

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE SALE, PURCHASE, AND
5 DISTRIBUTION OF WINE; DEFINING "FORTIFIED WINE"; SPECIFYING APPLICATION OF WINE OR LIQUOR
6 STATUTES TO FORTIFIED WINE; REVISING THE TAX RELATED TO FORTIFIED WINES; ALLOWING
7 DISTRIBUTION OF FORTIFIED WINE BY WINE DISTRIBUTORS; PREVENTING GROCERIES OR
8 PHARMACIES FROM SELLING FORTIFIED WINE; AND AMENDING SECTIONS 16-1-106, 16-1-201, 16-1-302,
9 16-1-401, 16-1-404, 16-1-411, 16-2-101, 16-2-103, 16-2-106, 16-2-203, 16-2-301, 16-3-106, 16-3-218, 16-3-306,
10 16-3-310, 16-3-401, 16-3-402, 16-3-403, 16-3-404, 16-3-405, 16-3-406, 16-3-411, 16-3-415, 16-3-416, 16-3-417,
11 16-3-418, 16-3-419, 16-4-103, 16-4-106, 16-4-107, 16-4-108, 16-4-115, 16-4-201, 16-4-301, 16-4-303, AND
12 16-4-501, MCA."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15
16 **Section 1.** Section 16-1-106, MCA, is amended to read:

17 **"16-1-106. Definitions.** As used in this code, the following definitions apply:

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

20 (2) "Agency liquor store" means a store operated under an agency franchise agreement in accordance
21 with this code for the purpose of selling liquor or fortified wine at either the posted or the retail price for
22 off-premises consumption.

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

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

26 (5) (a) "Beer" means:

27 (i) a malt beverage containing not more than 8.75% of alcohol by volume; or

28 (ii) an alcoholic beverage containing not more than 14% alcohol by volume:

29 (A) that is made by the alcoholic fermentation of an infusion or decoction, or a combination of both, in
30 potable brewing water, of malted cereal grain; and

- 1 (B) in which the sugars used for fermentation of the alcoholic beverage are at least 75% derived from
2 malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients.
- 3 (b) The term does not include a caffeinated or stimulant-enhanced malt beverage.
- 4 (6) "Beer importer" means a person other than a brewer who imports malt beverages.
- 5 (7) "Brewer" means a person who produces malt beverages.
- 6 (8) "Caffeinated or stimulant-enhanced malt beverage" means:
- 7 (a) a beverage:
- 8 (i) that is fermented in a manner similar to beer and from which some or all of the fermented alcohol has
9 been removed and replaced with distilled ethyl alcohol;
- 10 (ii) that contains at least 0.5% of alcohol by volume;
- 11 (iii) that is treated by processing, filtration, or another method of manufacture that is not generally
12 recognized as a traditional process in the production of beer as described in 27 CFR 25.55; and
- 13 (iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and
14 taurine; or
- 15 (b) a beverage:
- 16 (i) that contains at least 0.5% of alcohol by volume;
- 17 (ii) that is treated by processing, filtration, or another method of manufacture that is not generally
18 recognized as a traditional process in the production of beer as described in 27 CFR 25.55;
- 19 (iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract;
- 20 (iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and
21 taurine;
- 22 (v) for which the producer is required to file a formula for approval with the United States alcohol and
23 tobacco tax and trade bureau pursuant to 27 CFR 25.55; and
- 24 (vi) that is not exempt pursuant to 27 CFR 25.55(f).
- 25 (9) "Community" means:
- 26 (a) in an incorporated city or town, the area within the incorporated city or town boundaries;
- 27 (b) in an unincorporated city or area, the area identified by the federal bureau of the census as a
28 community for census purposes; and
- 29 (c) in a consolidated local government, the area of the consolidated local government not otherwise
30 incorporated.

1 (10) "Department" means the department of revenue, unless otherwise specified, and includes the
2 department of justice with respect to receiving and processing, but not granting or denying, an application under
3 a contract entered into under 16-1-302.

4 (11) "Fortified wine" means wine that is at least 16% alcohol by volume when bottled or packaged by the
5 manufacturer but not more than 24% alcohol by volume, whether through natural fermentation or the addition of
6 a distilled alcoholic beverage.

7 ~~(11)~~(12) "Growler" means any refillable, resealable container complying with federal law.

8 ~~(12)~~(13) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the
9 juices of apples or pears and that contains not less than 0.5% of alcohol by volume and not more than 6.9% of
10 alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

11 ~~(13)~~(14) "Immediate family" means a spouse, dependent children, or dependent parents.

12 ~~(14)~~(15) "Import" means to transfer beer or ~~table~~ wine from outside the state of Montana into the state
13 of Montana.

14 ~~(15)~~(16) (a) "Liquor" means an alcoholic beverage except beer and ~~table~~ wine. The term includes a
15 caffeinated or stimulant-enhanced malt beverage.

16 (b) Unless otherwise stated, the term applies to fortified wine only for the purposes of 16-2-105,
17 16-2-108, 16-2-201, 16-3-107, and 16-3-307.

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

23 ~~(17)~~(18) "Package" means a container or receptacle used for holding an alcoholic beverage.

24 ~~(18)~~(19) "Posted price" means the wholesale price of liquor or fortified wine for sale to persons who hold
25 liquor licenses as fixed and determined by the department and in addition an excise and license tax as provided
26 in this code. In the case of sacramental wine, the wholesale price may not exceed the sum of the department's
27 cost to acquire the sacramental wine, the department's current freight rate to agency liquor stores, and a 20%
28 markup. In the case of fortified wine, the wholesale price may not exceed the sum of the department's cost to
29 acquire the fortified wine, the department's current freight rate to agency liquor stores, and a 30% markup.

30 ~~(19)~~(20) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains

1 50% of alcohol by volume.

2 ~~(20)~~(21) "Public place" means a place, building, or conveyance to which the public has or may be
3 permitted to have access and any place of public resort.

4 ~~(24)~~(22) "Retail price" means the price established by an agent for the sale of liquor or fortified wine to
5 persons who do not hold liquor licenses. The retail price may not be less than the department's posted price.

6 ~~(22)~~(23) "Rules" means rules adopted by the department or the department of justice pursuant to this
7 code.

8 ~~(23)~~(24) "Sacramental wine" means wine that is manufactured and sold exclusively for use as
9 sacramental wine or for other religious purposes.

10 ~~(24)~~(25) "Special event", as it relates to an application for a beer and wine special permit, means a short,
11 infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.

12 ~~(25)~~(26) "State liquor warehouse" means a building owned or under control of the department for the
13 purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

14 ~~(26)~~(27) "Storage depot" means a building or structure owned or operated by a brewer at any point in the
15 state of Montana off and away from the premises of a brewery, which building or structure is equipped with
16 refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as
17 permitted by this code.

18 ~~(27)~~(28) "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler
19 or ~~table~~ wine distributor, located at a site in Montana other than the site of the beer wholesaler's or ~~table~~ wine
20 distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer
21 or ~~table~~ wine as permitted by this code.

22 ~~————(28) "Table wine" means wine that contains not more than 16% of alcohol by volume and includes cider.~~

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

25 ~~(30)~~(29) "Warehouse" means a building or structure located in Montana that is owned or operated by a
26 licensed beer wholesaler or ~~table~~ wine distributor for the receiving, storage, and distribution of beer or ~~table~~ wine
27 as permitted by this code.

28 ~~(34)~~(30) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation
29 of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur
30 in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of

1 alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in
 2 accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic
 3 beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in
 4 accordance with federal regulations are also wine.

5 (31) "Wine distributor" means a person importing into or purchasing in Montana wine for sale or resale
 6 to retailers licensed in Montana."

7

8 **Section 2.** Section 16-1-201, MCA, is amended to read:

9 **"16-1-201. Acts not covered by code.** (1) ~~Nothing in this~~ This code prevents does not prevent any
 10 brewer, distiller, or other person, licensed under the provisions of any statute of the United States of America for
 11 the manufacture of alcoholic beverages, from having or keeping alcoholic beverages in a place and in the manner
 12 authorized by or under any ~~such that~~ statute.

13 (2) It is the policy of the state of Montana that the manufacture of alcoholic beverages, including the
 14 distillation, rectification, bottling, and processing as these terms are defined under the provisions of the laws of
 15 the United States, is authorized and permitted by any brewer, distiller, rectifier, or other person licensed under
 16 any provision of any statute of the United States of America in a place and in the manner authorized by or under
 17 any statute of the United States. The department may adopt rules that the department considers necessary with
 18 respect to the manufacture of alcoholic beverages. The rules may not be inconsistent with this code or with the
 19 statutes of the United States of America or regulations issued under the provisions of the Federal Alcohol
 20 Administration Act, 27 U.S.C. 201 through 212, inclusive, or regulations issued under the provisions of chapter
 21 51 of the Internal Revenue Code.

22 (3) Nothing in this code prevents:

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

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

26

27 **Section 3.** Section 16-1-302, MCA, is amended to read:

28 **"16-1-302. Functions, powers, and duties of department.** The department has the following functions,
 29 duties, and powers:

30 (1) to buy, import, have in its possession for sale, and sell liquors and fortified wine;

- 1 (2) to control the possession, sale, and delivery of liquors in accordance with the provisions of this code;
- 2 (3) to determine the municipalities where agency liquor stores are to be established throughout the state
- 3 and the situation of the stores within these municipalities;
- 4 (4) to lease, furnish, and equip any building or land required to administer its duties under this code;
- 5 (5) to buy or lease plants and equipment necessary to administer its duties under this code;
- 6 (6) to employ the necessary employees required to administer this code and to dismiss them, assign
- 7 them their title, and define their respective duties and powers and to contract with the department of justice for
- 8 investigative services and to receive and process, but not grant or deny, applications or to contract for the
- 9 services of experts and persons engaged in the practice of a profession, if appropriate. If the department
- 10 contracts for the receipt and processing of an application by the department of justice, the application must state
- 11 that it is to be filed with the department of justice.
- 12 (7) to determine the nature, form, and capacity of all packages to be used for containing liquor kept or
- 13 sold under this code;
- 14 (8) to grant and issue licenses under this code;
- 15 (9) to place special restrictions on the use of a particular license, which must be endorsed upon the face
- 16 of the license, if the special restrictions are made pursuant to a hearing held in connection with the issuance of
- 17 the license or if the special restrictions are agreed to by the licensee;
- 18 (10) without limiting or being limited by the foregoing, to do all things necessary to administer this code
- 19 or rules."

20

21 **Section 4.** Section 16-1-401, MCA, is amended to read:

22 **"16-1-401. Liquor excise tax.** (1) Except as provided in subsection (3), the department shall collect at

23 the time of the sale and delivery of any liquor or fortified wine as authorized under any provision of the laws of

24 the state of Montana an excise tax at a rate that is the percent of the retail selling price determined in accordance

25 with the following schedule based on all liquor or fortified wine sold and delivered in the state by a company that

26 manufactured, distilled, rectified, bottled, or processed the liquor or fortified wine and sold the specified number

27 of proof gallons of liquor or fortified wine nationwide in the calendar year preceding imposition of the tax pursuant

28 to this section:

Nationwide production	Tax rate
Less than 20,000 proof gallons	3%

1	20,000 to 50,000 proof gallons	8%
2	50,001 to 200,000 proof gallons	13.8%
3	Over 200,000 proof gallons	16%

4 (2) The department shall retain the amount of the excise tax received in a separate account and shall,
 5 in accordance with the provisions of 17-2-124, deposit, to the credit of the general fund, the amount collected and
 6 received not later than the 10th day of each month.

7 (3) The following are exempt from the tax imposed by this section:

8 (a) flavors and other nonbeverage ingredients containing alcohol that are imported or purchased by a
 9 brewery under conditions set by the department as provided in 16-3-214; and

10 (b) necessary distilled spirits imported in bulk for use by a distillery or microdistillery under conditions
 11 set by the department as provided in 16-4-311 and 16-4-312."

12

13 **Section 5.** Section 16-1-404, MCA, is amended to read:

14 **"16-1-404. License tax on liquor -- amount -- distribution of proceeds.** (1) Except as provided in
 15 subsection (4), the department shall collect at the time of sale and delivery of any liquor or fortified wine under
 16 any provisions of the laws of the state of Montana a license tax of:

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

21 (b) 8.6% of the retail selling price on all liquor or fortified wine sold and delivered in the state by a
 22 company that manufactured, distilled, rectified, bottled, or processed and that sold more than 50,000 proof gallons
 23 but not more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax
 24 pursuant to this section;

25 (c) 2% of the retail selling price on all liquor or fortified wine sold and delivered in the state by a company
 26 that manufactured, distilled, rectified, bottled, or processed and that sold not more than 50,000 proof gallons of
 27 liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.

28 (2) The license tax must be charged and collected on all liquor or fortified wine produced in or brought
 29 into the state and taxed by the department. The retail selling price must be computed by adding to the cost of the
 30 liquor or fortified wine the state markup as designated by the department. The license tax must be figured in the

1 same manner as the state excise tax and is in addition to the state excise tax. The department shall retain in a
 2 separate account the amount of the license tax received. The department, in accordance with the provisions of
 3 17-2-124, shall allocate the revenue as follows:

4 (a) Thirty-four and one-half percent is allocated to the state general fund.

5 (b) Sixty-five and one-half percent must be deposited in the state special revenue fund to the credit of
 6 the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism
 7 and chemical dependency.

8 (3) The license tax proceeds that are allocated to the department of public health and human services
 9 for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency must be credited
 10 quarterly to the department of public health and human services. The legislature may appropriate a portion of the
 11 license tax proceeds to support alcohol and chemical dependency programs. The remainder must be distributed
 12 as provided in 53-24-206.

13 (4) The following are exempt from the tax and markup imposed by this section:

14 (a) flavors and other nonbeverage ingredients containing alcohol that are imported or purchased by a
 15 brewery under conditions set by the department as provided in 16-3-214; and

16 (b) necessary distilled spirits imported in bulk for use by a distillery or microdistillery under conditions
 17 set by the department as provided in 16-4-311 and 16-4-312."

18

19 **Section 6.** Section 16-1-411, MCA, is amended to read:

20 **"16-1-411. Tax on wine and hard cider -- penalty and interest.** (1) (a) A tax of 27 cents per liter is
 21 imposed on ~~table~~ any wine, except hard cider, imported by a ~~table~~ wine distributor or the department.

22 (b) A tax of 3.7 cents per liter is imposed on hard cider imported by a ~~table~~ wine distributor or the
 23 department.

24 (c) A tax on fortified wine is imposed on a wine distributor, winery, or the department at the tax rate and
 25 in the manner provided for liquor in 16-1-401 and 16-1-404.

26 (2) The tax imposed in subsection (1) must be paid by the ~~table~~ wine distributor by the 15th day of the
 27 month following sale of the ~~table~~ wine or hard cider from the ~~table~~ wine distributor's warehouse. Failure to file a
 28 tax return or failure to pay the tax required by this section subjects the ~~table~~ wine distributor to the penalties and
 29 interest provided for in 15-1-216.

30 (3) The tax paid by a ~~table~~ wine distributor in accordance with subsection (2) must, in accordance with

1 the provisions of 17-2-124, be distributed as follows:

2 (a) 69% to the state general fund; and

3 (b) 31% to the state special revenue fund to the credit of the department of public health and human
4 services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency.

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

7 (5) For purposes of this section, "~~table wine~~" "wine" has the meaning assigned in 16-1-106, but does not
8 include hard cider."

9

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

11 **"16-2-101. Establishment and closure of agency liquor stores -- agency franchise agreement --**
12 **kinds and prices of liquor.** (1) The department shall enter into agency franchise agreements to operate agency
13 liquor stores as the department finds feasible for the wholesale and retail sale of liquor or fortified wine.

14 (2) (a) The department may from time to time fix the posted prices at which the various classes, varieties,
15 and brands of liquor or fortified wine may be sold, and the posted prices must be the same at all agency liquor
16 stores.

17 (b) (i) The department shall supply from the state liquor warehouse to agency liquor stores the various
18 classes, varieties, and brands of liquor or fortified wine for resale at the state posted price to persons who hold
19 liquor licenses and to all other persons at the retail price established by the agent.

20 (ii) (A) According to the ordering and delivery schedule set by the department, an agency liquor store may
21 place ~~a liquor~~ an order for liquor or fortified wine with the department at its state liquor warehouse in the manner
22 to be established by the department.

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

1 average discount ratio is the average ratio in fiscal year 1994 for similar sized stores for 1 year of operation. The
2 weighted average discount ratio must be computed on the store's first 12 months of operation.

3 (C) All liquor or fortified wine purchased from the state liquor warehouse by an agency liquor store must
4 be paid for within 60 days of the date on which the department invoices the liquor or fortified wine to the agency
5 liquor store.

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

7 (3) Agency liquor stores may not be located in or adjacent to grocery stores in communities with
8 populations over 3,000.

9 (4) (a) Agency liquor stores must receive commissions payable as follows:

10 (i) (A) a 10% commission for agencies in communities with a population of less than 3,000 ~~in population~~,
11 unless adjusted pursuant to subsection (6); or

12 (B) a commission established by competitive bidding unless adjusted pursuant to subsection (6) for
13 agencies in communities with a population of 3,000 or more ~~in population~~; plus

14 (ii) for agency liquor stores operating under a renewed franchise agreement or that have been operated
15 for at least 3 years under an original franchise agreement, a percentage based upon the total annual dollar
16 volume of sales in the previous fiscal year, as follows:

17 (A) for agency liquor stores with a volume of sales of \$560,000 or more, 0.875% beginning July 1, 2009;

18 (B) for agency liquor stores with a volume of sales of less than \$560,000, 1.5% beginning July 1, 2009;

19 or

20 (C) for a city with more than one agency liquor store, in lieu of the addition to a commission increase
21 provided in subsection (4)(a)(ii)(A) or (4)(a)(ii)(B), for each agency liquor store in the city, an addition to its
22 commission rate equal to the increase granted the agency liquor store with the lowest commission rate.

23 (b) The department shall by April 1 of each year determine the dollar values of sales volumes in
24 subsections (4)(a)(ii)(A) and (4)(a)(ii)(B) by using an inflation factor based on the change in the cost of liquor or
25 fortified wine to agency liquor stores during the prior calendar year. The department shall establish the method
26 of determining the inflation factor by rule using a liquor-specific base such as the annual change in the cost per
27 case of the 25 items with the highest sales volume for a calendar year or another appropriate method of
28 measuring the change in liquor or fortified wine prices.

29 (5) An agency franchise agreement must:

30 (a) be effective for a 10-year period and must be renewed at the existing commission rate for additional

- 1 10-year periods if the requirements of the agency franchise agreement have been satisfactorily performed;
- 2 (b) require the agent to maintain comprehensive general liability insurance and liquor liability insurance
- 3 throughout the term of the agency franchise agreement in an amount established by the department of
- 4 administration. The insurance policy must:
- 5 (i) declare the department as an additional insured; and
- 6 (ii) hold the state harmless and agree to defend and indemnify the state in a cause of action arising from
- 7 or in connection with the agent's negligent acts or activities in the execution and performance of the agency
- 8 franchise agreement.
- 9 (c) provide that upon termination by the department for cause or upon mutual termination, the agent is
- 10 liable for any outstanding liquor or fortified wine purchase invoices. If payment is not made within the appropriate
- 11 time, the department may immediately repossess all liquor and fortified wine inventory, wherever located.
- 12 (d) specify the reasonable service and space requirements that the agent will provide throughout the
- 13 term of the agency franchise agreement.
- 14 (6) (a) The commission percentage that the department pays the agent under subsection (4)(a) may be
- 15 reviewed every 3 years at the request of either party. If the agent concurs, the department may adjust the
- 16 commission percentage to be paid during the remaining term of the agency franchise agreement or until the next
- 17 time the commission percentage is reviewed, if that is sooner than the term of the agency franchise agreement,
- 18 to a commission percentage that is equal to the average commission percentage being paid agents with similar
- 19 sales volumes if:
- 20 (i) the agent's commission percentage is less than the average; and
- 21 (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 the
- 23 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 income
- 28 experienced before the cost increases occurred; and
- 29 (ii) if the department demonstrates that it is unable to indicate adjustments in the requirements specified
- 30 in the agent's franchise agreement that will eliminate the impact of cost increases.

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

7 (8) (a) The department may terminate an agency franchise agreement if the agent has not satisfactorily
8 performed the requirements of the agency franchise agreement because the agent:

9 (i) charges retail prices that are less than the department's posted price for liquor or fortified wine, sells
10 liquor or fortified wine to persons who hold liquor licenses at less than the posted price, or sells liquor or fortified
11 wine at case discounts greater than the discount provided for in 16-2-201 to persons who hold liquor licenses;

12 (ii) fails to maintain sufficient liability insurance;

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

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

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

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

25 (c) In the case of failure to make timely payments to the department for liquor or fortified wine purchased,
26 the department may terminate the agency franchise agreement and immediately repossess any liquor or fortified
27 wine purchased and in the possession of the agent. If an agency franchise agreement is terminated, the agent
28 may contest the termination and request a hearing within 30 days of the department's repossession of the liquor
29 or fortified wine. The agency liquor store shall remain closed until a final decision has been reached following a
30 hearing held pursuant to the Montana Administrative Procedure Act.

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

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

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

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

11

12 **Section 8.** Section 16-2-103, MCA, is amended to read:

13 **"16-2-103. Duplicate invoices of sales required.** (1) An agency liquor store shall, upon each sale of
14 liquor or ~~table~~ wine to any licensee, issue a duplicate invoice of the liquor or ~~table~~ wine purchased, as provided
15 by the department, a copy of which must be delivered to the licensee and one copy retained at the store.

16 (2) The invoice must show the date of purchase, the name of the employee making the sale, the quantity
17 of each kind of liquor or ~~table~~ wine purchased, the price paid for the liquor or ~~table~~ wine, the name of the licensee,
18 and the number of the license, with any other information that may be required by the department.

19 (3) The licensee shall keep and retain the duplicate invoice of all purchases made from an agency liquor
20 store, which must at all times be subject to inspection by the duly authorized officers, agents, and employees of
21 the department."

22

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

24 **"16-2-106. Sales by agent.** A liquor store agent may sell to any person any liquor and ~~table~~ wine that
25 the person is entitled to purchase in conformity with the provisions of this code and the rules implementing this
26 code. An agent may, under the terms and conditions that the agent establishes, deliver liquor and ~~table~~ wine
27 purchased from the agent's agency liquor store."

28

29 **Section 10.** Section 16-2-203, MCA, is amended to read:

30 **"16-2-203. Sales to licensees.** Agency liquor stores may sell to licensees licensed under this code all

1 kinds of liquor and ~~table~~ wine at the posted price. All sales must be made on a cash basis."

2

3 **Section 11.** Section 16-2-301, MCA, is amended to read:

4 **"16-2-301. Retail selling price on ~~table~~ wine -- tax on certain ~~table~~ wine.** (1) The retail selling price
5 at which ~~table~~ wine is sold at an agency liquor store is as determined by the agent.

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

10 (3) For the purposes of this section, "~~table wine~~" "wine" does not include hard cider or fortified wine."

11

12 **Section 12.** 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 is lawful to carry or convey liquor or ~~table~~ wine to any agency liquor store and to and from
15 the state liquor warehouse or any depot established by the department for the purposes of this code, and when
16 permitted to do so by this code and the rules promulgated under this code, it is lawful for any common carrier or
17 other person to carry or convey liquor or ~~table~~ wine sold by a vendor from an agency liquor store or to carry or
18 convey beer, when lawfully sold by a brewer, from the premises where the beer was manufactured or from
19 premises where the beer may be lawfully kept and sold to any place to which the liquor, ~~table~~ wine, or beer may
20 be lawfully delivered under this code and the rules promulgated under this code.

21 (2) A common carrier or any other person may not open, break, or allow to be opened or broken any
22 package or vessel containing an alcoholic beverage or drink or use or allow to be drunk or used any alcoholic
23 beverage while being carried or conveyed."

24

25 **Section 13.** Section 16-3-218, MCA, is amended to read:

26 **"16-3-218. "Distribute" defined.** As used in 16-3-219, 16-3-220, 16-4-103, and 16-4-108, "distribute"
27 means to deliver beer or wine to a retailer's premises licensed to sell beer or ~~table~~ wine."

28

29 **Section 14.** Section 16-3-306, MCA, is amended to read:

30 **"16-3-306. Proximity to churches and schools restricted.** (1) Except as provided in subsections (2)

1 through (4), a retail license may not be issued pursuant to this code to any business or enterprise whose
 2 premises are within 600 feet of and on the same street as a building used exclusively as a church, synagogue,
 3 or other place of worship or as a school other than a commercially operated or postsecondary school. This
 4 distance must be measured in a straight line from the center of the nearest entrance of the place of worship or
 5 school to the nearest entrance of the licensee's premises. This section is a limitation upon the department's
 6 licensing authority.

7 (2) However, the department may renew a license for any establishment located in violation of this
 8 section if the licensee does not relocate an entrance any closer than the existing entrances and if the
 9 establishment:

10 (a) was located on the site before the place of worship or school opened; or

11 (b) was located in a bona fide hotel, restaurant, or fraternal organization building at the site since January
 12 1, 1937.

13 (3) Subsection (1) does not apply to licenses for the sale of beer, ~~table~~ wine, or both in the original
 14 package for off-premises consumption.

15 (4) Subsection (1) does not apply within the applicable jurisdiction of a local government that has
 16 supplanted the provisions of subsection (1) as provided in 16-3-309."

17

18 **Section 15.** Section 16-3-310, MCA, is amended to read:

19 "**16-3-310. Lapse of license for nonuse.** Any retail license issued pursuant to this code, (including any
 20 retail license to sell beer ~~and table~~ or wine for off-premises consumption), not actually used in ~~a going an~~
 21 establishment for 90 days ~~shall~~ automatically ~~lapse~~ lapses. Upon determining the fact of nonuse for ~~such that~~
 22 period, the department shall cancel ~~such the~~ license of record and no portion of the fee paid ~~therefor shall be~~ is
 23 refundable. The provisions of this section ~~shall do~~ not apply to the license of any licensee whose premises are
 24 operated on a seasonal basis in connection with a bona fide dude ranch, resort, park hotel, tourist facility, or ~~like~~
 25 similar business, provided ~~such that the~~ licensee has secured written authority from the department to close and
 26 has licensed premises for a specified period of greater than 90 days' duration. ~~Should~~ If the department ~~determine~~
 27 determines that ~~such the~~ lapse was reasonably beyond the control of the licensee, then the lapse provision ~~shall~~
 28 does not apply."

29

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

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

3 (2) The public policy of the state of Montana is to maintain a system to provide for, regulate, and control
4 the acquisition, importation, and distribution of ~~table~~ wine.

5 (3) This part governs wineries, ~~table~~ wine distributors, and wine retailers."
6

7 **Section 17.** Section 16-3-402, MCA, is amended to read:

8 **"16-3-402. Importation of wine -- records.** (1) Except as provided in 16-3-411 and 16-4-901, all ~~table~~
9 wine manufactured outside of Montana and shipped into Montana must be consigned to and shipped to a
10 licensed ~~table~~ wine distributor and be unloaded by the distributor into the distributor's warehouse in Montana or
11 subwarehouse in Montana. The distributor shall distribute the ~~table~~ wine from the warehouse or subwarehouse.

12 (2) The distributor shall keep records at the distributor's principal place of business of all ~~table~~ wine,
13 including the name or kind received, on hand, sold, and distributed. The records may at all times be inspected
14 by the department.

15 (3) ~~Table wine~~ Wine that has been shipped into Montana in violation of this code must be seized by any
16 peace officer or representative of the department and may be confiscated in the manner as provided for the
17 confiscation of intoxicating liquor."
18

19 **Section 18.** 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 deliver
21 ~~table~~ wine purchased or acquired by the distributor to:

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

24 (b) an agency liquor store.

25 (2) It is unlawful for any ~~table~~ wine distributor to sell, deliver, or give away any ~~table~~ wine to be consumed
26 on the distributor's premises or to give, sell, deliver, or distribute any ~~table~~ wine purchased or acquired by the
27 distributor to the public."
28

29 **Section 19.** Section 16-3-404, MCA, is amended to read:

30 **"16-3-404. Monthly report of ~~table~~ wine distributor and retailer.** (1) Each licensed ~~table~~ wine

1 distributor shall, on or before the 15th day of each month, make an exact return to the department of revenue
 2 reporting the amount of ~~table~~ wine purchased or acquired by the distributor during the previous month, the
 3 amount of ~~table~~ wine sold and delivered by the distributor during the previous month, and the amount of inventory
 4 on hand in the manner and form prescribed by the department. The department has the right at any time to make
 5 an examination of the ~~table~~ wine distributor's books and premises and otherwise check the accuracy of the return
 6 or check the alcoholic content of ~~table~~ wine that the distributor may have on hand.

7 (2) Each wine retailer licensed to do business in this state shall, on or before the 15th day of each month,
 8 in the manner and form prescribed by the department, make a return to the department reporting the amount of
 9 wine purchased directly from any out-of-state winery in the previous month."
 10

11 **Section 20.** Section 16-3-405, MCA, is amended to read:

12 **"16-3-405. Carriers' reports of ~~table~~ wine transported.** Every railroad, motor carrier, and airline
 13 transporting ~~table~~ wine manufactured out of this state from points outside this state and delivering to points within
 14 this state shall, if requested by the department, on or before the ~~fifteenth~~ 15th day of each month, make an exact
 15 return to the department of revenue of the amount of ~~such ~~table~~ wine so~~ transported and delivered by ~~such~~ the
 16 railroad, motor carrier, or airline during the previous month; and shall state in ~~such~~ the return the name and
 17 address of the consignor and consignee, the date of delivery, and the amount delivered. A carrier shall retain for
 18 30 months all pertinent and relevant records necessary for the preparation of this report and any other information
 19 the department may require."
 20

21 **Section 21.** Section 16-3-406, MCA, is amended to read:

22 **"16-3-406. Financial interest in retailers prohibited.** (1) A winery or ~~table~~ wine distributor may not
 23 advance or loan money to, or furnish money for, or pay for or on behalf of any retailer any license or tax that may
 24 be required to be paid by any retailer, and a winery or ~~table~~ wine distributor may not be financially interested,
 25 either directly or indirectly, in the conduct or operation of the business of a retailer.

26 (2) A winery or ~~table~~ wine distributor is considered to have a financial interest if:

27 (a) the winery or ~~table~~ wine distributor owns or holds any interest in or a lien or mortgage against the
 28 retailer or the retailer's premises; or

29 (b) the winery or ~~table~~ wine distributor is under any contract with a retailer concerning future purchases
 30 or the sale of merchandise by one from or to the other; or

1 (c) the ~~table~~ wine distributor extends more than 7 days' credit to a retail licensee or furnishes to any retail
2 licensee any furniture, fixtures, or equipment to be used in the dispensation or sale of ~~table~~ wine; or

3 (d) any retailer holds an interest as a stockholder, or otherwise, in the business of the ~~table~~ wine
4 distributor."

5

6 **Section 22.** Section 16-3-411, MCA, is amended to read:

7 **"16-3-411. Winery.** (1) A winery located in Montana and licensed pursuant to 16-4-107 may:

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

9 (b) sell wine it produces at wholesale to wine distributors;

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

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

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

15 (f) obtain a special event permit under 16-4-301;

16 (g) perform those operations and cellar treatments that are permitted for bonded winery premises under
17 applicable regulations of the United States department of the treasury; or

18 (h) sell wine at the winery to a licensed retailer who presents the retailer's license or a photocopy of the
19 license.

20 (2) (a) A winery licensed pursuant to 16-4-107 may sell and deliver wine produced by the winery directly
21 to licensed retailers if the winery:

22 (i) uses the winery's own equipment, trucks, and employees to deliver the wine and the wine delivered
23 pursuant to this subsection (2)(a)(i) does not exceed 4,500 cases a year;

24 (ii) contracts with a licensed ~~table~~ wine distributor to ship and deliver the winery's wine to the retailer; or

25 (iii) contracts with a common carrier to ship and deliver the winery's wine to the retailer and:

26 (A) the wine shipped and delivered by common carrier is shipped directly from the producer's winery or
27 bonded warehouse;

28 (B) individual shipments delivered by common carrier are limited to three cases a day for each licensed
29 retailer; and

30 (C) the shipments delivered by common carrier do not exceed 4,500 cases a year.

1 (b) A winery making sales to retail licensees under the provisions of this subsection (2) is considered
2 a ~~table~~ wine distributor for the purposes of collecting taxes on ~~table~~ wine, as provided in 16-1-411.

3 (c) If a winery uses a common carrier for delivery of the wine to licensed ~~table~~ wine distributors and
4 retailers, the shipment must be:

5 (i) in boxes that are marked with the words: "Wine Shipment From Montana-Licensed Winery to Montana
6 Licensee";

7 (ii) delivered to the premises of a licensed ~~table~~ wine distributor or licensed retailer who is in good
8 standing; and

9 (iii) signed for by the wine distributor or retailer or its employee or agent.

10 (d) In addition to any records required to be maintained under 16-4-107, a winery that distributes wine
11 within the state under this subsection (2) shall maintain records of all sales and shipments. The winery shall, on
12 or before the 15th day of each month, in the manner and form prescribed by the department, make a return
13 reporting the amount of wine that it shipped in the state during the preceding month, names and addresses of
14 consignees or retailers, and other information that the department may determine to be necessary to ensure that
15 distribution of ~~table~~ wines within this state conforms to the requirements of this code."
16

17 **Section 23.** Section 16-3-415, MCA, is amended to read:

18 **"16-3-415. Definitions.** As used in this part, unless the context requires otherwise, the following
19 definitions apply:

20 (1) "Agreement of distributorship" means a contract, agreement, commercial relationship, license, or
21 other arrangement for a definite or an indefinite period of time between a supplier and a ~~table~~ wine distributor that
22 provides for the sale of ~~table~~ wine by the supplier to the ~~table~~ wine distributor.

23 (2) "Good cause" means failure by a ~~table~~ wine distributor to comply with reasonable business
24 requirements imposed, or sought to be imposed, by a supplier under the terms of an agreement of distributorship
25 if the requirements are imposed on other similarly situated distributors either by the terms of their agreements
26 or in the manner of their enforcement by the supplier.

27 (3) "Person" means a natural person, corporation, partnership, trust, agency, or other entity and includes
28 individual officers, directors, or other persons in active control of the activities of the entity.

29 (4) "Supplier" means a winery or an importer of ~~table~~ wines that enters into or is a party to an agreement
30 of distributorship with a ~~table~~ wine distributor."

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

Section 24. Section 16-3-416, MCA, is amended to read:

"16-3-416. ~~Table wine~~ Wine distributor provisions. (1) A supplier or ~~table~~ wine distributor must have a written agreement of distributorship that provides for purchase of the supplier's products from the supplier by the ~~table~~ wine distributor.

(2) An agreement of distributorship must provide that:

(a) a supplier shall notify a ~~table~~ wine distributor in writing at least 60 days prior to termination of an agreement of distributorship unless a termination without notice is permitted as provided in 16-3-417. The written notice must state the reasons for termination. Notice of termination is void if within 60 days of the notice, the ~~table~~ wine distributor rectifies the deficiency stated as the reason for termination and if the deficiency was not stated as reason for termination in a notice previously voided under the provisions of this subsection.

(b) a supplier may not unreasonably withhold or delay approval of a sale or transfer of the ownership, management, or control of a ~~table~~ wine distributorship. However, a ~~table~~ wine distributor shall give a supplier no less than 60 days' prior written notice of any material change in ownership, management, or control.

(3) Within 60 days after entering into an agreement of distributorship, the supplier shall advise the department of the agreement by filing a copy of the agreement that must include the sales area or areas designated for the ~~table~~ wine distributor.

(4) If a supplier terminates an agreement of distributorship under the provisions of subsection (2)(a), the ~~table~~ wine distributor subject to the termination is entitled to compensation for the laid-in cost of inventory. In the event of any termination of the agreement by the supplier other than termination for good cause or for any reason set forth in 16-3-417(3), the distributor is entitled to compensation for the laid-in cost of inventory and to liquidated damages based on the sales of the brand or brands involved, as may be provided in the agreement. If the supplier and the distributor are unable to agree on the amount of liquidated damages, the amount of liquidated damages must be determined by an arbitrator appointed under subsection (5) of this section.

(5) If undertaken in good faith by a supplier, a supplier may terminate an agreement of distributorship for a legitimate business reason not within the definition of good cause if an arbitrator appointed by the department finds, after hearing the supplier and the ~~table~~ wine distributor, that the termination is in the best interest of the ~~table~~ wine brand concerned. Arbitration under this section must be conducted under the provisions of Title 27, chapter 5.

(6) All agreements of distributorship are interpreted and governed by the laws of Montana.

1 (7) In any dispute resulting in litigation between a supplier and a distributor, the litigation must occur in
 2 a Montana court, federal or state, unless that forum would create an unreasonable burden on any party, as
 3 determined by the court in which the litigation is commenced.

4 (8) Agreements between a supplier and a distributor must recognize the constitutional right to a jury trial
 5 as set forth in Article II, section 26, of the Montana constitution.

6 (9) A provision in an agreement of distributorship that is inconsistent with the requirements of this section
 7 is void."

8

9 **Section 25.** Section 16-3-417, MCA, is amended to read:

10 **"16-3-417. Supplier provisions.** (1) An agreement of distributorship must provide that a ~~table~~ wine
 11 distributor shall:

12 (a) maintain the financial and competitive capability to efficiently and effectively distribute a supplier's
 13 products;

14 (b) maintain the quality and integrity of a supplier's products in a manner set forth by the supplier;

15 (c) exert the ~~table~~ wine distributor's best efforts to sell the supplier's wines;

16 (d) merchandise the products in retail stores as agreed between the ~~table~~ wine distributor and the
 17 supplier; and

18 (e) give a supplier not less than 60 days' written notice of the ~~table~~ wine distributor's intent to terminate
 19 an agreement of distributorship.

20 (2) As provided in 16-3-416, a supplier may terminate an agreement of distributorship based on a
 21 deficiency or other good cause by giving 60 days' prior written notice to the ~~table~~ wine distributor.

22 (3) A supplier may terminate an agreement of distributorship immediately and without notice if the reason
 23 for the termination is insolvency, assignment for the benefit of creditors, bankruptcy, or revocation or suspension
 24 for more than 14 days of a license to operate that is required by the state or the federal government."

25

26 **Section 26.** Section 16-3-418, MCA, is amended to read:

27 **"16-3-418. Dual appointments -- equal support -- alternate supplier -- dock sales.** (1) (a) A supplier
 28 may appoint one or more ~~table~~ wine distributors to distribute its ~~table~~ wines in a specified territory. If the supplier
 29 appoints two or more ~~table~~ wine distributors to sell its ~~table~~ wines in the same or overlapping territories, the
 30 supplier shall offer the same prices, delivery, terms, and promotional support to each ~~table~~ wine distributor.

1 (b) A supplier may not appoint more than one ~~table~~ wine distributor to distribute its hard cider in a
2 specified territory.

3 (c) For the purposes of this subsection (1), "~~table wine~~" "wine" has the meaning assigned in 16-1-106,
4 but does not include hard cider.

5 (2) (a) The holder of an all-beverages license under chapter 4, part 2, may, upon presentation of the
6 license or a photocopy of the license, personally obtain from any distributor's warehouse a quantity of ~~table~~ wine
7 that the licensee may agree to buy and that the distributor may agree to sell.

8 (b) The holder of a license that permits on-premises consumption of alcoholic beverages under
9 16-4-401(2) may, upon presentation of the license or a photocopy of the license, personally or through an
10 employee, obtain from a winery, as provided in 16-3-411(1)(h), a quantity of ~~table~~ wine that the licensee may
11 agree to buy and that the winery may agree to sell."

12

13 **Section 27.** Section 16-3-419, MCA, is amended to read:

14 **"16-3-419. Suppliers' prohibitions.** A supplier may not:

15 (1) coerce, induce, or attempt to coerce or induce a ~~table~~ wine distributor to engage in an illegal act or
16 course of conduct;

17 (2) require a ~~table~~ wine distributor to accept delivery of a product or other item or commodity that was
18 not ordered by the wine distributor;

19 (3) fix or maintain the price at which a distributor shall resell ~~table~~ wine."

20

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

22 **"16-4-103. Wholesalers' licenses -- application and issuance -- subwarehouses -- imported beer**

23 **handled through warehouse or subwarehouse -- wine storage.** (1) Any person desiring to sell and distribute
24 beer as a wholesaler shall apply to the department for a license and tender with the application the required
25 license fee. The department shall issue wholesale licenses to qualified applicants in accordance with the
26 provisions of this code. A license must be prominently displayed at all times in the place of business of the
27 wholesaler.

28 (2) An applicant shall maintain a fixed place of business, sufficient capital, and the facilities, storehouse,
29 receiving house, or warehouse for the receiving of, storage, handling, and moving of beer in large and jobbing
30 quantities for distribution and sale in original packages to other licensed wholesalers or licensed retailers. Each

1 wholesaler is entitled to only one wholesale license, which must be issued for the wholesaler's principal place
2 of business in Montana. Duplicate licenses may be issued for the wholesaler's subwarehouses in Montana. The
3 duplicate licenses must be prominently displayed at all times at the subwarehouses.

4 (3) If the applicant is a foreign corporation, the corporation must be authorized to do business in
5 Montana.

6 (4) A wholesaler that is also licensed as a ~~table~~ wine distributor may store wine in any of the wholesaler's
7 warehouses or subwarehouses.

8 (5) As used in subsection (1), "distribute" has the meaning provided in 16-3-218."
9

10 **Section 29.** Section 16-4-106, MCA, is amended to read:

11 **"16-4-106. Beer and ~~table~~ wine license transfers.** A transfer of any brewer's, beer wholesaler's, ~~table~~
12 wine distributor's, beer retailer's, or ~~table~~ wine retailer's license may be made on application to the department
13 with the consent of the department, provided that the transferee qualifies under this code."
14

15 **Section 30.** Section 16-4-107, MCA, is amended to read:

16 **"16-4-107. Winery license -- winery and importer registration.** (1) (a) Wine, other than for personal
17 consumption in conformity with federal exemptions from holding a basic permit as a bonded winery, may be
18 manufactured or directly distributed to retailers within the state only by a licensed winery. An application for a
19 winery license must be accompanied by a fee of \$400, which constitutes the first annual license fee, and a
20 licensee shall in each succeeding year pay an annual fee as provided in 16-4-501. Winery licensees located in
21 Montana must hold the appropriate basic permit required by the United States department of the treasury and
22 be qualified for a license in accordance with the provisions of 16-4-401(4). Winery licensees located in another
23 state must hold the appropriate basic permit required by the United States department of the treasury and the
24 appropriate license to manufacture wine from the state in which the winery is located and shall provide all other
25 information required by the department.

26 (b) A winery located in Montana that is licensed to do business in the state shall, each quarter and in the
27 manner and form prescribed by the department, report to the department the amount of wine manufactured or
28 imported by the winery in the previous quarter and the winery's inventory. The department may at any time
29 examine a winery's books.

30 (2) A winery that is not located in the state or an importer of ~~table~~ wines that holds the appropriate license

1 from the United States department of the treasury and that desires to distribute its ~~table~~ wines within this state
2 through licensed ~~table~~ wine distributors only shall apply to the department of revenue for registration on forms
3 to be prepared and furnished by the department. Each winery shall furnish the department with a copy of each
4 container label currently used by the winery on its products imported into Montana. The department shall require
5 the winery or importer to agree to furnish monthly and other reports concerning quantities and prices of ~~table~~ wine
6 that it ships into the state, names and addresses of consignees, and any other information that the department
7 may determine to be necessary to ensure that importation and distribution of ~~table~~ wines within this state conform
8 to the requirements of this code. A winery or importer of ~~table~~ wines may not ship ~~table~~ wines into this state until
9 the registration is granted by the department. The registration may be canceled or suspended by the department
10 upon a finding after notice and hearing that the registrant has not complied with the terms of its registration."
11

12 **Section 31.** Section 16-4-108, MCA, is amended to read:

13 **"16-4-108. ~~Table-wine~~ Wine distributor's license.** (1) Any person desiring to sell and distribute ~~table~~
14 wine at wholesale to retailers under the provisions of this code shall apply to the department of revenue for a
15 license to do so and shall submit with the application the annual license fee of \$400. The department may issue
16 licenses to qualified applicants in accordance with the provisions of this code.

17 (2) All ~~table~~ wine distributors' licenses issued in any year expire on June 30 of that year at midnight.

18 (3) A license fee may not be imposed upon ~~table~~ wine distributors by a municipality or any other political
19 subdivision of the state.

20 (4) The license must be at all times prominently displayed in the place of business of the ~~table~~ wine
21 distributor.

22 (5) An applicant must have a fixed place of business, sufficient capital, the facilities, storehouse, and
23 receiving house or warehouse for the receiving, storage, handling, and moving of ~~table~~ wine in large and jobbing
24 quantities for distribution and sale in original packages to other licensed ~~table~~ wine distributors or licensed
25 retailers. Each ~~table~~ wine distributor is entitled to only one wholesale ~~table~~ wine license, which must be issued
26 for the distributor's principal place of business in Montana. A duplicate license may be issued for one
27 subwarehouse only in Montana for each ~~table~~ wine distributor's license. The duplicate license must at all times
28 be prominently displayed at the subwarehouse. A ~~table~~ wine distributor may also hold a license to sell beer at
29 wholesale but may not hold or have any interest, direct or indirect, in any license to sell beer, ~~table~~ wine, or liquor
30 at retail.

1 (6) A wine distributor that distributes fortified wine may not sell fortified wine below the posted price set
2 by the department.

3 ~~(6)~~(7) If the applicant is a foreign corporation, the corporation must be authorized to do business in
4 Montana.

5 ~~(7)~~(8) As used in subsection (1), "distribute" has the meaning provided in 16-3-218."
6

7 **Section 32.** Section 16-4-115, MCA, is amended to read:

8 **"16-4-115. Beer and wine licenses for off-premises consumption.** (1) A retail license to sell beer
9 or ~~table wine but not fortified wine, or both,~~ in the original packages for off-premises consumption may be issued
10 only to a person, firm, or corporation that is approved by the department as a person, firm, or corporation qualified
11 to sell beer or ~~table wine but not fortified wine, or both,~~ and whose premises proposed for licensing are operated
12 as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of licenses that the department
13 may issue is not limited by the provisions of 16-4-105 but must be determined by the department in the exercise
14 of its sound discretion, and the department may in the exercise of its sound discretion grant or deny an application
15 for any license or suspend or revoke any license for cause.

16 (2) Upon receipt of a completed application for a license under this section, accompanied by the
17 necessary license fee as provided in 16-4-501, the department shall request that the department of justice make
18 a background investigation of all matters relating to the application.

19 (3) Based on the results of the investigation or in exercising its sound discretion as provided in
20 subsection (1), the department shall determine whether:

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

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

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

25 (4) License applications submitted under this section are not subject to the provisions of 16-4-203 and
26 16-4-207.

27 (5) If the premises proposed for licensing under this section are a new or remodeled structure, the
28 department may issue a conditional license prior to completion of the premises upon reasonable evidence that
29 the premises will be suitable for the carrying on of business as a bona fide grocery store or a drugstore licensed
30 as a pharmacy."

1

2 **Section 33.** Section 16-4-201, MCA, is amended to read:

3 **"16-4-201. All-beverages license quota.** (1) Except as otherwise provided by law, a license to sell
4 liquor, beer, and ~~table~~ wine at retail, an all-beverages license, in accordance with the provisions of this code and
5 the rules of the department, may be issued to any person who is approved by the department as a fit and proper
6 person to sell alcoholic beverages, except that the number of all-beverages licenses that the department may
7 issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from
8 the corporate limits of those cities and towns must be determined on the basis of population prescribed in
9 16-4-502 as follows:

10 (a) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate
11 limits of the towns, not more than two retail licenses;

12 (b) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 3,000
13 inhabitants and within a distance of 5 miles from the corporate limits of the cities and towns, three retail licenses
14 for the first 1,000 inhabitants and one retail license for each additional 1,000 inhabitants;

15 (c) in incorporated cities of over 3,000 inhabitants and within a distance of 5 miles from the corporate
16 limits of the cities, five retail licenses for the first 3,000 inhabitants and one retail license for each additional 1,500
17 inhabitants.

18 (2) The number of the inhabitants in cities and towns, exclusive of the number of inhabitants residing
19 within a distance of 5 miles from the corporate limits of the cities or towns, governs the number of retail licenses
20 that may be issued for use within the cities and towns and within a distance of 5 miles from the corporate limits
21 of the cities or towns. If two or more incorporated municipalities are situated within a distance of 5 miles from each
22 other, the total number of retail licenses that may be issued for use in both of the municipalities and within a
23 distance of 5 miles from their respective corporate limits must be determined on the basis of the combined
24 populations of both of the municipalities and may not exceed the limitations in subsection (1) or this subsection.
25 The distance of 5 miles from the corporate limits of any incorporated city or incorporated town must be measured
26 in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate
27 boundary of the city or town.

28 (3) Retail all-beverages licenses of issue on March 7, 1947, and all-beverages licenses issued under
29 16-4-209 that are in excess of the limitations in subsections (1) and (2) are renewable, but new licenses may not
30 be issued in violation of the limitations.

1 (4) The limitations in subsections (1) and (2) do not prevent the issuance of a nontransferable and
2 nonassignable, as to ownership only, retail license to an enlisted personnel, noncommissioned officers', or
3 officers' club located on a state or federal military reservation on May 13, 1985, or to any post of a nationally
4 chartered veterans' organization or any lodge of a recognized national fraternal organization if the veterans' or
5 fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949.

6 (5) The number of retail all-beverages licenses that the department may issue for use at premises
7 situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles
8 from the corporate limits of a city or town may not be more than one license for each 750 population of the county
9 after excluding the population of incorporated cities and incorporated towns in the county.

10 (6) An all-beverages license issued under subsection (5) that becomes located within 5 miles of an
11 incorporated city or town because of annexation after April 15, 2005, may not be transferred to another location
12 within the city quota area for 5 years from the date of annexation."

13

14 **Section 34.** Section 16-4-301, MCA, is amended to read:

15 **"16-4-301. Special permits to sell all alcoholic beverages, beer, and table wine -- application and**
16 **issuance.** (1) (a) An organization or institution that has a tax-exempt designation under the provisions of section
17 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), as amended, that is organized and operated to raise
18 funds for a needy person or that is an accredited Montana postsecondary school and that conducts a special
19 event may receive a special permit to sell beer and ~~table~~ wine to the patrons of that special event. An organization
20 may receive up to three special permits a year.

21 (b) A civic league or organization that has a tax-exempt designation under section 501(c)(4) of the
22 Internal Revenue Code, 26 U.S.C. 501(c)(4), as amended, or an organization authorized by an accredited
23 Montana postsecondary school to engage in fundraising activities for intercollegiate athletics that has a
24 tax-exempt designation under the provisions of section 501(c)(3) of the Internal Revenue Code, 26 U.S.C.
25 501(c)(3), as amended, may receive up to 12 special permits a year to sell beer and ~~table~~ wine. For purposes
26 of fundraising activities for intercollegiate athletics, only one organization for each Montana postsecondary school
27 may be authorized to apply for and receive special permits under this section. All net earnings from the sale of
28 beer and ~~table~~ wine must be contributed to the state of Montana or a political subdivision of the state or must be
29 devoted to purposes required of entities under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C.
30 501(c)(3), as amended.

1 (c) An association or corporation engaged in professional sporting contests or junior hockey contests
2 may receive one special permit to sell beer and ~~table~~ wine covering the entire season of play if:

3 (i) the association or corporation is sanctioned by a sports organization that regulates the specific sport;

4 (ii) the season of play of the sport is specified in advance;

5 (iii) an admission fee to the contests is charged; and

6 (iv) the contest events are held in facilities that provide seating for at least 1,000 patrons.

7 (d) A chamber of commerce or business league that has a tax-exempt designation under section
8 501(c)(6) of the Internal Revenue Code, 26 U.S.C. 501(c)(6), as amended, may receive up to 12 special permits
9 a year to sell beer and ~~table~~ wine. A chamber of commerce may not use one of its special permits for an event
10 conducted by a business league, and a business league may not use one of its permits for an event conducted
11 by a chamber of commerce. The chamber of commerce or business league receiving a special permit shall obtain
12 liquor liability insurance for any event it conducts.

13 (e) The beer and wine sold under this subsection (1) must be consumed at the time when and within the
14 enclosure where the special event, activity, or sporting contest is held.

15 (f) An application for a special permit must be presented 3 days in advance, but the department may,
16 for good cause, waive the 3-day requirement. The application must describe the location of the enclosure where
17 the special event, activity, or sporting contest is to be held, the nature of the special event, activity, or sporting
18 contest, and the period during which it is contemplated that the special event, activity, or sporting contest will be
19 held. An application for a permit for professional sporting contests or junior hockey contests under subsection
20 (1)(c) must provide the inclusive dates of the season of play for the sporting contest. The application must be
21 accompanied by the amount of the permit fee and a written statement of approval of the premises where the
22 special event, activity, or sporting contest is to be held issued by the local law enforcement agency that has
23 jurisdiction over the premises.

24 (g) A special permit issued under this subsection (1) for the purpose of selling and serving beer at a
25 special event, activity, or sporting contest conducted on the premises of a county fairground or public sports arena
26 authorizes the permitholder to sell and serve beer in the grandstand and bleacher area of the premises, as well
27 as from a booth, stand, or other fixed place on the premises.

28 (h) For the purposes of this subsection (1), a post of a nationally chartered veterans' organization or a
29 lodge of a recognized national fraternal organization otherwise licensed under this code is an organization that
30 may receive special permits for three special events a year, as described in subsection (1)(a), to sell beer and

1 ~~table~~ wine. All net proceeds must go to the post or lodge acquiring the special permit.

2 (2) (a) A post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal
3 organization not otherwise licensed under this code may receive, without notice or hearing as provided in
4 16-4-207, a special permit to sell beer and ~~table~~ wine or a special permit to sell all alcoholic beverages at the post
5 or lodge to members and their guests only, to be consumed within the hall or building of the post or lodge.

6 (b) The application of a nationally chartered veterans' organization or lodge of a recognized national
7 fraternal organization must describe the location of the hall or building where the special permit will be used and
8 the date it will be used.

9 (c) The special permit may be issued for a 24-hour period only, ending at 2 a.m., and the department
10 may not issue more than 12 special permits to any post or lodge during a calendar year."

11

12 **Section 35.** Section 16-4-303, MCA, is amended to read:

13 **"16-4-303. Special beer and ~~table~~ wine license for nonprofit arts organizations.** (1) A nonprofit arts
14 organization as defined in subsection (4) is entitled to a special beer and ~~table~~ wine license to sell beer and ~~table~~
15 wine to patrons of exhibitions, productions, performances, or programs sponsored or presented by the
16 organization in a specific theatre or other appropriately designated place for on-premises consumption.

17 (2) The proceeds derived from sales of beer and ~~table~~ wine, except for reasonable operating costs, must
18 be used to further the purposes of the organization.

19 (3) The department shall have access to the organization's records to determine whether the
20 organization is entitled to a license under this section.

21 (4) For the purposes of this section, the term "nonprofit arts organization" means an organization
22 governed under Title 35, chapter 2, that is organized and operated for the principal purpose of providing artistic
23 or cultural exhibitions, presentations, or performances for viewing or attendance by the general public. Assets
24 of the corporation must be irrevocably dedicated to the activities for which the license is granted and, on the
25 liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of
26 a member or individual except a nonprofit organization, association, or corporation. An artistic or cultural
27 exhibition, presentation, or performance includes:

28 (a) an exhibition or presentation of works of art or objects of cultural or historical significance, such as
29 those commonly displayed in art or history museums; and

30 (b) a musical or dramatic performance or series of performances.

1 (5) A license issued under this section is not subject to the provisions of 16-4-105."

2

3 **Section 36.** Section 16-4-501, MCA, is amended to read:

4 **"16-4-501. License and permit fees.** (1) Each beer licensee licensed to sell either beer or ~~table~~ wine
5 only or both beer and ~~table~~ wine under the provisions of this code shall pay a license fee. Unless otherwise
6 specified in this section, the fee is an annual fee and is imposed as follows:

7 (a) (i) each brewer and each beer importer, wherever located, whose product is sold or offered for sale
8 within the state, \$500;

9 (ii) for each storage depot, \$400;

10 (b) (i) each beer wholesaler, \$400; each winery, \$200; each ~~table~~ wine distributor, \$400;

11 (ii) for each subwarehouse, \$400;

12 (c) each beer retailer, \$200;

13 (d) (i) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer
14 license;

15 (ii) for a license to sell ~~table~~ wine at retail for off-premises consumption only, either alone or in conjunction
16 with beer, \$200;

17 (e) any unit of a nationally chartered veterans' organization, \$50.

18 (2) The permit fee under 16-4-301(1) is computed at the following rate:

19 (a) \$10 a day for each day that beer and ~~table~~ wine are sold at events, activities, or sporting contests,
20 other than those applied for pursuant to 16-4-301(1)(c); and

21 (b) \$1,000 a season for professional sporting contests or junior hockey contests held under the
22 provisions of 16-4-301(1)(c).

23 (3) The permit fee under 16-4-301(2) is \$10 for the sale of beer and ~~table~~ wine only or \$20 for the sale
24 of all alcoholic beverages.

25 (4) Passenger carrier licenses must be issued upon payment by the applicant of an annual license fee
26 in the sum of \$300.

27 (5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to
28 a beer-only license pursuant to 16-4-105, is \$200.

29 (6) The annual renewal fee for:

30 (a) a brewer producing 20,000 or fewer barrels of beer, as defined in 16-1-406, is \$200; and

1 (b) resort retail all-beverages licenses within a given resort area is \$2,000 for each license.

2 (7) Except as provided in this section, each licensee licensed under the quotas of 16-4-201 shall pay
3 an annual license fee as follows:

4 (a) for each license outside of incorporated cities and incorporated towns or in incorporated cities and
5 incorporated towns with a population of less than 2,000, \$250 for a unit of a nationally chartered veterans'
6 organization and \$400 for all other licensees;

7 (b) for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or
8 within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed
9 to the nearest boundary of the city, \$350 for a unit of a nationally chartered veterans' organization and \$500 for
10 all other licensees;

11 (c) for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or
12 within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed
13 to the nearest boundary of the city, \$500 for a unit of a nationally chartered veterans' organization and \$650 for
14 all other licensees;

15 (d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5
16 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest
17 boundary of the city, \$650 for a unit of a nationally chartered veterans' organization and \$800 for all other
18 licensees;

19 (e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns
20 is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary
21 of the city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the
22 corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license
23 fee chargeable by the larger incorporated city or incorporated town applies and must be paid by the applicant.
24 When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city
25 and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable
26 by the smaller incorporated town or incorporated city applies and must be paid by the applicant.

27 (f) an applicant for the issuance of an original license to be located in areas described in subsections
28 (6) and (7)(d) shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's
29 ability to pay a \$20,000 license fee. A successful applicant shall pay a one-time original license fee of \$20,000
30 for a license issued. The one-time license fee of \$20,000 may not apply to any transfer or renewal of a license

1 issued prior to July 1, 1974. However, all licenses are subject to the specified annual renewal fees.

2 (8) The fee for one all-beverages license to a public airport is \$800. This license is nontransferable.

3 (9) The annual fee for a retail beer and wine license to the Yellowstone airport is \$400.

4 (10) The annual fee for a special beer and ~~table~~ wine license for a nonprofit arts organization under
5 16-4-303 is \$250.

6 (11) The annual fee for a distillery is \$600.

7 (12) The license fees provided in this section are exclusive of and in addition to other license fees
8 chargeable in Montana for the sale of alcoholic beverages.

9 (13) In addition to other license fees, the department of revenue may require a licensee to pay a late fee
10 of 33 1/3% of any license fee delinquent on July 1 of the renewal year or 1 year after the licensee's anniversary
11 date, 66 2/3% of any license fee delinquent on August 1 of the renewal year or 1 year and 1 month after the
12 licensee's anniversary date, and 100% of any license fee delinquent on September 1 of the renewal year or 1
13 year and 2 months after the licensee's anniversary date.

14 (14) All license and permit fees collected under this section must be deposited as provided in 16-2-108."

15 - END -