

HOUSE BILL NO. 32

INTRODUCED BY KEENAN

BY REQUEST OF THE DEPARTMENT OF REVENUE
AND THE REVENUE OVERSIGHT COMMITTEE

IN THE HOUSE

January 7, 1985	Introduced and referred to Committee on Business and Labor.
January 10, 1985	Committee recommend bill do pass as amended. Report adopted.
	Fiscal Note requested.
January 11, 1985	Bill printed and placed on members' desks.
January 12, 1985	Second reading, do pass.
	Considered correctly engrossed.
January 14, 1985	Third reading, passed.
January 15, 1985	Fiscal Note returned. Transmitted to Senate.

IN THE SENATE

January 15, 1985	Introduced and referred to Committee on Taxation.
January 29, 1985	Committee recommend bill be concurring in. Report adopted.
January 30, 1985	Second reading, concurring in.
February 1, 1985	Third reading, concurring in. Ayes, 49; Noes, 0.
	Returned to House.

IN THE HOUSE

February 4, 1985

Received from Senate.

Sent to enrolling.

Reported correctly enrolled.

1 HOUSE BILL NO. 32
2 INTRODUCED BY KEENAN
3 BY REQUEST OF THE DEPARTMENT OF REVENUE
4 AND THE REVENUE OVERSIGHT COMMITTEE
5
6 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A BEER
7 IMPORTER LICENSE, LICENSING CRITERIA, AND PROCEDURES FOR
8 IMPORTING BEER INTO MONTANA; DEFINING "IMPORT"; ESTABLISHING
9 A LICENSE FEE; AMENDING SECTIONS 16-1-106, 16-3-101,
10 16-3-104, 16-3-201, 16-3-211 THROUGH 16-3-214, 16-3-221
11 THROUGH 16-3-226, 16-3-230, 16-3-241 THROUGH 16-3-244,
12 16-4-101, 16-4-401, 16-4-407, AND 16-4-501, MCA; AND
13 PROVIDING EFFECTIVE DATES."
14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
16 Section 1. Section 16-1-106, MCA, is amended to read:
17 "16-1-106. Definitions. As used in this code, the
18 following definitions apply:
19 (1) "Agency agreement" means an agreement between the
20 department and a person appointed to sell liquor as a
21 commission merchant rather than as an employee.
22 (2) "Alcohol" means ethyl alcohol, also called
23 ethanol, or the hydrated oxide of ethyl.
24 (3) "Alcoholic beverage" means a compound produced and
25 sold for human consumption as a drink that contains more

1 than .5% of alcohol by volume.
2 (4) "Beer" means a malt beverage containing not more
3 than 7% of alcohol by weight.
4 (5) "Brewer" means a person who produces malt
5 beverages.
6 (6) "Department" means the department of revenue.
7 (7) "Immediate family" means a spouse, dependent
8 children, or dependent parents.
9 (8) "Import" means to transfer beer or table wine from
10 outside the state of Montana into the state of Montana.
11 ~~(8)~~(9) "Industrial use" means a use described as
12 industrial use by the federal Alcohol Administration Act and
13 the federal rules and regulations of 27 CFR.
14 ~~(9)~~(10) "Liquor" means an alcoholic beverage except
15 beer and table wine.
16 ~~(10)~~(11) "Malt beverage" means an alcoholic beverage
17 made by the fermentation of an infusion or decoction, or a
18 combination of both, in potable brewing water, of malted
19 barley with or without hops or their parts or their products
20 and with or without other malted cereals and with or without
21 the addition of unmalted or prepared cereals, other
22 carbohydrates, or products prepared therefrom and with or
23 without other wholesome products suitable for human food
24 consumption.
25 ~~(11)~~(12) "Package" means a container or receptacle used

1 for holding an alcoholic beverage.

2 ~~†12†~~(13) "Posted price" means the retail price of
3 liquor as fixed and determined by the department and in
4 addition thereto an excise and license tax as provided in
5 this code.

6 ~~†13†~~(14) "Proof gallon" means a U.S. gallon of liquor
7 at 60 degrees on the Fahrenheit scale that contains 50% of
8 alcohol by volume.

9 ~~†14†~~(15) "Public place" means a place, building, or
10 conveyance to which the public has or may be permitted to
11 have access and any place of public resort.

12 ~~†15†~~(16) "Rules" means rules published by the
13 department pursuant to this code.

14 ~~†16†~~(17) "State liquor facility" means a facility owned
15 or under control of the department for the purpose of
16 receiving, storing, transporting, or selling alcoholic
17 beverages.

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

21 ~~†18†~~(19) "Storage depot" means a building or structure
22 owned or operated by a brewer at any point in the state of
23 Montana off and away from the premises of a brewery, and
24 which structure is equipped with refrigeration or cooling
25 apparatus for the storage of beer and from which a brewer

1 may sell or distribute beer as permitted by this code.

2 (20) "Subwarehouse" means a building or structure owned
3 or operated by a licensed beer wholesaler or table wine
4 distributor, located at a site in Montana other than the
5 site of such beer wholesaler's or table wine distributor's
6 warehouse or principal place of business, and used for the
7 receiving, storage, and distribution of beer or table wine
8 as permitted by this code.

9 ~~†19†~~(21) "Table wine" means wine as defined below which
10 contains not more than 14% alcohol by volume.

11 ~~†20†~~(22) "Warehouse" means a building or structure
12 located in Montana owned or operated by a licensed beer
13 wholesaler or table wine distributor for the receiving,
14 storage, and distribution of beer or table wine as permitted
15 by this code.

16 ~~†21†~~(23) "Wine" means an alcoholic beverage made from
17 the normal alcoholic fermentation of the juice of sound,
18 ripe fruit or other agricultural products without addition
19 or abstraction, except as may occur in the usual cellar
20 treatment of clarifying and aging, and that contains not
21 less than 7% or more than 24% of alcohol by volume. Wine
22 may be ameliorated to correct natural deficiencies,
23 sweetened, and fortified in accordance with applicable
24 federal regulations and the customs and practices of the
25 industry. Other alcoholic beverages not defined as above

1 but made in the manner of wine and labeled and sold as wine
2 in accordance with federal regulations are also wine."

3 Section 2. Section 16-3-101, MCA, is amended to read:

4 "16-3-101. Liquor dispensed only in accordance with
5 code. No brewer, beer importer, distiller, or manufacturer
6 of liquor shall, within the state, by himself, his clerk,
7 servant, or agent, give to any person any liquor except as
8 may be permitted by and in accordance with the rules made
9 under this code."

10 Section 3. Section 16-3-104, MCA, is amended to read:

11 "16-3-104. Common carriers to purchase beer from
12 brewer, beer importer, or wholesaler. It shall be unlawful
13 for the operator of any common carrier or its employees to
14 make sale of or dispose of any beer or malt liquors except
15 such as shall have been lawfully acquired or purchased from
16 a duly licensed brewer, beer importer, or wholesaler."

17 Section 4. Section 16-3-201, MCA, is amended to read:

18 "16-3-201. Possession, manufacture, importation, or
19 disposal of beer in manner other than prescribed unlawful.
20 It shall be unlawful to manufacture, import, sell or dispose
21 of, or possess for the purpose of sale beer of any kind or
22 character of an alcoholic content greater than herein
23 prescribed or other than in the manner permitted by this
24 code."

25 Section 5. Section 16-3-211, MCA, is amended to read:

1 "16-3-211. Monthly report of brewer or beer importer
2 -- inspection of books and premises. Every brewer and every
3 beer importer licensed to do business in this state shall,
4 on or before the 15th day of each month, in the manner and
5 form as shall be prescribed by the department, make an exact
6 return to the department of the amount of beer manufactured
7 or imported by him and the amount sold by him in the
8 previous month and of his inventory. The department shall
9 have the right at any time to make an examination of any
10 brewer's or beer importer's books and of his premises and
11 otherwise check the accuracy of any such return or to check
12 the alcoholic content of beer manufactured or imported by
13 him."

14 Section 6. Section 16-3-212, MCA, is amended to read:

15 "16-3-212. Brewers' or beer importers' sales to
16 wholesalers lawful. It shall be lawful for any licensed
17 brewer to sell or ~~dispose-of~~ deliver beer manufactured by
18 him to any licensed wholesaler. It shall be lawful for any
19 licensed beer importer to sell or deliver beer imported by
20 him to any licensed wholesaler."

21 Section 7. Section 16-3-213, MCA, is amended to read:

22 "16-3-213. Brewers or beer importers not to retail
23 beer -- original package exception. It shall be unlawful for
24 any brewer or breweries or beer importer to have or own any
25 permit to sell or retail beer at any place or premises, it

1 being the declared intention to prohibit brewers and beer
 2 importers from engaging in the retail dispensation of beer;
 3 provided, however, that this shall not be so construed as to
 4 prohibit breweries from making sale and delivery of beer
 5 manufactured by them, in original packages, at either
 6 wholesale or retail."

7 Section 8. Section 16-3-214, MCA, is amended to read:

8 "16-3-214. Beer sales by brewers and beer importers.

9 Subject to the limitations and restrictions contained in
 10 this code, any brewer or any beer importer duly licensed as
 11 such by the United States of America who manufactures beer
 12 in or imports beer into the state of Montana, upon payment
 13 of the annual license fee imposed by 16-4-501 and upon
 14 presenting satisfactory evidence to the department as
 15 required by 16-4-101, shall be licensed by the department,
 16 in accordance with the provisions of this code and such
 17 rules as may be prescribed by the department, to:

18 (1) sell and deliver beer to:

19 (a) a vendor;

20 (b) any licensees who are entitled to purchase beer
 21 from a brewer or beer importer under this code; or

22 (c) the public; or

23 (2) do any one or more of such acts of sale and
 24 delivery of beer."

25 Section 9. Section 16-3-221, MCA, is amended to read:

1 "16-3-221. Illegal acts by brewers or beer importers.

2 It is unlawful for any brewer or beer importer or any
 3 officer, agent, or representative of any brewer or beer
 4 importer to:

5 (1) coerce, or attempt to coerce, or persuade any
 6 person licensed to sell beer at wholesale to enter into any
 7 agreement or to take any action which would violate or tend
 8 to violate any of the laws of this state or any rules
 9 promulgated by the department;

10 (2) sell its products in the state without a written
 11 contract, which conforms to the provisions of 16-3-221
 12 through 16-3-226, with each appointed licensed wholesale
 13 distributor;

14 (3) designate or allow more than one wholesale
 15 distributor to sell or distribute a specific brand of the
 16 brewer's or beer importer's products to retail licensees in
 17 the same area, provided that nothing herein shall prohibit
 18 the brewer or beer importer from designating more than one
 19 wholesale distributor to sell or distribute different brands
 20 of the same manufacturer to retail licensees in the same
 21 area; and

22 (4) cancel or terminate, except for just cause or in
 23 accordance with the current terms and standards established
 24 by the brewer or beer importer then equally applicable to
 25 all wholesalers, any agreement or contract, written or oral,

1 or the franchise of any wholesaler existing on January 1,
 2 1974, or thereafter entered into to sell beer manufactured
 3 by the brewer or imported by the beer importer. A brewer or
 4 beer importer may, notwithstanding the preceding sentence,
 5 make reasonable classifications among wholesalers. If a
 6 brewer or beer importer cancels or terminates a wholesaler's
 7 franchise, the brewer or beer importer has the burden of
 8 proving the classification was reasonable and not arbitrary.
 9 After July 1, 1974, the provisions of 16-3-221 through
 10 16-3-226 shall be a part of any franchise, contract,
 11 agreement, or understanding, whether written or oral,
 12 between any wholesaler of beer licensed to do business in
 13 this state and any manufacturer or beer importer doing
 14 business with the licensed wholesaler just as though the
 15 provisions had been specifically agreed upon between the
 16 wholesaler and the manufacturer or beer importer."

17 Section 10. Section 16-3-222, MCA, is amended to read:

18 "16-3-222. Mandatory provisions of brewer-wholesaler
 19 or beer importer-wholesaler contracts, agreements, and
 20 franchises. All contracts, agreements, or franchises between
 21 a brewer and a wholesaler or a beer importer and a
 22 wholesaler shall specifically set forth or contain the
 23 following:

24 (1) that the brewer or beer importer or any officer,
 25 agent, or representative of any brewer or beer importer and

1 the wholesaler involved mutually shall determine the size or
 2 extent of the area in which the wholesaler may sell or
 3 distribute the products of the brewer or beer importer to
 4 the retail licensees. Said territory will be the territory
 5 agreed upon between the wholesaler and brewer or the
 6 wholesaler and beer importer and may not be changed without
 7 the mutual consent of both the wholesaler and brewer or the
 8 wholesaler and beer importer.

9 (2) the agreed-upon brands of the brewer or beer
 10 importer to be sold by the wholesaler;

11 (3) that the brewer or beer importer recognizes that
 12 the wholesaler is free to manage his business in the manner
 13 the wholesaler deems best and that this prerogative vests in
 14 the wholesaler the exclusive right to establish selling
 15 prices, to select the brands he wishes to handle, to
 16 determine the effort and resources the wholesaler will exert
 17 to develop and promote the sale of the brewer's or beer
 18 importer's products handled by the wholesaler;

19 (4) a procedure for the review of alleged wholesaler
 20 deficiencies, including the submission in writing to the
 21 wholesaler by the brewer or beer importer of said
 22 deficiencies, if the deficiencies are susceptible of
 23 correction and if the wholesaler desires to correct said
 24 deficiencies, and that a reasonable period of time shall be
 25 given the wholesaler for rectification of said deficiencies

1 prior to any notice of intent to terminate;

2 (5) a termination clause providing that the brewer or
3 beer importer shall deliver, in writing, to the wholesaler a
4 60-day notice of intent to terminate the agreement,
5 contract, or franchise."

6 Section 11. Section 16-3-223, MCA, is amended to read:

7 "16-3-223. Transfer of wholesaler's interest in
8 business. A wholesaler shall have the right to sell or
9 transfer his business or an interest in his business to any
10 person or to one or more members of his family or heirs or
11 legatees, whether the wholesaler operates as an individual,
12 a partnership, or corporation. Provided, however, the
13 consent of the brewer or beer importer in writing is
14 required for such transferee to continue as a wholesaler of
15 said brewer or beer importer, which consent shall consider
16 the personal, financial, and managerial responsibilities and
17 capabilities of such transferee and which consent shall not
18 unreasonably be withheld."

19 Section 12. Section 16-3-224, MCA, is amended to read:

20 "16-3-224. Contractual or franchise relationship --
21 existence by actions. The doing or accomplishing of any of
22 the following acts constitutes prima facie evidence of a
23 contractual or franchise relationship between a licensed
24 wholesaler and a brewer or beer importer within the
25 contemplation of 16-3-221 through 16-3-226:

1 (1) the shipment, preparation for shipment, or
2 acceptance of any order by any brewer or beer importer or
3 its agent for any beer to a licensed wholesaler within this
4 state;

5 (2) the payment by any licensed wholesaler within this
6 state or the acceptance of payment by any brewer or beer
7 importer or its agent for the shipment of an order of beer
8 intended for sale within this state."

9 Section 13. Section 16-3-225, MCA, is amended to read:

10 "16-3-225. Injunction to prevent franchise
11 cancellation. Any court of competent jurisdiction may enjoin
12 the cancellation or termination of a franchise or agreement
13 between a wholesaler and a brewer or between a wholesaler
14 and a beer importer at the instance of a wholesaler who is
15 or would be adversely affected by the cancellation or
16 termination. In granting an injunction, the court shall
17 provide that the brewer or beer importer shall not supply
18 the customers or territory of the wholesaler who is
19 servicing the territory or customers through other
20 distributors or means while the injunction is in effect."

21 Section 14. Section 16-3-226, MCA, is amended to read:

22 "16-3-226. Brewer-wholesaler or beer
23 importer-wholesaler agreements filed with department. An
24 exact copy of all agreements, contracts, or franchises
25 between a brewer or beer importer and a wholesaler shall be

1 filed with the department as a public document and shall be
2 available to any of the parties to a dispute. The
3 department, upon the instigation of any action in a court of
4 record, shall file an exact certified copy of the agreement
5 with the court for the court's consideration in determining
6 any matter before it. Any contracts, agreements, or
7 franchises not upon record with the department shall not be
8 considered by any court as having any force or effect."

9 Section 15. Section 16-3-230, MCA, is amended to read:

10 "16-3-230. Out-of-state beer required to be shipped to
11 wholesaler. All beer manufactured outside of the state of
12 Montana and shipped into Montana shall be consigned to and
13 shipped, either directly or via a licensed storage depot, to
14 a licensed wholesaler and by him unloaded into his warehouse
15 in Montana or subwarehouse in Montana. A brewer or beer
16 importer may sell only to wholesalers from a storage depot
17 in Montana and shall maintain records of all beer, including
18 the name or kind received, on hand, and sold, which records
19 may at all times be inspected by any representative of the
20 department. Said wholesaler shall distribute said beer from
21 such warehouse or subwarehouse and shall keep records at his
22 principal place of business of all beer, including the name
23 or kind received, on hand, sold, and distributed. Said
24 records may at all times be inspected by any member or
25 representative of the department."

1 Section 16. Section 16-3-241, MCA, is amended to read:

2 "16-3-241. Furnishing of fixtures or advertising
3 matter to retailers by brewers, beer importers, and
4 wholesalers unlawful -- exceptions. It shall be unlawful for
5 any brewer, beer importer, or wholesaler to lease, furnish,
6 give, or pay for any premises, furniture, fixtures,
7 equipment, signs, or any other advertising matter or any
8 other property to any retail licensee, used or to be used in
9 the dispensation of beer in and about the interior or
10 exterior of the place of business of any licensed retailer,
11 or furnish, give, or pay for any repairs, improvements,
12 painting, or decorating on or within such premises;
13 provided, however, that it shall be lawful for a brewer,
14 beer importer, or wholesaler to furnish, give, or loan to a
15 retail licensee:

16 (1) bottle openers, can openers, and trays, with or
17 without advertising matter thereon;

18 (2) advertising matter or novelties, of a value of not
19 to exceed \$50 per brewery or beer importer in any calendar
20 year to any one retailer, for display use on the interior of
21 said retailer's place of business;

22 (3) not more than two illuminated or electrical signs,
23 each of not more than 630 square inches in area, which signs
24 may bear the name, brand name, trade name, trademark, or
25 other designation indicating the name of the manufacturer of

1 beer and the place of manufacture, for display by the retail
 2 licensee on and within the interior of his place of business
 3 or in the windows inside the place of business of the
 4 licensed retailer and only if the particular brand of beer
 5 so advertised on such signs is actually available for sale
 6 on the licensee's premises at the time of such display; and
 7 (4) maintenance or repair services on draft beer
 8 equipment to keep it sanitary and in good working
 9 condition."

10 Section 17. Section 16-3-242, MCA, is amended to read:

11 "16-3-242. Financial interest in retailers prohibited.
 12 No brewer, beer importer, or wholesaler shall advance or
 13 loan money to or furnish money for or pay for or on behalf
 14 of any retailer any license or tax which may be required to
 15 be paid for any retailer, and no brewer, beer importer, or
 16 wholesaler shall be financially interested, either directly
 17 or indirectly, in the conduct or operation of the business
 18 of a retailer. A brewer, beer importer, or wholesaler shall
 19 be deemed to have such a financial interest within the
 20 meaning of this section if:

21 (1) such brewer, beer importer, or wholesaler owns or
 22 holds any interest in or a lien or mortgage against the
 23 retailer or his premises;

24 (2) such brewer, beer importer, or wholesaler is under
 25 any contract with a retailer concerning future purchases

1 and/or sale of merchandise by one from or to the other;

2 (3) any retailer holds an interest, as a stockholder
 3 or otherwise, in the business of the wholesaler."

4 Section 18. Section 16-3-243, MCA, is amended to read:

5 "16-3-243. Seven-day credit limitation. No sale or
 6 delivery of beer shall be made to any retail licensee except
 7 for cash paid within 7 days after the delivery thereof, and
 8 in no event shall any brewer, beer importer, or wholesaler
 9 extend more than 7 days' credit on account of such beer to a
 10 retail licensee, nor shall any retail licensee accept or
 11 receive delivery of such beer without agreement to pay in
 12 cash therefor within 7 days from delivery thereof. A
 13 correctly dated check which is honored upon presentment
 14 shall be considered as cash within the meaning of this code.
 15 Any extension or acceptance of credit in violation hereof
 16 shall be regarded and construed as rendering or receiving
 17 financial assistance, and the licenses of brewers, beer
 18 importers, wholesalers, and retail licensees involved in
 19 violation hereof shall be suspended or revoked, as
 20 determined by the department in its discretion."

21 Section 19. Section 16-3-244, MCA, is amended to read:

22 "16-3-244. Beer advertising limitations. It shall be
 23 lawful to advertise beer containing not more than 7% of
 24 alcohol by weight, as defined and regulated, subject to the
 25 restrictions on brewers and beer importers contained in

1 16-3-241 of this code and subject to the following
 2 restrictions on retailers. No retail licensee shall display
 3 or permit to be displayed on the exterior portion or surface
 4 of such retailer's place of business or on the exterior
 5 portion or surface of any building of which said place of
 6 business is a part or on any premises adjacent thereto,
 7 whether any of such premises be owned or leased by the
 8 retailer, any sign, poster, or advertisement bearing the
 9 name, brand name, trade name, trademark, or other
 10 designation indicating the manufacturer, brewer, beer
 11 importer, wholesaler, or place of manufacture of any beer
 12 whatsoever."

13 Section 20. Section 16-4-101, MCA, is amended to read:

14 "16-4-101. Applications for sale, import, or
 15 manufacture of beer -- qualifications of applicant. (1) Any
 16 person desiring to manufacture, import, or sell beer under
 17 the provisions of this code shall first apply to the
 18 department for a permit license to do so and pay with such
 19 application the license fee prescribed. The department shall
 20 require of such applicant satisfactory evidence that the
 21 applicant is of good moral character and a law-abiding
 22 person.

23 (2) Upon being satisfied, from such application or
 24 otherwise, that such applicant is qualified, the department
 25 shall issue such license to such person, which license shall

1 be at all times prominently displayed in the place of
 2 business of such applicant.

3 (3) If the department shall find that such applicant
 4 is not qualified, no license shall be granted and such
 5 license fee shall be returned."

6 Section 21. Section 16-4-401, MCA, is amended to read:

7 "16-4-401. License as privilege -- criteria for
 8 decision on application. (1) A license under this code is a
 9 privilege which the state may grant to an applicant and is
 10 not a right to which any applicant is entitled.

11 (2) Except as provided in subsection (6), in the case
 12 of a license that permits on-premises consumption, the
 13 department must find in every case in which it makes an
 14 order for the issuance of a new license or for the approval
 15 of the transfer of a license that:

16 (a) in the case of an individual applicant:

17 (i) the applicant will not possess an ownership
 18 interest in more than one establishment licensed under this
 19 chapter for all-beverages sales;

20 (ii) the applicant or any member of his immediate
 21 family is without financing from or any affiliation to a
 22 manufacturer, importer, bottler, or distributor of beer,
 23 wine, or liquor;

24 (iii) the applicant is a resident of the state and is
 25 qualified to vote in a state election;

1 (iv) the applicant's past record and present status as
2 a purveyor of alcoholic beverages and as a businessman and
3 citizen demonstrate that he is likely to operate his
4 establishment in compliance with all applicable laws of the
5 state and local governments; and

6 (v) the applicant is not under the age of 19 years;
7 and

8 (b) in the case of a corporate applicant:

9 (i) the owners of at least 51% of the outstanding
10 stock meet the requirements of subsection (2)(a)(iii);

11 (ii) each owner of 10% or more of the outstanding stock
12 meets the requirements for an individual applicant listed in
13 subsection (2)(a) of this section;

14 (iii) the corporation is authorized to do business in
15 Montana; and

16 (iv) in the case of a corporation not listed on a
17 national stock exchange, each owner of stock meets the
18 requirements of subsection (2)(a)(i).

19 (3) In the case of a license that permits only
20 off-premises consumption, the department must find in every
21 case in which it makes an order for the issuance of a new
22 license or for the approval of the transfer of a license
23 that:

24 (a) in the case of an individual applicant:

25 (i) the applicant will not possess an ownership

1 interest in more than one establishment licensed under this
2 chapter for all-beverages sales;

3 (ii) the applicant or any member of his immediate
4 family is without financing from or any affiliation to a
5 manufacturer, importer, bottler, or distributor of beer,
6 wine, or liquor;

7 (iii) the applicant has not been convicted of a felony
8 or, if the applicant has been convicted of a felony, his
9 rights have been restored;

10 (iv) the applicant's past record and present status as
11 a purveyor of alcoholic beverages and as a businessman and
12 citizen demonstrate that he is likely to operate his
13 establishment in compliance with all applicable laws of the
14 state and local governments; and

15 (v) the applicant is not under the age of 19 years;
16 and

17 (b) in the case of a corporate applicant:

18 (i) the owners of at least 51% of the outstanding
19 stock meet the requirements of subsection (3)(a)(iii);

20 (ii) each owner of 10% or more of the outstanding stock
21 meets the requirements for an individual listed in
22 subsection (3)(a) of this section; and

23 (iii) the corporation is authorized to do business in
24 Montana.

25 (4) In the case of a license that permits the

1 manufacture, importing, or wholesaling of an alcoholic
 2 beverage, the department must find in every case in which it
 3 makes an order for the issuance of a new license or for the
 4 approval of the transfer of a license that:

5 (a) in the case of an individual applicant:

6 (i) the applicant has no ownership interest in any
 7 establishment licensed under this chapter for retail
 8 alcoholic beverages sales;

9 (ii) the applicant has not been convicted of a felony
 10 or, if the applicant has been convicted of a felony, his
 11 rights have been restored;

12 (iii) the applicant's past record and present status as
 13 a purveyor of alcoholic beverages and as a businessman and
 14 citizen demonstrate that he is likely to operate his
 15 establishment in compliance with all applicable laws of the
 16 state and local governments;

17 (iv) the applicant is not under the age of 19 years;
 18 and

19 (v) an applicant for a wholesale license is neither a
 20 manufacturer of an alcoholic beverage nor is owned or
 21 controlled by a manufacturer of an alcoholic beverage; and

22 (b) in the case of a corporate applicant:

23 (i) the owners of at least 51% of the outstanding
 24 stock meet the requirements of subsection (4)(a)(ii);

25 (ii) each owner of 10% or more of the outstanding stock

1 meets the requirements for an individual listed in
 2 subsection (4)(a) of this section;

3 (iii) an applicant for a wholesale license is neither a
 4 manufacturer of an alcoholic beverage nor is owned or
 5 controlled by a manufacturer of an alcoholic beverage; and

6 (iv) the corporation is authorized to do business in
 7 Montana.

8 (5) In the case of a corporate applicant, the
 9 requirements of subsections (2)(b), (3)(b), and (4)(b) apply
 10 separately to each class of stock.

11 (6) The provisions of subsection (2) do not apply to
 12 an applicant for or holder of a license pursuant to
 13 16-4-302."

14 Section 22. Section 16-4-407, MCA, is amended to read:

15 "16-4-407. Expiration Suspension or revocation of
 16 licenses. Each July 1, the department shall issue licenses
 17 to brewers, beer importers, wholesalers, or retailers or for
 18 the retail sale of alcoholic beverages on an annual basis
 19 and at such fees as are prescribed by law, and such licenses
 20 are subject to suspension or revocation under 16-4-406 after
 21 midnight of June 30 of the succeeding year if the annual
 22 renewal fees required by 16-4-501 are not paid. The
 23 department shall notify each applicant for an original
 24 license or renewal that he should inform himself of
 25 applicable provisions of federal law which may require a

1 permit from a federal agency."

2 Section 23. Section 16-4-501, MCA, is amended to read:

3 "16-4-501. License and permit fees. (1) Each beer
4 licensee licensed to sell either beer or table wine only, or
5 both beer and table wine, under the provisions of this code,
6 shall pay an annual license fee as follows:

7 (a) each brewer and each beer importer, wherever
8 located, whose product is sold or offered for sale within
9 the state, \$500; for each storage depot, \$400;

10 (b) each beer wholesaler, \$400; each table wine
11 distributor, \$400;

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

14 (d) for a license to sell beer at retail for
15 off-premises consumption only, the same as a retail beer
16 license; for a license to sell table wine at retail for
17 off-premises consumption only, either alone or in
18 conjunction with beer, \$200;

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

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

25 (3) The permit fee under 16-4-301(2) is \$10 for the

1 sale of beer and table wine only or \$20 for the sale of all
2 alcoholic beverages.

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

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

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

11 (7) Each licensee licensed under the quotas of
12 16-4-201 shall pay an annual license fee as follows:

13 (a) except as hereinafter provided, for each license
14 outside of incorporated cities and incorporated towns or in
15 incorporated cities and incorporated towns with a population
16 of less than 2,000, \$250 for a unit of a nationally
17 chartered veterans' organization and \$400 for all other
18 licensees;

19 (b) except as hereinafter provided, for each license
20 in incorporated cities with a population of more than 2,000
21 and less than 5,000 or within a distance of 5 miles thereof,
22 measured in a straight line from the nearest entrance of the
23 premises to be licensed to the nearest boundary of such
24 city, \$350 for a unit of a nationally chartered veterans'
25 organization and \$500 for all other licensees;

(c) except as hereinafter provided, for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, \$500 for a unit of a nationally chartered veterans' organization and \$650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, \$650 for a unit of a nationally chartered veterans' organization and \$800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and shall be paid by the applicant. When the

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

(f) an applicant for the issuance of an original license to be located in areas described in subsection (d) of this subsection shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's ability to pay a \$20,000 license fee. A successful applicant shall pay a one-time original license fee of \$20,000 for any such license issued. The one-time license fee of \$20,000 shall not apply to any transfer or renewal of a license duly issued prior to July 1, 1974. All licenses, however, are subject to the annual renewal fee.

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

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

(10) In addition to other license fees, the department of revenue may require a licensee to pay a late fee of 33 1/3% of any license fee delinquent on July 1 of the renewal year, 66 2/3% of any license fee delinquent on

1 August 1 of the renewal year, and 100% of any license fee
2 delinquent on September 1 of the renewal year."

3 NEW SECTION. Section 24. Extension of authority. Any
4 existing authority of the department of revenue to make
5 rules on the subject of the provisions of this act is
6 extended to the provisions of this act.

7 NEW SECTION. Section 25. Authority to proceed with
8 rulemaking. The department of revenue may initiate
9 rulemaking proceedings under section 24 on or after passage
10 and approval of this act, but no rules under section 24 may
11 be made effective prior to the effective date of sections 1
12 through 23.

13 NEW SECTION. Section 26. Effective date. (1) Sections
14 1 through 23 and this subsection (1) are effective July 1,
15 1985.

16 (2) Sections 24, 25, and this subsection (2) are
17 effective on passage and approval.

-End-

STATE OF MONTANA
FISCAL NOTE

REQUEST NO. FNN054-85

Form **BD-15**

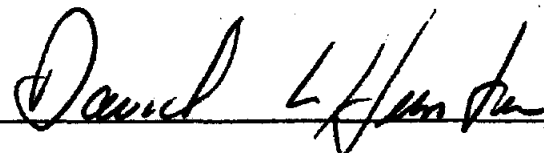
In compliance with a written request received January 10, 19 85, there is hereby submitted a Fiscal Note for H.B. 32 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION:

An act establishing a beer importer license, licensing criteria, and procedures for importing beer into Montana; defining "import"; establishing a license fee and providing effective dates.

FISCAL IMPACT

At the present time importers are considered brewers and charged an annual license fee of \$500. This bill proposes an annual license fee of \$500 for beer importers. Therefore, no effect on revenue will result.


BUDGET DIRECTOR
Office of Budget and Program Planning
Date: Jan 15, 1985

APPROVED BY COMM. ON
BUSINESS AND LABOR

HOUSE BILL NO. 32

INTRODUCED BY KEENAN

BY REQUEST OF THE DEPARTMENT OF REVENUE

AND THE REVENUE OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A BEER IMPORTER LICENSE, LICENSING CRITERIA, AND PROCEDURES FOR IMPORTING BEER INTO MONTANA; DEFINING "IMPORT"; ESTABLISHING A LICENSE FEE; AMENDING SECTIONS 16-1-106, 16-3-101, 16-3-104, 16-3-201, 16-3-211 THROUGH ~~16-3-214~~ 16-3-213, 16-3-221 THROUGH 16-3-226, 16-3-230, 16-3-241 THROUGH 16-3-244, 16-4-101, 16-4-401, 16-4-407, AND 16-4-501, MCA; AND PROVIDING EFFECTIVE DATES."

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) "BEER IMPORTER" MEANS A PERSON OTHER THAN A BREWER WHO IMPORTS MALT BEVERAGES.

~~(5)(6)~~ "Brewer" means a person who produces malt beverages.

~~(6)(7)~~ "Department" means the department of revenue.

~~(7)(8)~~ "Immediate family" means a spouse, dependent children, or dependent parents.

~~(8)(9)~~ "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.

~~(8)(9)(10)~~ "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)(10)(11)~~ "Liquor" means an alcoholic beverage except beer and table wine.

~~(10)(11)(12)~~ "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

1 human food consumption.

2 ~~(11)~~~~(12)~~(13) "Package" means a container or receptacle
3 used for holding an alcoholic beverage.

4 ~~(12)~~~~(13)~~(14) "Posted price" means the retail price of
5 liquor as fixed and determined by the department and in
6 addition thereto an excise and license tax as provided in
7 this code.

8 ~~(13)~~~~(14)~~(15) "Proof gallon" means a U.S. gallon of
9 liquor at 60 degrees on the Fahrenheit scale that contains
10 50% of alcohol by volume.

11 ~~(14)~~~~(15)~~(16) "Public place" means a place, building, or
12 conveyance to which the public has or may be permitted to
13 have access and any place of public resort.

14 ~~(15)~~~~(16)~~(17) "Rules" means rules published by the
15 department pursuant to this code.

16 ~~(16)~~~~(17)~~(18) "State liquor facility" means a facility
17 owned or under control of the department for the purpose of
18 receiving, storing, transporting, or selling alcoholic
19 beverages.

20 ~~(17)~~~~(18)~~(19) "State liquor store" means a retail store
21 operated by the department in accordance with this code for
22 the purpose of selling liquor.

23 ~~(18)~~~~(19)~~(20) "Storage depot" means a building or
24 structure owned or operated by a brewer at any point in the
25 state of Montana off and away from the premises of a

1 brewery, and which structure is equipped with refrigeration
2 or cooling apparatus for the storage of beer and from which
3 a brewer may sell or distribute beer as permitted by this
4 code.

5 ~~(20)~~"Subwarehouse" means a building or structure owned
6 or operated by a licensed beer wholesaler or table wine
7 distributor, located at a site in Montana other than the
8 site of such beer wholesaler's or table wine distributor's
9 warehouse or principal place of business, and used for the
10 receiving, storage, and distribution of beer or table wine
11 as permitted by this code.

12 ~~(19)~~(21) "Table wine" means wine as defined below which
13 contains not more than 14% alcohol by volume.

14 ~~(20)~~(22) "Warehouse" means a building or structure
15 located in Montana owned or operated by a licensed beer
16 wholesaler or table wine distributor for the receiving,
17 storage, and distribution of beer or table wine as permitted
18 by this code.

19 ~~(21)~~(23) "Wine" means an alcoholic beverage made from
20 the normal alcoholic fermentation of the juice of sound,
21 ripe fruit or other agricultural products without addition
22 or abstraction, except as may occur in the usual cellar
23 treatment of clarifying and aging, and that contains not
24 less than 7% or more than 24% of alcohol by volume. Wine
25 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."

Section 2. Section 16-3-101, MCA, is amended to read:

"16-3-101. Liquor dispensed only in accordance with code. No brewer, beer importer, distiller, or manufacturer of liquor shall, within the state, by himself, his clerk, servant, or agent, give to any person any liquor except as may be permitted by and in accordance with the rules made under this code."

Section 3. Section 16-3-104, MCA, is amended to read:

"16-3-104. Common carriers to purchase beer from brewer, beer importer, or wholesaler. It shall be unlawful for the operator of any common carrier or its employees to make sale of or dispose of any beer or malt liquors except such as shall have been lawfully acquired or purchased from a duly licensed brewer, beer importer, or wholesaler."

Section 4. Section 16-3-201, MCA, is amended to read:

"16-3-201. Possession, manufacture, importation, or disposal of beer in manner other than prescribed unlawful. It shall be unlawful to manufacture, import, sell or dispose of, or possess for the purpose of sale beer of any kind or character of an alcoholic content greater than herein

prescribed or other than in the manner permitted by this code."

Section 5. Section 16-3-211, MCA, is amended to read:

"16-3-211. Monthly report of brewer or beer importer -- inspection of books and premises. Every brewer and every beer importer licensed to do business in this state shall, on or before the 15th day of each month, in the manner and form as shall be prescribed by the department, make an exact return to the department of the amount of beer manufactured or imported by him and the amount sold by him in the previous month and of his inventory. The department shall have the right at any time to make an examination of any brewer's or beer importer's books and of his premises and otherwise check the accuracy of any such return or to check the alcoholic content of beer manufactured or imported by him."

Section 6. Section 16-3-212, MCA, is amended to read:

"16-3-212. Brewers' or beer importers' sales to wholesalers lawful. It shall be lawful for any licensed brewer to sell or ~~dispose of~~ deliver beer manufactured by him to any licensed wholesaler. It shall be lawful for any licensed beer importer to sell or deliver beer imported by him to any licensed wholesaler."

Section 7. Section 16-3-213, MCA, is amended to read:

"16-3-213. Brewers or beer importers not to retail

beer -- original package exception. It shall be unlawful for any brewer or breweries or beer importer to have or own any permit to sell or retail beer at any place or premises, it being the declared intention to prohibit brewers and beer importers from engaging in the retail dispensation of beer; provided, however, that this shall not be so construed as to prohibit breweries from making sale and delivery of beer manufactured by them, in original packages, at either wholesale or retail."

~~Section 8. Section 16-3-214, MCA, is amended to read:~~

~~"16-3-214. Beer sales by brewers and beer importers.~~

~~Subject to the limitations and restrictions contained in this code, any brewer or any beer importer duly licensed as such by the United States of America who manufactures beer in or imports beer into the state of Montana, upon payment of the annual license fee imposed by 16-4-501 and upon presenting satisfactory evidence to the department as required by 16-4-101, shall be licensed by the department, in accordance with the provisions of this code and such rules as may be prescribed by the department, to:~~

~~(1) sell and deliver beer to:~~

~~(a) a vendor;~~

~~(b) any licensees who are entitled to purchase beer from a brewer or beer importer under this code; or~~

~~(c) the public; or~~

~~(2) do any one or more of such acts of sale and delivery of beer;"~~

Section 8. Section 16-3-221, MCA, is amended to read:

"16-3-221. Illegal acts by brewers or beer importers.

It is unlawful for any brewer or beer importer or any officer, agent, or representative of any brewer or beer importer to:

(1) coerce, or attempt to coerce, or persuade any person licensed to sell beer at wholesale to enter into any agreement or to take any action which would violate or tend to violate any of the laws of this state or any rules promulgated by the department;

(2) sell its products in the state without a written contract, which conforms to the provisions of 16-3-221 through 16-3-226, with each appointed licensed wholesale distributor;

(3) designate or allow more than one wholesale distributor to sell or distribute a specific brand of the brewer's or beer importer's products to retail licensees in the same area, provided that nothing herein shall prohibit the brewer or beer importer from designating more than one wholesale distributor to sell or distribute different brands of the same manufacturer to retail licensees in the same area; and

(4) cancel or terminate, except for just cause or in

1 accordance with the current terms and standards established
 2 by the brewer or beer importer then equally applicable to
 3 all wholesalers, any agreement or contract, written or oral,
 4 or the franchise of any wholesaler existing on January 1,
 5 1974, or thereafter entered into to sell beer manufactured
 6 by the brewer or imported by the beer importer. A brewer or
 7 beer importer may, notwithstanding the preceding sentence,
 8 make reasonable classifications among wholesalers. If a
 9 brewer or beer importer cancels or terminates a wholesaler's
 10 franchise, the brewer or beer importer has the burden of
 11 proving the classification was reasonable and not arbitrary.
 12 After July 1, 1974, the provisions of 16-3-221 through
 13 16-3-226 shall be a part of any franchise, contract,
 14 agreement, or understanding, whether written or oral,
 15 between any wholesaler of beer licensed to do business in
 16 this state and any manufacturer or beer importer doing
 17 business with the licensed wholesaler just as though the
 18 provisions had been specifically agreed upon between the
 19 wholesaler and the manufacturer or beer importer."

20 Section 9. Section 16-3-222, MCA, is amended to read:

21 "16-3-222. Mandatory provisions of brewer-wholesaler
 22 or beer importer-wholesaler contracts, agreements, and
 23 franchises. All contracts, agreements, or franchises between
 24 a brewer and a wholesaler or a beer importer and a
 25 wholesaler shall specifically set forth or contain the

1 following:

2 (1) that the brewer or beer importer or any officer,
 3 agent, or representative of any brewer or beer importer and
 4 the wholesaler involved mutually shall determine the size or
 5 extent of the area in which the wholesaler may sell or
 6 distribute the products of the brewer or beer importer to
 7 the retail licensees. Said territory will be the territory
 8 agreed upon between the wholesaler and brewer or the
 9 wholesaler and beer importer and may not be changed without
 10 the mutual consent of both the wholesaler and brewer or the
 11 wholesaler and beer importer.

12 (2) the agreed-upon brands of the brewer or beer
 13 importer to be sold by the wholesaler;

14 (3) that the brewer or beer importer recognizes that
 15 the wholesaler is free to manage his business in the manner
 16 the wholesaler deems best and that this prerogative vests in
 17 the wholesaler the exclusive right to establish selling
 18 prices, to select the brands he wishes to handle, to
 19 determine the effort and resources the wholesaler will exert
 20 to develop and promote the sale of the brewer's or beer
 21 importer's products handled by the wholesaler;

22 (4) a procedure for the review of alleged wholesaler
 23 deficiencies, including the submission in writing to the
 24 wholesaler by the brewer or beer importer of said
 25 deficiencies, if the deficiencies are susceptible of

1 correction and if the wholesaler desires to correct said
2 deficiencies, and that a reasonable period of time shall be
3 given the wholesaler for rectification of said deficiencies
4 prior to any notice of intent to terminate;

5 (5) a termination clause providing that the brewer or
6 beer importer shall deliver, in writing, to the wholesaler a
7 60-day notice of intent to terminate the agreement,
8 contract, or franchise."

9 Section 10. Section 16-3-223, MCA, is amended to read:

10 "16-3-223. Transfer of wholesaler's interest in
11 business. A wholesaler shall have the right to sell or
12 transfer his business or an interest in his business to any
13 person or to one or more members of his family or heirs or
14 legatees, whether the wholesaler operates as an individual,
15 a partnership, or corporation. Provided, however, the
16 consent of the brewer or beer importer in writing is
17 required for such transferee to continue as a wholesaler of
18 said brewer or beer importer, which consent shall consider
19 the personal, financial, and managerial responsibilities and
20 capabilities of such transferee and which consent shall not
21 unreasonably be withheld."

22 Section 11. Section 16-3-224, MCA, is amended to read:

23 "16-3-224. Contractual or franchise relationship --
24 existence by actions. The doing or accomplishing of any of
25 the following acts constitutes prima facie evidence of a

1 contractual or franchise relationship between a licensed
2 wholesaler and a brewer or beer importer within the
3 contemplation of 16-3-221 through 16-3-226:

4 (1) the shipment, preparation for shipment, or
5 acceptance of any order by any brewer or beer importer or
6 its agent for any beer to a licensed wholesaler within this
7 state;

8 (2) the payment by any licensed wholesaler within this
9 state or the acceptance of payment by any brewer or beer
10 importer or its agent for the shipment of an order of beer
11 intended for sale within this state."

12 Section 12. Section 16-3-225, MCA, is amended to read:

13 "16-3-225. Injunction to prevent franchise
14 cancellation. Any court of competent jurisdiction may enjoin
15 the cancellation or termination of a franchise or agreement
16 between a wholesaler and a brewer or between a wholesaler
17 and a beer importer at the instance of a wholesaler who is
18 or would be adversely affected by the cancellation or
19 termination. In granting an injunction, the court shall
20 provide that the brewer or beer importer shall not supply
21 the customers or territory of the wholesaler who is
22 servicing the territory or customers through other
23 distributors or means while the injunction is in effect."

24 Section 13. Section 16-3-226, MCA, is amended to read:

25 "16-3-226. Brewer-wholesaler or beer

1 importer-wholesaler agreements filed with department. An
 2 exact copy of all agreements, contracts, or franchises
 3 between a brewer or beer importer and a wholesaler shall be
 4 filed with the department as a public document and shall be
 5 available to any of the parties to a dispute. The
 6 department, upon the instigation of any action in a court of
 7 record, shall file an exact certified copy of the agreement
 8 with the court for the court's consideration in determining
 9 any matter before it. Any contracts, agreements, or
 10 franchises not upon record with the department shall not be
 11 considered by any court as having any force or effect."

12 Section 14. Section 16-3-230, MCA, is amended to read:

13 "16-3-230. Out-of-state beer required to be shipped to
 14 wholesaler. All beer manufactured outside of the state of
 15 Montana and shipped into Montana shall be consigned to and
 16 shipped, either directly or via a licensed storage depot, to
 17 a licensed wholesaler and by him unloaded into his warehouse
 18 in Montana or subwarehouse in Montana. A brewer or beer
 19 importer may sell only to wholesalers from a storage depot
 20 in Montana and shall maintain records of all beer, including
 21 the name or kind received, on hand, and sold, which records
 22 may at all times be inspected by any representative of the
 23 department. Said wholesaler shall distribute said beer from
 24 such warehouse or subwarehouse and shall keep records at his
 25 principal place of business of all beer, including the name

1 or kind received, on hand, sold, and distributed. Said
 2 records may at all times be inspected by any member or
 3 representative of the department."

4 Section 15. Section 16-3-241, MCA, is amended to read:

5 "16-3-241. Furnishing of fixtures or advertising
 6 matter to retailers by brewers, beer importers, and
 7 wholesalers unlawful -- exceptions. It shall be unlawful for
 8 any brewer, beer importer, or wholesaler to lease, furnish,
 9 give, or pay for any premises, furniture, fixtures,
 10 equipment, signs, or any other advertising matter or any
 11 other property to any retail licensee, used or to be used in
 12 the dispensation of beer in and about the interior or
 13 exterior of the place of business of any licensed retailer,
 14 or furnish, give, or pay for any repairs, improvements,
 15 painting, or decorating on or within such premises;
 16 provided, however, that it shall be lawful for a brewer,
 17 beer importer, or wholesaler to furnish, give, or loan to a
 18 retail licensee:

19 (1) bottle openers, can openers, and trays, with or
 20 without advertising matter thereon;

21 (2) advertising matter or novelties, of a value of not
 22 to exceed \$50 per brewery or beer importer in any calendar
 23 year to any one retailer, for display use on the interior of
 24 said retailer's place of business;

25 (3) not more than two illuminated or electrical signs,

each of not more than 630 square inches in area, which signs may bear the name, brand name, trade name, trademark, or other designation indicating the name of the manufacturer of beer and the place of manufacture, for display by the retail licensee on and within the interior of his place of business or in the windows inside the place of business of the licensed retailer and only if the particular brand of beer so advertised on such signs is actually available for sale on the licensee's premises at the time of such display; and

(4) maintenance or repair services on draft beer equipment to keep it sanitary and in good working condition."

Section 16. Section 16-3-242, MCA, is amended to read:

"16-3-242. Financial interest in retailers prohibited.

No brewer, beer importer, or wholesaler shall advance or loan money to or furnish money for or pay for or on behalf of any retailer any license or tax which may be required to be paid for any retailer, and no brewer, beer importer, or wholesaler shall be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer. A brewer, beer importer, or wholesaler shall be deemed to have such a financial interest within the meaning of this section if:

(1) such brewer, beer importer, or wholesaler owns or holds any interest in or a lien or mortgage against the

retailer or his premises;

(2) such brewer, beer importer, or wholesaler is under any contract with a retailer concerning future purchases and/or sale of merchandise by one from or to the other;

(3) any retailer holds an interest, as a stockholder or otherwise, in the business of the wholesaler."

Section 17. Section 16-3-243, MCA, is amended to read:

"16-3-243. Seven-day credit limitation. No sale or delivery of beer shall be made to any retail licensee except for cash paid within 7 days after the delivery thereof, and in no event shall any brewer, beer importer, or wholesaler extend more than 7 days' credit on account of such beer to a retail licensee, nor shall any retail licensee accept or receive delivery of such beer without agreement to pay in cash therefor within 7 days from delivery thereof. A correctly dated check which is honored upon presentment shall be considered as cash within the meaning of this code. Any extension or acceptance of credit in violation hereof shall be regarded and construed as rendering or receiving financial assistance, and the licenses of brewers, beer importers, wholesalers, and retail licensees involved in violation hereof shall be suspended or revoked, as determined by the department in its discretion."

Section 18. Section 16-3-244, MCA, is amended to read:

"16-3-244. Beer advertising limitations. It shall be

1 lawful to advertise beer containing not more than 7% of
 2 alcohol by weight, as defined and regulated, subject to the
 3 restrictions on brewers and beer importers contained in
 4 16-3-241 of this code and subject to the following
 5 restrictions on retailers. No retail licensee shall display
 6 or permit to be displayed on the exterior portion or surface
 7 of such retailer's place of business or on the exterior
 8 portion or surface of any building of which said place of
 9 business is a part or on any premises adjacent thereto,
 10 whether any of such premises be owned or leased by the
 11 retailer, any sign, poster, or advertisement bearing the
 12 name, brand name, trade name, trademark, or other
 13 designation indicating the manufacturer, brewer, beer
 14 importer, wholesaler, or place of manufacture of any beer
 15 whatsoever."

16 Section 19. Section 16-4-101, MCA, is amended to read:

17 "16-4-101. Applications for sale, import, or
 18 manufacture of beer -- qualifications of applicant. (1) Any
 19 person desiring to manufacture, import, or sell beer under
 20 the provisions of this code shall first apply to the
 21 department for a permit license to do so and pay with such
 22 application the license fee prescribed. The department shall
 23 require of such applicant satisfactory evidence that the
 24 applicant is of good moral character and a law-abiding
 25 person.

1 (2) Upon being satisfied, from such application or
 2 otherwise, that such applicant is qualified, the department
 3 shall issue such license to such person, which license shall
 4 be at all times prominently displayed in the place of
 5 business of such applicant.

6 (3) If the department shall find that such applicant
 7 is not qualified, no license shall be granted and such
 8 license fee shall be returned."

9 Section 20. Section 16-4-401, MCA, is amended to read:

10 "16-4-401. License as privilege -- criteria for
 11 decision on application. (1) A license under this code is a
 12 privilege which the state may grant to an applicant and is
 13 not a right to which any applicant is entitled.

14 (2) Except as provided in subsection (6), in the case
 15 of a license that permits on-premises consumption, the
 16 department must find in every case in which it makes an
 17 order for the issuance of a new license or for the approval
 18 of the transfer of a license that:

19 (a) in the case of an individual applicant:

20 (i) the applicant will not possess an ownership
 21 interest in more than one establishment licensed under this
 22 chapter for all-beverages sales;

23 (ii) the applicant or any member of his immediate
 24 family is without financing from or any affiliation to a
 25 manufacturer, importer, bottler, or distributor of beer,

1 wine, or liquor;

2 (iii) the applicant is a resident of the state and is

3 qualified to vote in a state election;

4 (iv) the applicant's past record and present status as

5 a purveyor of alcoholic beverages and as a businessman and

6 citizen demonstrate that he is likely to operate his

7 establishment in compliance with all applicable laws of the

8 state and local governments; and

9 (v) the applicant is not under the age of 19 years;

10 and

11 (b) in the case of a corporate applicant:

12 (i) the owners of at least 51% of the outstanding

13 stock meet the requirements of subsection (2)(a)(iii);

14 (ii) each owner of 10% or more of the outstanding stock

15 meets the requirements for an individual applicant listed in

16 subsection (2)(a) of this section;

17 (iii) the corporation is authorized to do business in

18 Montana; and

19 (iv) in the case of a corporation not listed on a

20 national stock exchange, each owner of stock meets the

21 requirements of subsection (2)(a)(i).

22 (3) In the case of a license that permits only

23 off-premises consumption, the department must find in every

24 case in which it makes an order for the issuance of a new

25 license or for the approval of the transfer of a license

1 that:

2 (a) in the case of an individual applicant:

3 (i) the applicant will not possess an ownership

4 interest in more than one establishment licensed under this

5 chapter for all-beverages sales;

6 (ii) the applicant or any member of his immediate

7 family is without financing from or any affiliation to a

8 manufacturer, importer, bottler, or distributor of beer,

9 wine, or liquor;

10 (iii) the applicant has not been convicted of a felony

11 or, if the applicant has been convicted of a felony, his

12 rights have been restored;

13 (iv) the applicant's past record and present status as

14 a purveyor of alcoholic beverages and as a businessman and

15 citizen demonstrate that he is likely to operate his

16 establishment in compliance with all applicable laws of the

17 state and local governments; and

18 (v) the applicant is not under the age of 19 years;

19 and

20 (b) in the case of a corporate applicant:

21 (i) the owners of at least 51% of the outstanding

22 stock meet the requirements of subsection (3)(a)(iii);

23 (ii) each owner of 10% or more of the outstanding stock

24 meets the requirements for an individual listed in

25 subsection (3)(a) of this section; and

1 (iii) the corporation is authorized to do business in
2 Montana.

3 (4) In the case of a license that permits the
4 manufacture, importing, or wholesaling of an alcoholic
5 beverage, the department must find in every case in which it
6 makes an order for the issuance of a new license or for the
7 approval of the transfer of a license that:

8 (a) in the case of an individual applicant:

9 (i) the applicant has no ownership interest in any
10 establishment licensed under this chapter for retail
11 alcoholic beverages sales;

12 (ii) the applicant has not been convicted of a felony
13 or, if the applicant has been convicted of a felony, his
14 rights have been restored;

15 (iii) the applicant's past record and present status as
16 a purveyor of alcoholic beverages and as a businessman and
17 citizen demonstrate that he is likely to operate his
18 establishment in compliance with all applicable laws of the
19 state and local governments;

20 (iv) the applicant is not under the age of 19 years;
21 and

22 (v) an applicant for a wholesale license is neither a
23 manufacturer of an alcoholic beverage nor is owned or
24 controlled by a manufacturer of an alcoholic beverage; and

25 (b) in the case of a corporate applicant:

1 (i) the owners of at least 51% of the outstanding
2 stock meet the requirements of subsection (4)(a)(ii);

3 (ii) each owner of 10% or more of the outstanding stock
4 meets the requirements for an individual listed in
5 subsection (4)(a) of this section;

6 (iii) an applicant for a wholesale license is neither a
7 manufacturer of an alcoholic beverage nor is owned or
8 controlled by a manufacturer of an alcoholic beverage; and

9 (iv) the corporation is authorized to do business in
10 Montana.

11 (5) In the case of a corporate applicant, the
12 requirements of subsections (2)(b), (3)(b), and (4)(b) apply
13 separately to each class of stock.

14 (6) The provisions of subsection (2) do not apply to
15 an applicant for or holder of a license pursuant to
16 16-4-302."

17 Section 21. Section 16-4-407, MCA, is amended to read:

18 "16-4-407. Expiration Suspension or revocation of
19 licenses. Each July 1, the department shall issue licenses
20 to brewers, beer importers, wholesalers, or retailers or for
21 the retail sale of alcoholic beverages on an annual basis
22 and at such fees as are prescribed by law, and such licenses
23 are subject to suspension or revocation under 16-4-406 after
24 midnight of June 30 of the succeeding year if the annual
25 renewal fees required by 16-4-501 are not paid. The

1 department shall notify each applicant for an original
2 license or renewal that he should inform himself of
3 applicable provisions of federal law which may require a
4 permit from a federal agency."

5 Section 22. Section 16-4-501, MCA, is amended to read:

6 "16-4-501. License and permit fees. (1) Each beer
7 licensee licensed to sell either beer or table wine only, or
8 both beer and table wine, under the provisions of this code,
9 shall pay an annual license fee as follows:

10 (a) each brewer and each beer importer, wherever
11 located, whose product is sold or offered for sale within
12 the state, \$500; for each storage depot, \$400;

13 (b) each beer wholesaler, \$400; each table wine
14 distributor, \$400;

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

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

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

24 (2) The permit fee under 16-4-301(1) is computed at
25 the rate of \$15 a day for each day beer and table wine are

1 sold at those events lasting 2 or more days but in no case
2 be less than \$30.

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

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

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

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

14 (7) Each licensee licensed under the quotas of
15 16-4-201 shall pay an annual license fee as follows:

16 (a) except as hereinafter provided, for each license
17 outside of incorporated cities and incorporated towns or in
18 incorporated cities and incorporated towns with a population
19 of less than 2,000, \$250 for a unit of a nationally
20 chartered veterans' organization and \$400 for all other
21 licensees;

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

premises to be licensed to the nearest boundary of such city, \$350 for a unit of a nationally chartered veterans' organization and \$500 for all other licensees;

(c) except as hereinafter provided, for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, \$500 for a unit of a nationally chartered veterans' organization and \$650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, \$650 for a unit of a nationally chartered veterans' organization and \$800 for all other licensees;

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

incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and shall be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and shall be paid by the applicant.

(f) an applicant for the issuance of an original license to be located in areas described in subsection (d) of this subsection shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's ability to pay a \$20,000 license fee. A successful applicant shall pay a one-time original license fee of \$20,000 for any such license issued. The one-time license fee of \$20,000 shall not apply to any transfer or renewal of a license duly issued prior to July 1, 1974. All licenses, however, are subject to the annual renewal fee.

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

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

(10) In addition to other license fees, the department

1 of revenue may require a licensee to pay a late fee of
2 33 1/3% of any license fee delinquent on July 1 of the
3 renewal year, 66 2/3% of any license fee delinquent on
4 August 1 of the renewal year, and 100% of any license fee
5 delinquent on September 1 of the renewal year."

6 NEW SECTION. Section 23. Extension of authority. Any
7 existing authority of the department of revenue to make
8 rules on the subject of the provisions of this act is
9 extended to the provisions of this act.

10 NEW SECTION. Section 24. Authority to proceed with
11 rulemaking. The department of revenue may initiate
12 rulemaking proceedings under section ~~24~~ 23 on or after
13 passage and approval of this act, but no rules under section
14 ~~24~~ 23 may be made effective prior to the effective date of
15 sections 1 through ~~23~~ 22.

16 NEW SECTION. Section 25. Effective date. (1) Sections
17 1 through ~~23~~ 22 and this subsection (1) are effective July
18 1, 1985.

19 (2) Sections ~~24~~ 23, ~~25~~ 24, and this subsection (2) are
20 effective on passage and approval.

-End-

1 HOUSE BILL NO. 32

2 INTRODUCED BY KEENAN

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4 AND THE REVENUE OVERSIGHT COMMITTEE

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A BEER
7 IMPORTER LICENSE, LICENSING CRITERIA, AND PROCEDURES FOR
8 IMPORTING BEER INTO MONTANA; DEFINING "IMPORT"; ESTABLISHING
9 A LICENSE FEE; AMENDING SECTIONS 16-1-106, 16-3-101,
10 16-3-104, 16-3-201, 16-3-211 THROUGH ~~16-3-214~~ 16-3-213,
11 16-3-221 THROUGH 16-3-226, 16-3-230, 16-3-241 THROUGH
12 16-3-244, 16-4-101, 16-4-401, 16-4-407, AND 16-4-501, MCA;
13 AND PROVIDING EFFECTIVE DATES."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Section 16-1-106, MCA, is amended to read:

17 "16-1-106. Definitions. As used in this code, the
18 following definitions apply:19 (1) "Agency agreement" means an agreement between the
20 department and a person appointed to sell liquor as a
21 commission merchant rather than as an employee.22 (2) "Alcohol" means ethyl alcohol, also called
23 ethanol, or the hydrated oxide of ethyl.24 (3) "Alcoholic beverage" means a compound produced and
25 sold for human consumption as a drink that contains more

1 than .5% of alcohol by volume.

2 (4) "Beer" means a malt beverage containing not more
3 than 7% of alcohol by weight.4 (5) "BEER IMPORTER" MEANS A PERSON OTHER THAN A BREWER
5 WHO IMPORTS MALT BEVERAGES.6 ~~(5)(6)~~ "Brewer" means a person who produces malt
7 beverages.8 ~~(6)(7)~~ "Department" means the department of revenue.9 ~~(7)(8)~~ "Immediate family" means a spouse, dependent
10 children, or dependent parents.11 ~~(8)(9)~~ "Import" means to transfer beer or table wine
12 from outside the state of Montana into the state of Montana.13 ~~(9)(10)~~ "Industrial use" means a use described as
14 industrial use by the federal Alcohol Administration Act and
15 the federal rules and regulations of 27 CFR.16 ~~(10)(11)~~ "Liquor" means an alcoholic beverage except
17 beer and table wine.18 ~~(11)(12)~~ "Malt beverage" means an alcoholic
19 beverage made by the fermentation of an infusion or
20 decoction, or a combination of both, in potable brewing
21 water, of malted barley with or without hops or their parts
22 or their products and with or without other malted cereals
23 and with or without the addition of unmalted or prepared
24 cereals, other carbohydrates, or products prepared therefrom
25 and with or without other wholesome products suitable for

1 human food consumption.

2 ~~(11)~~~~(12)~~(13) "Package" means a container or receptacle
3 used for holding an alcoholic beverage.

4 ~~(12)~~~~(13)~~(14) "Posted price" means the retail price of
5 liquor as fixed and determined by the department and in
6 addition thereto an excise and license tax as provided in
7 this code.

8 ~~(13)~~~~(14)~~(15) "Proof gallon" means a U.S. gallon of
9 liquor at 60 degrees on the Fahrenheit scale that contains
10 50% of alcohol by volume.

11 ~~(14)~~~~(15)~~(16) "Public place" means a place, building, or
12 conveyance to which the public has or may be permitted to
13 have access and any place of public resort.

14 ~~(15)~~~~(16)~~(17) "Rules" means rules published by the
15 department pursuant to this code.

16 ~~(16)~~~~(17)~~(18) "State liquor facility" means a facility
17 owned or under control of the department for the purpose of
18 receiving, storing, transporting, or selling alcoholic
19 beverages.

20 ~~(17)~~~~(18)~~(19) "State liquor store" means a retail store
21 operated by the department in accordance with this code for
22 the purpose of selling liquor.

23 ~~(18)~~~~(19)~~(20) "Storage depot" means a building or
24 structure owned or operated by a brewer at any point in the
25 state of Montana off and away from the premises of a

1 brewery, and which structure is equipped with refrigeration
2 or cooling apparatus for the storage of beer and from which
3 a brewer may sell or distribute beer as permitted by this
4 code.

5 ~~(20)~~ "Subwarehouse" means a building or structure owned
6 or operated by a licensed beer wholesaler or table wine
7 distributary located at a site in Montana other than the
8 site of such beer wholesaler's or table wine distributor's
9 warehouse or principal place of business, and used for the
10 receiving, storage, and distribution of beer or table wine
11 as permitted by this code.

12 ~~(19)~~(21) "Table wine" means wine as defined below which
13 contains not more than 14% alcohol by volume.

14 ~~(20)~~(22) "Warehouse" means a building or structure
15 located in Montana owned or operated by a licensed beer
16 wholesaler or table wine distributor for the receiving,
17 storage, and distribution of beer or table wine as permitted
18 by this code.

19 ~~(21)~~(23) "Wine" means an alcoholic beverage made from
20 the normal alcoholic fermentation of the juice of sound,
21 ripe fruit or other agricultural products without addition
22 or abstraction, except as may occur in the usual cellar
23 treatment of clarifying and aging, and that contains not
24 less than 7% or more than 24% of alcohol by volume. Wine
25 may be ameliorated to correct natural deficiencies,

1 sweetened, and fortified in accordance with applicable
2 federal regulations and the customs and practices of the
3 industry. Other alcoholic beverages not defined as above
4 but made in the manner of wine and labeled and sold as wine
5 in accordance with federal regulations are also wine."

6 Section 2. Section 16-3-101, MCA, is amended to read:

7 "16-3-101. Liquor dispensed only in accordance with
8 code. No brewer, beer importer, distiller, or manufacturer
9 of liquor shall, within the state, by himself, his clerk,
10 servant, or agent, give to any person any liquor except as
11 may be permitted by and in accordance with the rules made
12 under this code."

13 Section 3. Section 16-3-104, MCA, is amended to read:

14 "16-3-104. Common carriers to purchase beer from
15 brewer, beer importer, or wholesaler. It shall be unlawful
16 for the operator of any common carrier or its employees to
17 make sale of or dispose of any beer or malt liquors except
18 such as shall have been lawfully acquired or purchased from
19 a duly licensed brewer, beer importer, or wholesaler."

20 Section 4. Section 16-3-201, MCA, is amended to read:

21 "16-3-201. Possession, manufacture, importation, or
22 disposal of beer in manner other than prescribed unlawful.
23 It shall be unlawful to manufacture, import, sell or dispose
24 of, or possess for the purpose of sale beer of any kind or
25 character of an alcoholic content greater than herein

1 prescribed or other than in the manner permitted by this
2 code."

3 Section 5. Section 16-3-211, MCA, is amended to read:

4 "16-3-211. Monthly report of brewer or beer importer
5 -- inspection of books and premises. Every brewer and every
6 beer importer licensed to do business in this state shall,
7 on or before the 15th day of each month, in the manner and
8 form as shall be prescribed by the department, make an exact
9 return to the department of the amount of beer manufactured
10 or imported by him and the amount sold by him in the
11 previous month and of his inventory. The department shall
12 have the right at any time to make an examination of any
13 brewer's or beer importer's books and of his premises and
14 otherwise check the accuracy of any such return or to check
15 the alcoholic content of beer manufactured or imported by
16 him."

17 Section 6. Section 16-3-212, MCA, is amended to read:

18 "16-3-212. Brewers' or beer importers' sales to
19 wholesalers lawful. It shall be lawful for any licensed
20 brewer to sell or dispose-of deliver beer manufactured by
21 him to any licensed wholesaler. It shall be lawful for any
22 licensed beer importer to sell or deliver beer imported by
23 him to any licensed wholesaler."

24 Section 7. Section 16-3-213, MCA, is amended to read:

25 "16-3-213. Brewers or beer importers not to retail

beer -- original package exception. It shall be unlawful for any brewer or breweries or beer importer to have or own any permit to sell or retail beer at any place or premises, it being the declared intention to prohibit brewers and beer importers from engaging in the retail dispensation of beer; provided, however, that this shall not be so construed as to prohibit breweries from making sale and delivery of beer manufactured by them, in original packages, at either wholesale or retail."

Section 8. ~~Section 16-3-214, MCA, is amended to read:~~

~~"16-3-214. Beer sales by brewers and beer importers.~~

~~Subject to the limitations and restrictions contained in this code, any brewer or any beer importer duly licensed as such by the United States of America who manufactures beer in or imports beer into the state of Montana, upon payment of the annual license fee imposed by 16-4-501 and upon presenting satisfactory evidence to the department as required by 16-4-101, shall be licensed by the department, in accordance with the provisions of this code and such rules as may be prescribed by the department, to:~~

~~(1) sell and deliver beer to:~~

~~(a) a vendor;~~

~~(b) any licensees who are entitled to purchase beer from a brewer or beer importer under this code; or~~

~~(c) the public; or~~

~~(2) do any one or more of such acts of sale and delivery of beer;"~~

Section 8. Section 16-3-221, MCA, is amended to read:

"16-3-221. Illegal acts by brewers or beer importers.

It is unlawful for any brewer or beer importer or any officer, agent, or representative of any brewer or beer importer to:

(1) coerce, or attempt to coerce, or persuade any person licensed to sell beer at wholesale to enter into any agreement or to take any action which would violate or tend to violate any of the laws of this state or any rules promulgated by the department;

(2) sell its products in the state without a written contract, which conforms to the provisions of 16-3-221 through 16-3-226, with each appointed licensed wholesale distributor;

(3) designate or allow more than one wholesale distributor to sell or distribute a specific brand of the brewer's or beer importer's products to retail licensees in the same area, provided that nothing herein shall prohibit the brewer or beer importer from designating more than one wholesale distributor to sell or distribute different brands of the same manufacturer to retail licensees in the same area; and

(4) cancel or terminate, except for just cause or in

1 accordance with the current terms and standards established
 2 by the brewer or beer importer then equally applicable to
 3 all wholesalers, any agreement or contract, written or oral,
 4 or the franchise of any wholesaler existing on January 1,
 5 1974, or thereafter entered into to sell beer manufactured
 6 by the brewer or imported by the beer importer. A brewer or
 7 beer importer may, notwithstanding the preceding sentence,
 8 make reasonable classifications among wholesalers. If a
 9 brewer or beer importer cancels or terminates a wholesaler's
 10 franchise, the brewer or beer importer has the burden of
 11 proving the classification was reasonable and not arbitrary.
 12 After July 1, 1974, the provisions of 16-3-221 through
 13 16-3-226 shall be a part of any franchise, contract,
 14 agreement, or understanding, whether written or oral,
 15 between any wholesaler of beer licensed to do business in
 16 this state and any manufacturer or beer importer doing
 17 business with the licensed wholesaler just as though the
 18 provisions had been specifically agreed upon between the
 19 wholesaler and the manufacturer or beer importer."

20 Section 9. Section 16-3-222, MCA, is amended to read:
 21 "16-3-222. Mandatory provisions of brewer-wholesaler
 22 or beer importer-wholesaler contracts, agreements, and
 23 franchises. All contracts, agreements, or franchises between
 24 a brewer and a wholesaler or a beer importer and a
 25 wholesaler shall specifically set forth or contain the

1 following:

2 (1) that the brewer or beer importer or any officer,
 3 agent, or representative of any brewer or beer importer and
 4 the wholesaler involved mutually shall determine the size or
 5 extent of the area in which the wholesaler may sell or
 6 distribute the products of the brewer or beer importer to
 7 the retail licensees. Said territory will be the territory
 8 agreed upon between the wholesaler and brewer or the
 9 wholesaler and beer importer and may not be changed without
 10 the mutual consent of both the wholesaler and brewer or the
 11 wholesaler and beer importer.

12 (2) the agreed-upon brands of the brewer or beer
 13 importer to be sold by the wholesaler;

14 (3) that the brewer or beer importer recognizes that
 15 the wholesaler is free to manage his business in the manner
 16 the wholesaler deems best and that this prerogative vests in
 17 the wholesaler the exclusive right to establish selling
 18 prices, to select the brands he wishes to handle, to
 19 determine the effort and resources the wholesaler will exert
 20 to develop and promote the sale of the brewer's or beer
 21 importer's products handled by the wholesaler;

22 (4) a procedure for the review of alleged wholesaler
 23 deficiencies, including the submission in writing to the
 24 wholesaler by the brewer or beer importer of said
 25 deficiencies, if the deficiencies are susceptible of

1 correction and if the wholesaler desires to correct said
2 deficiencies, and that a reasonable period of time shall be
3 given the wholesaler for rectification of said deficiencies
4 prior to any notice of intent to terminate;

5 (5) a termination clause providing that the brewer or
6 beer importer shall deliver, in writing, to the wholesaler a
7 60-day notice of intent to terminate the agreement,
8 contract, or franchise."

9 Section 10. Section 16-3-223, MCA, is amended to read:

10 "16-3-223. Transfer of wholesaler's interest in
11 business. A wholesaler shall have the right to sell or
12 transfer his business or an interest in his business to any
13 person or to one or more members of his family or heirs or
14 legatees, whether the wholesaler operates as an individual,
15 a partnership, or corporation. Provided, however, the
16 consent of the brewer or beer importer in writing is
17 required for such transferee to continue as a wholesaler of
18 said brewer or beer importer, which consent shall consider
19 the personal, financial, and managerial responsibilities and
20 capabilities of such transferee and which consent shall not
21 unreasonably be withheld."

22 Section 11. Section 16-3-224, MCA, is amended to read:

23 "16-3-224. Contractual or franchise relationship --
24 existence by actions. The doing or accomplishing of any of
25 the following acts constitutes prima facie evidence of a

1 contractual or franchise relationship between a licensed
2 wholesaler and a brewer or beer importer within the
3 contemplation of 16-3-221 through 16-3-226:

4 (1) the shipment, preparation for shipment, or
5 acceptance of any order by any brewer or beer importer or
6 its agent for any beer to a licensed wholesaler within this
7 state;

8 (2) the payment by any licensed wholesaler within this
9 state or the acceptance of payment by any brewer or beer
10 importer or its agent for the shipment of an order of beer
11 intended for sale within this state."

12 Section 12. Section 16-3-225, MCA, is amended to read:

13 "16-3-225. Injunction to prevent franchise
14 cancellation. Any court of competent jurisdiction may enjoin
15 the cancellation or termination of a franchise or agreement
16 between a wholesaler and a brewer or between a wholesaler
17 and a beer importer at the instance of a wholesaler who is
18 or would be adversely affected by the cancellation or
19 termination. In granting an injunction, the court shall
20 provide that the brewer or beer importer shall not supply
21 the customers or territory of the wholesaler who is
22 servicing the territory or customers through other
23 distributors or means while the injunction is in effect."

24 Section 13. Section 16-3-226, MCA, is amended to read:

25 "16-3-226. Brewer-wholesaler or beer

1 importer-wholesaler agreements filed with department. An
 2 exact copy of all agreements, contracts, or franchises
 3 between a brewer or beer importer and a wholesaler shall be
 4 filed with the department as a public document and shall be
 5 available to any of the parties to a dispute. The
 6 department, upon the instigation of any action in a court of
 7 record, shall file an exact certified copy of the agreement
 8 with the court for the court's consideration in determining
 9 any matter before it. Any contracts, agreements, or
 10 franchises not upon record with the department shall not be
 11 considered by any court as having any force or effect."

12 Section 14. Section 16-3-230, MCA, is amended to read:
 13 "16-3-230. Out-of-state beer required to be shipped to
 14 wholesaler. All beer manufactured outside of the state of
 15 Montana and shipped into Montana shall be consigned to and
 16 shipped, either directly or via a licensed storage depot, to
 17 a licensed wholesaler and by him unloaded into his warehouse
 18 in Montana or subwarehouse in Montana. A brewer or beer
 19 importer may sell only to wholesalers from a storage depot
 20 in Montana and shall maintain records of all beer, including
 21 the name or kind received, on hand, and sold, which records
 22 may at all times be inspected by any representative of the
 23 department. Said wholesaler shall distribute said beer from
 24 such warehouse or subwarehouse and shall keep records at his
 25 principal place of business of all beer, including the name

1 or kind received, on hand, sold, and distributed. Said
 2 records may at all times be inspected by any member or
 3 representative of the department."

4 Section 15. Section 16-3-241, MCA, is amended to read:

5 "16-3-241. Furnishing of fixtures or advertising
 6 matter to retailers by brewers, beer importers, and
 7 wholesalers unlawful -- exceptions. It shall be unlawful for
 8 any brewer, beer importer, or wholesaler to lease, furnish,
 9 give, or pay for any premises, furniture, fixtures,
 10 equipment, signs, or any other advertising matter or any
 11 other property to any retail licensee, used or to be used in
 12 the dispensation of beer in and about the interior or
 13 exterior of the place of business of any licensed retailer,
 14 or furnish, give, or pay for any repairs, improvements,
 15 painting, or decorating on or within such premises;
 16 provided, however, that it shall be lawful for a brewer,
 17 beer importer, or wholesaler to furnish, give, or loan to a
 18 retail licensee:

19 (1) bottle openers, can openers, and trays, with or
 20 without advertising matter thereon;

21 (2) advertising matter or novelties, of a value of not
 22 to exceed \$50 per brewery or beer importer in any calendar
 23 year to any one retailer, for display use on the interior of
 24 said retailer's place of business;

25 (3) not more than two illuminated or electrical signs,

each of not more than 630 square inches in area, which signs may bear the name, brand name, trade name, trademark, or other designation indicating the name of the manufacturer of beer and the place of manufacture, for display by the retail licensee on and within the interior of his place of business or in the windows inside the place of business of the licensed retailer and only if the particular brand of beer so advertised on such signs is actually available for sale on the licensee's premises at the time of such display; and

(4) maintenance or repair services on draft beer equipment to keep it sanitary and in good working condition."

Section 16. Section 16-3-242, MCA, is amended to read:

"16-3-242. Financial interest in retailers prohibited.

No brewer, beer importer, or wholesaler shall advance or loan money to or furnish money for or pay for or on behalf of any retailer any license or tax which may be required to be paid for any retailer, and no brewer, beer importer, or wholesaler shall be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer. A brewer, beer importer, or wholesaler shall be deemed to have such a financial interest within the meaning of this section if:

(1) such brewer, beer importer, or wholesaler owns or holds any interest in or a lien or mortgage against the

retailer or his premises;

(2) such brewer, beer importer, or wholesaler is under any contract with a retailer concerning future purchases and/or sale of merchandise by one from or to the other;

(3) any retailer holds an interest, as a stockholder or otherwise, in the business of the wholesaler."

Section 17. Section 16-3-243, MCA, is amended to read:

"16-3-243. Seven-day credit limitation. No sale or delivery of beer shall be made to any retail licensee except for cash paid within 7 days after the delivery thereof, and in no event shall any brewer, beer importer, or wholesaler extend more than 7 days' credit on account of such beer to a retail licensee, nor shall any retail licensee accept or receive delivery of such beer without agreement to pay in cash therefor within 7 days from delivery thereof. A correctly dated check which is honored upon presentment shall be considered as cash within the meaning of this code. Any extension or acceptance of credit in violation hereof shall be regarded and construed as rendering or receiving financial assistance, and the licenses of brewers, beer importers, wholesalers, and retail licensees involved in violation hereof shall be suspended or revoked, as determined by the department in its discretion."

Section 18. Section 16-3-244, MCA, is amended to read:

"16-3-244. Beer advertising limitations. It shall be

1 lawful to advertise beer containing not more than 7% of
 2 alcohol by weight, as defined and regulated, subject to the
 3 restrictions on brewers and beer importers contained in
 4 16-3-241 of this code and subject to the following
 5 restrictions on retailers. No retail licensee shall display
 6 or permit to be displayed on the exterior portion or surface
 7 of such retailer's place of business or on the exterior
 8 portion or surface of any building of which said place of
 9 business is a part or on any premises adjacent thereto,
 10 whether any of such premises be owned or leased by the
 11 retailer, any sign, poster, or advertisement bearing the
 12 name, brand name, trade name, trademark, or other
 13 designation indicating the manufacturer, brewer, beer
 14 importer, wholesaler, or place of manufacture of any beer
 15 whatsoever."

16 Section 19. Section 16-4-101, MCA, is amended to read:
 17 "16-4-101. Applications for sale, import, or
 18 manufacture of beer -- qualifications of applicant. (1) Any
 19 person desiring to manufacture, import, or sell beer under
 20 the provisions of this code shall first apply to the
 21 department for a permit license to do so and pay with such
 22 application the license fee prescribed. The department shall
 23 require of such applicant satisfactory evidence that the
 24 applicant is of good moral character and a law-abiding
 25 person.

1 (2) Upon being satisfied, from such application or
 2 otherwise, that such applicant is qualified, the department
 3 shall issue such license to such person, which license shall
 4 be at all times prominently displayed in the place of
 5 business of such applicant.

6 (3) If the department shall find that such applicant
 7 is not qualified, no license shall be granted and such
 8 license fee shall be returned."

9 Section 20. Section 16-4-401, MCA, is amended to read:
 10 "16-4-401. License as privilege -- criteria for
 11 decision on application. (1) A license under this code is a
 12 privilege which the state may grant to an applicant and is
 13 not a right to which any applicant is entitled.

14 (2) Except as provided in subsection (6), in the case
 15 of a license that permits on-premises consumption, the
 16 department must find in every case in which it makes an
 17 order for the issuance of a new license or for the approval
 18 of the transfer of a license that:

19 (a) in the case of an individual applicant:

20 (i) the applicant will not possess an ownership
 21 interest in more than one establishment licensed under this
 22 chapter for all-beverages sales;

23 (ii) the applicant or any member of his immediate
 24 family is without financing from or any affiliation to a
 25 manufacturer, importer, bottler, or distributor of beer,

1 wine, or liquor;

2 (iii) the applicant is a resident of the state and is

3 qualified to vote in a state election;

4 (iv) the applicant's past record and present status as

5 a purveyor of alcoholic beverages and as a businessman and

6 citizen demonstrate that he is likely to operate his

7 establishment in compliance with all applicable laws of the

8 state and local governments; and

9 (v) the applicant is not under the age of 19 years;

10 and

11 (b) in the case of a corporate applicant:

12 (i) the owners of at least 51% of the outstanding

13 stock meet the requirements of subsection (2)(a)(iii);

14 (ii) each owner of 10% or more of the outstanding stock

15 meets the requirements for an individual applicant listed in

16 subsection (2)(a) of this section;

17 (iii) the corporation is authorized to do business in

18 Montana; and

19 (iv) in the case of a corporation not listed on a

20 national stock exchange, each owner of stock meets the

21 requirements of subsection (2)(a)(i).

22 (3) In the case of a license that permits only

23 off-premises consumption, the department must find in every

24 case in which it makes an order for the issuance of a new

25 license or for the approval of the transfer of a license

1 that:

2 (a) in the case of an individual applicant:

3 (i) the applicant will not possess an ownership

4 interest in more than one establishment licensed under this

5 chapter for all-beverages sales;

6 (ii) the applicant or any member of his immediate

7 family is without financing from or any affiliation to a

8 manufacturer, importer, bottler, or distributor of beer,

9 wine, or liquor;

10 (iii) the applicant has not been convicted of a felony

11 or, if the applicant has been convicted of a felony, his

12 rights have been restored;

13 (iv) the applicant's past record and present status as

14 a purveyor of alcoholic beverages and as a businessman and

15 citizen demonstrate that he is likely to operate his

16 establishment in compliance with all applicable laws of the

17 state and local governments; and

18 (v) the applicant is not under the age of 19 years;

19 and

20 (b) in the case of a corporate applicant:

21 (i) the owners of at least 51% of the outstanding

22 stock meet the requirements of subsection (3)(a)(iii);

23 (ii) each owner of 10% or more of the outstanding stock

24 meets the requirements for an individual listed in

25 subsection (3)(a) of this section; and

1 (iii) the corporation is authorized to do business in
2 Montana.

3 (4) In the case of a license that permits the
4 manufacture, importing, or wholesaling of an alcoholic
5 beverage, the department must find in every case in which it
6 makes an order for the issuance of a new license or for the
7 approval of the transfer of a license that:

8 (a) in the case of an individual applicant:

9 (i) the applicant has no ownership interest in any
10 establishment licensed under this chapter for retail
11 alcoholic beverages sales;

12 (ii) the applicant has not been convicted of a felony
13 or, if the applicant has been convicted of a felony, his
14 rights have been restored;

15 (iii) the applicant's past record and present status as
16 a purveyor of alcoholic beverages and as a businessman and
17 citizen demonstrate that he is likely to operate his
18 establishment in compliance with all applicable laws of the
19 state and local governments;

20 (iv) the applicant is not under the age of 19 years;
21 and

22 (v) an applicant for a wholesale license is neither a
23 manufacturer of an alcoholic beverage nor is owned or
24 controlled by a manufacturer of an alcoholic beverage; and

25 (b) in the case of a corporate applicant:

1 (i) the owners of at least 51% of the outstanding
2 stock meet the requirements of subsection (4)(a)(ii);

3 (ii) each owner of 10% or more of the outstanding stock
4 meets the requirements for an individual listed in
5 subsection (4)(a) of this section;

6 (iii) an applicant for a wholesale license is neither a
7 manufacturer of an alcoholic beverage nor is owned or
8 controlled by a manufacturer of an alcoholic beverage; and

9 (iv) the corporation is authorized to do business in
10 Montana.

11 (5) In the case of a corporate applicant, the
12 requirements of subsections (2)(b), (3)(b), and (4)(b) apply
13 separately to each class of stock.

14 (6) The provisions of subsection (2) do not apply to
15 an applicant for or holder of a license pursuant to
16 16-4-302."

17 Section 21. Section 16-4-407, MCA, is amended to read:

18 "16-4-407. Expiration Suspension or revocation of
19 licenses. Each July 1, the department shall issue licenses
20 to brewers, beer importers, wholesalers, or retailers or for
21 the retail sale of alcoholic beverages on an annual basis
22 and at such fees as are prescribed by law, and such licenses
23 are subject to suspension or revocation under 16-4-406 after
24 midnight of June 30 of the succeeding year if the annual
25 renewal fees required by 16-4-501 are not paid. The

1 department shall notify each applicant for an original
2 license or renewal that he should inform himself of
3 applicable provisions of federal law which may require a
4 permit from a federal agency."

5 Section 22. Section 16-4-501, MCA, is amended to read:

6 "16-4-501. License and permit fees. (1) Each beer
7 licensee licensed to sell either beer or table wine only, or
8 both beer and table wine, under the provisions of this code,
9 shall pay an annual license fee as follows:

10 (a) each brewer and each beer importer, wherever
11 located, whose product is sold or offered for sale within
12 the state, \$500; for each storage depot, \$400;

13 (b) each beer wholesaler, \$400; each table wine
14 distributor, \$400;

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

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

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

24 (2) The permit fee under 16-4-301(1) is computed at
25 the rate of \$15 a day for each day beer and table wine are

1 sold at those events lasting 2 or more days but in no case
2 be less than \$30.

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

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

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

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

14 (7) Each licensee licensed under the quotas of
15 16-4-201 shall pay an annual license fee as follows:

16 (a) except as hereinafter provided, for each license
17 outside of incorporated cities and incorporated towns or in
18 incorporated cities and incorporated towns with a population
19 of less than 2,000, \$250 for a unit of a nationally
20 chartered veterans' organization and \$400 for all other
21 licensees;

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

premises to be licensed to the nearest boundary of such city, \$350 for a unit of a nationally chartered veterans' organization and \$500 for all other licensees;

(c) except as hereinafter provided, for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, \$500 for a unit of a nationally chartered veterans' organization and \$650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, \$650 for a unit of a nationally chartered veterans' organization and \$800 for all other licensees;

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

incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and shall be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and shall be paid by the applicant.

(f) an applicant for the issuance of an original license to be located in areas described in subsection (d) of this subsection shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's ability to pay a \$20,000 license fee. A successful applicant shall pay a one-time original license fee of \$20,000 for any such license issued. The one-time license fee of \$20,000 shall not apply to any transfer or renewal of a license duly issued prior to July 1, 1974. All licenses, however, are subject to the annual renewal fee.

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

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

(10) In addition to other license fees, the department

1 of revenue may require a licensee to pay a late fee of
2 33 1/3% of any license fee delinquent on July 1 of the
3 renewal year, 66 2/3% of any license fee delinquent on
4 August 1 of the renewal year, and 100% of any license fee
5 delinquent on September 1 of the renewal year."

6 NEW SECTION. Section 23. Extension of authority. Any
7 existing authority of the department of revenue to make
8 rules on the subject of the provisions of this act is
9 extended to the provisions of this act.

10 NEW SECTION. Section 24. Authority to proceed with
11 rulemaking. The department of revenue may initiate
12 rulemaking proceedings under section 24 23 on or after
13 passage and approval of this act, but no rules under section
14 24 23 may be made effective prior to the effective date of
15 sections 1 through 23 22.

16 NEW SECTION. Section 25. Effective date. (1) Sections
17 1 through 23 22 and this subsection (1) are effective July
18 1, 1985.

19 (2) Sections 24 23, 25 24, and this subsection (2) are
20 effective on passage and approval.

-End-

HOUSE BILL NO. 32

INTRODUCED BY KEENAN

BY REQUEST OF THE DEPARTMENT OF REVENUE

AND THE REVENUE OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A BEER
IMPORTER LICENSE, LICENSING CRITERIA, AND PROCEDURES FOR
IMPORTING BEER INTO MONTANA; DEFINING "IMPORT"; ESTABLISHING
A LICENSE FEE; AMENDING SECTIONS 16-1-106, 16-3-101,
16-3-104, 16-3-201, 16-3-211 THROUGH ~~16-3-214~~ 16-3-213,
16-3-221 THROUGH 16-3-226, 16-3-230, 16-3-241 THROUGH
16-3-244, 16-4-101, 16-4-401, 16-4-407, AND 16-4-501, MCA;
AND PROVIDING EFFECTIVE DATES."

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

THERE ARE NO CHANGES IN HB 32
AND WILL NOT BE RE-RUN. PLEASE
REFER TO YELLOW OR BLUE COPY FOR
COMPLETE TEXT.

REFERENCE BILL

HB 32

