

*Murray
Hager*

Senate BILL NO. 85
*Goodover Roberts, Marko Egan, Steve
Laur Hallock, Hiral Olson, [unclear]*
STAPHEUS
Reger
Loekie
Submitter
Stacy

1 INTRODUCTION BY
2 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING GROCERY
3 STORES AND OTHERS LICENSED FOR OFF-PREMISES BEER SALES TO
4 SELL WINE FOR OFF-PREMISES CONSUMPTION; DELETING WINE FROM
5 THE DEFINITION OF LIQUOR; DIRECTING THE DEPARTMENT OF
6 REVENUE TO WHOLESALE WINE AND TO REFRAIN FROM RETAILING
7 WINE; IMPOSING AN EXCISE TAX ON THE WHOLESALE TRANSFER OF
8 WINE; AMENDING SECTIONS 4-1-107, 4-1-201, 4-1-202, 4-3-201,
9 4-3-202, 4-3-208, 4-4-201, AND 4-6-105, R.C.M. 1947."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 4-1-107, R.C.M. 1947, is amended to
12 read as follows:

13 "4-1-107. Definitions. As used in this code the
14 following definitions apply:

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

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

20 (3) "Alcoholic beverage" means a compound produced and
21 sold for human consumption as a drink that contains more
22 than ~~one-half--of-one-percent-(0.5%)~~ 1/2 of 1% of alcohol by

23 volume.
24 (4) "Beer" means a malt beverage containing not more
25 than seven-percent-(7%) of alcohol by weight.
(5) "Brewer" means a person who produces malt
beverages.
(6) "Department" means the Montana department of
revenue.
(7) "Immediate family" means a spouse, dependent
children, or dependant parents.
(8) "Industrial use" means a use described as
industrial use by the Federal Alcohol Administration Act and
the federal rules and regulations of 27 CFR.
(9) "Liquor" means an alcoholic beverage except beer
or wine.
(10) "Malt beverage" means an alcoholic beverage made
by the fermentation of an infusion or decoction, or a
combination of both, in potable brewing water, of malted
barley with or without hops or their parts, or their
products, and with or without other malted cereals and with
or without the addition of unmalted or prepared cereals,
other carbohydrates, or products prepared therefrom, and
with or without other wholesome products suitable for human
food consumption.
(11) "Package" means a container or receptacle used for
holding an alcoholic beverage.

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1 (12) "Proof gallon" means a U. S. gallon of liquor at
2 sixty ~~60~~ degrees on the Fahrenheit scale that contains fifty
3 percent-~~(50%)~~ of alcohol by volume.

4 (13) "Public place" means a place, building, or
5 conveyance to which the public has or may be permitted to
6 have access and any place of public resort.

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

11 (15) "Rules ~~and---regulations~~" means rules ~~and~~
12 ~~regulations~~ published by the department pursuant to this
13 act.

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

18 (17) "State liquor store" means a retail store operated
19 by the department in accordance with this code for the
20 purpose of selling ~~distilled-spirits-and-wines~~ liquor.

21 (18) "Storage depot" means a building or structure
22 owned or operated by a brewer at any point in the state of
23 Montana, off and away from the premises of a brewery, and
24 which structure is equipped with refrigeration or cooling
25 apparatus for the storage of beer, and from which a brewer

1 may sell or distribute beer as permitted by this code.

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

5 (20) "Wine" means an alcoholic beverage made from the
6 normal alcoholic fermentation of the juice of sound, ripe
7 fruit or other agricultural products without addition or
8 abstraction, except as may occur in the usual cellar
9 treatment of clarifying and aging and that contains not less
10 than seven-percent-~~(7%)~~-~~nor~~ ~~or~~ more than twenty-four-percent
11 ~~(24%)~~ of alcohol by volume. Wine may be ameliorated to
12 correct natural deficiencies, sweetened and fortified in
13 accordance with applicable federal regulations and the
14 customs and practices of the industry. Other alcoholic
15 beverages not defined as above but made in the manner of
16 wine, labeled and sold as wine in accordance with federal
17 regulations are also wine."

18 Section 2. Section 4-1-201, R.C.M. 1947, is amended to
19 read as follows:

20 "4-1-201. Sale of-~~liquor~~ ~~or~~ possession of liquor, ~~is~~
21 when unlawful. (1) Except as provided by this code, no
22 person ~~shall~~ ~~may~~, within the state, by himself, his clerk,
23 servant, or agent, expose or keep for sale, or directly or
24 indirectly or upon any pretense or upon any device, sell,
25 or offer to sell, or in consideration of the purchase or

1 transfer of any property, or for any other consideration, or
 2 at the time of the transfer of any property, give to any
 3 other person any liquor.

4 (2) No person ~~shall~~ may have or keep any liquor within
 5 the state which has not been purchased from the state of
 6 Montana; provided, however, that nothing in this code ~~shall~~
 7 ~~prohibit~~ prohibits any person entering this state from any
 8 other state, or from any foreign country, from having in his
 9 possession not to exceed ~~three-(3)~~ wine gallons of ~~alcoholic~~
 10 ~~liquors, wine,~~ or beer, which ~~liquor or beer shall have~~ has
 11 been purchased in another state or foreign country, but no
 12 person claiming to have so entered the state, ~~shall~~ may at
 13 any time, have in his possession more than ~~three-(3)~~ wine
 14 gallons of ~~intoxicating~~ liquor alcoholic beverages which
 15 ~~shall~~ has not ~~have~~ been purchased from a state liquor store.
 16 This subsection ~~shall~~ does not apply to the department or to
 17 the keeping or having of liquor alcoholic beverages by
 18 brewers, distillers, and other persons duly licensed by the
 19 United States for the manufacture of such ~~liquor~~ liquor
 20 ~~beverages,~~ or to the keeping or having of any proprietary or
 21 patent medicines or of any extracts, essences, tinctures, or
 22 preparations where such having and keeping is authorized by
 23 this code.

24 (3) Nothing contained in this section ~~shall~~ apply
 25 applies to the possession by a sheriff or his bailiff of

1 ~~liquor alcoholic beverages~~ seized under execution or other
 2 judicial or ~~extra-judicial~~ extrajudicial process nor ~~or~~ to
 3 sales under executions or other judicial or ~~extra-judicial~~
 4 extrajudicial process to the department, or in the case of
 5 beer to a brewer, beer licensee, club licensee, or canteen
 6 licensee."

7 Section 3. Section 4-1-202, R.C.M. 1947, is amended to
 8 read as follows:

9 "4-1-202. Application of code. (1) Nothing in this
 10 code ~~shall prevent~~ prevents any brewer, distiller, or other
 11 person duly licensed, under the provisions of any statute of
 12 the United States of America, for the manufacture of ~~liquor~~
 13 alcoholic beverages from having or keeping ~~liquor~~ an
 14 alcoholic beverage in a place and in the manner authorized
 15 by or under any such statute.

16 (2) It is hereby declared to be the policy of the
 17 state of Montana that the manufacture of ~~liquor alcoholic~~
 18 beverages, including the distillation, rectification,
 19 bottling, and processing as these terms are defined under
 20 the provisions of the laws of the United States, shall be
 21 authorized and permitted by any brewer, distiller,
 22 rectifier, or other person duly licensed under any provision
 23 of any statute of the United States of America in a place
 24 and in the manner authorized by or under any statute of the
 25 United States provided the ~~Montana~~ state department of

1 revenue may make such regulations rules as the department
 2 deems considers necessary with respect thereto, not
 3 inconsistent with this code, or with the statutes of the
 4 United States of America or regulations issued under the
 5 provisions of the federal Federal Alcohol Administration
 6 Act, title Title 27, United States Code, sections 201
 7 through 212 inclusive, or regulations issued under the
 8 provisions of the Internal Revenue Code, title-26 Title 26,
 9 United States Code, sections 5001 through 5693, inclusive.

10 ~~(2)(3)~~ Nothing in this code shall ~~prevent~~ prevents:

11 (a) ~~The~~ the sale of liquor or wine by any person to
 12 the department;

13 (b) ~~The~~ the purchase, importation, and sale of liquor
 14 or wine by the department for the purposes of and in
 15 accordance with this code."

16 Section 4. Section 4-3-201, R.C.M. 1947, is amended to
 17 read as follows:

18 "4-3-201. Possession, manufacture, or disposal of beer
 19 or wine in other manner than prescribed unlawful. It shall
 20 be is unlawful to manufacture, or sell, or dispose of, or
 21 possess for the purpose of sale, beer or wine of any kind or
 22 character of an alcoholic content greater than herein
 23 prescribed, or other than in the manner permitted by this
 24 code."

25 Section 5. Section 4-3-202, R.C.M. 1947, is amended to

1 read as follows:

2 "4-3-202. Beer or wine sale by department prohibited.
 3 The sale of beer or retail sale of wine by the department is
 4 hereby prohibited."

5 Section 6. There is a new R.C.M. section that reads as
 6 follows:

7 Purchase of wine for off-premises sale. Persons
 8 licensed under 4-4-201, subsection (4) or 4-4-202 to sell
 9 wine for off-premises or on-premises consumption may
 10 purchase wine from the department in lots of one case or
 11 more, upon payment of the department's purchase price, the
 12 excise tax, and shipping costs from the department to the
 13 purchaser. The department's purchase price includes
 14 shipping costs from the winery to the department.

15 Section 7. There is a new R.C.M. section that reads as
 16 follows:

17 Department to wholesale wine -- procedure. The
 18 department shall purchase from wineries such types and
 19 quantities of wine as licensed retailers of wine request or
 20 as may further seem proper to the department.

21 Section 8. There is a new R.C.M. section that reads as
 22 follows:

23 Excise tax on wine -- rate. The department shall charge
 24 and collect an excise tax on the wholesale transfer of wine
 25 at the rate of 56% of the price of the wine f.o.b. winery.

1 All tax collected under this section shall be paid into the
2 general fund.

3 Section 9. Section 4-3-308, R.C.M. 1947, is amended to
4 read as follows:

5 "4-3-308. Refilling of liquor or wine bottles
6 prohibited. No person who sells, or offers for sale, liquor
7 or wine, nor or the agent or employee of such person, may--:

8 (1) place in any liquor or wine bottle any ~~liquor~~
9 ~~whatsoever type of alcoholic beverage~~ other than those that
10 contained in such bottle at the time of stamping by the
11 federal government; or

12 (2) possess any liquor or wine bottle in which any
13 liquor or wine has been placed in violation of subsection
14 (1); or

15 (3) by the addition of any substance ~~whatsoever~~ to any
16 liquor or wine bottle, in any manner alter or increase any
17 portion of the original contents contained in such bottle at
18 the time of stamping by the federal government; or

19 (4) possess any liquor or wine bottle, any portion of
20 the contents of which has been altered or increased in
21 violation of subsection (3); except that this section does
22 not prohibit any reuse of liquor or wine bottles which is
23 permitted under laws or regulations of the federal
24 government."

25 Section 10. Section 4-4-201, R.C.M. 1947, is amended

1 to read as follows:

2 "4-4-201. Issuance of retail beer licenses -- limit on
3 number of beer licenses -- wine license amendments -- retail
4 license fee. (1) Except as otherwise provided by law, a
5 license to sell beer at retail, or beer and wine at retail
6 pursuant to subsection (2), in accordance with the
7 provisions of this ~~act code~~ and the ~~regulations rules~~ of the
8 department of ~~revenue~~, may be issued to any person, firm, or
9 corporation who ~~shall be~~ is approved by the department as a
10 fit and proper person, firm, or corporation to sell beer, ~~and~~
11 provided, that:

12 (a) the number of retail beer licenses that the
13 department may issue for premises situated within
14 incorporated cities and incorporated towns and within a
15 distance of ~~five-}~~ miles from the corporate limits of such
16 cities and towns shall be determined on the basis of
17 population as shown by the most recent official United
18 States census authorized by ~~Congress~~ Congress, ~~to-wit~~
19 ~~namely: in in~~ incorporated towns of ~~five-hundred-}~~ {500}
20 inhabitants or less and within a distance of ~~five-}~~ miles
21 from the corporate limits of such towns, not more than one
22 ~~{} retail beer license, which shall may~~ not be used in
23 conjunction with a retail liquor license; in incorporated
24 cities or incorporated towns of more than ~~five-hundred-}~~ {500}
25 inhabitants and not over ~~two-thousand-}~~ {2,000} inhabitants

1 and within a distance of ~~five- $\{5\}$~~ miles from the corporate
 2 limits of such cities or towns, one ~~$\{1\}$~~ beer license for
 3 each ~~five-hundred- $\{500\}$~~ inhabitants which said beer license
 4 ~~shall~~ may not be used in conjunction with retail liquor
 5 licenses; in incorporated cities of over ~~two--thousand~~
 6 ~~$\{2,000\}$~~ inhabitants and within a distance of ~~five- $\{5\}$~~ miles
 7 from the corporate limits of such cities, two ~~$\{2\}$~~ additional
 8 retail beer licenses for the first ~~two--thousand-- $\{2,000\}$~~
 9 inhabitants or major fraction thereof and one ~~$\{1\}$~~ additional
 10 retail beer license for each additional ~~two--thousand- $\{2,000\}$~~
 11 inhabitants which ~~shall~~ may not be used in conjunction with
 12 retail liquor licenses. The number of the inhabitants in
 13 such cities and towns, exclusive of the number of
 14 inhabitants residing within a distance of ~~five-- $\{5\}$~~ miles
 15 from the corporate limits thereof, shall govern the number
 16 of retail beer licenses that may be issued for use within
 17 such cities and towns and within a distance of ~~five- $\{5\}$~~
 18 miles from the corporate limits thereof~~--provided--that~~
 19 ~~where, where~~ two ~~$\{2\}$~~ or more incorporated municipalities are
 20 situated within a distance of ~~five-- $\{5\}$~~ miles from each
 21 other, the total number of retail beer licenses that may be
 22 issued for use in both of such municipalities and within a
 23 distance of ~~five- $\{5\}$~~ miles from their respective corporate
 24 limits, shall be determined on the basis of the combined
 25 populations of both of such municipalities and ~~shall~~ may not

1 exceed the foregoing limitations. The ~~said~~ distance of ~~five~~
 2 ~~$\{5\}$~~ miles from the corporate limits of any incorporated city
 3 or incorporated town shall be measured in a straight line
 4 from the nearest entrance of the premises proposed for
 5 licensing to the nearest corporate boundary of such city or
 6 town. Retail beer licenses of issue on the date of the
 7 passage and approval of this act and which are in excess of
 8 the foregoing limitations shall be renewable, but no new
 9 licenses ~~shall~~ may be issued in violation of such
 10 limitations~~--provided--that--such--~~ Such limitations ~~shall~~ may
 11 not prevent the issuance of a nontransferable and
 12 nonassignable retail beer license to any post of a
 13 nationally chartered veterans' organization or any lodge of
 14 a recognized national fraternal organization, if such
 15 veterans' or fraternal organization has been in existence
 16 for a period of ~~five- $\{5\}$~~ years or more prior to January 1,
 17 1949. No incorporated city or incorporated town may by
 18 ordinance restrict the number of licenses that the
 19 department may issue~~1~~ provided that no retail beer license
 20 may be issued by the department for any premises situated
 21 within any zone of such city or town wherein the sale of
 22 beer is prohibited by ordinance, a certified copy of which
 23 has been filed with the department. The department ~~shall~~
 24 ~~have-discretion-to~~ may deny the issuance of a retail beer
 25 license if it ~~shall-determine~~ determines that the premises

1 proposed for licensing are off regular police beats and
2 cannot be properly policed by local authorities.

3 (b) The number of retail beer licenses that the
4 department may issue for use at premises situated outside of
5 any incorporated city or incorporated town and outside of
6 the area within a distance of ~~five--(5)~~ miles from the
7 ~~corporated~~ corporate limits thereof, or for use at premises
8 situated within any unincorporated town shall be as
9 determined by the department in the exercise of its sound
10 discretion, provided, that no retail beer license ~~shall~~ may
11 be issued for any premises so situated unless the department
12 ~~shall-determine~~ determines that the issuance of such license
13 is required by public convenience and necessity.

14 (2) A person holding a license to sell beer for
15 consumption on the premises at retail may apply to the
16 department for an amendment to the license permitting the
17 holder to sell wine as well as beer. The division may issue
18 such amendment if it finds, on a satisfactory showing by the
19 applicant, that the sale of wine for consumption on the
20 premises would be supplementary to a restaurant or prepared
21 food business. A person holding a beer-and-wine license may
22 sell wine for consumption on the premises. He may buy wine
23 only at retail from the department. Nonretention of the
24 beer license, for whatever reason, shall mean automatic loss
25 of the wine amendment license.

1 (3) The annual license fee for a license to sell wine
2 on the premises, when issued as an amendment to a beer only
3 license shall be ~~two-hundred-dollars-(\$200)~~.

4 (4) A retail license to sell beer and wine in the
5 original packages for off-premise consumption only may be
6 issued to any person, firm, or corporation who ~~shall--be~~ is
7 approved by the department as a fit and proper person, firm,
8 or corporation to sell beer and wine and whose premises
9 proposed for licensing are operated as a bona fide grocery
10 store or a drugstore licensed as a pharmacy. The number of
11 such licenses that the department may issue ~~shall~~ is not be
12 limited by the provisions of subsection (1) of this section,
13 but shall be determined by the department in the exercise of
14 its sound discretion, and the department may in the exercise
15 of its sound discretion grant or deny any application for
16 any such license or suspend or revoke any such license for
17 cause. The annual license fee for a license to sell beer
18 and wine at retail for off-premises consumption shall be the
19 same as for a retail beer license."

20 Section 11. Section 4-6-105, R.C.M. 1947, is amended
21 to read as follows:

22 "4-6-105. Bottle clubs prohibited. The operation of
23 beer, wine, or liquor, or alcoholic beverage bottle clubs is
24 hereby prohibited by any person, persons, partnership, firm,
25 corporation, or association. A bottle club is hereby defined

1 as any person, persons, partnership, firm, corporation, or
2 association maintaining premises, not licensed for the sale
3 of beer, ~~wine,~~ or liquor, for a fee or other consideration,
4 including the sale of food, mixes, ice, or any other fluids
5 for alcoholic ~~liquors~~ ~~beverages,~~ or otherwise furnishing
6 premises for such purposes and from which they would derive
7 revenue.

8 Section 12. Severability. If a part of this act is
9 invalid, all valid parts that are severable from the invalid
10 part remain in effect. If a part of this act is invalid in
11 one or more of its applications, the part remains in effect
12 in all valid applications that are severable from the
13 invalid applications.

-End-

STATE OF MONTANA

REQUEST NO. 66-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 13, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 85 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION

This bill authorizes grocery stores and others licensed for off-premises beer sales to sell wine for off-premises consumption; deleting wine from the definition of liquor; directing the Department of Revenue to wholesale wine and to refrain from retailing wine; imposing an excise tax on the wholesale transfer of wine.

ASSUMPTIONS

Assume sales and expenditure data as given in Table 14 of the Legislative Fiscal Analyst's report entitled "Fiscal Impacts of Altering Montana's Liquor Distribution System" and Department of Revenue records.

Assume that 670 off-premises wine licenses are issued.

There are four alternative scenarios:

- I. No change in wine sales volume, direct shipment from warehouse to retailer (with no increase in transportation costs).
- II. No change in wine sales volume, shipments from warehouse to state liquor stores, state liquor stores sell wine at wholesale to retailers.
- III. 100% increase in wine sales volume, direct shipments from warehouse to retailer (with no increase in warehouse costs, and proportional increases in transportation costs).
- IV. 100% increase in wine sales volume, shipments from warehouse to state liquor stores, state liquor stores sell wine at wholesale to retailers (no increase in Department of Revenue costs, except for proportional increases in transportation costs).

FISCAL IMPACT

Depending upon the assumptions used, the net effect of this bill will be as follows:

<u>FY 78</u>	<u>FY 79</u>
<u>\$-2,201,646 to \$+61,271</u>	<u>\$-2,333,635 to \$+58,391</u>

(CONTINUED ON PAGE 2)

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: _____

STATE OF MONTANA

REQUEST NO. 66-77

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FISCAL IMPACT (Cont.)

In particular,

	<u>Current Law</u>	<u>Scenario I</u>	<u>Scenario II</u>	<u>Scenario III</u>	<u>Scenario IV</u>
Total Net Revenue FY 78	\$3,631,287	\$1,854,894	\$1,429,641	\$3,692,558	\$3,267,305
Total Net Revenue FY 79	\$3,815,070	\$1,942,834	\$1,481,435	\$3,873,461	\$3,412,062

EFFECT ON COUNTY OR OTHER LOCAL REVENUE

Under the proposed law, wine would no longer be classified as "liquor", and therefore the 5% liquor license tax would no longer be applicable. 80% of revenues from liquor license tax are currently allocated to local governments (60% to cities & towns, 20% to counties). Therefore, approximately \$248,000 in FY 78, and \$260,000 in FY 79, would not be distributed automatically to local jurisdictions.

LONG-RANGE EFFECTS

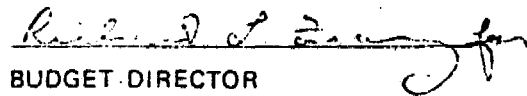
Depending upon distribution method employed by Department of Revenue, and upon the amount of hypothetical increase in wine sales attributable to retail sales in grocery stores and pharmacies, the impact on total net wine revenue will either be negligible or cause net revenues to decrease by up to 60%.

TECHNICAL NOTE

Department of Revenue would need to substantially modify warehouse operations and inventory management methods under scenarios I & III -- contrary to assumption of no increase in departmental operational expenditures.

The proposed law does not permit the Department of Revenue to change retailers for the Department's handling costs associated with wine, whereas the markup on liquor does include operational costs.

PREPARED BY DEPARTMENT OF REVENUE


 BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-28-77

FISCAL NOTE

(2nd Amendment)

Form BD-15

In compliance with a written request received January 18, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 85 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION

This bill authorizes grocery stores and others licensed for off-premises beer sales to sell wine for off-premises consumption; deleting wine from the definition of liquor; directing the Department of Revenue to wholesale wine and prohibiting the Department from retailing wine; imposing an excise tax on the wholesale transfer of wine.

ASSUMPTIONS

Assume sales and expenditure data as given in Table 14 of the Legislative Fiscal Analyst's report entitled "Fiscal Impacts of Altering Montana's Liquor Distribution System", p. 27.

Assume that 670 off-premises wine licenses are issued.
There are four alternative scenarios:

- I. No change in wine sales volume, direct shipment from warehouse to retailer (with no increase in transportation costs).
- II. No change in wine sales volume, shipments from warehouse to state liquor stores, state liquor stores sell wine at wholesale to retailers. (No transportation cost from state liquor stores to retailers.)
- III. 100% increase in wine sales volume, direct shipments from warehouse to retailer (with no increase in warehouse costs, and proportional increases in transportation costs).
- IV. 100% increase in wine sales volume, shipments from warehouse to state liquor stores, state liquor stores sell wine at wholesale to retailers (no increase in Department of Revenue costs, except for proportional increases in transportation costs).

FISCAL IMPACT

Depending upon the assumptions used, the net effect of this bill will be as follows:

<u>FY 78</u>	<u>FY 79</u>
\$-1,716,120 to \$+546,797	\$-1,809,886 to \$+582,140

(Continued on page 2)

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: _____

STATE OF MONTANA

REQUEST NO. 66-77 Amende
(2nd Amendment)

FISCAL NOTE

Form BD-15

In compliance with a written request received January 18, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 85 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

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FISCAL IMPACT (Cont.)

	<u>Current Law</u>	<u>Scenario I</u>	<u>Scenario II</u>	<u>Scenario III</u>	<u>Scenario IV</u>
Total net revenue FY 78	\$3,145,761	\$1,854,894	\$1,429,641	\$3,692,558	\$3,267,305
Total net revenue FY 79	\$3,291,321	\$1,942,834	\$1,481,435	\$3,873,481	\$3,412,062

NOTE: The various scenarios are presented in order to present a fiscal impact "range" since it is unknown at this time the effect of the proposed legislation on wine sales volume. It is generally agreed that enactment of such legislation will increase sales volume. A report by the Legislative Fiscal Analyst indicates that, based on the experience in four other states (Idaho, Maine, Virginia, and Washington), a doubling of sales may be conservative.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE

Under the proposed law, wine would no longer be classified as "liquor", and therefore the 5% liquor license tax would no longer be applicable. 80% of revenues from liquor license tax are currently allocated to local governments (60% to cities and towns, 20% to counties). Therefore, approximately \$248,000 in FY 78, and \$260,000 in FY 79, would not be distributed automatically to local jurisdictions.

LONG-RANGE EFFECTS

Depending upon distribution method employed by Department of Revenue, and upon the amount of hypothetical increase in wine sales attributable to retail sales in grocery stores and pharmacies, the impact on total net wine revenue will be in the range -55% to +17%.

TECHNICAL NOTE

Department of Revenue would need to substantially modify warehouse operations and inventory management methods under scenarios I & III - - contrary to assumption of no increase in departmental operational expenditures.

The proposed law does not permit the Department of Revenue to charge retailers for the Department's handling costs associated with wine, whereas the markup on liquor does include operational costs.

PREPARED BY DEPARTMENT OF REVENUE

Richard L. Frey
BUDGET DIRECTOR
Office of Budget and Program Planning
Date: 2-1-77

Approved by Committee
on Business and Industry

1 SENATE BILL NO. 35

2 INTRODUCED BY GOODOVER, ROBERTS,

3 MATHERS, REGAN, STEPHENS, LOWE, HAZELBAKER,

4 GRAHAM, HIMSL, OLSON, MURRAY, BERGREN, MANLEY,

5 HAGER, BLAYLOCK, KOLSTAD, TOWE, ROSKIE, FASBENDER, STURY

6
7 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING GROCERY
8 STORES AND OTHERS LICENSED FOR OFF-PREMISES BEER SALES TO
9 SELL WINE FOR OFF-PREMISES CONSUMPTION; ~~DELETING--WINE--FROM~~
10 ~~THE--DEFINITION--OF--LIQUOR;~~ DIRECTING THE DEPARTMENT OF
11 REVENUE TO WHOLESALE WINE AND ~~TO REFRAIN FROM RETAILING WINE~~
12 PROVIDING ALTERNATIVE WHOLESALING PROCEDURES; REVISING
13 CONTROL AND MARKETING POLICIES WITH RESPECT TO WINE;
14 IMPOSING AN EXCISE TAX ON THE WHOLESALE TRANSFER OF WINE;
15 AMENDING SECTIONS 4-1-107, 4-1-201, 4-1-202, 4-3-201,
16 4-3-202, 4-3-208, 4-1-401, 4-1-403, 4-2-102, 4-2-204,
17 4-3-102, 4-3-307, AND 4-4-201, AND 4-6-105, R.C.M. 1947;
18 AND PROVIDING A DELAYED EFFECTIVE DATE."

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21 Refer to Introduced Bill

22 (Strike everything after the enacting clause and insert:)

23 Section 1. There is a new section in Title 4, R.C.M.
24 1947, that reads as follows:

25 Policy as to the sales of wine. The public policy of

1 the state of Montana on sales of wine is to retain a
2 complete monopoly by the state over the importation and
3 acquisition of wine from wineries, making an agency of the
4 state the sole wine wholesaler of first instance. This
5 policy permits the state wine wholesaling agency to delegate
6 certain wholesaling functions to distributors under strict
7 licensing controls. These functions of handling and
8 distributing wine to approved wine retailers may also be
9 exercised by the state agency through the state warehouse
10 and state liquor stores.

11 Section 2. There is a new section in Title 4, R.C.M.
12 1947, that reads as follows:

13 Department to wholesale wine -- procedures --
14 penalties. (1) The department of revenue shall purchase from
15 wineries such types and quantities of wine as licensed
16 distributors or retailers of wine request or as may further
17 seem proper to the department. Orders shall be shipped to
18 the department's warehouse in Helena, or in the discretion
19 of the department, to the warehouse of a wine distributor.
20 In the latter case, the winery shall send a copy of the
21 invoice to the department. Shipment may be made by any
22 common carrier or by a wine distributor's own private
23 carrier. The department may, upon immediate notice, inspect
24 the records of a distributor or winery at any time during
25 regular business hours.

SECOND READING

1 (2) (a) If a licensed distributor of wine knowingly
 2 fails to report or in any manner knowingly falsifies a
 3 direct shipment of wine from a winery, the department shall
 4 suspend his privilege to sell wine for 30 days upon a first
 5 violation and for 60 days upon a second violation, and shall
 6 revoke his privilege to sell wine upon a third violation.

7 (b) If a winery knowingly fails to report a direct
 8 purchase of wine or knowingly misrepresents any matter
 9 concerning invoicing, pricing, shipping, and the like, the
 10 department shall revoke its privilege to sell wine in the
 11 state of Montana.

12 (c) The foregoing violations are civil violations,
 13 provable by a mere preponderance of the evidence.

14 Section 3. There is a new section in Title 4, R.C.M.
 15 1947, that reads as follows:

16 Wine distributor's license -- application and issuance
 17 -- records -- sanctions. (1) Any person desiring to sell and
 18 distribute wine to retailers under the provisions of this
 19 code shall apply to the department for a license to do so
 20 and tender with his application the license fee of \$400 and
 21 the department may issue licenses to qualified applicants in
 22 accordance with the provisions of this code. The license
 23 shall be at all times prominently displayed in the place of
 24 business of such distributor.

25 (2) Any individual or partnership which has been

1 licensed as a wine distributor may, upon incorporation in
 2 accordance with the laws of the state of Montana, transfer
 3 such license to the corporation if a majority of the capital
 4 stock thereof is held by the individual or the members of
 5 the partnership; or if applicant is a foreign corporation
 6 the corporation must be authorized to do business in
 7 Montana. Each applicant shall have a fixed place of
 8 business, sufficient capital, the facilities, storehouse,
 9 receiving house or warehouse for the receiving of, storage,
 10 handling and moving of wine in large and jobbing quantities
 11 for distribution and sale in original packages to other
 12 licensed distributors or licensed retailers. Each wine
 13 distributor shall be entitled to only one distributor's
 14 license, which license shall be issued for his principal
 15 place of business in Montana. However, a wine distributor
 16 may also hold a license to wholesale beer under 4-4-103, or
 17 a license to sell beer and wine at retail for consumption
 18 off the premises of one or more bona fide grocery stores
 19 under 4-4-201(4).

20 (3) All wine manufactured outside of the state of
 21 Montana and shipped into Montana shall, when such shipment
 22 is authorized by the department, be consigned to and shipped
 23 to a licensed wine distributor, and by him unloaded into his
 24 warehouse in Montana. The wine distributor shall distribute
 25 the wine from this warehouse. The wine distributor shall

1 keep records at his principal place of business of all wine
 2 including the name or kind received, on hand, sold and
 3 distributed; these records may at all times during regular
 4 business hours be inspected by any member or representative
 5 of the department. Any wine which has been shipped into
 6 Montana and has not been shipped to and distributed from the
 7 department's warehouse or, under authority of the
 8 department, from a warehouse of a licensed wine distributor
 9 shall be seized by any peace officer or representative of
 10 the department and may be confiscated in the matter as
 11 provided for the confiscation of liquor.

12 Section 4. There is a new section in Title 4, R.C.M.
 13 1947, that reads as follows:

14 Purchase of wine for off-premises sale. Persons
 15 licensed under 4-4-201, or 4-4-202 to sell wine for
 16 off-premises or on-premises consumption may purchase wine
 17 from the warehouse of the department or from a licensed wine
 18 distributor in lots of one case or more. The purchase price
 19 shall include the f.o.b. winery price, the excise tax
 20 thereon, shipping and handling costs, and such additional
 21 prices as a licensed wine distributor may impose if he
 22 handles the wine.

23 Section 5. There is a new section in Title 4, R.C.M.
 24 1947, that reads as follows:

25 / Excise tax on wine -- rate. The department shall charge

1 and collect an excise tax on the sale of wine using the
 2 basic formula of 30% of the price of the wine f.o.b. winery
 3 plus \$1 per gallon, provided that the total excise tax
 4 calculated from the basic formula shall not exceed \$2.50 per
 5 gallon. The excise tax on wine sold in bottles containing
 6 less than 64 ounces is 100 percent of the basic formula.
 7 The excise tax on wine sold in bottles containing 64 or more
 8 ounces but less than 128 ounces is 85% of the basic formula.
 9 The excise tax on wine sold in bottles containing 128 ounces
 10 and over is 62 percent of the basic formula. Ten percent of
 11 all taxes collected under this section shall be distributed
 12 to local governments in accordance with the formula set
 13 forth in 4-1-401. The balance shall be paid into the
 14 general fund.

15 Section 6. Section 4-1-401, R.C.M. 1947, is amended to
 16 read as follows:

17 "4-1-401. License tax on liquor -- amount --
 18 distribution of proceeds. The department of revenue is
 19 hereby authorized and directed to charge, receive and
 20 collect at the time of sale and delivery of any liquor
 21 except wine under any provisions of the laws of the state of
 22 Montana a license tax of five percent (5%) of the retail
 23 selling price on all liquor except wine so sold and
 24 delivered. Said tax shall be charged and collected on all
 25 liquor brought into the state and taxed by the department of

1 revenue. The retail selling price shall be computed by
 2 adding to the cost of said liquor the state markup as
 3 designated by the department. Said five percent (5%)
 4 license tax shall be figured in the same manner as the state
 5 excise tax and shall be in addition to said state excise
 6 tax. The department of revenue shall retain the amount of
 7 such five percent (5%) license tax so received in a separate
 8 account. Four-fifths (4/5) of these revenues shall be
 9 distributed to the counties according to the amount of
 10 liquor purchased in each county. One-fifth (1/5) of these
 11 revenues shall be deposited in the general fund. Provided,
 12 however, in the case of purchases of liquor by a retail
 13 liquor licensee for use in his business, the department
 14 shall make such regulations as are necessary to apportion
 15 that proportion of license tax so generated to the county
 16 where the licensed establishment is located, for use as
 17 provided in section 4-1-402, R.C.M. 1947. The department of
 18 revenue shall pay quarterly to each county treasurer the
 19 proportion of the license tax due each county.

20 The county treasurer of each county shall retain
 21 one-fourth (1/4) of said license tax, and shall, within
 22 thirty (30) days after receipt thereof, apportion the
 23 remaining three-fourths (3/4) thereof to the treasurers of
 24 the incorporated cities and towns within his county, said
 25 apportionment to be based in each instance upon the

1 proportion which the gross sale of liquor in such
 2 incorporated city or town bears to the gross sale of liquor
 3 in all of the incorporated cities and towns in his said
 4 county."

5 Section 7. Section 4-1-403, R.C.M. 1947, is amended to
 6 read as follows:

7 "4-1-403. Excise liquor tax -- collection. The
 8 department of revenue is hereby authorized and directed to
 9 charge, receive and collect at the time of the sale and
 10 delivery of any liquor except wine as authorized under any
 11 provision of the laws of the state of Montana an excise tax
 12 at the rate of sixteen per centum (16%) of the retail
 13 selling price on all liquor except wine so sold and
 14 delivered. The Montana department of revenue shall retain
 15 the amount of such excise tax received in a separate account
 16 and shall deposit with the state treasurer, to the credit of
 17 the general fund, such sums so collected and received not
 18 later than the tenth (10th) day of each and every month."

19 Section 8. Section 4-2-102, R.C.M. 1947, is amended to
 20 read as follows:

21 "4-2-102. Containers to be sealed with official seal
 22 -- opening package on liquor store premises forbidden. No
 23 distilled spirits or wine shall be sold to any purchaser,
 24 except in a package, sealed with the official seal
 25 prescribed by this act, which package shall not be opened on

1 the premises of a state store."

2 Section 9. Section 4-2-204, R.C.M. 1947, is amended to
3 read as follows:

4 "4-2-204. Department to sell to licensees -- posted
5 price. The department is hereby authorized to sell through
6 its stores all kinds of ~~liquor, wine and cordials~~ distilled
7 spirits kept in stock to licensees licensed under this code
8 at the posted price thereof in the store in which said
9 liquor is sold. All sales shall be upon a cash basis. The
10 posted price as used herein shall mean the retail price of
11 such liquor as fixed and determined by the department of
12 revenue and in addition thereto an excise tax as in this act
13 provided."

14 Section 10. Section 4-3-102, R.C.M. 1947, is amended
15 to read as follows:

16 "4-3-102. Liquor container must have been sealed with
17 official seal. Except in the case of--

18 (a) liquor imported by the state, or by the
19 department; or

20 (b) liquor had and kept by a person, and in a place
21 and manner referred to in section 4-1-202; or

22 (c) wine lawfully had or kept under this code; or

23 ~~(e);(d)~~ beer and malt liquor, lawfully had or kept
24 under this code; or

25 ~~(d);(e)~~ any liquor kept for sale by a druggist under

1 this code no liquor shall be kept or had by any person
2 within the state unless the package, not including a
3 decanter or other receptacle containing the liquor for
4 immediate consumption, in which the liquor is contained has,
5 while containing that liquor, been sealed with the official
6 seal prescribed under this code."

7 Section 11. Section 4-3-307, R.C.M. 1947, is amended
8 to read as follows:

9 "4-3-307. Sale of ~~liquor~~ distilled spirits at less
10 than posted price forbidden. It shall be unlawful for any
11 licensee under the provisions of this code to resell any
12 liquor distilled spirits purchased by such licensee from a
13 state liquor store or the state of Montana for a sum less
14 than the posted price established by the said store and paid
15 by the licensee therefor."

16 Section 12. Section 4-4-201, R.C.M. 1947, is amended
17 to read as follows:

18 "4-4-201. Issuance of retail beer licenses -- limit on
19 number of beer licenses -- wine license amendments -- retail
20 license fee. (1) Except as otherwise provided by law, a
21 license to sell beer at retail, or beer and wine at retail
22 pursuant to ~~subsection subsection~~ (2) or (4), in accordance
23 with the provisions of this act ~~code~~ and the ~~regulations~~
24 rules of the department ~~of revenue~~, may be issued to any
25 person, firm, or corporation who ~~shall be~~ is approved by the

1 department as a fit and proper person, firm, or corporation
2 to sell beer; ~~that~~ provided that:

3 (a) the number of retail beer licenses that the
4 department may issue for premises situated within
5 incorporated cities and incorporated towns and within a
6 distance of ~~five~~ (5) miles from the corporate limits of such
7 cities and towns shall be determined on the basis of
8 population as shown by the most recent official United
9 States census authorized by ~~Congress~~ Congress, ~~to-wit~~
10 namely: in in incorporated towns of ~~five-hundred~~ (500)
11 inhabitants or less and within a distance of ~~five~~ (5) miles
12 from the corporate limits of such towns, not more than one
13 ~~(1)~~ retail beer license, which ~~shall~~ may not be used in
14 conjunction with a retail liquor license; in incorporated
15 cities or incorporated towns of more than ~~five-hundred~~ (500)
16 inhabitants and not over ~~two--thousand--~~ (2,000) inhabitants
17 and within a distance of ~~five~~ (5) miles from the corporate
18 limits of such cities or towns, one ~~(1)~~ beer license for
19 each five hundred (500) inhabitants which ~~said~~ beer license
20 ~~shall~~ may not be used in conjunction with retail liquor
21 licenses; in incorporated cities of over ~~two--thousand~~
22 ~~(2,000)~~ inhabitants and within a distance of ~~five~~ (5) miles
23 from the corporate limits of such cities, two ~~(2)~~ additional
24 retail beer licenses for the first ~~two-thousand~~ (2,000)
25 inhabitants or major fraction thereof and one ~~(1)~~ additional

1 retail beer license for each additional ~~two-thousand~~ (2,000)
2 inhabitants which ~~shall~~ may not be used in conjunction with
3 retail liquor licenses. The number of the inhabitants in
4 such cities and towns, exclusive of the number of
5 inhabitants residing within a distance of ~~five~~ (5) miles
6 from the corporate limits thereof, shall govern the number
7 of retail beer licenses that may be issued for use within
8 such cities and towns and within a distance of ~~five~~ (5)
9 miles from the corporate limits thereof; ~~provided that~~
10 ~~where~~ where two ~~(2)~~ or more incorporated municipalities are
11 situated within a distance of ~~five~~ (5) miles from each
12 other, the total number of retail beer licenses that may be
13 issued for use in both of such municipalities and within a
14 distance of ~~five~~ (5) miles from their respective corporate
15 limits, shall be determined on the basis of the combined
16 populations of both of such municipalities and shall not
17 exceed the foregoing limitations. The ~~said~~ distance of ~~five~~
18 ~~(5)~~ miles from the corporate limits of any incorporated city
19 or incorporated town shall be measured in a straight line
20 from the nearest entrance of the premises proposed for
21 licensing to the nearest corporate boundary of such city or
22 town. Retail beer licenses of issue on the date of the
23 passage and approval of this act and which are in excess of
24 the foregoing limitations shall be renewable, but no new
25 licenses ~~shall~~ may be issued in violation of such

1 ~~limitations provided that such.~~ Such limitations shall ~~may~~
 2 not prevent the issuance of a nontransferable and
 3 nonassignable retail beer license to any post of a
 4 nationally chartered veterans' organization or any lodge of
 5 a recognized national fraternal organization, if such
 6 veterans' or fraternal organization has been in existence
 7 for a period of ~~five (5)~~ years or more prior to January 1,
 8 1949. No incorporated city or incorporated town may by
 9 ordinance restrict the number of licenses that the
 10 department may issue, provided that no retail beer license
 11 may be issued by the department for any premises situated
 12 within any zone of such city or town wherein the sale of
 13 beer is prohibited by ordinance, a certified copy of which
 14 has been filed with the department. The department shall
 15 ~~have discretion to~~ may deny the issuance of a retail beer
 16 license if it ~~shall determine~~ determines that the premises
 17 proposed for licensing are off regular police beats and
 18 cannot be properly policed by local authorities.

19 (b) The number of retail beer licenses that the
 20 department may issue for use at premises situated outside of
 21 any incorporated city or incorporated town and outside of
 22 the area within a distance of ~~five (5)~~ miles from the
 23 ~~incorporated corporate~~ corporate limits thereof, or for use at premises
 24 situated within any unincorporated town shall be as
 25 determined by the department in the exercise of its sound

1 discretion, provided, that no retail beer license shall ~~may~~
 2 be issued for any premises so situated unless the department
 3 ~~shall determine~~ determines that the issuance of such license
 4 is required by public convenience and necessity.

5 (2) A person holding a license to sell beer for
 6 consumption on the premises at retail may apply to the
 7 department for an amendment to the license permitting the
 8 holder to sell wine as well as beer. The division may issue
 9 such amendment if it finds, on a satisfactory showing by the
 10 applicant, that the sale of wine for consumption on the
 11 premises would be supplementary to a restaurant or prepared
 12 food business. A person holding a beer-and-wine license may
 13 sell wine for consumption on the premises. ~~He may buy wine~~
 14 ~~only at retail from the department.~~ Nonretention of the beer
 15 license, for whatever reason, shall mean automatic loss of
 16 the wine amendment license.

17 (3) The annual license fee for a license to sell wine
 18 on the premises, when issued as an amendment to a beer only
 19 license shall be ~~two hundred dollars (\$200).~~

20 (4) A retail license to sell beer and wine in the
 21 original packages for off-premise consumption only may be
 22 issued to any person, firm or corporation who ~~shall be~~ is
 23 approved by the department as a fit and proper person, firm,
 24 or corporation to sell beer and wine and whose premises
 25 proposed for licensing are operated as a bona fide grocery

1 store or a drugstore licensed as a pharmacy. A bona fide
2 grocery store means either a retail establishment where
3 articles of staple foodstuffs, household supplies, meats,
4 products, and dairy products are kept in sufficient
5 inventories for general trade and are sold for consumption
6 off the premises, or a specialty wine and cheese shop which
7 sells imported cheeses and wines at least 30% of its
8 inventory by value. The number of such licenses that the
9 department may issue shall is not be limited by the
10 provisions of subsection (1) of this section, but shall be
11 determined by the department in the exercise of its sound
12 discretion, and the department may in the exercise of its
13 sound discretion grant or deny any application for any such
14 license or suspend or revoke any such license for cause.
15 The annual license fee for a license to sell beer and wine
16 at retail for off-premises consumption shall be the same as
17 for a retail beer license."

18 Section 13. Effective date. This act is effective
19 February 1, 1978.

-End-