

SENATE BILL 5

Introduced by B. Brown

7/08	Introduced
7/08	Referred to Taxation
7/09	First Reading
7/10	Hearing
7/11	Adverse Committee Report Adopted

SENATE BILL NO. 5

INTRODUCED BY Bob Brown
BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE AUTHORITY OF THE DEPARTMENT OF REVENUE TO ESTABLISH AND MAINTAIN STATE EMPLOYEE-OPERATED LIQUOR STORES AFTER DECEMBER 31, 1992; PHASING OUT EXISTING STATE EMPLOYEE-OPERATED LIQUOR STORES PRIOR TO JUNE 30, 1993; EXEMPTING THE PHASEOUT OF STATE EMPLOYEE-OPERATED LIQUOR STORES FROM THE PRIVATIZATION PLAN REVIEW REQUIREMENTS OF TITLE 2, CHAPTER 8, PART 3, MCA; PROVIDING AUTHORITY FOR STATE AGENCY LIQUOR STORES TO APPLY FOR AND RECEIVE RETAIL OFF-PREMISES CONSUMPTION BEER AND TABLE WINE LICENSES; PROVIDING REDUCTION-IN-FORCE RIGHTS FOR DISPLACED LIQUOR STORE EMPLOYEES; PROVIDING A METHOD OF STATE FINANCING FOR AN EMPLOYEE-OWNED ENTERPRISE; AMENDING SECTIONS 2-17-101, 16-1-103, 16-1-105, 16-1-106, 16-1-202, 16-1-301, 16-1-302, 16-1-303, 16-1-304, 16-1-402, 16-2-101, 16-2-103, 16-2-104, 16-2-107, 16-2-108, 16-2-201, 16-2-203, 16-2-301, 16-2-302, 16-2-303, 16-3-103, 16-3-106, 16-3-307, 16-3-401, 16-3-402, 16-4-105, 16-4-401, 16-6-107, 16-6-303, 17-6-305, 17-6-308, 17-6-310, AND 17-6-318, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 2-17-101, MCA, is amended to read:

"2-17-101. Allocation of space. (1) The department of administration shall determine the space required by state agencies other than the university system and shall allocate space in buildings owned or leased by the state, based on each agency's need. To efficiently and effectively allocate space, the department periodically shall identify the amount, location, and nature of space used by each agency.

(2) An agency requiring additional space shall notify the department. The department, in consultation with the agency, shall determine the amount and nature of the space needed and locate space within a building owned or leased by the state to meet the agency's requirements. If no space is available in a building owned or leased by the state, the department shall locate space to be leased in an appropriate building or recommend alternatives to leasing, such as remodeling or exchanging space with another agency. A state agency may not lease, rent, or purchase property for quarters without prior approval of the department.

(3) (a) The location of the chambers for the house of representatives shall be determined in the sole discretion of the house of representatives. The location of the chambers of the senate shall be determined in the sole discretion of the senate.



(b) The department of administration, with the advice of the capitol building and planning committee, shall allocate other space for the use of the legislature, including but not limited to space for committee rooms and legislative offices.

(4) For state agencies located in a city other than Helena, the department of administration shall consolidate the offices of these agencies in a single, central location within the city whenever such consolidation would result in a cost savings to the state while permitting sufficient space and facilities for the agencies. The department may purchase, lease, or acquire, by exchange or otherwise, land and buildings in the city to achieve consolidation. State ~~retail~~ employee-operated liquor stores, state agency liquor stores, ~~liquor-retail--agencies,~~ and offices of the law enforcement services division and motor vehicle division of the department of justice are exempted from consolidation."

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 of the sale of liquor in the department of revenue. It is advisable and necessary, in addition to ~~the-operation-of-the~~ providing for state employee-operated liquor stores and

state agency liquor stores ~~now-provided-by-law~~, that the department be empowered and authorized to grant licenses to persons qualified under this code to sell liquor purchased by them at state employee-operated liquor stores or state agency liquor stores at retail posted price in accordance with this code and under rules promulgated by the department and under its strict supervision and control and to provide severe penalty for the sale of liquor except by and in state employee-operated liquor stores or state agency liquor stores and by persons licensed under this code. The restrictions, regulations, and provisions contained in this code are enacted by the legislature for the protection, health, welfare, and safety of the people of the state."

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

"16-1-105. Divisions of code. This code is divided into six chapters. Chapter 1 relates to the authority of the department of revenue to administer this code and the powers and functions of the department. Chapter 2 relates to the establishment of state agency liquor stores and the keeping and selling of liquors. Chapter 3 relates to the control of liquor, wine, and beer. Chapter 4 relates to license administration. Chapter 5, now repealed, related to identification cards. Chapter 6 relates to enforcement."

Section 4. Section 16-1-106, MCA, is amended to read:

"16-1-106. Definitions. As used in this code, the

1 following definitions apply:

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

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

7 (3) "Alcoholic beverage" means a compound produced and
8 sold for human consumption as a drink that contains more
9 than 0.5% of alcohol by volume.

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

12 (5) "Beer importer" means a person other than a brewer
13 who imports malt beverages.

14 (6) "Brewer" means a person who produces malt
15 beverages.

16 (7) (a) "Community" means:

17 (i) in an incorporated city or town, the area within
18 the incorporated city or town boundaries;

19 (ii) in an unincorporated area, the area within a 5-mile
20 radius of the local post office or, if no local post office
21 exists, the area within a 5-mile radius of the location of
22 the local state employee-operated liquor store as it existed
23 on [the effective date of this act]; and

24 (iii) in a consolidated local government, the area of
25 the consolidated local government not incorporated.

1 (b) The boundaries referred to in this subsection (7)
2 are not necessarily the same boundaries used to determine
3 the population of a community.

4 (7)(8) "Department" means the department of revenue.

5 (9) "Eligible state employee" means a state employee
6 who worked an average of at least 20 hours per week in a
7 state employee-operated liquor store during the 6 months
8 immediately preceding [the effective date of this act] and
9 who was employed as a liquor store manager, assistant
10 manager, or clerk on [the effective date of this act].

11 (10) "Employee-owned enterprise" has the meaning given
12 in 17-6-302.

13 (11) (a) "Grocery store" means a business that sells
14 fresh dairy products, fresh meat, fresh produce, canned
15 foods, or packaged foods.

16 (b) The term does not include a business with food and
17 beverage sales that are limited to canned or bottled
18 beverages, snack foods, or prepared foods.

19 (8)(12) "Immediate family" means a spouse, dependent
20 children, or dependent parents.

21 (9)(13) "Import" means to transfer beer or table wine
22 from outside the state of Montana into the state of Montana.

23 (10)(14) "Industrial use" means a use described as
24 industrial use by the federal Alcohol Administration Act and
25 the federal rules and regulations of 27 CFR.

1 ~~(11)~~(15) "Liquor" means an alcoholic beverage except
2 beer and table wine.

3 ~~(12)~~(16) "Malt beverage" means an alcoholic beverage
4 made by the fermentation of an infusion or decoction, or a
5 combination of both, in potable brewing water, of malted
6 barley with or without hops or their parts or their products
7 and with or without other malted cereals and with or without
8 the addition of unmalted or prepared cereals, other
9 carbohydrates, or products prepared therefrom from these
10 substances and with or without other wholesome products
11 suitable for human food consumption.

12 ~~(13)~~(17) "Package" means a container or receptacle used
13 for holding an alcoholic beverage.

14 ~~(14)~~(18) "Posted price" means the retail price of liquor
15 and table wine as fixed and determined by the department and
16 in addition thereto an excise and license tax as provided in
17 this code.

18 ~~(15)~~(19) "Proof gallon" means a U.S. gallon of liquor at
19 60 degrees on the Fahrenheit scale that contains 50% of
20 alcohol by volume.

21 ~~(16)~~(20) "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 ~~(17)~~(21) "Rules" means rules published by the department
25 pursuant to this code.

1 (22) "State agency liquor store" means a retail store
2 operated under an agency agreement in accordance with this
3 code for the purpose of selling liquor and table wine.

4 (23) "State employee-operated liquor store" means a
5 retail store that is operated by the department and that
6 employs state employees to sell liquor and table wine in
7 accordance with this code.

8 ~~(18)~~(24) "State liquor facility warehouse" means a
9 facility the building owned or under control of the
10 department for the purpose of receiving, storing,
11 transporting, or selling alcoholic beverages at wholesale.

12 ~~(19)~~~~"State-liquor-store"~~~~means-a-retail-store--operated~~
13 ~~by--the--department--in--accordance--with--this-code-for-the~~
14 ~~purpose-of-selling-liquor-and-table-wine.~~

15 ~~(20)~~(25) "Storage depot" means a building or structure
16 that is owned or operated by a brewer ~~at-any-point~~ in the
17 state of Montana off and away from the premises of a
18 brewery, ~~and---which---structure~~ that is equipped with
19 refrigeration or cooling apparatus for the storage of beer,
20 and from which a brewer may sell or distribute beer as
21 permitted by this code.

22 ~~(21)~~(26) "Subwarehouse" means a building or structure
23 owned or operated by a licensed beer wholesaler or table
24 wine distributor, located at a site in Montana other than
25 the site of such the beer wholesaler's or table wine

1 distributor's warehouse or principal place of business, and
2 used for the receiving, storage, and distribution of beer or
3 table wine as permitted by this code.

4 ~~(22)~~(27) "Table wine" means wine ~~as defined below which~~
5 ~~that~~ contains not more than 16% alcohol by volume.

6 ~~(23)~~(28) "Table wine distributor" means a person
7 importing into or purchasing in Montana table wine for sale
8 or resale to retailers licensed in Montana.

9 ~~(24)~~(29) "Warehouse" means a building or structure
10 located in Montana and owned or operated by a licensed beer
11 wholesaler or table wine distributor for the receiving,
12 storage, and distribution of beer or table wine as permitted
13 by this code.

14 ~~(25)~~(30) "Wine" means an alcoholic beverage made from or
15 containing the normal alcoholic fermentation of the juice of
16 sound, ripe fruit or other agricultural products without
17 addition or abstraction, except as may occur in the usual
18 cellar treatment of clarifying and aging, and that contains
19 more than 0.5% but not more than 24% of alcohol by volume.
20 Wine may be ameliorated to correct natural deficiencies,
21 sweetened, and fortified in accordance with applicable
22 federal regulations and the customs and practices of the
23 industry. Other alcoholic beverages not defined as above but
24 made in the manner of wine and labeled and sold as wine in
25 accordance with federal regulations are also wine."

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

2 **"16-1-202. Preparations not subject to code. (1)**
3 Subject to the provisions of this section, nothing in this
4 code shall, by reason only that such preparation contains
5 alcohol, prevent the manufacture, sale, purchase, or
6 consumption of any:

7 (a) extract, essence, or tincture or other preparation
8 containing alcohol ~~which~~ that is prepared according to a
9 formula of the United States Pharmacopoeia or according to a
10 formula approved of by the department; or

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

13 (2) The department, if of the opinion that any such
14 proprietary or patent medicine, extract, essence, tincture,
15 or preparation ~~which~~ that contains alcohol or any other
16 preparation of a solid, semisolid, or liquid nature
17 containing alcohol which, or any extract from which, can be
18 used as a beverage or as the ingredient of any beverage, may
19 prohibit ~~the its~~ its sale ~~thereof~~ by retail within the state or
20 ~~the its~~ its possession ~~of-the-same~~ for sale by retail within the
21 state, except by a state agency liquor store or by persons
22 duly licensed by the department to keep and sell the same
23 proprietary or patent medicine, extract, essence, tincture,
24 or preparation by retail in accordance with this code and
25 the regulations ~~made-thereunder~~ promulgated pursuant to this

1 code.

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

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

6 "16-1-301. **Administration of code.** The department ~~shall~~
7 ~~have~~ has the powers and duties to administer the Montana
8 Alcoholic Beverage Code, including the general control,
9 management, and supervision of all state agency liquor
0 stores."

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

2 "16-1-302. **Functions, powers, and duties of department.**
3 The department has the following functions, duties, and
4 powers:

5 (1) to buy, import, ~~have--in-its-possession-for-sale~~
6 possess, and sell ~~liquors~~ liquor and table wine in the
7 manner set forth in this code;

8 (2) to control the possession, sale, and delivery of
9 ~~liquors~~ alcoholic beverages in accordance with the
0 provisions of this code;

1 (3) to determine the municipalities where state agency
2 liquor stores are to be established throughout the state and
3 the situation of the stores within these municipalities;

4 (4) to lease, furnish, and equip any building or land
5 required for the operation of this code;

1 (5) to buy or lease all plants and equipment it may
2 consider necessary and useful in carrying into effect the
3 objects and purposes of this code;

4 (6) (a) to employ store managers and-also only for the
5 time necessary to close state employee-operated liquor
6 stores;

7 (b) to employ every officer, investigator, clerk, or
8 other employee required for the operation or carrying out of
9 this code and to dismiss them, fix their salaries or
10 remuneration, assign them their title, and define their
11 respective duties and powers;; and

12 (c) to engage the service of experts and persons
13 engaged in the practice of a profession, if considered
14 appropriate;

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

18 (8) to grant and issue licenses ~~under-and-in-pursuance~~
19 pursuant to this code;

20 (9) to place special restrictions on the use of a
21 particular license, which must be endorsed upon the face of
22 the license, if the special restrictions are made pursuant
23 to a hearing held in connection with the issuance of the
24 license or if the special restrictions are agreed to by the
25 licensee;

1 (10) without limiting or being limited by the foregoing,
2 to do all things considered necessary or advisable by the
3 department for the purpose of carrying into effect the
4 provisions of this code or the rules made under the
5 provisions of this code."

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

7 "16-1-303. Department rules. (1) The department may
8 make ~~such rules not-inconsistent~~ consistent with this code
9 as ~~to the department seem~~ considers necessary for carrying
10 out the provisions of this code and for the efficient
11 administration ~~thereof~~ of this code.

12 (2) Without ~~thereby~~ limiting the generality of the
13 provisions contained in subsection (1) ~~hereof~~, it is
14 declared that the power of the department to make rules in
15 the manner set out in ~~that~~ subsection (1) ~~shall--extend~~
16 extends to and ~~include~~ includes the following:

17 (a) regulating the equipment and management of state
18 agency liquor stores and warehouses ~~the state liquor~~
19 warehouse in which liquor or table wine is kept or sold and
20 prescribing the books and records to be kept ~~therein~~ in
21 state agency liquor stores and the state liquor warehouse;

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

25 (c) governing the purchase of liquor and table wine and

1 the furnishing of liquor and table wine to state agency
2 liquor stores established under this code;

3 (d) determining the classes, varieties, and brands of
4 liquor and table wine to be kept for sale at any state
5 agency liquor store;

6 (e) prescribing, subject to this code, the hours during
7 which state agency liquor stores ~~shall~~ must be kept open for
8 the sale of alcoholic beverages;

9 (f) providing for the issuing and distributing of price
10 lists showing the price to be paid by purchasers for each
11 class, variety, or brand of liquor and table wine kept for
12 sale under this code;

13 (g) prescribing forms to be used for the purpose of
14 this code or of the rules ~~made--thereunder~~ promulgated
15 pursuant to this code and the terms and conditions in
16 permits and licenses issued and granted under this code;

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

21 (i) prescribing the manner of giving and serving
22 notices required by this code or the rules ~~thereunder~~
23 promulgated pursuant to this code;

24 (j) prescribing the fees payable in respect of permits
25 and licenses issued under this code for which no fees are

1 prescribed in this code and prescribing the fees for
 2 anything done or permitted to be done under the rules ~~made~~
 3 thereunder promulgated pursuant to this code;

4 (k) prescribing, subject to the provisions of this
 5 code, the conditions and qualifications necessary for the
 6 obtaining of alcoholic beverage licenses and the books and
 7 records to be kept and the returns to be made by the
 8 licensees and providing for the inspection of ~~such~~ licensed
 9 premises;

10 (l) specifying and describing the place and the manner
 11 in which alcoholic beverages may be lawfully kept or stored;

12 (m) specifying and regulating the time and periods when
 13 and the manner, methods, and means by which vendors and
 14 brewers shall deliver alcoholic beverages under this code
 15 and the time and periods when and the manner, methods, and
 16 means by which alcoholic beverages, under this code, may be
 17 lawfully conveyed or carried;

18 (n) governing the conduct, management, and equipment of
 19 any premises licensed to sell alcoholic beverages under this
 20 code; and

21 (o) providing for the imposition and collection of
 22 taxes and making rules respecting returns, accounting, and
 23 payment of the taxes to the department.

24 (3) Whenever it is provided in this code that any act,
 25 matter, or thing may be done if permitted or authorized by

1 the rules or may be done in accordance with the rules or as
 2 provided by the rules, the department, subject to the
 3 restrictions set out in subsection (1) hereof, ~~shall have~~
 4 has the power to make rules respecting such the act, matter,
 5 or thing."

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

7 "16-1-304. Prohibited acts within division. (1) No (a)
 8 An officer or employee of the liquor division, including
 9 those engaged in the sale of liquor alcoholic beverages at
 10 the various state employee-operated liquor ~~or-table-wine~~
 11 stores, may not be directly or indirectly interested or
 12 engaged in any other business or undertaking dealing in
 13 liquor or table wine, whether as owner, part owner, partner,
 14 member of syndicate, shareholder, agent, or employee and
 15 whether for his the officer's or employee's own benefit or
 16 in a fiduciary capacity for some other person.

17 (b) The prohibition contained in subsection (1)(a) does
 18 not restrict a liquor division employee who is about to be
 19 terminated from state employment because of the closure of a
 20 state employee-operated liquor store from being a
 21 stockholder in an employee-owned enterprise organized for
 22 the purpose of obtaining and operating a state agency liquor
 23 store.

24 (2) ~~No--member--or--employee--of--the--division--or--any~~ An
 25 employee of the state may not solicit or receive directly or

1 indirectly any commission, remuneration, or gift whatsoever
 2 from any person or corporation having sold, selling, or
 3 offering liquor or table wine for sale to the ~~state--or~~
 4 division department pursuant to this code.

5 (3) ~~No~~ A person selling to, or offering for sale to, or
 6 purchasing liquor or table wine from the ~~state-liquor~~
 7 division department may not either directly or indirectly
 8 offer to pay any commission, profit, or remuneration or make
 9 any gift to any ~~member-or-employee-of-the-division,~~ to any
 10 employee of the state, or to anyone on behalf of ~~such-member~~
 11 or an employee of the state.

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

16 (a) Each manufacturer, distiller, compounder,
 17 rectifier, importer, or wholesale distributor or any other
 18 person, firm, or corporation proposing to sell any liquor or
 19 table wine to the ~~Montana-liquor-division~~ division department shall
 20 submit, without cost to the division department prior to the
 21 original purchase, an analysis of each brand and may submit
 22 a representative sample not exceeding 25 fluid ounces of
 23 such merchandise to the division department.

24 (b) When a brand of liquor or table wine has been
 25 accepted for testing by the division department, the

1 division department shall forward the sample, unopened and
 2 in its entirety, to a qualified chemical laboratory for
 3 analysis.

4 (c) The division department shall maintain written
 5 records of all samples received. The records ~~shall~~ must show
 6 the brand name, the amount and from whom received, the date
 7 received, the laboratory or chemist to whom forwarded, the
 8 ~~division's department's~~ division's department's action on the brand, and the person
 9 to whom the sample was delivered or other final disposition
 10 of the sample.

11 (5) ~~No--liquor--wine--or--other--alcoholic---beverage~~
 12 Alcoholic beverages may not be withdrawn from the regular
 13 state liquor warehouse inventory or from the state agency
 14 ~~liquor stores of-the-Montana-liquor-division~~ for any purpose
 15 other than sale at the prevailing state retail prices or for
 16 destroying damaged or defective merchandise. The division
 17 department shall maintain a written record including that
 18 includes the type, brand, container size, number of bottles
 19 or other units, signatures of witnesses, and method of
 20 destruction or other disposition of damaged or defective
 21 merchandise from the state liquor warehouse or state store
 22 merchandise agency liquor stores.

23 (6) The division department may not require a company
 24 that manufactured, distilled, rectified, bottled, or
 25 processed and sold less than 200,000 proof gallons of liquor

1 nationwide in the previous calendar year to maintain minimum
2 amounts of liquor or wine in the state liquor warehouse
3 while the distiller or winery retains ownership of the
4 product.

5 (7) The division department may not require a company
6 that bottled and sold less than 100,000 wine gallons of
7 table wine nationwide in the previous calendar year to
8 maintain minimum amounts of table wine in the state liquor
9 warehouse while the company retains ownership of the
0 product."

1 **Section 10.** Section 16-1-402, MCA, is amended to read:

2 "16-1-402. **Payment of excise tax by carriers.** (1) Every
3 airline or railroad operating in the state of Montana and
4 selling liquor purchased outside this state for consumption
5 within this state shall pay to the department the excise
6 taxes and state markup which that would be applicable to
7 such the liquor if purchased from the state liquor warehouse
8 or a state agency liquor store.

9 (2) The amount of such excise taxes and state markup
0 payable ~~shall be~~ is determined by multiplying the following
1 factors:

- 2 (a) the average liquor used per departure;
3 (b) the number of departures from Montana on which
4 liquor is served;
5 (c) the ratio of Montana revenue passenger miles to

1 system revenue passenger miles; and

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

3 (3) From ~~said the~~ product calculated in subsection (2),
4 the carrier shall subtract the amount of excise taxes and
5 state markup on purchases of liquor made within this state."

6 **Section 11.** Section 16-2-101, MCA, is amended to read:

7 "16-2-101. **Establishment and closure of state liquor**
8 **stores -- reduction-in-force rights of eligible state**
9 **employees -- kinds and prices of liquor and table wine.**

10 (1) (a) (i) The department ~~shall~~ may establish and maintain
11 one or more stores, operated under agency agreements, to be
12 known as "state agency liquor stores", as the department
13 finds feasible for the sale of liquor and table wine in
14 accordance with the provisions of this code and the rules
15 made-thereunder promulgated pursuant to this code.

16 (ii) A state employee-operated liquor store may be
17 maintained after June 30, 1993, only for the purpose of
18 closing down the store and not for the purpose of selling
19 liquor or table wine. A state employee-operated liquor store
20 maintained only for the purpose of closing down is
21 considered closed for the purposes of this code.

22 (b) The department ~~shall~~ may, without being required to
23 observe the requirements of Title 2, chapter 8, part 3,
24 enter into an agency agreement-or-employ-the-necessary-help
25 agreements to operate said state agency liquor stores and

1 shall designate the duties to be performed by the agent-or
2 employees agents.

3 (c) (i) An eligible state employee is entitled to
4 reduction-in-force rights. Reduction-in-force rights last
5 from (the effective date of this act) until 1 year after the
6 employee terminates employment. Acceptance of a permanent
7 position with a state agency terminates the employee's
8 reduction-in-force rights.

9 (ii) Reduction-in-force rights include but are not
10 limited to a hiring preference for any state position for
11 which the employee is qualified and noncompetitive transfer
12 to another vacant department position, at the same or a
13 lower salary, for which the employee is qualified.

14 ~~(c)(d) Once-established, a A store shall may not be~~
15 ~~closed, converted from a state employee-operated liquor~~
16 ~~store to an a state agency liquor store, or sold by the~~
17 ~~department unless:~~

18 ~~(i) the store is returning less than a 10% profit to~~
19 ~~the state; or~~

20 ~~(ii) the closure or sale is approved by the legislature.~~

21 (i) all the department employees who are eligible for
22 the reduction-in-force rights provided in subsection (1)(c)
23 no longer work at the state employee-operated liquor store
24 and the store lease with the department has expired; or

25 (ii) the conversion occurs after June 30, 1993.

1 (e) The revenue oversight committee must be informed of
2 all plans for converting state employee-operated liquor
3 stores to state agency liquor stores.

4 (2) The department ~~may--from--time--to--time~~ shall, as
5 provided by rule, fix the prices at which the various
6 classes, varieties, and brands of liquor and table wine may
7 be sold, ~~and by the department and its agents.~~ The retail
8 prices for the various classes, varieties, and brands of
9 liquor and table wine sold by the department or purchased
10 from a state agency liquor store shall must be the retail
11 price established by the department and must be the same at
12 all state agency liquor stores.

13 ~~(3)--(a)--State--liquor--stores--must--be--considered--for~~
14 ~~closure,--conversion,--or--sale--only--when--a--store--lease~~
15 ~~expires. Prior to the expiration of a lease, the department~~
16 ~~may--conduct--a--financial--profitability--analysis--using--the~~
17 ~~criteria--in--subsection--(1)(c)(i);--in--computing--profit--levels~~
18 ~~of--state--operated--stores,--the--costs--of--the--licensing--bureau~~
19 ~~and--the--legal--and--enforcement--division,--other--than~~
20 ~~inspection--costs--directly--attributable--to--liquor--stores,--may~~
21 ~~not--be--included--as--expenses. The revenue oversight committee~~
22 ~~must--be--informed--of--all--plans--for--conversion,--sale,--or~~
23 ~~closure--of--state--liquor--stores.~~

24 ~~(b)(3) No A state agency stores shall liquor store may~~
25 ~~not be located in or adjacent to grocery stores in~~

1 communities with populations over 3,000. ~~This provision is~~
 2 ~~applicable only to agency agreements entered into after May~~
 3 ~~11, 1987.~~

4 (4) Agency State agency liquor stores must receive
 5 commissions based on adjusted gross sales as follows:

6 (a) a 10% commission on adjusted gross sales for
 7 agencies state agency liquor stores in communities with less
 8 than 3,000 in population when the state owns all of the
 9 liquor and table wine to be sold on the premises;

0 (b) a 12% commission on gross sales for state agency
 1 liquor stores in communities with less than 3,000 in
 2 population when the agent has purchased from the department
 3 the liquor to be sold on the premises; and

4 (b)(c) a commission on gross sales established by
 5 competitive bidding for agencies state agency liquor stores
 6 in communities with 3,000 or more in population.

7 (5) (a) An agent operating a state agency liquor store
 8 who is paid a commission in accordance with subsection
 9 (4)(b) or (4)(c) must be issued the commission through a
 0 discount on the retail selling price of liquor that is
 1 purchased from the department. The discount must equal the
 2 commission.

3 (b) Department sales of liquor and table wine products
 4 to an agent who is paid a commission in accordance with
 5 subsection (4)(b) or (4)(c) are final and are not

1 consignment sales.

2 (c) The department may supply an agent with special
 3 orders for liquor in quantities of less than a full case
 4 when the agent makes a special order request, provided that
 5 the agent pays a service charge for the purchase of
 6 quantities of less than a full case if the agent is under
 7 contract for commission payments in accordance with
 8 subsection (4)(b) or (4)(c).

9 (d) An agent shall pay the department for liquor within
 10 30 calendar days of delivery.

11 (6) The department shall contract for agents to operate
 12 state agency liquor stores as follows:

13 (a) After December 31, 1992, each community may have no
 14 more than one agent under contract with the department at
 15 any time.

16 (b) (i) Each agent shall designate one primary location
 17 to which the state liquor warehouse may ship liquor. An
 18 agent may have satellite stores in the community in addition
 19 to the primary location if the total number of stores,
 20 including the primary location and the satellite stores,
 21 does not exceed the number of state employee-operated liquor
 22 store locations that existed in the community on December 1,
 23 1990.

24 (ii) In addition to the primary location referred to in
 25 subsection (6)(b)(i), an agent may designate and operate one

1 storage facility to warehouse liquor received from the state
 2 liquor warehouse for retail sale and to distribute liquor to
 3 licensees for retail sale.

4 (c) Contracts entered into under this subsection (6)
 5 are not subject to the term limitation provisions of
 6 18-4-313. An agency contract signed after [the effective
 7 date of this act]:

8 (i) must be for a 10-year term, renewable at the
 9 department's discretion for additional 10-year terms;

10 (ii) must allow the agent to sell or assign the contract
 11 to another party upon written approval from the department;

12 (iii) may be amended only in writing and with the
 13 agreement of both the department and the agent; and

14 (iv) may be terminated early only if the agent does not
 15 perform under the terms of the contract.

16 (d) (i) In awarding an agency contract available in a
 17 community for the first time pursuant to the conversion of a
 18 state employee-operated liquor store, absolute preference
 19 must be given to an employee-owned enterprise that bids for
 20 the agency contract, that claims the preference in writing,
 21 that has a stockholder who is an eligible state employee
 22 from a converted or about-to-be-converted state
 23 employee-operated liquor store in that community, and that
 24 bids an amount that is equal to or less than the maximum
 25 allowable bid published by the department in its invitation

1 for bids. This preference applies only to employee-owned
 2 enterprises that meet all other requirements of this code.

3 (ii) If there are no applicants eligible for the
 4 preference under subsection (6)(d)(i), absolute preference
 5 must be given to eligible state employees from converted or
 6 about-to-be-converted state employee-operated liquor stores
 7 in that community who bid for the agency contract, who claim
 8 the preference in writing, and who bid an amount that is
 9 equal to or less than the maximum allowable bid published by
 10 the department in its invitation for bids. This preference
 11 applies only to eligible state employees who meet all other
 12 requirements of this code.

13 (iii) If there are no applicants eligible for the
 14 preferences under subsection (6)(d)(i) or (6)(d)(ii),
 15 absolute preference must be given to the landlord of the
 16 converted or about-to-be-converted state employee-operated
 17 liquor store if the landlord applies for the license, claims
 18 the preference in writing, and bids an amount that is equal
 19 to or less than the maximum allowable bid published by the
 20 department in its invitation for bids. This preference
 21 applies only to a landlord who had a lease in effect with
 22 the department for the state employee-operated liquor store
 23 on [the effective date of this act]. This preference applies
 24 only to state employee-operated liquor store landlords who
 25 meet all other requirements of this code.

1 (iv) A preference referred to in subsection (6)(d)(ii)
 2 or (6)(d)(iii) may be claimed by a partnership applicant if
 3 the majority of the partners are eligible for the
 4 preference. A preference referred to in subsection
 5 (6)(d)(ii) or (6)(d)(iii) may be claimed by a corporate
 6 applicant if the majority of stock of each class of stock is
 7 owned by stockholders who are eligible for the preference.

8 (v) The preference referred to in subsection (6)(d)(iv)
 9 may be claimed by an individual applicant if the individual
 10 is either a partner in a partnership or a stockholder in a
 11 corporation, either of which is eligible for the preference.

12 ~~(5)(7)~~ The department shall maintain sufficient
 13 inventory in the state liquor warehouse in order to meet a
 14 monthly service level of at least 97%."

15 **Section 12.** Section 16-2-103, MCA, is amended to read:

16 "16-2-103. Duplicate invoices of sales required. (1)
 17 The A state agency liquor store or a state employee-operated
 18 liquor store shall, upon each sale of liquor or table wine
 19 to any licensee, issue a duplicate invoice of the liquor or
 20 table wine purchased, as provided by the department, a one
 21 copy of which shall must be delivered to the licensee and
 22 one copy of which must be retained at such the state agency
 23 liquor store or the state employee-operated liquor store.

24 (2) The invoice shall must show the date of purchase,
 25 the name of employee the individual making the sale, the

1 quantity of each kind of liquor or table wine purchased, the
 2 price paid therefor, the name of the licensee, and the
 3 number of the license, ~~with--such--other~~ and any other
 4 information ~~as--may--be~~ required by the department.

5 (3) The licensee shall keep and retain his the
 6 duplicate ~~invoice~~ invoices of all purchases made by him from
 7 the a state agency liquor store, ~~which shall at all times be~~
 8 or a state employee-operated liquor store. The invoices are
 9 subject to inspection at all times by the duly authorized
 10 officers, agents, and employees of the department."

11 **Section 13.** Section 16-2-104, MCA, is amended to read:

12 "16-2-104. Hours. ~~(1)~~ State agency liquor stores shall
 13 ~~may not~~ be and remain open during such period of the day as
 14 ~~the department shall deem advisable. The stores shall be~~
 15 ~~closed for the transaction of business on legal holidays and~~
 16 ~~between the close of normal business Saturday p.m. up to the~~
 17 ~~opening of normal business Tuesday a.m. as set by department~~
 18 ~~rule and the sale or delivery of liquor or table wine may~~
 19 ~~not be made between the hours of 2 a.m. and 8 a.m.~~

20 ~~(2) No sale or delivery of liquor or table wine shall~~
 21 ~~be made on or from the premises of any state liquor store~~
 22 ~~nor shall any store be open for the sale of liquor or table~~
 23 ~~wine.~~

24 ~~(a) on any holiday recognized by state law,~~

25 ~~(b) during such other period and on such other days as~~

1 ~~the department may direct:~~"

2 **Section 14.** Section 16-2-107, MCA, is amended to read:

3 "16-2-107. No open alcoholic beverage container or
4 alcoholic beverage consumption on premises of ~~state~~ store.
5 No An officer, clerk, or agent of the department employed in
6 a state employee-operated liquor store or a state agency
7 liquor store shall may not allow any alcoholic beverage
8 container to be opened on the premises of ~~a state~~ the liquor
9 store or allow any alcoholic beverage to be consumed on the
10 premises of ~~a state~~ the liquor store, nor shall may any
11 person open an alcoholic beverage container or consume any
12 alcoholic beverage on such the premises."

13 **Section 15.** Section 16-2-108, MCA, is amended to read:

14 "16-2-108. Disposition of money received. All money
15 received from the sale of liquor and table wine at the state
16 employee-operated liquor stores, at state agency liquor
17 stores established prior to (the effective date of this
18 act), or at the state warehouse must be deposited in the
19 enterprise fund in the state treasury to the credit of the
20 department. The department may purchase liquor and table
21 wine from money deposited to its account in the enterprise
22 fund. The department shall pay from its account in the
23 enterprise fund its administrative expenses, subject to the
24 limits imposed by legislative appropriation. No obligation
25 created or incurred by the department may be a debt or claim

1 against the state of Montana but must be payable by the
2 department solely from funds derived from ~~the operation of~~
3 state employee-operated liquor stores, state agency liquor
4 stores, and the state liquor warehouse. The department shall
5 pay into the state treasury to the credit of the enterprise
6 fund the receipts from all taxes and license and permit fees
7 collected by it. Taxes, license and permit fees, and the net
8 proceeds from ~~the operation of~~ state employee-operated
9 liquor stores, state agency liquor stores, and the state
10 liquor warehouse must be transferred to the general fund."

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

12 "16-2-201. Reduction for quantity sales of liquor --
13 commission -- reimbursement. (1) Reduction A reduction of 5%
14 of the retail price of liquor sold at the a state agency
15 liquor store shall must be made by the department for sales
16 of liquor to any person other than an agent purchasing
17 liquor in unbroken case lots. No other reduction shall may
18 be made by the department for quantity sales of liquor.

19 (2) Nothing in this section prohibits the department
20 from providing a commission to an agent through a discount
21 on the agent's purchase of liquor from the department in
22 accordance with 16-2-101(5).

23 (3) The department shall reimburse an agent who is paid
24 a commission in accordance with 16-2-101(5) for the 5%
25 reduction on unbroken case lot purchases when the agent

1 presents to the department an invoice signed by the agent
 2 and the purchaser showing the quantity and retail price of
 3 each item that was purchased, the date it was purchased, and
 4 the amount of the reduction that was allowed."

5 **Section 17.** Section 16-2-203, MCA, is amended to read:

6 "16-2-203. Department sales to licensees. The
 7 department may sell through state employee-operated liquor
 8 stores or through its state agency liquor stores to
 9 licensees licensed under this code all kinds of liquor and
 0 table wine at the posted price thereof in the store in which
 1 the liquor and table wine are sold. All retail sales shall
 2 must be upon on a cash or credit-card basis."

3 **Section 18.** Section 16-2-301, MCA, is amended to read:

4 "16-2-301. Retail selling price on table wine -- tax on
 5 certain table wine. (1) The retail selling price at which
 6 table wine is sold either by the department, through a state
 7 employee-operated liquor store or a state agency liquor
 8 store, or by a commission agent who was appointed before
 9 April 30, 1987, including subsequent renewals of such
 0 appointment, and who elects to order table wine from the
 1 department is computed by adding to the statewide weighted
 2 average cost of table wine the tax and state markup as
 3 designated by the department.

4 (2) The retail selling price at which table wine is
 5 sold by a commission agent appointed by the department after

1 May 1, 1987, is as determined by the agent.

2 (3) In addition to the tax on wine assessed under
 3 16-1-411, there is a tax of 1 cent a liter on table wine
 4 sold by a table wine distributor to an agent as described in
 5 subsection (2). This additional tax must be paid to the
 6 department by the distributor in the same manner as the tax
 7 under 16-1-411 is paid. The department shall deposit the tax
 8 paid under this section in the general fund."

9 **Section 19.** Section 16-2-302, MCA, is amended to read:

10 "16-2-302. State distribution. The department may
 11 import and distribute one or more named table wines to one
 12 or more designated state employee-operated liquor stores or
 13 to agency stores appointed on or before April 30, 1987,
 14 including subsequent renewals of such appointments, in the
 15 same manner as if the wine contained more than 16% alcohol
 16 by volume."

17 **Section 20.** Section 16-2-303, MCA, is amended to read:

18 "16-2-303. Department prohibited from engaging in
 19 unfair competition. (1) The department, in engaging in the
 20 retail sale of table wine through state employee-operated
 21 liquor stores, is subject to the provisions of Title 30,
 22 chapter 14, parts 1 and 2, except those provisions relating
 23 to enforcement and penalties.

24 (2) A person aggrieved by a violation of this section
 25 by the department may maintain an action to enjoin the

1 alleged violation and for the recovery of damages in the
2 district court of the district where the conduct complained
3 of occurred or where the department's principal office is
4 located."

5 **Section 21.** Section 16-3-103, MCA, is amended to read:

6 "16-3-103. Unlawful sales solicitation or advertising
7 -- exceptions. (1) No A person within the state ~~shall~~ may
8 not:

9 (a) canvass for, receive, take, or solicit orders for
10 the purchase or sale of any liquor or act as agent or
11 intermediary for the sale or purchase of any liquor or ~~hold~~
12 ~~himself--out~~ make representations as such an agent or
13 intermediary unless permitted to do so under rules that
14 ~~shall--be~~ promulgated by the department to govern such agent
15 or intermediary activities;

16 (b) canvass for or solicit orders for the purchase or
17 sale of any beer or malt liquor except in the case of beer
18 proposed to be sold to beer licensees duly authorized to
19 sell beer under the provisions of this code; or

20 (c) exhibit, publish, or display or permit to be
21 exhibited, published, or displayed any form of advertisement
22 or any other announcement, publication, or price list of or
23 concerning liquor or where or from whom the same may be had,
24 obtained, or purchased unless permitted to do so by the
25 rules of the department and then only in accordance with

1 such rules.

2 (2) This section ~~shall~~ does not apply to:

3 (a) the department, any act of the department, or any
4 state agency liquor store;

5 (b) the receipt or transmission of a telegram or letter
6 by any telegraph agent or operator or post-office employee
7 in the ordinary course of ~~his~~ employment as such an agent,
8 operator, or employee; or

9 (c) the sale and serving of beer in the grandstand and
10 bleacher area of a county fairground or public sports arena
11 under a special permit issued pursuant to 16-4-301 or a
12 catering endorsement issued pursuant to 16-4-204."

13 **Section 22.** Section 16-3-106, MCA, is amended to read:

14 "16-3-106. Conveyance of liquors, table wines, and beer
15 -- opening alcoholic beverages during transit forbidden. (1)
16 It ~~shall-be~~ is lawful to carry or convey liquor or table
17 wine to any state agency liquor store or state
18 employee-operated liquor store and to and from any the state
19 liquor warehouse or any depot established by the department
20 for the purposes of this code, and when permitted to do so
21 by this code and the rules ~~made--thereunder--and--in--accordance~~
22 ~~therewith~~ promulgated under this code, it ~~shall-be~~ is lawful
23 for any common carrier or other person to carry or convey
24 liquor or table wine sold by a vendor from a state agency
25 liquor store or a state employee-operated liquor store or to

1 carry or convey beer, when lawfully sold by a brewer, from
 2 the premises wherein-such where the beer was manufactured or
 3 from premises where the beer may be lawfully kept and sold
 4 to any place to which the same liquor, table wine, or beer
 5 may be lawfully delivered under this code and the rules made
 6 thereunder promulgated under this code.

7 (2) No common carrier or any other person shall may
 8 open, break, or allow to be opened or broken any package or
 9 vessel containing an alcoholic beverage or drink or use or
 0 allow to be drunk or used any alcoholic beverage therefrom
 1 while being carried or conveyed."

2 **Section 23.** Section 16-3-307, MCA, is amended to read:

3 "16-3-307. Sale of liquor at less than posted price
 4 unlawful. It ~~shall-be~~ is unlawful for any licensee under the
 5 provisions of this code to resell any liquor purchased by
 6 such the licensee from a state agency liquor store or the
 7 state of Montana for a sum less than the posted price
 8 established by the store department and paid by the licensee
 9 therefor."

10 **Section 24.** Section 16-3-401, MCA, is amended to read:

11 "16-3-401. Short title -- public policy -- purpose. (1)
 12 This part may be cited as the "Wine Distribution Act".

13 (2) The public policy of the state of Montana is to
 14 maintain a system for the importation and sale of table wine
 15 by the state through the state liquor facilities warehouse

1 and to provide for, regulate, and control the acquisition,
 2 importation, and distribution of table wine by licensed
 3 table wine distributors and the state.

4 (3) This part governs relationships between suppliers
 5 and table wine distributors, and because the legislature
 6 recognizes the public interest and the interests of
 7 suppliers and table wine distributors in the fair,
 8 efficient, and competitive distribution of table wine, this
 9 part is intended to:

10 (a) protect the table wine distributor's independence
 11 in managing his--own the distributor's business, including
 12 the establishment of selling prices; and

13 (b) encourage table wine distributors to devote their
 14 best efforts to the sale and distribution of the table wines
 15 they sell and distribute."

16 **Section 25.** Section 16-3-402, MCA, is amended to read:

17 "16-3-402. Importation of wine -- records. (1) With the
 18 exception of table wine purchased by the department and
 19 shipped to its the state liquor warehouse, all table wine
 20 manufactured outside of Montana and shipped into Montana
 21 shall must be consigned to and shipped to a licensed table
 22 wine distributor, and by--him unloaded by the distributor
 23 into his the distributor's warehouse in Montana or
 24 subwarehouse in Montana. The distributor shall distribute
 25 said the table wine from such the warehouse or subwarehouse.

1 (2) The distributor shall keep records at his the
 2 distributor's principal place of business of all table wine,
 3 including the name or kind received, on hand, sold, and
 4 distributed. The records may at all times be inspected by
 5 ~~any member or representative of~~ the department of revenue.

6 (3) ~~Any table~~ Table wine which that has been shipped
 7 into Montana and that has not been shipped to and
 8 distributed from a warehouse of a licensed table wine
 9 distributor or the ~~department shall~~ state liquor warehouse
 10 must be seized by any peace officer or representative of the
 11 department and may be confiscated in the manner as provided
 12 for the confiscation of intoxicating liquor."

13 **Section 26.** Section 16-4-105, MCA, is amended to read:

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

22 (a) the number of retail beer licenses that the
 23 department may issue for premises situated within
 24 incorporated cities and incorporated towns and within a
 25 distance of 5 miles from the corporate limits of such

1 incorporated cities and incorporated towns ~~shall~~ must be
 2 determined on the basis of population prescribed in 16-4-502
 3 as follows:

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

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

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

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

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

18 (c) retail beer licenses of issue on March 7, 1947, and
 19 retail beer licenses issued under 16-4-110, which are in
 20 excess of the foregoing limitations ~~shall-be~~ are renewable,
 21 but no new licenses may be issued in violation of such these
 22 limitations;

23 (d) such these limitations do not prevent the issuance
 24 of a nontransferable and nonassignable retail beer license
 25 to an enlisted men's servicemen's and servicewomen's,

1 noncommissioned officers', or officers' club located on a
 2 state or federal military reservation on May 13, 1985, or to
 3 a post of a nationally chartered veterans' organization or a
 4 lodge of a recognized national fraternal organization if
 5 such the veterans' or fraternal organization has been in
 6 existence for a period of 5 years or more prior to January
 7 1, 1949;

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

19 (2) A person holding a license to sell beer for
 20 consumption on the premises at retail may apply to the
 21 department for an amendment to the license permitting the
 22 holder to sell wine as well as beer. The division may issue
 23 such an amendment if it finds, on a satisfactory showing by
 24 the applicant, that the sale of wine for consumption on the
 25 premises would be supplementary to a restaurant or

1 prepared-food business. A person holding a beer-and-wine
2 license may sell wine for consumption on or off the
3 premises. Nonretention of the beer license, for whatever
4 reason, ~~shall--mean~~ means automatic loss of the wine
5 amendment license.

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

20 **Section 27.** Section 16-4-401, MCA, is amended to read:

21 "16-4-401. License as privilege -- criteria for
22 decision on application. (1) A license under this code is a
23 privilege ~~which~~ that the state may grant to an applicant and
24 is not a right to which any applicant is entitled.

25 (2) Except as provided in subsection (6), in the case

1 of a license that permits on-premises consumption, the
2 department must shall find in every case in which it makes
3 an order for the issuance of a new license or for the
4 approval of the transfer of a license that:

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

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

9 (ii) the applicant or any member of ~~his~~ the applicant's
10 immediate family is without financing from or any
11 affiliation to a manufacturer, importer, bottler, or
12 distributor of alcoholic beverages;

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

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

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

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

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

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

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

3 (iii) the corporation is authorized to do business in
4 Montana; and

5 (iv) in the case of a corporation not listed on a
6 national stock exchange, each owner of stock meets the
7 requirements of subsection (2)(a)(i); and

8 (c) in the case of any other business entity as
9 applicant:

0 (i) if the applicant consists of more than one
1 individual, all must meet the requirements of subsection
2 (2)(a); and

3 (ii) if the applicant consists of more than one
4 corporation, all must meet the requirements of subsection
5 (2)(b).

6 (3) In the case of a license that permits only
7 off-premises consumption of beer or table wine, the
8 department must shall find in every case in which it makes
9 an order for the issuance of a new license or for the
0 approval of the transfer of a license that:

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

2 (i) the applicant will not possess an ownership
3 interest in more than one establishment licensed under this
4 chapter for on-premises consumption all-beverages sales;

5 (ii) the applicant is not operating a state agency

1 liquor store;

2 ~~{+++}~~(iii) the applicant or any member of his the
3 applicant's immediate family is without financing from or
4 any affiliation to a manufacturer, importer, bottler, or
5 distributor of alcoholic beverages;

6 ~~{+++}~~(iv) the applicant has not been convicted of a
7 felony or, if the applicant has been convicted of a felony,
8 his the applicant's rights have been restored;

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

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

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

18 (i) the owners of at least 51% of the outstanding stock
19 meet the requirements of ~~subsection-(3)(a){+++}~~ subsections
20 (3)(a)(ii) and (3)(a)(iv);

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

24 (iii) the corporation is authorized to do business in
25 Montana; and

1 (c) in the case of any other business entity as
2 applicant:

3 (i) if the applicant consists of more than one
4 individual, all must meet the requirements of subsection
5 (3)(a); and

6 (ii) if the applicant consists of more than one
7 corporation, all must meet the requirements of subsection
8 (3)(b).

9 (4) In the case of a license that permits the
10 manufacture, importing, or wholesaling of an alcoholic
11 beverage, the department ~~must~~ shall find in every case in
12 which it makes an order for the issuance of a new license or
13 for the approval of the transfer of a license that:

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

15 (i) the applicant has no ownership interest in any
16 establishment licensed under this chapter for retail
17 alcoholic beverages sales;

18 (ii) the applicant has not been convicted of a felony
19 or, if the applicant has been convicted of a felony, his the
20 applicant's rights have been restored;

21 (iii) the applicant's past record and present status as
22 a purveyor of alcoholic beverages and as a ~~businessman--and~~
23 citizen and the applicant's business record demonstrate that
24 he the applicant is likely to operate his the establishment
25 in compliance with all applicable laws of the state and

1 local governments;

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

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

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

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

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

12 (iii) an applicant for a wholesale license is neither a
13 manufacturer of an alcoholic beverage nor is owned or
14 controlled by a manufacturer of an alcoholic beverage; and

15 (iv) the corporation is authorized to do business in
16 Montana; and

17 (c) in the case of any other business entity as
18 applicant:

19 (i) if the applicant consists of more than one
20 individual, all must meet the requirements of subsection
21 (4)(a); and

22 (ii) if the applicant consists of more than one
23 corporation, all must meet the requirements of subsection
24 (4)(b).

25 (5) In the case of a corporate applicant, the

1 requirements of subsections (2)(b), (3)(b), and (4)(b) apply
2 separately to each class of stock.

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

5 **Section 28.** Section 16-6-107, MCA, is amended to read:

6 "16-6-107. Disposal of forfeited alcoholic beverages --
7 report. (1) In every case in which a court or hearing
8 examiner makes any order for the forfeiture of alcoholic
9 beverages under any of the provisions of this code and in
0 every case in which any a claimant to an alcoholic beverage
1 under the provisions of 16-6-105 or 16-6-106 fails to
2 establish his a claim and right thereto to an alcoholic
3 beverage, the alcoholic beverage in question and the
4 packages in which the alcoholic beverage is kept shall must
5 be delivered to the department. The department shall
6 determine the market value of each forfeited alcoholic
7 beverage which that is found to be suitable for sale in the
8 state agency liquor stores and shall pay the amount--so
9 determined market value to the state treasurer after
0 deducting therefrom the expenses necessarily incurred by the
1 department for transporting the forfeited alcoholic beverage
2 to the state liquor warehouses warehouse. The alcoholic
3 beverage suitable for sale shall must be taken into stock by
4 the department and sold under the provisions of this code.
5 All alcoholic beverages found to be unsuitable for sale in

1 state agency liquor stores shall must be destroyed by the
2 department.

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

7 **Section 29.** Section 16-6-303, MCA, is amended to read:

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

1 **Section 30.** Section 17-6-305, MCA, is amended to read:

2 "17-6-305. Investment of up to twenty-five percent of
3 coal tax trust fund in Montana economy -- report by board.

4 (1) Subject to the provisions of 17-6-201(1), the board
5 shall endeavor to invest up to 25% of the permanent coal tax
6 trust fund established in 17-6-203(6) in the Montana
7 economy, with special emphasis on investments in new or
8 expanding locally owned enterprises and employee-owned
9 enterprises.

10 (2) In determining the probable income to be derived
11 from investment of this revenue, the long-term benefit to
12 the Montana economy must be considered.

13 (3) The legislature may provide additional procedures
14 to implement this section.

15 (4) The board shall report biennially to the
16 legislature on the investments made under this section."

17 **Section 31.** Section 17-6-308, MCA, is amended to read:

18 "17-6-308. Authorized investments. (1) Except as
19 provided in subsections (2) ~~and (3)~~ through (4) and subject
20 to the provisions of 17-6-201, the Montana permanent coal
21 tax trust fund must be invested as authorized by rules
22 adopted by the board.

23 (2) The board may make loans from the permanent coal
24 tax trust fund to the capital reserve account created
25 pursuant to 17-5-1515 to establish balances or restore

1 deficiencies in the account. The board may agree in
2 connection with the issuance of bonds or notes secured by
3 the account or fund to make the loans. Loans must be on
4 terms and conditions as the board determines and must be
5 repaid from revenues of the board realized from the exercise
6 of its powers under 17-5-1501 through 17-5-1518 and
7 17-5-1521 through 17-5-1529, subject to the prior pledge of
8 the revenues to the bonds and notes.

9 (3) The board shall allow the Montana board of science
10 and technology development provided for in 2-15-1818 to
11 administer \$7.5 million of the permanent coal tax trust fund
12 for seed capital project loans and \$5.1 million of the
13 permanent coal tax trust fund for research and development
14 project loans pursuant only to the provisions of Title 90,
15 chapter 3. This authority does not extend beyond June 30,
16 1994, for seed capital project loans and for research and
17 development project loans. Until the Montana board of
18 science and technology development makes a loan pursuant to
19 the provisions of Title 90, chapter 3, the funds under its
20 administration must be invested by the board of investments
21 pursuant to the provisions of 17-6-201.

22 (4) The board may make loans from the permanent coal
23 tax trust fund to an employee-owned enterprise to allow the
24 enterprise to bid on, acquire, or operate state government
25 operations that have been or will be converted to private

1 sector operations.

2 (4)(5) The board shall adopt rules to allow a nonprofit
3 corporation to apply for economic assistance. The rules must
4 recognize that different criteria may be needed for
5 nonprofit corporations than for for-profit corporations."

6 **Section 32.** Section 17-6-310, MCA, is amended to read:

7 "17-6-310. Limits on direct loans. (1) Except as
8 provided in 17-6-308(4) and 20-9-466, the state may not use
9 the portion of the permanent coal tax trust fund designated
0 for investment in the Montana economy to make direct loans.

1 (2) Except as provided in 17-6-308(4) and 20-9-466, the
2 permanent coal tax trust fund may not be used by the board
3 of investments to make direct loans to individual borrowers.
4 The purchase of debentures issued by a capital company and
5 loans or portions of loans originated by a financial
6 institution that are sold to the trust are not direct
7 loans."

8 **Section 33.** Section 17-6-318, MCA, is amended to read:

9 "17-6-318. Job credit interest rate reduction for small
0 business loan participations. (1) A borrower who uses the
1 proceeds of a small business loan participation funded under
2 the provisions of this part or a direct loan to an
3 employee-operated enterprise, as provided for in
4 17-6-308(4), to create jobs employing Montana residents is
5 entitled to a job credit interest rate reduction for each

1 job created over a 2-year period to employ a Montana
2 resident. The date of the formal written interim or
3 permanent loan application to the financial institution or
4 the state will be used as a beginning date for counting the
5 number of jobs created. The job credit interest rate
6 reduction may not apply to a loan participation of more than
7 1% of the total of the permanent coal tax trust fund
8 determined at the end of the last completed fiscal year. The
9 job credit interest rate reduction is equal to 0.05% for
10 each job created to employ a Montana resident up to a
11 maximum interest rate reduction of 2.5%.

12 (2) If the salary or wage of the job created:

13 (a) exceeds the average weekly wage, as defined in
14 39-71-116, the amount of the job credit interest rate
15 reduction may be increased proportionately for each
16 increment of 25% above the average weekly wage to a maximum
17 of two times the average weekly wage; or

18 (b) is less than the average weekly wage, as defined in
19 39-71-116, the job credit interest rate reduction is reduced
20 proportionately for each 25% increment below the average
21 wage.

22 (3) A job credit interest rate reduction may not be
23 allowed for a job created by the borrower using the proceeds
24 of the loan for which the salary or wage is less than the
25 minimum wage provided for in 39-3-409.

1 (4) No job credit will be given unless one whole job is
2 created.

3 (5) To qualify for the job credit interest rate
4 reduction, the borrower shall provide satisfactory evidence
5 of the creation of jobs ~~and--make--application--in--writing,~~
6 ~~through--its--financial--institution,~~ to the board when the
7 loan is delivered to the board or not later than 45 days
8 after the first and second anniversary dates of the loan.
9 For a small business loan participation, written application
10 must be made through the borrower's financial institution."

11 NEW SECTION. Section 34. Severability. If a part of
12 [this act] is invalid, all valid parts that are severable
13 from the invalid part remain in effect. If a part of [this
14 act] is invalid in one or more of its applications, the part
15 remains in effect in all valid applications that are
16 severable from the invalid applications.

17 NEW SECTION. Section 35. Effective date. [This act] is
18 effective on passage and approval.

-End-