

HOUSE BILL NO. 21

INTRODUCED BY HARRINGTON

BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

IN THE HOUSE

January 6, 1981	Introduced and referred to Committee on Business and Industry.
January 12, 1981	Committee recommend bill do pass. Report adopted.
January 13, 1981	Bill printed and placed on members' desks.
January 14, 1981	Second reading, do pass.
January 15, 1981	Considered correctly engrossed. Third reading, passed. Transmitted to Senate.

IN THE SENATE

January 16, 1981	Introduced and referred to Committee on Business and Industry.
February 9, 1981	Committee recommend bill be concurred in as amended. Report adopted.
February 11, 1981	Second reading, concurred in.
February 14, 1981	Third reading, concurred in as amended. Yeas, 50; Nays, 0.

IN THE HOUSE

February 16, 1981	Returned from Senate with amendments. Concurred in as amended.
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February 19, 1981

Second reading, amendments
concurrent in.

February 24, 1981

Third reading, amendments
concurrent in. Yeas, 94;
Nays, 0. Sent to enrolling.

Reported correctly enrolled.

1 within a distance of 5 miles from the corporate limits
 2 thereof. If two or more incorporated municipalities are
 3 situated within a distance of 5 miles from each other, the
 4 total number of retail beer licenses that may be issued for
 5 use in both of such municipalities and within a distance of
 6 5 miles from their respective corporate limits shall be
 7 determined on the basis of the combined populations of both
 8 of such municipalities and may not exceed the foregoing
 9 limitations. The distance of 5 miles from the corporate
 10 limits of any incorporated city or incorporated town shall
 11 be measured in a straight line from the nearest entrance of
 12 the premises proposed for licensing to the nearest corporate
 13 boundary of such city or town.

14 (c) retail beer licenses of issue on March 7, 1947, and
 15 which are in excess of the foregoing limitations shall be
 16 renewable, but no new licenses may be issued in violation of
 17 such limitations;

18 (d) such limitations do not prevent the issuance of a
 19 nontransferable and nonassignable retail beer license to a
 20 post of a nationally chartered veterans' organization or a
 21 lodge of a recognized national fraternal organization if
 22 such veterans' or fraternal organization has been in
 23 existence for a period of 5 years or more prior to January
 24 1, 1949;

25 (e) 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 5 miles from the corporate
 4 limits thereof or for use at premises situated within any
 5 unincorporated town shall be as determined by the department
 6 in the exercise of its sound discretion, except that no
 7 retail beer license may be issued for any premises so
 8 situated unless the department determines that the issuance
 9 of such license is required by public convenience and
 10 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
 18 prepared-food business. A person holding a beer-and-wine
 19 license may sell wine for consumption on the premises.
 20 Nonretention of the beer license, for whatever reason, shall
 21 mean automatic loss of the wine amendment license.

22 (3) A retail license to sell beer or table wine, or
 23 both, in the original packages for off-premises consumption
 24 only may be issued to any person, firm, or corporation who
 25 is approved by the department as a fit and proper person,

1 firm, or corporation to sell beer or table wine, or both,
 2 and whose premises proposed for licensing are operated as a
 3 bona fide grocery store or a drugstore licensed as a
 4 pharmacy. The number of such licenses that the department
 5 may issue is not limited by the provisions of subsection (1)
 6 of this section but shall be determined by the department in
 7 the exercise of its sound discretion, and the department may
 8 in the exercise of its sound discretion grant or deny any
 9 application for any such license or suspend or revoke any
 10 such license for cause."

11 Section 2. Section 16-4-201, MCA, is amended to read:

12 "16-4-201. All-beverages license quota. (1) Except as
 13 otherwise provided by law, a license to sell liquor, beer,
 14 and wine at retail (an all-beverages license) in accordance
 15 with the provisions of this code and the rules of the
 16 department may be issued to any person who is approved by
 17 the department as a fit and proper person to sell such
 18 beverages, except that the number of all-beverages licenses
 19 that the department may issue for premises situated within
 20 incorporated cities and incorporated towns and within a
 21 distance of 5 miles from the corporate limits of such cities
 22 and towns shall be determined on the basis of population as
 23 ~~shown--by--the--most--recent--official--United--States--census~~
 24 ~~authorized--by--congress~~, prescribed in 16-4-502 as follows:

25 (a) in incorporated towns of 500 inhabitants or less

1 and within a distance of 5 miles from the corporate limits
 2 of such towns, not more than two retail licenses;

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

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

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

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

16 (3) Retail all-beverages licenses of issue on March 7,
 17 1947, and which are in excess of the foregoing limitations
 18 shall be renewable, but no new licenses may be issued in
 19 violation of such limitations.

20 (4) Such limitations do not prevent the issuance of a
 21 nontransferable and nonassignable (as to ownership only)
 22 retail license to any post of a nationally chartered
 23 veterans' organization or any lodge of a recognized national
 24 fraternal organization if such veterans' or fraternal
 25 organization has been in existence for a period of 5 years

1 or more prior to January 1, 1949.

2 (5) The number of retail all-beverages licenses that
 3 the department may issue for use at premises situated
 4 outside of any incorporated city or incorporated town and
 5 outside of the area within a distance of 5 miles from the
 6 corporate limits thereof may not be more than one license
 7 for each 750 population of the county after excluding the
 8 population of incorporated cities and incorporated towns in
 9 such county."

10 Section 3. Section 16-4-204, MCA, is amended to read:
 11 "16-4-204. Contents of license -- posting -- privilege
 12 -- transfer -- expiration. (1) Every license issued under
 13 this part shall set forth the name of the person to whom
 14 issued, the location, by street and number or other
 15 appropriate specific description of location if no street
 16 address exists, of the premises where the business is to be
 17 carried on under said license, and such other information as
 18 the department shall deem necessary. If the licensee is a
 19 partnership or if more than one person has any interest in
 20 the business operated under the license, the names of all
 21 persons in the partnership or interested in the business
 22 must appear on the license. Every license must be posted in
 23 a conspicuous place on the premises wherein the business
 24 authorized under the license is conducted, and such license
 25 shall be exhibited upon request to any authorized

1 representative of the department or to any peace officer of
2 the state of Montana.

3 (2) Any license issued under the provisions of this
4 part shall be considered a privilege personal to the
5 licensee named in the license and shall be good until the
6 expiration of the license unless sooner revoked or
7 suspended.

8 (3) A license may be transferred to the executor or
9 administrator of the estate of any deceased licensee when
10 such estate consists in whole or in part of the business of
11 selling liquor under a license, and in such event the
12 license may descend or be disposed of with the business to
13 which it is applicable under appropriate probate
14 proceedings.

15 (4) In the event of a major loss or damage to licensed
16 premises by unforeseen natural causes or in case of
17 expiration of lease of the licensed premises or in the event
18 of eviction or increase of rent by the landlord (in case of
19 rented licensed premises) or in case of proposed removal of
20 license to premises as substantially suited for the retail
21 liquor business as the premises vacated, the licensee may
22 apply to the department for a transfer of the license to
23 different premises. The department may in its discretion
24 permit a transfer in such cases if it appears to the
25 department that such a transfer is required to do justice to

1 the licensee applying for the transfer. The department
2 shall in no event nor for any cause permit a transfer to
3 different premises where the sanitary, health, and service
4 facilities are less satisfactory than such facilities which
5 exist or had existed at the premises from which the transfer
6 is proposed to be made.

7 (5) Upon a bona fide sale of the business operated
8 under any license, the license may be transferred to a
9 qualified purchaser. No transfer of any license as to
10 person or location shall be effective unless and until
11 approved by the department, and any licensee or transferee
12 or proposed transferee who operates or attempts to operate
13 under any supposedly transferred license prior to the
14 approval of such transfer by the department, endorsed upon
15 the license in writing, shall be considered as operating
16 without a license and the license affected may be revoked or
17 suspended by the department. The department may, within its
18 discretion, permit a qualified purchaser to operate the
19 business to be transferred pending final approval, providing
20 the application for transfer has been filed with the
21 department.

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

25 (i) the total number of all-beverages licenses in the

1 original quota area exceeded the quota for that area by at
2 least 25% in the most recent census prescribed in 16-4-502;

3 (ii) the total number of all-beverages licenses in the
4 quota area to which the license would be transferred did not
5 exceed that area's quota by more than 25% in the most recent
6 census prescribed in 16-4-502; and

7 (iii) the department finds, after a public hearing, that
8 the public convenience and necessity would be served by such
9 a transfer.

10 (b) A license transferred between quota areas under
11 this section may not be mortgaged or pledged as security and
12 may not be transferred to another person except for a
13 transfer by inheritance upon the death of the licensee. A
14 license transferred between quota areas under this section
15 may be held only by natural persons. For the purpose of
16 this section, natural persons shall not include limited
17 partnerships or other business entities of any kind in which
18 each natural person is not a full participant in the
19 ownership and operation of the business authorized by the
20 license.

21 (7) (a) Any all-beverage licensee is, upon the approval
22 and in the discretion of the liquor division, entitled to a
23 catering endorsement to his all-beverage license to allow
24 the catering and sale of alcoholic beverages to persons
25 attending a special event upon premises not otherwise

1 licensed for the sale of alcoholic beverages, such beverages
2 to be consumed on the premises where the event is held.

3 (b) A written application for a catering endorsement
4 and an annual fee of \$250 must be submitted to the
5 department for its approval.

6 (c) A written application for each event for which the
7 licensee intends to provide catering services, the written
8 approval of the catering application by the sponsor of the
9 special event, and a fee of \$40 must be filed with the
10 department at least 10 days prior to the event and shall
11 describe the location of the premises where the event is to
12 be held, the nature of the event, and the period during
13 which the event is to be held. An all-beverage licensee who
14 holds an endorsement granted under this subsection (7) may
15 not receive approval to cater an event of which he is the
16 sponsor. The catered event must be within 100 miles of the
17 licensee's regular place of business. If obtained, the
18 licensee shall display in a prominent place on those
19 premises, the written approval from the department for each
20 event which is catered pursuant to this subsection.

21 (d) The licensee shall file with each application for
22 an event to be catered a written statement of approval of
23 the premises where the event is to be held issued by the
24 department of health and environmental sciences.

25 (e) The sale of alcoholic beverages pursuant to a

1 catering endorsement is subject to the provisions of
2 16-6-103.

3 (f) The sale of alcoholic beverages pursuant to a
4 catering endorsement is subject to the provisions of
5 16-3-306, unless entities named in 16-3-306 give their
6 written approval.

7 (8) Except as above provided, no license shall be
8 transferred or sold nor shall it be used for any place of
9 business not described in the license; provided, however,
10 that such license may be subject to mortgage and other valid
11 liens, in which event the name of the mortgagee, upon
12 application to and approval of the department, must be
13 endorsed on the license.

14 (9) All licenses shall expire at midnight of June 30 of
15 each year."

16 Section 4. Section 16-4-502, MCA, is amended to read:
17 "16-4-502. Census. The census taken under the direction
18 of congress shall be the basis upon which the respective
19 populations of the municipalities counties and incorporated
20 cities or towns shall be determined--~~unless a direct~~
21 ~~enumeration of the inhabitants is made by the state or~~
22 ~~municipal corporation in which case such later direct~~
23 ~~enumeration shall constitute such basis. No census hereafter~~
24 ~~taken may be such basis until it is published under the~~
25 ~~authority under which the same is taken and then its effect~~

1 ~~shall be prospective only from the date of such publication~~
2 ~~However, in the interim between censuses, the department~~
3 ~~shall use as such basis the most recent population estimates~~
4 ~~published by the bureau of the census, United States~~
5 ~~department of commerce."~~

-End-

HB 21

Approved by Committee
on Business and Industry

1 HOUSE BILL NO. 21
2 INTRODUCTION BY HARRINGTON

3 BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE USE OF
6 CERTAIN ANNUAL POPULATION ESTIMATES AS THE BASIS FOR
7 DETERMINING RETAIL BEER LICENSE AND ALL-BEVERAGES LICENSE
8 QUOTAS; AND TO ELIMINATE SPECIAL CENSUS PROVISIONS; AMENDING
9 SECTIONS 16-4-105, 16-4-201, 16-4-204, AND 16-4-502, MCA."

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

12 Section 1. Section 16-4-105, MCA, is amended to read:

13 "16-4-105. Limit on retail beer licenses -- wine
14 license amendments -- off-premises consumption. (1) Except
15 as otherwise provided by law, a license to sell beer at
16 retail or beer and wine at retail, in accordance with the
17 provisions of this code and the rules of the department, may
18 be issued to any person, firm, or corporation who is
19 approved by the department as a fit and proper person, firm,
20 or corporation to sell beer, except 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 5 miles from the corporate limits of such cities
25 and towns shall be determined on the basis of population as

1 ~~shown by the most recent official United States census~~
2 ~~authorized by congress, prescribed in 16-4-502~~ as follows:

3 (i) in incorporated towns of 500 inhabitants or less
4 and within a distance of 5 miles from the corporate limits
5 of such towns, not more than one retail beer license, which
6 may not be used in conjunction with a retail all-beverages
7 license;

8 (ii) in incorporated cities or incorporated towns of
9 more than 500 inhabitants and not over 2,000 inhabitants and
10 within a distance of 5 miles from the corporate limits of
11 such cities or towns, one beer license for each 500
12 inhabitants, which may not be used in conjunction with
13 retail all-beverages licenses;

14 (iii) in incorporated cities of over 2,000 inhabitants
15 and within a distance of 5 miles from the corporate limits
16 of such cities, two additional retail beer licenses for the
17 first 2,000 inhabitants or major fraction thereof and one
18 additional retail beer license for each additional 2,000
19 inhabitants, which may not be used in conjunction with
20 retail all-beverages licenses;

21 (b) the number of the inhabitants in such cities and
22 towns, exclusive of the number of inhabitants residing
23 within a distance of 5 miles from the corporate limits
24 thereof, shall govern the number of retail beer licenses
25 that may be issued for use within such cities and towns and

1 within a distance of 5 miles from the corporate limits
 2 thereof. If two or more incorporated municipalities are
 3 situated within a distance of 5 miles from each other, the
 4 total number of retail beer licenses that may be issued for
 5 use in both of such municipalities and within a distance of
 6 5 miles from their respective corporate limits shall be
 7 determined on the basis of the combined populations of both
 8 of such municipalities and may not exceed the foregoing
 9 limitations. The distance of 5 miles from the corporate
 10 limits of any incorporated city or incorporated town shall
 11 be measured in a straight line from the nearest entrance of
 12 the premises proposed for licensing to the nearest corporate
 13 boundary of such city or town.

14 (c) retail beer licenses of issue on March 7, 1947, and
 15 which are in excess of the foregoing limitations shall be
 16 renewable, but no new licenses may be issued in violation of
 17 such limitations;

18 (d) such limitations do not prevent the issuance of a
 19 nontransferable and nonassignable retail beer license to a
 20 post of a nationally chartered veterans' organization or a
 21 lodge of a recognized national fraternal organization if
 22 such veterans' or fraternal organization has been in
 23 existence for a period of 5 years or more prior to January
 24 1, 1949;

25 (e) 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 5 miles from the corporate
 4 limits thereof or for use at premises situated within any
 5 unincorporated town shall be as determined by the department
 6 in the exercise of its sound discretion, except that no
 7 retail beer license may be issued for any premises so
 8 situated unless the department determines that the issuance
 9 of such license is required by public convenience and
 10 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
 18 prepared-food business. A person holding a beer-and-wine
 19 license may sell wine for consumption on the premises.
 20 Nonretention of the beer license, for whatever reason, shall
 21 mean automatic loss of the wine amendment license.

22 (3) A retail license to sell beer or table wine, or
 23 both, in the original packages for off-premises consumption
 24 only may be issued to any person, firm, or corporation who
 25 is approved by the department as a fit and proper person,

1 firm, or corporation to sell beer or table wine, or both,
 2 and whose premises proposed for licensing are operated as a
 3 bona fide grocery store or a drugstore licensed as a
 4 pharmacy. The number of such licenses that the department
 5 may issue is not limited by the provisions of subsection (1)
 6 of this section but shall be determined by the department in
 7 the exercise of its sound discretion, and the department may
 8 in the exercise of its sound discretion grant or deny any
 9 application for any such license or suspend or revoke any
 10 such license for cause."

11 Section 2. Section 16-4-201, MCA, is amended to read:

12 "16-4-201. All-beverages license quota. (1) Except as
 13 otherwise provided by law, a license to sell liquor, beer,
 14 and wine at retail (an all-beverages license) in accordance
 15 with the provisions of this code and the rules of the
 16 department may be issued to any person who is approved by
 17 the department as a fit and proper person to sell such
 18 beverages, except that the number of all-beverages licenses
 19 that the department may issue for premises situated within
 20 incorporated cities and incorporated towns and within a
 21 distance of 5 miles from the corporate limits of such cities
 22 and towns shall be determined on the basis of population as
 23 ~~shown by the most recent official United States census~~
 24 ~~authorized by congress~~ prescribed in 16-4-502 as follows:

25 (a) in incorporated towns of 500 inhabitants or less

1 and within a distance of 5 miles from the corporate limits
 2 of such towns, not more than two retail licenses;

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

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

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

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

16 (3) Retail all-beverages licenses of issue on March 7,
 17 1947, and which are in excess of the foregoing limitations
 18 shall be renewable, but no new licenses may be issued in
 19 violation of such limitations.

20 (4) Such limitations do not prevent the issuance of a
 21 nontransferable and nonassignable (as to ownership only)
 22 retail license to any post of a nationally chartered
 23 veterans' organization or any lodge of a recognized national
 24 fraternal organization if such veterans' or fraternal
 25 organization has been in existence for a period of 5 years

1 or more prior to January 1, 1949.

2 (5) The number of retail all-beverages licenses that
 3 the department may issue for use at premises situated
 4 outside of any incorporated city or incorporated town and
 5 outside of the area within a distance of 5 miles from the
 6 corporate limits thereof may not be more than one license
 7 for each 750 population of the county after excluding the
 8 population of incorporated cities and incorporated towns in
 9 such county."

10 Section 3. Section 16-4-204, MCA, is amended to read:
 11 "16-4-204. Contents of license -- posting -- privilege
 12 -- transfer -- expiration. (1) Every license issued under
 13 this part shall set forth the name of the person to whom
 14 issued, the location, by street and number or other
 15 appropriate specific description of location if no street
 16 address exists, of the premises where the business is to be
 17 carried on under said license, and such other information as
 18 the department shall deem necessary. If the licensee is a
 19 partnership or if more than one person has any interest in
 20 the business operated under the license, the names of all
 21 persons in the partnership or interested in the business
 22 must appear on the license. Every license must be posted in
 23 a conspicuous place on the premises wherein the business
 24 authorized under the license is conducted, and such license
 25 shall be exhibited upon request to any authorized

1 representative of the department or to any peace officer of
2 the state of Montana.

3 (2) Any license issued under the provisions of this
4 part shall be considered a privilege personal to the
5 licensee named in the license and shall be good until the
6 expiration of the license unless sooner revoked or
7 suspended.

8 (3) A license may be transferred to the executor or
9 administrator of the estate of any deceased licensee when
10 such estate consists in whole or in part of the business of
11 selling liquor under a license, and in such event the
12 license may descend or be disposed of with the business to
13 which it is applicable under appropriate probate
14 proceedings.

15 (4) In the event of a major loss or damage to licensed
16 premises by unforeseen natural causes or in case of
17 expiration of lease of the licensed premises or in the event
18 of eviction or increase of rent by the landlord (in case of
19 rented licensed premises) or in case of proposed removal of
20 license to premises as substantially suited for the retail
21 liquor business as the premises vacated, the licensee may
22 apply to the department for a transfer of the license to
23 different premises. The department may in its discretion
24 permit a transfer in such cases if it appears to the
25 department that such a transfer is required to do justice to

1 the licensee applying for the transfer. The department
2 shall in no event nor for any cause permit a transfer to
3 different premises where the sanitary, health, and service
4 facilities are less satisfactory than such facilities which
5 exist or had existed at the premises from which the transfer
6 is proposed to be made.

7 (5) Upon a bona fide sale of the business operated
8 under any license, the license may be transferred to a
9 qualified purchaser. No transfer of any license as to
10 person or location shall be effective unless and until
11 approved by the department, and any licensee or transferee
12 or proposed transferee who operates or attempts to operate
13 under any supposedly transferred license prior to the
14 approval of such transfer by the department, endorsed upon
15 the license in writing, shall be considered as operating
16 without a license and the license affected may be revoked or
17 suspended by the department. The department may, within its
18 discretion, permit a qualified purchaser to operate the
19 business to be transferred pending final approval, providing
20 the application for transfer has been filed with the
21 department.

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

25 (i) the total number of all-beverages licenses in the

1 original quota area exceeded the quota for that area by at
2 least 25% in the most recent census prescribed in 16-4-502;

3 (ii) the total number of all-beverages licenses in the
4 quota area to which the license would be transferred did not
5 exceed that area's quota by more than 25% in the most recent
6 census prescribed in 16-4-502; and

7 (iii) the department finds, after a public hearing, that
8 the public convenience and necessity would be served by such
9 a transfer.

10 (b) A license transferred between quota areas under
11 this section may not be mortgaged or pledged as security and
12 may not be transferred to another person except for a
13 transfer by inheritance upon the death of the licensee. A
14 license transferred between quota areas under this section
15 may be held only by natural persons. For the purpose of
16 this section, natural persons shall not include limited
17 partnerships or other business entities of any kind in which
18 each natural person is not a full participant in the
19 ownership and operation of the business authorized by the
20 license.

21 (7) (a) Any all-beverage licensee is, upon the approval
22 and in the discretion of the liquor division, entitled to a
23 catering endorsement to his all-beverage license to allow
24 the catering and sale of alcoholic beverages to persons
25 attending a special event upon premises not otherwise

1 licensed for the sale of alcoholic beverages, such beverages
2 to be consumed on the premises where the event is held.

3 (b) A written application for a catering endorsement
4 and an annual fee of \$250 must be submitted to the
5 department for its approval.

6 (c) A written application for each event for which the
7 licensee intends to provide catering services, the written
8 approval of the catering application by the sponsor of the
9 special event, and a fee of \$40 must be filed with the
10 department at least 10 days prior to the event and shall
11 describe the location of the premises where the event is to
12 be held, the nature of the event, and the period during
13 which the event is to be held. An all-beverage licensee who
14 holds an endorsement granted under this subsection (7) may
15 not receive approval to cater an event of which he is the
16 sponsor. The catered event must be within 100 miles of the
17 licensee's regular place of business. If obtained, the
18 licensee shall display in a prominent place on those
19 premises, the written approval from the department for each
20 event which is catered pursuant to this subsection.

21 (d) The licensee shall file with each application for
22 an event to be catered a written statement of approval of
23 the premises where the event is to be held issued by the
24 department of health and environmental sciences.

25 (e) The sale of alcoholic beverages pursuant to a

1 catering endorsement is subject to the provisions of
2 16-6-103.

3 (f) The sale of alcoholic beverages pursuant to a
4 catering endorsement is subject to the provisions of
5 16-3-306, unless entities named in 16-3-306 give their
6 written approval.

7 (8) Except as above provided, no license shall be
8 transferred or sold nor shall it be used for any place of
9 business not described in the license; provided, however,
10 that such license may be subject to mortgage and other valid
11 liens, in which event the name of the mortgagee, upon
12 application to and approval of the department, must be
13 endorsed on the license.

14 (9) All licenses shall expire at midnight of June 30 of
15 each year."

16 Section 4. Section 16-4-502, MCA, is amended to read:

17 "16-4-502. Census. The census taken under the direction
18 of congress shall be the basis upon which the respective
19 populations of the municipalities counties and incorporated
20 cities or towns shall be determined--unless--a--direct
21 enumeration--of--the--inhabitants--is--made--by--the--state--or
22 municipal--corporations--in--which--case--such--later--direct
23 enumeration--shall--constitute--such--basis. No census hereafter
24 taken--may--be--such--basis--until--it--is--published--under--the
25 authority--under--which--the--same--is--taken--and--then--its--effect

1 ~~shall be prospective only from the date of such publication.~~
2 ~~However, in the interim between censuses, the department~~
3 ~~shall use as such basis the most recent population estimates~~
4 ~~published by the bureau of the census, United States~~
5 ~~department of commerce."~~

-End-

1 HOUSE BILL NO. 21
 2 INTRODUCTION BY HARRINGTON
 3 BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE USE OF
 6 CERTAIN ANNUAL POPULATION ESTIMATES AS THE BASIS FOR
 7 DETERMINING RETAIL BEER LICENSE AND ALL-BEVERAGES LICENSE
 8 QUOTAS; AND TO ELIMINATE SPECIAL CENSUS PROVISIONS; AMENDING
 9 SECTIONS 16-4-105, 16-4-201, 16-4-204, AND 16-4-502, MCA."
 10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 12 Section 1. Section 16-4-105, MCA, is amended to read:
 13 *16-4-105. Limit on retail beer licenses -- wine
 14 license amendments -- off-premises consumption. (1) Except
 15 as otherwise provided by law, a license to sell beer at
 16 retail or beer and wine at retail, in accordance with the
 17 provisions of this code and the rules of the department, may
 18 be issued to any person, firm, or corporation who is
 19 approved by the department as a fit and proper person, firm,
 20 or corporation to sell beer, except 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 5 miles from the corporate limits of such cities
 25 and towns shall be determined on the basis of population as

1 ~~shown by the most recent official United States census~~
 2 ~~authorized by congress, prescribed in 16-4-502~~ as follows:
 3 (i) in incorporated towns of 500 inhabitants or less
 4 and within a distance of 5 miles from the corporate limits
 5 of such towns, not more than one retail beer license, which
 6 may not be used in conjunction with a retail all-beverages
 7 license;
 8 (ii) in incorporated cities or incorporated towns of
 9 more than 500 inhabitants and not over 2,000 inhabitants and
 10 within a distance of 5 miles from the corporate limits of
 11 such cities or towns, one beer license for each 500
 12 inhabitants, which may not be used in conjunction with
 13 retail all-beverages licenses;
 14 (iii) in incorporated cities of over 2,000 inhabitants
 15 and within a distance of 5 miles from the corporate limits
 16 of such cities, two additional retail beer licenses for the
 17 first 2,000 inhabitants or major fraction thereof and one
 18 additional retail beer license for each additional 2,000
 19 inhabitants, which may not be used in conjunction with
 20 retail all-beverages licenses;
 21 (b) the number of the inhabitants in such cities and
 22 towns, exclusive of the number of inhabitants residing
 23 within a distance of 5 miles from the corporate limits
 24 thereof, shall govern the number of retail beer licenses
 25 that may be issued for use within such cities and towns and

1 within a distance of 5 miles from the corporate limits
 2 thereof. If two or more incorporated municipalities are
 3 situated within a distance of 5 miles from each other, the
 4 total number of retail beer licenses that may be issued for
 5 use in both of such municipalities and within a distance of
 6 5 miles from their respective corporate limits shall be
 7 determined on the basis of the combined populations of both
 8 of such municipalities and may not exceed the foregoing
 9 limitations. The distance of 5 miles from the corporate
 10 limits of any incorporated city or incorporated town shall
 11 be measured in a straight line from the nearest entrance of
 12 the premises proposed for licensing to the nearest corporate
 13 boundary of such city or town.

14 (c) retail beer licenses of issue on March 7, 1947, and
 15 which are in excess of the foregoing limitations shall be
 16 renewable, but no new licenses may be issued in violation of
 17 such limitations;

18 (d) such limitations do not prevent the issuance of a
 19 nontransferable and nonassignable retail beer license to a
 20 post of a nationally chartered veterans' organization or a
 21 lodge of a recognized national fraternal organization if
 22 such veterans' or fraternal organization has been in
 23 existence for a period of 5 years or more prior to January
 24 1, 1949;

25 (e) 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 5 miles from the corporate
 4 limits thereof or for use at premises situated within any
 5 unincorporated town shall be as determined by the department
 6 in the exercise of its sound discretion, except that no
 7 retail beer license may be issued for any premises so
 8 situated unless the department determines that the issuance
 9 of such license is required by public convenience and
 10 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
 18 prepared-food business. A person holding a beer-and-wine
 19 license may sell wine for consumption on the premises.
 20 Nonretention of the beer license, for whatever reason, shall
 21 mean automatic loss of the wine amendment license.

22 (3) A retail license to sell beer or table wine, or
 23 both, in the original packages for off-premises consumption
 24 only may be issued to any person, firm, or corporation who
 25 is approved by the department as a fit and proper person,

1 firm, or corporation to sell beer or table wine, or both,
 2 and whose premises proposed for licensing are operated as a
 3 bona fide grocery store or a drugstore licensed as a
 4 pharmacy. The number of such licenses that the department
 5 may issue is not limited by the provisions of subsection (1)
 6 of this section but shall be determined by the department in
 7 the exercise of its sound discretion, and the department may
 8 in the exercise of its sound discretion grant or deny any
 9 application for any such license or suspend or revoke any
 10 such license for cause."

11 Section 2. Section 16-4-201, MCA, is amended to read:
 12 "16-4-201. All-beverages license quota. (1) Except as
 13 otherwise provided by law, a license to sell liquor, beer,
 14 and wine at retail (an all-beverages license) in accordance
 15 with the provisions of this code and the rules of the
 16 department may be issued to any person who is approved by
 17 the department as a fit and proper person to sell such
 18 beverages, except that the number of all-beverages licenses
 19 that the department may issue for premises situated within
 20 incorporated cities and incorporated towns and within a
 21 distance of 5 miles from the corporate limits of such cities
 22 and towns shall be determined on the basis of population as
 23 ~~shown by the most recent official United States census~~
 24 ~~authorized by congress~~ prescribed in 16-4-502 as follows:
 25 (a) in incorporated towns of 500 inhabitants or less

1 and within a distance of 5 miles from the corporate limits
 2 of such towns, not more than two retail licenses;

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

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

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

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

16 (3) Retail all-beverages licenses of issue on March 7,
 17 1947, and which are in excess of the foregoing limitations
 18 shall be renewable, but no new licenses may be issued in
 19 violation of such limitations.

20 (4) Such limitations do not prevent the issuance of a
 21 nontransferable and nonassignable (as to ownership only)
 22 retail license to any post of a nationally chartered
 23 veterans' organization or any lodge of a recognized national
 24 fraternal organization if such veterans' or fraternal
 25 organization has been in existence for a period of 5 years

1 or more prior to January 1, 1949.

2 (5) The number of retail all-beverages licenses that
 3 the department may issue for use at premises situated
 4 outside of any incorporated city or incorporated town and
 5 outside of the area within a distance of 5 miles from the
 6 corporate limits thereof may not be more than one license
 7 for each 750 population of the county after excluding the
 8 population of incorporated cities and incorporated towns in
 9 such county."

10 Section 3. Section 16-4-204, MCA, is amended to read:
 11 "16-4-204. Contents of license -- posting -- privilege
 12 -- transfer -- expiration. (1) Every license issued under
 13 this part shall set forth the name of the person to whom
 14 issued, the location, by street and number or other
 15 appropriate specific description of location if no street
 16 address exists, of the premises where the business is to be
 17 carried on under said license, and such other information as
 18 the department shall deem necessary. If the licensee is a
 19 partnership or if more than one person has any interest in
 20 the business operated under the license, the names of all
 21 persons in the partnership or interested in the business
 22 must appear on the license. Every license must be posted in
 23 a conspicuous place on the premises wherein the business
 24 authorized under the license is conducted, and such license
 25 shall be exhibited upon request to any authorized

1 representative of the department or to any peace officer of
2 the state of Montana.

3 (2) Any license issued under the provisions of this
4 part shall be considered a privilege personal to the
5 licensee named in the license and shall be good until the
6 expiration of the license unless sooner revoked or
7 suspended.

8 (3) A license may be transferred to the executor or
9 administrator of the estate of any deceased licensee when
10 such estate consists in whole or in part of the business of
11 selling liquor under a license, and in such event the
12 license may descend or be disposed of with the business to
13 which it is applicable under appropriate probate
14 proceedings.

15 (4) In the event of a major loss or damage to licensed
16 premises by unforeseen natural causes or in case of
17 expiration of lease of the licensed premises or in the event
18 of eviction or increase of rent by the landlord (in case of
19 rented licensed premises) or in case of proposed removal of
20 license to premises as substantially suited for the retail
21 liquor business as the premises vacated, the licensee may
22 apply to the department for a transfer of the license to
23 different premises. The department may in its discretion
24 permit a transfer in such cases if it appears to the
25 department that such a transfer is required to do justice to

1 the licensee applying for the transfer. The department
2 shall in no event nor for any cause permit a transfer to
3 different premises where the sanitary, health, and service
4 facilities are less satisfactory than such facilities which
5 exist or had existed at the premises from which the transfer
6 is proposed to be made.

7 (5) Upon a bona fide sale of the business operated
8 under any license, the license may be transferred to a
9 qualified purchaser. No transfer of any license as to
10 person or location shall be effective unless and until
11 approved by the department, and any licensee or transferee
12 or proposed transferee who operates or attempts to operate
13 under any supposedly transferred license prior to the
14 approval of such transfer by the department, endorsed upon
15 the license in writing, shall be considered as operating
16 without a license and the license affected may be revoked or
17 suspended by the department. The department may, within its
18 discretion, permit a qualified purchaser to operate the
19 business to be transferred pending final approval, providing
20 the application for transfer has been filed with the
21 department.

22 (6) (a) A license may be transferred to a new ownership
23 and to a location outside the quota area for which it was
24 originally issued only when the following criteria are met:
25 (i) the total number of all-beverages licenses in the

1 original quota area exceeded the quota for that area by at
2 least 25% in the most recent census prescribed in 16-4-502;

3 (ii) the total number of all-beverages licenses in the
4 quota area to which the license would be transferred did not
5 exceed that area's quota by more than 25% in the most recent
6 census prescribed in 16-4-502; and

7 (iii) the department finds, after a public hearing, that
8 the public convenience and necessity would be served by such
9 a transfer.

10 (b) A license transferred between quota areas under
11 this section may not be mortgaged or pledged as security and
12 may not be transferred to another person except for a
13 transfer by inheritance upon the death of the licensee. A
14 license transferred between quota areas under this section
15 may be held only by natural persons. For the purpose of
16 this section, natural persons shall not include limited
17 partnerships or other business entities of any kind in which
18 each natural person is not a full participant in the
19 ownership and operation of the business authorized by the
20 license.

21 (7) (a) Any all-beverage licensee is, upon the approval
22 and in the discretion of the liquor division, entitled to a
23 catering endorsement to his all-beverage license to allow
24 the catering and sale of alcoholic beverages to persons
25 attending a special event upon premises not otherwise

1 licensed for the sale of alcoholic beverages, such beverages
2 to be consumed on the premises where the event is held.

3 (b) A written application for a catering endorsement
4 and an annual fee of \$250 must be submitted to the
5 department for its approval.

6 (c) A written application for each event for which the
7 licensee intends to provide catering services, the written
8 approval of the catering application by the sponsor of the
9 special event, and a fee of \$40 must be filed with the
10 department at least 10 days prior to the event and shall
11 describe the location of the premises where the event is to
12 be held, the nature of the event, and the period during
13 which the event is to be held. An all-beverage licensee who
14 holds an endorsement granted under this subsection (7) may
15 not receive approval to cater an event of which he is the
16 sponsor. The catered event must be within 100 miles of the
17 licensee's regular place of business. If obtained, the
18 licensee shall display in a prominent place on those
19 premises, the written approval from the department for each
20 event which is catered pursuant to this subsection.

21 (d) The licensee shall file with each application for
22 an event to be catered a written statement of approval of
23 the premises where the event is to be held issued by the
24 department of health and environmental sciences.

25 (e) The sale of alcoholic beverages pursuant to a

1 catering endorsement is subject to the provisions of
2 16-6-103.

3 (f) The sale of alcoholic beverages pursuant to a
4 catering endorsement is subject to the provisions of
5 16-3-306, unless entities named in 16-3-306 give their
6 written approval.

7 (8) Except as above provided, no license shall be
8 transferred or sold nor shall it be used for any place of
9 business not described in the license; provided, however,
10 that such license may be subject to mortgage and other valid
11 liens, in which event the name of the mortgagee, upon
12 application to and approval of the department, must be
13 endorsed on the license.

14 (9) All licenses shall expire at midnight of June 30 of
15 each year.*

16 Section 4. Section 16-4-502, MCA, is amended to read:

17 "16-4-502. Census. The census taken under the direction
18 of congress shall be the basis upon which the respective
19 populations of the municipalities counties and incorporated
20 cities or towns shall be determined ~~unless a direct~~
21 ~~enumeration of the inhabitants is made by the state or~~
22 ~~municipal corporation, in which case such later direct~~
23 ~~enumeration shall constitute such basis. No census hereafter~~
24 ~~taken may be such basis until it is published under the~~
25 ~~authority under which the same is taken, and then its effect~~

1 ~~shall be prospective only from the date of such publication.~~
2 However, in the interim between censuses, the department
3 shall use as such basis the most recent population estimates
4 published by the bureau of the census, United States
5 department of commerce.*

-End-

HOUSE BILL NO. 21

INTROUCED BY HARRINGTON

BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE USE OF CERTAIN ANNUAL POPULATION ESTIMATES AS THE BASIS FOR DETERMINING RETAIL BEER LICENSE AND ALL-BEVERAGES LICENSE QUOTAS; AND TO ELIMINATE SPECIAL CENSUS PROVISIONS; AMENDING SECTIONS 16-4-105, 16-4-201, 16-4-204, AND 16-4-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 16-4-105, MCA, is amended to read:

"16-4-105. Limit on retail beer licenses -- wine license amendments -- off-premises consumption. (1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person, firm, or corporation who is approved by the department as a fit and proper person, firm, or corporation to sell beer, except 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 distance of 5 miles from the corporate limits of such cities

and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by congress, prescribed in 16-4-502 as follows:

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

(ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities or towns, one beer license for each 500 inhabitants, which may not be used in conjunction with retail all-beverages licenses;

(iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities, two additional retail beer licenses for the first 2,000 inhabitants or major fraction thereof and one additional retail beer license for each additional 2,000 inhabitants, which may not be used in conjunction with retail all-beverages licenses;

(b) the number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits thereof, shall govern the number of retail beer licenses

1 that may be issued for use within such cities and towns and
 2 within a distance of 5 miles from the corporate limits
 3 thereof. If two or more incorporated municipalities are
 4 situated within a distance of 5 miles from each other, the
 5 total number of retail beer licenses that may be issued for
 6 use in both of such municipalities and within a distance of
 7 5 miles from their respective corporate limits shall be
 8 determined on the basis of the combined populations of both
 9 of such municipalities and may not exceed the foregoing
 10 limitations. The distance of 5 miles from the corporate
 11 limits of any incorporated city or incorporated town shall
 12 be measured in a straight line from the nearest entrance of
 13 the premises proposed for licensing to the nearest corporate
 14 boundary of such city or town.

15 (c) retail beer licenses of issue on March 7, 1947,
 16 and which are in excess of the foregoing limitations shall
 17 be renewable, but no new licenses may be issued in violation
 18 of such limitations;

19 (d) such limitations do not prevent the issuance of a
 20 nontransferable and nonassignable retail beer license to a
 21 post of a nationally chartered veterans' organization or a
 22 lodge of a recognized national fraternal organization if
 23 such veterans' or fraternal organization has been in
 24 existence for a period of 5 years or more prior to January
 25 1, 1949;

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

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

23 (3) A retail license to sell beer or table wine, or
 24 both, in the original packages for off-premises consumption
 25 only may be issued to any person, firm, or corporation who

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

12 Section 2. Section 16-4-201, MCA, is amended to read:

13 "16-4-201. All-beverages license quota. (1) Except as
 14 otherwise provided by law, a license to sell liquor, beer,
 15 and wine at retail (an all-beverages license) in accordance
 16 with the provisions of this code and the rules of the
 17 department may be issued to any person who is approved by
 18 the department as a fit and proper person to sell such
 19 beverages, except that the number of all-beverages licenses
 20 that the department may issue for premises situated within
 21 incorporated cities and incorporated towns and within a
 22 distance of 5 miles from the corporate limits of such cities
 23 and towns shall be determined on the basis of population as
 24 ~~shown by the most recent official United States census~~
 25 ~~authorized by congress, prescribed in 16-4-502~~ as follows:

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

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

10 (c) in incorporated cities of over 3,000 inhabitants
 11 and within a distance of 5 miles from the corporate limits
 12 thereof, five retail licenses for the first 3,000
 13 inhabitants and one retail license for each additional 1,500
 14 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 5 miles from the corporate limits
 18 thereof, shall govern the number of retail licenses that may
 19 be issued for use within such cities and towns and within a
 20 distance of 5 miles from the corporate limits thereof. If
 21 two or more incorporated municipalities are situated within
 22 a distance of 5 miles from each other, the total number of
 23 retail licenses that may be issued for use in both of such
 24 municipalities and within a distance of 5 miles from their
 25 respective corporate limits shall be determined on the basis

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

17 (3) Retail all-beverages licenses of issue on March 7,
 18 1947, and which are in excess of the foregoing limitations
 19 shall be renewable, but no new licenses may be issued in
 20 violation of such limitations.

21 (4) Such limitations do not prevent the issuance of a
 22 nontransferable and nonassignable (as to ownership only)
 23 retail license to any post of a nationally chartered
 24 veterans' organization or any lodge of a recognized national
 25 fraternal organization if such veterans' or fraternal

1 organization has been in existence for a period of 3 years
 2 or more prior to January 1, 1949.

3 (5) The number of retail all-beverages licenses that
 4 the department may issue for use at premises situated
 5 outside of any incorporated city or incorporated town and
 6 outside of the area within a distance of 5 miles from the
 7 corporate limits thereof may not be more than one license
 8 for each 750 population of the county after excluding the
 9 population of incorporated cities and incorporated towns in
 10 such county."

11 Section 3. Section 16-4-204, MCA, is amended to read:
 12 "16-4-204. Contents of license -- posting -- privilege
 13 -- transfer -- expiration. (1) Every license issued under
 14 this part shall set forth the name of the person to whom
 15 issued, the location, by street and number or other
 16 appropriate specific description of location if no street
 17 address exists, of the premises where the business is to be
 18 carried on under said license, and such other information as
 19 the department shall deem necessary. If the licensee is a
 20 partnership or if more than one person has any interest in
 21 the business operated under the license, the names of all
 22 persons in the partnership or interested in the business
 23 must appear on the license. Every license must be posted in
 24 a conspicuous place on the premises wherein the business
 25 authorized under the license is conducted, and such license

1 shall be exhibited upon request to any authorized
2 representative of the department or to any peace officer of
3 the state of Montana.

4 (2) Any license issued under the provisions of this
5 part shall be considered a privilege personal to the
6 licensee named in the license and shall be good until the
7 expiration of the license unless sooner revoked or
8 suspended.

9 (3) A license may be transferred to the executor or
10 administrator of the estate of any deceased licensee when
11 such estate consists in whole or in part of the business of
12 selling liquor under a license, and in such event the
13 license may descend or be disposed of with the business to
14 which it is applicable under appropriate probate
15 proceedings.

16 (4) In the event of a major loss or damage to licensed
17 premises by unforeseen natural causes or in case of
18 expiration of lease of the licensed premises or in the event
19 of eviction or increase of rent by the landlord (in case of
20 rented licensed premises) or in case of proposed removal of
21 license to premises as substantially suited for the retail
22 liquor business as the premises vacated, the licensee may
23 apply to the department for a transfer of the license to
24 different premises. The department may in its discretion
25 permit a transfer in such cases if it appears to the

1 department that such a transfer is required to do justice to
2 the licensee applying for the transfer. The department
3 shall in no event nor for any cause permit a transfer to
4 different premises where the sanitary, health, and service
5 facilities are less satisfactory than such facilities which
6 exist or had existed at the premises from which the transfer
7 is proposed to be made.

8 (5) Upon a bona fide sale of the business operated
9 under any license, the license may be transferred to a
10 qualified purchaser. No transfer of any license as to
11 person or location shall be effective unless and until
12 approved by the department, and any licensee or transferee
13 or proposed transferee who operates or attempts to operate
14 under any supposedly transferred license prior to the
15 approval of such transfer by the department, endorsed upon
16 the license in writing, shall be considered as operating
17 without a license and the license affected may be revoked or
18 suspended by the department. The department may, within its
19 discretion, permit a qualified purchaser to operate the
20 business to be transferred pending final approval, providing
21 the application for transfer has been filed with the
22 department.

23 (6) (a) A license may be transferred to a new
24 ownership and to a location outside the quota area for which
25 it was originally issued only when the following criteria

1 are met:

2 (i) the total number of all-beverages licenses in the
3 original quota area exceeded the quota for that area by at
4 least 25% in the most recent census prescribed in 16-4-502;

5 (ii) the total number of all-beverages licenses in the
6 quota area to which the license would be transferred did not
7 exceed that area's quota by more than 25% in the most recent
8 census prescribed in 16-4-502; and

9 (iii) the department finds, after a public hearing,
10 that the public convenience and necessity would be served by
11 such a transfer.

12 (b) A license transferred between quota areas under
13 this section may not be mortgaged or pledged as security and
14 may not be transferred to another person except for a
15 transfer by inheritance upon the death of the licensee. A
16 license transferred between quota areas under this section
17 may be held only by natural persons. For the purpose of
18 this section, natural persons shall not include limited
19 partnerships or other business entities of any kind in which
20 each natural person is not a full participant in the
21 ownership and operation of the business authorized by the
22 license.

23 (7) (a) Any all-beverage licensee is, upon the
24 approval and in the discretion of the liquor division,
25 entitled to a catering endorsement to his all-beverage

1 license to allow the catering and sale of alcoholic
2 beverages to persons attending a special event upon premises
3 not otherwise licensed for the sale of alcoholic beverages,
4 such beverages to be consumed on the premises where the
5 event is held.

6 (b) A written application for a catering endorsement
7 and an annual fee of \$250 must be submitted to the
8 department for its approval.

9 (c) A written application for each event for which the
10 licensee intends to provide catering services, the written
11 approval of the catering application by the sponsor of the
12 special event, and a fee of \$40 must be filed with the
13 department at least 10 days prior to the event and shall
14 describe the location of the premises where the event is to
15 be held, the nature of the event, and the period during
16 which the event is to be held. An all-beverage licensee who
17 holds an endorsement granted under this subsection (7) may
18 not receive approval to cater an event of which he is the
19 sponsor. The catered event must be within 100 miles of the
20 licensee's regular place of business. If obtained, the
21 licensee shall display in a prominent place on those
22 premises, the written approval from the department for each
23 event which is catered pursuant to this subsection.

24 (d) The licensee shall file with each application for
25 an event to be catered a written statement of approval of

1 the premises where the event is to be held issued by the
2 department of health and environmental sciences.

3 (e) The sale of alcoholic beverages pursuant to a
4 catering endorsement is subject to the provisions of
5 16-5-103.

6 (f) The sale of alcoholic beverages pursuant to a
7 catering endorsement is subject to the provisions of
8 16-3-306, unless entities named in 16-3-306 give their
9 written approval.

10 (g) Except as above provided, no license shall be
11 transferred or sold nor shall it be used for any place of
12 business not described in the license; provided, however,
13 that such license may be subject to mortgage and other valid
14 liens, in which event the name of the mortgagee, upon
15 application to and approval of the department, must be
16 endorsed on the license.

17 (9) All licenses shall expire at midnight of June 30
18 of each year."

19 Section 4. Section 16-4-502, MCA, is amended to read:

20 "16-4-502. Census. The census taken under the
21 direction of congress shall be the basis upon which the
22 respective populations of the municipalities counties and
23 incorporated cities or towns shall be determined ~~unless--a~~
24 ~~direct--enumeration--of--the--inhabitants--is--made--by--the--state~~
25 ~~or--municipal--corporation--in--which--case--such--later--direct~~

1 ~~enumeration--shall--constitute--such--basis. No census hereafter~~
2 ~~taken--may--be--such--basis--until--it--is--published--under--the~~
3 ~~authority--under--which--the--same--is--taken--and--then--its--effect~~
4 ~~shall--be--prospective--only--from--the--date--of--such--publication.~~
5 However, in the interim between censuses, the department
6 shall use as such basis the most recent population estimates
7 published by the bureau of the census, United States
8 department of commerce."

9 SECTION 5. EFFECTIVE DATE. THIS ACT IS EFFECTIVE ON
10 PASSAGE AND APPROVAL.

-End-

February 9, 1981

SENATE STANDING COMMITTEE REPORT
(Business and Industry)

That House Bill No. 21 be amended as follows:

1. Title, line 9.

Following: "MCA"

Strike: "."

Insert: ";"

2. Title, line 10.

Following: line 9

Insert: "AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

3. Page 14, line 6.

Following: line 5

Insert: "Section 6. Effective date. This act is effective
on passage and approval."