

1 Felan & Foster House BILL NO. 574 Curtiss HARP Haywood

2 INTRODUCED BY Rehbein Miller Grinds Eder Masolo Holland

3 Wm E Boharski; Foster Knox Long ORR Target Fish

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LIQUOR LAWS; PROVIDING FOR THE Jaylov Vick Hayne M. Hanson Sizer Ols Mercer Gortchak

5 CONVERSION OF EMPLOYEE-OPERATED STATE LIQUOR STORES TO AGENCY LIQUOR STORES; Ferkow Simpkins Cole Clark Stearns Gook Stovall

6 PROVIDING THAT ELIGIBLE STATE LIQUOR STORE EMPLOYEES HAVE A RIGHT OF FIRST REFUSAL IN
7 BECOMING AGENTS FOR THE CONVERTED STORES; PROVIDING FOR THE PURCHASE OF LIQUOR
8 ASSETS IN STORES BY THE AGENTS OPERATING THE STORES OVER AN 18-MONTH PERIOD;
9 PROHIBITING NEW AGENCY LIQUOR STORES FOR 4 YEARS IN CITIES OR TOWNS THAT HAD AN
10 AGENCY LIQUOR STORE IN 1994; PROVIDING FOR A STATE LIEN ON LIQUOR IN AGENCY LIQUOR
11 STORES; PROHIBITING A PERSON FROM HAVING AN OWNERSHIP INTEREST IN MORE THAN ONE
12 AGENCY LIQUOR STORE; PROHIBITING AN OWNERSHIP INTEREST IN AN AGENCY LIQUOR STORE BY
13 A PERSON HAVING ANOTHER TYPE OF LIQUOR LICENSE; PROVIDING FOR A BONUS PAYMENT FOR
14 CERTAIN STATE LIQUOR DIVISION EMPLOYEES WHO REMAIN IN EMPLOYMENT DURING THE
15 CONVERSION PROCESS; AMENDING LAWS RELATING TO TABLE WINE TO CLARIFY THE DISTRIBUTION
16 AND SALE OF TABLE WINE IN RELATION TO AGENCY LIQUOR STORES; PROVIDING FOR THE
17 CONTRACTUAL AND OTHER ADMINISTRATION OF AGENCY LIQUOR STORES; INCREASING THE CASE
18 DISCOUNT ON THE SALE OF LIQUOR TO 8 PERCENT AND LIMITING THE DISCOUNT TO ALCOHOLIC
19 BEVERAGE LICENSEES; PROVIDING THAT AGENCY STORES MAY BE OPEN ON MONDAYS IF A
20 MAJORITY OF THE ALL-BEVERAGES LICENSEES IN THE AGENCY'S MARKET AREA AGREE; AMENDING
21 SECTIONS 2-17-101, 16-1-103, 16-1-105, 16-1-106, 16-1-301, 16-1-302, 16-1-303, 16-1-304, 16-1-402,
22 16-2-101, 16-2-104, 16-2-105, 16-2-106, 16-2-107, 16-2-108, 16-2-201, 16-2-301, 16-3-103, 16-3-106,
23 16-3-307, 16-3-401, 16-3-402, 16-3-403, 16-3-411, 16-4-105, 16-4-401, 16-6-107, 16-6-303, 17-8-244,
24 AND 30-9-104, MCA; REPEALING SECTIONS 16-2-302 AND 16-2-303, MCA; AND PROVIDING EFFECTIVE
25 DATES."

26
27 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

28
29 NEW SECTION. Section 1. Eligible state employee. As used in [sections 1 through 8], "eligible
30 state employee" means a state employee who worked 544 hours either in an employee-operated state

1 liquor store as a liquor store manager, assistant manager, or clerk or in the central office of the liquor
2 division between July 1, 1994, and January 6, 1995, who is in a position subject to termination by
3 [sections 1 through 8]. For purposes of this section, the term "worked" includes all hours reported to the
4 central payroll system, such as but not limited to hours worked, sick leave, annual leave, and leave without
5 pay.

6

7 **NEW SECTION. Section 2. Purchase of initial inventory by existing state agent.** (1) As of June
8 30, 1995, the department of revenue shall calculate a closing statement showing the dollar amount of
9 inventory on hand for each agency liquor store in operation on that date. As soon as practical thereafter,
10 the department shall send to each agency liquor store a statement for the total price of the inventory,
11 payable in 16 even monthly payments. The price must be calculated in the same manner as the price for
12 liquor purchased by an agency liquor store under the provisions of 16-2-101. The first payment is due 60
13 days from the date on which the department mails the statement, and each subsequent payment is due on
14 the last day of the month for each month thereafter. At any time after payment of the first payment, an
15 agent who is purchasing the initial inventory may pay in full the amount due or may increase the amount
16 of each monthly payment. The payment of increased payments does not waive the making of a monthly
17 payment until the initial purchase price is fully paid.

18 (2) Any shortages due the state as of June 30, 1995, must be offset from the final commission
19 payment. If the shortage exceeds the calculated commission payment, the agent shall make payment
20 within 30 days of notice of the amount due.

21

22 **NEW SECTION. Section 3. Purchase of initial inventory and trade fixtures from former state liquor**
23 **store.** (1) After the selection of an agent pursuant to [section 6] who was an eligible state employee or
24 a business entity consisting of eligible state employees to operate an agency liquor store that is operating
25 as a state liquor store, the person or entity selected as agent and the department of revenue shall agree
26 upon a date of conversion from a state liquor store to an agency liquor store. The date must be between
27 July 1, 1995, and December 1, 1995. As of the day before the conversion date, the department shall
28 calculate a closing statement showing the dollar amount of inventory on hand and the dollar amount of any
29 trade fixtures that the agent chooses to purchase. As soon as practical thereafter, the department shall
30 send to the agency liquor store a statement for the total price of the inventory and trade fixtures, payable

1 in 16 even monthly payments. The price of liquor must be calculated in the same manner as the price for
2 liquor purchased by an agency liquor store under the provisions of 16-2-101. Trade fixtures must be valued
3 by the department as the amount, if any, in excess of the fixtures' depreciated value. The first payment
4 is due 60 days from the date on which the department mails the statement, and each subsequent payment
5 is due on the last day of the month for each month thereafter. At any time after payment of the first
6 payment, an agent may pay in full the amount due or may increase the amount of each monthly payment.
7 The payment of increased payments does not waive the making of a monthly payment until the initial
8 purchase price is fully paid.

9 (2) Any shortages due the state as of the date of conversion must be paid by the store manager
10 if the store manager becomes the liquor store agent or is a partner or shareholder in a business selected
11 as the liquor store agent. The manager shall make payment within 30 days of notice of the amount due.
12

13 **NEW SECTION. Section 4. Sales of returned liquor.** Any inventory owned by the state that is
14 located in either an agency liquor store or an employee-operated state liquor store prior to the operation
15 of either [section 2] or [section 3], which in the opinion of the department of revenue is not economically
16 feasible to be sold in agency liquor stores, may be returned to the state liquor warehouse. The department
17 may, between July 1, 1995, and June 30, 1996, dispose of this inventory in any commercially reasonable
18 manner, including but not limited to retail sales from the state liquor warehouse to retail licensees. After
19 the department has exhausted all attempts to commercially dispose of the inventory, the department may
20 dispose of it in any manner meeting its sound discretion.
21

22 **NEW SECTION. Section 5. Liquor store employees preference rights and bonus payment.** (1) Any
23 liquor store employee or liquor division central office employee who meets the requirements of an eligible
24 state employee who is terminated as a result of the operation of [sections 1 through 8] is eligible for a work
25 incentive bonus if the employee continues in employment through December 31, 1995. This bonus is in
26 addition to any reduction in force benefits or other benefits that the employee may be entitled to as a result
27 of termination under the provisions of [sections 1 through 8].

28 (a) The amount of the bonus must be computed by multiplying the eligible state employee's hourly
29 wage by 26.8%. The resulting product must be multiplied by 2,080 and that resulting product must be
30 multiplied by the quotient of the number of hours worked, not to exceed 1,088 hours, as an eligible state

1 employee between July 1, 1994, and January 6, 1995, divided by 1,088, which result is equal to the
2 employee's bonus.

3 (b) An employee is entitled to the full amount of the bonus if the employee's employment is
4 terminated by the department of revenue before December 31, 1995, because of the operation of [sections
5 1 through 8].

6 (2)(a) Notwithstanding any other provision of law, an employee of a state liquor store who meets
7 the requirements of an eligible state employee must be given the first right of refusal for selection of the
8 agent chosen to operate an agency liquor store.

9 (b) The department's selection criteria in order of priority for selecting an agent for
10 employee-operated state liquor stores to be converted to agency liquor stores are as follows:

11 (i) The applicant must be either an eligible state employee who is an employee of the store, a
12 partnership with a majority of the partners qualifying as eligible state employees and a majority of the
13 partners working as employees of the state liquor store, or a corporation with at least one shareholder who
14 is an eligible state employee and is an employee of the store.

15 (ii) If no applicant meets the requirements of subsection (2)(b)(i), the applicant must be either an
16 eligible state employee and an employee of another state liquor store in the same city or town, a partnership
17 with a majority of the partners qualifying as eligible state employees and employees of another state liquor
18 store in the same city or town, or a corporation with at least one shareholder who is an eligible state
19 employee and is an employee of another state liquor store in the same city or town.

20 (iii) If no applicant meets the requirements of subsection (2)(b)(i) or (2)(b)(ii), the state agent must
21 be selected by the methods required by the department of administration.

22 (3) All state liquor store employees and liquor division central office employees whose positions
23 are eliminated as a result of [sections 1 through 8] are entitled to all the benefits accorded by the State
24 Employee Protection Act in Title 2, chapter 18, part 12, as that part reads on the date on which the
25 employee leaves state employment.

26

27 **NEW SECTION. Section 6. Conversion of existing state-operated liquor stores.** (1)(a) Within 45
28 days of [the effective date of this section], an eligible state employee or a business entity consisting of
29 eligible state employees, as referred to in [section 5(2)(b)(i)], may file an application or applications to
30 operate as an agency liquor store the liquor store in which the employee or entity is employed or to operate

1 as an agency liquor store another liquor store in the same community in which the employee or entity is
2 employed.

3 (b) The application must set forth the nature of the entity applying for the agency franchise
4 agreement and the employee's or employees' preference rights, along with any other information that the
5 department of revenue requires.

6 (2)(a) If the employee or a business entity consisting of eligible state employees is the sole
7 applicant, the department shall enter into an agency franchise agreement with either the employee or the
8 business entity to operate the agency liquor store.

9 (b) If more than one eligible state employee or business entity consisting of eligible state employees
10 applies to be the agent for the liquor store in which the employee or entity works, the department shall use
11 the appropriate competitive bidding procedures to select the agent. However, no other person may be
12 allowed to apply.

13 (3) The initial commission rate for agency liquor stores to be operated by employees is the direct
14 operating expenses for a liquor store during fiscal year 1994 divided by the gross sales for fiscal year 1994,
15 not to exceed 10%. The initial commission rate may not be less than 10% for stores in communities with
16 less than 3,000 population. Any direct expense excluded by the 10% maximum rate must be proportionally
17 distributed among the remaining agency liquor stores.

18 (4) If after 45 days after [the effective date of this section] an eligible state employee or business
19 entity consisting of eligible state employees does not apply to operate the former state liquor store as an
20 agency liquor store, the department shall use the appropriate competitive bidding procedures to select the
21 agent.

22 (5) For purposes of this section, an eligible state employee is considered to be an employee of the
23 state liquor store in which the eligible employee worked a majority of the hours between July 1, 1994, and
24 January 6, 1995.

25 (6) Until converted to an agency liquor store, a state liquor store shall operate under the laws
26 governing the operation of state liquor stores as those laws read on January 1, 1995.

27

28 **NEW SECTION. Section 7. No new agency franchises for four years.** Notwithstanding the
29 provisions of [section 9], the department of revenue may not establish any new agency liquor stores until
30 after July 1, 1999, in any community that had at least one agency liquor store on July 1, 1994.

1 **NEW SECTION. Section 8. Exemption from privatization plan requirements.** [Sections 1 through
2 8] do not constitute privatization by an agency as that term is used in Title 2, chapter 8, part 3, and the
3 administration of [sections 1 through 8] by the department of revenue is not subject to the provisions of
4 Title 2, chapter 8, part 3.

5
6 **NEW SECTION. Section 9. Number and location of agency liquor stores.** (1)(a) In a community with
7 a population of 12,000 or less, there may be one agency liquor store. In communities with populations
8 greater than 12,000, there may be one agency liquor store for the first 12,000 inhabitants and one
9 additional agency liquor store within increments of population of 40,000 inhabitants above 12,000
10 inhabitants. In determining population, the department shall use the same methods used for determining
11 increases in the retail license quota system as provided in 16-4-501.

12 (b) In communities that are eligible for more than one agency liquor store, an agency liquor store
13 may not be located within a 1-mile radius of any other agency liquor store in the community.

14 (2) An agency liquor store may not be located in a community that is closer than 35 miles to
15 another community in which an agency liquor store is presently located, except in the circumstance when
16 the most recent population estimates show a 25% growth in population or a growth of 1,000 inhabitants
17 within a 2-year period, whichever is greater, and when this population increase is reasonably expected to
18 continue for at least 5 years.

19
20 **NEW SECTION. Section 10. State lien on liquor in agency liquor stores.** The state has a first lien
21 with an absolute first priority to secure any outstanding amounts due the state for liquor purchased on any
22 inventory, including any after-acquired inventory in the possession of an agent or on the premises of an
23 agency liquor store, to secure payment for the existing inventory. The state has the right to physically
24 recover any inventory from an agency liquor store for any failure to timely make payments.

25
26 **Section 11.** Section 2-17-101, MCA, is amended to read:

27 **"2-17-101. Allocation of space.** (1) The department of administration shall determine the space
28 required by state agencies other than the university system and shall allocate space in buildings owned or
29 leased by the state, based on each agency's need. To efficiently and effectively allocate space, the
30 department periodically shall identify the amount, location, and nature of space used by each agency:

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

8 (3) (a) The location of the chambers for the house of representatives must be determined in the
9 sole discretion of the house of representatives. The location of the chambers of the senate must be
10 determined in the sole discretion of the senate.

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

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

21
22 **Section 12.** Section 16-1-103, MCA, is amended to read:

23 **"16-1-103. Policy as to retail sale of liquor.** It is the policy of the state that it is necessary to
24 further regulate and control the sale and distribution of alcoholic beverages within the state and to ensure
25 that the department has the entire complete regulatory control of the sale of liquor in the department of
26 revenue this state. It is advisable and necessary, in addition to the operation of the ~~state agency~~ liquor
27 stores now provided by law, that the department be empowered and authorized to grant licenses to persons
28 qualified under this code to sell liquor purchased by them at ~~state agency~~ liquor stores at retail posted price
29 in accordance with this code and under rules promulgated by the department and under its strict
30 supervision and control and to provide severe penalty for the sale of liquor except by and in ~~state agency~~

1 liquor stores and by persons licensed under this code. The restrictions, regulations, and provisions
 2 contained in this code are enacted by the legislature for the protection, health, welfare, and safety of the
 3 people of the state."

4
 5 **Section 13.** Section 16-1-105, MCA, is amended to read:

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

11
 12 **Section 14.** Section 16-1-106, MCA, is amended to read:

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

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

16 (2) "Agency liquor store" means a retail store operated under an agency franchise agreement in
 17 accordance with this code for the purpose of selling liquor at retail for off-premises consumption.

18 ~~(2)(3)~~ "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

19 ~~(3)(4)~~ "Alcoholic beverage" means a compound produced and sold for human consumption as a
 20 drink that contains more than 0.5% of alcohol by volume.

21 ~~(4)(5)~~ "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

22 ~~(5)(6)~~ "Beer importer" means a person other than a brewer who imports malt beverages.

23 ~~(6)(7)~~ "Brewer" means a person who produces malt beverages.

24 (8) "Community" means:

25 (a) in an incorporated city or town, the area within the incorporated city or town boundaries;

26 (b) in an unincorporated city or area, the area identified by the federal bureau of the census as a
 27 community for census purposes; and

28 (c) in a consolidated local government, the area of the consolidated local government not otherwise
 29 incorporated.

30 ~~(7)(9)~~ "Department" means the department of revenue, unless otherwise specified.

- 1 ~~(8)~~(10) "Immediate family" means a spouse, dependent children, or dependent parents.
- 2 ~~(9)~~(11) "Import" means to transfer beer or table wine from outside the state of Montana into the
3 state of Montana.
- 4 ~~(10)~~(12) "Industrial use" means a use described as industrial use by the federal Alcohol
5 Administration Act and the federal rules and regulations of 27 CFR.
- 6 ~~(11)~~(13) "Liquor" means an alcoholic beverage except beer and table wine.
- 7 ~~(12)~~(14) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or
8 decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or
9 their parts or their products and with or without other malted cereals and with or without the addition of
10 unmalted or prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or
11 without other wholesome products suitable for human food consumption.
- 12 ~~(13)~~(15) "Package" means a container or receptacle used for holding an alcoholic beverage.
- 13 ~~(14)~~(16) "Posted price" means the retail price of liquor and table wine as fixed and determined by
14 the department and in addition an excise and license tax as provided in this code.
- 15 ~~(15)~~(17) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that
16 contains 50% of alcohol by volume.
- 17 ~~(16)~~(18) "Public place" means a place, building, or conveyance to which the public has or may be
18 permitted to have access and any place of public resort.
- 19 ~~(17)~~(19) "Rules" means rules adopted by the department or the department of justice pursuant to
20 this code.
- 21 ~~(18)~~(20) "State liquor ~~facility~~ warehouse" means a ~~facility~~ building owned or under control of the
22 department for the purpose of receiving, storing, transporting, or selling alcoholic beverages to agency
23 liquor stores.
- 24 ~~(19)~~ "State liquor store" means a retail store operated by the department in accordance with this
25 code for the purpose of selling liquor and table wine.
- 26 ~~(20)~~(21) "Storage depot" means a building or structure owned or operated by a brewer at any point
27 in the state of Montana off and away from the premises of a brewery, which structure is equipped with
28 refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute
29 beer as permitted by this code.
- 30 ~~(21)~~(22) "Subwarehouse" means a building or structure owned or operated by a licensed beer

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

4 ~~(22)~~(23) "Table wine" means wine that contains not more than 16% alcohol by volume.

5 ~~(23)~~(24) "Table wine distributor" means a person importing into or purchasing in Montana table
6 wine for sale or resale to retailers licensed in Montana.

7 ~~(24)~~(25) "Warehouse" means a building or structure located in Montana owned or operated by a
8 licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table
9 wine as permitted by this code.

10 ~~(25)~~(26) "Wine" means an alcoholic beverage made from or containing the normal alcoholic
11 fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction,
12 except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5%
13 but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies,
14 sweetened, and fortified in accordance with applicable federal regulations and the customs and practices
15 of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine
16 and labeled and sold as wine in accordance with federal regulations are also wine."
17

18 **Section 15.** Section 16-1-301, MCA, is amended to read:

19 "16-1-301. **Administration of code.** The department shall have the powers and duties to administer
20 the Montana Alcoholic Beverage Code, including the general control, management, and supervision of all
21 ~~state~~ agency liquor stores."
22

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

24 "16-1-302. **Functions, powers, and duties of department.** The department has the following
25 functions, duties, and powers:

26 (1) to buy, import, have in its possession for sale, and sell liquors ~~and table wine~~;

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

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

1 (4) to lease, furnish, and equip any building or land required to administer its duties under this
2 code;

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

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

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

10 (8) to grant and issue licenses under this code;

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

14 (10) without limiting or being limited by the foregoing, to do all things necessary to administer this
15 code or rules."

16
17 **Section 17.** Section 16-1-303, MCA, is amended to read:

18 **"16-1-303. Department rules.** (1) The department and the department of justice may make rules
19 not inconsistent with this code necessary to efficiently administer this code.

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

21 (a) regulating the ~~equipment and management~~ contractual operation of ~~state~~ agency liquor stores
22 and warehouses in which liquor ~~or table wine~~ is kept or sold and prescribing the books and records to be
23 kept;

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

26 (c) governing the purchase of liquor ~~and table wine~~ and the furnishing of liquor ~~and table wine~~ to
27 ~~state~~ agency liquor stores;

28 (d) determining the classes, varieties, and brands of liquor ~~and table wine~~ to be kept available for
29 distribution from the state liquor warehouse ~~sale at any state store~~;

30 (e) prescribing the minimum hours during which ~~state~~ agency liquor stores must be open for the

1 sale of alcoholic beverages;

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

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

6 (h) prescribing the form of records of purchase of liquor ~~and table wine~~ and the reports to be made
7 to the department and providing for inspection of the records;

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

9 (j) prescribing the fees payable for permits and licenses issued under this code for which ~~no~~ fees
10 are not prescribed in this code and prescribing the fees for anything done or permitted to be done under
11 the rules;

12 (k) prescribing, subject to the provisions of this code, the conditions and qualifications necessary
13 for the obtaining of alcoholic beverage licenses and the books and records to be kept and the returns to
14 be made by the licensees;

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

17 (m) specifying and regulating the time when and the manner by which vendors and brewers may
18 deliver alcoholic beverages under this code and the time when and the manner by which alcoholic
19 beverages, under this code, may be lawfully conveyed or carried;

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

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

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

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

29 (5) The department shall use the negotiated rulemaking procedures contained in Title 2, chapter
30 5, for the purpose of adoption of rules related to the operation of agency liquor stores. However, the

1 department may not be required to pay any expenses of the participants or of any persons engaged in the
 2 rulemaking process as provided for in 2-5-110."

3
 4 **Section 18.** Section 16-1-304, MCA, is amended to read:

5 **"16-1-304. Prohibited acts.** (1) An employee of the department involved in the operation of the
 6 state liquor warehouse ~~or state liquor stores~~, the issuance of licenses, or the collection of alcoholic
 7 beverages taxes or an employee of the department of justice directly involved with the investigation of
 8 matters concerning the manufacture, sale, and distribution of alcoholic beverages may not be directly or
 9 indirectly interested or engaged in any other business or undertaking dealing in liquor ~~or table wine~~, whether
 10 as owner, part owner, partner, member of syndicate, shareholder, agent, or employee for the employee's
 11 own benefit or in a fiduciary capacity for some other person.

12 (2) An employee of the state, a state agent, or any person having any ownership interest in an
 13 agency liquor store may not solicit or receive directly or indirectly any commission, remuneration, ~~or gift,~~
 14 or other thing tangible or intangible of value from any person or corporation selling or offering liquor ~~or table~~
 15 ~~wine~~ for sale to the state pursuant to this code.

16 (3) A person selling or offering for sale to or purchasing liquor ~~or table wine~~ from the state may
 17 not directly or indirectly offer to pay any commission, profit, or remuneration or make any gift to any
 18 ~~member or~~ employee of the state, any state agent, or any person having any ownership interest in an
 19 agency liquor store or to anyone on behalf of ~~the member or~~ an employee.

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

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

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

28 (c) The state shall maintain written records of all samples received. The records must show the
 29 brand name, amount and from whom received, date received, the laboratory or chemist to whom
 30 forwarded, the state's action on the brand, and the person to whom delivered or other final disposition of.

1 the sample.

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

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

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

15

16 **Section 19.** Section 16-1-402, MCA, is amended to read:

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

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

- 23 (a) the average liquor used per departure;
- 24 (b) the number of departures from Montana on which liquor is served;
- 25 (c) the ratio of Montana revenue passenger miles to system revenue passenger miles; and
- 26 (d) the applicable excise tax and state markup rates.

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

29

30 **Section 20.** Section 16-2-101, MCA, is amended to read:

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

5 ~~(b) The department shall enter into an agency franchise agreement~~ agreements ~~or employ the~~
6 ~~necessary help to operate the~~ agency liquor stores as the department finds feasible for the sale of liquor
7 ~~and shall designate the duties to be performed by the agent or employees.~~

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

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

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

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

15 (b)(i) The department shall supply from the state liquor warehouse to agency liquor stores the
16 various classes, varieties, and brands of liquor for resale at the state posted price.

17 (ii)(A) According to the ordering and delivery schedule set by the department, an agency liquor store
18 may place a liquor order with the department at its state liquor warehouse in the manner to be established
19 by the department.

20 (B) The agency liquor store's purchase price is the department's posted price less the agency liquor
21 store's commission rate in the state agency franchise agreement and less the agency liquor store's weighed
22 average discount ratio. For purposes of this subsection (2)(b)(ii)(B), for agency liquor stores or
23 employee-operated state liquor stores that were operating June 30, 1994, the weighted average discount
24 ratio is the ratio between an agency liquor store's or the employee-operated state liquor store's full case
25 discount sales divided by the agency liquor store's or employee-operated state liquor store's gross sales,
26 based on fiscal year 1994 reported sales, times the state discount rate for case lot sales, as provided in
27 16-2-201, divided by the state discount rate for full case lot sales in effect on June 30, 1994. For all other
28 stores that are placed in service after June 30, 1994, the weighted average discount ratio is the average
29 ratio in fiscal year 1994 for similar sized stores for 1 year of operation. Thereafter, the weighted discount
30 ratio must be computed on the store's first 12 months of operation.

1 (C) All liquor purchased from the state liquor warehouse by an agency liquor store must be paid for
 2 within 60 days of the date on which the department invoices the liquor to the agency liquor store.

3 (c) An agency liquor store may sell table wine at retail for off-premises consumption.

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

10 ~~(b) Agency liquor stores may not be located in or adjacent to grocery stores in communities with~~
 11 ~~populations over 3,000. This provision is applicable only to agency agreements entered into after May 11,~~
 12 ~~1987.~~

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

14 ~~(a) a 10% commission for agencies in communities with less than 3,000 in population, unless~~
 15 ~~adjusted pursuant to subsection (6) or (8);~~

16 ~~(b) a commission established by competitive bidding unless adjusted pursuant to subsection (6)~~
 17 ~~or (8) for agencies in communities with 3,000 or more in population.~~

18 ~~(5) An agency franchise agreement must:~~

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

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

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

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

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

1 that upon termination by the department for cause or upon mutual termination, the agent is liable for any
 2 outstanding liquor purchase invoices. If payment is not made within the appropriate time, the department
 3 may immediately repossess all liquor inventory, wherever located; and.

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

6 (6)(a) The commission percentage that the department pays the agent under an agency franchise
 7 agreement may be reviewed on July 1, 1998, and every 5 3 years thereafter at the request of either party.
 8 If the agent concurs, the department may adjust the commission percentage to be paid during the remaining
 9 term of the agency franchise agreement or until the next time the commission percentage is reviewed, if
 10 that is sooner than the term of the agency franchise agreement, to a commission percentage that is equal
 11 to the average commission percentage being paid agents with similar sales volumes if:

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

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

14 (b) The adjusted commission percentage determined under subsection (6)(a) may be greater than
 15 the average commission paid agents with similar sales volume:

16 (i) if the agent demonstrates that:

17 (A) the agent has experienced cost increases that are beyond the agent's control, including but not
 18 limited to increases in the federally established minimum wage or escalation in prevailing rent; and

19 (B) the average commission percentage is insufficient to yield net income commensurate with net
 20 income experienced before the cost increases occurred; and

21 (ii) if the department demonstrates that it is unable to indicate adjustments in the requirements
 22 specified in the agent's franchise agreement that will eliminate the impact of cost increases.

23 (7) The liability insurance ~~and performance security requirements~~ requirement may be reviewed
 24 every ~~5~~ 3 years after July 1, 1995, at the request of either the agent or the department. If the agent
 25 concurs, the department may adjust the requirements to be effective during the remaining term of the
 26 agency franchise agreement if the adjustments adequately protect the state from risks associated with the
 27 ~~loss of state assets or from the~~ agent's negligent acts or activities in the execution and performance of the
 28 agency franchise agreement. The amount of liability insurance coverage may not be less than the minimum
 29 requirements of the department of administration.

30 (8) (a) Except as provided in subsection (8)(b), an agency franchise agreement must be renewed

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

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

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

14 (d) If the agent under the existing franchise agreement declines to exercise the preference right
15 under subsection (8)(c), the department shall enter into an agency franchise agreement as provided in this
16 chapter with a person who accepted the adjusted commission percentage.

17 (e) If the agent exercises the preference right and believes the adjusted commission percentage
18 to be inadequate or not in the best interests of the state, the agent may request an administrative hearing.
19 The request must contain a statement of reasons why the agent believes the commission percentage to
20 be inadequate or not in the state's best interests. The department shall grant the request for a hearing if
21 it determines that the statement indicates evidence that the adjusted commission percentage is inadequate
22 or not in the state's best interests. The department may, after the hearing, adjust the commission
23 percentage if the agent shows that the commission percentage is inadequate or not in the best interests
24 of the state. If the department increases the commission percentage rate, the department shall set forth
25 its findings and conclusions in writing and inform the agent and the other persons who offered to enter into
26 an agency agreement at the adjusted commission rate.

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

30 (i) charges prices different from the state published price or provides different discounts;

1 (ii) fails to maintain sufficient liability insurance;

2 (iii) has not maintained a quantity and variety of product available for sale commensurate with
3 demand, delivery cycle, repayment schedule, mixed case shipments from the department, and the ability
4 to purchase special orders;

5 (iv) at an agency liquor store located 35 miles or more from the nearest agency liquor store, has
6 operated the agency liquor store in a manner that makes the premises unsanitary or inaccessible for the
7 purpose of making purchases of liquor; or

8 (v) fails to comply with the express terms of the agency franchise agreement.

9 (b) The department shall give an agent 30 days' notice of its intent to terminate the agency
10 franchise agreement for cause and specify the unmet requirements. The agent may contest the termination
11 and request a hearing within 30 days of the date of notice. If a hearing is requested, the department shall
12 suspend its termination order until after a final decision has been made pursuant to the Montana
13 Administrative Procedure Act.

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

20 ~~(b) If an agent is suspected of theft or unauthorized use of state assets, the department may~~
21 ~~terminate the agency franchise agreement and retrieve its assets immediately repossess any liquor~~
22 ~~purchased and in the possession of the agent. If an agency franchise agreement is terminated, the agent~~
23 ~~may contest the agency franchise agreement termination and request a hearing within 30 days of the~~
24 ~~department's retrieval of assets repossession of the liquor. The agency store shall remain closed until a final~~
25 ~~decision has been reached following a hearing held pursuant to the Montana Administrative Procedure Act.~~

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

28 (11) An agent may assign an agency franchise agreement to a person who, upon approval of the
29 department, is named agent in the agency franchise agreement, with the rights, privileges, and
30 responsibilities of the original agent for the remaining term of the agency franchise agreement. The agent

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

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

7 (12) A person or entity may not hold an ownership interest in more than one agency liquor store.

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

10
 11 **Section 21.** Section 16-2-104, MCA, is amended to read:

12 "**16-2-104. Hours.** (1) State Agency liquor stores ~~shall be and may~~ remain open during ~~such period~~
 13 ~~of the day as the department shall deem advisable~~ the period between 8 a.m. and 2 a. m. The stores ~~shall~~
 14 must be closed for the transaction of business on legal holidays and between the close of normal business
 15 Saturday ~~p.m. afternoon~~ up to the opening of normal business Tuesday ~~a.m. morning~~ as set by department
 16 rule.

17 (2)(a) An agency liquor store may be open on Mondays that are not legal holidays if 51% of the
 18 all-beverages licensees within the agency liquor store's immediate market area sign a petition agreeing that
 19 agency liquor stores located within the immediate market area may be open on Mondays. The petition must
 20 be on a form prescribed by the department. The department shall verify the validity of the signatures on
 21 the petition. If the department determines that the petition contains sufficient valid signatures, all agency
 22 liquor stores within the designated market area must be allowed to transact business on Mondays that are
 23 not legal holidays. To determine the number of signatures needed, the department shall round up to the
 24 nearest whole number any fractional number of all-beverages licensees.

25 (b) For the purposes of subsection (2)(a), immediate market area means:

26 (i) the city limits for stores located in incorporated cities or towns; and

27 (ii) the area contained within a 5-mile radius from a store or stores located in unincorporated cities
 28 or towns or in a consolidated local government.

29 ~~(2) No sale or delivery of liquor or table wine shall be made on or from the premises of any state~~
 30 ~~liquor store nor shall any store be open for the sale of liquor or table wine:~~

1 ~~(a) on any holiday recognized by state law;~~

2 ~~(b) during such other period and on such other days as the department may direct."~~

3
4 **Section 22.** Section 16-2-105, MCA, is amended to read:

5 "16-2-105. **Place and time of selling liquor.** ~~No~~ A liquor store manager agent and ~~no~~ a person
6 acting as ~~the clerk or servant~~ an employee of or in any capacity for any ~~manager shall~~ agent may not sell
7 liquor in any other place or at any other time or otherwise than as authorized by this code and the rules
8 implementing this code."

9
10 **Section 23.** Section 16-2-106, MCA, is amended to read:

11 "16-2-106. **Purchase price in advance.** A liquor store manager agent may sell to any person ~~such~~
12 any liquor and table wine as that the person is entitled to purchase in conformity with the provisions of this
13 code and the rules made thereunder, provided that no delivery shall take place until the purchaser has paid
14 the purchase price implementing this code. An agent may, under the terms and conditions that the agent
15 establishes, deliver liquor and table wine purchased from the agent's agency liquor store."

16
17 **Section 24.** Section 16-2-107, MCA, is amended to read:

18 "16-2-107. **No open alcoholic beverage container or alcoholic beverage consumption on premises**
19 **of state agency store.** ~~No officer, clerk, or agent of the department employed in a state~~ An agent and the
20 agent's employees in an agency store shall may not allow any alcoholic beverage container to be opened
21 on the premises of ~~a state~~ an agency liquor store or allow any alcoholic beverage to be consumed on the
22 premises of ~~a state~~ an agency liquor store, nor ~~shall may~~ any person open an alcoholic beverage container
23 or consume any alcoholic beverage ~~on such premises~~ in an agency liquor store."

24
25 **Section 25.** Section 16-2-108, MCA, is amended to read:

26 "16-2-108. **Disposition of money received.** ~~All money received from the sale of liquor and table~~
27 ~~wine at the state liquor stores must be deposited in the enterprise fund in the state treasury to the credit~~
28 ~~of the department.~~ The department may purchase liquor ~~and table wine~~ from money deposited to its
29 account in the enterprise fund. The department shall pay from its account in the enterprise fund its
30 administrative expenses, subject to the limits imposed by legislative appropriation. ~~No~~ An obligation created

1 or incurred by the department may not be a debt or claim against the state of Montana but must be payable
 2 by the department solely from funds derived from the operation of state liquor ~~stores~~ sales. The department
 3 shall pay into the state treasury to the credit of the enterprise fund the receipts from the sale of liquor and
 4 all taxes and license and permit fees collected by it. Taxes, license and permit fees, and the net proceeds
 5 from the operation of state liquor ~~stores~~ sales must be transferred to the general fund."

6
 7 **Section 26.** Section 16-2-201, MCA, is amended to read:

8 "16-2-201. **Reduction for quantity sales of liquor.** Reduction of ~~5%~~ 8% of the retail price of liquor
 9 sold at the ~~state agency~~ liquor store ~~shall~~ must be made by the department for sales of liquor to any ~~person~~
 10 licensee purchasing liquor in unbroken case lots. No other reduction ~~shall~~ may be made to any other
 11 person by the department for quantity sales of liquor."

12
 13 **Section 27.** Section 16-2-301, MCA, is amended to read:

14 "16-2-301. **Retail selling price on table wine -- tax on certain table wine.** ~~(1) The retail selling price~~
 15 ~~at which table wine is sold either by the department, through a state employee operated store, or by a~~
 16 ~~commission agent who was appointed before April 30, 1987, including subsequent renewals of such~~
 17 ~~appointment, and who elects to order table wine from the department is computed by adding to the~~
 18 ~~statewide weighted average cost of table wine the tax and state markup as designated by the department.~~

19 ~~(2)(1)~~ The retail selling price at which table wine is sold ~~by a commission agent appointed by the~~
 20 ~~department after May 1, 1987, at an agency liquor store~~ is as determined by the agent.

21 ~~(3)(2)~~ In addition to the tax on wine assessed under 16-1-411, there is a tax of 1 cent a liter on
 22 table wine sold by a table wine distributor to an agent as described in subsection ~~(2)~~ (1). This additional
 23 tax must be paid to the department by the distributor in the same manner as the tax under 16-1-411 is
 24 paid. The department shall deposit the tax paid under this section in the general fund."

25
 26 **Section 28.** Section 16-3-103, MCA, is amended to read:

27 "16-3-103. **Unlawful sales solicitation or advertising -- exceptions.** (1) ~~No~~ A person within the state
 28 ~~shall~~ may not:

29 (a) canvass for, receive, take, or solicit orders for the purchase or sale of any liquor or act as agent
 30 or intermediary for the sale or purchase of any liquor or be represented as an agent or intermediary unless

1 permitted to do so under rules that ~~shall be~~ are promulgated by the department to govern ~~such the~~
2 activities;

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

6 (c) exhibit, publish, or display or permit to be exhibited, published, or displayed any form of
7 advertisement or any other announcement, publication, or price list of or concerning liquor or where or from
8 whom the same may be had, obtained, or purchased unless permitted to do so by the rules of the
9 department and then only in accordance with ~~such the~~ the rules.

10 (2) This section does not apply to:

11 (a) the department, any act of the department, any ~~state~~ agency liquor store;

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

14 (c) the sale and serving of beer in the grandstand and bleacher area of a county fairground or public
15 sports arena under a special permit issued pursuant to 16-4-301 or a catering endorsement issued pursuant
16 to 16-4-111 or 16-4-204."

17

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

19 **"16-3-106. Conveyance of liquors, table wines, and beer -- opening alcoholic beverages during**
20 **transit forbidden.** (1) It ~~shall be~~ is lawful to carry or convey liquor or table wine to any ~~state~~ agency liquor
21 store and to and from ~~any the state liquor~~ warehouse or any depot established by the department for the
22 purposes of this code, and when permitted to do so by this code and the rules ~~made thereunder and in~~
23 ~~accordance therewith~~ promulgated under this code, it ~~shall be~~ is lawful for any common carrier or other
24 person to carry or convey liquor or table wine sold by a vendor from ~~a state~~ an agency liquor store or to
25 carry or convey beer, when lawfully sold by a brewer, from the premises ~~wherein such~~ where the beer was
26 manufactured or from premises where the beer may be lawfully kept and sold to any place to which the
27 ~~same liquor, table wine, or beer~~ may be lawfully delivered under this code and the rules made thereunder
28 promulgated under this code.

29 (2) ~~No~~ A common carrier or any other person ~~shall~~ may not open, break, or allow to be opened or
30 broken any package or vessel containing an alcoholic beverage or drink or use or allow to be drunk or used

1 any alcoholic beverage ~~therefrom~~ while being carried or conveyed."

2

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

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

8

9 **Section 31.** Section 16-3-401, MCA, is amended to read:

10 "**16-3-401. Short title -- public policy -- purpose.** (1) This part may be cited as the "Wine
11 Distribution Act".

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

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

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

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

22

23 **Section 32.** Section 16-3-402, MCA, is amended to read:

24 "**16-3-402. Importation of wine -- records.** (1) ~~With the exception of table wine purchased by the~~
25 ~~department and shipped to its warehouse, all~~ All table wine manufactured outside of Montana and shipped
26 into Montana ~~shall~~ must be consigned to and shipped to a licensed table wine distributor, ~~and by him be~~
27 unloaded by the distributor into ~~his~~ the distributor's warehouse in Montana or subwarehouse in Montana.
28 The distributor shall distribute ~~said~~ the table wine from ~~such~~ the warehouse or subwarehouse.

29 (2) The distributor shall keep records at ~~his~~ the distributor's principal place of business of all table
30 wine, including the name or kind received, on hand, sold, and distributed. The records may at all times be

1 inspected by ~~any member or representative of the department of revenue.~~

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

7 **Section 33.** Section 16-3-403, MCA, is amended to read:

8 "**16-3-403. To whom table wine distributor may sell.** (1) A table wine distributor may sell and
9 deliver table wine purchased or acquired by ~~him~~ the distributor to:

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

12 (b) ~~the department~~ an agency liquor store; and

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

14 (2) ~~It shall be~~ is unlawful for any table wine distributor to sell, deliver, or give away any table wine
15 to be consumed on ~~such~~ the distributor's premises or to give, sell, deliver, or distribute any table wine
16 purchased or acquired by ~~him~~ the distributor to the public."
17

18 **Section 34.** Section 16-3-411, MCA, is amended to read:

19 "**16-3-411. Domestic winery.** A winery located in Montana and registered pursuant to 16-4-107
20 may:

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

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

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

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

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

28 (6) obtain a special event permit under 16-4-301."
29

30 **Section 35.** Section 16-4-105, MCA, is amended to read:

1 **"16-4-105. Limit on retail beer licenses -- wine license amendments -- off-premises consumption.**

2 (1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in
3 accordance with the provisions of this code and the rules of the department, may be issued to any person,
4 firm, or corporation ~~who~~ that is approved by the department as a fit and proper person, firm, or corporation
5 to sell beer, except that:

6 (a) the number of retail beer licenses that the department may issue for premises situated within
7 incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of
8 ~~such those~~ such cities and towns ~~shall~~ must be determined on the basis of population prescribed in 16-4-502
9 as follows:

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

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

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

22 (b) the number of the inhabitants in ~~such incorporated~~ such cities and incorporated towns, exclusive of
23 the number of inhabitants residing within a distance of 5 miles from the corporate limits ~~thereof of the cities~~
24 or towns, shall govern ~~governs~~ the number of retail beer licenses that may be issued for use within ~~such~~
25 the cities and towns and within a distance of 5 miles from the corporate limits ~~thereof of the cities and~~
26 towns. If two or more incorporated municipalities are situated within a distance of 5 miles from each other,
27 the total number of retail beer licenses that may be issued for use in both of ~~such the incorporated~~
28 municipalities and within a distance of 5 miles from their respective corporate limits ~~shall~~ must be
29 determined on the basis of the combined populations of both of ~~such the~~ such municipalities and may not exceed
30 the ~~foregoing~~ limitations in this section. The distance of 5 miles from the corporate limits of any

1 incorporated city or incorporated town ~~shall~~ must be measured in a straight line from the nearest entrance
2 of the premises proposed for licensing to the nearest corporate boundary of ~~such~~ the city or town.

3 (c) retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110,
4 ~~which~~ that are in excess of the foregoing limitations ~~shall be~~ are renewable, but ~~no~~ new licenses may not
5 be issued in violation of ~~such~~ these limitations;

6 (d) ~~such~~ these limitations do not prevent the issuance of a nontransferable and nonassignable retail
7 beer license to an enlisted ~~men's~~ persons', noncommissioned officers', or officers' club located on a state
8 or federal military reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization
9 or a lodge of a recognized national fraternal organization if ~~such~~ the veterans' or fraternal organization has
10 been in existence for a period of 5 years or more prior to January 1, 1949;

11 (e) the number of retail beer licenses that the department may issue for use at premises situated
12 outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles
13 from the corporate limits ~~thereof~~ of the city or town or for use at premises situated within any
14 unincorporated ~~town~~ area ~~shall~~ must be ~~as~~ determined by the department in ~~the exercise of its sound~~
15 discretion, except that ~~no~~ a retail beer license may not be issued for any premises so situated unless the
16 department determines that the issuance of ~~such~~ the license is required by public convenience and
17 necessity.

18 (2) A person holding a license to sell beer for consumption on the premises at retail may apply to
19 the department for an amendment to the license permitting the holder to sell wine as well as beer. The
20 division may issue ~~such~~ an amendment if it finds, on a satisfactory showing by the applicant, that the sale
21 of wine for consumption on the premises would be supplementary to a restaurant or prepared-food
22 business. A person holding a beer-and-wine license may sell wine for consumption on or off the premises.
23 Nonretention of the beer license, for whatever reason, ~~shall mean~~ means automatic loss of the wine
24 amendment license.

25 (3) A retail license to sell beer or table wine, or both, in the original packages for off-premises
26 consumption only may be issued to any person, firm, or corporation ~~who~~ that is approved by the
27 department as a fit and proper person, firm, or corporation to sell beer or table wine, or both, and whose
28 premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a
29 pharmacy. The number of ~~such~~ licenses that the department may issue is not limited by the provisions of
30 subsection (1) ~~of this section~~ but ~~shall~~ must be determined by the department in ~~the exercise of its sound~~

1 discretion, and the department may in ~~the exercise of its sound~~ discretion grant or deny any application for
 2 any ~~such~~ license or suspend or revoke any ~~such~~ license for cause."

3
 4 **Section 36.** Section 16-4-401, MCA, is amended to read:

5 **"16-4-401. License as privilege -- criteria for decision on application.** (1) A license under this code
 6 is a privilege which the state may grant to an applicant and is not a right to which any applicant is entitled.

7 (2) Except as provided in subsection (6), in the case of a license that permits on-premises
 8 consumption, the department must find in every case in which it makes an order for the issuance of a new
 9 license or for the approval of the transfer of a license that:

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

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

13 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in
 14 16-1-106;

15 ~~###(iii)~~ (iii) the applicant or any member of ~~his~~ the applicant's immediate family is without financing from
 16 or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

17 ~~###(iv)~~ (iv) the applicant is a resident of the state and is qualified to vote in a state election;

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

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

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

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

25 (ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual
 26 applicant listed in subsection (2)(a) ~~of this section~~;

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

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

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

- 1 (i) if the applicant consists of more than one individual, all must meet the requirements of
 2 subsection (2)(a); and
- 3 (ii) if the applicant consists of more than one corporation, all must meet the requirements of
 4 subsection (2)(b).
- 5 (3) In the case of a license that permits only off-premises consumption, the department must find
 6 in every case in which it makes an order for the issuance of a new license or for the approval of the transfer
 7 of a license that:
- 8 (a) in the case of an individual applicant:
- 9 (i) the applicant will not possess an ownership interest in more than one establishment licensed
 10 under this chapter for all-beverages sales;
- 11 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in
 12 16-1-106;
- 13 ~~###(iii)~~ (iii) the applicant or any member of ~~his~~ the applicant's immediate family is without financing from
 14 or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;
- 15 ~~###(iv)~~ (iv) the applicant has not been convicted of a felony or, if the applicant has been convicted of
 16 a felony, ~~his~~ the applicant's rights have been restored;
- 17 ~~(iv)(v)~~ (v) the applicant's past record and present status as a purveyor of alcoholic beverages and as
 18 a ~~businessman~~ business person and citizen demonstrate that ~~he~~ the applicant is likely to operate ~~his~~ the
 19 establishment in compliance with all applicable laws of the state and local governments; and
- 20 ~~(v)(vi)~~ (vi) the applicant is not under the age of 19 years; and
- 21 (b) in the case of a corporate applicant:
- 22 (i) the owners of at least 51% of the outstanding stock meet the requirements of subsection
 23 ~~(3)(a)(iii)~~ (3)(a)(iv);
- 24 (ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual
 25 listed in subsection (3)(a) of this section; and
- 26 (iii) the corporation is authorized to do business in Montana; and
- 27 (c) in the case of any other business entity as applicant:
- 28 (i) if the applicant consists of more than one individual, all must meet the requirements of
 29 subsection (3)(a); and
- 30 (ii) if the applicant consists of more than one corporation, all must meet the requirements of

1 subsection (3)(b).

2 (4) In the case of a license that permits the manufacture, importing, or wholesaling of an alcoholic
3 beverage, the department must find in every case in which it makes an order for the issuance of a new
4 license or for the approval of the transfer of a license that:

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

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

8 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in
9 16-1-106;

10 ~~##(iii)~~ (iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of
11 a felony, ~~his~~ rights have been restored;

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

15 ~~(iv)(v)~~ (v) the applicant is not under the age of 19 years; and

16 ~~(v)(vi)~~ (vi) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor
17 is owned or controlled by a manufacturer of an alcoholic beverage; and

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

19 (i) the owners of at least 51% of the outstanding stock meet the requirements of subsection
20 ~~(4)(a)(iii)~~ (4)(a)(iii);

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

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

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

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

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

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

1 (5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), and (4)(b)
2 apply separately to each class of stock.

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

5

6 **Section 37.** Section 16-6-107, MCA, is amended to read:

7 **"16-6-107. Disposal of forfeited alcoholic beverages -- report.** (1) If a court or hearing examiner
8 orders the forfeiture of alcoholic beverages under this code or if a claimant to an alcoholic beverage under
9 16-6-105 or 16-6-106 fails to establish the claimant's right to the alcoholic beverage, the alcoholic
10 beverage in question and the packages in which the alcoholic beverage is kept must be delivered to the
11 department. The department shall determine the market value of each forfeited alcoholic beverage found
12 to be suitable for sale in ~~the state~~ agency liquor stores and shall pay the amount determined to the state
13 treasurer after deducting any expenses incurred by the department for transporting the forfeited alcoholic
14 beverage to the state liquor warehouse. The alcoholic beverage suitable for sale in ~~a state~~ an agency liquor
15 store must be taken into stock by the department and sold under the provisions of this code. All alcoholic
16 beverages found to be unsuitable for sale in ~~state~~ agency liquor stores must be destroyed by the
17 department.

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

20

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

22 **"16-6-303. Sale of liquor not purchased from state agency liquor store forbidden -- penalty.** It is
23 unlawful for any licensee to sell or keep for sale or have on ~~his~~ the licensee's premises for any purpose
24 whatever any liquor except that purchased from ~~the state~~ an agency liquor store, and any licensee found
25 in possession of or selling and keeping for sale any liquor ~~which that~~ was not purchased from ~~a state~~ an
26 agency liquor store shall, upon conviction, be punished by a fine of not less than \$500 or more than
27 \$1,500, by imprisonment for not less than 3 months or more than 1 year, or by both ~~such~~ fine and
28 imprisonment. If the department is satisfied that ~~any such~~ the liquor was knowingly sold or kept for sale
29 within the licensed premises by the licensee or by ~~his~~ the licensee's agents, servants, or employees, the
30 department shall immediately revoke the license."

1 **Section 39.** Section 17-8-244, MCA, is amended to read:

2 "**17-8-244. Exemptions.** (1) Section 17-8-242 does not apply to the following:

3 ~~(1)~~(a) interagency or intergovernmental transactions;

4 ~~(2)~~(b) claims subject to a good faith dispute;

5 ~~(3)~~(c) delinquencies due to natural disasters, disruptions in postal or delivery service, work
6 stoppage due to labor disputes, power failures, or any other cause resulting from circumstances clearly
7 beyond the control of the payer agency;

8 ~~(4)~~(d) contracts entered into before October 1, 1983;

9 ~~(5)~~(e) wages due and payable to state employees or payments from any state retirement system
10 created pursuant to Title 19; or

11 ~~(6)~~(f) claims submitted to the state or to its fiscal intermediary by providers of supplies or services
12 under the Montana medicaid or workers' compensation program if reasonable cause for nonpayment exists.

13 (2) In the case of liquor withdrawn from bailment in the state liquor warehouse by the department
14 of revenue for the purpose of resale through agency liquor stores, payment is timely if paid within 60 days
15 after the product is withdrawn."

16
17 **Section 40.** Section 30-9-104, MCA, is amended to read:

18 "**30-9-104. Transactions excluded from chapter.** This chapter does not apply:

19 (1) to a security interest subject to any statute of the United States such as the Ship Mortgage Act,
20 1920, to the extent that ~~such~~ the statute governs the rights of parties to and third parties affected by
21 transactions in particular types of property;

22 (2) to a landlord's lien;

23 (3) to a lien given by statute or other rule of law for services or materials except as provided in
24 30-9-310 on priority of such liens;

25 (4) to a transfer of a claim for wages, salary, or other compensation of an employee;

26 (5) to a transfer by a government or governmental subdivision or agency;

27 (6) to a sale of accounts or chattel paper as part of a sale of the business out of which they arose,
28 or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of
29 a right to payment under a contract to an assignee who is also to do the performance under the contract,
30 or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting

1 indebtedness;

2 (7) to a transfer of an interest or claim in or under any policy of insurance, except as provided with
3 respect to proceeds (30-9-306) and priorities in proceeds (30-9-312);

4 (8) to a right represented by a judgment (other than a judgment taken on a right to payment which
5 was collateral);

6 (9) to any right of setoff;

7 (10) except to the extent that provision is made for fixtures in 30-9-313, to the creation or transfer
8 of an interest in or lien on real estate, including a lease or rents ~~thereunder~~ under the lease;

9 (11) to a transfer in whole or in part of any claim arising out of tort; ~~or~~

10 (12) to a transfer of an interest in any deposit account (30-9-105(1)), except as provided with
11 respect to proceeds (30-9-306) and priorities in proceeds (30-9-312); or

12 (13) to liquor in an agency liquor store as defined in 16-1-106."

13

14 **NEW SECTION. Section 41. Repealer.** Sections 16-2-302 and 16-2-303, MCA, are repealed.

15

16 **NEW SECTION. Section 42. Codification instruction.** [Sections 9 and 10] are intended to be
17 codified as an integral part of Title 16, chapter 2, part 1, and the provisions of Title 16, chapter 2, part 1,
18 apply to [sections 9 and 10].

19

20 **NEW SECTION. Section 43. Effective date.** (1) Except as provided in (2), [this act] is effective
21 on passage and approval.

22 (2) [Section 24] is effective July 1, 1995.

23

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0574, as introduced

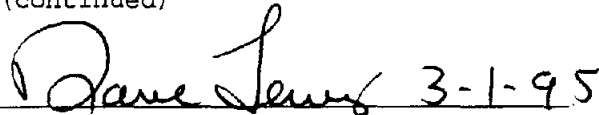
DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising liquor laws, providing for the conversion of employee-operated state liquor stores to agency liquor stores; providing that eligible state liquor store employees have a right of first refusal in becoming agents for the converted stores; providing for the purchase of liquor assets in stores by the agents operating the stores over an 18-month period; prohibiting new agency liquor stores for 4 years in cities or towns that had an agency liquor store in 1994; providing for a state lien on liquor in agency liquor stores; prohibiting a person from having an ownership interest in more than one agency liquor store; prohibiting an ownership interest in an agency liquor store by a person having another type of liquor license; providing for a bonus payment for certain state liquor division employees who remain in employment during the conversion process; amending laws relating to table wine to clarify the distribution and sale of table wine in relation to agency liquor stores; providing for the contractual and other administration of agency liquor stores; increasing the case discount on the sale of liquor to 8 percent and limiting the discount to alcoholic beverage licensees; providing that agency stores may be open on Mondays if a majority of the All-Beverages Licensees in the agency's market area agree; and providing effective dates.

ASSUMPTIONS:

1. The volume of liquor sold will be no different under the proposed legislation than under current law.
2. The elimination of the state's authorization to purchase and distribute table wine will not affect revenue since the state has not been exercising this authority.
3. The state will continue to set the price of a bottle of liquor sold at agency liquor stores in the same way it currently does.
4. Under the proposal the cost of commissions for the agents who will operate the 26 current state stores will equal the current operating expenses for those stores.
5. Under the proposal commissions will be paid via a reduction in the retail posted price of a bottle of liquor sold to agents. For clarity, this fiscal note reflects the change in commissions as an operating expense.
6. Increasing the full case discount rate from 5% to 8% effective on July 1, 1995 for liquor licensees will not increase the volume of full case sales.
7. The termination costs for state employees will include normal benefit payouts, bonuses as provided in HB574, and costs associated with the Employee Protection Act on the assumption that HB490 will be enacted. Employee Protection Act costs would include early retirement benefits and 6-mo health insurance coverage per employee.
8. Initial inventory maintained in a state liquor store under current law will be sold to the agent of that store under the proposal. The agent will pay for this inventory in 16 equal monthly installments.
9. The value of inventory at cost (\$5.537 million), owned by the state in state liquor stores and in the central warehouse, will be transferred to the general fund by June 30, 1997 after expenditure of close-out costs for terminating employees and the retention of central office employees, between July 1, 1995 and December 31, 1995, who would otherwise be subject to reduction in force.
10. Reductions in FTE include 2.00 FTE which were included in the executive budget's proposed personal services reductions.

(continued)


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


WILLIAM REHBEIN, PRIMARY SPONSOR DATE

Fiscal Note for HB0574, as introduced

HB 574

(continued)

FISCAL IMPACT:Expenditures: (rounded to nearer \$1000)

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Merchandising Expenses:		
FTE	(79.50)	(79.50)
Personal Services	(1,146,000)	(2,303,000)
Operating Expense	935,000	1,967,000
Depreciation	(45,000)	(45,000)
Inventory Loss	<u>(55,000)</u>	<u>(55,000)</u>
Total	(311,000)	(436,000)
Licensee Discounts:	402,000	410,000
Termination Costs:		
Benefits Payout	207,000	0
Bonuses	440,000	0
Early Retirement	214,000	0
6-mo Health Insurance	106,000	0
Inventory Writeoff	<u>150,000</u>	<u>0</u>
Total	1,117,000	0
Total Expenditures	1,208,000	(26,000)
Revenues:		
Inventory Reduction	1,208,000	4,329,000
Net Impact:		
Liquor Profits (General Fund)	0	4,355,000

LONG RANGE EFFECTS OF PROPOSED LEGISLATION:

There would be ongoing savings (increased revenues transferred to general fund) of approximately \$26,000 per year.

APPROVED BY COMMITTEE
ON BUSINESS AND LABOR

1 HOUSE BILL NO. 574

2 INTRODUCED BY REHBEIN, MILLER, GRINDE, ELLIS, MASOLO, HOLLAND, FELAND, FISHER, CURTISS,
3 HARP, HARGROVE, BOHARSKI, KASTEN, KNOX, JORE, ORR, BARNETT, TASH, GAGE, BECK,
4 HERRON, TAYLOR, VICK, HAYNE, M. HANSON, SLITER, OHS, MERCER, GROSFIELD, FORBES,
5 SIMPKINS, COLE, CLARK, DEVANEY, ZOOK, STOVALL
6

7 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LIQUOR LAWS; PROVIDING FOR THE
8 CONVERSION OF EMPLOYEE-OPERATED STATE LIQUOR STORES TO AGENCY LIQUOR STORES;
9 PROVIDING THAT ELIGIBLE STATE LIQUOR STORE EMPLOYEES HAVE A RIGHT OF FIRST REFUSAL IN
10 BECOMING AGENTS FOR THE CONVERTED STORES; PROVIDING FOR THE PURCHASE OF LIQUOR
11 ASSETS IN STORES BY THE AGENTS OPERATING THE STORES OVER AN 18-MONTH PERIOD;
12 PROHIBITING NEW AGENCY LIQUOR STORES FOR 4 YEARS IN CITIES OR TOWNS THAT HAD AN
13 AGENCY LIQUOR STORE IN 1994; PROVIDING FOR A STATE LIEN ON LIQUOR IN AGENCY LIQUOR
14 STORES; PROHIBITING A PERSON FROM HAVING AN OWNERSHIP INTEREST IN MORE THAN ONE
15 AGENCY LIQUOR STORE; PROHIBITING AN OWNERSHIP INTEREST IN AN AGENCY LIQUOR STORE BY
16 A PERSON HAVING ANOTHER TYPE OF LIQUOR LICENSE; PROVIDING FOR A BONUS PAYMENT FOR
17 CERTAIN STATE LIQUOR DIVISION EMPLOYEES WHO REMAIN IN EMPLOYMENT DURING THE
18 CONVERSION PROCESS; AMENDING LAWS RELATING TO TABLE WINE TO CLARIFY THE DISTRIBUTION
19 AND SALE OF TABLE WINE IN RELATION TO AGENCY LIQUOR STORES; PROVIDING FOR THE
20 CONTRACTUAL AND OTHER ADMINISTRATION OF AGENCY LIQUOR STORES; INCREASING THE CASE
21 DISCOUNT ON THE SALE OF LIQUOR TO 8 PERCENT AND LIMITING THE DISCOUNT TO ALCOHOLIC
22 BEVERAGE LICENSEES; PROVIDING THAT AGENCY STORES MAY BE OPEN ON MONDAYS IF A
23 MAJORITY OF THE ALL-BEVERAGES LICENSEES IN THE AGENCY'S MARKET AREA AGREE; PROVIDING
24 TIME LIMITS RELATING TO GRANTING OR DENYING A LICENSE; AMENDING SECTIONS 2-17-101,
25 16-1-103, 16-1-105, 16-1-106, 16-1-301, 16-1-302, 16-1-303, 16-1-304, 16-1-402, 16-2-101, 16-2-104,
26 16-2-105, 16-2-106, 16-2-107, 16-2-108, 16-2-201, 16-2-301, 16-3-103, 16-3-106, 16-3-307, 16-3-401,
27 16-3-402, 16-3-403, 16-3-411, 16-4-105, 16-4-207, 16-4-401, 16-4-405, 16-6-107, 16-6-303, 17-8-244,
28 AND 30-9-104, MCA; REPEALING SECTIONS 16-2-302 AND 16-2-303, MCA; AND PROVIDING EFFECTIVE
29 DATES."
30

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

2
3 NEW SECTION. **Section 1. Eligible state employee.** As used in [sections 1 through 8], "eligible
4 state employee" means a state employee who worked 544 hours either in an employee-operated state
5 liquor store as a liquor store manager, assistant manager, or clerk or in the central office of the liquor
6 division between July 1, 1994, and January 6, 1995, who is in a position subject to termination by
7 [sections 1 through 8]. For purposes of this section, the term "worked" includes all hours reported to the
8 central payroll system, such as but not limited to hours worked, sick leave, annual leave, and leave without
9 pay.

10
11 NEW SECTION. **Section 2. Purchase of initial inventory by existing state agent.** (1) As of June
12 30, 1995, the department of revenue shall calculate a closing statement showing the dollar amount of
13 inventory on hand for each agency liquor store in operation on that date. As soon as practical thereafter,
14 the department shall send to each agency liquor store a statement for the total price of the inventory,
15 payable in 16 even monthly payments. The price must be calculated in the same manner as the price for
16 liquor purchased by an agency liquor store under the provisions of 16-2-101. The first payment is due 60
17 days from the date on which the department mails the statement, and each subsequent payment is due on
18 the last day of the month for each month thereafter. At any time after payment of the first payment, an
19 agent who is purchasing the initial inventory may pay in full the amount due or may increase the amount
20 of each monthly payment. The payment of increased payments does not waive the making of a monthly
21 payment until the initial purchase price is fully paid.

22 (2) Any shortages due the state as of June 30, 1995, must be offset from the final commission
23 payment. If the shortage exceeds the calculated commission payment, the agent shall make payment
24 within 30 days of notice of the amount due.

25
26 NEW SECTION. **Section 3. Purchase of initial inventory and trade fixtures from former state liquor**
27 **store.** (1) After the selection of an agent pursuant to [section 6] who was an eligible state employee or
28 a business entity consisting of eligible state employees to operate an agency liquor store that is operating
29 as a state liquor store, the person or entity selected as agent and the department of revenue shall agree
30 upon a date of conversion from a state liquor store to an agency liquor store. The date must be between

1 July 1, 1995, and December 1, 1995. As of the day before the conversion date, the department shall
2 calculate a closing statement showing the dollar amount of inventory on hand and the dollar amount of any
3 trade fixtures that the agent chooses to purchase. As soon as practical thereafter, the department shall
4 send to the agency liquor store a statement for the total price of the inventory and trade fixtures, payable
5 in 16 even monthly payments. The price of liquor must be calculated in the same manner as the price for
6 liquor purchased by an agency liquor store under the provisions of 16-2-101. Trade fixtures must be valued
7 by the department as the amount, if any, in excess of the fixtures' depreciated value. The first payment
8 is due 60 days from the date on which the department mails the statement, and each subsequent payment
9 is due on the last day of the month for each month thereafter. At any time after payment of the first
10 payment, an agent may pay in full the amount due or may increase the amount of each monthly payment.
11 The payment of increased payments does not waive the making of a monthly payment until the initial
12 purchase price is fully paid.

13 (2) Any shortages due the state as of the date of conversion must be paid by the store manager
14 if the store manager becomes the liquor store agent or is a partner or shareholder in a business selected
15 as the liquor store agent. The manager shall make payment within 30 days of notice of the amount due.
16

17 **NEW SECTION. Section 4. Sales of returned liquor.** Any inventory owned by the state that is
18 located in either an agency liquor store or an employee-operated state liquor store prior to the operation
19 of either [section 2] or [section 3], which in the opinion of the department of revenue is not economically
20 feasible to be sold in agency liquor stores, may be returned to the state liquor warehouse. The department
21 may, between July 1, 1995, and June 30, 1996, dispose of this inventory in any commercially reasonable
22 manner, including but not limited to retail sales from the state liquor warehouse to retail licensees. After
23 the department has exhausted all attempts to commercially dispose of the inventory, the department may
24 dispose of it in any manner meeting its sound discretion.
25

26 **NEW SECTION. Section 5. Liquor store employees preference rights and bonus payment.** (1) Any
27 liquor store employee or liquor division central office employee who meets the requirements of an eligible
28 state employee who is terminated as a result of the operation of [sections 1 through 8] is eligible for a work
29 incentive bonus if the employee continues in employment through December 31, 1995. This bonus is in
30 addition to any reduction in force benefits or other benefits that the employee may be entitled to as a result

1 of termination under the provisions of [sections 1 through 8].

2 (a) The amount of the bonus must be computed by multiplying the eligible state employee's hourly
3 wage by 26.8%. The resulting product must be multiplied by 2,080 and that resulting product must be
4 multiplied by the quotient of the number of hours worked, not to exceed 1,088 hours, as an eligible state
5 employee between July 1, 1994, and January 6, 1995, divided by 1,088, which result is equal to the
6 employee's bonus.

7 (b) An employee is entitled to the full amount of the bonus if the employee's employment is
8 terminated by the department of revenue before December 31, 1995, because of the operation of [sections
9 1 through 8].

10 (2)(a) Notwithstanding any other provision of law, an employee of a state liquor store who meets
11 the requirements of an eligible state employee must be given the first right of refusal for selection of the
12 agent chosen to operate an agency liquor store.

13 (b) The department's selection criteria in order of priority for selecting an agent for
14 employee-operated state liquor stores to be converted to agency liquor stores are as follows:

15 (i) The applicant must be either an eligible state employee who is an employee of the store, a
16 partnership with a majority of the partners qualifying as eligible state employees and a majority of the
17 partners working as employees of the state liquor store, or a corporation with at least one shareholder who
18 is an eligible state employee and is an employee of the store.

19 (ii) If no applicant meets the requirements of subsection (2)(b)(i), the applicant must be either an
20 eligible state employee and an employee of another state liquor store in the same city or town, a partnership
21 with a majority of the partners qualifying as eligible state employees and employees of another state liquor
22 store in the same city or town, or a corporation with at least one shareholder who is an eligible state
23 employee and is an employee of another state liquor store in the same city or town.

24 (iii) If no applicant meets the requirements of subsection (2)(b)(i) or (2)(b)(ii), the state agent must
25 be selected by the methods required by the department of administration.

26 (3) All state liquor store employees and liquor division central office employees whose positions
27 are eliminated as a result of [sections 1 through 8] are entitled to all the benefits accorded by the State
28 Employee Protection Act in Title 2, chapter 18, part 12, as that part reads on the date on which the
29 employee leaves state employment.

30

1 **NEW SECTION. Section 6. Conversion of existing state-operated liquor stores.** (1)(a) Within 45
2 days of [the effective date of this section], an eligible state employee or a business entity consisting of
3 eligible state employees, as referred to in [section 5(2)(b)(i)], may file an application or applications to
4 operate as an agency liquor store the liquor store in which the employee or entity is employed or to operate
5 as an agency liquor store another liquor store in the same community in which the employee or entity is
6 employed.

7 (b) The application must set forth the nature of the entity applying for the agency franchise
8 agreement and the employee's or employees' preference rights, along with any other information that the
9 department of revenue requires.

10 (2)(a) If the employee or a business entity consisting of eligible state employees is the sole
11 applicant, the department shall enter into an agency franchise agreement with either the employee or the
12 business entity to operate the agency liquor store.

13 (b) If more than one eligible state employee or business entity consisting of eligible state employees
14 applies to be the agent for the liquor store in which the employee or entity works, the department shall use
15 the appropriate competitive bidding procedures to select the agent. However, no other person may be
16 allowed to apply.

17 (3) The initial commission rate for agency liquor stores to be operated by employees is the direct
18 operating expenses for a liquor store during fiscal year 1994 divided by the gross sales for fiscal year 1994,
19 not to exceed 10%. The initial commission rate may not be less than 10% for stores in communities with
20 less than 3,000 population. Any direct expense excluded by the 10% maximum rate must, IN THE
21 CALCULATION OF THE COMMISSION RATES, be proportionally distributed among the remaining agency
22 liquor stores.

23 (4) If after 45 days after [the effective date of this section] an eligible state employee or business
24 entity consisting of eligible state employees does not apply to operate the former state liquor store as an
25 agency liquor store, the department shall use the appropriate competitive bidding procedures to select the
26 agent.

27 (5) For purposes of this section, an eligible state employee is considered to be an employee of the
28 state liquor store in which the eligible employee worked a majority of the hours between July 1, 1994, and
29 January 6, 1995.

30 (6) Until converted to an agency liquor store, a state liquor store shall operate under the laws

1 governing the operation of state liquor stores as those laws read on January 1, 1995.

2

3 NEW SECTION. **Section 7. No new agency franchises for four years.** Notwithstanding the
4 provisions of [section 9], the department of revenue may not establish any new agency liquor stores until
5 after July 1, 1999, in any community that had at least one agency liquor store on July 1, 1994.

6

7 NEW SECTION. **Section 8. Exemption from privatization plan requirements.** [Sections 1 through
8 8] do not constitute privatization by an agency as that term is used in Title 2, chapter 8, part 3, and the
9 administration of [sections 1 through 8] by the department of revenue is not subject to the provisions of
10 Title 2, chapter 8, part 3.

11

12 NEW SECTION. **Section 9. Number and location of agency liquor stores.** (1)(a) In a community with
13 a population of 12,000 or less, there may be one agency liquor store. In communities with populations
14 greater than 12,000, there may be one agency liquor store for the first 12,000 inhabitants and one
15 additional agency liquor store within increments of population of 40,000 inhabitants above 12,000
16 inhabitants. In determining population, the department shall use the same methods used for determining
17 increases in the retail license quota system as provided in 16-4-501.

18 (b) In communities that are eligible for more than one agency liquor store, an agency liquor store
19 ESTABLISHED AFTER [THE EFFECTIVE DATE OF THIS ACT] may not be located within a 1-mile radius of
20 any other agency liquor store in the community.

21 (2) An agency liquor store ESTABLISHED AFTER [THE EFFECTIVE DATE OF THIS ACT] may not
22 be located in a community that is closer than 35 miles to another community in which an agency liquor
23 store is presently located, except in the circumstance when the most recent population estimates show a
24 25% growth in population or a growth of 1,000 inhabitants within a 2-year period, whichever is greater,
25 and when this population increase is reasonably expected to continue for at least 5 years.

26

27 NEW SECTION. **Section 10. State lien on liquor in agency liquor stores.** The state has a first lien
28 with an absolute first priority to secure any outstanding amounts due the state for liquor purchased on any
29 inventory, including any after-acquired inventory in the possession of an agent or on the premises of an
30 agency liquor store, to secure payment for the existing inventory. The state has the right to physically

1 recover any inventory from an agency liquor store for any failure to timely make payments.

2

3 **Section 11.** Section 2-17-101, MCA, is amended to read:

4 **"2-17-101. Allocation of space.** (1) The department of administration shall determine the space
5 required by state agencies other than the university system and shall allocate space in buildings owned or
6 leased by the state, based on each agency's need. To efficiently and effectively allocate space, the
7 department periodically shall identify the amount, location, and nature of space used by each agency.

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

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

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

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

28

29 **Section 12.** Section 16-1-103, MCA, is amended to read:

30 **"16-1-103. Policy as to retail sale of liquor.** It is the policy of the state that it is necessary to

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

11
 12 **Section 13.** Section 16-1-105, MCA, is amended to read:

13 **"16-1-105. Divisions of code.** This code is divided into six chapters. Chapter 1 relates to the
 14 authority of the department of revenue to administer this code and the powers and functions of the
 15 department. Chapter 2 relates to the establishment of ~~state agency liquor~~ stores and the keeping and selling
 16 of liquors. Chapter 3 relates to the control of liquor, wine, and beer. Chapter 4 relates to license
 17 administration. Chapter 5, now repealed, related to identification cards. Chapter 6 relates to enforcement."
 18

19 **Section 14.** Section 16-1-106, MCA, is amended to read:

20 **"16-1-106. Definitions.** As used in this code, the following definitions apply:

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

23 (2) "Agency liquor store" means a retail store operated under an agency franchise agreement in
 24 accordance with this code for the purpose of selling liquor at retail for off-premises consumption.

25 ~~(2)~~(3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

26 ~~(3)~~(4) "Alcoholic beverage" means a compound produced and sold for human consumption as a
 27 drink that contains more than 0.5% of alcohol by volume.

28 ~~(4)~~(5) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

29 ~~(5)~~(6) "Beer importer" means a person other than a brewer who imports malt beverages.

30 ~~(6)~~(7) "Brewer" means a person who produces malt beverages.

1 (8) "Community" means:

2 (a) in an incorporated city or town, the area within the incorporated city or town boundaries;

3 (b) in an unincorporated city or area, the area identified by the federal bureau of the census as a
4 community for census purposes; and

5 (c) in a consolidated local government, the area of the consolidated local government not otherwise
6 incorporated.

7 ~~(7)~~(9) "Department" means the department of revenue, unless otherwise specified.

8 ~~(8)~~(10) "Immediate family" means a spouse, dependent children, or dependent parents.

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

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

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

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

19 ~~(13)~~(15) "Package" means a container or receptacle used for holding an alcoholic beverage.

20 ~~(14)~~(16) "Posted price" means the retail price of liquor and table wine as fixed and determined by
21 the department and in addition an excise and license tax as provided in this code.

22 ~~(15)~~(17) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that
23 contains 50% of alcohol by volume.

24 ~~(16)~~(18) "Public place" means a place, building, or conveyance to which the public has or may be
25 permitted to have access and any place of public resort.

26 ~~(17)~~(19) "Rules" means rules adopted by the department or the department of justice pursuant to
27 this code.

28 ~~(18)~~(20) "State liquor ~~facility~~ warehouse" means a ~~facility~~ building owned or under control of the
29 department for the purpose of receiving, storing, transporting, or selling alcoholic beverages to agency
30 liquor stores.

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

3 ~~(20)~~(21) "Storage depot" means a building or structure owned or operated by a brewer at any point
4 in the state of Montana off and away from the premises of a brewery, which structure is equipped with
5 refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute
6 beer as permitted by this code.

7 ~~(21)~~(22) "Subwarehouse" means a building or structure owned or operated by a licensed beer
8 wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's
9 or table wine distributor's warehouse or principal place of business, and used for the receiving, storage,
10 and distribution of beer or table wine as permitted by this code.

11 ~~(22)~~(23) "Table wine" means wine that contains not more than 16% alcohol by volume.

12 ~~(23)~~(24) "Table wine distributor" means a person importing into or purchasing in Montana table
13 wine for sale or resale to retailers licensed in Montana.

14 ~~(24)~~(25) "Warehouse" means a building or structure located in Montana owned or operated by a
15 licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table
16 wine as permitted by this code.

17 ~~(25)~~(26) "Wine" means an alcoholic beverage made from or containing the normal alcoholic
18 fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction,
19 except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5%
20 but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies,
21 sweetened, and fortified in accordance with applicable federal regulations and the customs and practices
22 of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine
23 and labeled and sold as wine in accordance with federal regulations are also wine."
24

25 **Section 15.** Section 16-1-301, MCA, is amended to read:

26 **"16-1-301. Administration of code.** The department shall have the powers and duties to administer
27 the Montana Alcoholic Beverage Code, including the general control, management, and supervision of all
28 ~~state~~ agency liquor stores."
29

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

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

3 (1) to buy, import, have in its possession for sale, and sell liquors ~~and table wine~~;

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

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

8 (4) to lease, furnish, and equip any building or land required to administer its duties under this
9 code;

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

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

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

17 (8) to grant and issue licenses under this code;

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

21 (10) without limiting or being limited by the foregoing, to do all things necessary to administer this
22 code or rules."

23

24 **Section 17.** Section 16-1-303, MCA, is amended to read:

25 **"16-1-303. Department rules.** (1) The department and the department of justice may make rules
26 not inconsistent with this code necessary to efficiently administer this code.

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

28 (a) regulating the ~~equipment and management~~ contractual operation of state agency liquor stores
29 and warehouses in which liquor ~~or table wine~~ is kept or sold and prescribing the books and records to be
30 kept;

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

3 (c) governing the purchase of liquor ~~and table wine~~ and the furnishing of liquor ~~and table wine~~ to
4 state agency liquor stores;

5 (d) determining the classes, varieties, and brands of liquor ~~and table wine~~ to be kept available for
6 distribution from the state liquor warehouse ~~sale at any state store~~;

7 (e) prescribing the minimum hours during which state agency liquor stores must be open for the
8 sale of alcoholic beverages;

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

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

13 (h) prescribing the form of records of purchase of liquor ~~and table wine~~ and the reports to be made
14 to the department and providing for inspection of the records;

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

16 (j) prescribing the fees payable for permits and licenses issued under this code for which ~~no~~ fees
17 are not prescribed in this code and prescribing the fees for anything done or permitted to be done under
18 the rules;

19 (k) prescribing, subject to the provisions of this code, the conditions and qualifications necessary
20 for the obtaining of alcoholic beverage licenses and the books and records to be kept and the returns to
21 be made by the licensees;

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

24 (m) specifying and regulating the time when and the manner by which vendors and brewers may
25 deliver alcoholic beverages under this code and the time when and the manner by which alcoholic
26 beverages, under this code, may be lawfully conveyed or carried;

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

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

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

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

6 (5) The department shall use the negotiated rulemaking procedures contained in Title 2, chapter
 7 5, for the purpose of adoption of rules related to the operation of agency liquor stores. However, the
 8 department may not be required to pay any expenses of the participants or of any persons engaged in the
 9 rulemaking process as provided for in 2-5-110."

10
 11 **Section 18.** Section 16-1-304, MCA, is amended to read:

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

19 (2) An employee of the state, a state agent, or any person having any ownership interest in an
 20 agency liquor store may not solicit or receive directly or indirectly any commission, remuneration, ~~or gift,~~
 21 or other thing tangible or intangible of value from any person or corporation selling or offering liquor ~~or table~~
 22 ~~wine~~ for sale to the state pursuant to this code.

23 (3) A person selling or offering for sale to or purchasing liquor ~~or table wine~~ from the state may
 24 not directly or indirectly offer to pay any commission, profit, or remuneration or make any gift to any
 25 ~~member or~~ employee of the state, any state agent, or any person having any ownership interest in an
 26 agency liquor store or to anyone on behalf of ~~the member or an~~ employee.

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

29 (a) Each manufacturer, distiller, compounder, rectifier, importer, or wholesale distributor or any
 30 other person, firm, or corporation proposing to sell any liquor ~~or table wine~~ to the state of Montana shall

1 submit, without cost to the state prior to the original purchase, an analysis of each brand and may submit
2 a representative sample not exceeding 25 fluid ounces of the merchandise to the state.

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

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

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

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

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

22
23 **Section 19.** Section 16-1-402, MCA, is amended to read:

24 "**16-1-402. Payment of excise tax by carriers.** (1) Every airline or railroad operating in the state of
25 Montana and selling liquor purchased outside this state for consumption within this state shall pay to the
26 department the excise taxes and state markup ~~which~~ that would be applicable to ~~such~~ the liquor if
27 purchased from the an state agency liquor store.

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

30 (a) the average liquor used per departure;

- 1 (b) the number of departures from Montana on which liquor is served;
- 2 (c) the ratio of Montana revenue passenger miles to system revenue passenger miles; and
- 3 (d) the applicable excise tax and state markup rates.
- 4 (3) From ~~said~~ the product, the carrier shall subtract the amount of excise taxes and state markup
- 5 on purchases of liquor made within this state."

6
7 **Section 20.** Section 16-2-101, MCA, is amended to read:

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

12 ~~(b) The department shall enter into an agency franchise agreement agreements or employ the~~
13 ~~necessary help to operate the agency liquor stores as the department finds feasible for the sale of liquor~~
14 ~~and shall designate the duties to be performed by the agent or employees.~~

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

- 17 ~~(i) the store is returning less than a 10% profit to the state; or~~
- 18 ~~(ii) the closure or sale is approved by the legislature.~~

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

22 (b)(i) The department shall supply from the state liquor warehouse to agency liquor stores the
23 various classes, varieties, and brands of liquor for resale at the state posted price.

24 (ii)(A) According to the ordering and delivery schedule set by the department, an agency liquor store
25 may place a liquor order with the department at its state liquor warehouse in the manner to be established
26 by the department.

27 (B) The agency liquor store's purchase price is the department's posted price less the agency liquor
28 store's commission rate in the state agency franchise agreement and less the agency liquor store's weighed
29 average discount ratio. For purposes of this subsection (2)(b)(ii)(B), for agency liquor stores or
30 employee-operated state liquor stores that were operating June 30, 1994, the weighted average discount

1 ratio is the ratio between an agency liquor store's or the employee-operated state liquor store's full case
 2 discount sales divided by the agency liquor store's or employee-operated state liquor store's gross sales,
 3 based on fiscal year 1994 reported sales, times the state discount rate for case lot sales, as provided in
 4 16-2-201, divided by the state discount rate for full case lot sales in effect on June 30, 1994. For all other
 5 stores that are placed in service after June 30, 1994, the weighted average discount ratio is the average
 6 ratio in fiscal year 1994 for similar sized stores for 1 year of operation. Thereafter, the weighted discount
 7 ratio must be computed on the store's first 12 months of operation.

8 (C) All liquor purchased from the state liquor warehouse by an agency liquor store must be paid for
 9 within 60 days of the date on which the department invoices the liquor to the agency liquor store.

10 (c) An agency liquor store may sell table wine at retail for off-premises consumption.

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

17 ~~(b) Agency liquor stores may not be located in or adjacent to grocery stores in communities with~~
 18 ~~populations over 3,000. This provision is applicable only to agency agreements entered into after May 11,~~
 19 ~~1987.~~

20 (4) ~~Agency~~ THE DEPARTMENT SHALL NEGOTIATE COMMISSIONS WITH AGENCY STORES, AND
 21 AGENCY stores must receive commissions ~~based on adjusted gross sales payable~~ as follows:

22 (a) ~~a 10% commission~~ COMMISSION OF 10% OR MORE, BUT NOT TO EXCEED 15%, for agencies
 23 in communities with less than 3,000 in population, unless adjusted pursuant to subsection (6) or (8);

24 (b) a commission established by competitive bidding unless adjusted pursuant to subsection (6)
 25 or (8) for agencies in communities with 3,000 or more in population.

26 (5) An agency franchise agreement must:

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

29 (b) require the agent to maintain comprehensive general liability insurance and liquor liability
 30 insurance throughout the term of the agency franchise agreement in an amount established by the

1 department of administration. The insurance policy must:

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

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

6 (c) ~~require the agent to provide performance security in an amount equal to the average monthly~~
7 ~~value of inventory at cost based on the most recent 12-month period of inventory value at the agency store~~
8 ~~location or, if a 12-month history is not available, the department's estimate of the average value provide~~
9 ~~that upon termination by the department for cause or upon mutual termination, the agent is liable for any~~
10 ~~outstanding liquor purchase invoices. If payment is not made within the appropriate time, the department~~
11 ~~may immediately repossess all liquor inventory, wherever located, and.~~

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

14 (6)(a) The commission percentage that the department pays the agent under an agency franchise
15 agreement may be reviewed on July 1, 1998, and every 3 years thereafter at the request of either party.
16 If the agent concurs, the department may adjust the commission percentage to be paid during the remaining
17 term of the agency franchise agreement or until the next time the commission percentage is reviewed, if
18 that is sooner than the term of the agency franchise agreement, to a commission percentage that is equal
19 to the average commission percentage being paid agents with similar sales volumes if:

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

21 ~~(a)(ii)~~ all the requirements of the agency franchise agreement have been satisfactorily performed.

22 (b) The adjusted commission percentage determined under subsection (6)(a) may be greater than
23 the average commission paid agents with similar sales volume:

24 (i) if the agent demonstrates that:

25 (A) the agent has experienced cost increases that are beyond the agent's control, including but not
26 limited to increases in the federally established minimum wage or escalation in prevailing rent; and

27 (B) the average commission percentage is insufficient to yield net income commensurate with net
28 income experienced before the cost increases occurred; and

29 (ii) if the department demonstrates that it is unable to indicate adjustments in the requirements
30 specified in the agent's franchise agreement that will eliminate the impact of cost increases.

1 (7) The liability insurance ~~and performance security requirements~~ requirement may be reviewed
2 every ~~5~~ 3 years ~~after July 1, 1995~~, at the request of either the agent or the department. If the agent
3 concurs, the department may adjust the requirements to be effective during the remaining term of the
4 agency franchise agreement if the adjustments adequately protect the state from risks associated with the
5 ~~loss of state assets or from the~~ agent's negligent acts or activities in the execution and performance of the
6 agency franchise agreement. The amount of liability insurance coverage may not be less than the minimum
7 requirements of the department of administration.

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

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

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

22 (d) If the agent under the existing franchise agreement declines to exercise the preference right
23 under subsection (8)(c), the department shall enter into an agency franchise agreement as provided in this
24 chapter with a person who accepted the adjusted commission percentage.

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

1 percentage if the agent shows that the commission percentage is inadequate or not in the best interests
2 of the state. If the department increases the commission percentage rate, the department shall set forth
3 its findings and conclusions in writing and inform the agent and the other persons who offered to enter into
4 an agency agreement at the adjusted commission rate.

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

8 (i) charges prices different from the state published price or provides different discounts;

9 (ii) fails to maintain sufficient liability insurance;

10 (iii) has not maintained a quantity and variety of product available for sale commensurate with
11 demand, delivery cycle, repayment schedule, mixed case shipments from the department, and the ability
12 to purchase special orders;

13 (iv) at an agency liquor store located 35 miles or more from the nearest agency liquor store, has
14 operated the agency liquor store in a manner that makes the premises unsanitary or inaccessible for the
15 purpose of making purchases of liquor; or

16 (v) fails to comply with the express terms of the agency franchise agreement.

17 (b) The department shall give an agent 30 days' notice of its intent to terminate the agency
18 franchise agreement for cause and specify the unmet requirements. The agent may contest the termination
19 and request a hearing within 30 days of the date of notice. If a hearing is requested, the department shall
20 suspend its termination order until after a final decision has been made pursuant to the Montana
21 Administrative Procedure Act.

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

28 ~~(b) If an agent is suspected of theft or unauthorized use of state assets, the department may~~
29 ~~terminate the agency franchise agreement and retrieve its assets immediately repossess any liquor~~
30 ~~purchased and in the possession of the agent. If an agency franchise agreement is terminated, the agent~~

1 may contest the ~~agency franchise agreement~~ termination and request a hearing within 30 days of the
 2 department's ~~retrieval of assets~~ repossession of the liquor. The agency store shall remain closed until a final
 3 decision has been reached following a hearing held pursuant to the Montana Administrative Procedure Act.

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

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

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

15 (12) A person or entity may not hold an ownership interest in more than one agency liquor store.

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

18
 19 **Section 21.** Section 16-2-104, MCA, is amended to read:

20 "16-2-104. Hours. (1) ~~State Agency~~ Agency liquor stores ~~shall be and may~~ remain open during ~~such period~~
 21 ~~of the day as the department shall deem advisable~~ the period between 8 a.m. and 2 a.m. The stores ~~shall~~
 22 must be closed for the transaction of business on legal holidays and between the close of normal business
 23 Saturday ~~p.m. afternoon~~ up to the opening of normal business Tuesday ~~a.m. morning as set by department~~
 24 rule.

25 (2)(a) An agency liquor store may be open on Mondays that are not legal holidays if 51% of the
 26 all-beverages licensees within the agency liquor store's immediate market area sign a petition agreeing that
 27 agency liquor stores located within the immediate market area may be open on Mondays. The petition must
 28 be on a form prescribed by the department. The department shall verify the validity of the signatures on
 29 the petition. If the department determines that the petition contains sufficient valid signatures, all agency
 30 liquor stores within the designated market area must be allowed to transact business on Mondays that are

1 not legal holidays. To determine the number of signatures needed, the department shall round up to the
 2 nearest whole number any fractional number of all-beverages licensees.

3 (b) For the purposes of subsection (2)(a), immediate market area means:

4 (i) the city limits for stores located in incorporated cities or towns; and

5 (ii) the area contained within a 5-mile radius from a store or stores located in unincorporated cities
 6 or towns or in a consolidated local government.

7 ~~(2) No sale or delivery of liquor or table wine shall be made on or from the premises of any state~~
 8 ~~liquor store nor shall any store be open for the sale of liquor or table wine:~~

9 ~~(a) on any holiday recognized by state law;~~

10 ~~(b) during such other period and on such other days as the department may direct."~~

11
 12 **Section 22.** Section 16-2-105, MCA, is amended to read:

13 **"16-2-105. Place and time of selling liquor.** ~~No~~ A liquor store manager agent and ~~no~~ a person
 14 acting as the clerk or servant an employee of or in any capacity for any ~~manager shall~~ agent may not sell
 15 liquor in any other place or at any other time or otherwise than as authorized by this code and the rules
 16 implementing this code."

17
 18 **Section 23.** Section 16-2-106, MCA, is amended to read:

19 **"16-2-106. Purchase price in advance.** A liquor store manager agent may sell to any person ~~such~~
 20 any liquor and table wine ~~as that the person is entitled to purchase in conformity with the provisions of this~~
 21 ~~code and the rules made thereunder, provided that no delivery shall take place until the purchaser has paid~~
 22 ~~the purchase price~~ implementing this code. An agent may, under the terms and conditions that the agent
 23 establishes, deliver liquor and table wine purchased from the agent's agency liquor store."

24
 25 **Section 24.** Section 16-2-107, MCA, is amended to read:

26 **"16-2-107. No open alcoholic beverage container or alcoholic beverage consumption on premises**
 27 **of state agency store.** ~~No officer, clerk, or agent of the department employed in a state~~ An agent and the
 28 agent's employees in an agency store shall may not allow any alcoholic beverage container to be opened
 29 on the premises of ~~a state~~ an agency liquor store or allow any alcoholic beverage to be consumed on the
 30 premises of ~~a state~~ an agency liquor store, nor ~~shall~~ may any person open an alcoholic beverage container

1 or consume any alcoholic beverage ~~on such premises~~ in an agency liquor store."

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

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

15 **Section 26.** Section 16-2-201, MCA, is amended to read:

16 "16-2-201. **Reduction for quantity sales of liquor.** Reduction of ~~5%~~ 8% of the retail price of liquor
17 sold at the ~~state~~ agency liquor store ~~shall~~ must be made by the department for sales of liquor to any ~~person~~
18 licensee purchasing liquor in unbroken case lots. No other reduction ~~shall~~ may be made to any other
19 person by the department for quantity sales of liquor."
20

21 **Section 27.** Section 16-2-301, MCA, is amended to read:

22 "16-2-301. **Retail selling price on table wine -- tax on certain table wine.** ~~(1) The retail selling price~~
23 ~~at which table wine is sold either by the department, through a state employee operated store, or by a~~
24 ~~commission agent who was appointed before April 30, 1987, including subsequent renewals of such~~
25 ~~appointment, and who elects to order table wine from the department is computed by adding to the~~
26 ~~statewide weighted average cost of table wine the tax and state markup as designated by the department.~~

27 ~~(2)(1)~~ The retail selling price at which table wine is sold ~~by a commission agent appointed by the~~
28 ~~department after May 1, 1987,~~ at an agency liquor store is as determined by the agent.

29 ~~(3)(2)~~ In addition to the tax on wine assessed under 16-1-411, there is a tax of 1 cent a liter on
30 table wine sold by a table wine distributor to an agent as described in subsection ~~(2)~~ (1). This additional

1 tax must be paid to the department by the distributor in the same manner as the tax under 16-1-411 is
2 paid. The department shall deposit the tax paid under this section in the general fund."

3
4 **Section 28.** Section 16-3-103, MCA, is amended to read:

5 "16-3-103. **Unlawful sales solicitation or advertising -- exceptions.** (1) ~~No~~ A person within the state
6 ~~shall~~ may not:

7 (a) canvass for, receive, take, or solicit orders for the purchase or sale of any liquor or act as agent
8 or intermediary for the sale or purchase of any liquor or be represented as an agent or intermediary unless
9 permitted to do so under rules that ~~shall be~~ are promulgated by the department to govern ~~such~~ the
10 activities;

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

14 (c) exhibit, publish, or display or permit to be exhibited, published, or displayed any form of
15 advertisement or any other announcement, publication, or price list of or concerning liquor or where or from
16 whom the same may be had, obtained, or purchased unless permitted to do so by the rules of the
17 department and then only in accordance with ~~such~~ the rules.

18 (2) This section does not apply to:

19 (a) the department, any act of the department, any ~~state~~ agency liquor store;

20 (b) the receipt or transmission of a telegram or letter by any telegraph agent or operator or
21 post-office employee in the ordinary course of employment as ~~such~~ the agent, operator, or employee; or

22 (c) the sale and serving of beer in the grandstand and bleacher area of a county fairground or public
23 sports arena under a special permit issued pursuant to 16-4-301 or a catering endorsement issued pursuant
24 to 16-4-111 or 16-4-204."

25
26 **Section 29.** Section 16-3-106, MCA, is amended to read:

27 "16-3-106. **Conveyance of liquors, table wines, and beer -- opening alcoholic beverages during**
28 **transit forbidden.** (1) It ~~shall be~~ is lawful to carry or convey liquor or table wine to any ~~state~~ agency liquor
29 store and to and from ~~any~~ the state liquor warehouse or any depot established by the department for the
30 purposes of this code, and when permitted to do so by this code and the rules ~~made thereunder and in~~

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

7 (2) ~~No~~ A common carrier or any other person ~~shall~~ may not open, break, or allow to be opened or
 8 broken any package or vessel containing an alcoholic beverage or drink or use or allow to be drunk or used
 9 any alcoholic beverage ~~therefrom~~ while being carried or conveyed."

10

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

12 "**16-3-307. Sale of liquor at less than posted price unlawful.** It ~~shall be~~ is unlawful for any licensee
 13 under the provisions of this code to resell any liquor purchased by ~~such~~ the licensee from ~~a state~~ an agency
 14 liquor store or the state of Montana for a sum less than the posted price established by the store and paid
 15 by the licensee ~~therefor~~."

16

17 **Section 31.** Section 16-3-401, MCA, is amended to read:

18 "**16-3-401. Short title -- public policy -- purpose.** (1) This part may be cited as the "Wine
 19 Distribution Act".

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

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

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

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

30

1 **Section 32.** Section 16-3-402, MCA, is amended to read:

2 "**16-3-402. Importation of wine -- records.** (1) ~~With the exception of table wine purchased by the~~
3 ~~department and shipped to its warehouse, all~~ All table wine manufactured outside of Montana and shipped
4 into Montana ~~shall~~ must be consigned to and shipped to a licensed table wine distributor, and ~~by him~~ be
5 unloaded by the distributor into ~~his~~ the distributor's warehouse in Montana or subwarehouse in Montana.
6 The distributor shall distribute ~~said~~ the table wine from ~~such~~ the warehouse or subwarehouse.

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

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

14

15 **Section 33.** Section 16-3-403, MCA, is amended to read:

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

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

20 (b) ~~the department~~ an agency liquor store; ~~and~~

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

22 (2) ~~It shall be~~ is unlawful for any table wine distributor to sell, deliver, or give away any table wine
23 to be consumed on ~~such~~ the distributor's premises or to give, sell, deliver, or distribute any table wine
24 purchased or acquired by ~~him~~ the distributor to the public."

25

26 **Section 34.** Section 16-3-411, MCA, is amended to read:

27 "**16-3-411. Domestic winery.** A winery located in Montana and registered pursuant to 16-4-107
28 may:

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

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

- 1 (3) sell wine it produces at retail at the winery directly to the consumer for consumption on or off
2 the premises;
- 3 (4) provide, without charge, wine it produces for consumption at the winery;
- 4 (5) purchase from the department or its licensees brandy or other distilled spirits for fortifying wine
5 it produces; or
- 6 (6) obtain a special event permit under 16-4-301."

7

8 **Section 35.** Section 16-4-105, MCA, is amended to read:9 **"16-4-105. Limit on retail beer licenses -- wine license amendments -- off-premises consumption.**

10 (1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in
11 accordance with the provisions of this code and the rules of the department, may be issued to any person,
12 firm, or corporation ~~who~~ that is approved by the department as a fit and proper person, firm, or corporation
13 to sell beer, except that:

14 (a) the number of retail beer licenses that the department may issue for premises situated within
15 incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of
16 ~~such those~~ those cities and towns ~~shall~~ must be determined on the basis of population prescribed in 16-4-502
17 as follows:

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

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

25 (iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the
26 corporate limits of ~~such the~~ the cities, four retail beer licenses for the first 2,000 inhabitants, two additional
27 retail beer licenses for the next 2,000 inhabitants or major fraction thereof, and one additional retail beer
28 license for ~~each every~~ every additional 2,000 inhabitants, which may not be used in conjunction with retail
29 all-beverages licenses;

30 (b) the number of the inhabitants in ~~such~~ incorporated cities and incorporated towns, exclusive of

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

11 (c) retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110,
 12 ~~which that~~ are in excess of the foregoing limitations ~~shall be~~ are renewable, but ~~no~~ new licenses may not
 13 be issued in violation of ~~such~~ these limitations;

14 (d) ~~such~~ these limitations do not prevent the issuance of a nontransferable and nonassignable retail
 15 beer license to an enlisted ~~men's~~ persons', noncommissioned officers', or officers' club located on a state
 16 or federal military reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization
 17 or a lodge of a recognized national fraternal organization if ~~such~~ the veterans' or fraternal organization has
 18 been in existence for a period of 5 years or more prior to January 1, 1949;

19 (e) the number of retail beer licenses that the department may issue for use at premises situated
 20 outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles
 21 from the corporate limits ~~thereof~~ of the city or town or for use at premises situated within any
 22 unincorporated ~~town~~ area ~~shall~~ must be ~~as~~ determined by the department in ~~the exercise of its sound~~
 23 discretion, except that ~~no~~ a retail beer license may not be issued for any premises so situated unless the
 24 department determines that the issuance of ~~such~~ the license is required by public convenience and
 25 necessity.

26 (2) A person holding a license to sell beer for consumption on the premises at retail may apply to
 27 the department for an amendment to the license permitting the holder to sell wine as well as beer. The
 28 division may issue ~~such~~ an amendment if it finds, on a satisfactory showing by the applicant, that the sale
 29 of wine for consumption on the premises would be supplementary to a restaurant or prepared-food
 30 business. A person holding a beer-and-wine license may sell wine for consumption on or off the premises.

1 Nonretention of the beer license, for whatever reason, ~~shall mean~~ means automatic loss of the wine
2 amendment license.

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

12 **SECTION 36. SECTION 16-4-207, MCA, IS AMENDED TO READ:**

13 "16-4-207. **Notice of application -- investigation -- publication -- protest.** (1) When an application
14 has been filed with the department for a license to sell alcoholic beverages at retail or to transfer a retail
15 license, the department shall review the application for completeness and to determine whether the
16 applicant or the premises to be licensed meets criteria provided by law. The department shall request that
17 the department of justice investigate the application as provided in 16-4-402. If after the investigation the
18 department does not discover a basis to deny the application, the department shall promptly publish in a
19 newspaper of general circulation in the city, town, or county from which the application comes a notice
20 that the applicant has made application for a retail license and that protests against the issuance of a
21 license to the applicant by a person who has extended credit to the transferor or residents of the county
22 from which the application comes or adjoining Montana counties may be mailed to a named administrator
23 in the department of revenue within 10 days after the final notice is published. Notice of application for a
24 new license must be published once a week for 4 consecutive weeks. Notice of application for transfer of
25 a license must be published once a week for 2 consecutive weeks. Notice may be substantially in the
26 following form:

27 **NOTICE OF APPLICATION FOR RETAIL ALL-BEVERAGES LICENSE**

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

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

3 Dated

Signed

4 ADMINISTRATOR

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

7 (3) If the administrator receives no written protests, the department may issue or transfer the
 8 license without holding a public hearing. If the issuance or transfer of a license is made without holding a
 9 public hearing, the issuance or transfer must be completed within 40 days of the last date of publication
 10 under subsection (1). If written protests by a person who has extended credit to the transferor or residents
 11 of the county from which the application comes or adjoining Montana counties against the issuance or
 12 transfer of the license are received, the department shall hold a public hearing. Unless a later date is set
 13 by agreement between the applicant and the department, the public hearing must be held within 30 days
 14 of the last date of publication under subsection (1)."

15

16 **Section 37.** Section 16-4-401, MCA, is amended to read:

17 **"16-4-401. License as privilege -- criteria for decision on application.** (1) A license under this code
 18 is a privilege which the state may grant to an applicant and is not a right to which any applicant is entitled.

19 (2) Except as provided in subsection (6), in the case of a license that permits on-premises
 20 consumption, the department must find in every case in which it makes an order for the issuance of a new
 21 license or for the approval of the transfer of a license that:

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

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

25 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in
 26 16-1-106;

27 ~~##~~(iii) the applicant or any member of ~~his~~ the applicant's immediate family is without financing from
 28 or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

29 ~~###~~(iv) the applicant is a resident of the state and is qualified to vote in a state election;

30 ~~##~~(v) the applicant's past record and present status as a purveyor of alcoholic beverages and as

1 a ~~businessman~~ business person and citizen demonstrate that ~~he~~ the applicant is likely to operate ~~his~~ the
2 establishment in compliance with all applicable laws of the state and local governments; and

3 ~~(v)~~(vi) the applicant is not under the age of 19 years; and

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

5 (i) the owners of at least 51% of the outstanding stock meet the requirements of subsection

6 ~~(2)(a)(iii)~~ (2)(a)(iv);

7 (ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual

8 applicant listed in subsection (2)(a) ~~of this section~~;

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

10 (iv) in the case of a corporation not listed on a national stock exchange, each owner of stock meets

11 the requirements of subsection (2)(a)(i) and (2)(a)(ii); and

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

13 (i) if the applicant consists of more than one individual, all must meet the requirements of

14 subsection (2)(a); and

15 (ii) if the applicant consists of more than one corporation, all must meet the requirements of

16 subsection (2)(b).

17 (3) In the case of a license that permits only off-premises consumption, the department must find

18 in every case in which it makes an order for the issuance of a new license or for the approval of the transfer

19 of a license that:

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

21 (i) the applicant will not possess an ownership interest in more than one establishment licensed

22 under this chapter for all-beverages sales;

23 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in

24 16-1-106;

25 ~~(ii)~~(iii) the applicant or any member of ~~his~~ the applicant's immediate family is without financing from

26 or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

27 ~~(iii)~~(iv) the applicant has not been convicted of a felony or, if the applicant has been convicted of

28 a felony, ~~his~~ the applicant's rights have been restored;

29 ~~(iv)~~(v) the applicant's past record and present status as a purveyor of alcoholic beverages and as

30 a ~~businessman~~ business person and citizen demonstrate that ~~he~~ the applicant is likely to operate ~~his~~ the

- 1 establishment in compliance with all applicable laws of the state and local governments; and
- 2 ~~(v)~~(vi) the applicant is not under the age of 19 years; and
- 3 (b) in the case of a corporate applicant:
- 4 (i) the owners of at least 51% of the outstanding stock meet the requirements of subsection
- 5 ~~(3)(a)(iii)~~ (3)(a)(iv);
- 6 (ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual
- 7 listed in subsection (3)(a) of this section; and
- 8 (iii) the corporation is authorized to do business in Montana; and
- 9 (c) in the case of any other business entity as applicant:
- 10 (i) if the applicant consists of more than one individual, all must meet the requirements of
- 11 subsection (3)(a); and
- 12 (ii) if the applicant consists of more than one corporation, all must meet the requirements of
- 13 subsection (3)(b).
- 14 (4) In the case of a license that permits the manufacture, importing, or wholesaling of an alcoholic
- 15 beverage, the department must find in every case in which it makes an order for the issuance of a new
- 16 license or for the approval of the transfer of a license that:
- 17 (a) in the case of an individual applicant:
- 18 (i) the applicant has no ownership interest in any establishment licensed under this chapter for retail
- 19 alcoholic beverages sales;
- 20 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in
- 21 16-1-106;
- 22 ~~##~~(iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of
- 23 a felony, ~~his~~ rights have been restored;
- 24 ~~###~~(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as
- 25 a ~~businessman~~ business person and citizen demonstrate that ~~he is~~ the applicant likely to operate ~~his~~ the
- 26 establishment in compliance with all applicable laws of the state and local governments;
- 27 ~~(v)~~(v) the applicant is not under the age of 19 years; and
- 28 ~~(v)~~(vi) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor
- 29 is owned or controlled by a manufacturer of an alcoholic beverage; and
- 30 (b) in the case of a corporate applicant:

1 (i) the owners of at least 51% of the outstanding stock meet the requirements of subsection
2 ~~(4)(a)(iii)~~ (4)(a)(iii);

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

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

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

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

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

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

13 (5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), and (4)(b)
14 apply separately to each class of stock.

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

17
18 **SECTION 38. SECTION 16-4-405, MCA, IS AMENDED TO READ:**

19 "16-4-405. **Denial of license -- timeliness.** (1) The department may deny the issuance of a retail
20 alcoholic beverages license if it determines that the premises proposed for licensing are off regular police
21 beats and cannot be properly policed by local authorities.

22 (2) A retail license may not be issued by the department for a premises situated within a zone of
23 a city or town where the sale of alcoholic beverages is prohibited by ordinance, a certified copy of which
24 has been filed with the department.

25 (3) A license under this code may not be issued if the department finds from the evidence at the
26 hearing held pursuant to 16-4-207(3) that:

27 (a) the welfare of the people residing in the vicinity of the premises for which the license is desired
28 will be adversely and seriously affected;

29 (b) there is not a public convenience and necessity justification;

30 (c) the applicant or the premises proposed for licensing fail to meet the eligibility or suitability

1 criteria established by this code; or

2 (d) the purposes of this code will not be carried out by the issuance of the license.

3 (4) The hearing examiner shall issue a proposed decision to grant or deny a license within 60 days
 4 after holding a public hearing under 16-4-207. Within 45 days of the expiration of the time period for
 5 written exceptions or, if there are oral arguments, within 45 days after oral arguments are held before the
 6 department, the department shall either grant or deny a license application."

7

8 **Section 39.** Section 16-6-107, MCA, is amended to read:

9 **"16-6-107. Disposal of forfeited alcoholic beverages -- report.** (1) If a court or hearing examiner
 10 orders the forfeiture of alcoholic beverages under this code or if a claimant to an alcoholic beverage under
 11 16-6-105 or 16-6-106 fails to establish the claimant's right to the alcoholic beverage, the alcoholic
 12 beverage in question and the packages in which the alcoholic beverage is kept must be delivered to the
 13 department. The department shall determine the market value of each forfeited alcoholic beverage found
 14 to be suitable for sale in ~~the state~~ agency liquor stores and shall pay the amount determined to the state
 15 treasurer after deducting any expenses incurred by the department for transporting the forfeited alcoholic
 16 beverage to the state liquor warehouse. The alcoholic beverage suitable for sale in ~~a state~~ an agency liquor
 17 store must be taken into stock by the department and sold under the provisions of this code. All alcoholic
 18 beverages found to be unsuitable for sale in ~~state~~ agency liquor stores must be destroyed by the
 19 department.

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

22

23 **Section 40.** Section 16-6-303, MCA, is amended to read:

24 **"16-6-303. Sale of liquor not purchased from ~~state~~ agency liquor store forbidden -- penalty.** It is
 25 unlawful for any licensee to sell or keep for sale or have on ~~his~~ the licensee's premises for any purpose
 26 whatever any liquor except that purchased from ~~the state~~ an agency liquor store, and any licensee found
 27 in possession of or selling and keeping for sale any liquor ~~which that~~ which that was not purchased from ~~a state~~ an
 28 agency liquor store shall, upon conviction, be punished by a fine of not less than \$500 or more than
 29 \$1,500, by imprisonment for not less than 3 months or more than 1 year, or by both ~~such~~ fine and
 30 imprisonment. If the department is satisfied that ~~any such~~ the liquor was knowingly sold or kept for sale

1 within the licensed premises by the licensee or by ~~his~~ the licensee's agents, servants, or employees, the
2 department shall immediately revoke the license."

3
4 **Section 41.** Section 17-8-244, MCA, is amended to read:

5 "**17-8-244. Exemptions.** (1) Section 17-8-242 does not apply to the following:

6 ~~(1)~~(a) interagency or intergovernmental transactions;

7 ~~(2)~~(b) claims subject to a good faith dispute;

8 ~~(3)~~(c) delinquencies due to natural disasters, disruptions in postal or delivery service, work
9 stoppage due to labor disputes, power failures, or any other cause resulting from circumstances clearly
10 beyond the control of the payer agency;

11 ~~(4)~~(d) contracts entered into before October 1, 1983;

12 ~~(5)~~(e) wages due and payable to state employees or payments from any state retirement system
13 created pursuant to Title 19; or

14 ~~(6)~~(f) claims submitted to the state or to its fiscal intermediary by providers of supplies or services
15 under the Montana medicaid or workers' compensation program if reasonable cause for nonpayment exists.

16 (2) In the case of liquor withdrawn from bailment in the state liquor warehouse by the department
17 of revenue for the purpose of resale through agency liquor stores, payment is timely if paid within 60 days
18 after the product is withdrawn."

19
20 **Section 42.** Section 30-9-104, MCA, is amended to read:

21 "**30-9-104. Transactions excluded from chapter.** This chapter does not apply:

22 (1) to a security interest subject to any statute of the United States such as the Ship Mortgage Act,
23 1920, to the extent that ~~such~~ the statute governs the rights of parties to and third parties affected by
24 transactions in particular types of property;

25 (2) to a landlord's lien;

26 (3) to a lien given by statute or other rule of law for services or materials except as provided in
27 30-9-310 on priority of such liens;

28 (4) to a transfer of a claim for wages, salary, or other compensation of an employee;

29 (5) to a transfer by a government or governmental subdivision or agency;

30 (6) to a sale of accounts or chattel paper as part of a sale of the business out of which they arose,

1 or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of
2 a right to payment under a contract to an assignee who is also to do the performance under the contract,
3 or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting
4 indebtedness;

5 (7) to a transfer of an interest or claim in or under any policy of insurance, except as provided with
6 respect to proceeds (30-9-306) and priorities in proceeds (30-9-312);

7 (8) to a right represented by a judgment (other than a judgment taken on a right to payment which
8 was collateral);

9 (9) to any right of setoff;

10 (10) except to the extent that provision is made for fixtures in 30-9-313, to the creation or transfer
11 of an interest in or lien on real estate, including a lease or rents ~~thereunder~~ under the lease;

12 (11) to a transfer in whole or in part of any claim arising out of tort; ~~or~~

13 (12) to a transfer of an interest in any deposit account (30-9-105(1)), except as provided with
14 respect to proceeds (30-9-306) and priorities in proceeds (30-9-312); or

15 (13) to liquor in an agency liquor store as defined in 16-1-106."

16

17 **NEW SECTION. Section 43. Repealer.** Sections 16-2-302 and 16-2-303, MCA, are repealed.

18

19 **NEW SECTION. Section 44. Codification instruction.** [Sections 9 and 10] are intended to be
20 codified as an integral part of Title 16, chapter 2, part 1, and the provisions of Title 16, chapter 2, part 1,
21 apply to [sections 9 and 10].

22

23 **NEW SECTION. Section 45. Effective date.** (1) Except as provided in (2), [this act] is effective
24 on passage and approval.

25 (2) [Section ~~24~~ 26] is effective July 1, 1995.

26

-END-

1 HOUSE BILL NO. 574

2 INTRODUCED BY REHBEIN, MILLER, GRINDE, ELLIS, MASOLO, HOLLAND, FELAND, FISHER, CURTISS,
3 HARP, HARGROVE, BOHARSKI, KASTEN, KNOX, JORE, ORR, BARNETT, TASH, GAGE, BECK,
4 HERRON, TAYLOR, VICK, HAYNE, M. HANSON, SLITER, OHS, MERCER, GROSFIELD, FORBES,
5 SIMPKINS, COLE, CLARK, DEVANEY, ZOOK, STOVALL

6
7 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LIQUOR LAWS; PROVIDING FOR THE
8 CONVERSION OF EMPLOYEE-OPERATED STATE LIQUOR STORES TO AGENCY LIQUOR STORES;
9 ~~PROVIDING THAT ELIGIBLE STATE LIQUOR STORE EMPLOYEES HAVE A RIGHT OF FIRST REFUSAL IN~~
10 ~~BECOMING AGENTS FOR THE CONVERTED STORES;~~ PROVIDING FOR THE PURCHASE OF LIQUOR
11 ASSETS IN STORES BY THE AGENTS OPERATING THE STORES OVER AN 18-MONTH PERIOD;
12 PROHIBITING NEW AGENCY LIQUOR STORES FOR 4 YEARS IN CITIES OR TOWNS THAT HAD AN
13 AGENCY LIQUOR STORE IN 1994; PROVIDING FOR A STATE LIEN ON LIQUOR IN AGENCY LIQUOR
14 STORES; PROHIBITING A PERSON FROM HAVING AN OWNERSHIP INTEREST IN MORE THAN ONE
15 AGENCY LIQUOR STORE; PROHIBITING AN OWNERSHIP INTEREST IN AN AGENCY LIQUOR STORE BY
16 A PERSON HAVING ANOTHER TYPE OF LIQUOR LICENSE; PROVIDING FOR A BONUS PAYMENT FOR
17 CERTAIN STATE LIQUOR DIVISION EMPLOYEES WHO REMAIN IN EMPLOYMENT DURING THE
18 CONVERSION PROCESS; AMENDING LAWS RELATING TO TABLE WINE TO CLARIFY THE DISTRIBUTION
19 AND SALE OF TABLE WINE IN RELATION TO AGENCY LIQUOR STORES; PROVIDING FOR THE
20 CONTRACTUAL AND OTHER ADMINISTRATION OF AGENCY LIQUOR STORES; INCREASING THE CASE
21 DISCOUNT ON THE SALE OF LIQUOR TO 8 PERCENT AND LIMITING THE DISCOUNT TO ALCOHOLIC
22 BEVERAGE LICENSEES; PROVIDING THAT AGENCY STORES MAY BE OPEN ON MONDAYS IF A
23 MAJORITY OF THE ALL-BEVERAGES LICENSEES IN THE AGENCY'S MARKET AREA AGREE; PROVIDING
24 TIME LIMITS RELATING TO GRANTING OR DENYING A LICENSE; AMENDING SECTIONS 2-17-101,
25 16-1-103, 16-1-105, 16-1-106, 16-1-301, 16-1-302, 16-1-303, 16-1-304, 16-1-402, 16-2-101, 16-2-104,
26 16-2-105, 16-2-106, 16-2-107, 16-2-108, 16-2-201, 16-2-301, 16-3-103, 16-3-106, 16-3-307, 16-3-401,
27 16-3-402, 16-3-403, 16-3-411, 16-4-105, ~~16-4-207~~, 16-4-401, ~~16-4-405~~, 16-6-107, 16-6-303, 17-8-244,
28 AND 30-9-104, MCA; REPEALING SECTIONS 16-2-302 AND 16-2-303, MCA; AND PROVIDING EFFECTIVE
29 DATES AND A TERMINATION DATE."

30

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

2

3 NEW SECTION. **Section 1. Eligible state employee.** As used in [sections 1 through & 6], "eligible
4 state employee" means a state employee who worked 544 hours either in an employee-operated state
5 liquor store as a liquor store manager, assistant manager, or clerk or in the central office of the liquor
6 division between July 1, 1994, and January 6, 1995, who is in a position subject to termination by
7 [sections 1 through & 6]. For purposes of this section, the term "worked" includes all hours reported to
8 the central payroll system, such as but not limited to hours worked, sick leave, annual leave, and leave
9 without pay.

10

11 NEW SECTION. **Section 2. Purchase of initial inventory by existing state agent.** (1) As of June
12 30, 1995, the department of revenue shall calculate a closing statement showing the dollar amount of
13 inventory on hand for each agency liquor store in operation on that date. As soon as practical thereafter,
14 the department shall send to each agency liquor store a statement for the total price of the inventory,
15 payable in 16 even monthly payments. The price must be calculated in the same manner as the price for
16 liquor purchased by an agency liquor store under the provisions of 16-2-101. The first payment is due 60
17 days from the date on which the department mails the statement, and each subsequent payment is due on
18 the last day of the month for each month thereafter. At any time after payment of the first payment, an
19 agent who is purchasing the initial inventory may pay in full the amount due or may increase the amount
20 of each monthly payment. The payment of increased payments does not waive the making of a monthly
21 payment until the initial purchase price is fully paid.

22 (2) Any shortages due the state as of June 30, 1995, must be offset from the final commission
23 payment. If the shortage exceeds the calculated commission payment, the agent shall make payment
24 within 30 days of notice of the amount due.

25

26 ~~NEW SECTION. **Section 3. Purchase of initial inventory and trade fixtures from former state liquor**~~
27 ~~store. (1) After the selection of an agent pursuant to [section 6] who was an eligible state employee or~~
28 ~~a business entity consisting of eligible state employees to operate an agency liquor store that is operating~~
29 ~~as a state liquor store, the person or entity selected as agent and the department of revenue shall agree~~
30 ~~upon a date of conversion from a state liquor store to an agency liquor store. The date must be between~~

1 ~~July 1, 1995, and December 1, 1995. As of the day before the conversion date, the department shall~~
2 ~~calculate a closing statement showing the dollar amount of inventory on hand and the dollar amount of any~~
3 ~~trade fixtures that the agent chooses to purchase. As soon as practical thereafter, the department shall~~
4 ~~send to the agency liquor store a statement for the total price of the inventory and trade fixtures, payable~~
5 ~~in 16 even monthly payments. The price of liquor must be calculated in the same manner as the price for~~
6 ~~liquor purchased by an agency liquor store under the provisions of 16-2-101. Trade fixtures must be valued~~
7 ~~by the department as the amount, if any, in excess of the fixtures' depreciated value. The first payment~~
8 ~~is due 60 days from the date on which the department mails the statement, and each subsequent payment~~
9 ~~is due on the last day of the month for each month thereafter. At any time after payment of the first~~
10 ~~payment, an agent may pay in full the amount due or may increase the amount of each monthly payment.~~
11 ~~The payment of increased payments does not waive the making of a monthly payment until the initial~~
12 ~~purchase price is fully paid.~~

13 ~~(2) Any shortages due the state as of the date of conversion must be paid by the store manager~~
14 ~~if the store manager becomes the liquor store agent or is a partner or shareholder in a business selected~~
15 ~~as the liquor store agent. The manager shall make payment within 30 days of notice of the amount due.~~
16

17 **NEW SECTION. Section 3. Sales of returned liquor.** Any inventory owned by the state that is
18 located in either an agency liquor store or an employee-operated state liquor store prior to the operation
19 of either ~~[section 2] or [section 3]~~ **[SECTION 2]**, which in the opinion of the department of revenue is not
20 economically feasible to be sold in agency liquor stores, may be returned to the state liquor warehouse.
21 The department may, between July 1, 1995, and June 30, 1996, dispose of this inventory in any
22 commercially reasonable manner, including but not limited to retail sales from the state liquor warehouse
23 to retail licensees. After the department has exhausted all attempts to commercially dispose of the
24 inventory, the department may dispose of it in any manner meeting its sound discretion.

25
26 **NEW SECTION. Section 4. Liquor store employees preference rights and bonus payment.** (1) Any
27 liquor store employee or liquor division central office employee who meets the requirements of an eligible
28 state employee who is terminated as a result of the operation of [sections 1 through § 6] is eligible for a
29 work incentive bonus if the employee continues in employment through December 31, 1995. This bonus
30 is in addition to any reduction in force benefits or other benefits that the employee may be entitled to as

1 a result of termination under the provisions of [sections 1 through ~~8~~ 6].

2 (a) The amount of the bonus must be computed by multiplying the eligible state employee's hourly
3 wage by 26.8%. The resulting product must be multiplied by 2,080 and that resulting product must be
4 multiplied by the quotient of the number of hours worked, not to exceed 1,088 hours, as an eligible state
5 employee between July 1, 1994, and January 6, 1995, divided by 1,088, which result is equal to the
6 employee's bonus.

7 (b) An employee is entitled to the full amount of the bonus if the employee's employment is
8 terminated by the department of revenue before December 31, 1995, because of the operation of [sections
9 1 through ~~8~~ 6].

10 ~~(2)(a) Notwithstanding any other provision of law, an employee of a state liquor store who meets~~
11 ~~the requirements of an eligible state employee must be given the first right of refusal for selection of the~~
12 ~~agent chosen to operate an agency liquor store.~~

13 ~~(b) The department's selection criteria in order of priority for selecting an agent for~~
14 ~~employee operated state liquor stores to be converted to agency liquor stores are as follows:~~

15 ~~(i) The applicant must be either an eligible state employee who is an employee of the store, a~~
16 ~~partnership with a majority of the partners qualifying as eligible state employees and a majority of the~~
17 ~~partners working as employees of the state liquor store, or a corporation with at least one shareholder who~~
18 ~~is an eligible state employee and is an employee of the store.~~

19 ~~(ii) If no applicant meets the requirements of subsection (2)(b)(i), the applicant must be either an~~
20 ~~eligible state employee and an employee of another state liquor store in the same city or town, a partnership~~
21 ~~with a majority of the partners qualifying as eligible state employees and employees of another state liquor~~
22 ~~store in the same city or town, or a corporation with at least one shareholder who is an eligible state~~
23 ~~employee and is an employee of another state liquor store in the same city or town.~~

24 ~~(iii) If no applicant meets the requirements of subsection (2)(b)(i) or (2)(b)(ii), the state agent must~~
25 ~~be selected by the methods required by the department of administration.~~

26 ~~(3)(2)~~ All state liquor store employees and liquor division central office employees whose positions
27 are eliminated as a result of [sections 1 through ~~8~~ 6] are entitled to all the benefits accorded by the State
28 Employee Protection Act in Title 2, chapter 18, part 12, as that part reads on the date on which the
29 employee leaves state employment.

30

1 ~~NEW SECTION. Section 6. Conversion of existing state-operated liquor stores. (1)(a) Within 45~~
 2 ~~days of [the effective date of this section], an eligible state employee or a business entity consisting of~~
 3 ~~eligible state employees, as referred to in [section 5(2)(b)(i)], may file an application or applications to~~
 4 ~~operate as an agency liquor store the liquor store in which the employee or entity is employed or to operate~~
 5 ~~as an agency liquor store another liquor store in the same community in which the employee or entity is~~
 6 ~~employed.~~

7 ~~(b) The application must set forth the nature of the entity applying for the agency franchise~~
 8 ~~agreement and the employee's or employees' preference rights, along with any other information that the~~
 9 ~~department of revenue requires.~~

10 ~~(2)(a) If the employee or a business entity consisting of eligible state employees is the sole~~
 11 ~~applicant, the department shall enter into an agency franchise agreement with either the employee or the~~
 12 ~~business entity to operate the agency liquor store.~~

13 ~~(b) If more than one eligible state employee or business entity consisting of eligible state employees~~
 14 ~~applies to be the agent for the liquor store in which the employee or entity works, the department shall use~~
 15 ~~the appropriate competitive bidding procedures to select the agent. However, no other person may be~~
 16 ~~allowed to apply.~~

17 ~~(3) The initial commission rate for agency liquor stores to be operated by employees is the direct~~
 18 ~~operating expenses for a liquor store during fiscal year 1994 divided by the gross sales for fiscal year 1994,~~
 19 ~~not to exceed 10%. The initial commission rate may not be less than 10% for stores in communities with~~
 20 ~~less than 3,000 population. Any direct expense excluded by the 10% maximum rate must, IN THE~~
 21 ~~CALCULATION OF THE COMMISSION RATES, be proportionally distributed among the remaining agency~~
 22 ~~liquor stores.~~

23 ~~(4) If after 45 days after [the effective date of this section] an eligible state employee or business~~
 24 ~~entity consisting of eligible state employees does not apply to operate the former state liquor store as an~~
 25 ~~agency liquor store, the department shall use the appropriate competitive bidding procedures to select the~~
 26 ~~agent.~~

27 ~~(5) For purposes of this section, an eligible state employee is considered to be an employee of the~~
 28 ~~state liquor store in which the eligible employee worked a majority of the hours between July 1, 1994, and~~
 29 ~~January 6, 1995.~~

30 ~~(6) Until converted to an agency liquor store, a state liquor store shall operate under the laws~~

1 ~~governing the operation of state liquor stores as those laws read on January 1, 1995.~~

2

3 NEW SECTION. **Section 5. No new agency franchises for four years.** Notwithstanding the
4 provisions of [section ~~9~~ 7], the department of revenue may not establish any new agency liquor stores until
5 after July 1, 1999, in any community that had at least one agency liquor store on July 1, 1994.

6

7 NEW SECTION. **Section 6. Exemption from privatization plan requirements.** [Sections 1 through
8 ~~8~~ 6] do not constitute privatization by an agency as that term is used in Title 2, chapter 8, part 3, and the
9 administration of [sections 1 through ~~8~~ 6] by the department of revenue is not subject to the provisions of
10 Title 2, chapter 8, part 3.

11

12 NEW SECTION. **Section 7. Number and location of agency liquor stores.** (1)(a) In a community with
13 a population of 12,000 or less, there may be one agency liquor store. In communities with populations
14 greater than 12,000, there may be one agency liquor store for the first 12,000 inhabitants and one
15 additional agency liquor store within increments of population of 40,000 inhabitants above 12,000
16 inhabitants. In determining population, the department shall use the same methods used for determining
17 increases in the retail license quota system as provided in 16-4-501.

18 (b) In communities that are eligible for more than one agency liquor store, an agency liquor store
19 ESTABLISHED AFTER [THE EFFECTIVE DATE OF THIS ACT] may not be located within a 1-mile radius of
20 any other agency liquor store in the community.

21 (2) An agency liquor store ESTABLISHED AFTER [THE EFFECTIVE DATE OF THIS ACT] may not
22 be located in a community that is closer than 35 miles to another community in which an agency liquor
23 store is presently located, except in the circumstance when the most recent population estimates show a
24 25% growth in population or a growth of 1,000 inhabitants within a 2-year period, whichever is greater,
25 and when this population increase is reasonably expected to continue for at least 5 years.

26

27 NEW SECTION. **Section 8. State lien on liquor in agency liquor stores.** The state has a first lien
28 with an absolute first priority to secure any outstanding amounts due the state for liquor purchased on any
29 inventory, including any after-acquired inventory in the possession of an agent or on the premises of an
30 agency liquor store, to secure payment for the existing inventory. The state has the right to physically

1 recover any inventory from an agency liquor store for any failure to timely make payments.

2
3 **Section 9.** Section 2-17-101, MCA, is amended to read:

4 **"2-17-101. Allocation of space.** (1) The department of administration shall determine the space
5 required by state agencies other than the university system and shall allocate space in buildings owned or
6 leased by the state, based on each agency's need. To efficiently and effectively allocate space, the
7 department periodically shall identify the amount, location, and nature of space used by each agency.

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

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

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

21 (4) For state agencies located in a city other than Helena, the department of administration shall
22 consolidate the offices of these agencies in a single, central location within the city whenever the
23 consolidation would result in a cost savings to the state while permitting sufficient space and facilities for
24 the agencies. The department may purchase, lease, or acquire, by exchange or otherwise, land and
25 buildings in the city to achieve consolidation. ~~State retail liquor stores, liquor retail agencies, and offices~~
26 Offices of the law enforcement services division and motor vehicle division of the department of justice are
27 exempted from consolidation."
28

29 **Section 10.** Section 16-1-103, MCA, is amended to read:

30 **"16-1-103. Policy as to retail sale of liquor.** It is the policy of the state that it is necessary to

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

11

12 **Section 11.** Section 16-1-105, MCA, is amended to read:

13 **"16-1-105. Divisions of code.** This code is divided into six chapters. Chapter 1 relates to the
 14 authority of the department of revenue to administer this code and the powers and functions of the
 15 department. Chapter 2 relates to the establishment of ~~state~~ agency liquor stores and the keeping and selling
 16 of liquors. Chapter 3 relates to the control of liquor, wine, and beer. Chapter 4 relates to license
 17 administration. Chapter 5, now repealed, related to identification cards. Chapter 6 relates to enforcement."

18

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

20 **"16-1-106. Definitions.** As used in this code, the following definitions apply:

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

23 (2) "Agency liquor store" means a ~~retail~~ store operated under an agency franchise agreement in
 24 accordance with this code for the purpose of selling liquor at EITHER THE POSTED OR retail PRICE for
 25 off-premises consumption.

26 ~~(2)~~(3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

27 ~~(3)~~(4) "Alcoholic beverage" means a compound produced and sold for human consumption as a
 28 drink that contains more than 0.5% of alcohol by volume.

29 ~~(4)~~(5) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

30 ~~(5)~~(6) "Beer importer" means a person other than a brewer who imports malt beverages.

1 ~~(6)~~(7) "Brewer" means a person who produces malt beverages.

2 (8) "Community" means:

3 (a) in an incorporated city or town, the area within the incorporated city or town boundaries;

4 (b) in an unincorporated city or area, the area identified by the federal bureau of the census as a
5 community for census purposes; and

6 (c) in a consolidated local government, the area of the consolidated local government not otherwise
7 incorporated.

8 ~~(7)~~(9) "Department" means the department of revenue, unless otherwise specified.

9 ~~(8)~~(10) "Immediate family" means a spouse, dependent children, or dependent parents.

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

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

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

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

20 ~~(13)~~(15) "Package" means a container or receptacle used for holding an alcoholic beverage.

21 ~~(14)~~(16) "Posted price" means the ~~retail~~ WHOLESALE price of liquor ~~and table wine~~ FOR SALE TO
22 PERSONS WHO HOLD LIQUOR LICENSES as fixed and determined by the department and in addition an
23 excise and license tax as provided in this code.

24 ~~(15)~~(17) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that
25 contains 50% of alcohol by volume.

26 ~~(16)~~(18) "Public place" means a place, building, or conveyance to which the public has or may be
27 permitted to have access and any place of public resort.

28 (19) "RETAIL PRICE" MEANS THE PRICE ESTABLISHED BY AN AGENT FOR THE SALE OF LIQUOR
29 TO PERSONS WHO DO NOT HOLD LIQUOR LICENSES. THE RETAIL PRICE MAY NOT BE LESS THAN THE
30 DEPARTMENT'S POSTED PRICE.

1 ~~(17)(19)(20)~~ "Rules" means rules adopted by the department or the department of justice pursuant
2 to this code.

3 ~~(18)(20)(21)~~ "State liquor ~~facility~~ warehouse" means a ~~facility~~ building owned or under control of
4 the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages to agency
5 liquor stores.

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

8 ~~(20)(21)(22)~~ "Storage depot" means a building or structure owned or operated by a brewer at any
9 point in the state of Montana off and away from the premises of a brewery, which structure is equipped
10 with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or
11 distribute beer as permitted by this code.

12 ~~(21)(22)(23)~~ "Subwarehouse" means a building or structure owned or operated by a licensed beer
13 wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's
14 or table wine distributor's warehouse or principal place of business, and used for the receiving, storage,
15 and distribution of beer or table wine as permitted by this code.

16 ~~(22)(23)(24)~~ "Table wine" means wine that contains not more than 16% alcohol by volume.

17 ~~(23)(24)(25)~~ "Table wine distributor" means a person importing into or purchasing in Montana table
18 wine for sale or resale to retailers licensed in Montana.

19 ~~(24)(25)(26)~~ "Warehouse" means a building or structure located in Montana owned or operated by
20 a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or
21 table wine as permitted by this code.

22 ~~(25)(26)(27)~~ "Wine" means an alcoholic beverage made from or containing the normal alcoholic
23 fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction,
24 except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5%
25 but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies,
26 sweetened, and fortified in accordance with applicable federal regulations and the customs and practices
27 of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine
28 and labeled and sold as wine in accordance with federal regulations are also wine."
29

30 **Section 13.** Section 16-1-301, MCA, is amended to read:

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

4
5 **Section 14.** Section 16-1-302, MCA, is amended to read:

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

8 (1) to buy, import, have in its possession for sale, and sell liquors ~~and table wine~~;

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

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

13 (4) to lease, furnish, and equip any building or land required to administer its duties under this
14 code;

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

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

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

22 (8) to grant and issue licenses under this code;

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

26 (10) without limiting or being limited by the foregoing, to do all things necessary to administer this
27 code or rules."

28
29 **Section 15.** Section 16-1-303, MCA, is amended to read:

30 **"16-1-303. Department rules.** (1) The department and the department of justice may make rules

1 not inconsistent with this code necessary to efficiently administer this code.

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

3 (a) regulating the ~~equipment and management~~ contractual operation of ~~state~~ agency liquor stores
4 and warehouses in which liquor ~~or table wine~~ is kept or sold and prescribing the books and records to be
5 kept;

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

8 (c) governing the purchase of liquor ~~and table wine~~ and the furnishing of liquor ~~and table wine~~ to
9 state agency liquor stores;

10 (d) determining the classes, varieties, and brands of liquor ~~and table wine~~ to be kept available for
11 distribution from the state liquor warehouse ~~sale at any state store~~;

12 (e) prescribing the minimum hours during which ~~state~~ agency liquor stores must be open for the
13 sale of alcoholic beverages;

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

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

18 (h) prescribing the form of records of purchase of liquor ~~and table wine~~ and the reports to be made
19 to the department and providing for inspection of the records;

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

21 (j) prescribing the fees payable for permits and licenses issued under this code for which ~~no~~ fees
22 are not prescribed in this code and prescribing the fees for anything done or permitted to be done under
23 the rules;

24 (k) prescribing, subject to the provisions of this code, the conditions and qualifications necessary
25 for the obtaining of alcoholic beverage licenses and the books and records to be kept and the returns to
26 be made by the licensees;

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

29 (m) specifying and regulating the time when and the manner by which vendors and brewers may
30 deliver alcoholic beverages under this code and the time when and the manner by which alcoholic

1 beverages, under this code, may be lawfully conveyed or carried;

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

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

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

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

11 (5) The department shall use the negotiated rulemaking procedures contained in Title 2, chapter
12 5, for the purpose of adoption of rules related to the operation of agency liquor stores. However, the
13 department may not be required to pay any expenses of the participants or of any persons engaged in the
14 rulemaking process as provided for in 2-5-110."

15

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

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

24 (2) An employee of the state, a state agent, or any person having any ownership interest in an
25 agency liquor store may not solicit or receive directly or indirectly any commission, remuneration, ~~or~~ gift,
26 or other thing tangible or intangible of value from any person or corporation selling or offering liquor ~~or table~~
27 ~~wine~~ for sale to the state pursuant to this code.

28 (3) A person selling or offering for sale to or purchasing liquor ~~or table wine~~ from the state may
29 not directly or indirectly offer to pay any commission, profit, or remuneration or make any gift to any
30 member or employee of the state, any state agent, or any person having any ownership interest in an

1 agency liquor store or to anyone on behalf of ~~the member or an~~ employee.

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

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

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

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

14 (5) Liquor, ~~wine, or other alcoholic beverage~~ may not be withdrawn from the regular warehouse
15 inventory or from the state agency liquor stores for any purpose other than final sale to PERSONS WHO
16 HOLD LIQUOR LICENSES AT THE POSTED PRICE AND SALE TO THE CONSUMER at the ~~prevailing state retail~~
17 ~~prices~~ RETAIL PRICE ESTABLISHED BY THE AGENT or for destroying damaged or defective merchandise.
18 The state shall maintain a written record including the type, brand, container size, number of bottles or
19 other units, signatures of witnesses, and method of destruction or other disposition of damaged or defective
20 warehouse ~~or state store~~ merchandise.

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

25 ~~{7} The state may not require a company that bottled and sold less than 100,000 wine gallons of~~
26 ~~table wine nationwide in the previous calendar year to maintain minimum amounts of table wine in the state~~
27 ~~warehouse while the company retains ownership of the product."~~

28

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

30 **"16-1-402. Payment of excise tax by carriers.** (1) Every airline or railroad operating in the state of

1 Montana and selling liquor purchased outside this state for consumption within this state shall pay to the
 2 department the excise taxes and state markup ~~which~~ that would be applicable to ~~such~~ the liquor if
 3 purchased from ~~the~~ an state agency liquor store.

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

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

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

12

13 **Section 18.** Section 16-2-101, MCA, is amended to read:

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

18 (b) ~~The department shall enter into an agency franchise agreement~~ agreements ~~or employ the~~
 19 ~~necessary help to operate the~~ agency liquor stores as the department finds feasible for the WHOLESALE
 20 AND RETAIL sale of liquor ~~and shall designate the duties to be performed by the agent or employees.~~

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

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

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

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

28 (b)(i) The department shall supply from the state liquor warehouse to agency liquor stores the
 29 various classes, varieties, and brands of liquor for resale at the state posted price TO PERSONS WHO HOLD
 30 LIQUOR LICENSES AND TO ALL OTHER PERSONS AT THE RETAIL PRICE ESTABLISHED BY THE AGENT.

1 (ii)(A) According to the ordering and delivery schedule set by the department, an agency liquor store
 2 may place a liquor order with the department at its state liquor warehouse in the manner to be established
 3 by the department.

4 (B) The agency liquor store's purchase price is the department's posted price less the agency liquor
 5 store's commission rate in the state agency franchise agreement and less the agency liquor store's weighed
 6 average discount ratio. For purposes of this subsection (2)(b)(ii)(B), for agency liquor stores or
 7 employee-operated state liquor stores that were operating June 30, 1994, the weighted average discount
 8 ratio is the ratio between an agency liquor store's or the employee-operated state liquor store's full case
 9 discount sales divided by the agency liquor store's or employee-operated state liquor store's gross sales,
 10 based on fiscal year 1994 reported sales, times the state discount rate for case lot sales, as provided in
 11 16-2-201, divided by the state discount rate for full case lot sales in effect on June 30, 1994. For all other
 12 stores that are placed in service after June 30, 1994, the weighted average discount ratio is the average
 13 ratio in fiscal year 1994 for similar sized stores for 1 year of operation. Thereafter, the weighted discount
 14 ratio must be computed on the store's first 12 months of operation.

15 (C) All liquor purchased from the state liquor warehouse by an agency liquor store must be paid for
 16 within 60 days of the date on which the department invoices the liquor to the agency liquor store.

17 (c) An agency liquor store may sell table wine at retail for off-premises consumption.

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

24 ~~(b) Agency liquor stores may not be located in or adjacent to grocery stores in communities with~~
 25 ~~populations over 3,000. This provision is applicable only to agency agreements entered into after May 11,~~
 26 ~~1987.~~

27 (4) Agency ~~THE DEPARTMENT SHALL NEGOTIATE COMMISSIONS WITH AGENCY STORES, AND~~
 28 ~~AGENCY~~ AGENCY stores must receive commissions based on adjusted gross sales payable as follows:

29 (a) a ~~10% commission~~ ~~COMMISSION OF 10% OR MORE, BUT NOT TO EXCEED 15%,~~ 10%
 30 COMMISSION for agencies in communities with less than 3,000 in population, unless adjusted pursuant

1 to subsection (6) or (8);

2 (b) a commission established by competitive bidding unless adjusted pursuant to subsection (6)
3 or (8) for agencies in communities with 3,000 or more in population.

4 (5) An agency franchise agreement must:

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

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

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

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

14 (c) ~~require the agent to provide performance security in an amount equal to the average monthly~~
15 ~~value of inventory at cost based on the most recent 12-month period of inventory value at the agency store~~
16 ~~location or, if a 12-month history is not available, the department's estimate of the average value~~ provide
17 that upon termination by the department for cause or upon mutual termination, the agent is liable for any
18 outstanding liquor purchase invoices. If payment is not made within the appropriate time, the department
19 may immediately repossess all liquor inventory, wherever located; and.

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

22 (6)(a) The commission percentage that the department pays the agent under an agency franchise
23 agreement may be reviewed on July 1, 1998, and every 5 3 years thereafter at the request of either party.
24 If the agent concurs, the department may adjust the commission percentage to be paid during the remaining
25 term of the agency franchise agreement or until the next time the commission percentage is reviewed, if
26 that is sooner than the term of the agency franchise agreement, to a commission percentage that is equal
27 to the average commission percentage being paid agents with similar sales volumes if:

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

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

30 (b) The adjusted commission percentage determined under subsection (6)(a) may be greater than

1 the average commission paid agents with similar sales volume:

2 (i) if the agent demonstrates that:

3 (A) the agent has experienced cost increases that are beyond the agent's control, including but not
4 limited to increases in the federally established minimum wage or escalation in prevailing rent; and

5 (B) the average commission percentage is insufficient to yield net income commensurate with net
6 income experienced before the cost increases occurred; and

7 (ii) if the department demonstrates that it is unable to indicate adjustments in the requirements
8 specified in the agent's franchise agreement that will eliminate the impact of cost increases.

9 (7) The liability insurance ~~and performance security requirements~~ requirement may be reviewed
10 every ~~5~~ 3 years after July 1, 1995, at the request of either the agent or the department. If the agent
11 concurs, the department may adjust the requirements to be effective during the remaining term of the
12 agency franchise agreement if the adjustments adequately protect the state from risks associated with the
13 ~~loss of state assets or from the agent's negligent acts or activities in the execution and performance of the~~
14 agency franchise agreement. The amount of liability insurance coverage may not be less than the minimum
15 requirements of the department of administration.

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

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

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

30 (d) If the agent under the existing franchise agreement declines to exercise the preference right

1 under subsection (8)(c), the department shall enter into an agency franchise agreement as provided in this
2 chapter with a person who accepted the adjusted commission percentage.

3 (e) If the agent exercises the preference right and believes the adjusted commission percentage
4 to be inadequate or not in the best interests of the state, the agent may request an administrative hearing.
5 The request must contain a statement of reasons why the agent believes the commission percentage to
6 be inadequate or not in the state's best interests. The department shall grant the request for a hearing if
7 it determines that the statement indicates evidence that the adjusted commission percentage is inadequate
8 or not in the state's best interests. The department may, after the hearing, adjust the commission
9 percentage if the agent shows that the commission percentage is inadequate or not in the best interests
10 of the state. If the department increases the commission percentage rate, the department shall set forth
11 its findings and conclusions in writing and inform the agent and the other persons who offered to enter into
12 an agency agreement at the adjusted commission rate.

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

16 (i) charges prices different from the state published price or provides different discounts RETAIL
17 PRICES THAT ARE LESS THAN THE DEPARTMENT'S POSTED PRICE FOR LIQUOR, SELLS LIQUOR TO
18 PERSONS WHO HOLD LIQUOR LICENSES AT LESS THAN THE POSTED PRICE, OR SELLS LIQUOR AT
19 CASE DISCOUNTS GREATER THAN THE DISCOUNT PROVIDED FOR IN 16-2-201 TO PERSONS WHO
20 HOLD LIQUOR LICENSES;

21 (ii) fails to maintain sufficient liability insurance;

22 (iii) has not maintained a quantity and variety of product available for sale commensurate with
23 demand, delivery cycle, repayment schedule, mixed case shipments from the department, and the ability
24 to purchase special orders;

25 (iv) at an agency liquor store located 35 miles or more from the nearest agency liquor store, has
26 operated the agency liquor store in a manner that makes the premises unsanitary or inaccessible for the
27 purpose of making purchases of liquor; or

28 (v) fails to comply with the express terms of the agency franchise agreement.

29 (b) The department shall give an agent 30 days' notice of its intent to terminate the agency
30 franchise agreement for cause and specify the unmet requirements. The agent may contest the termination

1 and request a hearing within 30 days of the date of notice. If a hearing is requested, the department shall
 2 suspend its termination order until after a final decision has been made pursuant to the Montana
 3 Administrative Procedure Act.

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

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

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

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

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

27 (12) A person or entity may not hold an ownership interest in more than one agency liquor store.

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

30

1 **Section 19.** Section 16-2-104, MCA, is amended to read:

2 "**16-2-104. Hours.** (1) ~~State Agency~~ liquor stores ~~shall be and may~~ remain open during ~~such period~~
3 ~~of the day as the department shall deem advisable~~ the period between 8 a.m. and 2 a. m. The stores shall
4 must be closed for the transaction of business on legal holidays and between the close of normal business
5 Saturday ~~p.m. afternoon~~ up to the opening of normal business Tuesday ~~a.m. morning~~ as set by department
6 rule.

7 (2)(a) An agency liquor store may be open on Mondays that are not legal holidays if 51% of the
8 all-beverages licensees within the agency liquor store's immediate market area sign a petition agreeing that
9 agency liquor stores located within the immediate market area may be open on Mondays. The petition must
10 be on a form prescribed by the department. The department shall verify the validity of the signatures on
11 the petition. If the department determines that the petition contains sufficient valid signatures, all agency
12 liquor stores within the designated market area must be allowed to transact business on Mondays that are
13 not legal holidays. To determine the number of signatures needed, the department shall round up to the
14 nearest whole number any fractional number of all-beverages licensees.

15 (b) For the purposes of subsection (2)(a), immediate market area means:

16 (i) the city limits for stores located in incorporated cities or towns; and

17 (ii) the area contained within a 5-mile radius from a store or stores located in unincorporated cities
18 or towns or in a consolidated local government.

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

21 ~~(a) on any holiday recognized by state law;~~

22 ~~(b) during such other period and on such other days as the department may direct."~~

23
24 **Section 20.** Section 16-2-105, MCA, is amended to read:

25 "**16-2-105. Place and time of selling liquor.** ~~No~~ A liquor store manager agent and ~~no~~ a person
26 acting as ~~the clerk or servant~~ an employee of or in any capacity for any ~~manager shall agent may not~~ sell
27 liquor in any other place or at any other time or otherwise than as authorized by this code and the rules
28 implementing this code."

29
30 **Section 21.** Section 16-2-106, MCA, is amended to read:

1 **"16-2-106. Purchase price in advance.** A liquor store manager agent may sell to any person such
 2 any liquor and table wine as that the person is entitled to purchase in conformity with the provisions of this
 3 code and the rules made thereunder, provided that no delivery shall take place until the purchaser has paid
 4 the purchase price implementing this code. An agent may, under the terms and conditions that the agent
 5 establishes, deliver liquor and table wine purchased from the agent's agency liquor store."

6
 7 **Section 22.** Section 16-2-107, MCA, is amended to read:

8 **"16-2-107. No open alcoholic beverage container or alcoholic beverage consumption on premises**
 9 **of state agency store.** ~~No officer, clerk, or agent of the department employed in a state~~ An agent and the
 10 agent's employees in an agency store shall may not allow any alcoholic beverage container to be opened
 11 on the premises of ~~a state~~ an agency liquor store or allow any alcoholic beverage to be consumed on the
 12 premises of ~~a state~~ an agency liquor store, nor ~~shall may~~ any person open an alcoholic beverage container
 13 or consume any alcoholic beverage ~~on such premises~~ in an agency liquor store."

14
 15 **Section 23.** Section 16-2-108, MCA, is amended to read:

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

26
 27 **Section 24.** Section 16-2-201, MCA, is amended to read:

28 **"16-2-201. Reduction for quantity sales of liquor.** (1) Reduction of ~~5%~~ 8% of the ~~retail~~ POSTED
 29 price of liquor sold at the ~~state~~ agency liquor store ~~shall~~ must be made by the department for sales of liquor
 30 to any ~~person~~ licensee purchasing liquor in unbroken case lots. No other reduction ~~shall~~ may be made to

1 any other person by the department for quantity sales of liquor.

2 (2) THIS SECTION DOES NOT PREVENT AN AGENT FROM PROVIDING PURCHASE DISCOUNTS
 3 OR SELLING LIQUOR TO ANY OTHER PERSON AT A PRICE LESS THAN THE AGENT'S ESTABLISHED
 4 RETAIL PRICE. HOWEVER, AN AGENT IS PROHIBITED FROM SELLING LIQUOR TO ANY PERSON AT A
 5 PRICE LESS THAN THE DEPARTMENT'S POSTED PRICE."

6

7 **Section 25.** Section 16-2-301, MCA, is amended to read:

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

13 ~~(2)(1) The retail selling price at which table wine is sold by a commission agent appointed by the~~
 14 ~~department after May 1, 1987, at an agency liquor store is as determined by the agent.~~

15 ~~(3)(2) In addition to the tax on wine assessed under 16-1-411, there is a tax of 1 cent a liter on~~
 16 ~~table wine sold by a table wine distributor to an agent as described in subsection (2) (1). This additional~~
 17 ~~tax must be paid to the department by the distributor in the same manner as the tax under 16-1-411 is~~
 18 ~~paid. The department shall deposit the tax paid under this section in the general fund."~~

19

20 **Section 26.** Section 16-3-103, MCA, is amended to read:

21 **"16-3-103. Unlawful sales solicitation or advertising -- exceptions.** (1) ~~No~~ A person within the state
 22 ~~shall may not~~:

23 (a) canvass for, receive, take, or solicit orders for the purchase or sale of any liquor or act as agent
 24 or intermediary for the sale or purchase of any liquor or be represented as an agent or intermediary unless
 25 permitted to do so under rules that ~~shall be~~ are promulgated by the department to govern ~~such the~~
 26 activities;

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

30 (c) exhibit, publish, or display or permit to be exhibited, published, or displayed any form of

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

4 (2) This section does not apply to:

5 (a) the department, any act of the department, any ~~state~~ agency liquor store;

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

8 (c) the sale and serving of beer in the grandstand and bleacher area of a county fairground or public
 9 sports arena under a special permit issued pursuant to 16-4-301 or a catering endorsement issued pursuant
 10 to 16-4-111 or 16-4-204."

11
 12 **Section 27.** Section 16-3-106, MCA, is amended to read:

13 **"16-3-106. Conveyance of liquors, table wines, and beer -- opening alcoholic beverages during**
 14 **transit forbidden.** (1) It ~~shall be~~ is lawful to carry or convey liquor or table wine to any ~~state~~ agency liquor
 15 store and to and from ~~any~~ the state liquor warehouse or any depot established by the department for the
 16 purposes of this code, and when permitted to do so by this code and the rules ~~made thereunder and in~~
 17 ~~accordance therewith~~ promulgated under this code, it ~~shall be~~ is lawful for any common carrier or other
 18 person to carry or convey liquor or table wine sold by a vendor from ~~a state~~ an agency liquor store or to
 19 carry or convey beer, when lawfully sold by a brewer, from the premises ~~wherein such~~ where the beer was
 20 manufactured or from premises where the beer may be lawfully kept and sold to any place to which the
 21 ~~same liquor, table wine, or beer~~ may be lawfully delivered under this code and the rules made thereunder
 22 promulgated under this code.

23 (2) ~~No~~ A common carrier or any other person ~~shall~~ may not open, break, or allow to be opened or
 24 broken any package or vessel containing an alcoholic beverage or drink or use or allow to be drunk or used
 25 any alcoholic beverage ~~therefrom~~ while being carried or conveyed."

26
 27 **Section 28.** Section 16-3-307, MCA, is amended to read:

28 **"16-3-307. Sale of liquor at less than posted price unlawful.** It ~~shall be~~ is unlawful for any licensee
 29 under the provisions of this code to resell any liquor purchased by ~~such~~ the licensee from ~~a state~~ an agency
 30 liquor store or the state of Montana for a sum less than the posted price established by the ~~store~~

1 DEPARTMENT and paid by the licensee ~~therefor.~~"

2

3 **Section 29.** Section 16-3-401, MCA, is amended to read:

4 "**16-3-401. Short title -- public policy -- purpose.** (1) This part may be cited as the "Wine
5 Distribution Act".

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

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

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

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

16

17 **Section 30.** Section 16-3-402, MCA, is amended to read:

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

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

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

30

1 **Section 31.** Section 16-3-403, MCA, is amended to read:

2 **"16-3-403. To whom table wine distributor may sell.** (1) A table wine distributor may sell and
3 deliver table wine purchased or acquired by ~~him~~ the distributor to:

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

6 (b) ~~the department~~ an agency liquor store; and

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

8 (2) It ~~shall be~~ is unlawful for any table wine distributor to sell, deliver, or give away any table wine
9 to be consumed on ~~such~~ the distributor's premises or to give, sell, deliver, or distribute any table wine
10 purchased or acquired by ~~him~~ the distributor to the public."

11

12 **Section 32.** Section 16-3-411, MCA, is amended to read:

13 **"16-3-411. Domestic winery.** A winery located in Montana and registered pursuant to 16-4-107
14 may:

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

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

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

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

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

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

23

24 **Section 33.** Section 16-4-105, MCA, is amended to read:

25 **"16-4-105. Limit on retail beer licenses -- wine license amendments -- off-premises consumption.**

26 (1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in
27 accordance with the provisions of this code and the rules of the department, may be issued to any person,
28 firm, or corporation ~~who~~ that is approved by the department as a fit and proper person, firm, or corporation
29 to sell beer, except that:

30 (a) the number of retail beer licenses that the department may issue for premises situated within

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

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

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

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

16 (b) the number of the inhabitants in ~~such incorporated~~ cities and incorporated towns, exclusive of
17 the number of inhabitants residing within a distance of 5 miles from the corporate limits ~~thereof of the cities~~
18 or towns, shall govern governs the number of retail beer licenses that may be issued for use within ~~such~~
19 the cities and towns and within a distance of 5 miles from the corporate limits thereof of the cities and
20 towns. If two or more incorporated municipalities are situated within a distance of 5 miles from each other,
21 the total number of retail beer licenses that may be issued for use in both of ~~such the incorporated~~
22 municipalities and within a distance of 5 miles from their respective corporate limits ~~shall~~ must be
23 determined on the basis of the combined populations of both of ~~such the~~ municipalities and may not exceed
24 the ~~foregoing~~ limitations in this section. The distance of 5 miles from the corporate limits of any
25 incorporated city or incorporated town ~~shall~~ must be measured in a straight line from the nearest entrance
26 of the premises proposed for licensing to the nearest corporate boundary of ~~such the~~ city or town.

27 (c) retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110,
28 ~~which that~~ are in excess of the foregoing limitations ~~shall be~~ are renewable, but ~~no~~ new licenses may not
29 be issued in violation of ~~such these~~ limitations;

30 (d) ~~such these~~ limitations do not prevent the issuance of a nontransferable and nonassignable retail

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

5 (e) the number of retail beer licenses that the department may issue for use at premises situated
 6 outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles
 7 from the corporate limits ~~thereof~~ of the city or town or for use at premises situated within any
 8 unincorporated ~~town-shall~~ area must be as determined by the department in ~~the exercise of its sound~~
 9 discretion, except that ~~no~~ a retail beer license may not be issued for any premises so situated unless the
 10 department determines that the issuance of ~~such~~ the license is required by public convenience and
 11 necessity.

12 (2) A person holding a license to sell beer for consumption on the premises at retail may apply to
 13 the department for an amendment to the license permitting the holder to sell wine as well as beer. The
 14 division may issue ~~such~~ an amendment if it finds, on a satisfactory showing by the applicant, that the sale
 15 of wine for consumption on the premises would be supplementary to a restaurant or prepared-food
 16 business. A person holding a beer-and-wine license may sell wine for consumption on or off the premises.
 17 Nonretention of the beer license, for whatever reason, ~~shall mean~~ means automatic loss of the wine
 18 amendment license.

19 (3) A retail license to sell beer or table wine, or both, in the original packages for off-premises
 20 consumption only may be issued to any person, firm, or corporation ~~who~~ that is approved by the
 21 department as a fit and proper person, firm, or corporation to sell beer or table wine, or both, and whose
 22 premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a
 23 pharmacy. The number of ~~such~~ licenses that the department may issue is not limited by the provisions of
 24 subsection (1) ~~of this section~~ but ~~shall~~ must be determined by the department in ~~the exercise of its sound~~
 25 discretion, and the department may in ~~the exercise of its sound~~ discretion grant or deny any application for
 26 any ~~such~~ license or suspend or revoke any ~~such~~ license for cause."

27
 28 ~~SECTION 36. SECTION 16-4-207, MCA, IS AMENDED TO READ:~~

29 ~~"16-4-207. Notice of application—investigation—publication—protest. (1) When an application~~
 30 ~~has been filed with the department for a license to sell alcoholic beverages at retail or to transfer a retail~~

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

13 **NOTICE OF APPLICATION FOR RETAIL ALL BEVERAGES LICENSE**

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

19 Dated Signed

20 ADMINISTRATOR

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

23 (3) If the administrator receives no written protests, the department may issue or transfer the
 24 license without holding a public hearing. If the issuance or transfer of a license is made without holding a
 25 public hearing, the issuance or transfer must be completed within 40 days of the last date of publication
 26 under subsection (1). If written protests by a person who has extended credit to the transferor or residents
 27 of the county from which the application comes or adjoining Montana counties against the issuance or
 28 transfer of the license are received, the department shall hold a public hearing. Unless a later date is set
 29 by agreement between the applicant and the department, the public hearing must be held within 30 days
 30 of the last date of publication under subsection (1)."

1 **Section 34.** Section 16-4-401, MCA, is amended to read:

2 **"16-4-401. License as privilege -- criteria for decision on application.** (1) A license under this code
3 is a privilege which the state may grant to an applicant and is not a right to which any applicant is entitled.

4 (2) Except as provided in subsection (6), in the case of a license that permits on-premises
5 consumption, the department must find in every case in which it makes an order for the issuance of a new
6 license or for the approval of the transfer of a license that:

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

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

10 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in
11 16-1-106;

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

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

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

18 ~~v~~(vi) the applicant is not under the age of 19 years; and

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

20 (i) the owners of at least 51% of the outstanding stock meet the requirements of subsection
21 ~~(2)(a)(iii)~~ (2)(a)(iv);

22 (ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual
23 applicant listed in subsection (2)(a) ~~of this section~~;

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

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

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

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

30 (ii) if the applicant consists of more than one corporation, all must meet the requirements of

1 subsection (2)(b).

2 (3) In the case of a license that permits only off-premises consumption, the department must find
3 in every case in which it makes an order for the issuance of a new license or for the approval of the transfer
4 of a license that:

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

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

8 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in
9 16-1-106;

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

12 ~~iiii~~(iv) the applicant has not been convicted of a felony or, if the applicant has been convicted of
13 a felony, ~~his~~ the applicant's rights have been restored;

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

17 ~~v~~(vi) the applicant is not under the age of 19 years; and

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

19 (i) the owners of at least 51% of the outstanding stock meet the requirements of subsection
20 ~~(3)(a)(iii)~~ (3)(a)(iv);

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

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

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

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

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

29 (4) In the case of a license that permits the manufacture, importing, or wholesaling of an alcoholic
30 beverage, the department must find in every case in which it makes an order for the issuance of a new

1 license or for the approval of the transfer of a license that:

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

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

5 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in
6 16-1-106;

7 ~~(iii)~~(iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of
8 a felony, ~~his~~ rights have been restored;

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

12 ~~(iv)~~(v) the applicant is not under the age of 19 years; and

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

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

16 (i) the owners of at least 51% of the outstanding stock meet the requirements of subsection
17 ~~(4)(a)(iii)~~ (4)(a)(iii);

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

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

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

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

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

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

28 (5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), and (4)(b)
29 apply separately to each class of stock.

30 (6) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant

1 to 16-4-302."

2

3 ~~SECTION 38. SECTION 16-4-405, MCA, IS AMENDED TO READ:~~

4 ~~"16-4-405. Denial of license — timeliness. (1) The department may deny the issuance of a retail~~
 5 ~~alcoholic beverages license if it determines that the premises proposed for licensing are off regular police~~
 6 ~~beats and cannot be properly policed by local authorities.~~

7 ~~(2) A retail license may not be issued by the department for a premises situated within a zone of~~
 8 ~~a city or town where the sale of alcoholic beverages is prohibited by ordinance, a certified copy of which~~
 9 ~~has been filed with the department.~~

10 ~~(3) A license under this code may not be issued if the department finds from the evidence at the~~
 11 ~~hearing held pursuant to 16-4-207(3) that:~~

12 ~~(a) the welfare of the people residing in the vicinity of the premises for which the license is desired~~
 13 ~~will be adversely and seriously affected;~~

14 ~~(b) there is not a public convenience and necessity justification;~~

15 ~~(c) the applicant or the premises proposed for licensing fail to meet the eligibility or suitability~~
 16 ~~criteria established by this code; or~~

17 ~~(d) the purposes of this code will not be carried out by the issuance of the license.~~

18 ~~(4) The hearing examiner shall issue a proposed decision to grant or deny a license within 60 days~~
 19 ~~after holding a public hearing under 16-4-207. Within 45 days of the expiration of the time period for~~
 20 ~~written exceptions or, if there are oral arguments, within 45 days after oral arguments are held before the~~
 21 ~~department, the department shall either grant or deny a license application."~~

22

23 **Section 35.** Section 16-6-107, MCA, is amended to read:

24 **"16-6-107. Disposal of forfeited alcoholic beverages -- report.** (1) If a court or hearing examiner
 25 orders the forfeiture of alcoholic beverages under this code or if a claimant to an alcoholic beverage under
 26 16-6-105 or 16-6-106 fails to establish the claimant's right to the alcoholic beverage, the alcoholic
 27 beverage in question and the packages in which the alcoholic beverage is kept must be delivered to the
 28 department. The department shall determine the market value of each forfeited alcoholic beverage found
 29 to be suitable for sale in the state agency liquor stores and shall pay the amount determined to the state
 30 treasurer after deducting any expenses incurred by the department for transporting the forfeited alcoholic

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

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

7
 8 **Section 36.** Section 16-6-303, MCA, is amended to read:

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

18
 19 **Section 37.** Section 17-8-244, MCA, is amended to read:

20 **"17-8-244. Exemptions. (1)** Section 17-8-242 does not apply to the following:

21 ~~(1)(a)~~ (a) interagency or intergovernmental transactions;

22 ~~(2)(b)~~ (b) claims subject to a good faith dispute;

23 ~~(3)(c)~~ (c) delinquencies due to natural disasters, disruptions in postal or delivery service, work
 24 stoppage due to labor disputes, power failures, or any other cause resulting from circumstances clearly
 25 beyond the control of the payer agency;

26 ~~(4)(d)~~ (d) contracts entered into before October 1, 1983;

27 ~~(5)(e)~~ (e) wages due and payable to state employees or payments from any state retirement system
 28 created pursuant to Title 19; or

29 ~~(6)(f)~~ (f) claims submitted to the state or to its fiscal intermediary by providers of supplies or services
 30 under the Montana medicaid or workers' compensation program if reasonable cause for nonpayment exists.

1 (2) In the case of liquor withdrawn from bailment in the state liquor warehouse by the department
 2 of revenue for the purpose of resale through agency liquor stores, payment is timely if paid within 60 days
 3 after the product is withdrawn."

4
 5 **Section 38.** Section 30-9-104, MCA, is amended to read:

6 **"30-9-104. Transactions excluded from chapter.** This chapter does not apply:

7 (1) to a security interest subject to any statute of the United States such as the Ship Mortgage Act,
 8 1920, to the extent that ~~such~~ the statute governs the rights of parties to and third parties affected by
 9 transactions in particular types of property;

10 (2) to a landlord's lien;

11 (3) to a lien given by statute or other rule of law for services or materials except as provided in
 12 30-9-310 on priority of such liens;

13 (4) to a transfer of a claim for wages, salary, or other compensation of an employee;

14 (5) to a transfer by a government or governmental subdivision or agency;

15 (6) to a sale of accounts or chattel paper as part of a sale of the business out of which they arose,
 16 or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of
 17 a right to payment under a contract to an assignee who is also to do the performance under the contract,
 18 or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting
 19 indebtedness;

20 (7) to a transfer of an interest or claim in or under any policy of insurance, except as provided with
 21 respect to proceeds (30-9-306) and priorities in proceeds (30-9-312);

22 (8) to a right represented by a judgment (other than a judgment taken on a right to payment which
 23 was collateral);

24 (9) to any right of setoff;

25 (10) except to the extent that provision is made for fixtures in 30-9-313, to the creation or transfer
 26 of an interest in or lien on real estate, including a lease or rents ~~thereunder~~ under the lease;

27 (11) to a transfer in whole or in part of any claim arising out of tort; ~~or~~

28 (12) to a transfer of an interest in any deposit account (30-9-105(1)), except as provided with
 29 respect to proceeds (30-9-306) and priorities in proceeds (30-9-312); or

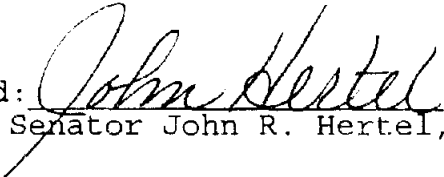
30 (13) to liquor in an agency liquor store as defined in 16-1-106."

SENATE STANDING COMMITTEE REPORT

Page 1 of 4
March 22, 1995

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration HB 574 (third reading copy -- blue), respectfully report that HB 574 be amended as follows and as so amended be concurred in.

Signed: 
Senator John R. Hertel, Chair

That such amendments read:

1. Title, line 10.

Following: "~~STORES,~~"

Insert: "PROVIDING THAT ELIGIBLE STATE LIQUOR STORE EMPLOYEES
HAVE A RIGHT OF FIRST REFUSAL IN BECOMING AGENTS FOR THE
CONVERTED STORES;"

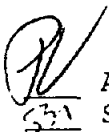
2. Page 2, lines 3 and 7.

Strike: "6"

Insert: "8"

3. Page 2, line 25.

Insert: "NEW SECTION. Section 3. Purchase of initial inventory and trade fixtures from former state liquor store. (1)
After the selection of an agent pursuant to [section 6] who was an eligible state employee or a business entity consisting of eligible state employees to operate an agency liquor store that is operating as a state liquor store, the person or entity selected as agent and the department of revenue shall agree upon a date of conversion from a state liquor store to an agency liquor store. The date must be between July 1, 1995, and December 1, 1995. As of the day before the conversion date, the department shall calculate a closing statement showing the dollar amount of inventory on hand and the dollar amount of any trade fixtures that the agent chooses to purchase. As soon as practical thereafter, the department shall send to the agency liquor store a statement for the total price of the inventory and trade fixtures, payable in 16 even monthly payments. The price of liquor must be calculated in the same manner as the price for liquor purchased by an agency liquor store under the provisions of 16-2-101. Trade fixtures must be valued by the department as the amount, if any, in excess of the fixtures' depreciated value. The first payment is due 60 days from the date on which the department mails the statement, and each subsequent payment is due on the last day of the month for each month thereafter. At any time after payment of the



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Senator Carrying Bill

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SENATE
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first payment, an agent may pay in full the amount due or may increase the amount of each monthly payment. The payment of increased payments does not waive the making of a monthly payment until the initial purchase price is fully paid.

(2) Any shortages due the state as of the date of conversion must be paid by the store manager if the store manager becomes the liquor store agent or is a partner or shareholder in a business selected as the liquor store agent. The manager shall make payment within 30 days of notice of the amount due."

Renumber: subsequent sections

4. Page 3, line 19.

Strike: "[SECTION 2]"

Insert: "either [section 2] or [section 3]"

5. Page 3, line 26.

Following: "and"

Insert: "preference rights and"

6. Page 3, line 28.

Strike: "6"

Insert: "8"

7. Page 4, lines 1, 9, and 27.

Strike: "6"

Insert: "8"

8. Page 4.

Following: line 25

Insert: "(2) (a) Notwithstanding any other provision of law, an employee of a state liquor store who meets the requirements of an eligible state employee must be given the right of first refusal for selection of the agent chosen to operate an agency liquor store.

(b) The department's selection criteria in order of priority for selecting an agent for employee-operated state liquor stores to be converted to agency liquor stores are as follows:

(i) The applicant must be either an eligible state employee who is an employee of the store, a partnership with a majority of the partners qualifying as eligible state employees and a majority of the partners working as employees of the state liquor store, or a corporation with at least one shareholder who is an eligible state employee and is an employee of the store.

(ii) If no applicant meets the requirements of subsection (2) (b) (i), the applicant must be either an eligible state employee and an employee of another state liquor store in the same city or town, a partnership with a majority of the partners

qualifying as eligible state employees and employees of another state liquor store in the same city or town, or a corporation with at least one shareholder who is an eligible state employee and is an employee of another state liquor store in the same city or town.

(iii) If no applicant meets the requirements of subsection (2)(b)(i) or (2)(b)(ii), the state agent must be selected by the methods required by the department of administration."

Renumber: subsequent subsection

9. Page 4, line 30.

Insert: "NEW SECTION. **Section 6. Conversion of existing state-operated liquor stores.** (1)(a) Within 45 days of [the

effective date of this section], any person or entity, an eligible state employee, or a business entity consisting of eligible state employees, as referred to in [section 5(2)(b)(i)], may file an application or applications to operate as an agency liquor store the liquor store in which the eligible state employee or the employees of the business entity consisting of eligible state employees are employed or to operate as an agency liquor store another liquor store in the same community in which the eligible state employee or employees of the business entity consisting of eligible state employees are employed.

(b) The application must set forth the nature of the entity applying for the agency franchise agreement and the employee's or employees' preference rights, if any, along with any other information that the department of revenue requires.

(2)(a) If the employee or a business entity consisting of eligible state employees is the sole applicant, the department shall enter into an agency franchise agreement with either the employee or the business entity to operate the agency liquor store.

(b) If more than one person or entity or more than one eligible state employee or business entity consisting of eligible state employees applies to be the agent for the liquor store, the department shall use the appropriate competitive bidding procedures to select the agent. However, if eligible state employees or a business entity consisting of eligible state employees matches the bid of any other person or entity, the franchise must be awarded to the eligible state employees or business entity consisting of eligible state employees.

(3) For purposes of this section, an eligible state employee is considered to be an employee of the state liquor store in which the eligible employee worked a majority of the hours between July 1, 1994, and January 6, 1995.

(4) Until converted to an agency liquor store, a state liquor store shall operate under the laws governing the operation

of state liquor stores as those laws read on January 1, 1995."
Renumber: subsequent sections

10. Page 6, line 4.
Strike: "7"
Insert: "9"

11. Page 6, lines 8 and 9.
Strike: "6"
Insert: "8"

12. Page 6, lines 19 and 21.
Strike: "ACT"
Insert: "section"

13. Page 36, lines 3 and 5.
Strike: "7 and 8"
Insert: "9 and 10"

14. Page 36, line 11.
Strike: "24"
Insert: "26"

15. Page 36, line 11.
Strike: "37"
Insert: "39"

-END-

1 HOUSE BILL NO. 574

2 INTRODUCED BY REHBEIN, MILLER, GRINDE, ELLIS, MASOLO, HOLLAND, FELAND, FISHER, CURTISS,
3 HARP, HARGROVE, BOHARSKI, KASTEN, KNOX, JORE, ORR, BARNETT, TASH, GAGE, BECK,
4 HERRON, TAYLOR, VICK, HAYNE, M. HANSON, SLITER, OHS, MERCER, GROSFIELD, FORBES,
5 SIMPKINS, COLE, CLARK, DEVANEY, ZOOK, STOVALL

6
7 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LIQUOR LAWS; PROVIDING FOR THE
8 CONVERSION OF EMPLOYEE-OPERATED STATE LIQUOR STORES TO AGENCY LIQUOR STORES;
9 ~~PROVIDING THAT ELIGIBLE STATE LIQUOR STORE EMPLOYEES HAVE A RIGHT OF FIRST REFUSAL IN~~
10 ~~BECOMING AGENTS FOR THE CONVERTED STORES;~~ PROVIDING THAT ELIGIBLE STATE LIQUOR STORE
11 EMPLOYEES HAVE A RIGHT OF FIRST REFUSAL IN BECOMING AGENTS FOR THE CONVERTED STORES;
12 PROVIDING FOR THE PURCHASE OF LIQUOR ASSETS IN STORES BY THE AGENTS OPERATING THE
13 STORES OVER AN 18-MONTH PERIOD; PROHIBITING NEW AGENCY LIQUOR STORES FOR 4 YEARS IN
14 CITIES OR TOWNS THAT HAD AN AGENCY LIQUOR STORE IN 1994; PROVIDING FOR A STATE LIEN ON
15 LIQUOR IN AGENCY LIQUOR STORES; PROHIBITING A PERSON FROM HAVING AN OWNERSHIP
16 INTEREST IN MORE THAN ONE AGENCY LIQUOR STORE; PROHIBITING AN OWNERSHIP INTEREST IN AN
17 AGENCY LIQUOR STORE BY A PERSON HAVING ANOTHER TYPE OF LIQUOR LICENSE; PROVIDING FOR
18 A BONUS PAYMENT FOR CERTAIN STATE LIQUOR DIVISION EMPLOYEES WHO REMAIN IN
19 EMPLOYMENT DURING THE CONVERSION PROCESS; AMENDING LAWS RELATING TO TABLE WINE TO
20 CLARIFY THE DISTRIBUTION AND SALE OF TABLE WINE IN RELATION TO AGENCY LIQUOR STORES;
21 PROVIDING FOR THE CONTRACTUAL AND OTHER ADMINISTRATION OF AGENCY LIQUOR STORES;
22 INCREASING THE CASE DISCOUNT ON THE SALE OF LIQUOR TO 8 PERCENT AND LIMITING THE
23 DISCOUNT TO ALCOHOLIC BEVERAGE LICENSEES; PROVIDING THAT AGENCY STORES MAY BE OPEN
24 ON MONDAYS IF A MAJORITY OF THE ALL-BEVERAGES LICENSEES IN THE AGENCY'S MARKET AREA
25 AGREE; ~~PROVIDING TIME LIMITS RELATING TO GRANTING OR DENYING A LICENSE;~~ AMENDING
26 SECTIONS 2-17-101, 16-1-103, 16-1-105, 16-1-106, 16-1-301, 16-1-302, 16-1-303, 16-1-304, 16-1-402,
27 16-2-101, 16-2-104, 16-2-105, 16-2-106, 16-2-107, 16-2-108, 16-2-201, 16-2-301, 16-3-103, 16-3-106,
28 16-3-307, 16-3-401, 16-3-402, 16-3-403, 16-3-411, 16-4-105, ~~16-4-207~~, 16-4-401, ~~16-4-405~~, 16-6-107,
29 16-6-303, 17-8-244, AND 30-9-104, MCA; REPEALING SECTIONS 16-2-302 AND 16-2-303, MCA; AND
30 PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."

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

2

3 NEW SECTION. **Section 1. Eligible state employee.** As used in [sections 1 through 8 & 8],
 4 "eligible state employee" means a state employee who worked 544 hours either in an employee-operated
 5 state liquor store as a liquor store manager, assistant manager, or clerk or in the central office of the liquor
 6 division between July 1, 1994, and January 6, 1995, who is in a position subject to termination by
 7 [sections 1 through 8 & 8]. For purposes of this section, the term "worked" includes all hours reported to
 8 the central payroll system, such as but not limited to hours worked, sick leave, annual leave, and leave
 9 without pay.

10

11 NEW SECTION. **Section 2. Purchase of initial inventory by existing state agent.** (1) As of June
 12 30, 1995, the department of revenue shall calculate a closing statement showing the dollar amount of
 13 inventory on hand for each agency liquor store in operation on that date. As soon as practical thereafter,
 14 the department shall send to each agency liquor store a statement for the total price of the inventory,
 15 payable in 16 even monthly payments. The price must be calculated in the same manner as the price for
 16 liquor purchased by an agency liquor store under the provisions of 16-2-101. The first payment is due 60
 17 days from the date on which the department mails the statement, and each subsequent payment is due on
 18 the last day of the month for each month thereafter. At any time after payment of the first payment, an
 19 agent who is purchasing the initial inventory may pay in full the amount due or may increase the amount
 20 of each monthly payment. The payment of increased payments does not waive the making of a monthly
 21 payment until the initial purchase price is fully paid.

22 (2) Any shortages due the state as of June 30, 1995, must be offset from the final commission
 23 payment. If the shortage exceeds the calculated commission payment, the agent shall make payment
 24 within 30 days of notice of the amount due.

25

26 NEW SECTION. SECTION 3. PURCHASE OF INITIAL INVENTORY AND TRADE FIXTURES FROM
 27 FORMER STATE LIQUOR STORE. (1) AFTER THE SELECTION OF AN AGENT PURSUANT TO [SECTION
 28 6] WHO WAS AN ELIGIBLE STATE EMPLOYEE OR A BUSINESS ENTITY CONSISTING OF ELIGIBLE STATE
 29 EMPLOYEES TO OPERATE AN AGENCY LIQUOR STORE THAT IS OPERATING AS A STATE LIQUOR
 30 STORE, THE PERSON OR ENTITY SELECTED AS AGENT AND THE DEPARTMENT OF REVENUE SHALL

1 AGREE UPON A DATE OF CONVERSION FROM A STATE LIQUOR STORE TO AN AGENCY LIQUOR STORE.
2 THE DATE MUST BE BETWEEN JULY 1, 1995, AND DECEMBER 1, 1995. AS OF THE DAY BEFORE THE
3 CONVERSION DATE, THE DEPARTMENT SHALL CALCULATE A CLOSING STATEMENT SHOWING THE
4 DOLLAR AMOUNT OF INVENTORY ON HAND AND THE DOLLAR AMOUNT OF ANY TRADE FIXTURES
5 THAT THE AGENT CHOOSES TO PURCHASE. AS SOON AS PRACTICAL THEREAFTER, THE
6 DEPARTMENT SHALL SEND TO THE AGENCY LIQUOR STORE A STATEMENT FOR THE TOTAL PRICE OF
7 THE INVENTORY AND TRADE FIXTURES, PAYABLE IN 16 EVEN MONTHLY PAYMENTS. THE PRICE OF
8 LIQUOR MUST BE CALCULATED IN THE SAME MANNER AS THE PRICE FOR LIQUOR PURCHASED BY AN
9 AGENCY LIQUOR STORE UNDER THE PROVISIONS OF 16-2-101. TRADE FIXTURES MUST BE VALUED
10 BY THE DEPARTMENT AS THE AMOUNT, IF ANY, IN EXCESS OF THE FIXTURES' DEPRECIATED VALUE.
11 THE FIRST PAYMENT IS DUE 60 DAYS FROM THE DATE ON WHICH THE DEPARTMENT MAILES THE
12 STATEMENT, AND EACH SUBSEQUENT PAYMENT IS DUE ON THE LAST DAY OF THE MONTH FOR EACH
13 MONTH THEREAFTER. AT ANY TIME AFTER PAYMENT OF THE FIRST PAYMENT, AN AGENT MAY PAY
14 IN FULL THE AMOUNT DUE OR MAY INCREASE THE AMOUNT OF EACH MONTHLY PAYMENT. THE
15 PAYMENT OF INCREASED PAYMENTS DOES NOT WAIVE THE MAKING OF A MONTHLY PAYMENT UNTIL
16 THE INITIAL PURCHASE PRICE IS FULLY PAID.

17 (2) ANY SHORTAGES DUE THE STATE AS OF THE DATE OF CONVERSION MUST BE PAID BY THE
18 STORE MANAGER IF THE STORE MANAGER BECOMES THE LIQUOR STORE AGENT OR IS A PARTNER
19 OR SHAREHOLDER IN A BUSINESS SELECTED AS THE LIQUOR STORE AGENT. THE MANAGER SHALL
20 MAKE PAYMENT WITHIN 30 DAYS OF NOTICE OF THE AMOUNT DUE.

21
22 NEW SECTION. Section 3. Purchase of initial inventory and trade fixtures from former state liquor
23 store. (1) After the selection of an agent pursuant to [section 6] who was an eligible state employee or
24 a business entity consisting of eligible state employees to operate an agency liquor store that is operating
25 as a state liquor store, the person or entity selected as agent and the department of revenue shall agree
26 upon a date of conversion from a state liquor store to an agency liquor store. The date must be between
27 July 1, 1995, and December 1, 1995. As of the day before the conversion date, the department shall
28 calculate a closing statement showing the dollar amount of inventory on hand and the dollar amount of any
29 trade fixtures that the agent chooses to purchase. As soon as practical thereafter, the department shall
30 send to the agency liquor store a statement for the total price of the inventory and trade fixtures, payable

1 in 16 even monthly payments. The price of liquor must be calculated in the same manner as the price for
 2 liquor purchased by an agency liquor store under the provisions of 16-2-101. Trade fixtures must be valued
 3 by the department as the amount, if any, in excess of the fixtures' depreciated value. The first payment
 4 is due 60 days from the date on which the department mails the statement, and each subsequent payment
 5 is due on the last day of the month for each month thereafter. At any time after payment of the first
 6 payment, an agent may pay in full the amount due or may increase the amount of each monthly payment.
 7 The payment of increased payments does not waive the making of a monthly payment until the initial
 8 purchase price is fully paid.

9 (2) Any shortages due the state as of the date of conversion must be paid by the store manager
 10 if the store manager becomes the liquor store agent or is a partner or shareholder in a business selected
 11 as the liquor store agent. The manager shall make payment within 30 days of notice of the amount due.

12
 13 **NEW SECTION.** Section 4. Sales of returned liquor. Any inventory owned by the state that is
 14 located in either an agency liquor store or an employee-operated state liquor store prior to the operation
 15 of either [section 2] or [section 3] **[SECTION 2] EITHER [SECTION 2] OR [SECTION 3]**, which in the opinion
 16 of the department of revenue is not economically feasible to be sold in agency liquor stores, may be
 17 returned to the state liquor warehouse. The department may, between July 1, 1995, and June 30, 1996,
 18 dispose of this inventory in any commercially reasonable manner, including but not limited to retail sales
 19 from the state liquor warehouse to retail licensees. After the department has exhausted all attempts to
 20 commercially dispose of the inventory, the department may dispose of it in any manner meeting its sound
 21 discretion.

22
 23 **NEW SECTION.** Section 5. Liquor store employees ~~preference rights and~~ **PREFERENCE RIGHTS**
 24 **AND bonus payment.** (1) Any liquor store employee or liquor division central office employee who meets
 25 the requirements of an eligible state employee who is terminated as a result of the operation of [sections
 26 1 through ~~8 & 8~~] is eligible for a work incentive bonus if the employee continues in employment through
 27 December 31, 1995. This bonus is in addition to any reduction in force benefits or other benefits that the
 28 employee may be entitled to as a result of termination under the provisions of [sections 1 through ~~8 & 8~~].

29 (a) The amount of the bonus must be computed by multiplying the eligible state employee's hourly
 30 wage by 26.8%. The resulting product must be multiplied by 2,080 and that resulting product must be

1 multiplied by the quotient of the number of hours worked, not to exceed 1,088 hours, as an eligible state
 2 employee between July 1, 1994, and January 6, 1995, divided by 1,088, which result is equal to the
 3 employee's bonus.

4 (b) An employee is entitled to the full amount of the bonus if the employee's employment is
 5 terminated by the department of revenue before December 31, 1995, because of the operation of [sections
 6 1 through ~~8~~ 6 ~~8~~].

7 ~~(2)(a) Notwithstanding any other provision of law, an employee of a state liquor store who meets~~
 8 ~~the requirements of an eligible state employee must be given the first right of refusal for selection of the~~
 9 ~~agent chosen to operate an agency liquor store.~~

10 ~~(b) The department's selection criteria in order of priority for selecting an agent for~~
 11 ~~employee-operated state liquor stores to be converted to agency liquor stores are as follows:~~

12 ~~(i) The applicant must be either an eligible state employee who is an employee of the store, a~~
 13 ~~partnership with a majority of the partners qualifying as eligible state employees and a majority of the~~
 14 ~~partners working as employees of the state liquor store, or a corporation with at least one shareholder who~~
 15 ~~is an eligible state employee and is an employee of the store.~~

16 ~~(ii) If no applicant meets the requirements of subsection (2)(b)(i), the applicant must be either an~~
 17 ~~eligible state employee and an employee of another state liquor store in the same city or town, a partnership~~
 18 ~~with a majority of the partners qualifying as eligible state employees and employees of another state liquor~~
 19 ~~store in the same city or town, or a corporation with at least one shareholder who is an eligible state~~
 20 ~~employee and is an employee of another state liquor store in the same city or town.~~

21 ~~(iii) If no applicant meets the requirements of subsection (2)(b)(i) or (2)(b)(ii), the state agent must~~
 22 ~~be selected by the methods required by the department of administration.~~

23 (2)(A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN EMPLOYEE OF A STATE
 24 LIQUOR STORE WHO MEETS THE REQUIREMENTS OF AN ELIGIBLE STATE EMPLOYEE MUST BE GIVEN
 25 THE RIGHT OF FIRST REFUSAL FOR SELECTION OF THE AGENT CHOSEN TO OPERATE AN AGENCY
 26 LIQUOR STORE.

27 (B) THE DEPARTMENT'S SELECTION CRITERIA IN ORDER OF PRIORITY FOR SELECTING AN
 28 AGENT FOR EMPLOYEE-OPERATED STATE LIQUOR STORES TO BE CONVERTED TO AGENCY LIQUOR
 29 STORES ARE AS FOLLOWS:

30 (I) THE APPLICANT MUST BE EITHER AN ELIGIBLE STATE EMPLOYEE WHO IS AN EMPLOYEE OF

1 THE STORE, A PARTNERSHIP WITH A MAJORITY OF THE PARTNERS QUALIFYING AS ELIGIBLE STATE
 2 EMPLOYEES AND A MAJORITY OF THE PARTNERS WORKING AS EMPLOYEES OF THE STATE LIQUOR
 3 STORE, OR A CORPORATION WITH AT LEAST ONE SHAREHOLDER WHO IS AN ELIGIBLE STATE
 4 EMPLOYEE AND IS AN EMPLOYEE OF THE STORE.

5 (II) IF NO APPLICANT MEETS THE REQUIREMENTS OF SUBSECTION (2)(B)(I), THE APPLICANT
 6 MUST BE EITHER AN ELIGIBLE STATE EMPLOYEE AND AN EMPLOYEE OF ANOTHER STATE LIQUOR
 7 STORE IN THE SAME CITY OR TOWN, A PARTNERSHIP WITH A MAJORITY OF THE PARTNERS
 8 QUALIFYING AS ELIGIBLE STATE EMPLOYEES AND EMPLOYEES OF ANOTHER STATE LIQUOR STORE
 9 IN THE SAME CITY OR TOWN, OR A CORPORATION WITH AT LEAST ONE SHAREHOLDER WHO IS AN
 10 ELIGIBLE STATE EMPLOYEE AND IS AN EMPLOYEE OF ANOTHER STATE LIQUOR STORE IN THE SAME
 11 CITY OR TOWN.

12 (III) IF NO APPLICANT MEETS THE REQUIREMENTS OF SUBSECTION (2)(B)(I) OR (2)(B)(II), THE
 13 STATE AGENT MUST BE SELECTED BY THE METHODS REQUIRED BY THE DEPARTMENT OF
 14 ADMINISTRATION.

15 ~~(3)(2)(3)~~ All state liquor store employees and liquor division central office employees whose
 16 positions are eliminated as a result of [sections 1 through ~~8 & 8~~] are entitled to all the benefits accorded
 17 by the State Employee Protection Act in Title 2, chapter 18, part 12, as that part reads on the date on
 18 which the employee leaves state employment.

19
 20 **NEW SECTION. SECTION 6. CONVERSION OF EXISTING STATE-OPERATED LIQUOR STORES.**

21 (1)(A) WITHIN 45 DAYS OF [THE EFFECTIVE DATE OF THIS SECTION], ANY PERSON OR ENTITY, AN
 22 ELIGIBLE STATE EMPLOYEE, OR A BUSINESS ENTITY CONSISTING OF ELIGIBLE STATE EMPLOYEES, AS
 23 REFERRED TO IN [SECTION 5(2)(B)(I)], MAY FILE AN APPLICATION OR APPLICATIONS TO OPERATE AS
 24 AN AGENCY LIQUOR STORE THE LIQUOR STORE IN WHICH THE ELIGIBLE STATE EMPLOYEE OR THE
 25 EMPLOYEES OF THE BUSINESS ENTITY CONSISTING OF ELIGIBLE STATE EMPLOYEES ARE EMPLOYED
 26 OR TO OPERATE AS AN AGENCY LIQUOR STORE ANOTHER LIQUOR STORE IN THE SAME COMMUNITY
 27 IN WHICH THE ELIGIBLE STATE EMPLOYEE OR EMPLOYEES OF THE BUSINESS ENTITY CONSISTING OF
 28 ELIGIBLE STATE EMPLOYEES ARE EMPLOYED.

29 (B) THE APPLICATION MUST SET FORTH THE NATURE OF THE ENTITY APPLYING FOR THE
 30 AGENCY FRANCHISE AGREEMENT AND THE EMPLOYEE'S OR EMPLOYEES' PREFERENCE RIGHTS, IF

1 ANY, ALONG WITH ANY OTHER INFORMATION THAT THE DEPARTMENT OF REVENUE REQUIRES.

2 (2)(A) IF THE EMPLOYEE OR A BUSINESS ENTITY CONSISTING OF ELIGIBLE STATE EMPLOYEES
 3 IS THE SOLE APPLICANT, THE DEPARTMENT SHALL ENTER INTO AN AGENCY FRANCHISE AGREEMENT
 4 WITH EITHER THE EMPLOYEE OR THE BUSINESS ENTITY TO OPERATE THE AGENCY LIQUOR STORE.

5 (B) IF MORE THAN ONE PERSON OR ENTITY OR MORE THAN ONE ELIGIBLE STATE EMPLOYEE
 6 OR BUSINESS ENTITY CONSISTING OF ELIGIBLE STATE EMPLOYEES APPLIES TO BE THE AGENT FOR
 7 THE LIQUOR STORE, THE DEPARTMENT SHALL USE THE APPROPRIATE COMPETITIVE BIDDING
 8 PROCEDURES TO SELECT THE AGENT. HOWEVER, IF ELIGIBLE STATE EMPLOYEES OR A BUSINESS
 9 ENTITY CONSISTING OF ELIGIBLE STATE EMPLOYEES MATCHES THE BID OF ANY OTHER PERSON OR
 10 ENTITY, THE FRANCHISE MUST BE AWARDED TO THE ELIGIBLE STATE EMPLOYEES OR BUSINESS
 11 ENTITY CONSISTING OF ELIGIBLE STATE EMPLOYEES.

12 (3) FOR PURPOSES OF THIS SECTION, AN ELIGIBLE STATE EMPLOYEE IS CONSIDERED TO BE
 13 AN EMPLOYEE OF THE STATE LIQUOR STORE IN WHICH THE ELIGIBLE EMPLOYEE WORKED A
 14 MAJORITY OF THE HOURS BETWEEN JULY 1, 1994, AND JANUARY 6, 1995.

15 (4) UNTIL CONVERTED TO AN AGENCY LIQUOR STORE, A STATE LIQUOR STORE SHALL
 16 OPERATE UNDER THE LAWS GOVERNING THE OPERATION OF STATE LIQUOR STORES AS THOSE LAWS
 17 READ ON JANUARY 1, 1995.

18
 19 ~~**NEW SECTION. Section 6. Conversion of existing state operated liquor stores.** (1)(a) Within 45~~
 20 ~~days of [the effective date of this section], an eligible state employee or a business entity consisting of~~
 21 ~~eligible state employees, as referred to in [section 5(2)(b)(i)], may file an application or applications to~~
 22 ~~operate as an agency liquor store the liquor store in which the employee or entity is employed or to operate~~
 23 ~~as an agency liquor store another liquor store in the same community in which the employee or entity is~~
 24 ~~employed.~~

25 ~~(b) The application must set forth the nature of the entity applying for the agency franchise~~
 26 ~~agreement and the employee's or employees' preference rights, along with any other information that the~~
 27 ~~department of revenue requires.~~

28 ~~(2)(a) If the employee or a business entity consisting of eligible state employees is the sole~~
 29 ~~applicant, the department shall enter into an agency franchise agreement with either the employee or the~~
 30 ~~business entity to operate the agency liquor store.~~

1 ~~(b) If more than one eligible state employee or business entity consisting of eligible state employees~~
2 ~~applies to be the agent for the liquor store in which the employee or entity works, the department shall use~~
3 ~~the appropriate competitive bidding procedures to select the agent. However, no other person may be~~
4 ~~allowed to apply.~~

5 ~~(3) The initial commission rate for agency liquor stores to be operated by employees is the direct~~
6 ~~operating expenses for a liquor store during fiscal year 1994 divided by the gross sales for fiscal year 1994,~~
7 ~~not to exceed 10%. The initial commission rate may not be less than 10% for stores in communities with~~
8 ~~less than 3,000 population. Any direct expense excluded by the 10% maximum rate must, IN THE~~
9 ~~CALCULATION OF THE COMMISSION RATES, be proportionally distributed among the remaining agency~~
10 ~~liquor stores.~~

11 ~~(4) If after 45 days after [the effective date of this section] an eligible state employee or business~~
12 ~~entity consisting of eligible state employees does not apply to operate the former state liquor store as an~~
13 ~~agency liquor store, the department shall use the appropriate competitive bidding procedures to select the~~
14 ~~agent.~~

15 ~~(5) For purposes of this section, an eligible state employee is considered to be an employee of the~~
16 ~~state liquor store in which the eligible employee worked a majority of the hours between July 1, 1994, and~~
17 ~~January 6, 1995.~~

18 ~~(6) Until converted to an agency liquor store, a state liquor store shall operate under the laws~~
19 ~~governing the operation of state liquor stores as those laws read on January 1, 1995.~~

21 NEW SECTION. **Section 7. No new agency franchises for four years.** Notwithstanding the
22 provisions of [section ~~9~~ 7 ~~9~~], the department of revenue may not establish any new agency liquor stores
23 until after July 1, 1999, in any community that had at least one agency liquor store on July 1, 1994.

25 NEW SECTION. **Section 8. Exemption from privatization plan requirements.** [Sections 1 through
26 ~~8~~ 6 ~~8~~] do not constitute privatization by an agency as that term is used in Title 2, chapter 8, part 3, and
27 the administration of [sections 1 through ~~8~~ 6 ~~8~~] by the department of revenue is not subject to the
28 provisions of Title 2, chapter 8, part 3.

30 NEW SECTION. **Section 9. Number and location of agency liquor stores.** (1)(a) In a community with

1 a population of 12,000 or less, there may be one agency liquor store. In communities with populations
 2 greater than 12,000, there may be one agency liquor store for the first 12,000 inhabitants and one
 3 additional agency liquor store within increments of population of 40,000 inhabitants above 12,000
 4 inhabitants. In determining population, the department shall use the same methods used for determining
 5 increases in the retail license quota system as provided in 16-4-501.

6 (b) In communities that are eligible for more than one agency liquor store, an agency liquor store
 7 ESTABLISHED AFTER [THE EFFECTIVE DATE OF THIS ACT SECTION] may not be located within a 1-mile
 8 radius of any other agency liquor store in the community.

9 (2) An agency liquor store ESTABLISHED AFTER [THE EFFECTIVE DATE OF THIS ACT SECTION]
 10 may not be located in a community that is closer than 35 miles to another community in which an agency
 11 liquor store is presently located, except in the circumstance when the most recent population estimates
 12 show a 25% growth in population or a growth of 1,000 inhabitants within a 2-year period, whichever is
 13 greater, and when this population increase is reasonably expected to continue for at least 5 years.

14
 15 NEW SECTION. Section 10. State lien on liquor in agency liquor stores. The state has a first lien
 16 with an absolute first priority to secure any outstanding amounts due the state for liquor purchased on any
 17 inventory, including any after-acquired inventory in the possession of an agent or on the premises of an
 18 agency liquor store, to secure payment for the existing inventory. The state has the right to physically
 19 recover any inventory from an agency liquor store for any failure to timely make payments.

20
 21 **Section 11.** Section 2-17-101, MCA, is amended to read:

22 **"2-17-101. Allocation of space.** (1) The department of administration shall determine the space
 23 required by state agencies other than the university system and shall allocate space in buildings owned or
 24 leased by the state, based on each agency's need. To efficiently and effectively allocate space, the
 25 department periodically shall identify the amount, location, and nature of space used by each agency.

26 (2) An agency requiring additional space shall notify the department. The department, in
 27 consultation with the agency, shall determine the amount and nature of the space needed and locate space
 28 within a building owned or leased by the state to meet the agency's requirements. If ~~no~~ space is not
 29 available in a building owned or leased by the state, the department shall locate space to be leased in an
 30 appropriate building or recommend alternatives to leasing, such as remodeling or exchanging space with

1 another agency. A state agency may not lease, rent, or purchase property for quarters without prior
2 approval of the department.

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

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

9 (4) For state agencies located in a city other than Helena, the department of administration shall
10 consolidate the offices of these agencies in a single, central location within the city whenever the
11 consolidation would result in a cost savings to the state while permitting sufficient space and facilities for
12 the agencies. The department may purchase, lease, or acquire, by exchange or otherwise, land and
13 buildings in the city to achieve consolidation. ~~State retail liquor stores, liquor retail agencies, and offices~~
14 Offices of the law enforcement services division and motor vehicle division of the department of justice are
15 exempted from consolidation."
16

17 **Section 12.** Section 16-1-103, MCA, is amended to read:

18 "16-1-103. **Policy as to retail sale of liquor.** It is the policy of the state that it is necessary to
19 further regulate and control the sale and distribution of alcoholic beverages within the state and to ensure
20 that the department has the entire complete regulatory control of the sale of liquor in ~~the department of~~
21 ~~revenue~~ this state. It is advisable and necessary, in addition to the operation of the ~~state agency~~ liquor
22 stores now provided by law, that the department be empowered and authorized to grant licenses to persons
23 qualified under this code to sell liquor purchased by them at ~~state agency~~ liquor stores at retail posted price
24 in accordance with this code and under rules promulgated by the department and under its strict
25 supervision and control and to provide severe penalty for the sale of liquor except by and in ~~state agency~~
26 liquor stores and by persons licensed under this code. The restrictions, regulations, and provisions
27 contained in this code are enacted by the legislature for the protection, health, welfare, and safety of the
28 people of the state."
29

30 **Section 13.** Section 16-1-105, MCA, is amended to read:

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

6
 7 **Section 14.** Section 16-1-106, MCA, is amended to read:

8 **"16-1-106. Definitions.** As used in this code, the following definitions apply:

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

11 (2) "Agency liquor store" means a ~~retail~~ store operated under an agency franchise agreement in
 12 accordance with this code for the purpose of selling liquor at EITHER THE POSTED OR retail PRICE for
 13 off-premises consumption.

14 ~~(2)~~(3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

15 ~~(3)~~(4) "Alcoholic beverage" means a compound produced and sold for human consumption as a
 16 drink that contains more than 0.5% of alcohol by volume.

17 ~~(4)~~(5) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

18 ~~(5)~~(6) "Beer importer" means a person other than a brewer who imports malt beverages.

19 ~~(6)~~(7) "Brewer" means a person who produces malt beverages.

20 (8) "Community" means:

21 (a) in an incorporated city or town, the area within the incorporated city or town boundaries;

22 (b) in an unincorporated city or area, the area identified by the federal bureau of the census as a
 23 community for census purposes; and

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

26 ~~(7)~~(9) "Department" means the department of revenue, unless otherwise specified.

27 ~~(8)~~(10) "Immediate family" means a spouse, dependent children, or dependent parents.

28 ~~(9)~~(11) "Import" means to transfer beer or table wine from outside the state of Montana into the
 29 state of Montana.

30 ~~(10)~~(12) "Industrial use" means a use described as industrial use by the federal Alcohol

1 Administration Act and the federal rules and regulations of 27 CFR.

2 ~~(11)~~(13) "Liquor" means an alcoholic beverage except beer and table wine.

3 ~~(12)~~(14) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or
4 decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or
5 their parts or their products and with or without other malted cereals and with or without the addition of
6 unmalted or prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or
7 without other wholesome products suitable for human food consumption.

8 ~~(13)~~(15) "Package" means a container or receptacle used for holding an alcoholic beverage.

9 ~~(14)~~(16) "Posted price" means the ~~retail~~ WHOLESALE price of liquor ~~and table wine~~ FOR SALE TO
10 PERSONS WHO HOLD LIQUOR LICENSES as fixed and determined by the department and in addition an
11 excise and license tax as provided in this code.

12 ~~(15)~~(17) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that
13 contains 50% of alcohol by volume.

14 ~~(16)~~(18) "Public place" means a place, building, or conveyance to which the public has or may be
15 permitted to have access and any place of public resort.

16 (19) "RETAIL PRICE" MEANS THE PRICE ESTABLISHED BY AN AGENT FOR THE SALE OF LIQUOR
17 TO PERSONS WHO DO NOT HOLD LIQUOR LICENSES. THE RETAIL PRICE MAY NOT BE LESS THAN THE
18 DEPARTMENT'S POSTED PRICE.

19 ~~(17)~~(19)(20) "Rules" means rules adopted by the department or the department of justice pursuant
20 to this code.

21 ~~(18)~~(20)(21) "State liquor ~~facility~~ warehouse" means a ~~facility~~ building owned or under control of
22 the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages to agency
23 liquor stores.

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

26 ~~(20)~~(21)(22) "Storage depot" means a building or structure owned or operated by a brewer at any
27 point in the state of Montana off and away from the premises of a brewery, which structure is equipped
28 with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or
29 distribute beer as permitted by this code.

30 ~~(21)~~(22)(23) "Subwarehouse" means a building or structure owned or operated by a licensed beer

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

4 ~~(22)(23)(24)~~ "Table wine" means wine that contains not more than 16% alcohol by volume.

5 ~~(23)(24)(25)~~ "Table wine distributor" means a person importing into or purchasing in Montana table
 6 wine for sale or resale to retailers licensed in Montana.

7 ~~(24)(25)(26)~~ "Warehouse" means a building or structure located in Montana owned or operated by
 8 a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or
 9 table wine as permitted by this code.

10 ~~(25)(26)(27)~~ "Wine" means an alcoholic beverage made from or containing the normal alcoholic
 11 fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction,
 12 except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5%
 13 but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies,
 14 sweetened, and fortified in accordance with applicable federal regulations and the customs and practices
 15 of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine
 16 and labeled and sold as wine in accordance with federal regulations are also wine."
 17

18 **Section 15.** Section 16-1-301, MCA, is amended to read:

19 **"16-1-301. Administration of code.** The department shall have the powers and duties to administer
 20 the Montana Alcoholic Beverage Code, including the general control, management, and supervision of all
 21 ~~state~~ agency liquor stores."
 22

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

24 **"16-1-302. Functions, powers, and duties of department.** The department has the following
 25 functions, duties, and powers:

- 26 (1) to buy, import, have in its possession for sale, and sell liquors ~~and table wine~~;
- 27 (2) to control the possession, sale, and delivery of liquors in accordance with the provisions of this
 28 code;
- 29 (3) to determine the municipalities where ~~state~~ agency liquor stores are to be established
 30 throughout the state and the situation of the stores within these municipalities;

1 (4) to lease, furnish, and equip any building or land required to administer its duties under this
2 code;

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

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

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

10 (8) to grant and issue licenses under this code;

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

14 (10) without limiting or being limited by the foregoing, to do all things necessary to administer this
15 code or rules."

16

17 **Section 17.** Section 16-1-303, MCA, is amended to read:

18 **"16-1-303. Department rules.** (1) The department and the department of justice may make rules
19 not inconsistent with this code necessary to efficiently administer this code.

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

21 (a) regulating the ~~equipment and management~~ contractual operation of ~~state agency liquor~~ state agency liquor stores
22 and warehouses in which liquor ~~or table wine~~ is kept or sold and prescribing the books and records to be
23 kept;

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

26 (c) governing the purchase of liquor ~~and table wine~~ and the furnishing of liquor ~~and table wine~~ to
27 state agency liquor stores;

28 (d) determining the classes, varieties, and brands of liquor ~~and table wine~~ to be kept available for
29 distribution from the state liquor warehouse ~~sale at any state store~~;

30 (e) prescribing the minimum hours during which ~~state agency~~ state agency liquor stores must be open for the

1 sale of alcoholic beverages;

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

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

6 (h) prescribing the form of records of purchase of liquor ~~and table wine~~ and the reports to be made
7 to the department and providing for inspection of the records;

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

9 (j) prescribing the fees payable for permits and licenses issued under this code for which ~~no~~ fees
10 are not prescribed in this code and prescribing the fees for anything done or permitted to be done under
11 the rules;

12 (k) prescribing, subject to the provisions of this code, the conditions and qualifications necessary
13 for the obtaining of alcoholic beverage licenses and the books and records to be kept and the returns to
14 be made by the licensees;

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

17 (m) specifying and regulating the time when and the manner by which vendors and brewers may
18 deliver alcoholic beverages under this code and the time when and the manner by which alcoholic
19 beverages, under this code, may be lawfully conveyed or carried;

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

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

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

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

29 (5) The department shall use the negotiated rulemaking procedures contained in Title 2, chapter
30 5, for the purpose of adoption of rules related to the operation of agency liquor stores. However, the

1 department may not be required to pay any expenses of the participants or of any persons engaged in the
2 rulemaking process as provided for in 2-5-110."

3

4 **Section 18.** Section 16-1-304, MCA, is amended to read:

5 **"16-1-304. Prohibited acts.** (1) An employee of the department involved in the operation of the
6 state liquor warehouse ~~or state liquor stores~~, the issuance of licenses, or the collection of alcoholic
7 beverages taxes or an employee of the department of justice directly involved with the investigation of
8 matters concerning the manufacture, sale, and distribution of alcoholic beverages may not be directly or
9 indirectly interested or engaged in any other business or undertaking dealing in liquor ~~or table wine~~, whether
10 as owner, part owner, partner, member of syndicate, shareholder, agent, or employee for the employee's
11 own benefit or in a fiduciary capacity for some other person.

12 (2) An employee of the state, a state agent, or any person having any ownership interest in an
13 agency liquor store may not solicit or receive directly or indirectly any commission, remuneration, ~~or~~ gift,
14 or other thing tangible or intangible of value from any person or corporation selling or offering liquor ~~or table~~
15 ~~wine~~ for sale to the state pursuant to this code.

16 (3) A person selling or offering for sale to or purchasing liquor ~~or table wine~~ from the state may
17 not directly or indirectly offer to pay any commission, profit, or remuneration or make any gift to any
18 ~~member or~~ employee of the state, any state agent, or any person having any ownership interest in an
19 agency liquor store or to anyone on behalf of ~~the member or~~ an employee.

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

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

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

28 (c) The state shall maintain written records of all samples received. The records must show the
29 brand name, amount and from whom received, date received, the laboratory or chemist to whom
30 forwarded, the state's action on the brand, and the person to whom delivered or other final disposition of

1 the sample.

2 (5) Liquor, ~~wine, or other alcoholic beverage~~ may not be withdrawn from the regular warehouse
 3 inventory or from the ~~state~~ agency liquor stores for any purpose other than ~~final~~ sale to PERSONS WHO
 4 HOLD LIQUOR LICENSES AT THE POSTED PRICE AND SALE TO the consumer at the ~~prevailing state retail~~
 5 ~~prices~~ RETAIL PRICE ESTABLISHED BY THE AGENT or for destroying damaged or defective merchandise.
 6 The state shall maintain a written record including the type, brand, container size, number of bottles or
 7 other units, signatures of witnesses, and method of destruction or other disposition of damaged or defective
 8 warehouse ~~or state store~~ merchandise.

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

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

16

17 **Section 19.** Section 16-1-402, MCA, is amended to read:

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

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

- 24 (a) the average liquor used per departure;
 25 (b) the number of departures from Montana on which liquor is served;
 26 (c) the ratio of Montana revenue passenger miles to system revenue passenger miles; and
 27 (d) the applicable excise tax and state markup rates.

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

30

1 Section 20. Section 16-2-101, MCA, is amended to read:

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

6 ~~(b) The department shall enter into an agency franchise agreement agreements or employ the~~
7 ~~necessary help to operate the agency liquor stores as the department finds feasible for the WHOLESALE~~
8 ~~AND RETAIL sale of liquor and shall designate the duties to be performed by the agent or employees.~~

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

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

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

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

16 (b)(i) The department shall supply from the state liquor warehouse to agency liquor stores the
17 various classes, varieties, and brands of liquor for resale at the state posted price TO PERSONS WHO HOLD
18 LIQUOR LICENSES AND TO ALL OTHER PERSONS AT THE RETAIL PRICE ESTABLISHED BY THE AGENT.

19 (ii)(A) According to the ordering and delivery schedule set by the department, an agency liquor store
20 may place a liquor order with the department at its state liquor warehouse in the manner to be established
21 by the department.

22 (B) The agency liquor store's purchase price is the department's posted price less the agency liquor
23 store's commission rate in the state agency franchise agreement and less the agency liquor store's weighed
24 average discount ratio. For purposes of this subsection (2)(b)(ii)(B), for agency liquor stores or
25 employee-operated state liquor stores that were operating June 30, 1994, the weighted average discount
26 ratio is the ratio between an agency liquor store's or the employee-operated state liquor store's full case
27 discount sales divided by the agency liquor store's or employee-operated state liquor store's gross sales,
28 based on fiscal year 1994 reported sales, times the state discount rate for case lot sales, as provided in
29 16-2-201, divided by the state discount rate for full case lot sales in effect on June 30, 1994. For all other
30 stores that are placed in service after June 30, 1994, the weighted average discount ratio is the average

1 ratio in fiscal year 1994 for similar sized stores for 1 year of operation. Thereafter, the weighted discount
 2 ratio must be computed on the store's first 12 months of operation.

3 (C) All liquor purchased from the state liquor warehouse by an agency liquor store must be paid for
 4 within 60 days of the date on which the department invoices the liquor to the agency liquor store.

5 (c) An agency liquor store may sell table wine at retail for off-premises consumption.

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

12 ~~(b) Agency liquor stores may not be located in or adjacent to grocery stores in communities with~~
 13 ~~populations over 3,000. This provision is applicable only to agency agreements entered into after May 11,~~
 14 ~~1987.~~

15 ~~(4) Agency~~ THE DEPARTMENT SHALL NEGOTIATE COMMISSIONS WITH AGENCY STORES, AND
 16 AGENCY AGENCY stores must receive commissions based on adjusted gross sales payable as follows:

17 ~~(a) a 10% commission~~ COMMISSION OF 10% OR MORE, BUT NOT TO EXCEED 15%, 10%
 18 COMMISSION for agencies in communities with less than 3,000 in population, unless adjusted pursuant
 19 to subsection (6) or (8);

20 ~~(b) a commission established by competitive bidding~~ unless adjusted pursuant to subsection (6)
 21 or (8) for agencies in communities with 3,000 or more in population.

22 (5) An agency franchise agreement must:

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

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

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

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

1 agency franchise agreement;

2 ~~(c) require the agent to provide performance security in an amount equal to the average monthly~~
 3 ~~value of inventory at cost based on the most recent 12-month period of inventory value at the agency store~~
 4 ~~location or, if a 12-month history is not available, the department's estimate of the average value provide~~
 5 ~~that upon termination by the department for cause or upon mutual termination, the agent is liable for any~~
 6 ~~outstanding liquor purchase invoices. If payment is not made within the appropriate time, the department~~
 7 ~~may immediately repossess all liquor inventory, wherever located; and.~~

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

10 (6)(a) The commission percentage that the department pays the agent under an agency franchise
 11 agreement may be reviewed on July 1, 1998, and every 3 years thereafter at the request of either party.
 12 If the agent concurs, the department may adjust the commission percentage to be paid during the remaining
 13 term of the agency franchise agreement or until the next time the commission percentage is reviewed, if
 14 that is sooner than the term of the agency franchise agreement, to a commission percentage that is equal
 15 to the average commission percentage being paid agents with similar sales volumes if:

16 ~~(a)(i)~~ the agent's commission percentage is less than the average; and
 17 ~~(a)(ii)~~ all the requirements of the agency franchise agreement have been satisfactorily performed.

18 (b) The adjusted commission percentage determined under subsection (6)(a) may be greater than
 19 the average commission paid agents with similar sales volume:

20 (i) if the agent demonstrates that:

21 (A) the agent has experienced cost increases that are beyond the agent's control, including but not
 22 limited to increases in the federally established minimum wage or escalation in prevailing rent; and

23 (B) the average commission percentage is insufficient to yield net income commensurate with net
 24 income experienced before the cost increases occurred; and

25 (ii) if the department demonstrates that it is unable to indicate adjustments in the requirements
 26 specified in the agent's franchise agreement that will eliminate the impact of cost increases.

27 (7) The liability insurance ~~and performance security requirements~~ requirement may be reviewed
 28 every 3 years after July 1, 1995, at the request of either the agent or the department. If the agent
 29 concurs, the department may adjust the requirements to be effective during the remaining term of the
 30 agency franchise agreement if the adjustments adequately protect the state from risks associated with the

1 ~~loss of state assets or from the agent's negligent acts or activities in the execution and performance of the~~
2 agency franchise agreement. The amount of liability insurance coverage may not be less than the minimum
3 requirements of the department of administration.

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

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

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

18 (d) If the agent under the existing franchise agreement declines to exercise the preference right
19 under subsection (8)(c), the department shall enter into an agency franchise agreement as provided in this
20 chapter with a person who accepted the adjusted commission percentage.

21 (e) If the agent exercises the preference right and believes the adjusted commission percentage
22 to be inadequate or not in the best interests of the state, the agent may request an administrative hearing.
23 The request must contain a statement of reasons why the agent believes the commission percentage to
24 be inadequate or not in the state's best interests. The department shall grant the request for a hearing if
25 it determines that the statement indicates evidence that the adjusted commission percentage is inadequate
26 or not in the state's best interests. The department may, after the hearing, adjust the commission
27 percentage if the agent shows that the commission percentage is inadequate or not in the best interests
28 of the state. If the department increases the commission percentage rate, the department shall set forth
29 its findings and conclusions in writing and inform the agent and the other persons who offered to enter into
30 an agency agreement at the adjusted commission rate.

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

4 (i) ~~charges prices different from the state published price or provides different discounts~~ RETAIL
5 PRICES THAT ARE LESS THAN THE DEPARTMENT'S POSTED PRICE FOR LIQUOR, SELLS LIQUOR TO
6 PERSONS WHO HOLD LIQUOR LICENSES AT LESS THAN THE POSTED PRICE, OR SELLS LIQUOR AT
7 CASE DISCOUNTS GREATER THAN THE DISCOUNT PROVIDED FOR IN 16-2-201 TO PERSONS WHO
8 HOLD LIQUOR LICENSES;

9 (ii) fails to maintain sufficient liability insurance;

10 (iii) has not maintained a quantity and variety of product available for sale commensurate with
11 demand, delivery cycle, repayment schedule, mixed case shipments from the department, and the ability
12 to purchase special orders;

13 (iv) at an agency liquor store located 35 miles or more from the nearest agency liquor store, has
14 operated the agency liquor store in a manner that makes the premises unsanitary or inaccessible for the
15 purpose of making purchases of liquor; or

16 (v) fails to comply with the express terms of the agency franchise agreement.

17 (b) The department shall give an agent 30 days' notice of its intent to terminate the agency
18 franchise agreement for cause and specify the unmet requirements. The agent may contest the termination
19 and request a hearing within 30 days of the date of notice. If a hearing is requested, the department shall
20 suspend its termination order until after a final decision has been made pursuant to the Montana
21 Administrative Procedure Act.

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

28 ~~(b) If an agent is suspected of theft or unauthorized use of state assets, the department may~~
29 ~~terminate the agency franchise agreement and retrieve its assets immediately~~ repossess any liquor
30 purchased and in the possession of the agent. If an agency franchise agreement is terminated, the agent

1 may contest the ~~agency franchise agreement~~ termination and request a hearing within 30 days of the
 2 department's ~~retrieval of assets~~ repossession of the liquor. The agency store shall remain closed until a final
 3 decision has been reached following a hearing held pursuant to the Montana Administrative Procedure Act.

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

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

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

15 (12) A person or entity may not hold an ownership interest in more than one agency liquor store.

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

18
 19 **Section 21.** Section 16-2-104, MCA, is amended to read:

20 "**16-2-104. Hours.** (1) ~~State Agency~~ liquor stores ~~shall be and may~~ remain open during ~~such period~~
 21 ~~of the day as the department shall deem advisable~~ the period between 8 a.m. and 2 a.m. The stores ~~shall~~
 22 must be closed for the transaction of business on legal holidays and between the close of normal business
 23 Saturday ~~p.m.~~ afternoon up to the opening of normal business Tuesday ~~a.m.~~ morning ~~as set by department~~
 24 rule.

25 (2)(a) An agency liquor store may be open on Mondays that are not legal holidays if 51% of the
 26 all-beverages licensees within the agency liquor store's immediate market area sign a petition agreeing that
 27 agency liquor stores located within the immediate market area may be open on Mondays. The petition must
 28 be on a form prescribed by the department. The department shall verify the validity of the signatures on
 29 the petition. If the department determines that the petition contains sufficient valid signatures, all agency
 30 liquor stores within the designated market area must be allowed to transact business on Mondays that are

1 not legal holidays. To determine the number of signatures needed, the department shall round up to the
 2 nearest whole number any fractional number of all-beverages licensees.

3 (b) For the purposes of subsection (2)(a), immediate market area means:

4 (i) the city limits for stores located in incorporated cities or towns; and

5 (ii) the area contained within a 5-mile radius from a store or stores located in unincorporated cities
 6 or towns or in a consolidated local government.

7 ~~(2) No sale or delivery of liquor or table wine shall be made on or from the premises of any state~~
 8 ~~liquor store nor shall any store be open for the sale of liquor or table wine:~~

9 ~~(a) on any holiday recognized by state law;~~

10 ~~(b) during such other period and on such other days as the department may direct."~~

11
 12 **Section 22.** Section 16-2-105, MCA, is amended to read:

13 **"16-2-105. Place and time of selling liquor.** ~~No~~ A liquor store manager agent and ~~no~~ a person
 14 acting as the clerk or servant an employee of or in any capacity for any ~~manager shall~~ agent may not sell
 15 liquor in any other place or at any other time or otherwise than as authorized by this code and the rules
 16 implementing this code."

17
 18 **Section 23.** Section 16-2-106, MCA, is amended to read:

19 **"16-2-106. Purchase price in advance.** A liquor store manager agent may sell to any person ~~such~~
 20 any liquor and table wine as that the person is entitled to purchase in conformity with the provisions of this
 21 code and the rules made thereunder, provided that no delivery shall take place until the purchaser has paid
 22 the purchase price implementing this code. An agent may, under the terms and conditions that the agent
 23 establishes, deliver liquor and table wine purchased from the agent's agency liquor store."

24
 25 **Section 24.** Section 16-2-107, MCA, is amended to read:

26 **"16-2-107. No open alcoholic beverage container or alcoholic beverage consumption on premises**
 27 **of state agency store.** ~~No officer, clerk, or agent of the department employed in a state~~ An agent and the
 28 agent's employees in an agency store shall may not allow any alcoholic beverage container to be opened
 29 on the premises of ~~a state~~ an agency liquor store or allow any alcoholic beverage to be consumed on the
 30 premises of ~~a state~~ an agency liquor store, nor shall may any person open an alcoholic beverage container

1 or consume any alcoholic beverage ~~on such premises~~ in an agency liquor store."

2

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

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

14

15 **Section 26.** Section 16-2-201, MCA, is amended to read:

16 "16-2-201. **Reduction for quantity sales of liquor.** (1) Reduction of ~~5%~~ 8% of the ~~retail~~ POSTED
 17 price of liquor sold at the state agency liquor store ~~shall~~ must be made by the department for sales of liquor
 18 to any ~~person~~ licensee purchasing liquor in unbroken case lots. No other reduction ~~shall~~ may be made to
 19 any other person by the department for quantity sales of liquor.

20 (2) THIS SECTION DOES NOT PREVENT AN AGENT FROM PROVIDING PURCHASE DISCOUNTS
 21 OR SELLING LIQUOR TO ANY OTHER PERSON AT A PRICE LESS THAN THE AGENT'S ESTABLISHED
 22 RETAIL PRICE. HOWEVER, AN AGENT IS PROHIBITED FROM SELLING LIQUOR TO ANY PERSON AT A
 23 PRICE LESS THAN THE DEPARTMENT'S POSTED PRICE."

24

25 **Section 27.** Section 16-2-301, MCA, is amended to read:

26 "16-2-301. **Retail selling price on table wine -- tax on certain table wine.** ~~(1) The retail selling price~~
 27 ~~at which table wine is sold either by the department, through a state employee operated store, or by a~~
 28 ~~commission agent who was appointed before April 30, 1987, including subsequent renewals of such~~
 29 ~~appointment, and who elects to order table wine from the department is computed by adding to the~~
 30 ~~statewide weighted average cost of table wine the tax and state markup as designated by the department.~~

1 ~~{2}~~(1) The retail selling price at which table wine is sold ~~by a commission agent appointed by the~~
2 ~~department after May 1, 1987, at an agency liquor store~~ is as determined by the agent.

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

7

8 **Section 28.** Section 16-3-103, MCA, is amended to read:

9 "**16-3-103. Unlawful sales solicitation or advertising -- exceptions.** (1) ~~No~~ A person within the state
10 ~~shall~~ may not:

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

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

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

22 (2) This section does not apply to:

23 (a) the department, any act of the department, any ~~state~~ agency liquor store;

24 (b) the receipt or transmission of a telegram or letter by any telegraph agent or operator or
25 post-office employee in the ordinary course of employment as ~~such~~ the agent, operator, or employee; or

26 (c) the sale and serving of beer in the grandstand and bleacher area of a county fairground or public
27 sports arena under a special permit issued pursuant to 16-4-301 or a catering endorsement issued pursuant
28 to 16-4-111 or 16-4-204."

29

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

1 **"16-3-106. Conveyance of liquors, table wines, and beer -- opening alcoholic beverages during**
 2 **transit forbidden.** (1) It ~~shall be~~ is lawful to carry or convey liquor or table wine to any state agency liquor
 3 store and to and from ~~any~~ the state liquor warehouse or any depot established by the department for the
 4 purposes of this code, and when permitted to do so by this code and the rules ~~made thereunder and in~~
 5 ~~accordance therewith~~ promulgated under this code, it ~~shall be~~ is lawful for any common carrier or other
 6 person to carry or convey liquor or table wine sold by a vendor from ~~a state~~ an agency liquor store or to
 7 carry or convey beer, when lawfully sold by a brewer, from the premises ~~wherein such~~ where the beer was
 8 manufactured or from premises where the beer may be lawfully kept and sold to any place to which the
 9 ~~same liquor, table wine, or beer~~ may be lawfully delivered under this code and the rules ~~made thereunder~~
 10 promulgated under this code.

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

14
 15 **Section 30.** Section 16-3-307, MCA, is amended to read:

16 **"16-3-307. Sale of liquor at less than posted price unlawful.** It ~~shall be~~ is unlawful for any licensee
 17 under the provisions of this code to resell any liquor purchased by ~~such~~ the licensee from ~~a state~~ an agency
 18 liquor store or the state of Montana for a sum less than the posted price established by the ~~store~~
 19 DEPARTMENT and paid by the licensee ~~therefor~~."

20
 21 **Section 31.** Section 16-3-401, MCA, is amended to read:

22 **"16-3-401. Short title -- public policy -- purpose.** (1) This part may be cited as the "Wine
 23 Distribution Act".

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

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

30 (a) protect the table wine distributor's independence in managing ~~his own~~ the distributor's

1 business, including the establishment of selling prices; and

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

4

5 **Section 32.** Section 16-3-402, MCA, is amended to read:

6 "**16-3-402. Importation of wine -- records.** (1) ~~With the exception of table wine purchased by the~~
7 ~~department and shipped to its warehouse, all~~ All table wine manufactured outside of Montana and shipped
8 into Montana ~~shall~~ must be consigned to and shipped to a licensed table wine distributor, and ~~by him~~ be
9 unloaded ~~by the distributor~~ into ~~his~~ the distributor's warehouse in Montana or subwarehouse in Montana.
10 The distributor shall distribute ~~said~~ the table wine from ~~such~~ the warehouse or subwarehouse.

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

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

18

19 **Section 33.** Section 16-3-403, MCA, is amended to read:

20 "**16-3-403. To whom table wine distributor may sell.** (1) A table wine distributor may sell and
21 deliver table wine purchased or acquired by ~~him~~ the distributor to:

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

24 (b) ~~the department~~ an agency liquor store; and

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

26 (2) It ~~shall be~~ is unlawful for any table wine distributor to sell, deliver, or give away any table wine
27 to be consumed on ~~such~~ the distributor's premises or to give, sell, deliver, or distribute any table wine
28 purchased or acquired by ~~him~~ the distributor to the public."

29

30 **Section 34.** Section 16-3-411, MCA, is amended to read:

1 "16-3-411. Domestic winery. A winery located in Montana and registered pursuant to 16-4-107
2 may:

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

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

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

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

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

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

11

12 Section 35. Section 16-4-105, MCA, is amended to read:

13 "16-4-105. Limit on retail beer licenses -- wine license amendments -- off-premises consumption.

14 (1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in
15 accordance with the provisions of this code and the rules of the department, may be issued to any person,
16 firm, or corporation ~~who~~ that is approved by the department as a fit and proper person, firm, or corporation
17 to sell beer, except that:

18 (a) the number of retail beer licenses that the department may issue for premises situated within
19 incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of
20 ~~such those~~ the cities and towns ~~shall~~ must be determined on the basis of population prescribed in 16-4-502
21 as follows:

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

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

29 (iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the
30 corporate limits of ~~such~~ the cities, four retail beer licenses for the first 2,000 inhabitants, two additional

1 retail beer licenses for the next 2,000 inhabitants or major fraction thereof, and one additional retail beer
 2 license for ~~each~~ every additional 2,000 inhabitants, which may not be used in conjunction with retail
 3 all-beverages licenses;

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

15 (c) retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-1107
 16 ~~which that~~ are in excess of the foregoing limitations ~~shall be~~ are renewable, but ~~no~~ new licenses may not
 17 be issued in violation of ~~such~~ these limitations;

18 (d) ~~such~~ these limitations do not prevent the issuance of a nontransferable and nonassignable retail
 19 beer license to an enlisted ~~men's~~ persons', noncommissioned officers', or officers' club located on a state
 20 or federal military reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization
 21 or a lodge of a recognized national fraternal organization if ~~such~~ the veterans' or fraternal organization has
 22 been in existence for a period of 5 years or more prior to January 1, 1949;

23 (e) the number of retail beer licenses that the department may issue for use at premises situated
 24 outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles
 25 from the corporate limits ~~thereof~~ of the city or town or for use at premises situated within any
 26 unincorporated ~~town~~ area ~~shall~~ must be as determined by the department in ~~the exercise of its sound~~
 27 discretion, except that ~~no~~ a retail beer license may not be issued for any premises so situated unless the
 28 department determines that the issuance of ~~such~~ the license is required by public convenience and
 29 necessity.

30 (2) A person holding a license to sell beer for consumption on the premises at retail may apply to

1 the department for an amendment to the license permitting the holder to sell wine as well as beer. The
 2 division may issue ~~such an~~ amendment if it finds, on a satisfactory showing by the applicant, that the sale
 3 of wine for consumption on the premises would be supplementary to a restaurant or prepared-food
 4 business. A person holding a beer-and-wine license may sell wine for consumption on or off the premises.
 5 Nonretention of the beer license, for whatever reason, ~~shall mean~~ means automatic loss of the wine
 6 amendment license.

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

15
 16 ~~SECTION 36. SECTION 16-4-207, MCA, IS AMENDED TO READ:~~

17 ~~"16-4-207. Notice of application—investigation—publication—protest. (1) When an application~~
 18 ~~has been filed with the department for a license to sell alcoholic beverages at retail or to transfer a retail~~
 19 ~~license, the department shall review the application for completeness and to determine whether the~~
 20 ~~applicant or the premises to be licensed meets criteria provided by law. The department shall request that~~
 21 ~~the department of justice investigate the application as provided in 16-4-402. If after the investigation the~~
 22 ~~department does not discover a basis to deny the application, the department shall promptly publish in a~~
 23 ~~newspaper of general circulation in the city, town, or county from which the application comes a notice~~
 24 ~~that the applicant has made application for a retail license and that protests against the issuance of a~~
 25 ~~license to the applicant by a person who has extended credit to the transferor or residents of the county~~
 26 ~~from which the application comes or adjoining Montana counties may be mailed to a named administrator~~
 27 ~~in the department of revenue within 10 days after the final notice is published. Notice of application for a~~
 28 ~~new license must be published once a week for 4 consecutive weeks. Notice of application for transfer of~~
 29 ~~a license must be published once a week for 2 consecutive weeks. Notice may be substantially in the~~
 30 ~~following form:-~~

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

3 ~~(iii)~~(iv) the applicant is a resident of the state and is qualified to vote in a state election;

4 ~~(iv)~~(v) the applicant's past record and present status as a purveyor of alcoholic beverages and as
5 a ~~businessman~~ business person and citizen demonstrate that ~~he~~ the applicant is likely to operate ~~his~~ the
6 establishment in compliance with all applicable laws of the state and local governments; and

7 ~~(v)~~(vi) the applicant is not under the age of 19 years; and

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

9 (i) the owners of at least 51% of the outstanding stock meet the requirements of subsection
10 ~~(2)(a)(iii)~~ (2)(a)(iv);

11 (ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual
12 applicant listed in subsection (2)(a) ~~of this section~~;

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

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

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

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

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

21 (3) In the case of a license that permits only off-premises consumption, the department must find
22 in every case in which it makes an order for the issuance of a new license or for the approval of the transfer
23 of a license that:

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

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

27 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in
28 16-1-106;

29 ~~(iii)~~(iii) the applicant or any member of ~~his~~ the applicant's immediate family is without financing from
30 or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

1 ~~(iii)~~(iv) the applicant has not been convicted of a felony or, if the applicant has been convicted of
2 a felony, ~~his~~ the applicant's rights have been restored;

3 ~~(iv)~~(v) the applicant's past record and present status as a purveyor of alcoholic beverages and as
4 a ~~businessman~~ business person and citizen demonstrate that ~~he~~ the applicant is likely to operate ~~his~~ the
5 establishment in compliance with all applicable laws of the state and local governments; and

6 ~~(v)~~(vi) the applicant is not under the age of 19 years; and

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

8 (i) the owners of at least 51% of the outstanding stock meet the requirements of subsection
9 ~~(3)(a)(iii)~~ (3)(a)(iv);

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

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

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

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

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

18 (4) In the case of a license that permits the manufacture, importing, or wholesaling of an alcoholic
19 beverage, the department must find in every case in which it makes an order for the issuance of a new
20 license or for the approval of the transfer of a license that:

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

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

24 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in
25 16-1-106;

26 ~~(ii)~~(iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of
27 a felony, ~~his~~ rights have been restored;

28 ~~(iii)~~(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as
29 a ~~businessman~~ business person and citizen demonstrate that ~~he is~~ the applicant likely to operate ~~his~~ the
30 establishment in compliance with all applicable laws of the state and local governments;

1 ~~(iv)~~(v) the applicant is not under the age of 19 years; and

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

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

5 (i) the owners of at least 51% of the outstanding stock meet the requirements of subsection
6 ~~(4)(a)(ii)~~ (4)(a)(iii);

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

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

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

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

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

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

17 (5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), and (4)(b)
18 apply separately to each class of stock.

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

21
22 ~~SECTION 38. SECTION 16-4-405, MCA, IS AMENDED TO READ:~~

23 ~~"16-4-405. Denial of license timeliness. (1) The department may deny the issuance of a retail~~
24 ~~alcoholic beverages license if it determines that the premises proposed for licensing are off regular police~~
25 ~~beats and cannot be properly policed by local authorities.~~

26 ~~(2) A retail license may not be issued by the department for a premises situated within a zone of~~
27 ~~a city or town where the sale of alcoholic beverages is prohibited by ordinance, a certified copy of which~~
28 ~~has been filed with the department.~~

29 ~~(3) A license under this code may not be issued if the department finds from the evidence at the~~
30 ~~hearing held pursuant to 16-4-207(3) that:~~

1 ~~(a) the welfare of the people residing in the vicinity of the premises for which the license is desired~~
2 ~~will be adversely and seriously affected;~~

3 ~~(b) there is not a public convenience and necessity justification;~~

4 ~~(c) the applicant or the premises proposed for licensing fail to meet the eligibility or suitability~~
5 ~~criteria established by this code; or~~

6 ~~(d) the purposes of this code will not be carried out by the issuance of the license.~~

7 ~~(4) The hearing examiner shall issue a proposed decision to grant or deny a license within 60 days~~
8 ~~after holding a public hearing under 16-4-207. Within 45 days of the expiration of the time period for~~
9 ~~written exceptions or, if there are oral arguments, within 45 days after oral arguments are held before the~~
10 ~~department, the department shall either grant or deny a license application."~~

11
12 **Section 37.** Section 16-6-107, MCA, is amended to read:

13 **"16-6-107. Disposal of forfeited alcoholic beverages -- report.** (1) If a court or hearing examiner
14 orders the forfeiture of alcoholic beverages under this code or if a claimant to an alcoholic beverage under
15 16-6-105 or 16-6-106 fails to establish the claimant's right to the alcoholic beverage, the alcoholic
16 beverage in question and the packages in which the alcoholic beverage is kept must be delivered to the
17 department. The department shall determine the market value of each forfeited alcoholic beverage found
18 to be suitable for sale in ~~the state~~ agency liquor stores and shall pay the amount determined to the state
19 treasurer after deducting any expenses incurred by the department for transporting the forfeited alcoholic
20 beverage to the state liquor warehouse. The alcoholic beverage suitable for sale in ~~a state~~ an agency liquor
21 store must be taken into stock by the department and sold under the provisions of this code. All alcoholic
22 beverages found to be unsuitable for sale in ~~state~~ agency liquor stores must be destroyed by the
23 department.

24 (2) If an alcoholic beverage is seized by a peace officer, the officer shall report to the department
25 in writing the particulars of the seizure."
26

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

28 **"16-6-303. Sale of liquor not purchased from state agency liquor store forbidden -- penalty.** It is
29 unlawful for any licensee to sell or keep for sale or have on his the licensee's premises for any purpose
30 whatever any liquor except that purchased from ~~the state~~ an agency liquor store, and any licensee found

1 in possession of or selling and keeping for sale any liquor ~~which~~ that was not purchased from ~~a state an~~
 2 agency liquor store shall, upon conviction, be punished by a fine of not less than \$500 or more than
 3 \$1,500, by imprisonment for not less than 3 months or more than 1 year, or by both ~~such~~ fine and
 4 imprisonment. If the department is satisfied that ~~any such~~ the liquor was knowingly sold or kept for sale
 5 within the licensed premises by the licensee or by ~~his~~ the licensee's agents, servants, or employees, the
 6 department shall immediately revoke the license."

7

8 **Section 39.** Section 17-8-244, MCA, is amended to read:

9 "17-8-244. Exemptions. (1) Section 17-8-242 does not apply to the following:

10 ~~(1)(a)~~ interagency or intergovernmental transactions;

11 ~~(2)(b)~~ claims subject to a good faith dispute;

12 ~~(3)(c)~~ delinquencies due to natural disasters, disruptions in postal or delivery service, work
 13 stoppage due to labor disputes, power failures, or any other cause resulting from circumstances clearly
 14 beyond the control of the payer agency;

15 ~~(4)(d)~~ contracts entered into before October 1, 1983;

16 ~~(5)(e)~~ wages due and payable to state employees or payments from any state retirement system
 17 created pursuant to Title 19; or

18 ~~(6)(f)~~ claims submitted to the state or to its fiscal intermediary by providers of supplies or services
 19 under the Montana medicaid or workers' compensation program if reasonable cause for nonpayment exists.

20 (2) In the case of liquor withdrawn from bailment in the state liquor warehouse by the department
 21 of revenue for the purpose of resale through agency liquor stores, payment is timely if paid within 60 days
 22 after the product is withdrawn."

23

24 **Section 40.** Section 30-9-104, MCA, is amended to read:

25 "30-9-104. Transactions excluded from chapter. This chapter does not apply:

26 (1) to a security interest subject to any statute of the United States such as the Ship Mortgage Act,
 27 1920, to the extent that ~~such~~ the statute governs the rights of parties to and third parties affected by
 28 transactions in particular types of property;

29 (2) to a landlord's lien;

30 (3) to a lien given by statute or other rule of law for services or materials except as provided in

- 1 30-9-310 on priority of such liens;
- 2 (4) to a transfer of a claim for wages, salary, or other compensation of an employee;
- 3 (5) to a transfer by a government or governmental subdivision or agency;
- 4 (6) to a sale of accounts or chattel paper as part of a sale of the business out of which they arose,
- 5 or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of
- 6 a right to payment under a contract to an assignee who is also to do the performance under the contract,
- 7 or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting
- 8 indebtedness;
- 9 (7) to a transfer of an interest or claim in or under any policy of insurance, except as provided with
- 10 respect to proceeds (30-9-306) and priorities in proceeds (30-9-312);
- 11 (8) to a right represented by a judgment (other than a judgment taken on a right to payment which
- 12 was collateral);
- 13 (9) to any right of setoff;
- 14 (10) except to the extent that provision is made for fixtures in 30-9-313, to the creation or transfer
- 15 of an interest in or lien on real estate, including a lease or rents ~~thereunder~~ under the lease;
- 16 (11) to a transfer in whole or in part of any claim arising out of tort; ~~or~~
- 17 (12) to a transfer of an interest in any deposit account (30-9-105(1)), except as provided with
- 18 respect to proceeds (30-9-306) and priorities in proceeds (30-9-312); or
- 19 (13) to liquor in an agency liquor store as defined in 16-1-106."
- 20

21 **NEW SECTION. Section 41. Repealer.** Sections 16-2-302 and 16-2-303, MCA, are repealed.

22

23 **NEW SECTION. Section 42. Codification instruction.** [Sections ~~9 and 10~~ 7 AND 8 9 AND 10] are

24 intended to be codified as an integral part of Title 16, chapter 2, part 1, and the provisions of Title 16,

25 chapter 2, part 1, apply to [sections ~~9 and 10~~ 7 AND 8 9 AND 10].

26

27 **NEW SECTION. Section 43. Effective date.** (1) Except as provided in (2), [this act] is effective

28 on passage and approval.

29 (2) [Section ~~24~~ 26 24 26] is effective July 1, 1995.

30

