_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ALCOHOLIC BEVERAGE LICENSING ELIGIBILITY STANDARDS FOR CERTAIN LICENSEES; APPLYING TO STANDARDS FOR APPLICANTS RELATING TO FUNDING SOURCES; CLARIFYING THE EFFECT OF FELONY CONVICTIONS AND SUPERVISION STATUS; AMENDING SECTIONS 16-4-109, 16-4-115, 16-4-307, 16-4-401, AND 16-4-419, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 16-4-109, MCA, is amended to read:

"**16-4-109. Golf course beer and wine license.** (1) On application, the department shall issue a retail beer and wine license, to be known as a golf course beer and wine license, for use at a golf course. The application must be made by the person or entity that owns and operates the golf course.

(2) The department shall issue a golf course beer and wine license to a qualified applicant regardless of the number of beer and wine licenses already issued within the beer and wine license quota area in which the golf course is situated. A license issued pursuant to this section is nontransferable.

(3) If the owner of the golf course is not the state, a unit of the university system, or a local government, the owner must be approved by the department as provided in this chapter for the issuance of retail beer and wine licenses and:

(a) the golf course must consist of at least 9 holes and 2,500 lineal yards;

(b) the golf course must be either within the limits of an incorporated city or town or within 5 miles of the limits of an incorporated city or town;

(c) the applicant for a license under this section may not have held a retail beer and wine or all-beverages license within 12 months of the date of application; and

(d) the applicant, except for a golf course under a governing body incorporated under section

501(c)(3) of the Internal Revenue Code, shall pay an initial application fee as provided in 16-4-501.

(4) If the owner of the golf course is the state, a unit of the university system, or a local government, the department may approve the application if an owner-designated individual who provides general oversight of the alcoholic beverage operations meets the requirements of 16-4-401(2)(a)~~(i) through (2)(a)(iii)~~.

(5) (a) Except as provided in subsection (5)(c), a golf course beer and wine license and all retail beer and wine sales under the license are subject to all statutes and rules governing a retail beer and wine license.

(b) If the owner of the golf course is not the state, a unit of the university system, or a local government:

(i) retail beer and wine sales may be made only during the time of the year that the golf course is open for business, and sales on days during that time must stop by 1 hour after sunset;

(ii) the seating capacity of the premises where the beer and wine are sold may not exceed 75 persons; and

(iii) gaming or gambling is not authorized under the license issued under this section.

(c) If the owner of a golf course is the state, a unit of the university system, or a local government, the owner may lease the beer and wine license for use at the golf course to an individual or entity approved by the department."

Section 2. Section 16-4-115, MCA, is amended to read:

"**16-4-115. Beer and wine licenses for off-premises consumption -- third-party delivery -- own delivery for grocery stores.** (1) A retail license to sell beer or table wine, or both, in the original packages for off-premises consumption may be issued only to individuals or entities qualified for licensure under 16-4-401. If the premises proposed for licensing are operated in conjunction with another business, that business must be a grocery store or drugstore licensed as a pharmacy. The number of licenses that the department may issue is not limited by the provisions of 16-4-105 but must be determined by the department in the exercise of its sound discretion, and the department may in the exercise of its sound discretion grant or deny an application for any license or suspend or revoke any license for cause.

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

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

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

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

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

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

(5) A license issued under this section may offer curbside pickup between 8 a.m. and 2 a.m. in original packaging.

(6) An off-premises retail licensee may use a third-party delivery licensee to deliver beer and table wine as provided in 16-4-307.

(7) (a) A retail licensee who qualifies for licensure under 16-4-401 as an off-premises retail licensee that operates in conjunction with a grocery store or drugstore licensed as a pharmacy with a license to sell beer and table wine in original packaging may apply to the department and pay a fee for an endorsement to deliver beer and table wine in original packaging. Deliveries under this subsection (7) may be made only to a residential or commercial address. An off-premises retail licensee under this section may only deliver beer or table wine through drivers who:

(i) are an employee of the licensee or an independent contractor of the retail licensee;

(ii) are at least 21 years of age;

(iii) have a valid driver's license for delivery through a motor vehicle or a valid driver's license or a state-issued identification for delivery through bicycle or other means not a motor vehicle;

(iv) have not been convicted of a felony~~, unless the driver's rights have been restored~~ in the past 5 years~~,~~ or a driving under the influence offense in the past 7 years;

(v) are not currently on probation or parole or under deferred prosecution for committing a felony

offense; and

~~(v)~~ (vi) have completed a responsible server and sales training program or a delivery training program under Title 16, chapter 4, part 10, prior to their first alcohol delivery.

(b) Any beer or table wine sold by the off-premises retail licensee for delivery must be removed from the off-premises retail licensee's licensed premises only during the hours in which the off-premises retail licensee is permitted to sell alcoholic beverages. The delivery must be completed within an hour after the time that the off-premises retail licensee is required to end sales of alcoholic beverages.

(c) Any beer or table wine unable to be delivered for any reason must be returned to the licensed premises of the off-premises retail licensee that sold the beer or table wine. The driver shall return the beer or table wine to the off-premises retail licensee prior to or at the end of the delivery route, unless the off-premises retail licensee is closed at the time of return, in which case the driver shall return the beer or table wine as soon as practicable. The third-party delivery licensee shall document and maintain a record of the delivery attempt. Drivers may not be compensated based on whether a delivery of beer or table wine results in a completed delivery transaction.

(d) The person to whom the delivery is made must be at least 21 years of age. The driver shall use an identification scanning software technology or an alternative approved by the department to verify the age of the recipient at the time of delivery.

(e) Deliveries may not be made to anyone who is apparently or obviously intoxicated.

(f) The outer packaging containing the beer or table wine being delivered must clearly indicate that the package contains an alcoholic beverage, unless one of the following conditions is met:

(i) the person delivering the order has personally retrieved and bagged or otherwise packaged the beer or table wine for delivery; or

(ii) the driver is notified through electronic or other means that the delivery order contains alcohol and that the recipient must be 21 years of age or older.

(g) Beer or table wine intended for delivery by a motor vehicle must be transported in the rear of the motor vehicle and may not be within the immediate arm's length of the driver or within a separate cargo area.

(h) Beer or table wine intended for delivery by bicycle must be in a closed compartment or

otherwise out of reach of the bicycle operator.

(i) A off-premises retail licensee under this section may not deliver or facilitate delivery of beer or table wine to the following locations:

(i) a business licensed to sell alcoholic beverages at retail, with the exception of delivery to individual guest rooms of a lodging facility that is also licensed to sell alcoholic beverages at retail;

(ii) a location within the campus of an institution of higher education; or

(iii) a property that does not have a permanent address that includes a street name and number.

(j) An off-premises retail licensee under this section that delivers or facilitates the delivery of beer or table wine shall maintain books and records reflecting the date, time, address, and recipient of the alcohol delivery for each delivery, the name and address of the person making the delivery, and the name and business address of the off-premises retail licensee selling the alcoholic beverage. Records must be maintained in either hard copy or electronic format for 3 years. Off-premises retail licensees shall make these books and records available to the department and its investigators on reasonable notice from the department."

Section 3. Section 16-4-307, MCA, is amended to read:

"**16-4-307. Third-party delivery license -- definitions.** (1) An off-premises retail licensee as provided for in 16-4-115 shall sell beer or table wine to the end consumer for personal use only and not for resale. A third-party delivery licensee may not sell beer or table wine to the end consumer. The off-premises retail licensee must have the exclusive authority to determine which beer or table wine is available for delivery and set the prices for these beverages.

(2) (a) The department may issue a third-party delivery license to a third-party delivery applicant if the following requirements are met:

(i) the third-party delivery applicant meets the requirements for an off-premises retail licensee under 16-4-401 to hold a license; and

(ii) the third-party delivery applicant submits an application and pays the initial license fee as provided in 16-4-501.

(b) Third-party delivery licenses may be renewed annually by June 30 if:

(i) the third-party delivery licensee continues to meet the requirements for an off-premises retail

licensee under 16-4-401 to hold a license; and

(ii) the third-party delivery licensee submits a renewal form and the annual renewal fee as provided in 16-4-501.

(3) A third-party delivery licensee may only deliver or facilitate the delivery of beer or table wine through drivers who:

(a) are an employee or an independent contractor of the third-party delivery licensee;

(b) are at least 21 years of age;

(c) have a valid driver's license for delivery through a motor vehicle or a valid driver's license or a state-issued identification for delivery through bicycle or other means not a motor vehicle;

(d) have not been convicted of a felony~~, unless the driver's rights have been restored~~ in the past 5 years~~,~~ or a driving under the influence offense in the past 7 years;

(e) are not currently on probation or parole or under deferred prosecution for committing a felony offense; and

~~(e)~~ (f) have completed a responsible server and sales training program or a delivery training program under Title 16, chapter 4, part 10, prior to their first alcohol delivery.

(4) Third-party delivery licensees are subject to the penalties provided in Title 16, chapter 4, part 10.

(5) Any beer or table wine sold by an off-premises retail licensee for delivery by or through a third-party delivery licensee must be removed from the off-premises retail licensee's licensed premises only during the hours in which the off-premises retail licensee is permitted to sell alcoholic beverages. The delivery must be completed within an hour after the time that the off-premises retail licensee is required to end sales of alcoholic beverages.

(6) Any beer or table wine unable to be delivered for any reason must be returned to the licensed premises of the off-premises retail licensee that sold the beer or table wine. The driver shall return the beer or table wine to the off-premises retail licensee prior to or at the end of the delivery route, unless the off-premises retail licensee is closed at the time of return, in which case the driver shall return the beer or table wine as soon as practicable. The third-party delivery licensee shall document and maintain a record of the delivery attempt. Drivers may not be compensated based on whether a delivery of beer or table wine results in a completed

delivery transaction.

(7) The person to whom the delivery is made must be at least 21 years of age. The driver shall use an identification scanning software technology or an alternative approved by the department to verify the age of the recipient at the time of delivery.

(8) Deliveries may not be made to anyone who is apparently or obviously intoxicated.

(9) The outer packaging containing the beer or table wine being delivered must clearly indicate that the package contains an alcoholic beverage, unless one of the following conditions is met:

(a) the person delivering the order has personally retrieved and bagged or otherwise packaged the beer or table wine for delivery; or

(b) the driver is notified through electronic or other means that the delivery order contains alcohol and that the recipient must be 21 years of age or older.

(10) Beer or table wine intended for delivery by a motor vehicle must be transported in the rear of the motor vehicle and may not be within the immediate arm's length of the driver or within a separate cargo area.

(11) Beer or table wine intended for delivery by bicycle must be in a closed compartment or otherwise out of reach of the bicycle operator.

(12) A licensee under this section may not deliver or facilitate delivery of beer or table wine to the following locations:

(a) a business licensed to sell alcoholic beverages at retail, with the exception of delivery to individual guest rooms of a lodging facility that is also licensed to sell alcoholic beverages at retail;

(b) a location within the campus of an institution of higher education; or

(c) a property that does not have a permanent address that includes a street name and number.

(13) A licensee under this section that delivers or facilitates the delivery of beer or table wine shall maintain books and records reflecting the date, time, address, and recipient of the alcohol delivery for each delivery, the name and address of the person making the delivery, and the name and business address of the off-premises retail licensee selling the alcoholic beverage. Records must be maintained in either hard copy or electronic format for 3 years. Licensees shall make these books and records available to the department and its investigators on reasonable notice from the department.

(14) An off-premises retail licensee may utilize the services of a third-party delivery licensee by means of the telephone, the internet, a mobile application, or other electronic means to facilitate the ordering or delivery of beer or table wine from inventory located at the off-premises retail licensee's licensed premises.

(15) An off-premises retail licensee is not subject to violations of this section that arise out of the delivery of beer or table wine delivered by a third-party delivery licensee.

(16) A violation of this code by a third-party delivery licensee or its drivers subjects the third-party delivery licensee to penalties as provided in 16-4-406.

(17) Nothing in this section may be construed to require a technology services company to obtain a third-party delivery license if the company does not employ or contract with delivery drivers and instead provides software or an application that connects consumers and off-premises retail licensees for the delivery of beer or table wine from the off-premises retail licensee.

(18) A third-party delivery license is not required for a common carrier lawfully transporting or shipping alcoholic beverages.

(19) The third-party delivery licensee shall maintain a general liability insurance policy in an amount of no less than $1 million for each occurrence with a $2 million aggregate.

(20) The department may adopt rules to implement this section.

(21) As used in this section, the following definitions apply:

(a) "Third-party delivery license" means a license issued by the department to a third-party delivery licensee for the delivery of beer or table wine.

(b) "Third-party delivery licensee" means a person who offers a service to deliver or facilitate the delivery of, but not to buy or sell, beer or table wine in original packaging from an off-premises retail licensee issued a license under 16-4-115 and enters into a written agreement with the off-premises retail licensee for the purpose of delivering beer or table wine sold by the off-premises retail licensee."

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

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

(2) Except as provided in 16-4-311 and subsection (5) of this section and subject to subsection (8), the department shall find in every case in which it makes an order for the issuance of a new license, for the approval of the transfer of a license, or for the renewal of a license that:

(a) if the applicant is an individual:

(i) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments;

(ii) the applicant has not been convicted of a felony ~~or, if the applicant has been convicted of a felony, the applicant's rights have been restored~~ within 5 years of the date of application;

(iii) the applicant is not currently on probation or parole or under deferred prosecution for committing a felony offense; and

~~(iii)~~ (iv) the applicant is not under 19 years of age;

(b) if the applicant is a publicly traded corporation:

(i) the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (2)(a);

(ii) each individual who has control over the operation of the license meets the requirements for an individual applicant listed in subsection (2)(a); and

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

(c) if the applicant is a privately held corporation, all of the following must apply:

(i) each owner of 15% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a). If no single owner owns more than 15% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (2)(a), and the owners of 51% of the outstanding stock must meet the requirements of subsection (2)(a).

(ii) each individual who has control over the operation of the license meets the requirements for an individual applicant listed in subsection (2)(a);

(iii) each person who shares in the profits or liabilities of a license meets the requirements for an individual applicant listed in subsection (2)(a). This subsection (2)(c)(iii) does not apply to a shareholder of a

corporation who owns less than 15% of the outstanding stock in that corporation except that the provisions of subsection (7) apply.

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

(d) if the applicant is a general partnership, each partner must meet the requirements of subsection (2)(a);

(e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all limited partners whose ownership interest in the partnership equals or exceeds 15% must meet the requirements of subsection (2)(a). If no single limited partner's interest equals or exceeds 15%, then 51% of all limited partners must meet the requirements of subsection (2)(a).

(f) if the applicant is a limited liability company:

(i) all managing members and those members whose ownership interest in the company equals or exceeds 15% must meet the requirements of subsection (2)(a). If no single member's interest equals or exceeds 15%, then 51% of all members must meet the requirements of subsection (2)(a).

(ii) the limited liability company is authorized to do business in Montana;

(g) if the applicant is a trust, the trustee must meet the requirements of subsection (2)(a);

(h) if the applicant is a nonprofit organization:

(i) the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (2)(a); and

(ii) the nonprofit organization is authorized to do business in Montana;

(i) if the applicant is a cooperative association:

(i) the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (2)(a); and

(ii) the cooperative association is authorized to do business in Montana.

(3) The applicant and any individual of the applicant who must meet the requirements of (2)(a) must be current on all tax filings, taxes, interest, and penalties due to the state; however, nothing in this subsection authorizes the department to consider an applicant's tax status or whether the applicant was or is an income tax protestor when renewing the license.

(4) In the case of a corporate applicant, the requirements of subsection (2)(b) or (2)(c) apply

separately to each class of stock.

(5) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant to 16-4-302 or an applicant for registration under 16-4-101 or 16-4-107.

(6) An applicant's source of funding must be from a suitable source. A lender or other source of money or credit may be found unsuitable if the source:

(a) is a person whose prior financial or other activities or criminal record:

(i) poses a threat to the public interest of the state;

(ii) poses a threat to the effective regulation and control of alcoholic beverages; or

(iii) creates a danger of illegal practices, methods, or activities in the conduct of the licensed business; ~~or~~

(b) has been convicted of a felony ~~unless the person's rights have been restored~~ within the past 5 years; or

(c) is currently on probation or parole or under deferred prosecution for committing a felony offense.

(7) (a) Except as specifically provided in this code relating to financial interests in licenses, nothing in this section applies or otherwise prohibits an applicant or licensee from obtaining personal financing from a licensed financial institution, taking advantage of consumer credit, or using a personal credit card to make purchases on behalf of a licensed entity if the applicant or licensee is reimbursed by the licensed entity within 90 days. An applicant or individual may obtain multiple transactions up to an aggregate maximum of $100,000 with each individual transaction not to exceed $25,000 to be used on behalf of the licensed entity.

(b) A licensee's use of short-term financing of 90 days or less from institutional lenders and noninstitutional lenders does not constitute an undisclosed ownership interest in the license.

(c) It is the intent of this subsection (7) to facilitate the efficient administration of an entity licensed under this code.

(8) (a) An individual applying for an all-beverages license or having any ownership interest in an entity applying for an all-beverages license may not, if the application were to be approved, own an interest in more than half the total number of allowable all-beverages licenses in any quota area described in 16-4-201.

(b) If two or more individuals through a business or family relationship share in the profits or

liabilities of all-beverages licenses, the aggregate number of licenses in which they share in the profits or liabilities may not exceed half the total number of allowable all-beverages licenses in the specific quota area in which the all-beverages licenses will be held.

(c) An applicant applying for an all-beverages license and any individual of the applicant who must meet the requirements of subsection (2)(a) may not, if the application were to be approved, possess an ownership interest in more than the limit established in 16-4-205 for establishments licensed under this chapter for all-beverages sales. However, resort retail all-beverages licenses issued under 16-4-213 do not count toward this limit.

(d) An applicant and any individual of the applicant who must meet the requirements of subsection (2)(a) may not possess an ownership interest in an agency liquor store as defined in 16-1-106.

(e) Except as provided in subsection (9), an applicant for an on-premises consumption license or any member of the applicant's immediate family must be without financing from and may not have any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages, except that an applicant's spouse may possess an ownership interest in one or more manufacturer licenses. This prohibition also applies to any individual of the applicant who must meet the requirements of subsection (2)(a).

(f) An applicant for an off-premises consumption license or any member of the applicant's immediate family must be without financing from and may not have any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages. This prohibition also applies to any individual of the applicant who must meet the requirements of subsection (2)(a).

(g) Except as provided in subsection (9), an applicant for a manufacturing, importing, or distributing license and any individual of the applicant who must meet the requirements of subsection (2)(a) may not possess an ownership interest in any establishment licensed under this chapter for retail alcoholic beverage sales.

(h) An applicant for a distributor license and any individual of the applicant who must meet the requirements of subsection (2)(a) may not be a manufacturer of an alcoholic beverage or owned or controlled by a manufacturer of an alcoholic beverage.

(9) (a) A person with an ownership interest in a licensed brewery or licensed winery may hold complete ownership of up to a combined total of three retail licenses issued pursuant to 16-4-105 or 16-4-201.

The owner of a retail license issued pursuant to 16-4-105 or 16-4-201 may hold complete ownership of brewery or winery licenses. The first of these licenses must be a colocated license.

(b) A person with an ownership interest in a licensed distillery may hold complete ownership of up to three retail licenses issued pursuant to 16-4-201. The owner of a retail license issued pursuant to 16-4-201 may hold complete ownership of distillery licenses. The first of these licenses must be a colocated license.

(c) A person with an ownership interest in a retail license issued pursuant to 16-4-105 may not also have an ownership interest in a distillery license.

(d) To hold both a manufacturing license and a retail license pursuant to this subsection (9), a licensee:

(i) must maintain both the manufacturing license and the retail license on the same premises for the first of these licenses, known as a colocated premises;

(ii) must have 100% of the same ownership between the manufacturing license and the retail license; and

(iii) must provide and serve through the retail license alcohol produced by other manufacturers that are not affiliated or financially interested, either directly or indirectly, in the conduct or operation of the business in which the license was issued pursuant to 16-4-105 and 16-4-201, or the licensed brewery, winery, or distillery.

(e) Colocated licenses may transfer beer manufactured, liquor distilled, or wine produced by the licensee between the colocated manufacturing license and the retail license without it being considered distributed or delivered as provided in this code.

(f) For the purposes of this code, the following definitions apply:

(i) "Colocated license" means a manufacturing license and a retail license owned completely by a licensee and that are operated at one premises.

(ii) "Colocated premises" means a premises where a manufacturing license and a retail license are both located.

(10) Ownership of warehouse receipts as provided in 16-4-312 does not constitute ownership, control, or affiliation with the distillery that originally issued the warehouse receipt. A person who holds a warehouse receipt as provided in 16-4-312(6) is not restricted from any activity regulated by the department

that is otherwise legal for the person. Except in connection with the department's income tax enforcement duties as provided in Title 15, the department is not authorized to require a distillery or any other person to provide information regarding the sale or purchase of warehouse receipts."

Section 5. Section 16-4-419, MCA, is amended to read:

"**16-4-419. Location managers.** (1) Each applicant and each licensee shall submit an application to the department designating at least one location manager. Except as provided in subsection (2), a location manager must meet the following requirements:

(a) the location manager's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the location manager is likely to operate the establishment in compliance with all applicable laws of the state and local governments;

(b) the location manager has not been convicted of a felony ~~or, if the location manager has been convicted of a felony, the location manager's rights have been restored~~ within the past 5 years;

(c) the location manager is not currently on probation or parole or under deferred prosecution for committing a felony offense; and

~~(c)~~ (d) the location manager is not under 19 years of age.

(2) If a location manager is an applicant or owner required to be vetted under 16-4-401, the requirements of this section do not apply.

(3) If an applicant or licensee designates a business entity as a location manager, the business entity must designate at least one officer, member, or partner that meets the requirements of subsection (1)."

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

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