

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By REP. BOB BACHINI, CHAIRMAN, on April 18, 1991,
at 8:45 a.m.

ROLL CALL

Members Present:

Bob Bachini, Chairman (D)
Sheila Rice, Vice-Chair (D)
Joe Barnett (R)
Steve Benedict (R)
Brent Cromley (D)
Tim Dowell (D)
Alvin Ellis, Jr. (R)
Stella Jean Hansen (D)
H.S. "Sonny" Hanson (R)
Tom Kilpatrick (D)
Dick Knox (R)
Don Larson (D)
Scott McCulloch (D)
Bob Pavlovich (D)
John Scott (D)
Don Steppler (D)
Rolph Tunby (R)
Norm Wallin (R)

Staff Present: Paul Verdon, Legislative Council
Jo Lahti, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Announcements/Discussion: HB 1013 was heard and executive action
taken.

HEARING ON HOUSE BILL 1013

Presentation and Opening Statement by Sponsor:

REP. TIMOTHY J. WHALEN, HD 93, Billings, sponsor stated this bill
addresses a problem that came about when the state stored
products in the state warehouse from distillers. It is an Act to
prohibit the Liquor Division of the Department of Revenue (DOJ)
requiring low-volume liquor, as used in Section 16-1-401, MCA, or

low-volume table wine companies from maintaining liquor or wine in the state warehouse while the company maintains ownership of the liquor or wine; amends Section 16-1-304, MCA; and provides an immediate effective date.

Rather than the state having to pay for the product at the time the product is delivered to the warehouse, it is held in 'bailment' (Webster's Collegiate dictionary says "The delivering of goods by one party to another to be held in trust for a specific purpose and returned when that purpose is ended") from one to twenty-one days before the distiller is paid for his shipment. The only distillery in Montana is owned by Marilyn and Bob Lemm who started it up about two years ago. Over one-half of the value of the liquor held in the state warehouse is in the federal excise tax the distiller pays upfront when the product is brought into the state warehouse. Sometimes six to eight months pass before the liquor is moved out of the state warehouse to the retail stores. The distiller must wait until the product is removed from the state warehouse by the state retail stores to be paid for his product that has been stored in the state warehouse. The payment may be in small dribbles since the product may be sold over a period of several months and in several volumes. Some of the product may be moved out in a day while it may take longer for the rest of it to be moved. It takes from one to twenty-one days in the course of the normal business operation before it is moved out of the warehouse and the distiller receives his money for a shipment.

This is an Act providing a little tax break to distillers selling less than 200,000 proof gallons of liquor nationwide and less than 100,000 wine gallons of table wine nationwide in the previous calendar year. That will help out the small Montana distillers. The sponsor will appreciate favorable consideration.

Proponents' Testimony:

Michael Lemm, Montana Distillers, is in favor of this bill. **REP. WHALEN** explained basically what Montana Distillers are going through right now. They recently sent over a shipment worth \$113,000 of which \$79,000 was federal excise tax that had to be paid on the same day it arrived at the warehouse. With bailment it takes a long time to get that money back. The distiller has to put out a lot of money. They have to borrow more money to pay their employees and insurance, etc. He is here to support this bill.

REP. DAVE BROWN, HD 72, Butte Silver Bow said in the process of converting the Liquor Division's inventory and putting money into the general fund, \$4 million was credited to help balance the budget this one time. Without a change in the statute they can't recognize the problem imposed on a small business like Bob and Mike Lemm's operation. They had to put out \$120,000 for the federal excise tax for a shipment and it could be six months before they can get it back. They employ 18-20 employees a shift

to be competitive.

This is the kind of legislation that we ought to be sensitive to. It helps to solve problems. They are the only ones in Montana now in the hard liquor distillery area. It seems a reasonable thing to do.

Mark Staples, Montana Tavern Association, said since they had a hand in creating this problem when they participated in the bailment negotiations whereby the manufacturers own the liquor in the state warehouse rather than the state, they would like to help someone hurt by the process. Under bailment the state doesn't have to pay out and hold the inventory cost. Small volume products, especially holiday products when people use different types of small quantities, sometimes are slow sellers. Payment by the state would be made for those specialty products. This was the unanticipated consequence on this home grown distiller. He is very much in support of this bill.

REP. BOB PAVLOVICH, HD 70, Butte, went on record as being in support of HB 1013.

Opponents' Testimony: None

Questions From Committee Members:

REP. BENEDICT asked the amount of money this would cost. Gary Blewett, Administrator of the Liquor Division, Department of Revenue, said the cost would be between \$100,000 and \$150,000 one time. An estimate of about \$4 million would be transferred to the account of the Liquor Division, so that fund would be less \$150,000. It is a one time shot that doesn't create any work for them. It is easy enough to manage.

REP. TUNBY said it sounded from what Mark Staples said manufacturers have owned the liquor in the state liquor stores. Mr. Blewett answered they own it and have paid federal taxes on it.

REP. DOWELL said this bill makes reference to wine as well, are wineries impacted? Mr. Blewett said they are dealing with an exception for small wineries in this bill as well, and that is for equity purposes. There is one small winery in Montana, and there could be more. The idea was to make it equitable.

REP. ELLIS asked what proof gallons are. What would be a proof figure that would be proof gallons under the federal law? Mr. Blewett explained that there is a different kind of tax break established for wineries if they sell under the 100,000 gallon figure. It wouldn't impact Montana at all.

REP. ELLIS asked for an explanation of why some products do not go out for six months. REP. BROWN explained the product may or

may not move as fast as they anticipated or there may be a ton of reasons why it does not move, but it does take a long time for their delivery to the front door of the warehouse out to the retail stores which is the time when the distiller under the bailment program is paid. Either way, even if it is only three months or two months, I used six months because that is the figure quoted me which may be the outside number, the distiller is putting up \$120,000 in federal excise tax to cover that product and won't get his money back until that product is removed from the state warehouse.

REP. ELLIS asked if this is an immediate fund business right now as it stands? REP. BROWN explained right now it is as far as it affects the hard liquor side, and that is the Montana Distillers Montana Gold operation that Bob Lemm operates. The only winery it affects is the winery in St. Ignatius.

REP. ELLIS asked how the cash flow worked. Mr. Blewett explained regarding the cash flow: the state might purchase \$150,000 worth of stock, and at once the distiller gets that payment under this bill. Before bailment, whenever the distiller brought his product to the state warehouse, he was paid for it and it didn't matter when they shipped it out from the distiller's standpoint. But under bailment on products stored in the warehouse, the federal excise tax has to be paid upfront by the distiller; and the state pays the distiller as they draw it out; so if the product is dribbled out over a period of time, the distiller is paid accordingly, and it might be in one day or it could be up to about every twenty-one days before he is paid for the amount removed from the warehouse.

REP. ELLIS said he realized that. Obviously six months is not the average time for them to get payment on the warehoused product. What would a more accurate time frame be? Mr. Blewett said from the date of drawing the product out to when the distiller is paid, the longest time is twenty-one days and it could be as soon as one day. No payment is made on the product maintained in the warehouse, only on what leaves the state warehouse.

REP. ELLIS asked how long would it take on average to move that \$150,000 worth of product. Mr. Blewett said the turnover rate for this product would probably be about 8 turns a year or so on that product, so there is considerable lag time. They are probably eating about 20% of that tax.

REP. WALLIN asked how many employees do you have? Mike Lemm said at any one given time 18-20, depending on the size of bottle. If you are bottling a larger size, it takes less employees. For the most part when bottling a liter it takes even more, it takes 22 to 25 per shift.

REP. WALLIN asked when you have invested this money in this wine and you have a slow mover or slow brand, what do you do with it? Mr. Blewett said if they have a slow mover and it just isn't

selling, they reduce the price to sell it off. Usually they try to see if they can stop buying it, and if there is enough turns over a period of time, it is sold at the purchase price.

REP. WALLIN asked if there is a time limit. Mr. Blewett said No, there is no time limit. Under federal law there is no time limit.

REP. WALLIN said we are trying to help one small company that does not have many employees and in a special sort of way to do that. Is there any possibility that you can see that the state will be dealing with any other companies in the foreseeable future? Mr. Blewett said the figure of 200,000 proof gallons already exists in law for another section which limits the reduced tax charge on this product which applies only to Montana Distillers right now; the other small companies are too far away to make it worth their while to bring it in, so his estimate is that this would not have any impact other than for this company.

REP. SCOTT commented in reading this over there are a lot of people concerned about wine. Does the state warehouse handle any wines other than the fortified wines? Mr. Blewett said they do have some wines. Wine represents only a little less than 2% of their gross. Wine is also distributed on the market, meaning there are wholesalers that distribute it, so whether that section is in the law or not does not prohibit a Montana winery from having a distribution market. The state is the exclusive distributor for liquor. So wine is a very small factor of the state operation. Whether it is in there or not has no real bearing on the issue itself.

REP. BENEDICT remarked the \$150,000 is the cost to the general fund; there are only about 22 employees. That \$150,000 is an accelerated payment on what would be purchased anyway. It is not a hit to the general fund since it only accelerates or advances what the state would buy anyhow. It is not like giving this \$150,000 to this small company for these few employees. Mr. Blewett said your argument is certainly correct. It is not a gift of funds to them, but it is a state investment.

In 1988, the Department of Revenue adopted rules requiring liquor and table wine vendors to maintain supplies of liquor or table wine in the state warehouse in a bailment status. The rules were aimed at maintaining adequate supplies of liquor and table wine at all times, without requiring the state to incur the costs of inventory. This bill exempts low-volume companies from the bailment requirements. The rules have had a prohibitive impact on low-volume companies, because they are required to pay federal excise taxes on the liquor in the bailment status, but they are not paid for the liquor or table wine until it is placed in the inventory of retail stores.

Because they would not have to maintain their monthly average throughout, they could transfer their inventory assets of about \$4 million to the general fund less the approximately \$150,000 to

be paid to the Montana Distillers for their product that is already in the warehouse, the payment of which is authorized by this bill. It is just a shift of assets from one account to another account.

REP. BACHINI asked if the Department has any objection to this bill at all. Mr. Blewett said they do not have any objection.

REP. ELLIS asked what is a proof gallon? Mr. Blewett said there is a technical definition in the law. It requires that you weigh the liquid gallon of the unit. Most of the products in the store are 80 proof, but they are not all that, some have a different liquid gallon measure that sometimes is 100 proof gallon. A proof gallon is a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume, that is 100 proof gallon. That would be the standard, and then it weights from there.

Closing by Sponsor:

REP. WHALEN thanked Gary Blewett and Mike Lemm for coming in today in support of HB 1013.

EXECUTIVE ACTION ON HOUSE BILL 1013

Motion: REP. PAVLOVICH moved HB 1013 DO PASS.

REP. WALLIN would vote against this bill. He didn't see where special dispensation should be given to a business that employs only 22 people and doesn't affect the market. We could go on forever with this kind of bill for different friends, and if this really affected several companies, he would vote for it. We are just helping one small operation.

REP. PAVLOVICH disagreed. We are here to try to help small companies. It is the same thing as farming, when a farmer or a rancher takes his beef to the market, he gets paid when he sells his beef at that market. He doesn't wait until they butcher it and give it to Safeway and Safeway sells it and then he gets his money. In other words if he had to wait that long to get his money, he would be out of business. It is only fair for one person to get his money upfront like any other business.

REP. BENEDICT tends to disagree with REP. WALLIN because he doesn't care if it is one company or a hundred companies, what the state is doing is wrong, which it is, then that needs to be corrected.

REP. ELLIS said he is having a little difficulty with this. What we are talking about here is not the \$150,000 or maybe it is. It is a one time loan of \$150,000 that will be paid off. It costs the state that much upfront. Obviously we have decided that it is

fair to charge most companies the \$150,000, assuming they all did the same volume of business. All the other companies operate out of state and this one doesn't. It seems that is the real difference we are talking about here. While he can sympathize with Montana Distillers, at the same time, he has a little trouble justifying this just because they are from Montana. It seems that is really the exception, that they don't have to pay their taxes upfront, but everybody else does. If it is a good idea for everybody to pay their taxes upfront, maybe it is a good idea for these people to do so too.

REP. STELLA JEAN HANSEN commented it is a lot easier for the state to bear the burden of that inventory than it is for one little company. She doesn't think that is a fair burden on that little company.

REP. PAVLOVICH agreed with REP. HANSEN. Seagram's or Schenley's or companies like that are big corporations and sell products all over the world. They have money upfront. They have the cash flow. Here we have a small business that is expected to hand out \$150,000 and is going to get it back in dribbles every twenty-one days, so he sends in a shipment having a federal excise charge of \$150,000 to the state warehouse. After twenty-one days they ship out maybe one-fourth of that product, he gets one-fourth of the value of his shipment back in twenty-one days. And then he has to wait until they ship out the other fourth of it, and then he gets that back in twenty-one days, so it might take two months or more before he gets all his money back. That is not fair to that little man.

REP. BENEDICT doesn't think it is fair either, nor is the bailment affair particularly fair. He doesn't agree with any of it. The state should be on a cash and carry basis with a lot of its merchants, and it would be like REP. ELLIS said if you took your cows to market and the guy said O.K. I'll take these cows, and I might pay you later on down the road if I get a chance to sell them, you wouldn't be very happy with that; neither would REP. WALLIN if he had some cars he was going to sell to the state and he sold them to the state and didn't get paid for them for six months until they decided to put them into service. It is the same principle. The state ought to be on a cash and carry basis for the small businessman.

REP. BACHINI agreed.

REP. BARNETT supports this issue for the same reason he does not support the accelerated income tax that we are facing right now. We are robbing the small businessman by forcing him to pay upfront.

REP. BACHINI said when we have a small business that is growing we should help it. This is a very good bill to help those small businesses and we are here to take some of that burden off and not put more burden onto them.


Vote: Motion HB 1013 DO PASS carried with all members except
REP. WALLIN voting for the motion.

ADJOURNMENT

Adjournment: 9:25 a.m.



REP. BOB BACHINI, CHAIRMAN



JO LAHTI, SECRETARY

BB/jl

BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

DATE April 18, 1991

[illegible]

HOUSE STANDING COMMITTEE REPORT

April 18, 1991

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Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 1013 (first reading copy - white) do pass.

Signed: _____

Bob Sachini
Bob Sachini, Chairman

**HOUSE OF REPRESENTATIVES
VISITOR REGISTER**

Business & Econ. Dev. COMMITTEE BILL NO. HB 1013

DATE Apr. 18, 1991 SPONSOR(S) Rep. Tim Whalen

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
DAVE Brown	HD #72	X	
Tim Whalen	sponsor	X	
Mike Lemm	Mt. Distillers	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.