

HOUSE BILL 631

IN THE HOUSE

February 7, 1979	Introduced and referred to Committee on Business and Industry.
February 13, 1979	Committee recommend bill, do not pass.
February 14, 1979	Report adopted. Objection.
February 15, 1979	On motion taken from second reading and referred to Committee on Taxation.

1 House BILL NO. 631  
 2 INTRODUCED BY BURNETT Schultz

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REMOVE THE STATE  
 5 FROM THE RETAIL LIQUOR BUSINESS; AMENDING SECTIONS 16-1-103,  
 6 16-1-106, 16-1-304, 16-1-401, 16-1-404, 16-2-101, AND  
 7 16-2-201, MCA."

8  
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 16-1-103, MCA, is amended to read:

11 "16-1-103. Policy as to retail sale of liquor. It is  
 12 hereby declared as the policy of the state that it is  
 13 necessary to further regulate and control the sale and  
 14 distribution of alcoholic beverages within the state, to  
 15 eliminate certain illegal traffic in liquor now existing,  
 16 and to ensure the entire control of the sale of liquor in  
 17 the Montana department of revenue. It is advisable and  
 18 necessary, in addition to the operation of the state liquor  
 19 stores now provided by law, that the department be empowered  
 20 and authorized to grant licenses to persons qualified under  
 21 this code to sell liquor purchased by them at state liquor  
 22 stores at ~~retail~~ the posted price in accordance with this  
 23 code and under rules promulgated by the department and under  
 24 its strict supervision and control and to provide severe  
 25 penalty for the sale of liquor except by and in state liquor

1 stores and by persons licensed under this code. The  
 2 restrictions, regulations, and provisions contained in this  
 3 code are enacted by the legislature for the protection,  
 4 health, welfare, and safety of the people of the state."

5 Section 2. Section 16-1-106, MCA, is amended to read:

6 "16-1-106. Definitions. As used in this code, the  
 7 following definitions apply:

8 (1) "Agency agreement" means an agreement between the  
 9 department and a person appointed to sell liquor as a  
 10 commission merchant rather than as an employee.

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

13 (3) "Alcoholic beverage" means a compound produced and  
 14 sold for human consumption as a drink that contains more  
 15 than .5% of alcohol by volume.

16 (4) "Beer" means a malt beverage containing not more  
 17 than 7% of alcohol by weight.

18 (5) "Brewer" means a person who produces malt  
 19 beverages.

20 (6) "Department" means the Montana department of  
 21 revenue.

22 (7) "Immediate family" means a spouse, dependent  
 23 children, or dependent parents.

24 (8) "Industrial use" means a use described as  
 25 industrial use by the federal Alcohol Administration Act and

1 the federal rules and regulations of 27 CFR.

2 (9) "Liquor" means an alcoholic beverage except beer.

3 (10) "Malt beverage" means an alcoholic beverage made  
4 by the fermentation of an infusion or decoction, or a  
5 combination of both, in potable brewing water, of malted  
6 barley with or without hops or their parts or their products  
7 and with or without other malted cereals and with or without  
8 the addition of unmalted or prepared cereals, other  
9 carbohydrates, or products prepared therefrom and with or  
10 without other wholesome products suitable for human food  
11 consumption.

12 (11) "Package" means a container or receptacle used for  
13 holding an alcoholic beverage.

14 (12) "Posted price" means the ~~retail~~ wholesale price of  
15 liquor as fixed and determined by the department and in  
16 addition thereto an excise and license tax as provided in  
17 this code.

18 (13) "Proof gallon" means a U.S. gallon of liquor at 60  
19 degrees on the Fahrenheit scale that contains 50% of alcohol  
20 by volume.

21 (14) "Public place" means a place, building, or  
22 conveyance to which the public has or may be permitted to  
23 have access and any place of public resort.

24 (15) "Residence" means a building, part of a building,  
25 or tent where a person resides but does not include any part

1 of a building that is not actually and exclusively used as a  
2 private residence.

3 (16) "Rules" means rules published by the department  
4 pursuant to this code.

5 (17) "State liquor facility" means a facility owned or  
6 under control of the department for the purpose of  
7 receiving, storing, transporting, or selling alcoholic  
8 beverages.

9 (18) "State liquor store" means a ~~retail~~ wholesale  
10 store operated by the department in accordance with this  
11 code for the purpose of selling liquor to retail licensees.

12 (19) "Storage depot" means a building or structure  
13 owned or operated by a brewer at any point in the state of  
14 Montana off and away from the premises of a brewery, and  
15 which structure is equipped with refrigeration or cooling  
16 apparatus for the storage of beer and from which a brewer  
17 may sell or distribute beer as permitted by this code.

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

21 (21) "Wine" means an alcoholic beverage made from the  
22 normal alcoholic fermentation of the juice of sound, ripe  
23 fruit or other agricultural products without addition or  
24 abstraction, except as may occur in the usual cellar  
25 treatment of clarifying and aging, and that contains not

1 less than 7% or more than 24% of alcohol by volume. Wine  
 2 may be ameliorated to correct natural deficiencies,  
 3 sweetened, and fortified in accordance with applicable  
 4 federal regulations and the customs and practices of the  
 5 industry. Other alcoholic beverages not defined as above  
 6 but made in the manner of wine, labeled and sold as wine in  
 7 accordance with federal regulations are also wine."

8 Section 3. Section 16-1-304, MCA, is amended to read:  
 9 "16-1-304. Prohibited acts within division. (1) No  
 10 officer or employee of the liquor division, including those  
 11 engaged in the sale of liquor at the various state liquor  
 12 stores, may be directly or indirectly interested or engaged  
 13 in any other business or undertaking dealing in liquor,  
 14 whether as owner, part owner, partner, member of syndicate,  
 15 shareholder, agent, or employee and whether for his own  
 16 benefit or in a fiduciary capacity for some other person.

17 (2) No member or employee of the division or any  
 18 employee of the state may solicit or receive directly or  
 19 indirectly any commission, remuneration, or gift whatsoever  
 20 from any person or corporation having sold, selling, or  
 21 offering liquor for sale to the state or division pursuant  
 22 to this code.

23 (3) No person selling or offering for sale to or  
 24 purchasing liquor from the state liquor division may either  
 25 directly or indirectly offer to pay any commission, profit,

1 or remuneration or make any gift to any member or employee  
 2 of the division, to any employee of the state, or to anyone  
 3 on behalf of such member or employee.

4 (4) The prohibition contained in subsection (3) of  
 5 this section does not prohibit the division from receiving  
 6 samples of liquor for the purpose of chemical testing,  
 7 subject to the following limitations:

8 (a) Each manufacturer, distiller, compounder,  
 9 rectifier, importer, or wholesale distributor or any other  
 10 person, firm, or corporation proposing to sell any liquor to  
 11 the Montana liquor division shall submit, without cost to  
 12 the division prior to the original purchase, an analysis of  
 13 each brand and may submit a representative sample not  
 14 exceeding 25 fluid ounces of such merchandise to the  
 15 division.

16 (b) When a brand of liquor has been accepted for  
 17 testing by the division, the division shall forward the  
 18 sample, unopened and in its entirety, to a qualified  
 19 chemical laboratory for analysis.

20 (c) The division shall maintain written records of all  
 21 samples received. The records shall show the brand name,  
 22 amount and from whom received, date received, the laboratory  
 23 or chemist to whom forwarded, the division's action on the  
 24 brand, and the person to whom delivered or other final  
 25 disposition of the sample.

1 (5) No liquor, wine, or other alcoholic beverage may  
 2 be withdrawn from the regular warehouse inventory or from  
 3 the state liquor stores of the Montana liquor division for  
 4 any purpose other than sale at the prevailing state ~~retail~~  
 5 wholesale prices or for destroying damaged or defective  
 6 merchandise. The division shall maintain a written record  
 7 including the type, brand, container size, number of bottles  
 8 or other units, signatures of witnesses, and method of  
 9 destruction or other disposition of damaged or defective  
 10 warehouse or state store merchandise."

11 Section 4. Section 16-1-401, MCA, is amended to read:

12 "16-1-401. Liquor excise tax. The department is hereby  
 13 authorized and directed to charge, receive, and collect at  
 14 the time of the sale and delivery of any liquor as  
 15 authorized under any provision of the laws of the state of  
 16 Montana an excise tax at the rate of 16% of the ~~retail~~  
 17 wholesale selling price on all liquor sold and delivered.  
 18 The department shall retain the amount of such excise tax  
 19 received in a separate account and shall deposit with the  
 20 state treasurer, to the credit of the general fund, such  
 21 sums collected and received not later than the 10th day of  
 22 each and every month."

23 Section 5. Section 16-1-404, MCA, is amended to read:

24 "16-1-404. License tax on liquor -- amount --  
 25 distribution of proceeds. (1) The department is hereby

1 authorized and directed to charge, receive, and collect at  
 2 the time of sale and delivery of any liquor under any  
 3 provisions of the laws of the state of Montana a license tax  
 4 of 10% of the ~~retail~~ wholesale selling price on all liquor  
 5 sold and delivered. Said tax shall be charged and collected  
 6 on all liquor brought into the state and taxed by the  
 7 department. The ~~retail~~ wholesale selling price shall be  
 8 computed by adding to the cost of said liquor the state  
 9 markup as designated by the department. Said 10% license tax  
 10 shall be figured in the same manner as the state excise tax  
 11 and shall be in addition to said state excise tax. The  
 12 department shall retain in a separate account the amount of  
 13 such 10% license tax so received. Two-thirds of these  
 14 revenues shall be distributed to the counties according to  
 15 the amount of liquor purchased in each county. One-third of  
 16 these revenues shall be retained by the state. Provided,  
 17 however, in the case of purchases of liquor by a retail  
 18 liquor licensee for use in his business, the department  
 19 shall make such regulations as are necessary to apportion  
 20 that proportion of license tax so generated to the county  
 21 where the licensed establishment is located, for use as  
 22 provided in 16-1-405. The department shall pay quarterly to  
 23 each county treasurer the proportion of the license tax due  
 24 each county.

25 (2) The county treasurer of each county shall retain

1 50% of said license tax and shall, within 30 days after  
 2 receipt thereof, apportion the remaining 50% thereof to the  
 3 treasurers of the incorporated cities and towns within his  
 4 county, said apportionment to be based in each instance upon  
 5 the proportion which the gross sale of liquor in such  
 6 incorporated city or town bears to the gross sale of liquor  
 7 in all of the incorporated cities and towns in his county.

8 (3) Of the 50% of the tax retained by the county, the  
 9 county treasurer shall deposit six-sevenths of this amount  
 10 in a fund within the county for the treatment,  
 11 rehabilitation, and prevention of alcoholism as approved by  
 12 the state of Montana. The remaining one-seventh of the  
 13 funds shall be retained in the county treasury for use by  
 14 that county.

15 (4) The one-third of the license tax on liquor  
 16 retained by the state shall be deposited with the state  
 17 treasurer to the credit of the department of institutions  
 18 each quarter for the treatment, rehabilitation, and  
 19 prevention of alcoholism as approved by the state."

20 Section 6. Section 16-2-101, MCA, is amended to read:

21 "16-2-101. Establishment of state liquor stores --  
 22 kinds and prices of liquor. (1) The department shall  
 23 establish and maintain one or more stores, to be known as  
 24 "state liquor stores", as the department finds feasible for  
 25 the ~~state wholesaling~~ of liquor to retail liquor licensees in

1 accordance with the provisions of this code and the rules  
 2 made thereunder. The stores shall be classified according to  
 3 the volume of business which each store does each fiscal  
 4 year. The volume of business to be used in figuring each  
 5 store's classification shall be the volume of business done  
 6 by the store to be classified during the immediate past  
 7 fiscal year.

8 (2) Stores shall be classified as follows:

9 (a) Stores having done a business of \$450,000 or over  
 10 shall be "class A" stores.

11 (b) Stores having done a business of \$140,000 and up  
 12 to \$450,000 shall be "class B" stores.

13 (c) All stores having done a business of less than  
 14 \$140,000 shall be "class C" stores.

15 (3) In opening new stores the department shall  
 16 estimate the volume of business which said store will do the  
 17 first year and classify said store according to the estimate  
 18 of business.

19 (4) The department shall enter into an agency  
 20 agreement or employ the necessary help to operate said  
 21 stores and shall designate the duties to be performed by the  
 22 agent or employees.

23 (5) The department may from time to time fix the  
 24 prices at which the various classes, varieties, and brands  
 25 of liquor may be sold, and prices shall be the same at all

1 state stores."

2 Section 7. Section 16-2-201, MCA, is amended to read:

3 "16-2-201. Reduction for quantity sales of liquor.

4 Reduction of 5% of the ~~retail~~ wholesale price of liquor sold

5 at the state liquor store shall be made by the department

6 for sales of liquor to any person purchasing liquor in

7 unbroken case lots. No other reduction shall be made by the

8 department for quantity sales of liquor."

... -End-

## STATE OF MONTANA

REQUEST NO. 281-79

## FISCAL NOTE

Form BD-15

In compliance with a written request received February 7, 19 79, there is hereby submitted a Fiscal Note for House Bill 631 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

This proposed bill removes the state from the retail liquor business.

ASSUMPTIONS

- (a) The Liquor Division will continue its present pricing policy (i.e., the markup percentage which is being used at the present time will continue in effect under the proposed law).
- (b) It is assumed that the Liquor Division will be able to break its leases on an unspecified number of retail stores without additional cost or penalty.
- (c) If all current store locations were to continue to operate as wholesale liquor stores, then it is assumed that operating expenses would be unaffected by the proposed law.
- (d) If all current store locations were to be closed as state liquor stores, and if the Helena warehouse were to be operated as the single wholesale distribution point for the entire state, then it is assumed that total operating expenses for the Liquor Division would be reduced by 63.4%.
- (e) The Department of Revenue projection of liquor receipts and expenditures for the 80-81 biennium is the basis for comparison.
- (f) It is assumed that the same volume of alcoholic beverages would be sold in Montana during FY80 and FY81, regardless of which law obtains, present or proposed.

FISCAL IMPACT

	<u>FY 80</u>	<u>FY 81</u>
Liquor Excise Tax		
under current law	\$6.030 M	\$6.313 M
under proposed law	<u>\$5.752 M to \$5.820 M</u>	<u>\$6.015 M to \$6.093 M</u>
Estimated Decrease	<u>(\$0.210 M to \$0.278 M)</u>	<u>(\$0.220 M to \$0.298 M)</u>
Liquor License Tax		
under current law	\$3.769 M	\$3.946 M
under proposed law	<u>\$3.595 M to \$3.638 M</u>	<u>\$3.760 M to \$3.808 M</u>
Estimated Decrease	<u>(\$0.131 M to \$0.174 M)</u>	<u>(\$0.138 M to \$0.186 M)</u>
Net Profits from		
Liquor Merchandising		
under current law	\$4.874 M	\$4.837 M
under proposed law	<u>\$3.562 M to \$7.210 M</u>	<u>\$3.461 M to \$7.398 M</u>
Estimated Impact	<u>(\$1.312 M) to \$2.336 M</u>	<u>(\$1.376 M) to \$2.561 M</u>

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: \_\_\_\_\_

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FISCAL IMPACT (Cont.)

	<u>FY 80</u>	<u>FY 81</u>
Total Revenue		
under current law	\$14.673 M	\$15.096 M
under proposed law	\$13.020 M to \$16.557 M	\$13.362 M to \$17.173 M
Estimated Impact	(\$ 1.653 M) to \$ 1.884 M	(\$ 1.734 M) to \$ 2.077 M

FUND INFORMATION

General Fund		
under current law	\$10.904 M	\$11.150 M
under proposed law	\$ 9.382 M to \$12.962 M	\$ 9.554 M to \$13.413 M
Estimated Impact	(\$ 1.522 M) to \$ 2.058 M	(\$ 1.596 M) to \$ 2.263 M

Allocated to Local Governments		
under current law	\$ 2.513 M	\$ 2.631 M
under proposed law	\$ 2.397 M to \$ 2.425 M	\$ 2.507 M to \$ 2.539 M
Estimated Decrease	(\$ 0.088 M to \$ 0.116 M)	(\$ 0.092 M to \$ 0.124 M)

State Alcoholism Treatment Program		
under current law	\$ 1.256 M	\$ 1.315 M
under proposed law	\$ 1.198 M to \$ 1.213 M	\$ 1.253 M to \$ 1.269 M
Estimated Decrease	(\$ 0.043 M to \$ 0.058 M)	(\$ 0.046 M to \$ 0.062 M)

EFFECT ON LOCAL GOVERNMENTS

Local Government Share of Liquor License Tax:

	<u>FY 80</u>		<u>FY 81</u>	
	<u>Present</u>	<u>Proposed</u>	<u>Present</u>	<u>Proposed</u>
Cities & Towns	1.256 M	1.198 M - 1.213 M	1.315 M	1.253 M - 1.269 M
County Alcoholism Programs	1.077 M	1.027 M - 1.039 M	1.127 M	1.074 M - 1.088 M
General County Use	0.179 M	0.171 M - 0.173 M	0.188 M	0.179 M - 0.181 M
Total	2.512 M	2.396 M - 2.425 M	2.630 M	2.506 M - 2.538 M

PREPARED BY DEPARTMENT OF REVENUE

*Richard L. Franzen*  
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2/15/79