INTRODUCED BY For Jestender Murray Pour 1 2 Martun Chim 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CONVERT THE 4

5 MUNICIPAL ON-PREMISES BEER LICENSE QUOTAS INTO A STATEWIDE 6 QUOTA FOR SUCH LICENSES; AUTHORIZING THE BOARD OF EXAMINERS 7 TO RECOMMEND COMPENSATION FOR LOSSES REALIZED AS A 8 CONSEQUENCE; AMENDING SECTION 4-4-201, R-C-M- 1947-\*

9

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

11 Section 1. Findings and policy. (1) The legislature 12 finds that the quotas on retail on-premises beer licenses in 13 and near incorporated cities and towns are on the verge of becoming another species of government-created "new 14 property" in some localities. While the applicable quotas 15 allow the issuance of 409 licenses in municipal areas and 16 only 275 have thus far been issued, the faster growing 17 cities are now licensed up to their guotas and some retail 18 beer licenses in these cities have recently been transferred 19 20 for valuable consideration. With the advent of franchised pizza restaurants and the enhancement since 1974 of a beer 21 license by the wine amendment, this trend may accelerate. Z2 The legislature further finds that neither public policy nor 23 the best interests of present and potential beer bar owners 24 would be served by allowing these licenses to become 25

INTRODUCED BILL

valuable property rights such as tavern or all-beverages
 licenses have become.

3 (2) The purpose of this act is to modify the municipal 4 beer license quota system into a statewide quota for 5 municipal beer bars, a present quota of 409 licenses which 6 would be adjusted after future census takings. Up to this 7 statewide limit, a retail beer license, with or without a 8 wine amendment, will be available in or around any city or 9 town.

10 Section 2. Section 4-4-201, R.C.M. 1947, is amended to 11 read as follows:

12 #4-4-201. Issuance of retail beer licenses -- limit on number of beer licenses -- wine license amendments -- retail 13 14 license fee. (1) Except as otherwise provided by law, a 15 license to sell beer at retail. or beer and wine at retail 16 pursuant to subsection (2), in accordance with the 17 provisions of this act and the regulations of the department 18 of revenue, may be issued to any person, firm or corporation 19 who shall be approved by the department as a fit and proper 20 person, firm or corporation to sell beer; provided, that: 21 (a) the number of retail beer licenses that the 22 department may issue for premises situated within

incorporated cities and incorporated towns and within a
distance of five (5) miles from the corporate limits of such
cities and towns shall be determined on the basis of

-2-

1 population as shown by the most recent official United 2 States census authorized by Congress, to wit: In incorporated towns of five hundred (500) inhabitants or less 3 4 and within a distance of five (5) miles from the corporate 5 limits of such towns, not more than one (1) retail beer 6 license which shall not be used in conjunction with a retail 7 liquor license; in incorporated cities or incorporated towns 8 of more than five hundred (500) inhabitants and not over two thousand (2000) inhabitants and within a distance of five 9 10 (5) miles from the corporate limits of such cities or towns, 11 one (1) beer license for each five hundred (500) inhabitants 12 which said beer license shall not be used in conjunction 13 with retail liquor licenses; in incorporated cities of over 14 two thousand (2000) inhabitants and within a distance of 15 five (5) miles from the corporate limits of such cities, two 16 (2) additional retail beer licenses for the first two 17 thousand (2000) inhabitants or major fraction thereof and 18 one (1) additional retail beer license for each additional 19 two thousand (2000) inhabitants which shall not be used in 20 conjunction with retail liquor licenses. The-number-of--the 21 inhabitants--in--such--cities--and--townsy--exclusive-of-the 22 number-of-inhabitants-residing-within-a-distance-of-five-{5} 23 miles-from-the-corporate-limits-thereofy--shall--govern--the 24 number--of--retail--beer-licenses-that-may-be-issued-for-use 25 witHim-such-cities-and-towns-and-within-a-distance--of--five

1	<del>{5}miles-from-the-corporate-limits-thereof<u>;</u>-providedy-that</del>
2	wheretwo{2}ormoreincorporatedmunicipalitiesare
3	situatedwithinadistanceoffive{5}-miles-from-each
4	othery-the-total-number-of-retail-beer-licenses-that-maybe
5	issuedforuse-in-both-of-such-municipalities-and-within-0
6	distance-of-five-(5)-miles-from-theirrespectivecorporate
7	<del>limitsyshallbedeterminedon-the-basis-of-the-combined</del>
8	populations-of-both-of-suchmunicipalitiesandshallnot
9	exceedtheforegoinglimitations+ Ine_department_shall
10	determine the number of retail beer licenses which may be
11	issued in or within 5 miles of all the incorporated cities
12	and towns in the state under the foregoing limitations; as
13	long as this number exceeds the number of retail beer
14	licenses actually issued in or within 5 miles of all the
15	incorporated cities and towns in the state: the department
16	may issue new retail beer licenses in or within 5 miles of
17	any incorporated city or town notwithstanding the quota
18	limitations in effect prior to the effective date of this
19	amendatory_act_in_that_city_or_town+_Hunicipal_quotas_shall
20	be computed on the basis of the population of the city or
21	town excluding the population within the 5-mile area outside
22	the municipal boundaries. The said distance of five (5)
23	miles from the corporate limits $w$ any incorporated city or
24	. Incorporated town shall be meas $\nu$ ad in a straight line from
25	the nearest entrance of the premises proposed for licensing

-4-

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

(b) The number of retail beer 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 corporated limits thereof, or for use at premises situated within any unincorporated town shall be as determined by the department in the exercise of its sound discretion; provided, that no retail beer license shall be issued for any premises so situated unless the department shall determine that the issuance of such license is required by

8 public convenience and necessity.

1

2

а

4

5

6

7

9 (2) A person holding a license to sell beer for 10 consumption on the premises at retail may apply to the department for an amendment to the license permitting the 11 12 holder to sell wine as well as neer. The division may issue 13 such amendment if it finds, on a satisfactory showing by the 14 applicant, that the sale of wine for consumption on the 15 premises would be supplementary to a restaurant or prepared 16 food business. A person holding a beer-and-wine license may 17 sell wine for consumption on the premises. He may buy wine only at retail from the department. Nonretention of the 13 19 beer license, for whatever reason, shall mean automatic loss 20 of the wine amendment license. (3) The annual license fee for a license to sell wine 21

22 on the premises, when issued as an amendment to a beer only

23 license shall be two hundred dollars (\$200).

24 (4) A retail license to sell beer in the original
25 packages for off-premise off-premises consumption only may

LC 0787/01

be issued to any person, firm or corporation who shall be 1 approved by the department as a fit and proper person. firm 2 or corporation to sell beer and whose premises proposed for 3 4 licensing are operated as a bona fide grocery store or a 5 drugstore licensed as a pharmacy. The number of such licenses that the department may issue shall not be limited 5 7 by the provisions of subsection (1) of this section, but 8 shall be determined by the department in the exercise of its sound discretion, and the department may in the exercise of 9 10 its sound discretion grant or deny any application for any 11 such license or suspend or revoke any such license for 12 cause. The annual license fee for a license to sell beer at 13 retail for off-premises consumption shall be the same as for a retail bear license." 14

15 Section 3. There is a new R.C.M. section that reads as 16 follows:

17 Compensation for losses. (1) A person who purchased a retail beer license between July 1, 1975, and January 1, 18 19 1977, may apply to the board of examiners for compensation 20 for any damages realized due to this act. The board of 21 examiners shall award compensation, subject to subsection 22 (2), for only such damages as are strictly due to diminution 23 of the value of the license as a property right, excluding 24 all consideration paid for tangible assets, goodwill, name 25 recognition, or insurance or other contract rights. The 1 department of administration shall provide appraisal advice

2 as requested by the board.

(2) Compensation for damages recognized under 3 subsection (1) shall be 60% of the damages if the license 4 was transferred between July 1, 1975, and December 31, 1975, 5 and 80% of the damages if the license was transferred 6 7 between January 1, 1976, and January 1, 1977. 8 (3) Claims awarded by the board of examiners shall be 9 presented to the 46th legislature for payment. The board may 10 not award more than \$100,000 for all damages.

-End-

#### LC 0787/01

45th Legislature

9

Approved by Committee on <u>Business and Industry</u>

Enate BILL NO. 206 1 Munay Jam INTRODUCED BY From C 2 matur Sin 3

A BILL FOR AN ACT ENTITLED: "AN ACT TO CONVERT THE
MUNICIPAL DN-PREMISES BEER LICENSE QUOTAS INTO A STATEWIDE
QUOTA FOR SUCH LICENSES; AUTHORIZING THE BOARD OF EXAMINERS
TO RECOMMEND COMPENSATION FOR LOSSES REALIZED AS A
CONSEQUENCE; AMENDING SECTION 4-4-201, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 10 Section 1. Findings and policy. (1) The legislature 11 finds that the quotas on retail on-premises beer licenses in 12 and near incorporated cities and towns are on the verge of 13 becoming another species of government-created "new 14 property" in some localities. While the applicable quotas 15 allow the issuance of 409 licenses in municipal areas and 16 17 only 275 have thus far been issued, the faster growing cities are now licensed up to their quotas and some retail 18 beer licenses in these cities have recently been transferred 19 for valuable consideration. With the advent of franchised 20 pizza restaurants and the enhancement since 1974 of a beer 21 license by the wine amendment, this trend may accelerate. 22 The legislature further finds that neither public policy nor 23 the best interests of present and potential beer bar owners 24 would be served by allowing these licenses to become 25

SECOND READING

valuable property rights such as tavern or all-beverages
 licenses have become.

3 (2) The purpose of this act is to modify the municipal 4 beer license quota system into a statewide quota for 5 municipal beer bars, a present quota of 409 licenses which 6 would be adjusted after future census takings. Up to this 7 statewide limit, a retail beer license, with or without a 8 wine amendment, will be available in or around any city or 9 town.

10 Section 2. Section 4-4-201, R.C.M. 1947, is amended to 11 read as follows:

#4-4-201. Issuance of retail beer licenses -- limit on 12 13 number of beer licenses -- wine license amendments -- retail 14 license fee. (1) Except as otherwise provided by law. a 15 license to sell beer at retail, or beer and wine at retail 16 pursuant to subsection (2), in accordance with the 17 provisions of this act and the regulations of the department 18 of revenue, may be issued to any person, firm or corporation 19 who shall be approved by the department as a fit and proper 20 person. firm or corporation to sell beer: provided. that: 21 (a) the number of retail beer licenses that the

22 department may issue for premises situated within 23 incorporated cities and incorporated towns and within a 24 distance of five (5) miles from the corporate limits of such 25 cities and towns shall be determined on the basis of

٦.

-2-

1 population as shown by the most recent official United 2 States census authorized by Congress, to wit: In incorporated towns of five hundred (500) inhabitants or less 3 4 and within a distance of five (5) miles from the corporate 5 limits of such towns, not more than one (1) retail beer 6 license which shall not be used in conjunction with a retail 7 liquor license; in incorporated cities or incorporated towns 8 of more than five hundred (500) inhabitants and not over two 9 thousand (2000) inhabitants and within a distance of five 10 (5) miles from the corporate limits of such cities or towns, one (1) beer license for each five hundred (500) inhabitants 11 12 which said beer license shall not be used in conjunction 13 with retail liquor licenses; in incorporated cities of over 14 two thousand (2000) inhabitants and within a distance of 15 five (5) miles from the corporate limits of such cities, two 16 (2) additional retail beer licenses for the first two 17 thousand (2000) inhabitants or major fraction thereof and 18 one (1) additional retail beer license for each additional 19 two thousand (2000) inhabitants which shall not be used in 20 conjunction with retail liquor licenses. The-number-of--the 21 inhabitants--in--such--cities--and--townsy--exclusive-of-the 22 number-of-inhabitants-residing-within-a-distance-of-five-(5) 23 miles-from-the-corporate-limits-thereofy--shall--govern--the number--of--retail--beer-licenses-that-may-be-issued-for-use 24 25 within-such-cities-and-towns-and-within-a-distance--of--five

### LC 0787/01

1	<del>{5}miles-from</del> -the-corporate-limits-thereoff-providedy-that
2	wheretwo(2)ormoreincorporatedmunicipalitiesare
3	situatedwithinadistanceoffive{5}-miles-from-each
4	<del>othery-the-total-number-of-retail-beer-licenses-that-maybe</del>
5	issuedforuse-in-both-of-such-municipalities-and-within-a
6	distance-of-five-(5)-miles-from-theirrespectivecorporate
7	<del>limitsyshallbedeterminedon-the-basis-of-the-combined</del>
8	populations-of-both-of-suchmunicipalitiesandshallnot
9	exceedtheforegoinglimitations. <u>The_department_shall</u>
10	determine the number of retail beer licenses which may be
11	issuedinor_within 5 miles_of_all_the_incorporated_cities
12	and towns in the state under the foregoing limitations; as
13	long as this number exceeds the number of retail beer
14	licenses actually issued in or within 5 miles of all the
15	incorporated cities and towns in the state, the department
16	<u>may issue new retail beer licenses in or within 5 miles of</u>
17	any incorporated_city_or_town_notwithstanding_the_quota
18	<u>limitations in effect prior to the effective date of this</u>
19	amendatory_act_in_that_city_or_town. Municipal_quotas_shall
20	<u>be computed on the basis of the population of the city or</u>
21	town excluding the population within the 5-mile area dutside
<b>2</b> 2	the municipal boundaries. The said distance of five (5)
23	miles from the corporate limits of any incorporated city or
24	incorporated town shall be measured in a straight line from
25	the nearest entrance of the premises proposed for licensing

-4-

1

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

(b) The number of retail beer licenses that the
department may issue for use at premises situated outside of
any incorporated city or incorporated town and outside of

-5-

the area within a distance of five (5) miles from the

corporated limits thereof, or for use at premises situated within any unincorporated town shall be as determined by the department in the exercise of its sound discretion; provided, that no retail beer license shall be issued for any premises so situated unless the department shall determine that the issuance of such license is required by public convenience and necessity.

9 (2) A person holding a license to sell beer for consumption on the premises at retail may apply to the 10 11 department for an amendment to the license permitting the 12 holder to sell wine as well as beer. The division may issue 13 such amendment if it finds, on a satisfactory showing by the 14 applicant, that the sale of wine for consumption on the 15 premises would be supplementary to a restaurant or prepared 16 food business. A person holding a beer-and-wine license may 17 sell wine for consumption on the premises. He may buy wine 18 only at retail from the department. Nonretention of the 19 beer license, for whatever reason, shall mean automatic loss 20 of the wine amendment license.

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

24 (4) A retail license to sell beer in the original
25 packages for off-premise off-premises consumption only may

-6-

.

be issued to any person, firm or corporation who shall be 1 2 approved by the department as a fit and proper person. firm З or corporation to sell beer and whose premises proposed for licensing are operated as a bona fide grocery store or a 4 5 drugstore licensed as a pharmacy. The number of such licenses that the department may issue shall not be limited -6 7 by the provisions of subsection (1) of this section, but shall be determined by the department in the exercise of its - 8 9 sound discretion, and the department may in the exercise of 10 its sound discretion grant or deny any application for any 11 such license or suspend or revoke any such license for 12 cause. The annual license fee for a license to sell beer at retail for off-premises consumption shall be the same as for 13 14 a retail beer license."

15 Section 3. There is a new R.C.M. section that reads as 16 follows:

17 Compensation for losses. (1) A person who purchased a 18 retail beer license between July 1, 1975, and January 1, 19 1977, may apply to the board of examiners for compensation 20 for any damages realized due to this act. The board of 21 examiners shall award compensation, subject to subsection 22 (2), for only such damages as are strictly due to diminution 23 of the value of the license as a property right, excluding 24 all consideration paid for tangible assets, goodwill, name 25 recognition, or insurance or other contract rights. The

department of administration shall provide appraisal advice
 as requested by the board.

3 (2) Compensation for damages recognized under 4 subsection (1) shall be 60% of the damages if the license 5 was transferred between July 1, 1975, and December 31, 1975, 6 and 80% of the damages if the license was transferred 7 between January 1, 1976, and January 1, 1977.

8 (3) Claims awarded by the board of examiners shall be 9 presented to the 46th legislature for payment. The board may

10 not award more than \$100,000 for all damages.

-End-

-7-

-8-

4oth Legislature

्र

\$5 0206/02

### Approved by Committee on Business and Industry

1	SENATE BILL NO. 206
2	INTRODUCED BY LOWE, FASBENDER, HURRAY, REGAN, MATHERS, OLSON
3	
4	A BILL FOR AN ACT ENTITLED: "AN ACT TO CONVERT THE
5	MUNICIPAL ON-PREMISES BEER LICENSE QUOTAS INTO A STATEWIDE
6	QUOTA FOR SUCH LICENSES; AND PROVIDING CONPENSATION FROM THE
7	GENERAL FUND BY INCREASING THE RETAIL BEER LICENSE FEE:
õ	AUTHORIZING THE BOARD OF EXAMINERS TO RECOMMEND COMPENSATION
9	FOR LOSSES REALIZED AS A CONSEQUENCE; AMENDING <del>section</del>
10	SECTIONS 4-4-201, AND 4-4-401, R.C.M. 1947."
11	
12	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13	Section 1. Findings and policy. (1) The legislature
14	finds that the quotas on retail on-premises beer licenses in
15	and near incorporated cities and towns are on the verge of
16	becoming another species of government-created "new
17	property" in some localities. While the applicable quotas
13	allow the issuance of 409 licenses in municipal areas and
19	only 275 have thus far been issued, the faster growing
20	cities are now licensed up to their quotas and some retail
21	beer licenses in these cities have recently been transferred
22	for valuable consideration. With the advent of franchised
23	pizza restaurants and the enhancement since 1974 of a beer
24	license by the wine amendment, this trend may accelerate.
25	The legislature further finds that neither public policy nor

SECOND READING

SECOND PRINTING

the best interests of present and potential beer bar owners
 would be served by allowing these licenses to become
 valuable property rights such as tavern or all-beverages
 licenses have become.

5 (2) The purpose of this act is to modify the municipal 6 beer license quota system into a statewide quota for 7 municipal beer bars, a present quota of 409 licenses which 8 would be adjusted after future census takings. Up to this 9 statewide limit, a retail beer license, with or without a 10 wine amendment, will be available in or around any city or 11 town.

Section 2. Section 4-4-201, R.C.M. 1947, is amended to read as follows:

14 "4-4-201. Issuance of retail beer licenses -- limit on number of beer licenses -- wine license amendments -- retail 15 16 license fee. (1) Except as otherwise provided by law, a 17 license to sell beer at retail, or beer and wine at retail pursuant to subsection (2), in accordance with the 18 provisions of this act and the regulations of the department 19 of revenue, may be issued to any person, firm or corporation 20 who shall be approved by the department as a fit and proper 21 person, firm or corporation to sell beer; provided, that: 22

(a) the number of retail beer licenses that the
 department may issue for premises situated within
 incorporated cities and incorporated towns and within a

-2- SB 206

## SH 0206/02

1 distance of five (5) miles from the corporate limits of such 2 cities and towns shall be determined on the basis of 3 population as shown by the most recent official United 4 States census authorized by Congress, to wit: In 5 incorporated towns of five hundred (500) inhabitants or tess and within a distance of five (5) miles from the corporate 6 7 limits of such towns, not more than one (1) retail beer 8 license which shall not be used in conjunction with a retail 9 liquor license; in incorporated cities or incorporated towns 10 of more than five hundred (500) inhabitants and not over two thousand (2000) inhabitants and within a distance of five 11 12 (5) miles from the corporate limits of such cities or towns, 13 one (1) beer license for each five hundred (500) inhabitants 14 which said beer license shall not be used in conjunction 15 with retail liquor licenses; in incorporated cities of over 16 two thousand (2000) inhabitants and within a distance of 17 five (5) miles from the corporate limits of such cities, two 18 (2) additional retail beer licenses for the first two thousand (2000) inhabitants or major fraction thereof and 19 20 one (1) additional retail beer license for each additional 21 two thousand (2000) inhabitants which shall not be used in 22 conjunction with retail liquor licenses. The-number-of--the 23 inhabitants--in--such--cities--and--townsy--exclusive-of-the 24 number-of-inhabitants-residing-within-a-distance-of-five-15t 25 miles-from-the-corporate-limits-thereofy--shall--nevern--the

1 number--of--retail--beer-licenses-that-may-be-issued-for-use 2 within-such-cities-and-towns-and-within-s-distance--of--five 3 fol--miles-from-the-corporate-limits-thereoff-providedy-that 4 where--two--f2}--or--more--incorporated--municipalities--are 5 situated--within--a--distance--of--five--i5j-miles-from-each 6 othery-the-total-number-of-retail-beer-licenses-thot-may--be 7 issued--for--use-in-both-of-such-municipalities-and-within-a 8 distance-of-five-+5}-miles-from-their--respective--corporate 9 limitsy--shall--be--determined--on-the-basis-of-the-combined 10 populations-of-both-of-such--municipalities--and--shall--not 11 exceed--the--foregoing--limitations. The department shall 12 determine the number of retail beer licenses, which may be 13 issued in or within 5 miles of all the incorporated cities 14 and towns in the state under the foregoing limitations: as long as this number exceeds the number of retail beer 15 16 licenses actually issued in or within 5 miles of all the 17 incorporated cities and towns in the state, the department 18 may issue new retail beer licenses in or within 5 miles of 19 any incorporated city or town notwithstanding the guota 20 limitations in effect prior to the effective \_date of \_this 21 amendatory act in that city or town. Municipal quotas shall 22 be computed on the basis of the population of the city or 23 town excluding the population within the 5-mile area outside 24 the nunicipal boundaries. The said distance of five (5) 25 miles from the corporate limits of any incorporated city or

-4-

SB 0206/02

-3--

### 55 0206/02

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

Ν.

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

11 (2) A person holding a license to sell beer for 12 consumption on the premises at retail may apply to the 13 department for an amendment to the license permitting the holder to sell wine as well as beer. The division may issue 14 15 such amendment if it finds, on a satisfactory showing by the 16 applicant, that the sale of wine for consumption on the 17 premises would be supplementary to a restaurant or prepared 18 food business. A person holding a beer-and-wine license may 19 sell wine for consumption on the premises. He may buy wine 29 only at retail from the department. Nonretention of the 21 beer license, for whatever reason, shall mean automatic loss 22 of the wine amendment license.

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

-6-

-5-

Sð 206

SB 206

SB 0206/02

# S8 0206/02

1 (4) A retail license to sell beer in the original 2 packages for off-premise off-premises consumption only may be issued to any person, firm or corporation who shall be 3 4 approved by the department as a fit and proper person, firm 5 or corporation to sell beer and whose premises proposed for licensing are operated as a bona fide grocery store or a 6 7 drugstore licensed as a pharmacy. The number of such 8 licenses that the department may issue shall not be limited 9 by the provisions of subsection (1) of this section, but 10 shall be determined by the department in the exercise of its 11 sound discretion, and the department may in the exercise of 12 its sound discretion grant or deny any application for any 13 such license or suspend or revoke any such license for 14 cause. The annual license fee for a license to sell beer at 15 retail for off-premises consumption shall be the same as for 16 a retail beer license."

17 Section 3. There is a new R.C.M. section that reads as 18 follows:

19 Compensation for losses. (1) A person who purchased a 20 retail beer license between July 1, 1975, and January 1, 21 1977, may apply to the board of examiners for compensation 22 for any damages realized due to this act. The board of 23 examiners shall award compensation, subject to subsection 24 (2), for only such damages as are strictly due to diminution 25 of the value of the license as a property right, excluding

-7-

S6 206

all consideration paid for tangible assets, goodwill, name
 recognition, or insurance or other contract rights. The
 department of edministration <u>REVENUE</u> shall provide appraisal
 advice as requested by the board.

5 (2) Compensation for damages recognized under 6 subsection (1) shall be 60% of the damages if the license 7 was transferred between July 1y-1975y-and SEEORE December 8 31, 1975, and 80% of the damages if the license was 9 transferred between January 1, 1976, and January 1, 1977. 10 (3) Claims awarded by the board of examiners shall be

11 presented--to-the-46th-legislature-for-payment PAID\_FROM\_IHE 12 <u>GENERAL\_FUND</u>. The board may not award more than \$100,000 for 13 all damages.

 14
 SECTION 4.
 SECTION 4.4.
 SECTION 4.4.

16 #4-4-401. Fees for licenses -- expiration dates --17 regulation by cities and towns. Each licensee, under the 18 provisions of this code, shall pay an annual license fee as 19 follows:

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

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

-8-

- 24 Each "retailer" two-hundred-dollars-(\$200) \$3251
- 25 Any unit of a nationally chartered veterans\*

SE 0206/02

SB 0206/02

1 organization fifty dollars (\$50);

<u>،</u> ۱

2 All licenses issued in any year shall expire on the 3 30th day of June at midnight of such year. A transfer of any such license may be made on application to the Hontana -4 department of revenue with the consent of the said Э 6 department provided that said transferee shall qualify under 7 this code. The cities and incorporated towns may enact ы ordinances defining certain areas in said cities or towns 9 where beer may or may not be sold providing that said 10 ordinance does not affect the limit of retail beer licenses which shall be issued by the Montana department of revenue 11 12 based upon the population of the city or town and said city 13 or town shall file a certified copy of said ordinance with 14 the Montana department of revenue. This code shall not be construed or interpreted so as to repeal, amend, modify, 15 change, or alter any provisions of this code which require 16 beer manufactured outside of the state of Montana and 11 shipped into Montana to be consigned to and shipped to a 13 licensed wholesaler and by him unloaded into his warehouse 19 20 or subwarehouse in Montana."

 21
 SECTION 5. EXPIRATION DATE. SECTION. 3. OF THIS BILL

 22
 AND INE AMENOMENT TO SECTION 4-4-401 WILL EXPIRE ON JULY 1.

 23
 1979. AFTER THAT DATE. THE FEE FOR A REER RETAILER LICENSE

 24
 REVERTS TO \$200.

-End-

-7-

SENATE FILL NG. 206 1 INTRODUCED BY LOWE, FASBENDER, MURRAY, REGAN, MATHERS, OLSON. 5 3 A BILL FOR AN ACT ENTITLED: "AN ACT TO CONVERT THE 4 MUNICIPAL ON-PREMISES BEER LICENSE QUOTAS INTO A STATEWIDE 5 QUOTA FOR SUCH LICENSES; AND PROVIDING COMPENSATION FROM THE ÷ GENERAL FUND BY INCREASING THE RETAIL HEER LICENSE FEE: 7 AUTHONIZING THE BOARD OF EXAMINERS TO RECOMMEND COMPENSATION ń 9 FOR LOSSES REALIZED AS A CONSEQUENCE: AMENDING SECTION SECTIONS 4-4-201, AND 4-4-401, R.C.M. 1947." 10 11 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: Section 1. Findings and policy. (1) The legislature 13 14 finds that the quotas on retail on-premises beer licenses in and near incorporated cities and towns are on the verge of 15 becoming another species of government-created "new 16 17 property" in some localities. While the applicable quotas allow the issuance of 409 licenses in municipal areas and 18 only 215 have thus far been issued, the faster growing 19 cities are now licensed up to their quotas and some retail 20 beer licenses in these cities have recently been transferred 21 for valuable consideration. With the advent of franchised 22 pizza restaurants and the enhancement since 1974 of a peer 23 license by the wine amendment, this trend may accelerate. 24 The locislature further finds that neither public policy nor 25

THIRD READING

1 the best interests of present and potential beer bar owners 2 would be served by allowing these licenses to become 3 valuable property rights such as tavern or all-beverages 4 licenses have become.

(2) The purpose of this act is to modify the municipal
beer license quota system into a statewide quota for
municipal beer bars, a present quota of 409 licenses which
would be adjusted after future census takings. Up to this
statewide limit, a retail beer license, with or without a
wine amendment, will be available in or around any city or
town.

12 Section 2. Section 4-4-201, R.C.M. 1947, is amended to 13 read 3s follows:

14 "4-4-201. Issuance of retail beer licenses -- limit on 15 number of beer licenses -- wine license amendments -- retail 16 license fee. (1) Except as otherwise provided by law- a 17 license to sell beer at retail, or beer and wine at retail 19 pursuant to subsection (2), in accordance with the 19 provisions of this act and the regulations of the department 20 of revenue, may be issued to any person, firm or corporation who shall be approved by the department as a fit and proper 21 22 person, firm or corporation to sell beer; provided, that:

(a) the number of retail beer licenses that the
 department may issue for premises situated within
 incorporated cities and incorporated towns and within a

-7-

1 distance of five (5) miles from the corporate limits of such cities and towns shall be determined on the basis of 2 3 population as shown by the most recent official United States census authorized by Congress, to wit: In 4 5 incorporated towns of five hundred (500) inhabitants or less 6 and within a distance of five (5) miles from the cornorate 7 limits of such towns, not more than one (1) retail beer license which shall not be used in conjunction with a retail 8 9 liquor license; in incorporated cities or incorporated towns of more than five hundred (500) inhabitants and not over two 10 11 thousand (2000) inhabitants and within a distance of five 12 (5) miles from the corporate limits of such cities or towns, one (1) beer license for each five hundred (500) inhabitants 13 14 which said beer license shall not be used in conjunction 15 with retail liquor licenses; in incorporated cities of over 16 two thousand (2000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities, two 17 16 (2) additional retail beer licenses for the first two 19 thousand (2000) inhabitants or major fraction thereof and 20 one (1) additional retail beer license for each additional 21 two thousand (2000) inhabitants which shall not be used in 22 conjunction with retail liquor licenses. The-number-of-the 23 inhabitants--in--such--cities--and--townsy--exclusive-of-the 24 number-of-inhotitants-residing-within-a-distance-of-five-fot 25 miles-from-the-corporate-limits-thereofy--shall--povern--the

numberofretailbeer-licenses-that-may-be-issued-for-use
within-such-cities-and-towns-and-within-a-distanceoffive
<del>{5}miles-from-the-corporate-limits-thereoff-providedy-that</del>
wheretwc{2 <del>}or</del> moreincorporatedmunicipalitiesore
situatedwithinadistanceaffive{5}-miles-from-each
otherv-the-total-number-of-retail-beer-licenses-that-maybe
issuedforuse-in-both-of-such-municipalities-and-within-o
distance-of-five-(5)-miles-from-theirrespectivecorporate
<del>limitsyshallbedeterminedon-the-basis-of-the-combined</del>
populations-of-both-of-suchmunicipalitiesandshallnot
exceedtheforegoinglimitations. <u>The department shall</u>
determine the number of retail beer licenses which may be
issued_in_or_within 5_miles of all the incorporated cities
and towns in the state under the foregoing limitations; as
long as this number exceeds the number of retail beer
licenses actually issued in or within 5 miles of all the

17 incorporated cities and towns in the state, the department

19 any incorporated city or town notwithstanding the guota

may issue new retail beer licenses in or within 5 giles of

- 20 limitations in effect prior to the effective date of this
- 21 amendatory act in that city or town. Municipal quotas shall
- 22 by computed on the basis of the population of the city or
- 23 town excluding the population within the 5-mile area outside
- 24 the punicipal boundaries. The said distance of five (5)
- 25 miles from the corporate limits of any incorporated city or

-4-

1

2

3

4

5

6

7

8

Q.

10

11

12

13

14

15

15

13

-3-

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

1 department may issue for use at premises situated outside of 2 any incorporated city or incorporated town and outside of 3 the area within a distance of five (5) miles from the 4 corporated limits thereof, or for use at premises situated ۰, within any unincorporated town shall be as determined by the 6 department in the exercise of its sound discretion; 7 provided, that no retail beer license shall be issued for any premises so situated unless the department shall в determine that the issuance of such license is required by 9 10 public convenience and necessity.

11 (2) A person holding a license to sell beer for consumption on the premises at retail may apply to the 12 13 department for an amendment to the license permitting the 14 holder to sell wine as well as beer. The division may issue such amendment if it finds, on a satisfactory showing by the 15 applicant, that the sale of wine for consumption on the 16 17 premises would be supplementary to a restaurant or prepared 18 food business. A person holding a beer-and-wine license may 19 sell wine for consumption on the premises. He may buy wine 20 only at retail from the department. Nonretention of the 21 beer license, for whatever reason, shall mean automatic loss 22 of the wine amendment license. 23 (3) The annual license fee for a license to sell wine

24 on the premises, when issued as an amendment to a beer only

-6-

25 license shall be two hundred dollars (\$200).

SB 206

-5-

S6 206

÷

1 (4) A retail license to sell beer in the original 2 packages for off-premise off-premises consumption only may З be issued to any person, firm or corporation who shall be 4 approved by the department as a fit and proper person, firm 5 or corporation to sell beer and whose premises proposed for 5 licensing are operated as a bona fide grocery store or a 7 drugstore licensed as a pharmacy. The number of such licenses that the department may issue shall not be limited 8 9 by the provisions of subsection (1) of this section, but 10 shall be determined by the department in the exercise of its sound discretion, and the department may in the exercise of 11 its sound discretion grant or deny any application for any 12 13 such license or suspend or revoke any such license for cause. The annual license fee for a license to sell beer at 14 retail for off-premises consumption shall be the same as for 15 16 a retail beer license."

17 Section 3. There is a new R.C.M. section that reads as 18 follows:

19 Compensation for losses. (1) A person who purchased a 20 retail beer license between July 1, 1975, and January 1, 21 1977, may apply to the board of examiners for compensation 22 for any damages realized due to this act. The board of 23 examiners shall award compensation, subject to subsection 24 (2), for only such damages as are strictly due to diminution 25 of the value of the license as a property right, excluding

-7-

.

all consideration paid for tangible assets, doodwill, name
 recognition, or insurance or other contract rights. The
 department of edministration <u>REVENUE</u> shall provide appraisal
 advice as requested by the board.

5 (2) Compensation for damages recognized under subsection (1) shall be 60% of the damages if the license 6 7 was transferred between-July-19-1975y--and BEFORE December 8 31. 1975. and 80% of the damages if the license was transferred between January 1, 1976, and January 1, 1977. 9 (3) Claims awarded by the board of examiners shall be 10 11 presented--to-the-46th-legislature-for-payment PAID\_FRDM\_IHE GENERAL FUND. The board may not award more than \$100,000 for 12 13 all damages. SECTION 4. SECTION 4-4-401: R.C.M. 1947. IS AMENDED TO 14 15 READ AS FOLLOWS: 16 "4-4-401. Fees for licenses -- expiration dates --17 regulation by cities and towns. Each licensee, under the 15 provisions of this code, shall pay an annual license fee as follows: 19

20 Each "brewer," wherever located, whose product is sold
21 or offered for sale within the state, five hundred dollars
22 (\$500);
23 Dach "wholesaler" four hundred dollars (\$400);

- 24 Each "retailer" <del>two-hundred-dollors-(\$200) <u>\$325:</u></del>
- 25 Any unit of a nationally chartered veterans\*

-8- ·· SF 206

1 organization fifty dollars (\$50);

All licenses issued in any year shall expire on the 2 30th day of June at midnight of such year. A transfer of 3 any such license may be made on application to the Hontana 4 department of revenue with the consent of the said 5 department provided that said transferee shall qualify under 6 this code. The cities and incorporated towns may enact 7 8 ordinances defining certain areas in said cities or towns 9 where beer may or may not be sold providing that said 10 ordinance does not affect the limit of retail beer licenses 11 which shall be issued by the Montana department of revenue 12 based upon the population of the city or town and said city 13 or town shall file a certified copy of said ordinance with 14 the Montana department of revenue. This code shall not be construed or interpreted so as to repeal, amend, modify, 15 16 change, or alter any provisions of this code which require beer manufactured outside of the state of Montana and 17 13 shipped into Montane to be consigned to and shipped to a 17 licensed wholesaler and by him unloaded into his warehouse 20 or subwarehouse in Montana."

 21
 SECTION 5. EXPIRATION DATE. SECTION 3 DE THIS BILL

 23
 AND THE AMENDMENT TO SECTION 4-4-401 WILL EXPIRE DM JULY. 1.

 23
 1972. AFTER. THAT DATE. THE FEE FOR A BEER RETAILER LICENSE

 24
 REVENTS TO \$200.

-Erd-

-9-