

1 HOUSE BILL NO. 41
2 INTRODUCED BY MARKS

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE AND CLARIFY
5 THE MONTANA ALCOHOLIC BEVERAGE CODE IN SUPPORT OF
6 RECODIFICATION; AMENDING SECTIONS 4-1-304, 4-2-102, 4-2-204,
7 4-4-105, 4-4-201, 4-4-202, 4-4-301, 4-4-302, 4-4-303,
8 4-4-401, 4-4-403, 4-4-404, 4-5-105, 4-6-102, 4-6-205, AND
9 4-6-401; REPEALING SECTIONS 4-1-305, 4-1-307, 4-4-106, AND
10 4-6-206, B.C.M. 1947."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 4-1-304, B.C.M. 1947, is amended to
14 read as follows:

15 "4-1-304. Liquor division employees not to be
16 interested in liquor sales unlawful to give or receive
17 gift, commission or remuneration Prohibited acts within
18 division. (1) No officer or employee of the liquor division,
19 including those engaged in the sale of liquor at the various
20 state liquor stores, shall may be directly or indirectly
21 interested or engaged in any other business or undertaking
22 dealing in liquor, whether as owner, part owner, partner,
23 member of syndicate, shareholder, agent, or employee, and
24 whether for his own benefit or in a fiduciary capacity for
25 some other person.

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

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

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

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

25 (b) ~~It shall be the duty of the division, when~~ When a

1 brand of liquor has been accepted for testing by the
2 division, ~~to~~ the division shall forward the sample, unopened
3 and in its entirety, to a qualified chemical laboratory for
4 analysis.

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

11 (5) No liquor, wine, or other ~~spiriteous~~ alcoholic
12 beverage ~~shall~~ may be withdrawn from the regular warehouse
13 inventory or from the state liquor stores of the Montana
14 liquor division, for any purpose ~~whatsoever~~ other than by
15 sale at the prevailing state retail prices, or for
16 destroying damaged or defective merchandise. The division
17 shall maintain a written record including the type, brand,
18 and container size, number of bottles or other units,
19 signatures of witnesses, and method of destruction or other
20 disposition of damaged or defective warehouse or state store
21 merchandise."

22 Section 2. Section 4-2-102, R.C.M. 1947, is amended to
23 read as follows:

24 "4-2-102. Containers to be sealed with official seal
25 -- opening package on liquor store premises forbidden. No

1 ~~spirite or wine shall~~ liquor may be sold to any purchaser,
2 except in a package, sealed with the official seal
3 prescribed by this ~~act~~ code, which package ~~shall~~ may not be
4 opened on the premises of a state store."

5 Section 3. Section 4-2-204, R.C.M. 1947, is amended to
6 read as follows:

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

17 Section 4. Section 4-4-105, R.C.M. 1947, is amended to
18 read as follows:

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

1 is held.

2 (b) The application of any such association or
3 corporation shall be presented ~~ten~~ (10) days in advance and
4 shall describe the location of such enclosure ~~wherein~~ where
5 such event is to be held, the nature of ~~such~~ the event, and
6 the period when it is contemplated that the ~~same event~~ will
7 be held. ~~Such~~ The application shall be accompanied by the
8 amount of the permit fee ~~hereinafter provided~~.

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

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

20 (2) (a) Any a post of a nationally chartered veterans'
21 organization or ~~any~~ a lodge of a recognized national
22 fraternal organization, not otherwise licensed under this
23 code, shall, in the discretion of the department, without
24 notice or hearing as provided in ~~section~~ 4-4-302, be
25 entitled to a special permit to sell beer or a special

1 permit to sell all alcoholic beverages at such post or
2 lodge, to members and their guests only, to be consumed
3 within the hall or building of such post or lodge.

4 (b) The application of such nationally chartered
5 veterans' organization or lodge of a recognized national
6 fraternal organization shall describe the location of the
7 hall or building where the special permit ~~shall~~ will be used
8 and the date it will be used. ~~Such application shall be~~
9 ~~accompanied by a permit fee of ten dollars (\$10).~~

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

15 Section 5. Section 4-4-201, R.C.M. 1947, is amended to
16 read as follows:

17 "4-4-201. Issuance of retail beer licenses — limit on
18 number of beer retail licenses — wine license amendments —
19 retail license fee off-premises consumption. (1) Except as
20 otherwise provided by law, a license to sell beer at retail,
21 or beer and wine at retail ~~pursuant to subsection (2)~~, in
22 accordance with the provisions of this ~~act~~ code and the
23 ~~regulations~~ rules of the department ~~of revenue~~, may be
24 issued to any person, firm, or corporation who ~~shall be~~ is
25 approved by the department as a fit and proper person, firm,

1 or corporation to sell beer, ~~provided, except~~ that:

2 (a) the number of retail beer licenses that the
3 department may issue for premises situated within
4 incorporated cities and incorporated towns and within a
5 distance of ~~five~~(5) miles from the corporate limits of such
6 cities and towns shall be determined on the basis of
7 population as shown by the most recent official United
8 States census authorized by ~~Congress~~ Congress, ~~to-wit as~~
9 follows:

10 (i) ~~In~~ in incorporated towns of ~~five-hundred~~(500)
11 inhabitants or less and within a distance of ~~five~~(5) miles
12 from the corporate limits of such towns, not more than one
13 ~~retail~~ beer license which ~~shall~~ may not be used in
14 conjunction with a retail ~~liquor~~ all-beverages license;

15 (ii) in incorporated cities or incorporated towns of
16 more than ~~five-hundred~~(500) inhabitants and not over ~~two~~
17 ~~thousand~~(2,000) inhabitants and within a distance of ~~five~~
18 ~~retail~~ beer license for each ~~five-hundred~~(500) inhabitants
19 which ~~said-beer-license-shall~~ may not be used in conjunction
20 with retail ~~liquor~~ all-beverages licenses;

21 (iii) in incorporated cities of over ~~two-thousand~~
22 ~~retail~~ beer licenses for the first ~~two-thousand~~(2,000)
23 inhabitants and within a distance of ~~five~~(5) miles
24 from the corporate limits of such cities, two ~~retail~~ additional
25 retail beer licenses for the first ~~two-thousand~~(2,000)

1 inhabitants or major fraction thereof and one ~~retail~~ additional
2 retail beer license for each additional ~~two-thousand~~(2,000)
3 inhabitants which ~~shall~~ may not be used in conjunction with
4 retail ~~liquor~~ all-beverages licenses;

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

24 (c) ~~Retail~~ retail beer licenses of issue on ~~the date~~
25 ~~of the passage and approval of this act~~ March 7, 1947, and

1 which are in excess of the foregoing limitations shall be
 2 renewable, but no new licenses shall may be issued in
 3 violation of such limitations; ~~provided, that~~

4 (d) such limitations shall do not prevent the issuance
 5 of a nontransferable and nonassignable retail beer license
 6 to ~~any~~ a post of a nationally chartered veterans'
 7 organization or ~~any~~ a lodge of a recognized national
 8 fraternal organization, if such veterans' or fraternal
 9 organization has been in existence for a period of ~~five~~
 10 ~~(5)~~ years or more prior to January 1, 1949-;

11 (e) the number of retail beer licenses that the
 12 department may issue for use at premises situated outside of
 13 any incorporated city or incorporated town and outside of
 14 the area within a distance of 5 miles from the corporated
 15 limits thereof or for use at premises situated within any
 16 unincorporated town shall be as determined by the department
 17 in the exercise of its sound discretion, except that no
 18 retail beer license may be issued for any premises so
 19 situated unless the department determines that the issuance
 20 of such license is required by public convenience and
 21 necessity.

22 (2) The cities and incorporated towns may enact
 23 ordinances defining certain areas in the cities and towns
 24 where alcoholic beverages may or may not be sold. No
 25 incorporated city or incorporated town may by ordinance

1 restrict the number of licenses that the department may
 2 issue, ~~provided that However,~~ no retail beer license may be
 3 issued by the department for any premises situated within
 4 any zone of such city or town ~~wherein~~ where the sale of beer
 5 or liquor is prohibited by ordinance, a certified copy of
 6 which has been filed with the department. The department
 7 ~~shall have discretion to~~ may deny the issuance of a retail
 8 beer or all-beverages license if it ~~shall determine~~
 9 determines that the premises proposed for licensing are off
 10 regular police beats and cannot be properly policed by local
 11 authorities.

12 ~~(b) The number of retail beer licenses that the~~
 13 ~~department may issue for use at premises situated outside of~~
 14 ~~any incorporated city or incorporated town and outside of~~
 15 ~~the area within a distance of five (5) miles from the~~
 16 ~~corporated limits thereof, or for use at premises situated~~
 17 ~~within any unincorporated town shall be as determined by the~~
 18 ~~department in the exercise of its sound discretion,~~
 19 ~~provided, that no retail beer license shall be issued for~~
 20 ~~any premises so situated unless the department shall~~
 21 ~~determine that the issuance of such license is required by~~
 22 ~~public convenience and necessity.~~

23 ~~(2) (3)~~ A person holding a license to sell beer for
 24 consumption on the premises at retail may apply to the
 25 department for an amendment to the license permitting the

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

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

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

1 any such license or suspend or revoke any such license for
 2 cause. ~~The annual license fee for a license to sell beer at~~
 3 ~~retail for off-premises consumption shall be the same as for~~
 4 ~~a retail beer license."~~

5 Section 6. Section 4-4-202, R.C.M. 1947, is amended to
 6 read as follows:

7 "4-4-202. ~~All-beverage~~ All-beverages license quota.
 8 ~~(1)~~ Except as otherwise provided by law, a license to sell
 9 liquor, beer, and wine at retail, an all-beverages license,
 10 in accordance with the provisions of this code and the
 11 ~~regulations~~ rules of the Montana department of revenue, may
 12 be issued to any person who shall be is approved by the
 13 department as a fit and proper person to sell such
 14 beverages, ~~provided,~~ except that:

15 ~~(a) (1)~~ the number of all-beverages licenses that the
 16 department may issue for premises situated within
 17 incorporated cities and incorporated towns and within a
 18 distance of ~~five (5)~~ miles from the corporate limits of such
 19 cities and towns shall be determined on the basis of
 20 population as shown by the most recent official United
 21 States census authorized by ~~Congress~~ Congress, ~~to-wit as~~
 22 follows:

23 ~~(a) In~~ in incorporated towns of ~~five-hundred (500)~~
 24 inhabitants or less and within a distance of ~~five (5)~~ miles
 25 from the corporate limits of such towns, not more than two

1 ~~(2)~~ retail licenses;

2 (b) in incorporated cities or incorporated towns of
3 more than ~~five hundred~~ (500) inhabitants and not over ~~three~~
4 ~~thousand~~ (3,000) inhabitants and within a distance of ~~five~~
5 ~~(5)~~ miles from the corporate limits of such cities and
6 towns, three ~~(3)~~ retail licenses for the first ~~one thousand~~
7 ~~(1,000)~~ inhabitants and one ~~(1)~~ retail license for each
8 additional ~~one thousand~~ (1,000) inhabitants;

9 (c) in incorporated cities of over ~~three thousand~~
10 ~~(3,000)~~ inhabitants and within a distance of ~~five~~ (5) miles
11 from the corporate limits thereof, five (5) retail licenses
12 for the first ~~three thousand~~ (3,000) inhabitants and one (1)
13 retail license for each additional ~~one thousand five hundred~~
14 ~~(1,500)~~ inhabitants.

15 (2) The number of the inhabitants in such cities and
16 towns, exclusive of the number of inhabitants residing
17 within a distance of ~~five~~ (5) miles from the corporate
18 limits thereof, shall govern the number of retail licenses
19 that may be issued for use within such cities and towns and
20 within a distance of ~~five~~ (5) miles from the corporate
21 limits thereof, ~~provided, however, that where~~ If two (2) or
22 more incorporated municipalities are situated within a
23 distance of ~~five~~ (5) miles from each other, the total number
24 of retail licenses that may be issued for use in both of
25 such municipalities and within a distance of ~~five~~ (5) miles

1 from their respective corporate limits, shall be determined
2 on the basis of the combined population of both of such
3 municipalities and ~~shall~~ may not exceed the foregoing
4 limitations. Notwithstanding the preceding sentence, the
5 total population for determining the quota of a city may
6 include, with the city's population, the population residing
7 outside, but within ~~five~~ (5) miles of the city limits in a
8 case where the number of persons residing outside but within
9 ~~five~~ (5) miles of the city exceeds the number of persons
10 residing within the city. Such a determination may be made
11 only upon a special census taken by the department or its
12 agent at the expense of the applicant for a license under
13 this section. The ~~said~~ distance of ~~five~~ (5) miles from the
14 corporate limits of any incorporated city or incorporated
15 town shall be measured in a straight line from the nearest
16 entrance of the premises proposed for licensing to the
17 nearest corporate boundary of ~~each~~ the city or town.

18 (3) Retail all-beverages licenses of issue on ~~the date~~
19 ~~of the passage and approval of this code~~ March 7, 1947, and
20 which are in excess of the foregoing limitations shall be
21 renewable, but no new licenses ~~shall~~ may be issued in
22 violation of such limitations, ~~provided that such~~

23 (4) Such limitations ~~shall~~ do not prevent the issuance
24 of a nontransferable and nonassignable (as to ownership
25 only) retail license to any post of a nationally chartered

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

15 ~~(b)(5)~~ the The number of retail all-beverages licenses
 16 that the department may issue for use at premises situated
 17 outside of any incorporated city or incorporated town and
 18 outside of the area within a distance of ~~five (5)~~ miles from
 19 the corporate limits thereof, ~~shall be~~ may not be more than
 20 one ~~(4)~~ license for each ~~seven hundred fifty (750)~~
 21 population of the county, after excluding the population of
 22 incorporated cities and incorporated towns in such county."

23 Section 7. Section 4-4-301, R.C.M. 1947, is amended to
 24 read as follows:

25 "4-4-301. Application for all-beverages license --

1 penalty for false statements. (1) Prior to the issuance of
 2 a an all-beverages license as ~~herein~~ provided in 4-4-202,
 3 the applicant shall file with the ~~Montana~~ department of
 4 ~~revenue~~ an application in writing, signed by the applicant,
 5 and containing such information and statements relative to
 6 the applicant and the premises where the alcoholic beverage
 7 is to be sold, as may be required by the department.

8 (2) The application shall be verified by the affidavit
 9 of the person making the same before a person authorized to
 10 administer oaths. If any false statement is made in any
 11 part of ~~said~~ the application, the applicant, or applicants,
 12 ~~shall be deemed~~ are guilty of a misdemeanor, and upon
 13 conviction thereof the license, if issued, shall be revoked
 14 and the applicant, or applicants, subjected to the penalties
 15 provided by law."

16 Section 8. Section 4-4-302, R.C.M. 1947, is amended to
 17 read as follows:

18 "4-4-302. Notice of application -- publication --
 19 protest. (1) When an application has been filed with the
 20 ~~Montana~~ department of ~~revenue~~ for a license to sell
 21 alcoholic beverages at retail, or to transfer such license,
 22 the department shall promptly publish in a newspaper of
 23 general circulation in the city, town, or county from ~~where~~
 24 such which the application ~~shall come~~ comes, a notice that
 25 such applicant has made application for such license, and

1 that protests against the issuance of a license to the
 2 applicant will be heard at a time and place stated in the
 3 notice, which shall be in the city of Helena, Montana.
 4 Notice of application for a new license shall be published
 5 once a week for ~~four~~(4) consecutive weeks. Notice of
 6 application for transfer of a license shall be published
 7 once a week for ~~two~~(2) consecutive weeks. Notice may be
 8 substantially in the following form:

9 NOTICE OF APPLICATION FOR RETAIL

10 ALL-BEVERAGES LICENSE

11 Notice is hereby given that on the day of,
 12 19.., one (name of applicant) filed an application for a
 13 retail all-beverages license with the Montana department of
 14 revenue, to be used at (describe location of premises where
 15 ~~license is~~ beverages are to be sold), and protests, if any
 16 there be, against the issuance of such license will be heard
 17 at the hour of ---M, on the day of, 19.., at the
 18 office of the Montana department of revenue, in Helena,
 19 Montana.

20 Dated

Signed

21 ADMINISTRATOR

22 (2) No license ~~shall~~ may be issued until on or after
 23 the date set in the notice for hearing protests. Nor ~~shall~~
 24 may a license under this code be issued if the ~~said Montana~~
 25 department of revenue ~~shall find~~ finds from the evidence at

1 ~~said the~~ hearing that the welfare of the people residing in
 2 the vicinity of the place for which such license is desired
 3 will be adversely and seriously affected, or that the
 4 purposes of this code will not be carried out by the
 5 issuance of such license. Each applicant shall, at the time
 6 of filing his application, pay to the ~~Montana~~ department of
 7 ~~revenue~~, an amount sufficient to cover the costs of
 8 publishing ~~said the~~ notice."

9 Section 9. Section 4-4-303, R.C.M. 1947, is amended to
 10 read as follows:

11 "4-4-303. Investigation of application. Upon receipt
 12 of a completed application for a license under this code,
 13 accompanied by the necessary license fee ~~and bond~~, the
 14 department of ~~revenue~~ shall within ~~thirty~~(30) days
 15 ~~thereafter, cause to be made~~ make a thorough investigation
 16 of all matters pertaining thereto, and shall determine
 17 whether such applicant is qualified to receive a license and
 18 his premises are suitable for the carrying on of the
 19 business, and whether the requirements of this code and the
 20 rules ~~and regulations~~ promulgated by the department are met
 21 and complied with."

22 Section 10. Section 4-4-401, R.C.M. 1947, is amended
 23 to read as follows:

24 "4-4-401. Fees for licenses ~~---expiration dates---~~
 25 ~~regulation by cities and towns.~~ (1)(a) Each beer licensee,

1 under the provisions of this code, shall pay an annual
2 license fee as follows:

3 (i) ~~Each each~~ "brewer," wherever located, whose
4 product is sold or offered for sale within the state, ~~five~~
5 ~~hundred dollars (\$500); for each storage depot, \$400;~~

6 (ii) ~~each each~~ "wholesaler", ~~four hundred dollars~~
7 ~~(\$400);~~

8 (iii) ~~Each each~~ "retailer", ~~two hundred dollars (\$200);~~
9 ~~with a wine license amendment, an additional \$200;~~

10 (iv) for a license to sell beer at retail for
11 off-premises consumption only, the same as a retail beer
12 license;

13 (v) ~~Any any~~ unit of a nationally chartered veterans'
14 organization, ~~fifty dollars (\$50);~~

15 ~~All licenses issued in any year shall expire on the~~
16 ~~30th day of June at midnight of such year.~~

17 (b) A transfer of any ~~such~~ brewer's, wholesaler's, or
18 ~~beer retailer's~~ license may be made on application to the
19 Montana department of revenue with the consent of the said
20 department, provided that ~~said the~~ transferee shall qualify
21 ~~qualifies~~ under this code. ~~The cities and incorporated~~
22 ~~towns may enact ordinances defining certain areas in said~~
23 ~~cities or towns where beer may or may not be sold providing~~
24 ~~that said ordinance does not affect the limit of retail beer~~
25 ~~licenses which shall be issued by the Montana department of~~

1 ~~revenue based upon the population of the city or town and~~
2 ~~said city or town shall file a certified copy of said~~
3 ~~ordinance with the Montana department of revenue.~~

4 (c) This code shall not be construed or interpreted so
5 as to repeal, amend, modify, change, or alter any provisions
6 of this code which require beer manufactured outside of ~~the~~
7 ~~state of~~ Montana and shipped into Montana to be consigned to
8 and shipped to a licensed wholesaler and by him unloaded
9 into his warehouse or subwarehouse in Montana.

10 (2) The permit fee under 4-4-105(1) is computed at the
11 rate of \$15 a day for each day beer is sold at those events
12 lasting 2 or more days but in no case be less than \$30.

13 (3) The permit fee under 4-4-105(2) is \$10 for the
14 sale of beer only or \$20 for the sale of all alcoholic
15 beverages.

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

19 (5) The annual license fee for a license to sell wine
20 on the premises, when issued as an amendment to a beer-only
21 license, is \$200.

22 (6) Each licensee licensed under the quotas of 4-4-202
23 shall pay an annual license fee as follows:

24 (a) except as hereinafter provided, for each license
25 outside of incorporated cities and incorporated towns or in

1 incorporated cities and incorporated towns with a population
 2 of less than 2,000, \$400;

3 (b) except as hereinafter provided, for each license
 4 in incorporated cities with a population of more than 2,000
 5 and less than 5,000, \$300; or within a distance of 5 miles
 6 thereof, measured in a straight line from the nearest
 7 entrance of the premises to be licensed to the nearest
 8 boundary of such city, \$500;

9 (c) except as hereinafter provided, for each license
 10 in incorporated cities with a population of more than 5,000
 11 and less than 10,000 or within a distance of 5 miles
 12 thereof, measured in a straight line from the nearest
 13 entrance of the premises to be licensed to the nearest
 14 boundary of such city, \$650;

15 (d) for each license in incorporated cities with a
 16 population of 10,000 or more, or within a distance of 5
 17 miles thereof, measured in a straight line from the nearest
 18 entrance of the premises to be licensed to the nearest
 19 boundary of such city, \$800;

20 (e) the distance of 5 miles from the corporate limits
 21 of any incorporated cities and incorporated towns is
 22 measured in a straight line from the nearest entrance of the
 23 premises to be licensed to the nearest boundary of such city
 24 or town; and where the premises of the applicant to be
 25 licensed are situated within 5 miles of the corporate

1 boundaries of two or more incorporated cities or
 2 incorporated towns of different populations, the license fee
 3 chargeable by the larger incorporated city or incorporated
 4 town applies and shall be paid by the applicant. When the
 5 premises of the applicant to be licensed are situated within
 6 an incorporated town or incorporated city and any portion of
 7 the incorporated town or incorporated city is without a
 8 5-mile limit, the license fee chargeable by the smaller
 9 incorporated town or incorporated city applies and shall be
 10 paid by the applicant.

11 (f) an applicant for the issuance of an original
 12 license to be located in areas described in paragraph (d) of
 13 this subsection shall pay a one-time original license fee of
 14 \$20,000 for any such license issued. The one-time license
 15 fee of \$20,000 shall not apply to any transfer or renewal of
 16 a license duly issued prior to July 1, 1974. All licenses,
 17 however, are subject to the annual renewal fee of \$800.

18 (7) The license fees herein provided for are exclusive
 19 of and in addition to other license fees chargeable in
 20 Montana for the sale of liquor, beer, and malt beverages."

21 Section 11. Section 4-4-403, R.C.M. 1947, is amended
 22 to read as follows:

23 "4-4-403. ~~License fee for retail sale of liquor within~~
 24 ~~and without cities and towns of designated populations~~
 25 ~~and census of population. Each licensee licensed under~~

1 the quotas of section 4-4-202 shall pay an annual license
2 fee as follows:

3 (a) Except as hereinafter provided, for each license
4 outside of incorporated cities and incorporated towns, or in
5 incorporated cities and incorporated towns with a population
6 of less than two thousand (2,000), four hundred dollars
7 (\$400) per annum;

8 (b) Except as hereinafter provided, for each license
9 in incorporated cities with a population of more than two
10 thousand (2,000) and less than five thousand (5,000), three
11 hundred (\$300.00) dollars per annum; or within a distance of
12 five (5) miles thereof, measured in a straight line from the
13 nearest entrance of the premises to be licensed to the
14 nearest boundary of such city, five hundred dollars (\$500)
15 per annum;

16 (c) Except as hereinafter provided, for each license
17 in incorporated cities with a population of more than five
18 thousand (5,000) and less than ten thousand (10,000), or
19 within a distance of five (5) miles thereof, measured in a
20 straight line from the nearest entrance of the premises to
21 be licensed to the nearest boundary of such city, six
22 hundred fifty dollars (\$650) per annum;

23 (d) For each license in incorporated cities with a
24 population of ten thousand (10,000) or more, or within a
25 distance of five (5) miles thereof, measured in a straight

1 line from the nearest entrance of the premises to be
2 licensed to the nearest boundary of such city, eight hundred
3 dollars (\$800) per annum;

4 (e) For each railway system in the state of Montana,
5 three hundred (\$300.00) dollars per annum;

6 (f) The distance of five (5) miles from the corporate
7 limits of any incorporated cities and incorporated towns
8 shall be measured in a straight line from the nearest
9 entrance of the premises to be licensed to the nearest
10 boundary of such city or town; and where the premises of the
11 applicant to be licensed are situated within five (5) miles
12 of the corporate boundaries of two (2) or more incorporated
13 cities or incorporated towns of different populations the
14 license chargeable by the larger incorporated city or
15 incorporated town shall apply and be paid by the applicant;
16 provided, however, that when the premises of the applicant
17 to be licensed are situated within an incorporated town or
18 incorporated city and any portion of said incorporated town
19 or incorporated city be without said five (5) mile limit
20 then the license fee chargeable by the smaller incorporated
21 town or incorporated city shall apply and be paid by said
22 applicant.

23 An applicant for the issuance of an original license to
24 be located in areas described in subsection (d) of this
25 section shall pay a one-time original license fee of twenty

1 ~~thousand dollars (\$20,000) for any such license issued. The~~
 2 ~~said one time license fee of twenty thousand dollars~~
 3 ~~(\$20,000) shall not apply to any transfer or renewal of a~~
 4 ~~license duly issued prior to July 1, 1974. All licenses,~~
 5 ~~however, shall be subject to the annual renewal fee of eight~~
 6 ~~hundred dollars (\$800).~~

7 ~~The license fees herein provided for are exclusive of~~
 8 ~~and in addition to other license fees chargeable in the~~
 9 ~~state of Montana for the sale of liquor, beer and malt~~
 10 ~~beverages.~~

11 The census taken under the direction of Congress
 12 ~~congress of the United States in the year nineteen hundred~~
 13 ~~and thirty, and every ten years thereafter,~~ shall be the
 14 basis upon which the respective populations of ~~said the~~ the
 15 municipalities shall be determined, unless a direct
 16 enumeration of the inhabitants ~~thereof be is~~ is made by the
 17 state or municipal corporation, in which case such later
 18 direct enumeration shall constitute such basis, provided,
 19 ~~however, that no~~ No census hereafter taken ~~shall may~~ may be such
 20 basis until it ~~shall have been is~~ is published under the
 21 authority under which the same ~~shall be is~~ is taken, and then
 22 its effect shall be prospective only from the date of such
 23 publication ~~be prospective only and provided, further, that~~
 24 ~~none of the provisions of this act shall be deemed to~~
 25 ~~operate retroactively."~~

1 Section 12. Section 4-4-404, R.C.M. 1947, is amended
 2 to read as follows:

3 "4-4-404. Fee for and expiration of licenses.
 4 ~~Effective Each~~ Each July 1, 1944, ~~and at the same date of each~~
 5 ~~year thereafter,~~ the Montana department of ~~revenue~~ shall
 6 issue licenses to brewers, wholesalers, or retailers or for
 7 the retail sale of alcoholic beverages ~~liquor~~ on an annual
 8 basis, and at such fees as are prescribed by law, and such
 9 licenses shall expire at midnight of June ~~30th~~ 30 of the
 10 succeeding year. The department shall notify each applicant
 11 for an original license or renewal that he should inform
 12 himself of applicable provisions of federal law which may
 13 require a permit from a federal agency."

14 Section 13. Section 4-5-105, R.C.M. 1947, is amended
 15 to read as follows:

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

1 defray the county's costs in administering this program."
 2 Section 14. Section 4-6-102, R.C.M. 1947, is amended
 3 to read as follows:
 4 "4-6-102. Sale of liquor not purchased from state
 5 store forbidden — penalty. It ~~shall be~~ is unlawful for any
 6 licensee to sell or keep for sale ~~and/or~~ have on his
 7 premises for any purpose whatever, any liquor except that
 8 purchased from the state liquor store, and any licensee
 9 found in possession of, or selling and keeping for sale, any
 10 liquor which was not purchased from a state liquor store,
 11 shall, upon conviction, be ~~fined~~ punished by a fine of not
 12 less than ~~five hundred dollars~~ ~~(\$500)~~ ~~nor~~ or more than
 13 ~~fifteen hundred dollars~~ ~~(\$1,500)~~, ~~or~~ be punished by
 14 imprisonment for not less than ~~three~~ ~~(3)~~ months ~~nor~~ or more
 15 than ~~one~~ ~~(1)~~ year, or by both such fine and imprisonment,
 16 and if the department ~~shall be~~ is satisfied that any such
 17 liquor was knowingly sold or kept for sale within the
 18 licensed premises by ~~such~~ the licensee, or by his agents,
 19 servants, or employees, ~~it shall be mandatory that said~~ the
 20 department shall immediately revoke the license ~~of said~~
 21 licensee."
 22 Section 15. Section 4-6-205, R.C.M. 1947, is amended
 23 to read as follows:
 24 "4-6-205. Unlawful alcoholic beverage — seizure —
 25 forfeiture. Any investigator or peace officer who finds an

1 alcoholic beverage, which he has reasonable cause to believe
 2 is had or kept by any person in violation of the provisions
 3 of this code, may forthwith seize and remove the same and
 4 the packages in which the alcoholic beverage is kept, and
 5 upon conviction of the person for a violation of any
 6 provision of ~~this section~~ ~~4-3-102~~, the alcoholic beverage
 7 and all packages containing the same shall, in addition to
 8 any other penalty prescribed by this code, ipso facto be
 9 forfeited to the state of Montana."
 10 Section 16. Section 4-6-401, R.C.M. 1947, is amended
 11 to read as follows:
 12 "4-6-401. Premises where liquor illegally sold public
 13 nuisance. Any room, house, building, boat, vehicle,
 14 structure or place where alcoholic beverages are knowingly
 15 manufactured, sold, or bartered, in violation of this code
 16 or ~~section~~ 94-8-107 and all property knowingly kept and used
 17 in maintaining the same is hereby declared to be a public
 18 nuisance, and any person who maintains such a nuisance shall
 19 be guilty of a misdemeanor, and upon conviction thereof
 20 shall be fined not less than ~~one hundred dollars~~ ~~(\$100.00)~~,
 21 ~~nor~~ or more than ~~five hundred dollars~~ ~~(\$500)~~ and by
 22 ~~imprisonment~~ be imprisoned not less than ~~thirty~~ 30 days, ~~nor~~
 23 or more than ~~six~~ 6 months."
 24 Section 17. Repealer. Sections 4-1-305, 4-1-307,
 25 4-4-106, and 4-6-206, R.C.M. 1947, are repealed.

-End-

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LC 0044

1977 Legislature
Code Commissioner Bill - Summary

House Bill No. 41

TO REVISE AND CLARIFY LAWS RELATING TO THE ALCOHOLIC BEVERAGE CODE.

(This summary does not include discussion of routine form or grammatical changes.)

Section 1. 4-1-304 essentially covers all the conflict-of-interest areas for liquor division employees which the next section, 4-1-305, addresses. The amendment borrows 4-1-305's language specifically including the store employees and puts it in 4-1-304; the latter section is then repealed.

Section 2. 4-2-102. Substitute the word "liquor" for "spirits".

Section 3. 4-2-204. Add words "and license" after "excise" to clarify that price of liquor includes both taxes. When section was enacted in 1937 there was no license tax.

Section 4. 4-4-105. Insert "Alcoholic Beverages" in catchline so it may be combined with 4-4-106 by inserting in 4-4-105 (2) the words, "or a special permit to sell all alcoholic beverages". Fees for each permit are transferred to 4-4-401. Repeal 4-4-106.

Section 5. 4-4-201. Substitute "all-beverages license" for "liquor license". Substitute "March 7, 1947," for "the date of the passage and approval of this act". Move to here from 4-4-401 and 4-4-202 the authority of cities to enact ordinances banning sales of alcoholic beverages in certain zones. Transfer (3) and part of (4) on fees to 4-4-401.

Section 6. 4-4-202. Substitute "March 7, 1947" for "the date of the passage and approval of this code" to correct an error in the 1975 recodification. Delete language concerning ordinances added to 4-4-201.

Section 7. 4-4-301. Insert "all beverages" in catchline and in first sentence substitute "in 4-4-201" for "herein" to indicate that the section deals only with an all-beverages license.

Section 8. 4-4-302. In notice example, substitute "beverages are" for "license is" to indicate the applicant must describe the premises where beverages are to be sold.

Section 9. 4-4-303. Delete "and bond" since none is required.

Section 10. 4-4-401. Rearrange so that all license fees due under code appear in this section. Bring in the wine amendment and grocery license fees from 4-4-201 (see section 7), delete June 30 expiration date and amend this provision into 4-4-404 for beer licenses (see section 12). Delete the ordinance provisions which were consolidated in 4-4-201, bring in the special permit fees from 4-4-105 and 4-4-106 (see section 5), bring in passenger carrier license fee from 4-4-109 (drop the latter reference in recodification).

Section 11. 4-4-403. Delete all fee references, moved to 4-4-401, so that only the census provision remains. Delete reference to a census "every ten years thereafter" since congress has just put census-taking on a five-year cycle.

Section 12. 4-4-404. Delete the word "liquor" so that section applies to beer also. Renewal provision in 4-4-401 may be deleted by adding "and to brewers and wholesalers" to this section.

Section 13. 4-5-105. Substitute the word "Chapter" for the word "code".

Section 14. 4-6-102. Supply the verb "be punished".

Section 15. 4-6-205. Insert "4-3-102" for "this section" to clarify that the section is referring to a violation of the state seal requirements. "This section" contains no prohibitions.

Section 16. 4-6-401. Correct grammar by inserting "be imprisoned" for "by imprisonment".

Section 17. Repealers.

4-1-305. Repealed by consolidation with preceding section; 4-1-307 repealed as superfluous material; 4-4-106 repealed by consolidation with preceding section; 4-6-206 repealed by consolidation with preceding section.

Approved by Committee
on Business and Industry

1 HOUSE BILL NO. 41

2 INTRODUCED BY MARKS

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE AND CLARIFY
5 THE MONTANA ALCOHOLIC BEVERAGE CODE IN SUPPORT OF
6 RECODIFICATION; AMENDING SECTIONS 4-1-304, 4-2-102, 4-2-204,
7 4-4-105, 4-4-201, 4-4-202, 4-4-301, 4-4-302, 4-4-303,
8 4-4-401, 4-4-403, 4-4-404, 4-5-105, 4-6-102, 4-6-205, AND
9 4-6-401; REPEALING SECTIONS 4-1-305, 4-1-307, 4-4-106, AND
10 4-6-206, R.C.M. 1947."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 4-1-304, R.C.M. 1947, is amended to
14 read as follows:

15 "~~4-1-304. Liquor division employees not to be~~
16 ~~interested in liquor sales -- unlawful to give or receive~~
17 ~~gift, commission or remuneration~~ Prohibited acts within
18 division. (1) No officer or employee of the liquor division,
19 including those engaged in the sale of liquor at the various
20 state liquor stores, shall may be directly or indirectly
21 interested or engaged in any other business or undertaking
22 dealing in liquor, whether as owner, part owner, partner,
23 member of syndicate, shareholder, agent, or employee, and
24 whether for his own benefit or in a fiduciary capacity for
25 some other person.

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

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

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

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

25 (b) ~~It shall be the duty of the division, when~~ When a

SECOND READING

1 brand of liquor has been accepted for testing by the
 2 division, ~~to~~ the division shall forward the sample, unopened
 3 and in its entirety, to a qualified chemical laboratory for
 4 analysis.

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

11 (5) No liquor, wine, or other ~~spirituos~~ alcoholic
 12 beverage ~~shall~~ may be withdrawn from the regular warehouse
 13 inventory or from the state liquor stores of the Montana
 14 liquor division, for any purpose ~~whatsoever~~ other than ~~by~~
 15 sale at the prevailing state retail prices, or for
 16 destroying damaged or defective merchandise. The division
 17 shall maintain a written record including the type, brand,
 18 ~~and~~ container size, ~~and~~ number of bottles or other units, ~~and~~
 19 signatures of witnesses, ~~and~~ method of destruction or other
 20 disposition of damaged or defective warehouse or state store
 21 merchandise."

22 Section 2. Section 4-2-102, R.C.M. 1947, is amended to
 23 read as follows:

24 "4-2-102. Containers to be sealed with official seal
 25 — opening package on liquor store premises forbidden. No

1 ~~spirits or wine shall~~ liquor may be sold to any purchaser,
 2 except in a package, sealed with the official seal
 3 prescribed by this ~~act~~ code, which package ~~shall~~ may not be
 4 opened on the premises of a state store."

5 Section 3. Section 4-2-204, R.C.M. 1947, is amended to
 6 read as follows:

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

17 Section 4. Section 4-4-105, R.C.M. 1947, is amended to
 18 read as follows:

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

1 is held.

2 (b) The application of any such association or
3 corporation shall be presented ~~ten~~ (10) days in advance and
4 shall describe the location of such enclosure ~~wherein~~ where
5 such event is to be held, the nature of ~~such~~ the event, and
6 the period when it is contemplated that the ~~same~~ event will
7 be held. ~~Such~~ The application shall be accompanied by the
8 amount of the permit fee ~~hereinafter provided~~.

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

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

20 (2) (a) ~~Any~~ A post of a nationally chartered veterans'
21 organization or ~~any~~ a lodge of a recognized national
22 fraternal organization, not otherwise licensed under this
23 code, shall, in the discretion of the department, without
24 notice or hearing as provided in ~~section~~ 4-4-302, be
25 entitled to a special permit to sell beer or a special

1 permit to sell all alcoholic beverages at such post or
2 lodge, to members and their guests only, to be consumed
3 within the hall or building of such post or lodge.

4 (b) The application of such nationally chartered
5 veterans' organization or lodge of a recognized national
6 fraternal organization shall describe the location of the
7 hall or building where the special permit ~~shall~~ will be used
8 and the date it will be used. ~~Such application shall be~~
9 ~~accompanied by a permit fee of ten dollars (\$10).~~

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

15 Section 5. Section 4-4-201, R.C.M. 1947, is amended to
16 read as follows:

17 "4-4-201. Issuance of retail beer licenses -- limit on
18 number of beer retail licenses -- wine license amendments --
19 retail license fee off-premises consumption. (1) Except as
20 otherwise provided by law, a license to sell beer at retail,
21 or beer and wine at retail ~~pursuant to subsection (2)~~, in
22 accordance with the provisions of this ~~act~~ code and the
23 ~~regulations~~ rules of the department ~~of revenue~~, may be
24 issued to any person, firm, or corporation who ~~shall be~~ is
25 approved by the department as a fit and proper person, firm,

1 or corporation to sell beer, ~~provided, except~~ that:

2 (a) the number of retail beer licenses that the
3 department may issue for premises situated within
4 incorporated cities and incorporated towns and within a
5 distance of ~~five~~(5) miles from the corporate limits of such
6 cities and towns shall be determined on the basis of
7 population as shown by the most recent official United
8 States census authorized by ~~Congress~~ Congress, ~~to-wit as~~
9 follows:

10 (i) ~~In~~ in incorporated towns of ~~five-hundred~~(500)
11 inhabitants or less and within a distance of ~~five~~(5) miles
12 from the corporate limits of such towns, not more than one
13 ~~retail~~ beer license which ~~shall~~ may not be used in
14 conjunction with a retail ~~liquor~~ all-beverages license;

15 (ii) in incorporated cities or incorporated towns of
16 more than ~~five-hundred~~(500) inhabitants and not over ~~two~~
17 ~~thousand~~(2,000) inhabitants and within a distance of ~~five~~
18 (5) miles from the corporate limits of such cities or towns,
19 one ~~retail~~ beer license for each ~~five-hundred~~(500) inhabitants
20 which ~~said~~ beer license shall ~~may~~ may not be used in conjunction
21 with retail ~~liquor~~ all-beverages licenses;

22 (iii) in incorporated cities of over ~~two-thousand~~
23 (2,000) inhabitants and within a distance of ~~five~~(5) miles
24 from the corporate limits of such cities, two ~~retail~~(2) additional
25 retail beer licenses for the first ~~two-thousand~~(2,000)

1 inhabitants or major fraction thereof and one ~~retail~~(1) additional
2 retail beer license for each additional ~~two-thousand~~(2,000)
3 inhabitants which ~~shall~~ may not be used in conjunction with
4 retail ~~liquor~~ all-beverages licenses;

5 (b) ~~The~~ the number of the inhabitants in such cities
6 and towns, exclusive of the number of inhabitants residing
7 within a distance of ~~five~~(5) miles from the corporate
8 limits thereof, shall govern the number of retail beer
9 licenses that may be issued for use within such cities and
10 towns and within a distance of ~~five~~(5) miles from the
11 corporate limits thereof, ~~provided, that where~~ if two ~~retail~~(2)
12 or more incorporated municipalities are situated within a
13 distance of ~~five~~(5) miles from each other, the total number
14 of retail beer licenses that may be issued for use in both
15 of such municipalities and within a distance of ~~five~~(5)
16 miles from their respective corporate limits, shall be
17 determined on the basis of the combined populations of both
18 of such municipalities and ~~shall~~ may not exceed the
19 foregoing limitations. The ~~said~~ distance of ~~five~~(5) miles
20 from the corporate limits of any incorporated city or
21 incorporated town shall be measured in a straight line from
22 the nearest entrance of the premises proposed for licensing
23 to the nearest corporate boundary of such city or town.

24 (c) ~~Retail~~ retail beer licenses of issue on ~~the date~~
25 ~~of the passage and approval of this act~~ March 7, 1947, and

1 which are in excess of the foregoing limitations shall be
2 renewable, but no new licenses shall may be issued in
3 violation of such limitations; ~~provided, that~~

4 (d) such limitations shall do not prevent the issuance
5 of a nontransferable and nonassignable retail beer license
6 to ~~any~~ a post of a nationally chartered veterans'
7 organization or ~~any~~ a lodge of a recognized national
8 fraternal organization, if such veterans' or fraternal
9 organization has been in existence for a period of ~~five~~
10 ~~(5)~~ years or more prior to January 1, 1989;

11 (e) the number of retail beer licenses that the
12 department may issue for use at premises situated outside of
13 any incorporated city or incorporated town and outside of
14 the area within a distance of 5 miles from the corporated
15 limits thereof or for use at premises situated within any
16 unincorporated town shall be as determined by the department
17 in the exercise of its sound discretion, except that no
18 retail beer license may be issued for any premises so
19 situated unless the department determines that the issuance
20 of such license is required by public convenience and
21 necessity.

22 (2) The cities and incorporated towns may enact
23 ordinances defining certain areas in the cities and towns
24 where alcoholic beverages may or may not be sold. No
25 incorporated city or incorporated town may by ordinance

1 restrict the number of licenses that the department may
2 issue, ~~provided that~~ However, no retail beer license may be
3 issued by the department for any premises situated within
4 any zone of such city or town ~~wherein~~ where the sale of beer
5 or liquor is prohibited by ordinance, a certified copy of
6 which has been filed with the department. The department
7 ~~shall have discretion to~~ may deny the issuance of a retail
8 beer or all beverages license if it ~~shall determine~~
9 determines that the premises proposed for licensing are off
10 regular police beats and cannot be properly policed by local
11 authorities.

12 ~~(b) The number of retail beer licenses that the~~
13 ~~department may issue for use at premises situated outside of~~
14 ~~any incorporated city or incorporated town and outside of~~
15 ~~the area within a distance of five (5) miles from the~~
16 ~~corporated limits thereof, or for use at premises situated~~
17 ~~within any unincorporated town shall be as determined by the~~
18 ~~department in the exercise of its sound discretion;~~
19 ~~provided, that no retail beer license shall be issued for~~
20 ~~any premises so situated unless the department shall~~
21 ~~determine that the issuance of such license is required by~~
22 ~~public convenience and necessity.~~

23 ~~(2)(3)~~ A person holding a license to sell beer for
24 consumption on the premises at retail may apply to the
25 department for an amendment to the license permitting the

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

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

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

1 any such license or suspend or revoke any such license for
 2 cause. ~~The annual license fee for a license to sell beer at~~
 3 ~~retail for off-premises consumption shall be the same as for~~
 4 ~~a retail beer license."~~

5 Section 6. Section 4-4-202, R.C.M. 1947, is amended to
 6 read as follows:

7 "4-4-202. ~~All-beverage~~ All-beverages license quota.
 8 ~~(4)~~ Except as otherwise provided by law, a license to sell
 9 liquor, beer, and wine at retail, an all-beverages license,
 10 in accordance with the provisions of this code and the
 11 ~~regulations~~ rules of the Montana department of ~~revenue~~, may
 12 be issued to any person who shall be is approved by the
 13 department as a fit and proper person to sell such
 14 beverages, ~~provided, except~~ that:

15 ~~(a)(1)~~ the number of all-beverages licenses that the
 16 department may issue for premises situated within
 17 incorporated cities and incorporated towns and within a
 18 distance of ~~five~~ (5) miles from the corporate limits of such
 19 cities and towns shall be determined on the basis of
 20 population as shown by the most recent official United
 21 States census authorized by ~~Congress~~ Congress, ~~to-wit~~ as
 22 follows:

23 ~~(a)~~ is ~~in~~ incorporated towns of ~~five hundred~~ (500)
 24 inhabitants or less and within a distance of ~~five~~ (5) miles
 25 from the corporate limits of such towns, not more than two

1 ~~(2)~~ retail licenses;

2 (b) in incorporated cities or incorporated towns of
3 more than ~~five hundred~~ (500) inhabitants and not over ~~three~~
4 ~~thousand~~ (3,000) inhabitants and within a distance of ~~five~~
5 ~~(5)~~ miles from the corporate limits of such cities and
6 towns, three ~~(2)~~ retail licenses for the first ~~one thousand~~
7 ~~(1,000)~~ inhabitants and one ~~(1)~~ retail license for each
8 additional ~~one thousand~~ (1,000) inhabitants;

9 (c) in incorporated cities of over ~~three thousand~~
10 ~~(3,000)~~ inhabitants and within a distance of ~~five~~ (5) miles
11 from the corporate limits thereof, five ~~(5)~~ retail licenses
12 for the first ~~three thousand~~ (3,000) inhabitants and one ~~(1)~~
13 retail license for each additional ~~one thousand five hundred~~
14 ~~(1,500)~~ inhabitants.

15 (2) The number of the inhabitants in such cities and
16 towns, exclusive of the number of inhabitants residing
17 within a distance of ~~five~~ (5) miles from the corporate
18 limits thereof, shall govern the number of retail licenses
19 that may be issued for use within such cities and towns and
20 within a distance of ~~five~~ (5) miles from the corporate
21 limits thereof, ~~provided, however, that where~~ if two ~~(2)~~ or
22 more incorporated municipalities are situated within a
23 distance of ~~five~~ (5) miles from each other, the total number
24 of retail licenses that may be issued for use in both of
25 such municipalities and within a distance of ~~five~~ (5) miles

1 from their respective corporate limits, shall be determined
2 on the basis of the combined population of both of such
3 municipalities and ~~shall~~ may not exceed the foregoing
4 limitations. Notwithstanding the preceding sentence, the
5 total population for determining the quota of a city may
6 include, with the city's population, the population residing
7 outside, but within ~~five~~ (5) miles of the city limits in a
8 case where the number of persons residing outside but within
9 ~~five~~ (5) miles of the city exceeds the number of persons
10 residing within the city. Such a determination may be made
11 only upon a special census taken by the department or its
12 agent at the expense of the applicant for a license under
13 this section. The ~~said~~ distance of ~~five~~ (5) miles from the
14 corporate limits of any incorporated city or incorprated
15 town shall be measured in a straight line from the nearest
16 entrance of the premises proposed for licensing to the
17 nearest corporate boundary of ~~such~~ the city or town.

18 (3) Retail all-beverages licenses of issue on ~~the date~~
19 ~~of the passage and approval of this code~~ March 7, 1947, and
20 which are in excess of the foregoing limitations shall be
21 renewable, but no new licenses ~~shall~~ may be issued in
22 violation of such limitations, ~~provided that such~~

23 (4) Such limitations ~~shall~~ do not prevent the issuance
24 of a nontransferable and nonassignable (as to ownership
25 only) retail license to any post of a nationally chartered

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

15 (b) {5} the ~~The~~ number of retail all-beverages licenses
 16 that the department may issue for use at premises situated
 17 outside of any incorporated city or incorporated town and
 18 outside of the area within a distance of ~~five~~ {5} miles from
 19 the corporate limits thereof, ~~shall be~~ may not be more than
 20 one {1} license for each ~~seven hundred fifty~~ {750}
 21 population of the county, after excluding the population of
 22 incorporated cities and incorporated towns in such county."

23 Section 7. Section 4-4-301, R.C.M. 1947, is amended to
 24 read as follows:

25 "4-4-301. Application for all-beverages license --

1 penalty for false statements. {1} Prior to the issuance of
 2 a an all-beverages license as ~~herein~~ provided in 4-4-202,
 3 the applicant shall file with the ~~Montana~~ department of
 4 ~~revenue~~ an application in writing, signed by the applicant,
 5 and containing such information and statements relative to
 6 the applicant and the premises where the alcoholic beverage
 7 is to be sold, as may be required by the department.

8 {2} The application shall be verified by the affidavit
 9 of the person making the same before a person authorized to
 10 administer oaths. If any false statement is made in any
 11 part of ~~said~~ the application, the applicant, or applicants,
 12 ~~shall be deemed~~ are guilty of a misdemeanor, and upon
 13 conviction thereof the license, if issued, shall be revoked
 14 and the applicant, or applicants, subjected to the penalties
 15 provided by law."

16 Section 8. Section 4-4-302, R.C.M. 1947, is amended to
 17 read as follows:

18 "4-4-302. Notice of application -- publication --
 19 protest. {1} When an application has been filed with the
 20 ~~Montana~~ department of ~~revenue~~ for a license to sell
 21 alcoholic beverages at retail, or to transfer such license,
 22 the department shall promptly publish in a newspaper of
 23 general circulation in the city, town, or county from ~~whence~~
 24 ~~such~~ which the application ~~shall come~~ comes, a notice that
 25 such applicant has made application for such license, and

1 that protests against the issuance of a license to the
 2 applicant will be heard at a time and place stated in the
 3 notice, which shall be in the city of Helena, Montana.
 4 Notice of application for a new license shall be published
 5 once a week for ~~four~~ (4) consecutive weeks. Notice of
 6 application for transfer of a license shall be published
 7 once a week for ~~two~~ (2) consecutive weeks. Notice may be
 8 substantially in the following form:

9 NOTICE OF APPLICATION FOR RETAIL

10 ALL-BEVERAGES LICENSE

11 Notice is hereby given that on the day of,
 12 19.., one (name of applicant) filed an application for a
 13 retail all-beverages license with the Montana department of
 14 revenue, to be used at (describe location of premises where
 15 ~~license is~~ beverages are to be sold), and protests, if any
 16 there be, against the issuance of such license will be heard
 17 at the hour of --M, on the day of, 19.., at the
 18 office of the Montana department of revenue, in Helena,
 19 Montana.

20 Dated Signed

21 ADMINISTRATOR

22 (2) No license shall may be issued until on or after
 23 the date set in the notice for hearing protests. Nor shall
 24 may a license under this code be issued if the ~~said~~ Montana
 25 department ~~of revenue shall find~~ finds from the evidence at

1 ~~said~~ the hearing that the welfare of the people residing in
 2 the vicinity of the place for which such license is desired
 3 will be adversely and seriously affected, or that the
 4 purposes of this code will not be carried out by the
 5 issuance of such license. Each applicant shall, at the time
 6 of filing his application, pay to the ~~Montana~~ department ~~of~~
 7 ~~revenue~~, an amount sufficient to cover the costs of
 8 publishing ~~said~~ the notice."

9 Section 9. Section 4-4-303, R.C.M. 1947, is amended to
 10 read as follows:

11 "4-4-303. Investigation of application. Upon receipt
 12 of a completed application for a license under this code,
 13 accompanied by the necessary license fee ~~and bond~~, the
 14 department ~~of revenue~~ shall within ~~thirty~~ (30) days
 15 ~~thereafter, cause to be made~~ make a thorough investigation
 16 of all matters pertaining thereto, and shall determine
 17 whether such applicant is qualified to receive a license and
 18 his premises are suitable for the carrying on of the
 19 business, and whether the requirements of this code and the
 20 rules ~~and regulations~~ promulgated by the department are met
 21 and complied with."

22 Section 10. Section 4-4-401, R.C.M. 1947, is amended
 23 to read as follows:

24 "4-4-401. Fees for licenses ~~--- expiration dates ---~~
 25 ~~regulation by cities and towns.~~ (1)(a) Each beer licensee,

1 under the provisions of this code, shall pay an annual
2 license fee as follows:

3 (i) Each each "brewer," wherever located, whose
4 product is sold or offered for sale within the state, ~~five~~
5 ~~hundred dollars (\$500); for each storage depot, \$400;~~

6 (ii) Each each "wholesaler," ~~four hundred dollars~~
7 ~~(\$400);~~

8 (iii) Each each BEER "retailer," ~~two hundred dollars~~
9 ~~(\$200); with a wine license amendment, an additional \$200;~~

10 (iv) for a license to sell beer at retail for
11 off-premises consumption only, the same as a retail beer
12 license;

13 (v) Any any unit of a nationally chartered veterans'
14 organization, fifty dollars (\$50);

15 ~~All licenses issued in any year shall expire on the~~
16 ~~30th day of June at midnight of each year.~~

17 (b) A transfer of any such brewer's, wholesaler's, or
18 beer retailer's license may be made on application to the
19 Montana department of revenue with the consent of the said
20 department, provided that said the transferee shall qualify
21 qualifies under this code. The cities and incorporated
22 towns may enact ordinances defining certain areas in said
23 cities or towns where beer may or may not be sold providing
24 that said ordinance does not affect the limit of retail beer
25 licenses which shall be issued by the Montana department of

1 ~~revenue based upon the population of the city or town and~~
2 ~~said city or town shall file a certified copy of said~~
3 ~~ordinance with the Montana department of revenue.~~

4 (c) This code shall not be construed or interpreted so
5 as to repeal, amend, modify, change, or alter any provisions
6 of this code which require beer manufactured outside of the
7 state of Montana and shipped into Montana to be consigned to
8 and shipped to a licensed wholesaler and by him unloaded
9 into his warehouse or subwarehouse in Montana.

10 (2) The permit fee under 4-4-105(1) is computed at the
11 rate of \$15 a day for each day beer is sold at those events
12 lasting 2 or more days but in no case be less than \$30.

13 (3) The permit fee under 4-4-105(2) is \$10 for the
14 sale of beer only or \$20 for the sale of all alcoholic
15 beverages.

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

19 (5) The annual license fee for a license to sell wine
20 on the premises, when issued as an amendment to a beer-only
21 license, is \$200.

22 (6) Each licensee licensed under the quotas of 4-4-202
23 shall pay an annual license fee as follows:

24 (a) except as hereinafter provided, for each license
25 outside of incorporated cities and incorporated towns or in

1 incorporated cities and incorporated towns with a population
 2 of less than 2,000, \$400;

3 (b) except as hereinafter provided, for each license
 4 in incorporated cities with a population of more than 2,000
 5 and less than 5,000, \$400, or within a distance of 5 miles
 6 thereof, measured in a straight line from the nearest
 7 entrance of the premises to be licensed to the nearest
 8 boundary of such city, \$500;

9 (c) except as hereinafter provided, for each license
 10 in incorporated cities with a population of more than 5,000
 11 and less than 10,000 or within a distance of 5 miles
 12 thereof, measured in a straight line from the nearest
 13 entrance of the premises to be licensed to the nearest
 14 boundary of such city, \$650;

15 (d) for each license in incorporated cities with a
 16 population of 10,000 or more, or within a distance of 5
 17 miles thereof, measured in a straight line from the nearest
 18 entrance of the premises to be licensed to the nearest
 19 boundary of such city, \$800;

20 (e) the distance of 5 miles from the corporate limits
 21 of any incorporated cities and incorporated towns is
 22 measured in a straight line from the nearest entrance of the
 23 premises to be licensed to the nearest boundary of such city
 24 or town; and where the premises of the applicant to be
 25 licensed are situated within 5 miles of the corporate

1 boundaries of two or more incorporated cities or
 2 incorporated towns of different populations, the license fee
 3 chargeable by the larger incorporated city or incorporated
 4 town applies and shall be paid by the applicant. When the
 5 premises of the applicant to be licensed are situated within
 6 an incorporated town or incorporated city and any portion of
 7 the incorporated town or incorporated city is without a
 8 5-mile limit, the license fee chargeable by the smaller
 9 incorporated town or incorporated city applies and shall be
 10 paid by the applicant.

11 (f) an applicant for the issuance of an original
 12 license to be located in areas described in paragraph (d) of
 13 this subsection shall pay a one-time original license fee of
 14 \$20,000 for any such license issued. The one-time license
 15 fee of \$20,000 shall not apply to any transfer or renewal of
 16 a license duly issued prior to July 1, 1974. All licenses,
 17 however, are subject to the annual renewal fee of \$800.

18 (7) The license fees herein provided for are exclusive
 19 of and in addition to other license fees chargeable in
 20 Montana for the sale of liquor, beer, and malt beverages."

21 Section 11. Section 4-4-403, R.C.M. 1947, is amended
 22 to read as follows:

23 "4-4-403. License fee for retail sale of liquor within
 24 and without cities and towns of designated populations--
 25 census Census of population. Each licensee licensed under

1 ~~the quotas of section 4-4-202 shall pay an annual license~~
 2 ~~fee as follows:~~

3 ~~(a) Except as hereinafter provided, for each license~~
 4 ~~outside of incorporated cities and incorporated towns, or in~~
 5 ~~incorporated cities and incorporated towns with a population~~
 6 ~~of less than two thousand (2,000), four hundred dollars~~
 7 ~~(\$400) per annum;~~

8 ~~(b) Except as hereinafter provided, for each license~~
 9 ~~in incorporated cities with a population of more than two~~
 10 ~~thousand (2,000) and less than five thousand (5,000), three~~
 11 ~~hundred (\$300.00) dollars per annum; or within a distance of~~
 12 ~~five (5) miles thereof, measured in a straight line from the~~
 13 ~~nearest entrance of the premises to be licensed to the~~
 14 ~~nearest boundary of such city, five hundred dollars (\$500)~~
 15 ~~per annum;~~

16 ~~(c) Except as hereinafter provided, for each license~~
 17 ~~in incorporated cities with a population of more than five~~
 18 ~~thousand (5,000) and less than ten thousand (10,000), or~~
 19 ~~within a distance of five (5) miles thereof, measured in a~~
 20 ~~straight line from the nearest entrance of the premises to~~
 21 ~~be licensed to the nearest boundary of such city, six~~
 22 ~~hundred fifty dollars (\$650) per annum;~~

23 ~~(d) For each license in incorporated cities with a~~
 24 ~~population of ten thousand (10,000) or more, or within a~~
 25 ~~distance of five (5) miles thereof, measured in a straight~~

1 ~~line from the nearest entrance of the premises to be~~
 2 ~~licensed to the nearest boundary of such city, eight hundred~~
 3 ~~dollars (\$800) per annum;~~

4 ~~(e) For each railway system in the state of Montana,~~
 5 ~~three hundred (\$300.00) dollars per annum;~~

6 ~~(f) The distance of five (5) miles from the corporate~~
 7 ~~limits of any incorporated cities and incorporated towns~~
 8 ~~shall be measured in a straight line from the nearest~~
 9 ~~entrance of the premises to be licensed to the nearest~~
 10 ~~boundary of such city or town, and where the premises of the~~
 11 ~~applicant to be licensed are situated within five (5) miles~~
 12 ~~of the corporate boundaries of two (2) or more incorporated~~
 13 ~~cities or incorporated towns of different populations the~~
 14 ~~license chargeable by the larger incorporated city or~~
 15 ~~incorporated town shall apply and be paid by the applicant;~~
 16 ~~provided, however, that when the premises of the applicant~~
 17 ~~to be licensed are situated within an incorporated town or~~
 18 ~~incorporated city and any portion of said incorporated town~~
 19 ~~or incorporated city be without said five (5) mile limit~~
 20 ~~then the license fee chargeable by the smaller incorporated~~
 21 ~~town or incorporated city shall apply and be paid by said~~
 22 ~~applicant.~~

23 ~~An applicant for the issuance of an original license to~~
 24 ~~be located in areas described in subsection (d) of this~~
 25 ~~section shall pay a one time original license fee of twenty~~

1 ~~thousand dollars (\$20,000) for any such license issued. The~~
 2 ~~said one-time license fee of twenty thousand dollars~~
 3 ~~(\$20,000) shall not apply to any transfer or renewal of a~~
 4 ~~license duly issued prior to July 1, 1974. All licenses,~~
 5 ~~however, shall be subject to the annual renewal fee of eight~~
 6 ~~hundred dollars (\$800).~~

7 ~~The license fees herein provided for are exclusive of~~
 8 ~~and in addition to other license fees chargeable in the~~
 9 ~~state of Montana for the sale of liquor, beer and malt~~
 10 ~~beverages.~~

11 The census taken under the direction of Congress
 12 ~~Congress~~ of the United States in the year nineteen hundred
 13 ~~and thirty, and every ten years thereafter,~~ shall be the
 14 basis upon which the respective populations of ~~said the~~
 15 municipalities shall be determined, unless a direct
 16 enumeration of the inhabitants ~~thereof be is~~ made by the
 17 state or municipal corporation, in which case such later
 18 direct enumeration shall constitute such basis, ~~and provided,~~
 19 ~~however, that no~~ no census hereafter taken shall may be such
 20 basis until it ~~shall have been is~~ published under the
 21 authority under which the same ~~shall be is~~ taken, and then
 22 its effect shall be prospective only from the date of such
 23 publication ~~be prospective only and provided, further, that~~
 24 ~~none of the provisions of this act shall be deemed to~~
 25 ~~operate retroactively."~~

1 Section 12. Section 4-4-404, R.C.M. 1947, is amended
 2 to read as follows:

3 "4-4-404. Fee for and expiration of licenses.
 4 ~~Effective Each~~ Each July 1, 1944, and at the same date of each
 5 ~~year thereafter,~~ the Montana department of ~~revenue~~ shall
 6 issue licenses to brewers, wholesalers, or retailers or for
 7 the retail sale of alcoholic beverages ~~liquor~~ on an annual
 8 basis, and at such fees as are prescribed by law, and such
 9 licenses shall expire at midnight of June ~~30th~~ 30 of the
 10 succeeding year. The department shall notify each applicant
 11 for an original license or renewal that he should inform
 12 himself of applicable provisions of federal law which may
 13 require a permit from a federal agency."

14 Section 13. Section 4-5-105, R.C.M. 1947, is amended
 15 to read as follows:

16 "4-5-105. Fee to be charged. The county clerk and
 17 recorders shall charge and collect a fee of ~~one dollar and~~
 18 ~~fifty cents (\$1.50)~~ from the applicant at the time the
 19 application is prepared, ~~and one dollar (\$1)~~ thereof shall
 20 be transmitted to the Montana department of ~~revenue~~ along
 21 with the application and shall be used to defray the cost of
 22 administering and executing the provisions of this ~~code~~
 23 chapter. Any surplus shall revert to the general fund ~~of~~
 24 ~~the state~~ of Montana. The remaining ~~fifty cents (\$0.50)~~ 50
 25 cents shall be paid into the general fund of the county to

1 defray the county's costs in administering this program."

2 Section 14. Section 4-6-102, R.C.M. 1947, is amended
3 to read as follows:

4 "4-6-102. Sale of liquor not purchased from state
5 store forbidden — penalty. It ~~shall be~~ is unlawful for any
6 licensee to sell or keep for sale ~~and/or~~ have on his
7 premises for any purpose whatever, any liquor except that
8 purchased from the state liquor store, and any licensee
9 found in possession of, or selling and keeping for sale, any
10 liquor which was not purchased from a state liquor store,
11 shall, upon conviction, be ~~fin~~ punished by a fine of not
12 less than ~~five hundred dollars~~ (\$500) ~~or~~ or more than
13 ~~fifteen hundred dollars~~ (\$1,500), ~~or~~ be punished by
14 imprisonment for not less than ~~three~~ (3) months ~~or~~ or more
15 than ~~one~~ (1) year, or by both such fine and imprisonment,
16 and if the department ~~shall be~~ is satisfied that any such
17 liquor was knowingly sold or kept for sale within the
18 licensed premises by ~~such~~ the licensee, or by his agents,
19 servants, or employees, ~~it shall be mandatory that said~~ the
20 department shall immediately revoke the license ~~of said~~
21 licensee."

22 Section 15. Section 4-6-205, R.C.M. 1947, is amended
23 to read as follows:

24 "4-6-205. Unlawful alcoholic beverage — seizure —
25 forfeiture. Any investigator or peace officer who finds an

1 alcoholic beverage, which he has reasonable cause to believe
2 is had or kept by any person in violation of the provisions
3 of this code, may forthwith seize and remove the same and
4 the packages in which the alcoholic beverage is kept, and
5 upon conviction of the person for a violation of any
6 provision of ~~this section~~ 4-3-102, the alcoholic beverage
7 and all packages containing the same shall, in addition to
8 any other penalty prescribed by this code, ipso facto be
9 forfeited to the state of Montana."

10 Section 16. Section 4-6-401, R.C.M. 1947, is amended
11 to read as follows:

12 "4-6-401. Premises where liquor illegally sold public
13 nuisance. Any room, house, building, boat, vehicle,
14 structure or place where alcoholic beverages are knowingly
15 manufactured, sold, or bartered, in violation of this code
16 or ~~section~~ 94-8-107 and all property knowingly kept and used
17 in maintaining the same is hereby declared to be a public
18 nuisance, and any person who maintains such a nuisance shall
19 be guilty of a misdemeanor, and upon conviction thereof
20 shall be fined not less than ~~one hundred dollars~~ (\$100.00),
21 ~~or~~ or more than ~~five hundred dollars~~ (\$500) and by
22 ~~imprisonment~~ be imprisoned not less than ~~thirty~~ 30 days, ~~or~~
23 or more than ~~six~~ 6 months."

24 Section 17. Repealer. Sections 4-1-305, 4-1-307,
25 4-4-106, and 4-6-206, R.C.M. 1947, are repealed.

-End-

-28-

1 HOUSE BILL NO. 41
2 INTRODUCED BY MARKS
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE AND CLARIFY
5 THE MONTANA ALCOHOLIC BEVERAGE CODE IN SUPPORT OF
6 RECODIFICATION; AMENDING SECTIONS 4-1-304, 4-2-102, 4-2-204,
7 4-4-105, 4-4-201, 4-4-202, 4-4-301, 4-4-302, 4-4-303,
8 4-4-401, 4-4-403, 4-4-404, 4-5-105, 4-6-102, 4-6-205, AND
9 4-6-401; REPEALING SECTIONS 4-1-305, 4-1-307, 4-4-106, AND
10 4-6-206, R.C.M. 1947."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13 Section 1. Section 4-1-304, R.C.M. 1947, is amended to
14 read as follows:

15 "4-1-304. ~~Liquor division employees not to be~~
16 ~~interested in liquor sales unlawful to give or receive~~
17 ~~gift, commission or remuneration~~ Prohibited acts within
18 division. (1) No officer or employee of the liquor division,
19 including those engaged in the sale of liquor at the various
20 state liquor stores, shall may be directly or indirectly
21 interested or engaged in any other business or undertaking
22 dealing in liquor, whether as owner, part owner, partner,
23 member of syndicate, shareholder, agent, or employee, and
24 whether for his own benefit or in a fiduciary capacity for
25 some other person.

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

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

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

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

25 (b) ~~It shall be the duty of the division, when~~ When a

There are no changes in HB 41, and due to length will not
be rerun. Please refer to yellow copy for complete text.

1 brand of liquor has been accepted for testing by the
 2 division, ~~to~~ the division shall forward the sample, unopened
 3 and in its entirety, to a qualified chemical laboratory for
 4 analysis.

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

11 (5) No liquor, wine, or other ~~spiriteous~~ alcoholic
 12 beverage ~~shall~~ may be withdrawn from the regular warehouse
 13 inventory or from the state liquor stores of the Montana
 14 liquor division, for any purpose ~~whatsoever~~ other than ~~by~~
 15 sale at the prevailing state retail prices, or for
 16 destroying damaged or defective merchandise. The division
 17 shall maintain a written record including the type, brand,
 18 ~~and~~ container size, ~~and~~ number of bottles or other units,
 19 signatures of witnesses, ~~and~~ method of destruction or other
 20 disposition of damaged or defective warehouse or state store
 21 merchandise."

22 Section 2. Section 4-2-102, R.C.M. 1947, is amended to
 23 read as follows:

24 "4-2-102. Containers to be sealed with official seal
 25 -- opening package on liquor store premises forbidden. No

1 ~~spirits or wine shall~~ liquor may be sold to any purchaser,
 2 except in a package, sealed with the official seal
 3 prescribed by this ~~act~~ code, which package ~~shall~~ may not be
 4 opened on the premises of a state store."

5 Section 3. Section 4-2-204, R.C.M. 1947, is amended to
 6 read as follows:

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

17 Section 4. Section 4-4-105, R.C.M. 1947, is amended to
 18 read as follows:

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

March 9, 1977

SENATE
COMMITTEE OF THE WHOLE

That House Bill No. 41 be amended as follows:

1. Amend page 9, section 5, line 3.

Following: "limitations"

Insert: "unless it is established on the record of a contested case hearing that an additional license or licenses would reasonably serve the public convenience and necessity"

2. Amend page 14, section 6, line 22.

Following: "†"

Insert: "unless it is established on the record of a contested case hearing that an additional license or licenses would reasonably serve the public convenience and necessity"

HOUSE BILL NO. 41
INTRODUCED BY MARKS

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE AND CLARIFY THE MONTANA ALCOHOLIC BEVERAGE CODE IN SUPPORT OF RECODIFICATION; AMENDING SECTIONS 4-1-304, 4-2-102, 4-2-204, 4-4-105, 4-4-201, 4-4-202, 4-4-301, 4-4-302, 4-4-303, 4-4-401, 4-4-403, 4-4-404, 4-5-105, 4-6-102, 4-6-205, AND 4-6-401; REPEALING SECTIONS 4-1-305, 4-1-307, 4-4-106, AND 4-6-206, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
Section 1. Section 4-1-304, R.C.M. 1947, is amended to read as follows:

"4-1-304. ~~liquor--division--employees--not--to--be interested-in-liquor-sales---unlawful-to-give--or--receive gifts--commission--or--remuneration~~ Prohibited acts within division. (1) No officer or employee of the liquor division, including those engaged in the sale of liquor at the various state liquor stores, ~~shall~~ may 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 division or any employee of the state ~~shall~~ may 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 division ~~in-pursuance-of~~ pursuant to this code.

(3) No person selling or offering for sale to, or purchasing liquor from, the state liquor division, ~~shall~~ may either directly or indirectly offer to pay any commission, profit, or remuneration, or make any gift to any member or employee of the 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 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 ~~spirited-liquors~~ liquor to the Montana liquor division shall submit, without cost to the 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~~ division.

(b) ~~It shall be the duty of the division, when~~ When a

1 brand of liquor has been accepted for testing by the
 2 division, ~~to the division shall~~ forward the sample, unopened
 3 and in its entirety, to a qualified chemical laboratory for
 4 analysis.

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

11 (5) No liquor, wine, or other spirited alcoholic
 12 beverage ~~shall~~ may be withdrawn from the regular warehouse
 13 inventory or from the state liquor stores of the Montana
 14 liquor division, for any purpose ~~whatsoever~~ other than by
 15 sale at the prevailing state retail prices, or for
 16 destroying damaged or defective merchandise. The division
 17 shall maintain a written record including the type, brand,
 18 ~~and~~ container size, number of bottles or other units,
 19 signatures of witnesses, and method of destruction or other
 20 disposition of damaged or defective warehouse or state store
 21 merchandise."

22 Section 2. Section 4-2-102, R.C.M. 1947, is amended to
 23 read as follows:

24 "4-2-102. Containers to be sealed with official seal
 25 -- opening package on liquor store premises forbidden. No

1 ~~spirited or wine shall~~ liquor may be sold to any purchaser
 2 except in a package sealed with the official seal
 3 prescribed by this act ~~code~~, which package ~~shall~~ may not be
 4 opened on the premises of a state store."

5 Section 3. Section 4-2-204, R.C.M. 1947, is amended to
 6 read as follows:

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

17 Section 4. Section 4-4-105, R.C.M. 1947, is amended to
 18 read as follows:

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

1 is held.

2 (d) The application of any such association or
3 corporation shall be presented ~~ten-(10)~~ days in advance and
4 shall describe the location of such enclosure ~~wherein~~ where
5 such event is to be held, the nature of such ~~the~~ event, and
6 the period when it is contemplated that the ~~same~~ event will
7 be held. Such ~~the~~ application shall be accompanied by the
8 amount of the permit fee ~~hereinafter-provided~~.

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

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

20 (2) (a) Any A post of a nationally chartered veterans'
21 organization or any a lodge of a recognized national
22 fraternal organization, not otherwise licensed under this
23 code, shall, in the discretion of the department, without
24 notice or hearing as provided in section 4-4-302, be
25 entitled to a special permit to sell beer or a special

1 permit to sell all alcoholic beverages at such post or
2 lodge, to members and their guests only, to be consumed
3 within the hall or building of such post or lodge.

4 (b) The application of such nationally chartered
5 veterans' organization or lodge of a recognized national
6 fraternal organization shall describe the location of the
7 hall or building where the special permit ~~shall~~ will be used
8 and the date it will be used. ~~Such application shall be~~
9 ~~accompanied by a permit fee of ten dollars--(\$10)~~

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

15 Section 5. Section 4-4-201, R.C.M. 1947, is amended to
16 read as follows:

17 "4-4-201. Issuance of retail beer licenses -- limit on
18 number of beer retail licenses -- wine license amendments --
19 retail--license--fee off-premises consumption. (1) Except as
20 otherwise provided by law, a license to sell beer at retail
21 or beer and wine at retail ~~pursuant to subsection (2)~~, in
22 accordance with the provisions of this act ~~code~~ and the
23 ~~regulations~~ rules of the department of ~~revenue~~, may be
24 issued to any person, firm, or corporation who ~~shall--be~~ is
25 approved by the department as a fit and proper person, firm,

1 or corporation to sell beer, ~~provided, except~~ that:

2 (a) the number of retail beer licenses that the
3 department may issue for premises situated within
4 incorporated cities and incorporated towns and within a
5 distance of ~~five~~(5) miles from the corporate limits of such
6 cities and towns shall be determined on the basis of
7 population as shown by the most recent official United
8 States census authorized by ~~congress~~ congress, to-wit as
9 follows:

10 (i) in incorporated towns of ~~five-hundred~~(500)
11 inhabitants or less and within a distance of ~~five~~(5) miles
12 from the corporate limits of such towns, not more than one
13 ~~retail beer license which shall~~ may not be used in
14 conjunction with a retail ~~liquor~~ all-beverages license;

15 (ii) in incorporated cities or incorporated towns of
16 more than ~~five-hundred~~(500) inhabitants and not over two
17 ~~thousand~~(2,000) inhabitants and within a distance of ~~five~~
18 (5) miles from the corporate limits of such cities or towns,
19 one ~~retail beer license for each~~ retail beer license for each ~~five-hundred~~(500) inhabitants
20 which ~~said beer license shall~~ may not be used in conjunction
21 with retail ~~liquor~~ all-beverages licenses;

22 (iii) in incorporated cities of over ~~two~~(2,000)
23 ~~thousand~~(2,000) inhabitants and within a distance of ~~five~~(5) miles
24 from the corporate limits of such cities, two ~~retail~~ retail
25 retail beer licenses for the first ~~two~~(2,000)

1 inhabitants or major fraction thereof and one ~~retail~~ retail additional
2 retail beer license for each additional ~~two-thousand~~(2,000)
3 inhabitants which ~~shall~~ may not be used in conjunction with
4 retail ~~liquor~~ all-beverages licenses;

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

24 (c) ~~Retail~~ retail beer licenses of issue on ~~the date~~
25 ~~of the passage and approval of this act~~ March 1, 1947 and

1 which are in excess of the foregoing limitations shall be
 2 renewable, but no new licenses shall ~~may~~ be issued in
 3 violation of such limitations UNLESS IT IS ESTABLISHED ON
 4 THE RECORD OF A CONTESTED CASE HEARING THAT AN ADDITIONAL
 5 LICENSE OR LICENSES WOULD REASONABLY SERVE THE PUBLIC
 6 CONVENIENCE AND NECESSITY; provided, that

7 (d) such limitations shall ~~do~~ not prevent the issuance
 8 of a nontransferable and nonassignable retail beer license
 9 to ~~any~~ a post of a nationally chartered veterans'
 10 organization or ~~any~~ a lodge of a recognized national
 11 fraternal organization, if such veterans' or fraternal
 12 organization has been in existence for a period of ~~five~~
 13 ~~(5)~~ years or more prior to January 1, 1949;

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

25 (2) The cities and incorporated towns may enact

1 ordinances defining certain areas in the cities and towns
 2 where alcoholic beverages may or may not be sold. No
 3 incorporated city or incorporated town may by ordinance
 4 restrict the number of licenses that the department may
 5 issue; ~~provided that However,~~ no retail beer license may be
 6 issued by the department for any premises situated within
 7 any zone of such city or town wherein ~~where~~ the sale of beer
 8 or liquor is prohibited by ordinance, a certified copy of
 9 which has been filed with the department. The department
 10 shall ~~have discretion to~~ may deny the issuance of a retail
 11 beer or all-beverages license if it shall ~~determine~~
 12 determines that the premises proposed for licensing are off
 13 regular police beats and cannot be properly policed by local
 14 authorities.

15 (b) ~~The number of retail beer licenses that the~~
 16 ~~department may issue for use at premises situated outside of~~
 17 ~~any incorporated city or incorporated town and outside of~~
 18 ~~the area within a distance of five (5) miles from the~~
 19 ~~corporated limits thereof or for use at premises situated~~
 20 ~~within any unincorporated town shall be as determined by the~~
 21 ~~department in the exercise of its sound discretion,~~
 22 ~~provided that no retail beer license shall be issued for~~
 23 ~~any premises so situated unless the department shall~~
 24 ~~determine that the issuance of such license is required by~~
 25 ~~public convenience and necessity.~~

1 ~~(2)(3)~~ A person holding a license to sell beer for
 2 consumption on the premises at retail may apply to the
 3 department for an amendment to the license permitting the
 4 holder to sell wine as well as beer. The division may issue
 5 such amendment if it finds, on a satisfactory showing by the
 6 applicant, that the sale of wine for consumption on the
 7 premises would be supplementary to a restaurant or prepared
 8 food ~~prepared-food~~ business. A person holding a
 9 beer-and-wine license may sell wine for consumption on the
 10 premises. He may buy wine only at retail from the
 11 department. Nonretention of the beer license, for whatever
 12 reason, shall mean automatic loss of the wine amendment
 13 license.

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

17 (4) A retail license to sell beer in the original
 18 packages for ~~off-premise~~ off-premises consumption only may
 19 be issued to any person, firm, or corporation who ~~shall be~~
 20 is approved by the department as a fit and proper person,
 21 firm, or corporation to sell beer and whose premises
 22 proposed for licensing are operated as a bona fide grocery
 23 store or a drugstore licensed as a pharmacy. The number of
 24 such licenses that the department may issue ~~shall is~~ not be
 25 limited by the provisions of subsection (1) of this section.

1 but shall be determined by the department in the exercise of
 2 its sound discretion, and the department may in the exercise
 3 of its sound discretion grant or deny any application for
 4 any such license or suspend or revoke any such license for
 5 cause. ~~The annual license fee for a license to sell beer at~~
 6 ~~retail for off-premises consumption shall be the same as for~~
 7 ~~a retail beer license."~~

8 Section 6. Section 4-4-202, R.C.M. 1947, is amended to
 9 read as follows:

10 "4-4-202. ~~All-beverage~~ All-beverages license quota.
 11 ~~(1)~~ Except as otherwise provided by law, a license to sell
 12 liquor, beer, and wine at retail, an all-beverages license,
 13 in accordance with the provisions of this code and the
 14 regulations rules of the Montana department of revenue, may
 15 be issued to any person who ~~shall be~~ is approved by the
 16 department as a fit and proper person to sell such
 17 beverages, ~~provided, except~~ that:

18 ~~(1)~~ the number of all-beverages licenses that the
 19 department may issue for premises situated within
 20 incorporated cities and incorporated towns and within a
 21 distance of ~~five~~ (5) miles from the corporate limits of such
 22 cities and towns shall be determined on the basis of
 23 population as shown by the most recent official United
 24 States census authorized by Congress ~~Congress, to wit as~~
 25 follows:

1 (a) ~~in~~ ~~in~~ incorporated towns of ~~five-hundred-(500)~~
2 inhabitants or less and within a distance of ~~five-(5)~~ miles
3 from the corporate limits of such towns, not more than two
4 ~~(2)~~ retail licenses;

5 (b) in incorporated cities or incorporated towns of
6 more than ~~five-hundred-(500)~~ inhabitants and not over three
7 ~~thousand-(3,000)~~ inhabitants and within a distance of ~~five~~
8 ~~(5)~~ miles from the corporate limits of such cities and
9 towns, three ~~(3)~~ retail licenses for the first ~~one--thousand~~
10 ~~(1,000)~~ inhabitants and one ~~(1)~~ retail license for each
11 additional ~~one-thousand-(1,000)~~ inhabitants;

12 (c) in incorporated cities of over ~~three--thousand~~
13 ~~(3,000)~~ inhabitants and within a distance of ~~five-(5)~~ miles
14 from the corporate limits thereof, five ~~(5)~~ retail licenses
15 for the first ~~three-thousand-(3,000)~~ inhabitants and one ~~(1)~~
16 retail license for each additional ~~one-thousand-five-hundred~~
17 ~~(1,500)~~ inhabitants.

18 (2) The number of the inhabitants in such cities and
19 towns, exclusive of the number of inhabitants residing
20 within a distance of ~~five--(5)~~ miles from the corporate
21 limits thereof, shall govern the number of retail licenses
22 that may be issued for use within such cities and towns and
23 within a distance of ~~five--(5)~~ miles from the corporate
24 limits thereof, ~~provided, however, that where~~ if two ~~(2)~~ or
25 more incorporated municipalities are situated within a

1 distance of ~~five-(5)~~ miles from each other, the total number
2 of retail licenses that may be issued for use in both of
3 such municipalities and within a distance of ~~five-(5)~~ miles
4 from their respective corporate limits, shall be determined
5 on the basis of the combined population of both of such
6 municipalities and ~~shall may~~ not exceed the foregoing
7 limitations. Notwithstanding the preceding sentence, the
8 total population for determining the quota of a city may
9 include, with the city's population, the population residing
10 outside but within ~~five-(5)~~ miles of the city limits in a
11 case where the number of persons residing outside but within
12 ~~five-(5)~~ miles of the city exceeds the number of persons
13 residing within the city. Such a determination may be made
14 only upon a special census taken by the department or its
15 agent at the expense of the applicant for a license under
16 this section. The ~~said~~ distance of ~~five-(5)~~ miles from the
17 corporate limits of any incorporated city or incorporated
18 town shall be measured in a straight line from the nearest
19 entrance of the premises proposed for licensing to the
20 nearest corporate boundary of ~~such the~~ city or town.

21 (1) Retail all-beverages licenses of issue on ~~the date~~
22 ~~of the passage and approval of this code~~ March 1, 1947, and
23 which are in excess of the foregoing limitations shall be
24 renewable, but no new licenses ~~shall may~~ be issued in
25 violation of such limitations; UNLESS IT IS ESTABLISHED ON

1 ~~THE RECORD OF A CONTESTED CASE HEARING THAT AN ADDITIONAL~~
 2 ~~LICENSE OR LICENSES WOULD REASONABLY SERVE THE PUBLIC~~
 3 ~~CONVENIENCE AND NECESSITY, provided that such~~

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

21 (b)(5) the the number of retail all-beverages licenses
 22 that the department may issue for use at premises situated
 23 outside of any incorporated city or incorporated town and
 24 outside of the area within a distance of five (5) miles from
 25 the corporate limits thereof, shall be may not be more than

1 one (1) license for each ~~seven hundred fifty (750)~~
 2 population of the county after excluding the population of
 3 incorporated cities and incorporated towns in such county."

4 Section 7. Section 4-4-301, R.C.M. 1947, is amended to
 5 read as follows:

6 *4-4-301. Application for ~~all-beverages~~ license --
 7 penalty for false statements. (1) Prior to the issuance of
 8 ~~an all-beverages~~ license as herein provided in 4-4-202,
 9 the applicant shall file with the Montana department of
 10 revenue an application in writing, signed by the applicant
 11 and containing such information and statements relative to
 12 the applicant and the premises where the alcoholic beverage
 13 is to be sold, as may be required by the department.

14 (2) The application shall be verified by the affidavit
 15 of the person making the same before a person authorized to
 16 administer oaths. If any false statement is made in any
 17 part of said the application, the applicant or applicants
 18 shall be deemed are guilty of a misdemeanor, and upon
 19 conviction thereof the license, if issued, shall be revoked
 20 and the applicant or applicants, subjected to the penalties
 21 provided by law."

22 Section 8. Section 4-4-302, R.C.M. 1947, is amended to
 23 read as follows:

24 *4-4-302. Notice of application -- publication --
 25 protest. (1) When an application has been filed with the

1 Montana department of--revenue for a license to sell
 2 alcoholic beverages at retail, or to transfer such license,
 3 the department shall promptly publish in a newspaper of
 4 general circulation in the city, town, or county from whence
 5 such ~~which the~~ application ~~shall come~~ comes a notice that
 6 such applicant has made application for such license, and
 7 that protests against the issuance of a license to the
 8 applicant will be heard at a time and place stated in the
 9 notice, which shall be in the city of Helena, Montana.
 10 Notice of application for a new license shall be published
 11 once a week for ~~four--{4}~~ consecutive weeks. Notice of
 12 application for transfer of a license shall be published
 13 once a week for ~~two--{2}~~ consecutive weeks. Notice may be
 14 substantially in the following form:

15 NOTICE OF APPLICATION FOR RETAIL

16 ALL-BEVERAGES LICENSE

17 Notice is hereby given that on the day of,
 18 19.., one (name of applicant) filed an application for a
 19 retail all-beverages license with the Montana department of
 20 revenue, to be used at (describe location of premises where
 21 ~~license--to~~ beverages are to be sold), and protests, if any
 22 there be, against the issuance of such license will be heard
 23 at the hour of --M, on the day of, 19... at the
 24 office of the Montana department of revenue, in Helena,
 25 Montana.

1 Dated Signed

2 ADMINISTRATOR

3 {2} No license shall ~~may~~ be issued until on or after
 4 the date set in the notice for hearing protests. Nor shall
 5 ~~may~~ a license under this code be issued if the ~~said--~~ Montana
 6 department of--revenue--shall--find ~~finds~~ from the evidence at
 7 ~~said the~~ hearing that the welfare of the people residing in
 8 the vicinity of the place for which such license is desired
 9 will be adversely and seriously affected, or that the
 10 purposes of this code will not be carried out by the
 11 issuance of such license. Each applicant shall, at the time
 12 of filing his application, pay to the Montana department of
 13 revenue, an amount sufficient to cover the costs of
 14 publishing ~~said the~~ notice."

15 Section 9. Section 4-4-303, R.C.M. 1947, is amended to
 16 read as follows:

17 "4-4-303. Investigation of application. Upon receipt
 18 of a completed application for a license under this code,
 19 accompanied by the necessary license fee ~~and--bond~~, the
 20 department of--revenue shall within ~~thirty--{30}~~ days
 21 ~~thereafter--cause-to-be-made~~ ~~make~~ a thorough investigation
 22 of all matters pertaining thereto, and shall determine
 23 whether such applicant is qualified to receive a license and
 24 his premises are suitable for the carrying on of the
 25 business, and whether the requirements of this code and the

1 rules and regulations promulgated by the department are met
2 and complied with."

3 Section 10. Section 4-4-401, R.C.M. 1947, is amended
4 to read as follows:

5 "4-4-401. Fees for licenses ~~---expiration---dates---~~
6 ~~regulation---by---cities---and---towns.~~ (i)(a) Each beer licensee,
7 under the provisions of this code, shall pay an annual
8 license fee as follows:

9 (i) Each ~~each~~ "brewer," wherever located, whose
10 product is sold or offered for sale within the state, ~~five~~
11 ~~hundred-dollars-(\$500); for each storage depot, \$500;~~

12 (ii) Each ~~each~~ "wholesaler," ~~four--hundred--dollars~~
13 ~~(\$400);~~

14 (iii) Each ~~each~~ BEER "retailer," ~~two--hundred--dollars~~
15 ~~(\$200); with a wine license amendment, an additional \$200;~~

16 (iv) ~~for a license to sell beer at retail for~~
17 ~~off-premises consumption only, the same as a retail beer~~
18 ~~license;~~

19 (v) ~~Any any~~ unit of a nationally chartered veterans'
20 organization, ~~fifty-dollars-(\$50)+.~~

21 ~~All--licenses--issued--in--any-year--shall--expire--on--the~~
22 ~~30th-day-of-June-at-midnight-of-such-year.~~

23 (b) A transfer of any ~~such~~ brewer's, wholesaler's, or
24 beer retailer's license may be made on application to the
25 Montana department of revenue with the consent of the said

1 department, provided that said ~~the~~ transferee shall qualify
2 qualifies under this code. ~~The--cities--and--incorporated~~
3 ~~towns--may--enact--ordinances--defining--certain--areas--in--said~~
4 ~~cities--or--towns--where--beer--may--or--may--not--be--sold--providing~~
5 ~~that--said--ordinance--does--not--affect--the--limit--of--retail--beer~~
6 ~~licenses--which--shall--be--issued--by--the--Montana--department--of~~
7 ~~revenue--based--upon--the--population--of--the--city--or--town--and~~
8 ~~said--city--or--town--shall--file--a--certified--copy--of--said~~
9 ~~ordinance--with--the--Montana--department--of--revenue.~~

10 (c) This code shall not be construed or interpreted so
11 as to repeal, amend, modify, change, or alter any provisions
12 of this code which require beer manufactured outside of the
13 state of Montana and shipped into Montana to be consigned to
14 and shipped to a licensed wholesaler and by him unloaded
15 into his warehouse or subwarehouse in Montana.

16 (2) ~~The permit fee under 4-4-105(1) is computed at the~~
17 ~~rate of \$15 a day for each day beer is sold at those events~~
18 ~~lasting 2 or more days but in no case be less than \$30.~~

19 (3) ~~The permit fee under 4-4-105(2) is \$10 for the~~
20 ~~sale of beer only or \$20 for the sale of all alcoholic~~
21 ~~beverages.~~

22 (4) ~~Passenger carrier licenses shall be issued upon~~
23 ~~payment by the applicant of an annual license fee in the sum~~
24 ~~of \$100.~~

25 (5) ~~The annual license fee for a license to sell wine~~

1 on the premises, when issued as an amendment to a beer-only
2 license, is \$200.

3 (b) Each licensee licensed under the quotas of 4-4-202
4 shall pay an annual license fee as follows:

5 (a) except as hereinafter provided, for each license
6 outside of incorporated cities and incorporated towns or in
7 incorporated cities and incorporated towns with a population
8 of less than 2,000, \$400;

9 (b) except as hereinafter provided, for each license
10 in incorporated cities with a population of more than 2,000
11 and less than 5,000, ~~\$300~~ or within a distance of 5 miles
12 thereof, measured in a straight line from the nearest
13 entrance of the premises to be licensed to the nearest
14 boundary of such city, \$500;

15 (c) except as hereinafter provided, for each license
16 in incorporated cities with a population of more than 5,000
17 and less than 10,000 or within a distance of 5 miles
18 thereof, measured in a straight line from the nearest
19 entrance of the premises to be licensed to the nearest
20 boundary of such city, \$650;

21 (d) for each license in incorporated cities with a
22 population of 10,000 or more, or within a distance of 5
23 miles thereof, measured in a straight line from the nearest
24 entrance of the premises to be licensed to the nearest
25 boundary of such city, \$800;

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

17 (f) an applicant for the issuance of an original
18 license to be located in areas described in paragraph (d) of
19 this subsection shall pay a one-time original license fee of
20 \$20,000 for any such license issued. The one-time license
21 fee of \$20,000 shall not apply to any transfer or renewal of
22 a license duly issued prior to July 1, 1974. All licenses,
23 however, are subject to the annual renewal fee of \$800.

24 (7) The license fees herein provided for are exclusive
25 of and in addition to other license fees chargeable in

1 Montana for the sale of liquor, beer, and malt beverages."

2 Section 11. Section 4-4-403, R.C.M. 1947, is amended
3 to read as follows:

4 "4-4-403. License fee for retail sale of liquor within
5 and without cities and towns of designated populations
6 census (Census of population. Each licensee licensed under
7 the quotes of section 4-4-202 shall pay an annual license
8 fee as follows:

9 (a) Except as hereinafter provided, for each license
10 outside of incorporated cities and incorporated towns, or in
11 incorporated cities and incorporated towns with a population
12 of less than two thousand (2,000), four hundred dollars
13 (\$400) per annum;

14 (b) Except as hereinafter provided, for each license
15 in incorporated cities with a population of more than two
16 thousand (2,000) and less than five thousand (5,000), three
17 hundred (\$300.00) dollars per annum, or within a distance of
18 five (5) miles thereof, measured in a straight line from the
19 nearest entrance of the premises to be licensed to the
20 nearest boundary of such city, five hundred dollars (\$500)
21 per annum;

22 (c) Except as hereinafter provided, for each license
23 in incorporated cities with a population of more than five
24 thousand (5,000) and less than ten thousand (10,000), or
25 within a distance of five (5) miles thereof, measured in a

1 straight line from the nearest entrance of the premises to
2 be licensed to the nearest boundary of such city, six
3 hundred fifty dollars (\$650) per annum;

4 (d) For each license in incorporated cities with a
5 population of ten thousand (10,000) or more, or within a
6 distance of five (5) miles thereof, measured in a straight
7 line from the nearest entrance of the premises to be
8 licensed to the nearest boundary of such city, eight hundred
9 dollars (\$800) per annum;

10 (e) For each railway system in the state of Montana,
11 three hundred (\$300.00) dollars per annum;

12 (f) The distance of five (5) miles from the corporate
13 limits of any incorporated cities and incorporated towns
14 shall be measured in a straight line from the nearest
15 entrance of the premises to be licensed to the nearest
16 boundary of such city or town, and where the premises of the
17 applicant to be licensed are situated within five (5) miles
18 of the corporate boundaries of two (2) or more incorporated
19 cities or incorporated towns of different populations, the
20 license chargeable by the larger incorporated city or
21 incorporated town shall apply and be paid by the applicant,
22 provided, however, that when the premises of the applicant
23 to be licensed are situated within an incorporated town or
24 incorporated city and any portion of said incorporated town
25 or incorporated city be without said five (5) mile limit

1 then the license fee chargeable by the smaller incorporated
2 town or incorporated city shall apply and be paid by said
3 applicants.

4 An applicant for the issuance of an original license to
5 be located in areas described in subsection (d) of this
6 section shall pay a one-time original license fee of twenty
7 thousand dollars (\$20,000) for any such license issued. The
8 said one-time license fee of twenty thousand dollars
9 (\$20,000) shall not apply to any transfer or renewal of a
10 license duty issued prior to July 1, 1974. All licenses
11 however, shall be subject to the annual renewal fee of eight
12 hundred dollars (\$800).

13 The license fees herein provided for are exclusive of
14 and in addition to other license fees chargeable in the
15 state of Montana for the sale of liquor, beer and malt
16 beverages.

17 The census taken under the direction of Congress
18 CONGRESS of the United States in the year nineteen hundred
19 and thirty and every ten years thereafter, shall be the
20 basis upon which the respective populations of said the
21 municipalities shall be determined, unless a direct
22 enumeration of the inhabitants thereof be is made by the
23 state or municipal corporation, in which case such later
24 direct enumeration shall constitute such basis, provided
25 however, that no 90 census hereafter taken shall may be such

1 basis until it shall have been is published under the
2 authority under which the same shall be is taken, and then
3 its effect shall be prospective only from the date of such
4 publication be prospective only and provided, further, that
5 none of the provisions of this act shall be deemed to
6 operate retroactively."

7 Section 12. Section 4-4-404, R.C.M. 1947, is amended
8 to read as follows:

9 "4-4-404. Fee for and expiration of licenses.
10 Effective Each July 1, 1944, and at the same date of each
11 year thereafter, the Montana department of revenue shall
12 issue licenses to brewers, wholesalers, or retailers or for
13 the retail sale of alcoholic beverages liquor on an annual
14 basis and at such fees as are prescribed by law, and such
15 licenses shall expire at midnight of June 30th 30 of the
16 succeeding year. The department shall notify each applicant
17 for an original license or renewal that he should inform
18 himself of applicable provisions of federal law which may
19 require a permit from a federal agency."

20 Section 13. Section 4-5-105, R.C.M. 1947, is amended
21 to read as follows:

22 "4-5-105. Fee to be charged. The county clerk and
23 recorders shall charge and collect a fee of one dollar and
24 fifty cents (\$1.50) from the applicant at the time the
25 application is prepared, and one dollar (\$1) thereof shall

1 be transmitted to the Montana department of--revenue along
 2 with the application and shall be used to defray the cost of
 3 administering and executing the provisions of this code
 4 chapter. Any surplus shall revert to the general fund of
 5 the--state of Montana. The remaining fifty--cents--(~~\$50~~) 50
 6 cents shall be paid into the general fund of the county to
 7 defray the county's costs in administering this program."

8 Section 14. Section 4-6-102, R.C.M. 1947, is amended
 9 to read as follows:

10 "4-6-102. Sale of liquor not purchased from state
 11 store forbidden -- penalty. It ~~shall be~~ is unlawful for any
 12 licensee to sell or keep for sale and/or have on his
 13 premises for any purpose whatever, any liquor except that
 14 purchased from the state liquor store, and any licensee
 15 found in possession of, or selling and keeping for sale, any
 16 liquor which was not purchased from a state liquor store,
 17 shall, upon conviction, be fined punished by a fine of not
 18 less than ~~five--hundred--dollars--(\$500)~~ nor or more than
 19 ~~fifteen--hundred--dollars--(\$1,500)~~, or be ~~punished~~
 20 imprisonment for not less than ~~three--(3)~~ months nor or more
 21 than ~~one--(1)~~ year, or by both such fine and imprisonment,
 22 and if the department ~~shall be~~ is satisfied that any such
 23 liquor was knowingly sold or kept for sale within the
 24 licensed premises by ~~such the~~ licensee, or by his agents,
 25 servants, or employees, ~~it shall be mandatory that said the~~

1 department shall immediately revoke the license of--said
 2 licensee."

3 Section 15. Section 4-6-205, R.C.M. 1947, is amended
 4 to read as follows:

5 "4-6-205. Unlawful alcoholic beverage -- seizure --
 6 forfeiture. Any investigator or peace officer who finds an
 7 alcoholic beverage, which he has reasonable cause to believe
 8 is had or kept by any person in violation of the provisions
 9 of this code, may forthwith seize and remove the same and
 10 the packages in which the alcoholic beverage is kept, and
 11 upon conviction of the person for a violation of any
 12 provision of ~~this--section 4-3-102,~~ the alcoholic beverage
 13 and all packages containing the same shall, in addition to
 14 any other penalty prescribed by this code, ipso facto be
 15 forfeited to the state of Montana."

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

18 "4-6-401. Premises where liquor illegally sold public
 19 nuisance. Any room, house, building, boat, vehicle,
 20 structure or place where alcoholic beverages are knowingly
 21 manufactured, sold, or bartered, in violation of this code
 22 or section 94-8-107 and all property knowingly kept and used
 23 in maintaining the same is hereby declared to be a public
 24 nuisance, and any person who maintains such a nuisance shall
 25 be guilty of a misdemeanor, and upon conviction thereof

1 shall be fined not less than ~~one-hundred-dollars-(\$100.00),~~
2 nor ~~or~~ more than ~~five-hundred-dollars-(\$500)~~ and by
3 imprisonment ~~be imprisoned~~ not less than thirty ~~30~~ days, nor
4 ~~or~~ more than ~~six 6~~ months."

5 Section 17. Repealer. Sections 4-1-305, 4-1-307,
6 4-4-106, and 4-6-206, R.C.M. 1947, are repealed.

-End-

1 HOUSE BILL NO. 41

2 INTRODUCED BY MARKS

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE AND CLARIFY
5 THE MONTANA ALCOHOLIC BEVERAGE CODE IN SUPPORT OF
6 RECODIFICATION; AMENDING SECTIONS 4-1-304, 4-2-102, 4-2-204,
7 4-4-105, 4-4-201, 4-4-202, 4-4-301, 4-4-302, 4-4-303,
8 4-4-401, 4-4-403, 4-4-404, 4-5-105, 4-6-102, 4-6-205, AND
9 4-6-401; REPEALING SECTIONS 4-1-305, 4-1-307, 4-4-106, AND
10 4-6-206, R.C.M. 1947."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 4-1-304, R.C.M. 1947, is amended to
14 read as follows:

15 "~~4-1-304. Liquor--division--employees--not--to--be~~
16 ~~interested-in-liquor-sales--unlawful-to-give-or-receive~~
17 ~~gifts--commission--or--remuneration~~ Prohibited acts within
18 division. (1) No officer or employee of the liquor division,
19 including those engaged in the sale of liquor at the various
20 state liquor stores, ~~shall~~ may be directly or indirectly
21 interested or engaged in any other business or undertaking
22 dealing in liquor, whether as owner, part owner, partner,
23 member of syndicate, shareholder, agent, or employee, and
24 whether for his own benefit or in a fiduciary capacity for
25 some other person.

1 (2) No member or employee of the division or any
2 employee of the state ~~shall~~ may solicit or receive directly
3 or indirectly any commission, remuneration, or gift
4 whatsoever from any person or corporation having sold,
5 selling, or offering liquor for sale to the state or
6 division ~~in-pursuance-of~~ pursuant to this code.

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

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

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

25 (b) ~~it--shall-be-the-duty-of-the-division--when~~ when a

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1 brand of liquor has been accepted for testing by the
2 division, ~~to the division shall~~ forward the sample, unopened
3 and in its entirety, to a qualified chemical laboratory for
4 analysis.

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

11 (5) No liquor, wine, or other ~~spirituoes~~ alcoholic
12 beverage ~~shall may~~ be withdrawn from the regular warehouse
13 inventory or from the state liquor stores of the Montana
14 liquor division, for any purpose ~~whatsoever~~ other than by
15 sale at the prevailing state retail prices, or for
16 destroying damaged or defective merchandise. The division
17 shall maintain a written record including the type, brand,
18 ~~and~~ container size, ~~number~~ of bottles or other units, ~~and~~
19 signatures of witnesses, ~~and~~ method of destruction or other
20 disposition of damaged or defective warehouse or state store
21 merchandise."

22 Section 2. Section 4-2-102, R.C.M. 1947, is amended to
23 read as follows:

24 "4-2-102. Containers to be sealed with official seal
25 -- opening package on liquor store premises forbidden. No

1 ~~spirits-or-wine-shall~~ liquor may be sold to any purchaser
2 except in a package, sealed with the official seal
3 prescribed by this ~~act code~~, which package ~~shall may~~ not be
4 opened on the premises of a state store."

5 Section 3. Section 4-2-204, R.C.M. 1947, is amended to
6 read as follows:

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

17 Section 4. Section 4-4-105, R.C.M. 1947, is amended to
18 read as follows:

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

1 is held.

2 ~~(b)~~ The application of any such association or
3 corporation shall be presented ~~ten-(10)~~ days in advance and
4 shall describe the location of such enclosure ~~wherein~~ where
5 such event is to be held, the nature of such ~~the~~ event, and
6 the period when it is contemplated that the ~~same event~~ will
7 be held. Such ~~the~~ application shall be accompanied by the
8 amount of the permit fee ~~hereinafter-provided~~.

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

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

20 (2) ~~(a)~~ Any a post of a nationally chartered veterans'
21 organization or ~~any~~ a lodge of a recognized national
22 fraternal organization, not otherwise licensed under this
23 code, shall, in the discretion of the department, without
24 notice or hearing as provided in section 4-4-302, be
25 entitled to a special permit to sell beer or a special

1 permit to sell all alcoholic beverages at such post or
2 lodge, to members and their guests only, to be consumed
3 within the hall or building of such post or lodge.

4 ~~(b)~~ The application of such nationally chartered
5 veterans' organization or lodge of a recognized national
6 fraternal organization shall describe the location of the
7 hall or building where the special permit ~~shall~~ will be used
8 and the date it will be used. ~~Such application shall be~~
9 ~~accompanied by a permit fee of ten dollars-(10).~~

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

15 Section 5. Section 4-4-201, R.C.M. 1947, is amended to
16 read as follows:

17 "4-4-201. Issuance of retail beer licenses -- limit on
18 number of beer retail licenses -- wine license amendments --
19 retail--license--fee off-premises consumption. (1) Except as
20 otherwise provided by law, a license to sell beer at retail,
21 or beer and wine at retail ~~pursuant to subsection (2),~~ in
22 accordance with the provisions of this ~~act~~ code and the
23 ~~regulations~~ rules of the department of ~~revenue,~~
24 may be issued to any person, firm, or corporation who ~~shall--be~~ is
25 approved by the department as a fit and proper person, firm,

1 or corporation to sell beer~~;~~ ~~provided,~~ except that:

2 (a) the number of retail beer licenses that the
3 department may issue for premises situated within
4 incorporated cities and incorporated towns and within a
5 distance of ~~five-(5)~~ miles from the corporate limits of such
6 cities and towns shall be determined on the basis of
7 population as shown by the most recent official United
8 States census authorized by ~~Congress~~ Congress, ~~to-wit as~~ as
9 follows:

10 (i) ~~in~~ in incorporated towns of ~~five-hundred-(500)~~
11 inhabitants or less and within a distance of ~~five-(5)~~ miles
12 from the corporate limits of such towns, not more than one
13 ~~(1)~~ retail beer license which ~~shall~~ may not be used in
14 conjunction with a retail ~~liquor~~ all-beverages license;

15 (ii) in incorporated cities or incorporated towns of
16 more than ~~five-hundred-(500)~~ inhabitants and not over two
17 ~~thousand--(2,000)~~ inhabitants and within a distance of ~~five~~
18 ~~(5)~~ miles from the corporate limits of such cities or towns,
19 one ~~(1)~~ beer license for each ~~five-hundred-(500)~~ inhabitants
20 which ~~said-beer-license-shall~~ may not be used in conjunction
21 with retail ~~liquor~~ all-beverages licenses;

22 (iii) in incorporated cities of over ~~two-thousand~~
23 ~~(2,000)~~ inhabitants and within a distance of ~~five-(5)~~ miles
24 from the corporate limits of such cities, two ~~(2)~~ additional
25 retail beer licenses for the first ~~two-thousand--(2,000)~~

1 inhabitants or major fraction thereof and one ~~(1)~~ additional
2 retail beer license for each additional ~~two-thousand-(2,000)~~
3 inhabitants which ~~shall~~ may not be used in conjunction with
4 retail ~~liquor~~ all-beverages licenses~~;~~

5 (b) ~~The~~ the number of the inhabitants in such cities
6 and towns, exclusive of the number of inhabitants residing
7 within a distance of ~~five-(5)~~ miles from the corporate
8 limits thereof, shall govern the number of retail beer
9 licenses that may be issued for use within such cities and
10 towns and within a distance of ~~five-(5)~~ miles from the
11 corporate limits thereof~~;~~ ~~that-where~~ if two ~~(2)~~
12 or more incorporated municipalities are situated within a
13 distance of ~~five-(5)~~ miles from each other, the total number
14 of retail beer licenses that may be issued for use in both
15 of such municipalities and within a distance of ~~five-(5)~~
16 miles from their respective corporate limits, shall be
17 determined on the basis of the combined populations of both
18 of such municipalities and ~~shall~~ may not exceed the
19 foregoing limitations. The ~~said~~ distance of ~~five-(5)~~ miles
20 from the corporate limits of any incorporated city or
21 incorporated town shall be measured in a straight line from
22 the nearest entrance of the premises proposed for licensing
23 to the nearest corporate boundary of such city or town.

24 (c) ~~Retail~~ retail beer licenses of issue on ~~the-date~~
~~of-the-passage-and-approval-of-this-act~~ March 7, 1947, and

1 which are in excess of the foregoing limitations shall be
 2 renewable, but no new licenses shall ~~may~~ be issued in
 3 violation of such limitations ~~UNLESS IT IS ESTABLISHED ON~~
 4 ~~THE RECORD OF A CONTESTED CASE HEARING THAT AN ADDITIONAL~~
 5 ~~LICENSE OR LICENSES WOULD REASONABLY SERVE THE PUBLIC~~
 6 ~~CONVENIENCE AND NECESSITY~~; provided, that

7 (d) such limitations shall ~~do~~ not prevent the issuance
 8 of a nontransferable and nonassignable retail beer license
 9 to ~~any~~ a post of a nationally chartered veterans'
 10 organization or ~~any~~ a lodge of a recognized national
 11 fraternal organization, if such veterans' or fraternal
 12 organization has been in existence for a period of five
 13 (5) years or more prior to January 1, 1949;

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

25 (2) The cities and incorporated towns may enact

1 ~~ordinances defining certain areas in the cities and towns~~
 2 ~~where alcoholic beverages may or may not be sold. No~~
 3 incorporated city or incorporated town may by ordinance
 4 restrict the number of licenses that the department may
 5 issue, ~~provided that~~ ~~However,~~ no retail beer license may be
 6 issued by the department for any premises situated within
 7 any zone of such city or town ~~wherein~~ ~~where~~ the sale of beer
 8 or liquor is prohibited by ordinance, a certified copy of
 9 which has been filed with the department. The department
 10 ~~shall have discretion to~~ ~~may~~ deny the issuance of a retail
 11 beer ~~or all beverages~~ license if it ~~shall determine~~
 12 ~~determines~~ that the premises proposed for licensing are off
 13 regular police beats and cannot be properly policed by local
 14 authorities.

15 (b) ~~The number of retail beer licenses that the~~
 16 ~~department may issue for use at premises situated outside of~~
 17 ~~any incorporated city or incorporated town and outside of~~
 18 ~~the area within a distance of five (5) miles from the~~
 19 ~~corporated limits thereof, or for use at premises situated~~
 20 ~~within any unincorporated town shall be as determined by the~~
 21 ~~department in the exercise of its sound discretion,~~
 22 ~~provided that no retail beer license shall be issued for~~
 23 ~~any premises so situated unless the department shall~~
 24 ~~determine that the issuance of such license is required by~~
 25 ~~public convenience and necessity.~~

1 ~~(2)(3)~~ A person holding a license to sell beer for
 2 consumption on the premises at retail may apply to the
 3 department for an amendment to the license permitting the
 4 holder to sell wine as well as beer. The division may issue
 5 such amendment if it finds, on a satisfactory showing by the
 6 applicant, that the sale of wine for consumption on the
 7 premises would be supplementary to a restaurant or prepared
 8 food ~~prepared-food~~ business. A person holding a
 9 beer-and-wine license may sell wine for consumption on the
 10 premises. He may buy wine only at retail from the
 11 department. Nonretention of the beer license, for whatever
 12 reason, shall mean automatic loss of the wine amendment
 13 license.

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

17 (4) A retail license to sell beer in the original
 18 packages for ~~off-premise~~ off-premises consumption only may
 19 be issued to any person, firm, or corporation who shall be
 20 is approved by the department as a fit and proper person,
 21 firm, or corporation to sell beer and whose premises
 22 proposed for licensing are operated as a bona fide grocery
 23 store or a drugstore licensed as a pharmacy. The number of
 24 such licenses that the department may issue shall is not be
 25 limited by the provisions of subsection (1) of this section.

1 but shall be determined by the department in the exercise of
 2 its sound discretion, and the department may in the exercise
 3 of its sound discretion grant or deny any application for
 4 any such license or suspend or revoke any such license for
 5 cause. ~~The annual license fee for a license to sell beer at~~
 6 ~~retail for off-premises consumption shall be the same as for~~
 7 ~~a retail beer license."~~

8 Section 6. Section 4-4-202, R.C.M. 1947, is amended to
 9 read as follows:

10 "4-4-202. ~~All-beverage~~ All-beverages license quota.
 11 ~~(1)~~ Except as otherwise provided by law, a license to sell
 12 liquor, beer, and wine at retail, an all-beverages license,
 13 in accordance with the provisions of this code and the
 14 regulations rules of the Montana department of revenue, may
 15 be issued to any person who shall be is approved by the
 16 department as a fit and proper person to sell such
 17 beverages; provided, except that:

18 ~~(a)~~ (1) the number of all-beverages licenses that the
 19 department may issue for premises situated within
 20 incorporated cities and incorporated towns and within a
 21 distance of ~~five~~ (5) miles from the corporate limits of such
 22 cities and towns shall be determined on the basis of
 23 population as shown by the most recent official United
 24 States census authorized by Congress Congress, ~~to-wit as~~
 25 follows:

1 ~~(a)~~ ~~in~~ ~~in~~ incorporated towns of ~~five-hundred-(500)~~
 2 inhabitants or less and within a distance of ~~five-(5)~~ miles
 3 from the corporate limits of such towns, not more than two
 4 ~~(2)~~ retail licenses;

5 ~~(b)~~ in incorporated cities or incorporated towns of
 6 more than ~~five-hundred-(500)~~ inhabitants and not over three
 7 ~~thousand-(3,000)~~ inhabitants and within a distance of ~~five~~
 8 ~~(5)~~ miles from the corporate limits of such cities and
 9 towns, three ~~(3)~~ retail licenses for the first ~~one-thousand~~
 10 ~~(1,000)~~ inhabitants and one ~~(1)~~ retail license for each
 11 additional ~~one-thousand-(1,000)~~ inhabitants;

12 ~~(c)~~ in incorporated cities of over ~~three--thousand~~
 13 ~~(3,000)~~ inhabitants and within a distance of ~~five-(5)~~ miles
 14 from the corporate limits thereof, five ~~(5)~~ retail licenses
 15 for the first ~~three-thousand-(3,000)~~ inhabitants and one ~~(1)~~
 16 retail license for each additional ~~one-thousand-five-hundred~~
 17 ~~(1,500)~~ inhabitants.

18 ~~(2)~~ The number of the inhabitants in such cities and
 19 towns, exclusive of the number of inhabitants residing
 20 within a distance of ~~five--(5)~~ miles from the corporate
 21 limits thereof, shall govern the number of retail licenses
 22 that may be issued for use within such cities and towns and
 23 within a distance of ~~five--(5)~~ miles from the corporate
 24 limits thereof; ~~provided, however, that where~~ If two ~~(2)~~ or
 25 more incorporated municipalities are situated within a

1 distance of ~~five-(5)~~ miles from each other, the total number
 2 of retail licenses that may be issued for use in both of
 3 such municipalities and within a distance of ~~five-(5)~~ miles
 4 from their respective corporate limits, shall be determined
 5 on the basis of the combined population of both of such
 6 municipalities and ~~shall~~ ~~may~~ not exceed the foregoing
 7 limitations. Notwithstanding the preceding sentence, the
 8 total population for determining the quota of a city may
 9 include, with the city's population, the population residing
 10 outside, but within ~~five-(5)~~ miles of the city limits in a
 11 case where the number of persons residing outside but within
 12 ~~five-(5)~~ miles of the city exceeds the number of persons
 13 residing within the city. Such a determination may be made
 14 only upon a special census taken by the department or its
 15 agent at the expense of the applicant for a license under
 16 this section. The ~~said~~ distance of ~~five-(5)~~ miles from the
 17 corporate limits of any incorporated city or incorporated
 18 town shall be measured in a straight line from the nearest
 19 entrance of the premises proposed for licensing to the
 20 nearest corporate boundary of such ~~the~~ city or town.

21 ~~(3)~~ Retail all-beverages licenses of issue on ~~the date~~
 22 ~~of the passage and approval of this code~~ March 7, 1947, and
 23 which are in excess of the foregoing limitations shall be
 24 renewable, but no new licenses ~~shall~~ ~~may~~ be issued in
 25 violation of such limitations; ~~UNLESS IT IS ESTABLISHED ON~~

~~THE RECORD OF A CONTESTED CASE HEARING THAT AN ADDITIONAL LICENSE OR LICENSES WOULD REASONABLY SERVE THE PUBLIC CONVENIENCE AND NECESSITY, provided that such~~

~~(4) Such limitations shall do not prevent the issuance of a nontransferable and nonassignable (as to ownership only) retail 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 department may issue, provided that no retail license may be issued by the department for any premises situated within any zone of a city or town wherein the sale of liquor is prohibited by ordinance, a certified copy of which has been filed with the department. The department shall have discretion to deny the issuance of a retail 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)(5) the the number of retail all-beverages licenses that the 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 corporate limits thereof shall be may not be more than~~

one (1) license for each seven--hundred---fifty---(750) population of the county, after excluding the population of incorporated cities and incorporated towns in such county."

Section 7. Section 4-4-301, R.C.M. 1947, is amended to read as follows:

"4-4-301. Application for all-beverages license -- penalty for false statements. (1) Prior to the issuance of a an all-beverages license as herein provided in 4-4-202, the applicant shall file with the Montana 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 alcoholic beverage is to be sold, as may be required by the department.

(2) 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 the application, the applicant or applicants shall be deemed are 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 8. Section 4-4-302, R.C.M. 1947, is amended to read as follows:

"4-4-302. Notice of application -- publication -- protest. (1) When an application has been filed with the

1 Montana department of--revenue for a license to sell
 2 alcoholic beverages at retail or to transfer such license,
 3 the department shall promptly publish in a newspaper of
 4 general circulation in the city, town, or county from whence
 5 such ~~which the~~ application ~~shall come~~ comes, a notice that
 6 such applicant has made application for such license, and
 7 that protests against the issuance of a license to the
 8 applicant will be heard at a time and place stated in the
 9 notice, which shall be in the city of Helena, Montana.
 10 Notice of application for a new license shall be published
 11 once a week for ~~four--(4)~~ consecutive weeks. Notice of
 12 application for transfer of a license shall be published
 13 once a week for ~~two--(2)~~ consecutive weeks. Notice may be
 14 substantially in the following form:

15 NOTICE OF APPLICATION FOR RETAIL
 16 ALL-BEVERAGES LICENSE

17 Notice is hereby given that on the day of,
 18 19.., one (name of applicant) filed an application for a
 19 retail all-beverages license with the Montana department of
 20 revenue, to be used at (describe location of premises where
 21 ~~license--is~~ beverages are to be sold), and protests, if any
 22 there be, against the issuance of such license will be heard
 23 at the hour of --M, on the day of, 19.., at the
 24 office of the Montana department of revenue in Helena,
 25 Montana.

1 Dated Signed

2 ADMINISTRATOR

3 (2) No license ~~shall~~ may be issued until on or after
 4 the date set in the notice for hearing protests. Nor ~~shall~~
 5 may a license under this code be issued if the ~~said--Montana~~
 6 department of--revenue--~~shall find~~ finds from the evidence at
 7 ~~said the~~ hearing that the welfare of the people residing in
 8 the vicinity of the place for which such license is desired
 9 will be adversely and seriously affected, or that the
 10 purposes of this code will not be carried out by the
 11 issuance of such license. Each applicant shall, at the time
 12 of filing his application, pay to the Montana department of
 13 revenue an amount sufficient to cover the costs of
 14 publishing ~~said the~~ notice."

15 Section 9. Section 4-4-303, R.C.M. 1947, is amended to
 16 read as follows:

17 "4-4-303. Investigation of application. Upon receipt
 18 of a completed application for a license under this code,
 19 accompanied by the necessary license fee ~~and bond~~, the
 20 department of--revenue shall within ~~thirty--(30)~~ days
 21 ~~thereafter, cause to be made~~ make a thorough investigation
 22 of all matters pertaining thereto, and shall determine
 23 whether such applicant is qualified to receive a license and
 24 his premises are suitable for the carrying on of the
 25 business, and whether the requirements of this code and the

1 rules and regulations promulgated by the department are met
2 and complied with."

3 Section 10. Section 4-4-401, R.C.M. 1947, is amended
4 to read as follows:

5 "4-4-401. Fees for licenses ~~---expiration-dates---~~
6 ~~regulation-by-cities-and-towns.~~ (i)(a) Each beer licensee,
7 under the provisions of this code, shall pay an annual
8 license fee as follows:

9 (i) Each each "brewer," wherever located, whose
10 product is sold or offered for sale within the state, five
11 hundred-dollars-(\$500); for each storage depot, \$400;

12 (ii) Each each "wholesaler", ~~four-hundred-dollars~~
13 ~~(\$400);~~

14 (iii) Each each "BEER" "retailer", ~~two-hundred-dollars~~
15 ~~(\$200); with a wine license amendment, an additional \$200;~~

16 (iv) for a license to sell beer at retail for
17 off-premises consumption only, the same as a retail beer
18 license;

19 (v) Any any unit of a nationally chartered veterans'
20 organization, ~~fifty-dollars-(\$50);~~

21 ~~All licenses issued in any year shall expire on the~~
22 ~~30th day of June at midnight of such year.~~

23 (b) A transfer of any such brewer's, wholesaler's, or
24 beer retailer's license may be made on application to the
25 Montana department of revenue with the consent of the ~~said~~

1 department, provided that ~~said the~~ transferee shall qualify
2 qualifies under this code. ~~The cities and incorporated~~
3 ~~towns may enact ordinances defining certain areas in said~~
4 ~~cities or towns where beer may or may not be sold providing~~
5 ~~that said ordinance does not affect the limit of retail beer~~
6 ~~licenses which shall be issued by the Montana department of~~
7 ~~revenue based upon the population of the city or town and~~
8 ~~said city or town shall file a certified copy of said~~
9 ~~ordinance with the Montana department of revenue~~

10 (c) This code shall not be construed or interpreted so
11 as to repeal, amend, modify, change, or alter any provisions
12 of this code which require beer manufactured outside of the
13 state of Montana and shipped into Montana to be consigned to
14 and shipped to a licensed wholesaler and by him unloaded
15 into his warehouse or subwarehouse in Montana.

16 (2) The permit fee under 4-4-105(1) is computed at the
17 rate of \$15 a day for each day beer is sold at those events
18 lasting 2 or more days but in no case be less than \$30.

19 (3) The permit fee under 4-4-105(2) is \$10 for the
20 sale of beer only or \$20 for the sale of all alcoholic
21 beverages.

22 (4) Passenger carrier licenses shall be issued upon
23 payment by the applicant of an annual license fee in the sum
24 of \$300.

25 (5) The annual license fee for a license to sell wine

1 on the premises, when issued as an amendment to a beer-only
 2 license, is \$200.

3 (6) Each licensee licensed under the quotas of 4-4-202
 4 shall pay an annual license fee as follows:

5 (a) except as hereinafter provided, for each license
 6 outside of incorporated cities and incorporated towns or in
 7 incorporated cities and incorporated towns with a population
 8 of less than 2,000, \$400;

9 (b) except as hereinafter provided, for each license
 10 in incorporated cities with a population of more than 2,000
 11 and less than 5,000, \$300; or within a distance of 5 miles
 12 thereof, measured in a straight line from the nearest
 13 entrance of the premises to be licensed to the nearest
 14 boundary of such city, \$500;

15 (c) except as hereinafter provided, for each license
 16 in incorporated cities with a population of more than 5,000
 17 and less than 10,000 or within a distance of 5 miles
 18 thereof, measured in a straight line from the nearest
 19 entrance of the premises to be licensed to the nearest
 20 boundary of such city, \$650;

21 (d) for each license in incorporated cities with a
 22 population of 10,000 or more, or within a distance of 5
 23 miles thereof, measured in a straight line from the nearest
 24 entrance of the premises to be licensed to the nearest
 25 boundary of such city, \$800;

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

17 (f) an applicant for the issuance of an original
 18 license to be located in areas described in paragraph (d) of
 19 this subsection shall pay a one-time original license fee of
 20 \$20,000 for any such license issued. The one-time license
 21 fee of \$20,000 shall not apply to any transfer or renewal of
 22 a license duly issued prior to July 1, 1974. All licenses,
 23 however, are subject to the annual renewal fee of \$800.

24 (7) The license fees herein provided for are exclusive
 25 of and in addition to other license fees chargeable in

1 Montana for the sale of liquor, beer, and malt beverages."

2 Section 11. Section 4-4-403, R.C.M. 1947, is amended
3 to read as follows:

4 "4-4-403. ~~License fee for retail sale of liquor within~~
5 ~~and without cities and towns of designated populations---~~
6 ~~census~~ Census of population. Each licensee licensed under
7 the quotas of section 4-4-202 shall pay an annual license
8 fee as follows:

9 ~~(a) Except as hereinafter provided, for each license~~
10 ~~outside of incorporated cities and incorporated towns, or in~~
11 ~~incorporated cities and incorporated towns with a population~~
12 ~~of less than two thousand (2,000), four hundred dollars~~
13 ~~(\$400) per annum;~~

14 ~~(b) Except as hereinafter provided, for each license~~
15 ~~in incorporated cities with a population of more than two~~
16 ~~thousand (2,000) and less than five thousand (5,000), three~~
17 ~~hundred (\$300.00) dollars per annum; or within a distance of~~
18 ~~five (5) miles thereof, measured in a straight line from the~~
19 ~~nearest entrance of the premises to be licensed to the~~
20 ~~nearest boundary of such city, five hundred dollars (\$500)~~
21 ~~per annum;~~

22 ~~(c) Except as hereinafter provided, for each license~~
23 ~~in incorporated cities with a population of more than five~~
24 ~~thousand (5,000) and less than ten thousand (10,000), or~~
25 ~~within a distance of five (5) miles thereof, measured in a~~

1 ~~straight line from the nearest entrance of the premises to~~
2 ~~be licensed to the nearest boundary of such city, six~~
3 ~~hundred fifty dollars (\$650) per annum;~~

4 ~~(d) For each license in incorporated cities with a~~
5 ~~population of ten thousand (10,000) or more, or within a~~
6 ~~distance of five (5) miles thereof, measured in a straight~~
7 ~~line from the nearest entrance of the premises to be~~
8 ~~licensed to the nearest boundary of such city, eight hundred~~
9 ~~dollars (\$800) per annum;~~

10 ~~(e) For each railway system in the state of Montana,~~
11 ~~three hundred (\$300.00) dollars per annum;~~

12 ~~(f) The distance of five (5) miles from the corporate~~
13 ~~limits of any incorporated cities and incorporated towns~~
14 ~~shall be measured in a straight line from the nearest~~
15 ~~entrance of the premises to be licensed to the nearest~~
16 ~~boundary of such city or town, and where the premises of the~~
17 ~~applicant to be licensed are situated within five (5) miles~~
18 ~~of the corporate boundaries of two (2) or more incorporated~~
19 ~~cities or incorporated towns of different populations, the~~
20 ~~license chargeable by the larger incorporated city or~~
21 ~~incorporated town shall apply and be paid by the applicant,~~
22 ~~provided, however, that when the premises of the applicant~~
23 ~~to be licensed are situated within an incorporated town or~~
24 ~~incorporated city and any portion of said incorporated town~~
25 ~~or incorporated city be without said five (5) mile limit~~

1 then the license fee chargeable by the smaller incorporated
2 town or incorporated city shall apply and be paid by said
3 applicants.

4 An applicant for the issuance of an original license to
5 be located in areas described in subsection (d) of this
6 section shall pay a one-time original license fee of twenty
7 thousand dollars (\$20,000) for any such license issued. The
8 said one-time license fee of twenty thousand dollars
9 (\$20,000) shall not apply to any transfer or renewal of a
10 license duly issued prior to July 1, 1974. All licenses
11 however, shall be subject to the annual renewal fee of eight
12 hundred dollars (\$800).

13 The license fees herein provided for are exclusive of
14 and in addition to other license fees chargeable in the
15 state of Montana for the sale of liquor, beer and malt
16 beverages.

17 The census taken under the direction of Congress
18 ~~congress~~ of the United States in the year nineteen hundred
19 and thirty and every ten years thereafter, shall be the
20 basis upon which the respective populations of said the
21 municipalities shall be determined, unless a direct
22 enumeration of the inhabitants thereof be is made by the
23 state or municipal corporation, in which case such later
24 direct enumeration shall constitute such basis, is provided,
25 however, that no No census hereafter taken shall may be such

1 basis until it shall have been is published under the
2 authority under which the same shall be is taken, and then
3 its effect shall be prospective only from the date of such
4 publication be prospective only and provided, further, that
5 none of the provisions of this act shall be deemed to
6 operate retroactively."

7 Section 12. Section 4-4-404, R.C.M. 1947, is amended
8 to read as follows:

9 "4-4-404. Fee for and expiration of licenses.
10 Effective Each July 1, 1944, and at the same date of each
11 year thereafter, the Montana department of revenue shall
12 issue licenses to brewers, wholesalers, or retailers or for
13 the retail sale of alcoholic beverages liquor on an annual
14 basis, and at such fees as are prescribed by law, and such
15 licenses shall expire at midnight of June 30th 30 of the
16 succeeding year. The department shall notify each applicant
17 for an original license or renewal that he should inform
18 himself of applicable provisions of federal law which may
19 require a permit from a federal agency."

20 Section 13. Section 4-5-105, R.C.M. 1947, is amended
21 to read as follows:

22 "4-5-105. Fee to be charged. The county clerk and
23 recorders shall charge and collect a fee of one dollar and
24 fifty cents (\$1.50) from the applicant at the time the
25 application is prepared, is and one dollar (\$1) thereof shall

1 be transmitted to the Montana department of--revenue along
 2 with the application and shall be used to defray the cost of
 3 administering and executing the provisions of this code
 4 chapter. Any surplus shall revert to the general fund of
 5 the--state of Montana. The remaining fifty--cents--{~~50~~} 50
 6 cents shall be paid into the general fund of the county to
 7 defray the county's costs in administering this program."

8 Section 14. Section 4-6-102, R.C.M. 1947, is amended
 9 to read as follows:

10 "4-6-102. Sale of liquor not purchased from state
 11 store forbidden -- penalty. It ~~shall be~~ is unlawful for any
 12 licensee to sell or keep for sale and/or have on his
 13 premises for any purpose whatever, any liquor except that
 14 purchased from the state liquor store, and any licensee
 15 found in possession of, or selling and keeping for sale, any
 16 liquor which was not purchased from a state liquor store,
 17 shall, upon conviction, be fined punished by a fine of not
 18 less than ~~five hundred dollars--{~~500~~}~~ nor or more than
 19 ~~fifteen hundred dollars--{~~1500~~}~~, or be punished by
 20 imprisonment for not less than ~~three--{3}~~ months nor or more
 21 than ~~one--{1}~~ year, or by both such fine and imprisonment,
 22 and if the department ~~shall be~~ is satisfied that any such
 23 liquor was knowingly sold or kept for sale within the
 24 licensed premises by ~~such the~~ licensee, or by his agents,
 25 servants, or employees, ~~it shall be mandatory that said the~~

1 department shall immediately revoke the license of--said
 2 licensee."

3 Section 15. Section 4-6-205, R.C.M. 1947, is amended
 4 to read as follows:

5 "4-6-205. Unlawful alcoholic beverage -- seizure --
 6 forfeiture. Any investigator or peace officer who finds an
 7 alcoholic beverage, which he has reasonable cause to believe
 8 is had or kept by any person in violation of the provisions
 9 of this code, may forthwith seize and remove the same and
 10 the packages in which the alcoholic beverage is kept, and
 11 upon conviction of the person for a violation of any
 12 provision of ~~this--section 4-3-102,~~ the alcoholic beverage
 13 and all packages containing the same shall, in addition to
 14 any other penalty prescribed by this code, ipso facto be
 15 forfeited to the state of Montana."

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

18 "4-6-401. Premises where liquor illegally sold public
 19 nuisance. Any room, house, building, boat, vehicle,
 20 structure or place where alcoholic beverages are knowingly
 21 manufactured, sold, or bartered, in violation of this code
 22 or ~~section 94-8-107~~ and all property knowingly kept and used
 23 in maintaining the same is hereby declared to be a public
 24 nuisance, and any person who maintains such a nuisance shall
 25 be guilty of a misdemeanor, and upon conviction thereof

1 shall be fined not less than ~~one-hundred-dollars-(\$100.00)~~
2 nor ~~or~~ more than ~~five-hundred-dollars-(\$500)~~ and by
3 ~~imprisonment~~ be imprisoned not less than ~~thirty 30~~ days nor
4 ~~or~~ more than ~~six 6~~ months."

5 Section 17. Repealer. Sections 4-1-305, 4-1-307,
6 4-4-106, and 4-6-206, R.C.M. 1947, are repealed.

-End-