

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on March 8, 1995, at
8:00 a.m.

ROLL CALL

Members Present:

Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Ken Miller (R)
Sen. Mike Sprague (R)
Sen. Terry Klampe (D)

Members Excused: Sen. Gary Forrester (D)

Members Absent: Sen. Bill Wilson (D)

Staff Present: Bart Campbell, Legislative Council
Lynette Lavin, Committee Secretary

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

Committee Business Summary:

Hearing: HB 549, HB 286, HB 342
Executive Action: HB 408 BE CONCURRED IN
HB 549 BE CONCURRED IN
HB 286 BE CONCURRED IN AS AMENDED
HB 342 BE CONCURRED IN

HEARING ON HB 549

Opening Statement by Sponsor:

REP. DEBBIE SHEA, HD 35, Butte, read her written Sponsor's
Remarks on HB 549, EXHIBIT #1.

Proponents' Testimony:

Sarah Power, Attorney, Buttrey Food & Drug, said they assisted in
drafting HB 549, which was designed to simplify the process of
issuing beer and wine licenses for off-premises consumption. She

said the Department of Revenue supported HB 549 and she asked the committee's support as well.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

SEN. STEVE BENEDICT asked Gary Blewett, Liquor Division, Department of Revenue, if he agreed and he said he did.

SEN. MIKE SPRAGUE asked if HB 549 would be a cause-and-effect situation, i.e. hearing from small businesses at home because they didn't know anything about the bill. Mr. Blewett said there would not be a chain reaction cause-and-effect because there was no competition for the licenses.

Closing by Sponsor:

REP. SHEA asked the committee's support for HB 549.

HEARING ON HB 286

Opening Statement by Sponsor:

REP. BOB PAVLOVICH, HD 37, Butte, said the beer industry was a three tier industry; manufacturer, wholesaler, and retailer. He said the purpose of HB 549 was to stop the brewer from coercing the wholesaler to set a price; however, it would be permissible to get together and suggest prices. He distributed copies of amendments, EXHIBIT #2. REP. PAVLOVICH said HB 286 strengthened the separation between brewers and wholesalers, kept brewers from controlling wholesalers, kept brewers from setting prices, allowed the marketplace to set the price through supply and demand, furthered the enterprise system and maintained competitive pricing among wholesalers.

Proponents' Testimony:

Tom Hopgood, Montana Beer and Wine Wholesalers Association, expressed appreciation to the committee for its courtesy throughout the session. He said HB 286 would clarify that brewers were prohibited from setting the prices for products sold at wholesale by beer distributors. Mr. Hopgood said there was some opposition from one of the major breweries, and a discussion with them produced the amendments in EXHIBIT #2. He said the concern was when a brewer came to a wholesaler to say he would raise the price, suggesting the wholesaler raise his price no more than a certain amount, though the wholesaler may need to increase it more. Tom Hopgood explained in the past, when the above happened, it was the tendency of the brewers to declare to the wholesaler if they raised the price by a certain amount, the brewers would raise theirs by a certain amount, i.e. brewery

influenced the wholesaler's price. He remarked the distributor, according to statute, was free to set his or her own retail prices. **Mr. Hopgood** said the amendments would take care of the reach-back pricing and would allow the brewers ease with **HB 286**.

Harry Watkins, President, Montana Beer and Wine Wholesalers Association, said his organization supported **HB 286** because sometimes wholesalers found it necessary to raise the prices more than recommended by the major breweries they represented. He said from a legal standpoint, wholesalers had a weak contractual right to the brands they represented; therefore, they usually agreed with the brewery recommendations. **Mr. Watkins** said the breweries usually felt a nickel or dime increase per case should be good for every wholesaler; in reality, every wholesaler had a different financial profile. **Mr. Watkins** said the marketplace was the best indicator of the size of increase.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

SEN. MIKE SPRAGUE asked if there was a chart or graph to illustrate the reach-back effect. **Harry Watkins** drew an illustration on the blackboard to explain.

SEN. SPRAGUE commented the wholesalers were asking for flexibility and competitiveness and that was what saved the consumer. **Tom Hopgood** agreed, explaining the beer wholesale business had interbrand competition which kept the prices down.

SEN. STEVE BENEDICT asked if there was more sympathy toward the wholesalers instead of the large out-of-state corporations which try to influence Montana prices, would it be better to not adopt the amendments, but go with **HB 286**. **Mr. Hopgood** said the bill would have prevented the brewers retaliating against the distributor raising the wholesale more than the brewers suggested. He said Anheuser Busch had discomfort with the introduced language; therefore, it was suggested the language be added that nothing could be construed as to prevent a brewer from suggesting prices. **Mr. Hopgood** said they agreed the language in Amendment #5 adequately addressed the problem of reach-back pricing. He said if it was desired to ignore big brewery influence, the amendment should be left off; however, he was not advocating that. He said though the bill was not the optimum, both Anheuser Busch and his organization could live with it.

SEN. BENEDICT asked **Steve Browning** what response would Anheuser Busch have if in addition to not adopting these amendments, but also returning the bill back to its original state as it was introduced. **Mr. Browning, Anheuser Busch**, stated the reason they didn't like the bill as introduced, not as amended, was because the parameters or requirements were not included; the language was coercive, ambiguous, and really didn't list what could be done or could not be done. They were okay with the prior law as

they knew what the parameters were and could live with those parameters. **Mr. Browning** said they were prepared to accept additional requirements as long as they knew what those requirements were and how they could conduct their business.

SEN. CASEY EMERSON questioned **Mr. Hopgood** about enforcing the Fair Trade Act of the federal government, where every wholesaler could purchase from any brewer they wished. **Mr. Hopgood** stated this issue had been addressed. He said after prohibition was repealed, Congress enacted the three tier system which had the producer of the alcoholic beverage (the brewery), the distributor, and the retailer. There was a very distinct line between the brewer and the distributor and a very distinct line between the distributor and the retailer, and he said that was to prevent the brewery from obtaining too great a control over the retailer. He stated it prohibited companies like Anheuser Busch from opening up their own chain of bars all across the country. He explained the middle tier worked through interbrand competition, rather than the intrabrand competition.

Mr. Hopgood related the economics of beer distribution, exclusive territories, and interbrand competition were incredibly complex; it had been debated and discussed. He commented there was only one state in this country that had intrabrand competition and that was Indiana and they were having difficulties, with attempts in the Indiana legislature to remedy that problem. He contended interbrand competition was a system of distribution in the beer business that worked. He reported it protected the retailer from the brewer, it protected the retailer from the distributor and in the final analysis, it protected the consumer.

SEN. EMERSON told **Mr. Hopgood**, he really didn't believe that and thought the market took care of that better than the three tier system. He thought the free market system was by far the best step. **SEN. EMERSON** stated he was going to be in Indiana in a few months and was going to check their system. **Mr. Hopgood** contended beer distributors, as a group, were generally believers in free enterprise and that was what they were conducting; free enterprise of Anheuser Busch against Miller against Coors, etc. within the same territory. He remarked they believed that was as much free enterprise, interbrand competition, as it would be in intrabrand competition.

SEN. BENEDICT commented to **Mr. Hopgood**, he thought it should be brought out and was appropriate the present system was set up to avoid cherry-picking by the distributors as far as just carrying popular brands of beer and not carrying the full line. **Mr. Hopgood** remarked that was absolutely correct.

Closing by Sponsor:

REP. PAVLOVICH stated he would concur with the amendments. In reference to the free enterprise system **SEN. EMERSON** was talking about, a few years ago they had a strike of the retailers in

Butte, along with the Teamster's. They had a problem getting beer. They had to go to Bozeman and Great Falls to purchase their beer as they didn't dare cross the picket line being from a union town. He declared after about two weeks, the wholesalers in Butte informed the wholesalers elsewhere not to sell them any beer. **REP. PAVLOVICH** maintained they had to come back to the legislature to adopt a rule that said as long as a person owns an "all beverage license", the wholesaler must sell the beer.

HEARING ON HB 342

Opening Statement by Sponsor:

REP. BOB PAVLOVICH, HD 37, Butte, said **HB 342** was a wine distributor bill. In 1991 the legislature enacted section 16-3-416, MCA which contained statutory safeguards for wine distribution contracts. The safeguards were enacted because of an unfair practice of wineries in dealing with Montana wine distributors. He explained among other provisions, the 1991 law required wineries to give 60 days notice of contract termination for reasons other than bankruptcy or loss of license. He stated the law allowed the terminated distributor 60 days to cure any deficiency in his performance of the wine distributor contract.

REP. PAVLOVICH explained the law also required the supplier to pay for the laid-in cost of inventory and for the liquidation damages of termination. He said what had occurred since 1991, (time of enactment of the law) some wineries had resorted to the preparation of contracts which were contrary to the Montana statutes. They had contracts with wineries that were made out-of-state and did not conform to Montana law. He said **HB 342** stated when they sold wine in the State of Montana, they would have a contract made in Montana under Montana law.

Proponents' Testimony:

Tom Hopgood, Montana Beer and Wine Wholesalers Association, explained what had been experienced with the 1991 law was contracts being prepared by the wineries, which were one-sided in favor of the wineries. He said the problem was addressed by the legislature in 1991 to insert certain safeguards into the law governing the termination of contracts, the payment of liquidated damages and the opportunity to cure defects and performance, etc. They thought those were very important provisions.

Mr. Hopgood stated; however, the wineries were simply sidestepping the projections they had put into the statute by saying the contract was governed by, for example, the State of Washington, or the State of New York. He had a couple of contracts to show the committee, one being from the Stimson Lane Winery in Washington, which had a number of provisions that were completely contrary to the statutory projections in Montana law.

Mr. Hopgood contended the contract shortened the time interval in which a winery had to give notice of termination. He stated, more significantly, the contract allowed the winery to pay damages to the distributor at their sole discretion. He declared Montana law stated the winery must pay those damages and also laid-in inventory; under the Washington contract that was optional. **Mr. Hopgood** claimed the other contract was from the Canandaigua Wine Company (both contracts had been left with the House Business & Labor Committee), and was thought to be even more overbearing than the Stimson Lane contract.

Mr. Hopgood maintained some of the wineries had overstepped their bounds in getting around the Montana law. He said the state had wide discretion in regulating the distribution of alcoholic beverages within the state; also, the state imposed the policy on wine franchise contracts and should be enforceable within the borders of the state. He contended **HB 342** also prevented the wineries from setting or maintaining the wholesale price of wine.

Mr. Hopgood asked the committee's favorable endorsement of **HB 342**.

Harry Watkins, Zip Distributing, Missoula and also the current President, Beer & Wine Wholesalers Association, stated his comments on **HB 342** were more personal. They thought under the 1991 law, they were entitled to 60 days notice of termination with a list of deficiencies and the opportunity to correct those deficiencies. He contended; however, last year Canandaigua purchased the rights of the Almaden brand, which Zip Beverage represented in Missoula, and terminated their distributorship on the spot because they wanted to realign those brands with other Canandaigua brands that were represented by another wholesaler. **Mr. Watkins** maintained they were the largest Almaden wholesaler in the state and had represented them since wines began being represented by wholesalers, about 1979.

Mr. Watkins stated they had lost 30 to 40% of their wine business in one day with no consideration for their investment, warehouse, vehicles, or their manpower situation. He said their competitor now controlled over 75% of the wine business in their area and also their wine manager was no longer with them. He claimed they were basically struggling to remain in the wine wholesale business. **Mr. Watkins** expressed there were times when wineries needed to realign their brands for various reasons and he said the 60 days notice was not unreasonable considering their obligations were all very long-term. He reported their warehouse cost over \$900,000 and they had a fleet investment exceeding \$500,000; both were financed at a bank. **Mr. Watkins** related had they had 60 days notice of deficiencies, they would have been very motivated to eliminate those deficiencies or performance problems.

Opponents' Testimony:

Mona Jamison, Wine Institute, said they were was an association of out-of-state producers of wine. The **Wine Institute** was primarily California wineries. They were supporting Section 2, which stated they could not price fix. The focus of **Ms. Jamison's** testimony related to the proposed changes in Section 1. The 60 days notice already was the law. The **Wine Institute** thought it was very reasonable because of the costs of inventory, stocking, etc. That was the law; however, the law had been broken by a number of suppliers. She said assuming Canandaigua was a "bad player", how far did the law go, as a matter of public policy of attempting to fix every wrong by regulating the market.

Ms. Jamison suggested if Canandaigua did violate Montana statute there were remedies which were outside this legislature. She said one remedy may be to go to court. She stated weigh at what point did it serve public policy to address every market breach by trying to change the statute. They supported those provisions in 1991. They worked very hard with **REP. PAVLOVICH** and **Roger Tippy** (who was the lobbyist at that time for the distributors) to make sure the provision for the law in Section 1 went into it and they thought those were reasonable. She said to add subsections (6) and (7) now would still be the conflict of laws question as New York's may read the same under the "laws of New York". She said this would not solve the problem.

Ms. Jamison stated they urged a be concurred in on Section 2 and they urged a do not concur on Section 1 proposal.

Questions From Committee Members and Responses:

SEN. MIKE SPRAGUE asked **Mr. Watkins** about the agreement of notification, re-notification, and correction of problems. On the testimony given by **Mr. Hopgood** would **Mr. Watkins** explain why he couldn't rectify enough to keep the contract. **Mr. Watkins** stated their contract was with Almaden and that contract also had a few quirks in it. They didn't have a corrected contract at the time and therefore, didn't think they were obligated under this statute to give them any notice.

SEN. SPRAGUE commented to **Ms. Jamison** that nationally there had been a deregulation of interstate marketing, banking, etc., where the market was opening up and also states rights were being heard. Should they assume, with all the state regulations, that a distributor (a winery) would not be somewhat sensitive to states' rights. **Ms. Jamison** said **Mr. Hopgood** stated he left the contract with Canandaigua down in the House Business and Labor Committee, but **Mr. Watkins** was with Almaden and why did the distributor sign the contract. At what point do people say "I'm not signing this, it is coercive, these are the provisions in Montana law and what you are asking me to sign is contrary to what is required".

SEN. SPRAGUE stated he wasn't getting what he wanted from the examples the committee had heard. The winery chose to not honor an assumption, or circumvent state law relative to the law from which they came and thought their law was better than Montana law. **Ms. Jamison** asserted she wanted to make it clear, for the record, she was not here defending Canandaigua.

{Tape: 1; Side: B}

SEN. CASEY EMERSON commented to **Mr. Watkins**, it was Almaden that took the rights to sell that wine away from his distributorship because they had changed ownership. **Mr. Watkins** stated that was correct.

SEN. EMERSON asked **Mr. Watkins** what really hurt him, the present law that let Almaden do that, or was it the fact there was a monopolistic situation the free enterprise system would have cured had they had that system. **Mr. Watkins** stated what had hurt them was the over-all structure, purchases, warehouse capacities, manpower situation, all of which were based on anticipation of certain volume level. The law that was passed in 1991 gave the wholesalers, who had substantial debts and obligations, the opportunity of 60 days to correct deficiencies.

SEN. EMERSON asked **Mr. Watkins** if he had been able to buy under the free trade laws, would he have been hurt. **Mr. Watkins** said had they been able to purchase Canandaigua products at the same time as their competitor, their whole financial situation would have developed differently and they probably would not have been hurt.

Closing by Sponsor:

REP. PAVLOVICH stated **HB 342** was a bill to protect the wine distributors in the State of Montana. They would follow a Montana law and not a law from another state.

REP. PAVLOVICH stated **SEN. J. D. LYNCH** had agreed to carry **HB 342** on the Senate floor.

EXECUTIVE ACTION ON HB 408

Motion: **SEN. STEVE BENEDICT** MOVED **HB 408** BE CONCURRED IN.

Discussion: **SEN. KEN MILLER** thanked the committee for the time to check with his constituent about **HB 408**. The message was incorrect as it was **SB 408** that was of a concern. He stated he supported **HB 408**.

Vote: The motion **HB 408** BE CONCURRED IN CARRIED UNANIMOUSLY by voice vote. **SEN. MILLER** agreed to carry **HB 408** on the Senate floor.

EXECUTIVE ACTION ON HB 549

Motion/Vote: SEN. STEVE BENEDICT MOVED HB 549 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY by voice vote. SEN. GERRY DEVLIN will carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB 286

Motion/Vote: SEN. STEVE BENEDICT MOVED TO ADOPT THE AMENDMENTS HB028601.ABC. The motion CARRIED UNANIMOUSLY by voice vote.

Motion/Vote: SEN. BENEDICT MOVED HB 286 AS AMENDED BE CONCURRED IN. The motion CARRIED UNANIMOUSLY by voice vote.

EXECUTIVE ACTION ON HB 342

Motion: SEN. STEVE BENEDICT MOVED HB 342 BE CONCURRED IN.

Discussion: SEN. WILLIAM CRISMORE stated HB 342 was redundant as it was already covered under the law.

SEN. BENEDICT said he thought the purpose of this bill was to bring the contracts into conformance with Montana law instead of allowing a contract to be executed in another state and under the laws of that state. SEN. BENEDICT stated the crux of HB 342 clarified when a contract was made with a Montana business in the State of Montana then the contract should conform to Montana law.

SEN. KEN MILLER inquired from Bart Campbell, when the contract was made with a New York company and their contract said it would be under New York law, how would HB 342 help those contracts. Mr. Campbell answered that was a complicated area of law. He said often contracts were written which specified which state's law would apply when the parties agreed.

SEN. CASEY EMERSON asked Mr. Campbell if there would be an enforcement problem when the company who signed the contract in Montana and were to abide by New York law; however, they decided to break the contract. He said would it be possible for those people in New York to enforce it out here in Montana. Mr. Campbell related they would be able to enforce it by going through a Montana court if they believed that provision of the contract applied to a New York law. SEN EMERSON stated if the company had followed Montana law when they broke the contract, the court would throw the case out. Mr. Campbell gave his personal opinion and stated had the contract been signed, knowingly, that it applied to New York law, the New York law would be applied to that case.

SEN. TERRY KLAMPE stated **Mona Jamison** tried to make that point when she asked the rhetorical question about "did you sign the contract". **SEN. KLAMPE** said **Ms. Jamison** was correct; this could be handled without changing statutes.

SEN. BENEDICT contended **HB 342** was a tool in the law that allowed the Montana wine wholesalers to insist on a contract that was Montana based. He conveyed the wholesalers would have the tool to state they want the contract to conform to Montana law.

SEN. MIKE SPRAGUE agreed with **SEN. BENEDICT**.

SEN. CRISMORE asked the ramifications if someone refused to sign the contract unless they agreed to change the contract; this would protect them. **SEN. BENEDICT** stated that was one of the weaknesses of the 1991 law and **HB 342** gave this protection. **SEN. CRISMORE** asked if this contract would not be binding. **SEN. BENEDICT** deferred that question to **Tom. Hopgood**. **Mr. Hopgood** said the bill did not take away the freedom of the winery to contract in whatever manner; what it did was to keep the winery from being able to push that contract at Montana distributors. **HB 342** keeps things even between the winery and the Montana distributors. **Mr. Hopgood** stated there were provisions in the 1991 law that said they must have the Montana provisions in their contract. He asserted the winery had the opportunity to say "no", then apply the laws to the State of New York.

SEN. EMERSON stated if those wineries didn't comply with Montana law, they would have to quit selling their wine in the entire state. **Mr. Hopgood** said if that were their choice, that was what they would have to do. He said no matter how small the Montana market was, it was still a profitable market and they would not pull out-of-state.

SEN. EMERSON asked **SEN. BENEDICT** if he thought this would cause a lot of renegotiations of contracts that had been written in the past. **SEN. BENEDICT** said the next time the contract came up for renewal, the provisions of Montana law must be included in the contract at that time.

SEN. SPRAGUE noted the effective date was October 1, 1995, which was a new contract basis. **SEN. SPRAGUE** remarked on **HB 286**, the word coerce was used several times in the title and that was basically what the committee was discussing.

SEN. BENEDICT stated this bill to conform to Montana Law would apply to any Montana distributor.

Vote: The motion **HB 342 BE CONCURRED IN CARRIED 5-3** on roll call vote #1.

ADJOURNMENT

Adjournment: The meeting adjourned at 9:30 a.m.



SEN. JOHN HERTEL, Chairman



LYNETTE LAVIN, Secretary

JH/11

MONTANA SENATE
 1995 LEGISLATURE
 BUSINESS AND INDUSTRY COMMITTEE

ROLL CALL

DATE

3-8-95

| NAME | PRESENT | ABSENT | EXCUSED |
|-------------------------------------|---------|--------|---------|
| STEVE BENEDICT, VICE CHAIRMAN | ✓ | | |
| WILLIAM CRISMORE | ✓ | | |
| CASEY EMERSON | ✓ | | |
| GARY FORRESTER (left meeting - ill) | ✓ | | ✓ |
| TERRY KLAMPE | ✓ | | |
| KEN MILLER | ✓ | | |
| MIKE SPRAGUE | ✓ | | |
| BILL WILSON | | ✓ | |
| JOHN HERTEL, CHAIRMAN | ✓ | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 8, 1995

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration HB 408 (third reading copy -- blue), respectfully report that HB 408 be concurred in.

Signed: John Hertel
Senator John R. Hertel, Chair

FW
ST

Amd. Coord.
Sec. of Senate

Sen. Jan Miller
Senator Carrying Bill

541112SC.SPV

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 8, 1995

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration HB 549 (third reading copy -- blue), respectfully report that HB 549 be concurred in.

Signed: John Hertel
Senator John R. Hertel, Chair

PW
gms

Amd. Coord.
Sec. of Senate

Sen. Gerry Swalen
Senator Carrying Bill

541113SC.SPV

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 8, 1995

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration HB 286 (third reading copy -- blue), respectfully report that HB 286 be amended as follows and as so amended be concurred in.

Signed: John R. Hertel
Senator John R. Hertel, Chair

That such amendments read:

1. Title, line 6.

Following: first "coerce"

Strike: "or"

Insert: ", "

Following: second "coerce"

Insert: ", or persuade"

2. Page 1, line 14.

Strike: "or"

Insert: ", "

Following: "~~persuade~~"

Insert: ", or persuade"

3. Page 1, line 15.

Strike: "set a price for any product or to"

4. Page 1, lines 16 through 19.

Strike: "." on line 16 through "DISTRIBUTORS." on line 19

Insert: " ; "

5. Page 1, line 26.

Strike: "and"

Insert: "(4) 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:

(a) 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; or

(b) 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 resale price that it recommended

PA
Amd. Coord.
GA Sec. of Senate

Sen. J. D. Linnick
Senator Carrying Bill

541121SC.SPV

to the wholesale distributor."
Renumber: subsequent subsection

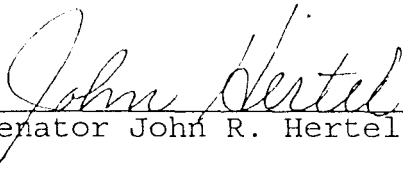
-END-

SENATE STANDING COMMITTEE REPORT


Page 1 of 1
March 8, 1995

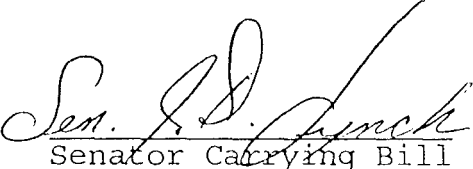
MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration HB 342 (third reading copy -- blue), respectfully report that HB 342 be concurred in.

Signed: 

Senator John R. Hertel, Chair


Amd. Coord.
Sec. of Senate


Senator Carrying Bill

541127SC.SPV

MONTANA SENATE
1995 LEGISLATURE
BUSINESS AND INDUSTRY COMMITTEE
ROLL CALL VOTE

DATE 3-8-95 BILL NO. HB 342 NUMBER 1

MOTION: HB 342 BC1

| NAME | AYE | NO |
|---|-----|----|
| STEVE BENEDICT, VICE CHAIRMAN | ✓ | |
| WILLIAM CRISMORE | | ✓ |
| CASEY EMERSON | ✓ | |
| GARY FORRESTER <i>(signed proxy)</i> | ✓ | |
| TERRY KLAMPE | | ✓ |
| KEN MILLER | | ✓ |
| MIKE SPRAGUE | ✓ | |
| BILL WILSON <i>(absent)</i> | | |
| JOHN HERTEL, CHAIRMAN | ✓ | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

MONTANA SENATE COMMITTEE PROXY

DATE 3-8-95

I request to be excused from the B & A

Committee meeting this date because of other commitments. I desire
to leave my proxy vote with Bill Wilson or Benedict

Indicate **Bill Number** and your vote **Aye** or **No**. If there are
amendments, list them by **name and number** under the bill and
indicate a **separate vote** for each amendment.

| HOUSE BILL/AMENDMENT | AYE | NO |
|----------------------|-----|----|
| | | |
| | | |
| | | |
| | | |
| | | |
| HB 549 | ✓ | |
| | | |
| | | |
| | | |
| | | |

| SENATE BILL/AMENDMENT | AYE | NO |
|-----------------------|-----|----|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

Rep. [Signature]
(Signature)

Sponsor's Remarks on HB 549

Rep. Debbie Shea

Hearing Wednesday March 8th, 1995 - Senate Business & Industry

Room 410

This bill was drafted at the request of Representative Tom Zook and introduced by me at the request of Buttrey Food & Drug Company of Great Falls, Montana.

Buttrey has a problem with the issuance of its Licenses for off-premises consumption of Beer & Wine for its new stores. The problems is created because the law governing these grocery store licenses was placed in the same statute as regular liquor licenses.

Regular liquor licenses and grocery store beer and wine licenses are different kinds of licenses. But, under present law they're covered by the same statute. Let me explain how this creates the problem:

1. Regular liquor licenses are "quota" licenses and require proof of Public Convenience and Necessity, before they can be issued. This requires "public notice and an opportunity for hearing" so that people who have a competing license can object to the issuance of a new liquor license in their area.

2. Grocery store beer & wine licenses which allow sales of beer and wine for off-premises consumption are non-quota licenses. No one really has the right to object to their issuance and publication of notice is really not necessary. But since they're in the liquor license statute, publication of notice is still required, even though it's not necessary.

3. The result is that when a someone wants to open a new grocery store, the following things often happen:

(a) The owner has to wait for the department of Revenue to give an unnecessary notice for an unnecessary hearing. If somebody should actually object, the Department of Revenue has to hold an unnecessary hearing. This creates great uncertainty in opening a new store. No one can predict when it might actually happen.

(b) At the same time, the owner has to wait for local building-inspector's approval in order to occupy the premises. Under the liquor license rules, Department of Revenue can't issue the Grocery Store Beer & Wine License, until after the local building inspector has given approval because that's also a requirement of the liquor license statute. Local building inspection is on its own time schedule. Sometimes its difficult to get the Building Inspector and the Department of Revenue to coordinate their approvals.

4. A "Catch 22" situation develops. The store owner needs to have a "Grand Opening" for a store that's ready for occupancy with all departments in operation. The notice and hearing requirements

EXHIBIT 1
DATE 3-8-95
HB 549

of the liquor law can delay this. When the Department of Revenue is also compelled to wait for the required approval by the building inspector, the owner can't make any plans to open the store. This is an unnecessary business problem.

5. There's really no good reason why the Department of Revenue can't issue the grocery store beer & wine license, without notice, subject to the condition that the local building inspector must first approve the premises for occupancy. The owner and the contractor can then plan for a definite opening date. The store will be ready to have a "Grand Opening" as soon as the building inspector says "go".

Solution: If the Grocery store Beer & Wine licenses were removed from the liquor license statute, these problems would no longer exist. **That's what HB 549 does. I hope you'll agree!**

I RESPECTFULLY REQUEST YOUR SUPPORT FOR HB 549, THANK YOU!

Representative Debbie Shea House District 95

Amendments to House Bill No. 286
Third Reading Copy

For the Committee on Business and Industry

Prepared by Bart Campbell
March 7, 1995

1. Title, line 6.

Following: first "coerce"

Strike: "or"

Insert: ", "

Following: second "coerce"

Insert: ", or persuade"

2. Page 1, line 14.

Strike: "or"

Insert: ", "

Following: "persuade"

Insert: ", or persuade"

3. Page 1, line 15.

Strike: "set a price for any product or to"

4. Page 1, lines 16 through 19.

Strike: "." on line 16 through "DISTRIBUTORS." on line 19

Insert: ";"

5. Page 1, line 26.

Strike: "and"

Insert: "(4) 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:

(a) 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; or

(b) 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 resale price that it recommended to the wholesale distributor."

Re-number: subsequent subsection

DATE March 8, 1995

SENATE COMMITTEE ON Business and Industry

BILLS BEING HEARD TODAY: HB 286 Rep. Paulovich
HB 342 Rep. Paulovich & HB 549 Rep. Shea

< ■ > PLEASE PRINT < ■ >

Check One

| Name | Representing | Bill No. | Support | Oppose |
|----------------|---------------------------|------------|--------------------|--------|
| Sarah Pouch | Buttreys | 549 | ✓ | |
| Tom Hopgood | Mt. Beer Wine Wholesalers | 286 342 | ✓ | |
| Harry Watkins | Zip Distributing | 286 342 | ✓ | |
| Bill McBride | | — | | |
| Mona Jamison | WIWE INST | 342 | | ✓ |
| Steve Browning | Anheuser Busch | 286 | ✓ e anheuser | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY