

HOUSE BILL NO. 527

1/28 Introduced
1/28 Referred to Business & Labor
1/29 Fiscal Note Requested
2/08 Fiscal Note Received
2/11 Hearing
3/11 Adverse Committee Report
3/11 Objection to Adverse Committee Report
3/18 2nd Reading Do Not Pass
3/18 Bill Killed

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HOUSE BILL NO. 527

INTRODUCED BY

Mark *Offen* *Hager* *DeBran* *Ramirez*

A BILL FOR AN ACT ENTITLED: "AN ACT TO WITHDRAW THE STATE FROM THE STATE LIQUOR STORE BUSINESS AND REQUIRE THE STORES TO BE SOLD TO PRIVATE PARTIES; TO PROVIDE THAT ALL LIQUOR STORES ARE TO BE OPERATED UNDER LICENSES THAT ARE NOT SUBJECT TO A QUOTA; TO ALLOW THE STATE TO OPERATE ONLY ONE STATE WAREHOUSE FOR SALES TO HOLDERS OF LIQUOR AND WINE LICENSES; TO ALLOW LIQUOR STORES TO SET THEIR OWN RETAIL PRICES; TO INCREASE THE DISCOUNT FOR QUANTITY PURCHASES FROM THE STATE WAREHOUSE; TO REQUIRE THE STATE TO PAY THE COST OF SHIPMENTS FROM ITS WAREHOUSE; AND TO CLARIFY TERMINOLOGY; AMENDING SECTIONS 16-1-103, 16-1-105, 16-1-106, 16-1-202, 16-1-301 THROUGH 16-1-304, 16-1-401, 16-1-402, 16-1-404, 16-2-107, 16-2-201, 16-2-203, 16-2-302, 16-2-303, 16-3-103, 16-3-106, 16-3-401, 16-4-201, 16-4-202, 16-4-204, 16-4-205, 16-4-207, 16-4-208, 16-4-404, 16-4-501, 16-4-503, 16-6-107, 16-6-301, AND 16-6-303, MCA; REPEALING SECTIONS 16-2-101, 16-2-103 THROUGH 16-2-106, 16-2-108, 16-2-301, AND 16-3-307, MCA; AND PROVIDING EFFECTIVE DATES."

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

NEW SECTION. Section 1. Package store license. (1) An applicant who meets the requirements of this code must be

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issued a license to sell liquor, beer, and wine at retail for off-premises consumption only. Such a license is called a package store license. A license may not be granted to an applicant that operates, manages, or directly or indirectly owns a controlling interest in a grocery store or supermarket of any size that is adjacent to the premises where the license will be exercised.

(2) At least 60% of the gross sales for any 3-month period of a licensee under this section must be derived from the sale of alcoholic beverages.

(3) Licensees under this section may determine the price at which they sell alcoholic beverages at retail, not to exceed 110% of the posted retail price of the package.

(4) Except as provided in 16-4-404(4) through (6), no package store license may be transferred or sold or used for any place of business not described in the license; however, such license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and approval of the department, must be endorsed on the license.

Section 2. Section 16-1-103, MCA, is amended to read: "16-1-103. Policy as to retail sale of liquor. It is the policy of the state that it is necessary to further regulate and control the sale and distribution of alcoholic beverages within the state and to ensure the entire control

1 of the sale of liquor in the department of revenue. It is
 2 advisable and necessary, ~~in addition to the operation of the~~
 3 ~~state liquor stores now provided by law,~~ that the department
 4 be empowered and authorized to grant licenses to persons
 5 qualified under this code to sell liquor purchased by them
 6 at the state liquor stores warehouse at ~~retail~~ the posted
 7 price in accordance with this code and under rules
 8 promulgated by the department and under its strict
 9 supervision and control and to provide severe penalty for
 10 the sale of liquor except by ~~and in state liquor stores--and~~
 11 ~~by persons licensed under this code.~~ The restrictions,
 12 regulations, and provisions contained in this code are
 13 enacted by the legislature for the protection, health,
 14 welfare, and safety of the people of the state."

15 Section 3. Section 16-1-105, MCA, is amended to read:

16 "16-1-105. Divisions of code. This code is divided
 17 into six chapters. Chapter 1 relates to the authority of
 18 the department of revenue to administer this code and the
 19 powers and functions of the department. Chapter 2 relates to
 20 the ~~establishment--of--state--stores--and--the--keeping--and~~
 21 ~~selling--of--liquors~~ price of liquor and the sale of table
 22 wine. Chapter 3 relates to the control of liquor, wine, and
 23 beer. Chapter 4 relates to license administration. Chapter 5
 24 relates to identification cards. Chapter 6 relates to
 25 enforcement."

1 Section 4. Section 16-1-106, MCA, is amended to read:
 2 "16-1-106. Definitions. As used in this code, the
 3 following definitions apply:

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

7 ~~(2)(1)~~ "Alcohol" means ethyl alcohol, also called
 8 ethanol, or the hydrated oxide of ethyl.

9 ~~(3)(2)~~ "Alcoholic beverage" means a compound produced
 10 and sold for human consumption as a drink that contains more
 11 than .5% of alcohol by volume.

12 ~~(4)(3)~~ "Beer" means a malt beverage containing not
 13 more than 7% of alcohol by weight.

14 ~~(5)(4)~~ "Brewer" means a person who produces malt
 15 beverages.

16 ~~(6)(5)~~ "Department" means the department of revenue.

17 ~~(7)(6)~~ "Immediate family" means a spouse, dependent
 18 children, or dependent parents.

19 ~~(8)(7)~~ "Industrial use" means a use described as
 20 industrial use by the federal Alcohol Administration Act and
 21 the federal rules and regulations of 27 CFR.

22 ~~(9)(8)~~ "Liquor" means an alcoholic beverage except
 23 beer and table wine.

24 ~~(10)(9)~~ "Malt beverage" means an alcoholic beverage
 25 made by the fermentation of an infusion or decoction, or a

1 combination of both, in potable brewing water, of malted
2 barley with or without hops or their parts or their products
3 and with or without other malted cereals and with or without
4 the addition of unmalted or prepared cereals, other
5 carbohydrates, or products prepared therefrom and with or
6 without other wholesome products suitable for human food
7 consumption.

8 ~~{11}~~(10) "Package" means a container or receptacle used
9 for holding an alcoholic beverage.

10 (11) "Package store license" means a license issued
11 under [section 1].

12 (12) "Posted price" means the ~~retail~~ wholesale price of
13 paid by licensees for liquor, beer, and wine purchased from
14 the state warehouse by licensees. The term includes the
15 price as fixed and determined by the department and in
16 addition thereto ~~an--excise--and--license-tax-as~~ any taxes
17 provided in this code.

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

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

24 (15) "Retail all-beverages license" includes a tavern,
25 resort, or public airport retail all-beverages license but

1 does not include a package store license.

2 ~~{15}~~(16) "Rules" means rules published by the
3 department pursuant to this code.

4 ~~{16}~~"State--liquor-facility"--means-a-facility-owned-or
5 under--control--of--the--department--for--the---purpose---of
6 receiving,---storing,---transporting,---or---selling--alcoholic
7 beverages.

8 ~~{17}~~"State-liquor-store"--means-a-retail-store-operated
9 by-the-department-in--accordance--with--this--code--for--the
10 purpose-of-selling-liquor.

11 ~~{18}~~(17) "Storage depot" means a building or structure
12 owned or operated by a brewer at any point in the state of
13 Montana off and away from the premises of a brewery, and
14 which structure is equipped with refrigeration or cooling
15 apparatus for the storage of beer and from which a brewer
16 may sell or distribute beer as permitted by this code.

17 ~~{19}~~(18) "Table wine" means wine as defined below which
18 contains not more than 14% alcohol by volume.

19 ~~{20}~~(19) "Warehouse" means a building or structure
20 owned or operated by a licensed wholesaler for the
21 receiving, storage, and distribution of beer as permitted by
22 this code.

23 ~~{21}~~(20) "Wine" means an alcoholic beverage made from
24 the normal alcoholic fermentation of the juice of sound,
25 ripe fruit or other agricultural products without addition

1 or abstraction, except as may occur in the usual cellar
 2 treatment of clarifying and aging, and that contains not
 3 less than 7% or more than 24% of alcohol by volume. Wine
 4 may be ameliorated to correct natural deficiencies,
 5 sweetened, and fortified in accordance with applicable
 6 federal regulations and the customs and practices of the
 7 industry. Other alcoholic beverages not defined as above but
 8 made in the manner of wine and labeled and sold as wine in
 9 accordance with federal regulations are also wine."

10 Section 5. Section 16-1-202, MCA, is amended to read:

11 "16-1-202. Preparations not subject to code. (1)
 12 Subject to the provisions of this section, nothing in this
 13 code shall, by reason only that such preparation contains
 14 alcohol, prevent the manufacture, sale, purchase, or
 15 consumption of any:

16 (a) extract, essence, or tincture or other preparation
 17 containing alcohol which is prepared according to a formula
 18 of the United States Pharmacopoeia or according to a formula
 19 approved of by the department; or

20 (b) proprietary or patent medicine prepared according
 21 to a formula approved of by the department.

22 (2) The department, if of opinion that any such
 23 proprietary or patent medicine, extract, essence, tincture,
 24 or preparation which contains alcohol or any other
 25 preparation of a solid, semisolid, or liquid nature

1 containing alcohol which, or any extract from which, can be
 2 used as a beverage or as the ingredient of any beverage, may
 3 prohibit the sale thereof by retail within the state or the
 4 possession of the same for sale by retail within the state,
 5 except by ~~a state liquor store or~~ by persons duly licensed
 6 by the department to keep and sell the same by at retail in
 7 accordance with this code and ~~the regulations made~~
 8 thereunder rules adopted by the department.

9 (3) The department shall notify the manufacturer or
 10 vendor of such proprietary or patent medicine, extract,
 11 essence, tincture, or preparation of the prohibition."

12 Section 6. Section 16-1-301, MCA, is amended to read:

13 "16-1-301. Administration of code. The department
 14 shall have the powers and duties to administer the Montana
 15 Alcoholic Beverage Code, ~~including the general control,~~
 16 ~~management, and supervision of all state liquor stores."~~

17 Section 7. Section 16-1-302, MCA, is amended to read:

18 "16-1-302. Functions, powers, and duties of
 19 department. (1) The department shall have the following
 20 functions, duties, and powers:

21 ~~†1(a)~~ to buy, import, have in its possession for
 22 sale, and sell to licensees through the state warehouse
 23 liquors and ~~table~~ wine in the manner set forth in this code;

24 ~~†2(b)~~ to control the possession, sale, and delivery
 25 of liquors in accordance with the provisions of this code;

1 ~~†3) to determine the municipalities within which state~~
 2 ~~liquor stores shall be established throughout the state and~~
 3 ~~the situation of the stores within every such municipality;~~
 4 †4)(c) to buy or lease, furnish, and equip any one
 5 building or and necessary land required for the operation of
 6 the state warehouse under this code;
 7 ~~†5) to buy or lease all plants and equipment it may~~
 8 ~~consider necessary and useful in carrying into effect the~~
 9 ~~objects and purposes of this code;~~
 10 †6)(d) to employ store managers a state warehouse
 11 manager and ~~also~~ every officer, investigator, clerk, or
 12 other employee required for the operation or carrying out of
 13 this code and to dismiss the same, fix their salaries or
 14 remuneration, assign them their title, define their
 15 respective duties and powers, and to engage the service of
 16 experts and persons engaged in the practice of a profession,
 17 if deemed expedient;
 18 †7)(e) to determine the nature, form, and capacity of
 19 all packages to be used for containing liquor kept or sold
 20 under this code;
 21 †8)(f) to grant and issue licenses under and in
 22 pursuance to this code;
 23 †9)(g) without in any way limiting or being limited by
 24 the foregoing, to do all such things as are deemed necessary
 25 or advisable by the department for the purpose of carrying

1 into effect the provisions of this code or the rules made
 2 thereunder of the department.
 3 (2) The department may operate only one state
 4 warehouse under this code."
 5 Section 8. Section 16-1-303, MCA, is amended to read:
 6 "16-1-303. Department rules. (1) The department may
 7 make such rules not inconsistent with this code as to the
 8 department seem necessary for carrying out the provisions of
 9 this code and for the efficient administration thereof.
 10 (2) Without thereby limiting the generality of the
 11 provisions contained in subsection (1) hereof, it is
 12 declared that the power of the department to make rules in
 13 the manner set out in that subsection shall extend to and
 14 include the following:
 15 (a) regulating the equipment and management of the
 16 state stores and warehouses in which liquor or table wine is
 17 kept or sold warehouse and prescribing the books and records
 18 to be kept therein;
 19 (b) prescribing the duties of the employees of the
 20 liquor division and regulating their conduct while in the
 21 discharge of their duties;
 22 ~~†c) governing the purchase of liquor and the~~
 23 ~~furnishing of liquor to state stores established under this~~
 24 ~~code;~~
 25 ~~†d) determining the classes, varieties, and brands of~~

1 ~~liquor--and--table--wine--to--be--kept--for--sale--at--any--state~~
2 ~~store;~~

3 ~~(e)--prescribing,--subject--to--this--code,--the--hours~~
4 ~~during--which--state--liquor--stores--shall--be--kept--open--for--the~~
5 ~~sale--of--alcoholic--beverages;~~

6 ~~(f)(c)~~ providing for the issuing and distributing of
7 price lists showing the posted price to be paid by
8 purchasers licensees for each class, variety, or brand of
9 liquor and table wine kept--for--sale--under--this--code
10 purchased from the state warehouse;

11 ~~(g)(d)~~ prescribing forms to be used for the purpose of
12 this code or of the rules made thereunder and the terms and
13 conditions in permits and licenses issued and granted under
14 this code;

15 ~~(h)(e)~~ prescribing the form of records of purchase of
16 liquor and table wine and the reports to be made thereon to
17 the division and providing for inspection of the records so
18 kept;

19 ~~(i)(f)~~ prescribing the manner of giving and serving
20 notices required by this code or the rules thereunder;

21 ~~(j)(g)~~ prescribing the fees payable in respect of
22 permits and licenses issued under this code for which no
23 fees are prescribed in this code and prescribing the fees
24 for anything done or permitted to be done under the rules
25 made thereunder;

1 ~~(*)~~(h) prescribing, subject to the provisions of this
2 code, the conditions and qualifications necessary for the
3 obtaining of a liquor or beer license and the books and
4 records to be kept and the returns to be made by the
5 licensees and providing for the inspection of such licensed
6 premises;

7 ~~(*)~~(i) specifying and describing the place and the
8 manner in which liquor or beer may be lawfully kept or
9 stored;

10 ~~(*)~~(j) specifying and regulating the time and periods
11 when and the manner, methods, and means by which vendors and
12 brewers shall deliver liquor under this code and the time
13 and periods when and the manner, methods, and means by which
14 liquor, under this code, may be lawfully conveyed or
15 carried;

16 ~~(*)~~(k) governing the conduct, management, and
17 equipment of any premises licensed to sell liquor or beer
18 under this code;

19 ~~(*)~~(l) providing for the imposition and collection of
20 taxes and making rules respecting returns, accounting, and
21 payment of the taxes to the department.

22 (3) Whenever it is provided in this code that any act,
23 matter, or thing may be done if permitted or authorized by
24 the rules or may be done in accordance with the rules or as
25 provided by the rules, the department, subject to the

1 restrictions set out in subsection (1) hereof, shall have
2 the power to make rules respecting such act, matter, or
3 thing."

4 Section 9. Section 16-1-304, MCA, is amended to read:

5 "16-1-304. Prohibited acts within division. (1) No
6 officer or employee of the liquor division~~including those~~
7 ~~engaged in the sale of liquor at the various state liquor or~~
8 ~~table wine stores~~, may be directly or indirectly interested
9 or engaged in any other business or undertaking dealing in
10 liquor or ~~table~~ wine, whether as owner, part owner, partner,
11 member of syndicate, shareholder, agent, or employee and
12 whether for his own benefit or in a fiduciary capacity for
13 some other person.

14 (2) No member or employee of the division or any
15 employee of the state may solicit or receive directly or
16 indirectly any commission, remuneration, or gift whatsoever
17 from any person or corporation having sold, selling, or
18 offering liquor or ~~table~~ wine for sale to the state or
19 division pursuant to this code.

20 (3) No person selling or offering for sale to or
21 purchasing liquor or ~~table~~ wine from the state liquor
22 division may either directly or indirectly offer to pay any
23 commission, profit, or remuneration or make any gift to any
24 member or employee of the division, to any employee of the
25 state, or to anyone on behalf of such member or employee.

1 (4) The prohibition contained in subsection (3) of
2 this section does not prohibit the division from receiving
3 samples of liquor or ~~table~~ wine for the purpose of chemical
4 testing, subject to the following limitations:

5 (a) Each manufacturer, distiller, compounder,
6 rectifier, importer, or wholesale distributor or any other
7 person, firm, or corporation proposing to sell any liquor or
8 ~~table~~ wine to the Montana liquor division shall submit,
9 without cost to the division prior to the original purchase,
10 an analysis of each brand and may submit a representative
11 sample not exceeding 25 fluid ounces of such merchandise to
12 the division.

13 (b) When a brand of liquor or ~~table~~ wine has been
14 accepted for testing by the division, the division shall
15 forward the sample, unopened and in its entirety, to a
16 qualified chemical laboratory for analysis.

17 (c) The division shall maintain written records of all
18 samples received. The records shall show the brand name,
19 amount and from whom received, date received, the laboratory
20 or chemist to whom forwarded, the division's action on the
21 brand, and the person to whom delivered or other final
22 disposition of the sample.

23 (5) No liquor ~~or wine or other alcoholic beverage~~
24 may be withdrawn from the regular state warehouse inventory
25 ~~or from the state liquor stores of the Montana liquor~~

1 division for any purpose other than sale by the state to
 2 licensees at the prevailing state-retail-prices posted price
 3 or for destroying damaged or defective merchandise. The
 4 division shall maintain a written record including the type,
 5 brand, container size, number of bottles or other units,
 6 signatures of witnesses, and method of destruction or other
 7 disposition of damaged or defective state warehouse or-state
 8 store merchandise."

9 Section 10. Section 16-1-401, MCA, is amended to read:

10 "16-1-401. Liquor excise tax. The department is hereby
 11 authorized and directed to charge, receive, and collect at
 12 the time of the sale and delivery of any liquor as
 13 authorized under any provision of the laws of the state of
 14 Montana an excise tax at the rate of 16% of the retail
 15 wholesale selling price on all liquor sold and delivered to
 16 licensees. The department shall retain the amount of such
 17 excise tax received in a separate account and shall deposit
 18 with the state treasurer, to the credit of the general fund,
 19 such sums collected and received not later than the 10th day
 20 of each and every month."

21 Section 11. Section 16-1-402, MCA, is amended to read:

22 "16-1-402. Payment of excise tax by carriers. (1)
 23 Every airline or railroad operating in the state of Montana
 24 and selling liquor purchased outside this state for
 25 consumption within this state shall pay to the department

1 the excise taxes and state markup which would be applicable
 2 to such liquor if purchased from the state ~~liquor-store~~
 3 warehouse.

4 (2) The amount of such excise taxes and state markup
 5 payable shall be determined by multiplying the following
 6 factors:

7 (a) the average liquor used per departure;

8 (b) the number of departures from Montana on which
 9 liquor is served;

10 (c) the ratio of Montana revenue passenger miles to
 11 system revenue passenger miles; and

12 (d) the applicable excise tax and state markup rates.

13 (3) From said product, the carrier shall subtract the
 14 amount of excise taxes and state markup on purchases of
 15 liquor made within this state."

16 Section 12. Section 16-1-404, MCA, is amended to read:

17 "16-1-404. License tax on liquor -- amount --
 18 distribution of proceeds. (1) The department is hereby
 19 authorized and directed to charge, receive, and collect at
 20 the time of sale and delivery of any liquor under any
 21 provisions of the laws of the state of Montana a license tax
 22 of 10% of the retail wholesale selling price on all liquor
 23 sold and delivered to licensees. Said tax shall be charged
 24 and collected on all liquor brought into the state and taxed
 25 by the department. The retail wholesale selling price shall

1 be computed by adding to the cost of said liquor the state
 2 markup as designated by the department. Said 10% license tax
 3 shall be figured in the same manner as the state excise tax
 4 and shall be in addition to said state excise tax. The
 5 department shall retain in a separate account the amount of
 6 such 10% license tax so received. Thirty percent of these
 7 revenues shall be allocated to the counties according to the
 8 amount of liquor purchased in each county to be distributed
 9 to the incorporated cities and towns, as provided in
 10 subsection (2). Four and one-half percent of these revenues
 11 shall be allocated to the counties according to the amount
 12 of liquor purchased in each county, and this money may be
 13 used for county purposes. The remaining revenues shall be
 14 deposited in the state special revenue fund to the credit of
 15 the department of institutions for the treatment,
 16 rehabilitation, and prevention of alcoholism. Provided,
 17 however, in the case of purchases of liquor by a retail
 18 liquor licensee for use in his business, the department
 19 shall make such regulations as are necessary to apportion
 20 that proportion of license tax so generated to the county
 21 where the licensed establishment is located, for use as
 22 provided in 16-1-405. The department shall pay quarterly to
 23 each county treasurer the proportion of the license tax due
 24 each county to be allocated to the incorporated cities and
 25 towns of the county.

1 (2) The license tax proceeds allocated to the county
 2 under subsection (1) for use by cities and towns shall be
 3 distributed by the county treasurer to the incorporated
 4 cities and towns within 30 days of receipt from the
 5 department. The distribution of funds to the cities and
 6 towns shall be based on the proportion that the gross sale
 7 of liquor in each city or town is to the gross sale of
 8 liquor in all of the cities and towns of the county.

9 (3) The license tax proceeds that are allocated to the
 10 department of institutions for the treatment,
 11 rehabilitation, and prevention of alcoholism shall be
 12 credited quarterly to the department of institutions. The
 13 legislature may appropriate a portion of the license tax
 14 proceeds to support alcohol programs. The remainder shall be
 15 distributed as provided in 53-24-206."

16 Section 13. Section 16-2-107, MCA, is amended to read:
 17 "16-2-107. No open liquor container or liquor
 18 consumption on premises of state package store. No ~~officer,~~
 19 ~~clerk,~~~~or agent of the department~~ person owning or employed
 20 in a state package store shall allow any liquor container to
 21 be opened on the premises of ~~a state~~ the store or allow any
 22 liquor to be consumed on the premises of ~~a state~~ the store,
 23 nor shall any person open a liquor container or consume any
 24 liquor on such premises."

25 Section 14. Section 16-2-201, MCA, is amended to read:

1 "16-2-201. Reduction Price discount for quantity sales
 2 purchases of liquor. ~~Reduction A reduction~~ of 5% 10% of the
 3 ~~retail~~ posted price of liquor sold ~~at~~ by the state liquor
 4 ~~store warehouse~~ shall be made by the department for sales of
 5 liquor to any person purchasing liquor in unbroken case
 6 lots. No other reduction shall be made by the department for
 7 quantity sales of liquor."

8 Section 15. Section 16-2-203, MCA, is amended to read:

9 "16-2-203. Department sales to licensees. The
 10 department may sell through its ~~stores~~ warehouse to
 11 licensees licensed under this code all kinds of liquor, wine
 12 ~~containing--more--than--14%--alcohol-by-volume,~~ and cordials
 13 ~~kept in stock, at the posted price thereof--in-the--store--in~~
 14 ~~which--the--liquor--is--sold.~~ All sales shall be upon a cash
 15 basis. The licensee may, in his discretion, have the liquor,
 16 wine, and cordials shipped to him, and the department must
 17 pay all shipping costs."

18 Section 16. Section 16-2-302, MCA, is amended to read:

19 "16-2-302. State distribution sales. The department
 20 may import and distribute sell to licensees one or more
 21 named table wines ~~to--one-or-more-designated-state-liquor~~
 22 ~~stores,~~ in the same manner as if the table wine contained
 23 more than 14% alcohol by volume."

24 Section 17. Section 16-2-303, MCA, is amended to read:

25 "16-2-303. Department prohibited from engaging in

1 unfair competition. (1) The department, in engaging in the
 2 ~~retail~~ wholesale sale of table wine to licensees, is subject
 3 to the provisions of Title 30, chapter 14, parts 1 and 2,
 4 except those provisions relating to enforcement and
 5 penalties.

6 (2) A person aggrieved by a violation of this section
 7 by the department may maintain an action to enjoin the
 8 alleged violation and for the recovery of damages in the
 9 district court of the district where the conduct complained
 10 of occurred or where the department's principal office is
 11 located."

12 Section 18. Section 16-3-103, MCA, is amended to read:

13 "16-3-103. Unlawful sales solicitation or advertising
 14 -- exceptions. (1) No person within the state shall:

15 (a) canvass for, receive, take, or solicit orders for
 16 the purchase or sale of any liquor or act as agent or
 17 intermediary for the sale or purchase of any liquor or hold
 18 himself out as such agent or intermediary unless permitted
 19 to do so under rules that shall be promulgated by the
 20 department to govern such activities;

21 (b) canvass for or solicit orders for the purchase or
 22 sale of any beer or malt liquor except in the case of beer
 23 proposed to be sold to beer licensees or club licensees duly
 24 authorized to sell beer under the provisions of this code;

25 (c) exhibit, publish, or display or permit to be

1 exhibited, published, or displayed any form of advertisement
 2 or any other announcement, publication, or price list of or
 3 concerning liquor or where or from whom the same may be had,
 4 obtained, or purchased unless permitted to do so by the
 5 rules of the department and then only in accordance with
 6 such rules.

7 (2) This section shall not apply to:

8 (a) the department, or any act of the department, ~~any~~
 9 ~~state-liquor-store~~; or

10 (b) the receipt or transmission of a telegram or
 11 letter by any telegraph agent or operator or post-office
 12 employee in the ordinary course of his employment as such
 13 agent, operator, or employee."

14 Section 19. Section 16-3-106, MCA, is amended to read:

15 "16-3-106. Conveyance of liquors -- opening liquor
 16 during transit forbidden. (1) It shall be lawful to carry or
 17 convey liquor ~~to-any-state-store-and~~ to and from any the
 18 warehouse ~~or--depot~~ established by the department for the
 19 purposes of this code, and when permitted to do so by this
 20 code and the rules made thereunder and in accordance
 21 therewith, it shall be lawful for any common carrier or
 22 other person to carry or convey ~~liquor-sold-by-a-vendor-from~~
 23 ~~a--state-store-or~~ beer, when lawfully sold by a brewer, from
 24 the premises wherein such beer was manufactured or from
 25 premises where the beer may be lawfully kept and sold to any

1 place to which the same may be lawfully delivered under this
 2 code and the rules made thereunder.

3 (2) No common carrier or any other person shall open,
 4 break, or allow to be opened or broken any package or vessel
 5 containing liquor or drink or use or allow to be drunk or
 6 used any liquor therefrom while being carried or conveyed."

7 Section 20. Section 16-3-401, MCA, is amended to read:

8 "16-3-401. Public policy. The public policy of the
 9 state of Montana is to maintain a system for the importation
 10 and sale of wine by the state through the state liquor
 11 facilities warehouse and provide for, regulate, and control
 12 the acquisition, importation, and distribution of table wine
 13 containing not more than 14% alcohol by volume by licensed
 14 wine distributors ~~and-the-state.~~"

15 Section 21. Section 16-4-201, MCA, is amended to read:

16 "16-4-201. ~~All-beverages Retail tavern all-beverages~~
 17 license quota. (1) Except as otherwise provided by law, a
 18 license to sell liquor, beer, and wine at retail for both
 19 on-premises and off-premises consumption (as a retail tavern
 20 all-beverages license) in accordance with the provisions of
 21 this code and the rules of the department may be issued to
 22 any person who is approved by the department as a fit and
 23 proper person to sell such beverages, except that the number
 24 of retail tavern all-beverages licenses that the department
 25 may issue for premises situated within incorporated cities

1 and incorporated towns and within a distance of 5 miles from
 2 the corporate limits of such cities and towns shall be
 3 determined on the basis of population prescribed in 16-4-502
 4 as follows:

5 (a) in incorporated towns of 500 inhabitants or less
 6 and within a distance of 5 miles from the corporate limits
 7 of such towns, not more than two retail tavern all-beverages
 8 licenses;

9 (b) in incorporated cities or incorporated towns of
 10 more than 500 inhabitants and not over 3,000 inhabitants and
 11 within a distance of 5 miles from the corporate limits of
 12 such cities and towns, three retail tavern all-beverages
 13 licenses for the first 1,000 inhabitants and one retail
 14 tavern all-beverages license for each additional 1,000
 15 inhabitants;

16 (c) in incorporated cities of over 3,000 inhabitants
 17 and within a distance of 5 miles from the corporate limits
 18 thereof, five retail tavern all-beverages licenses for the
 19 first 3,000 inhabitants and one retail tavern all-beverages
 20 license for each additional 1,500 inhabitants.

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

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

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

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

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

9 Section 22. Section 16-4-202, MCA, is amended to read:

10 "16-4-202. Resort Retail resort all-beverages
 11 licenses. (1) It is the intent and purpose of this section
 12 to encourage the growth of quality recreational resort
 13 facilities in undeveloped areas of the state and to provide
 14 for the orderly growth of existing recreational sites by the
 15 establishment of resort areas within which retail--liquor
 16 licenses to sell liquor, beer, and wine at retail for both
 17 on-premises and off-premises consumption (a retail resort
 18 all-beverages license) may be issued by the department under
 19 the terms and as more particularly prescribed below. In
 20 addition to the licenses as otherwise set forth in {this
 21 act} this code, the department may issue resort-retail
 22 liquor retail resort all-beverages licenses in a resort
 23 area.

24 (2) For the purposes of this section, a resort area is
 25 defined as a recreational facility meeting the

1 qualifications determined by the department as hereinafter
 2 provided.

3 (3) The department shall determine that the area for
 4 which licenses are to be issued is a resort area, such
 5 determination to be made under and pursuant to rules to be
 6 first promulgated on or before December 31, 1975.

7 (4) In addition to the other requirements of this
 8 code, a resort area, for the purposes of qualification for
 9 the issuance of resort--retail--liquor a retail resort
 10 all-beverages license, must have a current actual valuation
 11 of resort or recreational facilities, including land and
 12 improvements thereon, of not less than \$500,000, at least
 13 half of which valuation must be for a structure or
 14 structures within the resort area, and must be under the
 15 sole ownership or control of one person or entity at the
 16 time of the filing of the resort area plat referred to in
 17 subsection (5) of this section. The word control shall mean
 18 lands held under lease, option, or permit.

19 (5) The resort area must be determined by the resort
 20 developer or landowner by a plat setting forth the resort
 21 boundaries, designating the ownership of the lands within
 22 the resort area, which plat must be verified by the resort
 23 developer or landowner and filed with the department prior
 24 to the filing of any applications by individuals for
 25 licenses within the resort area. Such plat must show the

1 location and general design of the buildings and other
 2 improvements to be built in said area in which ~~resort-retail~~
 3 ~~liquor retail resort all-beverages~~ licenses are to or may be
 4 located. A master plan for the development of the area may
 5 be filed by the resort developer in satisfaction of this
 6 section.

7 (6) Upon such filing the department shall forthwith
 8 schedule a public hearing to be held in Helena, Montana, to
 9 determine whether the facility proposed by the resort
 10 developer or landowner is a resort area within the meaning
 11 of the rules of the department. At least 30 days prior to
 12 the date of the hearing, the department shall publish notice
 13 thereof, with a description of the location of the proposed
 14 resort area, in a newspaper published in the county or
 15 counties in which the resort is located, once a week for 4
 16 consecutive weeks. Each resort developer or landowner
 17 shall, at the time of filing his application, pay to the
 18 department an amount sufficient to cover the costs of said
 19 publication.

20 (7) Persons may present statements to the department
 21 at the hearing in person or in writing in opposition or
 22 support of the plat.

23 (8) Within 30 days of the hearing, the department
 24 shall accept or reject the plat. If rejected the department
 25 must state its reasons and set forth the conditions, if any,

1 under which the plat will be accepted, and the decision of
 2 the department may be reviewed pursuant to the review
 3 procedure set forth in 16-4-406.

4 (9) Once filed with the department, the boundaries of
 5 a resort may not be changed without full hearing as above
 6 provided and the prior approval of the department, which
 7 approval shall be according to public convenience and
 8 necessity.

9 (10) (a) When the department has accepted a plat and a
 10 given resort area has been determined, applications may then
 11 be filed with the department by persons for the issuance of
 12 ~~resort-retail-liquor retail resort all-beverages~~ licenses
 13 within the resort area.

14 (b) Each applicant must submit plans showing the
 15 location, appearance, and floor plan of the premises for
 16 which application for a license is made.

17 (c) If an applicant otherwise qualifies for a retail
 18 resort all-beverages license but the premises to be licensed
 19 are still in construction or are otherwise incomplete at the
 20 time of such application, the department shall issue a
 21 letter stating that the license will be issued at such time
 22 as the qualifications for a licensed premises have been met,
 23 setting forth such time limitations and requirements as the
 24 department may establish.

25 (11) In addition to the restrictions on sale or

1 transfer of a license as provided in 16-4-204 and 16-4-404,
 2 no ~~resort-retail-liquor~~ retail resort all-beverages license
 3 may be sold or transferred for operation at a location
 4 outside of the boundaries of the resort area.

5 (12) A ~~resort-retail-liquor~~ retail resort all-beverages
 6 license shall not be subject to the quota limitations set
 7 forth in 16-4-201, and if the requirements of this section
 8 have been met, a ~~resort--retail--liquor~~ retail resort
 9 all-beverages license shall be issued by the department on
 10 the basis that the department has determined that such
 11 license is justified by public convenience and necessity, in
 12 accordance with the procedure required in 16-4-207."

13 Section 23. Section 16-4-204, MCA, is amended to read:

14 "16-4-204. ~~Transfer~~ Retail tavern all-beverages
 15 license transfer -- catering endorsement. (1) (a) Except as
 16 provided in subsection (1)(b), a retail tavern all-beverages
 17 license may be transferred to a new ownership and to a
 18 location outside the quota area for which it was originally
 19 issued only when the following criteria are met:

20 (i) the total number of retail tavern all-beverages
 21 licenses in the original quota area exceeded the quota for
 22 that area by at least 25% in the most recent census
 23 prescribed in 16-4-502;

24 (ii) the total number of retail tavern all-beverages
 25 licenses in the quota area to which the license would be

1 transferred did not exceed that area's quota in the most
 2 recent census prescribed in 16-4-502:

3 (A) by more than 33%; or

4 (B) in an incorporated city of more than 10,000
 5 inhabitants and within a distance of 5 miles from its
 6 corporate limits by more than 43%; and

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

10 (b) A license within an incorporated quota area may be
 11 transferred to a new ownership and to a new unincorporated
 12 location within the same county on application to and with
 13 consent of the department when the quota of the retail
 14 tavern all-beverages licenses in the original quota area
 15 exceeds the quota for that area by at least 25% in the most
 16 recent census and will not fall below that level because of
 17 the transfer.

18 (c) For 5 years after the transfer of a license
 19 between quota areas under subsection (1)(a), the license may
 20 not be mortgaged or pledged as security and may not be
 21 transferred to another person except for a transfer by
 22 inheritance upon the death of the licensee.

23 (d) Once a license is transferred to a new quota area
 24 under subsection (1)(a), it may not be transferred to
 25 another quota area or back to the original quota area.

1 (2) (a) Any retail all-beverages licensee is, upon the
 2 approval and in the discretion of the liquor division,
 3 entitled to a catering endorsement to his retail
 4 all-beverages license to allow the catering and sale of
 5 alcoholic beverages to persons attending a special event
 6 upon premises not otherwise licensed for the sale of
 7 alcoholic beverages, such beverages to be consumed on the
 8 premises where the event is held.

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

12 (c) A written application for each event for which the
 13 licensee intends to provide catering services, the written
 14 approval of the catering application by the sponsor of the
 15 special event, and a fee of \$35 must be filed with the
 16 department at least 3 days prior to the event and shall
 17 describe the location of the premises where the event is to
 18 be held, the nature of the event, and the period during
 19 which the event is to be held. An A retail all-beverages
 20 licensee who holds an endorsement granted under this
 21 subsection (2) may not receive approval to cater an event of
 22 which he is the sponsor. The catered event must be within
 23 100 miles of the licensee's regular place of business. If
 24 obtained, the licensee shall display in a prominent place on
 25 those premises, the written approval from the department for

1 each event which is catered pursuant to this subsection.

2 (d) The licensee shall file with each application for
 3 an event to be catered a written statement of approval of
 4 the premises where the event is to be held issued by the
 5 department of health and environmental sciences and the
 6 local law enforcement agency that has jurisdiction over the
 7 premises where the event is to be held.

8 (e) The sale of alcoholic beverages pursuant to a
 9 catering endorsement is subject to the provisions of
 10 16-6-103.

11 (f) The sale of alcoholic beverages pursuant to a
 12 catering endorsement is subject to the provisions of
 13 16-3-306, unless entities named in 16-3-306 give their
 14 written approval."

15 Section 24. Section 16-4-205, MCA, is amended to read:
 16 "16-4-205. Limit one license to person -- business in
 17 name of licensee. No person shall be granted more than one
 18 retail all-beverages license in any year. No business may be
 19 carried on under any license issued under this chapter
 20 except in the name of the licensee."

21 Section 25. Section 16-4-207, MCA, is amended to read:
 22 "16-4-207. Notice of application for retail
 23 all-beverages license -- publication -- protest. (1) When an
 24 application has been filed with the department for a retail
 25 all-beverages license to sell alcoholic beverages at retail

1 or to transfer such license, the department shall promptly
 2 publish in a newspaper of general circulation in the city,
 3 town, or county from which the application comes a notice
 4 that such applicant has made application for such license
 5 and that protests against the issuance of a license to the
 6 applicant may be mailed to a named administrator in the
 7 department of revenue within 10 days after the final notice
 8 is published. Notice of application for a new license shall
 9 be published once a week for 4 consecutive weeks. Notice of
 10 application for transfer of a license shall be published
 11 once a week for 2 consecutive weeks. Notice may be
 12 substantially in the following form:

13 NOTICE OF APPLICATION FOR RETAIL

14 ALL-BEVERAGES LICENSE

15 Notice is hereby given that on the day of,
 16 19.., one (name of applicant) filed an application for a
 17 retail all-beverages license with the Montana department of
 18 revenue, to be used at (describe location of premises where
 19 beverages are to be sold), and protests, if any there be,
 20 against the issuance of such license may be mailed to,
 21 department of revenue, Helena, Montana, on or before the
 22 day of, 19...

23 Dated Signed

24 ADMINISTRATOR

25 (2) Each applicant shall, at the time of filing his

1 application, pay to the department an amount sufficient to
 2 cover the costs of publishing the notice.

3 (3) If the administrator receives no written protests,
 4 the department may issue or transfer the license without
 5 holding a public hearing. If written protests against the
 6 issuance or transfer of the license are received, the
 7 department shall hold a public hearing at its office in
 8 Helena."

9 Section 26. Section 16-4-208, MCA, is amended to read:

10 "16-4-208. Airport Retail public airport all-beverages
 11 license. (1) The department of revenue shall issue one
 12 all-beverages license, to be known as a retail public
 13 airport all-beverages license, for use at each publicly
 14 owned airport served by scheduled airlines and enplaning and
 15 deplaning a minimum total of 20,000 passengers annually
 16 when:

17 (a) application is made;

18 (b) upon finding that this license is justified by
 19 public convenience and necessity, including the convenience
 20 and necessity of the public traveling by scheduled airlines;
 21 and

22 (c) following a hearing as provided in 16-4-207.

23 (2) Application shall be made by the agency owning and
 24 operating the airport. The agency owning and operating the
 25 airport may lease the retail public airport all-beverages

1 license to an individual or entity approved by the
2 department.

3 (3) A retail public airport all-beverages license and
4 all retail liquor sales thereunder shall be subject to all
5 statutes and rules governing retail all-beverages licenses.

6 (4) The department of revenue shall issue a retail
7 public airport all-beverages license to a qualified
8 applicant regardless of the number of retail all-beverages
9 licenses already issued within the retail tavern
10 all-beverages license quota area in which the airport is
11 situated."

12 Section 27. Section 16-4-404, MCA, is amended to read:

13 "16-4-404. Protest period -- contents of license --
14 posting -- privilege -- transfer -- expiration. (1) No
15 retail all-beverages license may be issued until on or after
16 the date set in the notice for hearing protests.

17 (2) Every license issued under this code shall set
18 forth the name of the person to whom issued, the location,
19 by street and number or other appropriate specific
20 description of location if no street address exists, of the
21 premises where the business is to be carried on under said
22 license, and such other information as the department shall
23 deem necessary. If the licensee is a partnership or if more
24 than one person has any interest in the business operated
25 under the license, the names of all persons in the

1 partnership or interested in the business must appear on the
2 license. Every license must be posted in a conspicuous
3 place on the premises wherein the business authorized under
4 the license is conducted, and such license shall be
5 exhibited upon request to any authorized representative of
6 the department or to any peace officer of the state of
7 Montana.

8 (3) Any license issued under the provisions of this
9 code shall be considered a privilege personal to the
10 licensee named in the license and shall be good until the
11 expiration of the license unless sooner revoked or
12 suspended.

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

20 (5) In the event of a major loss or damage to licensed
21 premises by unforeseen natural causes or in case of
22 expiration of lease of the licensed premises or in the event
23 of eviction or increase of rent by the landlord (in case of
24 rented licensed premises) or in case of proposed removal of
25 license to premises as substantially suited for the retail

1 liquor business as the premises vacated, the licensee may
 2 apply to the department for a transfer of the license to
 3 different premises. The department may in its discretion
 4 permit a transfer in such cases if it appears to the
 5 department that such a transfer is required to do justice to
 6 the licensee applying for the transfer. The department
 7 shall in no event nor for any cause permit a transfer to
 8 different premises where the sanitary, health, and service
 9 facilities are less satisfactory than such facilities which
 10 exist or had existed at the premises from which the transfer
 11 is proposed to be made.

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

1 department.

2 (7) Except as provided in subsections (2) through (6)
 3 and 16-4-204, no license shall be transferred or sold nor
 4 shall it be used for any place of business not described in
 5 the license; provided, however, that such license may be
 6 subject to mortgage and other valid liens, in which event
 7 the name of the mortgagee, upon application to and approval
 8 of the department, must be endorsed on the license."

9 Section 28. Section 16-4-501, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

19 (7) Each licensee licensed under the quotas of
20 16-4-201 shall pay an annual license fee as follows:

21 (a) except as hereinafter provided, for each license
22 outside of incorporated cities and incorporated towns or in
23 incorporated cities and incorporated towns with a population
24 of less than 2,000, \$250 for a unit of a nationally
25 chartered veterans' organization and \$400 for all other

1 licensees;

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

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

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

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

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

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

25 (8) The fee for one retail public airport all-beverage

1 license to a public airport shall be \$800. This license is
 2 nontransferable.

3 (9) The fee for issuance of a package store license
 4 under [section 1] is:

5 (a) \$5,000, with an \$800 annual renewal fee, if the
 6 package store is in an incorporated town or city with less
 7 than 10,000 inhabitants; and

8 (b) \$10,000, with an \$800 annual renewal fee, if the
 9 package store is in an incorporated city with 10,000 or more
 10 inhabitants.

11 ~~(9)~~(10) The license fees herein provided for are
 12 exclusive of and in addition to other license fees
 13 chargeable in Montana for the sale of alcoholic beverages.

14 ~~(10)~~(11) In addition to other license fees, the
 15 department of revenue may require a licensee to pay a late
 16 fee of 33 1/3% of any license fee delinquent on July 1 of
 17 the renewal year, 66 2/3% of any license fee delinquent on
 18 August 1 of the renewal year, and 100% of any license fee
 19 delinquent on September 1 of the renewal year."

20 Section 29. Section 16-4-503, MCA, is amended to read:

21 "16-4-503. City and county licenses -- fees. The city
 22 council of any incorporated town or city or the county
 23 commissioners outside of any incorporated town or city may
 24 provide for the issuance of licenses to persons to whom a
 25 retail license has been issued under the provisions of this

1 code and may fix license fees, not to exceed a sum equal to
 2 five-eighths of the fee for an a retail all-beverages
 3 license or 100% of the fee for a beer or beer-and-wine
 4 license collected by the department from such licensee under
 5 this code."

6 Section 30. Section 16-6-107, MCA, is amended to read:
 7 "16-6-107. Disposal of forfeited alcoholic beverages
 8 -- report. (1) In every case in which a court makes any
 9 order for the forfeiture of alcoholic beverages under any of
 10 the provisions of this code and in every case in which any
 11 claimant to an alcoholic beverage under the provisions of
 12 16-6-105 fails to establish his claim and right thereto, the
 13 alcoholic beverage in question and the packages in which the
 14 alcoholic beverage is kept shall forthwith be delivered to
 15 the department. The department shall thereupon determine the
 16 market value of each forfeited alcoholic beverage which is
 17 found to be suitable for sale in the state ~~liquor--stores~~
 18 warehouse and shall pay the amount so determined to the
 19 state treasurer after deducting therefrom the expenses
 20 necessarily incurred by the department for transporting the
 21 forfeited alcoholic beverage to the state ~~liquor--warehouses~~
 22 warehouse. The alcoholic beverage suitable for sale shall be
 23 taken into stock by the department and sold under the
 24 provisions of this code. Each forfeited alcoholic beverage
 25 which is found to be unsuitable for sale in ~~state-liquor~~

1 ~~stores~~ the state warehouse shall be destroyed under
 2 competent supervision as may from time to time be directed
 3 by the department.

4 (2) In every case in which an alcoholic beverage is
 5 seized by a peace officer, it shall be his duty to forthwith
 6 make or cause to be made to the department a report in
 7 writing of the particulars of such seizure."

8 Section 31. Section 16-6-301, MCA, is amended to read:

9 "16-6-301. Transfer, sale, and possession of alcoholic
 10 beverages -- when unlawful. (1) Except as provided by this
 11 code, no person shall, within the state, by himself, his
 12 clerk, servant, or agent, expose or keep for sale or,
 13 directly or indirectly or upon any pretense or upon any
 14 device, sell or offer to sell or, in consideration of the
 15 purchase or transfer of any property or for any other
 16 consideration or at the time of the transfer of any
 17 property, give to any other person any liquor.

18 (2) No person shall have or keep any liquor within the
 19 state which has not been purchased from the state of
 20 Montana. Nothing in this code shall prohibit any person
 21 entering this state from any other state or from any foreign
 22 country from having in his possession not to exceed 3 wine
 23 gallons of alcoholic liquor or beer which liquor or beer
 24 shall have been purchased in another state or foreign
 25 country, but no person claiming to have so entered the state

1 shall at any time have in his possession more than 3 wine
 2 gallons of intoxicating liquor which shall not have been
 3 purchased from a state liquor---store licensee. This
 4 subsection shall not apply to the department or to the
 5 keeping or having of liquor by brewers, distillers, and
 6 other persons duly licensed by the United States for the
 7 manufacture of such liquor or to the keeping or having of
 8 any proprietary or patent medicines or of any extracts,
 9 essences, tinctures, or preparations where such having and
 10 keeping is authorized by this code.

11 (3) Nothing contained in this section shall apply to
 12 the possession by a sheriff or his bailiff of liquor seized
 13 under execution or other judicial or extrajudicial process
 14 or to sales under executions or other judicial or
 15 extrajudicial process to the department or, in the case of
 16 beer, to a brewer, beer licensee, club licensee, or canteen
 17 licensee.

18 (4) Except as provided in this code, no person shall,
 19 within the state, by himself, his clerk, servant, or agent:

20 (a) attempt to purchase any alcoholic beverage;

21 (b) directly or indirectly or upon any pretense or
 22 device, purchase any alcoholic beverage; or

23 (c) in consideration of the sale or transfer of any
 24 property or for any other consideration or at the time of
 25 the transfer of any property, take or accept from any other

1 person any alcoholic beverage."

2 Section 32. Section 16-6-303, MCA, is amended to read:

3 "16-6-303. Sale of liquor not purchased from state
 4 store warehouse forbidden -- penalty. It is unlawful for any
 5 licensee to sell or keep for sale or have on his premises
 6 for any purpose whatever any liquor except that purchased
 7 from the state liquor---store warehouse, and any licensee
 8 found in possession of or selling and keeping for sale any
 9 liquor which was not purchased from a the state liquor-store
 10 warehouse shall, upon conviction, be punished by a fine of
 11 not less than \$500 or more than \$1,500, by imprisonment for
 12 not less than 3 months or more than 1 year, or by both such
 13 fine and imprisonment. If the department is satisfied that
 14 any such liquor was knowingly sold or kept for sale within
 15 the licensed premises by the licensee or by his agents,
 16 servants, or employees, the department shall immediately
 17 revoke the license."

18 NEW SECTION. Section 33. Sale of existing state
 19 retail liquor stores. (1) The department of revenue shall
 20 negotiate contracts to sell, as soon as possible after [the
 21 effective date of this section], all existing state retail
 22 liquor stores, including agency stores, and the contracts
 23 must have a January 1, 1987, closing date. The sales must be
 24 made through a sealed bid procedure to qualified bidders. A
 25 qualified bidder is a bidder who is eligible to receive a

1 package store license.

2 (2) The department shall establish a minimum sale
3 price for each state-operated store that may not be less
4 than the value of the average daily inventory at the store.
5 The highest qualified bidder is entitled to assume title to
6 the store inventory, store fixtures, lease, if any, and
7 related merchandise and equipment; except that if the bid of
8 an employee of the store or a person operating the store
9 under an agency agreement is within 5% of the highest bid,
10 he is entitled to assume title. The successful bidder must
11 be granted an agency agreement to operate the store as a
12 state liquor store between the time title is assumed and
13 January 1, 1987. The department shall develop a list of
14 items that will be assumed by the highest qualified bidder.

15 (3) The highest qualified bidder must be issued a
16 package store license on January 1, 1987, and,
17 notwithstanding 16-4-501(9), may not be charged a fee for
18 issuance of the license.

19 (4) A state store may be operated by the department
20 until it is sold and the sale is closed. If it is not sold
21 by January 1, 1987, the department shall return the
22 inventory remaining at the store to the central warehouse in
23 Helena and sell the other items referred to in subsection
24 (2).

25 NEW SECTION. Section 34. Extension of authority. Any

1 existing authority of the department of revenue to make
2 rules on the subject of the provisions of this act is
3 extended to the provisions of this act

4 NEW SECTION. Section 35. Repealer. Sections 16-2-101,
5 16-2-103 through 16-2-106, 16-2-108, 16-2-301, and 16-3-307,
6 MCA, are repealed.

7 NEW SECTION. Section 36. Codification instruction.
8 Section 1 is intended to be codified as an integral part of
9 Title 16, chapters 1 through 6, and the provisions of Title
10 16, chapters 1 through 6 apply to section 1.

11 NEW SECTION. Section 37. Effective dates. This
12 section and section 33 are effective on passage and
13 approval. The remaining sections are effective January 1,
14 1987.

-End-

STATE OF MONTANA

REQUEST NO. FNN-273-85

FISCAL NOTE

Form BD-15

In compliance with a written request received January 30, 19 85, there is hereby submitted a Fiscal Note for H.B. 527 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 OF PROPOSED LEGISLATION:

An act to withdraw the state from the state liquor store business and require the stores to be sold to private parties; to provide that all liquor stores are to be operated under licenses that are not subject to a quota; to allow the state to operate only one state warehouse for sales to holders of liquor and wine licenses; to allow liquor stores to set their own retail prices; to increase the discount for quantity purchases from the state warehouse; to require the state to pay the cost of shipments from its warehouse; and to clarify terminology; and providing effective dates.

ASSUMPTIONS:Liquor Enterprise Profits:

- 1) Liquor enterprise revenue projections prepared by OBPP provide the basis for comparison.
- 2) Retail "Posted Price" is determined as under current policies and procedures; and includes the cost of goods plus state markup and all taxes. Wholesale "Posted Price" is after the 10% discount proposed by the bill.
- 3) Outbound freight costs for shipments to licensees and package stores are equalized statewide and added to the cost of goods. The effect is to mark up and add excise tax to the freight cost. (This is the current practice.) The equalized outbound freight costs, therefore, are paid on all purchases from the warehouse regardless of whether shipments are arranged by the licensee, the department or picked up at the warehouse.
- 4) Based on Wyoming's experience, additional outbound freight costs of \$2.439M per year will be incurred. These additional costs increase the cost of goods as under current Montana procedures and those of virtually all other states. Based on historical sales patterns, only 45% of these additional costs will be incurred in FY 87 due to the effective date of the proposal.
- 5) Under the proposed law, the warehouse would be remodeled and reequipped in FY 1987 at an estimated cost of \$350,000.
- 6) Under the proposed law, 15.5 FTE would be added to the warehouse staff, at a cost of \$260,000 per year. Based on historical sales patterns, only 45% of these expenses will be incurred in FY 1987 due to the effective date of the proposal.

David L. Hunter

BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 7, 1985

- 7) Stores Bureau operating expenses of \$4.915 M would be eliminated under the proposal, but other costs incurred by the Liquor Division and other divisions of the Department would continue to be charged against liquor revenues.
- 8) Expenditures for Licensing Bureau salaries, benefits, travel and communications would increase by 30%. The portion of Legal and Enforcement Division expenses allocated to the Liquor Division also would increase by approximately 30%. These expenditure increases would be incurred in FY 1987.
- 9) A one time expenditure of \$275,700 in FY 1987 will be necessary to "cash out" store personnel for accumulated sick leave and vacation.
- 10) It is assumed that the Liquor Division will be able to terminate the majority of existing store leases without continued payments. (Current commitments would require lease payments of \$354,000 in FY 1987, \$221,600 in FY 1988 and \$92,200 in FY 1989).
- 11) Agreements will be reached for the sale of all 59 existing state stores. The stores will be operated as agency stores, as proposed, for the entire period of FY 87. The operator of agency stores is responsible for all operating expenses. Agency store operators, however, receive a 10% commission as compensation. Moreover, during this period sales to licensees are subject to the existing 5% discount (see technical note).
- 12) The price effects of the proposal will price the state out of the table wine business. Historically, 3.6% of total sales are from table wines.

Sale of store inventories:

- 1) The Department is extended the authority to value store inventories, and therefore establish minimum bids, at the wholesale price less discount level established under the proposal. The value will be on the basis of "Posted Price" less a 10% discount.
- 2) Inventories in the stores will be drawn down to remove slow moving, unprofitable items. These actions are anticipated to expedite the sale of the stores, rather than force the state to retrieve existing store inventories and return them to the warehouse. The bill could create logistical problems for the Department. If store inventories could not be sold at the maximum bid they would have to be retrieved and returned to the warehouse at considerable expense not reflected in this note. In FY 84 the average inventory of the stores was \$4.67M valued at cost. Estimates suggest that 20% of these inventories are slow moving items that would be eliminated (but maintained in the warehouse). The figures imply that an inventory of \$3.736M valued at cost will be established for purposes of establishing minimum store bids. The calculation of minimum bids are shown below:

Cost of Goods	\$3,736,000
Mark-Up	1,494,400
Liquor License Tax	523,040
Liquor Excise Tax	836,864
"Posted" Value	<u>\$6,590,304</u>
Discount	659,030
Minimum Bid	<u>\$5,931,274</u>

- 3) The depreciated value of state-owned furniture and fixtures in the state stores is approximately \$338,000.
- 4) All store inventory and equipment are sold in FY1987 at the above prices.

Package Store Licenses:

- 1) Wyoming has 1 off premise retail outlet for every 5,355 persons. This statistic suggests that the population of Montana would support 152 package stores for a net gain of 14 stores. However, it is expected that some of the smaller volume agency stores will cease to exist under the proposal. Assuming county borders reasonably approximate a given store's (or stores') market area, implies that 49 existing agency stores will close. These figures suggest that 63 new stores will be subject to the first time license fee. All of these stores are assumed to be in cities and towns with populations greater than 10,000.
- 2) The proposal will have no effect on other licensing revenue.

Effect on Liquor Profits

	<u>Current Law</u> (OBPP)	<u>1st 6 months</u> ¹⁾	<u>FY87</u> <u>Proposed Law</u> <u>Last 6 months</u>	<u>TOTAL</u>
Gross Sales	\$57,514,893	\$31,633,191	\$26,739,580	\$58,372,771
Liquor License Tax	\$ 4,210,000	\$ 2,315,500	\$ 2,122,189	\$ 4,437,689
Liquor Excise Tax	\$ 6,736,000	\$ 3,704,800	\$ 3,395,502	\$ 7,100,302
Wine Tax	\$ 96,893	\$ 53,291	0	\$ 53,291
Net Sales	\$46,472,000	\$25,559,600	\$21,221,889	\$46,781,489
Discounts	\$ 825,000	\$ 1,581,660	\$ 2,673,958 ²⁾	\$ 4,255,618
Cost of Goods	\$33,488,000	<u>\$18,418,400</u>	<u>\$15,158,492²⁾</u>	\$33,576,892 ³⁾
Operating Expense	\$ 7,117,000			\$ 5,937,840 ³⁾
+ Miscellaneous Income	\$ 34,000			\$ 34,000
Liquor Profits	<u>\$ 5,077,000</u>			<u>\$ 3,045,139</u>

1) Effective date of proposal 1/1/87 is midway through fiscal year, sales allocated by historical trend. 55% first half, 45% second half.

2) $.45 (33,488,000) + .45 \frac{\text{trans. costs}}{(2,439,000)} - \frac{\text{Wine Cost}}{1,008,659} = 15,158,492$

3) $7,117,000 - \frac{\text{Store Exp.}}{4,915,000} + \frac{\text{Warehouse}}{350,000} + \frac{\text{Staff}}{117,000} + \frac{\text{Licensing}}{33,096} + \frac{\text{Legal}}{72,425} + \frac{\text{Commissions}}{3,163,319} = 5,937,840$

	<u>Under</u> <u>Current Law</u>	<u>FY 87</u> <u>Under</u> <u>Proposed Law</u>	<u>Difference</u>
<u>EFFECT OF REVENUE:*</u>			
<u>Liquor Operation:</u>			
Liquor Profits	\$ 5,077,000	\$ 3,045,139	(\$2,031,861)
Liquor Excise Tax	\$ 6,736,000	\$ 7,100,302	\$ 364,302
Liquor License Tax	\$ 4,210,000	\$ 4,437,689	\$ 227,689
<u>Licensing Revenue:</u>			
Package Store Licenses	\$ -0-	\$ 630,000	\$ 630,000
<u>Sale of Stores:</u>			
Equipment	\$ -0-	\$ 338,000	\$ 338,000
<u>Liquor Inventory:</u>			
Cost & Mark-Up	\$ -0-	\$ 4,571,370	\$ 4,571,370
Liquor Excise Tax	\$ -0-	\$ 836,864	\$ 836,864
Liquor License Tax	\$ -0-	\$ 523,040	\$ 523,040
TOTALS	\$16,023,000	\$21,482,404	\$ 5,459,404
<u>FUND INFORMATION:</u>			
General Fund	\$11,813,000	\$16,521,675	\$ 4,708,675
Cities & Towns	\$ 1,263,000	\$ 1,488,219	\$ 225,219
Counties	\$ 189,450	\$ 223,232	\$ 33,782
Dept. of Institutions	\$ 2,757,550	\$ 3,249,278	\$ 491,728

EFFECT ON COUNTY/LOCAL REVENUES

FY 1987 distributions to cities and towns, and counties are given in the fund information.

* The proposal reduces wine tax revenue collected by the Department. However, it is assumed that private distributors will supply the package stores. Consequently, total wine tax revenue should remain unaffected by the proposal.

LONG RANGE EFFECTS:

The proposal will increase the price of liquor to the Montana consumer by 20%. A price increase of this magnitude may cause sales to decline more rapidly than was assumed for purposes of this fiscal note and would encourage the illegal trade of liquor.

However, assuming liquor sales remain constant at FY 1987 levels, the following gives an appreciation of the long-range effect of the proposal (one time costs and revenues are removed).

FY 1988 & Beyond

	<u>Under Current Law</u>	<u>Under Proposed Law</u>	<u>Difference</u>
<u>EFFECT ON REVENUE:</u>			
Ongoing Liquor Operation:			
Liquor Profits	\$ 5,077,000	\$ 4,634,730	\$ (442,270)
Liquor Excise Tax	\$ 6,736,000	\$ 7,283,000	\$ 547,000
Liquor License Tax	\$ 4,210,000	\$ 4,552,000	\$ 342,000
The Fund Breakdown Becomes:			
General Fund	\$11,813,000	\$11,917,730	\$ 104,730
Cities & Towns	\$ 1,263,000	\$ 1,365,600	\$ 102,600
Counties	\$ 189,450	\$ 204,840	\$ 15,390
Dept. of Institutions	\$ 2,757,550	\$ 2,981,560	\$ 224,010

POLICY ISSUES:

- 1) It should be noted that a 20% price increase to the retail consumer under current law would increase liquor profits by \$4.8 M and liquor tax revenue by \$1.85 M per year. General fund revenues from liquor sales would be increased by \$5.95 M per year - a 51% increase in state general fund revenues.
- 2) The inclusion of equalized freight rates is important to the fiscal conclusions of this analysis. If the current practice of including freight costs in the costs of goods sold and thereby marking up and taxing that amount is not continued, then this bill would have a smaller fiscal impact in FY 87 and coming bienniums. Allowing retailers to pay their own freight would reduce state revenue \$0.838 million in FY 87 and \$1.863 million per year thereafter.

TECHNICAL NOTES:

- 1) The bill does not provide for package store licenses in unincorporated cities and towns or outside city limits.
- 2) The bill makes numerous references to prices. For example, the bill distinguishes between retail posted prices, posted price and wholesale price. These different prices cause confusion. This confusion could be eliminated with more definitions.
- 3) It is not entirely clear whether the minimum bid price for the state stores is to be based on the cost of the inventory or the retail value of the inventory. This fiscal note assumes that the value is to be based on retail.
- 4) The prohibition against locating private package stores next to grocery stores would result in the relocation of 16 existing state stores or agencies. These stores in the present location would not meet the qualifications for a package store license. This could prevent the department from selling the inventory as the bill anticipates
- 5) The 60% of gross sales requirement would eliminate 7 existing agencies. This requirement is particularly important in rural areas where a liquor store's revenue must be supplemented with other revenue to operate profitably.
- 6) The bill contemplates signing over the title and entering an agency agreement once a successful bidder is established. This is inconsistent and could have severe financial consequences. Strictly interpreted the new owner could receive all the proceeds from the stores sales, he owns the inventory, and also receive a commission from the state. Similarly, the new owner becomes a licensee and is entitled to the 5% discount allowed under current law.

COMM. ON
BUSINESS AND LABOR
RECOMMEND DO NOT PASS
OBJECTION RAISED TO
ADVERSE COMMITTEE REPORT

HOUSE BILL NO. 527

INTRODUCED BY

Marks

Simon *Winters* *Ramirez*
O'Hara *Hager* *DeaBran*

A BILL FOR AN ACT ENTITLED: "AN ACT TO WITHDRAW THE STATE FROM THE STATE LIQUOR STORE BUSINESS AND REQUIRE THE STORES TO BE SOLD TO PRIVATE PARTIES; TO PROVIDE THAT ALL LIQUOR STORES ARE TO BE OPERATED UNDER LICENSES THAT ARE NOT SUBJECT TO A QUOTA; TO ALLOW THE STATE TO OPERATE ONLY ONE STATE WAREHOUSE FOR SALES TO HOLDERS OF LIQUOR AND WINE LICENSES; TO ALLOW LIQUOR STORES TO SET THEIR OWN RETAIL PRICES; TO INCREASE THE DISCOUNT FOR QUANTITY PURCHASES FROM THE STATE WAREHOUSE; TO REQUIRE THE STATE TO PAY THE COST OF SHIPMENTS FROM ITS WAREHOUSE; AND TO CLARIFY TERMINOLOGY; AMENDING SECTIONS 16-1-103, 16-1-105, 16-1-106, 16-1-202, 16-1-301 THROUGH 16-1-304, 16-1-401, 16-1-402, 16-1-404, 16-2-107, 16-2-201, 16-2-203, 16-2-302, 16-2-303, 16-3-103, 16-3-106, 16-3-401, 16-4-201, 16-4-202, 16-4-204, 16-4-205, 16-4-207, 16-4-208, 16-4-404, 16-4-501, 16-4-503, 16-6-107, 16-6-301, AND 16-6-303, MCA; REPEALING SECTIONS 16-2-101, 16-2-103 THROUGH 16-2-106, 16-2-108, 16-2-301, AND 16-3-307, MCA; AND PROVIDING EFFECTIVE DATES."

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

NEW SECTION. Section 1. Package store license. (1) An applicant who meets the requirements of this code must be

issued a license to sell liquor, beer, and wine at retail for off-premises consumption only. Such a license is called a package store license. A license may not be granted to an applicant that operates, manages, or directly or indirectly owns a controlling interest in a grocery store or supermarket of any size that is adjacent to the premises where the license will be exercised.

(2) At least 60% of the gross sales for any 3-month period of a licensee under this section must be derived from the sale of alcoholic beverages.

(3) Licensees under this section may determine the price at which they sell alcoholic beverages at retail, not to exceed 110% of the posted retail price of the package.

(4) Except as provided in 16-4-404(4) through (6), no package store license may be transferred or sold or used for any place of business not described in the license; however, such license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and approval of the department, must be endorsed on the license.

Section 2. Section 16-1-103, MCA, is amended to read:

"16-1-103. Policy as to retail sale of liquor. It is the policy of the state that it is necessary to further regulate and control the sale and distribution of alcoholic beverages within the state and to ensure the entire control

1 of the sale of liquor in the department of revenue. It is
 2 advisable and necessary, ~~in addition to the operation of the~~
 3 ~~state liquor stores now provided by law,~~ that the department
 4 be empowered and authorized to grant licenses to persons
 5 qualified under this code to sell liquor purchased by them
 6 at the state liquor stores warehouse at retail the posted
 7 price in accordance with this code and under rules
 8 promulgated by the department and under its strict
 9 supervision and control and to provide severe penalty for
 10 the sale of liquor except by ~~and in state liquor stores--and~~
 11 by persons licensed under this code. The restrictions,
 12 regulations, and provisions contained in this code are
 13 enacted by the legislature for the protection, health,
 14 welfare, and safety of the people of the state."

15 Section 3. Section 16-1-105, MCA, is amended to read:
 16 "16-1-105. Divisions of code. This code is divided
 17 into six chapters. Chapter 1 relates to the authority of
 18 the department of revenue to administer this code and the
 19 powers and functions of the department. Chapter 2 relates to
 20 ~~the establishment--of--state--stores--and--the--keeping--and~~
 21 ~~selling--of--liquors~~ price of liquor and the sale of table
 22 wine. Chapter 3 relates to the control of liquor, wine, and
 23 beer. Chapter 4 relates to license administration. Chapter 5
 24 relates to identification cards. Chapter 6 relates to
 25 enforcement."

1 Section 4. Section 16-1-106, MCA, is amended to read:
 2 "16-1-106. Definitions. As used in this code, the
 3 following definitions apply:

4 ~~{1}--"Agency--agreement"--means--an--agreement--between--the~~
 5 ~~department--and--a--person--appointed--to--sell--liquor--as--a~~
 6 ~~commission-merchant--rather--than--as--an--employee--~~

7 ~~{2}{1}~~ "Alcohol" means ethyl alcohol, also called
 8 ethanol, or the hydrated oxide of ethyl.

9 ~~{3}{2}~~ "Alcoholic beverage" means a compound produced
 10 and sold for human consumption as a drink that contains more
 11 than .5% of alcohol by volume.

12 ~~{4}{3}~~ "Beer" means a malt beverage containing not
 13 more than 7% of alcohol by weight.

14 ~~{5}{4}~~ "Brewer" means a person who produces malt
 15 beverages.

16 ~~{6}{5}~~ "Department" means the department of revenue.

17 ~~{7}{6}~~ "Immediate family" means a spouse, dependent
 18 children, or dependent parents.

19 ~~{8}{7}~~ "Industrial use" means a use described as
 20 industrial use by the federal Alcohol Administration Act and
 21 the federal rules and regulations of 27 CFR.

22 ~~{9}{8}~~ "Liquor" means an alcoholic beverage except
 23 beer and table wine.

24 ~~{10}{9}~~ "Malt beverage" means an alcoholic beverage
 25 made by the fermentation of an infusion or decoction, or a

1 combination of both, in potable brewing water, of malted
2 barley with or without hops or their parts or their products
3 and with or without other malted cereals and with or without
4 the addition of unmalted or prepared cereals, other
5 carbohydrates, or products prepared therefrom and with or
6 without other wholesome products suitable for human food
7 consumption.

8 ~~{11}~~(10) "Package" means a container or receptacle used
9 for holding an alcoholic beverage.

10 (11) "Package store license" means a license issued
11 under [section 1].

12 (12) "Posted price" means the retail wholesale price of
13 paid by licensees for liquor, beer, and wine purchased from
14 the state warehouse by licensees. The term includes the
15 price as fixed and determined by the department and in
16 addition thereto ~~an--excise--and--license-tax-as~~ any taxes
17 provided in this code.

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

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

24 (15) "Retail all-beverages license" includes a tavern,
25 resort, or public airport retail all-beverages license but

1 does not include a package store license.

2 ~~{15}~~(16) "Rules" means rules published by the
3 department pursuant to this code.

4 ~~{16}~~"State--liquor-facility"~~--means-a-facility-owned-or~~
5 ~~under--control--of--the--department--for--the--purpose--of~~
6 ~~receiving,--storing,--transporting,--or--selling--alcoholic~~
7 ~~beverages.~~

8 ~~{17}~~"State-liquor-store"~~--means-a-retail-store-operated~~
9 ~~by-the-department-in--accordance--with--this--code--for--the~~
10 ~~purpose-of-selling-liquor.~~

11 ~~{18}~~(17) "Storage depot" means a building or structure
12 owned or operated by a brewer at any point in the state of
13 Montana off and away from the premises of a brewery, and
14 which structure is equipped with refrigeration or cooling
15 apparatus for the storage of beer and from which a brewer
16 may sell or distribute beer as permitted by this code.

17 ~~{19}~~(18) "Table wine" means wine as defined below which
18 contains not more than 14% alcohol by volume.

19 ~~{20}~~(19) "Warehouse" means a building or structure
20 owned or operated by a licensed wholesaler for the
21 receiving, storage, and distribution of beer as permitted by
22 this code.

23 ~~{21}~~(20) "Wine" means an alcoholic beverage made from
24 the normal alcoholic fermentation of the juice of sound,
25 ripe fruit or other agricultural products without addition

1 or abstraction, except as may occur in the usual cellar
 2 treatment of clarifying and aging, and that contains not
 3 less than 7% or more than 24% of alcohol by volume. Wine
 4 may be ameliorated to correct natural deficiencies,
 5 sweetened, and fortified in accordance with applicable
 6 federal regulations and the customs and practices of the
 7 industry. Other alcoholic beverages not defined as above but
 8 made in the manner of wine and labeled and sold as wine in
 9 accordance with federal regulations are also wine."

10 Section 5. Section 16-1-202, MCA, is amended to read:

11 "16-1-202. Preparations not subject to code. (1)
 12 Subject to the provisions of this section, nothing in this
 13 code shall, by reason only that such preparation contains
 14 alcohol, prevent the manufacture, sale, purchase, or
 15 consumption of any:

16 (a) extract, essence, or tincture or other preparation
 17 containing alcohol which is prepared according to a formula
 18 of the United States Pharmacopoeia or according to a formula
 19 approved of by the department; or

20 (b) proprietary or patent medicine prepared according
 21 to a formula approved of by the department.

22 (2) The department, if of opinion that any such
 23 proprietary or patent medicine, extract, essence, tincture,
 24 or preparation which contains alcohol or any other
 25 preparation of a solid, semisolid, or liquid nature

1 containing alcohol which, or any extract from which, can be
 2 used as a beverage or as the ingredient of any beverage, may
 3 prohibit the sale thereof by retail within the state or the
 4 possession of the same for sale by retail within the state,
 5 except by ~~a state liquor store or by~~ persons duly licensed
 6 by the department to keep and sell the same by at retail in
 7 accordance with this code and ~~the regulations made~~
 8 thereunder rules adopted by the department.

9 (3) The department shall notify the manufacturer or
 10 vendor of such proprietary or patent medicine, extract,
 11 essence, tincture, or preparation of the prohibition."

12 Section 6. Section 16-1-301, MCA, is amended to read:

13 "16-1-301. Administration of code. The department
 14 shall have the powers and duties to administer the Montana
 15 Alcoholic Beverage Code, ~~including the general control,~~
 16 ~~management, and supervision of all state liquor stores."~~

17 Section 7. Section 16-1-302, MCA, is amended to read:

18 "16-1-302. Functions, powers, and duties of
 19 department. (1) The department shall have the following
 20 functions, duties, and powers:

21 ~~(1)(a)~~ (a) to buy, import, have in its possession for
 22 sale, and sell to licensees through the state warehouse
 23 liquors and table wine in the manner set forth in this code;

24 ~~(2)(b)~~ (b) to control the possession, sale, and delivery
 25 of liquors in accordance with the provisions of this code;

~~{3}--to-determine-the-municipalities-within-which-state
liquor-stores-shall-be-established-throughout-the-state--and
the--situation-of-the-stores-within-every-such-municipality;~~

{4}(c) to buy or lease, furnish, and equip any one building or and necessary land required for the operation of the state warehouse under this code;

~~{5}--to--buy--or--lease--all--plants--and--equipment--it--may
consider-necessary--and--useful--in--carrying--into--effect--the
objects--and--purposes--of--this--code;~~

{6}(d) to employ ~~store--managers~~ a state warehouse manager and also every officer, investigator, clerk, or other employee required for the operation or carrying out of this code and to dismiss the same, fix their salaries or remuneration, assign them their title, define their respective duties and powers, and to engage the service of experts and persons engaged in the practice of a profession, if deemed expedient;

{7}(e) to determine the nature, form, and capacity of all packages to be used for containing liquor kept or sold under this code;

{8}(f) to grant and issue licenses under and in pursuance to this code;

{9}(g) without in any way limiting or being limited by the foregoing, to do all such things as are deemed necessary or advisable by the department for the purpose of carrying

into effect the provisions of this code or the rules made thereunder of the department.

(2) The department may operate only one state warehouse under this code."

Section 8. Section 16-1-303, MCA, is amended to read:

"16-1-303. Department rules. (1) The department may make such rules not inconsistent with this code as to the department seem necessary for carrying out the provisions of this code and for the efficient administration thereof.

(2) Without thereby limiting the generality of the provisions contained in subsection (1) hereof, it is declared that the power of the department to make rules in the manner set out in that subsection shall extend to and include the following:

(a) regulating the equipment and management of the state stores-and-warehouses-in-which-liquor-or-table-wine-is kept-or-sold warehouse and prescribing the books and records to be kept therein;

(b) prescribing the duties of the employees of the liquor division and regulating their conduct while in the discharge of their duties;

~~{c}--governing--the--purchase---of---liquor---and---the
furnishing--of-liquor-to-state-stores-established-under-this
code;~~

~~{d}--determining-the-classes,-varieties,-and-brands--of~~

1 ~~liquor and table wine to be kept for sale at any state~~
2 ~~store;~~

3 ~~{e} prescribing, subject to this code, the hours~~
4 ~~during which state liquor stores shall be kept open for the~~
5 ~~sale of alcoholic beverages;~~

6 {f}(c) providing for the issuing and distributing of
7 price lists showing the posted price to be paid by
8 purchasers licensees for each class, variety, or brand of
9 liquor and table wine kept for sale under this code
10 purchased from the state warehouse;

11 {g}(d) prescribing forms to be used for the purpose of
12 this code or of the rules made thereunder and the terms and
13 conditions in permits and licenses issued and granted under
14 this code;

15 {h}(e) prescribing the form of records of purchase of
16 liquor and table wine and the reports to be made thereon to
17 the division and providing for inspection of the records so
18 kept;

19 {i}(f) prescribing the manner of giving and serving
20 notices required by this code or the rules thereunder;

21 {j}(g) prescribing the fees payable in respect of
22 permits and licenses issued under this code for which no
23 fees are prescribed in this code and prescribing the fees
24 for anything done or permitted to be done under the rules
25 made thereunder;

1 {k}(h) prescribing, subject to the provisions of this
2 code, the conditions and qualifications necessary for the
3 obtaining of a liquor or beer license and the books and
4 records to be kept and the returns to be made by the
5 licensees and providing for the inspection of such licensed
6 premises.

7 {l}(i) specifying and describing the place and the
8 manner in which liquor or beer may be lawfully kept or
9 stored;

10 {m}(j) specifying and regulating the time and periods
11 when and the manner, methods, and means by which vendors and
12 brewers shall deliver liquor under this code and the time
13 and periods when and the manner, methods, and means by which
14 liquor, under this code, may be lawfully conveyed or
15 carried;

16 {n}(k) governing the conduct, management, and
17 equipment of any premises licensed to sell liquor or beer
18 under this code;

19 {o}(l) providing for the imposition and collection of
20 taxes and making rules respecting returns, accounting, and
21 payment of the taxes to the department.

22 (3) Whenever it is provided in this code that any act,
23 matter, or thing may be done if permitted or authorized by
24 the rules or may be done in accordance with the rules or as
25 provided by the rules, the department, subject to the

1 restrictions set out in subsection (1) hereof, shall have
2 the power to make rules respecting such act, matter, or
3 thing."

4 Section 9. Section 16-1-304, MCA, is amended to read:

5 "16-1-304. Prohibited acts within division. (1) No
6 officer or employee of the liquor division, ~~including those~~
7 ~~engaged in the sale of liquor at the various state liquor or~~
8 ~~table wine stores,~~ may be directly or indirectly interested
9 or engaged in any other business or undertaking dealing in
10 liquor or table wine, whether as owner, part owner, partner,
11 member of syndicate, shareholder, agent, or employee and
12 whether for his own benefit or in a fiduciary capacity for
13 some other person.

14 (2) No member or employee of the division or any
15 employee of the state may solicit or receive directly or
16 indirectly any commission, remuneration, or gift whatsoever
17 from any person or corporation having sold, selling, or
18 offering liquor or table wine for sale to the state or
19 division pursuant to this code.

20 (3) No person selling or offering for sale to or
21 purchasing liquor or table wine from the state liquor
22 division may either directly or indirectly offer to pay any
23 commission, profit, or remuneration or make any gift to any
24 member or employee of the division, to any employee of the
25 state, or to anyone on behalf of such member or employee.

1 (4) The prohibition contained in subsection (3) of
2 this section does not prohibit the division from receiving
3 samples of liquor or table wine for the purpose of chemical
4 testing, subject to the following limitations:

5 (a) Each manufacturer, distiller, compounder,
6 rectifier, importer, or wholesale distributor or any other
7 person, firm, or corporation proposing to sell any liquor or
8 table wine to the Montana liquor division shall submit,
9 without cost to the division prior to the original purchase,
10 an analysis of each brand and may submit a representative
11 sample not exceeding 25 fluid ounces of such merchandise to
12 the division.

13 (b) When a brand of liquor or table wine has been
14 accepted for testing by the division, the division shall
15 forward the sample, unopened and in its entirety, to a
16 qualified chemical laboratory for analysis.

17 (c) The division shall maintain written records of all
18 samples received. The records shall show the brand name,
19 amount and from whom received, date received, the laboratory
20 or chemist to whom forwarded, the division's action on the
21 brand, and the person to whom delivered or other final
22 disposition of the sample.

23 (5) No liquor, or wine, ~~or other alcoholic beverage~~
24 may be withdrawn from the regular state warehouse inventory
25 ~~or from the state liquor stores of the Montana liquor~~

1 division for any purpose other than sale by the state to
 2 licensees at the prevailing state-retail-prices posted price
 3 or for destroying damaged or defective merchandise. The
 4 division shall maintain a written record including the type,
 5 brand, container size, number of bottles or other units,
 6 signatures of witnesses, and method of destruction or other
 7 disposition of damaged or defective state warehouse or-state
 8 store merchandise."

9 Section 10. Section 16-1-401, MCA, is amended to read:
 10 "16-1-401. Liquor excise tax. The department is hereby
 11 authorized and directed to charge, receive, and collect at
 12 the time of the sale and delivery of any liquor as
 13 authorized under any provision of the laws of the state of
 14 Montana an excise tax at the rate of 16% of the retail
 15 wholesale selling price on all liquor sold and delivered to
 16 licensees. The department shall retain the amount of such
 17 excise tax received in a separate account and shall deposit
 18 with the state treasurer, to the credit of the general fund,
 19 such sums collected and received not later than the 10th day
 20 of each and every month."

21 Section 11. Section 16-1-402, MCA, is amended to read:
 22 "16-1-402. Payment of excise tax by carriers. (1)
 23 Every airline or railroad operating in the state of Montana
 24 and selling liquor purchased outside this state for
 25 consumption within this state shall pay to the department

1 the excise taxes and state markup which would be applicable
 2 to such liquor if purchased from the state liquor-store
 3 warehouse.

4 (2) The amount of such excise taxes and state markup
 5 payable shall be determined by multiplying the following
 6 factors:

- 7 (a) the average liquor used per departure;
 8 (b) the number of departures from Montana on which
 9 liquor is served;
 10 (c) the ratio of Montana revenue passenger miles to
 11 system revenue passenger miles; and
 12 (d) the applicable excise tax and state markup rates.

13 (3) From said product, the carrier shall subtract the
 14 amount of excise taxes and state markup on purchases of
 15 liquor made within this state."

16 Section 12. Section 16-1-404, MCA, is amended to read:
 17 "16-1-404. License tax on liquor -- amount --
 18 distribution of proceeds. (1) The department is hereby
 19 authorized and directed to charge, receive, and collect at
 20 the time of sale and delivery of any liquor under any
 21 provisions of the laws of the state of Montana a license tax
 22 of 10% of the retail wholesale selling price on all liquor
 23 sold and delivered to licensees. Said tax shall be charged
 24 and collected on all liquor brought into the state and taxed
 25 by the department. The retail wholesale selling price shall

1 be computed by adding to the cost of said liquor the state
 2 markup as designated by the department. Said 10% license tax
 3 shall be figured in the same manner as the state excise tax
 4 and shall be in addition to said state excise tax. The
 5 department shall retain in a separate account the amount of
 6 such 10% license tax so received. Thirty percent of these
 7 revenues shall be allocated to the counties according to the
 8 amount of liquor purchased in each county to be distributed
 9 to the incorporated cities and towns, as provided in
 10 subsection (2). Four and one-half percent of these revenues
 11 shall be allocated to the counties according to the amount
 12 of liquor purchased in each county, and this money may be
 13 used for county purposes. The remaining revenues shall be
 14 deposited in the state special revenue fund to the credit of
 15 the department of institutions for the treatment,
 16 rehabilitation, and prevention of alcoholism. Provided,
 17 however, in the case of purchases of liquor by a retail
 18 liquor licensee for use in his business, the department
 19 shall make such regulations as are necessary to apportion
 20 that proportion of license tax so generated to the county
 21 where the licensed establishment is located, for use as
 22 provided in 16-1-405. The department shall pay quarterly to
 23 each county treasurer the proportion of the license tax due
 24 each county to be allocated to the incorporated cities and
 25 towns of the county.

1 (2) The license tax proceeds allocated to the county
 2 under subsection (1) for use by cities and towns shall be
 3 distributed by the county treasurer to the incorporated
 4 cities and towns within 30 days of receipt from the
 5 department. The distribution of funds to the cities and
 6 towns shall be based on the proportion that the gross sale
 7 of liquor in each city or town is to the gross sale of
 8 liquor in all of the cities and towns of the county.

9 (3) The license tax proceeds that are allocated to the
 10 department of institutions for the treatment,
 11 rehabilitation, and prevention of alcoholism shall be
 12 credited quarterly to the department of institutions. The
 13 legislature may appropriate a portion of the license tax
 14 proceeds to support alcohol programs. The remainder shall be
 15 distributed as provided in 53-24-206."

16 Section 13. Section 16-2-107, MCA, is amended to read:
 17 "16-2-107. No open liquor container or liquor
 18 consumption on premises of state package store. No ~~officer~~
 19 ~~clerk, or agent of the department~~ person owning or employed
 20 in a state package store shall allow any liquor container to
 21 be opened on the premises of ~~a state~~ the store or allow any
 22 liquor to be consumed on the premises of ~~a state~~ the store,
 23 nor shall any person open a liquor container or consume any
 24 liquor on such premises."

25 Section 14. Section 16-2-201, MCA, is amended to read:

1 "16-2-201. Reduction Price discount for quantity sales
2 purchases of liquor. Reduction A reduction of 5% 10% of the
3 retail posted price of liquor sold at by the state liquor
4 store warehouse shall be made by the department for sales of
5 liquor to any person purchasing liquor in unbroken case
6 lots. No other reduction shall be made by the department for
7 quantity sales of liquor."

8 Section 15. Section 16-2-203, MCA, is amended to read:

9 "16-2-203. Department sales to licensees. The
10 department may sell through its stores warehouse to
11 licensees licensed under this code all kinds of liquor, wine
12 containing--more--than--14%--alcohol-by-volume, and cordials
13 kept in stock, at the posted price thereof in the store in
14 which the liquor is sold. All sales shall be upon a cash
15 basis. The licensee may, in his discretion, have the liquor,
16 wine, and cordials shipped to him, and the department must
17 pay all shipping costs."

18 Section 16. Section 16-2-302, MCA, is amended to read:

19 "16-2-302. State distribution sales. The department
20 may import and distribute sell to licensees one or more
21 named table wines to--one-or-more-designated-state-liquor
22 stores, in the same manner as if the table wine contained
23 more than 14% alcohol by volume."

24 Section 17. Section 16-2-303, MCA, is amended to read:

25 "16-2-303. Department prohibited from engaging in

1 unfair competition. (1) The department, in engaging in the
2 retail wholesale sale of table wine to licensees, is subject
3 to the provisions of Title 30, chapter 14, parts 1 and 2,
4 except those provisions relating to enforcement and
5 penalties.

6 (2) A person aggrieved by a violation of this section
7 by the department may maintain an action to enjoin the
8 alleged violation and for the recovery of damages in the
9 district court of the district where the conduct complained
10 of occurred or where the department's principal office is
11 located."

12 Section 18. Section 16-3-103, MCA, is amended to read:

13 "16-3-103. Unlawful sales solicitation or advertising
14 -- exceptions. (1) No person within the state shall:

15 (a) canvass for, receive, take, or solicit orders for
16 the purchase or sale of any liquor or act as agent or
17 intermediary for the sale or purchase of any liquor or hold
18 himself out as such agent or intermediary unless permitted
19 to do so under rules that shall be promulgated by the
20 department to govern such activities;

21 (b) canvass for or solicit orders for the purchase or
22 sale of any beer or malt liquor except in the case of beer
23 proposed to be sold to beer licensees or club licensees duly
24 authorized to sell beer under the provisions of this code;

25 (c) exhibit, publish, or display or permit to be

1 exhibited, published, or displayed any form of advertisement
 2 or any other announcement, publication, or price list of or
 3 concerning liquor or where or from whom the same may be had,
 4 obtained, or purchased unless permitted to do so by the
 5 rules of the department and then only in accordance with
 6 such rules.

7 (2) This section shall not apply to:

8 (a) the department; or any act of the department; ~~any~~
 9 ~~state-liquor-store~~; or

10 (b) the receipt or transmission of a telegram or
 11 letter by any telegraph agent or operator or post-office
 12 employee in the ordinary course of his employment as such
 13 agent, operator, or employee."

14 Section 19. Section 16-3-106, MCA, is amended to read:

15 "16-3-106. Conveyance of liquors -- opening liquor
 16 during transit forbidden. (1) It shall be lawful to carry or
 17 convey liquor ~~to-any-state-store-and~~ to and from any the
 18 warehouse ~~or--depot~~ established by the department for the
 19 purposes of this code, and when permitted to do so by this
 20 code and the rules made thereunder and in accordance
 21 therewith, it shall be lawful for any common carrier or
 22 other person to carry or convey ~~liquor-sold-by-a-vendor-from~~
 23 ~~a--state-store-or~~ beer, when lawfully sold by a brewer, from
 24 the premises wherein such beer was manufactured or from
 25 premises where the beer may be lawfully kept and sold to any

1 place to which the same may be lawfully delivered under this
 2 code and the rules made thereunder.

3 (2) No common carrier or any other person shall open,
 4 break, or allow to be opened or broken any package or vessel
 5 containing liquor or drink or use or allow to be drunk or
 6 used any liquor therefrom while being carried or conveyed."

7 Section 20. Section 16-3-401, MCA, is amended to read:

8 "16-3-401. Public policy. The public policy of the
 9 state of Montana is to maintain a system for the importation
 10 and sale of wine by the state through the state liquor
 11 ~~facilities~~ warehouse and provide for, regulate, and control
 12 the acquisition, importation, and distribution of table wine
 13 containing not more than 14% alcohol by volume by licensed
 14 wine distributors ~~and-the-state.~~"

15 Section 21. Section 16-4-201, MCA, is amended to read:

16 "16-4-201. ~~All-beverages~~ Retail tavern all-beverages
 17 license quota. (1) Except as otherwise provided by law, a
 18 license to sell liquor, beer, and wine at retail for both
 19 on-premises and off-premises consumption ~~(as a retail tavern~~
 20 ~~all-beverages license)~~ in accordance with the provisions of
 21 this code and the rules of the department may be issued to
 22 any person who is approved by the department as a fit and
 23 proper person to sell such beverages, except that the number
 24 of retail tavern all-beverages licenses that the department
 25 may issue for premises situated within incorporated cities

1 and incorporated towns and within a distance of 5 miles from
 2 the corporate limits of such cities and towns shall be
 3 determined on the basis of population prescribed in 16-4-502
 4 as follows:

5 (a) in incorporated towns of 500 inhabitants or less
 6 and within a distance of 5 miles from the corporate limits
 7 of such towns, not more than two retail tavern all-beverages
 8 licenses;

9 (b) in incorporated cities or incorporated towns of
 10 more than 500 inhabitants and not over 3,000 inhabitants and
 11 within a distance of 5 miles from the corporate limits of
 12 such cities and towns, three retail tavern all-beverages
 13 licenses for the first 1,000 inhabitants and one retail
 14 tavern all-beverages license for each additional 1,000
 15 inhabitants;

16 (c) in incorporated cities of over 3,000 inhabitants
 17 and within a distance of 5 miles from the corporate limits
 18 thereof, five retail tavern all-beverages licenses for the
 19 first 3,000 inhabitants and one retail tavern all-beverages
 20 license for each additional 1,500 inhabitants.

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

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

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

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

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

9 Section 22. Section 16-4-202, MCA, is amended to read:
 10 "16-4-202. Resort Retail resort all-beverages
 11 licenses. (1) It is the intent and purpose of this section
 12 to encourage the growth of quality recreational resort
 13 facilities in undeveloped areas of the state and to provide
 14 for the orderly growth of existing recreational sites by the
 15 establishment of resort areas within which ~~retail--liquor~~
 16 licenses to sell liquor, beer, and wine at retail for both
 17 on-premises and off-premises consumption (a retail resort
 18 all-beverages license) may be issued by the department under
 19 the terms and as more particularly prescribed below. In
 20 addition to the licenses as otherwise set forth in {this
 21 act} this code, the department may issue ~~resort-retail~~
 22 ~~liquor retail resort all-beverages~~ licenses in a resort
 23 area.

24 (2) For the purposes of this section, a resort area is
 25 defined as a recreational facility meeting the

1 qualifications determined by the department as hereinafter
 2 provided.

3 (3) The department shall determine that the area for
 4 which licenses are to be issued is a resort area, such
 5 determination to be made under and pursuant to rules to be
 6 first promulgated on or before December 31, 1975.

7 (4) In addition to the other requirements of this
 8 code, a resort area, for the purposes of qualification for
 9 the issuance of ~~resort--retail--liquor~~ a retail resort
 10 all-beverages license, must have a current actual valuation
 11 of resort or recreational facilities, including land and
 12 improvements thereon, of not less than \$500,000, at least
 13 half of which valuation must be for a structure or
 14 structures within the resort area, and must be under the
 15 sole ownership or control of one person or entity at the
 16 time of the filing of the resort area plat referred to in
 17 subsection (5) of this section. The word control shall mean
 18 lands held under lease, option, or permit.

19 (5) The resort area must be determined by the resort
 20 developer or landowner by a plat setting forth the resort
 21 boundaries, designating the ownership of the lands within
 22 the resort area, which plat must be verified by the resort
 23 developer or landowner and filed with the department prior
 24 to the filing of any applications by individuals for
 25 licenses within the resort area. Such plat must show the

1 location and general design of the buildings and other
 2 improvements to be built in said area in which ~~resort-retail~~
 3 ~~liquor retail resort all-beverages~~ licenses are to or may be
 4 located. A master plan for the development of the area may
 5 be filed by the resort developer in satisfaction of this
 6 section.

7 (6) Upon such filing the department shall forthwith
 8 schedule a public hearing to be held in Helena, Montana, to
 9 determine whether the facility proposed by the resort
 10 developer or landowner is a resort area within the meaning
 11 of the rules of the department. At least 30 days prior to
 12 the date of the hearing, the department shall publish notice
 13 thereof, with a description of the location of the proposed
 14 resort area, in a newspaper published in the county or
 15 counties in which the resort is located, once a week for 4
 16 consecutive weeks. Each resort developer or landowner
 17 shall, at the time of filing his application, pay to the
 18 department an amount sufficient to cover the costs of said
 19 publication.

20 (7) Persons may present statements to the department
 21 at the hearing in person or in writing in opposition or
 22 support of the plat.

23 (8) Within 30 days of the hearing, the department
 24 shall accept or reject the plat. If rejected the department
 25 must state its reasons and set forth the conditions, if any,

1 under which the plat will be accepted, and the decision of
 2 the department may be reviewed pursuant to the review
 3 procedure set forth in 16-4-406.

4 (9) Once filed with the department, the boundaries of
 5 a resort may not be changed without full hearing as above
 6 provided and the prior approval of the department, which
 7 approval shall be according to public convenience and
 8 necessity.

9 (10) (a) When the department has accepted a plat and a
 10 given resort area has been determined, applications may then
 11 be filed with the department by persons for the issuance of
 12 ~~resort-retail-liquor retail resort all-beverages~~ licenses
 13 within the resort area.

14 (b) Each applicant must submit plans showing the
 15 location, appearance, and floor plan of the premises for
 16 which application for a license is made.

17 (c) If an applicant otherwise qualifies for a retail
 18 resort all-beverages license but the premises to be licensed
 19 are still in construction or are otherwise incomplete at the
 20 time of such application, the department shall issue a
 21 letter stating that the license will be issued at such time
 22 as the qualifications for a licensed premises have been met,
 23 setting forth such time limitations and requirements as the
 24 department may establish.

25 (11) In addition to the restrictions on sale or

1 transfer of a license as provided in 16-4-204 and 16-4-404,
 2 no ~~resort-retail-liquor~~ retail resort all-beverages license
 3 may be sold or transferred for operation at a location
 4 outside of the boundaries of the resort area.

5 (12) A ~~resort-retail-liquor~~ retail resort all-beverages
 6 license shall not be subject to the quota limitations set
 7 forth in 16-4-201, and if the requirements of this section
 8 have been met, a ~~resort--retail--liquor~~ retail resort
 9 all-beverages license shall be issued by the department on
 10 the basis that the department has determined that such
 11 license is justified by public convenience and necessity, in
 12 accordance with the procedure required in 16-4-207."

13 Section 23. Section 16-4-204, MCA, is amended to read:

14 "16-4-204. ~~Transfer~~ Retail tavern all-beverages
 15 license transfer -- catering endorsement. (1) (a) Except as
 16 provided in subsection (1)(b), a retail tavern all-beverages
 17 license may be transferred to a new ownership and to a
 18 location outside the quota area for which it was originally
 19 issued only when the following criteria are met:

20 (i) the total number of retail tavern all-beverages
 21 licenses in the original quota area exceeded the quota for
 22 that area by at least 25% in the most recent census
 23 prescribed in 16-4-502;

24 (ii) the total number of retail tavern all-beverages
 25 licenses in the quota area to which the license would be

1 transferred did not exceed that area's quota in the most
 2 recent census prescribed in 16-4-502:

3 (A) by more than 33%; or

4 (B) in an incorporated city of more than 10,000
 5 inhabitants and within a distance of 5 miles from its
 6 corporate limits by more than 43%; and

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

10 (b) A license within an incorporated quota area may be
 11 transferred to a new ownership and to a new unincorporated
 12 location within the same county on application to and with
 13 consent of the department when the quota of the retail
 14 tavern all-beverages licenses in the original quota area
 15 exceeds the quota for that area by at least 25% in the most
 16 recent census and will not fall below that level because of
 17 the transfer.

18 (c) For 5 years after the transfer of a license
 19 between quota areas under subsection (1)(a), the license may
 20 not be mortgaged or pledged as security and may not be
 21 transferred to another person except for a transfer by
 22 inheritance upon the death of the licensee.

23 (d) Once a license is transferred to a new quota area
 24 under subsection (1)(a), it may not be transferred to
 25 another quota area or back to the original quota area.

1 (2) (a) Any retail all-beverages licensee is, upon the
 2 approval and in the discretion of the liquor division,
 3 entitled to a catering endorsement to his retail
 4 all-beverages license to allow the catering and sale of
 5 alcoholic beverages to persons attending a special event
 6 upon premises not otherwise licensed for the sale of
 7 alcoholic beverages, such beverages to be consumed on the
 8 premises where the event is held.

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

12 (c) A written application for each event for which the
 13 licensee intends to provide catering services, the written
 14 approval of the catering application by the sponsor of the
 15 special event, and a fee of \$35 must be filed with the
 16 department at least 3 days prior to the event and shall
 17 describe the location of the premises where the event is to
 18 be held, the nature of the event, and the period during
 19 which the event is to be held. An A retail all-beverages
 20 licensee who holds an endorsement granted under this
 21 subsection (2) may not receive approval to cater an event of
 22 which he is the sponsor. The catered event must be within
 23 100 miles of the licensee's regular place of business. If
 24 obtained, the licensee shall display in a prominent place on
 25 those premises, the written approval from the department for

1 each event which is catered pursuant to this subsection.

2 (d) The licensee shall file with each application for
 3 an event to be catered a written statement of approval of
 4 the premises where the event is to be held issued by the
 5 department of health and environmental sciences and the
 6 local law enforcement agency that has jurisdiction over the
 7 premises where the event is to be held.

8 (e) The sale of alcoholic beverages pursuant to a
 9 catering endorsement is subject to the provisions of
 10 16-6-103.

11 (f) The sale of alcoholic beverages pursuant to a
 12 catering endorsement is subject to the provisions of
 13 16-3-306, unless entities named in 16-3-306 give their
 14 written approval."

15 Section 24. Section 16-4-205, MCA, is amended to read:
 16 "16-4-205. Limit one license to person -- business in
 17 name of licensee. No person shall be granted more than one
 18 retail all-beverages license in any year. No business may be
 19 carried on under any license issued under this chapter
 20 except in the name of the licensee."

21 Section 25. Section 16-4-207, MCA, is amended to read:
 22 "16-4-207. Notice of application for retail
 23 all-beverages license -- publication -- protest. (1) When an
 24 application has been filed with the department for a retail
 25 all-beverages license to sell alcoholic beverages at retail

1 or to transfer such license, the department shall promptly
 2 publish in a newspaper of general circulation in the city,
 3 town, or county from which the application comes a notice
 4 that such applicant has made application for such license
 5 and that protests against the issuance of a license to the
 6 applicant may be mailed to a named administrator in the
 7 department of revenue within 10 days after the final notice
 8 is published. Notice of application for a new license shall
 9 be published once a week for 4 consecutive weeks. Notice of
 10 application for transfer of a license shall be published
 11 once a week for 2 consecutive weeks. Notice may be
 12 substantially in the following form:

13 NOTICE OF APPLICATION FOR RETAIL

14 ALL-BEVERAGES LICENSE

15 Notice is hereby given that on the day of,
 16 19.., one (name of applicant) filed an application for a
 17 retail all-beverages license with the Montana department of
 18 revenue, to be used at (describe location of premises where
 19 beverages are to be sold), and protests, if any there be,
 20 against the issuance of such license may be mailed to,
 21 department of revenue, Helena, Montana, on or before the
 22 day of, 19...

23 Dated

Signed

24 ADMINISTRATOR

25 (2) Each applicant shall, at the time of filing his

1 application, pay to the department an amount sufficient to
 2 cover the costs of publishing the notice.

3 (3) If the administrator receives no written protests,
 4 the department may issue or transfer the license without
 5 holding a public hearing. If written protests against the
 6 issuance or transfer of the license are received, the
 7 department shall hold a public hearing at its office in
 8 Helena."

9 Section 26. Section 16-4-208, MCA, is amended to read:

10 "16-4-208. Airport Retail public airport all-beverages
 11 license. (1) The department of revenue shall issue one
 12 all-beverages license, to be known as a retail public
 13 airport all-beverages license, for use at each publicly
 14 owned airport served by scheduled airlines and enplaning and
 15 deplaning a minimum total of 20,000 passengers annually
 16 when:

17 (a) application is made;

18 (b) upon finding that this license is justified by
 19 public convenience and necessity, including the convenience
 20 and necessity of the public traveling by scheduled airlines;
 21 and

22 (c) following a hearing as provided in 16-4-207.

23 (2) Application shall be made by the agency owning and
 24 operating the airport. The agency owning and operating the
 25 airport may lease the retail public airport all-beverages

1 license to an individual or entity approved by the
2 department.

3 (3) A retail public airport all-beverages license and
4 all retail liquor sales thereunder shall be subject to all
5 statutes and rules governing retail all-beverages licenses.

6 (4) The department of revenue shall issue a retail
7 public airport all-beverages license to a qualified
8 applicant regardless of the number of retail all-beverages
9 licenses already issued within the retail tavern
10 all-beverages license quota area in which the airport is
11 situated."

12 Section 27. Section 16-4-404, MCA, is amended to read:

13 "16-4-404. Protest period -- contents of license --
14 posting -- privilege -- transfer -- expiration. (1) No
15 retail all-beverages license may be issued until on or after
16 the date set in the notice for hearing protests.

17 (2) Every license issued under this code shall set
18 forth the name of the person to whom issued, the location,
19 by street and number or other appropriate specific
20 description of location if no street address exists, of the
21 premises where the business is to be carried on under said
22 license, and such other information as the department shall
23 deem necessary. If the licensee is a partnership or if more
24 than one person has any interest in the business operated
25 under the license, the names of all persons in the

1 partnership or interested in the business must appear on the
2 license. Every license must be posted in a conspicuous
3 place on the premises wherein the business authorized under
4 the license is conducted, and such license shall be
5 exhibited upon request to any authorized representative of
6 the department or to any peace officer of the state of
7 Montana.

8 (3) Any license issued under the provisions of this
9 code shall be considered a privilege personal to the
10 licensee named in the license and shall be good until the
11 expiration of the license unless sooner revoked or
12 suspended.

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

20 (5) In the event of a major loss or damage to licensed
21 premises by unforeseen natural causes or in case of
22 expiration of lease of the licensed premises or in the event
23 of eviction or increase of rent by the landlord (in case of
24 rented licensed premises) or in case of proposed removal of
25 license to premises as substantially suited for the retail

1 liquor business as the premises vacated, the licensee may
 2 apply to the department for a transfer of the license to
 3 different premises. The department may in its discretion
 4 permit a transfer in such cases if it appears to the
 5 department that such a transfer is required to do justice to
 6 the licensee applying for the transfer. The department
 7 shall in no event nor for any cause permit a transfer to
 8 different premises where the sanitary, health, and service
 9 facilities are less satisfactory than such facilities which
 10 exist or had existed at the premises from which the transfer
 11 is proposed to be made.

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

1 department.

2 (7) Except as provided in subsections (2) through (6)
 3 and 16-4-204, no license shall be transferred or sold nor
 4 shall it be used for any place of business not described in
 5 the license; provided, however, that such license may be
 6 subject to mortgage and other valid liens, in which event
 7 the name of the mortgagee, upon application to and approval
 8 of the department, must be endorsed on the license."

9 Section 28. Section 16-4-501, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

16 (6) The annual fee for ~~resort-retail-liquor~~ retail
17 resort all-beverages licenses within a given resort area
18 shall be \$2,000 for each license.

19 (7) Each licensee licensed under the quotas of
20 16-4-201 shall pay an annual license fee as follows:

21 (a) except as hereinafter provided, for each license
22 outside of incorporated cities and incorporated towns or in
23 incorporated cities and incorporated towns with a population
24 of less than 2,000, \$250 for a unit of a nationally
25 chartered veterans' organization and \$400 for all other

1 licensees;

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

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

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

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

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

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

25 (8) The fee for one retail public airport all-beverage

1 license to a public airport shall be \$800. This license is
 2 nontransferable.

3 (9) The fee for issuance of a package store license
 4 under [section 1] is:

5 (a) \$5,000, with an \$800 annual renewal fee, if the
 6 package store is in an incorporated town or city with less
 7 than 10,000 inhabitants; and

8 (b) \$10,000, with an \$800 annual renewal fee, if the
 9 package store is in an incorporated city with 10,000 or more
 10 inhabitants.

11 ~~{9}~~{10} The license fees herein provided for are
 12 exclusive of and in addition to other license fees
 13 chargeable in Montana for the sale of alcoholic beverages.

14 ~~{10}~~{11} In addition to other license fees, the
 15 department of revenue may require a licensee to pay a late
 16 fee of 33 1/3% of any license fee delinquent on July 1 of
 17 the renewal year, 66 2/3% of any license fee delinquent on
 18 August 1 of the renewal year, and 100% of any license fee
 19 delinquent on September 1 of the renewal year."

20 Section 29. Section 16-4-503, MCA, is amended to read:

21 "16-4-503. City and county licenses -- fees. The city
 22 council of any incorporated town or city or the county
 23 commissioners outside of any incorporated town or city may
 24 provide for the issuance of licenses to persons to whom a
 25 retail license has been issued under the provisions of this

1 code and may fix license fees, not to exceed a sum equal to
 2 five-eighths of the fee for an a retail all-beverages
 3 license or 100% of the fee for a beer or beer-and-wine
 4 license collected by the department from such licensee under
 5 this code."

6 Section 30. Section 16-6-107, MCA, is amended to read:
 7 "16-6-107. Disposal of forfeited alcoholic beverages
 8 -- report. (1) In every case in which a court makes any
 9 order for the forfeiture of alcoholic beverages under any of
 10 the provisions of this code and in every case in which any
 11 claimant to an alcoholic beverage under the provisions of
 12 16-6-105 fails to establish his claim and right thereto, the
 13 alcoholic beverage in question and the packages in which the
 14 alcoholic beverage is kept shall forthwith be delivered to
 15 the department. The department shall thereupon determine the
 16 market value of each forfeited alcoholic beverage which is
 17 found to be suitable for sale in the state ~~liquor--stores~~
 18 warehouse and shall pay the amount so determined to the
 19 state treasurer after deducting therefrom the expenses
 20 necessarily incurred by the department for transporting the
 21 forfeited alcoholic beverage to the state ~~liquor--warehouses~~
 22 warehouse. The alcoholic beverage suitable for sale shall be
 23 taken into stock by the department and sold under the
 24 provisions of this code. Each forfeited alcoholic beverage
 25 which is found to be unsuitable for sale in ~~state-liquor~~

1 ~~stores~~ the state warehouse shall be destroyed under
 2 competent supervision as may from time to time be directed
 3 by the department.

4 (2) In every case in which an alcoholic beverage is
 5 seized by a peace officer, it shall be his duty to forthwith
 6 make or cause to be made to the department a report in
 7 writing of the particulars of such seizure."

8 Section 31. Section 16-6-301, MCA, is amended to read:

9 "16-6-301. Transfer, sale, and possession of alcoholic
 10 beverages -- when unlawful. (1) Except as provided by this
 11 code, no person shall, within the state, by himself, his
 12 clerk, servant, or agent, expose or keep for sale or,
 13 directly or indirectly or upon any pretense or upon any
 14 device, sell or offer to sell or, in consideration of the
 15 purchase or transfer of any property or for any other
 16 consideration or at the time of the transfer of any
 17 property, give to any other person any liquor.

18 (2) No person shall have or keep any liquor within the
 19 state which has not been purchased from the state of
 20 Montana. Nothing in this code shall prohibit any person
 21 entering this state from any other state or from any foreign
 22 country from having in his possession not to exceed 3 wine
 23 gallons of alcoholic liquor or beer which liquor or beer
 24 shall have been purchased in another state or foreign
 25 country, but no person claiming to have so entered the state

1 shall at any time have in his possession more than 3 wine
 2 gallons of intoxicating liquor which shall not have been
 3 purchased from a state ~~liquor---~~store licensee. This
 4 subsection shall not apply to the department or to the
 5 keeping or having of liquor by brewers, distillers, and
 6 other persons duly licensed by the United States for the
 7 manufacture of such liquor or to the keeping or having of
 8 any proprietary or patent medicines or of any extracts,
 9 essences, tinctures, or preparations where such having and
 10 keeping is authorized by this code.

11 (3) Nothing contained in this section shall apply to
 12 the possession by a sheriff or his bailiff of liquor seized
 13 under execution or other judicial or extrajudicial process
 14 or to sales under executions or other judicial or
 15 extrajudicial process to the department or, in the case of
 16 beer, to a brewer, beer licensee, club licensee, or canteen
 17 licensee.

18 (4) Except as provided in this code, no person shall,
 19 within the state, by himself, his clerk, servant, or agent:

- 20 (a) attempt to purchase any alcoholic beverage;
 21 (b) directly or indirectly or upon any pretense or
 22 device, purchase any alcoholic beverage; or
 23 (c) in consideration of the sale or transfer of any
 24 property or for any other consideration or at the time of
 25 the transfer of any property, take or accept from any other

1 person any alcoholic beverage."

2 Section 32. Section 16-6-303, MCA, is amended to read:

3 "16-6-303. Sale of liquor not purchased from state
 4 store warehouse forbidden -- penalty. It is unlawful for any
 5 licensee to sell or keep for sale or have on his premises
 6 for any purpose whatever any liquor except that purchased
 7 from the state ~~liquor---~~store warehouse, and any licensee
 8 found in possession of or selling and keeping for sale any
 9 liquor which was not purchased from a the state liquor-store
 10 warehouse shall, upon conviction, be punished by a fine of
 11 not less than \$500 or more than \$1,500, by imprisonment for
 12 not less than 3 months or more than 1 year, or by both such
 13 fine and imprisonment. If the department is satisfied that
 14 any such liquor was knowingly sold or kept for sale within
 15 the licensed premises by the licensee or by his agents,
 16 servants, or employees, the department shall immediately
 17 revoke the license."

18 NEW SECTION. Section 33. Sale of existing state
 19 retail liquor stores. (1) The department of revenue shall
 20 negotiate contracts to sell, as soon as possible after [the
 21 effective date of this section], all existing state retail
 22 liquor stores, including agency stores, and the contracts
 23 must have a January 1, 1987, closing date. The sales must be
 24 made through a sealed bid procedure to qualified bidders. A
 25 qualified bidder is a bidder who is eligible to receive a

1 package store license.

2 (2) The department shall establish a minimum sale
3 price for each state-operated store that may not be less
4 than the value of the average daily inventory at the store.
5 The highest qualified bidder is entitled to assume title to
6 the store inventory, store fixtures, lease, if any, and
7 related merchandise and equipment; except that if the bid of
8 an employee of the store or a person operating the store
9 under an agency agreement is within 5% of the highest bid,
10 he is entitled to assume title. The successful bidder must
11 be granted an agency agreement to operate the store as a
12 state liquor store between the time title is assumed and
13 January 1, 1987. The department shall develop a list of
14 items that will be assumed by the highest qualified bidder.

15 (3) The highest qualified bidder must be issued a
16 package store license on January 1, 1987, and,
17 notwithstanding 16-4-501(9), may not be charged a fee for
18 issuance of the license.

19 (4) A state store may be operated by the department
20 until it is sold and the sale is closed. If it is not sold
21 by January 1, 1987, the department shall return the
22 inventory remaining at the store to the central warehouse in
23 Helena and sell the other items referred to in subsection
24 (2).

25 NEW SECTION. Section 34. Extension of authority. Any

1 existing authority of the department of revenue to make
2 rules on the subject of the provisions of this act is
3 extended to the provisions of this act.

4 NEW SECTION. Section 35. Repealer. Sections 16-2-101,
5 16-2-103 through 16-2-106, 16-2-108, 16-2-301, and 16-3-307,
6 MCA, are repealed.

7 NEW SECTION. Section 36. Codification instruction.
8 Section 1 is intended to be codified as an integral part of
9 Title 16, chapters 1 through 6, and the provisions of Title
10 16, chapters 1 through 6, apply to section 1.

11 NEW SECTION. Section 37. Effective dates. This
12 section and section 33 are effective on passage and
13 approval. The remaining sections are effective January 1,
14 1987.

-End-