

SENATE BILL NO. 78

INTRODUCED BY SEVERSON

IN THE SENATE

January 8, 1981	Introduced and referred to Committee on State Administration.
January 13, 1981	Committee recommend bill do pass. Report adopted.
January 14, 1981	Bill printed and placed on members' desks.
January 15, 1981	Second reading, do pass.
January 16, 1981	Considered correctly engrossed.
January 17, 1981	Third reading, passed. Transmitted to House.

IN THE HOUSE

January 19, 1981	Introduced and referred to Committee on Business and Industry.
March 6, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 9, 1981	Second reading, concurred in.
March 12, 1981	Third reading, concurred in as amended. Ayes, 84; Noes, 11.

IN THE SENATE

March 13, 1981	Returned from House with amendments.
March 16, 1981	On motion, consideration be passed for the day.

March 17, 1981	Second reading, amendments concurred in.
March 19, 1981	Third reading, amendments concurred in. Ayes, 48; Noes, 0. Sent to enrolling.
March 24, 1981	Correctly enrolled. Signed by President.
March 25, 1981	Delivered to Governor.
March 31, 1981	Returned from Governor with recommended amendments.
April 3, 1981	Second reading, Governor's amendments concurred in.
April 6, 1981	Third reading, Governor's amendments concurred in. Ayes, 48; Noes, 1. Transmitted to House.

IN THE HOUSE

April 17, 1981	Second reading, Governor's amendments concurred in. On motion rules suspended and Governor's amendments placed on third reading this day. Third reading, Governor's amendments concurred in. Ayes, 83; Noes, 10.
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IN THE SENATE

April 20, 1981	Returned from House. Concurred in. Sent to enrolling. Reported correctly enrolled.
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1 *Senate* BILL NO. *78*
 2 INTRODUCED BY *Chas. W. Peterson*-----
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4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE
 5 DETERMINATION OF DISTANCE LIMITATIONS FOR THE ISSUANCE OF A
 6 LIQUOR LICENSE; EXCEPTING LICENSES ALREADY ISSUED; AND
 7 AMENDING SECTIONS 16-4-105, 16-4-201, AND 16-4-501, MCA."

8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

11 "16-4-105. Limit on retail beer licenses -- wine
 12 license amendments -- off-premises consumption. (1) Except
 13 as otherwise provided by law, a license to sell beer at
 14 retail or beer and wine at retail, in accordance with the
 15 provisions of this code and the rules of the department, may
 16 be issued to any person, firm, or corporation who is
 17 approved by the department as a fit and proper person, firm,
 18 or corporation to sell beer, except that:

19 (a) the number of retail beer licenses that the
 20 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, as follows:

1 (i) 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 one retail beer license, which
 4 may not be used in conjunction with a retail all-beverages
 5 license;

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

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

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

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

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

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

24 (e) the number of retail beer licenses that the
 25 department may issue for use at premises situated outside of

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

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

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

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

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

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

24 (a) in incorporated towns of 500 inhabitants or less
 25 and within a distance of 5 miles from the corporate limits

1 of such towns, not more than two retail licenses;

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

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

13 (2) The number of the inhabitants in such cities and
 14 towns, exclusive of the number of inhabitants residing
 15 within a distance of 5 miles from the corporate limits
 16 thereof, shall govern the number of retail licenses that may
 17 be issued for use within such cities and towns and within a
 18 distance of 5 miles from the corporate limits thereof. If
 19 two or more incorporated municipalities are situated within
 20 a distance of 5 miles from each other, the total number of
 21 retail licenses that may be issued for use in both of such
 22 municipalities and within a distance of 5 miles from their
 23 respective corporate limits shall be determined on the basis
 24 of the combined populations of both of such municipalities
 25 and may not exceed the foregoing limitations.

1 Notwithstanding the preceding sentence, the total population
 2 for determining the quota of a city may include with the
 3 city's population the population residing outside but within
 4 5 miles of the city limits in a case where the number of
 5 persons residing outside but within 5 miles of the city
 6 exceeds the number of persons residing within the city.
 7 Such a determination may be made only upon a special census
 8 taken by the department or its agent at the expense of the
 9 applicant for a license under this section. The distance of
 10 5 miles from the corporate limits of any incorporated city
 11 or incorporated town shall be measured ~~in a straight line~~
 12 over the shortest practical route from the nearest entrance
 13 of the premises proposed for licensing to the nearest
 14 corporate boundary of the city or town.

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

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

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

9 Section 3. Section 16-4-501, MCA, is amended to read:

10 "16-4-501. License and permit fees. (1) Each beer
 11 licensee licensed to sell either beer or table wine only, or
 12 both beer and table wine, under the provisions of this code,
 13 shall pay an annual license fee as follows:

14 (a) each brewer, wherever located, whose product is
 15 sold or offered for sale within the state, \$500; for each
 16 storage depot, \$400;

17 (b) each beer wholesaler, \$400; each table wine
 18 distributor, \$400;

19 (c) each beer retailer, \$200; with a wine license
 20 amendment, an additional \$200;

21 (d) for a license to sell beer at retail for
 22 off-premises consumption only, the same as a retail beer
 23 license; for a license to sell table wine at retail for
 24 off-premises consumption only, either alone or in
 25 conjunction with beer, \$200;

1 (e) any unit of a nationally chartered veterans'
2 organization, \$50.

3 (2) The permit fee under 16-4-301(1) is computed at the
4 rate of \$15 a day for each day beer is sold at those events
5 lasting 2 or more days but in no case be less than \$30.

6 (3) The permit fee under 16-4-301(2) is \$10 for the
7 sale of beer only or \$20 for the sale of all alcoholic
8 beverages.

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

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

15 (6) The annual fee for resort retail liquor licenses
16 within a given resort area shall be \$2,000 for each license.

17 (7) Each licensee licensed under the quotas of 16-4-201
18 shall pay an annual license fee as follows:

19 (a) except as hereinafter provided, for each license
20 outside of incorporated cities and incorporated towns or in
21 incorporated cities and incorporated towns with a population
22 of less than 2,000, \$400;

23 (b) except as hereinafter provided, for each license in
24 incorporated cities with a population of more than 2,000 and
25 less than 5,000 or within a distance of 5 miles thereof,

1 measured ~~in-a-straight-line~~ over the shortest practical
2 route from the nearest entrance of the premises to be
3 licensed to the nearest boundary of such city, \$500;

4 (c) except as hereinafter provided, for each license in
5 incorporated cities with a population of more than 5,000 and
6 less than 10,000 or within a distance of 5 miles thereof,
7 measured ~~in-a-straight-line~~ over the shortest practical
8 route from the nearest entrance of the premises to be
9 licensed to the nearest boundary of such city, \$650;

10 (d) for each license in incorporated cities with a
11 population of 10,000 or more or within a distance of 5 miles
12 thereof, measured ~~in-a-straight-line~~ over the shortest
13 practical route from the nearest entrance of the premises to
14 be licensed to the nearest boundary of such city, \$800;

15 (e) the distance of 5 miles from the corporate limits
16 of any incorporated cities and incorporated towns is
17 measured ~~in-a-straight-line~~ over the shortest practical
18 route from the nearest entrance of the premises to be
19 licensed to the nearest boundary of such city or town; and
20 where the premises of the applicant to be licensed are
21 situated within 5 miles of the corporate boundaries of two
22 or more incorporated cities or incorporated towns of
23 different populations, the license fee chargeable by the
24 larger incorporated city or incorporated town applies and
25 shall be paid by the applicant. When the premises of the

1 applicant to be licensed are situated within an incorporated
 2 town or incorporated city and any portion of the
 3 incorporated town or incorporated city is without a 5-mile
 4 limit, the license fee chargeable by the smaller
 5 incorporated town or incorporated city applies and shall be
 6 paid by the applicant.

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

14 (8) The fee for one all-beverage license to a public
 15 airport shall be \$800. This license is nontransferable.

16 (9) The license fees herein provided for are exclusive
 17 of and in addition to other license fees chargeable in
 18 Montana for the sale of alcoholic beverages."

19 NEW SECTION. Section 4. Determination of mileage
 20 distances. When the mileage distance established under the
 21 provisions of this part is a matter of controversy and is an
 22 issue before the department of revenue, the mileage shall be
 23 established on the following basis:

24 (1) The distance in mileage shall be measured by a
 25 vehicle equipped with an accurate odometer.

1 (2) A representative of the department and of a license
 2 holder or license applicant shall be present when the
 3 distance is measured.

4 (3) The route traversed for the measurement shall be
 5 the route designated by the department, except that the
 6 route shall be reasonably passable during the entire year.
 7 In determining reasonable passage, a route may not be
 8 disqualified because it is impassable during temporary,
 9 extreme weather conditions such as rains, snow, or floods.

10 Section 5. Existing licenses not affected. The
 11 provisions of [sections 1 through 5 of this act] relating to
 12 the 5-mile limit determination do not apply to and do not
 13 affect a license issued prior to [the effective date of this
 14 act].

15 Section 6. Codification instruction. Section 4 is
 16 intended to be codified as an integral part of Title 16,
 17 part 4, and the provisions of Title 16, part 4, apply to
 18 section 4.

-End-

Approved by Committee
on State Administration

1 *Senate* BILL NO. *78*
2 INTRODUCED BY *John Benson*

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE
5 DETERMINATION OF DISTANCE LIMITATIONS FOR THE ISSUANCE OF A
6 LIQUOR LICENSE; EXCEPTING LICENSES ALREADY ISSUED; AND
7 AMENDING SECTIONS 16-4-105, 16-4-201, AND 16-4-501, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

11 "16-4-105. Limit on retail beer licenses -- wine
12 license amendments -- off-premises consumption. (1) Except
13 as otherwise provided by law, a license to sell beer at
14 retail or beer and wine at retail, in accordance with the
15 provisions of this code and the rules of the department, may
16 be issued to any person, firm, or corporation who is
17 approved by the department as a fit and proper person, firm,
18 or corporation to sell beer, except that:

19 (a) the number of retail beer licenses that the
20 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, as follows:

1 (i) 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 one retail beer license, which
4 may not be used in conjunction with a retail all-beverages
5 license;

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

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

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

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

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

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

24 (e) the number of retail beer licenses that the
 25 department may issue for use at premises situated outside of

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

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

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

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

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

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

24 (a) in incorporated towns of 500 inhabitants or less
 25 and within a distance of 5 miles from the corporate limits

1 of such towns, not more than two retail licenses;

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

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

13 (2) The number of the inhabitants in such cities and
 14 towns, exclusive of the number of inhabitants residing
 15 within a distance of 5 miles from the corporate limits
 16 thereof, shall govern the number of retail licenses that may
 17 be issued for use within such cities and towns and within a
 18 distance of 5 miles from the corporate limits thereof. If
 19 two or more incorporated municipalities are situated within
 20 a distance of 5 miles from each other, the total number of
 21 retail licenses that may be issued for use in both of such
 22 municipalities and within a distance of 5 miles from their
 23 respective corporate limits shall be determined on the basis
 24 of the combined populations of both of such municipalities
 25 and may not exceed the foregoing limitations.

1 Notwithstanding the preceding sentence, the total population
 2 for determining the quota of a city may include with the
 3 city's population the population residing outside but within
 4 5 miles of the city limits in a case where the number of
 5 persons residing outside but within 5 miles of the city
 6 exceeds the number of persons residing within the city.
 7 Such a determination may be made only upon a special census
 8 taken by the department or its agent at the expense of the
 9 applicant for a license under this section. The distance of
 10 5 miles from the corporate limits of any incorporated city
 11 or incorporated town shall be measured ~~in a straight line~~
 12 over the shortest practical route from the nearest entrance
 13 of the premises proposed for licensing to the nearest
 14 corporate boundary of the city or town.

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

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

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

9 Section 3. Section 16-4-501, MCA, is amended to read:

10 "16-4-501. License and permit fees. (1) Each beer
 11 licensee licensed to sell either beer or table wine only, or
 12 both beer and table wine, under the provisions of this code,
 13 shall pay an annual license fee as follows:

14 (a) each brewer, wherever located, whose product is
 15 sold or offered for sale within the state, \$500; for each
 16 storage depot, \$400;

17 (b) each beer wholesaler, \$400; each table wine
 18 distributor, \$400;

19 (c) each beer retailer, \$200; with a wine license
 20 amendment, an additional \$200;

21 (d) for a license to sell beer at retail for
 22 off-premises consumption only, the same as a retail beer
 23 license; for a license to sell table wine at retail for
 24 off-premises consumption only, either alone or in
 25 conjunction with beer, \$200;

1 (e) any unit of a nationally chartered veterans'
2 organization, \$50.

3 (2) The permit fee under 16-4-301(1) is computed at the
4 rate of \$15 a day for each day beer is sold at those events
5 lasting 2 or more days but in no case be less than \$30.

6 (3) The permit fee under 16-4-301(2) is \$10 for the
7 sale of beer only or \$20 for the sale of all alcoholic
8 beverages.

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

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

15 (6) The annual fee for resort retail liquor licenses
16 within a given resort area shall be \$2,000 for each license.

17 (7) Each licensee licensed under the quotas of 16-4-201
18 shall pay an annual license fee as follows:

19 (a) except as hereinafter provided, for each license
20 outside of incorporated cities and incorporated towns or in
21 incorporated cities and incorporated towns with a population
22 of less than 2,000, \$400;

23 (b) except as hereinafter provided, for each license in
24 incorporated cities with a population of more than 2,000 and
25 less than 5,000 or within a distance of 5 miles thereof,

1 ~~measured in a straight line~~ over the shortest practical
2 ~~route~~ from the nearest entrance of the premises to be
3 licensed to the nearest boundary of such city, \$500;

4 (c) except as hereinafter provided, for each license in
5 incorporated cities with a population of more than 5,000 and
6 less than 10,000 or within a distance of 5 miles thereof,
7 ~~measured in a straight line~~ over the shortest practical
8 ~~route~~ from the nearest entrance of the premises to be
9 licensed to the nearest boundary of such city, \$650;

10 (d) for each license in incorporated cities with a
11 population of 10,000 or more or within a distance of 5 miles
12 thereof, ~~measured in a straight line~~ over the shortest
13 ~~practical route~~ from the nearest entrance of the premises to
14 be licensed to the nearest boundary of such city, \$800;

15 (e) the distance of 5 miles from the corporate limits
16 of any incorporated cities and incorporated towns is
17 ~~measured in a straight line~~ over the shortest practical
18 ~~route~~ from the nearest entrance of the premises to be
19 licensed to the nearest boundary of such city or town; and
20 where the premises of the applicant to be licensed are
21 situated within 5 miles of the corporate boundaries of two
22 or more incorporated cities or incorporated towns of
23 different populations, the license fee chargeable by the
24 larger incorporated city or incorporated town applies and
25 shall be paid by the applicant. When the premises of the

1 applicant to be licensed are situated within an incorporated
 2 town or incorporated city and any portion of the
 3 incorporated town or incorporated city is without a 5-mile
 4 limit, the license fee chargeable by the smaller
 5 incorporated town or incorporated city applies and shall be
 6 paid by the applicant.

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

14 (8) The fee for one all-beverage license to a public
 15 airport shall be \$800. This license is nontransferable.

16 (9) The license fees herein provided for are exclusive
 17 of and in addition to other license fees chargeable in
 18 Montana for the sale of alcoholic beverages.*

19 NEW SECTION. Section 4. Determination of mileage
 20 distances. When the mileage distance established under the
 21 provisions of this part is a matter of controversy and is an
 22 issue before the department of revenue, the mileage shall be
 23 established on the following basis:

24 (1) The distance in mileage shall be measured by a
 25 vehicle equipped with an accurate odometer.

1 (2) A representative of the department and of a license
 2 holder or license applicant shall be present when the
 3 distance is measured.

4 (3) The route traversed for the measurement shall be
 5 the route designated by the department, except that the
 6 route shall be reasonably passable during the entire year.
 7 In determining reasonable passage, a route may not be
 8 disqualified because it is impassable during temporary,
 9 extreme weather conditions such as rains, snow, or floods.

10 Section 5. Existing licenses not affected. The
 11 provisions of [sections 1 through 5 of this act] relating to
 12 the 5-mile limit determination do not apply to and do not
 13 affect a license issued prior to [the effective date of this
 14 act].

15 Section 6. Codification instruction. Section 4 is
 16 intended to be codified as an integral part of Title 16,
 17 part 4, and the provisions of Title 16, part 4, apply to
 18 section 4.

-End-

1 *Senate* BILL NO. 78
 2 INTRODUCED BY *James J. Swenson*

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE
 5 DETERMINATION OF DISTANCE LIMITATIONS FOR THE ISSUANCE OF A
 6 LIQUOR LICENSE; EXCEPTING LICENSES ALREADY ISSUED; AND
 7 AMENDING SECTIONS 16-4-105, 16-4-201, AND 16-4-501, MCA."

8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 16-4-105, MCA, is amended to read:
 11 "16-4-105. Limit on retail beer licenses -- wine
 12 license amendments -- off-premises consumption. (1) Except
 13 as otherwise provided by law, a license to sell beer at
 14 retail or beer and wine at retail, in accordance with the
 15 provisions of this code and the rules of the department, may
 16 be issued to any person, firm, or corporation who is
 17 approved by the department as a fit and proper person, firm,
 18 or corporation to sell beer, except that:

19 (a) the number of retail beer licenses that the
 20 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, as follows:

1 (i) 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 one retail beer license, which
 4 may not be used in conjunction with a retail all-beverages
 5 license;

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

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

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

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

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

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

24 (e) the number of retail beer licenses that the
 25 department may issue for use at premises situated outside of

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

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

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

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

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

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

24 (a) in incorporated towns of 500 inhabitants or less
 25 and within a distance of 5 miles from the corporate limits

1 of such towns, not more than two retail licenses;

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

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

13 (2) The number of the inhabitants in such cities and
 14 towns, exclusive of the number of inhabitants residing
 15 within a distance of 5 miles from the corporate limits
 16 thereof, shall govern the number of retail licenses that may
 17 be issued for use within such cities and towns and within a
 18 distance of 5 miles from the corporate limits thereof. If
 19 two or more incorporated municipalities are situated within
 20 a distance of 5 miles from each other, the total number of
 21 retail licenses that may be issued for use in both of such
 22 municipalities and within a distance of 5 miles from their
 23 respective corporate limits shall be determined on the basis
 24 of the combined populations of both of such municipalities
 25 and may not exceed the foregoing limitations.

1 Notwithstanding the preceding sentence, the total population
 2 for determining the quota of a city may include with the
 3 city's population the population residing outside but within
 4 5 miles of the city limits in a case where the number of
 5 persons residing outside but within 5 miles of the city
 6 exceeds the number of persons residing within the city.
 7 Such a determination may be made only upon a special census
 8 taken by the department or its agent at the expense of the
 9 applicant for a license under this section. The distance of
 10 5 miles from the corporate limits of any incorporated city
 11 or incorporated town shall be measured ~~in a straight line~~
 12 over the shortest practical route from the nearest entrance
 13 of the premises proposed for licensing to the nearest
 14 corporate boundary of the city or town.

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

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

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

9 Section 3. Section 16-4-501, MCA, is amended to read:
 10 "16-4-501. License and permit fees. (1) Each beer
 11 licensee licensed to sell either beer or table wine only, or
 12 both beer and table wine, under the provisions of this code,
 13 shall pay an annual license fee as follows:

14 (a) each brewer, wherever located, whose product is
 15 sold or offered for sale within the state, \$500; for each
 16 storage depot, \$400;

17 (b) each beer wholesaler, \$400; each table wine
 18 distributor, \$400;

19 (c) each beer retailer, \$200; with a wine license
 20 amendment, an additional \$200;

21 (d) for a license to sell beer at retail for
 22 off-premises consumption only, the same as a retail beer
 23 license; for a license to sell table wine at retail for
 24 off-premises consumption only, either alone or in
 25 conjunction with beer, \$200;

1 (e) any unit of a nationally chartered veterans'
2 organization, \$50.

3 (2) The permit fee under 16-4-301(1) is computed at the
4 rate of \$15 a day for each day beer is sold at those events
5 lasting 2 or more days but in no case be less than \$30.

6 (3) The permit fee under 16-4-301(2) is \$10 for the
7 sale of beer only or \$20 for the sale of all alcoholic
8 beverages.

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

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

15 (6) The annual fee for resort retail liquor licenses
16 within a given resort area shall be \$2,000 for each license.

17 (7) Each licensee licensed under the quotas of 16-4-201
18 shall pay an annual license fee as follows:

19 (a) except as hereinafter provided, for each license
20 outside of incorporated cities and incorporated towns or in
21 incorporated cities and incorporated towns with a population
22 of less than 2,000, \$400;

23 (b) except as hereinafter provided, for each license in
24 incorporated cities with a population of more than 2,000 and
25 less than 5,000 or within a distance of 5 miles thereof,

1 measured ~~in-a-straight-line~~ over the shortest practical
2 route from the nearest entrance of the premises to be
3 licensed to the nearest boundary of such city, \$500;

4 (c) except as hereinafter provided, for each license in
5 incorporated cities with a population of more than 5,000 and
6 less than 10,000 or within a distance of 5 miles thereof,
7 measured ~~in-a-straight-line~~ over the shortest practical
8 route from the nearest entrance of the premises to be
9 licensed to the nearest boundary of such city, \$650;

10 (d) for each license in incorporated cities with a
11 population of 10,000 or more or within a distance of 5 miles
12 thereof, measured ~~in-a-straight-line~~ over the shortest
13 practical route from the nearest entrance of the premises to
14 be licensed to the nearest boundary of such city, \$800;

15 (e) the distance of 5 miles from the corporate limits
16 of any incorporated cities and incorporated towns is
17 measured ~~in-a-straight-line~~ over the shortest practical
18 route from the nearest entrance of the premises to be
19 licensed to the nearest boundary of such city or town; and
20 where the premises of the applicant to be licensed are
21 situated within 5 miles of the corporate boundaries of two
22 or more incorporated cities or incorporated towns of
23 different populations, the license fee chargeable by the
24 larger incorporated city or incorporated town applies and
25 shall be paid by the applicant. When the premises of the

1 applicant to be licensed are situated within an incorporated
 2 town or incorporated city and any portion of the
 3 incorporated town or incorporated city is without a 5-mile
 4 limit, the license fee chargeable by the smaller
 5 incorporated town or incorporated city applies and shall be
 6 paid by the applicant.

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

14 (8) The fee for one all-beverage license to a public
 15 airport shall be \$800. This license is nontransferable.

16 (9) The license fees herein provided for are exclusive
 17 of and in addition to other license fees chargeable in
 18 Montana for the sale of alcoholic beverages."

19 NEW SECTION. Section 4. Determination of mileage
 20 distances. When the mileage distance established under the
 21 provisions of this part is a matter of controversy and is an
 22 issue before the department of revenue, the mileage shall be
 23 established on the following basis:

24 (1) The distance in mileage shall be measured by a
 25 vehicle equipped with an accurate odometer.

1 (2) A representative of the department and of a license
 2 holder or license applicant shall be present when the
 3 distance is measured.

4 (3) The route traversed for the measurement shall be
 5 the route designated by the department, except that the
 6 route shall be reasonably passable during the entire year.
 7 In determining reasonable passage, a route may not be
 8 disqualified because it is impassable during temporary,
 9 extreme weather conditions such as rains, snow, or floods.

10 Section 5. Existing licenses not affected. The
 11 provisions of [sections 1 through 5 of this act] relating to
 12 the 5-mile limit determination do not apply to and do not
 13 affect a license issued prior to [the effective date of this
 14 act].

15 Section 6. Codification instruction. Section 4 is
 16 intended to be codified as an integral part of Title 16,
 17 part 4, and the provisions of Title 16, part 4, apply to
 18 section 4.

-End-

1 SENATE BILL NO. 78

2 INTRODUCED BY SEVERSON

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE
5 DETERMINATION OF DISTANCE LIMITATIONS FOR THE ISSUANCE OF A
6 LIQUOR LICENSE; EXCEPTING LICENSES ALREADY ISSUED; AND
7 AMENDING SECTIONS 16-1-106, 16-4-105, 16-4-201, AND
8 16-4-501, MCA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 SECTION 1. SECTION 16-1-106, MCA, IS AMENDED TO READ:

12 "16-1-106. Definitions. As used in this code, the
13 following definitions apply:

14 (1) "Agency agreement" means an agreement between the
15 department and a person appointed to sell liquor as a
16 commission merchant rather than as an employee.

17 (2) "Alcohol" means ethyl alcohol, also called
18 ethanol, or the hydrated oxide of ethyl.

19 (3) "Alcoholic beverage" means a compound produced and
20 sold for human consumption as a drink that contains more
21 than .5% of alcohol by volume.

22 (4) "Beer" means a malt beverage containing not more
23 than 7% of alcohol by weight.

24 (5) "Brewer" means a person who produces malt
25 beverages.

1 (6) "Department" means the department of revenue.

2 (7) "Immediate family" means a spouse, dependent
3 children, or dependent parents.

4 (8) "Industrial use" means a use described as
5 industrial use by the federal Alcohol Administration Act and
6 the federal rules and regulations of 27 CFR.

7 (9) "Liquor" means an alcoholic beverage except beer
8 and table wine.

9 (10) "Malt beverage" means an alcoholic beverage made
10 by the fermentation of an infusion or decoction, or a
11 combination of both, in potable brewing water, of malted
12 barley with or without hops or their parts or their products
13 and with or without other malted cereals and with or without
14 the addition of unmalted or prepared cereals, other
15 carbohydrates, or products prepared therefrom and with or
16 without other wholesome products suitable for human food
17 consumption.

18 (11) "Package" means a container or receptacle used for
19 holding an alcoholic beverage.

20 (12) "Posted price" means the retail price of liquor as
21 fixed and determined by the department and in addition
22 thereto an excise and license tax as provided in this code.

23 (13) "Proof gallon" means a U.S. gallon of liquor at 60
24 degrees on the Fahrenheit scale that contains 50% of alcohol
25 by volume.

1 (14) "Public place" means a place, building, or
 2 conveyance to which the public has or may be permitted to
 3 have access and any place of public resort.

4 (15) "Public road or highway" means the same as in
 5 15-70-301(5).

6 (15)(16) "Rules" means rules published by the
 7 department pursuant to this code.

8 (16)(17) "State liquor facility" means a facility owned
 9 or under control of the department for the purpose of
 10 receiving, storing, transporting, or selling alcoholic
 11 beverages.

12 (17)(18) "State liquor store" means a retail store
 13 operated by the department in accordance with this code for
 14 the purpose of selling liquor.

15 (18)(19) "Storage depot" means a building or structure
 16 owned or operated by a brewer at any point in the state of
 17 Montana off and away from the premises of a brewery, and
 18 which structure is equipped with refrigeration or cooling
 19 apparatus for the storage of beer and from which a brewer
 20 may sell or distribute beer as permitted by this code.

21 (19)(20) "Table wine" means wine as defined below which
 22 contains not more than 14% alcohol by volume.

23 (20)(21) "Warehouse" means a building or structure
 24 owned or operated by a licensed wholesaler for the
 25 receiving, storage, and distribution of beer as permitted by

1 this code.

2 (21)(22) "Wine" means an alcoholic beverage made from
 3 the normal alcoholic fermentation of the juice of sound,
 4 ripe fruit or other agricultural products without addition
 5 or abstraction, except as may occur in the usual cellar
 6 treatment of clarifying and aging, and that contains not
 7 less than 7% or more than 24% of alcohol by volume. wine
 8 may be ameliorated to correct natural deficiencies,
 9 sweetened, and fortified in accordance with applicable
 10 federal regulations and the customs and practices of the
 11 industry. Other alcoholic beverages not defined as above
 12 but made in the manner of wine and labeled and sold as wine
 13 in accordance with federal regulations are also wine."

14 Section 2. Section 16-4-105, MCA, is amended to read:

15 "16-4-105. Limit on retail beer licenses -- wine
 16 license amendments -- off-premises consumption. (1) Except
 17 as otherwise provided by law, a license to sell beer at
 18 retail or beer and wine at retail, in accordance with the
 19 provisions of this code and the rules of the department, may
 20 be issued to any person, firm, or corporation who is
 21 approved by the department as a fit and proper person, firm,
 22 or corporation to sell beer, except that:

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

1 distance of 5 miles from the corporate limits of such cities
 2 and towns shall be determined on the basis of population as
 3 shown by the most recent official United States census
 4 authorized by congress, as follows:

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

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

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

23 (b) the number of the inhabitants in such cities and
 24 towns, exclusive of the number of inhabitants residing
 25 within a distance of 5 miles from the corporate limits

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

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

21 (d) such limitations do not prevent the issuance of a
 22 nontransferable and nonassignable retail beer license to a
 23 post of a nationally chartered veterans' organization or a
 24 lodge of a recognized national fraternal organization if
 25 such veterans' or fraternal organization has been in

1 existence for a period of 5 years or more prior to January
2 1, 1949;

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

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

25 (3) A retail license to sell beer or table wine, or

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

14 Section 3. Section 16-4-201, MCA, is amended to read:
15 "16-4-201. All-beverages license quota. (1) Except as
16 otherwise provided by law, a license to sell liquor, beer,
17 and wine at retail (an all-beverages license) in accordance
18 with the provisions of this code and the rules of the
19 department may be issued to any person who is approved by
20 the department as a fit and proper person to sell such
21 beverages, except that the number of all-beverages licenses
22 that the 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, as follows:

3 (a) 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 two retail licenses;

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

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

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

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

20 (3) Retail all-beverages licenses of issue on March 7,
21 1947, and which are in excess of the foregoing limitations
22 shall be renewable, but no new licenses may be issued in
23 violation of such limitations.

24 (4) Such limitations do not prevent the issuance of a
25 nontransferable and nonassignable (as to ownership only)

1 retail license to any post of a nationally chartered
 2 veterans' organization or any lodge of a recognized national
 3 fraternal organization if such veterans' or fraternal
 4 organization has been in existence for a period of 5 years
 5 or more prior to January 1, 1949.

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

14 Section 4. Section 16-4-501, MCA, is amended to read:

15 "16-4-501. License and permit fees. (1) Each beer
 16 licensee licensed to sell either beer or table wine only, or
 17 both beer and table wine, under the provisions of this code,
 18 shall pay an annual license fee as follows:

19 (a) each brewer, wherever located, whose product is
 20 sold or offered for sale within the state, \$500; for each
 21 storage depot, \$400;

22 (b) each beer wholesaler, \$400; each table wine
 23 distributor, \$400;

24 (c) each beer retailer, \$200; with a wine license
 25 amendment, an additional \$200;

1 (d) for a license to sell beer at retail for
 2 off-premises consumption only, the same as a retail beer
 3 license; for a license to sell table wine at retail for
 4 off-premises consumption only, either alone or in
 5 conjunction with beer, \$200;

6 (e) any unit of a nationally chartered veterans'
 7 organization, \$50.

8 (2) The permit fee under 16-4-301(1) is computed at
 9 the rate of \$15 a day for each day beer is sold at those
 10 events lasting 2 or more days but in no case be less than
 11 \$30.

12 (3) The permit fee under 16-4-301(2) is \$10 for the
 13 sale of beer only or \$20 for the sale of all alcoholic
 14 beverages.

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

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

21 (6) The annual fee for resort retail liquor licenses
 22 within a given resort area shall be \$2,000 for each license.

23 (7) Each licensee licensed under the quotas of
 24 16-4-201 shall pay an annual license fee as follows:

25 (a) except as hereinafter provided, for each license

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

4 (b) except as hereinafter provided, for each license
5 in incorporated cities with a population of more than 2,000
6 and less than 5,000 or within a distance of 5 miles thereof,
7 measured ~~in-a-straight-line~~ over the shortest practical
8 route PUBLIC ROAD OR HIGHWAY from the nearest entrance of
9 the premises to be licensed to the nearest boundary of such
10 city, \$500;

11 (c) except as hereinafter provided, for each license
12 in incorporated cities with a population of more than 5,000
13 and less than 10,000 or within a distance of 5 miles
14 thereof, measured ~~in-a-straight-line~~ over the shortest
15 practical--route PUBLIC ROAD OR HIGHWAY from the nearest
16 entrance of the premises to be licensed to the nearest
17 boundary of such city, \$650;

18 (d) for each license in incorporated cities with a
19 population of 10,000 or more or within a distance of 5 miles
20 thereof, measured ~~in-a-straight-line~~ over the shortest
21 practical--route PUBLIC ROAD OR HIGHWAY from the nearest
22 entrance of the premises to be licensed to the nearest
23 boundary of such city, \$800;

24 (e) the distance of 5 miles from the corporate limits
25 of any incorporated cities and incorporated towns is

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

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

23 (8) The fee for one all-beverage license to a public
24 airport shall be \$800. This license is nontransferable.

25 (9) The license fees herein provided for are exclusive

1 of and in addition to other license fees chargeable in
2 Montana for the sale of alcoholic beverages."

3 NEW SECTION. Section 5. Determination of mileage
4 distances. When the mileage distance established under the
5 provisions of this part is a matter of controversy and is an
6 issue before the department of revenue, the mileage shall be
7 established on the following basis:

8 (1) The distance in mileage shall be measured by a
9 vehicle equipped with an accurate odometer.

10 (2) A representative of the department and of a
11 license holder or license applicant shall be present when
12 the distance is measured.

13 (3) The route traversed for the measurement shall be
14 ~~the route designated by the department, except that the~~
15 ~~route shall be~~ SHORTEST PUBLIC ROAD OR HIGHWAY THAT IS
16 reasonably passable during the entire year. In determining
17 reasonable passage, a route may not be disqualified because
18 it is impassable during temporary, extreme weather
19 conditions such as rains, snow, or floods.

20 Section 6. Existing licenses not affected. The
21 provisions of [sections ~~1~~ 2 through 5 6 of this act]
22 relating to the 5-mile limit determination do not apply to
23 and do not affect a license issued prior to [the effective
24 date of this act].

25 Section 7. Codification instruction. Section 4 5 is

1 intended to be codified as an integral part of Title 16,
2 part 4, and the provisions of Title 16, part 4, apply to
3 section 4 5.

-End-

March 4, 1981

SENATE BILL 78

THE HOUSE BUSINESS AND INDUSTRY COMMITTEE AMENDED SB 78 in the third reading copy as follows:

1. Title, line 7.
Following: "SECTIONS"
Insert: "16-1-106,"

2. Page 1, following line 9.
Insert: "Section 1. Section 16-1-105, MCA, is amended to read:

16-1-106. Definitions. As used in this code, the following definitions apply:

(1) "Agency agreement" means an agreement between the department and a person appointed to sell liquor as a commission merchant rather than as an employee.

(2) "Alcohol" means ethyl alcohol, also called ethanol, or the dehydrated oxide of ethyl.

SENATE BILL 78
Page 2

March 4, 1981

(Continued)

(3) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than .5% of alcohol by volume.

(4) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

(5) "Brewer" means a person who produces malt beverages.

(6) "Department" means the department of revenue.

(7) "Immediate family" means a spouse, dependent children, or dependent parents.

(8) "Industrial use" means a use described as industrial use by the federal Alcohol Administration Act and the federal rules and regulations of 27 CFR.

(9) "Liquor" means an alcoholic beverage except beer and table wine.

(10) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of u-malted or prepared cereals, other carbohydrates, or products prepared therefrom and with or without other wholesome products suitable for human food consumption.

(11) "Package" means a container or receptacle used for holding an alcoholic beverage.

(12) "Posted price" means the retail price of liquor as fixed and determined by the department and in addition thereto an excise and license tax as provided in this code.

(13) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

(14) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(15) "Public road or highway" means the same as in 15-70-301(5).

~~(15)~~ (16) "Rules" means rules published by the department pursuant to this code.

~~(16)~~ (17) "State liquor facility" means a facility owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages.

(Continued)

(17) (18) "State liquor store" means a retail store operated by the department in accordance with this code for the purpose of selling liquor.

(18) (19) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, and which structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

(19) (20) "Table wine" means wine as defined below which contains not more than 14% alcohol by volume.

(20) (21) "Warehouse" means a building or structure owned or operated by a licensed wholesaler for the receiving, storage, and distribution of beer as permitted by this code.

(21) (22) "Wine" means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains not less than 7% or more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined as above but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

Renumber: subsequent sections

3. Page 3, lines 9 and 10.
Following: "shortest" on line 9
Strike: "practical route"
Insert: "public road or highway"

4. Page 7, line 12.
Following: "shortest"
Strike: "practical route"
Insert: "public road or highway"

5. Page 10, lines 1 and 2.
Following: "shortest" on line 1
Strike: "practical route"
Insert: "public road or highway"

6. Page 10, lines 7 and 8.
Following: "shortest" on line 7
Strike: "practical route"
Insert: "public road or highway"

(Continued)

(Continued)

7. Page 10, line 13.
Strike: "practical route"
Insert: "public road or highway"

8. Page 10, lines 17 and 18.
Following: "shortest" on line 17
Strike: "practical route"
Insert: "public road or highway"

9. Page 12, lines 5 and 6.
Following: "the" at the beginning of line 5
Strike: the remainder of line 5 through "be" on line 6
Insert: "shortest public road or highway that is"

10. Page 12, line 11.
Following: "sections"
Strike: "1"
Insert: "2"
Following: "through"
Strike: "5"
Insert: "6"

11. Page 12, line 15.
Following: second "Section"
Strike: "4"
Insert: "5"

12. Page 12, line 18.
Strike: "4"
Insert: "5"

BE CONCURRED IN AS AMENDED

March 30, 1981

PROPOSED GOVERNOR'S AMENDMENTS TO SENATE BILL NO. 78;
REFERENCE COPY, AS FOLLOWS:

1. Page 15, lines 20 through 24
Following: "6." on line 20
Delete: the remainder of lines 20 through 24 in their entirety.
Insert: "Effect on licenses. (1) With respect to any retail beer or all-beverage license for on-premise consumption, that has been issued prior to the effective date of this act, the provisions of (sections 2 through 5) do not affect:
 - (a) the validity of the license or its reissuance for the same premise or;
 - (b) the status of the license as a city or county license so long as the premise is not relocated.
- (2) With respect to any retail beer or all-beverage license for on-premise consumption, issued on or after the effective date of this act, the validity of the license or any reissuance of the license shall not be affected by the construction of a public road or highway occurring after the date the license is originally issued."

SENATE BILL NO. 78

INTRODUCED BY SEVERSON

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE DETERMINATION OF DISTANCE LIMITATIONS FOR THE ISSUANCE OF A LIQUOR LICENSE; EXCEPTING LICENSES ALREADY ISSUED; AND AMENDING SECTIONS 16-1-106, 16-4-105, 16-4-201, AND 16-4-501, MCA."

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

SECTION 1. SECTION 16-1-106, MCA, IS AMENDED TO READ:

"16-1-106. Definitions. As used in this code, the following definitions apply:

(1) "Agency agreement" means an agreement between the department and a person appointed to sell liquor as a commission merchant rather than as an employee.

(2) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(3) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than .5% of alcohol by volume.

(4) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

(5) "Brewer" means a person who produces malt beverages.

(6) "Department" means the department of revenue.

(7) "Immediate family" means a spouse, dependent children, or dependent parents.

(8) "Industrial use" means a use described as industrial use by the federal Alcohol Administration Act and the federal rules and regulations of 27 CFR.

(9) "Liquor" means an alcoholic beverage except beer and table wine.

(10) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared therefrom and with or without other wholesome products suitable for human food consumption.

(11) "Package" means a container or receptacle used for holding an alcoholic beverage.

(12) "Posted price" means the retail price of liquor as fixed and determined by the department and in addition thereto an excise and license tax as provided in this code.

(13) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

1 (14) "Public place" means a place, building, or
2 conveyance to which the public has or may be permitted to
3 have access and any place of public resort.

4 (15) "Public road or highway" means the same as in
5 15-70-301(5).

6 (15)(16) "Rules" means rules published by the
7 department pursuant to this code.

8 (16)(17) "State liquor facility" means a facility owned
9 or under control of the department for the purpose of
10 receiving, storing, transporting, or selling alcoholic
11 beverages.

12 (17)(18) "State liquor store" means a retail store
13 operated by the department in accordance with this code for
14 the purpose of selling liquor.

15 (18)(19) "Storage depot" means a building or structure
16 owned or operated by a brewer at any point in the state of
17 Montana off and away from the premises of a brewery, and
18 which structure is equipped with refrigeration or cooling
19 apparatus for the storage of beer and from which a brewer
20 may sell or distribute beer as permitted by this code.

21 (19)(20) "Table wine" means wine as defined below which
22 contains not more than 14% alcohol by volume.

23 (20)(21) "Warehouse" means a building or structure
24 owned or operated by a licensed wholesaler for the
25 receiving, storage, and distribution of beer as permitted by

1 this code.

2 (21)(22) "Wine" means an alcoholic beverage made from
3 the normal alcoholic fermentation of the juice of sound,
4 ripe fruit or other agricultural products without addition
5 or abstraction, except as may occur in the usual cellar
6 treatment of clarifying and aging, and that contains not
7 less than 7% or more than 24% of alcohol by volume. Wine
8 may be ameliorated to correct natural deficiencies,
9 sweetened, and fortified in accordance with applicable
10 federal regulations and the customs and practices of the
11 industry. Other alcoholic beverages not defined as above
12 but made in the manner of wine and labeled and sold as wine
13 in accordance with federal regulations are also wine."

14 Section 2. Section 16-4-105, MCA, is amended to read:

15 "16-4-105. Limit on retail beer licenses -- wine
16 license amendments -- off-premises consumption. (1) Except
17 as otherwise provided by law, a license to sell beer at
18 retail or beer and wine at retail, in accordance with the
19 provisions of this code and the rules of the department, may
20 be issued to any person, firm, or corporation who is
21 approved by the department as a fit and proper person, firm,
22 or corporation to sell beer, except that:

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

1 distance of 5 miles from the corporate limits of such cities
 2 and towns shall be determined on the basis of population as
 3 shown by the most recent official United States census
 4 authorized by congress, as follows:

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

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

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

23 (b) the number of the inhabitants in such cities and
 24 towns, exclusive of the number of inhabitants residing
 25 within a distance of 5 miles from the corporate limits

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

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

21 (d) such limitations do not prevent the issuance of a
 22 nontransferable and nonassignable retail beer license to a
 23 post of a nationally chartered veterans' organization or a
 24 lodge of a recognized national fraternal organization if
 25 such veterans' or fraternal organization has been in

1 existence for a period of 5 years or more prior to January
2 1, 1949;

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

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

25 (3) A retail license to sell beer or table wine, or

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

14 Section 3. Section 16-4-201, MCA, is amended to read:
15 "16-4-201. All-beverages license quota. (1) Except as
16 otherwise provided by law, a license to sell liquor, beer,
17 and wine at retail (an all-beverages license) in accordance
18 with the provisions of this code and the rules of the
19 department may be issued to any person who is approved by
20 the department as a fit and proper person to sell such
21 beverages, except that the number of all-beverages licenses
22 that the 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, as follows:

3 (a) 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 two retail licenses;

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

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

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

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

20 (3) Retail all-beverages licenses of issue on March 7,
21 1947, and which are in excess of the foregoing limitations
22 shall be renewable, but no new licenses may be issued in
23 violation of such limitations.

24 (4) Such limitations do not prevent the issuance of a
25 nontransferable and nonassignable (as to ownership only)

1 retail license to any post of a nationally chartered
2 veterans' organization or any lodge of a recognized national
3 fraternal organization if such veterans' or fraternal
4 organization has been in existence for a period of 5 years
5 or more prior to January 1, 1949.

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

14 Section 4. Section 16-4-501, MCA, is amended to read:
15 "16-4-501. License and permit fees. (1) Each beer
16 licensee licensed to sell either beer or table wine only, or
17 both beer and table wine, under the provisions of this code,
18 shall pay an annual license fee as follows:

19 (a) each brewer, wherever located, whose product is
20 sold or offered for sale within the state, \$500; for each
21 storage depot, \$400;

22 (b) each beer wholesaler, \$400; each table wine
23 distributor, \$400;

24 (c) each beer retailer, \$200; with a wine license
25 amendment, an additional \$200;

1 (d) for a license to sell beer at retail for
2 off-premises consumption only, the same as a retail beer
3 license; for a license to sell table wine at retail for
4 off-premises consumption only, either alone or in
5 conjunction with beer, \$200;

6 (e) any unit of a nationally chartered veterans'
7 organization, \$50.

8 (2) The permit fee under 16-4-301(1) is computed at
9 the rate of \$15 a day for each day beer is sold at those
10 events lasting 2 or more days but in no case be less than
11 \$30.

12 (3) The permit fee under 16-4-301(2) is \$10 for the
13 sale of beer only or \$20 for the sale of all alcoholic
14 beverages.

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

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

21 (6) The annual fee for resort retail liquor licenses
22 within a given resort area shall be \$2,000 for each license.

23 (7) Each licensee licensed under the quotas of
24 16-4-201 shall pay an annual license fee as follows:

25 (a) except as hereinafter provided, for each license

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

4 (b) except as hereinafter provided, for each license
5 in incorporated cities with a population of more than 2,000
6 and less than 5,000 or within a distance of 5 miles thereof,
7 ~~measured in--a--straight--line~~ over the shortest practical
8 route PUBLIC ROAD OR HIGHWAY from the nearest entrance of
9 the premises to be licensed to the nearest boundary of such
10 city, \$500;

11 (c) except as hereinafter provided, for each license
12 in incorporated cities with a population of more than 5,000
13 and less than 10,000 or within a distance of 5 miles
14 thereof, ~~measured in--a--straight--line~~ over the shortest
15 practical--route PUBLIC ROAD OR HIGHWAY from the nearest
16 entrance of the premises to be licensed to the nearest
17 boundary of such city, \$650;

18 (d) for each license in incorporated cities with a
19 population of 10,000 or more or within a distance of 5 miles
20 thereof, ~~measured in--a--straight--line~~ over the shortest
21 practical--route PUBLIC ROAD OR HIGHWAY from the nearest
22 entrance of the premises to be licensed to the nearest
23 boundary of such city, \$800;

24 (e) the distance of 5 miles from the corporate limits
25 of any incorporated cities and incorporated towns is

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

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

23 (8) The fee for one all-beverage license to a public
24 airport shall be \$800. This license is nontransferable.

25 (9) The license fees herein provided for are exclusive

1 of and in addition to other license fees chargeable in
2 Montana for the sale of alcoholic beverages."

3 NEW SECTION. Section 5. Determination of mileage
4 distances. When the mileage distance established under the
5 provisions of this part is a matter of controversy and is an
6 issue before the department of revenue, the mileage shall be
7 established on the following basis:

8 (1) The distance in mileage shall be measured by a
9 vehicle equipped with an accurate odometer.

10 (2) A representative of the department and of a
11 license holder or license applicant shall be present when
12 the distance is measured.

13 (3) The route traversed for the measurement shall be
14 the ~~route designated by the department, except that the~~
15 ~~route shall be~~ SHORTEST PUBLIC ROAD OR HIGHWAY THAT IS
16 reasonably passable during the entire year. In determining
17 reasonable passage, a route may not be disqualified because
18 it is impassable during temporary, extreme weather
19 conditions such as rains, snow, or floods.

20 Section 6. Existing ~~licenses not affected. The~~
21 ~~provisions of Sections 2 through 5 of this act~~
22 ~~relating to the 5-mile limit determination do not apply to~~
23 ~~and do not affect a license issued prior to the effective~~
24 ~~date of this act.~~ EFFECT ON LICENSES. (1) WITH RESPECT TO
25 ANY RETAIL BEER OR ALL-BEVERAGE LICENSE FOR ON-PREMISE

1 CONSUMPTION, THAT HAS BEEN ISSUED PRIOR TO THE EFFECTIVE
2 DATE OF THIS ACT, THE PROVISIONS OF [SECTIONS 2 THROUGH 5]
3 DO NOT AFFECT:

4 (A) THE VALIDITY OF THE LICENSE OR ITS REISSUANCE FOR
5 THE SAME PREMISE OR;

6 (B) THE STATUS OF THE LICENSE AS A CITY OR COUNTY
7 LICENSE SO LONG AS THE PREMISE IS NOT RELOCATED.

8 (2) WITH RESPECT TO ANY RETAIL BEER OR ALL-BEVERAGE
9 LICENSE FOR ON-PREMISE CONSUMPTION, ISSUED ON OR AFTER THE
10 EFFECTIVE DATE OF THIS ACT, THE VALIDITY OF THE LICENSE OR
11 ANY REISSUANCE OF THE LICENSE SHALL NOT BE AFFECTED BY THE
12 CONSTRUCTION OF A PUBLIC ROAD OR HIGHWAY OCCURRING AFTER THE
13 DATE THE LICENSE IS ORIGINALLY ISSUED.

14 Section 7. Codification instruction. Section 4 5 is
15 intended to be codified as an integral part of Title 16,
16 part 4, and the provisions of Title 16, part 4, apply to
17 section 4 5.

-End-



TED SCHWINDEN
GOVERNOR

State of Montana
Office of the Governor
Helena 59620

March 30, 1981

The Honorable Jean A. Turnage
President of the Senate
State Capitol
Helena, Montana 59620

The Honorable Robert L. Marks
Speaker of the House
State Capitol
Helena, Montana 59620

Dear Senator Turnage and Representative Marks:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return Senate Bill No. 78, "AN ACT TO REVISE THE DETERMINATION OF DISTANCE LIMITATIONS FOR THE ISSUANCE OF A LIQUOR LICENSE; EXCEPTING LICENSES ALREADY ISSUED; AND AMENDING SECTIONS 16-1-106, 16-4-105, 16-4-201, AND 16-4-501, MCA," without my signature and recommend the attached amendments for the following reasons.

The five mile distance from an incorporated city is currently measured in a straight line from the nearest entrance of the premise to be licensed to the nearest boundary of an incorporated city. Senate Bill No. 78, changes the distance measurements as follows: the five mile distance from an incorporated city will be measured over the shortest public road or highway from the nearest entrance of the premise to be licensed to the nearest boundary of such incorporated city.

The effect of Senate Bill No. 78 is that it removes all distance limitations determining how near to an incorporated city or county an all beverage or on-premise beer licensee may locate his premise. If the distance from the nearest entrance of his premise to the nearest boundary of an incorporated city is greater than five miles, via the shortest road or highway, a license may be issued.

Senator Turnage and Representative Marks
March 30, 1981
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The proposed amendment to Section 6 would ensure that the provisions of Section 2 through 5 of the Act do not apply to and would not alter the classification of those previously issued licenses or effect their renewability so as long as the licensees remain in their existing premises. In addition, the amendment will ensure that all licenses issued after the effective date of Senate Bill No. 78, retain their original status even though shorter public roads or highways may be constructed after the original issuance of the license.

I urge your concurrence in these amendments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ted Schwinden".

TED SCHWINDEN
Governor