

MINUTES OF THE MEETING
BUSINESS & INDUSTRY COMMITTEE
MONTANA STATE SENATE

February 10, 1979

The meeting of the Business and Industry Committee was called to order by Chairman Frank Hazelbaker on the above date in Room 404 of the State Capitol Building at 10:00 a.m.

ROLL CALL: All members were present with the exception of Senators Dover and Lowe who were excused.

Chairman Hazelbaker called this meeting in order to act on some bills which had been heard previously but not acted upon.

DISPOSITION OF SENATE BILL 99: Chairman Hazelbaker called on Staff Attorney, Bob Pyfer, to explain the new statement of intent for SB 99.

Senator Goodover made a motion to adopt the new statement of intent. Senator Blaylock seconded the motion. The statement of intent was adopted unanimously.

Senator Goodover made a motion to adopt the amendments in the title and in the body of the bill. Senator Blaylock seconded the motion. The amendments were adopted unanimously by the Committee. Senator Regan was the only "no" vote.

Senator Goodover made a motion that Senate Bill 99 Do Pass As Amended. Senate Bill 99 was given a unanimous DO PASS AS AMENDED by the Committee. Senator Regan was the only "no" vote.

DISPOSITION OF SENATE BILL 86: Senator Regan moved that Senate Bill 86 Do Pass. Senator Blaylock seconded the motion. Senate Bill 86 was given a unanimous DO PASS by the Committee.

DISPOSITION OF SENATE BILL 209: Senator Peterson moved that Senate Bill 209 Do Pass As Amended. There was a second by Senator Kolstad.

The Committee voted unanimously that Senate Bill 209 DO PASS AS AMENDED.

SENATE BILL 191: The subcommittee working on this bill stated that amendments were being prepared and would be ready by Tuesday a.m. A statement of intent is also being prepared for the Committee and will be presented.

SENATE BILL 255: Senator Blaylock moved that Senate Bill 255 Do Pass. The Committee voted unanimously that Senate Bill 255 DO PASS. The bill will be held, however, until Senator Thiessen, sponsor of SB 255, returns next week.

Minutes of the Meeting
Business & Industry Committee
February 10, 1979

SENATE BILL 302: The Committee decided to hold this bill until they have an opportunity to check on HB #285 which may be similar to SB 302.

SENATE BILL 268: The Committee agreed to hold this bill until Monday when Senator Lowe can be present.

ADJOURN: There being no further business, the meeting was adjourned at 10:45 a.m.



Senator Frank Hazelbaker, Chairman

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

46TH LEGISLATIVE SESSION - - 1979

Date Feb. 10

*Mayer
Groom 104*

STANDING COMMITTEE REPORT

February 10

19 79

MR. President

We, your committee on **Business and Industry**

having had under consideration **Senate** Bill No. **99**

Respectfully report as follows: That **Senate** Bill No. **99**

introduced bill, be amended as follows: (see attached 13 pages)

And, as so amended,

DO PASS.

G.W.

Frank Hazelbaker Chairman.

SENATE BILL #99

2/10/79

AMENDMENTS

SB #99

Lowe
Senator William Lowe

Print to SBA99

Yes

SBA99

Yes

Printed

STATEMENT OF INTENT RE: S.B. NO. 99

A statement of intent is required for S.B. No. 99 in that it delegates rulemaking authority to the Department of Revenue in Section 6.

Section 6 of the bill expands the rulemaking powers of the department of revenue by authorizing the department to adopt rules on various aspects of marketing table wine. Montana liquor laws have traditionally given wide discretion and power to the state liquor control agency. This should also be the case for regulated wine handling. This statement is therefore not a comprehensive list of anticipated agency rules. If a problem not now foreseen arises in the wine handling area and the department can handle the problem with a rule, the legislature should expect the department to take the necessary action.

Rules that can presently be anticipated would deal with the manner in which distributors would sell to state stores and the retail markup to be applied in state stores. The department may require distributors to sell wine on invoices which are consistent with the department's recordkeeping systems. The state markup should not be so low as to create a competitive advantage for the state. The special order procedure in Section 9 may be implemented by department rules to require customer prepayment for small individual orders.

AMENDMENTS TO SB 99

1. Page 1, line 7.

Following: line 7

Insert: "ALLOCATING THE TAX ON WINE;"

2. Page 1, line 7.

Following: "2,"

Strike: "4, AND"

Following: "5"

Insert: ", AND 9"

3. Page 1, line 10.

Following: line 10

Strike: everything after the enacting clause

Insert:

"Section 1. Section 1 of Initiative No. 81 is amended to read:

"Section 1. There is a new section in Title ~~44-88-1647~~ ~~1647~~ that reads as follows:

The public policy of the state of Montana is to retain a complete monopoly by the state over the acquisition, importation and distribution of wine containing more than 14% alcohol by volume but to maintain a system for the sale of wine by the state through state liquor facilities and provide for, regulate and control the acquisition, importation and distribution of table wine containing not more than 14% alcohol by volume in a manner paralleling the regulation and control of importation, acquisition and distribution of beer within this state. When the words "table wine" are used in this act in either the singular or

plural they refer only to wine containing not more than 14% alcohol by volume."

Section 2. Section 2 of Initiative No. 81 is amended to read:

"Section 2. Section 4-1-107, RCM 1947, is amended to read as follows:

"4-1-107. Definitions. As used in this code:

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

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

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

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

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

"(6) "Department" means the Montana department of revenue.

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

"(8) "Industrial use" means a use described as industrial use by the Federal Alcohol Administration Act and

the federal rules and regulations of 27 CFR.

"(9) 'Liquor' means an alcoholic beverage except beer and table wine.

"(10) '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 therefrom, and with or without other wholesome products suitable for human food consumption.

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

"(12) 'Proof gallon' means a U.S. gallon of liquor at sixty degrees on the Fahrenheit scale that contains fifty percent (50%) of alcohol by volume.

"(13) '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.

"(14) 'Residence' means a building, part of a building where a person resides, but does not include any part of a building that is not actually and exclusively used as a private residence.

"(15) 'Rules and regulations' means rules and

regulations published by the department pursuant to this act.

"(16) 'State liquor facility' means a facility owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages.

"(17) 'State liquor store' means a retail store operated by the department in accordance with this code for the purpose of selling distilled spirits and wines ~~containing more than 14% alcohol by volume~~.

"(18) '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, and which 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.

"(19) 'Warehouse' means a building or structure owned or operated by a licensed wholesaler for the receiving, storage and distribution of beer or table wine as permitted by this code.

"(20) 'Wine' means an alcoholic beverage made from 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 not less

than seven percent (7%) nor more than twenty-four percent (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 as above but made in the manner of wine, labeled and sold as wine in accordance with federal regulations are also wine.

"(21) 'Table wine' means wine as defined above which contains not more than 14% alcohol by volume."

Section 3. Section 5 of Initiative No. 81 is amended to read:

"Section 5. There is a new section in Title 4-REB 1947 161 NCA, that reads as follows:

To whom table wine distributor may sell. A table wine distributor may sell and deliver table wine purchased or acquired by him to another table wine distributor, retailer, or common carrier which holds a license issued by the department of revenue, or to the department. It shall be unlawful for any table wine distributor to sell, deliver or give away any table wine to be consumed on such distributor's premises or to give, sell, deliver, or distribute any table wine purchased or acquired by him to the public.

A distributor may not deliver wine to a state liquor store at a different price than that offered for similar goods under similar circumstances to retailers in the same county in which the state liquor store is located.

Section 4. Section 9 of Initiative No. 81 is amended to read:

Section 9.

~~Tax on Wine. A tax of seventy-five cents (75¢) per gallon is hereby levied and imposed on table wine imported by any table wine distributor, and such tax shall be paid by the table wine distributor by the 15th of the month following receipt of the table wine at the table wine distributor's warehouse. The tax computed and paid in accordance with this section shall be the only tax imposed by the state or any of its subdivisions, including cities and towns, and it shall be distributed in accordance with applicable statutes and regulations.~~

~~✓ 60¢ to the state general fund; 5¢ to the earmarked revenue account to the credit of the department of institutions for the treatment, rehabilitation, and prevention of alcoholism; 5¢ to the counties based on population for the purpose established in 16-1-404; and 5¢ to the cities and towns based on population for the purpose established in 16-1-405.~~

Section 5. Section 16-1-302, SCA, is amended to read:

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

(1) to buy, import, have in its possession for sale, and sell liquors in the manner set forth in this code;

(2) to buy from licensed table wine distributor(s) any liquors in its possession for sale, and sell table wine in the manner set forth in this code;

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

(4) to determine the municipalities within which state liquor stores shall be established throughout the state and the situation of the stores within every such municipality;

(5) to lease, furnish, and equip any building or land required for the operation of this code;

(6) to buy or lease all plants and equipment it may consider necessary and useful in carrying into effect the objects and purposes of this code;

6711 to employ store managers and also every officer, investigatory, clerk, or other employee required for the operation or carrying out of this code and to dismiss the same; fix their salaries or remunerations; assign them their title; define their respective duties and powers; and to engage the service of experts and persons engaged in the practice of a profession, if deemed expedient;

67121 to determine the nature, form, and capacity of all packages to be used for containing liquor kept or sold under this code;

67131 to grant and issue licenses under and in pursuance to this code;

67141 without in any way limiting or being limited by the foregoing, to do all such things as are deemed necessary or advisable by the department for the purpose of carrying into effect the provisions of this code or the rules made thereunder."

Section 6. Section 16-1-303, RCA, is amended to read:

"16-1-303. Department rules. (1) The department may make such rules not inconsistent with this code as to the department seem necessary for carrying out the provisions of this code and for the efficient administration thereof.

(2) without thereby limiting the generality of the provisions contained in subsection (1) hereof, it is declared that the power of the department to make rules in the manner set out in that subsection shall extend to and include the following:

(a) regulating the equipment and management of state stores and warehouses in which liquor or table wine is kept or sold and prescribing the books and records to be kept therein;

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

(c) governing the purchase of liquor and the furnishing of liquor to state stores established under this code;

(d) determining the classes, varieties, and brands of liquor and table wine to be kept for sale at any state store;

(e) prescribing, subject to this code, the hours during which state liquor stores shall be kept 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 and table wine kept for sale under this code;

(g) prescribing an official seal which shall be attached to every package of liquor sold or sealed under this code;

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

(i) prescribing the form of records of purchase of liquor and table wine and the reports to be made thereon to

the division and providing for inspection of the records so kept;

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

(k) prescribing the fees payable in respect of permits and licenses issued under this code for which no fees are prescribed in this code and prescribing the fees for anything done or permitted to be done under the rules made thereunder;

(l) prescribing, subject to the provisions of this code, the conditions and qualifications necessary for the obtaining of a liquor or beer license and the books and records to be kept and the returns to be made by the licensees and providing for the inspection of such licensed premises;

(m) specifying and describing the place and the manner in which liquor or beer may be lawfully kept or stored;

(n) specifying and regulating the time and periods when and the manner, methods, and means by which vendors and brewers shall deliver liquor under this code and the time and periods when and the manner, methods, and means by which liquor, under this code, may be lawfully conveyed or carried;

(o) governing the conduct, management, and equipment of any premises licensed to sell liquor or beer under this

code;

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

(3) Whenever it is provided in this code that any act, matter, or thing may be done if permitted or authorized by the rules or may be done in accordance with the rules or as provided by the rules, the department, subject to the restrictions set out in subsection (1) hereof, shall have the power to make rules respecting such act, matter, or thing."

Section 7. Section 16-1-304, SCA, is amended to read:

"16-1-304. Prohibited acts within division. (1) No officer or employee of the liquor division, including those engaged in the sale of liquor at the various state liquor stores, may be directly or indirectly interested or engaged in any other business or undertaking dealing in liquor or table wine, whether as owner, part owner, partner, member of syndicate, shareholder, agent, or employee and whether for his own benefit or in a fiduciary capacity for some other person.

(2) No member or employee of the division or any employee of the state may solicit or receive directly or indirectly any commissions, remuneration, or gift whatsoever from any person or corporation having sold, selling, or

offering liquor or table wine for sale to the state or division pursuant to this code.

(3) No person selling or offering for sale to or purchasing liquor or table wine from the state liquor division may either directly or indirectly offer to pay any commission, profit, or remuneration or make any gift to any member or employee of the division, to any employee of the state, or to anyone on behalf of such member or employee.

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

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

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

(c) The division shall maintain written records of all

samples received. The records shall show the brand name, amount and from whom received, date received, the laboratory or chemist to whom forwarded, the division's action on the brand, and the person to whom delivered or other final disposition of the sample.

(5) No liquor, wine, or other alcoholic beverage may be withdrawn from the regular warehouse inventory or from the state liquor stores of the Montana Liquor Division for any purpose other than sale at the prevailing state retail prices or for destroying damaged or defective merchandise. The division 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 or state store merchandise."

NEW SECTION. Section 8. Retail selling price on table wine sold by the state. The retail selling price at which table wine is sold by the department shall be computed by adding to the ^{statewide weighted average} ~~cost of table wine~~ the state markup as designated by the department.

NEW SECTION. Section 9. (1) The department may, upon petition, notice, opportunity for hearing, and making of findings, import and distribute one or more named table wines to one or more designated state liquor stores, in the same manner as if the table wine contained more than 14% alcohol by volume.

(2) An interested person may petition the department to import one or more table wines to be sold in a state liquor store or a group of stores in a designated area, upon the

grounds that the particular table wine is not available from any table wine distributor serving the area. The department shall give notice of the petition to all table wine distributors serving the area and shall conduct a contested case hearing if any distributor files a protest to the petition.

(3) The department must find, upon the record of the hearing if one is demanded, that a particular table wine cannot be reasonably obtained from any table wine distributor before the department may import that table wine as provided in subsection (1).

-End-

SUMMARY

INTENT

Sec. 1. Amends the statement of policy in Initiative 81 to declare that the state will maintain retailing of wine at state liquor stores while regulating private sector distribution and retailing of wine.

Sec. 2. Amends the definitions in the Alcoholic Beverage Code to redefine a state liquor store as a facility for selling liquor and wine. Identical section is in the introduced bill.

Sec. 3. Amends a section in the initiative, specifying to whom a distributor may sell, to declare that the Department of Revenue is also eligible to buy wine at wholesale. A distributor would be prohibited from selling wine to the department at a higher or lower price than that he offers to groceries and taverns in the same ~~area~~ ^{county} as the state store.

Sec. 5. Amends a section in the Alcoholic Beverage Code dealing with the powers of the Department of Revenue, to specify that the department may also purchase wine from a distributor.

Sec. 6. Amends the section of the Alcoholic Beverage Code which gives rule-making power to the department by specifying that the department may exempt rules for the handling of wine.

Section 6. Amends the conflict-of-interest section in the Alcoholic Beverage Code to prohibit liquor division employees from investing in a wine business. Identical section is in the introduced bill.

Self-explanatory

Self-explanatory

The intent is to have the grocer or tavern and the state liquor store all start at the same wholesale price. This will promote fair competition and prevent any wine retailer, private or public from having an unfair advantage.

This authority would be delegated to each store manager, who would order the wines he customarily stocks from the various distributors who service the area. New

rules for inventory control and reporting from the state stores would be internal management policies and not subject to the Administrative Procedure Act. Rules might be adopted to enforce the non-discrimination requirement in section 3, to govern special order procedures, to set the markup under section 3, and to provide for state payment to distributors in a manner equivalent to the seven-day credit obligation of the groceries and taverns.

Conforming amendment to keep the law consistent.

SUMMARY

Sec. 7. Adds a new section providing that the retail price of wine in a state store is determined by adding the state markup to the cost of the wine.

Sec. 8. Adds a new section declaring that the Department of Revenue may import, distribute, and retail particular brands of wine if the distributors in the area do not and will not carry those wines.

Sec. 9. Amends the tax section in Initiative 81 to allocate the revenue from the 75 cents per gallon tax: 60 cents to the general fund, 5 cents to the counties, and 10 cents to the alcoholism treatment programs of the Department of Institutions.

INITIATIVES

Cost is the distributor's wholesale price for the wine delivered at a state store. This includes the amount which the distributor has already paid. The markup would be designed in the department's rules and could be changed after notice and hearing. The markup should never be less than that used for distilled spirits.

This authority may not have to be used. It guarantees that when consumer demand exists for a particular wine, it will be available in the state stores.

This is intended to roughly approximate the distribution of profits and taxes on wine as it has been marketed under the state monopoly.

STANDING COMMITTEE REPORT

February 10, 1979

MR. President:

We, your committee on Business and Industry,

having had under consideration Senate Bill No. 36,

Respectfully report as follows: That Senate Bill No. 36,

DO PASS

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STANDING COMMITTEE REPORT

February 10, 1979

MR. President:

We, your committee on Business and Industry,

having had under consideration Senate Bill No. 209,

Respectfully report as follows: That Senate Bill No. 209
introduced bill, be amended as follows:

1. Page 1, line 21.

Following: "year"

Insert: "(or 7.4% if payable annually in advance)"

2. Page 1, line 22.

Following: "after"

Strike: "July 1, 1979"

Insert: "January 1, 1980"

3. Page 2, line 8.

Following: "year"

Insert: "unless the policyowner by written notice to the insurer
elects to defer payment of interest until it has accrued"

And, as so amended,

DO PASS

GL

KEY POINTS ON MONTANA SENATE BILL NO. 209

1. This bill would permit life insurance companies to use a maximum interest rate of 8% for loans on life insurance policies, if they agree to charge lower premiums or pay higher dividends to policyholders.
2. The bill would not affect policies issued before its effective date.
3. The present 6% limit was enacted in Montana in 1961.
4. 45 states now permit an 8% maximum, including 25 with no limit, 19 of which recently changed from 6% to 8%, and New York which changed from 5% to 8% in 1977.
5. Companies issuing policies with an 8% rate are paying larger dividends to their policyholders on those policies or charging lower premiums. This helps most policyholders since about 3/4 have not borrowed on their policies.
6. Passage of this bill will reduce the cost of life insurance. Many major companies will charge lower net premiums in Montana if this bill is passed. This is already being done in 45 states, including all bordering states.
7. If the bill is not passed most Montana residents will continue to pay more for life insurance than residents of other states.
8. Most borrowing on policies has been done by the larger policyholders. This reduces the earnings of the companies which then pay lower dividends to all policyholders. As a result, the Montana policyholder who has not borrowed, usually the small policyholder, is getting smaller dividends than he should be getting.
9. In 1962 life insurance companies were investing in mortgages and bonds at about 5-1/2%, and the Montana limit on policy loan interest rates was 6%. In 1978 the companies' new investments in mortgages and bonds were made at about 9-1/2% and the Montana limit on policy loan interest rates was still 6%.