

## MINUTES

### MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on April 10, 1997, at  
9:00 A.M., in ROOM 410.

#### ROLL CALL

##### Members Present:

Sen. John R. Hertel, Chairman (R)  
Sen. Steve Benedict, Vice Chairman (R)  
Sen. Debbie Bowman Shea (D)  
Sen. William S. Crismore (R)  
Sen. C.A. Casey Emerson (R)  
Sen. Bea McCarthy (D)

Members Excused: None

Members Absent: None

Staff Present: Bart Campbell, Legislative Services Division  
Mary Gay Wells, Committee Secretary

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

##### Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 604; 4/7/97  
Executive Action: HB 604

{Tape: 1; Side: A; Approx. Time Count: 9:01 AM; Comments: N/A.}

#### HEARING ON HB 604

Sponsor: REP. HAL HARPER, HD 52, HELENA

Proponents: REP. SAM ROSE, HD 87, CHOTEAU  
REP. CARLEY TUSS, HD 46, BLACK EAGLE  
Bob Stephens, MT Grain Growers Assoc.  
Todd Murphy, Helena  
Mark Staples, MT Taverns Association  
Tom Hopgood, MT Beer & Wine Association  
Kelly Cogley, Anheuser-Busch Co.  
Todd Daniels, Kessler Brewing Co.  
Dave Brown, MT Independent Machine Operators  
Assoc.  
REP. BOB PAVLOVICH, HD 37, BUTTE  
Brian Clark, Fun Beverage, Inc.

Opponents:           None

Opening Statement by Sponsor:

REP. HAL HARPER, HD 52, HELENA. HB 604, as originally drafted and worked on by a number of people including the MT Grain Growers Assoc., is attempting to add value to Montana raw products. After attending a Grain Growers Association Meeting, and asking who in the group was interested in malting barley, I was introduced to a gentleman, named Gary Pierson, who was not able to make it down here today. When I first met him he showed me a project that a consulting group had been working on to try and establish a malting barley facility in the State of Montana. Malting barley is a product that every brewer needs to make their beer. Although we grow some of the best barley in the world, we don't have a malting barley facility. So every brewer in Montana has to buy his malting barley out of state. We wanted to get a facility here in Montana and thus add value to Montana grain. Along with this project, he had a survey to see if the local demand was there so that this malt house could get a toe hold. Once they get going they figure they can find a notch and provide Montana malting barley to breweries all over the state.

The bill in it's original form did a number of things. In order to legalize brewpubs in the state we are trying to bring our laws in line with the laws of 48 other states. We want to legalize the brewpubs and give them the right to sell their own beer. Montana and Mississippi do not allow this. Mississippi's last vote failed by a single vote. Although there won't be nearly the number of brewers here to express intense interest in this bill, there are a number of reasons. Those people feel the frustration that they are not able to take their product from the raw grain product all the way through and sell it to the consumer. In 48 states they can do this. This bill, in order to allow that had to change a number of sections of law that were written in 1933 as prohibition was repealed.

As you can see, almost all of those things have been stricken out of the bill. This bill was introduced three weeks before it was heard in the House committee but it was heard on the final day. There was not enough time for the committee to even meet and consider the bill. They had to come back to it. They accepted amendments that stripped out all parts of the bill except the part that legalized home brewing and the portion of the bill that gives a tax break to malting barley facilities. It is the same tax break we gave to the canola facilities, though they never located here. It is a 2% tax break. It moves malting barley facilities from a Class A property tax at 6% to a 4% rate.

If the committee wishes to do nothing else with the bill, my request would be that those provisions proceed. We want these people to have a chance to get started on a malting barley facility.

I would like to pass out to the committee a copy of the MCA as it relates to wineries (**EXHIBIT 1**). What this bill had originally asked for is exactly what the Legislature has allowed the wineries. A winery can sell its product. Under current law, it allows first a brewery to give away its own product for on-premise consumption but not to sell it. Secondly, the Code allows a brewery to self-distribute its product if they desire. My bill is not traveling any new ground. Also, in the original bill, it stated that a holder of an all beverage liquor license who did not have a gambling endorsement could also have a brewery. We thought that since everyone is lamenting the fact the only way a liquor licensee can preserve the value of their license is to have gambling, and many people don't want that, we thought this would be a good way to preserve that value.

There are many people here to testify for this bill. There is general agreement on the two provisions of the bill that still remain. But people are coming from different points of view. Some people are afraid to testify because of repercussions one way or the other. I would like to submit a letter (**EXHIBIT 2**) from a gentleman, Thomas Kerns, of Portland, Oregon. He would like to come here and establish a brewery, but he can't because of the laws as they now stand. We have for years struggled in the Legislature to try to find ways to add manufacturing jobs in Montana. These are manufacturing jobs. This is a way that we can help Montanans use the products of Montana. Right now, we are being prevented from doing this by a 1933 set of laws. It is time to make a change.

#### Proponents' Testimony:

**REP. SAM ROSE, HD 87, CHOTEAU.** I would like to pass out two letters (**EXHIBIT 3 AND EXHIBIT 4**). This first is from the City of Choteau and they have been working toward locating a manufacturing plant in Teton County. The city has offered land to them. The second letter is from our county commissioners.

This bill came in late, so the malting plant is included with that particular bill. This has generated a great deal of interest, not only in our community but also in the economic development of Montana. Because it is a value added product, it gives our agricultural people another dimension for marketing a special crop. The special crop we are talking about is malt barley. We have the right conditions to grow this type of barley. I represent over 80,000 acres of irrigated ground. Plus, the farmers in the triangle area can also grow this on dry land. We have a good resource for this particular plant. Some of our malting barley comes out of Canada and some even out of England for the specialty brews. Here we are sitting in an area where this crop can grow and we are not utilizing it but shipping it out of state. It will be a win-win situation. We figure at the maximum we would use 750,000 bushels of barley. This is probably 2% of the barley grown in our area. So we are not placing anyone in jeopardy. Our business plan has already been

established and we do have outlets in the western portion of the U. S. Thank you for your time.

**REP. CARLEY TUSS, HD 46, BLACK EAGLE.** I stand in support of this bill and would only echo what **REP. ROSE** has said in terms of economic development. The golden triangle is rich. Last fall, the Agriculture Dept. had a conference in Great Falls including Canada and surrounding states. One of the thoughts I took away was how important value added industry is. And when we speak of the malting barley facility we are talking about value added. It benefits not only Teton County but its neighbor to the south, Cascade County.

I am the one who carved the bill up. I did that because it was evident that our committee had no appetite for engaging in more discussions of yet another kind of liquor license for brewpubs. The committee would only support this bill as it stands. I would ask you to resist any amendments that would reinsert brewpub type language. Thank you.

**Bob Stephens, MT Grain Growers Assoc., the MT Barley Growers Assoc. and the MT Natural Barley Growers Assoc.** We support this bill because it is another market for barley. About half of the barley grown in Montana is malting barley. About 20% is sold for malting barley. We raise approximately 60 to 65 million bushels a year. Eighty percent is sent out of state. A lot of this barley is shipped to Butte. We urge your support for this bill and thank you for your consideration.

**Todd Murphy, Helena.** I would like you to support this measure as written; however, I have been up here before. We tried to do some of the same things in 1995. I doubt that the bill would have passed as originally written, so I would like to offer one amendment (**EXHIBIT 5**). He then read through the sheet.

**Mark Staples, MT Taverns Association.** We certainly support the malting plant component of this bill. And we certainly support the home brewing component. We have not heard of one small brewery in Montana that is not selling every ounce of product they make. One of the main reasons for that is the support they receive from the bars and taverns in Montana to place and sell their product. It doesn't seem to be, in our mind, a driving need for added revenue in their places when they are selling every ounce they produce. We have micro-breweries and brewpubs in Montana and they are thriving. It is a bit of structuring when they create these brewpubs as they now stand. They put an existing licensee with the brewpub person. Often they are members of the same family, with one person holding the on-premise consumption license. Some people feel that we will eventually evolve away from that kind of convoluted setup.

I am not so sure that with brewpubs doing so well right now that we need to change the law. We were asked in the House Committee to support the bill as amended. Historically, we did support the

position that if you have a present license, you ought to be able to brew on premises. On the other hand I also told them that I was not sure that the beer wholesalers would buy into this. It is not worth it to us at this point to get into a big fight about this. We do have one or two taverns in Montana that would like to brew their own rather than get into some configuration with someone else. I do believe that like the cabaret issue which is going to create 210 new beer and wine licenses in the state in the next year this would be an enormous change in the licensing field. This may well create quite a shakeup while getting everything smoothed out. I think that this may well be more than enough to assimilate this session and further changes at this time may be just too much. Maybe brewpubs can be next. Thanks.

*{Tape: 1; Side: A; Approx. Time Count: 9:31 AM; Comments: N/A.}*

**Tom Hopgood, MT Beer & Wine Association.** We are in support of HB 604 as it now stands. We would not be in support of any amendments that would be offered at this time. I will give my testimony (EXHIBIT 6) and hand in the written copy. Thank you.

**Kelly Cogley, Anheuser-Busch Co.** We support the bill as it is now written. Thank you.

**Todd Daniels, Kessler Brewing Co.** We are in favor of HB 604. First, I would like to say that this bill as it exists today is something that everyone here is in favor of. As a Montana manufacturer, I seek out Montana made products. I know that from my conversations with other Montana breweries this bill to allow the malting barley facilities in Montana would be something those breweries would seek out as well. On the issue of home brewing, I am in agreement with that as well.

I would like to make a statement for the record rather than ask to change things at this point in time. The Kessler Brewing Company is run by my partner, Mike James, myself and one other person. We are a small Montana manufacturer. As Mr. Staples alluded to, we do sell every ounce of beer that we make. We also don't brew more than we can sell. I am disappointed in the fact that this bill did not go through in its original form, because it would have been an opportunity for marketing our product on a local level while allowing us to grow. Looking at the profiles of Montana breweries, we are brewing less than 5% of all the beer that is sold in Montana. So we are a very small community that is trying to grow.

I won't get into any of the reasons why there are large breweries here opposing any amendments to the bill, but I think that you all should look at the reasons. I am pleased that in the last few days we have had good conversations between the breweries in Montana and as a brewer I feel that I have a good pulse of the brewing industry. As a group, the breweries in Montana are in favor of brewpub legislation.

**{Tape: 1; Side: B; Approx. Time Count: 9:48 AM; Comments: LOST ONE SENTENCE OF MR. DANIELS TESTIMONY.}**

As a matter of record, I would like to thank Tom Hopgood and the Montana Wholesalers for coming forth and stating that they are willing to work with the breweries in the next couple of years on such legislation. I would also like to thank **REP. HARPER** for all his hard work on this bill. Thank you.

**Dave Brown, MT Independent Machine Operators Assoc.** This may seem a strange place for me to appear, but with 5,000 machines that my folks vend across Montana ties us very closely to what those folks do that primarily belong to Mr. Staple's association. They hear from their customers on a regular basis about their desires, etc. In this case, we solidly support the bill as it came out of the House. Thank you.

**REP. BOB PAVLOVICH, HD 37, BUTTE.** I stand as a proponent of the bill as it sits. If there are any amendments put in the bill, I would stand as an opponent. I own a tavern and have for 45 years and we sell micro beers. We have the micro breweries on the original bill that want to come in and be a competitor of mine. If that would happen, I could look forward to seeing the major breweries come in, build a nice tavern alongside mine, open up a microbrewery and then I would have more competition. I think we do a fair job; I believe in the three tier system; let them go through a wholesaler and we'll sell their beer. If they want to get into opposition with me, then I think I should take their beer out of my establishment and all the tavern owners of Montana should take all the micro beers out of their establishment and let them sell their own micro beer. We are selling it for them now and we are doing a good job. We ought to leave it alone. If it is good in 48 other states, I think we ought to look and see what they are doing. Maybe we can come up with a good consensus over the next two years.

**Brian Clark, Fun Beverage, Inc.** We answer the phone: This is Fun. I am here today requesting your support for HB 604 as it stands before you. I did not support the original bill as it impacted every tier: brewers, wholesalers and retailers. We do have brewpubs in the state today and 17% of my business is derived from craft beers. This is a high percentage across the nation. Of that 17%, 50% comes from Montana breweries. I do believe the brewpubs can have a place in the three tier system. But nothing should be done to destroy the three tier system. Thank you.

**{Tape: 1; Side: B; Approx. Time Count: 9:54 AM; Comments: N/A.}**

Opponents' Testimony: None

Questions From Committee Members and Responses:

**SEN. CASEY EMERSON** asked if a malting barley facility was possible now under current law? **REP. HARPER** said yes, it was. This bill will give these facilities a tax break of 2%.

**SEN. STEVE BENEDICT** asked if it was his intention to by-pass the distributors with this amendment? In other words, if you had a beer and wine license or an all beverage license, would you see the breweries being able to by-pass the distributor and just sell directly to themselves. And can they do that today? **Mr. Murphy** said yes, that was his intention, and yes they can do that today anyway.

**SEN. BENEDICT** asked what is the difference between a winery being able to sell their product through their own company as opposed to a brewpub? **Mr. Hopgood** replied that the wine market is a more confined market. It is not as widely consumed as beer. The other point is there are many differences in the way the wine industry is regulated and the way beer is regulated. This is a complicated and subtle system for the distribution of beer. And this may be something that needs to be addressed to equalize this situation.

**SEN. BENEDICT** said that the consumption may be less, but he couldn't see much of a difference in where it is placed. He sees wine in grocery stores, bars, restaurants, etc. Less consumption doesn't speak to the question as to why to treat them differently. **Mr. Hopgood** referred the question to **Mr. Clark**. **Mr. Clark** responded that he represented the winery that has the opportunity to do so. Brewpubs and wine pubs are not the same animal at all. The laws concerning both are regulated differently, taxed differently, etc. There is not a proliferation of wine pubs springing up. Mission Mountain Winery is located in Dayton, MT. They are located there because that is where the process is and they are near their raw product. (He was interrupted at this point, because he did not seem to be answering the question.)

**SEN. BENEDICT** asked if any amendments had been offered on the House Floor so that the bill could be put back in its original form? **REP. HARPER** said that he had not offered any. **SEN. BENEDICT** said that **REP. HARPER** had mentioned some potential brewers in the state would be hesitant to testify here. Could he tell the committee what kind of pressure could be put upon these people? **REP. HARPER** said that there is a difference between the laws that relate to beer and wine distributors. He don't know if the committee had examined the kind of contract that a brewer must sign with a distributor. He had copied sections of the law and would like to hand them out (**EXHIBIT 7**). It is curious to understand exactly how these laws operate. The section he asked the committee to look at is 16-3-222. Clearly, a distributor or taverns for that matter are in a position of determining whether or not they want to carry the product. But also, if you look at

this particular provision, you will see that even after a contract is signed with a distributor, the distributor can decide how much effort they want to put into moving that product. **SEN. BENEDICT** asked could there be repercussions for the brewer that the distributors could freeze them out of the market around the state by not distributing the products. **REP. HARPER** said that he knew of no such threats that have been made in context with this bill, absent the one that **REP. PAVLOVICH** made which really wasn't a threat, but he just mentioned that, hey, we could quit handling this kind of thing. Certainly that kind of fear is there. He wanted the committee to have this code just so the committee could understand that when the brewer signs a contract with a distributor, the copy of that contract is filed with the Dept. of Revenue. The contract states that the distributor is free to manage the product or not manage the product as he sees fit. In Subsection 3, if there is a perceived deficiency from the brewer with that distributor, that distributor cannot be fired. He has to be given a 60 notice, the deficiencies must be detailed in writing what the brewer has perceived and give them a chance to correct it. In effect, these two are married and it is not easy to get a divorce.

**SEN. BENEDICT** stated that he had been looking at this bill for the last couple of days and his free enterprise background has led him to ask the Legislative Services Division to prepare some amendments to put this bill back in its original form. He, after hearing all the testimony, is hesitant to offer the amendments. He further stated that **Mr. Daniels** did not come to the podium with fire in his eyes saying put it back the way it was originally. He said that there might be some compromises that could be worked out in the next two years. So the question is: would you like the amendments offered during executive action or leave it alone and let you all work through that process? **Mr. Daniels** replied that he was approaching the committee wearing two hats. He is the point of contact for the breweries in Montana because after the House bill was introduced, he was the point of contact because he lives here in Helena. But as Kessler Brewing Company, he believes that it is something that would help them market their product. It is not something they are going to pursue immediately. As a group of Montana breweries, the majority of them are in favor of brewpub legislation. And as a majority and with the response of the Montana wholesalers, they are willing to work with the wholesalers to present a bill that does not jeopardize Montana breweries. There is a fear for Montana breweries. It is not a majority fear, but it is a fear. For me, I use wholesalers. I am up here extending my nose to be chopped off for representing us and the situation. **SEN. BENEDICT** said that the short answer to his question is not to offer the amendments at this time. **Mr. Daniels** said yes.

**SEN. WILLIAM CRISMORE** asked about the amendment that **Mr. Murphy** offered. He has heard that the state doesn't really need the amendment because there are already brewpubs operating. Is this true? **Mr. Staples** responded that what the amendment is proposing



is that present license holders be allowed to make the investment and bring in the facilities, brew beer on their own premises for sale on their own premises and sell for distribution elsewhere. What is being done currently by current license holders is this. One partner owns the actual on-premise facility with current license. Another partner parks the brewery right next to it and has a see-through glass window which for purposes of law separate the two but most people use that see-through glass to make sure that their brewing is not contaminated anyway. And then they load the beer over from the one into the other and out the taps. That is how brewpubs are configured now. **Mr. Murphy's** amendment would take out what some feel is the extra step of having to have two separate legal entities and allow it to be one single legal entity. I would like to say one thing. Why does this issue get so confusing? The wholesalers are not concerned about the wineries because the wineries are selling their own wine. The wholesalers aren't concerned about a brewpub bill if the brewpub can sell all beers. That doesn't bother the three tier system. Their concern is when the brewpub only sells their own because they say, why should we allow these new places to come into being and do something we do when they are not going to traffic with us. And where the gnarl comes in is when they add that component. The wholesalers are offering to work with the brewpubs for the next session on a bill that would allow the brewpubs to sell all product which in our estimation turns them into a bar. Now if that is the thing, we'll reverse our position right here and support the legislation that **REP. HARPER** first introduced. That gores our ox the least but it gores the beer wholesaler's ox the most. So in looking at the whole picture, that is where the gnarl comes in.

**SEN. BENEDICT** asked if **Mr. Staples** would like him to offer his amendments in executive action? **Mr. Staples** answered, not at this time, but if he were told that the would-be brewpubbers and the wholesalers are thinking about creating brewpubs that sell all beer products with no money down in a new license, then he would suggest that be done.

**SEN. BENEDICT** asked **Mr. Hopgood** if he would like to make a statement. **Mr. Hopgood** replied that he would like to add that the discussions that have been heard this morning have brought the exact problem to the fore. For the record, his association would not enter into negotiations unless the taverns association, represented by **Mr. Staples**, would be at the table and all three groups would have to reach a consensus. Thank you.

Closing by Sponsor:

**REP. HARPER** closed. The point has been made that any brewer that knows their business needs to use the professionals to wholesale the product. I am very hopeful that negotiations can proceed and want to thank all parties here this morning who have offered to do just that. I would certainly like to be involved as well. Right now there are five different establishments that have

accomplished this, but there is separation. There are two licenses and two owners and that is what they would like to change. The longer the Legislature waits to modernize these laws the longer we are going to have convoluted types of ownerships. So I look forward to meeting and discussing and negotiating these issues because I believe that an agreement can be reached. For a brewery to be able to sell their own product is a right that should not be denied. One last note is that the winery provision was made law in 1987. That is modernization. The crux of the matter on this is if the distributors could sell all their products to these brewpubs, they would be happy but then we would have bars. In my mind, the win-win is that a brewpub that serves only its own beer will not compete with the bars and taverns. But that will allow them to have the grubstake and grow to be a big enough brewery so that they can move their product. Then they will need the services of the wholesalers. I look forward to working on this. Thank you for your time and attention.

{Tape: 1; Side: B; Approx. Time Count: 10:26 AM; Comments: A 5 MINUTE BREAK WAS TAKEN.}

EXECUTIVE ACTION ON HB 604

Motion/Vote: SEN. WILLIAM CRISMORE MOVED HB 604 BE CONCURRED IN.  
THE MOTION CARRIED UNANIMOUSLY: 6-0

SENATE BUSINESS & INDUSTRY COMMITTEE

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ADJOURNMENT

Adjournment: 10:30 A.M.



SEN. JOHN R. HERTEL, Chairman



MARY GAY WELLS, Secretary

JH/MGW