

Montana Code Annotated, 2009

TITLE 16

ALCOHOL AND TOBACCO

Ch.

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Part 1

General Provisions

16-1-101. Citation -- declaration of policy -- subject matters of regulation. (1)
Chapters 1 through 4 and 6 of this title may be cited as the "Montana Alcoholic Beverage Code".

(2) It is the policy of the state of Montana to effectuate and ensure the entire control of the manufacture, sale, importation, and distribution of alcoholic beverages within the state

subject to the authority of the state acting through the department.

(3) This code is an exercise of the police power of the state for the protection of the welfare, health, peace, morals, and safety of the people of the state and of the state's power under the 21st amendment to the United States constitution to control the transportation and importation of alcoholic beverages into the state. The overall purposes of this code under the 21st amendment to the United States constitution are to promote temperance, create orderly markets, and aid in the collection of taxes. The provisions of this code must be broadly construed to accomplish these purposes.

History: En. Sec. 1, Ch. 105, L. 1933; re-en. Sec. 2815.60, R.C.M. 1935; amd. Sec. 1, Ch. 165, L. 1951; Sec. 4-101, R.C.M. 1947; amd. and redes. 4-1-101 by Sec. 1, Ch. 387, L. 1975; R.C.M. 1947, 4-1-101; amd. Sec. 1, Ch. 68, L. 1987; amd. Sec. 1, Ch. 543, L. 2001; amd. Sec. 22, Ch. 130, L. 2005; amd. Sec. 1, Ch. 181, L. 2009.

16-1-102. Policy as to sale of beer. It is the policy of the state of Montana that the manufacture, transportation, distribution, sale, and possession of "beer", as that term is defined in this code, must be controlled and regulated as provided under this code. Unless defined as beer in 16-1-106(5)(b), beer, porter, ale, stout, and malt liquors containing more than 8.75% alcohol by volume and that are defined as "liquor" are subject to the regulations and controls provided for liquor.

History: En. Sec. 1, Ch. 106, L. 1933; re-en. Sec. 2815.10, R.C.M. 1935; amd. Sec. 1, Ch. 166, L. 1951; Sec. 4-301, R.C.M. 1947; amd. and redes. 4-1-102 by Sec. 45, Ch. 387, L. 1975; R.C.M. 1947, 4-1-102; amd. Sec. 1, Ch. 197, L. 2009.

16-1-103. Policy as to retail sale of liquor. It is the policy of the state that it is necessary to further regulate and control the sale and distribution of alcoholic beverages within the state and to ensure that the department has complete regulatory control of the sale of liquor in this state. It is advisable and necessary, in addition to the operation of the agency liquor stores now provided by law, that the department be empowered and authorized to grant licenses to persons qualified under this code to sell liquor purchased by them at agency liquor stores at retail posted price in accordance with this code and under rules promulgated by the department and under its strict supervision and control and to provide severe penalty for the sale of liquor except by and in agency liquor stores and by persons licensed under this code. The restrictions, regulations, and provisions contained in this code are enacted by the legislature for the protection, health, welfare, and safety of the people of the state.

History: En. Preamble, Ch. 84, L. 1937; Sec. 4-401, R.C.M. 1947; amd. and redes. 4-1-103 by Sec. 78, Ch. 387, L. 1975; R.C.M. 1947, 4-1-103; amd. Sec. 1, Ch. 5, L. 1979; amd. Sec. 12, Ch. 530, L. 1995.

16-1-104. Intent and construction of code. (1) The purpose and intent of this code are to:

(a) establish a state licensing system to control the transportation and importation of alcoholic beverages into Montana and the manufacture, sale, transportation, and distribution of

alcoholic beverages within the state of Montana; and

(b) prohibit transactions in alcoholic beverages within the state of Montana except under state control as specifically provided by this code.

(2) Every section and provision of this code must be construed according to subsection (1).

History: En. Sec. 99, Ch. 105, L. 1933; re-en. Sec. 2815.159, R.C.M. 1935; Sec. 4-233, R.C.M. 1947; amd. and redes. 4-1-104 by Sec. 42, Ch. 387, L. 1975; R.C.M. 1947, 4-1-104; amd. Sec. 2, Ch. 68, L. 1987; amd. Sec. 2, Ch. 543, L. 2001.

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

History: En. Sec. 3, Ch. 105, L. 1933; re-en. Sec. 2815.62, R.C.M. 1935; Sec. 4-103, R.C.M. 1947; amd. and redes. 4-1-105 by Sec. 2, Ch. 387, L. 1975; R.C.M. 1947, 4-1-105; amd. Sec. 3, Ch. 68, L. 1987; amd. Sec. 53, Ch. 370, L. 1987; amd. Sec. 13, Ch. 530, L. 1995.

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

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

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

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

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

(5) (a) "Beer" means:

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

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

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

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

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

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

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

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

(a) a beverage:

(i) that is fermented in a manner similar to beer and from which some or all of the

fermented alcohol has been removed and replaced with distilled ethyl alcohol;

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

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

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

(b) a beverage:

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

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

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

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

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

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

(9) "Community" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

(20) "Retail price" means the price established by an agent for the sale of liquor to persons who do not hold liquor licenses. The retail price may not be less than the department's posted price.

(21) "Rules" means rules adopted by the department or the department of justice pursuant to this code.

(22) "Sacramental wine" means wine that is manufactured and sold exclusively for use as sacramental wine or for other religious purposes.

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

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

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

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

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

(28) "Table wine distributor" means a person importing into or purchasing in Montana table wine for sale or resale to retailers licensed in Montana.

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

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

History: Ap.p. Sec. 110, Ch. 387, L. 1975; Sec. 4-1-107, R.C.M. 1947; Ap.p. Sec. 14, Ch. 84, L. 1937; Sec. 4-416, R.C.M. 1947; amd. and redes. 4-2-204 by Sec. 93, Ch. 387, L. 1975; amd. Sec. 3, Ch. 496, L. 1977; Sec. 4-2-204, R.C.M. 1947; R.C.M. 1947, 4-1-107, 4-2-204(part); amd. Sec. 2, I.M. No. 81, app. Nov. 7, 1978; amd. Sec. 2, Ch. 5, L. 1979; amd. Sec. 2, Ch. 699, L. 1979; amd. Sec. 1, Ch. 519, L. 1981; amd. Sec. 1, Ch. 595, L. 1983; amd. Sec. 1, Ch. 16, L. 1985; amd. Sec. 1, Ch. 19, L. 1985; amd. Sec. 1, Ch. 141, L. 1985; amd. Sec. 4, Ch. 68, L. 1987; amd. Sec. 8, Ch. 314, L. 1991; amd. Sec. 1, Ch. 228, L. 1993; amd. Sec. 1, Ch. 414, L. 1993; amd. Sec. 14, Ch. 530, L. 1995; amd. Sec. 86, Ch. 42, L. 1997; amd. Sec. 1, Ch. 399, L. 1997; amd. Sec. 2, Ch. 110, L. 2003; amd. Sec. 1, Ch. 369, L. 2003; amd. Sec. 1, Ch. 101, L. 2009; amd. Sec. 2, Ch. 197, L. 2009; amd. Sec. 2, Ch. 414, L. 2009.

Part 2

Scope of Code and Exemptions

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

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

(3) Nothing in this code prevents:

- (a) the sale of liquor or table wine by any person to the department;
- (b) the purchase, importation, and sale of liquor and table wine by the department for the purposes of and in accordance with this code.

History: En. Sec. 35, Ch. 105, L. 1933; re-en. Sec. 2815.94, R.C.M. 1935; amd. Sec. 1, Ch. 67, L. 1965; Sec. 4-140, R.C.M. 1947; amd. and redes. 4-1-202 by Sec. 14, Ch. 387, L. 1975; R.C.M. 1947, 4-1-202; amd. Sec. 5, Ch. 68, L. 1987; amd. Sec. 87, Ch. 42, L. 1997.

16-1-202. Preparations not subject to code. (1) Subject to the provisions of this section, nothing in this code, by reason only that a preparation contains alcohol, prevents the manufacture, sale, purchase, or consumption of any:

- (a) extract, essence, or tincture or other preparation containing alcohol that is prepared according to a formula of the United States Pharmacopoeia or according to a formula approved

of by the department; or

(b) proprietary or patent medicine prepared according to a formula approved of by the department.

(2) The department, if of the opinion that any proprietary or patent medicine, extract, essence, tincture, or preparation that contains alcohol or any other preparation of a solid, semisolid, or liquid nature that contains alcohol can be used or that an extract from the substance can be used as a beverage or as the ingredient of a beverage, may prohibit the retail sale or the possession of the substance for retail sale within the state, except by an agency liquor store or by persons licensed by the department to keep and sell the substance by retail in accordance with this code and the regulations made under this code.

(3) The department shall notify the manufacturer or vendor of the proprietary or patent medicine, extract, essence, tincture, or preparation of the prohibition.

History: En. Sec. 36, Ch. 105, L. 1933; re-en. Sec. 2815.95, R.C.M. 1935; Sec. 4-141, R.C.M. 1947; amd. and redes. 4-1-203 by Sec. 15, Ch. 387, L. 1975; R.C.M. 1947, 4-1-203(part); amd. Sec. 88, Ch. 42, L. 1997.

16-1-203. Health professions exemption. A physician, dentist, veterinarian, or pharmacist, acting within the scope of the individual's professional responsibility and license to practice, who prescribes, prepares, or administers alcohol or substances containing alcohol and sells or charges a fee does not violate the prohibitions of this code.

History: En. 4-1-204 by Sec. 111, Ch. 387, L. 1975; R.C.M. 1947, 4-1-204; amd. Sec. 186, Ch. 56, L. 2009.

16-1-204. Licensed hospital or health care facility. Any person in charge of an institution regularly conducted as a licensed hospital or health care facility may administer alcoholic beverages purchased by the person to any patient or inmate of the institution and may charge for the alcoholic beverages.

History: En. Sec. 34, Ch. 105, L. 1933; re-en. Sec. 2815.93, R.C.M. 1935; amd. Sec. 9, Ch. 154, L. 1965; Sec. 4-139, R.C.M. 1947; amd. and redes. 4-1-205 by Sec. 13, Ch. 387, L. 1975; R.C.M. 1947, 4-1-205(part); amd. Sec. 6, Ch. 68, L. 1987; amd. Sec. 187, Ch. 56, L. 2009.

16-1-205. Local option. The electors of a county may, by approving an initiative as provided under 7-5-131 through 7-5-137, prohibit the sale and consumption of liquor or of all alcoholic beverages within the county. If such initiative is presented to the board of county commissioners, the board may not approve it but shall submit the proposal to the people under Title 7, chapter 5, part 1.

History: En. 4-1-206 by Sec. 112, Ch. 387, L. 1975; R.C.M. 1947, 4-1-206; amd. Sec. 392, Ch. 571, L. 1979; amd. Sec. 13, Ch. 20, L. 1985.

Part 3

Department of Revenue Powers, Duties, and Limitations

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

History: En. Sec. 4, Ch. 105, L. 1933; re-en. Sec. 2815.63, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1937; amd. Sec. 1, Ch. 243, L. 1947; amd. Sec. 1, Ch. 140, L. 1949; amd. Sec. 1, Ch. 183, L. 1951; Sec. 4-107, R.C.M. 1947; amd. and redes. 4-1-301 by Sec. 3, Ch. 387, L. 1975; R.C.M. 1947, 4-1-301; amd. Sec. 15, Ch. 530, L. 1995.

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

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

History: En. Sec. 8, Ch. 105, L. 1933; re-en. Sec. 2815.67, R.C.M. 1935; amd. Sec. 3, Ch. 154, L. 1965; Sec. 4-112, R.C.M. 1947; amd. and redes. 4-1-302 by Sec. 5, Ch. 387, L. 1975; R.C.M. 1947, 4-1-302; amd. Sec. 6, Ch. 699, L. 1979; amd. Sec. 3, Ch. 156, L. 1991; amd. Sec. 2, Ch. 414, L. 1993; amd. Sec. 16, Ch. 530, L. 1995; amd. Sec. 3, Ch. 110, L. 2003.

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

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

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

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

(c) governing the purchase of liquor and the furnishing of liquor to agency liquor stores;

(d) determining the classes, varieties, and brands of liquor to be available for distribution from the state liquor warehouse;

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

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

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

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

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

(j) prescribing the fees payable for permits and licenses issued under this code for which fees are not prescribed in this code and prescribing the fees for anything done or permitted to be done under the rules;

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

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

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

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

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

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

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

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

History: En. Sec. 9, Ch. 105, L. 1933; re-en. Sec. 2815.68, R.C.M. 1935; amd. Sec. 1, Ch. 43, L. 1965; amd. Sec. 1, Ch. 154, L. 1965; Sec. 4-113, R.C.M. 1947; amd. and redes. 4-1-303 by Sec. 6, Ch. 387, L. 1975; R.C.M. 1947, 4-1-303; amd. Sec. 7, Ch. 699, L. 1979; amd. Sec. 1, Ch. 47, L. 1983; amd. Sec. 7, Ch. 68, L. 1987; amd. Sec. 3, Ch. 414, L. 1993; amd. Sec. 17, Ch. 530, L. 1995.

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

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

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

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

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

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

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

(5) Liquor may not be withdrawn from the regular warehouse inventory or from the agency liquor stores for any purpose other than sale to persons who hold liquor licenses at the posted price and sale to the consumer at the retail price established by the agent or for destroying damaged or defective merchandise. The state shall maintain a written record including the type, brand, container size, number of bottles or other units, signatures of witnesses, and method of destruction or other disposition of damaged or defective warehouse merchandise.

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

History: En. Sec. 48, Ch. 105, L. 1933; re-en. Sec. 2815.107, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1965; amd. Sec. 1, Ch. 72, L. 1971; Sec. 4-153, R.C.M. 1947; amd. and redes. 4-1-304 by Sec. 18, Ch. 387, L. 1975; amd. Sec. 1, Ch. 496, L. 1977; R.C.M. 1947, 4-1-304; amd. Sec. 8, Ch. 699, L. 1979; amd. Sec. 1, Ch. 766, L. 1991; amd. Sec. 4, Ch. 414, L. 1993; amd. Sec. 18, Ch. 530, L. 1995; amd. Sec. 4, Ch. 110, L. 2003.

16-1-305. Title to property and moneys -- administrative expenses. All property, whether real or personal, all moneys acquired, administered, possessed, or received by the department, and all profits earned in the administration of this code shall be the property of the state. All expenses, debts, and liabilities incurred by the department in connection with the administration of this code shall be paid by the department from the moneys received by the department under such administration.

History: En. Sec. 91, Ch. 105, L. 1933; re-en. Sec. 2815.151, R.C.M. 1935; Sec. 4-226, R.C.M. 1947; amd. and redes. 4-1-306 by Sec. 40, Ch. 387, L. 1975; R.C.M. 1947, 4-1-306.

16-1-306. Revenue to be paid to state treasurer. Except as provided in 16-1-404, 16-1-406, and 16-1-411, all fees, charges, taxes, and revenue collected by or under authority of the department must, in accordance with the provisions of 17-2-124, be deposited to the credit of the state general fund.

History: En. Sec. 49, Ch. 106, L. 1933; amd. Sec. 17, Ch. 46, Ex. L. 1933; amd. Sec. 20B, Ch. 109, L. 1935; re-en. Sec. 2815.50, R.C.M. 1935; amd. Sec. 9, Ch. 14, L. 1941; amd. Sec. 1, Ch. 121, L. 1949; amd. Sec. 20, Ch. 249, L. 1967; amd. Sec. 3, Ch. 296, L. 1969; amd. Sec. 3, Ch. 421, L. 1971; Sec. 4-347, R.C.M. 1947; amd. and redes. 4-1-407 by Sec. 72, Ch. 387, L. 1975; amd. Sec. 1, Ch. 286, L. 1977; R.C.M. 1947, 4-1-407; amd. Sec. 54, Ch. 370, L. 1987; amd. Sec. 20, Ch. 455, L. 1993; amd. Sec. 23, Ch. 18, L. 1995; amd. Sec. 13, Ch. 422, L. 1997; amd. Sec. 18, Ch. 475, L. 2007; amd. Sec. 36, Ch. 2, L. 2009.

Part 4

Taxation of Alcoholic Beverages

16-1-401. Liquor excise tax. (1) The department shall collect at the time of the sale and delivery of any liquor as authorized under any provision of the laws of the state of Montana an excise tax at a rate that is the percent of the retail selling price determined in accordance with the following schedule based on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed the liquor and sold the specified number of proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section:

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

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

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

History: En. Sec. 15, Ch. 84, L. 1937; amd. Sec. 1, Ch. 41, L. 1939; amd. Sec. 1, Ch. 180, L. 1957; Approved at referendum, Nov. 4, 1958; Sec. 4-417, R.C.M. 1947; amd. and redes. 4-1-403 by Sec. 94, Ch. 387, L. 1975; R.C.M. 1947, 4-1-403; amd. Sec. 1, Ch. 690, L. 1985; amd. Sec. 21, Ch. 455, L. 1993; amd. Sec. 24, Ch. 18, L. 1995; amd. Sec. 19, Ch. 475, L. 2007; amd. Sec. 1, Ch. 259, L. 2009.

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

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

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

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

History: En. 4-4-110 by Sec. 115, Ch. 387, L. 1975; R.C.M. 1947, 4-4-110; amd. Sec. 19, Ch. 530, L. 1995.

16-1-403. Excise tax accounting methods -- report forms -- penalty and interest. (1) Any carrier aggrieved by the application of the method provided in 16-1-402 may petition the department for use of an alternate method. If the department finds that the application of the method will be unjust to the carrier, it may allow the use of the method petitioned for by the carrier or may use another method that fairly reflects the liquor purchased outside this state and served for consumption within this state.

(2) (a) The department shall prescribe report forms that must be used by the carriers in reporting their sales and computing their liability for excise taxes and markup. Report forms must be filed and payment of excise taxes and state markup must be made on a quarterly basis. The filing of report forms and payment of excise taxes and state markup must be made not later than the last day of the month immediately following the close of each quarterly period.

(b) A person who fails to file a required report form or to pay the excise taxes or state markup due under this part is subject to the penalty and interest provisions of 15-1-216.

History: En. 4-4-111 by Sec. 116, Ch. 387, L. 1975; R.C.M. 1947, 4-4-111; amd. Sec. 3, Ch. 5, L. 1979; amd. Sec. 47, Ch. 427, L. 1999.

16-1-404. License tax on liquor -- amount -- distribution of proceeds. (1) The department shall collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of:

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

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

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

(2) The license tax must be charged and collected on all liquor produced in or brought into the state and taxed by the department. The retail selling price must be computed by adding to the cost of the liquor the state markup as designated by the department. The license tax must be figured in the same manner as the state excise tax and is in addition to the state excise tax. The department shall retain in a separate account the amount of the license tax received. The department, in accordance with the provisions of 17-2-124, shall allocate the revenue as follows:

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

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

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

History: En. Sec. 1, Ch. 217, L. 1957; amd. Sec. 1, Ch. 153, L. 1969; amd. Sec. 17, Ch. 302, L. 1974; Sec. 4-240, R.C.M. 1947; amd. and redes. 4-1-401 by Sec. 44, Ch. 387, L. 1975; amd. Sec. 8, Ch. 414, L. 1977; R.C.M. 1947, 4-1-401; amd. Sec. 6, Ch. 711, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 690, L. 1985; amd. Sec. 13, Ch. 703, L. 1985; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 22, Ch. 455, L. 1993; amd. Sec. 25, Ch. 18, L. 1995; amd. Sec. 51, Ch. 546, L. 1995; amd. Sec. 14, Ch. 422, L. 1997; amd. Sec. 9, Ch. 389, L. 1999; amd. Sec. 1, Ch. 470, L. 2001; amd. Sec. 104, Ch. 574, L. 2001; amd. Sec. 4, Ch. 591, L. 2005; amd. Sec. 20, Ch. 475, L. 2007.

16-1-405. Repealed. Sec. 123, Ch. 2, L. 2009.

History: En. Sec. 2, Ch. 217, L. 1957; Sec. 4-241, R.C.M. 1947; redes. 4-1-402 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-1-402; amd. Sec. 8, Ch. 68, L. 1987.

16-1-406. Taxes on beer. (1) (a) A tax is imposed on each barrel of 31 gallons of beer sold in Montana by a wholesaler. A barrel of beer equals 31 gallons. The tax is based upon the total number of barrels of beer produced by a brewer in a year. A brewer who produces less than 20,000 barrels of beer a year is taxed on the following increments of production:

- (i) up to 5,000 barrels, \$1.30;
- (ii) 5,001 barrels to 10,000 barrels, \$2.30; and
- (iii) 10,001 barrels to 20,000 barrels, \$3.30.

(b) The tax on beer sold for a brewer who produces over 20,000 barrels is \$4.30.

(2) The tax imposed pursuant to subsection (1) is due at the end of each month from the wholesaler upon beer sold by the wholesaler during that month. The department shall compute the tax due on beer sold in containers other than barrels or in barrels of more or less capacity than 31 gallons.

(3) Each quarter, in accordance with the provisions of 17-2-124, of the tax collected pursuant to subsection (1), an amount equal to:

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

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

History: En. Sec. 20, Ch. 106, L. 1933; amd. Sec. 8, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.29, R.C.M. 1935; amd. Sec. 2, Ch. 135, L. 1959; amd. Sec. 2, Ch. 296, L. 1969; amd. Sec. 2, Ch. 421, L. 1971; amd. Sec. 18, Ch. 302, L. 1974; Sec. 4-324, R.C.M. 1947; redes. 4-1-404 by Sec. 120, Ch. 387, L. 1975; amd. Sec. 9, Ch. 414, L. 1977; R.C.M. 1947, 4-1-404(part); amd. Sec. 1, Ch. 172, L. 1987; amd. Sec. 15, Ch. 422, L. 1997; amd. Sec. 1, Ch. 405, L. 2001; amd. Sec. 2, Ch. 470, L. 2001; amd. Secs. 105, 255(7), Ch. 574, L. 2001; amd. Sec. 21, Ch. 475, L. 2007.

16-1-407. Repealed. Sec. 3, Ch. 172, L. 1987.

History: En. 4-1-405 by Sec. 113, Ch. 387, L. 1975; R.C.M. 1947, 4-1-405.

16-1-408. Repealed. Sec. 66, Ch. 422, L. 1997.

History: En. Sec. 20, Ch. 106, L. 1933; amd. Sec. 8, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.29, R.C.M. 1935; amd. Sec. 2, Ch. 135, L. 1959; amd. Sec. 2, Ch. 296, L. 1969; amd. Sec. 2, Ch. 421, L. 1971; amd. Sec. 18, Ch. 302, L. 1974; Sec. 4-324, R.C.M. 1947; redes. 4-1-404 by Sec. 120, Ch. 387, L. 1975; amd. Sec. 9, Ch. 414, L. 1977; R.C.M. 1947, 4-1-404(part); amd. Sec. 1, Ch. 721, L. 1985; amd. Sec. 2, Ch. 172, L. 1987; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 23, Ch. 455, L. 1993; amd. Sec. 26, Ch. 18, L. 1995; amd. Sec. 52, Ch. 546, L. 1995.

16-1-409. Failure to make beer tax returns -- penalties and interest. (1) If a brewer or wholesaler subject to the payment of the tax provided for in 16-1-406 fails to make any return required by this code or fails to make payment of the tax within the time provided in this part, the department shall, after the time has expired, determine and fix the amount of tax due the state from the delinquent brewer or wholesaler.

(2) The department shall then proceed to collect the tax with penalties and interest. Upon request of the department, the attorney general shall prosecute in any court of competent jurisdiction an action to collect the tax.

(3) If all or part of the tax imposed upon a brewer or wholesaler by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand filed or recorded after the warrant is issued.

(4) An action may not be maintained to enjoin the collection of the tax or any part of the tax.

(5) Any tax owed by a brewer or wholesaler under this code not paid within the time provided is delinquent, and penalty and interest must be added to the delinquent tax as provided in 15-1-216.

(6) A brewer or wholesaler who fails, neglects, or refuses to make the return to the department provided for in 16-3-211 or 16-3-231 or refuses to allow the examination as provided for in 16-3-211 or 16-3-231 or fails to make an accurate return according to the manner prescribed is guilty of a misdemeanor and upon conviction shall be fined in an amount not exceeding \$1,000.

History: (1) thru (6)En. Sec. 3, Ch. 220, L. 1939; Sec. 4-325, R.C.M. 1947; amd. and redes. 4-3-217 by Sec. 60, Ch. 387, L. 1975; Sec. 4-3-217, R.C.M. 1947; (7)En. Sec. 16, Ch. 106, L. 1933; re-en. Sec. 2815.25, R.C.M. 1935; amd. Sec. 2, Ch. 220, L. 1939; Sec. 4-320, R.C.M. 1947; amd. and redes. 4-6-403 by Sec. 58, Ch. 387, L. 1975; Sec. 4-6-403, R.C.M. 1947; R.C.M. 1947, 4-3-217, 4-6-403; amd. Sec. 40, Ch. 439, L. 1981; amd. Sec. 19, Ch. 83, L. 1989; amd. Sec. 16, Ch. 422, L. 1997; amd. Sec. 48, Ch. 427, L. 1999.

16-1-410. Repealed. Sec. 66, Ch. 422, L. 1997.

History: En. 4-347.1 by Sec. 4, Ch. 421, L. 1971; Sec. 4-347.1, R.C.M. 1947; amd. and redes. 4-1-408 by Sec. 73, Ch. 387, L. 1975; R.C.M. 1947, 4-1-408; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 14, Ch. 703, L. 1985; amd. Sec. 20, Ch. 83, L. 1989; amd. Sec. 23, Ch. 15, Sp. L. July 1992; amd. Sec. 1, Ch. 60, L. 1993; amd. Sec. 24, Ch. 455, L. 1993; amd. Sec. 27, Ch. 18, L. 1995.

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

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

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

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

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

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

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

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

History: En. Sec. 9, I.M. No. 81, app. Nov. 7, 1978; amd. Sec. 5, Ch. 699, L. 1979; amd. Sec. 1, Ch. 219, L. 1981; amd. Sec. 1, Ch. 241, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 15, Ch. 703, L. 1985; amd. Sec. 2, Ch. 721, L. 1985; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 24, Ch. 15, Sp. L. July 1992; amd. Sec. 2, Ch. 60, L. 1993; amd. Sec. 25, Ch. 455, L. 1993; amd. Sec. 28, Ch. 18, L. 1995; amd. Sec. 53, Ch. 546, L. 1995; amd. Sec. 2, Ch. 399, L. 1997; amd. Sec. 49, Ch. 427, L. 1999; amd. Sec. 3, Ch. 470, L. 2001; amd. Sec. 106, Ch. 574, L. 2001; amd. Sec. 22, Ch. 475, L. 2007.

16-1-412 through 16-1-420 reserved.

16-1-421. Terminated. Sec. 39, Ch. 15, Sp. L. July 1992.

History: En. Sec. 20, Ch. 15, Sp. L. July 1992; amd. Sec. 26, Ch. 455, L. 1993.

16-1-422. Terminated. Sec. 39, Ch. 15, Sp. L. July 1992.

History: En. Sec. 21, Ch. 15, Sp. L. July 1992; amd. Sec. 27, Ch. 455, L. 1993.

16-1-423. Terminated. Sec. 39, Ch. 15, Sp. L. July 1992.

History: En. Sec. 22, Ch. 15, Sp. L. July 1992; amd. Sec. 28, Ch. 455, L. 1993.

16-1-424. Distillery -- reporting -- tax payment -- penalties. (1) Except as provided in subsection (9), a distillery licensed to do business in this state under 16-4-311 shall, on or before the 15th day of each month, in the manner and form prescribed by the department, make an exact return to the department reporting the total amount of liquor samples provided with or without charge at the distillery in the previous month. The department may at any time make an examination of the distillery's books and of the premises and may otherwise check the accuracy of the return.

(2) The taxes imposed pursuant to 16-1-401 and 16-1-404 upon a distillery licensed under 16-4-311 are due on or before the 15th day of each month from the distiller for liquor sold during the previous month. The department shall adopt rules and provide forms for the proper allocation of taxes.

(3) If a distiller subject to the payment of the taxes provided for in 16-1-401 and 16-1-404 fails to make any return required by this code or fails to make payment of the taxes within the time provided in this part, the department shall, after the time has expired, determine and fix the amount of taxes due the state from the delinquent distiller.

(4) The department shall then proceed to collect the tax with penalties and interest. Upon request of the department, the attorney general shall prosecute in any court of competent jurisdiction an action to collect the tax.

(5) If all or part of the tax imposed upon a distillery by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand filed or recorded after the warrant is issued.

(6) An action may not be maintained to enjoin the collection of the tax or any part of the tax.

(7) Any tax owed by a distiller under this code that is not paid within the time provided is delinquent, and penalty and interest must be added to the delinquent tax as provided in 15-1-216.

(8) Except as provided in subsection (9), a distiller who fails, neglects, or refuses to make the return to the department provided for in this section, refuses to allow the examinations as provided for in this section, or fails to make an accurate return in the manner prescribed is guilty of a misdemeanor and upon conviction shall be fined an amount not exceeding \$1,000.

(9) A distillery for which the tax is less than \$10 a month from the sale of samples is not required to file a return or pay the tax for that month under this section.

History: En. Sec. 7, Ch. 591, L. 2005.

CHAPTER 2

LIQUOR STORES

Part 1 -- Operation of Stores

16-2-101. Establishment and closure of agency liquor stores -- agency franchise agreement -- kinds and prices of liquor.

16-2-102. Repealed.

16-2-103. Duplicate invoices of sales required.

16-2-104. Hours.

16-2-105. Place and time of selling liquor.

16-2-106. Sales by agent.

16-2-107. No open alcoholic beverage container or alcoholic beverage consumption on premises of agency store.

16-2-108. Disposition of money received.

16-2-109. Number and location of agency liquor stores.

16-2-110. State lien on liquor in agency liquor stores.

Part 2 -- Price of Liquor

16-2-201. Reduction for quantity sales of liquor.

16-2-202. Repealed.

16-2-203. Department sales to licensees.

Part 3 -- Sale of Table Wine

16-2-301. Retail selling price on table wine -- tax on certain table wine.

16-2-302. Repealed.

16-2-303. Repealed.

Part 4 -- Conversion of Liquor Stores (Repealed)

Part 1

Operation of Stores

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) An agency franchise agreement must:

(a) be effective for a 10-year period and must be renewed at the existing commission rate for additional 10-year periods if the requirements of the agency franchise agreement have been satisfactorily performed;

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

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

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

(c) provide that upon termination by the department for cause or upon mutual termination, the agent is liable for any outstanding liquor purchase invoices. If payment is not made within the appropriate time, the department may immediately repossess all liquor inventory, wherever located.

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

(6) (a) The commission percentage that the department pays the agent under subsection (4)(a) may be reviewed every 3 years at the request of either party. If the agent concurs, the department may adjust the commission percentage to be paid during the remaining term of the agency franchise agreement or until the next time the commission percentage is reviewed, if that is sooner than the term of the agency franchise agreement, to a commission percentage that is equal to the average commission percentage being paid agents with similar sales volumes if:

(i) the agent's commission percentage is less than the average; and
(ii) all the requirements of the agency franchise agreement have been satisfactorily performed.

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

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

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

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

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

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

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

(ii) fails to maintain sufficient liability insurance;

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

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

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

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

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

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

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

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

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

History: En. Sec. 10, Ch. 105, L. 1933; re-en. Sec. 2815.69, R.C.M. 1935; amd. Sec. 4, Ch. 30, L. 1937; amd. Sec. 1, Ch. 237, L. 1947; amd. Sec. 1, Ch. 162, L. 1949; amd. Sec. 1, Ch. 62, L. 1971; Sec. 4-114, R.C.M. 1947; amd. and redes. 4-2-101 by Sec. 7, Ch. 387, L. 1975; R.C.M. 1947, 4-2-101(part); amd. Sec. 1, Ch. 157, L. 1979; amd. Sec. 1, Ch. 2, Sp. L. March 1986; amd. Sec. 9, Ch. 68, L. 1987; amd. Sec. 1, Ch. 648, L. 1987; amd. Sec. 2, Ch. 228, L. 1993; amd. Sec. 20, Ch. 530, L. 1995; amd. Sec. 89, Ch. 42, L. 1997; amd. Sec. 1, Ch. 508, L. 2001; amd. Sec. 15, Ch. 44, L. 2007; amd. Sec. 1, Ch. 391, L. 2009.

16-2-102. Repealed. Sec. 4, Ch. 47, L. 1983.

History: En. Sec. 14, Ch. 105, L. 1933; re-en. Sec. 2815.73, R.C.M. 1935; Sec. 4-119, R.C.M. 1947; redes. 4-2-102 by Sec. 120, Ch. 387, L. 1975; amd. Sec. 2, Ch. 496, L. 1977; R.C.M. 1947, 4-2-102.

16-2-103. Duplicate invoices of sales required. (1) An agency liquor store shall, upon each sale of liquor or table wine to any licensee, issue a duplicate invoice of the liquor or table

wine purchased, as provided by the department, a copy of which must be delivered to the licensee and one copy retained at the store.

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

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

History: En. Sec. 16, Ch. 84, L. 1937; Sec. 4-418, R.C.M. 1947; amd. and redes. 4-2-205 by Sec. 95, Ch. 387, L. 1975; R.C.M. 1947, 4-2-205; amd. Sec. 10, Ch. 68, L. 1987; amd. Sec. 90, Ch. 42, L. 1997.

16-2-104. Hours. (1) Agency liquor stores may remain open during the period between 8 a.m. and 2 a.m. The stores must be closed for the transaction of business on legal holidays and between the close of normal business Saturday afternoon up to the opening of normal business Tuesday morning.

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

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

- (i) the city limits for stores located in incorporated cities or towns; and
- (ii) the area contained within a 5-mile radius from a store or stores located in unincorporated cities or towns or in a consolidated local government.

History: (1)En. Sec. 10, Ch. 105, L. 1933; re-en. Sec. 2815.69, R.C.M. 1935; amd. Sec. 4, Ch. 30, L. 1937; amd. Sec. 1, Ch. 237, L. 1947; amd. Sec. 1, Ch. 162, L. 1949; amd. Sec. 1, Ch. 62, L. 1971; Sec. 4-114, R.C.M. 1947; amd. and redes. 4-2-101 by Sec. 7, Ch. 387, L. 1975; Sec. 4-2-101, R.C.M. 1947; (2)En. Sec. 16, Ch. 105, L. 1933; re-en. Sec. 2815.75, R.C.M. 1935; amd. Sec. 5, Ch. 30, L. 1937; amd. Sec. 2, Ch. 62, L. 1971; Sec. 4-121, R.C.M. 1947; amd. and redes. 4-2-104 by Sec. 11, Ch. 387, L. 1975; Sec. 4-2-104, R.C.M. 1947; R.C.M. 1947, 4-2-101(part), 4-2-104; amd. Sec. 11, Ch. 68, L. 1987; amd. Sec. 21, Ch. 530, L. 1995.

16-2-105. Place and time of selling liquor. A liquor store agent and a person acting as an employee of or in any capacity for any agent may not sell liquor in any other place or at any other time or otherwise than as authorized by this code and the rules implementing this code.

History: En. Sec. 47, Ch. 105, L. 1933; re-en. Sec. 2815.106, R.C.M. 1935; Sec. 4-152,

R.C.M. 1947; amd. and redes. 4-2-105 by Sec. 17, Ch. 387, L. 1975; R.C.M. 1947, 4-2-105; amd. Sec. 22, Ch. 530, L. 1995.

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

History: En. Sec. 12, Ch. 105, L. 1933; re-en. Sec. 2815.71, R.C.M. 1935; amd. Sec. 4, Ch. 154, L. 1965; amd. Sec. 1, Ch. 162, L. 1969; Sec. 4-116, R.C.M. 1947; amd. and redes. 4-2-106 by Sec. 8, Ch. 387, L. 1975; R.C.M. 1947, 4-2-106; amd. Sec. 12, Ch. 68, L. 1987; amd. Sec. 23, Ch. 530, L. 1995.

16-2-107. No open alcoholic beverage container or alcoholic beverage consumption on premises of agency store. An agent and the agent's employees in an agency store may not allow any alcoholic beverage container to be opened on the premises of an agency liquor store or allow any alcoholic beverage to be consumed on the premises of an agency liquor store, nor may any person open an alcoholic beverage container or consume any alcoholic beverage in an agency liquor store.

History: En. Sec. 15, Ch. 105, L. 1933; re-en. Sec. 2815.74, R.C.M. 1935; Sec. 4-120, R.C.M. 1947; amd. and redes. 4-2-107 by Sec. 10, Ch. 387, L. 1975; R.C.M. 1947, 4-2-107; amd. Sec. 2, Ch. 47, L. 1983; amd. Sec. 13, Ch. 68, L. 1987; amd. Sec. 24, Ch. 530, L. 1995.

16-2-108. Disposition of money received. (1) The department may purchase liquor from money deposited to its account in the enterprise fund. The department shall pay from its account in the enterprise fund its administrative expenses associated with the sale of liquor, subject to the limits imposed by legislative appropriation. An obligation created or incurred by the department may not be a debt or claim against the state of Montana but must be payable by the department solely from funds derived from the operation of state liquor sales. The department shall pay into the state treasury to the credit of the enterprise fund the receipts from the sale of liquor and all taxes collected by it. Taxes and the net proceeds from the operation of state liquor sales must be transferred to the general fund.

(2) All liquor license fees and permit fees collected by the department must be deposited into the department's liquor enterprise fund.

(3) The department shall pay from its account in the liquor enterprise fund:

(a) expenses associated with administering liquor licensing and fee collection; and
(b) expenses associated with investigations pursuant to its agreement with the department of justice.

(4) The net proceeds of the liquor enterprise fund must be transferred to the general fund.

History: En. Sec. 94, Ch. 105, L. 1933; re-en. Sec. 2815.154, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1939; amd. Sec. 211, Ch. 147, L. 1963; Sec. 4-229, R.C.M. 1947; amd. and redes. 4-1-406 by Sec. 41, Ch. 387, L. 1975; amd. Sec. 1, Ch. 398, L. 1977; R.C.M. 1947, 4-1-406; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 14, Ch. 68, L. 1987; amd. Sec. 1, Ch. 225, L. 1989;

amd. Sec. 25, Ch. 530, L. 1995; amd. Sec. 2, Ch. 448, L. 2001.

16-2-109. Number and location of agency liquor stores. (1) (a) In a community with a population of 12,000 or less, there may be one agency liquor store. In communities with populations greater than 12,000, there may be one agency liquor store for the first 12,000 inhabitants and one additional agency liquor store within increments of population of 40,000 inhabitants above 12,000 inhabitants. In determining population, the department shall use the same methods used for determining increases in the retail license quota system as provided in 16-4-201.

(b) In communities that are eligible for more than one agency liquor store, an agency liquor store established after April 25, 1995, may not be located within a 1-mile radius of any other agency liquor store in the community.

(2) An agency liquor store established after April 25, 1995, may not be located in a community that is closer than 35 miles to another community in which an agency liquor store is presently located, except in the circumstance when the most recent population estimates show a 25% growth in population or a growth of 1,000 inhabitants within a 2-year period, whichever is greater, and when this population increase is reasonably expected to continue for at least 5 years.

History: En. Sec. 9, Ch. 530, L. 1995; amd. Sec. 22, Ch. 7, L. 2001.

16-2-110. State lien on liquor in agency liquor stores. The state has a first lien with an absolute first priority to secure any outstanding amounts due the state for liquor purchased on any inventory, including any after-acquired inventory in the possession of an agent or on the premises of an agency liquor store, to secure payment for the existing inventory. The state has the right to physically recover any inventory from an agency liquor store for any failure to timely make payments.

History: En. Sec. 10, Ch. 530, L. 1995.

Part 2

Price of Liquor

16-2-201. Reduction for quantity sales of liquor. (1) Reduction of 8% of the posted price of liquor sold at the agency liquor store must be made by the department for sales of liquor to any licensee purchasing liquor in unbroken case lots. No other reduction may be made to any other person by the department for quantity sales of liquor.

(2) This section does not prevent an agent from providing purchase discounts or selling liquor to any other person at a price less than the agent's established retail price. However, an agent is prohibited from selling liquor to any person at a price less than the department's posted price.

History: En. Sec. 1, Ch. 185, L. 1943; amd. Sec. 1, Ch. 334, L. 1975; Sec. 4-117, R.C.M.

1947; amd. and redes. 4-2-201 by Sec. 9, Ch. 387, L. 1975; R.C.M. 1947, 4-2-201; amd. Sec. 26, Ch. 530, L. 1995.

16-2-202. Repealed. Sec. 3, Ch. 690, L. 1985.

History: En. 4-114.1 by Sec. 1, Ch. 359, L. 1974; Sec. 4-114.1, R.C.M. 1947; redes. 4-2-202 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-2-202.

16-2-203. Department sales to licensees. The department may sell through its stores to licensees licensed under this code all kinds of liquor and table wine at the posted price thereof in the store in which the liquor and table wine are sold. All sales shall be upon a cash basis.

History: En. Sec. 14, Ch. 84, L. 1937; Sec. 4-416, R.C.M. 1947; amd. and redes. 4-2-204 by Sec. 93, Ch. 387, L. 1975; amd. Sec. 3, Ch. 496, L. 1977; R.C.M. 1947, 4-2-204(part); amd. Sec. 10, I.M. No. 81, app. Nov. 7, 1978; amd. Sec. 15, Ch. 68, L. 1987.

Part 3

Sale of Table Wine

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

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

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

History: En. Sec. 9, Ch. 699, L. 1979; amd. Sec. 1, Ch. 629, L. 1987; amd. Sec. 27, Ch. 530, L. 1995; amd. Sec. 3, Ch. 399, L. 1997.

16-2-302. Repealed. Sec. 41, Ch. 530, L. 1995.

History: En. Sec. 10, Ch. 699, L. 1979; amd. Sec. 16, Ch. 68, L. 1987; amd. Sec. 2, Ch. 629, L. 1987.

16-2-303. Repealed. Sec. 41, Ch. 530, L. 1995.

History: En. Sec. 11, Ch. 699, L. 1979.

Part 4

Conversion of Liquor Stores (Repealed)

16-2-401. Repealed. Sec. 315, Ch. 42, L. 1997.

History: En. Sec. 1, Ch. 530, L. 1995.

16-2-402. Repealed. Sec. 315, Ch. 42, L. 1997.

History: En. Sec. 2, Ch. 530, L. 1995.

16-2-403. Repealed. Sec. 315, Ch. 42, L. 1997.

History: En. Sec. 3, Ch. 530, L. 1995.

16-2-404. Repealed. Sec. 315, Ch. 42, L. 1997.

History: En. Sec. 4, Ch. 530, L. 1995.

16-2-405. Repealed. Sec. 315, Ch. 42, L. 1997.

History: En. Sec. 5, Ch. 530, L. 1995.

16-2-406. Repealed. Sec. 315, Ch. 42, L. 1997.

History: En. Sec. 6, Ch. 530, L. 1995.

16-2-407. Repealed. Secs. 315(2), 316(2), Ch. 42, L. 1997.

History: En. Sec. 7, Ch. 530, L. 1995.

16-2-408. Repealed. Sec. 315, Ch. 42, L. 1997.

History: En. Sec. 8, Ch. 530, L. 1995.

CHAPTER 3

CONTROL OF LIQUOR, BEER, AND WINE

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Part 1

Official Controls

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

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

(i) any alcoholic beverage to any person in this state who does not hold a valid wholesaler's license or connoisseur's license issued by the department; or

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

(b) The prohibition in subsection (2)(a) includes alcoholic beverages ordered or purchased by telephone, computer, or other device, except by persons holding a valid connoisseur's license provided for in 16-4-901.

(3) Except as otherwise provided by this code, alcoholic beverages shipped, transported, or consigned pursuant to subsection (2)(a) and intended for sale to any person not licensed under this code must be distributed by the licensed wholesaler to a licensed retailer for sale to the ultimate consumer.

History: En. Sec. 46, Ch. 105, L. 1933; re-en. Sec. 2815.105, R.C.M. 1935; Sec. 4-151, R.C.M. 1947; redes. 4-3-101 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-101; amd. Sec. 2, Ch. 19, L. 1985; amd. Sec. 17, Ch. 68, L. 1987; amd. Sec. 3, Ch. 543, L. 2001.

16-3-102. Repealed. Sec. 4, Ch. 47, L. 1983.

History: En. Sec. 53, Ch. 105, L. 1933; re-en. Sec. 2815.112, R.C.M. 1935; Sec. 4-158, R.C.M. 1947; amd. and redes. 4-3-102 by Sec. 21, Ch. 387, L. 1975; R.C.M. 1947, 4-3-102; amd. Sec. 11, I.M. No. 81, app. Nov. 7, 1978.

16-3-103. Unlawful sales solicitation or advertising -- exceptions. (1) A person within the state may not:

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

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

(c) exhibit, publish, or display or permit to be exhibited, published, or displayed any

form of advertisement or any other announcement, publication, or price list of or concerning liquor or where or from whom the same may be had, obtained, or purchased unless permitted to do so by the rules of the department and then only in accordance with the rules.

(2) This section does not apply to:

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

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

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

History: En. Sec. 65, Ch. 105, L. 1933; re-en. Sec. 2815.124, R.C.M. 1935; amd. Sec. 1, Ch. 140, L. 1974; amd. Sec. 1, Ch. 274, L. 1975; Sec. 4-170, R.C.M. 1947; redes. 4-3-103 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-103; amd. Sec. 1, Ch. 134, L. 1985; amd. Sec. 1, Ch. 180, L. 1987; amd. Sec. 3, Ch. 599, L. 1993; amd. Sec. 28, Ch. 530, L. 1995.

16-3-104. Common carriers to purchase beer from brewer, beer importer, or wholesaler. It shall be unlawful for the operator of any common carrier or its employees to make sale of or dispose of any beer or malt liquors except such as shall have been lawfully acquired or purchased from a duly licensed brewer, beer importer, or wholesaler.

History: En. Sec. 37, Ch. 106, L. 1933; re-en. Sec. 2815.41, R.C.M. 1935; Sec. 4-338, R.C.M. 1947; amd. and redes. 4-3-104 by Sec. 67, Ch. 387, L. 1975; R.C.M. 1947, 4-3-104; amd. Sec. 3, Ch. 19, L. 1985.

16-3-105. Restrictions on alcoholic beverages in hotels. Except in the case of alcoholic beverages kept or consumed in premises for which a license has been granted under the law and that form a part of a hotel, a person may not:

(1) keep or consume alcoholic beverages in any part of a hotel other than a private guest room;

(2) keep or have any alcoholic beverage in any room in a hotel unless the person is a bona fide guest of the hotel and is registered in the office of the hotel as an occupant of that room.

History: En. Sec. 64, Ch. 105, L. 1933; re-en. Sec. 2815.123, R.C.M. 1935; amd. Sec. 1, Ch. 152, L. 1974; Sec. 4-169, R.C.M. 1947; redes. 4-3-105 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-105; amd. Sec. 18, Ch. 68, L. 1987; amd. Sec. 188, Ch. 56, L. 2009.

16-3-106. Conveyance of liquors, table wines, and beer -- opening alcoholic beverages during transit forbidden. (1) It is lawful to carry or convey liquor or table wine to any agency liquor store and to and from the state liquor warehouse or any depot established by the department for the purposes of this code, and when permitted to do so by this code and the rules promulgated under this code, it is lawful for any common carrier or other person to carry or convey liquor or table wine sold by a vendor from an agency liquor store or to carry or convey

beer, when lawfully sold by a brewer, from the premises where the beer was manufactured or from premises where the beer may be lawfully kept and sold to any place to which the liquor, table wine, or beer may be lawfully delivered under this code and the rules promulgated under this code.

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

History: En. Sec. 17, Ch. 105, L. 1933; re-en. Sec. 2815.76, R.C.M. 1935; Sec. 4-122, R.C.M. 1947; amd. and redes. 4-2-103 by Sec. 12, Ch. 387, L. 1975; R.C.M. 1947, 4-2-103; amd. Sec. 19, Ch. 68, L. 1987; amd. Sec. 29, Ch. 530, L. 1995.

16-3-107. Resident representatives required. (1) For the purposes of this section, "vendor" means a person, partnership, association, or corporation that sells liquor to the department.

(2) A vendor who desires to promote the sale of the vendor's product in the state shall employ one representative and may employ two additional representatives to promote the sale of the vendor's product. A representative must be a resident of the state or become a resident after employment.

(3) If a vacancy occurs in the one required position, the vendor shall fill the position within 60 days after the vacancy occurs.

History: En. Sec. 1, Ch. 293, L. 1987; amd. Sec. 1, Ch. 372, L. 2003.

Part 2

Regulation of Brewers, Beer Importers, and Beer Wholesalers

16-3-201. Possession, manufacture, importation, or disposal of beer in manner other than prescribed unlawful -- personal brewing. (1) It is unlawful to manufacture, import, sell or dispose of, or possess for the purpose of sale beer of any kind or character of an alcoholic content greater than authorized or other than in the manner permitted by this code.

(2) This code does not prohibit the manufacture of beer, for personal or family use and not intended for sale, that meets the exemptions of 26 U.S.C. 5053(e) and regulations implementing that section, including the brewing of beer, for personal or family use, on premises other than those of the person brewing the beer.

History: En. Sec. 5, Ch. 106, L. 1933; re-en. Sec. 2815.14, R.C.M. 1935; Sec. 4-309, R.C.M. 1947; amd. and redes. 4-3-201 by Sec. 49, Ch. 387, L. 1975; R.C.M. 1947, 4-3-201; amd. Sec. 4, Ch. 19, L. 1985; amd. Sec. 2, Ch. 546, L. 1997.

16-3-202. Beer sale by department prohibited. The sale of beer by the department is hereby prohibited.

History: En. Sec. 4, Ch. 106, L. 1933; re-en. Sec. 2815.13, R.C.M. 1935; amd. Sec. 1, Ch. 89, L. 1937; amd. Sec. 1, Ch. 186, L. 1947; Sec. 4-308, R.C.M. 1947; amd. and redes. 4-3-202 by Sec. 48, Ch. 387, L. 1975; R.C.M. 1947, 4-3-202.

16-3-203 through 16-3-210 reserved.

16-3-211. Monthly report of brewer, beer importer, or retailer -- inspection of books and premises. (1) Every brewer and every beer importer licensed to do business in this state shall, on or before the 15th day of each month, as prescribed by the department, make an exact return to the department of the amount of beer manufactured or imported by the brewer or importer, the amount sold by the brewer or importer in the previous month, and the inventory of the brewer or importer. The department may make an examination of any brewer's or beer importer's books and of the brewer's or importer's premises and otherwise check the accuracy of any return or check the alcoholic content of beer manufactured or imported by the brewer or importer.

(2) Every retailer licensed to do business in this state shall, on or before the 15th day of each month, as prescribed by the department, make an exact return to the department of the amount of beer purchased in the previous month directly from any brewery not located in the state of Montana.

History: En. Sec. 7, Ch. 106, L. 1933; re-en. Sec. 2815.16, R.C.M. 1935; Sec. 4-311, R.C.M. 1947; amd. and redes. 4-3-203 by Sec. 51, Ch. 387, L. 1975; R.C.M. 1947, 4-3-203; amd. Sec. 5, Ch. 19, L. 1985; amd. Sec. 1, Ch. 516, L. 2007.

16-3-212. Brewers' or beer importers' sales to wholesalers lawful. A licensed brewer may sell or deliver beer manufactured by the brewer to any licensed wholesaler. A licensed beer importer may sell or deliver beer imported by the importer to any licensed wholesaler.

History: En. Sec. 9, Ch. 106, L. 1933; amd. Sec. 3, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.18, R.C.M. 1935; Sec. 4-313, R.C.M. 1947; amd. and redes. 4-3-204 by Sec. 52, Ch. 387, L. 1975; R.C.M. 1947, 4-3-204; amd. Sec. 6, Ch. 19, L. 1985; amd. Sec. 189, Ch. 56, L. 2009.

16-3-213. Brewers or beer importers not to retail beer -- small brewery exceptions. (1) Except as provided for small breweries in subsection (2), it is unlawful for any brewer or breweries or beer importer to have or own any permit to sell or retail beer at any place or premises. It is the intention of this section to prohibit brewers and beer importers from engaging in the retail sale of beer. This section does not prohibit breweries from selling and delivering beer manufactured by them, in original packages, at either wholesale or retail.

(2) (a) For the purposes of this section, a "small brewery" is a brewery that has an annual nationwide production of not less than 100 barrels or more than 10,000 barrels.

(b) A small brewery may, at one location for each brewery license, provide samples of beer that were brewed and fermented on the premises in a sample room located on the licensed premises. The samples may be provided with or without charge between the hours of 10 a.m. and 8 p.m. No more than 48 ounces of malt beverage may be sold or given to each individual customer during a business day.

History: En. Sec. 11, Ch. 106, L. 1933; re-en. Sec. 2815.20, R.C.M. 1935; Sec. 4-315, R.C.M. 1947; redes. 4-3-205 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-205; amd. Sec. 7, Ch. 19, L. 1985; amd. Sec. 1, Ch. 149, L. 1985; amd. Sec. 1, Ch. 116, L. 1999.

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

- (a) sell and deliver beer from its storage depot or brewery to:
 - (i) a wholesaler;
 - (ii) licensed retailers if the brewer uses the brewer's own equipment, trucks, and employees to deliver the beer and if:
 - (A) individual deliveries, other than draught beer, are limited to the case equivalent of 8 barrels a day to each licensed retailer; and
 - (B) the total amount of beer sold or delivered directly to all retailers does not exceed 10,000 barrels a year; or
 - (iii) the public;
 - (b) provide its own products for consumption on its licensed premises without charge or, if it is a small brewery, provide its own products at a sample room as provided in 16-3-213; or
 - (c) do any one or more of the acts of sale and delivery of beer as provided in this code.
- (2) A brewery may not use a common carrier for delivery of the brewery's product to the public or to licensed retailers.
- (3) An additional license fee may not be imposed on a brewery providing its own products on its licensed premises for consumption on the premises.
- (4) This section does not prohibit a licensed brewer from shipping and selling beer directly to a wholesaler in this state under the provisions of 16-3-230.

History: En. Sec. 13, Ch. 106, L. 1933; amd. Sec. 4, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.22, R.C.M. 1935; amd. Sec. 4, Ch. 166, L. 1951; amd. Sec. 1, Ch. 135, L. 1959; amd. Sec. 1, Ch. 296, L. 1969; amd. Sec. 1, Ch. 421, L. 1971; Sec. 4-317, R.C.M. 1947; amd. and redes. 4-3-206 by Sec. 53, Ch. 387, L. 1975; R.C.M. 1947, 4-3-206; amd. Sec. 2, Ch. 149, L. 1985; amd. Sec. 1, Ch. 721, L. 1991; amd. Sec. 1, Ch. 122, L. 1993; amd. Sec. 2, Ch. 116, L. 1999; amd. Sec. 4, Ch. 543, L. 2001; amd. Sec. 2, Ch. 516, L. 2007.

16-3-215 and 16-3-216 reserved.

16-3-217. Purposes. The legislature finds and declares that the purposes of 16-3-218 through 16-3-226 are to assure continued interbrand competition in malt beverage sales through competing independent wholesalers and to assure breweries the ability to protect the reputations of their products through quality control arrangements.

History: En. Sec. 1, Ch. 61, L. 1987.

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

History: En. Sec. 3, Ch. 61, L. 1987.

16-3-219. Dock sales restricted. Beer or wine may not be delivered to a licensed retailer at any location other than the retailer's licensed premises, except that a retailer located within the territory for which a wholesaler has been appointed to distribute a brand may personally or through an employee obtain from the wholesaler's warehouse quantities of beer not exceeding three barrels in packaged or draft form. An all-beverages licensee may upon presentation of the licensee's license or a photocopy of the license personally obtain from any wholesaler's warehouse the quantities of beer as the licensee and the wholesaler may agree to buy and sell.

History: En. Sec. 4, Ch. 61, L. 1987; amd. Sec. 1, Ch. 501, L. 2007.

16-3-220. Wholesalers' service obligations -- applicability. (1) A wholesaler appointed to distribute a brand of beer within a territory specified by agreement pursuant to 16-3-222 shall call on and offer that brand to at least 75% of the retailers within that territory at least every 3 weeks. However, if the brand of beer for which the wholesaler is appointed is a product of a brewer or beer importer whose products are not generally available, the wholesaler shall, at least every 3 weeks, call on and offer that brand to as many retailers within that territory as is reasonably possible given the amount of that brand that is available to the wholesaler.

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

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

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

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

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

(4) This section applies to all beer distribution agreements entered into, assigned, or amended after July 1, 1986. It does not apply to a distribution agreement for a named brand entered into before July 1, 1986, but does not prohibit a brewer who is a party to an agreement from requiring the appointed wholesaler to fulfill similar service obligations in the territory.

History: En. Sec. 5, Ch. 61, L. 1987; amd. Sec. 1, Ch. 139, L. 1995; amd. Sec. 91, Ch. 42, L. 1997.

16-3-221. Illegal acts by brewers or beer importers. (1) It is unlawful for any brewer or beer importer or any officer, agent, or representative of any brewer or beer importer to:

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

(b) sell its products in the state without a written contract, which conforms to the provisions of 16-3-221 through 16-3-226, with each appointed licensed wholesale distributor;

(c) designate or allow more than one wholesale distributor to sell or distribute a specific brand of the brewer's or beer importer's products to retail licensees in the same area, provided that nothing in this part prohibits the brewer or beer importer from designating more than one wholesale distributor to sell or distribute different brands of the same manufacturer to retail licensees in the same area;

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

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

(ii) after a wholesale distributor has exceeded a resale price increase recommended by a brewer or beer importer, the brewer or beer importer raises the price that it charges the wholesale distributor in an amount proportionately larger than the amount that it raised the wholesale distributor's prices initially when compared to the increase in the resale price that it recommended to the wholesale distributor; or

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

(e) cancel, terminate, discontinue, or fail to renew, except for just cause and in accordance with the current terms and standards established by the brewer or beer importer then equally applicable to all wholesalers, any agreement or contract, written or oral, or the franchise of any wholesaler existing on January 1, 1974, or entered into after that date to sell beer manufactured by the brewer or imported by the beer importer. A brewer or beer importer may, notwithstanding the preceding sentence, make reasonable classifications among wholesalers. If a brewer or beer importer cancels or terminates a wholesaler's franchise, the brewer or beer importer has the burden of proving that the classification was reasonable and not arbitrary. The provisions of 16-3-221 through 16-3-226 must be a part of any franchise, contract, agreement, or understanding, whether written or oral, between any wholesaler of beer licensed to do business in this state and any manufacturer or beer importer doing business with the licensed wholesaler just as though the provisions had been specifically agreed upon between the wholesaler and the manufacturer or beer importer. A wholesaler of beer licensed to conduct business in the state may not waive any of the protections or agree to any provision contrary to 16-3-221 through 16-3-226 by any conduct, including but not limited to the signing of any contract or agreement with terms contrary to those provisions.

(2) (a) Just cause as used in subsection (1)(e) means that the wholesaler failed to comply with the reasonable requirements placed on the wholesaler by the brewer or beer importer as a part of any written franchise, contract, or agreement between the parties.

(b) The sale or purchase or other restructuring of the brewer or beer importer by a successor in the manufacturing tier of the beer industry does not constitute just cause as that term is used in subsection (1)(e).

(c) For the purposes of this subsection (2), a successor means a person or entity who

replaces a brewer or beer importer with regard to the right to manufacture, sell, distribute, or import a brand or brands of beer regardless of the character or form of the succession. A successor is obligated to all of the terms and conditions of any franchise, contract, agreement, or understanding, whether written or oral, in effect on the date of succession. A successor has the right to contractually require its wholesalers to comply with operational standards of performance if the standards are uniformly established for all of the successor's wholesalers and conform to the requirements of this section.

History: En. 4-317.2 by Sec. 1, Ch. 322, L. 1974; Sec. 4-317.2, R.C.M. 1947; redes. 4-3-207 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-207; amd. Sec. 8, Ch. 19, L. 1985; amd. Sec. 1, Ch. 409, L. 1995; amd. Sec. 1, Ch. 130, L. 1997; amd. Sec. 2, Ch. 181, L. 2009.

16-3-222. Mandatory provisions of brewer-wholesaler or beer importer-wholesaler contracts, agreements, and franchises. All contracts, agreements, or franchises between a brewer and a wholesaler or a beer importer and a wholesaler must specifically set forth or contain the following:

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

(2) the agreed-upon brands of the brewer or beer importer to be sold by the wholesaler;

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

(4) a procedure for the review of alleged wholesaler deficiencies asserted by the brewer or beer importer to constitute just cause as provided in 16-3-221, including the submission in writing to the wholesaler by the brewer or beer importer of the deficiencies, if the deficiencies are susceptible of correction and if the wholesaler desires to correct the deficiencies, and that a reasonable period of time must be given the wholesaler for rectification of the deficiencies prior to any notice of intent to terminate;

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

(6) that all agreements between a brewer and a wholesaler are interpreted and governed by the laws of Montana and that those laws must be liberally construed to effectuate the remedial purpose of the protections of the beer franchise law contained in 16-3-221 through 16-3-226;

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

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

History: En. 4-317.3 by Sec. 2, Ch. 322, L. 1974; Sec. 4-317.3, R.C.M. 1947; redes. 4-3-208 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-208; amd. Sec. 9, Ch. 19, L. 1985; amd. Sec. 1, Ch. 194, L. 1999; amd. Sec. 3, Ch. 181, L. 2009.

16-3-223. Transfer of wholesaler's interest in business. A wholesaler may sell or transfer the business or an interest in the business to any person or to one or more members of the wholesaler's family or heirs or legatees, whether the wholesaler operates as an individual, a partnership, or corporation. However, the consent of the brewer or beer importer in writing is required for the transferee to continue as a wholesaler of the brewer or beer importer. The consent must consider the personal, financial, and managerial responsibilities and capabilities of the transferee, and the consent may not unreasonably be withheld.

History: En. 4-317.4 by Sec. 3, Ch. 322, L. 1974; Sec. 4-317.4, R.C.M. 1947; redes. 4-3-209 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-209; amd. Sec. 10, Ch. 19, L. 1985; amd. Sec. 190, Ch. 56, L. 2009.

16-3-224. Contractual or franchise relationship -- existence by actions. The doing or accomplishing of any of the following acts constitutes prima facie evidence of a contractual or franchise relationship between a licensed wholesaler and a brewer or beer importer within the contemplation of 16-3-221 through 16-3-226:

(1) the shipment, preparation for shipment, or acceptance of any order by any brewer or beer importer or its agent for any beer to a licensed wholesaler within this state;

(2) the payment by any licensed wholesaler within this state or the acceptance of payment by any brewer or beer importer or its agent for the shipment of an order of beer intended for sale within this state.

History: En. 4-317.5 by Sec. 4, Ch. 322, L. 1974; Sec. 4-317.5, R.C.M. 1947; redes. 4-3-210 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-210; amd. Sec. 11, Ch. 19, L. 1985.

16-3-225. Injunction to prevent franchise cancellation. Any court of competent jurisdiction may enjoin the cancellation or termination of a franchise or agreement between a wholesaler and a brewer or between a wholesaler and a beer importer at the instance of a wholesaler who is or would be adversely affected by the cancellation or termination. In granting an injunction, the court shall provide that the brewer or beer importer shall not supply the customers or territory of the wholesaler who is servicing the territory or customers through other distributors or means while the injunction is in effect.

History: En. 4-317.6 by Sec. 5, Ch. 322, L. 1974; Sec. 4-317.6, R.C.M. 1947; redes. 4-3-211 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-211; amd. Sec. 12, Ch. 19, L. 1985.

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

department. An exact copy of all agreements, contracts, or franchises between a brewer or beer importer and a wholesaler shall be filed with the department as a public document and shall be available to any of the parties to a dispute. The department, upon the instigation of any action in a court of record, shall file an exact certified copy of the agreement with the court for the court's consideration in determining any matter before it. Any contracts, agreements, or franchises not upon record with the department shall not be considered by any court as having any force or effect.

History: En. 4-317.7 by Sec. 6, Ch. 322, L. 1974; Sec. 4-317.7, R.C.M. 1947; amd. and redes. 4-3-212 by Sec. 55, Ch. 387, L. 1975; R.C.M. 1947, 4-3-212; amd. Sec. 13, Ch. 19, L. 1985.

16-3-227 through 16-3-229 reserved.

16-3-230. Beer required to be shipped to wholesaler. Except as provided in 16-3-214, all beer that is to be distributed in Montana, whether manufactured outside of or within the state of Montana, must be consigned to and shipped, either directly or via a licensed storage depot, to a licensed wholesaler and unloaded into the wholesaler's warehouse in Montana or subwarehouse in Montana. A brewer or beer importer may sell only to wholesalers from a storage depot in Montana and shall maintain records of all beer, including the name or kind received, on hand, and sold. The records may at any time be inspected by a representative of the department. The wholesaler shall distribute the beer from the warehouse or subwarehouse and shall keep records at the wholesaler's principal place of business of all beer, including the name or kind received, on hand, sold, and distributed. The records may be inspected by a representative of the department at any time.

History: En. Sec. 14, Ch. 106, L. 1933; amd. Sec. 5, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.23, R.C.M. 1935; amd. Sec. 1, Ch. 246, L. 1947; amd. Sec. 5, Ch. 166, L. 1951; amd. Sec. 1, Ch. 222, L. 1965; Sec. 4-318, R.C.M. 1947; amd. and redes. 4-4-103 by Sec. 56, Ch. 387, L. 1975; R.C.M. 1947, 4-4-103(part); amd. Sec. 2, Ch. 178, L. 1983; amd. Sec. 14, Ch. 19, L. 1985; amd. Sec. 1, Ch. 192, L. 1999.

16-3-231. Monthly report of wholesaler. Every wholesaler licensed to do business in this state shall, on or before the 15th day of each month, in the manner and form prescribed by the department, make an exact return to the department of the amount of beer manufactured in this state sold and delivered by the wholesaler and also of the amount of beer manufactured in places outside of the state sold and delivered by the wholesaler during the previous month and of the wholesaler's inventory. The department may at any time make an examination of the wholesaler's books and premises and otherwise check the accuracy of the return or check the alcoholic content of beer on hand.

History: En. Sec. 15, Ch. 106, L. 1933; re-en. Sec. 2815.24, R.C.M. 1935; Sec. 4-319, R.C.M. 1947; amd. and redes. 4-3-213 by Sec. 57, Ch. 387, L. 1975; R.C.M. 1947, 4-3-213; amd. Sec. 191, Ch. 56, L. 2009.

16-3-232. Beer sales by wholesaler. A wholesaler may sell and deliver beer purchased or acquired by the wholesaler to a wholesaler, retailer, or common carrier licensed under this code.

History: En. Sec. 17, Ch. 106, L. 1933; amd. Sec. 6, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.26, R.C.M. 1935; Sec. 4-321, R.C.M. 1947; amd. and redes. 4-3-214 by Sec. 59, Ch. 387, L. 1975; R.C.M. 1947, 4-3-214; amd. Sec. 192, Ch. 56, L. 2009.

16-3-233. Sales to public by wholesaler unlawful. A wholesaler may not give, sell, deliver, or distribute any beer purchased or acquired by the wholesaler to the public.

History: En. Sec. 18, Ch. 106, L. 1933; amd. Sec. 7, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.27, R.C.M. 1935; amd. Sec. 1, Ch. 274, L. 1973; Sec. 4-322, R.C.M. 1947; redes. 4-3-215 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-215; amd. Sec. 193, Ch. 56, L. 2009.

16-3-234. Consumption of beer on wholesalers' premises unlawful. It shall be unlawful for any wholesaler to sell, serve, or give away any beer to be consumed on such wholesaler's premises.

History: En. Sec. 19, Ch. 106, L. 1933; re-en. Sec. 2815.28, R.C.M. 1935; Sec. 4-323, R.C.M. 1947; redes. 4-3-216 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-216.

16-3-235. Carriers' reports of beer transported. Every railroad and every motor carrier transporting beer manufactured out of this state from points without this state and delivering the same to points within this state shall, if requested by the department, on or before the 15th day of each month, make an exact return to the department of the amount of such beer so transported and delivered by such railroad or motor carrier during the previous month and shall state in such return the name and address of the consignor, the name and address of the consignee, the date of delivery, and the amount delivered. A carrier shall retain for 30 months all pertinent and relevant records necessary for the preparation of this report and any other information the department may require.

History: En. Sec. 4, Ch. 220, L. 1939; Sec. 4-326, R.C.M. 1947; amd. and redes. 4-3-218 by Sec. 61, Ch. 387, L. 1975; R.C.M. 1947, 4-3-218; amd. Sec. 1, Ch. 207, L. 1991.

16-3-236 through 16-3-240 reserved.

16-3-241. Furnishing of fixtures or interior advertising matter to retailers by brewers, beer importers, and wholesalers unlawful -- exceptions. (1) (a) It is unlawful for any brewer, beer importer, or wholesaler to lease, furnish, give, or pay for any premises, furniture, fixtures, equipment, or any other advertising matter or any other property to a retail licensee, used or to be used in the dispensation of beer in and about the interior of the place of business of the licensed retailer, or to furnish, give, or pay for any repairs, improvements, or painting on or within the premises.

(b) It is lawful for a brewer, beer importer, or wholesaler to furnish, give, or loan to a

retail licensee:

(i) bottle openers, can openers, trays, tap handles, menus, apparel, coasters, glassware, cups, napkins, or other functional advertising matter that does not exceed \$300 in value in any 1 calendar year to any 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, 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 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.

History: En. Sec. 18, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.51, R.C.M. 1935; amd. Sec. 10, Ch. 166, L. 1951; amd. Sec. 1, Ch. 51, L. 1955; amd. Sec. 1, Ch. 110, L. 1959; amd. Sec. 1, Ch. 49, L. 1967; Sec. 4-349, R.C.M. 1947; amd. and redes. 4-3-219 by Sec. 74, Ch. 387, L. 1975; R.C.M. 1947, 4-3-219; amd. Sec. 1, Ch. 568, L. 1981; amd. Sec. 15, Ch. 19, L. 1985; amd. Sec. 1, Ch. 229, L. 1985; amd. Sec. 1, Ch. 247, L. 2005.

16-3-242. Financial interest in retailers prohibited. A brewer, 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, 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, beer importer, or wholesaler is considered to have a financial interest within the meaning of this section if:

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

(2) the brewer, 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

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

History: En. 4-3-220 by Sec. 75, Ch. 387, L. 1975; R.C.M. 1947, 4-3-220; amd. Sec. 16, Ch. 19, L. 1985; amd. Sec. 194, Ch. 56, L. 2009.

16-3-243. Seven-day credit limitation. No sale or delivery of beer shall be made to any retail licensee except for cash paid within 7 days after the delivery thereof, and in no event shall any brewer, beer importer, or wholesaler extend more than 7 days' credit on account of such beer to a retail licensee, nor shall any retail licensee accept or receive delivery of such beer without agreement to pay in cash therefor within 7 days from delivery thereof. A correctly dated check which is honored upon presentment shall be considered as cash within the meaning of this code. Any extension or acceptance of credit in violation hereof shall be regarded and construed as rendering or receiving financial assistance, and the licenses of brewers, beer importers, wholesalers, and retail licensees involved in violation hereof shall be suspended or revoked, as determined by the department in its discretion.

History: En. 4-3-221 by Sec. 76, Ch. 387, L. 1975; R.C.M. 1947, 4-3-221; amd. Sec. 17, Ch. 19, L. 1985.

16-3-244. Beer advertising limitations. It is lawful to advertise beer, as defined and regulated, subject to the restrictions on brewers and beer importers contained in 16-3-241 of this code and subject to the following restrictions on retailers. A retail licensee may not display or permit to be displayed on the exterior portion or surface of the retailer's place of business or on the exterior portion or surface of any building of which the place of business is a part or on any premises adjacent to the place of business, whether any of the premises are owned or leased by the retailer, any sign, poster, or advertisement bearing the name, brand name, trade name, trademark, or other designation indicating the manufacturer, brewer, beer importer, wholesaler, or place of manufacture of any beer, unless it is on a marquee, board, or other space used for temporary advertisements and is not displayed for more than 10 days per display period.

History: En. Sec. 11, Ch. 166, L. 1951; Sec. 4-358, R.C.M. 1947; amd. and redes. 4-3-222 by Sec. 77, Ch. 387, L. 1975; R.C.M. 1947, 4-3-222; amd. Sec. 18, Ch. 19, L. 1985; amd. Sec. 1, Ch. 223, L. 1985; amd. Sec. 3, Ch. 197, L. 2009.

Part 3

Retail Sales Restrictions

16-3-301. Unlawful purchases, transfers, sales, or deliveries -- presumption of legal age. (1) It is unlawful for a licensed retailer to purchase or acquire beer or wine from anyone except a brewery, winery, or wholesaler licensed under the provisions of this code.

(2) It is unlawful for a licensed retailer to transport beer or wine from one licensed premises or other facility to any other licensed premises owned by the licensee.

(3) It is unlawful for a licensed wholesaler to purchase beer or wine from anyone except a brewery, winery, or wholesaler licensed or registered under this code.

(4) It is unlawful for any licensee, a licensee's employee, or any other person to sell, deliver, or give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to:

- (a) any person under 21 years of age; or
- (b) any person actually, apparently, or obviously intoxicated.

(5) Any person under 21 years of age or any other person who knowingly misrepresents the person's qualifications for the purpose of obtaining an alcoholic beverage from the licensee is equally guilty with the licensee and, upon conviction, is subject to the penalty provided in 45-5-624. However, nothing in this section may be construed as authorizing or permitting the sale of an alcoholic beverage to any person in violation of any federal law.

(6) All licensees must display in a prominent place in their premises a placard, issued by the department, stating fully the consequences for violations of the provisions of this code by persons under 21 years of age.

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

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

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

(c) the sale was made in good faith and in reasonable reliance upon the representation and appearance of the purchaser that the purchaser was of legal age to purchase alcoholic beverages. (See compiler's comments for contingent termination of certain text.)

History: (1), (2)En. Sec. 31, Ch. 106, L. 1933; amd. Sec. 11, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.33, R.C.M. 1935; amd. Sec. 7, Ch. 166, L. 1951; amd. Sec. 2, Ch. 240, L. 1971; amd. Sec. 3, Ch. 94, L. 1973; Sec. 4-330, R.C.M. 1947; amd. and redes. 4-3-301 by Sec. 64, Ch. 387, L. 1975; Sec. 4-3-301, R.C.M. 1947; (3)En. Sec. 11, Ch. 84, L. 1937; amd. Sec. 3, Ch. 221, L. 1939; amd. Sec. 1, Ch. 71, L. 1953; amd. Sec. 4, Ch. 240, L. 1971; amd. Sec. 5, Ch. 94, L. 1973; Sec. 4-413, R.C.M. 1947; amd. and redes. 4-3-306 by Sec. 91, Ch. 387, L. 1975; Sec. 4-3-306, R.C.M. 1947; (4)En. Sec. 38, Ch. 84, L. 1937; amd. Sec. 2, Ch. 226, L. 1947; amd. Sec. 1, Ch. 161, L. 1951; amd. Sec. 5, Ch. 240, L. 1971; amd. Sec. 6, Ch. 94, L. 1973; Sec. 4-439, R.C.M. 1947; amd. and redes. 4-6-404 by Sec. 104, Ch. 387, L. 1975; Sec. 4-6-404, R.C.M. 1947; R.C.M. 1947, 4-3-301, 4-3-306, 4-6-404(part); amd. Sec. 1, Ch. 186, L. 1979; amd. Sec. 2, Ch. 61, L. 1987; amd. Sec. 1, Ch. 217, L. 1987; (6)En. Sec. 2, Ch. 233, L. 1993; amd. Sec. 1, Ch. 498, L. 2001; amd. Sec. 2, Ch. 501, L. 2007; amd. Sec. 3, Ch. 516, L. 2007.

16-3-302. Sale by retailer for consumption on premises. (1) It is lawful for a licensed retailer to sell and serve beer, either on draught or in containers, to the public to be consumed on the premises of the retailer.

(2) It is lawful for a licensee who has an all-beverages license that the licensee uses at a golf course to sell alcoholic beverages and for a licensee who has a golf course beer and wine license issued under 16-4-109 to sell beer and wine:

(a) in the building or other structural premises constituting the clubhouse or primary indoor recreational quarters of the golf course; and

(b) at any place within the boundaries of the golf course, from a portable satellite vehicle

or other movable satellite device that is moved from place to place, whether inside or outside of a building or other structure.

(3) It is lawful to consume alcoholic beverages sold as provided in subsection (2) at any place within the boundaries of the golf course, whether inside or outside of a building or other structure.

History: En. Sec. 29, Ch. 106, L. 1933; re-en. Sec. 2815.31, R.C.M. 1935; Sec. 4-328, R.C.M. 1947; amd. and redes. 4-3-302 by Sec. 63, Ch. 387, L. 1975; R.C.M. 1947, 4-3-302; amd. Sec. 1, Ch. 646, L. 1987; amd. Sec. 195, Ch. 56, L. 2009.

16-3-303. Sale of beer by retailer for consumption off premises. It shall be lawful for such retailer to sell or furnish beer to the public with intent that such beer shall be taken away from the premises of such retailer for consumption off the premises of such retailer.

History: En. Sec. 30, Ch. 106, L. 1933; amd. Sec. 10, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.32, R.C.M. 1935; amd. Sec. 1, Ch. 177, L. 1961; Sec. 4-329, R.C.M. 1947; redes. 4-3-303 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-303.

16-3-304. Closing hours for licensed retail establishments. Except as provided in 16-3-305, all licensed establishments wherein alcoholic beverages are sold, offered for sale, or given away at retail shall be closed each day between 2 a.m. and 8 a.m.; provided, however, that when any municipal incorporation has by ordinance further restricted the hours of sale of alcoholic beverages, then the sale of alcoholic beverages is prohibited within the limits of any such city or town during the time such sale is prohibited by this code and in addition thereto during the hours that it is prohibited by such ordinance. During such hours all persons except the alcoholic beverage licensee and employees of such licensed establishment shall be excluded from the licensed premises.

History: En. Sec. 1, Ch. 161, L. 1943; amd. Sec. 1, Ch. 162, L. 1959; amd. Sec. 1, Ch. 242, L. 1973; Sec. 4-303, R.C.M. 1947; amd. and redes. 4-3-304 by Sec. 46, Ch. 387, L. 1975; R.C.M. 1947, 4-3-304; amd. Sec. 1, Ch. 347, L. 1985.

16-3-305. Sale of alcoholic beverages during closed hours unlawful -- lawful business need not be closed. During the hours when the licensed establishments where alcoholic beverages are sold at retail are required by this code to be closed, it shall be unlawful to sell, offer for sale, give away, consume, or allow the consumption of alcoholic beverages. When an establishment licensed to sell alcoholic beverages is operated in conjunction with a hotel, restaurant, bus depot, railway terminal, grocery store, pharmacy, or other lawful business other than that of the sale of alcoholic beverages, then such other lawful business need not be closed.

History: En. Sec. 3, Ch. 161, L. 1943; Sec. 4-304, R.C.M. 1947; amd. and redes. 4-3-305 by Sec. 47, Ch. 387, L. 1975; R.C.M. 1947, 4-3-305; amd. Sec. 2, Ch. 347, L. 1985.

16-3-306. Proximity to churches and schools restricted. (1) Except as provided in subsections (2) through (4), a retail license may not be issued pursuant to this code to any

business or enterprise whose premises are within 600 feet of and on the same street as a building used exclusively as a church, synagogue, or other place of worship or as a school other than a commercially operated or postsecondary school. This distance must be measured in a straight line from the center of the nearest entrance of the place of worship or school to the nearest entrance of the licensee's premises. This section is a limitation upon the department's licensing authority.

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

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

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

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

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

History: En. Sec. 13, Ch. 84, L. 1937; Sec. 4-415, R.C.M. 1947; amd. and redes. 4-4-107 by Sec. 92, Ch. 387, L. 1975; R.C.M. 1947, 4-4-107; amd. Sec. 1, Ch. 152, L. 1981; amd. Sec. 1, Ch. 662, L. 1983; amd. Sec. 196, Ch. 56, L. 2009.

16-3-307. Sale of liquor at less than posted price unlawful. It is unlawful for any licensee under the provisions of this code to resell any liquor purchased by the licensee from an agency liquor store or the state of Montana for a sum less than the posted price established by the department and paid by the licensee.

History: En. Sec. 19, Ch. 84, L. 1937; Sec. 4-421, R.C.M. 1947; amd. and redes. 4-3-307 by Sec. 98, Ch. 387, L. 1975; R.C.M. 1947, 4-3-307; amd. Sec. 30, Ch. 530, L. 1995.

16-3-308. Refilling of liquor bottles prohibited. (1) No person, or the agent or employee of such person, who sells or offers liquor for sale may:

(a) place in any liquor bottle any liquor whatsoever other than that contained in such bottle at the time of stamping by the federal government;

(b) possess any liquor bottle in which any liquor has been placed in violation of subsection (1)(a);

(c) by the addition of any substance whatsoever to any liquor bottle, in any manner alter or increase any portion of the original contents contained in such bottle at the time of stamping by the federal government; or

(d) possess any liquor bottle, any portion of the contents of which has been altered or increased in violation of subsection (1)(c).

(2) This section does not prohibit any reuse of liquor bottles which is permitted under laws or regulations of the federal government.

History: En. 4-3-308 by Sec. 117, Ch. 387, L. 1975; R.C.M. 1947, 4-3-308.

16-3-309. Sales prohibited by ordinance. (1) An incorporated city may enact an

ordinance defining certain areas in its incorporated limits where alcoholic beverages may or may not be sold.

(2) A county may enact an ordinance or resolution defining certain areas in the county, not within the incorporated limits of a city, where alcoholic beverages may or may not be sold.

(3) In enacting such an ordinance or resolution, the county or city may provide that the provisions of 16-3-306(1) do not apply within the jurisdictional area of the ordinance or resolution. If a county or city has supplanted the provisions of 16-3-306(1), upon request of the department the governing body of the county or city must certify to the department whether or not the person or individual identified in the request may lawfully sell alcoholic beverages under the terms of the ordinance or resolution. The department is bound by the determination set forth in the certification.

(4) No county or incorporated city may by ordinance restrict the number of licenses that the department may issue.

History: En. Sec. 14, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.36, R.C.M. 1935; amd. Sec. 1, Ch. 225, L. 1947; amd. Sec. 1, Ch. 165, L. 1949; amd. Sec. 1, Ch. 55, L. 1955; amd. Sec. 1, Ch. 205, L. 1959; amd. Sec. 1, Ch. 271, L. 1965; amd. Sec. 1, Ch. 31, L. 1974; Sec. 4-333, R.C.M. 1947; amd. and redes. 4-4-201 by Sec. 66, Ch. 387, L. 1975; amd. Sec. 5, Ch. 496, L. 1977; R.C.M. 1947, 4-4-201(part); amd. Sec. 2, Ch. 662, L. 1983.

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

History: En. 4-4-203 by Sec. 80, Ch. 387, L. 1975; R.C.M. 1947, 4-4-203; amd. Sec. 20, Ch. 68, L. 1987.

16-3-311. Suitable premises for licensed retail establishments. (1) A licensed retailer may use a part of a building as premises licensed for on-premises consumption of alcoholic beverages. The premises must be separated from the rest of the building by permanent walls but may have inside access during lawful hours of operation to the rest of the building even if the businesses or uses in the other part of the building are unrelated to the operation of the premises in which the alcoholic beverages are served.

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

History: En. Sec. 1, Ch. 203, L. 1993.

16-3-312 through 16-3-320 reserved.

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

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

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

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

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

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

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

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

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

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

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

History: En. Sec. 1, Ch. 441, L. 2005.

16-3-322. Recordkeeping. (1) A licensee, at the time of the sale of a keg, shall record the following:

(a) the purchaser's name, address, and date of birth and the number of the purchaser's driver's license, state-issued or military identification card, tribal identification card, or valid United States or foreign passport;

(b) the date of purchase;

(c) the name of the clerk making the sale; and

(d) the purchaser's signature and date of purchase.

(2) The licensee shall maintain the record for not less than 45 days after the date of the sale.

(3) A licensee who maintains the records required by this section shall make the records available during regular business hours for inspection by law enforcement pursuant to 16-3-323.

History: En. Sec. 2, Ch. 441, L. 2005; amd. Sec. 16, Ch. 44, L. 2007; amd. Sec. 1, Ch.

180, L. 2007.

16-3-323. Enforcement. (1) A law enforcement officer may not request information on file about the original purchaser of a keg unless in connection with a violation of 16-6-305, 45-5-623, or 45-5-624(4). The officer shall return any recovered keg to the licensee and verify the information on file about the original purchaser.

(2) The deposit on the keg and any related deposit to the licensee must be forfeited by the original purchaser.

History: En. Sec. 3, Ch. 441, L. 2005.

16-3-324. Violations. (1) A person who knowingly fails to attach a keg tag as provided in 16-3-321 is guilty of a misdemeanor and shall be fined an amount not to exceed \$100.

(2) A person may not remove, deface, or damage the identification on a keg purposely to make it unreadable. A person convicted of purposely removing, defacing, or damaging a tag shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for not more than 6 months, or both.

History: En. Sec. 4, Ch. 441, L. 2005; amd. Sec. 17, Ch. 44, L. 2007.

Part 4

Sale of Table Wine

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

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

(3) This part governs wineries, table wine distributors, and wine retailers.

History: En. Sec. 1, I.M. No. 81, app. Nov. 7, 1978; amd. Sec. 1, Ch. 699, L. 1979; amd. Sec. 21, Ch. 68, L. 1987; amd. Sec. 9, Ch. 314, L. 1991; amd. Sec. 31, Ch. 530, L. 1995; amd. Sec. 3, Ch. 501, L. 2007.

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

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

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

seized by any peace officer or representative of the department and may be confiscated in the manner as provided for the confiscation of intoxicating liquor.

History: En. Sec. 4, I.M. 81, app. Nov. 7, 1978; amd. Sec. 3, Ch. 699, L. 1979; amd. Sec. 32, Ch. 530, L. 1995; amd. Sec. 4, Ch. 501, L. 2007.

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

(a) another table wine distributor, retailer, or common carrier that holds a license issued by the department of revenue; and
(b) an agency liquor store.

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

History: En. Sec. 5, I.M. 81, app. Nov. 7, 1978; amd. Sec. 4, Ch. 699, L. 1979; amd. Sec. 3, Ch. 629, L. 1987; amd. Sec. 33, Ch. 530, L. 1995.

16-3-404. Monthly report of table wine distributor and retailer. (1) Each licensed table wine distributor shall, on or before the 15th day of each month, make an exact return to the department of revenue reporting the amount of table wine purchased or acquired by the distributor during the previous month, the amount of table wine sold and delivered by the distributor during the previous month, and the amount of inventory on hand in the manner and form prescribed by the department. The department has the right at any time to make an examination of the table wine distributor's books and premises and otherwise check the accuracy of the return or check the alcoholic content of table wine that the distributor may have on hand.

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

History: En. Sec. 6, I.M. 81, app. Nov. 7, 1978; amd. Sec. 5, Ch. 501, L. 2007.

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

History: En. Sec. 7, I.M. No. 81, app. Nov. 7, 1978; amd. Sec. 2, Ch. 207, L. 1991.

16-3-406. Financial interest in retailers prohibited. (1) A winery or table wine 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 by any retailer, and a winery or table wine distributor may not be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer.

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

- (a) the winery or table wine distributor owns or holds any interest in or a lien or mortgage against the retailer or the retailer's premises; or
- (b) the winery or table wine distributor is under any contract with a retailer concerning future purchases or the sale of merchandise by one from or to the other; or
- (c) the table wine distributor extends more than 7 days' credit to a retail licensee or furnishes to any retail licensee any furniture, fixtures, or equipment to be used in the dispensation or sale of table wine; or
- (d) any retailer holds an interest as a stockholder, or otherwise, in the business of the table wine distributor.

History: En. Sec. 8, I.M. No. 81, app. Nov. 7, 1978; amd. Sec. 197, Ch. 56, L. 2009.

16-3-407 through 16-3-410 reserved.

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

- (a) import in bulk, bottle, produce, blend, store, transport, or export wine it produces;
- (b) sell wine it produces at wholesale to wine distributors;
- (c) sell wine it produces at retail at the winery directly to the consumer for consumption on or off the premises;
- (d) provide, without charge, wine it produces for consumption at the winery;
- (e) purchase from the department or its licensees brandy or other distilled spirits for fortifying wine it produces;
- (f) obtain a special event permit 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; or
- (h) sell wine at the winery to a licensed retailer who presents the retailer's license or a photocopy of the license.

(2) (a) A winery licensed pursuant to 16-4-107 may sell and deliver wine produced by the winery directly to licensed retailers 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 cases a year;

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

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

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

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

(c) If a winery uses a common carrier for delivery of the wine to licensed table wine distributors and retailers, 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 or licensed retailer who is in good standing; and

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

(d) 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, on or before the 15th day of each month, in the manner and form prescribed by the department, make a return reporting the amount of wine that it shipped in the state during the preceding month, names and addresses of consignees or retailers, and other information that the department may determine to be necessary to ensure that distribution of table wines within this state conforms to the requirements of this code.

History: En. Sec. 1, Ch. 566, L. 1987; amd. Sec. 34, Ch. 530, L. 1995; amd. Sec. 1, Ch. 163, L. 2001; amd. Sec. 6, Ch. 501, L. 2007.

16-3-412 through 16-3-414 reserved.

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

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

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

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

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

History: En. Sec. 1, Ch. 314, L. 1991.

16-3-416. Table wine distributor provisions. (1) A supplier or table wine distributor

must have a written agreement of distributorship that provides for purchase of the supplier's products from the supplier by the table wine distributor.

(2) An agreement of distributorship must provide that:

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

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

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

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

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

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

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

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

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

History: En. Sec. 3, Ch. 314, L. 1991; amd. Sec. 1, Ch. 226, L. 1995; amd. Sec. 2, Ch. 194, L. 1999.

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

- (a) maintain the financial and competitive capability to efficiently and effectively distribute a supplier's products;
 - (b) maintain the quality and integrity of a supplier's products in a manner set forth by the supplier;
 - (c) exert the table wine distributor's best efforts to sell the supplier's wines;
 - (d) merchandise the products in retail stores as agreed between the table wine distributor and the supplier; and
 - (e) give a supplier not less than 60 days' written notice of the table wine distributor's intent to terminate an agreement of distributorship.
- (2) As provided in 16-3-416, a supplier may terminate an agreement of distributorship based on a deficiency or other good cause by giving 60 days' prior written notice to the table wine distributor.
- (3) A supplier may terminate an agreement of distributorship immediately and without notice if the reason for the termination is insolvency, assignment for the benefit of creditors, bankruptcy, or revocation or suspension for more than 14 days of a license to operate that is required by the state or the federal government.

History: En. Sec. 4, Ch. 314, L. 1991.

16-3-418. Dual appointments -- equal support -- alternate supplier -- dock sales.

- (1) (a) A supplier may appoint one or more table wine distributors to distribute its table wines in a specified territory. If the supplier appoints two or more table wine distributors to sell its table wines in the same or overlapping territories, the supplier shall offer the same prices, delivery, terms, and promotional support to each table wine distributor.
- (b) A supplier may not appoint more than one table wine distributor to distribute its hard cider in a specified territory.
- (c) For the purposes of this subsection (1), "table wine" has the meaning assigned in 16-1-106, but does not include hard cider.
- (2) (a) The holder of an all-beverages license under chapter 4, part 2, may, upon presentation of the license or a photocopy of the license, personally obtain from any distributor's warehouse a quantity of table wine that the licensee may agree to buy and that the distributor may agree to sell.
- (b) The holder of a license that permits on-premises consumption of alcoholic beverages under 16-4-401(2) may, upon presentation of the license or a photocopy of the license, personally or through an employee, obtain from a winery, as provided in 16-3-411(1)(h), a quantity of table wine that the licensee may agree to buy and that the winery may agree to sell.

History: En. Sec. 5, Ch. 314, L. 1991; amd. Sec. 4, Ch. 399, L. 1997; amd. Sec. 2, Ch. 163, L. 2001; amd. Sec. 7, Ch. 501, L. 2007.

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

- (1) coerce, induce, or attempt to coerce or induce a table wine distributor to engage in an illegal act or course of conduct;
- (2) require a table wine distributor to accept delivery of a product or other item or commodity that was not ordered by the wine distributor;

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

History: En. Sec. 2, Ch. 314, L. 1991; amd. Sec. 2, Ch. 226, L. 1995.

16-3-420. Applicability. Within 60 days after October 1, 1991, or within 60 days after the execution of a new agreement by the parties, whichever is later, an agreement of distributorship must be reduced to writing and an exact copy of the agreement must be filed with the department as a public document and must be available to any of the parties to a dispute. Upon filing with the department, the agreement becomes subject to the provisions of 16-1-106, 16-3-401, and 16-3-415 through 16-3-421.

History: En. Sec. 6, Ch. 314, L. 1991.

16-3-421. Injunction. A person injured by a violation of this part may bring a civil action in a court of competent jurisdiction to enjoin further violations in addition to other remedies provided by law.

History: En. Sec. 7, Ch. 314, L. 1991.

CHAPTER 4

LICENSE ADMINISTRATION

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Part 1

Beer and Wine Licenses

16-4-101. Applications for sale, import, or manufacture of beer -- qualifications of applicant. (1) Any person desiring to manufacture, 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 such application the license fee prescribed. The department shall require of such applicant satisfactory evidence that the applicant is of good moral character and a law-abiding person.

(2) Upon being satisfied, from such application or otherwise, that such applicant is qualified, the department shall issue such license to such person, which license shall be at all times prominently displayed in the place of business of such applicant.

(3) If the department shall find that such applicant is not qualified, no license shall be granted and such license fee shall be returned.

History: En. Sec. 6, Ch. 106, L. 1933; re-en. Sec. 2815.15, R.C.M. 1935; Sec. 4-310, R.C.M. 1947; amd. and redes. 4-4-101 by Sec. 50, Ch. 387, L. 1975; R.C.M. 1947, 4-4-101; amd. Sec. 19, Ch. 19, L. 1985.

16-4-102. Right of brewers to maintain and operate storage depots -- annual licenses. It shall be lawful for any brewer duly licensed to manufacture beer, upon the payment to the department of an annual license fee in addition to all other fees and taxes required to be paid by such brewer for each storage depot, to own, lease, maintain, and operate, in any city or town in the state of Montana, a building for use as a storage depot, equipped with refrigeration and cooling apparatus, for receiving, handling, and storing beer therein and distributing and selling beer therefrom, as brewers are permitted to sell and distribute beer under the provisions of this code.

History: En. Sec. 6, Ch. 166, L. 1951; Sec. 4-317.1, R.C.M. 1947; amd. and redes. 4-4-102 by Sec. 54, Ch. 387, L. 1975; R.C.M. 1947, 4-4-102; amd. Sec. 3, Ch. 178, L. 1983.

16-4-103. Wholesalers' licenses -- application and issuance -- subwarehouses -- imported beer handled through warehouse or subwarehouse -- wine storage. (1) Any person desiring to sell and distribute beer as a wholesaler shall apply to the department for a license and tender with the application the required license fee. The department shall issue wholesale licenses to qualified applicants in accordance with the provisions of this code. A license must be prominently displayed at all times in the place of business of the wholesaler.

(2) An applicant shall maintain a fixed place of business, sufficient capital, and the facilities, storehouse, receiving house, or warehouse for the receiving of, storage, handling, and moving of beer in large and jobbing quantities for distribution and sale in original packages to other licensed wholesalers or licensed retailers. Each wholesaler is entitled to only one wholesale license, which must be issued for the wholesaler's principal place of business in Montana. Duplicate licenses may be issued for the wholesaler's subwarehouses in Montana. The duplicate licenses must be prominently displayed at all times at the subwarehouses.

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

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

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

History: En. Sec. 14, Ch. 106, L. 1933; amd. Sec. 5, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.23, R.C.M. 1935; amd. Sec. 1, Ch. 246, L. 1947; amd. Sec. 5, Ch. 166, L. 1951; amd. Sec. 1, Ch. 222, L. 1965; Sec. 4-318, R.C.M. 1947; amd. and redes. 4-4-103 by Sec. 56, Ch. 387, L. 1975; R.C.M. 1947, 4-4-103(part); amd. Sec. 1, Ch. 359, L. 1981; amd. Sec. 6, Ch. 61, L. 1987; amd. Sec. 1, Ch. 143, L. 2005.

16-4-104. Beer retailer's license -- application and issuance -- check of alcoholic content by department. (1) Any person desiring to possess and have beer for the purpose of retail sale under the provisions of this code shall first apply to the department for a permit to do so and submit with the application the license fee.

(2) Upon being satisfied, from the application or otherwise, that the applicant is qualified, the department shall issue a license to the person. The license must at all times be prominently displayed in the place of business of the person.

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

(4) The department may, at any time, examine the books of account and the premises of any licensed retailer and otherwise check the retailer's methods of conducting business and the alcoholic content of the beer kept for sale.

(5) A person may not sell beer at retail without a valid license issued under this code.

History: En. Sec. 28, Ch. 106, L. 1933; amd. Sec. 9, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.30, R.C.M. 1935; Sec. 4-327, R.C.M. 1947; amd. and redes. 4-4-104 by Sec. 62, Ch. 387, L. 1975; R.C.M. 1947, 4-4-104; amd. Sec. 198, Ch. 56, L. 2009.

16-4-105. Limit on retail beer licenses -- wine license amendments -- limitation on use of license -- exceptions. (1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person, firm, or corporation that is approved by the department as a person, firm, or corporation qualified to sell beer, except that:

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

(i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of the towns, not more than one retail beer license;

(ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of the cities or towns, one retail beer license for every 500 inhabitants;

(iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from

the corporate limits of the cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail beer licenses for the next 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail beer license for every additional 2,000 inhabitants;

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

(c) retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110 that are in excess of the limitations in this section are renewable, but new licenses may not be issued in violation of the limitations;

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

(e) the number of retail beer licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits or for use at premises situated within any unincorporated area must be determined by the department in its discretion, except that a retail beer license may not be issued for any premises so situated unless the department determines that the issuance of the license is required by public convenience and necessity pursuant to 16-4-203. Subsection (3) does not apply to licenses issued under this subsection (1)(e). The owner of the license whose premises are situated outside of an incorporated city or town may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5, part 3, 5, or 6.

(2) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The department may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared-food business. Except for beer and wine licenses issued pursuant to 16-4-420, a person holding a beer and wine license may sell wine for consumption on or off the premises. Nonretention of the beer license, for whatever reason, means automatic loss of the wine amendment license.

(3) (a) Except as provided in subsections (1)(e) and (3)(b), a license issued pursuant to this section after October 1, 1997, must have a conspicuous notice that the license may not be used for premises where gambling is conducted.

(b) Subsection (3)(a) does not apply to licenses issued under this section if the department received the application before October 1, 1997. For the purposes of this subsection (3)(b), the application is received by the department before October 1, 1997, if the application's mail cover is postmarked by the United States postal service before October 1, 1997, or if the application was consigned to a private courier service for delivery to the department before October 1, 1997. An applicant who consigns an application to a private courier shall provide to the department, upon demand, documentary evidence satisfactory to the department that the application was consigned to a private courier before October 1, 1997.

(4) A license issued under subsection (1)(e) that becomes located within 5 miles of an incorporated city or town because of annexation after April 15, 2005, may not be transferred to another location within the city quota area for 5 years from the date of the annexation.

History: En. Sec. 14, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.36, R.C.M. 1935; amd. Sec. 1, Ch. 225, L. 1947; amd. Sec. 1, Ch. 165, L. 1949; amd. Sec. 1, Ch. 55, L. 1955; amd. Sec. 1, Ch. 205, L. 1959; amd. Sec. 1, Ch. 271, L. 1965; amd. Sec. 1, Ch. 31, L. 1974; Sec. 4-333, R.C.M. 1947; amd. and redes. 4-4-201 by Sec. 66, Ch. 387, L. 1975; amd. Sec. 5, Ch. 496, L. 1977; R.C.M. 1947, 4-4-201(1), (3), (4); amd. Sec. 12, I.M. No. 81, app. Nov. 7, 1978; amd. Sec. 1, Ch. 25, L. 1981; amd. Sec. 1, Ch. 86, L. 1981; amd. Sec. 2, Ch. 519, L. 1981; amd. Sec. 1, Ch. 50, L. 1983; amd. Sec. 2, Ch. 595, L. 1983; amd. Sec. 3, Ch. 731, L. 1985; amd. Sec. 2, Ch. 228, L. 1995; amd. Sec. 35, Ch. 530, L. 1995; amd. Sec. 6, Ch. 465, L. 1997; amd. Sec. 1, Ch. 528, L. 1997; amd. Sec. 23, Ch. 7, L. 2001; amd. Sec. 1, Ch. 267, L. 2005.

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

History: En. Sec. 45, Ch. 106, L. 1933; amd. Sec. 15, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.44, R.C.M. 1935; amd. Sec. 2, Ch. 246, L. 1947; amd. Sec. 1, Ch. 122, L. 1963; Sec. 4-341, R.C.M. 1947; amd. and redes. 4-4-401 by Sec. 68, Ch. 387, L. 1975; amd. Sec. 10, Ch. 496, L. 1977; R.C.M. 1947, 4-4-401(1)(b); amd. Sec. 13, I.M. No. 81, app. Nov. 7, 1978.

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

(b) A winery located in Montana that is licensed to do business in the state shall, each quarter and in the manner and form prescribed by the department, report to the department the

amount of wine manufactured or imported by the winery in the previous quarter and the winery's inventory. The department may at any time examine a winery's books.

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

History: En. Sec. 3, I.M. No. 81, app. Nov. 7, 1978; amd. Sec. 70, Ch. 575, L. 1981; amd. Sec. 3, Ch. 163, L. 2001; amd. Sec. 8, Ch. 501, L. 2007.

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

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

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

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

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

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

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

History: En. Sec. 4, I.M. No. 81, app. Nov. 7, 1978; amd. Sec. 3, Ch. 699, L. 1979; amd.

Sec. 2, Ch. 359, L. 1981; amd. Sec. 7, Ch. 61, L. 1987; amd. Sec. 23, Ch. 68, L. 1987; amd. Sec. 199, Ch. 56, L. 2009.

16-4-109. Golf course beer and wine license. (1) Upon application, the department of revenue shall issue a retail beer and wine license, to be known as a golf course beer and wine license, for use at a golf course. If the owner of the golf course is not the state, a unit of the university system, or a local government, to qualify for a license under this section:

- (a) (i) the golf course must consist of at least 9 holes and 2,500 lineal yards;
- (ii) the golf course must be either within the limits of an incorporated city or town or within 5 miles of the limits of an incorporated city or town;
- (iii) the applicant for a license under this section may not have held a beer and wine or all-beverages license within 12 months of the date of application; and
- (iv) the applicant shall pay an initial application fee of \$20,000; or
- (b) (i) the golf course must consist of at least 9 holes and 2,500 lineal yards;
- (ii) the governing body of the golf course must be incorporated under section 501(c)(3) of the Internal Revenue Code;
- (iii) the golf course must be within 5 miles of the limits of an incorporated city or town; and
- (iv) the applicant for a license under this section may not have held a beer and wine or all-beverages license within 12 months of the date of application.

(2) The application must be made by the person or entity that owns and operates the golf course. If the owner of the golf course is not the state, a unit of the university system, or a local government, the owner must be approved by the department as provided in this chapter for the issuance of beer licenses.

(3) (a) Except as provided in subsection (3)(c), a golf course beer and wine license and all retail beer and wine sales under the license are subject to all statutes and rules governing a retail beer license with a wine license amendment.

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

- (i) retail beer and wine sales may be made only during the time of the year that the golf course is open for business, and sales on days during that time must stop by 1 hour after sunset;
- (ii) the seating capacity of the premises where the beer and wine are sold may not exceed 75 persons; and
- (iii) gaming or gambling is not authorized under the license issued under this section.

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

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

History: En. Sec. 1, Ch. 537, L. 1983; amd. Sec. 1, Ch. 117, L. 1985; amd. Sec. 1, Ch. 458, L. 2001; amd. Sec. 1, Ch. 605, L. 2003.

16-4-110. Beer license for tribal alcoholic beverages licensee or enlisted personnel, noncommissioned officers', or officers' club. (1) Upon application and qualification, the department shall issue a license to sell beer for consumption on the premises to:

(a) a tribal alcoholic beverages licensee who operates the business within the exterior boundaries of a Montana Indian reservation under a tribal license issued prior to January 1, 1985;

(b) an enlisted personnel, noncommissioned officers', or officers' club located on a state or federal military reservation in Montana on May 13, 1985.

(2) A license issued under the provisions of subsection (1) is not subject to the quota limitations of 16-4-105.

(3) Upon application and approval by the department, a license issued under subsection (1)(a) may be transferred to another qualified applicant, but only to a location within the quota area and the exterior boundaries of the Montana Indian reservation for which the license was originally issued.

(4) A license issued under this section is subject to all statutes and rules governing licenses to sell beer at retail for on-premises consumption.

History: En. Sec. 1, Ch. 731, L. 1985; amd. Sec. 200, Ch. 56, L. 2009.

16-4-111. Catering endorsement for beer and wine licensees. (1) (a) A person who is engaged primarily in the business of providing meals with table service and who is licensed to sell beer at retail or beer and wine at retail for on-premises consumption may, upon the approval of the department, be granted a catering endorsement to the license to allow the catering and sale of beer or beer and wine to persons attending a special event upon premises not otherwise licensed for the sale of beer or beer and wine for on-premises consumption. The beer or wine must be consumed on the premises where the event is held.

(b) A person who is licensed pursuant to 16-4-420 to sell beer at retail or beer and wine at retail for on-premises consumption may, upon the approval of the department, be granted a catering endorsement to the license to allow the catering and sale of beer and wine to persons attending a special event upon premises not otherwise licensed for the sale of beer or beer and wine, along with food equal in cost to 65% of the total gross revenue from the catering contract, for on-premises consumption. The beer or wine must be consumed on the premises where the event is held.

(2) A written application for a catering endorsement and an annual fee of \$200 must be submitted to the department for its approval.

(3) A licensee who holds a catering endorsement may not cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

(4) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises that the catered event is to be held. A fee of \$35 must accompany the notice.

(5) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(6) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval for the on-premises sale of beer or beer and wine on premises where the event is to be held.

(7) A catering endorsement issued for the purpose of selling and serving beer or beer and

wine at a special event conducted on the premises of a county fairground or public sports arena authorizes the licensee to sell and serve beer or beer and wine in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.

(8) A licensee may not share revenue from the sale of alcoholic beverages with the sponsor of the catered event unless the sponsor is the state of Montana, a political subdivision of the state, or a qualified entity under section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c), as amended.

History: En. Sec. 1, Ch. 599, L. 1993; amd. Sec. 7, Ch. 465, L. 1997; amd. Sec. 1, Ch. 324, L. 1999; amd. Sec. 24, Ch. 7, L. 2001; amd. Sec. 2, Ch. 369, L. 2003.

16-4-112 through 16-4-114 reserved.

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

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

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

- (a) the applicant is qualified to receive a license;
- (b) the applicant's premises are suitable for the carrying on of the business; and
- (c) the requirements of this code and the rules promulgated by the department are met and complied with.

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

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

History: En. Sec. 1, Ch. 228, L. 1995; amd. Sec. 2, Ch. 528, L. 1997; amd. Sec. 1, Ch. 54, L. 1999.

Part 2

All-Beverages Licenses

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

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

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

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

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

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

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

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

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

History: En. Sec. 3, Ch. 84, L. 1937; amd. Sec. 1, Ch. 226, L. 1947; amd. Sec. 1, Ch. 164, L. 1949; amd. Sec. 1, Ch. 144, L. 1951; amd. Sec. 1, Ch. 56, L. 1955; amd. Sec. 1, Ch. 206, L. 1959; amd. Sec. 1, Ch. 217, L. 1963; amd. Sec. 1, Ch. 322, L. 1971; amd. Sec. 1, Ch. 340, L. 1974; Sec. 4-403, R.C.M. 1947; amd. and redes. 4-4-202 by Sec. 79, Ch. 387, L. 1975; amd. Sec. 6, Ch. 496, L. 1977; R.C.M. 1947, 4-4-202; amd. Sec. 2, Ch. 25, L. 1981; amd. Sec. 3, Ch. 519, L. 1981; amd. Sec. 3, Ch. 595, L. 1983; amd. Sec. 4, Ch. 731, L. 1985; amd. Sec. 24, Ch. 68, L. 1987; amd. Sec. 2, Ch. 267, L. 2005; amd. Sec. 201, Ch. 56, L. 2009.

16-4-202. Resort retail all-beverages licenses. (1) It is the intent and purpose of this section to encourage the growth of quality recreational resort facilities in undeveloped areas of the state and to provide for the orderly growth of existing recreational sites by the establishment of resort areas within which retail all-beverages licenses may be issued by the department under the terms of this section. In addition to the licenses set forth in this code, the department may issue one resort retail all-beverages license for the first 100 accommodation units and an additional license for each additional 50 accommodation units in a resort area. Regardless of how many resort area all-beverages licenses are issued, no more than 20 gambling machine permits may be issued for the resort area.

(2) (a) For the purposes of this section, "resort area" means a recreational facility meeting the qualifications determined by the department and as otherwise provided in this section.

(b) The term does not include any land or improvements that lie wholly within the boundaries of a quota area as described in 16-4-201(1).

(3) The department shall determine that the area for which licenses are to be issued is a resort area pursuant to rules.

(4) (a) In addition to the other requirements of this code, a resort area, for the purposes of qualification for the issuance of a resort retail all-beverages license, must:

(i) have a current actual valuation of resort or recreational facilities, including land and improvements, of not less than \$500,000, at least half of which valuation must be for a structure or structures within the resort area;

(ii) be under the sole ownership or control of one person or entity at the time of the filing of the resort area plat referred to in subsection (5);

(iii) contain a minimum of 50 acres of land;

(iv) contain a minimum of 100 overnight guest accommodation units, each unit capable of being separately locked by the occupants and containing sleeping, bath, and toilet facilities; and

(v) provide on the grounds of the resort the recreational facilities that warrant the resort designation being granted.

(b) For the purposes of this section, "control" means land or improvements that are owned or that are held under contract, lease, option, or permit.

(5) The resort area must be determined by the resort area developer or landowner by a plat setting forth the resort area boundaries and designating the ownership of the lands within the resort area. The plat must be verified by the resort area developer or landowner and must be filed

with the department prior to the filing of any applications for resort retail all-beverages licenses within the resort area. The plat must show the location and general design of the buildings and other improvements existing or to be built in the resort area. A master plan for the development of the resort area may be filed by the resort area developer in satisfaction of this section.

(6) Within 7 days after the plat is filed, the department shall schedule a public hearing to be held in the proposed area to determine whether the facility proposed by the resort area developer or landowner is a resort area. At least 30 days prior to the date of the hearing, the department shall publish notice of the hearing in a newspaper published in the county or counties in which the resort area is located, once a week for 4 consecutive weeks. The notice must include a description of the proposed resort area. Each resort area developer or landowner shall, at the time of filing an application, pay to the department an amount sufficient to cover the costs of publication.

(7) Any person may present, in person or in writing, a statement to the department at the hearing in opposition to or support of the plat.

(8) Within 30 days after the hearing, the department shall accept or reject the plat. If the plat is rejected, the department shall state its reasons and set forth the conditions, if any, under which the plat will be accepted. The decision of the department may be reviewed pursuant to the review procedure set forth in 16-4-406.

(9) Once filed with the department, the boundaries of a resort area may not be changed without:

(a) a hearing, noticed and conducted in the same manner as provided in subsections (6) and (7); and

(b) the prior approval of the department, determined according to public convenience and necessity.

(10) (a) When the department has accepted a plat and a given resort area has been determined, applications may be filed with the department for the issuance of resort retail all-beverages licenses within the resort area.

(b) Each applicant shall submit plans showing the location, appearance, and floor plan of the premises for which application for a resort retail all-beverages license is made.

(c) If an applicant otherwise qualifies for a resort retail all-beverages license but the premises to be licensed are still in construction or are otherwise incomplete at the time that application is made, the department shall issue a letter stating that the license will be issued at the time that the qualifications for a licensed premises have been met. The letter must set forth specific time limitations and requirements that the department may establish.

(11) In addition to the restrictions on sale or transfer of a license as provided in 16-4-204 and 16-4-404, a resort retail all-beverages license may not be sold or transferred for operation at a location outside of the boundaries of the resort area.

(12) A resort retail all-beverages license is not subject to the quota limitations set forth in 16-4-201, and if the requirements of this section have been met, a resort retail all-beverages license must be issued by the department on the basis that the department has determined that the license is justified by public convenience and necessity, in accordance with the procedure required in 16-4-207.

History: En. 4-4-204 by Sec. 81, Ch. 387, L. 1975; R.C.M. 1947, 4-4-204(part); amd. Sec. 2, Ch. 583, L. 1979; amd. Sec. 25, Ch. 68, L. 1987; amd. Sec. 1, Ch. 371, L. 1997; amd.

Sec. 2, Ch. 487, L. 1997; amd. Sec. 40, Ch. 51, L. 1999; amd. Sec. 1, Ch. 325, L. 1999.

16-4-203. Determination of public convenience and necessity. (1) An original license issued pursuant to 16-4-104, 16-4-201, 16-4-202, or 16-4-208 or the transfer of location of an on-premises retail license may be approved if the department does not receive the minimum number of protests required for a public convenience and necessity determination pursuant to 16-4-207, in which case the application must be regarded as a prima facie showing of public convenience and necessity and no further determination of public convenience and necessity is allowed.

(2) (a) If the department receives at least the minimum number of protests required for a public convenience and necessity determination, as provided in 16-4-207, an application must be approved when evidence indicates that the issuance of an original license or transfer of location will materially promote the public's ability to engage in the licensed activity.

(b) The issuance of an original license or a transfer of location will materially promote the public's ability to engage in the licensed activity if:

(i) the applicant's history and experience demonstrate the capacity to operate the proposed license in a lawful manner;

(ii) the approval of the application for the premises at the proposed location is consistent with the public's demand or probable demand for the licensed activity that presently exists or is reasonably expected to exist within the next 5 years in the quota area where the proposed premises is located and in quota areas adjacent to the quota area where the proposed premises is located;

(iii) the approval of the application for the premises at the proposed location contributes to the public's ability to participate in the licensed activity throughout the quota area where the proposed premises is located and quota areas adjacent to the quota area where the proposed premises is located;

(iv) the approval of the application for the premises at the proposed location is consistent with adopted or pending planning, annexation, and zoning ordinances of local governments that confer or will confer jurisdiction over business and developments such as the proposed license in the quota area where the proposed premises is located and in quota areas adjacent to the quota area where the proposed premises is located.

(3) When determining whether or not an application is justified by public convenience and necessity, the department may:

(a) receive evidence at the public hearing specified in 16-4-207 only from the applicant, any protestors whose protests the department has accepted pursuant to 16-4-207, and any other person summoned or called by either a protestor or applicant;

(b) find that the application is justified by public convenience and necessity if the applicant has provided substantial credible evidence as provided for in this subsection (3) that shows that the department's approval of the application will materially promote the public's ability to engage in the licensed activity. The substantial credible evidence required must include a consideration of each of the components of materially promoting the public's ability to engage in the licensed activity as provided in subsection (2)(b).

(4) For the purposes of this section, the following definitions apply:

(a) "Confer or will confer jurisdiction" means the power or authority that a local government or an appointed subsidiary of a local government has or may obtain within 1 year

from the date of the hearing to consider and adopt planning, annexation, or zoning ordinances.

(b) "Licensed activity" means the purchase of alcoholic beverages for on-premises consumption in a business licensed to sell alcoholic beverages at retail for on-premises consumption.

(c) "Pending planning, annexation, and zoning ordinances" means the ordinances of a local government or an appointed subsidiary of a local government that were publicly considered within the year preceding the date of the hearing or are presently being considered.

History: En. 4-403.1 by Sec. 2, Ch. 340, L. 1974; Sec. 4-403.1, R.C.M. 1947; redes. 4-4-205 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-4-205; amd. Sec. 4, Ch. 156, L. 1991; amd. Sec. 3, Ch. 528, L. 1997.

16-4-204. Transfer -- catering endorsement. (1) (a) Except as provided in subsection (1)(d), a license may be transferred to a new ownership and to a location outside the quota area for which it was originally issued only when the following criteria are met:

(i) the total number of all-beverages licenses in the original quota area exceeded the quota for that area by at least 25% in the most recent census prescribed in 16-4-502;

(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred, exclusive of those issued under 16-4-209(1)(a) and (1)(b), did not exceed that area's quota in the most recent census prescribed in 16-4-502:

(A) by more than 33%; or

(B) in an incorporated city of more than 10,000 inhabitants and within a distance of 5 miles from its corporate limits by more than 43%;

(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by a transfer; and

(iv) an applicant for the new ownership to be awarded on a lottery basis by the department has met the following criteria:

(A) the applicant had not made another application under this subsection (1)(a) for a lottery-awarded license within the previous 12 months;

(B) the applicant has provided with the application an irrevocable letter of credit from a financial institution that guarantees the applicant's ability to pay \$100,000; and

(C) the applicant or, if the applicant is not an individual, a person with an ownership interest in the applicant does not have an ownership interest in an all-beverages license.

(b) A license transferred pursuant to subsection (1)(a) that was issued pursuant to a lottery is not eligible to offer gambling under Title 23, chapter 5, part 3, 5, or 6.

(c) A successful lottery applicant shall commence business within 1 year of the lottery unless the department grants an extension because a delay was caused by circumstances beyond the control of the applicant.

(d) A license within an incorporated quota area may be transferred to a new ownership and to a new unincorporated location within the same county on application to and with consent of the department when the quota of the all-beverages licenses in the original quota area, exclusive of those issued under 16-4-209(1)(a) and (1)(b), exceeds the quota for that area by at least 25% in the most recent census and will not fall below that level because of the transfer.

(e) For 5 years after the transfer of a license between quota areas under subsection (1)(a), the license may not be mortgaged or pledged as security and may not be transferred to another

person except for a transfer by inheritance upon the death of the licensee.

(f) Once a license is transferred to a new quota area under subsection (1)(a), it may not be transferred to another quota area or back to the original quota area.

(g) A license issued under 16-4-209(1)(a) may not be transferred to a location outside the quota area and the exterior boundaries of the Montana Indian reservation for which it was originally issued.

(2) (a) Any all-beverages licensee is, upon the approval and in the discretion of the department, entitled to a catering endorsement to the licensee's all-beverages license to allow the catering and sale of alcoholic beverages to persons attending a special event upon premises not otherwise licensed for the sale of alcoholic beverages for on-premises consumption. The alcoholic beverages must be consumed on the premises where the event is held.

(b) A written application for a catering endorsement and an annual fee of \$250 must be submitted to the department for its approval.

(c) An all-beverages licensee who holds an endorsement granted under this subsection (2) may not cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

(d) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises where the catered event is to be held. A fee of \$35 must accompany the notice.

(e) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(f) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval.

(g) A catering endorsement issued for the purpose of selling and serving beer at a special event conducted on the premises of a county fairground or public sports arena authorizes the licensee to sell and serve beer in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.

(h) A licensee may not share revenue from the sale of alcoholic beverages with the sponsor of the catered event unless the sponsor is the state of Montana, a political subdivision of the state, or a qualified entity under section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c), as amended.

History: (4)(a), (b) of 4-4-206 En. Sec. 88, Ch. 387, L. 1975; R.C.M. 1947, 4-4-206(4)(a)(b)(part); amd. Sec. 1, Ch. 139, L. 1979; amd. Sec. 3, Ch. 25, L. 1981; amd. Sec. 1, Ch. 59, L. 1981; amd. Sec. 1, Ch. 512, L. 1981; amd. Sec. 1, Ch. 29, L. 1983; amd. Sec. 1, Ch. 37, L. 1983; amd. Sec. 1, Ch. 59, L. 1983; amd. Sec. 1, Ch. 636, L. 1983; amd. Sec. 5, Ch. 731, L. 1985; amd. Sec. 1, Ch. 34, L. 1987; amd. Sec. 3, Ch. 180, L. 1987; amd. Sec. 2, Ch. 599, L. 1993; amd. Sec. 25, Ch. 7, L. 2001; amd. Sec. 1, Ch. 85, L. 2001; amd. Sec. 3, Ch. 369, L. 2003; amd. Sec. 1, Ch. 277, L. 2007.

16-4-205. Limit one license to person -- business in name of licensee. (1) A person may not be issued more than one all-beverages license in any year, with the exception of a secured party issued an additional all-beverages license as the result of a default. A secured party shall transfer ownership of any additional all-beverages license within 180 days of issuance. A business may not be carried on under any license issued under this chapter except in the name of the licensee.

(2) The provisions of this section do not apply to licenses held by the Montana heritage preservation and development commission under the provisions of 16-4-305.

History: En. Sec. 9, Ch. 84, L. 1937; Sec. 4-411, R.C.M. 1947; amd. and redes. 4-4-207 by Sec. 89, Ch. 387, L. 1975; R.C.M. 1947, 4-4-207; amd. Sec. 1, Ch. 82, L. 1985; amd. Sec. 3, Ch. 251, L. 1999.

16-4-206. Renumbered 16-4-402(1) and (3). Code Commissioner, 1979.

16-4-207. Notice of application -- investigation -- publication -- protest. (1) When an application has been filed with the department for a license to sell alcoholic beverages at retail or to transfer the location of a retail license, the department shall review the application for completeness and, based upon review of the application and any other information supplied to the department, determine whether the applicant or the premises to be licensed meets criteria provided by law. The department may make one request for additional information necessary to complete the application. The application is considered complete when the applicant furnishes the application information requested by the department. When the application is complete, the department of justice shall investigate the application as provided in 16-4-402. When the department determines that an application for a license under this code is complete, the department shall publish in a newspaper of general circulation in the city, town, or county from which the application comes a notice that the applicant has made application for a retail on-premises license or a transfer of location and that protests may be made against the approval of the application by a person who has extended credit to the transferor or by residents of the county from which the application comes or adjoining Montana counties. Protests may be mailed to a named administrator in the department within 10 days after the final notice is published. Notice of application for a new license must be published once a week for 4 consecutive weeks. Notice of application for transfer of ownership or location of a license must be published once a week for 2 consecutive weeks. Notice may be substantially in the following form:

NOTICE OF APPLICATION FOR RETAIL
ALL-BEVERAGES LICENSE

Notice is given that on the ____ day of ____, 20 ____, one (name of applicant) filed an application for a retail all-beverages license with the Montana department of revenue to be used at (describe location of premises where beverages are to be sold). A person who has extended credit to the transferor and residents of _____ counties may protest against the approval of the application. Each protestor is required to mail a letter that contains in legible print the protestor's full name, mailing address, and street address. Each letter must be signed by the protestor. A protest petition bearing the names and signatures of persons opposing the approval of an application may not be considered as a protest. Protests may be mailed to ____, department of revenue, Helena, Montana, on or before the ____ day of ____, 20__.

Dated _____

Signed _____

ADMINISTRATOR

(2) Each applicant shall, at the time of filing an application, pay to the department an

amount sufficient to cover the costs of publishing the notice.

(3) (a) If the administrator receives no written protests, the department may approve the application without holding a public hearing.

(b) A response to a notice of opportunity to protest an application may not be considered unless the response is a letter satisfying all the requirements contained in the notice in subsection (1).

(c) If the department receives sufficient written protests that satisfy the requirements in subsection (1) against the approval of the application, the department shall hold a public hearing as provided in subsection (4).

(4) (a) If the department receives at least one protest but less than the number of protests required for a public convenience and necessity determination as specified in subsection (4)(c), the department shall schedule a public hearing to be held in Helena, Montana, to determine whether the protest presents sufficient cause to deny the application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for denial of an application provided for in 16-4-405, exclusive of public convenience and necessity. The hearing must be governed by the provisions of Title 2, chapter 4, part 6.

(b) If the department receives the number of protests required for a public convenience and necessity determination as specified in subsection (4)(c) and the application is for an original license or for a transfer of location, the department shall schedule a public hearing to be held in the county of the proposed location of the license to determine whether the protest presents sufficient cause to deny the application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for denial of an application provided for in 16-4-405 including public convenience and necessity. The hearing must be governed by the provisions of Title 2, chapter 4, part 6.

(c) The minimum number of protests necessary to initiate a public hearing to determine whether an application satisfies the requirements for public convenience and necessity, as specified in 16-4-203, for the proposed premises located within a quota area described in 16-4-201 must be 25% of the quota for all-beverages licenses determined for that quota area according to 16-4-201(1), (2), and (5) but in no case less than two. The minimum number of protests determined in this manner will apply only to applications for either on-premises consumption beer or all-beverages licenses.

History: En. Sec. 1, Ch. 202, L. 1951; amd. Sec. 1, Ch. 145, L. 1965; Sec. 4-407.1, R.C.M. 1947; amd. and redes. 4-4-302 by Sec. 84, Ch. 387, L. 1975; amd. Sec. 8, Ch. 496, L. 1977; R.C.M. 1947, 4-4-302(part); amd. Sec. 1, Ch. 583, L. 1979; amd. Sec. 1, Ch. 445, L. 1983; amd. Sec. 1, Ch. 231, L. 1989; amd. Sec. 5, Ch. 156, L. 1991; amd. Sec. 5, Ch. 414, L. 1993; amd. Sec. 4, Ch. 528, L. 1997; amd. Sec. 41, Ch. 51, L. 1999; amd. Sec. 3, Ch. 448, L. 2001; amd. Sec. 5, Ch. 110, L. 2003.

16-4-208. Airport all-beverages license. (1) The department of revenue shall issue one all-beverages license, to be known as a public airport all-beverages license, for use at each publicly owned airport served by scheduled airlines and enplaning and deplaning a minimum total of 20,000 passengers annually when:

(a) application is made;

(b) upon finding that this license is justified by public convenience and necessity,

including the convenience and necessity of the public traveling by scheduled airlines; and

(c) following a hearing as provided in 16-4-207.

(2) Application shall be made by the agency owning and operating the airport. The agency owning and operating the airport may lease the airport all-beverages license to an individual or entity approved by the department.

(3) A public airport all-beverages license and all retail alcoholic beverage sales thereunder shall be subject to all statutes and rules governing all-beverages licenses.

(4) The department of revenue shall issue a public airport all-beverages license to a qualified applicant regardless of the number of all-beverages licenses already issued within the all-beverages license quota area in which the airport is situated.

History: En. Sec. 1, Ch. 461, L. 1979; amd. Sec. 26, Ch. 68, L. 1987.

16-4-209. All-beverages license for tribal alcoholic beverages licensee or enlisted personnel, noncommissioned officers', or officers' club. (1) Upon application and qualification, the department shall issue an all-beverages license to:

(a) a tribal alcoholic beverages licensee who operates the business within the exterior boundaries of a Montana Indian reservation under a tribal license issued prior to January 1, 1985;

(b) an enlisted personnel, noncommissioned officers', or officers' club located on a state or federal military reservation in Montana on May 13, 1985.

(2) A license issued under the provisions of subsection (1) is not subject to the quota limitations of 16-4-201.

(3) Upon application and approval by the department, a license issued under subsection (1)(a) may be transferred to another qualified applicant, but the license may be transferred only to a location within the quota area and the exterior boundaries of the Montana Indian reservation for which the license was originally issued.

(4) A license issued under this section is subject to all statutes and rules governing all-beverages licenses.

History: En. Sec. 2, Ch. 731, L. 1985; amd. Sec. 202, Ch. 56, L. 2009.

16-4-210. Resort license -- tour boat endorsement. (1) A holder of a resort all-beverages license issued under 16-4-202 may be issued a tour boat endorsement to allow the sale of alcoholic beverages to passengers on boats at least 40 feet in length and equipped to carry at least 50 passengers.

(2) The endorsement must be issued upon written application to the department and submission of an annual fee of \$200. The applicant must also submit proof:

(a) of compliance with the following requirements:

(i) county health department inspection and approval of food services offered on the boat;

(ii) inspection and approval by the department of fish, wildlife, and parks of boat safety equipment requirements;

(iii) current boat registration; and

(iv) business liability insurance coverage; and

(b) that the registered owner of the tour boat is:

(i) a resort all-beverages licensee;
(ii) an individual named on a resort all-beverages license; or
(iii) a stockholder owning 10% or more of any class of stock in a corporate resort all-beverages license.

(3) Alcoholic beverages may be sold pursuant to the endorsement authorized in subsection (1) only while the boat is underway within 30 miles of the resort boundary or is in preparation for scheduled departure. Except as provided in this subsection, no alcoholic beverages may be sold or served when the boat is secured at its or any other mooring.

(4) Sale of alcoholic beverages under the endorsement is subject to all other requirements imposed for any all-beverages license issued under this part.

History: En. Sec. 1, Ch. 149, L. 1989.

Part 3

Special Licenses

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

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

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

- (i) the association or corporation is sanctioned by a sports organization that regulates the specific sport;
- (ii) the season of play of the sport is specified in advance;
- (iii) an admission fee to the contests is charged; and
- (iv) the contest events are held in facilities that provide seating for at least 1,000 patrons.

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

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

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

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

(h) For the purposes of this subsection (1), a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization otherwise licensed under this code is an organization that may receive special permits for three special events a year, as described in subsection (1)(a), to sell beer and table wine. All net proceeds must go to the post or lodge acquiring the special permit.

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

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

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

History: En. Sec. 13, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.35, R.C.M. 1935; amd. Sec. 1, Ch. 235, L. 1963; amd. Sec. 1, Ch. 285, L. 1974; Sec. 4-332, R.C.M. 1947; amd. and redes. 4-4-105 by Sec. 65, Ch. 387, L. 1975; amd. Sec. 4, Ch. 496, L. 1977; R.C.M. 1947, 4-4-105; amd. Sec. 1, Ch. 401, L. 1981; amd. Sec. 2, Ch. 37, L. 1983; amd. Sec. 2, Ch. 34, L. 1987; amd.

Sec. 2, Ch. 180, L. 1987; amd. Sec. 26, Ch. 7, L. 2001; amd. Sec. 1, Ch. 89, L. 2001; amd. Sec. 4, Ch. 369, L. 2003.

16-4-302. Passenger carrier licenses. Common carriers serving Montana may serve alcoholic beverages to passengers in aircraft over or railroad cars in the state of Montana upon the issuance of a retail all-beverages license by the department for that purpose. Such licenses shall be issued on an annual basis to common carriers making application therefor and shall be effective from July 1 of the current year to July 1 of the following year.

History: En. 4-4-109 by Sec. 114, Ch. 387, L. 1975; R.C.M. 1947, 4-4-109(part); amd. Sec. 27, Ch. 68, L. 1987.

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

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

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

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

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

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

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

History: En. Sec. 1, Ch. 380, L. 1987.

16-4-304. Beer and wine license for Yellowstone airport. (1) Upon application, the department of revenue shall issue a retail beer and wine license to the Yellowstone airport, which is an airport near West Yellowstone, Montana, owned by the state of Montana and operated by the department of transportation.

(2) The application must be made by the department of transportation. The department of transportation may lease the license of use at the airport to an individual or entity approved by the department of revenue.

(3) The license is valid for the retail sale of beer and wine.

(4) The lessee shall pay to the department of revenue an annual license fee as provided in

16-4-501.

- (5) The license issued pursuant to this section:
 - (a) is not subject to the quota provisions of 16-4-105;
 - (b) is nontransferable;
 - (c) does not permit gambling activities otherwise allowed under Title 23, part 5.

History: En. Sec. 1, Ch. 529, L. 1993; amd. Sec. 1, Ch. 293, L. 2005.

16-4-305. Montana heritage retail alcoholic beverage licenses -- use -- quota. (1) (a)

The Montana heritage preservation and development commission may use Montana heritage retail alcoholic beverage licenses within the quota area in which the licenses were originally issued, for the purpose of providing retail alcoholic beverage sales on property acquired by the state under Title 22, chapter 3, part 10. The licenses are to be considered when determining the appropriate quotas for issuance of other retail liquor licenses.

(b) The department may issue a wine amendment pursuant to 16-4-105(2) if the use of a Montana heritage retail alcoholic beverage license for the sale of beer meets all the requirements of that section.

(2) The Montana heritage preservation and development commission may lease a Montana heritage retail alcoholic beverage license to an individual or entity approved by the department.

(3) Montana heritage retail alcoholic beverage licenses are subject to all laws and rules governing the use and operation of retail liquor licenses.

(4) For the purposes of this section, "Montana heritage retail alcoholic beverage licenses" are all-beverages liquor licenses and retail on-premises beer licenses that have been transferred to the Montana heritage preservation and development commission under the provisions of section 2, Chapter 251, Laws of 1999.

History: En. Sec. 1, Ch. 251, L. 1999.

16-4-306. Transfer of existing license to political subdivision of state -- rulemaking.

(1) A political subdivision of the state of Montana may apply to the department for the transfer of an existing retail beer or beer and wine license and, upon approval by the department, the political subdivision may own and operate the license or lease the license to a person, firm, corporation, or other entity approved by the department.

(2) A license that is transferred to a political subdivision of the state:

(a) may be transferred only to another political subdivision of the state and not to any other person, firm, corporation, or entity;

(b) does not authorize and may not be used in conjunction with gambling activities except for horseracing as authorized in Title 23, chapter 4;

(c) may be authorized only for a fairgrounds complex owned by the political subdivision;

(d) is authorized for use in all facilities contained in the fairgrounds complex;

(e) is not, with respect to the facilities, subject to the provisions of 16-4-204(2);

(f) must be taken into account in determining the license quota restrictions of 16-4-105;

and

(g) is subject to all license fees, laws, and rules applicable to retail beer or beer and wine

licenses.

(3) The department may adopt rules to implement the provisions of this section.

History: En. Sec. 1, Ch. 169, L. 2009.

16-4-307 through 16-4-309 reserved.

16-4-310. Definitions. For the purpose of 16-4-311 and 16-4-312, the following definitions apply:

(1) "Microdistillery" means a distillery located in Montana that produces 25,000 gallons or less of liquor annually.

(2) "Produces" means the distillation of liquor on the premises of the distillery licensee.

History: En. Sec. 1, Ch. 591, L. 2005.

16-4-311. Distillery license. (1) The department may, upon receipt of an application, issue a distillery license to a person who is authorized under the provisions of the Federal Alcohol Administration Act, 27 U.S.C. 201 through 212, to distill, rectify, bottle, and process liquor. A licensee may import, manufacture, distill, rectify, blend, denature, and store spirits of an alcoholic content greater than 17% alcohol by weight for sale to the department or as provided in 16-4-312 and may transport the liquor out of this state for sale outside this state. Distillery licensees must be permitted to purchase, from and through the department, alcoholic beverages for blending and manufacturing purposes upon terms and conditions that the department may provide. A licensee may not sell any alcoholic beverage within this state except to the department or as provided in 16-4-312.

(2) An agricultural producer or association of agricultural producers or legal agents who manufacture and convert agricultural surpluses, byproducts, or wastes into denatured ethyl and industrial alcohol for purposes other than human consumption are not required to obtain a distillery license from the department.

History: En. Sec. 2, Ch. 591, L. 2005.

16-4-312. Domestic distillery. (1) A distillery located in Montana and licensed pursuant to 16-4-311 may:

(a) import necessary products in bulk;

(b) bottle, produce, blend, store, transport, or export liquor that it produces;

(c) perform those operations that are permitted for bonded distillery premises under applicable regulations of the United States department of the treasury.

(2) (a) A distillery that is located in Montana and licensed pursuant to 16-4-311 shall sell liquor to the department under this code, and the department shall include the distillery's liquor as a listed product.

(b) The distillery may use a common carrier for delivery of the liquor to the department.

(c) A distillery that produces liquor within the state under this subsection (2) shall maintain records of all sales and shipments. The distillery shall furnish monthly and other reports concerning quantities and prices of liquor that it ships to the department and other information

that the department may determine to be necessary to ensure that distribution of liquor within this state conforms to the requirements of this code.

(3) A microdistillery may:

(a) provide, with or without charge, not more than 2 ounces of liquor that it produces at the microdistillery to consumers for consumption on the premises between 10 a.m. and 8 p.m. A microdistillery may not sell or give more than 2 ounces of liquor to an individual for on-premises consumption during a business day.

(b) sell liquor that it produces at retail at the distillery directly to the consumer for off-premises consumption if:

(i) not more than 1 liter a day is sold to an individual; and

(ii) the minimum retail price as determined by the department is charged.

History: En. Sec. 3, Ch. 591, L. 2005.

16-4-313. Sacramental wine license. (1) The department may issue a sacramental wine license to an establishment located in Montana that sells sacramental wine at retail to rabbis, priests, pastors, ministers, or other officials of churches or other established religious organizations exclusively for their off-premises use as sacramental wine or for other religious purposes.

(2) An application for a license under this section must be accompanied by a fee of \$200, which constitutes the first annual license fee. The annual license renewal fee is \$100.

(3) Unless the sacramental wine is purchased onsite at the premises of the licensed retailer, an establishment selling sacramental wine for religious purposes shall deliver directly to the religious organization's premises using the establishment's own employees and equipment.

(4) A sacramental wine licensee shall maintain records of all wine sales made during the preceding 2 years and shall allow the department access to the records when requested so that the department can ascertain whether the limitations of subsection (1) are being complied with.

(5) Upon receipt of a completed application for a license under this section, the department may request that the department of justice make a background investigation of all matters relating to the application.

(6) Based on the results of the investigation or in exercising its sound discretion, the department shall determine whether:

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

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

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

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

(8) If the premises proposed for licensing under this section are a new or remodeled structure, the department may issue a conditional license prior to completion of the premises upon reasonable evidence that the premises will be suitable for the carrying on of business as a bona fide establishment for selling sacramental wine.

History: En. Sec. 1, Ch. 414, L. 2009.

Part 4

Licensing Criteria

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

(2) Except as provided in 16-4-311 and subsection (6) of this section, in the case of a license that permits on-premises consumption, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) if the applicant is an individual:

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

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

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

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

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

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

(i) each owner of 10% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a). If no single owner owns more than 10% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (2)(a).

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

(iii) each person who shares in the profits or liabilities of a license meets the requirements for an individual applicant listed in subsection (2)(a). This subsection (2)(b)(iii) does not apply to a shareholder of a corporation who owns less than 10% of the outstanding stock in that corporation.

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

(c) if the applicant is a privately held corporation:

(i) each owner of 10% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a). If no single owner owns more than 10% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (2)(a), and the owners of 51% of the outstanding stock must meet the requirements of subsection (2)(a).

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

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

a shareholder of a corporation who owns less than 10% of the outstanding stock in that corporation.

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

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

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

(f) if the applicant is a limited liability company, all managing members and those members whose ownership interest in the company equals or exceeds 10% must meet the requirements of subsection (2)(a). If no single member's interest equals or exceeds 10%, then 51% of all members must meet the requirements of subsection (2)(a).

(3) In the case of a license that permits only off-premises consumption, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) if the applicant is an individual:

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

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

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

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

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

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

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

(i) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (3)(a). If no single owner owns more than 10% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (3)(a).

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

(c) if the applicant is a privately held corporation:

(i) each owner of 10% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (3)(a). If no single owner owns more than 10% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (3)(a), and the owners of 51% of the outstanding stock must meet the requirements of subsection (3)(a).

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

(d) if the applicant is a general partnership, each partner must meet the requirements of subsection (3)(a);

(e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all limited partners whose ownership interest in the partnership equals or exceeds 10% must meet the requirements of subsection (3)(a). If no single limited partner's interest equals or exceeds 10%, then 51% of all limited partners must meet the requirements of subsection (3)(a).

(f) if the applicant is a limited liability company, all managing members and those members whose ownership interest in the company equals or exceeds 10% must meet the requirements of subsection (3)(a). If no single member's interest equals or exceeds 10%, then 51% of all members must meet the requirements of subsection (3)(a).

(4) Subject to 16-4-311, in the case of a license that permits the manufacture, importing, or wholesaling of an alcoholic beverage, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) if the applicant is an individual:

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

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

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

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

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

(vi) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or controlled by a manufacturer of an alcoholic beverage;

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

(i) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (4)(a). If no single owner owns more than 10% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (4)(a).

(ii) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or controlled by a manufacturer of an alcoholic beverage; and

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

(c) if the applicant is a privately held corporation:

(i) each owner of 10% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (4)(a). If no single owner owns more than 10% of the outstanding stock, the applicant must designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (4)(a) and the owners of 51% of the outstanding stock must meet the requirements of subsection (4)(a).

(ii) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or controlled by a manufacturer of an alcoholic beverage; and

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

(d) if the applicant is a general partnership, each partner must meet the requirements of subsection (4)(a);

(e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all limited partners whose ownership interest in the partnership equals or exceeds 10% must meet the requirements of subsection (4)(a). If no single limited partner's interest equals or exceeds 10%, then 51% of all limited partners must meet the requirements of subsection (4)(a).

(f) if the applicant is a limited liability company, all managing members and those members whose ownership interest in the company equals or exceeds 10% must meet the requirements of subsection (4)(a). If no single member's interest equals or exceeds 10%, then 51% of all members must meet the requirements of subsection (4)(a).

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

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

(7) 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 offense within 5 years of the date of application or is on probation or parole or under deferred prosecution for committing a felony offense.

History: En. Sec. 10, Ch. 84, L. 1937; amd. Sec. 1, Ch. 76, L. 1945; amd. Sec. 1, Ch. 244, L. 1947; amd. Sec. 1, Ch. 10, L. 1957; Sec. 4-412, R.C.M. 1947; amd. and redes. 4-4-108 by Sec. 90, Ch. 387, L. 1975; R.C.M. 1947, 4-4-108; amd. Sec. 2, Ch. 186, L. 1979; amd. Sec. 3, Ch. 359, L. 1981; amd. Sec. 1, Ch. 178, L. 1983; amd. Sec. 20, Ch. 19, L. 1985; amd. Sec. 1, Ch. 133, L. 1985; amd. Sec. 28, Ch. 68, L. 1987; amd. Sec. 36, Ch. 530, L. 1995; amd. Sec. 2, Ch. 148, L. 1999; amd. Sec. 4, Ch. 448, L. 2001; amd. Sec. 5, Ch. 591, L. 2005; amd. Sec. 1, Ch. 197, L. 2007.

16-4-402. Application -- investigation. (1) Prior to the issuance of a license under this chapter, the applicant shall file with the department an application containing information and statements relative to the applicant and the premises where the alcoholic beverage is to be sold as required by the department.

(2) (a) Upon receipt of a completed application for a license under this code, accompanied by the necessary license fee or letter of credit as provided in 16-4-501(7)(f), the department of justice shall make a thorough investigation of all matters relating to the application. Based on the results of the investigation or on other information, the department shall determine whether:

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

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

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

(b) This subsection (2) does not apply to a catering endorsement provided in 16-4-111 or

16-4-204(2), a retail beer and wine license for off-premises consumption as provided in 16-4-115, or a special permit provided in 16-4-301.

(c) For an original license application and an application for transfer of location of a license, the department of justice's investigation and the department's determination under this subsection (2) must be completed within 90 days of the receipt of a completed application. If information is requested from the applicant by either department, the time period in this subsection (2)(c) is tolled until the requested information is received by the requesting department. The time period is also tolled if the applicant requests and is granted a delay in the license determination or if the license is for premises that are to be altered, as provided in 16-3-311, or newly constructed. The basis for the tolling of the deadline must be documented.

(3) (a) Upon proof that an applicant made a false statement in any part of the original application, in any part of an annual renewal application, or in any hearing conducted pursuant to an application, the application for the license may be denied, and if issued, the license may be revoked.

(b) A statement on an application or at a hearing that is based upon a verifiable assertion made by a governmental officer, employee, or agent that an applicant relied upon in good faith may not be used as the basis of a false statement for a denial or revocation of a license.

(4) The department shall issue a conditional approval letter upon the last occurrence of either:

(a) completion of the investigation and determination provided for in subsection (2) if the department has not received information that would cause the department to deny the application; or

(b) a final agency decision that either denies or dismisses a protest against the approval of an application pursuant to 16-4-207.

(5) The conditional approval letter must state the reasons upon which the future denial of the application may be based. The reasons for denial of the application after the issuance of the conditional approval letter are as follows:

(a) there is false or erroneous information in the application;

(b) the premises are not approved by local building, health, or fire officials;

(c) there are physical changes to the premises that if known prior to the issuance of the conditional approval letter would have constituted grounds for the denial of the application or denial of the issuance of the conditional approval; or

(d) a final decision by a court exercising jurisdiction over the matter either reverses or remands the department's final agency decision provided for in subsection (4).

History: En. Sec. 6, Ch. 84, L. 1937; Sec. 4-408, R.C.M. 1947; amd. and redes. 4-4-303 by Sec. 85, Ch. 387, L. 1975; amd. Sec. 9, Ch. 496, L. 1977; Sec. 4-4-303, R.C.M. 1947; (1), (3)En. Sec. 5, Ch. 84, L. 1937; amd. Sec. 2, Ch. 221, L. 1939; amd. Sec. 2, Ch. 163, L. 1941; Sec. 4-407, R.C.M. 1947; amd. and redes. 4-4-301 by Sec. 83, Ch. 387, L. 1975; amd. Sec. 7, Ch. 496, L. 1977; Sec. 4-4-301, R.C.M. 1947; Sec. 16-4-206, MCA 1979; redes. 16-4-402(1) and (3) by Code Commissioner, 1979; amd. Sec. 1, Ch. 18, L. 1979; amd. Sec. 3, Ch. 37, L. 1983; amd. Sec. 1, Ch. 51, L. 1983; amd. Sec. 6, Ch. 156, L. 1991; amd. Sec. 6, Ch. 414, L. 1993; amd. Sec. 4, Ch. 599, L. 1993; amd. Sec. 3, Ch. 228, L. 1995; amd. Sec. 5, Ch. 528, L. 1997; amd. Sec. 2, Ch. 54, L. 1999; amd. Sec. 6, Ch. 110, L. 2003; amd. Sec. 1, Ch. 257, L. 2007.

16-4-403. Repealed. Sec. 11, Ch. 110, L. 2003.

History: Ap. p. Sec. 1, Ch. 487, L. 1973; Sec. 4-408.1, R.C.M. 1947; amd. and redes. 4-4-304 by Sec. 86, Ch. 387, L. 1975; Sec. 4-4-304, R.C.M. 1947; Ap. p. Sec. 2, Ch. 487, L. 1973; Sec. 4-408.2, R.C.M. 1947; redes. 4-4-305 by Sec. 120, Ch. 387, L. 1975; Sec. 4-4-305, R.C.M. 1947; R.C.M. 1947, 4-4-304, 4-4-305; amd. Sec. 7, Ch. 414, L. 1993.

16-4-404. Protest period -- contents of license -- posting -- privilege -- transfer. (1) A license may not be issued until on or after the date set in the notice for hearing protests.

(2) Every license issued under this code must state the name of the person to whom it is issued, the location, by street and number or other appropriate specific description of location if no street address exists, of the premises where the business is to be carried on under the license, and other information the department considers necessary. If the licensee is a partnership or if more than one person has an interest in the business operated under the license, the names of all persons in the partnership or interested in the business must appear on the license. Every license must be posted in a conspicuous place on the premises in which the business authorized under the license is conducted, and the license must be exhibited upon request to any authorized representative of the department or the department of justice or to any peace officer of the state of Montana.

(3) A license issued under the provisions of this code is a privilege personal to the licensee named in the license and is valid until the expiration of the license unless sooner revoked or suspended.

(4) A license may be transferred to the executor or administrator of the estate of a deceased licensee when the estate consists in whole or in part of the business of selling alcoholic beverages under a license. The license may descend or be disposed of with the licensed business under appropriate probate proceedings.

(5) (a) A licensee may apply to the department for a transfer of the license to different premises within the quota area if:

(i) there has been major loss or damage to the licensed premises by unforeseen natural causes;

(ii) the lease of the licensed premises has expired;

(iii) in case of rented licensed premises, there has been an eviction or increase of rent by the landlord; or

(iv) the licensee has proposed removal of the license to premises that are as substantially suited for the retail alcoholic beverages business as the premises proposed to be vacated.

(b) The department may, after notice and opportunity for protest, permit a transfer in the cases specified in subsection (5)(a) if it appears to the department that a transfer is required to do justice to the licensee applying for the transfer and the transfer is justified by public convenience and necessity, pursuant to 16-4-203, unless a public convenience and necessity hearing is required by 16-4-207. The department may not allow a transfer to different premises where the sanitary, health, and service facilities are less satisfactory than facilities that exist or had existed at the premises from which the transfer is proposed to be made.

(6) Upon a bona fide sale of the business operated under a license, the license may be transferred to a qualified purchaser. A transfer of a license to a person or location is not effective unless approved by the department. A licensee or transferee or proposed transferee who operates

or attempts to operate under a supposedly transferred license prior to the approval of the transfer by the department, endorsed upon the license in writing, is considered to be operating without a license and the license affected may be revoked or suspended by the department. The department may, within its discretion, permit a qualified purchaser to operate the business to be transferred pending final approval if there has not been a change in location and the application for transfer has been filed with the department.

(7) Except as provided in 16-4-204 and subsections (2) through (6) of this section, a license may not be transferred or sold or used for any place of business not described in the license. A license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and approval of the department, must be endorsed on the license. Beer or wine sold to a licensee on credit pursuant to 16-3-243 or 16-3-406 does not create a lien upon a license, but a subsequent licensee has the obligation to pay for the beer or wine.

History: (1)En. Sec. 1, Ch. 202, L. 1951; amd. Sec. 1, Ch. 145, L. 1965; Sec. 4-407.1, R.C.M. 1947; amd. and redes. 4-4-302 by Sec. 84, Ch. 387, L. 1975; amd. Sec. 8, Ch. 496, L. 1977; R.C.M. 1947, 4-4-302(part); (2) thru (7) En. Sec. 8, Ch. 84, L. 1937; amd. Sec. 1, Ch. 97, L. 1951; Sec. 4-410, R.C.M. 1947; amd. and redes. 4-4-206 by Sec. 88, Ch. 387, L. 1975; R.C.M. 1947, 4-4-206(part); redes. from 16-4-204(1)-(5), (8) by Code Commissioner, 1983; amd. Sec. 29, Ch. 68, L. 1987; amd. Sec. 7, Ch. 156, L. 1991; amd. Sec. 1, Ch. 311, L. 1993; amd. Sec. 8, Ch. 414, L. 1993; amd. Sec. 6, Ch. 528, L. 1997.

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

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

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

(a) the welfare of the people residing or of retail licensees located in the vicinity of the premises for which the license is desired will be adversely and seriously affected;

(b) if required, there is not a public convenience and necessity justification pursuant to 16-4-203;

(c) the applicant or the premises proposed for licensing fail to meet the eligibility or suitability criteria established by this code;

(d) a possible reason for denial listed in a conditional approval letter, as provided in 16-4-402, has been verified; or

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

History: (1), (2)En. Sec. 14, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.36, R.C.M. 1935; amd. Sec. 1, Ch. 225, L. 1947; amd. Sec. 1, Ch. 165, L. 1949; amd. Sec. 1, Ch. 55, L. 1955; amd. Sec. 1, Ch. 205, L. 1959; amd. Sec. 1, Ch. 271, L. 1965; amd. Sec. 1, Ch. 31, L. 1974; Sec. 4-333, R.C.M. 1947; amd. and redes. 4-4-201 by Sec. 66, Ch. 387, L. 1975; amd. Sec. 5, Ch. 496, L. 1977; Sec. 4-4-201, R.C.M. 1947; (3)En. Sec. 1, Ch. 202, L. 1951; amd. Sec. 1, Ch. 145, L.

1965; Sec. 4-407.1, R.C.M. 1947; amd. and redes. 4-4-302 by Sec. 84, Ch. 387, L. 1975; amd. Sec. 8, Ch. 496, L. 1977; Sec. 4-4-302, R.C.M. 1947; R.C.M. 1947, 4-4-201(part), 4-4-302(part); amd. Sec. 30, Ch. 68, L. 1987; amd. Sec. 8, Ch. 156, L. 1991; amd. Sec. 7, Ch. 528, L. 1997.

16-4-406. Renewal -- suspension or revocation -- penalty. (1) The department shall upon a written, verified complaint of a person request that the department of justice investigate the action and operation of a brewer, winery, wholesaler, or retailer licensed under this code.

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

- (a) reprimand a licensee;
- (b) proceed to revoke the license of the licensee;
- (c) suspend the license for a period of not more than 3 months;
- (d) refuse to grant a renewal of the license after its expiration; or
- (e) impose a civil penalty not to exceed \$1,500.

History: En. Sec. 46, Ch. 106, L. 1933; re-en. Sec. 2815.45, R.C.M. 1935; amd. Sec. 8, Ch. 166, L. 1951; Sec. 4-342, R.C.M. 1947; amd. and redes. 4-4-402 by Sec. 69, Ch. 387, L. 1975; R.C.M. 1947, 4-4-402; amd. Sec. 9, Ch. 156, L. 1991; amd. Sec. 9, Ch. 414, L. 1993; amd. Sec. 4, Ch. 163, L. 2001; amd. Sec. 7, Ch. 110, L. 2003.

16-4-407. Suspension or revocation of licenses. Each July 1 or, when applicable, on the licensee's anniversary date, the department shall issue licenses to brewers, wineries, beer importers, wholesalers, or retailers or for the retail sale of alcoholic beverages on an annual basis upon payment of the fees prescribed by law. The licenses are subject to suspension or revocation under 16-4-406 after midnight of June 30 of the succeeding year or 1 year after the anniversary if the annual renewal fees required by 16-4-501 are not paid. The department shall notify each applicant for an original license or renewal that it is the applicant's responsibility to determine if applicable provisions of federal law require the applicant to obtain a permit from a federal agency.

History: En. Sec. 2, Ch. 235, L. 1943; Sec. 4-406, R.C.M. 1947; amd. and redes. 4-4-404 by Sec. 82, Ch. 387, L. 1975; amd. Sec. 12, Ch. 496, L. 1977; R.C.M. 1947, 4-4-404; amd. Sec. 2, Ch. 29, L. 1983; amd. Sec. 21, Ch. 19, L. 1985; amd. Sec. 3, Ch. 54, L. 1999; amd. Sec. 5, Ch. 163, L. 2001.

16-4-408. Renewal of suspended licenses. After suspension or revocation of a license, the department shall have the power to renew the same if in its discretion a proper showing therefor has been made.

History: En. Sec. 27, Ch. 84, L. 1937; Sec. 4-429, R.C.M. 1947; amd. and redes. 4-4-405 by Sec. 102, Ch. 387, L. 1975; R.C.M. 1947, 4-4-405.

16-4-409. Repealed. Sec. 5, Ch. 595, L. 1983.

History: En. Sec. 5, Ch. 519, L. 1981.

16-4-410. Repealed. Sec. 5, Ch. 595, L. 1983.

History: En. Sec. 6, Ch. 519, L. 1981.

16-4-411. Appeals concerning alcoholic beverages laws. (1) Any interested party shall have the right to appeal any decision of the department of revenue concerning the issuance, transfer, suspension, or revocation of alcoholic beverages licenses to the district court in the county in which the issuance, transfer, suspension, or revocation occurred or, at the appellant's option, in the district court of the first judicial district.

(2) The appeal must be in conformity with the provisions of Title 2, chapter 4, part 7.

History: En. 82A-1808 by Sec. 2, Ch. 207, L. 1973; en. 82A-1808 by Sec. 64.1, Ch. 391, L. 1973; R.C.M. 1947, 82A-1808; amd. Sec. 1, Ch. 135, L. 1985; amd. Sec. 31, Ch. 68, L. 1987.

16-4-412. Limits on concurrent applications. (1) An application for the issuance of a new license or for the transfer of an existing license may not be considered by the department if a previous application for the same premises is pending. An application is considered pending if a final decision:

(a) has not been made by the department; or

(b) has been made by the department but:

(i) a petition for judicial review can still be filed or has been filed; or

(ii) an appeal to the Montana supreme court can still be filed or has been filed.

(2) This section does not prevent the department from considering more than one application for the same location pursuant to competition for a last available license.

History: En. Sec. 1, Ch. 156, L. 1991.

16-4-413. Denial of application -- five-year moratorium. (1) If an application for the issuance of a new license or for the transfer of an existing license has been denied for any reason provided in 16-4-405, the department may not consider an application or issue any retail license, special permit, or special license for those premises for 5 years unless the department, using the criteria described in subsection (3), determines that the proposed use is substantially different from the use that was rejected. The prohibition period commences on the date of the final agency decision or, if judicially reviewed, on the date the judicial decision is final.

(2) If an application is withdrawn after a hearing has been held in which testimony is received regarding any reason for denial provided in 16-4-405, the effect of the withdrawal is the same as if a final decision had been made denying the application for any reason provided in 16-4-405. The 5-year prohibition against considering an application or issuing a license for that vicinity commences on the date of the withdrawal.

(3) The department shall determine whether a proposed use is substantially different by considering:

- (a) the capacity of the proposed use;
- (b) the nature of the establishment;
- (c) the presence and character of any entertainment; and
- (d) the characteristics of the neighborhood.

History: En. Sec. 2, Ch. 156, L. 1991.

16-4-414. Fingerprints required of applicants -- exceptions. (1) Except as provided in subsections (2) and (3), an applicant for a license under this code, any person employed by the applicant as a manager, and, if the applicant is a corporation, each person holding 10% or more of the outstanding stock and each officer and director shall submit their fingerprints with the application to facilitate a fingerprint and background check by the department of justice and the federal bureau of investigation. The results of the investigation must be used by the department in determining the applicant's eligibility for a license.

(2) (a) When the applicant is seeking a license for off-premises consumption, the following persons are subject to the fingerprint and background check described in subsection (1):

- (i) the applicant;
- (ii) a person designated by the applicant as responsible for operating the licensed establishment on behalf of the licensee; or
- (iii) if the applicant is a corporation, each person holding 10% or more of the outstanding stock and each officer and director responsible for operating the licensed establishment.

(b) Additional fingerprint and background checks may be required at renewal only for new persons described in subsection (2)(a).

(c) A change in the form of a licensee's business entity that does not result in any person having a new ownership interest in the business is not grounds for the department to require a fingerprint or background check.

(3) When the applicant is seeking a license for off-premises consumption, a person employed by the applicant as a manager is not subject to the fingerprint and background check described in subsection (1).

History: En. Sec. 1, Ch. 110, L. 2003; amd. Sec. 1, Ch. 495, L. 2005.

16-4-415. Changes in business entity ownership -- department approval required.

(1) In the case of corporate licensees, a person or entity that does not own stock or owns less than 10% of the stock in the corporation may not receive stock that results in the person or entity's share of stock in the corporation being 10% or greater unless the department reviews and determines that the person or entity qualifies for ownership of a liquor license as provided in 16-4-401.

(2) In the case of all other business entities, when a proposed transfer of ownership would result in a party who prior to the transfer owned no interest in the license owning an interest in the license, the proposed transfer must be submitted to the department for review. The proposed new party must qualify for ownership of a liquor license as provided in 16-4-401.

(3) In the case of a proposed change in business entity, the proposed new business entity shall apply for a transfer of ownership of the license with the department prior to changing the

business entity. The proposed new business entity must qualify for ownership of a liquor license as provided in 16-4-401.

History: En. Sec. 1, Ch. 148, L. 1999.

16-4-416. Ownership of liquor license by United States. (1) Whenever right, title, and interest in a liquor license vests in the United States, the United States shall promptly give notice to the department of its interest and must have the license placed on nonuse status. The United States shall transfer ownership of the license to a qualified applicant within 200 days from the date on which it obtained an interest in the license. Upon receipt of an application to transfer the license, the department may, pursuant to 16-4-404, grant the applicant temporary authority to operate the license.

(2) The department, upon a showing of good cause, may in its discretion extend the time for sale of the license for an additional period of up to 180 days.

History: En. Sec. 1, Ch. 90, L. 2001.

16-4-417 through 16-4-419 reserved.

16-4-420. Restaurant beer and wine license. (1) The department shall issue a restaurant beer and wine license to an applicant whenever the department determines that the applicant, in addition to satisfying the requirements of this section, meets the following qualifications and conditions:

(a) the applicant complies with the licensing criteria provided in 16-4-401 for an on-premises consumption license;

(b) the applicant operates a restaurant at the location where the restaurant beer and wine license will be used or satisfies the department that:

(i) the applicant intends to open a restaurant that will meet the requirements of subsection (6) and intends to operate the restaurant so that at least 65% of the restaurant's gross income during its first year of operation is expected to be the result of the sale of food;

(ii) the restaurant beer and wine license will be used in conjunction with that restaurant, that the restaurant will serve beer and wine only to a patron who orders food, and that beer and wine purchases will be stated on the food bill; and

(iii) the restaurant will serve beer and wine from a service bar, as service bar is defined by the department by rule;

(c) the applicant understands and acknowledges in writing on the application that this license prohibits the applicant from being licensed to conduct any gaming or gambling activity or operate any gambling machines and that if any gaming or gambling activity or machine exists at the location where the restaurant beer and wine license will be used, the activity must be discontinued or the machines must be removed before the restaurant beer and wine license takes effect; and

(d) the applicant states the planned seating capacity of the restaurant, if it is to be built, or the current seating capacity if the restaurant is operating.

(2) (a) A restaurant that has an existing retail license for the sale of beer, wine, or any other alcoholic beverage may not be considered for a restaurant beer and wine license at the same

location.

(b) (i) An on-premises retail licensee who sells the licensee's existing retail license may not apply for a license under this section for a period of 1 year from the date that license is transferred to a new purchaser.

(ii) A person, including an individual, with an ownership interest in an existing on-premises retail license that is being transferred to a new purchaser may not attain an ownership interest in a license applied for under this section for a period of 1 year from the date that the existing on-premises retail license is transferred to a new purchaser.

(3) A completed application for a license under this section and the appropriate application fee, as provided in subsection (11), must be submitted to the department. The department shall investigate the items relating to the application as described in subsections (3)(a) through (3)(d). Based on the results of the investigation and the exercise of its sound discretion, the department shall determine whether:

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

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

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

(d) the seating capacity stated on the application is correct.

(4) An application for a beer and wine license submitted under this section is subject to the provisions of 16-4-203, 16-4-207, and 16-4-405.

(5) If a premises proposed for licensing under this section is a new or remodeled structure, then the department may issue a conditional license prior to completion of the premises based on reasonable evidence, including a statement from the applicant's architect or contractor confirming that the seating capacity stated on the application is correct, that the premises will be suitable for the carrying on of business as a bona fide restaurant, as defined in subsection (6).

(6) (a) For purposes of this section, "restaurant" means a public eating place:

(i) where individually priced meals are prepared and served for on-premises consumption;

(ii) where at least 65% of the restaurant's annual gross income from the operation must be from the sale of food and not from the sale of alcoholic beverages. Each year after a license is issued, the applicant shall file with the department a statement, in a form approved by the department, attesting that at least 65% of the gross income of the restaurant during the prior year resulted from the sale of food.

(iii) that has a dining room, a kitchen, and the number and kinds of employees necessary for the preparation, cooking, and serving of meals in order to satisfy the department that the space is intended for use as a full-service restaurant; and

(iv) that serves an evening dinner meal at least 4 days a week for at least 2 hours a day between the hours of 5 p.m. and 11 p.m. The provisions of subsection (6)(b) and this subsection (6)(a)(iv) do not apply to a restaurant for which a restaurant beer and wine license is in effect as of April 9, 2009, or to subsequent renewals of that license.

(b) The term does not mean a fast-food restaurant that, excluding any carry-out business, serves a majority of its food and drink in throw-away containers not reused in the same restaurant.

(7) (a) A restaurant beer and wine license may be transferred, upon approval by the department, from the original applicant to a new owner of the restaurant only after 1 year of use by the original owner.

(b) A license issued under this section may be jointly owned, and the license may pass to the surviving joint tenant upon the death of the other tenant. However, the license may not be transferred to any other person or entity by operation of the laws of inheritance or succession or any other laws allowing the transfer of property upon the death of the owner in this state or in another state.

(c) An estate may, upon the sale of a restaurant that is property of the estate and with the approval of the department, transfer a restaurant beer and wine license to a new owner.

(8) (a) The department shall issue a restaurant beer and wine license to a qualified applicant:

(i) except as provided in subsection (8)(c), for a restaurant located in a quota area with a population of 5,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(ii) for a restaurant located in a quota area with a population of 5,001 to 20,000 persons, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 160% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(iii) for a restaurant located in a quota area with a population of 20,001 to 60,000 persons, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 100% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(iv) for a restaurant located in a quota area with a population of 60,001 persons or more, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105; and

(v) for a restaurant located in a quota area that is also a resort community, as the resort community is designated by the department of commerce under 7-6-1501(5), if the number of restaurant beer and wine licenses issued in the quota area that is also a resort community is equal to or less than 200% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105.

(b) In determining the number of restaurant beer and wine licenses that may be issued under this subsection (8) based on the percentage amounts described in subsections (8)(a)(i) through (8)(a)(v), the department shall round to the nearer whole number.

(c) If the department has issued the number of restaurant beer and wine licenses authorized for a quota area under subsection (8)(a)(i), there must be a one-time adjustment of four additional licenses for that quota area.

(d) If there are more applicants than licenses available in a quota area, then the license must be awarded by lottery as provided in subsection (9).

(9) (a) When a restaurant beer and wine license becomes available by the initial issuance of licenses under this section or as the result of an increase in the population in the quota area, the nonrenewal of a restaurant beer and wine license, or the lapse or revocation of a license by the department, then the department shall advertise the availability of the license in the quota area for which it is available. If there are more applicants than number of licenses available, the license must be awarded to an applicant by a lottery.

(b) A preference must be given to an applicant who does not yet have in any quota area a

restaurant beer and wine license or a retail beer license and who operates a restaurant that is in the quota area described in subsection (8) in which the license has become available and that meets the qualifications of subsection (6) for at least 12 months prior to the filing of an application. An applicant with a preference must be awarded a license before any applicant without a preference.

(c) The department shall numerically rank all applicants in the lottery. Only the successful applicants will be required to submit a completed application and a one-time required fee. An applicant's ranking may not be sold or transferred to another person or entity. The preference and an applicant's ranking apply only to the intended license advertised by the department or to the number of licenses determined under subsection (8) when there are more applicants than licenses available. The applicant's qualifications for any other restaurant beer and wine license awarded by lottery must be determined at the time of the lottery.

(d) If a successful lottery applicant does not use a license within 1 year of notification by the department of license eligibility, the applicant shall forfeit the license. The department shall refund any fees paid except the application fee and offer the license to the next eligible ranked applicant in the lottery.

(10) Under a restaurant beer and wine license, beer and wine may not be sold for off-premises consumption.

(11) An application for a restaurant beer and wine license must be accompanied by a fee equal to 20% of the initial licensing fee. If the department does not make a decision either granting or denying the license within 4 months of receipt of a complete application, the department shall pay interest on the application fee at the rate of 1% a month until a license is issued or the application is denied. Interest may not accrue during any period that the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or 16-4-207. If the department denies an application, the application fee, plus any interest, less a processing fee established by rule, must be refunded to the applicant. Upon the issuance of a license, the licensee shall pay the balance of the initial licensing fee. The amount of the initial licensing fee is determined according to the following schedule:

- (a) \$5,000 for restaurants with a stated seating capacity of 60 persons or less;
- (b) \$10,000 for restaurants with a stated seating capacity of 61 to 100 persons; or
- (c) \$20,000 for restaurants with a stated seating capacity of 101 persons or more.

(12) The annual fee for a restaurant beer and wine license is \$400.

(13) If a restaurant licensed under this part increases the stated seating capacity of the licensed restaurant or if the department determines that a licensee has increased the stated seating capacity of the licensed restaurant, then the licensee shall pay to the department the difference between the fees paid at the time of filing the original application and issuance of a license and the applicable fees for the additional seating.

(14) The number of beer and wine licenses issued to restaurants with a stated seating capacity of 101 persons or more may not exceed 25% of the total licenses issued.

(15) Possession of a restaurant beer and wine license is not a qualification for licensure of any gaming or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a restaurant beer and wine license.

History: En. Sec. 1, Ch. 465, L. 1997; amd. Sec. 2, Ch. 324, L. 1999; amd. Sec. 27, Ch. 7, L. 2001; amd. Sec. 8, Ch. 110, L. 2003; amd. Sec. 1, Ch. 348, L. 2007; amd. Sec. 1, Ch. 187,

L. 2009.

16-4-421. Denial of restaurant beer and wine license. (1) A restaurant beer and wine license may not be issued by the department for a premises situated within a zone of a city, town, or county where the sale of alcoholic beverages is prohibited by ordinance, a certified copy of which has been filed with the department.

(2) A restaurant beer and wine license may not be issued or renewed if the department finds, subject to the opportunity for a hearing pursuant to Title 2, chapter 4, part 6, that the applicant or the premises proposed for licensing fail to meet the eligibility or suitability criteria provided by law.

History: En. Sec. 2, Ch. 465, L. 1997.

16-4-422. Sale of beer and wine prohibited during certain hours. Except as provided in 16-3-305, restaurants licensed pursuant to 16-4-420 in which beer and wine are sold, offered for sale, or given away at retail may not serve beer and wine between the hours of 11 p.m. and 11 a.m. However, if an incorporated city or town has by ordinance further restricted the hours of sale of beer and wine, then the sale of beer and wine in restaurants licensed to sell beer and wine, pursuant to 16-4-420, is prohibited within the limits of the city or town during the time that the sale is prohibited by this section and in addition to the hours that the sale is prohibited by ordinance.

History: En. Sec. 3, Ch. 465, L. 1997.

16-4-423. Restaurant beer and wine license -- prohibited practices. A restaurant licensed for the sale of beer and wine pursuant to 16-4-420 may not convey to any person by any means that a person may either purchase or consume beer or wine on the premises without being required to purchase food.

History: En. Sec. 4, Ch. 465, L. 1997.

Part 5

Licensing Fees

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

- (a) (i) each brewer and each beer importer, wherever located, whose product is sold or offered for sale within the state, \$500;
- (ii) for each storage depot, \$400;
- (b) (i) each beer wholesaler, \$400; each winery, \$200; each table wine distributor, \$400;
- (ii) for each subwarehouse, \$400;

- (c) each beer retailer, \$200;
- (d) (i) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license;
- (ii) for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, \$200;
- (e) any unit of a nationally chartered veterans' organization, \$50.
- (2) The permit fee under 16-4-301(1) is computed at the following rate:
 - (a) \$10 a day for each day that beer and table wine are sold at events, activities, or sporting contests, other than those applied for pursuant to 16-4-301(1)(c); and
 - (b) \$1,000 a season for professional sporting contests or junior hockey contests held under the provisions of 16-4-301(1)(c).
- (3) The permit fee under 16-4-301(2) is \$10 for the sale of beer and table wine only or \$20 for the sale of all alcoholic beverages.
- (4) Passenger carrier licenses must be issued upon payment by the applicant of an annual license fee in the sum of \$300.
- (5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license pursuant to 16-4-105, is \$200.
- (6) The annual renewal fee for:
 - (a) a brewer producing 20,000 or fewer barrels of beer, as defined in 16-1-406, is \$200; and
 - (b) resort retail all-beverages licenses within a given resort area is \$2,000 for each license.
- (7) Except as provided in this section, each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:
 - (a) for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, \$250 for a unit of a nationally chartered veterans' organization and \$400 for all other licensees;
 - (b) for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, \$350 for a unit of a nationally chartered veterans' organization and \$500 for all other licensees;
 - (c) for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, \$500 for a unit of a nationally chartered veterans' organization and \$650 for all other licensees;
 - (d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, \$650 for a unit of a nationally chartered veterans' organization and \$800 for all other licensees;
 - (e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and must be paid by the applicant. When the

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

(f) an applicant for the issuance of an original license to be located in areas described in subsections (6) and (7)(d) shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's ability to pay a \$20,000 license fee. A successful applicant shall pay a one-time original license fee of \$20,000 for a license issued. The one-time license fee of \$20,000 may not apply to any transfer or renewal of a license issued prior to July 1, 1974.

However, all licenses are subject to the specified annual renewal fees.

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

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

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

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

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

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

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

History: (1) thru (5), (9)En. Sec. 45, Ch. 106, L. 1933; amd. Sec. 15, Ch. 46, Ex. L. 1933; re-en, Sec. 2815.44, R.C.M. 1935; amd. Sec. 2, Ch. 246, L. 1947; amd. Sec. 1, Ch. 122, L. 1963; Sec. 4-341, R.C.M. 1947; amd. and redes. 4-4-401 by Sec. 68, Ch. 387, L. 1975; amd. Sec. 10, Ch. 496, L. 1977; Sec. 4-4-401, R.C.M. 1947; (6)En. 4-4-204 by Sec. 81, Ch. 387, L. 1975; Sec. 4-4-204, R.C.M. 1947; (7)En. Sec. 4, Ch. 84, L. 1937; amd. Sec. 1, Ch. 221, L. 1939; amd. Sec. 1, Ch. 163, L. 1941; amd. Sec. 1, Ch. 211, L. 1943; amd. Sec. 1, Ch. 236, L. 1947; amd. Sec. 1, Ch. 356, L. 1974; Sec. 4-404, R.C.M. 1947; R.C.M. 1947, 4-404(part), 4-4-204(part), 4-4-401(part); amd. Sec. 13, I.M. No. 81, app. Nov. 7, 1978; (8)En. Sec. 2, Ch. 461, L. 1979; amd. Sec. 1, Ch. 181, L. 1981; amd. Sec. 2, Ch. 401, L. 1981; amd. Sec. 4, Ch. 519, L. 1981; amd. Sec. 3, Ch. 29, L. 1983; amd. Sec. 2, Ch. 51, L. 1983; amd. Sec. 4, Ch. 595, L. 1983; amd. Sec. 22, Ch. 19, L. 1985; amd. Sec. 2, Ch. 141, L. 1985; amd. Sec. 32, Ch. 68, L. 1987; amd. Sec. 2, Ch. 380, L. 1987; amd. Sec. 21, Ch. 83, L. 1989; amd. Sec. 2, Ch. 225, L. 1989; amd. Sec. 2, Ch. 371, L. 1997; amd. Sec. 8, Ch. 528, L. 1997; amd. Sec. 4, Ch. 54, L. 1999; amd. Sec. 6, Ch. 163, L. 2001; amd. Sec. 2, Ch. 405, L. 2001; amd. Sec. 5, Ch. 369, L. 2003; amd. Sec. 2, Ch. 293, L. 2005; amd. Sec. 6, Ch. 591, L. 2005; amd. Sec. 9, Ch. 501, L. 2007.

16-4-502. Census. The census taken under the direction of congress shall be the basis upon which the respective populations of the counties and incorporated cities or towns shall be

determined. However, in the interim between censuses, the department shall use as such basis the most recent population estimates published by the bureau of the census, United States department of commerce.

History: En. Sec. 4, Ch. 84, L. 1937; amd. Sec. 1, Ch. 221, L. 1939; amd. Sec. 1, Ch. 163, L. 1941; amd. Sec. 1, Ch. 211, L. 1943; amd. Sec. 1, Ch. 236, L. 1947; amd. Sec. 1, Ch. 356, L. 1974; Sec. 4-404, R.C.M. 1947; amd. and redes. 4-4-403 by Sec. 119, Ch. 387, L. 1975; amd. Sec. 11, Ch. 496, L. 1977; R.C.M. 1947, 4-4-403; amd. Sec. 4, Ch. 25, L. 1981.

16-4-503. City and county licenses -- fees. The city council of any incorporated town or city or the county commissioners outside of any incorporated town or city may provide for the issuance of licenses to persons to whom a retail license has been issued under the provisions of this code and may fix license fees, not to exceed a sum equal to five-eighths of the fee for an all-beverages license or 100% of the fee for a beer or beer and wine license collected by the department from such licensee under this code.

History: En. Sec. 28, Ch. 84, L. 1937; Sec. 4-430, R.C.M. 1947; amd. and redes. 4-4-406 by Sec. 103, Ch. 387, L. 1975; amd. Sec. 1, Ch. 509, L. 1977; R.C.M. 1947, 4-4-406.

Parts 6 and 7 reserved

Part 8

Liquor License Security Interest

16-4-801. Security interest in liquor license. (1) (a) A security interest in a liquor license is an interest in the liquor license that secures payment or performance of an obligation. A contract for the sale of a liquor license, including a provision allowing the seller to retain an ownership interest in the license solely for the purpose of guaranteeing payment for the license, may, for the purposes of this section, be treated as a security interest.

(b) For the purposes of this section:

(i) "default" means that:

(A) the defaulting party has acknowledged in writing pursuant to the terms of a written security agreement or contract for sale that the defaulting party no longer has any ownership interest or any other rights to possess or control the liquor license;

(B) a court of competent jurisdiction has made an order foreclosing all of the defaulting party's interests in the license; or

(C) there has been a nonjudicial sale by the secured party made pursuant to the Uniform Commercial Code and the secured party has provided written proof of the sale to the department; and

(ii) "liquor license" means a license issued under this chapter.

(2) The department, after review of the underlying documents creating the security interest, may approve a transfer of ownership of a liquor license subject to a security interest as provided in subsection (1). A person holding a security interest may not have any control in the operation of the business operated under a license subject to a security interest nor may that person share in the profits or the liabilities of the business other than the payment or performance of the licensee's obligation under a security agreement.

(3) (a) Within 7 days of a default by a licensee, the person holding the security interest shall give notice to the department of the licensee's default and either apply to have the license transferred to that person, subject to that person meeting the requirements of 16-4-401 and all other applicable provisions of this code, or the person shall place the license on nonuser status. Upon receipt of an application to transfer the license, the department may, pursuant to 16-4-404, grant the applicant temporary authority to operate the license. If the person holding the license places the license on nonuser status, the person shall transfer ownership of the license within 180 days from the date on which the notice of the default was given to the department. The operation of a business under a license by a person holding a security interest for more than 7 days after default of the licensee or without temporary authority issued by the department must be considered to be a violation of this code and constitutes grounds for the department to either deny an application for transfer of the license or for the revocation of the license pursuant to 16-4-406.

(b) If the person holding the security interest does not qualify for or cannot qualify for ownership of a liquor license under 16-4-401, the secured party shall transfer ownership of the liquor license within 180 days of the notice of the default of the licensee.

(c) The department, upon a showing of good cause, may in its discretion extend the time for sale of the license for an additional period of up to 180 days.

(4) A regulated lender, as defined in 31-1-111, may obtain a security interest in a liquor license in order to secure a loan or a guaranty of a loan. This section does not prohibit or limit the ability of a regulated lender to use loan and security documentation consistent with that used by the regulated lender generally, and the documentation does not constitute control of the operation of the business or the licensee operating the business that is subject to the security interest.

History: En. Sec. 1, Ch. 280, L. 1999; amd. Sec. 1, Ch. 422, L. 2003; amd. Sec. 1, Ch. 62, L. 2009.

Part 9

Connoisseur's Licenses

16-4-901. Connoisseur's licenses -- application -- fees. (1) A person in this state desiring to receive direct shipments of beer only, wine only, or both beer and wine from an out-of-state brewery or winery for the person's own consumption and not for resale shall file with the department an application for a connoisseur's license. The application must be accompanied by a registration fee in the amount of:

- (a) \$50 for a beer connoisseur's license;
- (b) \$50 for a wine connoisseur's license; or

(c) \$100 for a beer and wine connoisseur's license.

(2) Each application for a license must be on a form prescribed by the department and must set forth the name of the applicant, the applicant's home or business address, proof that the applicant is at least 21 years of age, and other information that the department may require.

(3) A connoisseur's license expires on June 30 of each calendar year. A licensee may annually renew a license with the department by paying a \$25 renewal fee for a beer connoisseur's license or a wine connoisseur's license and a \$50 renewal fee for a beer and wine connoisseur's license.

(4) The holder of a connoisseur's license may not sell beer or wine to the public.

(5) The department shall adopt rules to provide procedures for the application for and the provision of a connoisseur's license.

History: En. Sec. 7, Ch. 543, L. 2001.

16-4-902. Payment of taxes -- authority of department. (1) A person holding a connoisseur's license shall pay, on June 30 and December 31, the beer and wine taxes imposed by Title 16, chapter 1, part 4, on beer or wine that is received by direct shipment from an out-of-state brewery or winery during the previous 6-month period.

(2) Each holder of a connoisseur's license shall file with the department a return, on a form provided by the department, and pay the tax for shipments received.

History: En. Sec. 8, Ch. 543, L. 2001.

16-4-903. Direct shipment of beer or wine -- limitations. (1) Subject to the provisions of 16-4-901, the holder of a connoisseur's license may receive up to 144 bottles or 12 cases of wine or 288 bottles or 12 cases of beer from an out-of-state brewery or winery during a 12-month period for personal use and not for resale. A person wishing to receive both wine and beer under this section must possess a beer and wine connoisseur's license.

(2) A licensee under this section shall forward to the out-of-state brewery or winery a distinctive address label, provided by the department, clearly identifying any package that is shipped as a legal direct-shipment package to the holder of a connoisseur's license.

(3) A licensee shall report to the department, on June 30 and December 31, the total amount of beer or wine received from an out-of-state brewery or winery and pay all applicable excise taxes, as provided for in Title 16, chapter 1, part 4, imposed on the receipt of beer or wine during the previous 6 months.

History: En. Sec. 9, Ch. 543, L. 2001.

16-4-904 and 16-4-905 reserved.

16-4-906. Out-of-state brewery or winery registration -- limitation on shipping -- penalty. (1) Each out-of-state brewery or winery desiring to ship beer or wine to a person holding a connoisseur's license shall register with the department on forms provided by the department.

(2) The annual limit on out-of-state shipments to all connoisseur's license holders is:

- (a) 1,440 bottles or 60 cases of beer for breweries; and
- (b) 720 bottles or 60 cases of wine for wineries.
- (3) For any shipment into the state that exceeds the limits provided for in subsection (2), the out-of-state brewery or winery may:
 - (a) distribute the brewery's or winery's product through a licensed wholesale distributor;
 - (b) distribute through direct shipment to licensed retailers in accordance with the provisions of 16-3-411 if the winery is licensed pursuant to 16-4-107; or
 - (c) distribute as a brewery in accordance with the provisions of 16-3-214.
- (4) An out-of-state brewery or winery that violates the provisions of this section is subject to the penalties provided for in 16-6-302.

History: En. Sec. 10, Ch. 543, L. 2001; amd. Sec. 10, Ch. 501, L. 2007; amd. Sec. 4, Ch. 516, L. 2007.

16-4-907 through 16-4-909 reserved.

16-4-910. Penalty for noncompliance. (1) Except as provided in 16-4-906, a person who violates the provisions of this part commits a civil offense.

- (2) A person convicted under subsection (1):
 - (a) for a first offense, must be mailed a certified letter by the department ordering that person to cease and desist committing the violation;
 - (b) for a second offense, shall be fined a civil penalty not to exceed \$500; and
 - (c) for a third or subsequent offense, shall be fined a civil penalty not to exceed \$2,500.

History: En. Sec. 11, Ch. 543, L. 2001.

CHAPTER 5

IDENTIFICATION CARDS (Repealed)

Part 1 -- Application for Card (Repealed)

Part 1

Application for Card (Repealed)

16-5-101. Repealed. Sec. 2, Ch. 26, L. 1979.

History: En. Sec. 1, Ch. 190, L. 1957; amd. Sec. 8, Ch. 240, L. 1971; amd. Sec. 9, Ch. 94, L. 1973; Sec. 4-506, R.C.M. 1947; redes. 4-5-101 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-5-101.

16-5-102. Repealed. Sec. 2, Ch. 26, L. 1979.

History: En. Sec. 2, Ch. 190, L. 1957; Sec. 4-507, R.C.M. 1947; amd. and redes. 4-5-102 by Sec. 106, Ch. 387, L. 1975; R.C.M. 1947, 4-5-102.

16-5-103. Repealed. Sec. 2, Ch. 26, L. 1979.

History: En. Sec. 3, Ch. 190, L. 1957; Sec. 4-508, R.C.M. 1947; amd. and redes. 4-5-103 by Sec. 107, Ch. 387, L. 1975; R.C.M. 1947, 4-5-103.

16-5-104. Repealed. Sec. 2, Ch. 26, L. 1979.

History: En. Sec. 4, Ch. 190, L. 1957; Sec. 4-509, R.C.M. 1947; amd. and redes. 4-5-104 by Sec. 108, Ch. 387, L. 1975; R.C.M. 1947, 4-5-104.

16-5-105. Repealed. Sec. 2, Ch. 26, L. 1979.

History: En. Sec. 5, Ch. 190, L. 1957; amd. Sec. 1, Ch. 272, L. 1973; Sec. 4-510, R.C.M. 1947; amd. and redes. 4-5-105 by Sec. 109, Ch. 387, L. 1975; amd. Sec. 13, Ch. 496, L. 1977; R.C.M. 1947, 4-5-105.

16-5-106. Repealed. Sec. 2, Ch. 26, L. 1979.

History: En. Sec. 7, Ch. 190, L. 1957; Sec. 4-512, R.C.M. 1947; redes. 4-5-106 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-5-106.

CHAPTER 6

ENFORCEMENT

Part 1 -- Investigations

- 16-6-101. Employment of investigators and prosecuting officers.
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- 16-6-103. Examination of retailer's premises and carriers' cars and aircraft.
- 16-6-104. Unlawful alcoholic beverage -- seizure -- forfeiture.
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- 16-6-302. Sale of alcoholic beverage without license -- sale or importation in violation of code -- penalty.
- 16-6-303. Sale of liquor not purchased from agency liquor store forbidden -- penalty.
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- 16-6-305. Age limit for sale or provision of alcoholic beverages -- liability of provider.
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- 16-6-311. Occupant of premises deemed party to offense.
- 16-6-312. Premises where alcoholic beverages illegally sold public nuisance.
- 16-6-313. Injunction actions.
- 16-6-314. Penalty for violating code -- revocation of license -- penalty for violation by underage person.

Part 1

Investigations

16-6-101. Employment of investigators and prosecuting officers. (1) The department of justice may appoint one or more investigators or prosecuting officers who, under its direction, shall perform the duties it may require.

(2) When requested by the department, the department of justice shall:

(a) investigate the character of an applicant applying for the issuance or transfer of a liquor license and, if applicable, the suitability of a premises or proposed premises to be used in connection with a liquor license;

(b) investigate all matters relating to the purchase, sale, importation, exportation, possession, and delivery of alcoholic beverages; and

(c) serve as a liaison to local law enforcement authorities in matters relating to alcoholic beverage law enforcement.

History: En. Sec. 90, Ch. 105, L. 1933; re-en. Sec. 2815.150, R.C.M. 1935; Sec. 4-225, R.C.M. 1947; amd. and redes. 4-6-201 by Sec. 39, Ch. 387, L. 1975; R.C.M. 1947, 4-6-201; amd. Sec. 10, Ch. 414, L. 1993.

16-6-102. Search warrants. Upon information on oath by a department of justice investigator appointed under this code or by a peace officer showing reasonable cause to believe that alcoholic beverages are unlawfully kept, or kept for unlawful purposes, in any premises, a court may issue a warrant to authorize the investigator or peace officer or any other person named in the warrant to enter and search the entire premises, including to break open any door, lock, fastening, closet, cupboard, box, or other receptacle on the premises that might contain alcoholic beverages.

History: En. Sec. 74, Ch. 105, L. 1933; re-en. Sec. 2815.133, R.C.M. 1935; Sec. 4-208, R.C.M. 1947; amd. and redes. 4-6-203 by Sec. 25, Ch. 387, L. 1975; R.C.M. 1947, 4-6-203; amd. Sec. 11, Ch. 414, L. 1993.

16-6-103. Examination of retailer's premises and carriers' cars and aircraft. The department of justice or its representative or a peace officer may at any time examine the premises of a retail licensee to determine whether the law of Montana and the rules of the department or the department of justice are being complied with and also may inspect cars or aircraft of any common carrier system licensed under this code.

History: En. Sec. 26, Ch. 84, L. 1937; Sec. 4-428, R.C.M. 1947; amd. and redes. 4-6-204 by Sec. 101, Ch. 387, L. 1975; R.C.M. 1947, 4-6-204; amd. Sec. 12, Ch. 414, L. 1993.

16-6-104. Unlawful alcoholic beverage -- seizure -- forfeiture. (1) An investigator or

peace officer who finds an alcoholic beverage and who has reasonable cause to believe that the alcoholic beverage was obtained or kept by any person in violation of the provisions of this code may seize and remove the alcoholic beverage and the packages in which the alcoholic beverage is kept, and upon conviction of the person, the alcoholic beverage and all packages containing the alcoholic beverages are, in addition to any other penalty prescribed by this code, forfeited to the state of Montana.

(2) Any beer or wine that has been shipped into Montana in violation of this code must be seized by any peace officer or representative of the department and may be confiscated in the manner as provided for the confiscation of alcoholic beverages.

History: (1)En. 4-6-205 by Sec. 22, Ch. 387, L. 1975; amd. Sec. 15, Ch. 496, L. 1977; Sec. 4-6-205, R.C.M. 1947; (2)En. Sec. 14, Ch. 106, L. 1933; amd. Sec. 5, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.23, R.C.M. 1935; amd. Sec. 1, Ch. 246, L. 1947; amd. Sec. 5, Ch. 166, L. 1951; amd. Sec. 1, Ch. 222, L. 1965; Sec. 4-318, R.C.M. 1947; amd. and redes. 4-4-103 by Sec. 56, Ch. 387, L. 1975; Sec. 4-4-103, R.C.M. 1947; R.C.M. 1947, 4-4-103(part), 4-6-205; amd. Sec. 3, Ch. 47, L. 1983; amd. Sec. 33, Ch. 68, L. 1987; amd. Sec. 11, Ch. 501, L. 2007; amd. Sec. 5, Ch. 516, L. 2007.

16-6-105. Seizure and forfeiture of alcoholic beverage and conveyance. Whenever an investigator or any peace officer in making or attempting to make a search under and in pursuance of authority of law finds in any motor vehicle, vessel, boat, canoe, or conveyance of any description an alcoholic beverage that is unlawfully kept or had or kept or held for unlawful purposes contrary to the provisions of this code, the investigator or peace officer may seize the alcoholic beverage and packages in which the alcoholic beverage is contained and the motor vehicle, vessel, boat, canoe, or conveyance in which the alcoholic beverage is found. Upon the conviction of the occupant or person in charge of the motor vehicle, vessel, boat, canoe, or conveyance, or of any other person, for having or keeping the alcoholic beverages contrary to any of the provisions of this code in any vehicle, vessel, boat, canoe, or conveyance, the court in which the person is convicted may, in addition to the sentence imposed under authority of law, declare the alcoholic beverage or any part seized and the package in which the alcoholic beverage is contained to be forfeited to the state of Montana. The court may in and by decree further declare the motor vehicle, vessel, boat, canoe, or conveyance seized to be forfeited to the state of Montana.

History: En. Sec. 75, Ch. 105, L. 1933; re-en. Sec. 2815.134, R.C.M. 1935; Sec. 4-209, R.C.M. 1947; amd. and redes. 4-6-207 by Sec. 26, Ch. 387, L. 1975; R.C.M. 1947, 4-6-207; amd. Sec. 203, Ch. 56, L. 2009.

16-6-106. When force may be used in seizure of alcoholic beverages -- forfeiture -- hearing. (1) If an alcoholic beverage is found by a department of justice investigator or a peace officer in any place in quantities that satisfy the investigator or peace officer that the alcoholic beverage is being kept contrary to this code, the investigator or peace officer may seize and remove, by force if necessary, any alcoholic beverage found and the packages in which the alcoholic beverage was kept and immediately turn the alcoholic beverage over to the department.

(2) The department shall determine if the seized alcoholic beverage is suitable for resale

in an agency liquor store. If the department has determined that the seized alcoholic beverage is suitable for resale, the department shall commence an administrative action against the owner of the alcoholic beverage. All seized alcoholic beverages found to be unsuitable for sale in an agency liquor store must be destroyed by the department.

(3) A notice and opportunity for hearing must be given in accordance with the Montana Administrative Procedure Act, except that the notice must be published in the county where the alcoholic beverage was seized if a newspaper is published in the county.

(4) The notice must show the date and place of seizure, the name of the person or persons actually or apparently in possession or control of the alcoholic beverage if the person was present at the time of the seizure, and the reasons the department claims the right to the possession of the alcoholic beverage. The notice must also demand that all persons who claim any right to the possession of the alcoholic beverage show the nature of their claim or claims, that the hearing examiner declare the alcoholic beverage contraband, and that the hearing examiner order that the alcoholic beverage be forfeited to the state.

History: En. Sec. 76, Ch. 105, L. 1933; re-en. Sec. 2815.135, R.C.M. 1935; amd. Sec. 1, Ch. 140, L. 1945; Sec. 4-210, R.C.M. 1947; amd. and redes. 4-6-208 by Sec. 27, Ch. 387, L. 1975; R.C.M. 1947, 4-6-208; amd. Sec. 14, Ch. 20, L. 1985; amd. Sec. 1, Ch. 83, L. 1985; amd. Sec. 13, Ch. 414, L. 1993; amd. Sec. 92, Ch. 42, L. 1997.

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

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

History: En. Sec. 77, Ch. 105, L. 1933; re-en. Sec. 2815.136, R.C.M. 1935; Sec. 4-211, R.C.M. 1947; amd. and redes. 4-6-209 by Sec. 28, Ch. 387, L. 1975; R.C.M. 1947, 4-6-209; amd. Sec. 2, Ch. 83, L. 1985; amd. Sec. 14, Ch. 414, L. 1993; amd. Sec. 37, Ch. 530, L. 1995.

16-6-108. Inspection of carriers' records. For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this code, the department or the department of justice or any person appointed by either department in writing for the purpose may inspect the freight and express books and records and all waybills, bills of lading, receipts, and documents in the possession of any railway company, express company, or other common carrier doing business within the state containing any information or record relating to any goods shipped or carried or consigned or received for shipment or carriage within the state.

History: En. Sec. 78, Ch. 105, L. 1933; re-en. Sec. 2815.137, R.C.M. 1935; Sec. 4-212, R.C.M. 1947; amd. and redes. 4-6-210 by Sec. 29, Ch. 387, L. 1975; R.C.M. 1947, 4-6-210; amd. Sec. 15, Ch. 414, L. 1993.

16-6-109. Unlawful for carrier to refuse inspection of records. Every railway company, express company, or common carrier and every officer or employee of a company or common carrier who neglects or refuses to produce and submit for inspection any book, record, or document referred to in 16-6-108 when requested to do so by the department or the department of justice or by a person appointed by either department is guilty of an offense against this code.

History: En. Sec. 79, Ch. 105, L. 1933; re-en. Sec. 2815.138, R.C.M. 1935; Sec. 4-213, R.C.M. 1947; amd. and redes. 4-6-211 by Sec. 30, Ch. 387, L. 1975; R.C.M. 1947, 4-6-211; amd. Sec. 16, Ch. 414, L. 1993.

Part 2

Prosecutions

16-6-201. Jurisdiction of courts. (1) As to misdemeanor actions, the district courts of this state have concurrent jurisdiction with justice of the peace courts in all prosecutions under the Montana Alcoholic Beverage Code described in 16-1-101.

- (2) The jurisdiction provided for in subsection (1) is in addition to the jurisdiction of:
- (a) justices' courts, as provided in 3-10-303;
 - (b) municipal courts, as provided in 3-6-103; and
 - (c) city courts, as provided in 3-11-102.

History: En. Sec. 48, Ch. 106, L. 1933; amd. Sec. 16, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.47, R.C.M. 1935; amd. Sec. 9, Ch. 166, L. 1951; Sec. 4-344, R.C.M. 1947; amd. and redes. 4-6-301 by Sec. 70, Ch. 387, L. 1975; R.C.M. 1947, 4-6-301; amd. Sec. 1, Ch. 49, L. 2007.

16-6-202. Appeal. An appeal shall lie from any conviction or order made in the prosecution of any offense against any of the provisions of this code, and the practice and procedure on any appeal from any such conviction or order and all proceedings thereon shall be governed by the law applicable to appeal in criminal cases.

History: En. Sec. 89, Ch. 105, L. 1933; re-en. Sec. 2815.149, R.C.M. 1935; Sec. 4-224, R.C.M. 1947; amd. and redes. 4-6-302 by Sec. 38, Ch. 387, L. 1975; R.C.M. 1947, 4-6-302.

16-6-203. Description of offense. In describing the offense respecting the sale or keeping for sale or other disposal of alcoholic beverages or the having, keeping, giving, purchasing, or consumption of alcoholic beverages in any information, summons, conviction, warrant, or proceeding under this code, it shall be sufficient to state simply the sale or keeping for sale or disposal, having, keeping, giving, purchasing, or consumption of alcoholic beverages,

without stating:

- (1) the name or kind of such alcoholic beverage or the price thereof;
- (2) the name of any person to whom it was sold or disposed of or by whom it was taken or consumed or from whom it was purchased or received; or
- (3) the quantity of alcoholic beverage, except in the case of offenses where the quantity is essential, and then it shall be sufficient to allege the sale or disposal of more or less than such quantity.

History: En. Sec. 80, Ch. 105, L. 1933; re-en. Sec. 2815.139, R.C.M. 1935; Sec. 4-214, R.C.M. 1947; amd. and redes. 4-6-303 by Sec. 31, Ch. 387, L. 1975; R.C.M. 1947, 4-6-303.

16-6-204. Defense need not be negatived. The description of any offense under this code, in the words of this code or in any words of like effect, shall be sufficient in law; and any exception, exemption, provision, excuse, or qualification, whether it occurs by way of proviso or in the description of the offense in this code, may be proved by the defendant but need not be specified or negatived in the information or complaint; but if it is so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the informant or complainant.

History: En. Sec. 81, Ch. 105, L. 1933; re-en. Sec. 2815.140, R.C.M. 1935; Sec. 4-215, R.C.M. 1947; amd. and redes. 4-6-304 by Sec. 32, Ch. 387, L. 1975; R.C.M. 1947, 4-6-304.

16-6-205. Sufficiency of evidence. In any prosecution under this code for the sale or keeping for sale or other disposal of alcoholic beverages or the having, keeping, giving, purchasing, or consuming of alcoholic beverages, it is not necessary that any witness testify to the precise description or quantity of the alcoholic beverages sold, disposed of, kept, had, given, purchased, or consumed or the precise consideration, if any, received for the alcoholic beverages. It is also unnecessary to testify to the fact of the sale or other disposal having taken place with the witness's participation or to the witness's own personal or certain knowledge. However, a conviction may be based upon circumstantial evidence reasonably tending to establish the guilt of the accused beyond a reasonable doubt.

History: En. Sec. 82, Ch. 105, L. 1933; re-en. Sec. 2815.141, R.C.M. 1935; Sec. 4-216, R.C.M. 1947; amd. and redes. 4-6-305 by Sec. 33, Ch. 387, L. 1975; R.C.M. 1947, 4-6-305; amd. Sec. 204, Ch. 56, L. 2009.

16-6-206. Proof of violation. In proving the sale, disposal, gift, or purchase, gratuitous or otherwise, or consumption of an alcoholic beverage, it shall not be necessary in any prosecution to show that any money actually passed or any alcoholic beverage was actually consumed if the court hearing the case is satisfied that a transaction in the nature of a sale, disposal, gift, or purchase actually took place or that any consumption of an alcoholic beverage was about to take place. Proof of consumption or intended consumption of an alcoholic beverage on premises on which such consumption is prohibited by some person not authorized to consume an alcoholic beverage thereon shall be evidence that such alcoholic beverage was sold, given to, or purchased by the person consuming or being about to consume or carrying away the same, as

against the occupant of the premises.

History: En. Sec. 83, Ch. 105, L. 1933; re-en. Sec. 2815.142, R.C.M. 1935; Sec. 4-217, R.C.M. 1947; amd. and redes. 4-6-306 by Sec. 34, Ch. 387, L. 1975; R.C.M. 1947, 4-6-306.

16-6-207. Analyst's report as prima facie evidence of contents. In any prosecution under this code or the rules adopted to implement this code, production by a police officer, constable, inspector, or peace officer of a certificate or report signed or purporting to be signed by a United States or state analyst as to the analysis or ingredients of any alcoholic beverage or other fluid or any preparation, compound, or substance, the certificate or report is prima facie evidence of the facts stated in the certificate or report and of the authority of the person giving or making the certificate or report without any proof of appointment or signature.

History: En. Sec. 84, Ch. 105, L. 1933; re-en. Sec. 2815.143, R.C.M. 1935; Sec. 4-218, R.C.M. 1947; amd. and redes. 4-6-307 by Sec. 35, Ch. 387, L. 1975; R.C.M. 1947, 4-6-307; amd. Sec. 205, Ch. 56, L. 2009.

16-6-208. Inference of intoxicating beverage. The court trying a case shall, in the absence of proof to the contrary, be at liberty to infer that the alcoholic beverage in question is intoxicating from the fact that a witness described it as intoxicating or by a name which is commonly applied to an intoxicating beverage.

History: En. Sec. 85, Ch. 105, L. 1933; re-en. Sec. 2815.144, R.C.M. 1935; Sec. 4-219, R.C.M. 1947; amd. and redes. 4-6-308 by Sec. 36, Ch. 387, L. 1975; R.C.M. 1947, 4-6-308.

16-6-209. Inferences of fact from evidence found. Upon the hearing of any charge of selling or purchasing an alcoholic beverage or of unlawfully having or keeping an alcoholic beverage contrary to any of the provisions of this code, the court trying the case may draw inferences of fact from the kind and quantity of alcoholic beverage found in the possession of the person accused or in any building, premises, vehicle, motorcar, automobile, vessel, boat, canoe, conveyance, or place occupied or controlled by the accused and from the frequency with which the alcoholic beverage is received at or in or is removed from the location and from the circumstances under which the alcoholic beverage is kept or dealt with.

History: En. Sec. 86, Ch. 105, L. 1933; re-en. Sec. 2815.145, R.C.M. 1935; Sec. 4-220, R.C.M. 1947; amd. and redes. 4-6-309 by Sec. 37, Ch. 387, L. 1975; R.C.M. 1947, 4-6-309; amd. Sec. 206, Ch. 56, L. 2009.

Part 3

Miscellaneous Prohibitions and Penalties

16-6-301. Transfer, sale, and possession of alcoholic beverages -- when unlawful. (1)

Except as provided by this code, a person or the person's agents or employees may not:

- (a) expose or keep an alcoholic beverage for sale;
- (b) directly or indirectly or upon any pretense or upon any device, sell or offer to sell an alcoholic beverage; or
- (c) in consideration of the purchase or transfer of any property or for any other consideration or at the time of the transfer of any property, give to any other person an alcoholic beverage.

(2) A person may not have or keep any alcoholic beverage that has not been purchased within the state of Montana.

(3) This code does not prohibit:

(a) a person entering this state from another state or foreign country from having in the person's actual physical possession an amount not to exceed 3 gallons of alcoholic beverage that was purchased in another state or foreign country;

(b) possession of beer produced for personal or family use and not intended for sale that meets the exemptions of 26 U.S.C. 5053(e) and regulations implementing that section, including the brewing of beer, for personal or family use, on premises other than those of the person brewing the beer;

(c) possession of beer or wine purchased from an out-of-state brewery or winery if the person possessing the beer or wine holds a connoisseur's license as provided for in 16-4-901;

(d) possession of alcoholic beverages by brewers, distillers, and other persons duly licensed by the United States for the manufacture of those alcoholic beverages;

(e) possession of proprietary or patent medicines or of any extracts, essences, tinctures, or preparations if the possession is authorized by this code; or

(f) possession by a sheriff or bailiff of alcoholic beverages seized under execution or other judicial or extrajudicial process or sales under executions or other judicial or extrajudicial process to the department or a licensee.

(4) Except as provided in this code, a person or the person's agents or employees may not:

(a) attempt to purchase any alcoholic beverage;

(b) directly or indirectly or upon any pretense or device, purchase any alcoholic beverage; or

(c) in consideration of the sale or transfer of any property or for any other consideration or at the time of the transfer of any property, take or accept from any other person any alcoholic beverage.

History: (1) thru (3)En. Sec. 45, Ch. 105, L. 1933; amd. Sec. 1, Ch. 166, L. 1935; re-en. Sec. 2815.104, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1957; Sec. 4-150, R.C.M. 1947; amd. and redes. 4-1-201 by Sec. 16, Ch. 387, L. 1975; Sec. 4-1-201, R.C.M. 1947; (4)En. Sec. 49, Ch. 105, L. 1933; re-en. Sec. 2815.108, R.C.M. 1935; Sec. 4-154, R.C.M. 1947; amd. and redes. 4-6-101 by Sec. 19, Ch. 387, L. 1975; Sec. 4-6-101, R.C.M. 1947; R.C.M. 1947, 4-1-201, 4-6-101; amd. Sec. 34, Ch. 68, L. 1987; amd. Sec. 3, Ch. 546, L. 1997; amd. Sec. 5, Ch. 543, L. 2001.

16-6-302. Sale of alcoholic beverage without license -- sale or importation in violation of code -- penalty. (1) For the purposes of this section "person" means an individual, partnership, corporation, company, firm, society, association, joint-stock company, trust, or other

entity capable of holding a legal or beneficial interest in property, but does not include a state or agency of a state.

(2) A person who has not been issued a license under this code who sells or keeps for sale in Montana any alcoholic beverage commits a criminal offense and upon conviction is punishable by a fine not to exceed \$5,000 or by imprisonment in the state prison for not less than 1 or more than 5 years or by both the fine and imprisonment.

(3) A person in the business of selling alcoholic beverages in another state or country who imports or distributes alcoholic beverages in violation of this code commits a civil offense.

(4) A person convicted under subsection (3):

(a) for a first offense, must be mailed a certified letter by the department ordering that person to cease and desist any shipments of alcoholic beverages to any person in Montana;

(b) for a second offense, shall be fined a civil penalty not to exceed \$5,000;

(c) for a third offense, shall be fined a civil penalty not to exceed \$10,000; and

(d) for a fourth or subsequent offense, shall be fined a civil penalty not to exceed \$50,000.

History: En. Sec. 18, Ch. 84, L. 1937; Sec. 4-420, R.C.M. 1947; amd. and redes. 4-4-407 by Sec. 97, Ch. 387, L. 1975; R.C.M. 1947, 4-4-407; amd. Sec. 4, Ch. 5, L. 1979; amd. Sec. 6, Ch. 543, L. 2001.

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

History: En. Sec. 17, Ch. 84, L. 1937; Sec. 4-419, R.C.M. 1947; amd. and redes. 4-6-102 by Sec. 96, Ch. 387, L. 1975; amd. Sec. 14, Ch. 496, L. 1977; R.C.M. 1947, 4-6-102; amd. Sec. 38, Ch. 530, L. 1995.

16-6-304. Providing alcoholic beverage to intoxicated person prohibited. (1) No store manager, retail licensee, or any employee of a store manager or retail licensee may sell any alcoholic beverage or permit any alcoholic beverage to be sold to any person apparently under the influence of an alcoholic beverage.

(2) No person may give an alcoholic beverage to a person apparently under the influence of alcohol.

History: En. Sec. 55, Ch. 105, L. 1933; re-en. Sec. 2815.114, R.C.M. 1935; Sec. 4-160, R.C.M. 1947; amd. and redes. 4-6-103 by Sec. 23, Ch. 387, L. 1975; R.C.M. 1947, 4-6-103.

16-6-305. Age limit for sale or provision of alcoholic beverages -- liability of

provider. (1) (a) Except in the case of an alcoholic beverage provided in a nonintoxicating quantity to a person under 21 years of age by the person's parent or guardian, physician or dentist for medicinal purposes, a licensed pharmacist upon the prescription of a physician, or an ordained minister or priest in connection with a religious observance, a person may not sell or otherwise provide an alcoholic beverage to a person under 21 years of age.

(b) A parent, guardian, or other person may not knowingly sell or otherwise provide an alcoholic beverage in an intoxicating quantity to a person under 21 years of age.

(c) For the purposes of this section, "intoxicating quantity" means a quantity of an alcoholic beverage that is sufficient to produce:

(i) a blood, breath, or urine alcohol concentration in excess of 0.05; or

(ii) substantial or visible mental or physical impairment.

(2) A person is guilty of a misdemeanor who:

(a) invites a person under the age of 21 years into a public place where an alcoholic beverage is sold and treats, gives, or purchases an alcoholic beverage for the person;

(b) permits the person in a public place where an alcoholic beverage is sold to treat, give, or purchase alcoholic beverages for the person; or

(c) holds out the person to be 21 years of age or older to the owner of the establishment or to the owner's employee.

(3) It is unlawful for any person to fraudulently misrepresent the person's age to any dispenser of alcoholic beverages or to falsely procure any identification card or to alter any of the statements contained in any identification card, including a tribal identification card.

(4) A person 21 years of age or older who violates the provisions of subsection (1)(b) is, in addition to applicable criminal penalties, subject to civil liability for damages resulting from a tortious act committed by the person to whom the intoxicating substance was sold or provided if the act is judicially determined to be the result of the intoxicated condition created by the violation. (See compiler's comments for contingent termination of certain text.)

History: (1)En. Sec. 56, Ch. 105, L. 1933; re-en. Sec. 2815.115, R.C.M. 1935; amd. Sec. 1, Ch. 240, L. 1971; amd. Sec. 2, Ch. 94, L. 1973; Sec. 4-161, R.C.M. 1947; amd. and redes. 4-6-104 by Sec. 24, Ch. 387, L. 1975; Sec. 4-6-104, R.C.M. 1947; (2)En. Sec. 38, Ch. 84, L. 1937; amd. Sec. 2, Ch. 226, L. 1947; amd. Sec. 1, Ch. 161, L. 1951; amd. Sec. 5, Ch. 240, L. 1971; amd. Sec. 6, Ch. 94, L. 1973; Sec. 4-439, R.C.M. 1947; amd. and redes. 4-6-404 by Sec. 104, Ch. 387, L. 1975; Sec. 4-6-404, R.C.M. 1947; R.C.M. 1947, 4-6-104, 4-6-404(part); amd. Sec. 1, Ref. 74, app. Nov. 7, 1978; (3)En. Sec. 1, Ch. 26, L. 1979; amd. Sec. 4, Ch. 186, L. 1979; amd. Sec. 35, Ch. 68, L. 1987; amd. Sec. 2, Ch. 217, L. 1987; amd. Sec. 1, Ch. 448, L. 1989; amd. Sec. 2, Ch. 180, L. 2007.

16-6-306. Bottle clubs prohibited. The operation of alcoholic beverage bottle clubs is hereby prohibited by any person, persons, partnership, firm, corporation, or association. A bottle club is defined as any person, persons, partnership, firm, corporation, or association maintaining premises not licensed for the sale of alcoholic beverages, for a fee or other consideration, including the sale of food, mixes, ice, or any other fluids for alcoholic beverages, or otherwise furnishing premises for such purposes and from which they would derive revenue.

History: En. Sec. 1, Ch. 200, L. 1959; amd. Sec. 1, Ch. 109, L. 1963; Sec. 4-172, R.C.M.

1947; redes. 4-6-105 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-6-105; amd. Sec. 36, Ch. 68, L. 1987.

16-6-307. Consumption of alcoholic beverage on druggists' premises prohibited. No person within the state of Montana shall consume any alcoholic beverage on any premises where an alcoholic beverage is kept for sale by a druggist, nor shall any druggist permit any alcoholic beverage to be consumed on such premises.

History: En. Sec. 51, Ch. 105, L. 1933; re-en. Sec. 2815.110, R.C.M. 1935; Sec. 4-156, R.C.M. 1947; amd. and redes. 4-6-106 by Sec. 20, Ch. 387, L. 1975; R.C.M. 1947, 4-6-106.

16-6-308. Patent medicine prohibition. From and after the date of notification under 16-1-202(3), any person within the state selling or keeping for sale any such proprietary or patent medicine, extract, essence, tincture, or preparation so prohibited shall be guilty of an offense under this code.

History: En. Sec. 36, Ch. 105, L. 1933; re-en. Sec. 2815.95, R.C.M. 1935; Sec. 4-141, R.C.M. 1947; amd. and redes. 4-1-203 by Sec. 15, Ch. 387, L. 1975; R.C.M. 1947, 4-1-203(part).

16-6-309. Alcoholic beverages administered to institution inmates. An alcoholic beverage may not be administered by any person under 16-1-204 except to bona fide patients or inmates of the institution of which the person is in charge, and every person in charge of an institution who administers alcoholic beverages in evasion or violation of this code is guilty of an offense against this code.

History: En. Sec. 34, Ch. 105, L. 1933; re-en. Sec. 2815.93, R.C.M. 1935; amd. Sec. 9, Ch. 154, L. 1965; Sec. 4-139, R.C.M. 1947; amd. and redes. 4-1-205 by Sec. 13, Ch. 387, L. 1975; R.C.M. 1947, 4-1-205(part); amd. Sec. 37, Ch. 68, L. 1987; amd. Sec. 207, Ch. 56, L. 2009.

16-6-310. Officer or agent of corporation deemed party to offense. Where an offense against this code is committed by a corporation, the officer or agent of the corporation in charge of the premises in which the offense is committed shall prima facie be deemed to be a party to the offense so committed and shall be personally liable to the penalties prescribed for the offense as a principal offender. Nothing in this section shall relieve the corporation or the person who actually committed the offense from liability therefor.

History: En. Sec. 72, Ch. 105, L. 1933; re-en. Sec. 2815.131, R.C.M. 1935; Sec. 4-206, R.C.M. 1947; redes. 4-6-107 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-6-107.

16-6-311. Occupant of premises deemed party to offense. Upon proof of the fact that an offense against this code has been committed by any person in the employ of the occupant of any house, shop, room, or other premises in which the offense is committed or by any person who is suffered by the occupant to be or remain in or upon such house, shop, room, or premises or to act in any way for the occupant, the occupant shall prima facie be deemed to be a party to

the offense so committed and shall be liable to the penalties prescribed for the offense as a principal offender, notwithstanding the fact that the offense was committed by a person who is not proved to have committed it under or by the direction of the occupant. Nothing in this section shall relieve the person actually committing the offense from liability therefor.

History: En. Sec. 73, Ch. 105, L. 1933; re-en. Sec. 2815.132, R.C.M. 1935; Sec. 4-207, R.C.M. 1947; redes. 4-6-108 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-6-108.

16-6-312. Premises where alcoholic beverages illegally sold public nuisance. Any room, house, building, boat, vehicle, structure, or place where alcoholic beverages are knowingly manufactured, sold, or bartered in violation of this code or 45-8-111 and all property knowingly kept and used in maintaining the same is hereby declared to be a public nuisance, and any person who maintains such a nuisance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$100 or more than \$500 and be imprisoned not less than 30 days or more than 6 months.

History: En. Sec. 8, Ch. 30, L. 1937; Sec. 4-238, R.C.M. 1947; amd. and redes. 4-6-401 by Sec. 43, Ch. 387, L. 1975; amd. Sec. 16, Ch. 496, L. 1977; R.C.M. 1947, 4-6-401.

16-6-313. Injunction actions. An action to enjoin any nuisance defined in this code may be brought in the name of the state of Montana by the attorney general of the state or by any county attorney. The action must be brought and tried as an action in equity and may be brought in any court having jurisdiction to hear and determine equity cases. If it appears, by affidavits or otherwise, to the satisfaction of the judge that the nuisance exists, a temporary writ of injunction must be issued restraining the defendant from conducting or permitting the continuance of the nuisance until the conclusion of the trial. If a temporary injunction is sought, the court may issue an order restraining the defendant and all other persons from removing or in any way interfering with the fixtures or other things used in connection with the violation of this code constituting the nuisance. A bond may not be required in instituting the proceedings. The court is not required to find that the property involved was being unlawfully used at the time of the hearing, but on finding that the material allegations of the petition are true, the court shall order that alcoholic beverages may not be manufactured, sold, or bartered in the room, house, building, boat, vehicle, structure, or place or any part of those locations. Upon judgment of the court ordering the nuisance to be abated, the court may order that the room, house, building, boat, vehicle, structure, or place may not be occupied or used for 1 year. The court may permit the location to be occupied or used if the owner, lessee, tenant, or occupant gives a bond with sufficient surety, to be approved by the court making the order, in the sum of not less than \$500 or more than \$1,000, payable to the state of Montana and conditioned that alcoholic beverages will not be manufactured, sold, or bartered at the location and that the person will pay all fines, costs, and damages that may be assessed for any violations of this code upon the property.

History: En. Sec. 48, Ch. 106, L. 1933; amd. Sec. 16, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.49, R.C.M. 1935; Sec. 4-346, R.C.M. 1947; amd. and redes. 4-6-402 by Sec. 71, Ch. 387, L. 1975; R.C.M. 1947, 4-6-402; amd. Sec. 39, Ch. 68, L. 1987; amd. Sec. 208, Ch. 56, L. 2009.

16-6-314. Penalty for violating code -- revocation of license -- penalty for violation by underage person. (1) A person who violates a provision of this code is guilty of a misdemeanor punishable as provided in 46-18-212, except as otherwise provided in this section.

(2) If a retail licensee is convicted of an offense under this code, the licensee's license must be immediately revoked or, in the discretion of the department, another sanction must be imposed as provided under 16-4-406.

(3) A person under 21 years of age who violates 16-3-301(5) or 16-6-305(3) is subject to the penalty provided in 45-5-624(2) or (3). (See compiler's comments for contingent termination of certain text.)

History: En. Sec. 38, Ch. 84, L. 1937; amd. Sec. 2, Ch. 226, L. 1947; amd. Sec. 1, Ch. 161, L. 1951; amd. Sec. 5, Ch. 240, L. 1971; amd. Sec. 6, Ch. 94, L. 1973; Sec. 4-439, R.C.M. 1947; amd. and redes. 4-6-404 by Sec. 104, Ch. 387, L. 1975; R.C.M. 1947, 4-6-404(part); amd. Sec. 5, Ch. 186, L. 1979; amd. Sec. 2, Ch. 105, L. 1985; amd. Sec. 3, Ch. 217, L. 1987; amd. Sec. 22, Ch. 83, L. 1989; amd. Sec. 1, Ch. 481, L. 1995; amd. Sec. 12, Ch. 501, L. 2007; amd. Sec. 6, Ch. 516, L. 2007.

CHAPTERS 7 THROUGH 9

RESERVED

CHAPTER 10

REGULATION OF CIGARETTE MARKETING

Part 1 -- Policy and Definitions

16-10-101. Short title.

16-10-102. Declaration of policy.

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Part 1

Policy and Definitions

16-10-101. Short title. This chapter shall be known, designated, and cited as "The Montana Cigarette Sales Act".

History: En. Sec. 1, Ch. 258, L. 1965; R.C.M. 1947, 51-302.

16-10-102. Declaration of policy. The advertising, offering for sale, or sale of cigarettes below cost in the retail and wholesale trades is an unfair and deceptive business practice. It is the policy of the state to promote the public welfare, and it is the purpose of this chapter to carry out that policy in the public interest, stabilize the sale of cigarettes, and maximize and protect the state revenues from this source.

History: En. Preamble, Ch. 258, L. 1965; R.C.M. 1947, 51-301; amd. Sec. 5, Ch. 5, L. 1979; amd. Sec. 3, Ch. 578, L. 1995.

16-10-103. Definitions. When used in this chapter, except when the context clearly indicates a different meaning, the following definitions apply:

(1) "Basic cost of cigarettes" means the list cost of cigarettes as reported to the department by the manufacturer without any deductions for discounts or taxes of any kind.

(2) "Business day" means any day other than a Sunday or a legal holiday.

(3) "Cigarettes" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of nontobacco paper or any other substance or material except tobacco.

(4) (a) The term "cost to the retailer" means the cost to the wholesaler from whom the cigarettes were purchased by the retailer plus the cost of doing business by the retailer as evidenced by the standards and methods of accounting regularly employed by the retailer in the retailer's determination of costs for income tax reporting purposes for the total operation of the retailer's establishment. Cost of doing business by the retailer includes, without limitation:

(i) labor costs (including salaries of executives and officers);

(ii) rent;

(iii) depreciation;

(iv) selling costs;

(v) maintenance of equipment;

(vi) delivery costs;

(vii) all types of licenses;

(viii) all types of business taxes;

(ix) all types of insurance;

(x) all types of advertising;

(xi) any rebates, patronage dividends, or concessions, no matter how defined;

(xii) expenses prior to opening for business, including all startup costs, land acquisition costs, construction costs, costs for marketing studies, and similar expenses;

(xiii) any district, central, regional, and national administrative and operation costs and expenses; and

(xiv) all other indirect or overhead costs with respect to the operation of the business of the retailer.

(b) The cost of doing business by the retailer must be expressed as a percentage and applied to the cost to the wholesaler from whom the cigarettes were purchased.

(c) A retailer who purchases directly from a manufacturer or from any other person at or at less than or about the price normally and usually charged for purchases in wholesale quantities shall, in determining the cost to the retailer, add the cost of doing business by the wholesaler, as determined in subsection (5)(b), to the basic cost of cigarettes to the retailer, as well as the cost of doing business by the retailer.

(d) In the absence of the filing with the department of satisfactory proof of a lesser or higher cost of doing business by the retailer making the sale, the cost of doing business by the retailer is presumed to be 10% of the cost to the wholesaler.

(5) (a) The term "cost to the wholesaler" means the basic cost of cigarettes purchased by the wholesaler from a manufacturer plus the cost of doing business by the wholesaler as evidenced by the standards and methods of accounting regularly employed by the wholesaler in the wholesaler's determination of costs for income tax reporting purposes for the total operation

of the wholesaler's business. The cost of doing business by the wholesaler includes, without limitation:

- (i) labor costs (including salaries of executives and officers);
- (ii) rent;
- (iii) depreciation;
- (iv) selling costs;
- (v) maintenance of equipment;
- (vi) delivery costs;
- (vii) all types of licenses;
- (viii) all types of business taxes;
- (ix) all types of insurance;
- (x) all types of advertising;
- (xi) any rebates, patronage dividends, or concessions, no matter how defined;
- (xii) expenses prior to opening for business, including all startup costs, land acquisition costs, construction costs, costs for marketing studies, and similar expenses;
- (xiii) any district, central, regional, and national administrative and operation costs and expenses; and
- (xiv) all other indirect or overhead costs with respect to the operation of the wholesaler.

(b) The cost of doing business by a wholesaler must be expressed as a percentage and applied to the basic cost of cigarettes.

(c) In the absence of the filing with the department of proof that the department declares to be satisfactory of a lesser or higher cost of doing business by the wholesaler making the sale, the cost of doing business by the wholesaler is presumed to be 5% of the basic cost of cigarettes to the wholesaler plus cartage to the retail outlet if performed or paid for by the wholesaler. The cartage cost, in the absence of the filing with the department of satisfactory proof of a lesser or higher cost, is considered to be 3/4 of 1% of the basic cost of cigarettes to the wholesaler.

(6) "Department" means the department of revenue provided for in 2-15-1301 and, when the meaning of the context requires, includes its employees.

(7) "Manufacturer" means any person who fabricates cigarettes from raw materials for the purpose of resale.

(8) "Person" means an individual, firm, association, company, partnership, corporation, or other business entity, however formed.

(9) "Retailer" means a person who operates a store, stand, booth, concession, or other outlet for the purpose of selling cigarettes at retail.

(10) "Sale" or "sell" means any transfer of cigarettes for consideration, exchange, barter, gift, offer for sale, or distribution, in any manner or by any means.

(11) "Sell at retail", "sale at retail", or "retail sales" means any transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or usual conduct of the retailer's business, to the purchaser for consumption or use.

(12) "Sell at wholesale", "sale at wholesale", or "wholesale sales" means and includes any bona fide transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the wholesaler's business, to a retailer for the purpose of resale.

(13) "Sole distributor" means a person who either causes a unique brand of cigarettes to be manufactured according to distinctive specifications and acts as the exclusive distributor of the cigarettes or is the exclusive distributor of a brand of cigarettes within the continental United

States.

(14) "Wholesaler" means a person who services retail outlets by maintaining an established place of business for the purchase of cigarettes and who:

(a) purchases cigarettes from a manufacturer for the purpose of selling cigarettes to retailers; or

(b) purchases cigarettes from a sole distributor, another wholesaler, or any other person for the purpose of selling cigarettes to retailers.

History: En. Sec. 2, Ch. 258, L. 1965; amd. Sec. 1, Ch. 130, L. 1967; amd. Sec. 16, Ch. 391, L. 1973; R.C.M. 1947, 51-303; amd. Sec. 4, Ch. 578, L. 1995.

16-10-104. Powers of department. (1) In addition to the penalties and rights imposed and set forth in 16-10-402, the department shall enforce the provisions of this chapter.

(2) The department has the power to adopt, amend, and repeal rules necessary to enforce and administer the provisions of this chapter.

History: En. Sec. 13, Ch. 258, L. 1965; R.C.M. 1947, 51-314(part); amd. Sec. 5, Ch. 578, L. 1995.

16-10-105 through 16-10-109 reserved.

16-10-110. Licensure as both wholesaler and retailer allowed. This chapter does not prevent a person from being licensed as both a wholesaler and a retailer.

History: En. Sec. 1, Ch. 578, L. 1995.

Part 2

Sales Price of Cigarettes

16-10-201. Wholesaler-to-wholesaler sales. When one wholesaler sells cigarettes to any other wholesaler, the former may not be required to include in the selling price to the latter the cost to the wholesaler, as provided by 16-10-103, except that no such sale may be made at a price less than the basic cost of cigarettes, as defined in 16-10-103, but the latter wholesaler, upon resale to a retailer, is considered to be the wholesaler governed by the provisions of 16-10-103(5).

History: En. Sec. 4, Ch. 258, L. 1965; R.C.M. 1947, 51-305; amd. Sec. 6, Ch. 578, L. 1995.

16-10-202. Repealed. Sec. 7, Ch. 130, L. 1991.

History: En. Sec. 5, Ch. 258, L. 1965; R.C.M. 1947, 51-306.

16-10-203. Sales to meet competition permitted. (1) (a) A retailer may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article at cost to the competitor as a retailer as prescribed in this chapter.

(b) Any wholesaler may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is rendering the same type of service and is selling the same article at cost to the competitor as a wholesaler as prescribed in this chapter.

(c) The price of cigarettes advertised, offered for sale, or sold under the exceptions specified in 16-10-304 may not be considered the price of a competitor and may not be used as a basis for establishing prices below cost, and the price established at a bankruptcy sale may not be considered the price of a competitor within the purview of this section.

(2) In the absence of proof of the "price of a competitor" under this section, the "lowest cost to the retailer" or the "lowest cost to the wholesaler", determined by any "cost survey" made pursuant to 16-10-303, may be considered to be the "price of a competitor" within the meaning of this section.

History: En. Sec. 7, Ch. 258, L. 1965; R.C.M. 1947, 51-308; amd. Sec. 209, Ch. 56, L. 2009.

16-10-204. Determining cost -- prices below cost -- free merchandise. (1) In determining the cost to the retailer and the cost to the wholesaler, the department or a court shall receive and consider evidence tending to show that any person accused of violating the provisions of this chapter purchased cigarettes, with respect to the sale of which complaint is made, below either the cost to the retailer or the cost to the wholesaler, depending upon the status of the person accused, or upon terms or in a manner or under invoices that conceal the true cost, discounts, or terms of purchase. Further, the department or a court shall receive and consider evidence of the normal, customary, and prevailing terms and discounts in connection with other sales of a similar nature in this state.

(2) Merchandise given gratis or payment made to a retailer or wholesaler by the manufacturer of the merchandise for display, advertising, promotion purposes, any type of discount, or otherwise may not be considered in determining the cost of cigarettes to the retailer or wholesaler.

History: En. Sec. 9, Ch. 258, L. 1965; R.C.M. 1947, 51-310; amd. Sec. 7, Ch. 578, L. 1995.

16-10-205. Purchases outside ordinary trade channels. In establishing the cost of cigarettes to the retailer or wholesaler, the invoice cost of said cigarettes purchased at a forced, bankrupt, or closeout sale or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost of the cigarettes to the retailer or wholesaler in the quantity last purchased through the ordinary channels of trade.

History: En. Sec. 10, Ch. 258, L. 1965; R.C.M. 1947, 51-311.

Unlawful Practices -- Exceptions

16-10-301. Sales below cost. It is unlawful and a violation of this chapter:

(1) for any retailer or wholesaler to:

(a) advertise, offer to sell, or sell, at retail or wholesale, cigarettes at less than cost to a retailer or wholesaler;

(b) offer a rebate in price, give a rebate in price, offer a concession of any kind, or give a concession of any kind in connection with the sale of cigarettes that are sold by the wholesaler or retailer in the ordinary course of trade or business if the rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise to which the rebate or concession may lawfully be given;

(2) for any retailer to:

(a) induce or attempt to induce or procure or attempt to procure the purchase of cigarettes at a price less than the cost to the wholesaler, as defined in this chapter;

(b) induce or attempt to induce or procure or attempt to procure any rebate or concession of any kind or nature whatever in connection with the purchase of cigarettes.

History: En. Sec. 3, Ch. 258, L. 1965; R.C.M. 1947, 51-304(1), (2), (4); amd. Sec. 8, Ch. 578, L. 1995.

16-10-302. Illegal contracts. Any contract, expressed or implied, made by any person in violation of any of the provisions of this chapter is declared to be an illegal and void contract, and no recovery thereon shall be had.

History: En. Sec. 8, Ch. 258, L. 1965; R.C.M. 1947, 51-309.

16-10-303. Cost survey as evidence. When a cost survey pursuant to cost accounting practices used for income tax reporting purposes has been made by the department, a trade association, an industry group, a wholesaler, or a retailer to establish either the lowest cost to the retailer or the lowest cost to the wholesaler, or both, for the state, the cost survey is competent evidence for use in proving the cost to the person complained against within the provisions of this chapter.

History: En. Sec. 11, Ch. 258, L. 1965; R.C.M. 1947, 51-312; amd. Sec. 9, Ch. 578, L. 1995.

16-10-304. Exceptions. The provisions of this chapter shall not apply to sales at retail or sales at wholesale made:

(1) as an isolated transaction and not in the usual course of business;

(2) where cigarettes are advertised, offered for sale, or sold in bona fide clearance sales for the purpose of discontinuing trade in such cigarettes and said advertising, offer to sell, or sale shall state the reason thereof and the quantity of such cigarettes advertised, offered for sale, or sold as imperfect or damaged and said advertising, offer to sell, or sale shall state the reason

therefor and the quantity of such cigarettes advertised, offered for sale, or to be sold;

(3) where cigarettes are sold upon the final liquidation of a business; or

(4) where cigarettes are advertised, offered for sale, or sold by any fiduciary or other officer acting under the order or direction of any court.

History: En. Sec. 6, Ch. 258, L. 1965; R.C.M. 1947, 51-307.

16-10-305. Repealed. Sec. 7, Ch. 130, L. 1991.

History: En. Sec. 1, Ch. 139, L. 1985.

16-10-306. Cigarette and tobacco product labels -- federal requirements -- penalty.

(1) A person may not knowingly import into this state for sale or other distribution any package of cigarettes or tobacco product that violates any federal:

(a) tax, trademark, or copyright law; or

(b) requirement for the placement of labels, warnings, or other information, including health hazards, that must be on the container or individual package.

(2) A person may not sell or offer to sell a package of cigarettes or tobacco product or affix the tax insignia on a package of cigarettes, as provided in 16-11-113, knowing that:

(a) the package is marked as manufactured for use outside of the United States;

(b) any label or language has been altered from the manufacturer's original packaging and labeling to conceal the fact that the package was manufactured for use outside of the United States; or

(c) a stamp, label, or decal was affixed to conceal the fact that the package was manufactured for use outside of the United States.

(3) A package of cigarettes or tobacco product found in this state that is marked for use outside of the United States is contraband and may be seized without a warrant by the department, any agent of the department, or any peace officer. Any cigarettes or tobacco products seized as contraband must be destroyed by the department.

(4) (a) The department may proceed against a person who violates this section through a civil action under the civil enforcement provisions of Title 16, chapter 10, part 4.

(b) A violation of this section is criminally punishable by a fine in an amount not to exceed \$10,000.

(5) For the purposes of this section, "cigarette" has the meaning defined in 16-11-102 and "tobacco product" means all products containing tobacco for human consumption or use except cigarettes.

History: En. Sec. 1, Ch. 465, L. 1999; amd. Sec. 7, Ch. 511, L. 2005.

Part 4

Enforcement

16-10-401. Repealed. Sec. 35, Ch. 578, L. 1995.

History: En. Sec. 3, Ch. 258, L. 1965; R.C.M. 1947, 51-304(3).

16-10-402. Injunctive and other civil relief. (1) In addition to the penalty provided by 16-10-403, any person injured or any trade association that represents a person injured by any violation of this chapter may maintain an action in any court of equitable jurisdiction to prevent, restrain, or enjoin the violation. If in the action a violation of this chapter is established, the court shall enjoin and restrain or otherwise prohibit the violation and, in addition, shall assess in favor of the plaintiff and against the defendant the costs of the suit and reasonable attorney fees. In the action, it is not necessary that actual damages to the plaintiff be alleged or proved, but when alleged and proved, the plaintiff in the action, in addition to injunctive relief and fees and costs of suit, is entitled to recover from the defendant the amount of actual damages sustained by the plaintiff.

(2) If injunctive relief is not sought or required, any person injured by a violation of this chapter may maintain an action for damages alone in any court of competent jurisdiction. The measure of damages in the action is the same as prescribed in subsection (1).

History: En. Sec. 12, Ch. 258, L. 1965; R.C.M. 1947, 51-313; amd. Sec. 10, Ch. 578, L. 1995.

16-10-403. Revocation or suspension of license -- civil penalty. (1) The department may revoke or suspend the license of, impose a civil penalty not to exceed \$500 on, or order any combination of revocation, suspension, and penalty to be imposed on any licensed wholesaler or retailer upon sufficient cause appearing of the violation of this chapter or upon the failure of the licensee to comply with any of the provisions of this chapter.

(2) A license may not be suspended or revoked except upon notice to the licensee and after a hearing prescribed by the department at its principal office. The department, upon a finding by it that the licensee has failed to comply with any provisions of this chapter or any rule promulgated under this chapter, shall, in the case of a first offender, suspend the license of the licensee for a period of not less than 5 or more than 20 consecutive business days, impose a civil penalty in an amount not to exceed \$500, or order both the suspension and the penalty. In the case of a second or plural offender, the department shall suspend the license for a period of not less than 20 consecutive business days or more than 12 months, impose a civil penalty in an amount not to exceed \$500, or order both the suspension and the penalty. In the event the department finds the offender has been guilty of willful and persistent violations, it may revoke the licensee's license and, in its discretion, may impose a civil penalty in an amount not to exceed \$500.

(3) Any person whose license has been revoked may apply to the department at the expiration of 1 year for a reinstatement of the license. The license may be reinstated by the department if it appears to the satisfaction of the department that the licensee will comply with the provisions of this chapter and the rules promulgated under this chapter.

(4) A person whose license has been suspended or revoked may not sell cigarettes or permit cigarettes to be sold during the period of the suspension or revocation on the premises occupied by the person or upon other premises controlled by the person or others or in any other

manner or form whatever. A disciplinary proceeding or action is not barred or abated by the expiration, transfer, surrender, continuance, renewal, or extension of any license issued under the provisions of the cigarette tax law.

(5) Any determination by the department and any order of suspension or revocation of a license or refusal to reinstate a license after revocation is reviewable by the court in a proper case and in proceedings as provided by the procedural law of this jurisdiction.

History: En. Sec. 13, Ch. 258, L. 1965; R.C.M. 1947, 51-314(part); amd. Sec. 11, Ch. 578, L. 1995; amd. Sec. 42, Ch. 51, L. 1999.

CHAPTER 11

TAXATION OF TOBACCO PRODUCTS

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Part 1

Tax on Tobacco Products

16-11-101. Legislative intent. The legislature hereby declares that its intent in enacting 16-11-111 is to enable those who are subject to the taxes imposed by the federal tax laws to avail

themselves of the deductions respecting state and local taxes specified in section 164 of the Internal Revenue Code, 26 U.S.C. 164, as amended, in computing their taxable income.

History: En. Sec. 2, Ch. 97, L. 1963; R.C.M. 1947, 84-5606.1; amd. Sec. 40, Ch. 114, L. 2003.

16-11-102. Definitions. (1) As used in this chapter, the following definitions apply, unless the context requires otherwise:

(a) "Contraband" means:

(i) any tobacco product possessed, sold, offered for sale, distributed, held, owned, acquired, transported, imported, or caused to be imported in violation of this part;

(ii) any cigarette or roll-your-own tobacco that is possessed, sold, offered for sale, distributed, held, owned, acquired, transported, imported, or caused to be imported in violation of part 4 or part 5;

(iii) any cigarettes that bear trademarks that are counterfeit under state or federal trademark laws;

(iv) any cigarettes bearing false or counterfeit insignia or tax stamps from any state; or

(v) any cigarettes or tobacco products that violate 16-10-306.

(b) "Department" means the department of revenue provided for in 2-15-1301.

(c) "Person" means an individual, firm, partnership, corporation, association, company, committee, other group or persons, or other business entity, however formed.

(2) As used in this part, the following definitions apply, unless the context requires otherwise:

(a) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(i) any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(ii) tobacco, in any form, that is functional in the product and that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette; or

(iii) any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance or the type of tobacco used in the filler and regardless of its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette described in subsection (2)(a)(i).

(b) "Controlling person" means a person who owns an equity interest of 10% or more of a business or the equivalent.

(c) "Directory" means the tobacco product directory as provided in 16-11-504.

(d) "Full face value of insignia" means the total amount of the tax levied under this part.

(e) "Insignia" or "indicia" means the impression, mark, or stamp approved by the department under the provisions of this part.

(f) "Licensed retailer" means any person, other than a wholesaler, subjobber, or tobacco product vendor, who is licensed under the provisions of this part.

(g) "Licensed subjobber" means a subjobber licensed under the provisions of this part.

The person must be treated as a wholesaler.

(h) "Licensed wholesaler" means a wholesaler licensed under the provisions of this part.

(i) "Manufacturer" means any person who fabricates tobacco products from raw materials

for the purpose of resale.

(j) "Manufacturer's original container" means the original master shipping case or original shipping case used by the tobacco product manufacturer to ship multipack units, such as boxes, cartons, and sleeves, to warehouse distribution points.

(k) "Moist snuff" means any finely cut, ground, or powdered tobacco, other than dry snuff, that is intended to be placed in the oral cavity.

(l) "Record" means an original document, a legible facsimile, or an electronically preserved copy.

(m) "Retailer" means a person, other than a wholesaler, who is engaged in the business of selling tobacco products to the ultimate consumer. The term includes a person who operates fewer than 10 tobacco product vending machines.

(n) "Roll-your-own tobacco" means any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to or purchased by consumers as tobacco for making cigarettes.

(o) "Sale" or "sell" means any transfer of tobacco products for consideration, exchange, barter, gift, offer for sale, or distribution in any manner or by any means.

(p) "Sole distributor" means a person who either causes a unique brand of tobacco products to be manufactured according to distinctive specifications and acts as the exclusive distributor of the tobacco products or is the exclusive distributor of a brand of tobacco products within the continental United States.

(q) "Subjobber" means a person who purchases from a licensed wholesaler cigarettes with the Montana cigarette tax insignia affixed and sells or offers to sell tobacco products to a licensed retailer or tobacco product vendor. An isolated sale or exchange of cigarettes between licensed retailers does not constitute those retailers as subjobbers.

(r) "Tobacco product" means cigarettes and all other products containing tobacco that are intended for human consumption or use.

(s) (i) "Tobacco product vendor" means a person doing business in the state who purchases tobacco products through a wholesaler, subjobber, or retailer for 10 or more tobacco product vending machines that the person operates for a profit in premises or locations other than the person's own.

(ii) A tobacco product vendor must be treated as a wholesaler.

(t) "Wholesale price" means the established price for which a manufacturer sells a tobacco product to a wholesaler or any other person before any discount or reduction.

(u) "Wholesaler" means a person who:

(i) purchases tobacco products from a manufacturer for the purpose of selling tobacco products to subjobbers, tobacco product vendors, wholesalers, or retailers; or

(ii) purchases tobacco products from a sole distributor, another wholesaler, or any other person for the purpose of selling tobacco products to subjobbers, tobacco product vendors, wholesalers, or retailers.

History: En. Sec. 1, Ch. 140, L. 1969; amd. Sec. 205, Ch. 516, L. 1973; amd. Sec. 1, Ch. 445, L. 1975; R.C.M. 1947, 84-5606.2; amd. Sec. 1, Ch. 130, L. 1991; amd. Sec. 12, Ch. 578, L. 1995; amd. Sec. 8, Ch. 511, L. 2005.

16-11-103. Powers of department. (1) The department may prescribe rules not

inconsistent with the provisions of this chapter for the detailed and efficient administration of this chapter. All rules and orders promulgated must be published promptly and a copy distributed to each wholesale licensee. The department is authorized to adopt rules for the effective collection and refund of the tax imposed by this chapter.

(2) The department of revenue and the department of justice and their duly authorized agents may conduct inquiries and hearings, and any member of the department of revenue, department of justice, or any agent may administer oaths and take testimony under oath relative to the matter of inquiry. The director, the attorney general, or an authorized agent may subpoena witnesses and require the production of books, papers, and documents pertinent to the inquiry. The director, the attorney general, or an agent, after the hearing, shall make findings and issue an order in writing. The findings and order must be filed in the office of the department of revenue or the department of justice and must be open for public inspection.

(3) The department is authorized to contract with the department of justice for the investigations required under this chapter. The department may appoint additional assistants and establish an additional division of tobacco product enforcement as required to carry out the provisions of this chapter.

(4) The department and the department of justice are authorized to employ clerical and field assistants necessary to properly administer the provisions of this chapter.

(5) The department of justice may appoint one or more investigators or prosecuting officers who, under its direction, shall perform the duties it may require.

(6) When requested by the department of revenue, the department of justice shall:

(a) investigate all matters relating to the purchase, sale, importation, exportation, possession, and delivery of tobacco products; and

(b) serve as a liaison to local law enforcement authorities in matters relating to tobacco law enforcement.

History: (1)Ap. p. Sec. 26, Ch. 140, L. 1969; amd. Sec. 219, Ch. 516, L. 1973; Sec. 84-5606.27, R.C.M. 1947; Ap. p. Sec. 7, Ch. 12, Ex. L. 1969; amd. Sec. 254, Ch. 516, L. 1973; Sec. 84-6807, R.C.M. 1947; (2)En. Sec. 22, Ch. 140, L. 1969; amd. Sec. 110, Ch. 405, L. 1973; Sec. 84-5606.23, R.C.M. 1947; (3)En. Sec. 27, Ch. 140, L. 1969; amd. Sec. 220, Ch. 516, L. 1973; Sec. 84-5606.28, R.C.M. 1947; (4)En. Sec. 29, Ch. 140, L. 1969; amd. Sec. 5, Ch. 222, L. 1971; amd. Sec. 222, Ch. 516, L. 1973; Sec. 84-5606.30, R.C.M. 1947; R.C.M. 1947, 84-5606.23, 84-5606.27, 84-5606.28(part), 84-5606.30(part), 84-6807; amd. Sec. 17, Ch. 414, L. 1993; amd. Sec. 9, Ch. 511, L. 2005.

16-11-104. Carriers to report shipments -- penalties. (1) Except as provided in subsection (3), every common carrier hauling, transporting, or shipping into or out of the state of Montana from or to any other state or country any tobacco products shall report in writing the shipments or deliveries to the department on forms furnished by the department. The reports must include the date, the person to whom the tobacco products were consigned and delivered, the quantity as shown by the bill of lading, and other information that the department may require. A carrier shall retain for 36 months all pertinent and relevant records necessary for the preparation of this report and any other information that the department may require.

(2) A common carrier who violates the provisions of subsection (1) is subject to civil penalties as determined by the department. For a first offense, a natural person shall be fined an

amount not to exceed \$50,000, and any other entity shall be fined an amount not to exceed \$75,000. For a second or subsequent offense, a natural person shall be fined an amount not to exceed \$100,000, and any other entity shall be fined an amount not to exceed \$150,000.

(3) A common carrier hauling, transporting, or shipping tobacco products to a licensed wholesaler or retailer in Montana shall submit the reports described in subsection (1) to the department upon request of the department.

History: En. Sec. 19, Ch. 140, L. 1969; amd. Sec. 215, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.20; amd. Sec. 3, Ch. 207, L. 1991; amd. Sec. 10, Ch. 511, L. 2005.

16-11-105. Rulemaking authority of department of justice. The department of justice may adopt rules to implement 16-11-103, 16-11-118, 16-11-124, 16-11-141, 16-11-142, and 16-11-147.

History: En. Sec. 28, Ch. 414, L. 1993; amd. Sec. 5, Ch. 364, L. 2009.

16-11-106. Regular and systematic solicitation of business -- compliance with chapter. Every person who engages in the regular or systematic solicitation of consumers in this state to purchase tobacco products in any manner shall comply with all the requirements of this chapter and any rules adopted pursuant to this chapter.

History: En. Sec. 1, Ch. 511, L. 2005.

16-11-107. Secretary of state as process agent for unlicensed person doing business in state. Every person who engages in the regular or systematic solicitation of consumers in this state to purchase tobacco products in any manner without a license as required by this chapter must, by so doing, be considered to appoint the secretary of state as its agent upon whom all lawful process may be served. The secretary of state may be served with process issued within this state in any action or proceeding against the unlicensed person arising out of any contract or transaction. The regular and systematic solicitation of consumers in this state is considered to signify the person's assent to personal jurisdiction in the courts of this state and agreement that service of process on the secretary of state will have the same legal effect and validity as personal service of process upon the person in this state.

History: En. Sec. 2, Ch. 511, L. 2005.

16-11-108. Service of process. (1) Service of process pursuant to 16-11-107 must be made by delivering to and leaving with the secretary of state's office two copies of the summons and complaint and any fees required by law. The secretary of state shall, in a timely manner, mail by registered or certified mail one of the copies to the defendant at its last-known business address. The secretary of state shall keep the other copy as a record of the process served upon the secretary of state. The service of process is sufficient if a notice of service and a copy of the process are sent within 10 days after service by certified mail by the plaintiff's attorney to the defendant at its last-known principal place of business and if the defendant's receipt or the receipt issued by the post office with which the letter is certified, showing the name of the sender of the

letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing compliance with this section are filed with the clerk of the court in which the action is pending on or before the date the defendant is required to appear or within a further time that the court may allow.

(2) Service of process in any action, suit, or proceeding, in addition to being made in the manner provided in subsection (1), must be considered valid if:

(a) served upon any person within this state on behalf of the person soliciting business who is:

(i) soliciting orders for sale of tobacco products;

(ii) making any contract for sale of tobacco products or delivering any tobacco products;

or

(iii) collecting or receiving any money for tobacco products;

(b) a copy of the process is sent within 10 days after service, by certified mail, by the plaintiff's attorney to the defendant at the last-known principal place of business of the defendant; and

(c) the defendant's receipt or the receipt issued by the post office with which the letter is certified, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing compliance with this subsection (2) are filed with the clerk of the court in which the action is pending on or before the date the defendant is required to appear or within a further time that the court may allow.

(3) A plaintiff or complainant is not entitled to a judgment by default under this section until 30 days after the date of the filing of the affidavit of compliance.

(4) This section does not limit or abridge the right to serve any process, notice, or demand upon any tobacco product seller in any other manner now or later permitted by law.

History: En. Sec. 3, Ch. 511, L. 2005.

16-11-109 reserved.

16-11-110. Signature alternatives for electronically filed returns. For purposes of Title 15, chapters 1, 2, 6 through 10, 15 through 18, 23, 24, 30 through 33, 35 through 38, 44, 50, 51, 53, 59 through 61, and 65, and Title 16, chapter 11, the director of revenue, and for the purposes of Title 15, chapter 70, the director of the department of transportation, may prescribe, by rule, methods for signing, subscribing, or verifying electronically filed tax returns. Returns electronically filed in accordance with the methods adopted by rule have the same validity and consequences as physical forms signed by a taxpayer.

History: En. Sec. 2, Ch. 572, L. 1995; amd. Sec. 1, Ch. 6, L. 1997; Sec. 15-30-211, MCA 1995; redes. 16-11-110 by Sec. 2, Ch. 6, L. 1997.

16-11-111. Cigarette, tobacco products, and moist snuff sales tax -- exemption for sale to tribal member. (1) (a) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is \$1.70 on each package containing 20 cigarettes. Whenever packages contain other than 20 cigarettes, there is a tax on each cigarette

equal to 1/20 the tax on a package containing 20 cigarettes.

(b) The tax computed under subsection (1)(a) applies to illegally packaged cigarettes under 16-11-307.

(2) The tax imposed in subsection (1) does not apply to quota cigarettes.

(3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all cigarettes entering a Montana Indian reservation.

(4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within 1 year of the shipment date forfeits the refund or credit.

(5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the quota, as established in a cooperative agreement between the department and an Indian tribe or as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given a refund or credit. Once the quota has been filled, the department shall immediately notify all affected wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will not be honored for the remainder of the quota period. Quota allocations are not transferable between quota periods or between reservations.

(6) The total amount of refunds or credits allowed by the department to all wholesalers claiming the refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax due on the quota allocation. The department shall determine the amount of refunds or credits for each Indian reservation at the beginning of each fiscal year, using the most recent census data available from the bureau of Indian affairs or as provided in a cooperative agreement with the tribe or tribes of the Indian reservation.

(7) There must be collected and paid to the state of Montana a tax of 50% of the wholesale price, to the wholesaler, of all tobacco products other than cigarettes and moist snuff. The tax on moist snuff is 85 cents an ounce based upon the net weight of the package listed by the manufacturer. For packages of moist snuff that are less than or greater than 1 ounce, the tax must be proportional to the size of the package. Tobacco products shipped from Montana and destined for retail sale and consumption outside the state are not subject to this tax.

(8) The tax imposed by subsection (7) must be precollected and paid by a wholesaler to the department upon sale to a Montana retailer. A wholesaler who fails to report or pay the tax required by this part must be assessed penalty and interest as provided in 15-1-216.

(9) A retailer who purchases tobacco products for resale on which the tobacco products tax has not been collected and paid to the department shall comply with all the provisions of this part and the rules adopted to implement this part as if it were a wholesaler.

(10) A retailer must assume that the tobacco products tax has not been collected and paid to the department in the absence of a statement on the retailer's invoice or sales slip for the tobacco products that states that the applicable Montana tobacco products tax is included in the

total billing cost.

History: En. Sec. 6, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 3, Ch. 18, L. 1957; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 1, Ch. 222, L. 1957; amd. Sec. 1, Ch. 97, L. 1963; amd. Sec. 6, Ch. 270, L. 1963; amd. Sec. 5, Ch. 318, L. 1967; amd. Sec. 4, Ch. 222, L. 1971; R.C.M. 1947, 84-5606(2) thru (4); amd. Sec. 1, Ch. 267, L. 1981; amd. Sec. 1, Ch. 608, L. 1983; amd. Sec. 1, Ch. 450, L. 1985; amd. Sec. 1, Ch. 704, L. 1985; amd. Sec. 2, Ch. 681, L. 1989; amd. Sec. 2, Ch. 130, L. 1991; amd. Sec. 25, Ch. 15, Sp. L. July 1992; amd. Sec. 8, Ch. 352, L. 1993; amd. Sec. 13, Ch. 578, L. 1995; amd. Sec. 1, Ch. 56, L. 2001; amd. Sec. 49, Ch. 544, L. 2003; amd. Sec. 2, I.M. No. 149, approved Nov. 2, 2004; amd. Sec. 11, Ch. 511, L. 2005.

16-11-112. Tax on ultimate consumer. All taxes paid pursuant to 16-11-111 shall be conclusively presumed to be direct taxes on the retail consumer precollected for the purpose of convenience and facility only. The full face value of the insignia or tax shall be added to the cost of the cigarettes and recovered from the ultimate consumer or user. When the tax is paid by any other person, such payment shall be considered as an advance payment and shall be added to the price of the cigarettes and recovered from the ultimate consumer or user. Any person selling cigarettes at retail shall state or separately display in the licensed premises a notice of the tax included in the selling price and charged or payable pursuant to this section. The provisions of this section shall in no way affect the method of collection of such tax.

History: Ap. p. Sec. 6, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 3, Ch. 18, L. 1957; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 1, Ch. 222, L. 1957; amd. Sec. 1, Ch. 97, L. 1963; amd. Sec. 6, Ch. 270, L. 1963; amd. Sec. 5, Ch. 318, L. 1967; amd. Sec. 4, Ch. 222, L. 1971; Sec. 84-5606, R.C.M. 1947; Ap. p. Sec. 9, Ch. 140, L. 1969; Sec. 84-5606.10, R.C.M. 1947; R.C.M. 1947, 84-5606(1), 84-5606.10(part).

16-11-113. Tax insignia. (1) Except as provided in this section, the wholesaler of any cigarettes shall cause to be securely affixed to the cigarettes the required insignia denoting the applicable tax.

(2) The insignia must be properly applied prior to sale, under regulations that the department may prescribe.

(3) Retailers licensed under this part may buy, sell, or have in their possession only cigarettes that have on each package the insignia provided for in this part. The insignia provided for in this part may be sold only to and must be affixed only by licensed wholesalers.

(4) If any cigarettes without the insignia affixed are found in the place of business of any unlicensed wholesaler, retailer, or other person, the presumption is that the cigarettes are kept in that place of business in violation of the provisions of this part.

(5) This section does not apply to a wholesaler who has cigarettes in possession that are either to be shipped or consigned to an Indian tribe that has entered into a cooperative agreement with the state or to a military reservation.

History: (1) thru (3)En. Sec. 6, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 3, Ch. 18, L. 1957; amd. Sec. 7, Ch. 44,

L. 1957; amd. Sec. 1, Ch. 222, L. 1957; amd. Sec. 1, Ch. 97, L. 1963; amd. Sec. 6, Ch. 270, L. 1963; amd. Sec. 5, Ch. 318, L. 1967; amd. Sec. 4, Ch. 222, L. 1971; Sec. 84-5606, R.C.M. 1947; (4)En. Sec. 6, Ch. 140, L. 1969; Sec. 84-5606.7, R.C.M. 1947; (5)En. Sec. 27, Ch. 140, L. 1969; amd. Sec. 220, Ch. 516, L. 1973; Sec. 84-5606.28, R.C.M. 1947; R.C.M. 1947, 84-5606(part), 84-5606.7, 84-5606.28(part); amd. Sec. 1, Ch. 382, L. 1979; amd. Sec. 3, Ch. 130, L. 1991; amd. Sec. 14, Ch. 578, L. 1995.

16-11-114. Insignia discount. (1) Each licensed wholesaler is entitled to purchase an insignia at full face value less the following percentage of the face value upon payment for the insignia as defrayment of the costs of affixing insignia and precollecting the tax on behalf of the state of Montana:

(a) 0.90% for the first 2,580 cartons or portion of 2,580 cartons purchased in any calendar month;

(b) 0.60% for the next 2,580 cartons or portion of 2,580 cartons purchased in any calendar month; and

(c) 0.45% for purchases in excess of 5,160 cartons in any calendar month.

(2) The taxes for tobacco products, other than cigarettes, that are paid by the wholesaler must be paid to the department in full less a 1.5% defrayment for the wholesaler's collection and administrative expenses and must, in accordance with the provisions of 17-2-124, be deposited by the department in the state general fund except as provided in 16-11-119. Refunds of the tax paid must be made as provided in 15-1-503 in cases in which the tobacco products purchased become unsalable.

History: En. Sec. 11, Ch. 140, L. 1969; R.C.M. 1947, 84-5606.12; amd. Sec. 2, Ch. 267, L. 1981; amd. Sec. 1, Ch. 600, L. 1983; amd. Sec. 15, Ch. 578, L. 1995; amd. Sec. 50, Ch. 544, L. 2003; amd. Sec. 3, I.M. No. 149, approved Nov. 2, 2004; amd. Sec. 12, Ch. 511, L. 2005; amd. Sec. 23, Ch. 475, L. 2007.

16-11-115. Tax meter machine -- tax stamp-applying machine -- purchase of stamps. (1) The department may authorize any wholesaler of cigarettes licensed under this part to use a tax meter machine to imprint an insignia upon each package of cigarettes imported, sold, or delivered in this state. The insignia must be one approved by the department. Each package of cigarettes imported into or delivered or sold in this state must be marked with the proper insignia of the tax-stamping meter, and any original package of cigarettes so marked may be lawfully possessed and sold within the state by any wholesaler licensed under this part. The department shall supervise and check the operation of the tax meter machines. Before using the machine, the operator of the machine shall take the machine's meter to the county treasurer of the county in which the machine is operated. The county treasurer shall set the meter for the number of packages specified and required by the operator. Prior to setting the meter, the county treasurer shall charge the operator the amount of money proper for the setting, less the expense defrayment provided for in 16-11-114. The county treasurer shall collect this amount in advance unless the department has allowed the purchaser credit as provided in 16-11-117. The county treasurer shall report to the department on forms prescribed by it the name of the licensed wholesaler and the number of packages for which the meter was set and shall forward to the department any amounts collected from the licensee.

(2) (a) The department may authorize a licensed wholesaler to affix tax stamps to packages of cigarettes with a heat-applied machine approved by the department. The department shall supervise and check the operation of the stamp-applying machine.

(b) Tax stamps applied as provided in this subsection must be purchased from the department, and payment for the stamps must accompany the order unless the department has allowed the purchaser to delay payment as provided in 16-11-117.

History: En. Sec. 13, Ch. 140, L. 1969; amd. Sec. 210, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.13; amd. Sec. 2, Ch. 600, L. 1983; amd. Sec. 4, Ch. 130, L. 1991; amd. Sec. 16, Ch. 578, L. 1995.

16-11-116. Resale of insignia prohibited -- rebate. A wholesaler may not resell to any other wholesaler any insignia purchased from the department. A wholesaler who has on hand any meter settings or tax insignia at the time of discontinuing the business of selling cigarettes may apply to the department and be paid the face value of the meter settings or tax insignia less the amount of the expense defrayment allowed by 16-11-114.

History: En. Sec. 13, Ch. 140, L. 1969; amd. Sec. 211, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.14; amd. Sec. 5, Ch. 130, L. 1991; amd. Sec. 17, Ch. 578, L. 1995.

16-11-117. When payment for insignia due. The department may permit a licensed wholesaler to pay for the insignia purchased, or affixation of insignia, within 30 days. To be eligible to defer payment, a wholesaler shall file with the department either a surety bond or other cash security, as approved by the department, for the amount that the department may fix, but not in excess of an amount equal to the maximum insignia purchases incurred for any 30-day period in the previous calendar year. Any newly licensed wholesaler shall pay on a cash basis for 1 complete calendar year, after which the department may permit the wholesaler 30 days to pay for the purchase or affixation of insignia and shall require a bond or security as provided in this section.

History: En. Sec. 14, Ch. 140, L. 1969; amd. Sec. 212, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.15; amd. Sec. 18, Ch. 578, L. 1995.

16-11-118. Records of wholesalers, subjobbers, tobacco product vendors, and retailers. (1) All wholesalers and subjobbers shall keep for 3 years all:

- (a) invoices of tobacco products purchased, imported, or sold;
- (b) all receipts issued and insignia purchased; and
- (c) an accurate record of all sales of tobacco products, showing the name and address of each purchaser, the date of sale, the quantity of each kind sold, the name of any carrier, the shipping point, and the destination.

(2) All retailers and tobacco product vendors shall keep for 3 years all invoices of tobacco products purchased and received, showing the date of each purchase, the brand purchased, the quantity of each brand purchased, and an accurate record of the total sales of tobacco products.

(3) A wholesaler, retailer, subjobber, or tobacco product vendor shall permit the

department and the department of justice and their assistants, authorized agents, or representatives to examine all tobacco products, invoices, receipts, books, paper, memoranda, and records as may be necessary to determine compliance with this chapter.

(4) A person that violates the provisions of subsections (1) through (3) is subject to civil penalties as determined by the department of not less than \$1,000 or more than \$10,000.

History: En. Sec. 16, Ch. 140, L. 1969; amd. Sec. 214, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.17; amd. Sec. 6, Ch. 130, L. 1991; amd. Sec. 18, Ch. 414, L. 1993; amd. Sec. 19, Ch. 578, L. 1995; amd. Sec. 13, Ch. 511, L. 2005.

16-11-119. (Temporary) Disposition of taxes. (1) Cigarette taxes collected under the provisions of 16-11-111 must, in accordance with the provisions of 17-2-124, be deposited as follows:

(a) 8.3% or \$2 million, whichever is greater, in an account in the state special revenue fund to the credit of the department of public health and human services for the operation and maintenance of state veterans' nursing homes. The department of public health and human services may not expend more money from the account than is appropriated by the legislature. Subject to subsection (2) of this section, the department may not transfer funds in the account or expenditure authority related to the account pursuant to 17-7-139, 17-7-301, or 17-8-101.

(b) for fiscal years ending June 30, 2010, and June 30, 2011, 1.2% in the state special revenue fund to the credit of the account established in section 2, Chapter 461, Laws of 2009, for the construction of the state veterans' home in southwestern Montana;

(c) 2.6% in the long-range building program account provided for in 17-7-205;

(d) 44% in the health and medicaid initiatives account provided for in 53-6-1201; and

(e) the remainder to the state general fund.

(2) If money in the state special revenue account for the operation and maintenance of state veterans' nursing homes exceeds \$2 million at the end of the fiscal year, the excess must be transferred to the state general fund.

(3) The taxes collected on tobacco products, other than cigarettes, must in accordance with the provisions of 17-2-124 be deposited as follows:

(a) one-half in the state general fund; and

(b) one-half in the state special revenue fund account for health and medicaid initiatives provided for in 53-6-1201. (Terminates June 30, 2011--sec. 35(1), Ch. 486, L. 2009.)

16-11-119. (Effective July 1, 2011) Disposition of taxes. (1) Cigarette taxes collected under the provisions of 16-11-111 must, in accordance with the provisions of 17-2-124, be deposited as follows:

(a) 8.3% or \$2 million, whichever is greater, in the state special revenue fund to the credit of the department of public health and human services for the operation and maintenance of state veterans' nursing homes;

(b) for fiscal years ending June 30, 2010, and June 30, 2011, 1.2% in the state special revenue fund to the credit of the account established in section 2, Chapter 461, Laws of 2009, for the construction of the state veterans' home in southwestern Montana;

(c) 2.6% in the long-range building program account provided for in 17-7-205;

(d) 44% in the state special revenue fund to the credit of the health and medicaid

initiatives account provided for in 53-6-1201; and

(e) the remainder to the state general fund.

(2) If money in the state special revenue fund for the operation and maintenance of state veterans' nursing homes exceeds \$2 million at the end of the fiscal year, the excess must be transferred to the state general fund.

(3) The taxes collected on tobacco products, other than cigarettes, must in accordance with the provisions of 17-2-124 be deposited as follows:

(a) one-half in the state general fund; and

(b) one-half in the state special revenue fund account for health and medicaid initiatives provided for in 53-6-1201.

History: En. Sec. 29, Ch. 140, L. 1969; amd. Sec. 5, Ch. 222, L. 1971; amd. Sec. 222, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.30(part); amd. Sec. 3, Ch. 267, L. 1981; amd. Sec. 7, Ch. 281, L. 1983; amd. Sec. 2, Ch. 608, L. 1983; amd. Sec. 2, Ch. 704, L. 1985; amd. Sec. 3, Ch. 681, L. 1989; amd. Sec. 1, Ch. 3, Sp. L. July 1992; amd. Sec. 26, Ch. 15, Sp. L. July 1992; amd. Sec. 29, Ch. 455, L. 1993; amd. Sec. 1, Ch. 548, L. 1993; amd. Sec. 29, Ch. 18, L. 1995; amd. Sec. 2, Ch. 456, L. 1995; amd. Sec. 54, Ch. 546, L. 1995; amd. Sec. 17, Ch. 422, L. 1997; amd. Sec. 51, Ch. 544, L. 2003; amd. Sec. 4, I.M. No. 149, approved Nov. 2, 2004; amd. Sec. 14, Ch. 511, L. 2005; amd. Sec. 24, Ch. 475, L. 2007; amd. Sec. 5, Ch. 461, L. 2009; amd. Sec. 9, Ch. 486, L. 2009.

16-11-120. Tobacco product licenses. Every wholesaler, subjobber, retailer, or tobacco product vendor shall obtain a license from the department before engaging in the business of wholesaler, subjobber, retailer, or tobacco product vendor. A separate application and a separate license is required for each place of business owned, controlled, or operated by the wholesaler, subjobber, retailer, or tobacco product vendor within the state of Montana. Application forms must include the type and general description of applicant organizations, names of all known owners, and other pertinent information that the department may require by rule. The department shall comply with rules issued by the board of review established in 30-16-302 with respect to the form of electronic verification of information required or acceptable for licensing purposes.

History: En. Sec. 2, Ch. 140, L. 1969; amd. Sec. 206, Ch. 516, L. 1973; amd. Sec. 2, Ch. 445, L. 1975; R.C.M. 1947, 84-5606.3; amd. Sec. 2, Ch. 366, L. 1997; amd. Sec. 15, Ch. 511, L. 2005.

16-11-121. Vending machines not places of business. Cigarette vending machines may not be considered as places of business per se, but a report of each machine must be made on forms prescribed by the department. The form must include the name and address of the cigarette vendor, the assigned location of each machine, with best machine identification available, type of business, and other information that the department may require for proper administration of this part.

History: En. Sec. 3, Ch. 140, L. 1969; amd. Sec. 207, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.4; amd. Sec. 20, Ch. 578, L. 1995.

16-11-122. License fees -- renewal. (1) Each application for a wholesaler's license or a tobacco product vendor's license must be accompanied by a fee of \$50.

(2) Each application for a subjobber's license must be accompanied by a fee of \$50.

(3) Each application for a retailer's license must be accompanied by a fee of \$5.

(4) The fees for the licenses in subsections (2) and (3) may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party.

(5) These licenses must be renewed annually on or before the anniversary date established by rule by the board of review established in 30-16-302 and upon payment of the annual fee are effective for 1 year, without proration, and are not transferable.

History: En. Sec. 4, Ch. 140, L. 1969; amd. Sec. 3, Ch. 445, L. 1975; R.C.M. 1947, 84-5606.5(part); amd. Sec. 3, Ch. 366, L. 1997; amd. Sec. 16, Ch. 511, L. 2005.

16-11-123. Display of license. (1) Each license shall be prominently displayed on the licensed premises, and a separate license shall be displayed at each place of business owned, controlled, or operated by such wholesaler, subjobber, retailer, or cigarette vendor.

(2) Each cigarette vendor shall affix a license decal furnished by the department in a prominent position on each vending machine.

History: En. Sec. 4, Ch. 140, L. 1969; amd. Sec. 3, Ch. 445, L. 1975; R.C.M. 1947, 84-5606.5(part).

16-11-124. Disposition of license fees. (1) All license fees collected under the provisions of this part must be deposited with the state treasurer in the general fund.

(2) Each biennium, there must be appropriated to the department and the department of justice an amount justified and reasonable to operate the cigarette enforcement responsibilities of each department.

History: En. Sec. 5, Ch. 140, L. 1969; amd. Sec. 208, Ch. 516, L. 1973; amd. Sec. 6, Ch. 286, L. 1977; R.C.M. 1947, 84-5606.6(part); amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 351, L. 1989; amd. Sec. 19, Ch. 414, L. 1993; amd. Sec. 1, Ch. 10, L. 2009.

16-11-125. Licensure as both wholesaler and retailer allowed. This chapter does not prevent a person from being licensed as both a wholesaler and a retailer.

History: En. Sec. 1, Ch. 578, L. 1995.

16-11-126. Joint and several liability. (1) An individual is individually liable, jointly and severally, with and to the same extent as the business upon a determination that the individual possessed the responsibility on behalf of the business to comply or direct compliance with state law regarding sales of tobacco products if the individual is:

(a) a controlling person who directly or indirectly controls a business liable for a violation of the tax and directory requirements of this chapter; or

(b) a partner, officer, director, or person occupying a similar status or performing similar functions.

(2) For the purpose of determining liability for violations of the tax and directory requirements of this chapter, a member-managed limited liability company must be treated as a partnership with liability extending to each member who was a member at the time the violation occurred.

(3) For the purpose of determining personal liability for the failure to comply with the tax requirements of this chapter by a manager-managed limited liability company, the managers of the limited liability company are jointly and severally liable along with the limited liability company for all penalties owed.

(4) For determining personal liability for the failure to comply with the tax requirements of this chapter, the partners of the limited liability partnership are jointly and severally liable, along with the limited liability partnership, for any penalties and interest due.

History: En. Sec. 4, Ch. 511, L. 2005.

16-11-127 reserved.

16-11-128. Tobacco product sales reporting requirements. (1) Prior to delivering, mailing, or shipping tobacco products into Montana to a person other than a licensed wholesaler or retailer, a person who accepts purchase orders for tobacco product sales shall file a statement with the department. The statement must set forth:

(a) the name, trade name, and address of the principal place of business of the seller, any other place of business of the seller, and the seller's domicile state; and

(b) all owners or controlling persons and every partner, officer, director, or person occupying a similar status or performing similar functions and their home addresses.

(2) By the 10th day of each calendar month, each person that has made a sale or delivered, mailed, or shipped tobacco products into this state or contracted with another party for delivery service in connection with a sale of tobacco products into this state made during the previous calendar month shall file a memorandum of sale or a copy of the sales invoice with the department. The memorandum or sales invoice must provide, for each delivery sale made during the previous calendar month:

(a) the name and address of the consumer to whom the sale was made;

(b) the brand or brands of the tobacco products that were sold; and

(c) the quantity of tobacco products that were sold.

(3) A person that satisfies the requirements of 15 U.S.C. 376 is considered to meet the requirements of this section.

(4) The department may seek an injunction to restrain the actual or threatened violation of this section and to compel the seller to comply with this section.

History: En. Sec. 5, Ch. 511, L. 2005.

16-11-129. Enforcement. The attorney general, a designee of the attorney general, or any person who holds a permit under 26 U.S.C. 5713 may bring an action in the appropriate Montana district court to prevent or restrain violations of 16-11-128 by any person or by a principal of the person.

History: En. Sec. 34, Ch. 511, L. 2005.

16-11-130 reserved.

16-11-131. Transporting tobacco products without compliance a misdemeanor -- invoices and delivery tickets required -- stop and inspection authorized. (1) It is unlawful for a person to transport into, receive, carry, or move from place to place within this state, except in the course of interstate commerce, any tobacco products that do not comply with the requirements of this chapter.

(2) (a) When transporting unstamped cigarettes or roll-your-own tobacco, a person shall possess invoices or delivery tickets for the cigarettes or roll-your-own tobacco that show the name and address of the consignor or seller, the name of the consignee or purchaser, and the quantity and brands of the cigarettes or roll-your-own tobacco being transported.

(b) The cigarettes or roll-your-own tobacco transported are contraband and are subject to seizure, forfeiture, destruction, and sale as provided in 16-11-141, 16-11-147, 16-11-158, 16-11-159, 16-11-509, and this section if:

- (i) there are no invoices or delivery tickets;
- (ii) the name or address of the consignee or purchaser is falsified;
- (iii) the consignee or purchaser is not authorized to possess unstamped cigarettes or roll-your-own tobacco; or
- (iv) the cigarettes or roll-your-own tobacco are intended for sale in this state and are not on the directory.

(3) Transportation of cigarettes or roll-your-own tobacco from a point outside the state to a point in another state is not a violation of this section if the person transporting the unstamped cigarettes or cigarettes or roll-your-own tobacco that is not on the directory possesses adequate invoices or delivery tickets that give the name and address of the out-of-state consignor or seller and the out-of-state consignee or purchaser.

(4) If the department, its authorized agent, the department of justice, or a peace officer of the state has knowledge or reasonable grounds to believe that a vehicle is transporting tobacco products in violation of this chapter, the department, its agent, the department of justice, or a peace officer may stop and inspect the vehicle.

(5) When a person engaged in the business of selling tobacco products ships or causes to be shipped any tobacco products to any person in this state that are not in the tobacco product manufacturer's original container or wrapping, the container or wrapping must be plainly and visibly marked with the words "tobacco products".

(6) A person violating the provisions of this section is guilty of a misdemeanor and is subject to the penalties in 16-11-148.

History: En. Sec. 20, Ch. 140, L. 1969; amd. Sec. 216, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.21(part); amd. Sec. 2, Ch. 382, L. 1979; amd. Sec. 9, Ch. 352, L. 1993; amd. Sec. 21, Ch. 578, L. 1995; amd. Sec. 17, Ch. 511, L. 2005.

16-11-132. Unlawful to sell tobacco products without valid license -- exceptions. (1) Unless approved by the department, a person may not sell, offer to sell, or possess with intent to sell any tobacco products, at wholesale or retail, unless the person's license is current and valid

under the provisions of this part.

(2) A person may not sell, offer to sell, or possess with intent to sell any tobacco products, at wholesale or retail, to a resident or nonresident wholesaler, subjobber, tobacco product vendor, or retailer who is not licensed under this part or who is not licensed by the state in which the person sells, offers to sell, or intends to sell tobacco products. However, a wholesaler, subjobber, tobacco product vendor, or retailer licensed under the provisions of this chapter may sell cigarettes to any person, wholesaler, subjobber, tobacco product vendor, or retailer not licensed under this chapter if:

(a) the person, wholesaler, subjobber, tobacco product vendor, or retailer is exempt from state tobacco product taxation provisions;

(b) the person, wholesaler, subjobber, tobacco product vendor, or retailer furnishes documentary evidence of exemption from state tobacco product taxation provisions; and

(c) the person, wholesaler, subjobber, tobacco product vendor, or retailer signs a receipt of purchase for any tobacco products evidencing an exemption from state tobacco product taxation provisions.

(3) A person violating the provisions of this section shall be punished as provided in 16-11-148, and all tobacco products in the person's possession must be seized, forfeited, and destroyed pursuant to 16-11-147, 16-11-158, and 16-11-159.

History: En. Sec. 8, Ch. 140, L. 1969; amd. Sec. 1, Ch. 319, L. 1973; R.C.M. 1947, 84-5606.9; amd. Sec. 3, Ch. 382, L. 1979; amd. Sec. 22, Ch. 578, L. 1995; amd. Sec. 18, Ch. 511, L. 2005.

16-11-133. Sale and use of cigarettes without insignia unlawful. (1) Unless approved by the department, a person who sells any package of cigarettes that does not bear the insignia required by this part and a person who uses or consumes a cigarette within this state, taken from a package that does not bear the required insignia, is guilty of a misdemeanor and is subject to the penalties in 16-11-148.

(2) This section may not be construed to prohibit a natural person from physically transporting into the state of Montana for the person's own personal consumption or use, a maximum of:

(a) 600 cigarettes that bear the tax insignia of another state; or

(b) 30 ounces of tobacco products, other than cigarettes, on which the tobacco taxes of another state have been paid.

History: En. Sec. 17, Ch. 140, L. 1969; amd. Sec. 12, Ch. 126, L. 1977; R.C.M. 1947, 84-5606.18; amd. Sec. 4, Ch. 382, L. 1979; amd. Sec. 23, Ch. 578, L. 1995; amd. Sec. 19, Ch. 511, L. 2005.

16-11-134. Forged license stamp or insignia. A person who makes, alters, forges, or counterfeits any license stamp or insignia provided for in this law, who assists or is concerned in the creation of the stamp or insignia, or who has in the person's possession any altered, forged, counterfeit, or spurious stamp, license, or insignia with intent to defraud the state is guilty of forgery.

History: En. Sec. 6, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 3, Ch. 18, L. 1957; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 1, Ch. 222, L. 1957; amd. Sec. 1, Ch. 97, L. 1963; amd. Sec. 6, Ch. 270, L. 1963; amd. Sec. 5, Ch. 318, L. 1967; amd. Sec. 4, Ch. 222, L. 1971; R.C.M. 1947, 84-5606(part); amd. Sec. 210, Ch. 56, L. 2009.

16-11-135 through 16-11-140 reserved.

16-11-141. Powers of arrest -- search and seizure. (1) The department of justice is a criminal justice agency. Designated agents of the department of justice have peace officer status and may arrest any person violating any provision of this chapter, enter a complaint before any court of competent jurisdiction, and lawfully search and seize and use as evidence contraband found in the possession of any person or in any place.

(2) Any investigator or peace officer who finds a tobacco product that the investigator or peace officer has reasonable cause to believe is contraband may seize and remove the contraband and the packages in which the contraband is kept. The contraband and all packages containing the contraband must, in addition to any other penalty prescribed by this chapter, be forfeited to the state of Montana as provided in 16-11-159 and destroyed as provided in 16-11-158.

History: En. Sec. 25, Ch. 140, L. 1969; amd. Sec. 112, Ch. 405, L. 1973; amd. Sec. 13, Ch. 126, L. 1977; R.C.M. 1947, 84-5606.26; amd. Sec. 20, Ch. 414, L. 1993; amd. Sec. 20, Ch. 511, L. 2005.

16-11-142. Duties of county attorneys and peace officers. In the enforcement of this chapter, the department of justice may call to its assistance and it is the duty of any county attorney or any peace officer in this state to assist the department of justice in the enforcement of this chapter.

History: En. Sec. 27, Ch. 140, L. 1969; amd. Sec. 220, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.28(part); amd. Sec. 21, Ch. 414, L. 1993; amd. Sec. 21, Ch. 511, L. 2005.

16-11-143. Penalty and interest for unpaid tobacco product tax. (1) If a person fails or refuses to pay the tobacco product tax required by this part when due, the department shall proceed to determine the tax due from the information that the department can obtain and shall assess the tax plus penalty and interest as provided in 15-1-216.

(2) In the case of any violation of this chapter, the department may sue, in the district where the department maintains its principal office, for the amount of the unpaid tobacco product tax, penalty, and costs, including reasonable expense of the department in effecting collection of the unpaid tax and penalty. When the court finds that the failure to pay the tax has been willful, the court shall, in addition, assess damages in treble the amount of the tax found to be due.

History: En. Secs. 15, 28, Ch. 140, L. 1969; amd. Secs. 213, 221, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.16, 84-5606.29; amd. Sec. 24, Ch. 578, L. 1995; amd. Sec. 50, Ch. 427, L. 1999; amd. Sec. 22, Ch. 511, L. 2005.

16-11-144. Revocation or suspension of license. (1) The department may revoke or suspend the license of any wholesaler, subjobber, tobacco product vendor, retailer, or person licensed under 16-11-303 for failure to comply with any provision of The Montana Cigarette Sales Act (Title 16, chapter 10), this chapter, or with any lawful rule of the department made pursuant to those laws.

(2) A person aggrieved by a revocation or suspension may apply to the department for a hearing, which must be open to the public. If the person is aggrieved by the decision of the department, the person may further appeal to the court.

(3) When a license has been revoked, a license may not be issued to the licensee for a period of 1 year after revocation. When a license has been suspended, the suspension may be for any period not to exceed 1 year.

(4) A person who sells tobacco products after the person's license has been revoked or suspended is guilty of a misdemeanor and is subject to the penalties in 16-11-148, and all tobacco products in the person's possession must be seized and forfeited to the state.

History: En. Sec. 7, Ch. 140, L. 1969; amd. Sec. 209, Ch. 516, L. 1973; amd. Sec. 4, Ch. 445, L. 1975; R.C.M. 1947, 84-5606.8; amd. Sec. 1, Ch. 439, L. 1995; amd. Sec. 25, Ch. 578, L. 1995; amd. Sec. 23, Ch. 511, L. 2005.

16-11-145. Place where violations committed considered public nuisance. Each person having possession or control of or who maintains a building or place where tobacco products are sold in violation of this chapter or who permits the tobacco products to be sold in violation of this chapter in any place or building possessed, controlled, or maintained by that person is guilty of maintaining and keeping a nuisance. The building or place so used, together with the personal property and fixtures used in connection with the building, is considered a nuisance. The person must be enjoined and the building or place, personal property, and fixtures abated as a nuisance at the instance of the state.

History: En. Sec. 18, Ch. 140, L. 1969; R.C.M. 1947, 84-5606.19; amd. Sec. 26, Ch. 578, L. 1995; amd. Sec. 24, Ch. 511, L. 2005.

16-11-146. Penalty for forged license stamp or insignia. A person found guilty of forgery under 16-11-134 shall be punished by imprisonment in the state prison for not less than 1 year or more than 14 years. In addition, the department may impose the civil penalties in 16-11-148.

History: En. Sec. 6, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 3, Ch. 18, L. 1957; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 1, Ch. 222, L. 1957; amd. Sec. 1, Ch. 97, L. 1963; amd. Sec. 6, Ch. 270, L. 1963; amd. Sec. 5, Ch. 318, L. 1967; amd. Sec. 4, Ch. 222, L. 1971; R.C.M. 1947, 84-5606(part); amd. Sec. 25, Ch. 511, L. 2005.

16-11-147. Seizure and forfeiture of property used in transporting contraband. A motor vehicle, airplane, conveyance, vehicle, or other means of transportation in which contraband with a value of \$1,000 or more is being unlawfully transported, together with the

contraband and other equipment or personal property used in connection with and found in that transportation, is subject to seizure by the department of justice, its authorized agent, a sheriff or deputy, or any other peace officer and is subject to forfeiture as provided in 16-11-159.

History: En. Secs. 20, 21, Ch. 140, L. 1969; amd. Secs. 216, 217, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.21(part), 84-5606.22; amd. Sec. 254, Ch. 800, L. 1991; amd. Sec. 10, Ch. 352, L. 1993; amd. Sec. 22, Ch. 414, L. 1993; amd. Sec. 26, Ch. 511, L. 2005.

16-11-148. Penalties and other remedies. (1) Unless otherwise provided, the purposeful, knowing, or negligent violation of any provision of this part constitutes a misdemeanor punishable by imprisonment for a term of up to 1 year or by a fine of up to \$1,000, or both. For a first offense, if a violation of this part involves contraband the value of which does not exceed \$1,000, the offense is punishable by a fine of not less than \$100 or more than \$500 or by imprisonment in the county jail for not less than 30 days or more than 6 months, or both. Second and subsequent purposeful, knowing, or negligent violations of any provision of this part constitute a felony punishable by imprisonment for a term exceeding 1 year or a fine not to exceed \$50,000, or both.

(2) In addition to any other civil or criminal remedy provided by law, upon a determination that a license holder under this part has violated any section in this part or any rule adopted pursuant to this part, the license may be suspended or revoked in the manner provided in 16-11-144 in a proceeding brought by the department or the attorney general.

(3) (a) Except as provided in subsection (3)(b), in addition to the criminal penalties provided in subsection (1), the department or the department of justice may assess a person who violates any provision of this part a civil penalty of \$250 for the first full or partial pack of contraband cigarettes and \$10 for each additional full or partial pack of contraband cigarettes. For purposes of this definition of cigarette, 0.09 ounces of roll-your-own tobacco constitutes one individual cigarette. Each tax insignia affixed and each offer to sell, sale, or possession for sale of cigarettes in violation of this part constitutes a separate violation.

(b) A civil penalty may not be assessed to a person for a first violation of subsection (1) if the offense involves contraband with a value of \$1,000 or less.

(4) The department or the department of justice shall determine the amount of the penalty provided in subsection (3) and notify the person who unlawfully possessed or transported the contraband cigarettes of the amount. The penalty is due and payable on the date of the notice. A penalty not paid when due is subject to interest at the rate of 10% a year.

History: En. Sec. 30, Ch. 140, L. 1969; amd. Sec. 223, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.31; amd. Sec. 27, Ch. 578, L. 1995; amd. Sec. 27, Ch. 511, L. 2005.

16-11-149. Hearings before department. (1) A person aggrieved by any action of the department or its authorized agents taken to enforce the tax provisions of this part, except for a revocation of a license pursuant to 16-11-144, may apply to the department, in writing, for a hearing or rehearing within 30 days after the action of the department or its authorized agents.

(2) The department shall promptly consider the application, set the application for hearing, and notify the applicant of the time and place fixed for the hearing or rehearing, which may be at its office or in the county of the applicant. After the hearing or rehearing, the

department may make any further or other order on the grounds that it may consider proper and lawful and shall furnish a copy to the applicant.

(3) The department, on its own initiative, may order a contested case hearing on any matter concerned with licensing, as defined in 2-4-102, in connection with the administration of this part upon at least 10 days' notice in writing to the person or persons to be investigated.

(4) A person may appeal a final order of the department to the state tax appeal board as provided in 15-2-302.

History: En. Sec. 23, Ch. 140, L. 1969; amd. Sec. 111, Ch. 405, L. 1973; amd. Sec. 7, Ch. 155, L. 1977; R.C.M. 1947, 84-5606.24; amd. Sec. 23, Ch. 414, L. 1993; amd. Sec. 28, Ch. 578, L. 1995; amd. Sec. 28, Ch. 511, L. 2005; amd. Sec. 18, Ch. 44, L. 2007; amd. Sec. 6, Ch. 364, L. 2009.

16-11-150. Appeal to district court. Any person aggrieved by any action or decision of the department or the department of justice or a licensing decision of the department made under the provisions of this part may appeal to the district court in accordance with the Montana Administrative Procedure Act.

History: En. Sec. 24, Ch. 140, L. 1969; amd. Sec. 218, Ch. 516, L. 1973; amd. Sec. 8, Ch. 155, L. 1977; R.C.M. 1947, 84-5606.25; amd. Sec. 29, Ch. 511, L. 2005.

16-11-151 through 16-11-154 reserved.

16-11-155. Definitions. As used in 16-11-111, 16-11-155, 16-11-156, and 16-11-158, the following definitions apply:

(1) "Indian reservation" means lands declared to be a reservation for an Indian tribe or tribes:

(a) by a treaty between the tribe and a territorial government, a state government, or the United States;

(b) through an act of the United States congress; or

(c) through an executive order of the United States.

(2) "Quota" means 150% of the national average individual consumption of cigarettes multiplied by the enrolled tribal member population of an Indian reservation on which the cigarette sales are made or any other formula or amount agreed to in a state-tribal cooperative agreement.

History: En. Sec. 1, Ch. 352, L. 1993; amd. Sec. 30, Ch. 511, L. 2005.

16-11-156. Stamps affixed on cigarettes -- exception. Except for cigarettes sold on a military reservation, cigarettes sold in Montana must have a Montana cigarette tax stamp affixed prior to sale.

History: En. Sec. 2, Ch. 352, L. 1993.

16-11-157. Repealed. Sec. 35, Ch. 511, L. 2005.

History: En. Sec. 6, Ch. 352, L. 1993.

16-11-158. Sale or retention of forfeited property -- use of sale proceeds -- destruction of contraband. (1) When property is forfeited under 16-11-159, the department may:

(a) retain the property or any part of the property for official use or, upon application by a law enforcement agency of this state, another state, the District of Columbia, or the United States, for the exclusive use of enforcing the provisions of this chapter or the laws of another state, the District of Columbia, or the United States; or

(b) after advertising, sell the property, other than contraband, at public auction to the highest bidder.

(2) The proceeds of a sale under this section must be applied first to paying the expenses of any investigation leading to the seizure of the property, including costs incurred by a local, state, tribal, or federal law enforcement agency, and of the forfeiture and sale proceedings, including the expenses of seizure, maintenance, custody, and court costs. The balance of the proceeds, less an amount that is based on the value of the property seized on an Indian reservation and that is allocated to a tribe pursuant to a state-tribal cooperative agreement, must be deposited in the state general fund.

(3) Contraband forfeited under 16-11-159 must be destroyed.

History: En. Sec. 7, Ch. 352, L. 1993; amd. Sec. 31, Ch. 511, L. 2005.

16-11-159. Forfeiture of contraband and property used in transporting contraband. (1) Upon the seizure of any contraband and within 10 working days after seizure of any equipment or property, the officer making the seizure shall:

(a) deliver an inventory of the property or contraband seized to the person from whom the seizure was made or to any other person having a right or interest in the seized property or contraband, if known; and

(b) file a copy of the inventory with the department if the tobacco product is contraband under part 1 of this chapter or with the department of justice if the tobacco product is contraband under parts 4 or 5 of this chapter.

(2) If a person other than the person from whom the property or contraband was seized, as described in subsection (1), does not notify the department that issued the notice of a written claim of ownership or right of possession of the items seized within 15 days of the date of the inventory required in subsection (1), the seized property or contraband is considered forfeited.

(3) If a person notifies the appropriate department in writing of a claim of ownership or right of possession of the items seized within 15 days of the date of inventory required in subsection (1), the person is entitled to a hearing on the claim or right. The hearing must be held before the issuing department's director or the director's designee, in accordance with the Montana Administrative Procedure Act. If the aggregate value of the seized property or contraband is more than \$500, a person seeking the return of the property or contraband may, in lieu of requesting a hearing, bring an action in the district court of the county in which the property or contraband was seized.

(4) All property and contraband forfeited must be disposed of as provided in 16-11-158.

History: En. Sec. 6, Ch. 511, L. 2005.

Part 2

Tax on Tobacco Products Other Than Cigarettes (Repealed)

16-11-201. Repealed. Sec. 35, Ch. 511, L. 2005.

History: En. Sec. 1, Ch. 12, Ex. L. 1969; amd. Sec. 252, Ch. 516, L. 1973; R.C.M. 1947, 84-6801(4) thru (6); amd. Sec. 29, Ch. 578, L. 1995; amd. Sec. 52, Ch. 544, L. 2003.

16-11-202. Repealed. Sec. 35, Ch. 511, L. 2005.

History: En. Sec. 2, Ch. 12, Ex. L. 1969; R.C.M. 1947, 84-6802; amd. Sec. 27, Ch. 15, Sp. L. July 1992; amd. Sec. 30, Ch. 578, L. 1995; amd. Sec. 53, Ch. 544, L. 2003; amd. Sec. 5, I.M. No. 149, approved Nov. 2, 2004.

16-11-203. Repealed. Sec. 35, Ch. 511, L. 2005.

History: En. Sec. 3, Ch. 12, Ex. L. 1969; R.C.M. 1947, 84-6803; amd. Sec. 31, Ch. 578, L. 1995; amd. Sec. 51, Ch. 427, L. 1999.

16-11-204. Repealed. Sec. 35, Ch. 511, L. 2005.

History: En. Sec. 4, Ch. 12, Ex. L. 1969; R.C.M. 1947, 84-6804; amd. Sec. 32, Ch. 578, L. 1995.

16-11-205. Repealed. Sec. 35, Ch. 511, L. 2005.

History: En. Sec. 5, Ch. 12, Ex. L. 1969; R.C.M. 1947, 84-6805.

16-11-206. Repealed. Sec. 35, Ch. 511, L. 2005.

History: En. Sec. 6, Ch. 12, Ex. L. 1969; amd. Sec. 253, Ch. 516, L. 1973; R.C.M. 1947, 84-6806; amd. Sec. 8, Ch. 281, L. 1983; amd. Sec. 30, Ch. 455, L. 1993; amd. Sec. 30, Ch. 18, L. 1995; amd. Sec. 18, Ch. 422, L. 1997; amd. Sec. 54, Ch. 544, L. 2003; amd. Sec. 6, I.M. No. 149, approved Nov. 2, 2004.

Part 3

Youth Access to Tobacco Products Control Act

16-11-301. Short title. This part may be cited as the "Youth Access to Tobacco Products Control Act".

History: En. Sec. 1, Ch. 569, L. 1993.

16-11-302. Definitions. For the purposes of 16-11-301 through 16-11-308, the following definitions apply:

(1) "Distribute" means:

(a) to give, deliver, sample, or sell;

(b) to offer to give, deliver, sample, or sell; or

(c) to cause or hire another person to give, deliver, sample, or sell or offer to give, deliver, sample, or sell.

(2) "Health warning" means a tobacco product label required by federal law and intended to alert users of the product to the health risks associated with tobacco use. The term includes warning labels required under the Federal Cigarette Labeling and Advertising Act and the Comprehensive Smokeless Tobacco Health Education Act of 1986.

(3) "License" means a retail tobacco product sales license.

(4) "Person" means a natural person, company, corporation, firm, partnership, organization, or other legal entity.

(5) "Tobacco product" means a substance intended for human consumption that contains tobacco. The term includes cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco.

History: En. Sec. 2, Ch. 569, L. 1993.

16-11-303. License for retail sale of tobacco products. (1) A person may not sell tobacco products at retail, whether over the counter, by vending machine, or otherwise, without a license obtained from the department of revenue.

(2) A license for the retail sale of tobacco products may be obtained from the department of revenue.

(3) The fee collected by the department must be deposited in the general fund.

History: En. Sec. 3, Ch. 569, L. 1993.

16-11-304. Signs. A retail seller of tobacco products shall conspicuously display, at each place on the premises at which tobacco products are displayed and sold, a sign that is to be provided without charge by the department of revenue that states: "Montana law prohibits the sale of tobacco products to persons under 18 years of age."

History: En. Sec. 4, Ch. 569, L. 1993; amd. Sec. 2, Ch. 439, L. 1995.

16-11-305. Sale or distribution of tobacco products to persons under 18 years of age prohibited. (1) A person may not sell or distribute a tobacco product to an individual under 18 years of age, whether over the counter, by vending machine, or otherwise.

(2) If there is a reasonable doubt as to the individual's age, the seller shall require presentation of a driver's license or other generally accepted identification that includes a picture

of the individual.

History: En. Sec. 5, Ch. 569, L. 1993.

16-11-306. Sales of tobacco through vending machines restricted. (1) Tobacco products may be sold through a vending machine only in places where alcoholic beverages are sold and consumed on the premises and where the vending machine is under the direct line-of-sight supervision of the owner or an employee of the establishment. The tobacco products must be in a vending machine that contains only tobacco products.

(2) Tobacco products may not be sold through a vending machine that is located in a restaurant unless the restaurant has a bar, the restaurant area shares seating with the bar area, and the vending machine meets the requirements of subsection (1).

(3) The sale of tobacco products from a vending machine under the direct line-of-sight supervision of an owner or employee is considered a sale of tobacco products by the owner or employee for the purposes of 16-11-305.

History: En. Sec. 6, Ch. 569, L. 1993; amd. Sec. 1, Ch. 518, L. 1997.

16-11-307. Distribution of tobacco products in other than sealed packages prohibited -- minimum package size. (1) A person may not distribute a tobacco product for commercial purposes in other than a sealed package that is provided by the manufacturer and that contains the health warning required by federal law. Single cigarettes may not be sold.

(2) A person may not knowingly manufacture or distribute for commercial purposes cigarettes in a package containing fewer than 20 cigarettes or rolling tobacco in a package containing less than 0.6 ounces net weight of tobacco. For purposes of 16-11-308 and this section, "rolling tobacco" means any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to or purchased by consumers as tobacco for making cigarettes.

History: En. Sec. 7, Ch. 569, L. 1993; amd. Sec. 3, Ch. 439, L. 1995; amd. Sec. 2, Ch. 56, L. 2001.

16-11-308. Civil penalties -- license suspension -- tobacco education fee. (1) Failure to obtain a license, as required by 16-11-303, failure to post signs, as provided in 16-11-304, or the manufacture or sale of cigarettes or rolling tobacco in violation of the minimum package size requirements of 16-11-111 or 16-11-307 is punishable by a civil penalty of \$100. The department may collect the penalty in the manner provided for the collection of other debts.

(2) A person who violates 16-11-305(1) or 16-11-307(1) at any one location within a 3-year period shall be punished as follows:

(a) A first through third offense is punishable by a verbal notification of violation.

(b) A fourth offense is punishable by a written notice of violation to be sent by the department of public health and human services to the owner of the establishment.

(c) A fifth offense is punishable by assessment against the owner of the establishment of a tobacco education fee of \$500. The employee or other person who sold the tobacco product, the establishment manager, and the establishment owner, if the owner is a sole proprietor or partner,

shall read and view the tobacco education material.

(d) A sixth offense under 16-11-305(1) or 16-11-307(1) or a third offense under 16-11-307(2) is punishable by suspension of the licenses required by 16-11-120 and 16-11-303 for 3 months.

(e) A seventh and subsequent offense under 16-11-305(1) or 16-11-307(1) or a fourth and subsequent offense under 16-11-307(2) is punishable by suspension of the licenses required by 16-11-120 and 16-11-303 for 1 year.

(3) After 2 years from the first violation, if a person has not received notice of any further violations, a second violation is considered a first violation for the purposes of subsection (2).

(4) A license may not be reissued after suspension under subsection (2)(d) or (2)(e) unless tobacco education fees or civil penalties are paid in full.

(5) Tobacco education fees must be assessed and collected by the department of public health and human services. Notice of an assessment pursuant to subsection (2) and this subsection must be made by the department of public health and human services within 30 days of the alleged violation by certified letter addressed to the establishment owner or manager. The notice of assessment against the owner of the establishment must provide an opportunity for a hearing. The hearing may be conducted using electronic equipment and must comply with the provisions of the Montana Administrative Procedure Act. Within 30 days from the date on which the notice of assessment was mailed, the owner or manager shall notify the department of public health and human services that the owner or manager objects to the assessment and request a hearing pursuant to this subsection.

(6) In addition to the penalty provided for in subsection (2), a first and subsequent violation of 16-11-305(1) or 16-11-307(1) is punishable by an assessment of a tobacco education fee of \$25 against the employee who sold the tobacco product if the employee is not the owner of the establishment. The tobacco education fee must be assessed and collected by the department of public health and human services. Within 30 days of the alleged violation, notice of assessment pursuant to this subsection must be made by the department of public health and human services by certified letter addressed to the employee. The notice of assessment must provide an opportunity for a hearing. The hearing may be conducted using electronic equipment and must comply with the provisions of the Montana Administrative Procedure Act. Within 30 days from the date on which the notice of assessment was mailed, the employee shall notify the department of public health and human services that the employee objects to the assessment and requests a hearing pursuant to this subsection.

(7) The tobacco education material referred to in this section must be provided by the department of public health and human services in the form of written and video self-teaching materials. The education materials may be used only for the purposes provided in this section. Upon completion of the self-teaching materials, the establishment owner or manager shall execute a written statement on a form provided by the department of public health and human services verifying that the employee, owner, or manager, as appropriate, has read and viewed the self-teaching material and shall return the statement and the self-teaching video to the department of public health and human services.

(8) Upon the sixth and subsequent violation of this section, the department of public health and human services shall notify the department of revenue in writing to initiate suspension of the licenses required by 16-11-120 and 16-11-303 and shall notify the licensee in writing of the alleged violation and of the referral of the licensee's record of violations to the department of

revenue for suspension of the licenses pursuant to 16-11-144 and this section. The department of revenue shall review the record of violations and may initiate license suspension proceedings in accordance with 16-11-144. If, upon a review of the record of violations, the department of revenue declines to initiate suspension proceedings, the violation may not be charged against the licensee for the purposes of this section.

(9) Fees assessed pursuant to this section must be deposited in the state general fund.

History: En. Sec. 8, Ch. 569, L. 1993; amd. Sec. 4, Ch. 439, L. 1995; amd. Sec. 2, Ch. 518, L. 1997; amd. Sec. 10, Ch. 389, L. 1999; amd. Sec. 3, Ch. 56, L. 2001.

16-11-309. Inspection and notification of violation required. (1) The department of public health and human services shall conduct inspections of persons selling or distributing tobacco products to determine compliance with 16-11-303, 16-11-304, 16-11-305(1), 16-11-306, and 16-11-307. Inspections may be conducted directly by the department of public health and human services or may be provided for by contract let by the department of public health and human services. Persons found to be in violation of the requirements of this part or the rules of the department of public health and human services a fourth and subsequent time must be notified in writing by the department of public health and human services of the facts of the violation and the penalties provided by this part.

(2) The department of public health and human services shall provide documentation of alleged violations of 16-11-303, 16-11-305, and 16-11-307 to the department of revenue.

History: En. Sec. 5, Ch. 439, L. 1995.

16-11-310. Minors not liable for possession or attempt to purchase. An individual under 18 years of age assisting in the enforcement of this part is not liable under a civil or criminal law for the possession of or the attempt to purchase a tobacco product for the purposes of enforcing this part.

History: En. Sec. 6, Ch. 439, L. 1995; amd. Sec. 2, Ch. 498, L. 2001.

16-11-311. Local regulations. A local government may by ordinance adopt regulations on the subjects of 16-11-301 through 16-11-308 that are no more stringent than 16-11-301 through 16-11-308.

History: En. Sec. 10, Ch. 569, L. 1993.

16-11-312. Rulemaking authority. The department of revenue may adopt rules to implement 16-11-301 through 16-11-308.

History: En. Sec. 11, Ch. 569, L. 1993.

Part 4

Tobacco Products Reserve Fund -- Administration

16-11-401. Findings and purpose. (1) Cigarette smoking presents serious public health concerns to the State and to the citizens of the State. The Surgeon General has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(2) Cigarette smoking also presents serious financial concerns for the State. Under certain health-care programs, the State may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(3) Under these programs, the State pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking.

(4) It is the policy of the State that financial burdens imposed on the State by cigarette smoking be borne by tobacco product manufacturers rather than by the State to the extent that such manufacturers either determine to enter into a settlement with the State or are found culpable by the courts.

(5) On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "Master Settlement Agreement," with the State. The Master Settlement Agreement obligates these manufacturers, in return for a release of past, present and certain future claims against them as described therein, to pay substantial sums to the State (tied in part to their volume of sales); to fund a national foundation devoted to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(6) It would be contrary to the policy of the State if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the State will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the State to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

History: En. Sec. 1, Ch. 412, L. 1999.

16-11-402. Definitions. (1) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(2) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(3) "Allocable share" means Allocable Share as that term is defined in the Master Settlement Agreement.

(4) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (b) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (c) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (a) of this definition. The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

(5) "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on November 23, 1998 by the State and leading United States tobacco product manufacturers.

(6) "Qualified escrow fund" means an escrow arrangement with a federally or State chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with 16-11-403(2) of this Act.

(7) "Released claims" means Released Claims as that term is defined in the Master Settlement Agreement.

(8) "Releasing parties" means Releasing Parties as that term is defined in the Master Settlement Agreement.

(9) "Tobacco Product Manufacturer" means an entity that after the date of enactment of this Act directly (and not exclusively through any affiliate):

(a) manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsections II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(b) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(c) becomes a successor of an entity described in paragraph (a) or (b). The term "Tobacco Product Manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of paragraphs (a) - (c) above.

(10) "Units sold" means the number of individual cigarettes sold in the State by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the State on packs or "roll-your-own" tobacco containers. The department of revenue shall promulgate such regulations as are necessary to ascertain the amount of State excise tax

paid on the cigarettes of such tobacco product manufacturer for each year.

History: En. Sec. 2, Ch. 412, L. 1999; amd. Sec. 1, Ch. 324, L. 2005.

16-11-403. Requirements. Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the date of enactment of this Act shall do one of the following:

(1) become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(2) (a) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation) --

1999: \$.0094241 per unit sold after the date of enactment of this Act;

2000: \$.0104712 per unit sold;

for each of 2001 and 2002: \$.0136125 per unit sold;

for each of 2003 through 2006: \$.0167539 per unit sold;

for each of 2007 and each year thereafter: \$.0188482 per unit sold.

(b) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (a) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances-

(i) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds shall be released from escrow under this subparagraph (A) in the order in which they were placed into escrow and (B) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(ii) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of that Agreement, including a final determination of all adjustments, that the manufacturer would have been required to make on account of those units had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(iii) to the extent not released from escrow under subparagraphs (i) or (ii), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

(c) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General that it is in compliance with this subsection. The Attorney General may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall-

(i) be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total

amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(ii) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(iii) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years. Each failure to make an annual deposit required under this section shall constitute a separate violation. (Certain provisions void on occurrence of contingency--sec. 16, Ch. 397, L. 2003.)

History: En. Sec. 3, Ch. 412, L. 1999; amd. Sec. 14, Ch. 397, L. 2003.

16-11-404. Attorney fees and costs. (1) In an action under 16-11-403(2)(c), the court, upon a finding that a tobacco product manufacturer has failed to comply with its obligations under 16-11-403(1) or (2)(a), shall award the attorney general the expenses incurred in investigating the claim, the costs of suit, and reasonable attorney fees. In cases in which outside counsel represents the attorney general, the attorney fees awarded must equal the outside counsel charges reasonably incurred by the attorney general for attorney fees and expenses in prosecuting the action. In all other cases, the attorney fees must be calculated by reference to the hourly rate charged by the agency legal services bureau for the provision of legal services to state agencies, multiplied by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably incurred in the prosecution of the action.

(2) Investigation expenses, attorney fees, and costs recovered under this section are allocated to the department of justice for deposit in the attorney general's major litigation account and may be used by the attorney general for any purpose for which funds appropriated to that account may be used. (Certain provisions void on occurrence of contingency--sec. 16, Ch. 397, L. 2003.)

History: En. Sec. 13, Ch. 397, L. 2003; amd. Sec. 2, Ch. 324, L. 2005.

Part 5

Tobacco Products Reserve Fund -- Enforcement

16-11-501. Findings and purpose. The legislature finds that violations of 16-11-401 through 16-11-403 threaten the integrity of the tobacco Master Settlement Agreement, the fiscal soundness of the state, and the public health. The legislature finds that enacting procedural enhancements will help prevent violations of 16-11-401 through 16-11-403 and will safeguard the Master Settlement Agreement, the fiscal soundness of the state, and the public health. (Certain provisions void on occurrence of contingency--sec. 16, Ch. 397, L. 2003.)

History: En. Sec. 1, Ch. 397, L. 2003.

16-11-502. Definitions. As used in this part, the following definitions apply:

(1) "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including but not limited to "menthol", "lights", "kings", and "100s", and includes any use of a brand name (alone or in conjunction with any other word), trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to or identifiable with a previously known brand of cigarettes.

(2) "Cigarette" has the meaning provided in 16-11-402.

(3) "Department" means the department of revenue.

(4) "Master Settlement Agreement" has the meaning provided in 16-11-402.

(5) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

(6) "Participating manufacturer" has the meaning provided in section II(jj) of the Master Settlement Agreement defined in 16-11-402 and all amendments thereto.

(7) "Qualified escrow fund" has the meaning provided in 16-11-402.

(8) "Tobacco product manufacturer" has the meaning provided in 16-11-402.

(9) "Units sold" has the meaning provided in 16-11-402.

(10) "Wholesaler" means a person that is authorized to affix tax insignia to packages or other containers of cigarettes under 16-11-113, a person that is required to remit the tobacco tax imposed on cigarettes pursuant to 16-11-111, or a person that is required to remit the tobacco tax imposed on other tobacco products under 16-11-111(7). (Certain provisions void on occurrence of contingency--sec. 16, Ch. 397, L. 2003.)

History: En. Sec. 2, Ch. 397, L. 2003; amd. Sec. 3, Ch. 324, L. 2005.

16-11-503. Certifications. (1) Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a wholesaler, distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver, on a form prescribed by the attorney general, a certification to the director of the department and the attorney general, no later than April 30 of each year, certifying under penalty of perjury that, as of the date of the certification, the tobacco product manufacturer either is a participating manufacturer or is in full compliance with parts 4 and 5 of this chapter and any rules adopted pursuant to 16-11-511.

(2) A participating manufacturer shall include in its certification a list of its brand families.

(3) (a) A nonparticipating manufacturer shall include in its certification a list of all of its brand families, the number of units sold in the state during the preceding calendar year for each brand family, and a list of all of its brand families that have been sold in the state at any time during the current calendar year.

(b) The certification must indicate by an asterisk any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of the certification.

(c) The certification must identify by name and address any other manufacturer of the brand families in the preceding or current calendar year.

(4) A tobacco product manufacturer shall update its list of brand families 30 calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general and the director of the department.

(5) A nonparticipating manufacturer shall further certify:

(a) that the nonparticipating manufacturer is registered to do business in the state and has appointed an agent for service of process and has provided notice as required by 16-11-506;

(b) that the nonparticipating manufacturer has:

(i) established and continues to maintain a qualified escrow fund; and

(ii) executed a qualified escrow agreement that has been reviewed and approved by the attorney general and that governs the qualified escrow fund;

(c) that the nonparticipating manufacturer is in full compliance with 16-11-403 and this section and any rules adopted pursuant to 16-11-403 and this section;

(d) (i) the name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required by 16-11-403 and all rules adopted pursuant to 16-11-403;

(ii) the account number of the qualified escrow fund and any subaccount number for the state of Montana;

(iii) the amount the nonparticipating manufacturer placed in the qualified escrow fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each deposit, and any evidence or verification considered necessary by the attorney general to confirm the provisions of this subsection (5)(d)(iii); and

(iv) the amounts and dates of any withdrawal or transfer of funds that the nonparticipating manufacturer made at any time from the qualified escrow fund or from any other qualified escrow fund into which the nonparticipating manufacturer ever made escrow payments pursuant to 16-11-403 and all rules adopted pursuant to 16-11-403.

(6) A tobacco product manufacturer may not include a brand family in its certification unless:

(a) in the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be considered its cigarettes for purposes of calculating its payments under the Master Settlement Agreement for the relevant year, in the volume and shares determined pursuant to the Master Settlement Agreement; and

(b) in the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be considered to be its cigarettes for purposes of 16-11-403.

(7) This part may not be construed to limit or otherwise affect the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payment under the Master Settlement Agreement or for purposes of 16-11-401 through 16-11-403.

(8) A tobacco product manufacturer shall maintain all invoices and documentation of sales and other similar information relied upon for its certifications for a period of 5 years unless otherwise required by law to maintain them for a longer period of time. (Certain provisions void on occurrence of contingency--sec. 16, Ch. 397, L. 2003.)

History: En. Sec. 3, Ch. 397, L. 2003; amd. Sec. 4, Ch. 324, L. 2005.

16-11-504. Directory of cigarettes approved for stamping and sale. (1) Not later than

July 16, 2003, the attorney general shall develop and publish on the attorney general's website a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of 16-11-503 and all brand families that are listed in the certifications, except as otherwise provided in this section.

(2) The attorney general may not include or retain in the directory the name or brand families of any nonparticipating manufacturer that has failed to provide the required certification or whose certification the attorney general determines is not in compliance with 16-11-503, unless the attorney general has determined that the violation has been cured to the satisfaction of the attorney general.

(3) Neither a tobacco product manufacturer nor a brand family may be included or retained in the directory if the attorney general concludes, in the case of a nonparticipating manufacturer that:

(a) an escrow payment required pursuant to 16-11-403 for any period for any brand family, whether or not listed by the nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general; or

(b) an outstanding final judgment, including interest on the judgment, for a violation of 16-11-403 has not been fully satisfied for the brand family or the manufacturer.

(4) The attorney general shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this part. The attorney general shall post in the directory and transmit by electronic mail and certified mail, return receipt requested, to each wholesaler notice of the intended removal from the directory of a tobacco product manufacturer or brand family no less than 30 days prior to the removal. During that period, cigarettes of the tobacco product manufacturer or brand family subject to the notice are contraband under 16-11-147 and the affixing of tax insignia to or the sale or possession for sale of the cigarettes is unlawful as provided in 16-11-505, except that, notwithstanding the provisions of 16-11-147 and 16-11-505:

(a) a wholesaler may affix tax insignia to, possess for sale, or sell at wholesale cigarettes of any tobacco product manufacturer or brand family subject to notice of removal under this subsection (4) if the cigarettes were shipped to the wholesaler on or before the date of issuance of the notice and if the total number of the cigarettes sold by the wholesaler following issuance of the notice of removal and prior to reinstatement of the tobacco product manufacturer or brand family in the directory does not exceed a number that is the average of the number of cigarettes of the tobacco product manufacturer or brand family sold by the wholesaler during each of the 3 months preceding the issuance of the notice; and

(b) a licensed seller at retail may possess and sell cigarettes of a tobacco product manufacturer or brand family that the attorney general has removed from the directory or that is subject to notice of removal if the cigarettes were lawfully shipped to the retailer before the issuance of the notice of removal or after the issuance of notice of removal but before the attorney general removes the tobacco product manufacturer or brand family from the directory. A contract with a tobacco product manufacturer that has been removed from the directory that purports to require, contemplate, or provide for delivery of cigarettes or tobacco products in any applicable brand family after the date of removal from the directory is not valid or enforceable.

(5) Every wholesaler shall provide and update as necessary an electronic mail address to

the attorney general for the purpose of receiving any notifications required by this part. (Certain provisions void on occurrence of contingency--sec. 16, Ch. 397, L. 2003.)

History: En. Sec. 4, Ch. 397, L. 2003.

16-11-505. Prohibition against stamping or sale of cigarettes not in directory. It is unlawful for any person to:

(1) affix a tax insignia to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory; or

(2) sell, offer for sale, or possess for sale in this state cigarettes of a tobacco product manufacturer or brand family not included in the directory. (Certain provisions void on occurrence of contingency--sec. 16, Ch. 397, L. 2003.)

History: En. Sec. 5, Ch. 397, L. 2003.

16-11-506. Agent for service of process. (1) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families included or retained in the directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of 16-11-403 and this part, may be served in any manner authorized by law. The service constitutes legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, phone number, and proof of the appointment and availability of the agent to the satisfaction of the attorney general.

(2) The nonparticipating manufacturer shall provide notice to the attorney general at least 30 calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the attorney general of the appointment of a new agent no less than 5 calendar days prior to the termination of an existing agent appointment. If an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the attorney general of the termination within 5 calendar days and include proof to the satisfaction of the attorney general of the appointment of a new agent. (Certain provisions void on occurrence of contingency--sec. 16, Ch. 397, L. 2003.)

History: En. Sec. 6, Ch. 397, L. 2003.

16-11-507. Reporting of information. (1) Not later than 20 calendar days after the end of each calendar quarter and more frequently if directed by the attorney general, each wholesaler shall submit information that the attorney general requires to facilitate compliance with this section by nonparticipating manufacturers, including but not limited to a list by brand family of the total number of nonparticipating manufacturer cigarettes or, in the case of nonparticipating manufacturer roll-your-own tobacco, the equivalent amount of tobacco, calculated as provided in 16-11-402(4), on which the wholesaler precollected tax as provided in 16-11-113 and that the wholesaler sold during the period covered by the report. The wholesaler shall maintain and make available to the attorney general all invoices and documentation of sales of all nonparticipating

manufacturer cigarettes and any other information relied upon in reporting to the attorney general for a period of 5 years.

(2) The department is authorized to disclose to the attorney general any information received by it and requested by the attorney general for purposes of determining compliance with and enforcing the provisions of this part. The department and attorney general shall share the information received under this part with each other and may share the information with other federal, state, or local agencies only for the purposes of enforcement of 16-11-403, this part, or the corresponding laws of other states.

(3) The attorney general may require at any time from the nonparticipating manufacturer proof from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with 16-11-403 of:

- (a) the amount of money in the fund, exclusive of interest;
- (b) the amount and dates of each deposit to the fund; and
- (c) the amount and dates of each withdrawal from the fund.

(4) In addition to the information required to be submitted pursuant to subsections (1) through (3), the attorney general may require a wholesaler or tobacco product manufacturer to submit any additional information, including but not limited to samples of the packaging or labeling of each brand family, to enable the attorney general to determine whether a tobacco product manufacturer or wholesaler is in compliance with this part. All information submitted by a wholesaler or tobacco product manufacturer under this section must be full, complete, and accurate. (Certain provisions void on occurrence of contingency--sec. 16, Ch. 397, L. 2003.)

History: En. Sec. 7, Ch. 397, L. 2003; amd. Sec. 5, Ch. 324, L. 2005; amd. Sec. 32, Ch. 511, L. 2005.

16-11-508. Escrow installments. To promote compliance with the provisions of this part, the attorney general may adopt rules requiring a tobacco product manufacturer to make the escrow deposits required in 16-11-403 in installments during the year in which the sales covered by the deposits are made. The attorney general may require production of information sufficient to enable the attorney general to determine the adequacy of the amount of the installment deposit. (Certain provisions void on occurrence of contingency--sec. 16, Ch. 397, L. 2003.)

History: En. Sec. 8, Ch. 397, L. 2003.

16-11-509. Penalties and other remedies. (1) In addition to any other civil or criminal remedy provided by law, upon a determination that a wholesaler has violated 16-11-505 or any rule adopted pursuant to that section, the department may revoke or suspend the license of the wholesaler in the manner provided by 16-11-144 in a proceeding initiated by the department or at the request of the attorney general. For each violation of 16-11-505, a civil penalty in the amount of \$250 for the first full or partial pack and \$10 for each additional full or partial pack to which a tax insignia is affixed or that is sold, offered for sale, or possessed for sale in violation of 16-11-505 may be imposed. Each tax insignia affixed, each offer to sell cigarettes, and each pack sold, offered for sale, or possessed for sale in violation of 16-11-505 constitutes a separate violation. The penalty may be imposed in the manner provided by 16-11-143(2) in a proceeding brought by the department or the attorney general.

(2) Any cigarettes that have been sold, offered for sale, or possessed for sale in this state in violation of 16-11-505 may be considered contraband under 16-11-147. The cigarettes are subject to seizure and forfeiture as provided in 16-11-147, and all cigarettes seized and forfeited must be destroyed and not resold.

(3) The attorney general may seek an injunction to restrain a threatened or actual violation of 16-11-505 or 16-11-507(1) or (4) by a wholesaler and to compel the wholesaler to comply with those sections.

(4) (a) In any action brought pursuant to this part, the prevailing party is entitled to recover the costs of the action and reasonable attorney fees calculated as provided in 16-11-404. If the state is the prevailing party, its recoverable costs must include the state's costs of investigation of the violation.

(b) In cases in which the state is the prevailing party and outside counsel represents the attorney general, the attorney fees awarded must equal the outside counsel charges reasonably incurred by the attorney general's office for attorney fees and expenses in prosecuting the action. In all other cases in which the state is the prevailing party, the state's attorney fees must be calculated by reference to the hourly rate charged by the agency legal services bureau of the department for the provision of legal services to state agencies, multiplied by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably incurred in the prosecution of the action.

(5) (a) It is unlawful for a person to:

(i) sell, offer for sale, or distribute cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of 16-11-505; or

(ii) acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of 16-11-505.

(b) A violation of this section is a misdemeanor punishable as provided in 16-11-148.

(6) If a court determines that a person has violated this part, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be paid to the state treasurer for deposit in the trust fund created by Article XII, section 4, of the Montana constitution.

(7) Penalties, investigation expenses, attorney fees, and costs recovered under parts 4 and 5 of this chapter are allocated to the department of justice for deposit in the major litigation account and may be used for any purpose for which funds deposited in that account may be used. The funds are statutorily appropriated, as provided in 17-7-502, to the department of justice.

(8) Unless otherwise expressly provided, the remedies or penalties provided by this part are cumulative to each other and to the remedies or penalties available under all other laws of this state. (Certain provisions void on occurrence of contingency--sec. 16, Ch. 397, L. 2003.)

History: En. Sec. 9, Ch. 397, L. 2003; amd. Sec. 6, Ch. 324, L. 2005.

16-11-510. Contested case and judicial review of attorney general determinations. A determination of the attorney general not to include or to remove from the directory a brand family or tobacco product manufacturer is subject to review by the attorney general or an employee of the department of justice designated by the attorney general to issue final decisions under this part in the manner prescribed by Title 2, chapter 4, part 6. The decision of the attorney general or designated employee constitutes the final agency decision, and judicial review may be

sought from the final decision as provided in Title 2, chapter 4, part 7. (Certain provisions void on occurrence of contingency--sec. 16, Ch. 397, L. 2003.)

History: En. Sec. 10, Ch. 397, L. 2003.

16-11-511. Rules. The attorney general may adopt rules necessary to implement part 4 and this part. (Certain provisions void on occurrence of contingency--sec. 16, Ch. 397, L. 2003.)

History: En. Sec. 11, Ch. 397, L. 2003; amd. Sec. 7, Ch. 324, L. 2005.

16-11-512. Construction. If a court of competent jurisdiction finds that the provisions of 16-11-401 through 16-11-403 and of this part conflict and cannot be harmonized, then the legislature intends the provisions of 16-11-401 through 16-11-403 to control. Except as specifically provided in this part, the provisions of this part are not intended to and may not be interpreted to override the provisions of 16-11-401 through 16-11-403. (Certain provisions void on occurrence of contingency--sec. 16, Ch. 397, L. 2003.)

History: En. Sec. 12, Ch. 397, L. 2003.