

1 *Senate* BILL NO. *206*  
 2 INTRODUCED BY *Low Sachander Murray*  
 3 *Markus Olson*

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; 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."

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

1 valuable property rights such as tavern or all-beverages  
 2 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  
 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

1 population as shown by the most recent official United  
 2 States census authorized by Congress, to wit: In  
 3 incorporated towns of five hundred (500) inhabitants or less  
 4 and within a distance of five (5) miles from the corporate  
 5 limits of such towns, not more than 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,  
 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  
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 3 ~~situated within a distance of five (5) miles from each~~  
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 5 ~~issued for use in both of such municipalities and within a~~  
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 9 ~~exceed the foregoing limitations. The department shall~~  
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 13 ~~long as this number exceeds the number of retail beer~~  
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 19 ~~amendatory act in that city or town. Municipal quotas shall~~  
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 21 ~~town excluding the population within the 5-mile area outside~~  
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 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

1 to the nearest corporate boundary of such city or town.  
 2 Retail beer licenses of issue on the date of the passage and  
 3 approval of this act and which are in excess of the  
 4 foregoing limitations shall be renewable, but no new  
 5 licenses shall be issued in violation of such limitations;  
 6 provided, that such limitations shall not prevent the  
 7 issuance of a nontransferable and nonassignable retail beer  
 8 license to any post of a nationally chartered veterans'  
 9 organization or any lodge of a recognized national fraternal  
 10 organization, if such veterans' or fraternal organization  
 11 has been in existence for a period of five (5) years or more  
 12 prior to January 1, 1949. No incorporated city or  
 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.

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

1 the area within a distance of five (5) miles from the  
 2 corporated limits thereof, or for use at premises situated  
 3 within any unincorporated town shall be as determined by the  
 4 department in the exercise of its sound discretion;  
 5 provided, that no retail beer license shall be issued for  
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9 (2) A person holding a license to sell beer for  
 10 consumption on the premises at retail may apply to the  
 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  
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 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.

21 (3) The annual license fee for a license to sell wine  
 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

1 be issued to any person, firm or corporation who shall be  
 2 approved by the department as a fit and proper person, firm  
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 5 drugstore licensed as a pharmacy. The number of such  
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 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  
 13 retail for off-premises consumption shall be the same as for  
 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

1 department of administration shall provide appraisal advice  
 2 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  
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Approved by Committee on Business and Industry

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3 *Mark Olson*

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Approved by Committee  
on Business and Industry

SENATE BILL NO. 206

INTRODUCED BY LOWE, FASBENDER, MURRAY, REGAN, MATHERS, OLSON

A BILL FOR AN ACT ENTITLED: "AN ACT TO CONVERT THE MUNICIPAL ON-PREMISES BEER LICENSE QUOTAS INTO A STATEWIDE QUOTA FOR SUCH LICENSES; AND PROVIDING COMPENSATION FROM THE GENERAL FUND BY INCREASING THE RETAIL BEER LICENSE FEE; AUTHORIZING THE BOARD OF EXAMINERS TO RECOMMEND COMPENSATION FOR LOSSES REALIZED AS A CONSEQUENCE; AMENDING SECTION SECTIONS 4-4-201, AND 4-4-401, R.C.M. 1947."

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

Section 1. Findings and policy. (1) The legislature finds that the quotas on retail on-premises beer licenses in and near incorporated cities and towns are on the verge of becoming another species of government-created "new property" in some localities. While the applicable quotas allow the issuance of 409 licenses in municipal areas and only 275 have thus far been issued, the faster growing cities are now licensed up to their quotas and some retail beer licenses in these cities have recently been transferred for valuable consideration. With the advent of franchised pizza restaurants and the enhancement since 1974 of a beer license by the wine amendment, this trend may accelerate. The legislature further finds that neither public policy nor

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.

(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.

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

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SECOND READING

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 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

1 all consideration paid for tangible assets, goodwill, name  
 2 recognition, or insurance or other contract rights. The  
 3 department of administration REVENUE shall provide appraisal  
 4 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 1, 1975, and~~ BEFORE 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 THE  
 12 GENERAL FUND. The board may not award more than \$100,000 for  
 13 all damages.

14 SECTION 4. SECTION 4-4-401, R.C.M., 1947, IS AMENDED TO  
 15 READ AS FOLLOWS:

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:

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

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

24 Each "retailer" ~~two-hundred-dollars-(200)~~ \$325;

25 Any unit of a nationally chartered veterans'

1 organization fifty dollars (\$50);

2 All licenses issued in any year shall expire on the  
3 30th day of June at midnight of such year. A transfer of  
4 any such license may be made on application to the Montana  
5 department of revenue with the consent of the said  
6 department provided that said transferee shall qualify under  
7 this code. The cities and incorporated towns may enact  
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  
15 construed or interpreted so as to repeal, amend, modify,  
16 change, or alter any provisions of this code which require  
17 beer manufactured outside of the state of Montana and  
18 shipped into Montana to be consigned to and shipped to a  
19 licensed wholesaler and by him unloaded into his warehouse  
20 or subwarehouse in Montana."

21 ~~SECTION 5. EXPIRATION DATE. SECTION 3 OF THIS BILL~~  
22 ~~AND THE AMENDMENT TO SECTION 4-4-401 WILL EXPIRE ON JULY 1,~~  
23 ~~1979. AFTER THAT DATE, THE FEE FOR A BEER RETAILER LICENSE~~  
24 ~~REVERTS TO \$200.~~

-End-

## SENATE BILL NO. 206

INTRODUCED BY LOWE, FASBENDER, MURRAY, REGAN, MATHERS, OLSON

A BILL FOR AN ACT ENTITLED: "AN ACT TO CONVERT THE MUNICIPAL ON-PREMISES BEER LICENSE QUOTAS INTO A STATEWIDE QUOTA FOR SUCH LICENSES; AND PROVIDING COMPENSATION FROM THE GENERAL FUND BY INCREASING THE RETAIL BEER LICENSE FEE; AUTHORIZING THE BOARD OF EXAMINERS TO RECOMMEND COMPENSATION FOR LOSSES REALIZED AS A CONSEQUENCE; AMENDING SECTION SECTIONS 4-4-201, AND 4-4-401, R.C.M. 1947."

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

Section 1. Findings and policy. (1) The legislature finds that the quotas on retail on-premises beer licenses in and near incorporated cities and towns are on the verge of becoming another species of government-created "new property" in some localities. While the applicable quotas allow the issuance of 409 licenses in municipal areas and only 275 have thus far been issued, the faster growing cities are now licensed up to their quotas and some retail beer licenses in these cities have recently been transferred for valuable consideration. With the advent of franchised pizza restaurants and the enhancement since 1974 of a beer license by the wine amendment, this trend may accelerate. The legislature further finds that neither public policy nor

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.

(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.

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

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

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 less  
 6 and within a distance of five (5) miles from the corporate  
 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  
 11 thousand (2000) inhabitants and within a distance of five  
 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  
 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 towns, exclusive of the~~  
 24 ~~number of inhabitants residing within a distance of five (5)~~  
 25 ~~miles from the corporate limits thereof, shall govern the~~

1 ~~number of retail beer licenses that may be issued for use~~  
 2 ~~within such cities and towns and within a distance of five~~  
 3 ~~(5) miles from the corporate limits thereof provided that~~  
 4 ~~where two (2) or more incorporated municipalities are~~  
 5 ~~situated within a distance of five (5) miles from each~~  
 6 ~~other, the total number of retail beer licenses that 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 ~~limits, 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~~  
 15 ~~long as this number exceeds the number of retail beer~~  
 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 quota~~  
 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 municipal boundaries.~~ The said distance of five (5)  
 25 miles from the corporate limits of any incorporated city or

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 passage and  
 5 approval of this act and which are in excess of the  
 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  
 17 retail beer license may be issued by the department for any  
 18 premises situated within any zone of such city or town  
 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  
 22 a retail beer license if it shall determine that the  
 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 incorporated limits thereof, or for use at premises situated  
 5 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  
 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  
 14 holder to sell wine as well as beer. The division may issue  
 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  
 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  
 25 license shall be two hundred dollars (\$200).



1 (4) A retail license to sell beer in the original  
 2 packages for ~~off-premise~~ off-premises consumption only may  
 3 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  
 6 licensing are operated as a bona fide grocery store or a  
 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

1 all consideration paid for tangible assets, goodwill, name  
 2 recognition, or insurance or other contract rights. The  
 3 department of ~~administration~~ REVENUE shall provide appraisal  
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 13 all damages.

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 18 provisions of this code, shall pay an annual license fee as  
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20 Each "brewer," wherever located, whose product is sold  
 21 or offered for sale within the state, five hundred dollars  
 22 (\$500);

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

24 Each "retailer" ~~two hundred dollars (\$200)~~ \$225;

25 Any unit of a nationally chartered veterans'

1 organization fifty dollars (\$50);

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

21 ~~SECTION 5. EXPIRATION DATE. SECTION 3 OF THIS BILL~~  
22 ~~AND THE AMENDMENT TO SECTION 4-4-401 WILL EXPIRE ON JULY 1,~~  
23 ~~1979. AFTER THAT DATE, THE FEE FOR A BEER RETAILER LICENSE~~  
24 ~~REVERTS TO \$200.~~

-End-