

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON TAXATION

Call to Order: By CHAIRMAN GERRY DEVLIN, on March 30, 1995, at
8:00 a.m.

ROLL CALL

Members Present:

Sen. Gerry Devlin, Chairman (R)
Sen. Mike Foster, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. Delwyn Gage (R)
Sen. Lorents Grosfield (R)
Sen. John G. Harp (R)
Sen. Dorothy Eck (D)
Sen. Barry "Spook" Stang (D)
Sen. Fred R. Van Valkenburg (D)

Members Excused: None

Members Absent: None

Staff Present: Jeff Martin, Legislative Council
Renée Podell, Committee Secretary

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

Committee Business Summary:

Hearing: HB 587, HB 545, HB 562, HB 588
Executive Action: HB 545, HB 588, HB 550, (No Action on HB
562)

HEARING ON HB 587

Opening Statement by Sponsor:

REP. JOE QUILICI, HD 36, Butte, asserted HB 587 is presented at
the request of the Department of Revenue. He said it is a clean-
up measure simplifying a language and format change made by the
Legislative Council.

Proponents' Testimony:

Bill Kloker, Tax Program Supervisor, Department of Revenue,
presented a section by section analysis. EXHIBIT 1.

Opponents' Testimony:

None

Informational Testimony:

None

Questions From Committee Members and Responses:

CHAIRMAN DEVLIN asked Mr. Kloker if he had amendments for the coordination language he mentioned was needed. Mr. Kloker said he didn't have the language right now. CHAIRMAN DEVLIN suggested Mr. Kloker meet with Mr. Martin.

Closing by Sponsor:

REP. QUILICI closed with no further comment.

HEARING ON HB 545

Opening Statement by Sponsor:

REP. JUDY MURDOCK, HD 6, Big Horn and Yellowstone County, stated HB 545 concerns commercial property owners who will be making improvements to their property to comply with the American Disabilities Act. She explained it applies to improvements made to existing or new commercial buildings after December 1, 1995. She stated the exemption must be applied for by March 1st of the tax year.

Proponents' Testimony:

Dennis Burr, Montana Taxpayers Association, commented the bill provides reduced costs to the Department of Revenue for providing the forms.

David Owen, Montana Chamber of Commerce, stated the intent of the bill is appreciated. He said the cost of staying in business should not be an added tax burden.

Stuart Doggett, Montana Innkeepers, urged support for the bill.

Opponents' Testimony:

None

Informational Testimony:

None

Questions From Committee Members and Responses:

None

Closing by Sponsor:

REP. MURDOCK closed with no further comment.

HEARING ON HB 562Opening Statement by Sponsor:

REP. KENNETH WENNEMAR, HD 71, Frenchtown, declared HB 562 takes out Subsection 8 of §15-7-202. He explained Subsection 8 was put in a few years ago making nurseries greater than 10 acres agricultural land and nurseries less than 10 acres whatever the Assessor happened to decide. He stated currently there are four different classifications for nurseries. REP. WENNEMAR explained this bill aims to provide equitable taxation with consistency by the Department of Revenue.

Proponents' Testimony:

Wesley Delaney, Montana Association of Nurserymen, acknowledged the nursery industry is administrated through the Department of Agriculture. He stated even the IRS recognizes the nursery industry as agriculture. Mr. Delaney said he is a labor intensive agriculture operation versus a farmer who is highly recognized covering lots of acreage. He urged support for HB 562.

Harold McGuegly, President, Montana Association of Nurserymen, went on record in support of HB 562. He stated he would rather buy from Montana growers and if this bill passes it will allow him to support Montana growers.

Greg Chadwick, First Vice President, Montana Association of Nurserymen, and President, Chadwick Nursery, stated it is only fair the nurseries should get their agricultural status back. He urged support. Mr. Chadwick spoke in support of HB 562 on behalf of Bob Stevens, Montana Graingrowers Association.

Dwight Walton, Member of Montana Association of Nurserymen, it is fair he should be taxed the same as other agricultural landowners.

Michael Hiel, Montana Association of Nurserymen, stated there are many small nurseries throughout the state. He urged support for this legislation.

Opponents' Testimony:

None

Informational Testimony:

None

Questions From Committee Members and Responses:

CHAIRMAN DEVLIN asked Mr. Delaney how the nurserymen are taxed now. Mr. Delaney responded he is presently being taxed commercially.

CHAIRMAN DEVLIN asked Randy Wilke, DOR, to explain how the nurserymen are valued now versus how they will be valued under this bill. Mr. Wilke said the nurserymen will be treated the same as other agricultural land is treated. He explained there will be no acre requirement and they will be required to produce \$1,500.00 gross income off the land.

SEN. MIKE FOSTER commented he remembers this issue from two years ago. He asked Mr. Wilke to refresh his memory in regard to the proposed stricken language. Mr. Wilke said anytime agricultural land is dealt with there is long hearings and conflicting views. He presented a brief history of this issue from the 1991 Legislative Session.

SEN. LORENTS GROSFIELD asked Mr. Wilke if language was reinstated in Subsection 8 with the exception of the words "consist of at least 10 acres" on Page 3, Line 1, wouldn't the result be the nurserymen would be taxed at agricultural value. Mr. Wilke said the language would treat the nurserymen the same as other agricultural landowners, with the difference being they would be required to gross \$5,000.00 income and other folks would be required to gross \$1,500.00 income.

SEN. BARRY "SPOOK" STANG asked REP. WENNEMAR to give some history of the bill. REP. WENNEMAR reported a bill came out in 1991 providing nurserymen agricultural land because the DOR didn't recognize them as agricultural at that point. He stated during the hearing REP. RANEY didn't want truck farms considered agricultural. REP. WENNEMAR said through the confusion of truck farms REP. RANEY decided he didn't want nurseries to be taxed as agricultural.

Closing by Sponsor:

REP. WENNEMAR commented the reason why the original language of the bill was stricken was the Agricultural Committee felt in all fairness it was appropriate to apply \$1,500.00 to nurserymen also.

HEARING ON HB 588Opening Statement by Sponsor:

REP. KARL OHS, HD 33, Madison County, reported this bill clarifies a law providing for excess property taxes caused by errors in description or location of property. He stated this bill gives five years to go back and correct errors.

Proponents' Testimony:

Dennis Burr, Montana Taxpayers Association, commented this applies to a mismeasurement or if someone is being taxed in the wrong school district. Mr. Burr said HB 588 tightens up current law rather than expanding it. He urged support.

Opponents' Testimony:

None

Informational Testimony:

None

Questions From Committee Members and Responses:

None

Closing by Sponsor:

REP. OHS closed with no further comment.

EXECUTIVE ACTION ON HB 588

Motion/Vote: SEN. STANG MOVED HB 588 BE CONCURRED IN. MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 545

Motion/Vote: SEN. STANG MOVED HB 545 BE CONCURRED IN. MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 562

Discussion: SEN. GROSFIELD said based on Mr. Wilke's comment if this bill is passed the way it is it won't help the growers at all. SEN. GROSFIELD asked if there is an interest to help the growers. SEN. GROSFIELD asked Mr. Wilke if the DOR considers nurseries agricultural. Mr. Wilke said many nurseries conduct sales right in the greenhouse, however, if stock is grown in the ground it could be considered agricultural.

SEN. STANG stated the committee doesn't mind the land being classified as agricultural but the committee didn't want everything inside the greenhouses considered agricultural. SEN. STANG explained that was the argument several years ago. He stated the committee felt the land under the greenhouses is commercial use.

CHAIRMAN DEVLIN everything inside the nursery is currently considered commercial.

SEN. STANG said if SEN. GROSFIELD thinks he has a way to clarify the issue it will be fine to proceed. He said the intent is to be sure the land is classified and not the buildings.

SEN. JOHN HARP asked Mr. Wilke what the land is currently being classified as. Mr. Wilke said it is being classified as commercial.

SEN. FOSTER said the bill does what we want it to do as it is currently written.

CHAIRMAN DEVLIN asked that action on HB 562 be held until Monday.

EXECUTIVE ACTION ON HB 550

Discussion: Mr. Martin presented an amendment to Page 16, Subsection 3(8), Line 5, suggesting coordinating language changing the functions to the Department of Administration.

Motion/Vote: SEN. HARP MOVED COORDINATING LANGUAGE WITH HB 563. MOTION CARRIED 6 - 1 WITH SEN. STANG VOTING IN OPPOSITION TO THE MOTION.

Motion/Vote: SEN. FRED VAN VALKENBURG MOVED THE DEPARTMENT OF REVENUE'S AMENDMENT. MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. VAN VALKENBURG MOVED HB 550 BE CONCURRED IN AS AMENDED. MOTION CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 8:56 a.m.


GERRY DEVLIN, Chairman


RENEE J. PODELL, Secretary

GD/rp

**MONTANA SENATE
1995 LEGISLATURE
TAXATION COMMITTEE**

ROLL CALL

DATE

March 30, 1995

[illegible]

Presenting
a bill

Presenting
a well

PRESENTING
A BILL -
ARR. 8:45

SEN:1995
wp.rollcall.man
CS-09

SENATE STANDING COMMITTEE REPORT


Page 1 of 1
March 30, 1995

MR. PRESIDENT:

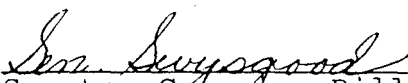
We, your committee on Taxation having had under consideration HB 588 (third reading copy -- blue), respectfully report that HB 588 be concurred in.

Signed:


Senator Gerry Devlin, Chair


Amd. Coord.

Sec. of Senate


Senator Carrying Bill

731017SC.SRF

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 30, 1995

MR. PRESIDENT:

We, your committee on Taxation having had under consideration HB 550 (third reading copy -- blue), respectfully report that HB 550 be amended as follows and as so amended be concurred in.

Signed: 
Senator Gerry Devlin, Chair

That such amendments read:

1. Page 18, line 5.

Strike: "(A)"

2. Page 18, lines 19 through 22.

Strike: subsection (b) in its entirety

3. Page 19, line 7.


Following: "Coordination."


Insert: "(1)"

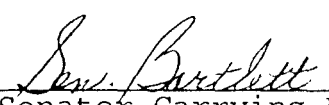
4. Page 19, line 10.

Insert: "(2) If House Bill No. 563 is passed and approved transferring debt collection from the state auditor to the department of administration, then the reference to "state auditor" in 15-1-708(3)(a) of [this act] is changed to "department of administration" and any reference to "state auditor" in 17-4-103 is changed to "department"."

-END-

 Amd. Coord.

 Sec. of Senate


Senator Carryng Bill

731125SC.SRF

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 30, 1995


MR. PRESIDENT:

We, your committee on Taxation having had under consideration HB 545 (third reading copy -- blue), respectfully report that HB 545 be concurred in.

Signed:


Senator Gerry Devlin, Chair

 Amd. Coord.

 Sec. of Senate


Senator Carrying Bill

731023SC.SRF

Title 16, Chapters 10 and 11

Cigarette Marketing and Taxation/Licensing and Minor Law

House Bill 587 is a housekeeping and clarification bill addressing the following:

- *Simplifying language and format changes suggested by the Department of Revenue and industry and changes made by the Legislative Council
- *Clarifying language to reflect current administration and industry practices
- *Aligning definitions in both sections where appropriate to eliminate confusion
- *Aligning current law with recent litigation--eliminating the wholesaler residency requirement
- *Repealing 16-10-401 and proposing a new section to replace the criminal penalty with a civil penalty for violations of minimum price
- *Clarifying the penalty language related to the Minor Law (16-11-308)

SECTION BY SECTION ANALYSIS**SECTION 1**

Stores like Price/Costco and Sam's Club operate as both a wholesale and retail outlet. The change clarifies that stores may operate as both a licensed wholesaler and a licensed retailer. Removed language found in a definition statute (16-10-103(12)(b)) and provided a new section applicable to both chapters.

SECTION 2

The 1993 Legislature passed the Youth Access to Tobacco Products Control Act - The Minor Law. This change will clarify that violations of the Act are subject to civil penalties and are handled in justice court.

SECTION 3

Selling cigarettes below the state minimum price is a violation of the minimum price law. The reason a person sold cigarettes below the state minimum price is not the violation, the violation is that he/she sold the cigarettes below the state minimum price. The requirement to prove intent makes the statute impossible to enforce.

SECTION 4 - Definitions

(1)(4)AND (5)

The department is responsible for setting and enforcing the minimum price of cigarettes. The proposed changes will clear up the language necessary to set one minimum price for each kind of cigarette sold in Montana and will clarify the accounting practices used for a "cost showing" to change the statutory presumption of the cost of doing business(wholesaler 5% retailer 10%). The department has historically set the minimum price using the manufacturers base cost of cigarettes. Montana does not allow any discounts off the manufacturer's invoice. Other states allow discounts off the manufacturers invoice. Montana has no control over the invoice price paid by out-of-state wholesalers. Therefore, out-of-state wholesalers could show that their invoice cost or replacement cost is lower than the price used by Montana in setting the minimum price. Replacement or invoice cost could be higher or lower than the minimum price set by the department depending on if there is an increase or decrease to the manufacturers basic cost.

In setting the minimum price we begin with the base cost of cigarettes then add the statutory presumed cost of doing business by the wholesaler (5%), cartage (.75%) and the statutory presumed cost of doing business by the retailer (10%). Any wholesaler or retailer can request a "cost showing" before the department to prove that they can do business lower than the presumed cost of doing business. If they prove their cost is less than the presumed cost, the department would change the minimum price to the lower cost. This would be the new state minimum price of cigarettes.

(6)

Changes the wording, not the meaning, by cleaning up sentence structure to make law more readable.

(7)

The term manufacturer is used in both chapters and was never defined. The term should be defined.

(8),(9),(10)AND (14)

Each chapter has it's own definitions. The proposed changes would make the definitions the same in both chapters.

(11)

Changes the wording, not the meaning, by cleaning up sentence structure to make the law more readable.

(13)

This change is necessary because the industry has changed the way it does business over the years. A distributor may approach a manufacturer and request the manufacturer to make a special cigarette for the distributor. The distributor is the only one that can sell the special cigarettes to licensed wholesalers in Montana.

SECTION 5

This change is necessary because we propose to repeal 16-10-401.

SECTIONS 6 & 7

Change the wording, not the meaning, by cleaning up sentence structure to make the law more readable.

SECTION 8

Selling cigarettes below the statutory minimum is a minimum price violation. The reason why a person sold cigarettes below the statutory minimum is not a violation, the violation is that he/she sold the cigarettes below the statutory minimum.

SECTION 9

The proposed changes will clear up the language and will clarify the accounting practices used for a "cost survey".

SECTIONS 10

This change is necessary because we propose to repeal 16-10-401.

SECTIONS 11

We propose to repeal 16-10-401. Section 16-10-401 addresses the penalty for selling below the statutory minimum as a misdemeanor. This means that we need to treat the person as a criminal because it was a misdemeanor. By repealing 16-10-401, if someone is selling below the statutory minimum we can penalize them by imposing a civil penalty or revoke/suspend their cigarette license. Sometimes it is just a mistake with no intention of violating the statute. We moved the penalty of not more than \$500 from section 16-10-401 to this section. We also change the wording, not the meaning, by cleaning up sentence structure to make sentences more readable and deleting words that do not apply.

SECTION 12 - Definitions

(1) (c); (2)(g)(j),(k)(l) AND (n)

Each chapter has its own definitions. The proposed changes would make the definitions the same in both chapters.

(2)(n)

The proposed change to the definition of wholesaler is necessary because of a stipulated judgement handed down by the court. McLean Western, INC., McLean Company, INC and Coremark INC. versus Montana Department of Revenue. These companies wanted to stamp Montana cigarettes at their out of state warehouse but the department would not license them as a Montana wholesaler . By the definition of wholesaler (16-11-102(l) they must be a resident in this state. They prevailed in court showing that we were causing them financial harm and hardship by not licensing them as a wholesaler. The stipulated judgement required us to license them as a wholesaler and let them stamp at their out-of-state warehouse. Therefore, the present statute must be changed to conform to the court decision by eliminating the residency requirement for stamping cigarettes. Today we have 8 out-of-state wholesalers.

SECTIONS 13 and 14

The 1993 Legislature changed the cigarette statutes by establishing a reservation quota system for all Montana reservations. Only quota cigarettes are exempt from state taxation. The current wording of this section suggests that all cigarettes shipped to reservations smokshops are exempt. House Bill 283 (1993) also required all cigarettes sold in Montana to be stamped except for sales made on a military reservation or on an Indian reservations that has a cooperative agreement with the state to stamp their quota cigarettes. Therefore it is necessary to delete and change the meaning of these sections.

SECTIONS 15, 16, 17, 18, 19 AND 20

Change the wording, not the meaning, by cleaning up sentence structure to make the law more readable and deleting words that do not apply .

SECTION 21

The 1993 Legislature changed the cigarette statutes by establishing a reservation quota system for all Montana reservations. Only quota cigarettes are exempt from state taxation. The current wording of this section suggests that all cigarettes shipped to reservations smokshops are exempt. House Bill 283 (1993) also required all cigarettes sold in Montana to be stamped except for sales made on a military reservation or on an Indian reservations that have a cooperative agreement with the state to stamp their quota cigarettes.. Therefore it is necessary to delete and change the meaning of this section.

SECTION 22

The proposed change to the definition of Wholesaler (16-11-102(l)) and this Section (16-11-132) are necessary because of a stipulated judgement handed down by the court. McLean Western, INC., McLean Company, INC and Coremark INC. versus Montana Department of Revenue. The department would not license them as a Montana wholesaler because they wanted to stamp Montana cigarettes at their out of state warehouse. By the definition of wholesaler (16-11-102(l) they must be a

resident in this state. They prevailed in court showing that we were causing them financial harm and hardship by not licensing them as a wholesaler. The stipulated judgement required us to license them as a wholesaler and let them stamp at their out-of-state warehouse. Therefore, the present statute must be changed to conform to the court decision by eliminating the residency requirement. Today we have 8 out-of-state wholesalers.

SECTION 23

The 1993 Legislature changed the cigarette statutes by establishing a reservation quota system for all Montana reservations. House Bill 283 (1993) also required all cigarettes sold in Montana to be stamped except for sales made on a military reservation or on an Indian reservations that have a cooperative agreement with the state to stamp their quota cigarettes.

SECTION 24

The section aligns the penalties for unpaid cigarette tax with the other taxes we administer.

SECTIONS 25, 26, 27

Change the wording, not the meaning, by cleaning up sentence structure to make the law more readable.

SECTION 28

If the department revokes or suspends a license the person is entitled to a hearing before the department. If the person wants to appeal the department's decision they can appeal it to district court. The appeal will not go to the State Tax Appeal Board because this is not a hearing on a tax.

SECTIONS 29

The term tobacco product is the central focus of Chapter 11, Part 2. It is never defined in the definition section. The term should be defined and will eliminate needless wording throughout Part 2.

SECTIONS 30, 31 AND 32

Change the wording, not the meaning, by cleaning up sentence structure to make the law more readable, deleting words that do not apply and deleting phrases used over and over in the same sentence.

SECTION 33

The 1993 Legislature passed the Youth Access to Tobacco Products Control Act - The Minor Law. This change will clarify that violations of the Act are subject to civil penalties and are handled in justice court. Other legislation is also clarifying this

section. Therefore, this section may be need to be coordinated with other legislation.

SECTION 34

Codification

SECTION 35

We propose to repeal section 16-10-401 - Criminal penalty for selling cigarettes below minimum price.

SECTION 36

The effective date of this bill is July 1, 1995

STATE OF MONTANA

MINIMUM CIGARETTE COSTS

29-Mar-95
FULL PRICE BRANDS

85mm's
100mm's
120mm's

MANUFACTURER'S LIST COST----- \$8.7900

(No cash, trade or any discounts of any type are allowed)

FEDERAL TAX PER CARTON----- \$2.4000

STATE TAX PER CARTON----- \$1.8000

\$12.9900

5% PRESUMED COST OF DOING BUSINESS----- \$0.6495

.0075 CARTAGE----- \$0.0974

(Addition of \$12.99 + \$0.6495 + \$0.0974 = \$13.7369)

COST TO WHOLESALER----- \$13.74

(10% * \$13.74 = \$1.38)

10% PRESUMED COST OF DOING BUSINESS----- \$1.38

COST TO RETAILER----- \$15.12

PER PACK----- \$1.52

DATE March 30, 1995

SENATE COMMITTEE ON Taxation

BILLS BEING HEARD TODAY: HB 545 Rep. Murdock
HB 562 Rep. Wenneman & HB 587 Rep. Quilici
HB 588 Rep. Ohs

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
<u>Walt McGeeby</u>	<u>MT Assoc Nurs</u>	<u>562</u>	<u>X</u>	
<u>Greg Chadwick</u>	<u>MTN ASSOC Nursery</u>	<u>562</u>	<u>X</u>	
<u>Wesley DeHaven</u>	<u>MTN ASS. NURSERY</u>	<u>562</u>	<u>X</u>	
<u>Bill Hoker</u>	<u>DOR</u>	<u>587</u>	<u>X</u>	
<u>Chow Maharg</u>	<u>DOR</u>	<u>587</u>	<u>✓</u>	
<u>Dwight Walton</u>	<u>MT ASSOC Nursery</u>	<u>562</u>	<u>✓</u>	
<u>Michael Hiel</u>	<u>MT ASSOC. NURSEMAN</u>	<u>562</u>	<u>✓</u>	
<u>Dennis Burt</u>	<u>MONTAX</u>	<u>HB 545</u> <u>HB 588</u>	<u>✓</u>	
<u>Stuart Daggell</u>	<u>MT Insurers</u>	<u>HB 545</u>	<u>✓</u>	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY