

SENATE BILL 41

Introduced by Brown, et al.

12/07	Introduced
12/07	Referred to Taxation
12/07	First Reading
12/07	Fiscal Note Requested
12/10	Hearing
12/10	Fiscal Note Received
12/10	Fiscal Note Printed
12/16	Tabled in Committee

1 Senate BILL NO. 41
2 INTRODUCED BY Bob Brown Lucy Mc Gowan Yellowtail
3 BY REQUEST OF THE DEPARTMENT OF REVENUE AND Bul
4 THE OFFICE OF BUDGET AND PROGRAM PLANNING

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE
7 AUTHORITY OF THE DEPARTMENT OF REVENUE TO ESTABLISH AND
8 MAINTAIN STATE LIQUOR STORES AFTER NOVEMBER 30, 1994;
9 PHASING OUT EXISTING STATE LIQUOR STORES BY NOVEMBER 30,
10 1994; ELIMINATING THE AUTHORITY OF THE DEPARTMENT OF REVENUE
11 TO PURCHASE AND SELL TABLE WINE; PROVIDING TERMINATION
12 BENEFITS FOR DISPLACED DEPARTMENT OF REVENUE EMPLOYEES;
13 ESTABLISHING REQUIREMENTS FOR ORDERS TO AND SHIPMENTS FROM
14 THE STATE LIQUOR WAREHOUSE; ALLOWING FOR THE SALE OF LIQUOR
15 BETWEEN ALL-BEVERAGES LICENSEES; LIMITING ACCESS TO AREAS
16 USED FOR ON-PREMISES CONSUMPTION; ELIMINATING THE AUTHORITY
17 OF THE DEPARTMENT TO CONTRACT FOR SERVICES IN EXCESS OF 3
18 YEARS; GENERALLY REVISING LIQUOR REGULATIONS; AMENDING
19 SECTIONS 2-17-101, 16-1-103, 16-1-106, 16-1-201, 16-1-302,
20 16-1-303, 16-1-304, 16-1-401, 16-1-402, 16-1-404, 16-1-411,
21 16-2-101, 16-2-103, 16-2-108, 16-2-203, 16-3-106, 16-3-307,
22 16-3-311, 16-3-401, 16-3-403, 16-3-411, 16-6-107, 16-6-303,
23 16-6-304, AND 18-4-313, MCA, AND SECTION 15, CHAPTER 623,
24 LAWS OF 1993; REPEALING SECTIONS 16-2-104, 16-2-105,
25 16-2-106, 16-2-107, 16-2-201, 16-2-301, 16-2-302, AND

1 16-2-303, MCA; AND PROVIDING EFFECTIVE DATES AND A
2 TERMINATION DATE."

3
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

5 NEW SECTION. **Section 1. Termination of state employees**
6 **due to closure of state liquor stores -- employment**
7 **preference -- employee bonus.** (1) (a) A department employee,
8 including a central office employee, who on [the effective
9 date of this section] was paid for an average of at least 20
10 hours a week of work either in a capacity directly related
11 to the operation of state liquor stores or supervising,
12 auditing, or evaluating inventory during the 6 months
13 immediately preceding [the effective date of this section]
14 is, upon closure of the store the employee worked at or upon
15 termination of employment by the department, entitled to an
16 employment preference with the department as provided in
17 this section in addition to the benefits provided by
18 2-18-1203 and the severance pay provided by 2-18-622.

19 (b) The employment preference provisions of 39-30-201
20 do not apply, and the application of the preference under
21 this section does not constitute a violation of Title 49,
22 chapter 2 or 3.

23 (c) The employment preference is in effect for 1 year
24 after closure of the store or termination of employment.
25 Acceptance of a permanent position with another state agency

1 terminates the employment preference.

2 (d) The employment preference applies to any open
3 department position for which the employee is qualified.

4 (2) The department shall provide training, at a cost
5 not to exceed \$1,000, for enhancement of the employee's
6 skills and knowledge if required for satisfactory
7 performance of the position to which an employee transfers
8 as a result of the preference. The training may be provided
9 by department personnel.

10 (3) (a) In addition to the benefits provided in
11 subsections (1) and (2), a state liquor store employee who
12 meets the hours of work qualifications of subsection (1)(a)
13 and who works at least 490 hours between September 1, 1994,
14 and November 30, 1994, or a department central office
15 employee whose employment is terminated as a result of the
16 closure of state liquor stores and who meets the hourly
17 salary qualifications of subsection (1)(a) and who works at
18 least 490 hours between October 1, 1994, and December 31,
19 1994, is entitled to a employee bonus.

20 (b) An employee's hours reported for payroll purposes
21 as annual leave or sick leave during the period between
22 September 1, 1994, and December 31, 1994, may not be counted
23 as hours worked for purposes of satisfying the requirement
24 of working 490 hours to qualify for the bonus.

25 (c) The bonus is equal to 1 week of pay for each year

1 that the employee was employed by the state, not to exceed a
2 total of 9 weeks of pay. For purposes of this subsection, a
3 week of pay is the gross pay for the employee for the
4 12-month period ending August 31, 1994, divided by 52.

5 (d) (i) Payment of the bonus to a liquor store employee
6 must be made in a lump sum no later than January 11, 1995,
7 provided that the final audit of the employee's store shows
8 no misappropriation of state funds.

9 (ii) Payment of the bonus to a central office employee
10 must be made in a lump sum along with the employee's regular
11 pay no later than January 11, 1995.

12 (4) Within a collective bargaining unit, implementation
13 of the employee benefits provided by this section is
14 negotiable under 39-31-305.

15 NEW SECTION. **Section 2. Termination of existing leases**
16 **for state liquor stores -- lease extension bonus.** (1) Unless
17 otherwise provided by an existing lease or rental agreement,
18 each lease or rental agreement for space for the operation
19 of a state liquor store is terminated upon 30 days notice to
20 the lessee by the department.

21 (2) (a) Except as provided in subsection (2)(b), the
22 department is not liable to the lessee for any amount that
23 would have been payable had the lease not been terminated
24 under this section and is liable to the lessee only for the
25 amount owed to the lessee up to the date the department

1 vacates the premises.

2 (b) A lease extension bonus equal to 1 1/2 months' rent
3 must be paid to a lessee who agrees in writing to an
4 extension of the department's lease or rental agreement in
5 order to allow the department to remain on the premises and
6 to continue to operate the store until November 30, 1994.
7 The bonus must be paid in a lump sum to the lessee on
8 December 1, 1994. To be eligible for a bonus, the lessee and
9 the department are required to sign the lease or rental
10 extension agreement within 45 days of [the effective date of
11 this section].

12 **NEW SECTION. Section 3. Termination of existing agency**
13 **franchise agreements -- agency extension bonus.** (1) Each
14 liquor store agency franchise agreement and any other liquor
15 store agency agreement is terminated on November 30, 1994,
16 unless terminated sooner by mutual consent of the parties.

17 (2) (a) Upon termination of the agreements, the
18 department shall reimburse the agents for all unamortized
19 capital expenditures required to comply with or perform
20 requirements of the agreement, including costs of
21 remodeling, purchase of buildings, construction, equipment,
22 and leases. The total of all reimbursements for all agents
23 may not exceed \$325,000. If the total claims exceed
24 \$325,000, the reimbursements must be prorated. The terms
25 "unamortized capital expenditures" means capital

1 expenditures, including the remaining portion of a capital
2 expenditure, that have not been written off for purposes of
3 the Internal Revenue Code.

4 (b) The department's liability for unamortized capital
5 expenditures for buildings is limited to the lesser of fair
6 market rental cost or actual rental cost for the part of the
7 building that was used for the sale of liquor during the
8 time it is vacant or not used for some other purpose between
9 December 1, 1994, and May 31, 1995.

10 (c) The reimbursement for unamortized capital
11 expenditures for fixtures and personal property is limited
12 to expenditures that cannot be used or absorbed by any
13 existing ongoing business being operated by the agent either
14 in conjunction with or on the same premises as the liquor
15 store.

16 (d) An agent must also be reimbursed for the lease or
17 rental expense incurred for space originally required for
18 the operation for a liquor store but no longer necessary for
19 that purpose that cannot be readily used in conjunction with
20 any other activity carried on at the premises. The
21 department's liability under this subsection for lease or
22 rental expenses for the space is limited to the lesser of
23 fair market rental cost or the actual rental cost for the
24 space during the time it is vacant or not used for some
25 other purpose between December 1, 1994, and May 31, 1995.

(e) A request for reimbursement must be submitted in writing to the department by June 1, 1995, with any supporting documentation that the department determines is needed to ensure that the request is only for unamortized capital expenditures and lease or rental costs related solely to the operation of the liquor store.

(f) The department shall pay the reimbursements by August 31, 1995.

(3) An agency extension bonus equal to 1 week's average commission for each year the department's agent was under contract with the department, not to exceed 9 weeks of average commission, must be paid to an agent who agrees in writing to continue to operate the liquor store until November 30, 1994. The bonus must be paid in a lump sum by January 11, 1995, if the final audit of the store shows no misappropriation of state merchandise or state funds. A week's average commission is the total commissions paid for the 12 months ending August 31, 1994, divided by 52.

NEW SECTION. Section 4. Operation of state liquor stores -- transition. (1) After [the effective date of this section], the department may sell liquor from the state liquor warehouse to a person possessing an all-beverages license and any prohibition in this code to the contrary does not apply.

(2) After November 15, 1994, the department may operate

a state liquor store only for the purpose of disposition of remaining inventory on hand and the store's orderly closing. After November 15, 1994, the department may sell any remaining product in the store first to licensees and if any inventory remains then to the general public. However, the department may not make shipments of any inventory to any store after November 15, 1994. A state liquor store maintained only for the purpose of closing is considered closed for purposes of this section.

(3) Between [the effective date of this section] and November 15, 1994, an all-beverages licensee's order for liquor must be placed through a state liquor store. For the purpose of computing either the agency commission or the employee bonus contained in the employees' bargaining agreements, orders that the department fills by direct shipment from the state liquor warehouse to the purchasing licensee must be credited to the state liquor store at which the order was placed.

Section 5. Section 2-17-101, MCA, is amended to read:

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

1 amount, location, and nature of space used by each agency.

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

13 (3) (a) The location of the chambers for the house of
14 representatives must be determined in the sole discretion of
15 the house of representatives. The location of the chambers
16 of the senate must be determined in the sole discretion of
17 the senate.

18 (b) The department of administration, with the advice
19 of the legislative council, shall allocate other space for
20 the use of the legislature, including but not limited to
21 space for committee rooms and legislative offices.

22 (4) For state agencies located in a city other than
23 Helena, the department of administration shall consolidate
24 the offices of these agencies in a single, central location
25 within the city whenever the consolidation would result in a

1 cost savings to the state while permitting sufficient space
2 and facilities for the agencies. The department may
3 purchase, lease, or acquire, by exchange or otherwise, land
4 and buildings in the city to achieve consolidation. ~~State~~
5 ~~retail--liquor--stores;--liquor--retail--agencies;--and~~ The
6 offices of the law enforcement services division and motor
7 vehicle division of the department of justice are exempted
8 from consolidation."

9 **Section 6.** Section 16-1-103, MCA, is amended to read:

10 "16-1-103. Policy as to retail sale of liquor. It is
11 the policy of the state ~~that-it-is-necessary~~ to further
12 regulate and control the sale and distribution of alcoholic
13 beverages within the state and to ensure that the ~~entire~~
14 complete control of the sale of liquor is in the department
15 ~~of--revenue~~. It is advisable and necessary ~~in-addition-to~~
16 ~~the-operation-of-the-state-liquor--stores--now--provided--by~~
17 ~~law~~ that the department ~~be-empowered-and~~ is authorized to
18 grant licenses to persons qualified under this code to sell
19 liquor purchased by them at the state liquor ~~stores-at~~
20 ~~retail-posted-price~~ warehouse in accordance with this code
21 and under rules promulgated by the department and under its
22 strict supervision and control and to provide severe ~~penalty~~
23 penalties for the sale of liquor except by and in the state
24 liquor ~~stores~~ warehouse and by persons licensed under this
25 code. The restrictions, regulations, and provisions

contained in this code are enacted by the legislature for the protection, health, welfare, and safety of the people of the state."

Section 7. Section 16-1-106, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

{15} "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

~~{16}~~{15} "Public place" means a place, building, or

conveyance to which the public has or may be permitted to have access and any place of public resort.

~~{17}~~(16) "Rules" means rules adopted by the department or the department of justice pursuant to this code.

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

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

~~{19}-"State--liquor-store"--means-a-retail-store-operated by-the-department-in--accordance--with--this--code--for--the purpose-of-selling-liquor-and-table-wine-~~

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

~~{21}~~(20) "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 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}~~(21) "Table wine" means wine that contains not more than 16% alcohol by volume.

~~{23}~~(22) "Table wine distributor" means a person importing into or purchasing in Montana table wine for sale or resale to retailers licensed in Montana.

(23) "Vendor base price" means the price the state pays a company that manufactures, distills, rectifies, bottles, or processes liquor sold to the state, f.o.b. the state liquor warehouse.

(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) "Wholesale markup" means the amount that is 28.6% of the vendor base price.

(26) "Wholesale price" is the price, fixed and determined by the department, paid by licensees for liquor purchased from the state liquor warehouse. The wholesale price is the sum of the vendor base price, wholesale markup, average cost of freight to all licensees, and any taxes provided in this code.

~~{25}~~(27) "Wine" means an alcoholic beverage made from or

1 containing the normal alcoholic fermentation of the juice of
 2 sound, ripe fruit or other agricultural products without
 3 addition or abstraction, except as may occur in the usual
 4 cellar treatment of clarifying and aging, and that contains
 5 more than 0.5% but not more than 24% of alcohol by volume.
 6 Wine may be ameliorated to correct natural deficiencies,
 7 sweetened, and fortified in accordance with applicable
 8 federal regulations and the customs and practices of the
 9 industry. Other alcoholic beverages not defined in this
 10 subsection but made in the manner of wine and labeled and
 11 sold as wine in accordance with federal regulations are also
 12 wine."

13 **Section 8.** Section 16-1-106, MCA, is amended to read:

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

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

20 †2‡ "Alcohol" means ethyl alcohol, also called ethanol,
 21 or the hydrated oxide of ethyl.

22 †3‡(2) "Alcoholic beverage" means a compound produced
 23 and sold for human consumption as a drink that contains more
 24 than 0.5% of alcohol by volume.

25 †4‡(3) "Beer" means a malt beverage containing not more

1 than 7% of alcohol by weight.

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

4 †6‡(5) "Brewer" means a person who produces malt
 5 beverages.

6 †7‡(6) "Department" means the department of revenue,
 7 unless otherwise specified.

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

10 †9‡(8) "Import" means to transfer beer or table wine
 11 from outside the state of Montana into the state of Montana.

12 †10‡(9) "Industrial use" means a use described as
 13 industrial use by the federal Alcohol Administration Act and
 14 the federal rules and regulations of 27 CFR.

15 †11‡(10) "Liquor" means an alcoholic beverage except
 16 beer and table wine.

17 †12‡(11) "Malt beverage" means an alcoholic beverage
 18 made by the fermentation of an infusion or decoction, or a
 19 combination of both, in potable brewing water, of malted
 20 barley with or without hops or their parts or their products
 21 and with or without other malted cereals and with or without
 22 the addition of unmalted or prepared cereals, other
 23 carbohydrates, or products prepared from carbohydrates and
 24 with or without other wholesome products suitable for human
 25 food consumption.

1 ~~{13}~~(12) "Package" means a container or receptacle used
2 for holding an alcoholic beverage.

3 ~~{14}-"Posted-price"-means-the-retail-price-of-liquor-and~~
4 ~~table-wine-as-fixed-and-determined-by-the-department-and--in~~
5 ~~addition-an-excise-and-license-tax-as-provided-in-this-code-~~

6 ~~{15}~~(13) "Proof gallon" means a U.S. gallon of liquor at
7 60 degrees on the Fahrenheit scale that contains 50% of
8 alcohol by volume.

9 ~~{16}~~(14) "Public place" means a place, building, or
10 conveyance to which the public has or may be permitted to
11 have access and any place of public resort.

12 ~~{17}~~(15) "Rules" means rules adopted by the department
13 or the department of justice pursuant to this code.

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

18 ~~{19}-"State-liquor-store"-means-a-retail-store--operated~~
19 ~~by--the--department--in--accordance--with--this-code-for-the~~
20 ~~purpose-of-selling-liquor-and-table-wine-~~

21 ~~{20}~~(17) "Storage depot" means a building or structure
22 owned or operated by a brewer at any point in the state of
23 Montana off and away from the premises of a brewery, which
24 structure is equipped with refrigeration or cooling
25 apparatus for the storage of beer and from which a brewer

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

2 ~~{21}~~(18) "Subwarehouse" means a building or structure
3 owned or operated by a licensed beer wholesaler or table
4 wine distributor, located at a site in Montana other than
5 the site of the beer wholesaler's or table wine
6 distributor's warehouse or principal place of business, and
7 used for the receiving, storage, and distribution of beer or
8 table wine as permitted by this code.

9 ~~{22}~~(19) "Table wine" means wine that contains not more
10 than 16% alcohol by volume.

11 ~~{23}~~(20) "Table wine distributor" means a person
12 importing into or purchasing in Montana table wine for sale
13 or resale to retailers licensed in Montana.

14 (21) "Vendor base price" means the price the state pays
15 a company that manufactures, distills, rectifies, bottles,
16 or processes liquor sold to the state, f.o.b. the state
17 liquor warehouse.

18 ~~{24}~~(22) "Warehouse" means a building or structure
19 located in Montana owned or operated by a licensed beer
20 wholesaler or table wine distributor for the receiving,
21 storage, and distribution of beer or table wine as permitted
22 by this code.

23 (23) "Wholesale markup" means the amount that is 28.6%
24 of the vendor base price.

25 (24) "Wholesale price" is the price, fixed and

determined by the department, paid by licensees for liquor purchased from the state liquor warehouse. The wholesale price is the sum of the vendor base price, wholesale markup, average cost of freight to all licensees, and any taxes provided in 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 in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

Section 9. Section 16-1-201, MCA, is amended to read:

"16-1-201. Acts not covered by code. (1) ~~Nothing-in~~ this ~~This code shall~~ does not prevent any brewer, distiller, or other person, duly licensed under the provisions of any statute of the United States of America for the manufacture of alcoholic beverages, from having or keeping alcoholic beverages in a place and in the manner authorized by or

under any such statute.

(2) It is ~~hereby-declared-to-be~~ the policy of the state of Montana that the manufacture of alcoholic beverages, including the distillation, rectification, bottling, and processing as these terms are defined under the provisions of the laws of the United States, ~~shall-be~~ is authorized and permitted by any brewer, distiller, rectifier, or other person duly licensed under any provision of any statute of the United States of America in a place and in the manner authorized by or under any statute of the United States, provided the department may make ~~such rules as that~~ the department ~~deems~~ considers necessary ~~with--respect--thereto~~ not inconsistent with this code or with the statutes of the United States of America or regulations issued under the provisions of the federal Alcohol Administration Act, Title 27, United States Code, sections 201 through 212, inclusive, or regulations issued under the provisions of the Internal Revenue Code, Title 26, United States Code, sections 5001 through 5693, inclusive.

(3) ~~Nothing-in-this~~ This code ~~shall~~ does not prevent:

(a) the sale of liquor ~~or-table-wine~~ by any person to the department;

(b) the purchase, importation, and sale of liquor ~~and table-wine~~ by the department for the purposes of and in accordance with this code."

Section 10. 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~~ possess, and sell ~~liquors-and-table-wine~~ liquor;

(2) to control the possession, sale, and delivery of ~~liquors~~ alcoholic beverages 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 to administer its duties under this code;

(5) to buy or lease plants and equipment necessary to administer its duties under this code;

(6) to employ ~~store--managers--and-other-employees~~ persons required to administer this code and to dismiss them, assign them their title, and define their respective duties and powers and to contract with the department of justice for investigative services or to contract for the services of experts and persons engaged in the practice of a profession, if 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 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 necessary to administer this code or rules."

Section 11. Section 16-1-303, MCA, is amended to read:

"16-1-303. Department rules. (1) The department and the department of justice may make rules not inconsistent with this code necessary to efficiently administer this code.

(2) Rules made by the department may include but are not limited to the following:

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

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

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

1 the furnishing of liquor and table wine to state stores;
 2 (d) determining the classes, varieties, and brands of
 3 liquor and table wine to be kept for sale at any state
 4 store;
 5 (e) prescribing the hours during which state liquor
 6 stores must be open for the sale of alcoholic beverages;
 7 (f) providing for the issuing and distributing of price
 8 lists showing the price to be paid by purchasers for each
 9 class, variety, or brand of liquor and table wine kept for
 10 sale;
 11 (g) prescribing forms to be used for the purpose of
 12 this code or the rules and the terms and conditions for
 13 permits and licenses issued and granted under this code;
 14 (h) prescribing the form of records of purchase of
 15 liquor and table wine and the reports to be made to the
 16 department and providing for inspection of the records;
 17 (i) prescribing the manner of giving and serving
 18 notices required by this code or the rules;
 19 (j) prescribing the fees payable for permits and
 20 licenses issued under this code for which no fees are not
 21 prescribed in this code and prescribing the fees for
 22 anything done or permitted to be done under the rules;
 23 (k) prescribing, subject to the provisions of this
 24 code, the conditions and qualifications necessary for the
 25 obtaining of alcoholic beverage licenses and the books and

1 records to be kept and the returns to be made by the
 2 licensees;
 3 (l) specifying and describing the place and the manner
 4 in which alcoholic beverages may be lawfully kept or stored;
 5 (m) specifying and regulating the time when and the
 6 manner by which vendors and brewers may deliver alcoholic
 7 beverages under this code and the time when and the manner
 8 by which alcoholic beverages, under this code, may be
 9 lawfully conveyed or carried;
 10 (n) governing the conduct, management, and equipment of
 11 any premises licensed to sell alcoholic beverages under this
 12 code;
 13 (o) providing for the imposition and collection of
 14 taxes and making rules respecting returns, accounting, and
 15 payment of the taxes to the department.
 16 (3) The department of justice may adopt rules to
 17 administer and implement its responsibilities under this
 18 title, including but not limited to rules providing for the
 19 inspection of licensed premises or premises where the sale
 20 of liquor has been proposed.
 21 (4) Whenever this code provides that an act may be done
 22 if authorized by rules, the department, subject to the
 23 restrictions in subsection (1), may make rules respecting
 24 the act."

25 **Section 12.** Section 16-1-303, MCA, is amended to read:

1 "16-1-303. Department rules. (1) The department and the
 2 department of justice may make rules not inconsistent with
 3 this code necessary to efficiently administer this code.
 4 (2) Rules made by the department may include but are
 5 not limited to the following:
 6 (a) regulating the equipment and management of the
 7 state stores-and-warehouses liquor warehouse in which liquor
 8 or--table-wine-is-kept-or-sold and prescribing the books and
 9 records to be kept;
 10 (b) prescribing the duties of department employees and
 11 regulating their conduct while in the discharge of their
 12 duties;
 13 (c) governing the purchase of liquor and-table-wine and
 14 the furnishing of liquor and--table--wine to state--stores
 15 all-beverages licensees;
 16 (d) determining the classes, varieties, and brands of
 17 liquor and-table-wine to be kept-for-sale sold at any the
 18 state store liquor warehouse;
 19 (e) prescribing--the--hours--during--which-state-liquor
 20 stores-must-be-open-for-the-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;
 25 (g) (f) prescribing forms to be used for the purpose of

1 this code or the rules and the terms and conditions for
 2 permits and licenses issued and granted under this code;
 3 (h) (g) prescribing the form of records of purchase of
 4 liquor and table wine and the reports to be made to the
 5 department and providing for inspection of the records;
 6 (i) (h) prescribing the manner of giving and serving
 7 notices required by this code or the rules;
 8 (j) (i) prescribing the fees payable for permits and
 9 licenses issued under this code for which no fees are not
 10 prescribed in this code and prescribing the fees for
 11 anything done or permitted to be done under the rules;
 12 (k) (j) prescribing, subject to the provisions of this
 13 code, the conditions and qualifications necessary for the
 14 obtaining of alcoholic beverage licenses and the books and
 15 records to be kept and the returns to be made by the
 16 licensees;
 17 (l) (k) specifying and describing the place and the
 18 manner in which alcoholic beverages may be lawfully kept or
 19 stored;
 20 (m) (l) specifying and regulating the time when and the
 21 manner by which vendors and brewers may deliver alcoholic
 22 beverages under this code and the time when and the manner
 23 by which alcoholic beverages, under this code, may be
 24 lawfully conveyed or carried;
 25 (n) (m) governing the conduct, management, and equipment

1 of any premises licensed to sell alcoholic beverages under
2 this code;

3 ~~(e)~~(n) providing for the imposition and collection of
4 taxes and making rules respecting returns, accounting, and
5 payment of the taxes to the department.

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

11 (4) Whenever this code provides that an act may be done
12 if authorized by rules, the department, subject to the
13 restrictions in subsection (1), may make rules respecting
14 the act."

15 **Section 13.** Section 16-1-304, MCA, is amended to read:

16 "16-1-304. Prohibited acts. (1) An employee of the
17 department involved in the operation of the state liquor
18 warehouse or state liquor stores, the issuance of licenses,
19 or the collection of alcoholic beverages taxes or an
20 employee of the department of justice directly involved with
21 the investigation of matters concerning the manufacture,
22 sale, and distribution of alcoholic beverages may not be
23 directly or indirectly interested or engaged in any other
24 business or undertaking dealing in liquor or table wine,
25 whether as owner, part owner, partner, member of syndicate,

1 shareholder, agent, or employee for the employee's own
2 benefit or in a fiduciary capacity for some other person.

3 (2) An employee of the state may not solicit or receive
4 directly or indirectly any commission, remuneration, or gift
5 from any person or corporation selling or offering liquor or
6 table wine for sale to the state pursuant to this code.

7 (3) A person selling to, or offering for sale to or
8 purchasing liquor or table wine from the state may not
9 directly or indirectly offer to pay any commission, profit,
10 or remuneration or make any gift to any member or employee
11 of the state or to anyone on behalf of the member or
12 employee.

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

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

25 (b) When a brand of liquor or table wine has been

1 accepted for testing by the state, the state shall forward
2 the sample, unopened and in its entirety, to a qualified
3 chemical laboratory for analysis.

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

10 (5) Liquor, wine, or other alcoholic beverage may not
11 be withdrawn from the regular state liquor warehouse
12 inventory or from the state liquor stores for any purpose
13 other than sale at the prevailing state retail prices or
14 wholesale price or for destroying damaged or defective
15 merchandise. The state shall maintain a written record,
16 including the type, brand, container size, number of bottles
17 or other units, signatures of witnesses, and method of
18 destruction or other disposition, of damaged or defective
19 state liquor warehouse or state store merchandise.

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

1 product.

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

7 **Section 14.** Section 16-1-304, MCA, is amended to read:

8 "16-1-304. Prohibited acts. (1) An employee of the
9 department involved in the operation of the state liquor
10 warehouse or-state-liquor-stores, the issuance of licenses,
11 or the collection of alcoholic beverages taxes or an
12 employee of the department of justice directly involved with
13 the investigation of matters concerning the manufacture,
14 sale, and distribution of alcoholic beverages may not be
15 directly or indirectly interested or engaged in any other
16 business or undertaking dealing in liquor--or--table--wine
17 alcoholic beverages, whether as owner, part owner, partner,
18 member of syndicate, shareholder, agent, or employee for the
19 employee's own benefit or in a fiduciary capacity for some
20 other person.

21 (2) An employee of the state may not solicit or receive
22 directly or indirectly any commission, remuneration, or gift
23 from any person or corporation selling or offering liquor or
24 table-wine for sale to the state pursuant to this code.

25 (3) A person selling to, or offering for sale to, or

1 purchasing liquor ~~or-table--wine~~ from the state may not
2 directly or indirectly offer to pay any commission, profit,
3 or remuneration or make any gift to any member or employee
4 of the state or to anyone on behalf of the member or
5 employee.

6 (4) The prohibition contained in subsection (3) does
7 not prohibit the state from receiving samples of liquor ~~or~~
8 ~~table-wine~~ for the purpose of chemical testing, subject to
9 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 shall submit, without
14 cost to the state prior to the original purchase, an
15 analysis of each brand and may submit a representative
16 sample, not exceeding 25 fluid ounces of the merchandise, to
17 the state.

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

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

1 brand, and the person to whom delivered or other final
2 disposition of the sample.

3 (5) Liquor, ~~--wine,--or-other-alcoholic-beverage~~ may not
4 be withdrawn from the regular state liquor warehouse
5 inventory ~~or--from--the-state-liquor-stores~~ for any purpose
6 other than sale at the prevailing state ~~retail~~ wholesale
7 price ~~prices~~ or for destroying damaged or defective
8 merchandise. The state shall maintain a written record,
9 including the type, brand, container size, number of bottles
10 or other units, signatures of witnesses, and method of
11 destruction or other disposition, of damaged or defective
12 state liquor warehouse ~~or-state-store~~ merchandise.

13 (6) The state may not require a company that
14 manufactured, distilled, rectified, bottled, or processed
15 and that 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 liquor warehouse
18 while the distiller ~~or--winery~~ retains ownership of the
19 product.

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

25 **Section 15.** Section 16-1-401, MCA, is amended to read:

1 **"16-1-401. Liquor excise tax.** (1) The department shall
 2 collect at the time of the sale and delivery of any liquor
 3 from a state liquor store after [the effective date of this
 4 section] and before November 30, 1994, as authorized under
 5 any provision of the laws of the state of Montana, an excise
 6 tax at the rate of:

7 (a) 16% of the retail selling price on all liquor sold
 8 and delivered in the state by a company that manufactured,
 9 distilled, rectified, bottled, or processed, and that sold
 10 more than 200,000 proof gallons of liquor nationwide in the
 11 calendar year preceding imposition of the tax pursuant to
 12 this section;

13 (b) 13.8% of the retail selling price on all liquor
 14 sold and delivered in the state by a company that
 15 manufactured, distilled, rectified, bottled, or processed,
 16 and that sold not more than 200,000 proof gallons of liquor
 17 nationwide in the calendar year preceding imposition of the
 18 tax pursuant to this section.

19 (2) The department shall collect at the time of sale
 20 and delivery of liquor from the state liquor warehouse after
 21 [the effective date of this section] an excise tax at the
 22 rate of:

23 (a) 22.9% of the vendor base price on liquor sold and
 24 delivered in the state by a company that manufactured,
 25 distilled, rectified, bottled, or processed and that sold

1 more than 200,000 proof gallons of liquor nationwide in the
 2 calendar year preceding imposition of the tax pursuant to
 3 this section;

4 (b) 19.7% of the vendor base price on liquor sold and
 5 delivered in the state by a company that manufactured,
 6 distilled, rectified, bottled, or processed and that sold
 7 not more than 200,000 proof gallons of liquor nationwide in
 8 the calendar year preceding imposition of the tax pursuant
 9 to this section.

10 ~~(2)~~(3) The department shall retain the amount of the
 11 excise tax received in a separate account and shall, in
 12 accordance with the provisions of 15-1-501(6), deposit, to
 13 the credit of the general fund, the sums collected and
 14 received, not later than the 10th day of each month."

15 **Section 16.** Section 16-1-401, MCA, is amended to read:

16 **"16-1-401. Liquor excise tax.** (1) The department shall
 17 collect at the time of the sale and delivery of any liquor
 18 from the state liquor warehouse, as authorized under any
 19 provision of the laws of the state of Montana, an excise tax
 20 at the rate of:

21 (a) 16% 22.9% of the retail-selling vendor base price
 22 on all liquor sold and delivered in the state by a company
 23 that manufactured, distilled, rectified, bottled, or
 24 processed, and that sold more than 200,000 proof gallons of
 25 liquor nationwide in the calendar year preceding imposition

1 of the tax pursuant to this section;

2 (b) ~~13.0%~~ 19.7% of the ~~retail-selling~~ vendor base price
3 on all liquor sold and delivered in the state by a company
4 that manufactured, distilled, rectified, bottled, or
5 processed; and that sold not more than 200,000 proof gallons
6 of liquor nationwide in the calendar year preceding
7 imposition of the tax pursuant to this section.

8 (2) The department shall retain the amount of the
9 excise tax received in a separate account and shall, in
10 accordance with the provisions of 15-1-501(6), deposit; to
11 the credit of the general fund; the sums collected and
12 received, not later than the 10th day of each month."

13 **Section 17.** Section 16-1-402, MCA, is amended to read:

14 "16-1-402. Payment of excise tax by carriers. (1) Every
15 Each airline or railroad operating in the state of Montana
16 and selling liquor purchased outside this state for
17 consumption within this state shall pay to the department
18 the excise taxes and the state wholesale markup ~~which that~~
19 would be applicable to such the liquor if purchased from the
20 state liquor store warehouse.

21 (2) The amount of such excise taxes and state wholesale
22 markup payable ~~shall~~ must be determined by multiplying the
23 following factors:

24 (a) the average liquor used per departure;

25 (b) the number of departures from Montana on which

1 liquor is served;

2 (c) the ratio of Montana revenue passenger miles to
3 system revenue passenger miles; and

4 (d) the applicable excise tax and state wholesale
5 markup rates.

6 (3) ~~From--said--product;--the~~ The carrier shall subtract
7 the amount of excise taxes and state markup on purchases of
8 liquor made within this state from the product determined
9 under subsection (2)."

10 **Section 18.** Section 16-1-404, MCA, is amended to read:

11 "16-1-404. License tax on liquor -- amount --
12 distribution of proceeds. (1) The department shall collect
13 at the time of sale and delivery of any liquor from a state
14 liquor store between [the effective date of this section]
15 and November 30, 1994, under any provisions of the laws of
16 the state of Montana, a license tax of:

17 (a) 10% of the retail selling price on all liquor sold
18 and delivered in the state by a company that manufactured,
19 distilled, rectified, bottled, or processed; and that sold
20 more than 200,000 proof gallons of liquor nationwide in the
21 calendar year preceding imposition of the tax pursuant to
22 this section;

23 (b) 8.6% of the retail selling price on all liquor sold
24 and delivered in the state by a company that manufactured,
25 distilled, rectified, bottled, or processed; and that sold

1 not more than 200,000 proof gallons of liquor nationwide in
2 the calendar year preceding imposition of the tax pursuant
3 to this section.

4 (2) The department shall collect at the time of sale
5 and delivery of any liquor from the state liquor warehouse
6 after [the effective date of this section], under any
7 provisions' of the laws of the state of Montana, a license
8 tax of:

9 (a) 14.3% of the vendor base price on all liquor sold
10 and delivered in the state by a company that manufactured,
11 distilled, rectified, bottled, or processed and that sold
12 more than 200,000 proof gallons of liquor nationwide in the
13 calendar year preceding imposition of the tax pursuant to
14 this section;

15 (b) 12.3% of the vendor base price on all liquor sold
16 and delivered in the state by a company that manufactured,
17 distilled, rectified, bottled, or processed and that sold
18 not more than 200,000 proof gallons of liquor nationwide in
19 the calendar year preceding imposition of the tax pursuant
20 to this section.

21 (2)(3) The license tax must be charged and collected on
22 all liquor brought into the state and taxed by the
23 department. The retail selling price for sales from the
24 state liquor stores between [the effective date of this
25 section] and November 30, 1994, must be computed by adding

1 to the cost of the liquor the state markup as designated by
2 the department. The license tax must be figured in the same
3 manner as the state excise tax and is in addition to the
4 state excise tax. The department shall retain in a separate
5 account the amount of the license tax received. Thirty
6 percent of ~~these--revenues-are~~ this revenue is statutorily
7 appropriated, as provided in 17-7-502, to the department and
8 must, in accordance with the provisions of 15-1-501(6), be
9 allocated to the counties according to the amount of liquor
10 purchased in each county to be distributed to the
11 incorporated cities and towns, as provided in subsection ~~(3)~~
12 ~~(4)~~. Four and one-half percent of ~~these-revenues-are~~ this
13 revenue is statutorily appropriated, as provided in
14 17-7-502, and must, in accordance with the provisions of
15 15-1-501(6), be allocated to the counties according to the
16 amount of liquor purchased in each county, ~~and this. This~~
17 money may be used for county purposes. The remaining
18 ~~revenues~~ revenue must, in accordance with the provisions of
19 15-1-501(6), be deposited in the state special revenue fund
20 to the credit of the department of corrections and human
21 services for the treatment, rehabilitation, and prevention
22 of alcoholism. In the case of purchases of liquor by a
23 retail liquor licensee for use in the licensee's business,
24 the department shall make regulations as are necessary to
25 apportion that proportion of license tax ~~so-generated~~ to the

county where the licensed establishment premises is located, for use as provided in 16-1-405. That proportion of the license tax is statutorily appropriated, as provided in 17-7-502, to the department, which shall pay quarterly to each county treasurer the proportion of the license tax due each county, in accordance with the provisions of 15-1-501(6), to be allocated to the incorporated cities and towns of the county.

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

~~†4†~~(5) The license tax proceeds that are allocated to the department of corrections and human services for the treatment, rehabilitation, and prevention of alcoholism must be credited quarterly to the department of corrections and human services. The legislature may appropriate a portion of the license tax proceeds to support alcohol programs. The remainder must be distributed as provided in 53-24-206."

Section 19. Section 16-1-404, MCA, is amended to read:

"16-1-404. License tax on liquor -- amount --

distribution of proceeds. (1) The department shall collect at the time of sale and delivery of any liquor from the state liquor warehouse, under any provisions of the laws of the state of Montana, a license tax of:

(a) ~~10%~~ 14.3% of the retail-selling vendor base price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed, and that sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

(b) ~~8-6%~~ 12.3% of the retail-selling vendor base price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed, and that sold not more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.

(2) The license tax must be charged and collected on all liquor brought into the state and taxed by the department. ~~The--retail--selling--price--must--be--computed--by--adding--to--the--cost--of--the--liquor--the--state--markup--as--designated--by--the--department.~~ The license tax must be figured in the same manner as the state excise tax and is in addition to the state excise tax. The department shall retain in a separate account the amount of the license tax received. ~~Thirty percent of these revenues are~~ this revenue

1 is statutorily appropriated, as provided in 17-7-502, to the
 2 department and must, in accordance with the provisions of
 3 15-1-501(6), be allocated to the counties according to the
 4 amount of liquor purchased by all-beverages licensees in
 5 each county to be distributed to the incorporated cities and
 6 towns, as provided in subsection (3). Four and one-half
 7 percent of ~~these--revenues-are~~ this revenue is statutorily
 8 appropriated, as provided in 17-7-502, and must, in
 9 accordance with the provisions of 15-1-501(6), be allocated
 10 to the counties according to the amount of liquor purchased
 11 by all-beverages licensees in each county, ~~and this. This~~
 12 money may be used for county purposes. The remaining
 13 ~~revenues revenue~~ must, in accordance with the provisions of
 14 15-1-501(6), be deposited in the state special revenue fund
 15 to the credit of the department of corrections and human
 16 services for the treatment, rehabilitation, and prevention
 17 of alcoholism. In the case of purchases of liquor by a
 18 ~~retail--liquor~~ an all-beverages licensee for use in the
 19 licensee's business, the department shall make regulations
 20 as are necessary to apportion that proportion of license tax
 21 ~~so--generated~~ to the county where the licensed establishment
 22 premises is located, for use as provided in 16-1-405. That
 23 proportion of the license tax is statutorily appropriated,
 24 as provided in 17-7-502, to the department, which shall pay
 25 quarterly to each county treasurer the proportion of the

1 license tax due each county, in accordance with the
 2 provisions of 15-1-501(6), to be allocated to the
 3 incorporated cities and towns of the county.

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

14 (4) The license tax proceeds that are allocated to the
 15 department of corrections and human services for the
 16 treatment, rehabilitation, and prevention of alcoholism must
 17 be credited quarterly to the department of corrections and
 18 human services. The legislature may appropriate a portion of
 19 the license tax proceeds to support alcohol programs. The
 20 remainder must be distributed as provided in 53-24-206."

21 **Section 20.** Section 16-1-411, MCA, is amended to read:

22 "16-1-411. (Effective on receipt of taxes or fees for
 23 September 1993) Tax on wine. (1) A tax of 27 cents per liter
 24 is imposed on table wine imported by a table wine
 25 distributor ~~or-the-department.~~

(2) ~~{a}~~ The tax on table wine imported by a table wine distributor must be paid by the table wine distributor by the 15th day of the month following sale of the table wine from the table wine distributor's warehouse. Failure to file a table wine tax return or failure to pay the tax required by this section subjects the table wine distributor to the penalties and interest provided for in 16-1-409.

~~{b}--The--tax--on--table--wine--imported--by--the--department must-be-collected-at-the-time-of-sale.~~

(3) The tax paid by a table wine distributor in accordance with subsection (2)~~{a}~~~~-and-the-tax--collected--by the-department-in-accordance-with-subsection-(2){b}~~ must, in accordance with the provisions of 15-1-501(6), be distributed as follows:

(a) 16 cents to the state general fund; and

(b) of the remaining 11 cents:

(i) 8.34 cents to the state special revenue fund to the credit of the department of corrections and human services for the treatment, rehabilitation, and prevention of alcoholism;

(ii) 1 1/3 cents is statutorily appropriated, as provided in 17-7-502, to the department, for allocation to the counties, based on population, for the purpose established in 16-1-404; and

(iii) 1 1/3 cents is statutorily appropriated, as

provided in 17-7-502, to the department, for allocation to the cities and towns, based on population, for the purpose established in 16-1-405.

(4) The tax computed and paid in accordance with this section is the only tax imposed by the state or any of its subdivisions, including cities and towns.

(5) For purposes of this section, "based on population" means:

(a) for counties, the direct proportion that the population of each county bears to the total population of all counties as shown in the latest official federal census as adjusted by the most recent population estimates published by the U.S. bureau of the census, as provided in 16-1-410(2); and

(b) for cities, the distribution described in 16-1-410."

Section 21. Section 16-2-101, MCA, is amended to read:

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

(b) The department ~~shall~~ may not enter into an a new agency franchise agreement. Agreements existing on [the effective date of this section] continue in effect until November 30, 1994, unless sooner terminated under the terms of the agreement. Until November 30, 1994, the department may continue to or employ the necessary help to operate the stores and shall designate the duties to be performed by the an agent or employees employee.

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

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

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

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

(3) ~~(a) State liquor stores must be considered for closure, conversion, or sale only when a store lease expires. Prior to the expiration of a lease, the department may conduct a financial profitability analysis using the criteria in subsection (1)(c)(i) in computing profit levels of state-operated stores, the costs of the licensing bureau and the legal and enforcement division, other than~~

~~inspection costs directly attributable to liquor stores, may not be included as expenses. The revenue oversight committee must be informed of all plans for conversion, sale, or closure of state liquor stores.~~

~~(b) Agency stores may not be located in or adjacent to grocery stores in communities with populations over 3,000. This provision is applicable only to agency agreements entered into after May 11, 1987.~~

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

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

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

(5)(4) An agency franchise agreement must:

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

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

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

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

6 {e}{b} require the agent to provide performance
7 security in an amount equal to the average monthly value of
8 inventory at cost based on the most recent 12-month period
9 of inventory value at the agency store location or, if a
10 12-month history is not available, the department's estimate
11 of the average value; and

12 {d}{c} specify the reasonable service and space
13 requirements that the agent will provide throughout the term
14 of the agency franchise agreement.

15 {6}--The commission percentage that the department pays
16 the agent under an agency franchise agreement may be
17 reviewed every 5 years at the request of either party. If
18 the agent concurs, the department may adjust the commission
19 percentage to be paid during the remaining term of the
20 agency franchise agreement to a commission percentage that
21 is equal to the average commission percentage being paid
22 agents with similar sales volumes if:

23 {a}--the agent's commission percentage is less than the
24 average; and

25 {b}--all the requirements of the agency franchise

1 agreement have been satisfactorily performed;

2 {7}--The liability insurance and performance security
3 requirements may be reviewed every 5 years at the request of
4 either the agent or the department. If the agent concurs,
5 the department may adjust the requirements to be effective
6 during the remaining term of the agency franchise agreement
7 if the adjustments adequately protect the state from risks
8 associated with the loss of state assets or from the agent's
9 negligent acts or activities in the execution and
10 performance of the agency franchise agreement. The amount of
11 insurance coverage may not be less than the minimum
12 requirements of the department of administration.

13 {8}--{a} Except as provided in subsection {8}{b}, an
14 agency franchise agreement must be renewed for additional
15 10-year periods if the agent has satisfactorily performed
16 all the requirements of the agency franchise agreement.
17 Except for establishing the new term and except for a
18 commission percentage that may be negotiated as provided in
19 subsection {8}{b}, changes in the agency franchise agreement
20 as a result of a renewal may not be made unless the agent
21 and the department mutually agree.

22 {b}--If at least 90 days prior to the expiration of a
23 10-year agency franchise agreement, the department
24 determines that an adjustment of the commission percentage
25 paid to the agent is in the best interests of the state, the

department shall notify the agent of that determination.

(c) If the agent does not concur with the department's commission percentage adjustment, the department shall advertise for bids for the agency franchise at the adjusted commission percentage, subject to the provisions of this chapter. If bids from persons who meet the criteria provided in this chapter are received by the department for the agency franchise at the adjusted commission percentage, the agent under the existing franchise agreement has a preference right to renew the franchise agreement by concurring in the adjusted commission percentage.

(d) If the agent under the existing franchise agreement declines to exercise the preference right under subsection (b)(c), the department shall enter into an agency franchise agreement as provided in this chapter with a person who accepted the adjusted commission percentage.

(e) If the agent exercises the preference right and believes the adjusted commission percentage to be inadequate or not in the best interests of the state, the agent may request an administrative hearing. The request must contain a statement of reasons why the agent believes the commission percentage to be inadequate or not in the state's best interests. The department shall grant the request for a hearing if it determines that the statement indicates evidence that the adjusted commission percentage is

inadequate or not in the state's best interests. The department may, after the hearing, adjust the commission percentage if the agent shows that the commission percentage is inadequate or not in the best interests of the state. If the department increases the commission percentage rate, the department shall set forth its findings and conclusions in writing and inform the agent and the other persons who offered to enter into an agency agreement at the adjusted commission rate.

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

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

(b) If an agent is suspected of theft or unauthorized use of state assets, the department may terminate the agency franchise agreement and retrieve its assets immediately. If

an agency franchise agreement is terminated, the agent may contest the agency franchise agreement termination and request a hearing within 30 days of the department's retrieval of assets. The agency store ~~shall~~ must remain closed until a final decision has been reached following a hearing held pursuant to the Montana Administrative Procedure Act.

~~(10)~~(6) An agency franchise agreement may be terminated upon mutual agreement by the agent and the department.

~~(11)~~(7) An agent may assign an agency franchise agreement to a person who, upon approval of the department, is named agent in the agency franchise agreement, ~~with and~~ who has the rights, privileges, and responsibilities of the original agent for the remaining term of the agency franchise agreement. The agent shall notify the department of an intent to assign the agency franchise agreement 60 days before the intended effective date of the assignment. The department may not unreasonably withhold approval of an assignment request.

~~(12)~~(8) An agency agreement in effect on March 30, 1993, must be converted upon request of the agent and approval of the department to ~~a 10-year~~ an agency franchise agreement pursuant to subsections ~~(5)~~ (4) through ~~(11)~~ (7), without competitive bids or proposals. The new agency franchise agreement terminates on November 30, 1994.

~~(13)~~(9) The department shall:

(a) maintain sufficient inventory in the state liquor warehouse in order to meet a monthly service level of at least 97%;

(b) ship orders to a licensed premises at least weekly if the premises are located in or within 5 miles of an incorporated community and at least once every 2 weeks to a licensed premises located elsewhere; and

(c) require a licensee to order at least three cases before a shipment is made. The shipment may include cases of mixed bottles of different types of beverages repacked at the state liquor warehouse. In addition to the wholesale price, a licensee must be charged for the costs of repacking. The charge may not exceed the costs of repacking. Licensees may pool their orders to meet the minimum shipment requirement. One licensee must be designated to receive the shipment. The designated licensee is liable to the state liquor warehouse for the entire cost of the shipment and shall prepare the invoices required by 16-2-103 for the other licensees' parts of the shipment."

Section 22. Section 16-2-101, MCA, is amended to read:

"16-2-101. Establishment and--closure of state liquor stores---agency-franchise-agreement warehouse -- kinds and prices of liquor and--table--wine. (1) (a) The department shall establish and maintain one-or-more-stores--to-be-known

1 as "state liquor stores", as the department finds feasible a
2 state liquor warehouse for the sale of liquor and table wine
3 in accordance with the provisions of this code and the rules
4 adopted under this code.

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

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

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

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

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

19 (3) (a) State liquor stores must be considered for
20 closure, conversion, or sale only when a store lease
21 expires. Prior to the expiration of a lease, the department
22 may conduct a financial profitability analysis using the
23 criteria in subsection (1)(c)(i) in computing profit levels
24 of state-operated stores, the costs of the licensing bureau
25 and the legal and enforcement division, other than

1 inspection costs directly attributable to liquor stores, may
2 not be included as expenses. The revenue oversight committee
3 must be informed of all plans for conversion, sale, or
4 closure of state liquor stores.

5 (b) Agency stores may not be located in or adjacent to
6 grocery stores in communities with populations over 3,000.
7 This provision is applicable only to agency agreements
8 entered into after May 11, 1987.

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

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

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

15 (5) An agency franchise agreement must:

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

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

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

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

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

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

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

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

(b) all the requirements of the agency franchise

agreement have been satisfactorily performed;

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

(8) (a) Except as provided in subsection (8)(b), an agency franchise agreement must be renewed for additional 10-year periods if the agent has satisfactorily performed all the requirements of the agency franchise agreement. Except for establishing the new term and except for a commission percentage that may be negotiated as provided in subsection (8)(b), changes in the agency franchise agreement as a result of a renewal may not be made unless the agent and the department mutually agree;

(b) If at least 90 days prior to the expiration of a 10-year agency franchise agreement, the department determines that an adjustment of the commission percentage paid to the agent is in the best interests of the state, the

department shall notify the agent of that determination.

(c) If the agent does not concur with the department's commission percentage adjustment, the department shall advertise for bids for the agency franchise at the adjusted commission percentage, subject to the provisions of this chapter. If bids from persons who meet the criteria provided in this chapter are received by the department for the agency franchise at the adjusted commission percentage, the agent under the existing franchise agreement has a preference right to renew the franchise agreement by concurring in the adjusted commission percentage.

(d) If the agent under the existing franchise agreement declines to exercise the preference right under subsection (b)(c), the department shall enter into an agency franchise agreement as provided in this chapter with a person who accepted the adjusted commission percentage.

(e) If the agent exercises the preference right and believes the adjusted commission percentage to be inadequate or not in the best interests of the state, the agent may request an administrative hearing. The request must contain a statement of reasons why the agent believes the commission percentage to be inadequate or not in the state's best interests. The department shall grant the request for a hearing if it determines that the statement indicates evidence that the adjusted commission percentage is

inadequate or not in the state's best interests. The department may, after the hearing, adjust the commission percentage if the agent shows that the commission percentage is inadequate or not in the best interests of the state. If the department increases the commission percentage rate, the department shall set forth its findings and conclusions in writing and inform the agent and the other persons who offered to enter into an agency agreement at the adjusted commission rate.

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

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

(b) If an agent is suspected of theft or unauthorized use of state assets, the department may terminate the agency franchise agreement and retrieve its assets immediately if

an agency franchise agreement is terminated, the agent may contest the agency franchise agreement termination and request a hearing within 30 days of the department's retrieval of assets. The agency store shall remain closed until a final decision has been reached following a hearing held pursuant to the Montana Administrative Procedure Act.

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

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

(12) An agency agreement in effect on March 30, 1993, must be converted upon request of the agent and approval of the department to a 10-year agency franchise agreement pursuant to subsections (5) through (11) without competitive bids or proposals.

(13)(3) The department shall:

(a) maintain sufficient inventory in the state liquor warehouse in order to meet a monthly service level of at

least 97%;

(b) ship orders to a licensed premises at least weekly if the premises are located in or within 5 miles of an incorporated community and at least once every 2 weeks to a licensed premises located elsewhere; and

(c) require a licensee to order at least three cases before a shipment is made. The shipment may include cases of mixed bottles of different types of beverages repacked at the state liquor warehouse. In addition to the wholesale price, a licensee must be charged for the costs of repacking. The charge may not exceed the costs of repacking. Licensees may pool their orders to meet the minimum shipment requirement. One licensee must be designated to receive the shipment. The designated licensee is liable to the state liquor warehouse for the entire cost of the shipment and shall prepare the invoices required by 16-2-103 for the other licensees' parts of the shipment."

Section 23. Section 16-2-103, MCA, is amended to read:

"16-2-103. Duplicate---invoices invoices of sales required. (1) (a) The A state liquor store, the state liquor warehouse, and an all-beverages licensee shall, upon each sale of liquor or table wine to any a licensee, issue a duplicate an invoice of the liquor or table wine purchased, as provided by the department, a copy of which shall must be delivered to the licensee and one copy retained at such the

1 store, warehouse, or all-beverages licensee's premises for 3
 2 years. The invoice may be inspected by an authorized agent
 3 of the department.

4 (b) An all-beverages licensee shall make out a
 5 triplicate invoice on a form provided by the department for
 6 each sale of liquor to a licensee, retain a copy at the
 7 all-beverages licensee's premises for 3 years, and give the
 8 purchaser and the department a copy. The department's copy
 9 must be sent by the end of the 10th day of the month that
 10 begins after the sale. The all-beverages licensee's copy may
 11 be inspected by an authorized agent of the department. The
 12 department may use the invoices to determine the proper
 13 distribution of liquor taxes.

14 (2) The invoice ~~shall~~ must show the date of purchase,
 15 the name of the employee making the sale, the quantity of
 16 each kind of liquor or table wine purchased, the price paid
 17 therefor, the name of the licensee purchaser, and the number
 18 of the purchaser's license, with such other information as
 19 may-be required by the department.

20 (3) The licensee-shall purchaser shall keep and--retain
 21 his duplicate the purchaser's copy of the invoice of-all
 22 purchases-made-by-him-from-the--state--liquor--store7--which
 23 shall--at--all--times--be--subject-to-inspection-by-the-duty
 24 authorized-officers7-agents7-and-employees for 3 years, and
 25 the invoice may be inspected by an agent of the department."

1 **Section 24.** Section 16-2-103, MCA, is amended to read:

2 "16-2-103. ~~Duplicate---invoices~~ Invoices of sales
 3 required. (1) (a) The state liquor store warehouse shall,
 4 upon each sale of liquor or--table--wine to any licensee,
 5 issue a--duplicate an invoice of the liquor or-table-wine
 6 purchased, as provided by the department, a copy of which
 7 shall must be delivered to the licensee and one copy
 8 retained at ~~such-store~~ the warehouse for 3 years.

9 (b) An all-beverages licensee shall make out a
 10 triplicate invoice on a form provided by the department for
 11 each sale of liquor to a licensee, retain a copy at the
 12 all-beverages licensee's premises for 3 years, and give the
 13 purchaser and the department a copy. The department's copy
 14 must be sent by the end of the 10th day of the month that
 15 begins after the sale. The all-beverages licensee's copy may
 16 be inspected by an authorized agent of the department. The
 17 department may use the invoices to determine the proper
 18 distribution of liquor taxes.

19 (2) The invoice ~~shall~~ must show the date of purchase,
 20 the name of the employee making the sale, the quantity of
 21 each kind of liquor or-table-wine purchased, the price paid
 22 therefor, the name of the licensee purchaser, and the number
 23 of the purchaser's license, with such other information as
 24 may-be required by the department.

25 (3) The licensee-shall purchaser shall keep and--retain

1 his duplicate the purchaser's copy of the invoice of all
 2 purchases made by him from the state liquor store, which
 3 shall at all times be subject to inspection by the duly
 4 authorized officers, agents, and employees for 3 years, and
 5 the invoice may be inspected by an agent of the department."

6 **Section 25.** Section 16-2-108, MCA, is amended to read:

7 "16-2-108. Disposition of money received. All money
 8 received from the sale of liquor and table wine at the state
 9 liquor stores and the state liquor warehouse must be
 10 deposited in the enterprise fund in the state treasury to
 11 the credit of the department. The department may purchase
 12 liquor and table wine from money deposited to its account in
 13 the enterprise fund. The department shall pay from its
 14 account in the enterprise fund its administrative expenses,
 15 subject to the limits imposed by legislative appropriation.
 16 No An obligation created or incurred by the department may
 17 be is not a debt or claim against the state of Montana but
 18 must be payable by the department solely from funds derived
 19 from the operation of state liquor stores and the state
 20 liquor warehouse. The department shall pay into the state
 21 treasury to the credit of the enterprise fund the receipts
 22 from all taxes and license and permit fees collected by it.
 23 Taxes, license and permit fees, and the net proceeds from
 24 the operation of state liquor stores and the state liquor
 25 warehouse must be transferred to the general fund."

1 **Section 26.** Section 16-2-108, MCA, is amended to read:

2 "16-2-108. Disposition of money received. All money
 3 received from the sale of liquor and table wine at the state
 4 liquor stores warehouse must be deposited in the enterprise
 5 fund in the state treasury to the credit of the department.
 6 The department may purchase liquor and table wine from money
 7 deposited to its account in the enterprise fund. The
 8 department shall pay from its account in the enterprise fund
 9 its administrative expenses, subject to the limits imposed
 10 by legislative appropriation. No An obligation created or
 11 incurred by the department may be is not a debt or claim
 12 against the state of Montana but must be payable by the
 13 department solely from funds derived from the operation of
 14 the state liquor stores warehouse. The department shall pay
 15 into the state treasury to the credit of the enterprise fund
 16 the receipts from all taxes and license and permit fees
 17 collected by it. Taxes, license and permit fees, and the net
 18 proceeds from the operation of the state liquor stores
 19 warehouse must be transferred to the general fund."

20 **Section 27.** Section 16-2-203, MCA, is amended to read:

21 "16-2-203. Department sales Sales to licensees. (1) The
 22 department may sell through its stores and through the state
 23 liquor warehouse to licensees licensed under this code all
 24 kinds of liquor and table wine at the posted price thereof
 25 in the state liquor warehouse or in the store in which the

1 liquor and table wine are sold. An all-beverages licensee
 2 may sell liquor and table wine to a licensee licensed under
 3 this code.

4 (2) All-sales-shall-be-upon-a-cash-basis Each purchase
 5 must be paid for in cash, or by a check signed on the
 6 check's stated date, at the time of the sale or within 14
 7 days of delivery of the liquor or wine."

8 **Section 28.** Section 16-2-203, MCA, is amended to read:

9 "16-2-203. Department sales to licensees. (1) The
 10 department may sell through its--stores the state liquor
 11 warehouse to licensees---licensed--under--this--code an
 12 all-beverages licensee all kinds of liquor and-table-wine at
 13 the posted wholesale price thereof-in-the-store-in-which-the
 14 liquor-and-table-wine-are-sold.

15 (2) All-sales-shall-be-upon-a-cash-basis Each purchase
 16 must be paid for in cash, or by a check signed on the
 17 check's stated date, at the time of the sale or within 14
 18 days of delivery of the liquor."

19 **Section 29.** Section 16-3-106, MCA, is amended to read:

20 "16-3-106. Conveyance of liquors, table wines, and beer
 21 -- opening alcoholic beverages during transit forbidden. (1)
 22 It shall--be is lawful to carry or convey liquor or-table
 23 wine-to-any-state-store-and to and from any the state liquor
 24 warehouse or-depot-established-by--the--department--for--the
 25 purposes--of-this-code,-and-when, When permitted to do so by

1 this code and the rules ~~made-thereunder--and--in--accordance~~
 2 ~~therewith,-it-shall-be~~ adopted under this code, it is lawful
 3 for any common carrier or other person to carry or convey
 4 liquor or-table-wine sold by a-vendor the department from a
 5 the state store liquor warehouse or beer, when lawfully sold
 6 by a brewer, from the premises wherein-such on which the
 7 beer was manufactured or from premises where on which the
 8 beer may be lawfully kept and sold or wine from premises on
 9 which it may be lawfully made, kept, or sold to any place to
 10 which the same may be lawfully delivered under this code and
 11 the rules ~~made-thereunder~~ adopted under this code.

12 (2) No A common carrier or any other person shall may
 13 not open, break, or allow to be opened or broken any package
 14 or vessel containing an alcoholic beverage or drink or use
 15 or allow to be drunk or used any alcoholic beverage
 16 therefrom from a package or vessel while being carried or
 17 conveyed."

18 **Section 30.** Section 16-3-307, MCA, is amended to read:

19 "16-3-307. Sale Resale of liquor at for less than
 20 posted purchase price unlawful. It shall-be is unlawful for
 21 any a licensee under the provisions of this code to resell
 22 any liquor purchased by such the licensee from a state
 23 liquor store, the state liquor warehouse, or another
 24 licensee or-the-state-of-Montana for a sum less than the
 25 posted price established--by--the--store--and paid by the

licensee therefor for the liquor."

Section 31. Section 16-3-307, MCA, is amended to read:

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

Section 32. Section 16-3-311, MCA, is amended to read:

"16-3-311. Suitable premises for licensed retail establishments. (1) (a) Except as provided in subsection (1)(b), A a licensed retailer may use a part of a building as premises licensed for on-premises consumption of alcoholic beverages. The premises must be separated from the rest of the building by permanent walls but may have inside access during lawful hours of operation to the rest of the building even if the businesses or uses in the other part of the building are unrelated to the operation of the premises in which the alcoholic beverages are served, except that there may not be inside access through a common wall separating a food market from the part of the building used as premises licensed for on-premises consumption of alcoholic beverages.

(b) Premises licensed for on-premises consumption of alcoholic beverages may not be located within a food market, in a building that would have only a food market in it in addition to the part of the building occupied by the licensed premises, or in a building attached to only one other building if the other building is a food market. If the licensed premises is in a building that is attached to two or more buildings and an adjoining building is a food market or if a part of an adjoining building that is immediately adjacent to the licensed premises is used for a food market, there may not be inside access between those two buildings.

(c) For purposes of this subsection (1), "food market" means a business that sells at wholesale or retail either fresh dairy products, fresh or frozen meat, fresh or frozen produce, canned foods, or other prepackaged foods. It does not include a business whose only sales of edibles are of nonalcoholic beverages and snacks.

(2) An all-beverages licensee who in any way advertises or holds the premises out as selling liquor for off-premises consumption shall separate the part of the premises licensed for on-premises consumption from the part of the premises used for off-premises sales:

(a) by one or more permanent walls that do not permit access between the two areas by the public; or

(b) if no more than eight cases of liquor are sold for off-premises consumption in any month and the licensee also uses the liquor kept for off-premises sales to replenish liquor used for on-premises consumption sales, by use of a storage area that is not accessible to the public or by storage on shelves, a counter, or a bar behind, at the end of, or otherwise immediately adjacent to a bar or counter from which on-premises consumption sales are made.

~~(2)~~(3) A licensee whose premises did not meet the requirements of this section on September 24, 1992, shall meet the requirements when an alteration to the premises has been completed and the department has approved the alteration. An alteration is any structural change in a premises. A cosmetic change, such as painting, carpeting, or other interior decorating, is not considered an alteration under this section."

Section 33. Section 16-3-401, MCA, is amended to read:

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

(2) The public policy of the state of Montana is to ~~maintain-a-system-for-the-importation-and-sale-of-table-wine by--the--state--through--state-liquor-facilities-and-provide~~ for, regulate, and control the acquisition, importation, and distribution of table wine by licensed table wine distributors ~~and-the-state.~~

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

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

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

Section 34. Section 16-3-403, MCA, is amended to read:

"16-3-403. To whom table wine distributor may sell. (1) A table wine distributor may sell and deliver table wine purchased or acquired by ~~him~~ the distributor to:

~~(a)~~ another table wine distributor, a retailer, or a common carrier ~~which~~ that holds a any necessary license issued by the department ~~of-revenue;~~

~~(b)--the-department--and~~

~~(c)--a-commission-agent-of-the-department.~~

(2) It ~~shall-be~~ is unlawful for ~~any~~ a table wine distributor to sell, deliver, or give away ~~any~~ table wine to be consumed on ~~such~~ the distributor's premises or to give, sell, deliver, or distribute ~~any~~ table wine purchased or

1 acquired by him the distributor to the public."

2 **Section 35.** Section 16-3-411, MCA, is amended to read:

3 **"16-3-411. Domestic winery.** A winery located in Montana
4 and registered pursuant to 16-4-107 may:

5 (1) import in bulk, bottle, produce, blend, store,
6 transport, or export wine it produces;

7 (2) sell wine it produces at wholesale to the
8 ~~department-or-to~~ wine distributors;

9 (3) sell wine it produces at retail at the winery
10 directly to the consumer for consumption on or off the
11 premises;

12 (4) provide, without charge, wine it produces for
13 consumption at the winery;

14 (5) purchase from the department or its licensees
15 brandy or other distilled spirits for fortifying wine it
16 produces; or

17 (6) obtain a special event permit under 16-4-301."

18 **Section 36.** Section 16-6-107, MCA, is amended to read:

19 **"16-6-107. Disposal of forfeited alcoholic beverages --**
20 **report.** (1) If a court or hearing examiner orders the
21 forfeiture of alcoholic beverages under this code or if a
22 claimant to an alcoholic beverage under 16-6-105 or 16-6-106
23 fails to establish the claimant's right to the alcoholic
24 beverage, the alcoholic beverage in question and the
25 packages in which the alcoholic beverage is kept must be

1 delivered to the department. The department shall determine
2 the market value of each forfeited alcoholic beverage found
3 to be suitable for sale in the state liquor ~~stores~~ warehouse
4 and shall pay the amount determined to the state treasurer
5 after deducting any expenses incurred by the department for
6 transporting the forfeited alcoholic beverage to the state
7 liquor warehouse. The alcoholic beverage suitable for sale
8 in a the state liquor ~~store~~ warehouse must be taken into
9 stock by the department and sold under the provisions of
10 this code. All alcoholic beverages found to be unsuitable
11 for sale in the state liquor ~~stores~~ warehouse must be
12 destroyed by the department.

13 (2) If an alcoholic beverage is seized by a peace
14 officer, the officer shall report to the department in
15 writing the particulars of the seizure."

16 **Section 37.** Section 16-6-303, MCA, is amended to read:

17 **"16-6-303. Sale of liquor not purchased from state**
18 **liquor store or state liquor warehouse forbidden -- penalty.**
19 It is unlawful for any a licensee to sell or keep for sale
20 or have on his the licensee's premises ~~for-any-purpose~~
21 ~~whatever~~ any liquor except that purchased from the a state
22 liquor store or the state liquor warehouse, and any a
23 licensee found in possession of or selling and keeping for
24 sale any liquor which that was not purchased from a state
25 liquor store or the state liquor warehouse shall, upon

conviction, be punished by a fine of not less than \$500 or more than \$1,500, by imprisonment for not less than 3 months or more than 1 year, or by both ~~such-fine-and--imprisonment~~. If the department is satisfied that ~~any-such~~ the liquor was knowingly sold or kept for sale within the licensed premises by the licensee or by ~~his~~ the licensee's agents, servants, or employees, the department shall immediately revoke the license."

Section 38. Section 16-6-303, MCA, is amended to read:

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

Section 39. Section 16-6-304, MCA, is amended to read:

"16-6-304. Providing alcoholic beverage to intoxicated person prohibited. (1) ~~No-store-manager,~~ A retail licensee ~~or any employee of a store-manager-or~~ retail licensee may ~~not~~ sell ~~any an~~ alcoholic beverage or permit ~~any an~~ alcoholic beverage to be sold to any person apparently under the influence of an alcoholic beverage.

(2) ~~No~~ A person may ~~not~~ give an alcoholic beverage to a person apparently under the influence of alcohol."

Section 40. Section 18-4-313, MCA, is amended to read:

"18-4-313. Contracts -- terms, extensions, and time limits. (1) Unless otherwise provided by law, a contract, lease, or rental agreement for supplies or services may not be made for a longer period than 3 years; however, the department may contract for the lease or purchase of telecommunications equipment and systems, data processing equipment, ~~the-department-of-revenue--liquor--agencies,~~ and the department of social and rehabilitation services medicaid management information system (MMIS) for a period not to exceed 10 years. A contract, lease, or rental agreement may be extended or renewed, notwithstanding the time limits stated in this section, if the terms of the extension or renewal, if any, are included in the solicitation and funds are available for the first fiscal period at the time of the agreement. Payment and performance

obligations for succeeding fiscal periods are subject to the availability and appropriation of funds for the fiscal periods.

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

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

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

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

Section 41. The first narrative paragraph on page 2608, section 15, Chapter 623, Laws of 1993, is amended to read:

"Liquor division proprietary funds necessary to maintain adequate inventories of liquor and wine and to operate the state liquor operation are appropriated in amounts not to exceed \$50,662,000 in fiscal 1994 and \$52,765,000 in fiscal 1995. Unused amounts must be transferred to the general fund at the end of the biennium. During the 1995 biennium, the division shall attempt to return at least 10% of net sales. Net sales are gross sales less discounts and all taxes collected. The Prior to December 1, 1994, the division shall limit operational expenses of the liquor merchandising

system to not more than 15% of the net sales. Operational expenses may not include product costs, freight charges, expenses allocable to other divisions, or licensing bureau expenses. After November 30, 1994, the liquor division may no longer expend funds from the liquor enterprise fund for the operation or maintenance of state liquor stores other than for termination costs as provided in [sections 1 through 4 of LC 106]. After November 30, 1994, the limit on operational expenses, other than those allowed for termination costs as provided in [sections 1 through 4 of LC 106], is 6% of the total cost of goods sold after November 30, 1994, less freight to licensees."

NEW SECTION. Section 42. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 16, chapter 2, part 1, and the provisions of Title 16 apply to [sections 1 through 4].

NEW SECTION. Section 43. Repealer. Sections 16-2-104, 16-2-105, 16-2-106, 16-2-107, 16-2-201, 16-2-301, 16-2-302, and 16-2-303, MCA, are repealed.

NEW SECTION. Section 44. Effective dates. (1) [Sections 1 through 4, 7, 11, 13, 15, 17, 18, 21, 23, 25, 27, 30, 37, 41, 42, and 45 and this section] are effective on passage and approval.

(2) [Section 32] is effective November 15, 1994.

(3) [Sections 5, 6, 8 through 10, 12, 14, 16, 19, 20,

LC 0106/01

1 22, 24, 26, 28, 29, 31, 33 through 36, 38 through 40, and
2 43] are effective November 30, 1994.

3 NEW SECTION. **Section 45. Termination.** [Sections 7, 11,
4 13, 15, 18, 21, 23, 25, 27, 30, and 37] terminate November
5 30, 1994.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0041, as introduced.

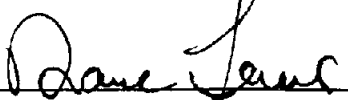
DESCRIPTION OF PROPOSED LEGISLATION:

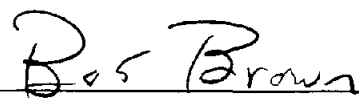
An act eliminating the authority of the Department of Revenue to establish and maintain state liquor stores after November 30, 1994; phasing out existing state liquor stores by November 30, 1994; eliminating the authority of the Department of Revenue to purchase and sell table wine; providing termination benefits for displaced Department of Revenue employees; establishing requirements for orders to and shipments from the state liquor warehouse; allowing for the sale of liquor between retail all-beverage licensees; limiting access to areas used for on-premises consumption; eliminating the authority for the Department to contract for services in excess of three years; generally revising liquor regulations; and providing effective dates and a termination date.

ASSUMPTIONS:

1. The volume of liquor sold will be no different under the proposed legislation than under current law.
2. The volume of liquor sold by state liquor stores will shift to existing retail liquor licensees.
3. The transition from distribution of liquor through state liquor stores to the wholesale distribution of liquor direct to retail liquor licensees will occur within a 6 week period beginning October 15, 1994; the proposed legislation will not affect expenditure or revenue estimates for FY 1994.
4. Operating expenses in FY 1995 will not be affected by the proposed legislation during the first 5 months of the year.
5. During the final 7 months of FY 1995, operating expenses will have the same relative distribution among responsibility centers and objects of expenditure as existed in FY 1992, except where expenses will be reduced due to the closure of state liquor stores, increased for additional warehouse/order processing staff due to direct shipment to licensees and closeout costs for employees/leases and agents.
6. The net reduction in FTE will be 57, a reduction in force of 84 existing positions and an addition of 27 new positions.
7. The wholesale price of liquor during the final 7 months of FY 1995 will be 4% lower than the current retail price due to the 47% net reduction in expenses (operating costs and freight to local outlets), and a 15% increase in profit.
8. Licensees will pay an average of 20 cents a bottle to repack mixed cases on 9% of total volume shipped.
9. The wholesale markup as a percent of cost of goods F.O.B. state warehouse (28.6%), will yield the wholesale operating costs and the same level of profit and distributions to other entities as for FY 1992.
10. The wholesale excise tax as a percent of cost of goods F.O.B. state warehouse (22.9%), will yield the same annual amount of excise tax as does the current retail excise tax as a percent of the cost of goods F.O.B. state stores plus retail markup (16%).
11. The wholesale license tax as a percent of cost of goods F.O.B. state warehouse (14.3%), will yield the same annual amount of license tax as does the current retail license tax as a percent of the cost of goods F.O.B. state stores plus retail markup (10%).
13. Wine and beer taxes will be the same under both current law and the proposed law.

(continued on next page)

 12-8
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


ROBERT "BOB" BROWN, PRIMARY SPONSOR DATE
Fiscal Note for SB0041, as introduced

SB 41

ASSUMPTIONS: (continued)

14. The value of inventory at cost (\$5 million) in state liquor stores will be transferred to the general fund after expenditure of close-out costs for terminating employees, agents, leases and loss on inventory (\$1.5 million) by June 30, 1995; the net to be transferred will be \$3.5 million.
15. Liquor licensing fees for FY 1994 and 1995 will be the same as for FY 1992, and are deposited in the general fund.
16. Projected other income under current law will be \$16,000 for both FY 1994 and 1995 along with the proposed law for FY 1994 (it was \$15,404 for FY 1993); projected other income for FY 1995 will be \$55,000, reflecting an average of 20 cents per bottle surcharge for repacking mixed cases.
17. Projected current law Liquor Division sales (net of taxes and discounts) will be \$40,168,000 and \$41,491,000 for FY 1994 and 1995, respectively (LFA).
18. Liquor profit transfers are deposited in the general fund.
19. Liquor excise tax receipts are deposited in the general fund.
20. Liquor license taxes are distributed 34.5% to local governments, and 65.5% to the Dept. of Corrections and Human Services.
21. Wine taxes are distributed 59.26% to the general fund, 9.85% to local governments, and 30.89% to the Dept. of Corrections and Human Services; beer taxes are distributed 41.86% to the general fund, 34.88% to local governments, and 23.26% to the Department of Corrections and Human Services.

FISCAL IMPACT:

Expenditures:

<u>Liquor Enterprise</u>	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	100.00	100.00	0.00	100.00	43.00 ¹	57.00
Personal Services	2,714,000	2,714,000	0	2,723,000	1,906,000	(817,000)
Operating Expenses	3,058,000	3,058,000	0	3,073,000	1,597,000	(1,476,000)
Merchandise	28,354,000	28,354,000	0	29,282,000	29,282,000	0
Freight	475,000	475,000	0	496,000	1,251,000	755,000
Other DoR/DoJ Approps	1,378,000	1,378,000	0	1,346,000	1,346,000	0
Distributed to Other Accts.	6,406,000	6,406,000	0	6,538,000	6,538,000	0
Close-Out Costs	0	0	0	0	1,500,000	1,500,000
Total	42,385,000	42,385,000	0	43,458,000	43,420,000	(38,000)

(continued on next page)

FISCAL IMPACT: (continued)

<u>Revenues:</u>	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Net Sales	40,168,000	40,168,000	0	41,491,000	40,483,000	(1,008,000)
Liquor Excise Tax	6,425,000	6,425,000	0	6,638,000	6,638,000	0
Liquor License Tax	4,016,000	4,016,000	0	4,148,000	4,148,000	0
Liquor Licensing Fees	1,553,000	1,553,000	0	1,553,000	1,553,000	0
Wine Tax	1,239,000	1,239,000	0	1,215,000	1,215,000	0
Beer License Tax	3,243,000	3,243,000	0	3,259,000	3,259,000	0
Other Income	16,000	16,000	0	16,000	55,000	39,000
Liquor Asset Liquidation	0	0	0	0	5,000,000	5,000,000
Total	56,660,000	56,660,000	0	58,320,000	62,351,000	4,031,000
<u>Net Impact:</u>						
Transfer to General Fund	14,275,000	14,275,000	0	14,862,000	18,931,000	4,069,000

LONG RANGE EFFECTS OF PROPOSED LEGISLATION:

The proposed legislation will result in an additional \$875,000 in liquor enterprise profits being transferred to the general fund per year in subsequent biennia.