

HOUSE BILL NO. 279

INTRODUCED BY GILBERT, HARRINGTON, FOSTER,  
MCCAFFREE, SWYSGOOD, HARP

IN THE HOUSE

JANUARY 20, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
	FIRST READING.
FEBRUARY 8, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 9, 1993	PRINTING REPORT.
FEBRUARY 10, 1993	SECOND READING, DO PASS.
FEBRUARY 11, 1993	ENGROSSING REPORT.
FEBRUARY 13, 1993	THIRD READING, PASSED. AYES, 99; NOES, 0.
FEBRUARY 15, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 16, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.
	FIRST READING.
MARCH 16, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 17, 1993	SECOND READING, CONCURRED IN.
MARCH 18, 1993	THIRD READING, CONCURRED IN. AYES, 49; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 19, 1993	RECEIVED FROM SENATE.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. *279*  
2 INTRODUCED BY *Billant Hamington Foster*  
3 *McClafferty* *Swygock* *HARP*  
4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING  
5 REQUIREMENTS FOR LIQUOR AGENCY STORE FRANCHISE AGREEMENTS;  
6 PROVIDING PROCEDURES FOR AGENCY FRANCHISE AGREEMENT  
7 TERMINATION; AMENDING SECTIONS 16-1-106, 16-2-101, AND  
8 18-4-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND  
9 AN APPLICABILITY DATE."

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

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

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

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

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

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

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

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

3 (6) "Brewer" means a person who produces malt  
4 beverages.

5 (7) "Department" means the department of revenue.

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

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

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

13 (11) "Liquor" means an alcoholic beverage except beer  
14 and table wine.

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

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

1 (14) "Posted price" means the retail price of liquor and  
2 table wine as fixed and determined by the department and in  
3 addition thereto an excise and license tax as provided in  
4 this code.

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

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

11 (17) "Rules" means rules published by the department  
12 pursuant to this code.

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

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

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

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

8 (22) "Table wine" means wine as-defined-below-which that  
9 contains not more than 16% alcohol by volume.

10 (23) "Table wine distributor" means a person importing  
11 into or purchasing in Montana table wine for sale or resale  
12 to retailers licensed in Montana.

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

18 (25) "Wine" means an alcoholic beverage made from or  
19 containing the normal alcoholic fermentation of the juice of  
20 sound, ripe fruit or other agricultural products without  
21 addition or abstraction, except as may occur in the usual  
22 cellar treatment of clarifying and aging, and that contains  
23 more than 0.5% but not more than 24% of alcohol by volume.  
24 Wine may be ameliorated to correct natural deficiencies,  
25 sweetened, and fortified in accordance with applicable

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

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

7 "16-2-101. Establishment and closure of state liquor  
8 stores -- agency franchise agreement -- kinds and prices of  
9 liquor and table wine. (1) (a) The department shall  
10 establish and maintain one or more stores, to be known as  
11 "state liquor stores", as the department finds feasible for  
12 the sale of liquor and table wine in accordance with the  
13 provisions of this code and the rules ~~made thereunder~~  
14 adopted under this code.

15 (b) The department shall enter into an agency franchise  
16 agreement or employ the necessary help to operate ~~said~~ the  
17 stores and shall designate the duties to be performed by the  
18 agent or employees.

19 (c) Once established, a store ~~shall~~ may not be closed,  
20 converted to an agency store, or sold by the department  
21 unless:

22 (i) the store is returning less than a 10% profit to  
23 the state; or

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

25 (2) The department may from time to time fix the prices

1 at which the various classes, varieties, and brands of  
2 liquor and table wine may be sold, and prices ~~shall~~ must be  
3 the same at all state stores.

4 (3) (a) State liquor stores must be considered for  
5 closure, conversion, or sale only when a store lease  
6 expires. Prior to the expiration of a lease, the department  
7 may conduct a financial profitability analysis using the  
8 criteria in subsection (1)(c)(i). In computing profit levels  
9 of state-operated stores, the costs of the licensing bureau  
10 and the legal and enforcement division, other than  
11 inspection costs directly attributable to liquor stores, may  
12 not be included as expenses. The revenue oversight committee  
13 must be informed of all plans for conversion, sale, or  
14 closure of state liquor stores.

15 (b) ~~No-agency~~ Agency stores ~~shall~~ may not be located in  
16 or adjacent to grocery stores in communities with  
17 populations over 3,000. This provision is applicable only to  
18 agency agreements entered into after May 11, 1987.

19 (4) Agency stores must receive commissions based on  
20 adjusted gross sales as follows:

21 (a) a 10% commission for agencies in communities with  
22 less than 3,000 in population;

23 (b) a commission established by competitive bidding for  
24 agencies in communities with 3,000 or more in population.

25 (5) An agency franchise agreement must:

1 (a) be effective for a 10-year period and may be  
 2 renewed every 10 years if the requirements of the agency  
 3 franchise agreement have been satisfactorily performed;

4 (b) require the agent to maintain comprehensive general  
 5 liability insurance and liquor liability insurance  
 6 throughout the term of the agency franchise agreement in an  
 7 amount established by the department of administration. The  
 8 insurance policy must:

9 (i) declare the department as an additional insured;  
 10 and

11 (ii) hold the state harmless and agree to defend and  
 12 indemnify the state in a cause of action arising from or in  
 13 connection with the agent's negligent acts or activities in  
 14 the execution and performance of the agency franchise  
 15 agreement;

16 (c) require the agent to provide performance security  
 17 in an amount equal to the average monthly value of inventory  
 18 at cost based on the most recent 12-month period of  
 19 inventory value at the agency store location or, if a  
 20 12-month history is not available, the department's estimate  
 21 of the average value; and

22 (d) specify the reasonable service and space  
 23 requirements that the agent will provide throughout the term  
 24 of the agency franchise agreement.

25 (6) The commission percentage that the department pays

1 the agent under an agency franchise agreement may be  
 2 reviewed every 5 years at the request of either party. If  
 3 the agent concurs, the department may adjust the commission  
 4 percentage to be paid during the remaining term of the  
 5 agency franchise agreement to a commission percentage that  
 6 is equal to the average commission percentage being paid  
 7 agents with similar sales volumes if:

8 (a) the agent's commission percentage is less than the  
 9 average; and

10 (b) all the requirements of the agency franchise  
 11 agreement have been satisfactorily performed.

12 (7) The liability insurance and performance security  
 13 requirements may be reviewed every 5 years at the request of  
 14 either the agent or the department. If the agent concurs,  
 15 the department may adjust the requirements to be effective  
 16 during the remaining term of the agency franchise agreement  
 17 if the adjustments adequately protect the state from risks  
 18 associated with the loss of state assets or from the agent's  
 19 negligent acts or activities in the execution and  
 20 performance of the agency franchise agreement. The amount of  
 21 insurance coverage may not be less than the minimum  
 22 requirements of the department of administration.

23 (8) An agency franchise agreement must be renewed for  
 24 additional 10-year periods if the agent has satisfactorily  
 25 performed all the requirements of the agency franchise

agreement. Except for establishing the new term, changes in the agency franchise agreement as a result of a renewal may not be made unless the agent and the department mutually agree.

(9) The department may terminate an agency franchise agreement if the agent has not satisfactorily performed the requirements of the agency franchise agreement or in the following cases:

(a) Except in the case of suspected theft or unauthorized use of state assets, the department shall give an agent 30 days' notice of its intent to terminate the agency franchise agreement for cause and specify the unmet requirements. The agent may contest the agency franchise agreement termination and request a hearing within 30 days. If a hearing is requested, the department shall suspend its termination order until after a final decision has been made pursuant to the Montana Administrative Procedure Act.

(b) If an agent is suspected of theft or unauthorized use of state assets, the department may terminate the agency franchise agreement and retrieve its assets immediately. If an agency franchise agreement is terminated, the agent may contest the agency franchise agreement termination and request a hearing within 30 days of the department's retrieval of assets. The agency store shall remain closed until a final decision has been reached following a hearing

held pursuant to the Montana Administrative Procedure Act.

(10) An agency franchise agreement may be terminated upon mutual agreement by the agent and the department.

(11) An agent may assign an agency franchise agreement to a person who, upon approval of the department, is named agent in the agency franchise agreement, with the rights, privileges, and responsibilities of the original agent for the remaining term of the agency franchise agreement. The agent shall notify the department of an intent to assign the agency franchise agreement 60 days before the intended effective date of the assignment. The department may not unreasonably withhold approval of an assignment request.

(12) An agency agreement in effect on [the effective date of this act] must be converted upon request of the agent and approval of the department to a 10-year agency franchise agreement pursuant to subsections (5) through (11) without competitive bids or proposals.

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

**Section 3.** Section 18-4-313, MCA, is amended to read:

**"18-4-313. Contracts -- terms, extensions, and time limits.** (1) Unless otherwise provided by law, no a contract, lease, or rental agreement for supplies or services may not be made for a longer period than 3 years; however, the

1 department may contract for the lease or purchase of  
 2 telecommunications equipment and systems, data processing  
 3 equipment, the department of revenue liquor agencies, and  
 4 the department of social and rehabilitation services  
 5 medicaid management information system (MMIS) for a period  
 6 not to exceed 10 years. A contract, lease, or rental  
 7 agreement may be extended or renewed, notwithstanding the  
 8 time limits stated in this section, if the terms of the  
 9 extension or renewal, if any, are included in the  
 10 solicitation and funds are available for the first fiscal  
 11 period at the time of the agreement. Payment and performance  
 12 obligations for succeeding fiscal periods are subject to the  
 13 availability and appropriation of funds therefor for the  
 14 fiscal periods.

15 (2) Prior to the extension or renewal of a contract, it  
 16 must be determined in writing that:

17 (a) estimated requirements cover the period of the  
 18 contract and are reasonably firm and continuing; and

19 (b) the contract will serve the best interests of the  
 20 state by encouraging effective competition or otherwise  
 21 promoting economies in state procurement.

22 (3) When funds are not appropriated or otherwise made  
 23 available to support continuation of performance in a  
 24 subsequent fiscal period, the contract must be canceled."

25 NEW SECTION. Section 4. Continuity of existing agency

1 agreements. An existing agency agreement that terminates  
 2 after [the effective date of this act] but before it is  
 3 converted to an agency franchise agreement is automatically  
 4 extended until an agency franchise agreement is signed or  
 5 for 6 months from [the effective date of this act],  
 6 whichever occurs first.

7 NEW SECTION. Section 5. Codification instruction.  
 8 [Section 4] is intended to be codified as an integral part  
 9 of Title 16, chapter 2, part 1, and the provisions of Title  
 10 16, chapter 2, part 1, apply to [section 4].

11 NEW SECTION. Section 6. Applicability. [This act]  
 12 applies to all agency franchise agreements entered into 6  
 13 months after [the effective date of this act].

14 NEW SECTION. Section 7. Effective date. [This act] is  
 15 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0279, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act establishing requirements for liquor agency store franchise agreements, providing procedures for agency franchise agreement termination effective on passage and applicable to agreements six months hence.

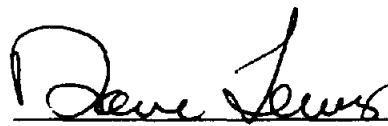
ASSUMPTIONS:

1. There is no fiscal impact as a result of this bill in either FY94 or FY95.

FISCAL IMPACT: None.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Under this legislation, the Department of Revenue or the liquor store agent can request a review and adjustment of the agency store commission percentage, at five-year intervals. This will result in a minimal fiscal impact over the long-run.

 1-25-93  
DAVID LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 1-25-93  
BOB GILBERT, PRIMARY SPONSOR      DATE

Fiscal Note for HB0279, as introduced

**HB 279**



APPROVED BY COMM. ON BUSINESS  
AND ECONOMIC DEVELOPMENT

HOUSE BILL NO. 279

INTRODUCED BY GILBERT, HARRINGTON, FOSTER,

MCCAFFREE, SWYSGOOD, HARP

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING  
REQUIREMENTS FOR LIQUOR AGENCY STORE FRANCHISE AGREEMENTS;  
PROVIDING PROCEDURES FOR AGENCY FRANCHISE AGREEMENT  
TERMINATION; AMENDING SECTIONS 16-1-106, 16-2-101, AND  
18-4-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND  
AN APPLICABILITY DATE."

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

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

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

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

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

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

(4) "Beer" means a malt beverage containing not more

than 7% of alcohol by weight.

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

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

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

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

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

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

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

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

(13) "Package" means a container or receptacle used for

1 holding an alcoholic beverage.

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

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

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

12 (17) "Rules" means rules published by the department  
13 pursuant to this code.

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

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

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

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

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

9 (22) "Table wine" means wine as-defined-below-which that  
10 contains not more than 16% alcohol by volume.

11 (23) "Table wine distributor" means a person importing  
12 into or purchasing in Montana table wine for sale or resale  
13 to retailers licensed in Montana.

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

19 (25) "Wine" means an alcoholic beverage made from or  
20 containing the normal alcoholic fermentation of the juice of  
21 sound, ripe fruit or other agricultural products without  
22 addition or abstraction, except as may occur in the usual  
23 cellar treatment of clarifying and aging, and that contains  
24 more than 0.5% but not more than 24% of alcohol by volume.  
25 Wine may be ameliorated to correct natural deficiencies,

sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined ~~as-above~~ in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

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

"16-2-101. Establishment and closure of state liquor stores -- agency franchise agreement -- kinds and prices of liquor and table wine. (1) (a) The department shall establish and maintain one or more stores, to be known as "state liquor stores", as the department finds feasible for the sale of liquor and table wine in accordance with the provisions of this code and the rules ~~made-thereunder~~ adopted under this code.

(b) The department shall enter into an agency franchise agreement or employ the necessary help to operate ~~said~~ the stores and shall designate the duties to be performed by the agent or employees.

(c) Once established, a store ~~shall~~ may not be closed, converted to an agency store, or sold by the department unless:

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

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

(2) The department may from time to time fix the prices at which the various classes, varieties, and brands of liquor and table wine may be sold, and prices ~~shall~~ must be the same at all state stores.

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

(b) No-agency Agency stores ~~shall~~ may not be located in or adjacent to grocery stores in communities with populations over 3,000. This provision is applicable only to agency agreements entered into after May 11, 1987.

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

(a) a 10% commission for agencies in communities with less than 3,000 in population;

(b) a commission established by competitive bidding for agencies in communities with 3,000 or more in population.

1 (5) An agency franchise agreement must:

2 (a) be effective for a 10-year period and may be  
3 renewed every 10 years if the requirements of the agency  
4 franchise agreement have been satisfactorily performed;

5 (b) require the agent to maintain comprehensive general  
6 liability insurance and liquor liability insurance  
7 throughout the term of the agency franchise agreement in an  
8 amount established by the department of administration. The  
9 insurance policy must:

10 (i) declare the department as an additional insured;  
11 and

12 (ii) hold the state harmless and agree to defend and  
13 indemnify the state in a cause of action arising from or in  
14 connection with the agent's negligent acts or activities in  
15 the execution and performance of the agency franchise  
16 agreement;

17 (c) require the agent to provide performance security  
18 in an amount equal to the average monthly value of inventory  
19 at cost based on the most recent 12-month period of  
20 inventory value at the agency store location or, if a  
21 12-month history is not available, the department's estimate  
22 of the average value; and

23 (d) specify the reasonable service and space  
24 requirements that the agent will provide throughout the term  
25 of the agency franchise agreement.

1 (6) The commission percentage that the department pays  
2 the agent under an agency franchise agreement may be  
3 reviewed every 5 years at the request of either party. If  
4 the agent concurs, the department may adjust the commission  
5 percentage to be paid during the remaining term of the  
6 agency franchise agreement to a commission percentage that  
7 is equal to the average commission percentage being paid  
8 agents with similar sales volumes if:

9 (a) the agent's commission percentage is less than the  
10 average; and

11 (b) all the requirements of the agency franchise  
12 agreement have been satisfactorily performed.

13 (7) The liability insurance and performance security  
14 requirements may be reviewed every 5 years at the request of  
15 either the agent or the department. If the agent concurs,  
16 the department may adjust the requirements to be effective  
17 during the remaining term of the agency franchise agreement  
18 if the adjustments adequately protect the state from risks  
19 associated with the loss of state assets or from the agent's  
20 negligent acts or activities in the execution and  
21 performance of the agency franchise agreement. The amount of  
22 insurance coverage may not be less than the minimum  
23 requirements of the department of administration.

24 (8) An (A) EXCEPT AS PROVIDED IN SUBSECTION (8)(B), AN  
25 agency franchise agreement must be renewed for additional

10-year periods if the agent has satisfactorily performed all the requirements of the agency franchise agreement. Except for establishing the new term AND EXCEPT FOR A COMMISSION PERCENTAGE THAT MAY BE NEGOTIATED AS PROVIDED IN SUBSECTION (8)(B), changes in the agency franchise agreement as a result of a renewal may not be made unless the agent and the department mutually agree.

(B) IF AT LEAST 90 DAYS PRIOR TO THE EXPIRATION OF A 10-YEAR AGENCY FRANCHISE AGREEMENT, THE DEPARTMENT DETERMINES THAT AN ADJUSTMENT OF THE COMMISSION PERCENTAGE PAID TO THE AGENT IS IN THE BEST INTERESTS OF THE STATE, THE DEPARTMENT SHALL NOTIFY THE AGENT OF THAT DETERMINATION.

(C) IF THE AGENT DOES NOT CONCUR WITH THE DEPARTMENT'S COMMISSION PERCENTAGE ADJUSTMENT, THE DEPARTMENT SHALL ADVERTISE FOR BIDS FOR THE AGENCY FRANCHISE AT THE ADJUSTED COMMISSION PERCENTAGE, SUBJECT TO THE PROVISIONS OF THIS CHAPTER. IF BIDS FROM PERSONS WHO MEET THE CRITERIA PROVIDED IN THIS CHAPTER ARE RECEIVED BY THE DEPARTMENT FOR THE AGENCY FRANCHISE AT THE ADJUSTED COMMISSION PERCENTAGE, THE AGENT UNDER THE EXISTING FRANCHISE AGREEMENT HAS A PREFERENCE RIGHT TO RENEW THE FRANCHISE AGREEMENT BY CONCURRING IN THE ADJUSTED COMMISSION PERCENTAGE.

(D) IF THE AGENT UNDER THE EXISTING FRANCHISE AGREEMENT DECLINES TO EXERCISE THE PREFERENCE RIGHT UNDER SUBSECTION (8)(C), THE DEPARTMENT SHALL ENTER INTO AN AGENCY FRANCHISE

AGREEMENT AS PROVIDED IN THIS CHAPTER WITH A PERSON WHO ACCEPTED THE ADJUSTED COMMISSION PERCENTAGE.

(E) IF THE AGENT EXERCISES THE PREFERENCE RIGHT AND BELIEVES THE ADJUSTED COMMISSION PERCENTAGE TO BE INADEQUATE OR NOT IN THE BEST INTERESTS OF THE STATE, THE AGENT MAY REQUEST AN ADMINISTRATIVE HEARING. THE REQUEST MUST CONTAIN A STATEMENT OF REASONS WHY THE AGENT BELIEVES THE COMMISSION PERCENTAGE TO BE INADEQUATE OR NOT IN THE STATE'S BEST INTERESTS. THE DEPARTMENT SHALL GRANT THE REQUEST FOR A HEARING IF IT DETERMINES THAT THE STATEMENT INDICATES EVIDENCE THAT THE ADJUSTED COMMISSION PERCENTAGE IS INADEQUATE OR NOT IN THE STATE'S BEST INTERESTS. THE DEPARTMENT MAY, AFTER THE HEARING, ADJUST THE COMMISSION PERCENTAGE IF THE AGENT SHOWS THAT THE COMMISSION PERCENTAGE IS INADEQUATE OR NOT IN THE BEST INTERESTS OF THE STATE. IF THE DEPARTMENT INCREASES THE COMMISSION PERCENTAGE RATE, THE DEPARTMENT SHALL SET FORTH ITS FINDINGS AND CONCLUSIONS IN WRITING AND INFORM THE AGENT AND THE OTHER PERSONS WHO OFFERED TO ENTER INTO AN AGENCY AGREEMENT AT THE ADJUSTED COMMISSION RATE.

(9) The department may terminate an agency franchise agreement if the agent has not satisfactorily performed the requirements of the agency franchise agreement or in the following cases:

(a) Except in the case of suspected theft or

1 unauthorized use of state assets, the department shall give  
 2 an agent 30 days' notice of its intent to terminate the  
 3 agency franchise agreement for cause and specify the unmet  
 4 requirements. The agent may contest the agency franchise  
 5 agreement termination and request a hearing within 30 days.  
 6 If a hearing is requested, the department shall suspend its  
 7 termination order until after a final decision has been made  
 8 pursuant to the Montana Administrative Procedure Act.

9 (b) If an agent is suspected of theft or unauthorized  
 10 use of state assets, the department may terminate the agency  
 11 franchise agreement and retrieve its assets immediately. If  
 12 an agency franchise agreement is terminated, the agent may  
 13 contest the agency franchise agreement termination and  
 14 request a hearing within 30 days of the department's  
 15 retrieval of assets. The agency store shall remain closed  
 16 until a final decision has been reached following a hearing  
 17 held pursuant to the Montana Administrative Procedure Act.

18 (10) An agency franchise agreement may be terminated  
 19 upon mutual agreement by the agent and the department.

20 (11) An agent may assign an agency franchise agreement  
 21 to a person who, upon approval of the department, is named  
 22 agent in the agency franchise agreement, with the rights,  
 23 privileges, and responsibilities of the original agent for  
 24 the remaining term of the agency franchise agreement. The  
 25 agent shall notify the department of an intent to assign the

1 agency franchise agreement 60 days before the intended  
 2 effective date of the assignment. The department may not  
 3 unreasonably withhold approval of an assignment request.

4 (12) An agency agreement in effect on [the effective  
 5 date of this act] must be converted upon request of the  
 6 agent and approval of the department to a 10-year agency  
 7 franchise agreement pursuant to subsections (5) through (11)  
 8 without competitive bids or proposals.

9 (5)(13) The department shall maintain sufficient  
 10 inventory in the state warehouse in order to meet a monthly  
 11 service level of at least 97%."

12 **Section 3.** Section 18-4-313, MCA, is amended to read:

13 **"18-4-313. Contracts -- terms, extensions, and time**  
 14 **limits. (1) Unless otherwise provided by law, no a contract,**  
 15 **lease, or rental agreement for supplies or services may not**  
 16 **be made for a longer period than 3 years; however, the**  
 17 **department may contract for the lease or purchase of**  
 18 **telecommunications equipment and systems, data processing**  
 19 **equipment, the department of revenue liquor agencies, and**  
 20 **the department of social and rehabilitation services**  
 21 **medicaid management information system (MMIS) for a period**  
 22 **not to exceed 10 years. A contract, lease, or rental**  
 23 **agreement may be extended or renewed, notwithstanding the**  
 24 **time limits stated in this section, if the terms of the**  
 25 **extension or renewal, if any, are included in the**

solicitation and funds are available for the first fiscal period at the time of the agreement. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds therefor for the fiscal periods.

(2) Prior to the extension or renewal of a contract, it must be determined in writing that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(3) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled."

NEW SECTION. **Section 4.** Continuity of existing agency agreements. An existing agency agreement that terminates after [the effective date of this act] but before it is converted to an agency franchise agreement is automatically extended until an agency franchise agreement is signed or for 6 months from [the effective date of this act], whichever occurs first.

NEW SECTION. **Section 5.** Codification instruction. [Section 4] is intended to be codified as an integral part of Title 16, chapter 2, part 1, and the provisions of Title

16, chapter 2, part 1, apply to [section 4].

NEW SECTION. **Section 6.** Applicability. [This act] applies to all agency franchise agreements entered into 6 months after [the effective date of this act].

NEW SECTION. **Section 7.** Effective date. [This act] is effective on passage and approval.

-End-

## HOUSE BILL NO. 279

INTRODUCED BY GILBERT, HARRINGTON, FOSTER,  
MCCAFFREE, SWYSGOOD, HARP

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING  
REQUIREMENTS FOR LIQUOR AGENCY STORE FRANCHISE AGREEMENTS;  
PROVIDING PROCEDURES FOR AGENCY FRANCHISE AGREEMENT  
TERMINATION; AMENDING SECTIONS 16-1-106, 16-2-101, AND  
18-4-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND  
AN APPLICABILITY DATE."

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

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

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

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

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

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

(4) "Beer" means a malt beverage containing not more

than 7% of alcohol by weight.

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

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

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

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

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

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

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

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

(13) "Package" means a container or receptacle used for



1 holding an alcoholic beverage.

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

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

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

12 (17) "Rules" means rules published by the department  
13 pursuant to this code.

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

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

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

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

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

9 (22) "Table wine" means wine ~~as-defined-below-which~~ that  
10 contains not more than 16% alcohol by volume.

11 (23) "Table wine distributor" means a person importing  
12 into or purchasing in Montana table wine for sale or resale  
13 to retailers licensed in Montana.

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

19 (25) "Wine" means an alcoholic beverage made from or  
20 containing the normal alcoholic fermentation of the juice of  
21 sound, ripe fruit or other agricultural products without  
22 addition or abstraction, except as may occur in the usual  
23 cellar treatment of clarifying and aging, and that contains  
24 more than 0.5% but not more than 24% of alcohol by volume.  
25 Wine may be ameliorated to correct natural deficiencies,

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

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

"16-2-101. Establishment and closure of state liquor stores -- agency franchise agreement -- kinds and prices of liquor and table wine. (1) (a) The department shall establish and maintain one or more stores, to be known as "state liquor stores", as the department finds feasible for the sale of liquor and table wine in accordance with the provisions of this code and the rules ~~made thereunder~~ adopted under this code.

(b) The department shall enter into an agency franchise agreement or employ the necessary help to operate ~~said~~ the stores and shall designate the duties to be performed by the agent or employees.

(c) Once established, a store ~~shall~~ may not be closed, converted to an agency store, or sold by the department unless:

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

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

(2) The department may from time to time fix the prices at which the various classes, varieties, and brands of liquor and table wine may be sold, and prices ~~shall~~ must be the same at all state stores.

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

(b) ~~No-agency~~ Agency stores ~~shall~~ may not be located in or adjacent to grocery stores in communities with populations over 3,000. This provision is applicable only to agency agreements entered into after May 11, 1987.

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

(a) a 10% commission for agencies in communities with less than 3,000 in population;

(b) a commission established by competitive bidding for agencies in communities with 3,000 or more in population.

(5) An agency franchise agreement must:

(a) be effective for a 10-year period and may be renewed every 10 years if the requirements of the agency franchise agreement have been satisfactorily performed;

(b) require the agent to maintain comprehensive general liability insurance and liquor liability insurance throughout the term of the agency franchise agreement in an amount established by the department of administration. The insurance policy must:

(i) declare the department as an additional insured;  
and

(ii) hold the state harmless and agree to defend and indemnify the state in a cause of action arising from or in connection with the agent's negligent acts or activities in the execution and performance of the agency franchise agreement;

(c) require the agent to provide performance security in an amount equal to the average monthly value of inventory at cost based on the most recent 12-month period of inventory value at the agency store location or, if a 12-month history is not available, the department's estimate of the average value; and

(d) specify the reasonable service and space requirements that the agent will provide throughout the term of the agency franchise agreement.

(6) The commission percentage that the department pays the agent under an agency franchise agreement may be reviewed every 5 years at the request of either party. If the agent concurs, the department may adjust the commission percentage to be paid during the remaining term of the agency franchise agreement to a commission percentage that is equal to the average commission percentage being paid agents with similar sales volumes if:

(a) the agent's commission percentage is less than the average; and

(b) all the requirements of the agency franchise agreement have been satisfactorily performed.

(7) The liability insurance and performance security requirements may be reviewed every 5 years at the request of either the agent or the department. If the agent concurs, the department may adjust the requirements to be effective during the remaining term of the agency franchise agreement if the adjustments adequately protect the state from risks associated with the loss of state assets or from the agent's negligent acts or activities in the execution and performance of the agency franchise agreement. The amount of insurance coverage may not be less than the minimum requirements of the department of administration.

(8) An (A) EXCEPT AS PROVIDED IN SUBSECTION (8)(B), AN agency franchise agreement must be renewed for additional

1 10-year periods if the agent has satisfactorily performed  
 2 all the requirements of the agency franchise agreement.  
 3 Except for establishing the new term AND EXCEPT FOR A  
 4 COMMISSION PERCENTAGE THAT MAY BE NEGOTIATED AS PROVIDED IN  
 5 SUBSECTION (8)(B), changes in the agency franchise agreement  
 6 as a result of a renewal may not be made unless the agent  
 7 and the department mutually agree.

8 (B) IF AT LEAST 90 DAYS PRIOR TO THE EXPIRATION OF A  
 9 10-YEAR AGENCY FRANCHISE AGREEMENT, THE DEPARTMENT  
 10 DETERMINES THAT AN ADJUSTMENT OF THE COMMISSION PERCENTAGE  
 11 PAID TO THE AGENT IS IN THE BEST INTERESTS OF THE STATE, THE  
 12 DEPARTMENT SHALL NOTIFY THE AGENT OF THAT DETERMINATION.

13 (C) IF THE AGENT DOES NOT CONCUR WITH THE DEPARTMENT'S  
 14 COMMISSION PERCENTAGE ADJUSTMENT, THE DEPARTMENT SHALL  
 15 ADVERTISE FOR BIDS FOR THE AGENCY FRANCHISE AT THE ADJUSTED  
 16 COMMISSION PERCENTAGE, SUBJECT TO THE PROVISIONS OF THIS  
 17 CHAPTER. IF BIDS FROM PERSONS WHO MEET THE CRITERIA PROVIDED  
 18 IN THIS CHAPTER ARE RECEIVED BY THE DEPARTMENT FOR THE  
 19 AGENCY FRANCHISE AT THE ADJUSTED COMMISSION PERCENTAGE, THE  
 20 AGENT UNDER THE EXISTING FRANCHISE AGREEMENT HAS A  
 21 PREFERENCE RIGHT TO RENEW THE FRANCHISE AGREEMENT BY  
 22 CONCURRING IN THE ADJUSTED COMMISSION PERCENTAGE.

23 (D) IF THE AGENT UNDER THE EXISTING FRANCHISE AGREEMENT  
 24 DECLINES TO EXERCISE THE PREFERENCE RIGHT UNDER SUBSECTION  
 25 (8)(C), THE DEPARTMENT SHALL ENTER INTO AN AGENCY FRANCHISE

1 AGREEMENT AS PROVIDED IN THIS CHAPTER WITH A PERSON WHO  
 2 ACCEPTED THE ADJUSTED COMMISSION PERCENTAGE.

3 (E) IF THE AGENT EXERCISES THE PREFERENCE RIGHT AND  
 4 BELIEVES THE ADJUSTED COMMISSION PERCENTAGE TO BE INADEQUATE  
 5 OR NOT IN THE BEST INTERESTS OF THE STATE, THE AGENT MAY  
 6 REQUEST AN ADMINISTRATIVE HEARING. THE REQUEST MUST CONTAIN  
 7 A STATEMENT OF REASONS WHY THE AGENT BELIEVES THE COMMISSION  
 8 PERCENTAGE TO BE INADEQUATE OR NOT IN THE STATE'S BEST  
 9 INTERESTS. THE DEPARTMENT SHALL GRANT THE REQUEST FOR A  
 10 HEARING IF IT DETERMINES THAT THE STATEMENT INDICATES  
 11 EVIDENCE THAT THE ADJUSTED COMMISSION PERCENTAGE IS  
 12 INADEQUATE OR NOT IN THE STATE'S BEST INTERESTS. THE  
 13 DEPARTMENT MAY, AFTER THE HEARING, ADJUST THE COMMISSION  
 14 PERCENTAGE IF THE AGENT SHOWS THAT THE COMMISSION PERCENTAGE  
 15 IS INADEQUATE OR NOT IN THE BEST INTERESTS OF THE STATE. IF  
 16 THE DEPARTMENT INCREASES THE COMMISSION PERCENTAGE RATE, THE  
 17 DEPARTMENT SHALL SET FORTH ITS FINDINGS AND CONCLUSIONS IN  
 18 WRITING AND INFORM THE AGENT AND THE OTHER PERSONS WHO  
 19 OFFERED TO ENTER INTO AN AGENCY AGREEMENT AT THE ADJUSTED  
 20 COMMISSION RATE.

21 (9) The department may terminate an agency franchise  
 22 agreement if the agent has not satisfactorily performed the  
 23 requirements of the agency franchise agreement or in the  
 24 following cases:

25 (a) Except in the case of suspected theft or

1 unauthorized use of state assets, the department shall give  
 2 an agent 30 days' notice of its intent to terminate the  
 3 agency franchise agreement for cause and specify the unmet  
 4 requirements. The agent may contest the agency franchise  
 5 agreement termination and request a hearing within 30 days.  
 6 If a hearing is requested, the department shall suspend its  
 7 termination order until after a final decision has been made  
 8 pursuant to the Montana Administrative Procedure Act.

9 (b) If an agent is suspected of theft or unauthorized  
 10 use of state assets, the department may terminate the agency  
 11 franchise agreement and retrieve its assets immediately. If  
 12 an agency franchise agreement is terminated, the agent may  
 13 contest the agency franchise agreement termination and  
 14 request a hearing within 30 days of the department's  
 15 retrieval of assets. The agency store shall remain closed  
 16 until a final decision has been reached following a hearing  
 17 held pursuant to the Montana Administrative Procedure Act.

18 (10) An agency franchise agreement may be terminated  
 19 upon mutual agreement by the agent and the department.

20 (11) An agent may assign an agency franchise agreement  
 21 to a person who, upon approval of the department, is named  
 22 agent in the agency franchise agreement, with the rights,  
 23 privileges, and responsibilities of the original agent for  
 24 the remaining term of the agency franchise agreement. The  
 25 agent shall notify the department of an intent to assign the

1 agency franchise agreement 60 days before the intended  
 2 effective date of the assignment. The department may not  
 3 unreasonably withhold approval of an assignment request.

4 (12) An agency agreement in effect on [the effective  
 5 date of this act] must be converted upon request of the  
 6 agent and approval of the department to a 10-year agency  
 7 franchise agreement pursuant to subsections (5) through (11)  
 8 without competitive bids or proposals.

9 (13) The department shall maintain sufficient  
 10 inventory in the state warehouse in order to meet a monthly  
 11 service level of at least 97%.

12 **Section 3.** Section 18-4-313, MCA, is amended to read:

13 "18-4-313. Contracts -- terms, extensions, and time  
 14 limits. (1) Unless otherwise provided by law, no a contract,  
 15 lease, or rental agreement for supplies or services may not  
 16 be made for a longer period than 3 years; however, the  
 17 department may contract for the lease or purchase of  
 18 telecommunications equipment and systems, data processing  
 19 equipment, the department of revenue liquor agencies, and  
 20 the department of social and rehabilitation services  
 21 medicaid management information system (MMIS) for a period  
 22 not to exceed 10 years. A contract, lease, or rental  
 23 agreement may be extended or renewed, notwithstanding the  
 24 time limits stated in this section, if the terms of the  
 25 extension or renewal, if any, are included in the

1 solicitation and funds are available for the first fiscal  
 2 period at the time of the agreement. Payment and performance  
 3 obligations for succeeding fiscal periods are subject to the  
 4 availability and appropriation of funds therefor for the  
 5 fiscal periods.

6 (2) Prior to the extension or renewal of a contract, it  
 7 must be determined in writing that:

8 (a) estimated requirements cover the period of the  
 9 contract and are reasonably firm and continuing; and

10 (b) the contract will serve the best interests of the  
 11 state by encouraging effective competition or otherwise  
 12 promoting economies in state procurement.

13 (3) When funds are not appropriated or otherwise made  
 14 available to support continuation of performance in a  
 15 subsequent fiscal period, the contract must be canceled."

16 NEW SECTION. Section 4. Continuity of existing agency  
 17 agreements. An existing agency agreement that terminates  
 18 after [the effective date of this act] but before it is  
 19 converted to an agency franchise agreement is automatically  
 20 extended until an agency franchise agreement is signed or  
 21 for 6 months from [the effective date of this act],  
 22 whichever occurs first.

23 NEW SECTION. Section 5. Codification instruction.  
 24 [Section 4] is intended to be codified as an integral part  
 25 of Title 16, chapter 2, part 1, and the provisions of Title

1 16, chapter 2, part 1, apply to [section 4].

2 NEW SECTION. Section 6. Applicability. [This act]  
 3 applies to all agency franchise agreements entered into 6  
 4 months after [the effective date of this act].

5 NEW SECTION. Section 7. Effective date. [This act] is  
 6 effective on passage and approval.

-End-

## 1 HOUSE BILL NO. 279

2 INTRODUCED BY GILBERT, HARRINGTON, FOSTER,

3 MCCAFFREE, SWYSGOOD, HARP

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING  
6 REQUIREMENTS FOR LIQUOR AGENCY STORE FRANCHISE AGREEMENTS;  
7 PROVIDING PROCEDURES FOR AGENCY FRANCHISE AGREEMENT  
8 TERMINATION; AMENDING SECTIONS 16-1-106, 16-2-101, AND  
9 18-4-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND  
10 AN APPLICABILITY DATE."

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

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

14 "16-1-106. Definitions. As used in this code, the  
15 following definitions apply:16 (1) "Agency franchise agreement" means an agreement  
17 between the department and a person appointed to sell liquor  
18 and table wine as a commission merchant rather than as an  
19 employee.20 (2) "Alcohol" means ethyl alcohol, also called ethanol,  
21 or the hydrated oxide of ethyl.22 (3) "Alcoholic beverage" means a compound produced and  
23 sold for human consumption as a drink that contains more  
24 than 0.5% of alcohol by volume.

25 (4) "Beer" means a malt beverage containing not more

1 than 7% of alcohol by weight.

2 (5) "Beer importer" means a person other than a brewer  
3 who imports malt beverages.4 (6) "Brewer" means a person who produces malt  
5 beverages.

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

7 (8) "Immediate family" means a spouse, dependent  
8 children, or dependent parents.9 (9) "Import" means to transfer beer or table wine from  
10 outside the state of Montana into the state of Montana.11 (10) "Industrial use" means a use described as  
12 industrial use by the federal Alcohol Administration Act and  
13 the federal rules and regulations of 27 CFR.14 (11) "Liquor" means an alcoholic beverage except beer  
15 and table wine.16 (12) "Malt beverage" means an alcoholic beverage made by  
17 the fermentation of an infusion or decoction, or a  
18 combination of both, in potable brewing water, of malted  
19 barley with or without hops or their parts or their products  
20 and with or without other malted cereals and with or without  
21 the addition of unmalted or prepared cereals, other  
22 carbohydrates, or products prepared therefrom from  
23 carbohydrates and with or without other wholesome products  
24 suitable for human food consumption.

25 (13) "Package" means a container or receptacle used for

1 holding an alcoholic beverage.

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

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

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

12 (17) "Rules" means rules published by the department  
13 pursuant to this code.

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

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

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

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

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

9 (22) "Table wine" means wine as-defined-below-which that  
10 contains not more than 16% alcohol by volume.

11 (23) "Table wine distributor" means a person importing  
12 into or purchasing in Montana table wine for sale or resale  
13 to retailers licensed in Montana.

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

19 (25) "Wine" means an alcoholic beverage made from or  
20 containing the normal alcoholic fermentation of the juice of  
21 sound, ripe fruit or other agricultural products without  
22 addition or abstraction, except as may occur in the usual  
23 cellar treatment of clarifying and aging, and that contains  
24 more than 0.5% but not more than 24% of alcohol by volume.  
25 Wine may be ameliorated to correct natural deficiencies,



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

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

"16-2-101. Establishment and closure of state liquor stores -- agency franchise agreement -- kinds and prices of liquor and table wine. (1) (a) The department shall establish and maintain one or more stores, to be known as "state liquor stores", as the department finds feasible for the sale of liquor and table wine in accordance with the provisions of this code and the rules made-thereunder adopted under this code.

(b) The department shall enter into an agency franchise agreement or employ the necessary help to operate said the stores and shall designate the duties to be performed by the agent or employees.

(c) Once established, a store shall may not be closed, converted to an agency store, or sold by the department unless:

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

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

(2) The department may from time to time fix the prices at which the various classes, varieties, and brands of liquor and table wine may be sold, and prices shall must be the same at all state stores.

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

(b) No-agency Agency stores shall may not be located in or adjacent to grocery stores in communities with populations over 3,000. This provision is applicable only to agency agreements entered into after May 11, 1987.

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

(a) a 10% commission for agencies in communities with less than 3,000 in population;

(b) a commission established by competitive bidding for agencies in communities with 3,000 or more in population.

(5) An agency franchise agreement must:

(a) be effective for a 10-year period and may be renewed every 10 years if the requirements of the agency franchise agreement have been satisfactorily performed;

(b) require the agent to maintain comprehensive general liability insurance and liquor liability insurance throughout the term of the agency franchise agreement in an amount established by the department of administration. The insurance policy must:

(i) declare the department as an additional insured; and

(ii) hold the state harmless and agree to defend and indemnify the state in a cause of action arising from or in connection with the agent's negligent acts or activities in the execution and performance of the agency franchise agreement;

(c) require the agent to provide performance security in an amount equal to the average monthly value of inventory at cost based on the most recent 12-month period of inventory value at the agency store location or, if a 12-month history is not available, the department's estimate of the average value; and

(d) specify the reasonable service and space requirements that the agent will provide throughout the term of the agency franchise agreement.

(6) The commission percentage that the department pays the agent under an agency franchise agreement may be reviewed every 5 years at the request of either party. If the agent concurs, the department may adjust the commission percentage to be paid during the remaining term of the agency franchise agreement to a commission percentage that is equal to the average commission percentage being paid agents with similar sales volumes if:

(a) the agent's commission percentage is less than the average; and

(b) all the requirements of the agency franchise agreement have been satisfactorily performed.

(7) The liability insurance and performance security requirements may be reviewed every 5 years at the request of either the agent or the department. If the agent concurs, the department may adjust the requirements to be effective during the remaining term of the agency franchise agreement if the adjustments adequately protect the state from risks associated with the loss of state assets or from the agent's negligent acts or activities in the execution and performance of the agency franchise agreement. The amount of insurance coverage may not be less than the minimum requirements of the department of administration.

(8) An (A) EXCEPT AS PROVIDED IN SUBSECTION (8)(B), AN agency franchise agreement must be renewed for additional

1 10-year periods if the agent has satisfactorily performed  
 2 all the requirements of the agency franchise agreement.  
 3 Except for establishing the new term AND EXCEPT FOR A  
 4 COMMISSION PERCENTAGE THAT MAY BE NEGOTIATED AS PROVIDED IN  
 5 SUBSECTION (8)(B), changes in the agency franchise agreement  
 6 as a result of a renewal may not be made unless the agent  
 7 and the department mutually agree.

8 (B) IF AT LEAST 90 DAYS PRIOR TO THE EXPIRATION OF A  
 9 10-YEAR AGENCY FRANCHISE AGREEMENT, THE DEPARTMENT  
 10 DETERMINES THAT AN ADJUSTMENT OF THE COMMISSION PERCENTAGE  
 11 PAID TO THE AGENT IS IN THE BEST INTERESTS OF THE STATE, THE  
 12 DEPARTMENT SHALL NOTIFY THE AGENT OF THAT DETERMINATION.

13 (C) IF THE AGENT DOES NOT CONCUR WITH THE DEPARTMENT'S  
 14 COMMISSION PERCENTAGE ADJUSTMENT, THE DEPARTMENT SHALL  
 15 ADVERTISE FOR BIDS FOR THE AGENCY FRANCHISE AT THE ADJUSTED  
 16 COMMISSION PERCENTAGE, SUBJECT TO THE PROVISIONS OF THIS  
 17 CHAPTER. IF BIDS FROM PERSONS WHO MEET THE CRITERIA PROVIDED  
 18 IN THIS CHAPTER ARE RECEIVED BY THE DEPARTMENT FOR THE  
 19 AGENCY FRANCHISE AT THE ADJUSTED COMMISSION PERCENTAGE, THE  
 20 AGENT UNDER THE EXISTING FRANCHISE AGREEMENT HAS A  
 21 PREFERENCE RIGHT TO RENEW THE FRANCHISE AGREEMENT BY  
 22 CONCURRING IN THE ADJUSTED COMMISSION PERCENTAGE.

23 (D) IF THE AGENT UNDER THE EXISTING FRANCHISE AGREEMENT  
 24 DECLINES TO EXERCISE THE PREFERENCE RIGHT UNDER SUBSECTION  
 25 (8)(C), THE DEPARTMENT SHALL ENTER INTO AN AGENCY FRANCHISE

1 AGREEMENT AS PROVIDED IN THIS CHAPTER WITH A PERSON WHO  
 2 ACCEPTED THE ADJUSTED COMMISSION PERCENTAGE.

3 (E) IF THE AGENT EXERCISES THE PREFERENCE RIGHT AND  
 4 BELIEVES THE ADJUSTED COMMISSION PERCENTAGE TO BE INADEQUATE  
 5 OR NOT IN THE BEST INTERESTS OF THE STATE, THE AGENT MAY  
 6 REQUEST AN ADMINISTRATIVE HEARING. THE REQUEST MUST CONTAIN  
 7 A STATEMENT OF REASONS WHY THE AGENT BELIEVES THE COMMISSION  
 8 PERCENTAGE TO BE INADEQUATE OR NOT IN THE STATE'S BEST  
 9 INTERESTS. THE DEPARTMENT SHALL GRANT THE REQUEST FOR A  
 10 HEARING IF IT DETERMINES THAT THE STATEMENT INDICATES  
 11 EVIDENCE THAT THE ADJUSTED COMMISSION PERCENTAGE IS  
 12 INADEQUATE OR NOT IN THE STATE'S BEST INTERESTS. THE  
 13 DEPARTMENT MAY, AFTER THE HEARING, ADJUST THE COMMISSION  
 14 PERCENTAGE IF THE AGENT SHOWS THAT THE COMMISSION PERCENTAGE  
 15 IS INADEQUATE OR NOT IN THE BEST INTERESTS OF THE STATE. IF  
 16 THE DEPARTMENT INCREASES THE COMMISSION PERCENTAGE RATE, THE  
 17 DEPARTMENT SHALL SET FORTH ITS FINDINGS AND CONCLUSIONS IN  
 18 WRITING AND INFORM THE AGENT AND THE OTHER PERSONS WHO  
 19 OFFERED TO ENTER INTO AN AGENCY AGREEMENT AT THE ADJUSTED  
 20 COMMISSION RATE.

21 (9) The department may terminate an agency franchise  
 22 agreement if the agent has not satisfactorily performed the  
 23 requirements of the agency franchise agreement or in the  
 24 following cases:

25 (a) Except in the case of suspected theft or

1 unauthorized use of state assets, the department shall give  
 2 an agent 30 days' notice of its intent to terminate the  
 3 agency franchise agreement for cause and specify the unmet  
 4 requirements. The agent may contest the agency franchise  
 5 agreement termination and request a hearing within 30 days.  
 6 If a hearing is requested, the department shall suspend its  
 7 termination order until after a final decision has been made  
 8 pursuant to the Montana Administrative Procedure Act.

9 (b) If an agent is suspected of theft or unauthorized  
 10 use of state assets, the department may terminate the agency  
 11 franchise agreement and retrieve its assets immediately. If  
 12 an agency franchise agreement is terminated, the agent may  
 13 contest the agency franchise agreement termination and  
 14 request a hearing within 30 days of the department's  
 15 retrieval of assets. The agency store shall remain closed  
 16 until a final decision has been reached following a hearing  
 17 held pursuant to the Montana Administrative Procedure Act.

18 (10) An agency franchise agreement may be terminated  
 19 upon mutual agreement by the agent and the department.

20 (11) An agent may assign an agency franchise agreement  
 21 to a person who, upon approval of the department, is named  
 22 agent in the agency franchise agreement, with the rights,  
 23 privileges, and responsibilities of the original agent for  
 24 the remaining term of the agency franchise agreement. The  
 25 agent shall notify the department of an intent to assign the

1 agency franchise agreement 60 days before the intended  
 2 effective date of the assignment. The department may not  
 3 unreasonably withhold approval of an assignment request.

4 (12) An agency agreement in effect on [the effective  
 5 date of this act] must be converted upon request of the  
 6 agent and approval of the department to a 10-year agency  
 7 franchise agreement pursuant to subsections (5) through (11)  
 8 without competitive bids or proposals.

9 (13) The department shall maintain sufficient  
 10 inventory in the state warehouse in order to meet a monthly  
 11 service level of at least 97%."

12 **Section 3. Section 18-4-313, MCA, is amended to read:**

13 **"18-4-313. Contracts -- terms, extensions, and time**  
 14 **limits. (1) Unless otherwise provided by law, no a contract,**  
 15 **lease, or rental agreement for supplies or services may not**  
 16 **be made for a longer period than 3 years; however, the**  
 17 **department may contract for the lease or purchase of**  
 18 **telecommunications equipment and systems, data processing**  
 19 **equipment, the department of revenue liquor agencies, and**  
 20 **the department of social and rehabilitation services**  
 21 **medicaid management information system (MMIS) for a period**  
 22 **not to exceed 10 years. A contract, lease, or rental**  
 23 **agreement may be extended or renewed, notwithstanding the**  
 24 **time limits stated in this section, if the terms of the**  
 25 **extension or renewal, if any, are included in the**

1 solicitation and funds are available for the first fiscal  
 2 period at the time of the agreement. Payment and performance  
 3 obligations for succeeding fiscal periods are subject to the  
 4 availability and appropriation of funds therefor for the  
 5 fiscal periods.

6 (2) Prior to the extension or renewal of a contract, it  
 7 must be determined in writing that:

8 (a) estimated requirements cover the period of the  
 9 contract and are reasonably firm and continuing; and

10 (b) the contract will serve the best interests of the  
 11 state by encouraging effective competition or otherwise  
 12 promoting economies in state procurement.

13 (3) When funds are not appropriated or otherwise made  
 14 available to support continuation of performance in a  
 15 subsequent fiscal period, the contract must be canceled."

16 NEW SECTION. Section 4. Continuity of existing agency  
 17 agreements. An existing agency agreement that terminates  
 18 after [the effective date of this act] but before it is  
 19 converted to an agency franchise agreement is automatically  
 20 extended until an agency franchise agreement is signed or  
 21 for 6 months from [the effective date of this act],  
 22 whichever occurs first.

23 NEW SECTION. Section 5. Codification instruction.  
 24 [Section 4] is intended to be codified as an integral part  
 25 of Title 16, chapter 2, part 1, and the provisions of Title

1 16, chapter 2, part 1, apply to [section 4].

2 NEW SECTION. Section 6. Applicability. [This act]  
 3 applies to all agency franchise agreements entered into 6  
 4 months after [the effective date of this act].

5 NEW SECTION. Section 7. Effective date. [This act] is  
 6 effective on passage and approval.

-End-