

## 1 HOUSE BILL NO. 86

2 INTRODUCED BY E. BUTTREY

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ALCOHOL LAW; GENERALLY

6 REVISING LAWS RELATED TO ALCOHOL WHOLESALERS; CREATING THE BEER AND TABLE WINE

7 DISTRIBUTION ACT; PROVIDING DEFINITIONS; CREATING A DISTRIBUTOR'S LICENSE; PROVIDING

8 REQUIREMENTS FOR OPERATION OF A DISTRIBUTOR'S LICENSE; PROVIDING FEES; REVISING LAWS

9 RELATING TO BEER AND TABLE WINE DISTRIBUTION; REVISING LAWS RELATING TO WINERIES AND

10 DISTRIBUTION OF WINE; PROVIDING FOR DISTRIBUTOR'S SERVICE OBLIGATIONS; AMENDING

11 SECTIONS 16-1-106, 16-1-303, 16-1-406, 16-1-411, 16-3-101, 16-3-104, 16-3-212, 16-3-214, 16-3-241, 16-3-

12 242, 16-3-243, 16-3-244, 16-3-301, 16-3-316, 16-3-321, 16-3-402, 16-3-406, 16-3-411, 16-4-101, 16-4-106, 16-

13 4-107, 16-4-313, 16-4-314, 16-4-401, 16-4-406, 16-4-407, 16-4-501, AND 16-4-906, MCA; REPEALING

14 SECTIONS 16-3-217, 16-3-218, 16-3-219, 16-3-220, 16-3-221, 16-3-222, 16-3-223, 16-3-224, 16-3-225, 16-3-

15 226, 16-3-230, 16-3-231, 16-3-232, 16-3-233, 16-3-234, 16-3-401, 16-3-403, 16-3-404, 16-3-415, 16-3-416, 16-

16 3-417, 16-3-418, 16-3-419, 16-3-420, 16-3-421, AND 16-4-113, MCA; AND PROVIDING AN IMMEDIATE

17 EFFECTIVE DATE."

18

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

20

21 NEW SECTION. **Section 1. Short title -- public policy -- purpose.** (1) [Sections 1 through 20] may

22 be cited as the "Beer and Table Wine Distribution Act".

23 (2) The public policy of the state of Montana is to maintain a system to provide for, regulate, and

24 control the acquisition, importation, and distribution of beer and table wine.

25 (3) The legislature finds and declares that the purpose of [sections 1 through 20] is to assure

26 continued interbrand competition in beer and table wine sales through competing independent distributors and

27 to assure breweries and wineries the ability to protect the reputations of their products through quality control

28 arrangements.

1

2           NEW SECTION. Section 2. Definitions. As used in [sections 1 through 20], unless the context  
3 requires otherwise, the following definitions apply:

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

7           (2)     "Distribute" means to:

8           (a)     deliver beer, table wine, or sacramental wine:

9           (i)     to a retailer's premises licensed to sell beer, table wine, or sacramental wine;

10          (ii)    to a noncontiguous storage area as allowed in 16-3-311(6);

11          (iii)   pursuant to an approved alternative delivery arrangement in [section 16(7)]; and

12          (iv)    to an alternate alcoholic beverage storage facility as allowed in 16-4-213(8); and

13          (b)     to deliver table wine to an agency liquor store.

14          (3)     "Good cause" means failure by a distributor to comply with reasonable business requirements  
15 imposed, or sought to be imposed, by a supplier under the terms of an agreement of distributorship if the  
16 requirements are imposed on other similarly situated distributors either by the terms of their agreements or in  
17 the manner of their enforcement by the supplier.

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

20          (5)     "Supplier" means a brewery, winery, or an importer of beer, table wines, or sacramental wines  
21 that enters into or is a party to an agreement of distributorship with a distributor.

22

23           NEW SECTION. Section 3. Distributor's license -- fee. (1) A person desiring to sell and distribute  
24 beer, table wine, or sacramental wine at wholesale to licensed retailers or table wine to agency liquor stores  
25 under the provisions of this code shall apply to the department for a license to do so and shall submit with the  
26 application the initial license fee of \$400. The department may issue licenses to qualified applicants in  
27 accordance with the provisions of this code.

28          (2)     A distributor's license expires at midnight on June 30 following the date of its issuance.

(3) A license fee may not be imposed on distributors by a municipality or any other political subdivision of the state.

(4) The license must be prominently displayed in the distributor's licensed premises at all times.

(5) (a) An applicant must have:

(i) a fixed place of business;

(ii) sufficient capital; and

(iii) the facilities, storehouse, and receiving house or warehouse for the receiving, storage, handling, and moving of beer, table wine, or sacramental wine in large and jobbing quantities for distribution and sale in original packages to other licensed distributors or licensed retailers.

(b) A distributor is entitled to only one license, which must be issued for the distributor's licensed premises in Montana. A license may be issued for each subwarehouse operated by the distributor. The license must be prominently displayed at the subwarehouse at all times.

**NEW SECTION. Section 4. Distributor financial interest in retailers prohibited.** A distributor may not advance or loan money to or furnish money for or pay for or on behalf of any retailer any license or tax that may be required to be paid for any retailer. A distributor may not be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer. A distributor is considered to have a financial interest within the meaning of this section if:

(1) the distributor owns or holds any interest in or a lien or mortgage against the retailer or the retailer's premises;

(2) the distributor is under a contract with a retailer concerning future purchases or the sale of merchandise by one from or to the other; or

(3) a retailer holds an interest, as a stockholder or otherwise, in the business of the distributor.

**NEW SECTION. Section 5. Beer agreement of distributorship provisions.** (1) A brewery or beer importer and distributor must have a written agreement of distributorship that provides for purchase of the brewery or beer importer's products from the brewery or beer importer by the distributor.

(2) A beer agreement of distributorship must provide:

1           (a)       that the brewer or beer importer or any officer, agent, or representative of any brewer or beer  
2 importer and the distributor involved shall mutually determine the size or extent of the area in which the  
3 distributor may sell or distribute the products of the brewer or beer importer to the retail licensees. The territory  
4 must be the territory agreed upon between the distributor and brewer or the distributor and beer importer and  
5 may not be changed without the mutual consent of both the distributor and brewer or the distributor and beer  
6 importer.

7           (b)       the agreed-upon brands of the brewer or beer importer to be sold by the distributor;

8           (c)       that the brewer or beer importer recognizes that the distributor is free to manage the  
9 distributor's business in the manner that the distributor considers best and that this prerogative vests in the  
10 distributor the exclusive right to establish selling prices, to select the brands that the distributor wishes to  
11 handle, and to determine the effort and resources that the distributor will exert to develop and promote the sale  
12 of the brewer's or beer importer's products handled by the distributor;

13          (d)       a procedure for the review of alleged distributor deficiencies asserted by the brewer or beer  
14 importer to constitute good cause as provided in [section 2] including the submission in writing to the distributor  
15 by the brewer or beer importer of the deficiencies, if the deficiencies are susceptible of correction and if the  
16 distributor desires to correct the deficiencies, and that a reasonable period of time must be given the distributor  
17 for rectification of the deficiencies prior to any notice of intent to terminate;

18          (e)       a termination clause providing that the brewer or beer importer shall deliver, in writing, to the  
19 distributor a 60-day notice of intent to terminate the agreement, contract, or franchise;

20          (f)       that all agreements between a brewer and a distributor are interpreted and governed by the  
21 laws of Montana and that those laws must be liberally construed to effectuate the remedial purpose of the  
22 protections of [sections 1 through 20];

23          (g)       that in any dispute resulting in litigation between a brewer or a beer importer and a distributor,  
24 the litigation must occur in a Montana court, either federal or state, unless that forum would create an  
25 unreasonable burden on any party, as determined by the court in which the litigation is commenced; and

26          (h)       that all agreements between a brewer or a beer importer and a distributor must recognize the  
27 constitutional right to a jury trial as set forth in Article II, section 26, of the Montana constitution.  
28

**NEW SECTION. Section 6. Table wine agreement of distributorship provisions.** (1) A winery or

wine importer and distributor must have a written agreement of distributorship that provides for purchase of the winery or wine importer's products from the winery or wine importer by the distributor.

(2) A table wine agreement of distributorship must provide that:

(a) a winery or wine importer shall notify a 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 [section 7].

The written notice must state the reasons for termination. Notice of termination is void if within 60 days of the notice, the 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 (2)(a).

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

(3) If a winery or wine importer terminates an agreement of distributorship under the provisions of subsection (2)(a), the 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 winery or wine importer other than termination for good cause or for any reason set forth in [section 7(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 winery or wine importer 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 (4).

(4) If undertaken in good faith by a winery or wine importer, a winery or wine importer 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 winery or wine importer and the distributor, that the termination is in the best interest of the brands concerned. Arbitration under this section must be conducted under the provisions of Title 27, chapter 5.

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

(6) In any dispute resulting in litigation between a winery or wine importer and a distributor, the

1 litigation must occur in a Montana court, federal or state, unless that forum would create an unreasonable  
2 burden on any party, as determined by the court in which the litigation is commenced.

3 (7) Agreements between a winery or wine importer and a distributor must recognize the  
4 constitutional right to a jury trial as set forth in Article II, section 26, of the Montana constitution.

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

7  
8 **NEW SECTION. Section 7. Winery and wine importer agreement of distributorship provisions.**

9 (1) An agreement of distributorship for a winery or wine importer's product must provide that a distributor shall:

10 (a) maintain the financial and competitive capability to efficiently and effectively distribute a winery  
11 or wine importer's products;

12 (b) maintain the quality and integrity of a winery or wine importer's products in a manner set forth  
13 by the winery or wine importer;

14 (c) exert the distributor's best efforts to sell the winery or wine importer's brands;

15 (d) merchandise the products in retail stores as agreed between the distributor and the winery or  
16 wine importer; and

17 (e) give a winery or wine importer not less than 60 days' written notice of the distributor's intent to  
18 terminate an agreement of distributorship.

19 (2) As provided in [section 6], a winery or wine importer may terminate an agreement of  
20 distributorship based on a deficiency or other good cause by giving 60 days' prior written notice to the  
21 distributor.

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

26  
27 **NEW SECTION. Section 8. Table wine distributor.** (1) A winery or wine importer may appoint one  
28 or more distributors to distribute its table wines in a specified territory. If the winery or wine importer appoints

1 two or more distributors to sell its table wines in the same or overlapping territories, the winery or wine importer  
2 shall offer the same prices, delivery, terms, and promotional support to each distributor.

3 (2) A winery or wine importer may not appoint more than one distributor to distribute its hard cider  
4 in a specified territory.

5 (3) For the purposes of this section, "table wine" has the same meaning as provided in 16-1-106  
6 but does not include hard cider.

7  
8 **NEW SECTION. Section 9. Distributors' service obligations for beer -- applicability.** (1) A  
9 distributor appointed to distribute a brand of beer within a territory specified by agreement pursuant to [section  
10 5] shall call on and offer that brand to at least 75% of the retailers within that territory at least every 3 weeks.  
11 However, if the brand of beer for which the distributor is appointed is a product of a brewer or beer importer  
12 whose products are not generally available, the distributor shall, at least every 3 weeks, call on and offer that  
13 brand to as many retailers within that territory as is reasonably possible given the amount of that brand that is  
14 available to the distributor.

15 (2) If a retailer's account with a distributor is current as required under 16-3-243, the distributor  
16 may not refuse to sell the retailer any generally available brand of beer for which the distributor has been  
17 appointed for the territory in which the retailer is located. The distributor shall offer to deliver the beer to the  
18 retailer at least every 3 weeks.

19 (3) For the purposes of this section, a brewer or beer importer's products are not generally  
20 available if:

21 (a) all of the brands of a brewer or beer importer shipped to a distributor during the most recent  
22 calendar quarter total less than 600 barrels;

23 (b) all of the brands of a brewer or beer importer shipped into the state total less than 1,200 barrels  
24 in each of the 2 consecutive preceding calendar quarters; and

25 (c) all of the brands produced by the brewer at all of its facilities total less than 150,000 barrels per  
26 year.

27 (4) This section applies to all beer distribution agreements entered into, assigned, or amended  
28 after July 1, 1986. It does not apply to a distribution agreement for a named brand entered into before July 1,

1 1986, but does not prohibit a brewer who is a party to an agreement from requiring the appointed distributor to  
2 fulfill similar service obligations in the territory.

3  
4 **NEW SECTION. Section 10. Winery or wine importer prohibitions -- illegal acts by brewers or**  
5 **beer importers.** (1) A winery or wine importer or an officer, agent or representative of a winery or wine importer  
6 may not:

7 (a) coerce, induce, or attempt to coerce or induce a distributor to engage in an illegal act or course  
8 of conduct;

9 (b) require a distributor to accept delivery of a product or other item or commodity that was not  
10 ordered by the distributor; or

11 (c) fix or maintain the price at which a distributor shall resell table wine.

12 (2) A brewer or beer importer or an officer, agent, or representative of a brewer or beer importer  
13 may not:

14 (a) coerce, attempt to coerce, or persuade any person licensed to sell beer as a distributor to enter  
15 into any agreement or to take any action that would violate or tend to violate any of the laws of this state or any  
16 rules promulgated by the department;

17 (b) sell its products in the state without a written contract that conforms to the provisions of  
18 [sections 1 through 20] with each appointed licensed distributor;

19 (c) designate or allow more than one distributor to sell or distribute a specific brand of the brewer's  
20 or beer importer's products to retail licensees in the same area, provided that nothing in [sections 1 through 20]  
21 prohibits the brewer or beer importer from designating more than one distributor to sell or distribute different  
22 brands of the same manufacturer to retail licensees in the same area;

23 (d) fix or maintain the price at which a distributor resells the brewer's or beer importer's products.  
24 Without limitation, it is a violation of this section if:

25 (i) after a distributor has exceeded a resale price increase recommended by a brewer or beer  
26 importer, the brewer or beer importer raises the price that it charges the distributor for those products within 60  
27 days;

28 (ii) after a distributor has exceeded a resale price increase recommended by a brewer or beer



1 importer, the brewer or beer importer raises the price that it charges the distributor in an amount proportionately  
2 larger than the amount that it raised the distributor's prices initially when compared to the increase in the resale  
3 price that it recommended to the distributor; or

4 (iii) the brewer or beer importer links or ties its participation in promotional discounts to the  
5 distributor's compliance with any recommended resale price.

6 (e) cancel, terminate, discontinue, or fail to renew, except for just cause and in accordance with  
7 the current terms and standards established by the brewer or beer importer then equally applicable to all  
8 distributors, any agreement or contract, written or oral, or the franchise of any wholesaler existing on January 1,  
9 1974, or entered into after that date to sell beer manufactured by the brewer or imported by the beer importer. A  
10 brewer or beer importer may, notwithstanding the preceding sentence, make reasonable classifications among  
11 distributors. If a brewer or beer importer cancels or terminates a distributor's franchise, the brewer or beer  
12 importer has the burden of proving that the classification was reasonable and not arbitrary. The provisions of  
13 [sections 1 through 20] must be a part of any franchise, contract, agreement, or understanding, whether written  
14 or oral, between any distributor of beer licensed to do business in this state and any manufacturer or beer  
15 importer doing business with the licensed distributor just as though the provisions had been specifically agreed  
16 upon between the distributor and the manufacturer or beer importer. A distributor of beer licensed to conduct  
17 business in the state may not waive any of the protections or agree to any provision contrary to [sections 1  
18 through 20] by any conduct, including but not limited to the signing of any contract or agreement with terms  
19 contrary to those provisions.

20 (3) (a) Just cause as used in subsection (2)(e) means that the distributor failed to comply with the  
21 reasonable requirements placed on the distributor by the brewer or beer importer as a part of any written  
22 franchise, contract, or agreement between the parties.

23 (b) The sale or purchase or other restructuring of the brewer or beer importer by a successor in the  
24 manufacturing tier of the beer industry does not constitute just cause as that term is used in subsection (2)(e).

25 (c) For the purposes of this subsection (3), a successor means a person or entity that replaces a  
26 brewer or beer importer with regard to the right to manufacture, sell, distribute, or import a brand or brands of  
27 beer regardless of the character or form of the succession. A successor is obligated to all of the terms and  
28 conditions of any franchise, contract, agreement, or understanding, whether written or oral, in effect on the date

1 of succession. A successor has the right to contractually require its distributor to comply with operational  
2 standards of performance if the standards are uniformly established for all of the successor's distributors and  
3 conform to the requirements of this section.

4  
5 **NEW SECTION. Section 11. Transfer of distributor's interest in business.** A distributor may sell  
6 or transfer the business or an interest in the business to any person or to one or more members of the  
7 distributor's family or heirs or legatees, whether the distributor operates as an individual, a partnership, or  
8 corporation. However, the consent of the brewer, beer importer, winery, or wine importer in writing is required  
9 for the transferee to continue as a distributor of the brewer, beer importer, winery, or wine importer. The  
10 consent must consider the personal, financial, and managerial responsibilities and capabilities of the transferee,  
11 and the consent may not unreasonably be withheld.

12  
13 **NEW SECTION. Section 12. Contractual or franchise relationship -- existence by actions.** The  
14 doing or accomplishing of any of the following acts constitutes prima facie evidence of a contractual or  
15 franchise relationship between a licensed distributor and a brewer, beer importer, winery, or wine importer  
16 within the intention of [sections 1 through 20]:

17 (1) the shipment, preparation for shipment, or acceptance of any order by any brewer, beer  
18 importer, winery, or wine importer or its agent for any beer, table wine, or sacramental wine to a licensed  
19 distributor within this state; or

20 (2) the payment by any licensed distributor within this state or the acceptance of payment by any  
21 brewer, beer importer, winery, or wine importer or its agent for the shipment of an order of beer, table wine, or  
22 sacramental wine intended for sale within this state.

23  
24 **NEW SECTION. Section 13. Distributor agreements filed with department.** Within 60 days after  
25 entering into a new agreement, an exact copy of all agreements, contracts, or franchises between a brewer,  
26 beer importer, winery, or wine importer and a distributor must be filed by the distributor with the department as  
27 a public document and must be available to any of the parties to a dispute. The department, on the instigation  
28 of an action in a court of record, shall file an exact certified copy of the agreement with the court for the court's

1 consideration in determining any matter before it. Any contracts, agreements, or franchises not on record with  
2 the department may not be considered by a court as having any force or effect. The distributor shall notify the  
3 brewer, beer importer, winery, or wine importer of the filing of the agreement with the department.

4  
5 **NEW SECTION. Section 14. Beer required to be shipped to distributor.** Except as provided in 16-  
6 3-214 and 16-4-401(9)(e), all beer that is to be distributed in Montana, whether manufactured outside of or  
7 within the state of Montana, must be consigned to and shipped, either directly or via a licensed storage depot,  
8 to a licensed distributor and unloaded into the distributor's warehouse in Montana or subwarehouse in Montana.  
9 A brewer or beer importer shall maintain records of all beer, including the name or kind received, on hand, and  
10 sold. The records may at any time be inspected by a representative of the department. The distributor shall  
11 distribute the beer from the warehouse or subwarehouse and shall keep records at the distributor's licensed  
12 premises of all beer, including the name or kind received, on hand, sold, and distributed. The records may be  
13 inspected by a representative of the department at any time.

14  
15 **NEW SECTION. Section 15. Sales by distributor.** (1) A distributor may sell and deliver beer  
16 purchased or acquired by the distributor to another distributor, retailer, or common carrier licensed under this  
17 code.

18 (2) A distributor may sell and deliver table wine and sacramental wine purchased or acquired by  
19 the distributor to another distributor, retailer, or common carrier licensed under this code and to an agency  
20 liquor store.

21  
22 **NEW SECTION. Section 16. Dock sales.** (1) Except as provided in subsections (2) through (4), beer  
23 may not be delivered to a licensed retailer at any location other than the retailer's licensed premises,  
24 noncontiguous storage areas under 16-3-311(6), and resort alternate storage facilities under 16-4-213(8).

25 (2) An all-beverages licensee may personally or through an employee obtain from any distributor's  
26 warehouse any quantity of beer as the all-beverages licensee and distributor may agree to buy and sell.

27 (3) Retailers other than an all-beverages licensee may personally or through an employee obtain  
28 from the distributor's warehouse any quantity of beer that the retailer and distributor may agree to buy and sell

1 only within the territory of the distributor in which the retailer is located.

2 (4) Except as provided in subsections (5) through (6), table wine and sacramental wine may not be  
3 delivered to a licensed retailer or liquor store agent at any location other than the retailer's licensed premises,  
4 an agency liquor store, noncontiguous storage areas under 16-3-311(6), or resort alternate storage facilities  
5 under 16-4-213(8).

6 (5) An all-beverages licensee may personally or through an employee obtain from any distributor's  
7 warehouse any quantity of table wine that the all-beverages licensee and distributor may agree to buy and sell.

8 (6) Liquor store agents or retailers other than all-beverages licensees may personally or through  
9 an employee obtain from the distributor's warehouse any quantity of table wine as the agent or retailer and  
10 distributor may agree to buy and sell only within the territory of the distributor in which the agent's liquor store or  
11 retailer is located.

12 (7) When a distributor's trucks and equipment are incapable of delivering beer, table wine, or  
13 sacramental wine to a retail licensee's premises due to the unique physical location of the retail licensee's  
14 premises, examples of which are premises located on an island or atop a mountain, the distributor and retail  
15 licensee may seek prior department approval for an alternative delivery arrangement on a form provided by the  
16 department. If the department approves the alternative delivery arrangement request, the department shall  
17 provide the distributor and the retail licensee a written summary of the conditions of the approved delivery  
18 arrangement. Failure to comply with the approved alternative delivery arrangement may subject the distributor  
19 or retail licensee to administrative action.

20  
21 **NEW SECTION. Section 17. Sales to public by distributor unlawful.** A distributor may not give,  
22 sell, deliver, or distribute any beer, table wine, or sacramental wine purchased or acquired by the distributor to  
23 the public.

24  
25 **NEW SECTION. Section 18. Consumption of beer, table wine, or sacramental wine on**  
26 **distributor's premises unlawful.** A distributor may not sell, serve, or give away any beer, table wine, or  
27 sacramental wine to be consumed on the distributor's premises.

28

1           **NEW SECTION. Section 19. Monthly report of distributor and retailer.** (1) A licensed distributor  
2 shall, on or before the 15th day of each month, make an exact return to the department of the amount of beer,  
3 table wine, and sacramental wine purchased or acquired by the distributor during the previous month, the  
4 amount of beer, table wine, and sacramental wine sold and delivered by the distributor during the previous  
5 month, and the amount of inventory on hand in the manner and form prescribed by the department. The  
6 department has the right at any time to make an examination of the distributor's books and premises and  
7 otherwise check the accuracy of the return or check the alcoholic content of beer, table wine, and sacramental  
8 wine that the distributor may have on hand.

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

12  
13           **NEW SECTION. Section 20. Injunction to prevent franchise cancellation.** (1) A person injured by  
14 a violation of [sections 1 through 20] may bring a civil action in a court of competent jurisdiction to enjoin further  
15 violations in addition to other remedies provided by law.

16           (2) A court of competent jurisdiction may enjoin the cancellation or termination of a franchise or  
17 agreement between a distributor and a brewer, between a distributor and a beer importer, between a distributor  
18 and a winery, or between a distributor and a wine importer at the instance of a distributor that is or would be  
19 adversely affected by the cancellation or termination. In granting an injunction, the court shall provide that the  
20 brewer, beer importer, winery, or wine importer may not supply the customers or territory of the distributor who  
21 is servicing the territory or customers through other distributors or means while the injunction is in effect.

22  
23           **Section 21.** Section 16-1-106, MCA, is amended to read:

24           **"16-1-106. Definitions.** As used in this code, the following definitions apply:

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

27           (2) "Agency liquor store" means a store operated under an agency franchise agreement in  
28 accordance with this code for the purpose of selling liquor at either the posted or the retail price for off-premises

1 consumption.

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

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

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

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

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

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

10 (B) in which the sugars used for fermentation of the alcoholic beverage are at least 75% derived  
11 from malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients.

12 (b) The term does not include a caffeinated or stimulant-enhanced malt beverage.

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

14 ~~(7) "Beer wholesaler" means a person importing into or purchasing in Montana beer for sale or~~  
15 ~~resale to retailers licensed in Montana.~~

16 ~~(8)(7)~~ "Brewer" means a person who produces malt beverages.

17 ~~(9)(8)~~ "Caffeinated or stimulant-enhanced malt beverage" means:

18 (a) a beverage:

19 (i) that is fermented in a manner similar to beer and from which some or all of the fermented  
20 alcohol has been removed and replaced with distilled ethyl alcohol;

21 (ii) that contains at least 0.5% of alcohol by volume;

22 (iii) that is treated by processing, filtration, or another method of manufacture that is not generally  
23 recognized as a traditional process in the production of beer as described in 27 CFR 25.55; and

24 (iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng,  
25 and taurine; or

26 (b) a beverage:

27 (i) that contains at least 0.5% of alcohol by volume;

28 (ii) that is treated by processing, filtration, or another method of manufacture that is not generally

1 recognized as a traditional process in the production of beer as described in 27 CFR 25.55;

2 (iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract;

3 (iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng,  
4 and taurine;

5 (v) for which the producer is required to file a formula for approval with the United States alcohol  
6 and tobacco tax and trade bureau pursuant to 27 CFR 25.55; and

7 (vi) that is not exempt pursuant to 27 CFR 25.55(f).

8 ~~(10)~~(9) "Community" means:

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

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

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

14 ~~(11)~~(10)"Concessionaire" means an entity that has a concession agreement with a licensed entity.

15 ~~(12)~~(11)"Curbside pickup" means the sale of alcoholic beverages that meets the requirements of 16-3-  
16 312.

17 ~~(13)~~(12)"Department" means the department of revenue, unless otherwise specified, and includes the  
18 department of justice with respect to receiving and processing, but not granting or denying, an application under  
19 a contract entered into under 16-1-302.

20 (13) "Distributor" means a person importing into or purchasing in Montana beer, table wine, or  
21 sacramental wine for sale or resale to retailers licensed in Montana and a person importing into or purchasing  
22 in Montana table wine for sale or resale to agency liquor stores.

23 (14) "Growler" means any fillable, sealable container complying with federal law.

24 (15) (a) "Guest ranch" means a business or organization that provides guests with overnight  
25 lodging, dining, and onsite outdoor recreational activities typical of western ranching for the purposes of  
26 vacation or recreation. Recreational activities offered by a guest ranch may include but are not limited to  
27 horseback riding, wagon or sleigh rides, shooting, and working with livestock. The property of a guest ranch  
28 must be composed of at least 50 contiguous acres. The property must be located entirely outside the license

1 quota area of an incorporated city or an incorporated town as determined under 16-4-105(1) or 16-4-201. The  
2 premises of a guest ranch may include restaurants, sporting and recreational equipment shops, event venues,  
3 arenas, and other facilities that may be used by other persons in addition to the overnight guests.

4 (b) The term does not include premises used as rehabilitation centers, group homes, clinics,  
5 nursing homes, church or other religious campgrounds, or other similar uses.

6 (16) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the  
7 juices of apples or pears and that contains not less than 0.5% of alcohol by volume and not more than 8.5% of  
8 alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

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

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

12 (19) "Liquor" means an alcoholic beverage except beer and table wine. The term includes a  
13 caffeinated or stimulant-enhanced malt beverage.

14 (20) "Location manager" means a person who provides general oversight of the alcoholic beverage  
15 operations and ensures compliance with alcoholic beverage laws and regulations. A location manager may be  
16 an owner of a license, an employee of the licensee, or an entity that contracts to provide services for the  
17 licensee.

18 (21) "Malt beverage" means:

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

24 (b) an alcoholic beverage made by the fermentation of malt substitutes, including rice, grain of any  
25 kind, glucose, sugar, or molasses that has not undergone distillation.

26 (22) (a) "Original package" means the sealed container in which a manufacturer packages its  
27 product for retail sale.

28 (b) The term includes but is not limited to:



- 1 (i) bottles;
- 2 (ii) cans; and
- 3 (iii) kegs.
- 4 (23) "Package" means a container or receptacle used for holding an alcoholic beverage.
- 5 (24) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses
- 6 as fixed and determined by the department and in addition an excise and license tax as provided in this code.
- 7 In the case of sacramental wine sold in agency liquor stores, the wholesale price may not exceed the sum of
- 8 the department's cost to acquire the sacramental wine, the department's current freight rate to agency liquor
- 9 stores, and a 20% markup.
- 10 (25) "Prepared serving" means a container of alcoholic beverages, filled at the time of sale and
- 11 sealed with a lid, for consumption at a place other than the licensee's premises.
- 12 (26) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that
- 13 contains 50% of alcohol by volume.
- 14 (27) "Public place" means a place, building, or conveyance to which the public has or may be
- 15 permitted to have access and any place of public resort.
- 16 (28) "Retail price" means the price established by an agent for the sale of liquor to persons who do
- 17 not hold liquor licenses. The retail price may not be less than the department's posted price.
- 18 (29) "Rules" means rules adopted by the department or the department of justice pursuant to this
- 19 code.
- 20 (30) "Sacramental wine" means wine that contains more than 0.5% but not more than 24% of
- 21 alcohol by volume that is manufactured and sold exclusively for use as sacramental wine or for other religious
- 22 purposes.
- 23 (31) "Special event", as it relates to an application for a beer and wine special permit, means a
- 24 short, infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.
- 25 (32) "State liquor warehouse" means a building owned or under control of the department for the
- 26 purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.
- 27 (33) "Storage depot" means a building or structure owned or operated by a brewer at any point in
- 28 the state of Montana off and away from the premises of a brewery, which building or structure is equipped with

1 refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as  
2 permitted by this code.

3 (34) "Subwarehouse" means a building or structure owned or operated by a licensed ~~combined beer~~  
4 ~~wholesaler and table wine distributor~~, located at a site in Montana other than the site of the ~~combined beer~~  
5 ~~wholesaler's and table wine distributor's warehouse~~, and used for the receiving, storage, and distribution of  
6 beer, table wine, or sacramental wine as permitted by this code.

7 (35) "Table wine" means wine that contains not more than 16% of alcohol by volume and includes  
8 hard cider.

9 ~~(36) "Table wine distributor" means a person importing into or purchasing in Montana table wine or~~  
10 ~~sacramental wine for sale or resale to retailers licensed in Montana and a person importing into or purchasing~~  
11 ~~in Montana table wine for sale or resale to agency liquor stores.~~

12 ~~(37)(36)~~ "Warehouse" means a building or structure located in Montana that is owned or operated by a  
13 licensed ~~combined beer wholesaler and table wine distributor~~ for the receiving, storage, and distribution of beer,  
14 ~~or table wine, and sacramental wine~~ as permitted by this code.

15 ~~(38)(37)~~ "Wine" means an alcoholic beverage made from or containing the normal alcoholic  
16 fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except  
17 as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not  
18 more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and  
19 fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other  
20 alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as  
21 wine in accordance with federal regulations are also wine."

22

23 **Section 22.** Section 16-1-303, MCA, is amended to read:

24 **"16-1-303. Department rules.** (1) The department and the department of justice may make rules not  
25 inconsistent with this code necessary to efficiently administer this code.

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

27 (a) regulating the contractual operation of agency liquor stores and warehouses in which liquor is  
28 kept or sold and prescribing the books and records to be kept;

- 1 (b) prescribing the duties of department employees and regulating their conduct while in the  
2 discharge of their duties;
- 3 (c) governing the purchase of liquor and the furnishing of liquor to agency liquor stores;
- 4 (d) determining the classes, varieties, and brands of liquor to be available for distribution from the  
5 state liquor warehouse. However, the department may not prohibit liquor that is sold in gelatin cups that are  
6 shelf stable and liquid at room temperature and may not prohibit the distribution of beer and table wine by a  
7 ~~beer wholesaler or table wine distributor~~ that are sold in gelatin cups that are shelf stable and liquid at room  
8 temperature.
- 9 (e) prescribing the minimum hours during which agency liquor stores must be open for the sale of  
10 alcoholic beverages;
- 11 (f) providing for the issuing and distributing of price lists showing the price to be paid by  
12 purchasers for each class, variety, or brand of liquor kept for sale;
- 13 (g) prescribing forms to be used for the purpose of this code or the rules and the terms and  
14 conditions for permits and licenses issued and granted under this code;
- 15 (h) prescribing the form of records of purchase of liquor and the reports to be made to the  
16 department and providing for inspection of the records;
- 17 (i) prescribing the manner of giving and serving notices required by this code or the rules;
- 18 (j) prescribing the fees payable for permits and licenses issued under this code for which fees are  
19 not prescribed in this code and prescribing the fees for anything done or permitted to be done under the rules;
- 20 (k) prescribing, subject to the provisions of this code, the conditions and qualifications necessary  
21 for the obtaining of alcoholic beverage licenses and the books and records to be kept and the returns to be  
22 made by the licensees;
- 23 (l) specifying and describing the place and the manner in which alcoholic beverages may be  
24 lawfully kept or stored;
- 25 (m) specifying and regulating the time when and the manner by which vendors and brewers may  
26 deliver alcoholic beverages under this code and the time when and the manner by which alcoholic beverages,  
27 under this code, may be lawfully conveyed or carried;
- 28 (n) governing the conduct, management, and equipment of any premises licensed to sell alcoholic

1 beverages under this code;

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

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

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

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

13

14 **Section 23.** Section 16-1-406, MCA, is amended to read:

15 **"16-1-406. Taxes on beer.** (1) (a) A tax is imposed on each barrel of 31 gallons of beer sold in  
16 Montana by a ~~wholesaler-distributor~~ or by a licensed brewer directly to retailers, special permittees, or the  
17 public. The tax is based on the total number of barrels of beer produced by a brewer in a year. A brewer who  
18 produces fewer than 10,000 barrels of beer a year is taxed on the following increments of production:

19 (i) up to 5,000 barrels, \$1.30;

20 (ii) 5,001 barrels to 10,000 barrels, \$2.30.

21 (b) The tax on beer sold for a brewer who produces over 10,000 barrels is \$4.30.

22 (2) The tax imposed pursuant to subsection (1) on a ~~wholesaler-distributor~~ and an electronic beer  
23 tax return is due at the end of each quarter from the ~~wholesaler-distributor~~ on beer sold by the ~~wholesaler~~  
24 distributor during that quarter. The tax imposed pursuant to subsection (1) on a licensed brewer and an  
25 electronic beer tax return is due at the end of each quarter from the brewer for beer sold during the previous  
26 quarter. The department shall compute the tax due on beer sold in containers other than barrels or in barrels of  
27 more or less capacity than 31 gallons.

28 (3) Each quarter, in accordance with the provisions of 17-2-124, of the tax collected pursuant to

1 subsection (1), an amount equal to:

2 (a) 23.26% must be deposited in the state treasury to the credit of the department of public health  
3 and human services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency;  
4 and

5 (b) the balance must be deposited in the state general fund."  
6

7 **Section 24.** Section 16-1-411, MCA, is amended to read:

8 **"16-1-411. Tax on wine and hard cider -- penalty and interest.** (1) (a) A tax of 27 cents a liter is  
9 imposed on sacramental wine and table wine, except hard cider, sold by:

- 10 (i) a ~~table wine~~-distributor to licensed retailers, agency liquor stores, and special permit holders;  
11 (ii) a licensed winery directly to licensed retailers, special permit holders, or the public; and  
12 (iii) a registered winery directly to the public.

13 (b) A tax of 3.7 cents a liter is imposed on hard cider sold by:

- 14 (i) a ~~table wine~~-distributor to licensed retailers, agency liquor stores, and special permit holders;  
15 (ii) a licensed winery directly to retailers, special permit holders, or the public; and  
16 (iii) a registered winery directly to the public.

17 (2) The tax imposed in subsection (1) must be paid as follows:

18 (a) A winery registered pursuant to 16-4-107 that sells more than 1,000 liters of sacramental wine,  
19 table wine, or hard cider, in any combination, to consumers in the state during a period beginning October 1  
20 and ending September 30 shall electronically file a wine tax return or a hard cider tax return, or both, and pay  
21 the tax on a quarterly basis on or before the 15th day of each quarter during the following period that begins  
22 October 1 and ends September 30.

23 (b) A winery registered pursuant to 16-4-107 that sells 1,000 liters or less of sacramental wine,  
24 table wine, or hard cider, in any combination, to consumers in the state during a period beginning October 1  
25 and ending September 30 shall electronically file a wine tax return or a hard cider tax return, or both, and pay  
26 the tax on or before October 15 of the following period that begins October 1 and ends September 30.

27 (c) A winery licensed pursuant to 16-4-107 that sells sacramental wine, table wine, or hard cider to  
28 consumers or licensed retailers in the state or that sells table wine to agency liquor stores for sale to consumers

1 in the state shall electronically file a wine tax return or a hard cider tax return, or both, and pay the tax on a  
2 quarterly basis on or before the 15th of each quarter for sales in the previous quarter.

3 (d) A ~~table wine~~ distributor that sells sacramental wine, table wine, or hard cider in the state shall  
4 electronically file a wine tax return or a hard cider tax return, or both, and pay the tax on a quarterly basis on or  
5 before the 15th day of each quarter for sales in the previous quarter.

6 (3) The tax paid by a winery or by a ~~table wine~~ distributor in accordance with subsection (2) must,  
7 in accordance with the provisions of 17-2-124, be distributed as follows:

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

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

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

13 (5) For the purposes of this section, "table wine" has the meaning assigned in 16-1-106 but does  
14 not include hard cider."  
15

16 **Section 25.** Section 16-3-101, MCA, is amended to read:

17 **"16-3-101. Alcoholic beverage transactions -- only in accordance with code.** (1) A person who  
18 manufactures, imports, distributes, ~~wholesales~~, or sells alcoholic beverages or the person's agent may not give  
19 or sell to any person within the state any alcoholic beverage except as may be permitted by and in accordance  
20 with the provisions of this code.

21 (2) (a) Except as otherwise provided by this code, a person or the person's agent may not ship,  
22 transport, or consign or cause to be shipped, transported, or consigned:

23 (i) any alcoholic beverage to any person in this state; or

24 (ii) any liquor except to the state liquor warehouse.

25 (b) The prohibition in subsection (2)(a) includes alcoholic beverages ordered or purchased by  
26 telephone, computer, or other device."  
27

28 **Section 26.** Section 16-3-104, MCA, is amended to read:

1           **"16-3-104. Common carriers to purchase beer from brewer, beer importer, or wholesaler**  
2   **distributor**. The operator of any common carrier or its employees may not sell or dispose of any beer except  
3   beer that has been lawfully acquired or purchased from a licensed brewer, beer importer, or ~~wholesaler~~  
4   distributor."

5  
6           **Section 27.** Section 16-3-212, MCA, is amended to read:

7           **"16-3-212. Brewers' or beer importers' sales to wholesalers distributors lawful.** A licensed or  
8   registered brewer may sell or deliver beer manufactured by the brewer to any licensed ~~wholesaler~~ distributor. A  
9   licensed or registered beer importer may sell or deliver beer imported by the importer to any licensed  
10   ~~wholesaler~~ distributor."

11  
12          **Section 28.** Section 16-3-214, MCA, is amended to read:

13          **"16-3-214. Beer sales by brewers -- sample room exception.** (1) Subject to the limitations and  
14   restrictions contained in this code, a brewer who manufactures less than 60,000 barrels of beer a year, upon  
15   payment of the annual license fee imposed by 16-4-501 and upon presenting satisfactory evidence to the  
16   department as required by 16-4-101, must be licensed by the department, in accordance with the provisions of  
17   this code and rules prescribed by the department, to:

18           (a)     sell and deliver beer from its storage depot or brewery to:

19           (i)     a ~~wholesaler~~ distributor;

20           (ii)    licensed retailers if the brewer uses the brewer's own equipment, trucks, and employees to  
21   deliver the beer and if:

22           (A)     individual deliveries, other than draught beer, are limited to the case equivalent of 8 barrels a  
23   day to each licensed retailer; and

24           (B)     the total amount of beer sold or delivered directly to all retailers does not exceed 10,000 barrels  
25   a year; or

26           (iii)   the public, including curbside pickup between 8 a.m. and 2 a.m. in original packaging or  
27   growlers;

28           (b)     provide its own products for consumption on its licensed premises without charge or, if it is a

1 small brewery, provide its own products or collaboration products at a sample room as provided in 16-3-213; or

2 (c) do any one or more of the acts of sale and delivery of beer as provided in this code.

3 (2) A brewery may not use a common carrier for delivery of the brewery's product to the public or  
4 to licensed retailers.

5 (3) A brewery may import or purchase, upon terms and conditions the department may require,  
6 necessary flavors and other nonbeverage ingredients containing alcohol for blending or manufacturing  
7 purposes.

8 (4) An additional license fee may not be imposed on a brewery providing its own products on its  
9 licensed premises for consumption on the premises.

10 (5) This section does not prohibit a licensed or registered brewer from shipping and selling beer  
11 directly to a ~~wholesaler-distributor~~ in this state under the provisions of 16-3-230.

12 (6) For a licensed brewery holding complete ownership of a retail license pursuant to 16-4-401(9),  
13 beer that is manufactured and sold at the colocated premises does not count towards the 10,000-barrel self-  
14 distribution limit imposed by subsection (1)(a)(ii)(B). Beer manufactured and sold at the colocated premises  
15 does count toward production levels for tax purposes."

16

17 **Section 29.** Section 16-3-241, MCA, is amended to read:

18 **"16-3-241. Furnishing of fixtures or interior advertising matter to retailers by brewers, beer**

19 **importers, and ~~wholesalers-distributors~~ unlawful -- exceptions.** (1) (a) Except as provided in subsection  
20 (3), it is unlawful for any brewer, beer importer, or ~~wholesaler-distributor~~ to lease, furnish, give, or pay for any  
21 premises, furniture, fixtures, equipment, or any other advertising matter or any other property to a retail  
22 licensee, used or to be used in the dispensation of beer in and about the interior of the place of business of the  
23 licensed retailer, or to furnish, give, or pay for any repairs, improvements, or painting on or within the premises.

24 (b) It is lawful for a brewer, beer importer, or ~~wholesaler-distributor~~ to furnish, give, or loan to a  
25 retail licensee:

26 (i) bottle openers, can openers, trays, tap handles, menus, apparel, coasters, glassware, cups,  
27 napkins, or other functional advertising matter that does not exceed \$300 in value in any 1 calendar year to any  
28 one retail establishment for display use within the interior of the retail establishment;



(ii) not more than six illuminated or electrical signs, neon signs, lamps, or lighted clocks for each brand of beer in any 1 calendar year to any one retailer for display use within the interior of the retailer's place of business. These signs, displays, lamps, or lighted clocks may bear the name, brand name, trade name, trademark, or other designation indicating the name of the manufacturer of beer and the place of manufacture. Any beer advertised must be available for sale on the retailer's premises at the time the displays are used unless the displays are the property of the retailer or, if supplied by a brewer, beer importer, or ~~wholesaler~~ distributor, a display has been in the retailer's possession for more than 9 months.

(iii) permanent or temporary advertising matter of a decorative nature, excluding items described in subsection (1)(b)(ii) but including nonelectric clocks, mirrors, banners, flags, and pennants; and

(iv) maintenance or repair services on draft beer equipment to keep it sanitary and in good working condition.

(2) A ~~wholesaler~~ distributor may furnish portable equipment used for the temporary cooling, handling, and dispensing of beer to a special permittee or a retailer for use:

(a) in catering an event that is off the permittee's or retailer's regular premises; or

(b) up to three times a year, on a retailer's regular premises, for a period not to exceed 72 hours.

(3) A licensed brewery holding complete ownership of a retail license pursuant to 16-4-401(9) is not subject to the limitations of subsection (1)(a) for the licensed brewery's retail-licensed premises."

**Section 30.** Section 16-3-242, MCA, is amended to read:

**"16-3-242. Financial interest in retailers prohibited.** (1) A brewer, or beer importer, ~~or wholesaler~~ may not advance or loan money to or furnish money for or pay for or on behalf of any retailer any license or tax that may be required to be paid for any retailer. A brewer, or beer importer, ~~or wholesaler~~ may not be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer. A brewer, or beer importer, ~~or wholesaler~~ is considered to have a financial interest within the meaning of this section if:

(a) the brewer, or beer importer, ~~or wholesaler~~ owns or holds any interest in or a lien or mortgage against the retailer or the retailer's premises; or

(b) the brewer, or beer importer, ~~or wholesaler~~ is under any contract with a retailer concerning future purchases or the sale of merchandise by one from or to the other; ~~or~~

1 (c) — any retailer holds an interest, as a stockholder or otherwise, in the business of the wholesaler.

2 (2) A licensed brewery holding complete ownership of a retail license pursuant to 16-4-401(9) is  
3 not subject to the limitations of this section for the licensed brewery's retail-licensed premises."

4  
5 **Section 31.** Section 16-3-243, MCA, is amended to read:

6 **"16-3-243. Seven-day credit limitation.** (1) A brewer, beer importer, or ~~beer wholesaler~~ distributor  
7 may not sell or deliver beer unless a retail licensee pays within 7 days of the delivery and may not extend more  
8 than 7 days' credit for payment for the beer to the retail licensee.

9 (2) A retail licensee shall pay a brewer, beer importer, or ~~beer wholesaler~~ distributor in full for beer  
10 within 7 days from the date of delivery and may not accept more than 7 days' credit from a brewer, beer  
11 importer, or ~~beer wholesaler~~ distributor. Failure to pay in full within 7 days from the date of delivery is  
12 considered an impermissible acceptance of credit.

13 (3) Any extension or acceptance of credit in violation of this section is considered rendering or  
14 receiving of financial assistance. Brewers, beer importers, ~~beer wholesalers~~ distributors, and retail licensees  
15 who violate this section are subject to the penalty provisions of 16-4-406."

16  
17 **Section 32.** Section 16-3-244, MCA, is amended to read:

18 **"16-3-244. Beer advertising limitations.** (1) Except as provided in subsection (2), it is lawful to  
19 advertise beer, as defined and regulated, subject to the restrictions on brewers and beer importers contained in  
20 16-3-241 and subject to the following restrictions on retailers. A retail licensee may not display or permit to be  
21 displayed on the exterior portion or surface of the retailer's place of business, whether any of the premises are  
22 owned or leased by the retailer, any sign, poster, or advertisement bearing the name, brand name, trade name,  
23 trademark, or other designation indicating the manufacturer, brewer, beer importer, ~~wholesaler~~ distributor, or  
24 place of manufacture of any beer, unless it is on a marquee, board, or other space used for temporary  
25 advertisements and is not displayed for more than 10 days per display period.

26 (2) A licensed brewery holding complete ownership of a retail license pursuant to 16-4-401(9) is  
27 not subject to the restrictions in subsection (1) at any of the brewery's licensed premises for products  
28 manufactured by the licensed brewery."

1

2           **Section 33.** Section 16-3-301, MCA, is amended to read:3           **"16-3-301. Unlawful purchases, transfers, sales, or deliveries -- presumption of legal age. (1)**

4       Except as allowed in 16-4-213(8), it is unlawful for a licensed retailer to:

5           (a)     purchase or acquire beer or wine from anyone except a brewery, winery, or ~~wholesaler~~  
6       distributor licensed under the provisions of this code;7           (b)     purchase or acquire table wine from anyone except a liquor store agent or winery or ~~table wine~~  
8       distributor licensed under the provisions of this code;

9           (c)     purchase or acquire wine from anyone except a liquor store agent or winery;

10          (d)     transport alcoholic beverages from one licensed premises or other facility to any other licensed  
11       premises owned by the licensee; or

12          (e)     purchase or acquire liquor from anyone except an agency liquor store.

13          (2)     It is unlawful for a licensed distributor or ~~wholesaler~~ to purchase beer, table wine, or wine from  
14       anyone except a brewery, winery, or ~~wholesaler~~ distributor licensed or registered under this code.15          (3)     It is unlawful for a liquor store agent to purchase table wine or sacramental wine from anyone  
16       except a ~~table wine~~ distributor licensed under this code.17          (4)     It is unlawful for any licensee, a licensee's employee, or any other person to sell, deliver, or  
18       give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to:

19               (a)     any person under 21 years of age; or

20               (b)     any person actually, apparently, or obviously intoxicated.

21          (5)     Any person under 21 years of age or any other person who knowingly misrepresents the  
22       person's qualifications for the purpose of obtaining an alcoholic beverage from the licensee is equally guilty with  
23       the licensee and, on conviction, is subject to the penalty provided in 45-5-624. However, nothing in this section  
24       may be construed as authorizing or permitting the sale of an alcoholic beverage to any person in violation of  
25       any federal law.26          (6)     All licensees shall display in a prominent place in their premises a placard, issued by the  
27       department, stating fully the consequences for violations of the provisions of this code by persons under 21  
28       years of age.

1           (7)     For purposes of 45-5-623 and this title, the establishment of the following facts by a person  
2     making a sale of alcoholic beverages to a person under the legal age constitutes prima facie evidence of  
3     innocence and a defense to a prosecution for sale of alcoholic beverages to a person under the legal age:

4           (a)     the purchaser falsely represented and supported with documentary evidence that an ordinary  
5     and prudent person would accept that the purchaser was of legal age to purchase alcoholic beverages;

6           (b)     the appearance of the purchaser was such that an ordinary and prudent person would believe  
7     the purchaser to be of legal age to purchase alcoholic beverages; and

8           (c)     the sale was made in good faith and in reasonable reliance on the representation and  
9     appearance of the purchaser that the purchaser was of legal age to purchase alcoholic beverages.

10          (8)     A licensed retailer may purchase beer and table wine from a licensed in-state retailer and  
11     transport the purchased beer and table wine to the licensed retailer's premises. The department may penalize  
12     retailers purchasing beer and table wine from out-of-state retailers subject to this code. Purchases under this  
13     subsection are limited to a maximum of 6 gallons a day. (See compiler's comments for contingent termination of  
14     certain text.)"

15  
16           **Section 34.** Section 16-3-316, MCA, is amended to read:

17           **"16-3-316. Fundraising events for nonprofit and tax-exempt organizations.** (1) A nonprofit  
18     organization governed under Title 35, chapter 2, or an organization designated as tax-exempt under the  
19     provisions of section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c), as amended, may raffle or auction  
20     alcoholic beverages at fundraising events. Any alcoholic beverage raffled or auctioned must be given by the  
21     organization to the raffle or auction winner sealed in its original package.

22          (2)     If the fundraising event is held on the premises of a business licensed under this code or on  
23     premises for which a permit has been issued under this code, the alcoholic beverage may not be consumed on  
24     the premises. An alcoholic beverage that is on a licensee's premises solely for a fundraising event under this  
25     section does not constitute a violation by the licensee of 16-3-301(1)(a) or 16-6-303.

26          (3)     A nonprofit or tax-exempt organization may hold no more than four events per calendar year at  
27     which alcoholic beverages are raffled or auctioned. The duration of each event must be announced at the time  
28     any raffle tickets are sold or auction bids are received. Raffles and auctions held pursuant to this section must

1 be to directly support bona fide charitable, nonprofit, or tax-exempt activities.

2 (4) An alcoholic beverage for raffle or auction must be:

3 (a) acquired, whether by purchase or donation, by the organization from a retailer or manufacturer  
4 licensed under the provisions of this code;

5 (b) acquired, whether by purchase at not less than the posted price or by donation, by the  
6 organization from an agency liquor store; or

7 (c) received by the organization as a donation at no cost to the organization from any other person  
8 except one licensed as a ~~wholesaler~~ or distributor under this code.

9 (5) No proceeds from the raffle or auction of alcoholic beverages may go to anyone who provided  
10 the alcoholic beverages to the organization for the raffle or auction.

11 (6) For a raffle or auction described in subsection (1), raffle tickets may not be sold to, and auction  
12 bids may not be solicited or received from, any person under 21 years of age. The organization raffling or  
13 auctioning alcoholic beverages may not sell, deliver, or give away any alcoholic beverage to a person under 21  
14 years of age or to any person actually, apparently, or obviously intoxicated.

15 (7) As used in this section:

16 (a) "auction" means the sale of an item or items, which may include alcoholic beverages, whereby  
17 the item for sale is sold to the highest bidder at the bid price. An auctioned item or items may have a reserve  
18 price.

19 (b) "raffle" means an event in which a nonprofit or tax-exempt organization sells tickets and each  
20 ticket gives the purchaser of the ticket the chance to win a prize, which may include alcoholic beverages, with  
21 the winner determined by a random drawing."

22  
23 **Section 35.** Section 16-3-321, MCA, is amended to read:

24 **"16-3-321. Keg identification tag.** (1) A licensee may not sell a keg of beer unless an identification  
25 tag is attached to the keg by the licensee.

26 (2) An identification tag must consist of paper, plastic, metal, or durable material that is not easily  
27 damaged or destroyed. An identification tag may be attached to a keg at the time of sale with a nylon tie or  
28 cording, wire tie or other metal attachment device, or other durable means of tying or attaching the tag to the

1 keg.

2 (3) The identification information contained on the tag must include:

3 (a) the licensee's name, address, and telephone number; and

4 (b) a prominently visible warning that intentional removal or defacement of the tag is a criminal  
5 offense.

6 (4) A retailer that accepts the return of a keg that does not have an identification tag attached shall  
7 obtain the information required in 16-3-322 on the original purchaser, to the extent possible, and obtain the  
8 same information on the person returning the keg. This information must be kept on file with the retailer for not  
9 less than 45 days from the date of return.

10 (5) A person, other than the licensee, the ~~wholesaler-distributor~~ of malt beverages, or a law  
11 enforcement officer, may not intentionally remove identification placed on a keg in compliance with this section.

12 (6) For the purposes of 16-3-321 through 16-3-324, the following definitions apply:

13 (a) "Keg" means a brewery-sealed, single container that contains not less than 7 gallons of beer.

14 (b) "Licensee" means a person who is licensed under Title 16, chapter 4, and who sells kegs to a  
15 consumer.

16 (7) The department shall develop and make available the identification tags required by this  
17 section."

18

19 **Section 36.** Section 16-3-402, MCA, is amended to read:

20 **"16-3-402. Importation of wine -- records.** (1) Except as provided in 16-3-411, 16-4-313, and Title  
21 16, chapter 4, part 11, all table wine manufactured outside of Montana and shipped into Montana must be  
22 consigned to and shipped to a licensed ~~table wine~~-distributor and be unloaded by the distributor into the  
23 distributor's warehouse in Montana or subwarehouse in Montana. The distributor shall distribute the table wine  
24 from the warehouse or subwarehouse.

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

28 (3) Table wine that has been shipped into Montana in violation of this code must be seized by any

1 peace officer or representative of the department and may be confiscated in the manner as provided for the  
2 confiscation of intoxicating liquor."

3  
4 **Section 37.** Section 16-3-406, MCA, is amended to read:

5 **"16-3-406. Financial interest in retailers prohibited.** (1) A winery or ~~table wine distributor~~ may not  
6 advance or loan money to, or furnish money for, or pay for or on behalf of any retailer any license or tax that  
7 may be required to be paid by any retailer, and a winery or ~~table wine distributor~~ may not be financially  
8 interested, either directly or indirectly, in the conduct or operation of the business of a retailer.

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

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

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

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

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

18  
19 **Section 38.** Section 16-3-411, MCA, is amended to read:

20 **"16-3-411. Winery.** (1) A winery located in Montana and licensed pursuant to 16-4-107 may:

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

22 (b) sell table wine it produces at wholesale to ~~table wine distributors~~ or liquor store agents;

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

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

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

28 (f) obtain no more than 12 special event permits under 16-4-301;

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

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

(i) obtain a direct shipment endorsement to ship table wine as provided in Title 16, chapter 4, part 11, directly to an individual in Montana who is at least 21 years of age; or

(j) offer wine in its original packaging, prepared servings, or growlers for curbside pickup between 8 a.m. and 2 a.m.

(2) (a) Except as provided in 16-4-401(9)(d), a winery licensed pursuant to 16-4-107 may sell and deliver wine produced by the winery directly to licensed retailers or liquor store agents if the winery:

(i) uses the winery's own equipment, trucks, and employees to deliver the wine and the wine delivered pursuant to this subsection (2)(a)(i) does not exceed 4,500 9-liter cases a year;

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

(iii) contracts with a common carrier to ship and deliver the winery's wine to the retailer or liquor store agent and:

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

(B) individual shipments delivered by common carrier are limited to three cases a day for each licensed retailer or liquor store agent; and

(C) the shipments delivered by common carrier do not exceed 4,500 9-liter cases a year.

(b) If a winery uses a common carrier for delivery of the wine to licensed ~~table wine~~ distributors, retailers, and liquor store agents, the shipment must be:

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

(ii) delivered to the premises of a licensed ~~table wine~~ distributor, licensed retailer, or liquor store agent; and

(iii) signed for by the ~~wine~~ distributor, retailer, or liquor store agent, or by its employee or agent.



(c) In addition to any records required to be maintained under 16-4-107, a winery that distributes wine within the state under this subsection (2) shall maintain records of all sales and shipments. The winery shall, pursuant to 16-1-411, electronically file a report, in the manner and form prescribed by the department, reporting the amount of wine or hard cider, or both, that it shipped in the state during the preceding period, including the names and addresses of consignees, retailers, or liquor store agents, and other information that the department may determine to be necessary to ensure that distribution of wine or hard cider, or both, within this state conforms to the requirements of this code.

(3) (a) A winery that is located in Montana and licensed to manufacture wine may be licensed by the department to own, lease, maintain, and operate anywhere in the state a storage depot for receiving, handling, and storing wine in addition to distributing and selling wine from the storage depot, subject to this code.

(b) To be licensed for a storage depot, a winery shall pay an annual license fee as provided in 16-4-501 for each storage depot operated by the winery, in addition to all other fees and taxes required to be paid by the winery, and must meet all applicable suitability requirements."

**Section 39.** Section 16-4-101, MCA, is amended to read:

**"16-4-101. Applications for sale, import, or manufacture of beer -- qualifications of applicant.**

(1) Except as provided in subsection (4), any person desiring to manufacture, distribute, import, or sell beer under the provisions of this code shall first apply to the department for a license to do so and pay with the application fee prescribed. The department shall require of the applicant satisfactory evidence that the applicant is suitable for carrying on the operations of a license.

(2) On being satisfied, from the application or otherwise, that the applicant is qualified, the department shall issue a license to the person, and the license must at all times be prominently displayed at the licensed premises.

(3) If the department finds that the applicant is not qualified, a license may not be granted and the license fee must be returned.

(4) A brewery that is not located in the state or a beer importer that holds the appropriate license from the United States department of the treasury that desires to distribute its beer within this state through

1 licensed beer ~~wholesalers~~ distributors shall apply to the department for registration on forms to be prepared and  
2 furnished by the department.

3 (5) A brewery or beer importer may not ship beer into this state until the registration is granted by  
4 the department. The registration may be canceled or suspended by the department upon a finding after notice  
5 and hearing that the registrant has not complied with the terms of its registration."  
6

7 **Section 40.** Section 16-4-106, MCA, is amended to read:

8 **"16-4-106. Beer and table wine license transfers.** A transfer of any brewer's, ~~beer wholesaler's,~~  
9 ~~table wine distributor's,~~ beer retailer's, or table wine retailer's license may be made on application to the  
10 department with the consent of the department, provided that the transferee qualifies under this code."  
11

12 **Section 41.** Section 16-4-107, MCA, is amended to read:

13 **"16-4-107. Winery license -- winery and importer registration.** (1) (a) Wine, other than for personal  
14 consumption in conformity with federal exemptions from holding a basic permit as a bonded winery, may be  
15 manufactured or directly distributed to retailers within the state only by a licensed winery, and table wine may  
16 be shipped directly by a winery with a direct shipment endorsement as provided in 16-4-1101 to an individual in  
17 Montana who is at least 21 years of age. An application for a winery license must be accompanied by a fee of  
18 \$400, which constitutes the first annual license fee, and a licensee shall in each succeeding year pay an annual  
19 fee as provided in 16-4-501. Winery licensees located in Montana must hold the appropriate basic permit  
20 required by the United States department of the treasury and be qualified for a license in accordance with the  
21 provisions of 16-4-401(2). Winery licensees located in another state must hold the appropriate basic permit  
22 required by the United States department of the treasury and the appropriate license to manufacture wine from  
23 the state in which the winery is located and shall provide all other information required by the department.

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

28 (2) (a) A winery that is not located in the state or an importer of table wines that holds the

1 appropriate license from the United States department of the treasury and that desires to distribute its table  
2 wines within this state through licensed ~~table wine~~ distributors shall apply to the department for registration on  
3 forms to be prepared and furnished by the department.

4 (b) Each winery shall furnish the department with a copy of each container label currently used by  
5 the winery on its products imported into Montana. The department shall require the winery or importer to agree  
6 to furnish monthly and other reports concerning quantities and prices of table wine that it ships into the state,  
7 names and addresses of consignees, and any other information that the department may determine to be  
8 necessary to ensure that importation and distribution of table wines within this state conform to the  
9 requirements of this code.

10 (c) A winery or importer of table wines may not ship table wines into this state until the registration  
11 is granted by the department. The registration may be canceled or suspended by the department upon a finding  
12 after notice and hearing that the registrant has not complied with the terms of its registration.

13 (3) A winery that is not located in Montana, that holds the appropriate license from the United  
14 States department of the treasury, that is not already registered with the department, and that desires to sell  
15 and ship table wine directly to individuals in Montana who are at least 21 years of age shall apply to the  
16 department for registration pursuant to subsection (2) and for a direct shipment endorsement pursuant to 16-4-  
17 1101."

18  
19 **Section 42.** Section 16-4-313, MCA, is amended to read:

20 **"16-4-313. Sacramental wine license.** (1) The department may issue a sacramental wine license to  
21 an establishment whether located in or outside Montana that sells church supplies, including sacramental wine,  
22 at retail to rabbis, priests, pastors, ministers, or other officials of churches or other established religious  
23 organizations exclusively for use as sacramental wine or for other religious purposes. Sales of sacramental  
24 wine may not be made to the public.

25 (2) An application for a license under this section must be accompanied by a fee of \$100, which  
26 constitutes the ~~first annual~~ initial license fee. The annual license renewal fee is \$50.

27 (3) Unless the sacramental wine is purchased onsite, an establishment selling sacramental wine  
28 for religious purposes may sell and deliver directly to the religious organization's premises by:

1 (a) using the establishment's own employees and equipment;

2 (b) contracting with a licensed ~~table wine~~ distributor; or

3 (c) contracting with a common carrier, which maintains an alcohol shipment program, to ship and  
4 deliver the wine. If the wine is shipped and delivered by the common carrier, the shipment must be in boxes  
5 marked with the words "Wine Shipment From Sacramental Wine Licensee for Religious Purposes Only" and  
6 the boxes must also be conspicuously labeled with the words "Contains Alcohol: Signature of Person 21 Years  
7 of Age or Older Required for Delivery".

8 (4) A sacramental wine licensee shall maintain records of all wine sales made during the preceding  
9 2 years and shall allow the department access to the records when requested so that the department can  
10 ascertain whether the limitations of subsection (1) are being complied with. The required record must include  
11 the addresses to which the sacramental wine is delivered and the printed name of the official of the church or  
12 other religious organization who signed for delivery.

13 (5) A sacramental wine licensee located out of state making sales under the provisions of this  
14 section is considered a ~~table wine~~ distributor for the purposes of 16-1-411.

15 (6) Upon receipt of a completed application for a license under this section, the department shall,  
16 in exercising its sound discretion, determine whether:

17 (a) the applicant is qualified under this section to receive a license;

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

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

21 (7) License applications submitted under this section are not subject to the provisions of 16-3-402,  
22 16-4-203, and 16-4-207.

23 (8) A person licensed under subsection (1) may transport sacramental wine from the licensee's  
24 premises to the religious organization's premises in any quantity for religious purposes.

25 (9) A sacramental wine licensee is not subject to the provisions of 16-4-1005 requiring licensees to  
26 ensure training."

27  
28 **Section 43.** Section 16-4-314, MCA, is amended to read:

1           **"16-4-314. Academic brewer license under small brewer exception -- conditions. (1) A**

2       postsecondary institution may apply for an academic brewer license under this section that allows the licensee  
3       to brew and sell beer to ~~wholesalers~~ distributors as provided in this section. The academic brewer license:

4           (a)       does not allow for the sale of beer at retail and does not allow for the operation of a sample  
5       room as provided in 16-3-213;

6           (b)       is limited to production of 10,000 barrels annually;

7           (c)       allows for distribution only to ~~wholesalers~~ distributors as provided in 16-3-214;

8           (d)       is under the ownership of a postsecondary institution;

9           (e)       may not offer gambling activities;

10          (f)       is otherwise subject to laws applying to brewery licenses as provided in this code; and

11          (g)       must operate in an on-campus facility operated in conjunction with a beer-brewing class or  
12       curriculum taught at the postsecondary institution or in conjunction with research at the postsecondary  
13       institution.

14          (2)       When a postsecondary institution has met the conditions in subsection (3) and has paid the fee  
15       specified for a brewer under 16-4-501, the department shall issue the academic brewer license.

16          (3)       To obtain a license under this section, a postsecondary institution shall:

17           (a)       document approval by the postsecondary institution's board of trustees or the board of regents  
18       of higher education, as applicable;

19           (b)       identify the on-campus location of the site where classes in beer making are to be held or  
20       where research is to take place; and

21           (c)       for criminal background requirements under 16-4-414, designate two or more individuals, each  
22       of whom must have responsibility for licensing compliance and each of whom must meet the requirements in  
23       16-4-401(2)(a).

24          (4)       For the purposes of this section, the term "postsecondary institution" means:

25           (a)       a unit of the Montana university system as described in 20-25-201; or

26           (b)       a Montana community college that is part of a community college district as defined in 20-15-  
27       101.

28          (5)       The department may adopt rules to implement this section."

1

2           **Section 44.** Section 16-4-401, MCA, is amended to read:

3           **"16-4-401. License as privilege -- criteria for decision on application -- restrictions -- colocated**  
4 **licenses.** (1) A license under this code is a privilege that the state may grant to an applicant and is not a right to  
5 which any applicant is entitled.

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

9           (a) if the applicant is an individual:

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

13           (ii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a  
14 felony, the applicant's rights have been restored; and

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

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

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

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

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

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

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

28           (ii) each individual who has control over the operation of the license meets the requirements for an

1 individual applicant listed in subsection (2)(a);

2 (iii) each person who shares in the profits or liabilities of a license meets the requirements for an  
3 individual applicant listed in subsection (2)(a). This subsection (2)(c)(iii) does not apply to a shareholder of a  
4 corporation who owns less than 15% of the outstanding stock in that corporation except that the provisions of  
5 subsection (7) apply.

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

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

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

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

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

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

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

19 (h) if the applicant is a nonprofit organization:

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

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

23 (i) if the applicant is a cooperative association:

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

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

27 (3) The applicant and any individual of the applicant who must meet the requirements of (2)(a)  
28 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.

(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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26

27 **Section 45.** Section 16-4-406, MCA, is amended to read:

28 **"16-4-406. Renewal -- suspension or revocation -- penalty -- mitigating and aggravating**

1     **circumstances -- contrived events.** (1) The department shall, upon a written, verified complaint of a person,  
2     request that the department of justice investigate the action and operation of a brewer, winery, ~~wholesaler,~~  
3     domestic distillery, ~~table wine~~ distributor, beer or wine importer, retailer, concessionaire, or any other person or  
4     business licensed or registered under this code.

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

10            (a)     reprimand a licensee or concessionaire or both;

11            (b)     proceed to revoke the license of the licensee or the concession agreement of the  
12     concessionaire or both only if the violations jeopardize health, welfare, and safety or there is not a proposed  
13     cure in place;

14            (c)     suspend the license or the concession agreement or both for a period of not more than 3  
15     months;

16            (d)     refuse to grant a renewal of the license or concession agreement or both after its expiration  
17     only if the violations jeopardize health, welfare, and safety or there is not a proposed cure in place; or

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

19            (3)     The department shall consider mitigating circumstances and may adjust penalties within  
20     penalty ranges based on its consideration of mitigating circumstances. Examples of mitigating circumstances  
21     are:

22            (a)     there have been no violations by the licensee or concessionaire or both within the past 3 years;

23            (b)     there have been good faith efforts by the licensee or concessionaire or both to prevent a  
24     violation;

25            (c)     written policies exist that govern the conduct of the licensee's employees or the  
26     concessionaire's employees or both;

27            (d)     there has been cooperation in the investigation of the violation that shows that the licensee or  
28     concessionaire or both or an employee or agent of the licensee or concessionaire or both accepts

1 responsibility; or

2 (e) the licensee or concessionaire or both have provided responsible alcohol server training to all  
3 of their employees.

4 (4) The department shall consider aggravating circumstances and may adjust penalties within  
5 penalty ranges based on its consideration of aggravating circumstances. Examples of aggravating  
6 circumstances are:

7 (a) prior warnings about compliance problems;

8 (b) prior violations within the past 3 years;

9 (c) lack of written policies governing employee conduct;

10 (d) multiple violations during the course of the investigation;

11 (e) efforts to conceal a violation;

12 (f) the intentional nature of the violation; or

13 (g) involvement of more than one patron or employee in a violation.

14 (5) The department may not issue a violation to a licensee or a concessionaire provided the  
15 investigation was not based on complaints or on observed misconduct but was based solely on a contrived  
16 event by the investigating authority or another designated organization creating the opportunity for a violation.  
17 The department may issue a violation only if the licensee or concessionaire fails more than two contrived event  
18 investigations within a 3-year period beginning with the first failure. For purposes of this section, the first two  
19 violations resulting from a contrived event investigation within a 3-year period do not constitute a violation of  
20 this code, and the department may not consider these violations in considering any mitigating circumstances  
21 and penalties as provided in this section."

22

23 **Section 46.** Section 16-4-407, MCA, is amended to read:

24 **"16-4-407. Renewal and nonrenewal of licenses -- notices of federal permit.** (1) Each July 1 or,  
25 when applicable, on the licensee's anniversary date, the department shall issue licenses to brewers, wineries,  
26 distillers, ~~beer importers, beer wholesalers, table wine distributors,~~ or retailers on an annual basis on receipt of  
27 a completed renewal form and payment of the fees prescribed by law.

28 (2) Subject to the opportunity for a hearing, the department may refuse to renew a license if the

1 licensee no longer qualifies for licensure under 16-4-401, a completed license renewal form has not been  
2 received, or the annual renewal fees required by 16-4-501 are not paid by July 1 or, when applicable, the  
3 licensee's anniversary date.

4 (3) The department shall notify each applicant for an original license or renewal that it is the  
5 applicant's responsibility to determine if applicable provisions of federal law require the applicant to obtain a  
6 permit from a federal agency."

7  
8 **Section 47.** Section 16-4-501, MCA, is amended to read:

9 **"16-4-501. License and permit fees.** (1) Each beer licensee licensed to sell either beer or table wine  
10 only or both beer and table wine under the provisions of this code shall pay a license fee. Unless otherwise  
11 specified in this section, the fee is an annual fee and is imposed as follows:

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

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

15 (b) (i) ~~each license for selling and distributing beer, table wine, or sacramental wine at wholesale to~~  
16 ~~licensed retailers or table wine to agency liquor stores under 16-4-113 distributor,~~ \$400; each winery, \$200;

17 (ii) for each subwarehouse and winery storage depot, \$400;

18 (c) each beer and wine retailer, \$400;

19 (d) (i) for a license to sell beer at retail for off-premises consumption only, \$200;

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

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

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

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

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

28 (3) The permit fee under 16-4-301(2) is \$10 for the sale of beer and table wine only or \$20 for the

1 sale of all alcoholic beverages.

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

4 (5) The annual renewal fee for:

5 (a) a brewer producing 10,000 or fewer barrels of beer, as defined in 16-1-406, is \$200;

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

7 (c) a continuing care retirement community limited all-beverages license is \$500 for each license.

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

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

13 (b) for each license in incorporated cities with a population of more than 2,000 and less than 5,000  
14 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be  
15 licensed to the nearest boundary of the city, \$350 for a unit of a nationally chartered veterans' organization and  
16 \$500 for all other licensees;

17 (c) for each license in incorporated cities with a population of more than 5,000 and less than  
18 10,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to  
19 be licensed to the nearest boundary of the city, \$500 for a unit of a nationally chartered veterans' organization  
20 and \$650 for all other licensees;

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

25 (e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated  
26 towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest  
27 boundary of the city or town; and where the premises of the applicant to be licensed are situated within 5 miles  
28 of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations,

1 the license fee chargeable by the larger incorporated city or incorporated town applies and must be paid by the  
2 applicant. When the premises of the applicant to be licensed are situated within an incorporated town or  
3 incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the  
4 license fee chargeable by the smaller incorporated town or incorporated city applies and must be paid by the  
5 applicant.

6 (f) an applicant for the issuance of a resort retail all-beverages license shall pay a \$100,000  
7 license fee on issuance of the license. The resort retail all-beverages license may be transferred to another  
8 location within the boundaries of the resort area or to another owner to be used at a location within the  
9 boundaries of the resort area.

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

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

13 (9) The annual fee for a special beer and table wine license for a nonprofit arts organization under  
14 16-4-303 is \$250.

15 (10) (a) The annual fee for a distillery is \$600.

16 (b) The annual fee for each distillery storage depot is \$400.

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

19 (12) In addition to other license fees, the department may require a licensee to pay a late fee of 33  
20 1/3% of any license fee delinquent on July 1 of the renewal year or 1 year after the licensee's anniversary date,  
21 66 2/3% of any license fee delinquent on August 1 of the renewal year or 1 year and 1 month after the  
22 licensee's anniversary date, and 100% of any license fee delinquent on September 1 of the renewal year or 1  
23 year and 2 months after the licensee's anniversary date.

24 (13) All license and permit fees collected under this section must be deposited as provided in 16-2-  
25 108."

26  
27 **Section 48.** Section 16-4-906, MCA, is amended to read:

28 **"16-4-906. Out-of-state brewery registration -- limitation on shipping -- penalty.** (1) Each out-of-

1 state brewery desiring to ship beer to a person holding a connoisseur's license shall register with the  
2 department on forms provided by the department.

3 (2) The annual limit on out-of-state shipments to all connoisseur's license holders is 1,440 bottles  
4 or 60 cases of beer.

5 (3) For any shipment into the state that exceeds the limits provided for in subsection (2), the out-of-  
6 state brewery may:

7 (a) distribute the brewery's product through a licensed ~~wholesale~~-distributor; or

8 (b) distribute as a brewery in accordance with the provisions of 16-3-214.

9 (4) An out-of-state brewery that violates the provisions of this section is subject to the penalties  
10 provided for in 16-6-302."

11

12 NEW SECTION. **Section 49. Repealer.** The following sections of the Montana Code Annotated are  
13 repealed:

14 16-3-217. Purposes.

15 16-3-218. "Distribute" defined.

16 16-3-219. Dock sales restricted -- exceptions.

17 16-3-220. Wholesalers' service obligations -- applicability.

18 16-3-221. Illegal acts by brewers or beer importers.

19 16-3-222. Mandatory provisions of brewer-wholesaler or beer importer-wholesaler contracts, agreements,  
20 and franchises.

21 16-3-223. Transfer of wholesaler's interest in business.

22 16-3-224. Contractual or franchise relationship -- existence by actions.

23 16-3-225. Injunction to prevent franchise cancellation.

24 16-3-226. Brewer-wholesaler or beer importer-wholesaler agreements filed with department.

25 16-3-230. Beer required to be shipped to wholesaler.

26 16-3-231. Monthly report of wholesaler.

27 16-3-232. Beer sales by wholesaler.

28 16-3-233. Sales to public by wholesaler unlawful.



- 1 16-3-234. Consumption of beer on wholesalers' premises unlawful.
- 2 16-3-401. Short title -- public policy -- purpose.
- 3 16-3-403. To whom table wine distributor may sell.
- 4 16-3-404. Monthly report of table wine distributor and retailer.
- 5 16-3-415. Definitions.
- 6 16-3-416. Table wine distributor provisions.
- 7 16-3-417. Supplier provisions.
- 8 16-3-418. Dual appointments -- equal support -- alternate supplier -- dock sales.
- 9 16-3-419. Suppliers' prohibitions.
- 10 16-3-420. Applicability.
- 11 16-3-421. Injunction.
- 12 16-4-113. Combined beer wholesaler and table wine distributor license.

13

14 NEW SECTION. Section 50. Codification instruction. [Sections 1 through 20] are intended to be  
15 codified as a new part in Title 16, chapter 3, and the provisions of Title 16, chapter 3, apply to [sections 1  
16 through 20].

17

18 NEW SECTION. Section 51. Effective date. [This act] is effective on passage and approval.

19

- END -