

HOUSE BILL NO. 609

INTRODUCED BY WANZENRIED, HARP, J. RICE,
GAGE, R. JOHNSON, VAN VALKENBURG, HALLIGAN
BY REQUEST OF THE DEPARTMENT OF REVENUE
AND THE DEPARTMENT OF JUSTICE

IN THE HOUSE

FEBRUARY 12, 1993

INTRODUCED AND REFERRED TO COMMITTEE
ON APPROPRIATIONS.

FIRST READING.

MARCH 16, 1993

COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

MARCH 17, 1993

PRINTING REPORT.

MARCH 23, 1993

SECOND READING, DO PASS.

MARCH 24, 1993

ENGROSSING REPORT.

THIRD READING, PASSED.
AYES, 99; NOES, 1.

MARCH 25, 1993

TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 26, 1993

INTRODUCED AND REFERRED TO COMMITTEE
ON FINANCE & CLAIMS.

FIRST READING.

MARCH 30, 1993

COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 31, 1993

SECOND READING, CONCURRED IN.

APRIL 1, 1993

THIRD READING, CONCURRED IN.
AYES, 48; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

APRIL 2, 1993

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

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INTRODUCED BY

House BILL NO. 609
~~UNZICKER~~ HARP
 BY REQUEST OF THE DEPARTMENT OF REVENUE
 AND THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING THE INVESTIGATIVE FUNCTIONS RELATING TO ALCOHOLIC BEVERAGE LICENSING AND ENFORCEMENT, TOBACCO, AND PUBLIC ASSISTANCE FROM THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF JUSTICE; GENERALLY REVISING THE LAWS TO CONFORM TO THE TRANSFER OF FUNCTIONS TO THE DEPARTMENT OF JUSTICE; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 16-1-106, 16-1-302, 16-1-303, 16-1-304, 16-4-207, 16-4-402, 16-4-403, 16-4-404, 16-4-406, 16-6-101, 16-6-102, 16-6-103, 16-6-106, 16-6-107, 16-6-108, 16-6-109, 16-11-103, 16-11-118, 16-11-124, 16-11-141, 16-11-142, 16-11-147, AND 16-11-149, MCA; AND PROVIDING EFFECTIVE DATES."

STATEMENT OF INTENT

A statement of intent is required for this bill because [sections 3 and 28] authorize the department of justice to adopt rules to carry out the investigative functions transferred to the department of justice from the department of revenue under the provisions of this bill. It is the intent of the legislature to consolidate investigative

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functions under the supervision of the state attorney general.

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

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

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

(1) "Agency agreement" means an agreement between the department and a person appointed to sell liquor 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, unless otherwise specified.

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

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

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

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

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

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

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

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

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

4 (17) "Rules" means rules published adopted by the
5 department or the department of justice pursuant to this
6 code.

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

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

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

20 (21) "Subwarehouse" means a building or structure owned
21 or operated by a licensed beer wholesaler or table wine
22 distributor, located at a site in Montana other than the
23 site of such the beer wholesaler's or table wine
24 distributor's warehouse or principal place of business, and
25 used for the receiving, storage, and distribution of beer or

1 table wine as permitted by this code.

2 (22) "Table wine" means wine as defined below which
3 contains not more than 16% alcohol by volume.

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

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

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

24 **Section 2.** Section 16-1-302, MCA, is amended to read:

25 "16-1-302. Functions, powers, and duties of department.

1 The department has the following functions, duties, and
2 powers:

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

6 (2) to control the possession, sale, and delivery of
7 liquors in accordance with the provisions of this code;

8 (3) to determine the municipalities where state liquor
9 stores are to be established throughout the state and the
10 situation of the stores within these municipalities;

11 (4) to lease, furnish, and equip any building or land
12 ~~required for-the-operation-of~~ to administer its duties under
13 this code;

14 (5) to buy or lease ~~all~~ plants and equipment ~~it--may~~
15 consider necessary ~~and--useful-in-carrying-into-effect-the~~
16 ~~objects-and-purposes-of~~ to administer its duties under this
17 code;

18 (6) to employ store managers and ~~also-every-officer,~~
19 ~~investigatory-clerk,-or other employee~~ employees required
20 ~~for-the-operation-or-carrying-out-of~~ to administer this code
21 and to dismiss them, ~~fix-their-salaries-or-remuneration,~~
22 assign them their title, and define their respective duties
23 and powers, and to engage contract with the department of
24 justice for investigative services or to contract for the
25 service services of experts and persons engaged in the

1 practice of a profession, if considered appropriate;

2 (7) to determine the nature, form, and capacity of all

3 packages to be used for containing liquor kept or sold under

4 this code;

5 (8) to grant and issue licenses under and-in-pursuance

6 to this code;

7 (9) to place special restrictions on the use of a

8 particular license, which must be endorsed upon the face of

9 the license, if the special restrictions are made pursuant

10 to a hearing held in connection with the issuance of the

11 license or if the special restrictions are agreed to by the

12 licensee;

13 (10) without limiting or being limited by the foregoing,

14 to do all things considered necessary or-advisable-by-the

15 department-for-the-purpose-of--carrying--into--effect--the

16 provisions--of to administer this code or the rules made

17 under-the-provisions-of-this-code."

18 **Section 3.** Section 16-1-303, MCA, is amended to read:

19 "16-1-303. Department rules. (1) The department and the

20 department of justice may make such rules not inconsistent

21 with this code as--to--the--department-seem necessary for

22 carrying-out-the-provisions--of to efficiently administer

23 this code and-for-the-efficient-administration-thereof.

24 (2) Without--thereby--limiting--the--generality--of-the

25 provisions--contained--in--subsection--(1)--hereof,--it--is

1 declared--that--the-power-of Rules made by the department to

2 make-rules-in-the-manner-set-out-in--that--subsection--shall

3 extend--to--and may include but are not limited to the

4 following:

5 (a) regulating the equipment and management of state

6 stores and warehouses in which liquor or table wine is kept

7 or sold and prescribing the books and records to be kept

8 therein;

9 (b) prescribing the duties of the department employees

10 of-the-liquor-division and regulating their conduct while in

11 the discharge of their duties;

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

13 the furnishing of liquor and table wine to state stores

14 established-under-this-code;

15 (d) determining the classes, varieties, and brands of

16 liquor and table wine to be kept for sale at any state

17 store;

18 (e) prescribing, subject-to-this-code, the hours during

19 which state liquor stores shall must be kept open for the

20 sale of alcoholic beverages;

21 (f) providing for the issuing and distributing of price

22 lists showing the price to be paid by purchasers for each

23 class, variety, or brand of liquor and table wine kept for

24 sale under-this-code;

25 (g) prescribing forms to be used for the purpose of

1 this code or of the rules ~~made-thereunder~~ and the terms and
2 conditions ~~in~~ for permits and licenses issued and granted
3 under this code;

4 (h) prescribing the form of records of purchase of
5 liquor and table wine and the reports to be made thereon to
6 the ~~division~~ department and providing for inspection of the
7 records ~~so-kept~~;

8 (i) prescribing the manner of giving and serving
9 notices required by this code or the rules thereunder;

10 (j) prescribing the fees payable ~~in--respect-of~~ for
11 permits and licenses issued under this code for which no
12 fees are prescribed in this code and prescribing the fees
13 for anything done or permitted to be done under the rules
14 ~~made-thereunder~~;

15 (k) prescribing, subject to the provisions of this
16 code, the conditions and qualifications necessary for the
17 obtaining of alcoholic beverage licenses and the books and
18 records to be kept and the returns to be made by the
19 licensees ~~and-providing-for-the-inspection-of-such-licensed~~
20 ~~premises~~;

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

23 (m) specifying and regulating the time and-periods when
24 and the ~~manner--methods--and--means~~ by which vendors and
25 brewers ~~shall~~ may deliver alcoholic beverages under this

1 code and the time ~~and-periods~~ when and the ~~manner--methods--~~
2 ~~and-means~~ by which alcoholic beverages, under this code, may
3 be lawfully conveyed or carried;

4 (n) governing the conduct, management, and equipment of
5 any premises licensed to sell alcoholic beverages under this
6 code;

7 (o) providing for the imposition and collection of
8 taxes and making rules respecting returns, accounting, and
9 payment of the taxes to the department.

10 (3) The department of justice may adopt rules to
11 administer and implement its responsibilities under this
12 title, including but not limited to rules providing for the
13 inspection of licensed premises or premises where the sale
14 of liquor has been proposed.

15 (4) ~~Whenever it-is-provided-in this code provides~~ that
16 any ~~an act--matter--or-thing~~ may be done if permitted--or
17 authorized by the rules ~~or-may-be-done-in-accordance-with~~
18 ~~the-rules-or-as-provided-by-the-rules~~, the department and
19 the department of justice, subject to the restrictions set
20 out in subsection (1) hereof, ~~shall-have-the--power--to~~ may
21 make rules respecting such the act--matter--or-thing."

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

23 "16-1-304. Prohibited acts ~~within--division~~. (1) No
24 officer--or An employee of the ~~liquor-division--including~~
25 ~~those--engaged--in--the--sale--of--liquor--at--the--various~~

1 department involved in the operation of the state warehouse
 2 or state liquor or--table--wine stores, the issuance of
 3 licenses, or the collection of alcoholic beverages taxes or
 4 an employee of the department of justice directly involved
 5 with the investigation of matters concerning the
 6 manufacture, sale, and distribution of alcoholic beverages
 7 may not be directly or indirectly interested or engaged in
 8 any other business or undertaking dealing in liquor or table
 9 wine, whether as owner, part owner, partner, member of
 10 syndicate, shareholder, agent, or employee and--whether for
 11 his the employee's own benefit or in a fiduciary capacity
 12 for some other person.

13 (2) ~~No member or employee of the--division--or--any~~ An
 14 employee of the state may not solicit or receive directly or
 15 indirectly any commission, remuneration, or gift ~~whatsoever~~
 16 from any person or corporation ~~having--sold, selling, or~~
 17 offering liquor or table wine for sale to the state or
 18 division pursuant to this code.

19 (3) No A person selling or offering for sale to or
 20 purchasing liquor or table wine from the state ~~liquor~~
 21 ~~division~~ may either not directly or indirectly offer to pay
 22 any commission, profit, or remuneration or make any gift to
 23 any member or employee of the ~~division--to any--employee--of~~
 24 the state, or to anyone on behalf of such the member or
 25 employee.

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

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

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

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

23 (5) ~~No-liquor~~ Liquor, wine, or other alcoholic beverage
 24 may not be withdrawn from the regular warehouse inventory or
 25 from the state liquor stores ~~of the Montana liquor division~~

for any purpose other than sale at the prevailing state retail prices or for destroying damaged or defective merchandise. The division state shall maintain a written record including the type, brand, container size, number of bottles or other units, signatures of witnesses, and method of destruction or other disposition of damaged or defective warehouse or state store merchandise.

(6) The division state may not require a company that manufactured, distilled, rectified, bottled, or processed and sold less than 200,000 proof gallons of liquor nationwide in the previous calendar year to maintain minimum amounts of liquor or wine in the state warehouse while the distiller or winery retains ownership of the product.

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

Section 5. Section 16-4-207, MCA, is amended to read:

"16-4-207. Notice of application -- investigation -- publication -- protest. (1) When an application has been filed with the department for a license to sell alcoholic beverages at retail or to transfer a retail license, the department shall review the application for completeness and to determine whether the applicant or the premises to be

licensed meets criteria provided by law. The department shall request that the department of justice investigate the application as provided in 16-4-402. If after the investigation the department does not discover a basis to deny the application, the department shall promptly publish in a newspaper of general circulation in the city, town, or county from which the application comes a notice that the applicant has made application for a retail license and that protests against the issuance of a license to the applicant by a person who has extended credit to the transferor or residents of the county from which the application comes or adjoining Montana counties may be mailed to a named administrator in the department of revenue within 10 days after the final notice is published. Notice of application for a new license must be published once a week for 4 consecutive weeks. Notice of application for transfer of a license must be published once a week for 2 consecutive weeks. Notice may be substantially in the following form:

NOTICE OF APPLICATION FOR RETAIL

ALL-BEVERAGES LICENSE

Notice is given that on the day of, 19.., one (name of applicant) filed an application for a retail all-beverages license with the Montana department of revenue, to be used at (describe location of premises where beverages are to be sold). A person who has extended credit

to the transferor and residents of counties may protest against the issuance of the license. Protests may be mailed to, department of revenue, Helena, Montana, on or before the day of, 19...

Dated Signed

ADMINISTRATOR

(2) Each applicant shall, at the time of filing his an application, pay to the department an amount sufficient to cover the costs of publishing the notice.

(3) If the administrator receives no written protests, the department may issue or transfer the license without holding a public hearing. If written protests by a person who has extended credit to the transferor or residents of the county from which the application comes or adjoining Montana counties against the issuance or transfer of the license are received, the department shall hold a public hearing."

Section 6. Section 16-4-402, MCA, is amended to read:

"16-4-402. Application -- investigation. (1) Prior to the issuance of a license under this chapter, the applicant shall file with the department an application in writing, signed by the applicant and containing information and statements relative to the applicant and the premises where the alcoholic beverage is to be sold as required by the department. The application must be verified by the

affidavit of the person making it before a person authorized to administer oaths.

(2) (a) Upon receipt of a completed application for a license under this code, accompanied by the necessary license fee or letter of credit as provided in 16-4-501(7)(f), the department shall within 30 days request that the department of justice make a thorough investigation of all matters relating to the application. The Based on the results of the investigation, the department shall determine whether:

(i) the applicant is qualified to receive a license;

(ii) his the applicant's premises are suitable for the carrying on of the business; and

(iii) the requirements of this code and the rules promulgated by the department are met and complied with.

(b) This subsection (2) does not apply to a catering endorsement provided in 16-4-204(2) or a special permit provided in 16-4-301.

(3) Upon proof that an applicant made a false statement in any part of the original application, in any part of an annual renewal application, or in any hearing conducted pursuant to an application, the application for the license may be denied, and if issued, the license may be revoked.

(4) If, within 30 days of receiving the completed application, the department finds no basis for denying the

1 application, the department shall proceed to publish the
2 notice of the application as required by 16-4-207."

3 **Section 7.** Section 16-4-403, MCA, is amended to read:

4 "16-4-403. Fingerprints required of licensees and
5 mortgagees. All applicants for a Montana retail
6 all-beverages or beer license, including corporate officers
7 and managers, may be required by the department when
8 applying-for-said-license or the department of justice to
9 have their fingerprints taken for use in determining the
10 eligibility of the applicant for such the license. This
11 provision ~~shall--also--apply~~ applies to all who file a
12 security interest against such the license except as--to
13 banks, savings and loan institutions, and licensed lending
14 agencies."

15 **Section 8.** Section 16-4-404, MCA, is amended to read:

16 "16-4-404. Protest period -- contents of license --
17 posting -- privilege -- transfer. (1) No A license may not
18 be issued until on or after the date set in the notice for
19 hearing protests.

20 (2) Every license issued under this code ~~shall~~ must
21 state the name of the person to whom it is issued, the
22 location, by street and number or other appropriate specific
23 description of location if no street address exists, of the
24 premises where the business is to be carried on under the
25 license, and other information the department considers

1 necessary. If the licensee is a partnership or if more than
2 one person has an interest in the business operated under
3 the license, the names of all persons in the partnership or
4 interested in the business must appear on the license. Every
5 license must be posted in a conspicuous place on the
6 premises in which the business authorized under the license
7 is conducted, and the license must be exhibited upon request
8 to any authorized representative of the department or the
9 department of justice or to any peace officer of the state
10 of Montana.

11 (3) A license issued under the provisions of this code
12 is a privilege personal to the licensee named in the license
13 and is valid until the expiration of the license unless
14 sooner revoked or suspended.

15 (4) A license may be transferred to the executor or
16 administrator of the estate of a deceased licensee when the
17 estate consists in whole or in part of the business of
18 selling alcoholic beverages under a license. The license may
19 descend or be disposed of with the licensed business under
20 appropriate probate proceedings.

21 (5) (a) A licensee may apply to the department for a
22 transfer of the license to different premises if:

23 (i) there has been major loss or damage to the licensed
24 premises by unforeseen natural causes;

25 (ii) the lease of the licensed premises has expired;

(iii) in case of rented licensed premises, there has been an eviction or increase of rent by the landlord; or

(iv) the licensee has proposed removal of the license to premises that are as substantially suited for the retail alcoholic beverages business as the premises proposed to be vacated.

(b) The department may, after notice and opportunity for protest, permit a transfer in the cases specified in subsection (5)(a) if it appears to the department that a transfer is required to do justice to the licensee applying for the transfer and is justified by public convenience and necessity. The department may not allow a transfer to different premises where the sanitary, health, and service facilities are less satisfactory than facilities that exist or had existed at the premises from which the transfer is proposed to be made.

(6) Upon a bona fide sale of the business operated under a license, the license may be transferred to a qualified purchaser. No A transfer of a license to a person or location is not effective unless approved by the department. A licensee or transferee or proposed transferee who operates or attempts to operate under a supposedly transferred license prior to the approval of the transfer by the department, endorsed upon the license in writing, is considered to be operating without a license and the license

affected may be revoked or suspended by the department. The department may, within its discretion, permit a qualified purchaser to operate the business to be transferred pending final approval if there has not been a change in location and the application for transfer has been filed with the department.

(7) Except as provided in subsections (2) through (6) and 16-4-204, no a license may not be transferred or sold or used for any place of business not described in the license. A license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and approval of the department, must be endorsed on the license."

Section 9. Section 16-4-406, MCA, is amended to read:

"16-4-406. **Renewal -- suspension or revocation -- penalty.** (1) The department may upon its own motion and shall upon a written, verified complaint of a person request that the department of justice investigate the action and operation of a brewer, wholesaler, or retailer licensed under this code.

(2) Subject to the opportunity for a hearing under the Montana Administrative Procedure Act, if the department, after receiving the results of the department of justice's investigation, has reasonable cause to believe that a licensee has violated a provision of this code or a rule of

the department, it may, in its discretion and in addition to the other penalties prescribed:

(a) reprimand a licensee;

(b) proceed to revoke the license of the licensee;

(c) suspend the license for a period of not more than 3 months;

(d) refuse to grant a renewal of the license after its expiration; or

(e) impose a civil penalty not to exceed \$1,500.

(3) If the department, after receiving the results of the department of justice's investigation, has reasonable cause to believe that a licensee does not meet the eligibility criteria established by this code or rules of the department or that the premises are not suitable pursuant to the provisions of this code or rules of the department, it may, in its discretion, proceed to revoke the license of the licensee or it may refuse to grant renewal of the license subject to the opportunity of the licensee to contest the action at a hearing under the Montana Administrative Procedure Act."

Section 10. Section 16-6-101, MCA, is amended to read:

"16-6-101. Employment of investigators and prosecuting officers. (1) The department of justice may appoint one or more investigators or prosecuting officers who, under its direction, shall perform such the duties as it may require

~~and who shall be paid such salaries, fees, and expenses as the department may fix.~~

(2) When requested by the department, the department of justice shall:

(a) investigate the character of an applicant applying for the issuance or transfer of a liquor license and, if applicable, the suitability of a premises or proposed premises to be used in connection with a liquor license;

(b) investigate all matters relating to the purchase, sale, importation, exportation, possession, and delivery of alcoholic beverages; and

(c) serve as a liaison to local law enforcement authorities in matters relating to alcoholic beverage law enforcement."

Section 11. Section 16-6-102, MCA, is amended to read:

"16-6-102. Search warrants. Upon information on oath by any a department of justice investigator appointed under this code or by any a peace officer showing reasonable cause to believe that alcoholic beverages are unlawfully kept, or had or kept or had for unlawful purposes, in any building or premises, ~~it shall be lawful for any a court by may issue a~~ warrant to authorize and empower the investigator or peace officer or any other person named therein in the warrant to enter and search the building or entire premises and every part thereof and for that purpose, including to break open

any door, lock, or fastening of the building or premises or any part thereof or any closet, cupboard, box, or other receptacle therein which on the premises that might contain alcoholic beverages."

Section 12. Section 16-6-103, MCA, is amended to read:

"16-6-103. Examination of retailer's premises and carriers' cars and aircraft. The department of justice or any duly authorized its representative thereof or the sheriff of any county shall have the right a peace officer may at any time to make an examination of examine the premises of a retail licensee as to determine whether the law of Montana and the rules of the department or the department of justice are being complied with and shall also have a right to also may inspect cars or aircraft of any common carrier system licensed under this code."

Section 13. Section 16-6-106, MCA, is amended to read:

"16-6-106. When force may be used in seizure of alcoholic beverages -- forfeiture -- hearing. (1) Where If an alcoholic beverage is found by any a department of justice investigator or a peace officer on any premises or in any place in such quantities as to that satisfy the investigator or peace officer that such the alcoholic beverage is being had or kept contrary to any of the provisions of this code, it shall be lawful for the investigator or peace officer to forthwith may seize and

remove, by force if necessary, any alcoholic beverage found and the packages in which the alcoholic beverage was had or kept and immediately turn the alcoholic beverage over to the department.

(2) The department shall determine if the seized alcoholic beverage is suitable for resale in a state liquor store. When If the department has determined that the seized alcoholic beverage is suitable for resale, the department shall commence an administrative action against the owner of the alcoholic beverage. All seized alcoholic beverages found to be unsuitable for sale in a state liquor store must be destroyed by the department.

(3) A notice and opportunity for hearing must be given in accordance with the Montana Administrative Procedure Act, except that the notice must be published in the county where the alcoholic beverage was seized if a newspaper is published in the county.

(4) The notice must show the date and place of seizure, the name of the person or persons actually or apparently in possession or control of the alcoholic beverage if such the person was present at the time of the seizure, and the reasons the department claims the right to the possession of the alcoholic beverage. The notice must also demand that all persons who claim any right to the possession of the alcoholic beverage show the nature of their claim or claims,

1 that the hearing examiner declare the alcoholic beverage
2 contraband, and that the hearing examiner order the
3 alcoholic beverage be forfeited to the state of Montana."

4 **Section 14.** Section 16-6-107, MCA, is amended to read:

5 "16-6-107. Disposal of forfeited alcoholic beverages --
6 report. (1) ~~In every case in which~~ If a court or hearing
7 examiner ~~makes any order for~~ orders the forfeiture of
8 alcoholic beverages under ~~any of the provisions of~~ this code
9 ~~and in every case in which any~~ or if a claimant to an
10 alcoholic beverage under ~~the provisions of~~ 16-6-105 or
11 16-6-106 fails to establish ~~his claim and the claimant's~~
12 right thereto to the alcoholic beverage, the alcoholic
13 beverage in question and the packages in which the alcoholic
14 beverage is kept ~~shall~~ must be delivered to the department.
15 The department shall determine the market value of each
16 forfeited alcoholic beverage ~~which is~~ found to be suitable
17 for sale in the state liquor stores and shall pay the amount
18 so determined to the state treasurer after deducting
19 ~~therefrom the~~ any expenses necessarily incurred by the
20 department for transporting the forfeited alcoholic beverage
21 to the state liquor warehouses warehouse. The alcoholic
22 beverage suitable for sale ~~shall~~ in a state liquor store
23 must be taken into stock by the department and sold under
24 the provisions of this code. All alcoholic beverages found
25 to be unsuitable for sale in state liquor stores ~~shall~~ must

1 be destroyed by the department.

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

6 **Section 15.** Section 16-6-108, MCA, is amended to read:

7 "16-6-108. Inspection of carriers' records. For the
8 purpose of obtaining information concerning any matter
9 relating to the administration or enforcement of this code,
10 the department or the department of justice or any person
11 appointed by it either department in writing for the purpose
12 may inspect the freight and express books and records and
13 all waybills, bills of lading, receipts, and documents in
14 the possession of any railway company, express company, or
15 other common carrier doing business within the state
16 containing any information or record relating to any goods
17 shipped or carried or consigned or received for shipment or
18 carriage within the state."

19 **Section 16.** Section 16-6-109, MCA, is amended to read:

20 "16-6-109. Unlawful for carrier to refuse inspection of
21 records. Every railway company, express company, or common
22 carrier and every officer or employee of any such a company
23 or common carrier who neglects or refuses to produce and
24 submit for inspection any book, record, or document referred
25 to in 16-6-108 when requested to do so by the department or

1 the department of justice or by a person so appointed by it
2 shall be either department is guilty of an offense against
3 this code."

4 **Section 17.** Section 16-11-103, MCA, is amended to read:

5 "16-11-103. Powers of department. (1) The department
6 shall have the power and authority to prescribe all rules
7 not inconsistent with the provisions of this part for the
8 detailed and efficient administration thereof of this part.
9 All such rules and orders promulgated ~~shall~~ must be
10 published promptly and a copy distributed to each wholesale
11 licensee. The department is authorized to adopt rules for
12 the effective collection and refund of the tax imposed by
13 part 2 of this chapter.

14 (2) The department and its duly authorized agents are
15 empowered to conduct investigations, inquiries, and hearings
16 hereunder, and any member thereof of the department or any
17 agent is authorized to administer oaths and take testimony
18 under oath relative to the matter of inquiry or
19 investigation. The director or his an authorized agent may
20 subpoena witnesses and require the production of books,
21 papers, and documents pertinent to such the inquiry. The
22 director or his the director's agent, after the hearing,
23 shall make findings and an order in writing, which findings
24 and order ~~shall~~ must be filed in the office of the
25 department and open for public inspection.

1 (3) The department is hereby authorized to contract
2 with the department of justice for the investigations
3 required under this part. The department may appoint such
4 additional assistants and to establish an additional
5 division of cigarette enforcement as may-be required to
6 carry out the provisions of this part.

7 (4) The department ~~is--hereby~~ and the department of
8 justice are authorized to employ such clerical and field
9 assistants ~~as-may-be~~ necessary to properly administer the
10 provisions of this part."

11 **Section 18.** Section 16-11-118, MCA, is amended to read:

12 "16-11-118. Records of tax meter users and stampers.
13 All tax meter users and stampers shall keep for 5 years all
14 invoices of cigarettes purchased and imported by them, all
15 receipts issued by them and insignia purchased, and an
16 accurate record of all sales of cigarettes by the tax meter
17 users or stampers, showing the name and address of each
18 purchaser, the date of sale, the quantity of each kind sold,
19 the name of any carrier, the shipping point, and
20 destination. The tax meter users or stampers shall permit
21 the department and the department of justice and its their
22 assistants, authorized agents, or representatives to examine
23 all taxable items of cigarettes, invoices, receipts, books,
24 paper, memoranda, and records as may be necessary to
25 determine whether the tax meter machine or tax

1 stamp-applying machine has been used as required or the
2 insignia required by this part had been purchased and used
3 or to determine the amount of such the tax as may be due or
4 unpaid."

5 **Section 19.** Section 16-11-124, MCA, is amended to read:

6 "16-11-124. Disposition of license fees. (1) All
7 license fees collected under the provisions of this part
8 shall must be deposited with the state treasurer in the
9 general fund.

10 (2) Each biennium, there shall must be appropriated to
11 the department and the department of justice an amount
12 justified and reasonable to operate the department's
13 cigarette enforcement division responsibilities of each
14 department.

15 (3) All expenses charged against the appropriation
16 shall must be justified by itemized claims coupled with
17 standard accounting reports."

18 **Section 20.** Section 16-11-141, MCA, is amended to read:

19 "16-11-141. Powers of arrest -- search and seizure. The
20 department of justice is a criminal justice agency. shall
21 ~~administer-and-enforce-this-party-and-the-director--and--his~~
22 Designated agents of the department of justice have the
23 ~~powers-of~~ peace officers officer status and may arrest any
24 person violating any provision of this part, enter a
25 complaint before any court of competent jurisdiction, and

1 lawfully search and seize and use as evidence any unlawful
2 or unlawfully possessed license, stamp, or insignia found in
3 the possession of any person or in any place."

4 **Section 21.** Section 16-11-142, MCA, is amended to read:

5 "16-11-142. Duties of county attorneys and peace
6 officers. In the enforcement of this part, the department of
7 justice may call to its assistance, and it shall ~~be~~ is the
8 duty of any county attorney or any peace officer in this
9 state to assist the department of justice in the enforcement
10 of this part."

11 **Section 22.** Section 16-11-147, MCA, is amended to read:

12 "16-11-147. Seizure and forfeiture of unlawful
13 cigarettes. (1) Any motor vehicle, airplane, conveyance,
14 vehicle, or other means of transportation in which
15 cigarettes are being unlawfully transported, together with
16 the cigarettes and other equipment or personal property used
17 in connection with and found in that transportation, is
18 subject to seizure by the department of justice, its duly
19 authorized agent, any sheriff or deputy, or any other peace
20 officer and is subject to forfeiture ~~in--the-manner as~~
21 provided in subsection (2).

22 (2) Upon the seizure of any cigarettes and within 2
23 days thereafter after seizure, the person or officer making
24 the seizure shall deliver an inventory of the property
25 seized to the person from whom the seizure was made, if

known, and file a copy of the inventory with the department. The person from whom the seizure was made or any other person claiming an interest in the property seized may apply for its return as provided in 46-5-305, 46-5-311, and 46-5-312."

Section 23. Section 16-11-149, MCA, is amended to read:

"16-11-149. Hearings before state tax appeal board. Any person aggrieved by any action of the department or its duly authorized agents under the provisions of this part may apply to the state tax appeal board, in writing, for a hearing or rehearing thereon within 30 days after such the action of the department or its authorized agents. The board shall promptly consider such the application, set ~~same~~ the application for hearing, and notify the applicant of the time and place fixed for such the hearing or rehearing, which may be at its office or in the county of the applicant. After such the hearing or rehearing, the board may make any further or other order in the premises as it may deem consider proper and lawful and shall furnish a copy thereof to the applicant. The department, on its own initiative, may order a contested case hearing on any matter concerned with licensing, as defined in 2-4-102, in connection with the administration of this part upon at least 10 days' notice in writing to the person or persons to be investigated."

NEW SECTION. Section 24. Functions transferred -- name change. (1) The functions of the department of revenue contained in Title 53, chapter 2, part 5, that relate to investigations involving public assistance are transferred to the department of justice.

(2) In the provisions of the Montana Code Annotated referred to in subsection (1), the term "department of revenue" or "department", meaning the department of revenue, is changed to "department of justice" or "department", meaning the department of justice. The code commissioner shall conform internal references, grammar, and legislation enacted by the 53rd legislature to these changes.

NEW SECTION. Section 25. Reorganization protections. The provisions of sections 2-15-131 through 2-15-137 govern the transfer of functions contained in [this act].

NEW SECTION. Section 26. Implementation. The governor shall by executive order implement the provisions of [this act].

NEW SECTION. Section 27. Appropriation -- transfer of employee positions. (1) There is appropriated from the liquor enterprise fund referred to in 16-2-108 to the department of justice for the biennium ending June 30, 1995, \$215,000 to be used to implement the transfer of investigative functions under [this act].

(2) There is transferred from the department of revenue

1 to the department of justice a total of 12 full-time
2 equivalent positions to implement the transfer of
3 investigative functions under [this act].

4 NEW SECTION. Section 28. Rulemaking authority. The
5 department of justice may adopt rules to implement [this
6 act].

7 NEW SECTION. Section 29. Effective dates. (1)
8 [Sections 25, 26, 28, and this section] are effective on
9 passage and approval.

10 (2) [Sections 1 through 24 and 27] are effective July
11 1, 1993.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0609, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act transferring the investigative functions related to alcoholic beverage licensing and enforcement, tobacco, and public assistance from the Department of Revenue to the Department of Justice; generally revising the laws to conform to the transfer of functions to the Department of Justice; providing an appropriation.

ASSUMPTIONS:


Department of Revenue:

1. The investigations unit, consisting of 12.00 FTE, would be transferred to the Department of Justice.
2. The fiscal impact for the general appropriations act is relative to the executive budget recommendation for the investigations unit. The precise amount of budget authority to be transferred is contingent upon final legislative action on the general appropriations act.

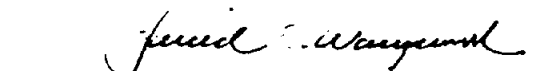
Department of Justice:

3. It is assumed that the current level authority for the 12.00 FTE will be transferred to the Gambling Control Division which will allow for improved coordination of work involving the same business establishments.
4. The bill provides for an appropriation of \$215,000 for the biennium, separate from the general appropriations act, for additional costs estimated by the Department of Justice. The transfer will have an expenditure impact to be funded by the Liquor Enterprise funds. The increases are for: upgrades of 8.00 FTE investigators from Grade 14 to Grade 16 to be consistent with the other investigators in the Department of Justice, additional moving, rent, and training expenses, and equipment including one vehicle, computers and printers, computer software, special law enforcement equipment, and copy machines.
5. The liquor enterprise fund appropriation will result in a like reduction in liquor profits deposited in the state general fund. Under current law, liquor profits are expected to total \$8,960,000 over the biennium (HJR3).

(continued)

 2-19-93

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2-19-93

DAVID WANZENREID, PRIMARY SPONSOR DATE

Fiscal Note for HB0609, as introduced

HB 609

FISCAL IMPACT:

Expenditures:

DoR Director's Office (general appropriations act)

	FY '94			FY '95		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	34.50	22.50	(12.00)	34.50	22.50	(12.00)
Personal Services	1,304,670	933,605	(371,065)	1,315,569	943,268	(372,301)
Operating Expenses	340,116	261,683	(78,433)	228,567	149,391	(79,176)
Equipment	24,907	4,185	(20,722)	12,463	0	(12,463)
Local Assistance	<u>15,000</u>	<u>0</u>	<u>(15,000)</u>	<u>15,000</u>	<u>0</u>	<u>(15,000)</u>
Total	1,684,693	1,199,473	(485,220)	1,571,599	1,092,659	(478,940)
Funding:						
General Fund	1,084,522	995,181	(89,341)	1,010,285	922,136	(88,149)
State Special Revenue	4,548	4,548	0	0	0	0
Federal Special Revenue	118,016	4,269	(113,747)	112,427	0	(112,427)
Proprietary	<u>477,607</u>	<u>195,475</u>	<u>(282,132)</u>	<u>448,887</u>	<u>170,523</u>	<u>(278,364)</u>
Total	1,684,693	1,199,473	(485,220)	1,571,599	1,092,659	(478,940)

DoJ Gambling Control Div (general appropriations act)

	FY94			FY95		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	34.00	46.00	12.00	34.00	46.00	12.00
Personal Services	1,201,950	1,573,015	371,065	1,207,350	1,579,651	372,301
Operating Expenses	365,600	444,033	78,433	368,900	448,076	79,176
Equipment	50,350	71,072	20,722	50,350	62,813	12,463
Local Assistance	<u>0</u>	<u>15,000</u>	<u>15,000</u>	<u>0</u>	<u>15,000</u>	<u>15,000</u>
Total	1,617,900	2,103,120	485,220	1,626,600	2,162,540	478,940
Funding:						
General Fund	0	89,341	89,341	0	88,149	88,149
State Special Revenue	1,617,900	1,617,900	0	1,626,600	1,626,600	0
Federal Special	0	113,747	113,747	0	112,427	112,427
Proprietary Fund	<u>0</u>	<u>282,132</u>	<u>282,132</u>	<u>0</u>	<u>278,364</u>	<u>278,364</u>
Total	1,617,900	2,103,120	485,220	1,626,600	2,162,540	478,940

(continued)

DoJ Gambling Control Div (HB0609-biennial appropriation)

	<u>FY94/95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Personal Services	0	95,000	95,000
Operating Expenses	0	34,000	34,000
Equipment	<u>0</u>	<u>86,000</u>	<u>86,000</u>
Total	0	215,000	215,000
Funding:			
Proprietary Fund	<u>0</u>	<u>215,000</u>	<u>215,000</u>
<u>Biennial Revenues:</u>			
Liquor Profits (GF)	8,960,000	8,745,000	(215,000)
<u>Net Impact:</u>			
General Fund			(215,000)

HB 609

APPROVED BY COMMITTEE
ON APPROPRIATIONS

HOUSE BILL NO. 609

INTRODUCED BY WANZENRIED, HARP, J. RICE,
GAGE, R. JOHNSON, VAN VALKENBURG, HALLIGAN
BY REQUEST OF THE DEPARTMENT OF REVENUE
AND THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING THE
INVESTIGATIVE FUNCTIONS RELATING TO ALCOHOLIC BEVERAGE
LICENSING AND ENFORCEMENT, TOBACCO, AND PUBLIC ASSISTANCE
FROM THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF JUSTICE;
GENERALLY REVISING THE LAWS TO CONFORM TO THE TRANSFER OF
FUNCTIONS TO THE DEPARTMENT OF JUSTICE; PROVIDING AN
APPROPRIATION; AMENDING SECTIONS 16-1-106, 16-1-302,
16-1-303, 16-1-304, 16-4-207, 16-4-402, 16-4-403, 16-4-404,
16-4-406, 16-6-101, 16-6-102, 16-6-103, 16-6-106, 16-6-107,
16-6-108, 16-6-109, 16-11-103, 16-11-118, 16-11-124,
16-11-141, 16-11-142, 16-11-147, AND 16-11-149, MCA; AND
PROVIDING EFFECTIVE DATES."

STATEMENT OF INTENT

A statement of intent is required for this bill because
[sections 3 and 28] authorize the department of justice to
adopt rules to carry out the investigative functions
transferred to the department of justice from the department
of revenue under the provisions of this bill. THE

INVESTIGATIVE FUNCTIONS THAT RULEMAKING MAY ADDRESS ARE
LIMITED TO THE FACTFINDING RESPONSIBILITIES OF INVESTIGATORS
AND THE SEARCH AND SEIZURE FUNCTIONS ASSOCIATED WITH
ILLEGALLY STORED OR TRANSPORTED ALCOHOLIC BEVERAGES OR
TOBACCO PRODUCTS. It is the intent of the legislature to
consolidate investigative functions under the supervision of
the state attorney general.

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

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

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

(1) "Agency agreement" means an agreement between the
department and a person appointed to sell liquor 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

1 beverages.

2 (7) "Department" means the department of revenue,
3 unless otherwise specified.

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

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

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

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

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

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

24 (14) "Posted price" means the retail price of liquor and
25 table wine as fixed and determined by the department and in

1 addition thereto an excise and license tax as provided in
2 this code.

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

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

9 (17) "Rules" means rules published adopted by the
10 department or the department of justice pursuant to this
11 code.

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

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

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

25 (21) "Subwarehouse" means a building or structure owned

or operated by a licensed beer wholesaler or table wine distributor, located at a site in Montana other than the site of such the beer wholesaler's or table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.

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

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

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

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

industry. Other alcoholic beverages not defined as above but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

Section 2. Section 16-1-302, MCA, is amended to read:

"16-1-302. Functions, powers, and duties of department.

The department has the following functions, duties, and powers:

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

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

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

(4) to lease, furnish, and equip any building or land ~~required for-the-operation-of~~ to administer its duties under this code;

(5) to buy or lease ~~all~~ plants and equipment ~~it-may consider necessary and-useful-in-carrying--into--effect--the objects--and-purposes-of~~ to administer its duties under this code;

(6) to employ store managers and ~~also--every--officer, investigator,--clerk,--or~~ other employee employees required ~~for-the-operation-or-carrying-out-of~~ to administer this code

and to dismiss them, ~~fix--their--salaries--or--remuneration,~~
 assign them their title, and define their respective duties
 and powers, and to engage contract with the department of
justice for investigative services or to contract for the
service services of experts and persons engaged in the
 practice of a profession, if considered appropriate;

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

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

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

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

Section 3. Section 16-1-303, MCA, is amended to read:

"16-1-303. Department rules. (1) The department and the
department of justice may make such rules not inconsistent

with this code ~~as--to--the--department--seem~~ necessary for
 carrying-out--the--provisions--of to efficiently administer
 this code ~~and-for-the-efficient-administration-thereof.~~

(2) ~~Without thereby--limiting--the--generality--of--the~~
~~provisions---contained--in--subsection--(1)--hereof,--it--is~~
~~declared-that-the-power-of~~ Rules made by the department to
 make--rules--in--the-manner-set-out-in-that-subsection-shall
 extend-to-and may include but are not limited to the
 following:

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

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

(c) governing the purchase of liquor and table wine and
 the furnishing of liquor and table wine to state stores
~~established-under-this-code;~~

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

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

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

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

(h) prescribing the form of records of purchase of liquor and table wine and the reports to be made thereon to the division department and providing for inspection of the records so-kept;

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

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

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

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

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

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

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

(3) The department of justice may adopt rules to administer and implement its responsibilities under this title, including but not limited to rules providing for the inspection of licensed premises or premises where the sale of liquor has been proposed.

(4) ~~Whenever it-is-provided-in~~ this code provides that any ~~an~~ act, ~~matter,--or-thing~~ may be done if ~~permitted-or~~ authorized by the rules ~~or-may-be-done--in--accordance--with~~ the ~~rules--or--as-provided-by-the-rules~~, the department ~~and the-department-of-justice~~, subject to the restrictions set out in subsection (1) hereof, ~~shall-have-the-power-to~~ may

make rules respecting such the act, matter, or thing."

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

"16-1-304. Prohibited acts ~~within--division.~~ (1) No ~~officer-or~~ An employee of the ~~liquor--division,--including~~ those ~~---engaged--in--the--sale--of--liquor--at--the--various~~ department involved in the operation of the state warehouse or state liquor or ~~table--wine~~ stores, the issuance of licenses, or the collection of alcoholic beverages taxes or an employee of the department of justice directly involved with the investigation of matters concerning the manufacture, sale, and distribution of alcoholic beverages may not be directly or indirectly interested or engaged in any other business or undertaking dealing in liquor or table wine, whether as owner, part owner, partner, member of syndicate, shareholder, agent, or employee ~~and-whether~~ for ~~his the employee's~~ own benefit or in a fiduciary capacity for some other person.

(2) ~~No--member--or--employee--of-the-division-or-any~~ An employee of the state may not solicit or receive directly or indirectly any commission, remuneration, or gift ~~whatsoever~~ from any person or corporation ~~having-sold, selling, or~~ offering liquor or table wine for sale to the state or ~~division~~ pursuant to this code.

(3) No A person selling or offering for sale to or purchasing liquor or table wine from the state ~~liquor~~

division may either not directly or indirectly offer to pay any commission, profit, or remuneration or make any gift to any member or employee of the ~~division,--to-any-employee-of~~ the state, or to anyone on behalf of such the member or employee.

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

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

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

(c) The division state shall maintain written records of all samples received. The records ~~shall~~ must show the brand name, amount and from whom received, date received, the laboratory or chemist to whom forwarded, the ~~division's~~

1 state's action on the brand, and the person to whom
2 delivered or other final disposition of the sample.

3 (5) ~~No-liquor~~ Liquor, wine, or other alcoholic beverage
4 may not be withdrawn from the regular warehouse inventory or
5 from the state liquor stores ~~of-the-Montana-liquor--division~~
6 for any purpose other than sale at the prevailing state
7 retail prices or for destroying damaged or defective
8 merchandise. The division state shall maintain a written
9 record including the type, brand, container size, number of
10 bottles or other units, signatures of witnesses, and method
11 of destruction or other disposition of damaged or defective
12 warehouse or state store merchandise.

13 (6) The division state may not require a company that
14 manufactured, distilled, rectified, bottled, or processed
15 and sold less than 200,000 proof gallons of liquor
16 nationwide in the previous calendar year to maintain minimum
17 amounts of liquor or wine in the state warehouse while the
18 distiller or winery retains ownership of the product.

19 (7) The division state may not require a company that
20 bottled and sold less than 100,000 wine gallons of table
21 wine nationwide in the previous calendar year to maintain
22 minimum amounts of table wine in the state warehouse while
23 the company retains ownership of the product."

24 **Section 5.** Section 16-4-207, MCA, is amended to read:

25 "16-4-207. Notice of application -- investigation --

1 publication -- protest. (1) When an application has been
2 filed with the department for a license to sell alcoholic
3 beverages at retail or to transfer a retail license, the
4 department shall review the application for completeness and
5 to determine whether the applicant or the premises to be
6 licensed meets criteria provided by law. The department
7 shall request that the department of justice investigate the
8 application as provided in 16-4-402. If after the
9 investigation the department does not discover a basis to
10 deny the application, the department shall promptly publish
11 in a newspaper of general circulation in the city, town, or
12 county from which the application comes a notice that the
13 applicant has made application for a retail license and that
14 protests against the issuance of a license to the applicant
15 by a person who has extended credit to the transferor or
16 residents of the county from which the application comes or
17 adjoining Montana counties may be mailed to a named
18 administrator in the department of revenue within 10 days
19 after the final notice is published. Notice of application
20 for a new license must be published once a week for 4
21 consecutive weeks. Notice of application for transfer of a
22 license must be published once a week for 2 consecutive
23 weeks. Notice may be substantially in the following form:

24 NOTICE OF APPLICATION FOR RETAIL

25 ALL-BEVERAGES LICENSE

Notice is given that on the day of, 19..., one (name of applicant) filed an application for a retail all-beverages license with the Montana department of revenue, to be used at (describe location of premises where beverages are to be sold). A person who has extended credit to the transferor and residents of counties may protest against the issuance of the license. Protests may be mailed to, department of revenue, Helena, Montana, on or before the day of, 19...

Dated Signed

ADMINISTRATOR

(2) Each applicant shall, at the time of filing his an application, pay to the department an amount sufficient to cover the costs of publishing the notice.

(3) If the administrator receives no written protests, the department may issue or transfer the license without holding a public hearing. If written protests by a person who has extended credit to the transferor or residents of the county from which the application comes or adjoining Montana counties against the issuance or transfer of the license are received, the department shall hold a public hearing."

Section 6. Section 16-4-402, MCA, is amended to read:

"16-4-402. Application -- investigation. (1) Prior to the issuance of a license under this chapter, the applicant

shall file with the department an application in writing, signed by the applicant and containing information and statements relative to the applicant and the premises where the alcoholic beverage is to be sold as required by the department. The application must be verified by the affidavit of the person making it before a person authorized to administer oaths.

(2) (a) Upon receipt of a completed application for a license under this code, accompanied by the necessary license fee or letter of credit as provided in 16-4-501(7)(f), the department shall within-30-days request that the department of justice make a thorough investigation of all matters relating to the application. The Based on the results of the investigation, the department shall determine whether:

(i) the applicant is qualified to receive a license;

(ii) his the applicant's premises are suitable for the carrying on of the business; and

(iii) the requirements of this code and the rules promulgated by the department are met and complied with.

(b) This subsection (2) does not apply to a catering endorsement provided in 16-4-204(2) or a special permit provided in 16-4-301.

(3) Upon proof that an applicant made a false statement in any part of the original application, in any part of an

annual renewal application, or in any hearing conducted pursuant to an application, the application for the license may be denied, and if issued, the license may be revoked.

(4) If, within 30 days of receiving the completed application, the department finds no basis for denying the application, the department shall proceed to publish the notice of the application as required by 16-4-207."

Section 7. Section 16-4-403, MCA, is amended to read:

"16-4-403. Fingerprints required of licensees and mortgagees. All applicants for a Montana retail all-beverages or beer license, including corporate officers and managers, may be required by the department when applying--for--said--license or the department of justice to have their fingerprints taken for use in determining the eligibility of the applicant for such the license. This provision ~~shall--also--apply~~ applies to all who file a security interest against such the license except as to banks, savings and loan institutions, and licensed lending agencies."

Section 8. Section 16-4-404, MCA, is amended to read:

"16-4-404. Protest period -- contents of license -- posting -- privilege -- transfer. (1) No A license may not be issued until on or after the date set in the notice for hearing protests.

(2) Every license issued under this code ~~shall~~ must

state the name of the person to whom it is issued, the location, by street and number or other appropriate specific description of location if no street address exists, of the premises where the business is to be carried on under the license, and other information the department considers necessary. If the licensee is a partnership or if more than one person has an interest in the business operated under the license, the names of all persons in the partnership or interested in the business must appear on the license. Every license must be posted in a conspicuous place on the premises in which the business authorized under the license is conducted, and the license must be exhibited upon request to any authorized representative of the department or the department of justice or to any peace officer of the state of Montana.

(3) A license issued under the provisions of this code is a privilege personal to the licensee named in the license and is valid until the expiration of the license unless sooner revoked or suspended.

(4) A license may be transferred to the executor or administrator of the estate of a deceased licensee when the estate consists in whole or in part of the business of selling alcoholic beverages under a license. The license may descend or be disposed of with the licensed business under appropriate probate proceedings.

(5) (a) A licensee may apply to the department for a transfer of the license to different premises if:

(i) there has been major loss or damage to the licensed premises by unforeseen natural causes;

(ii) the lease of the licensed premises has expired;

(iii) in case of rented licensed premises, there has been an eviction or increase of rent by the landlord; or

(iv) the licensee has proposed removal of the license to premises that are as substantially suited for the retail alcoholic beverages business as the premises proposed to be vacated.

(b) The department may, after notice and opportunity for protest, permit a transfer in the cases specified in subsection (5)(a) if it appears to the department that a transfer is required to do justice to the licensee applying for the transfer and is justified by public convenience and necessity. The department may not allow a transfer to different premises where the sanitary, health, and service facilities are less satisfactory than facilities that exist or had existed at the premises from which the transfer is proposed to be made.

(6) Upon a bona fide sale of the business operated under a license, the license may be transferred to a qualified purchaser. No A transfer of a license to a person or location is not effective unless approved by the

department. A licensee or transferee or proposed transferee who operates or attempts to operate under a supposedly transferred license prior to the approval of the transfer by the department, endorsed upon the license in writing, is considered to be operating without a license and the license affected may be revoked or suspended by the department. The department may, within its discretion, permit a qualified purchaser to operate the business to be transferred pending final approval if there has not been a change in location and the application for transfer has been filed with the department.

(7) Except as provided in subsections (2) through (6) and 16-4-204, no a license may not be transferred or sold or used for any place of business not described in the license. A license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and approval of the department, must be endorsed on the license."

Section 9. Section 16-4-406, MCA, is amended to read:

"16-4-406. **Renewal -- suspension or revocation -- penalty.** (1) The department may upon its own motion and shall upon a written, verified complaint of a person request that the department of justice investigate the action and operation of a brewer, wholesaler, or retailer licensed under this code.

1 (2) Subject to the opportunity for a hearing under the
 2 Montana Administrative Procedure Act, if the department,
 3 after receiving the results of the department of justice's
 4 investigation, has reasonable cause to believe that a
 5 licensee has violated a provision of this code or a rule of
 6 the department, it may, in its discretion and in addition to
 7 the other penalties prescribed:

- 8 (a) reprimand a licensee;
- 9 (b) proceed to revoke the license of the licensee;
- 10 (c) suspend the license for a period of not more than 3
 11 months;
- 12 (d) refuse to grant a renewal of the license after its
 13 expiration; or
- 14 (e) impose a civil penalty not to exceed \$1,500.
- 15 (3) If the department, after receiving the results of
 16 the department of justice's investigation, has reasonable
 17 cause to believe that a licensee does not meet the
 18 eligibility criteria established by this code or rules of
 19 the department or that the premises are not suitable
 20 pursuant to the provisions of this code or rules of the
 21 department, it may, in its discretion, proceed to revoke the
 22 license of the licensee or it may refuse to grant renewal of
 23 the license subject to the opportunity of the licensee to
 24 contest the action at a hearing under the Montana
 25 Administrative Procedure Act."

1 **Section 10.** Section 16-6-101, MCA, is amended to read:

2 "16-6-101. **Employment of investigators and prosecuting**
 3 **officers.** (1) The department of justice may appoint one or
 4 more investigators or prosecuting officers who, under its
 5 direction, shall perform such the duties as it may require
 6 ~~and--who--shall-be-paid-such-salaries,-fees,-and-expenses-as~~
 7 ~~the-department-may-fix.~~

8 (2) When requested by the department, the department of
 9 justice shall:

10 (a) investigate the character of an applicant applying
 11 for the issuance or transfer of a liquor license and, if
 12 applicable, the suitability of a premises or proposed
 13 premises to be used in connection with a liquor license;

14 (b) investigate all matters relating to the purchase,
 15 sale, importation, exportation, possession, and delivery of
 16 alcoholic beverages; and

17 (c) serve as a liaison to local law enforcement
 18 authorities in matters relating to alcoholic beverage law
 19 enforcement."

20 **Section 11.** Section 16-6-102, MCA, is amended to read:

21 "16-6-102. **Search warrants.** Upon information on oath by
 22 any a department of justice investigator appointed under
 23 this code or by any a peace officer showing reasonable cause
 24 to believe that alcoholic beverages are unlawfully kept, or
 25 had or kept or-had for unlawful purposes, in any building-or

premises, ~~it shall be lawful for any~~ a court by may issue a warrant to authorize ~~and empower~~ the investigator or peace officer or any other person named therein in the warrant to enter and search the ~~building or entire~~ premises ~~and every part thereof and for that purpose, including~~ to break open any door, lock, or fastening ~~of the building or premises or any part thereof or any~~, closet, cupboard, box, or other receptacle ~~therein which~~ on the premises that might contain alcoholic beverages."

Section 12. Section 16-6-103, MCA, is amended to read:

"16-6-103. Examination of retailer's premises and carriers' cars and aircraft. The department of justice or ~~any duly authorized~~ its representative thereof or the ~~sheriff of any county shall have the right a~~ peace officer may at any time ~~to make an examination of~~ examine the premises of a retail licensee ~~as to~~ determine whether the law of Montana and the rules of the department ~~or the department of justice~~ are being complied with and ~~shall also have a right to also may~~ inspect cars or aircraft of any common carrier system licensed under this code."

Section 13. Section 16-6-106, MCA, is amended to read:

"16-6-106. When force ~~may~~ be used in seizure of alcoholic beverages -- forfeiture -- hearing. (1) ~~Where~~ If an alcoholic beverage is found by any a department of justice investigator or a peace officer ~~on any premises or~~

in any place in such quantities ~~as to that~~ satisfy the investigator or peace officer that such the alcoholic beverage is being ~~had or~~ kept contrary to ~~any of the~~ provisions of this code, ~~it shall be lawful for~~ the investigator or peace officer ~~to forthwith~~ may seize and remove, by force if necessary, any alcoholic beverage found and the packages in which the alcoholic beverage was ~~had or~~ kept and immediately turn the alcoholic beverage over to the department.

(2) The department shall determine if the seized alcoholic beverage is suitable for resale in a state liquor store. When If the department has determined that the seized alcoholic beverage is suitable for resale, the department shall commence an administrative action against the owner of the alcoholic beverage. All seized alcoholic beverages found to be unsuitable for sale in a state liquor store must be destroyed by the department.

(3) A notice and opportunity for hearing must be given in accordance with the Montana Administrative Procedure Act, except that the notice must be published in the county where the alcoholic beverage was seized if a newspaper is published in the county.

(4) The notice must show the date and place of seizure, the name of the person or persons actually or apparently in possession or control of the alcoholic beverage if such the

person was present at the time of the seizure, and the reasons the department claims the right to the possession of the alcoholic beverage. The notice must also demand that all persons who claim any right to the possession of the alcoholic beverage show the nature of their claim or claims, that the hearing examiner declare the alcoholic beverage contraband, and that the hearing examiner order the alcoholic beverage be forfeited to the state of Montana."

Section 14. Section 16-6-107, MCA, is amended to read:

"16-6-107. Disposal of forfeited alcoholic beverages -- report. (1) ~~in every case in which~~ If a court or hearing examiner ~~makes any order for~~ orders the forfeiture of alcoholic beverages under ~~any of the provisions of~~ this code ~~and in every case in which any~~ or if a claimant to an alcoholic beverage under ~~the provisions of~~ 16-6-105 or 16-6-106 fails to establish ~~his claim and~~ the claimant's right ~~thereto to the alcoholic beverage,~~ the alcoholic beverage in question and the packages in which the alcoholic beverage is kept ~~shall~~ must be delivered to the department. The department shall determine the market value of each forfeited alcoholic beverage ~~which is~~ found to be suitable for sale in the state liquor stores and shall pay the amount ~~so~~ determined to the state treasurer after deducting ~~therefrom the~~ any expenses necessarily incurred by the department for transporting the forfeited alcoholic beverage

to the state liquor warehouses warehouse. The alcoholic beverage suitable for sale ~~shall~~ in a state liquor store must be taken into stock by the department and sold under the provisions of this code. All alcoholic beverages found to be unsuitable for sale in state liquor stores ~~shall~~ must be destroyed by the department.

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

Section 15. Section 16-6-108, MCA, is amended to read:

"16-6-108. Inspection of carriers' records. For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this code, the department or the department of justice or any person appointed by it either department in writing for the purpose may inspect the freight and express books and records and all waybills, bills of lading, receipts, and documents in the possession of any railway company, express company, or other common carrier doing business within the state containing any information or record relating to any goods shipped or carried or consigned or received for shipment or carriage within the state."

Section 16. Section 16-6-109, MCA, is amended to read:

"16-6-109. Unlawful for carrier to refuse inspection of

1 records. Every railway company, express company, or common
 2 carrier and every officer or employee of any-such a company
 3 or common carrier who neglects or refuses to produce and
 4 submit for inspection any book, record, or document referred
 5 to in 16-6-108 when requested to do so by the department or
 6 the department of justice or by a person so appointed by it
 7 ~~shall--be~~ either department is guilty of an offense against
 8 this code."

9 **Section 17.** Section 16-11-103, MCA, is amended to read:

10 "16-11-103. Powers of department. (1) The department
 11 shall have the power and authority to prescribe all rules
 12 not inconsistent with the provisions of this part for the
 13 detailed and efficient administration thereof of this part.
 14 All such rules and orders promulgated ~~shall~~ must be
 15 published promptly and a copy distributed to each wholesale
 16 licensee. The department is authorized to adopt rules for
 17 the effective collection and refund of the tax imposed by
 18 part 2 of this chapter.

19 (2) The department and its duly authorized agents are
 20 empowered to conduct investigations, inquiries, and hearings
 21 hereunder, and any member thereof of the department or any
 22 agent is authorized to administer oaths and take testimony
 23 under oath relative to the matter of inquiry or
 24 investigation. The director or his an authorized agent may
 25 subpoena witnesses and require the production of books,

1 papers, and documents pertinent to such the inquiry. The
 2 director or his the director's agent, after the hearing,
 3 shall make findings and an order in writing, which findings
 4 and order ~~shall~~ must be filed in the office of the
 5 department and open for public inspection.

6 (3) The department is hereby authorized to contract
 7 with the department of justice for the investigations
 8 required under this part. The department may appoint such
 9 additional assistants and to establish an additional
 10 division of cigarette enforcement as ~~may--be~~ required to
 11 carry out the provisions of this part.

12 (4) The department ~~is--hereby~~ and the department of
 13 justice are authorized to employ such clerical and field
 14 assistants ~~as--may--be~~ necessary to properly administer the
 15 provisions of this part."

16 **Section 18.** Section 16-11-118, MCA, is amended to read:

17 "16-11-118. Records of tax meter users and stampers.
 18 All tax meter users and stampers shall keep for 5 years all
 19 invoices of cigarettes purchased and imported by them, all
 20 receipts issued by them and insignia purchased, and an
 21 accurate record of all sales of cigarettes by the tax meter
 22 users or stampers, showing the name and address of each
 23 purchaser, the date of sale, the quantity of each kind sold,
 24 the name of any carrier, the shipping point, and
 25 destination. The tax meter users or stampers shall permit

the department and the department of justice and its their assistants, authorized agents, or representatives to examine all taxable items of cigarettes, invoices, receipts, books, paper, memoranda, and records as may be necessary to determine whether the tax meter machine or tax stamp-applying machine has been used as required or the insignia required by this part had been purchased and used or to determine the amount of such the tax as may be due or unpaid."

Section 19. Section 16-11-124, MCA, is amended to read:

"16-11-124. **Disposition of license fees.** (1) All license fees collected under the provisions of this part ~~shall~~ must be deposited with the state treasurer in the general fund.

(2) Each biennium, there ~~shall~~ must be appropriated to the department and the department of justice an amount justified and reasonable to operate the ~~department's~~ cigarette enforcement division responsibilities of each department.

(3) All expenses charged against the appropriation ~~shall~~ must be justified by itemized claims coupled with standard accounting reports."

Section 20. Section 16-11-141, MCA, is amended to read:

"16-11-141. **Powers of arrest -- search and seizure.** The department of justice is a criminal justice agency. ~~shall~~

~~administer--and--enforce--this--part--and--the--director--and--his~~
Designated agents of the department of justice have the ~~powers--of~~ peace officers officer status and may arrest any person violating any provision of this part, enter a complaint before any court of competent jurisdiction, and lawfully search and seize and use as evidence any unlawful or unlawfully possessed license, stamp, or insignia found in the possession of any person or in any place."

Section 21. Section 16-11-142, MCA, is amended to read:

"16-11-142. **Duties of county attorneys and peace officers.** In the enforcement of this part, the department of justice may call to its assistance, and it ~~shall-be~~ is the duty of any county attorney or any peace officer in this state to assist the department of justice in the enforcement of this part."

Section 22. Section 16-11-147, MCA, is amended to read:

"16-11-147. **Seizure and forfeiture of unlawful cigarettes.** (1) Any motor vehicle, airplane, conveyance, vehicle, or other means of transportation in which cigarettes are being unlawfully transported, together with the cigarettes and other equipment or personal property used in connection with and found in that transportation, is subject to seizure by the department of justice, its duty authorized agent, any sheriff or deputy, or any other peace officer and is subject to forfeiture ~~in--the--manner~~ as

1 provided in subsection (2).

2 (2) Upon the seizure of any cigarettes and within 2
3 days ~~thereafter~~ after seizure, the person or officer making
4 the seizure shall deliver an inventory of the property
5 seized to the person from whom the seizure was made, if
6 known, and file a copy of the inventory with the department.
7 The person from whom the seizure was made or any other
8 person claiming an interest in the property seized may apply
9 for its return as provided in 46-5-305, 46-5-311, and
10 46-5-312."

11 **Section 23.** Section 16-11-149, MCA, is amended to read:

12 "16-11-149. Hearings before state tax appeal board. Any
13 person aggrieved by any action of the department or its duly
14 authorized agents under the provisions of this part may
15 apply to the state tax appeal board, in writing, for a
16 hearing or rehearing ~~thereon~~ within 30 days after such the
17 action of the department or its authorized agents. The board
18 shall promptly consider such the application, set same the
19 application for hearing, and notify the applicant of the
20 time and place fixed for such the hearing or rehearing,
21 which may be at its office or in the county of the
22 applicant. After such the hearing or rehearing, the board
23 may make any further or other order in the premises as it
24 may deem consider proper and lawful and shall furnish a copy
25 thereof to the applicant. The department, on its own

1 initiative, may order a contested case hearing on any matter
2 concerned with licensing, as defined in 2-4-102, in
3 connection with the administration of this part upon at
4 least 10 days' notice in writing to the person or persons to
5 be investigated."

6 **NEW SECTION. Section 24.** Functions transferred -- name
7 change. (1) The functions of the department of revenue
8 contained in Title 53, chapter 2, part 5, that relate to
9 investigations involving public assistance are transferred
10 to the department of justice.

11 (2) In the provisions of the Montana Code Annotated
12 referred to in subsection (1), the term "department of
13 revenue" or "department", meaning the department of revenue,
14 is changed to "department of justice" or "department",
15 meaning the department of justice. The code commissioner
16 shall conform internal references, grammar, and legislation
17 enacted by the 53rd legislature to these changes.

18 **NEW SECTION. Section 25.** Reorganization protections.
19 The provisions of sections 2-15-131 through 2-15-137 govern
20 the transfer of functions contained in [this act].

21 **NEW SECTION. Section 26.** Implementation. The governor
22 shall by executive order implement the provisions of [this
23 act].

24 **NEW SECTION. Section 27.** Appropriation -- transfer of
25 employee positions. (1) There is appropriated from the

1 liquor enterprise fund referred to in 16-2-108 to the
2 department of justice for the biennium ending June 30, 1995,
3 \$215,000 to be used to implement the transfer of
4 investigative functions under [this act].

5 (2) There is transferred from the department of revenue
6 to the department of justice a total of 12 full-time
7 equivalent positions to implement the transfer of
8 investigative functions under [this act].

9 NEW SECTION. Section 28. Rulemaking authority. The
10 department of justice may adopt rules to implement {this
11 act} [SECTIONS 17 THROUGH 24].

12 NEW SECTION. Section 29. Effective dates. (1)
13 [Sections 25, 26, 28, and this section] are effective on
14 passage and approval.

15 (2) [Sections 1 through 24 and 27] are effective July
16 1, 1993.

-End-

HOUSE BILL NO. 609

INTRODUCED BY WANZENRIED, HARP, J. RICE,
GAGE, R. JOHNSON, VAN VALKENBURG, HALLIGAN
BY REQUEST OF THE DEPARTMENT OF REVENUE
AND THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING THE
INVESTIGATIVE FUNCTIONS RELATING TO ALCOHOLIC BEVERAGE
LICENSING AND ENFORCEMENT, TOBACCO, AND PUBLIC ASSISTANCE
FROM THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF JUSTICE;
GENERALLY REVISING THE LAWS TO CONFORM TO THE TRANSFER OF
FUNCTIONS TO THE DEPARTMENT OF JUSTICE; PROVIDING AN
APPROPRIATION; AMENDING SECTIONS 16-1-106, 16-1-302,
16-1-303, 16-1-304, 16-4-207, 16-4-402, 16-4-403, 16-4-404,
16-4-406, 16-6-101, 16-6-102, 16-6-103, 16-6-106, 16-6-107,
16-6-108, 16-6-109, 16-11-103, 16-11-118, 16-11-124,
16-11-141, 16-11-142, 16-11-147, AND 16-11-149, MCA; AND
PROVIDING EFFECTIVE DATES."

STATEMENT OF INTENT

A statement of intent is required for this bill because
[sections 3 and 28] authorize the department of justice to
adopt rules to carry out the investigative functions
transferred to the department of justice from the department
of revenue under the provisions of this bill. THE

INVESTIGATIVE FUNCTIONS THAT RULEMAKING MAY ADDRESS ARE
LIMITED TO THE FACTFINDING RESPONSIBILITIES OF INVESTIGATORS
AND THE SEARCH AND SEIZURE FUNCTIONS ASSOCIATED WITH
ILLEGALLY STORED OR TRANSPORTED ALCOHOLIC BEVERAGES OR
TOBACCO PRODUCTS. It is the intent of the legislature to
consolidate investigative functions under the supervision of
the state attorney general.

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

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

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

(1) "Agency agreement" means an agreement between the
department and a person appointed to sell liquor 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

THERE ARE NO CHANGES IN THIS BILL
AND WILL NOT BE REPRINTED. PLEASE
REFER TO YELLOW COPY FOR COMPLETE TEXT.

HOUSE BILL NO. 609

INTRODUCED BY WANZENRIED, HARP, J. RICE,
GAGE, R. JOHNSON, VAN VALKENBURG, HALLIGAN
BY REQUEST OF THE DEPARTMENT OF REVENUE
AND THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING THE
INVESTIGATIVE FUNCTIONS RELATING TO ALCOHOLIC BEVERAGE
LICENSING AND ENFORCEMENT, TOBACCO, AND PUBLIC ASSISTANCE
FROM THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF JUSTICE;
GENERALLY REVISING THE LAWS TO CONFORM TO THE TRANSFER OF
FUNCTIONS TO THE DEPARTMENT OF JUSTICE; PROVIDING AN
APPROPRIATION; AMENDING SECTIONS 16-1-106, 16-1-302,
16-1-303, 16-1-304, 16-4-207, 16-4-402, 16-4-403, 16-4-404,
16-4-406, 16-6-101, 16-6-102, 16-6-103, 16-6-106, 16-6-107,
16-6-108, 16-6-109, 16-11-103, 16-11-118, 16-11-124,
16-11-141, 16-11-142, 16-11-147, AND 16-11-149, MCA; AND
PROVIDING EFFECTIVE DATES."

STATEMENT OF INTENT

A statement of intent is required for this bill because
[sections 3 and 28] authorize the department of justice to
adopt rules to carry out the investigative functions
transferred to the department of justice from the department
of revenue under the provisions of this bill. THE

INVESTIGATIVE FUNCTIONS THAT RULEMAKING MAY ADDRESS ARE
LIMITED TO THE FACTFINDING RESPONSIBILITIES OF INVESTIGATORS
AND THE SEARCH AND SEIZURE FUNCTIONS ASSOCIATED WITH
ILLEGALLY STORED OR TRANSPORTED ALCOHOLIC BEVERAGES OR
TOBACCO PRODUCTS. It is the intent of the legislature to
consolidate investigative functions under the supervision of
the state attorney general.

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

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

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

(1) "Agency agreement" means an agreement between the
department and a person appointed to sell liquor 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

1 beverages.

2 (7) "Department" means the department of revenue,
3 unless otherwise specified.

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

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

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

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

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

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

24 (14) "Posted price" means the retail price of liquor and
25 table wine as fixed and determined by the department and in

1 addition thereto an excise and license tax as provided in
2 this code.

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

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

9 (17) "Rules" means rules published adopted by the
10 department or the department of justice pursuant to this
11 code.

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

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

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

25 (21) "Subwarehouse" means a building or structure owned

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

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

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

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

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

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

4 **Section 2.** Section 16-1-302, MCA, is amended to read:

5 "16-1-302. Functions, powers, and duties of department.
 6 The department has the following functions, duties, and
 7 powers:

8 (1) to buy, import, have in its possession for sale,
 9 and sell liquors and table wine ~~in-the-manner-set--forth--in~~
 10 ~~this-code;~~

11 (2) to control the possession, sale, and delivery of
 12 liquors in accordance with the provisions of this code;

13 (3) to determine the municipalities where state liquor
 14 stores are to be established throughout the state and the
 15 situation of the stores within these municipalities;

16 (4) to lease, furnish, and equip any building or land
 17 ~~required for-the-operation-of~~ to administer its duties under
 18 this code;

19 (5) to buy or lease ~~all~~ plants and equipment ~~it-may~~
 20 ~~consider necessary and-useful-in-carrying--into--effect--the~~
 21 ~~objects--and-purposes-of~~ to administer its duties under this
 22 code;

23 (6) to employ store managers and ~~also--every--officer,~~
 24 ~~investigator,--clerk,--or other employee~~ employees required
 25 ~~for-the-operation-or-carrying-out-of~~ to administer this code

and to dismiss them, ~~fix--their--salaries--or--remuneration,~~
 assign them their title, and define their respective duties
 and powers, and to engage contract with the department of
justice for investigative services or to contract for the
service services of experts and persons engaged in the
 practice of a profession, if considered appropriate;

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

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

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

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

Section 3. Section 16-1-303, MCA, is amended to read:

"16-1-303. Department rules. (1) The department and the
department of justice may make such rules not inconsistent

with this code ~~as--to--the--department--seem necessary for~~
~~carrying--out--the--provisions--of~~ to efficiently administer
 this code ~~and-for-the-efficient-administration-thereof.~~

(2) ~~Without--thereby--limiting--the--generality--of--the~~
~~provisions---contained--in--subsection--(1)--hereof--it--is~~
~~declared-that-the-power-of~~ Rules made by the department to
 make ~~rules--in--the-manner-set-out-in-that-subsection-shall~~
 extend to and may include but are not limited to the
 following:

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

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

(c) governing the purchase of liquor and table wine and
 the furnishing of liquor and table wine to state stores
~~established-under-this-code;~~

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

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

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

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

(h) prescribing the form of records of purchase of liquor and table wine and the reports to be made thereon to the division department and providing for inspection of the records so-kept;

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

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

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

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

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

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

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

(3) The department of justice may adopt rules to administer and implement its responsibilities under this title, including but not limited to rules providing for the inspection of licensed premises or premises where the sale of liquor has been proposed.

(4) Whenever it-is-provided-in this code provides that any an act--matter--or-thing may be done if permitted-or authorized by the rules or--may-be-done--in--accordance--with the--rules--or--as-provided-by-the-rules, the department and the-department-of-justice, subject to the restrictions set out in subsection (1) hereof, shall-have-the-power-to may

1 make rules respecting such the act, matter, or thing."

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

3 "16-1-304. Prohibited acts within--division. (1) No
4 officer or An employee of the liquor--division,--including
5 those--engaged--in--the--sale--of--liquor--at--the--various
6 department involved in the operation of the state warehouse
7 or state liquor or--table--wine stores, the issuance of
8 licenses, or the collection of alcoholic beverages taxes or
9 an employee of the department of justice directly involved
10 with the investigation of matters concerning the
11 manufacture, sale, and distribution of alcoholic beverages
12 may not be directly or indirectly interested or engaged in
13 any other business or undertaking dealing in liquor or table
14 wine, whether as owner, part owner, partner, member of
15 syndicate, shareholder, agent, or employee and whether for
16 his the employee's own benefit or in a fiduciary capacity
17 for some other person.

18 (2) No--member--or--employee--of-the-division-or-any An
19 employee of the state may not solicit or receive directly or
20 indirectly any commission, remuneration, or gift whatsoever
21 from any person or corporation having-sold, selling, or
22 offering liquor or table wine for sale to the state or
23 division pursuant to this code.

24 (3) No A person selling or offering for sale to or
25 purchasing liquor or table wine from the state liquor

1 division may either not directly or indirectly offer to pay
2 any commission, profit, or remuneration or make any gift to
3 any member or employee of the division,--to-any-employee-of
4 the state, or to anyone on behalf of such the member or
5 employee.

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

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

18 (b) When a brand of liquor or table wine has been
19 accepted for testing by the division state, the division
20 state shall forward the sample, unopened and in its
21 entirety, to a qualified chemical laboratory for analysis.

22 (c) The division state shall maintain written records
23 of all samples received. The records shall must show the
24 brand name, amount and from whom received, date received,
25 the laboratory or chemist to whom forwarded, the division's

1 state's action on the brand, and the person to whom
2 delivered or other final disposition of the sample.

3 (5) ~~No-liquor~~ Liquor, wine, or other alcoholic beverage
4 may not be withdrawn from the regular warehouse inventory or
5 from the state liquor stores ~~of the Montana-liquor--division~~
6 for any purpose other than sale at the prevailing state
7 retail prices or for destroying damaged or defective
8 merchandise. The division state shall maintain a written
9 record including the type, brand, container size, number of
10 bottles or other units, signatures of witnesses, and method
11 of destruction or other disposition of damaged or defective
12 warehouse or state store merchandise.

13 (6) The division state may not require a company that
14 manufactured, distilled, rectified, bottled, or processed
15 and sold less than 200,000 proof gallons of liquor
16 nationwide in the previous calendar year to maintain minimum
17 amounts of liquor or wine in the state warehouse while the
18 distiller or winery retains ownership of the product.

19 (7) The division state may not require a company that
20 bottled and sold less than 100,000 wine gallons of table
21 wine nationwide in the previous calendar year to maintain
22 minimum amounts of table wine in the state warehouse while
23 the company retains ownership of the product."

24 **Section 5.** Section 16-4-207, MCA, is amended to read:

25 "16-4-207. Notice of application -- investigation --

1 publication -- protest. (1) When an application has been
2 filed with the department for a license to sell alcoholic
3 beverages at retail or to transfer a retail license, the
4 department shall review the application for completeness and
5 to determine whether the applicant or the premises to be
6 licensed meets criteria provided by law. The department
7 shall request that the department of justice investigate the
8 application as provided in 16-4-402. If after the
9 investigation the department does not discover a basis to
10 deny the application, the department shall promptly publish
11 in a newspaper of general circulation in the city, town, or
12 county from which the application comes a notice that the
13 applicant has made application for a retail license and that
14 protests against the issuance of a license to the applicant
15 by a person who has extended credit to the transferor or
16 residents of the county from which the application comes or
17 adjoining Montana counties may be mailed to a named
18 administrator in the department of revenue within 10 days
19 after the final notice is published. Notice of application
20 for a new license must be published once a week for 4
21 consecutive weeks. Notice of application for transfer of a
22 license must be published once a week for 2 consecutive
23 weeks. Notice may be substantially in the following form:

24 NOTICE OF APPLICATION FOR RETAIL

25 ALL-BEVERAGES LICENSE

Notice is given that on the day of, 19.., one (name of applicant) filed an application for a retail all-beverages license with the Montana department of revenue, to be used at (describe location of premises where beverages are to be sold). A person who has extended credit to the transferor and residents of counties may protest against the issuance of the license. Protests may be mailed to, department of revenue, Helena, Montana, on or before the day of, 19...

Dated Signed

ADMINISTRATOR

(2) Each applicant shall, at the time of filing his an application, pay to the department an amount sufficient to cover the costs of publishing the notice.

(3) If the administrator receives no written protests, the department may issue or transfer the license without holding a public hearing. If written protests by a person who has extended credit to the transferor or residents of the county from which the application comes or adjoining Montana counties against the issuance or transfer of the license are received, the department shall hold a public hearing."

Section 6. Section 16-4-402, MCA, is amended to read:

"16-4-402. Application -- investigation. (1) Prior to the issuance of a license under this chapter, the applicant

shall file with the department an application in writing, signed by the applicant and containing information and statements relative to the applicant and the premises where the alcoholic beverage is to be sold as required by the department. The application must be verified by the affidavit of the person making it before a person authorized to administer oaths.

(2) (a) Upon receipt of a completed application for a license under this code, accompanied by the necessary license fee or letter of credit as provided in 16-4-501(7)(f), the department shall within 30 days request that the department of justice make a thorough investigation of all matters relating to the application. The Based on the results of the investigation, the department shall determine whether:

(i) the applicant is qualified to receive a license;

(ii) his the applicant's premises are suitable for the carrying on of the business; and

(iii) the requirements of this code and the rules promulgated by the department are met and complied with.

(b) This subsection (2) does not apply to a catering endorsement provided in 16-4-204(2) or a special permit provided in 16-4-301.

(3) Upon proof that an applicant made a false statement in any part of the original application, in any part of an

1 annual renewal application, or in any hearing conducted
2 pursuant to an application, the application for the license
3 may be denied, and if issued, the license may be revoked.

4 (4) If, within 30 days of receiving the completed
5 application, the department finds no basis for denying the
6 application, the department shall proceed to publish the
7 notice of the application as required by 16-4-207."

8 **Section 7.** Section 16-4-403, MCA, is amended to read:

9 "16-4-403. Fingerprints required of licensees and
10 mortgagees. All applicants for a Montana retail
11 all-beverages or beer license, including corporate officers
12 and managers, may be required by the department when
13 applying--for--said--license or the department of justice to
14 have their fingerprints taken for use in determining the
15 eligibility of the applicant for such the license. This
16 provision shall--also--apply applies to all who file a
17 security interest against such the license except as to
18 banks, savings and loan institutions, and licensed lending
19 agencies."

20 **Section 8.** Section 16-4-404, MCA, is amended to read:

21 "16-4-404. Protest period -- contents of license --
22 posting -- privilege -- transfer. (1) No A license may not
23 be issued until on or after the date set in the notice for
24 hearing protests.

25 (2) Every license issued under this code shall must

1 state the name of the person to whom it is issued, the
2 location, by street and number or other appropriate specific
3 description of location if no street address exists, of the
4 premises where the business is to be carried on under the
5 license, and other information the department considers
6 necessary. If the licensee is a partnership or if more than
7 one person has an interest in the business operated under
8 the license, the names of all persons in the partnership or
9 interested in the business must appear on the license. Every
10 license must be posted in a conspicuous place on the
11 premises in which the business authorized under the license
12 is conducted, and the license must be exhibited upon request
13 to any authorized representative of the department or the
14 department of justice or to any peace officer of the state
15 of Montana.

16 (3) A license issued under the provisions of this code
17 is a privilege personal to the licensee named in the license
18 and is valid until the expiration of the license unless
19 sooner revoked or suspended.

20 (4) A license may be transferred to the executor or
21 administrator of the estate of a deceased licensee when the
22 estate consists in whole or in part of the business of
23 selling alcoholic beverages under a license. The license may
24 descend or be disposed of with the licensed business under
25 appropriate probate proceedings.

1 (5) (a) A licensee may apply to the department for a
2 transfer of the license to different premises if:

3 (i) there has been major loss or damage to the licensed
4 premises by unforeseen natural causes;

5 (ii) the lease of the licensed premises has expired;

6 (iii) in case of rented licensed premises, there has
7 been an eviction or increase of rent by the landlord; or

8 (iv) the licensee has proposed removal of the license to
9 premises that are as substantially suited for the retail
10 alcoholic beverages business as the premises proposed to be
11 vacated.

12 (b) The department may, after notice and opportunity
13 for protest, permit a transfer in the cases specified in
14 subsection (5)(a) if it appears to the department that a
15 transfer is required to do justice to the licensee applying
16 for the transfer and is justified by public convenience and
17 necessity. The department may not allow a transfer to
18 different premises where the sanitary, health, and service
19 facilities are less satisfactory than facilities that exist
20 or had existed at the premises from which the transfer is
21 proposed to be made.

22 (6) Upon a bona fide sale of the business operated
23 under a license, the license may be transferred to a
24 qualified purchaser. No A transfer of a license to a person
25 or location is not effective unless approved by the

1 department. A licensee or transferee or proposed transferee
2 who operates or attempts to operate under a supposedly
3 transferred license prior to the approval of the transfer by
4 the department, endorsed upon the license in writing, is
5 considered to be operating without a license and the license
6 affected may be revoked or suspended by the department. The
7 department may, within its discretion, permit a qualified
8 purchaser to operate the business to be transferred pending
9 final approval if there has not been a change in location
10 and the application for transfer has been filed with the
11 department.

12 (7) Except as provided in subsections (2) through (6)
13 and 16-4-204, no a license may not be transferred or sold or
14 used for any place of business not described in the license.
15 A license may be subject to mortgage and other valid liens,
16 in which event the name of the mortgagee, upon application
17 to and approval of the department, must be endorsed on the
18 license."

19 **Section 9.** Section 16-4-406, MCA, is amended to read:

20 "16-4-406. Renewal -- suspension or revocation --
21 penalty. (1) The department may upon its own motion and
22 shall upon a written, verified complaint of a person request
23 that the department of justice investigate the action and
24 operation of a brewer, wholesaler, or retailer licensed
25 under this code.

(2) Subject to the opportunity for a hearing under the Montana Administrative Procedure Act, if the department, after receiving the results of the department of justice's investigation, has reasonable cause to believe that a licensee has violated a provision of this code or a rule of the department, it may, in its discretion and in addition to the other penalties prescribed:

(a) reprimand a licensee;

(b) proceed to revoke the license of the licensee;

(c) suspend the license for a period of not more than 3 months;

(d) refuse to grant a renewal of the license after its expiration; or

(e) impose a civil penalty not to exceed \$1,500.

(3) If the department, after receiving the results of the department of justice's investigation, has reasonable cause to believe that a licensee does not meet the eligibility criteria established by this code or rules of the department or that the premises are not suitable pursuant to the provisions of this code or rules of the department, it may, in its discretion, proceed to revoke the license of the licensee or it may refuse to grant renewal of the license subject to the opportunity of the licensee to contest the action at a hearing under the Montana Administrative Procedure Act."

Section 10. Section 16-6-101, MCA, is amended to read:

"16-6-101. **Employment of investigators and prosecuting officers.** (1) The department of justice may appoint one or more investigators or prosecuting officers who, under its direction, shall perform such the duties as it may require ~~and--who--shall-be-paid-such-salaries,-fees,-and-expenses-as the-department-may-fix.~~

(2) When requested by the department, the department of justice shall:

(a) investigate the character of an applicant applying for the issuance or transfer of a liquor license and, if applicable, the suitability of a premises or proposed premises to be used in connection with a liquor license;

(b) investigate all matters relating to the purchase, sale, importation, exportation, possession, and delivery of alcoholic beverages; and

(c) serve as a liaison to local law enforcement authorities in matters relating to alcoholic beverage law enforcement."

Section 11. Section 16-6-102, MCA, is amended to read:

"16-6-102. **Search warrants.** Upon information on oath by any a department of justice investigator appointed under this code or by any a peace officer showing reasonable cause to believe that alcoholic beverages are unlawfully kept, or had or kept ~~or-had~~ for unlawful purposes, in any building-or

1 premises, ~~it shall be lawful for any~~ a court by may issue a
 2 warrant to authorize and empower the investigator or peace
 3 officer or any other person named therein in the warrant to
 4 enter and search the ~~building or~~ entire premises and every
 5 ~~part thereof and for that purpose, including~~ to break open
 6 any door, lock, or fastening of ~~the building or premises or~~
 7 ~~any part thereof or any~~ closet, cupboard, box, or other
 8 receptacle therein which on the premises that might contain
 9 alcoholic beverages."

10 **Section 12.** Section 16-6-103, MCA, is amended to read:

11 "16-6-103. Examination of retailer's premises and
 12 carriers' cars and aircraft. The department of justice or
 13 ~~any~~ duly authorized its representative thereof or the
 14 ~~sheriff of any county shall have the right~~ a peace officer
 15 may at any time ~~to make an examination of~~ examine the
 16 premises of a retail licensee as to determine whether the
 17 law of Montana and the rules of the department or the
 18 department of justice are being complied with and ~~shall also~~
 19 ~~have a right to also may~~ inspect cars or aircraft of any
 20 common carrier system licensed under this code."

21 **Section 13.** Section 16-6-106, MCA, is amended to read:

22 "16-6-106. When force may be used in seizure of
 23 alcoholic beverages -- forfeiture -- hearing. (1) Where If
 24 an alcoholic beverage is found by any a department of
 25 justice investigator or a peace officer ~~on any premises or~~

1 in any place in such quantities ~~as to that~~ satisfy the
 2 investigator or peace officer that such the alcoholic
 3 beverage is being ~~had or~~ kept contrary to ~~any of the~~
 4 ~~provisions of~~ this code, ~~it shall be lawful for~~ the
 5 investigator or peace officer ~~to forthwith~~ may seize and
 6 remove, by force if necessary, any alcoholic beverage found
 7 and the packages in which the alcoholic beverage was ~~had or~~
 8 kept and immediately turn the alcoholic beverage over to the
 9 department.

10 (2) The department shall determine if the seized
 11 alcoholic beverage is suitable for resale in a state liquor
 12 store. When If the department has determined that the seized
 13 alcoholic beverage is suitable for resale, the department
 14 shall commence an administrative action against the owner of
 15 the alcoholic beverage. All seized alcoholic beverages found
 16 to be unsuitable for sale in a state liquor store must be
 17 destroyed by the department.

18 (3) A notice and opportunity for hearing must be given
 19 in accordance with the Montana Administrative Procedure Act,
 20 except that the notice must be published in the county where
 21 the alcoholic beverage was seized if a newspaper is
 22 published in the county.

23 (4) The notice must show the date and place of seizure,
 24 the name of the person or persons actually or apparently in
 25 possession or control of the alcoholic beverage if such the

1 person was present at the time of the seizure, and the
 2 reasons the department claims the right to the possession of
 3 the alcoholic beverage. The notice must also demand that all
 4 persons who claim any right to the possession of the
 5 alcoholic beverage show the nature of their claim or claims,
 6 that the hearing examiner declare the alcoholic beverage
 7 contraband, and that the hearing examiner order the
 8 alcoholic beverage be forfeited to the state of Montana."

9 **Section 14.** Section 16-6-107, MCA, is amended to read:

10 "16-6-107. Disposal of forfeited alcoholic beverages --
 11 report. (1) ~~in-every-case-in-which~~ If a court or hearing
 12 examiner ~~makes--any--order--for~~ orders the forfeiture of
 13 alcoholic beverages under ~~any-of-the-provisions-of~~ this code
 14 ~~and-in-every-case-in-which--any~~ or if a claimant to an
 15 alcoholic beverage under ~~the--provisions--of~~ 16-6-105 or
 16 16-6-106 fails to establish ~~his--claim--and~~ the claimant's
 17 right thereto to the alcoholic beverage, the alcoholic
 18 beverage in question and the packages in which the alcoholic
 19 beverage is kept ~~shall~~ must be delivered to the department.
 20 The department shall determine the market value of each
 21 forfeited alcoholic beverage ~~which-is~~ found to be suitable
 22 for sale in the state liquor stores and shall pay the amount
 23 so determined to the state treasurer after deducting
 24 ~~therefrom-the~~ any expenses necessarily incurred by the
 25 department for transporting the forfeited alcoholic beverage

1 to the state liquor warehouses warehouse. The alcoholic
 2 beverage suitable for sale ~~shall~~ in a state liquor store
 3 must be taken into stock by the department and sold under
 4 the provisions of this code. All alcoholic beverages found
 5 to be unsuitable for sale in state liquor stores ~~shall~~ must
 6 be destroyed by the department.

7 (2) ~~in-every-case-in-which~~ If an alcoholic beverage is
 8 seized by a peace officer, ~~it the officer shall be-his-duty~~
 9 ~~to-make-or-cause-to-be--made~~ report to the department a
 10 report in writing of the particulars of such the seizure."

11 **Section 15.** Section 16-6-108, MCA, is amended to read:

12 "16-6-108. Inspection of carriers' records. For the
 13 purpose of obtaining information concerning any matter
 14 relating to the administration or enforcement of this code,
 15 the department or the department of justice or any person
 16 appointed by ~~it~~ either department in writing for the purpose
 17 may inspect the freight and express books and records and
 18 all waybills, bills of lading, receipts, and documents in
 19 the possession of any railway company, express company, or
 20 other common carrier doing business within the state
 21 containing any information or record relating to any goods
 22 shipped or carried or consigned or received for shipment or
 23 carriage within the state."

24 **Section 16.** Section 16-6-109, MCA, is amended to read:

25 "16-6-109. Unlawful for carrier to refuse inspection of

1 records. Every railway company, express company, or common
 2 carrier and every officer or employee of any-such a company
 3 or common carrier who neglects or refuses to produce and
 4 submit for inspection any book, record, or document referred
 5 to in 16-6-108 when requested to do so by the department or
 6 the department of justice or by a person so appointed by it
 7 shall--be either department is guilty of an offense against
 8 this code."

9 **Section 17.** Section 16-11-103, MCA, is amended to read:

10 "16-11-103. Powers of department. (1) The department
 11 shall have the power and authority to prescribe all rules
 12 not inconsistent with the provisions of this part for the
 13 detailed and efficient administration thereof of this part.
 14 All such rules and orders promulgated shall must be
 15 published promptly and a copy distributed to each wholesale
 16 licensee. The department is authorized to adopt rules for
 17 the effective collection and refund of the tax imposed by
 18 part 2 of this chapter.

19 (2) The department and its duly authorized agents are
 20 empowered to conduct investigations, inquiries, and hearings
 21 hereunder, and any member thereof of the department or any
 22 agent is authorized to administer oaths and take testimony
 23 under oath relative to the matter of inquiry or
 24 investigation. The director or his an authorized agent may
 25 subpoena witnesses and require the production of books,

1 papers, and documents pertinent to such the inquiry. The
 2 director or his the director's agent, after the hearing,
 3 shall make findings and an order in writing, which findings
 4 and order shall must be filed in the office of the
 5 department and open for public inspection.

6 (3) The department is hereby authorized to contract
 7 with the department of justice for the investigations
 8 required under this part. The department may appoint such
 9 additional assistants and to establish an additional
 10 division of cigarette enforcement as may--be required to
 11 carry out the provisions of this part.

12 (4) The department is--hereby and the department of
 13 justice are authorized to employ such clerical and field
 14 assistants as--may--be necessary to properly administer the
 15 provisions of this part."

16 **Section 18.** Section 16-11-118, MCA, is amended to read:

17 "16-11-118. Records of tax meter users and stampers.
 18 All tax meter users and stampers shall keep for 5 years all
 19 invoices of cigarettes purchased and imported by them, all
 20 receipts issued by them and insignia purchased, and an
 21 accurate record of all sales of cigarettes by the tax meter
 22 users or stampers, showing the name and address of each
 23 purchaser, the date of sale, the quantity of each kind sold,
 24 the name of any carrier, the shipping point, and
 25 destination. The tax meter users or stampers shall permit

the department and the department of justice and its their assistants, authorized agents, or representatives to examine all taxable items of cigarettes, invoices, receipts, books, paper, memoranda, and records as may be necessary to determine whether the tax meter machine or tax stamp-applying machine has been used as required or the insignia required by this part had been purchased and used or to determine the amount of such the tax as may be due or unpaid."

Section 19. Section 16-11-124, MCA, is amended to read:

"16-11-124. Disposition of license fees. (1) All license fees collected under the provisions of this part ~~shall~~ must be deposited with the state treasurer in the general fund.

(2) Each biennium, there ~~shall~~ must be appropriated to the department and the department of justice an amount justified and reasonable to operate the department's cigarette enforcement division responsibilities of each department.

(3) All expenses charged against the appropriation ~~shall~~ must be justified by itemized claims coupled with standard accounting reports."

Section 20. Section 16-11-141, MCA, is amended to read:

"16-11-141. Powers of arrest -- search and seizure. The department of justice is a criminal justice agency. ~~shall~~

~~administer--and--enforce--this--part--and--the--director--and--his~~
Designated agents of the department of justice have the powers--of peace officers officer status and may arrest any person violating any provision of this part, enter a complaint before any court of competent jurisdiction, and lawfully search and seize and use as evidence any unlawful or unlawfully possessed license, stamp, or insignia found in the possession of any person or in any place."

Section 21. Section 16-11-142, MCA, is amended to read:

"16-11-142. Duties of county attorneys and peace officers. In the enforcement of this part, the department of justice may call to its assistance, and it ~~shall be~~ is the duty of any county attorney or any peace officer in this state to assist the department of justice in the enforcement of this part."

Section 22. Section 16-11-147, MCA, is amended to read:

"16-11-147. Seizure and forfeiture of unlawful cigarettes. (1) Any motor vehicle, airplane, conveyance, vehicle, or other means of transportation in which cigarettes are being unlawfully transported, together with the cigarettes and other equipment or personal property used in connection with and found in that transportation, is subject to seizure by the department of justice, its duty authorized agent, any sheriff or deputy, or any other peace officer and is subject to forfeiture ~~in--the--manner~~ as

1 provided in subsection (2).

2 (2) Upon the seizure of any cigarettes and within 2
3 days thereafter after seizure, the person or officer making
4 the seizure shall deliver an inventory of the property
5 seized to the person from whom the seizure was made, if
6 known, and file a copy of the inventory with the department.
7 The person from whom the seizure was made or any other
8 person claiming an interest in the property seized may apply
9 for its return as provided in 46-5-305, 46-5-311, and
10 46-5-312."

11 **Section 23.** Section 16-11-149, MCA, is amended to read:
12 "16-11-149. **Bearings before state tax appeal board.** Any
13 person aggrieved by any action of the department or its duly
14 authorized agents under the provisions of this part may
15 apply to the state tax appeal board, in writing, for a
16 hearing or rehearing thereon within 30 days after such the
17 action of the department or its authorized agents. The board
18 shall promptly consider such the application, set same the
19 application for hearing, and notify the applicant of the
20 time and place fixed for such the hearing or rehearing,
21 which may be at its office or in the county of the
22 applicant. After such the hearing or rehearing, the board
23 may make any further or other order in the premises as it
24 may deem consider proper and lawful and shall furnish a copy
25 thereof to the applicant. The department, on its own

1 initiative, may order a contested case hearing on any matter
2 concerned with licensing, as defined in 2-4-102, in
3 connection with the administration of this part upon at
4 least 10 days' notice in writing to the person or persons to
5 be investigated."

6 **NEW SECTION. Section 24. Functions transferred -- name**
7 **change.** (1) The functions of the department of revenue
8 contained in Title 53, chapter 2, part 5, that relate to
9 investigations involving public assistance are transferred
10 to the department of justice.

11 (2) In the provisions of the Montana Code Annotated
12 referred to in subsection (1), the term "department of
13 revenue" or "department", meaning the department of revenue,
14 is changed to "department of justice" or "department",
15 meaning the department of justice. The code commissioner
16 shall conform internal references, grammar, and legislation
17 enacted by the 53rd legislature to these changes.

18 **NEW SECTION. Section 25. Reorganization protections.**
19 The provisions of sections 2-15-131 through 2-15-137 govern
20 the transfer of functions contained in [this act].

21 **NEW SECTION. Section 26. Implementation.** The governor
22 shall by executive order implement the provisions of [this
23 act].

24 **NEW SECTION. Section 27. Appropriation -- transfer of**
25 **employee positions.** (1) There is appropriated from the

1 liquor enterprise fund referred to in 16-2-108 to the
2 department of justice for the biennium ending June 30, 1995,
3 \$215,000 to be used to implement the transfer of
4 investigative functions under [this act].

5 (2) There is transferred from the department of revenue
6 to the department of justice a total of 12 full-time
7 equivalent positions to implement the transfer of
8 investigative functions under [this act].

9 NEW SECTION. Section 28. Rulemaking authority. The
10 department of justice may adopt rules to implement {this
11 act} [SECTIONS 17 THROUGH 24].

12 NEW SECTION. Section 29. Effective dates. (1)
13 [Sections 25, 26, 28, and this section] are effective on
14 passage and approval.

15 (2) [Sections 1 through 24 and 27] are effective July
16 1, 1993.

-End-