

CHAPTER NO. 699

SENATE BILL NO. 99

INTRODUCED BY GOODOVER, FABREGA, MOORE, TURNAGE,  
O'CONNELL, MATHERS, GRAHAM, NATHE, MENAHAN, METCALF,  
ROSENTHAL, GILLIGAN, ROTH, RYAN, SCULLY, MANUEL,  
STAIGMILLER, MEYER, KOLSTAD

BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

IN THE SENATE

January 15, 1979	Introduced and referred to Committee on Taxation.
January 16, 1979	Rereferred to Committee on Business and Industry.  Fiscal note requested.
January 22, 1979	Fiscal note returned.
February 2, 1979	Committee minority recommend bill do pass.  Minority report adopted. (32 aye - 18 nay)
February 3, 1979	Printed and placed on members' desks.
February 5, 1979	Motion pass consideration until February 7, 1979.
February 6, 1979	On motion taken from second reading on rereferred to Committee on Business and Industry.
February 10, 1979	Statement of Intent adopted.  Committee recommend bill do pass as amended. Report adopted.
February 13, 1979	Printed and placed on members' desks.
February 14, 1979	Second reading, do pass as amended.
February 16, 1979	Considered correctly engrossed.

February 17, 1979

Third reading, passed.  
Transmitted to second house.

IN THE HOUSE

February 19, 1979

Introduced and referred  
to Committee on Taxation.

April 16, 1979

Committee recommend bill  
be concurred in as amended.  
Report adopted.

April 18, 1979

Second reading, concurred in  
as amended.

Third reading, concurred in  
as amended.

IN THE SENATE

April 19, 1979

Returned from second house.  
Concurred in as amended.  
Senate rejects House amendments.

On motion Free Joint Conference  
Committee requested.

Free Joint Conference Committee  
appointed.

April 20, 1979

Free Joint Conference  
Committee reported.

On motion rules suspended.  
Bill referred to second reading  
for consideration this day.

Second reading, adopted.

Third reading, adopted.

Adopted by second house.

Sent to enrolling.

Reported correctly enrolled.

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BILL NO. *99*

INTRODUCED BY *Senators Eugene Mann, Turner O'Connell, Nathan Mansham, Mitcalf, John Haigwill, Manuel Meyer, Justice Bell, R. H. Ryan, Sully*

BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE THE DEPARTMENT OF REVENUE TO BUY, IMPORT, AND SELL TABLE WINE; AMENDING SECTIONS 1, 2, 4, AND 5 OF INITIATIVE NO. 81; AND SECTIONS 16-1-302, 16-1-303, AND 16-1-304, MCA."

BE ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 1 of Initiative No. 81 is amended to read:

"Section 1. There is a new section in Title 4, ~~BCA~~ ~~1947~~ 16, MCA, that reads as follows:

The public policy of the state of Montana is to ~~retain a complete monopoly by the state over the acquisition, importation and distribution of wine containing more than 14% alcohol by volume but to maintain a system for the importation and sale of wine by the state through state liquor facilities and provide for, regulate, and control the acquisition, importation, and distribution of table wine containing not more than 14% alcohol by volume in a manner paralleling the regulation and control of importation, acquisition and distribution of beer within this state by licensed wine distributors and the state.~~ When the words

1 "table wine" are used in this act in either the singular or  
2 plural they refer only to wine containing not more than 14%  
3 alcohol by volume."

4 Section 2. Section 2 of Initiative No. 81 is amended  
5 to read:

6 "Section 2. Section 4-1-107, BCA 1947, is amended to  
7 read as follows:

8 "4-1-107. Definitions. As used in this code:

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

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

14 "(3) 'Alcoholic beverage' means a compound produced  
15 and sold for human consumption as a drink that contains more  
16 than one-half of one percent (0.5%) of alcohol by volume.

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

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

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

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

25 "(8) 'Industrial use' means a use described as

1 industrial use by the Federal Alcohol Administration Act and  
2 the federal rules and regulations of 27 CFR.

3       "(9) 'Liquor' means an alcoholic beverage except beer  
4 and table wine.

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

14       "(11) 'Package' means a container or receptacle used  
15 for holding an alcoholic beverage.

16       "(12) 'Proof gallon' means a U.S. gallon of liquor at  
17 sixty degrees on the Fahrenheit scale that contains fifty  
18 percent (50%) of alcohol by volume.

19       "(13) 'Public place' means a place, building, or  
20 conveyance to which the public has or may be permitted to  
21 have access and any place of public resort.

22       "(14) 'Residence' means a building, part of a building  
23 where a person resides, but does not include any part of a  
24 building that is not actually and exclusively used as a  
25 private residence.

1       "(15) 'Rules and regulations' means rules and  
2 regulations published by the department pursuant to this  
3 act.

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

8       "(17) 'State liquor store' means a retail store  
9 operated by the department in accordance with this code for  
10 the purpose of selling distilled spirits and wines  
11 ~~containing more than 24 percent by volume.~~

12       "(18) '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       "(19) 'Warehouse' means a building or structure owned  
19 or operated by a licensed wholesaler for the receiving,  
20 storage and distribution of beer or table wine as permitted  
21 by this code.

22       "(20) 'Wine' means an alcoholic beverage made from the  
23 normal alcoholic fermentation of the juice of sound, ripe,  
24 fruit or other agricultural products without addition or  
25 abstraction, except as may occur in the usual cellar

1 treatment of clarifying and aging and that contains not less  
 2 than seven percent (7%) nor more than twenty-four percent  
 3 (24%) of alcohol by volume. Wine may be aselicitated to  
 4 correct natural deficiencies, sweetened and fortified in  
 5 accordance with applicable federal regulations and the  
 6 customs and practices of the industry. Other alcoholic  
 7 beverages not defined as above but made in the manner of  
 8 wine, labeled and sold as wine in accordance with federal  
 9 regulations are also wine.

10 "~~(21) 'Table wine' means wine as defined above which~~  
 11 ~~contains not more than 18% alcohol by volume.~~"

12 Section 3. Section 4 of Initiative No. 81 is amended  
 13 to read:

14 "Section 4. There is a new section in Title 4, ~~RCM~~  
 15 ~~4947 16, RCM~~, that reads as follows:

16 Wine distributor's license — records. (1) Any person  
 17 desiring to sell and distribute table wine at wholesale to  
 18 retailers under the provisions of this code shall apply to  
 19 the department of revenue for a license to do so and shall  
 20 tender with his application the annual license fee of \$400  
 21 and the department may issue licenses to qualified  
 22 applicants in accordance with the provisions of this code.  
 23 All table wine distributors' licenses issued in any year  
 24 shall expire on the 30th day of June at midnight of such  
 25 year. No license fee may be imposed upon table wine

1 distributors by a municipality or any other political  
 2 subdivision of the state. The license shall be at all times  
 3 prominently displayed in the place of business of such table  
 4 wine distributor.

5 To qualify for a table wine distributor's license the  
 6 applicant shall be a resident of Montana; provided, however,  
 7 any individual or partnership which has been licensed as a  
 8 table wine distributor may, upon incorporation in accordance  
 9 with the laws of Montana, transfer such license to the  
 10 corporation if a majority of the capital stock thereof is  
 11 held by said individual or the members of said partnership;  
 12 or if applicant is a foreign corporation said corporation  
 13 shall be authorized to do business in Montana; and said  
 14 applicant shall have a fixed place of business, sufficient  
 15 capital, the facilities, storehouse, receiving house or  
 16 warehouse for the receiving of, storage, handling, and  
 17 moving of table wine in large and jobbing quantities for  
 18 distribution and sale in original packages to other licensed  
 19 table wine distributors or licensed retailers. Each table  
 20 wine distributor shall be entitled to only one (1) wholesale  
 21 table wine license, which license shall be issued for his  
 22 principal place of business in Montana; a duplicate license  
 23 may be issued for one (1) subwarehouse only in Montana for  
 24 each table wine distributor's license, which said duplicate  
 25 license shall at all times be prominently displayed at said

1 subwarehouse. A table wine distributor may also hold a  
2 license to sell beer at wholesale but shall not hold or have  
3 any interest, direct or indirect, in any license to sell  
4 beer, wine, or liquor at retail.

5 ~~All with the exception of table wine purchased by the~~  
6 ~~department and shipped to its warehouse, all~~ table wine  
7 manufactured outside of the state of Montana and shipped  
8 into Montana shall be consigned to and shipped to a licensed  
9 table wine distributor, and by him unloaded into his  
10 warehouse in Montana or subwarehouse in Montana; said  
11 distributor shall distribute said table wine from such  
12 warehouse or subwarehouse; said distributor shall keep  
13 records at his principal place of business of all table wine  
14 including the name or kind received, on hand, sold and  
15 distributed; said records may at all times be inspected by  
16 any member or representative of the department of revenue;  
17 any table wine which has been shipped into Montana and has  
18 not been shipped to and distributed from a warehouse of a  
19 licensed table wine distributor ~~or the department~~ shall be  
20 seized by any peace officer or representative of the  
21 department and may be confiscated in the manner as provided  
22 for the confiscation of intoxicating liquor."

23 Section 4. Section 5 of Initiative No. 81 is amended  
24 to read:

25 "Section 5. There is a new section in Title 4, ~~RCM~~

1 ~~1947 16, RCM~~, that reads as follows:

2 To whom table wine distributor may sell. A table wine  
3 distributor may sell and deliver table wine purchased or  
4 acquired by him to another table wine distributor, retailer,  
5 or common carrier which holds a license issued by the  
6 department of revenue, ~~or to the department~~. It shall be  
7 unlawful for any table wine distributor to sell, deliver or  
8 give away any table wine to be consumed on such  
9 distributor's premises or to give, sell, deliver, or  
10 distribute any table wine purchased or acquired by him to  
11 the public."

12 Section 5. Section 9 of Initiative No. 81 is amended  
13 to read:

14 "Section 9. There is a new section in Title 4, ~~RCM~~  
15 ~~1947 16, RCM~~, that reads as follows:

16 Tax on Wine. (1) A tax of seventy-five cents (75¢) per  
17 gallon is hereby levied and imposed on table wine imported  
18 by any table wine distributor, ~~and such tax on the~~  
19 ~~department~~.

20 (2) ~~The tax on table wine imported by a table wine~~  
21 ~~distributor~~ shall be paid by the table wine distributor by  
22 the 15th of the month following receipt of the table wine at  
23 the table wine distributor's warehouse.

24 (3) ~~The tax on table wine imported by the department~~  
25 ~~shall be collected at the time of sale, be retained in a~~

1 ~~separate account, and be deposited with the state treasurer~~  
 2 ~~to the credit of the general fund not later than the 30th~~  
 3 ~~day of the month following the sale.~~

4 (4) The tax computed and paid in accordance with this  
 5 section shall be the only tax imposed by the state or any of  
 6 its subdivisions, including cities and towns, and it shall  
 7 be distributed in accordance with applicable statutes and  
 8 regulations."

9 ~~NEW SECTION.~~ Section 6. Retail selling price on table  
 10 wine sold by the state. The retail selling price at which  
 11 table wine is sold by the department shall be computed by  
 12 adding to the cost of table wine the state markup as  
 13 designated by the department.

14 Section 7. Section 16-1-302, MCA, is amended to read:  
 15 "16-1-302. Functions, powers, and duties of  
 16 department. The department shall have the following  
 17 functions, duties, and powers:

18 (1) to buy, import, have in its possession for sale,  
 19 and sell liquors ~~and table wine~~ in the manner set forth in  
 20 this code;

21 (2) to control the possession, sale, and delivery of  
 22 liquors in accordance with the provisions of this code;

23 (3) to determine the municipalities within which state  
 24 liquor stores shall be established throughout the state and  
 25 the situation of the stores within every such municipality;

1 (4) to lease, furnish, and equip any building or land  
 2 required for the operation of this code;

3 (5) to buy or lease all plants and equipment it may  
 4 consider necessary and useful in carrying into effect the  
 5 objects and purposes of this code;

6 (6) to employ store managers and also every officer,  
 7 investigator, clerk, or other employee required for the  
 8 operation or carrying out of this code and to dismiss the  
 9 same, fix their salaries or remuneration, assign them their  
 10 title, define their respective duties and powers, and to  
 11 engage the service of experts and persons engaged in the  
 12 practice of a profession, if deemed expedient;

13 (7) to determine the nature, form, and capacity of all  
 14 packages to be used for containing liquor kept or sold under  
 15 this code;

16 (8) to grant and issue licenses under and in pursuance  
 17 to this code;

18 (9) without in any way limiting or being limited by  
 19 the foregoing, to do all such things as are deemed necessary  
 20 or advisable by the department for the purpose of carrying  
 21 into effect the provisions of this code or the rules made  
 22 thereunder."

23 Section 8. Section 16-1-303, MCA, is amended to read:

24 "16-1-303. Department rules. (1) The department may  
 25 make such rules not inconsistent with this code as to the

1 department sees necessary for carrying out the provisions of  
2 this code and for the efficient administration thereof.

3 (2) Without thereby limiting the generality of the  
4 provisions contained in subsection (1) hereof, it is  
5 declared that the power of the department to make rules in  
6 the manner set out in that subsection shall extend to and  
7 include the following:

8 (a) regulating the equipment and management of state  
9 stores and warehouses in which liquor ~~or table wine~~ is kept  
10 or sold and prescribing the books and records to be kept  
11 therein;

12 (b) prescribing the duties of the employees of the  
13 liquor division and regulating their conduct while in the  
14 discharge of their duties;

15 (c) governing the purchase of liquor and the  
16 furnishing of liquor to state stores established under this  
17 code;

18 (d) determining the classes, varieties, and brands of  
19 liquor ~~and table wine~~ to be kept for sale at any state  
20 store;

21 (e) prescribing, subject to this code, the hours  
22 during which state liquor stores shall be kept open for the  
23 sale of alcoholic beverages;

24 (f) providing for the issuing and distributing of  
25 price lists showing the price to be paid by purchasers for

1 each class, variety, or brand of liquor ~~and table wine~~ kept  
2 for sale under this code;

3 (g) prescribing an official seal which shall be  
4 attached to every package of liquor sold or sealed under  
5 this code;

6 (h) prescribing forms to be used for the purpose of  
7 this code or of the rules made thereunder and the terms and  
8 conditions in permits and licenses issued and granted under  
9 this code;

10 (i) prescribing the fees of records of purchase of  
11 liquor ~~and table wine~~ and the reports to be made thereon to  
12 the division and providing for inspection of the records so  
13 kept;

14 (j) prescribing the manner of giving and serving  
15 notices required by this code or the rules thereunder;

16 (k) prescribing the fees payable in respect of permits  
17 and licenses issued under this code for which no fees are  
18 prescribed in this code and prescribing the fees for  
19 anything done or permitted to be done under the rules made  
20 thereunder;

21 (l) prescribing, subject to the provisions of this  
22 code, the conditions and qualifications necessary for the  
23 obtaining of a liquor or beer license and the books and  
24 records to be kept and the returns to be made by the  
25 licensees and providing for the inspection of such licensed



1 premises;

2 (m) specifying and describing the place and the manner  
3 in which liquor or beer may be lawfully kept or stored;

4 (n) specifying and regulating the time and periods  
5 when and the manner, methods, and means by which vendors and  
6 brewers shall deliver liquor under this code and the time  
7 and periods when and the manner, methods, and means by which  
8 liquor, under this code, may be lawfully conveyed or  
9 carried;

10 (o) governing the conduct, management, and equipment  
11 of any premises licensed to sell liquor or beer under this  
12 code;

13 (p) providing for the imposition and collection of  
14 taxes and making rules respecting returns, accounting, and  
15 payment of the taxes to the department.

16 (3) Whenever it is provided in this code that any act,  
17 matter, or thing may be done if permitted or authorized by  
18 the rules or may be done in accordance with the rules or as  
19 provided by the rules, the department, subject to the  
20 restrictions set out in subsection (1) hereof, shall have  
21 the power to make rules respecting such act, matter, or  
22 thing."

23 Section 9. Section 16-1-304, MCA, is amended to read:

24 "16-1-304. Prohibited acts within division. (1) No  
25 officer or employee of the liquor division, including those

1 engaged in the sale of liquor ~~or table wine~~ at the various  
2 state liquor stores, may be directly or indirectly  
3 interested or engaged in any other business or undertaking  
4 dealing in liquor ~~or table wine~~, whether as owner, part  
5 owner, partner, member of syndicate, shareholder, agent, or  
6 employee and whether for his own benefit or in a fiduciary  
7 capacity for some other person.

8 (2) No member or employee of the division or any  
9 employee of the state may solicit or receive directly or  
10 indirectly any commission, remuneration, or gift whatsoever  
11 from any person or corporation having sold, selling, or  
12 offering liquor ~~or table wine~~ for sale to the state or  
13 division pursuant to this code.

14 (3) No person selling or offering for sale to or  
15 purchasing liquor ~~or table wine~~ from the state liquor  
16 division may either directly or indirectly offer to pay any  
17 commission, profit, or remuneration or make any gift to any  
18 member or employee of the division, to any employee of the  
19 state, or to anyone on behalf of such member or employee.

20 (4) The prohibition contained in subsection (3) of  
21 this section does not prohibit the division from receiving  
22 samples of liquor ~~or table wine~~ for the purpose of chemical  
23 testing, subject to the following limitations:

24 (a) Each manufacturer, distiller, compounder,  
25 rectifier, importer, or wholesale distributor or any other

1 person, firm, or corporation proposing to sell any liquor or  
 2 table wine to the Montana liquor division shall submit,  
 3 without cost to the division prior to the original purchase,  
 4 an analysis of each brand and may submit a representative  
 5 sample not exceeding 25 fluid ounces of such merchandise to  
 6 the division.

7 (b) When a brand of liquor ~~or a table wine~~ has been  
 8 accepted for testing by the division, the division shall  
 9 forward the sample, unopened and in its entirety, to a  
 10 qualified chemical laboratory for analysis.

11 (c) The division shall maintain written records of all  
 12 samples received. The records shall show the brand name,  
 13 amount and from whom received, date received, the laboratory  
 14 or chemist to whom forwarded, the division's action on the  
 15 brand, and the person to whom delivered or other final  
 16 disposition of the sample.

17 (5) No liquor, wine, or other alcoholic beverage may  
 18 be withdrawn from the regular warehouse inventory or from  
 19 the state liquor stores of the Montana liquor division for  
 20 any purpose other than sale at the prevailing state retail  
 21 prices or for destroying damaged or defective merchandise.  
 22 The division shall maintain a written record including the  
 23 type, brand, container size, number of bottles or other  
 24 units, signatures of witnesses, and method of destruction or  
 25 other disposition of damaged or defective warehouse or state

1 store merchandise."

-End-

## FISCAL NOTE

Form BD-15

In compliance with a written request received January 16, 1979, there is hereby submitted a Fiscal Note for Senate Bill 99 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 bill authorizes the Department of Revenue to buy, import, and sell table wine.

ASSUMPTIONS

- a) Implementation of Initiative 81, without modification, is assumed to result in a doubling of the total quantity of table wines sold in Montana from FY78 levels.
- b) 156,000 gallons of table wines will be sold annually by the state under the proposed law.
- c) The state's pricing policy on table wines sold through its liquor stores under the proposed law will be established so that:
  - (i) the average markup percentage will not be less than the FY78 level, and
  - (ii) the net revenue per gallon received by the state will not exceed the FY78 level.
- d) The total quantity of table wines sold in Montana may or may not be affected by adoption of the proposed law.
- e) The total number of state liquor stores, and of liquor division FTE s, will remain at present levels throughout the 80-81 biennium, regardless of whether the proposed law or the present law (including Initiative 81) obtains.

FISCAL IMPACT

	<u>FY80</u>	<u>FY81</u>
Table Wine Tax		
under current law	\$ 1,172,900	\$ 1,172,900
under proposed law	<u>1,172,900-1,289,900</u>	<u>1,172,900-1,289,900</u>
Estimated Increase	<u>0-117,000</u>	<u>0-117,000</u>
Net Profits From Table Wine Sales		
under present law	0	0
under proposed law	<u>469,500-676,600</u>	<u>469,500-676,600</u>
Estimated Increase	<u>469,500-676,600</u>	<u>469,500-676,600</u>
TOTAL REVENUE		
under current law	1,172,900	1,172,900
under proposed law	<u>1,642,400-1,966,500</u>	<u>1,642,400-1,966,500</u>
Estimated Increase	<u>\$ 469,500-793,600</u>	<u>\$ 469,500-793,600</u>

BUDGET DIRECTOR

Office of Budget and Program Planning

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

The estimated increase in revenue will accrue to the State General Fund.

STATE OF MONTANA

REQUEST NO. 18-79

FISCAL NOTE

Form BD 15

In compliance with a written request received January 16, 19 79, there is hereby submitted a Fiscal Note for Senate Bill 99 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

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AFFECT ON LOCAL GOVERNMENTS

No local impact.

Note: Initiative 81 provided for a 75¢/gallon tax on table wines, and specified that this tax "...shall be the only tax imposed by the state or any of its subdivisions, including cities and towns...". Before Initiative 81, the state imposed a 10% license tax and a 16% excise tax on the retail selling price of wine. Two-thirds of the 10% license tax was distributed to local governments. Under either Initiative 81 in its present form, or as amended by the proposed law, local governments will receive no portion of the wine tax.

TECHNICAL NOTE

Section 5 of the bill contains a provision which poses considerable administrative difficulty, in its stipulation that wine tax revenue be handled in a separate and particular manner.

Note: Before Initiative 81, the state imposed a 10% license tax and a 16% excise tax on the retail selling price of wine. The 10% license tax was allocated among various units of local government units, and to the state alcoholism treatment program. The 16% excise tax was distributed to the state general fund. Under Initiative 81, both in its present form or as it has been proposed to be amended by this bill, all of the proceeds from the wine tax will go to the general fund.

PREPARED BY DEPARTMENT OF REVENUE

*Richard L. Drury*  
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1/22/79

Approved by Committee  
on Business and Industry  
*Minority*

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INTRODUCED BY *Annex* BILL NO. *99*  
*Donovan* *George* *Mark* *Turner*  
*O'Connell*  
BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE *Mark*  
*NATHC* *Manahan* *Mitcalf* *Scott* *Gelley* *Richard* *Sully*  
*Stargis* *Manuel* *Meyer* *Kotstad*

A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE THE DEPARTMENT OF REVENUE TO BUY, IMPORT, AND SELL TABLE WINE; AMENDING SECTIONS 1, 2, 4, AND 5 OF INITIATIVE NO. 81; AND SECTIONS 16-1-302, 16-1-303, AND 16-1-304, MCA."

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The public policy of the state of Montana is to ~~maintain~~ maintain a complete monopoly by the state over the acquisition, importation and distribution of wine containing more than 14% alcohol by volume but to ~~maintain a system for the importation and sale of wine by the state through state liquor facilities and provide for, regulate, and control the acquisition, importation, and distribution of table wine containing not more than 14% alcohol by volume in a manner paralleling the regulation and control of importation, acquisition and distribution of beer within this state by licensed wine distributors and the state.~~ When the words

1 "table wine" are used in this act in either the singular or  
2 plural they refer only to wine containing not more than 14%  
3 alcohol by volume."

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5 to read:

6 "Section 2. Section 4-1-107, RCM 1947, is amended to  
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10 department and a person appointed to sell liquor as a  
11 commission merchant, rather than as an employee.

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

14 "(3) 'Alcoholic beverage' means a compound produced  
15 and sold for human consumption as a drink that contains more  
16 than one-half of one percent (0.5%) of alcohol by volume.

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

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

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

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

25 "(8) 'Industrial use' means a use described as

1 industrial use by the Federal Alcohol Administration Act and  
2 the federal rules and regulations of 27 CFR.

3 "(9) 'Liquor' means an alcoholic beverage except beer  
4 and table wine.

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

14 "(11) 'Package' means a container or receptacle used  
15 for holding an alcoholic beverage.

16 "(12) 'Proof gallon' means a U.S. gallon of liquor at  
17 sixty degrees on the Fahrenheit scale that contains fifty  
18 percent (50%) of alcohol by volume.

19 "(13) 'Public place' means a place, building, or  
20 conveyance to which the public has or may be permitted to  
21 have access and any place of public resort.

22 "(14) 'Residence' means a building, part of a building  
23 where a person resides, but does not include any part of a  
24 building that is not actually and exclusively used as a  
25 private residence.

1 "(15) 'Rules and regulations' means rules and  
2 regulations published by the department pursuant to this  
3 act.

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

8 "(17) 'State liquor store' means a retail store  
9 operated by the department in accordance with this code for  
10 the purpose of selling distilled spirits and wines  
11 containing more than 14% alcohol by volume.

12 "(18) '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 "(19) 'Warehouse' means a building or structure owned  
19 or operated by a licensed wholesaler for the receiving,  
20 storage and distribution of beer or table wine as permitted  
21 by this code.

22 "(20) 'Wine' means an alcoholic beverage made from the  
23 normal alcoholic fermentation of the juice of sound, ripe,  
24 fruit or other agricultural products without addition or  
25 abstraction, except as may occur in the usual cellar

1 treatment of clarifying and aging and that contains not less  
 2 than seven percent (7%) nor more than twenty-four percent  
 3 (24%) of alcohol by volume. Wine may be ameliorated to  
 4 correct natural deficiencies, sweetened and fortified in  
 5 accordance with applicable federal regulations and the  
 6 customs and practices of the industry. Other alcoholic  
 7 beverages not defined as above but made in the manner of  
 8 wine, labeled and sold as wine in accordance with federal  
 9 regulations are also wine.

10 "(21) 'Table wine' means wine as defined above which  
 11 contains not more than 14% alcohol by volume."

12 Section 3. Section 4 of Initiative No. 81 is amended  
 13 to read:

14 "Section 4. There is a new section in Title 4~~v~~-REM  
 15 1947 16, MCA, that reads as follows:

16 Wine distributor's license -- records. (1) Any person  
 17 desiring to sell and distribute table wine at wholesale to  
 18 retailers under the provisions of this code shall apply to  
 19 the department of revenue for a license to do so and shall  
 20 tender with his application the annual license fee of \$400  
 21 and the department may issue licenses to qualified  
 22 applicants in accordance with the provisions of this code.  
 23 All table wine distributors' licenses issued in any year  
 24 shall expire on the 30th day of June at midnight of such  
 25 year. No license fee may be imposed upon table wine

1 distributors by a municipality or any other political  
 2 subdivision of the state. The license shall be at all times  
 3 prominently displayed in the place of business of such table  
 4 wine distributor.

5 To qualify for a table wine distributor's license the  
 6 applicant shall be a resident of Montana; provided, however,  
 7 any individual or partnership which has been licensed as a  
 8 table wine distributor may, upon incorporation in accordance  
 9 with the laws of Montana, transfer such license to the  
 10 corporation if a majority of the capital stock thereof is  
 11 held by said individual or the members of said partnership;  
 12 or if applicant is a foreign corporation said corporation  
 13 shall be authorized to do business in Montana; and said  
 14 applicant shall have a fixed place of business, sufficient  
 15 capital, the facilities, storehouse, receiving house or  
 16 warehouse for the receiving of, storage, handling, and  
 17 moving of table wine in large and jobbing quantities for  
 18 distribution and sale in original packages to other licensed  
 19 table wine distributors or licensed retailers. Each table  
 20 wine distributor shall be entitled to only one (1) wholesale  
 21 table wine license, which license shall be issued for his  
 22 principal place of business in Montana; a duplicate license  
 23 may be issued for one (1) subwarehouse only in Montana for  
 24 each table wine distributor's license, which said duplicate  
 25 license shall at all times be prominently displayed at said

1 subwarehouse. A table wine distributor may also hold a  
2 license to sell beer at wholesale but shall not hold or have  
3 any interest, direct or indirect, in any license to sell  
4 beer, wine, or liquor at retail.

5 ~~A++ With the exception of table wine purchased by the~~  
6 ~~department and shipped to its warehouse, all~~ table wine  
7 manufactured outside of the state of Montana and shipped  
8 into Montana shall be consigned to and shipped to a licensed  
9 table wine distributor, and by him unloaded into his  
10 warehouse in Montana or subwarehouse in Montana; said  
11 distributor shall distribute said table wine from such  
12 warehouse or subwarehouse; said distributor shall keep  
13 records at his principal place of business of all table wine  
14 including the name or kind received, on hand, sold and  
15 distributed; said records may at all times be inspected by  
16 any member or representative of the department of revenue;  
17 any table wine which has been shipped into Montana and has  
18 not been shipped to and distributed from a warehouse of a  
19 licensed table wine distributor ~~or the department~~ shall be  
20 seized by any peace officer or representative of the  
21 department and may be confiscated in the manner as provided  
22 for the confiscation of intoxicating liquor."

23 Section 4. Section 5 of Initiative No. 81 is amended  
24 to read:

25 "Section 5. There is a new section in Title 4v-REM

1 1947 ~~16~~ MCA, that reads as follows:

2 To whom table wine distributor may sell. A table wine  
3 distributor may sell and deliver table wine purchased or  
4 acquired by him to another table wine distributor, retailer,  
5 or common carrier which holds a license issued by the  
6 department of revenue, ~~or to the department~~. It shall be  
7 unlawful for any table wine distributor to sell, deliver or  
8 give away any table wine to be consumed on such  
9 distributor's premises or to give, sell, deliver, or  
10 distribute any table wine purchased or acquired by him to  
11 the public."

12 Section 5. Section 9 of Initiative No. 81 is amended  
13 to read:

14 "Section 9. There is a new section in Title 4v-REM  
15 1947 ~~16~~ MCA, that reads as follows:

16 Tax on Wine. (1) A tax of seventy-five cents (75¢) per  
17 gallon is hereby levied and imposed on table wine imported  
18 by any table wine distributor, ~~and such tax or the~~  
19 ~~department.~~

20 (2) ~~The tax on table wine imported by a table wine~~  
21 ~~distributor~~ shall be paid by the table wine distributor by  
22 the 15th of the month following receipt of the table wine at  
23 the table wine distributor's warehouse.

24 (3) ~~The tax on table wine imported by the department~~  
25 ~~shall be collected at the time of sale, be retained in a~~



1 separate account, and be deposited with the state treasurer  
 2 to the credit of the general fund not later than the 10th  
 3 day of the month following the sale.

4 (4) The tax computed and paid in accordance with this  
 5 section shall be the only tax imposed by the state or any of  
 6 its subdivisions, including cities and towns, and it shall  
 7 be distributed in accordance with applicable statutes and  
 8 regulations."

9 NEW SECTION. Section 6. Retail selling price on table  
 10 wine sold by the state. The retail selling price at which  
 11 table wine is sold by the department shall be computed by  
 12 adding to the cost of table wine the state markup as  
 13 designated by the department.

14 Section 7. Section 16-1-302, MCA, is amended to read:  
 15 "16-1-302. Functions, powers, and duties of  
 16 department. The department shall have the following  
 17 functions, duties, and powers:

18 (1) to buy, import, have in its possession for sale,  
 19 and sell liquors and table wine in the manner set forth in  
 20 this code;

21 (2) to control the possession, sale, and delivery of  
 22 liquors in accordance with the provisions of this code;

23 (3) to determine the municipalities within which state  
 24 liquor stores shall be established throughout the state and  
 25 the situation of the stores within every such municipality;

1 (4) to lease, furnish, and equip any building or land  
 2 required for the operation of this code;

3 (5) to buy or lease all plants and equipment it may  
 4 consider necessary and useful in carrying into effect the  
 5 objects and purposes of this code;

6 (6) to employ store managers and also every officer,  
 7 investigator, clerk, or other employee required for the  
 8 operation or carrying out of this code and to dismiss the  
 9 same, fix their salaries or remuneration, assign them their  
 10 title, define their respective duties and powers, and to  
 11 engage the service of experts and persons engaged in the  
 12 practice of a profession, if deemed expedient;

13 (7) to determine the nature, form, and capacity of all  
 14 packages to be used for containing liquor kept or sold under  
 15 this code;

16 (8) to grant and issue licenses under and in pursuance  
 17 to this code;

18 (9) without in any way limiting or being limited by  
 19 the foregoing, to do all such things as are deemed necessary  
 20 or advisable by the department for the purpose of carrying  
 21 into effect the provisions of this code or the rules made  
 22 thereunder."

23 Section 8. Section 16-1-303, MCA, is amended to read:

24 "16-1-303. Department rules. (1) The department may  
 25 make such rules not inconsistent with this code as to the

1 department seem necessary for carrying out the provisions of  
2 this code and for the efficient administration thereof.

3 (2) Without thereby limiting the generality of the  
4 provisions contained in subsection (1) hereof, it is  
5 declared that the power of the department to make rules in  
6 the manner set out in that subsection shall extend to and  
7 include the following:

8 (a) regulating the equipment and management of state  
9 stores and warehouses in which liquor or table wine is kept  
10 or sold and prescribing the books and records to be kept  
11 therein;

12 (b) prescribing the duties of the employees of the  
13 liquor division and regulating their conduct while in the  
14 discharge of their duties;

15 (c) governing the purchase of liquor and the  
16 furnishing of liquor to state stores established under this  
17 code;

18 (d) determining the classes, varieties, and brands of  
19 liquor and table wine to be kept for sale at any state  
20 store;

21 (e) prescribing, subject to this code, the hours  
22 during which state liquor stores shall be kept open for the  
23 sale of alcoholic beverages;

24 (f) providing for the issuing and distributing of  
25 price lists showing the price to be paid by purchasers for

1 each class, variety, or brand of liquor and table wine kept  
2 for sale under this code;

3 (g) prescribing an official seal which shall be  
4 attached to every package of liquor sold or sealed under  
5 this code;

6 (h) prescribing forms to be used for the purpose of  
7 this code or of the rules made thereunder and the terms and  
8 conditions in permits and licenses issued and granted under  
9 this code;

10 (i) prescribing the form of records of purchase of  
11 liquor and table wine and the reports to be made thereon to  
12 the division and providing for inspection of the records so  
13 kept;

14 (j) prescribing the manner of giving and serving  
15 notices required by this code or the rules thereunder;

16 (k) prescribing the fees payable in respect of permits  
17 and licenses issued under this code for which no fees are  
18 prescribed in this code and prescribing the fees for  
19 anything done or permitted to be done under the rules made  
20 thereunder;

21 (l) prescribing, subject to the provisions of this  
22 code, the conditions and qualifications necessary for the  
23 obtaining of a liquor or beer license and the books and  
24 records to be kept and the returns to be made by the  
25 licensees and providing for the inspection of such licensed

1 premises;

2 (m) specifying and describing the place and the manner  
3 in which liquor or beer may be lawfully kept or stored;

4 (n) specifying and regulating the time and periods  
5 when and the manner, methods, and means by which vendors and  
6 brewers shall deliver liquor under this code and the time  
7 and periods when and the manner, methods, and means by which  
8 liquor, under this code, may be lawfully conveyed or  
9 carried;

10 (o) governing the conduct, management, and equipment  
11 of any premises licensed to sell liquor or beer under this  
12 code;

13 (p) providing for the imposition and collection of  
14 taxes and making rules respecting returns, accounting, and  
15 payment of the taxes to the department.

16 (3) Whenever it is provided in this code that any act,  
17 matter, or thing may be done if permitted or authorized by  
18 the rules or may be done in accordance with the rules or as  
19 provided by the rules, the department, subject to the  
20 restrictions set out in subsection (1) hereof, shall have  
21 the power to make rules respecting such act, matter, or  
22 thing."

23 Section 9. Section 16-1-304, MCA, is amended to read:

24 "16-1-304. Prohibited acts within division. (1) No  
25 officer or employee of the liquor division, including those

1 engaged in the sale of liquor or table wine at the various  
2 state liquor stores, may be directly or indirectly  
3 interested or engaged in any other business or undertaking  
4 dealing in liquor or table wine, whether as owner, part  
5 owner, partner, member of syndicate, shareholder, agent, or  
6 employee and whether for his own benefit or in a fiduciary  
7 capacity for some other person.

8 (2) No member or employee of the division or any  
9 employee of the state may solicit or receive directly or  
10 indirectly any commission, remuneration, or gift whatsoever  
11 from any person or corporation having sold, selling, or  
12 offering liquor or table wine for sale to the state or  
13 division pursuant to this code.

14 (3) No person selling or offering for sale to or  
15 purchasing liquor or table wine from the state liquor  
16 division may either directly or indirectly offer to pay any  
17 commission, profit, or remuneration or make any gift to any  
18 member or employee of the division, to any employee of the  
19 state, or to anyone on behalf of such member or employee.

20 (4) The prohibition contained in subsection (3) of  
21 this section does not prohibit the division from receiving  
22 samples of liquor or table wine for the purpose of chemical  
23 testing, subject to the following limitations:

24 (a) Each manufacturer, distiller, compounder,  
25 rectifier, importer, or wholesale distributor or any other

1 person, firm, or corporation proposing to sell any liquor or  
 2 table wine to the Montana liquor division shall submit,  
 3 without cost to the division prior to the original purchase,  
 4 an analysis of each brand and may submit a representative  
 5 sample not exceeding 25 fluid ounces of such merchandise to  
 6 the division.

7 (b) When a brand of liquor or table wine has been  
 8 accepted for testing by the division, the division shall  
 9 forward the sample, unopened and in its entirety, to a  
 10 qualified chemical laboratory for analysis.

11 (c) The division shall maintain written records of all  
 12 samples received. The records shall show the brand name,  
 13 amount and from whom received, date received, the laboratory  
 14 or chemist to whom forwarded, the division's action on the  
 15 brand, and the person to whom delivered or other final  
 16 disposition of the sample.

17 (5) No liquor, wine, or other alcoholic beverage may  
 18 be withdrawn from the regular warehouse inventory or from  
 19 the state liquor stores of the Montana liquor division for  
 20 any purpose other than sale at the prevailing state retail  
 21 prices or for destroying damaged or defective merchandise.  
 22 The division shall maintain a written record including the  
 23 type, brand, container size, number of bottles or other  
 24 units, signatures of witnesses, and method of destruction or  
 25 other disposition of damaged or defective warehouse or state

1 store merchandise."

-End-

1 premises;

2 (m) specifying and describing the place and the manner  
3 in which liquor or beer may be lawfully kept or stored;

4 (n) specifying and regulating the time and periods  
5 when and the manner, methods, and means by which vendors and  
6 brewers shall deliver liquor under this code and the time  
7 and periods when and the manner, methods, and means by which  
8 liquor, under this code, may be lawfully conveyed or  
9 carried;

10 (o) governing the conduct, management, and equipment  
11 of any premises licensed to sell liquor or beer under this  
12 code;

13 (p) providing for the imposition and collection of  
14 taxes and making rules respecting returns, accounting, and  
15 payment of the taxes to the department.

16 (3) Whenever it is provided in this code that any act,  
17 matter, or thing may be done if permitted or authorized by  
18 the rules or may be done in accordance with the rules or as  
19 provided by the rules, the department, subject to the  
20 restrictions set out in subsection (1) hereof, shall have  
21 the power to make rules respecting such act, matter, or  
22 thing.\*

23 Section 9. Section 16-1-304, MCA, is amended to read:

24 "16-1-304. Prohibited acts within division. (1) No  
25 officer or employee of the liquor division, including those

1 engaged in the sale of liquor or table wine at the various  
2 state liquor stores, may be directly or indirectly  
3 interested or engaged in any other business or undertaking  
4 dealing in liquor or table wine, whether as owner, part  
5 owner, partner, member of syndicate, shareholder, agent, or  
6 employee and whether for his own benefit or in a fiduciary  
7 capacity for some other person.

8 (2) No member or employee of the division or any  
9 employee of the state may solicit or receive directly or  
10 indirectly any commission, remuneration, or gift whatsoever  
11 from any person or corporation having sold, selling, or  
12 offering liquor or table wine for sale to the state or  
13 division pursuant to this code.

14 (3) No person selling or offering for sale to or  
15 purchasing liquor or table wine from the state liquor  
16 division may either directly or indirectly offer to pay any  
17 commission, profit, or remuneration or make any gift to any  
18 member or employee of the division, to any employee of the  
19 state, or to anyone on behalf of such member or employee.

20 (4) The prohibition contained in subsection (3) of  
21 this section does not prohibit the division from receiving  
22 samples of liquor or table wine for the purpose of chemical  
23 testing, subject to the following limitations:

24 (a) Each manufacturer, distiller, compounder,  
25 rectifier, importer, or wholesale distributor or any other

1 person, firm, or corporation proposing to sell any liquor or  
2 table wine to the Montana liquor division shall submit,  
3 without cost to the division prior to the original purchase,  
4 an analysis of each brand and may submit a representative  
5 sample not exceeding 25 fluid ounces of such merchandise to  
6 the division.

7 (b) When a brand of liquor or table wine has been  
8 accepted for testing by the division, the division shall  
9 forward the sample, unopened and in its entirety, to a  
10 qualified chemical laboratory for analysis.

11 (c) The division shall maintain written records of all  
12 samples received. The records shall show the brand name,  
13 amount and from whom received, date received, the laboratory  
14 or chemist to whom forwarded, the division's action on the  
15 brand, and the person to whom delivered or other final  
16 disposition of the sample.

17 (5) No liquor, wine, or other alcoholic beverage may  
18 be withdrawn from the regular warehouse inventory or from  
19 the state liquor stores of the Montana liquor division for  
20 any purpose other than sale at the prevailing state retail  
21 prices or for destroying damaged or defective merchandise.  
22 The division shall maintain a written record including the  
23 type, brand, container size, number of bottles or other  
24 units, signatures of witnesses, and method of destruction or  
25 other disposition of damaged or defective warehouse or state

1 store merchandise."

-End-

1 rules to require customer prepayment for small individual  
2 orders.

3 STATEMENT OF INTENT RE: SB 99

4 A statement of intent is required for S.B. No. 99 in  
5 that it delegates rulemaking authority to the Department of  
6 Revenue in Section 6.

7 Section 6 of the bill expands the rulemaking powers of  
8 the department of revenue by authorizing the department to  
9 adopt rules on various aspects of marketing table wine.  
10 Montana liquor laws have traditionally given wide discretion  
11 and power to the state liquor control agency. This should  
12 also be the case for regulated wine handling. This statement  
13 is therefore not a comprehensive list of anticipated agency  
14 rules. If a problem not now foreseen arises in the wine  
15 handling area and the department can handle the problem with  
16 a rule, the legislature should expect the department to take  
17 the necessary action.

18 Rules that can presently be anticipated would deal with  
19 the manner in which distributors would sell to state stores  
20 and the retail markup to be applied in state stores. The  
21 department may require distributors to sell wine on invoices  
22 which are consistent with the department's recordkeeping  
23 systems. The state markup should not be so low as to create  
24 a competitive advantage for the state. The special order  
25 procedure in Section 9 may be implemented by department

Approved by Committee  
on Business and Industry

SENATE BILL NO. 99

INTRODUCED BY GOODOVER, FABREGA, MOORE, TURNAGE,  
O'CONNELL, MATHERS, GRAHAM, NATHE, MENAHAN, METCALF,  
ROSENTHAL, GILLIGAN, ROTH, RYAN, SCULLY, MANUEL,  
STAIGMILLER, MEYER, KOLSTAD

BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE THE  
DEPARTMENT OF REVENUE TO BUY, IMPORT, AND SELL TABLE WINE;  
~~ALLOCATING THE TAX ON WINE;~~ AMENDING SECTIONS 1, 2, 4~~7~~--AND  
5~~2~~ AND 9 OF INITIATIVE NO. 81; AND SECTIONS 16-1-302,  
16-1-303, AND 16-1-304, MCA."

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

Refer to Introduced Bill

(Strike everything after the enacting clause and insert:)

Section 1. Section 1 of Initiative No. 81 is amended  
to read:

"Section 1. There is a new section in Title 47-REM  
1947 ~~16~~ MCA, that reads as follows:

The public policy of the state of Montana is to ~~retain~~  
~~a--complete--monopoly--by--the--state--over--the--acquisition,~~  
~~importation-and-distribution-of-wine--containing--more--than~~  
~~14%--alcohol-by-volume-but-to maintain a system for the sale~~  
~~of wine by the state through state liquor facilities and~~

~~provide~~ for regulate and control the acquisition,  
importation and distribution of table wine containing not  
more than 14% alcohol by volume in a manner paralleling the  
regulation and control of importation, acquisition and  
distribution of beer within this state. When the words  
"table wine" are used in this act in either the singular or  
plural they refer only to wine containing not more than 14%  
alcohol by volume."

Section 2. Section 2 of Initiative No. 81 is amended  
to read:

"Section 2. Section 4-1-107, RCM 1947, is amended to  
read as follows:

"4-1-107. Definitions. As used in this code:

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

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

"(3) 'Alcoholic beverage' means a compound produced  
and sold for human consumption as a drink that contains more  
than one-half of one percent (0.5%) of alcohol by volume.

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

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



1        " (6) 'Department' means the Montana department of  
2 revenue.

3        " (7) 'Immediate family' means a spouse, dependent  
4 children, or dependent parents.

5        " (8) 'Industrial use' means a use described as  
6 industrial use by the Federal Alcohol Administration Act and  
7 the federal rules and regulations of 27 CFR.

8        " (9) 'Liquor' means an alcoholic beverage except beer  
9 and table wine.

10       " (10) 'Malt beverage' means an alcoholic beverage made  
11 by the fermentation of an infusion or decoction, or a  
12 combination of both, in potable brewing water, of malted  
13 barley with or without hops or their parts, or their  
14 products, and with or without other malted cereals and with  
15 or without the addition of unmalted or prepared cereals,  
16 other carbohydrates or products prepared therefrom, and with  
17 or without other wholesome products suitable for human food  
18 consumption.

19       " (11) 'Package' means a container or receptacle used  
20 for holding an alcoholic beverage.

21       " (12) 'Proof gallon' means a U.S. gallon of liquor at  
22 sixty degrees on the Fahrenheit scale that contains fifty  
23 percent (50%) of alcohol by volume.

24       " (13) 'Public place' means a place, building, or  
25 conveyance to which the public has or may be permitted to

1 have access and any place of public resort.

2       " (14) 'Residence' means a building, part of a building  
3 where a person resides, but does not include any part of a  
4 building that is not actually and exclusively used as a  
5 private residence.

6       " (15) 'Rules and regulations' means rules and  
7 regulations published by the department pursuant to this  
8 act.

9       " (16) 'State liquor facility' means a facility owned or  
10 under control of the department for the purpose of  
11 receiving, storing, transporting, or selling alcoholic  
12 beverages.

13       " (17) 'State liquor store' means a retail store  
14 operated by the department in accordance with this code for  
15 the purpose of selling distilled spirits and wines  
16 ~~containing more than 14% alcohol by volume.~~

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

23       " (19) 'Warehouse' means a building or structure owned  
24 or operated by a licensed wholesaler for the receiving,  
25 storage and distribution of beer or table wine as permitted

1 by this code.

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

15       "~~(21) 'Table wine' means wine as defined above which~~  
16 ~~contains not more than 14% alcohol by volume.~~"

17       Section 3. Section 5 of Initiative No. 81 is amended  
18 to read:

19       "Section 5. There is a new section in Title 4--REM  
20 ~~1947 16, MCA~~, that reads as follows:

21       To whom table wine distributor may sell. A table wine  
22 distributor may sell and deliver table wine purchased or  
23 acquired by him to another table wine distributor, retailer,  
24 or common carrier which holds a license issued by the  
25 department of revenue, ~~or to the department~~. It shall be

1 unlawful for any table wine distributor to sell, deliver or  
2 give away any table wine to be consumed on such  
3 distributor's premises or to give, sell, deliver, or  
4 distribute any table wine purchased or acquired by him to  
5 the public. ~~A distributor may not deliver wine to a state~~  
6 ~~liquor store at a different price than that offered for~~  
7 ~~similar goods under similar circumstances to retailers in~~  
8 ~~the same county in which the state liquor store is located."~~

9       Section 4. Section 9 of Initiative No. 81 is amended  
10 to read:

11       "Section 9. There is a new section in Title 4--REM  
12 ~~1947 16, MCA~~, that reads as follows:

13       Tax on Wine. A tax of seventy-five cents (75 ) per  
14 gallon is hereby levied and imposed on table wine imported  
15 by any table wine distributor, and such tax shall be paid by  
16 the table wine distributor by the 15th of the month  
17 following receipt of the table wine at the table wine  
18 distributor's warehouse. The tax computed and paid in  
19 accordance with this section shall be the only tax imposed  
20 by the state or any of its subdivisions, including cities  
21 and towns, and it shall be distributed ~~in accordance with~~  
22 ~~applicable statutes and regulations~~, ~~60% to the state~~  
23 ~~general fund; 5% to the earmarked revenue account to the~~  
24 ~~credit of the department of institutions for the treatment,~~  
25 ~~rehabilitation, and prevention of alcoholism; 5% to the~~

1 ~~counties, based on population, for the purpose established~~  
 2 ~~in 16-1-504; and 5c to the cities and towns, based on~~  
 3 ~~population, for the purpose established in 16-1-505."~~

4 Section 5. Section 16-1-302, MCA, is amended to read:

5 "16-1-302. Functions, powers, and duties of  
 6 department. The department shall have the following  
 7 functions, duties, and powers:

8 (1) to buy, import, have in its possession for sale,  
 9 and sell liquors in the manner set forth in this code;

10 ~~(2) to buy from licensed table wine distributors, have~~  
 11 ~~in its possession for sale, and sell table wine in the~~  
 12 ~~manner set forth in this code;~~

13 ~~(3) to control the possession, sale, and delivery~~  
 14 ~~of liquors in accordance with the provisions of this code;~~

15 ~~(4) to determine the municipalities within which~~  
 16 ~~state liquor stores shall be established throughout the~~  
 17 ~~state and the situation of the stores within every such~~  
 18 ~~municipality;~~

19 ~~(5) to lease, furnish, and equip any building or~~  
 20 ~~land required for the operation of this code;~~

21 ~~(6) to buy or lease all plants and equipment it may~~  
 22 ~~consider necessary and useful in carrying into effect the~~  
 23 ~~objects and purposes of this code;~~

24 ~~(7) to employ store managers and also every~~  
 25 ~~officer, investigator, clerk, or other employee required for~~

1 the operation or carrying out of this code and to dismiss  
 2 the same, fix their salaries or remuneration, assign them  
 3 their title, define their respective duties and powers, and  
 4 to engage the service of experts and persons engaged in the  
 5 practice of a profession, if deemed expedient;

6 ~~(8) to determine the nature, form, and capacity of~~  
 7 ~~all packages to be used for containing liquor kept or sold~~  
 8 ~~under this code;~~

9 ~~(9) to grant and issue licenses under and in~~  
 10 ~~pursuance to this code;~~

11 ~~(10) without in any way limiting or being limited by~~  
 12 ~~the foregoing, to do all such things as are deemed necessary~~  
 13 ~~or advisable by the department for the purpose of carrying~~  
 14 ~~into effect the provisions of this code or the rules made~~  
 15 ~~thereunder."~~

16 Section 6. Section 16-1-303, MCA, is amended to read:

17 "16-1-303. Department rules. (1) The department may  
 18 make such rules not inconsistent with this code as to the  
 19 department seem necessary for carrying out the provisions of  
 20 this code and for the efficient administration thereof.

21 (2) Without thereby limiting the generality of the  
 22 provisions contained in subsection (1) hereof, it is  
 23 declared that the power of the department to make rules in  
 24 the manner set out in that subsection shall extend to and  
 25 include the following:

1 (a) regulating the equipment and management of state  
2 stores and warehouses in which liquor ~~or table wine~~ is kept  
3 or sold and prescribing the books and records to be kept  
4 therein;

5 (b) prescribing the duties of the employees of the  
6 liquor division and regulating their conduct while in the  
7 discharge of their duties;

8 (c) governing the purchase of liquor and the  
9 furnishing of liquor to state stores established under this  
10 code;

11 (d) determining the classes, varieties, and brands of  
12 liquor ~~and table wine~~ to be kept for sale at any state  
13 store;

14 (e) prescribing, subject to this code, the hours  
15 during which state liquor stores shall be kept open for the  
16 sale of alcoholic beverages;

17 (f) providing for the issuing and distributing of  
18 price lists showing the price to be paid by purchasers for  
19 each class, variety, or brand of liquor ~~and table wine~~ kept  
20 for sale under this code;

21 (g) prescribing an official seal which shall be  
22 attached to every package of liquor sold or sealed under  
23 this code;

24 (h) prescribing forms to be used for the purpose of  
25 this code or of the rules made thereunder and the terms and

1 conditions in permits and licenses issued and granted under  
2 this code;

3 (i) prescribing the form of records of purchase of  
4 liquor ~~and table wine~~ and the reports to be made thereon to  
5 the division and providing for inspection of the records so  
6 kept;

7 (j) prescribing the manner of giving and serving  
8 notices required by this code or the rules thereunder;

9 (k) prescribing the fees payable in respect of permits  
10 and licenses issued under this code for which no fees are  
11 prescribed in this code and prescribing the fees for  
12 anything done or permitted to be done under the rules made  
13 thereunder;

14 (l) prescribing, subject to the provisions of this  
15 code, the conditions and qualifications necessary for the  
16 obtaining of a liquor or beer license and the books and  
17 records to be kept and the returns to be made by the  
18 licensees and providing for the inspection of such licensed  
19 premises;

20 (m) specifying and describing the place and the manner  
21 in which liquor or beer may be lawfully kept or stored;

22 (n) specifying and regulating the time and periods  
23 when and the manner, methods, and means by which vendors and  
24 brewers shall deliver liquor under this code and the time  
25 and periods when and the manner, methods, and means by which

1 liquor, under this code, may be lawfully conveyed or  
2 carried;

3 (o) governing the conduct, management, and equipment  
4 of any premises licensed to sell liquor or beer under this  
5 code;

6 (p) providing for the imposition and collection of  
7 taxes and making rules respecting returns, accounting, and  
8 payment of the taxes to the department.

9 (3) Whenever it is provided in this code that any act,  
10 matter, or thing may be done if permitted or authorized by  
11 the rules or may be done in accordance with the rules or as  
12 provided by the rules, the department, subject to the  
13 restrictions set out in subsection (1) hereof, shall have  
14 the power to make rules respecting such act, matter, or  
15 thing."

16 Section 7. Section 16-1-304, MCA, is amended to read:

17 "16-1-304. Prohibited acts within division. (1) No  
18 officer or employee of the liquor division, including those  
19 engaged in the sale of liquor at the various state liquor  
20 stores, may be directly or indirectly interested or engaged  
21 in any other business or undertaking dealing in liquor or  
22 table wine, whether as owner, part owner, partner, member of  
23 syndicate, shareholder, agent, or employee and whether for  
24 his own benefit or in a fiduciary capacity for some other  
25 person.

1 (2) No member or employee of the division or any  
2 employee of the state may solicit or receive directly or  
3 indirectly any commission, remuneration, or gift whatsoever  
4 from any person or corporation having sold, selling, or  
5 offering liquor or table wine for sale to the state or  
6 division pursuant to this code.

7 (3) No person selling or offering for sale to or  
8 purchasing liquor or table wine from the state liquor  
9 division may either directly or indirectly offer to pay any  
10 commission, profit, or remuneration or make any gift to any  
11 member or employee of the division, to any employee of the  
12 state, or to anyone on behalf of such member or employee.

13 (4) The prohibition contained in subsection (3) of  
14 this section does not prohibit the division from receiving  
15 samples of liquor or table wine for the purpose of chemical  
16 testing, subject to the following limitations:

17 (a) Each manufacturer, distiller, compounder,  
18 rectifier, importer, or wholesale distributor or any other  
19 person, firm, or corporation proposing to sell any liquor or  
20 table wine to the Montana liquor division shall submit,  
21 without cost to the division prior to the original purchase,  
22 an analysis of each brand and may submit a representative  
23 sample not exceeding 25 fluid ounces of such merchandise to  
24 the division.

25 (b) when a brand of liquor or table wine has been

1 accepted for testing by the division, the division shall  
2 forward the sample, unopened and in its entirety, to a  
3 qualified chemical laboratory for analysis.

4 (c) The division shall maintain written records of all  
5 samples received. The records shall show the brand name,  
6 amount and from whom received, date received, the laboratory  
7 or chemist to whom forwarded, the division's action on the  
8 brand, and the person to whom delivered or other final  
9 disposition of the sample.

10 (5) No liquor, wine, or other alcoholic beverage may  
11 be withdrawn from the regular warehouse inventory or from  
12 the state liquor stores of the Montana liquor division for  
13 any purpose other than sale at the prevailing state retail  
14 prices or for destroying damaged or defective merchandise.  
15 The division shall maintain a written record including the  
16 type, brand, container size, number of bottles or other  
17 units, signatures of witnesses, and method of destruction or  
18 other disposition of damaged or defective warehouse or state  
19 store merchandise."

20 NEW SECTION. Section 8. Retail selling price on table  
21 wine sold by the state. The retail selling price at which  
22 table wine is sold by the department shall be computed by  
23 adding to the statewide weighted average cost of table wine  
24 the state markup as designated by the department.

25 NEW SECTION. Section 9. (1) The department may, upon

1 petition, notice, opportunity for hearing, and making of  
2 findings, import and distribute one or more named table  
3 wines to one or more designated state liquor stores, in the  
4 same manner as if the table wine contained more than 14%  
5 alcohol by volume.

6 (2) An interested person may petition the department  
7 to import one or more table wines to be sold in a state  
8 liquor store or a group of stores in a designated area, upon  
9 the grounds that the particular table wine is not available  
10 from any table wine distributor serving the area. The  
11 department shall give notice of the petition to all table  
12 wine distributors serving the area and shall conduct a  
13 contested case hearing if any distributor files a protest to  
14 the petition.

15 (3) The department must find, upon the record of the  
16 hearing if one is demanded, that a particular table wine  
17 cannot be reasonably obtained from any table wine  
18 distributor before the department may import that table wine  
19 as provided in subsection (1).

-End-

SENATE BILL NO. 99

INTRODUCED BY GOODOVER, FABREGA, MOORE, TURNAGE,  
O'CONNELL, MATHERS, GRAHAM, NATHE, MENAHAN, METCALF,  
ROSENTHAL, GILLIGAN, ROTH, RYAN, SCULLY, MANUEL,  
STAIGMILLER, MEYER, KOLSTAD

BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE THE  
DEPARTMENT OF REVENUE TO BUY, IMPORT, AND SELL TABLE WINE;  
ALLOCATING THE TAX ON WINE; AMENDING SECTIONS 1, 2, 4~~v~~ AND  
5~~2~~ AND 9 OF INITIATIVE NO. 81; AND SECTIONS 16-1-302,  
16-1-303, AND 16-1-304, MCA."

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

Refer to Introduced Bill

(Strike everything after the enacting clause and insert:)

Section 1. Section 1 of Initiative No. 81 is amended  
to read:

"Section 1. There is a new section in Title 4~~v~~-REM  
1947 16~~2~~ MCA, that reads as follows:

The public policy of the state of Montana is to retain  
~~a complete monopoly by the state over the acquisition  
importation and distribution of wine containing more than  
14% alcohol by volume but to maintain a system for the sale  
of wine by the state through state liquor facilities and~~

~~provide for~~ regulate, and control the acquisition,  
importations and distribution of table wine containing not  
more than 14% alcohol by volume in a manner paralleling the  
regulation and control of importation, acquisition and  
distribution of beer within this state. When the words  
"table wine" are used in this act in either the singular or  
plural they refer only to wine containing not more than 14%  
alcohol by volume."

Section 2. Section 2 of Initiative No. 81 is amended  
to read:

"Section 2. Section 4-1-107, RCM 1947, is amended to  
read as follows:

"4-1-107. Definitions. As used in this code:

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

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

"(3) 'Alcoholic beverage' means a compound produced  
and sold for human consumption as a drink that contains more  
than one-half of one percent (0.5%) of alcohol by volume.

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

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

1       "(6) 'Department' means the Montana department of  
2 revenue.

3       "(7) 'Immediate family' means a spouse, dependent  
4 children, or dependent parents.

5       "(8) 'Industrial use' means a use described as  
6 industrial use by the Federal Alcohol Administration Act and  
7 the federal rules and regulations of 27 CFR.

8       "(9) 'Liquor' means an alcoholic beverage except beer  
9 and table wine.

10       "(10) 'Malt beverage' means an alcoholic beverage made  
11 by the fermentation of an infusion or decoction, or a  
12 combination of both, in potable brewing water, of malted  
13 barley with or without hops or their parts, or their  
14 products, and with or without other malted cereals and with  
15 or without the addition of unmalted or prepared cereals,  
16 other carbohydrates or products prepared therefrom, and with  
17 or without other wholesome products suitable for human food  
18 consumption.

19       "(11) 'Package' means a container or receptacle used  
20 for holding an alcoholic beverage.

21       "(12) 'Proof gallon' means a U.S. gallon of liquor at  
22 sixty degrees on the Fahrenheit scale that contains fifty  
23 percent (50%) of alcohol by volume.

24       "(13) 'Public place' means a place, building, or  
25 conveyance to which the public has or may be permitted to

1 have access and any place of public resort.

2       "(14) 'Residence' means a building, part of a building  
3 where a person resides, but does not include any part of a  
4 building that is not actually and exclusively used as a  
5 private residence.

6       "(15) 'Rules and regulations' means rules and  
7 regulations published by the department pursuant to this  
8 act.

9       "(16) 'State liquor facility' means a facility owned or  
10 under control of the department for the purpose of  
11 receiving, storing, transporting, or selling alcoholic  
12 beverages.

13       "(17) 'State liquor store' means a retail store  
14 operated by the department in accordance with this code for  
15 the purpose of selling distilled spirits and wines  
16 ~~containing more than 24% alcohol by volume.~~

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

23       "(19) 'Warehouse' means a building or structure owned  
24 or operated by a licensed wholesaler for the receiving,  
25 storage and distribution of beer or table wine as permitted



1 by this code.

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

15       "(21) 'Table wine' means wine as defined above which  
16 contains not more than 14% alcohol by volume."

17       Section 3. Section 5 of Initiative No. 81 is amended  
18 to read:

19       "Section 5. There is a new section in Title 4v--REM  
20 1947 16A MCA, that reads as follows:

21       To whom table wine distributor may sell. A table wine  
22 distributor may sell and deliver<sup>3</sup> table wine purchased or  
23 acquired by him to another table wine distributor, retailer,  
24 or common carrier which holds a license issued by the  
25 department of revenue, or to the department. It shall be

1 unlawful for any table wine distributor to sell, deliver or  
2 give away any table wine to be consumed on such  
3 distributor's premises or to give, sell, deliver, or  
4 distribute any table wine purchased or acquired by him to  
5 the public. A distributor may not deliver wine to a state  
6 liquor store at a different price than that offered for  
7 similar goods under similar circumstances to retailers in  
8 the same county in which the state liquor store is located."

9       Section 4. Section 9 of Initiative No. 81 is amended  
10 to read:

11       "Section 9. There is a new section in Title 4v--REM  
12 1947 16A MCA, that reads as follows:

13       Tax on Wine. A tax of seventy-five cents (75 ) per  
14 gallon is hereby levied and imposed on table wine imported  
15 by any table wine distributor, and such tax shall be paid by  
16 the table wine distributor by the 15th of the month  
17 following receipt of the table wine at the table wine  
18 distributor's warehouse. The tax computed and paid in  
19 accordance with this section shall be the only tax imposed  
20 by the state or any of its subdivisions, including cities  
21 and towns, and it shall be distributed in accordance with  
22 applicable--statutes--and--regulations, 60 to the state  
23 general fund; 5 to the earmarked revenue account to the  
24 credit of the department of institutions for the treatment,  
25 rehabilitation, and prevention of alcoholism; 5 to the

1 counties, based on population, for the purpose established  
 2 in 16-1-404; and 5 to the cities and towns, based on  
 3 population, for the purpose established in 16-1-405."

4 Section 5. Section 16-1-302, MCA, is amended to read:  
 5 "16-1-302. Functions, powers, and duties of  
 6 department. The department shall have the following  
 7 functions, duties, and powers:

8 (1) to buy, import, have in its possession for sale,  
 9 and sell liquors in the manner set forth in this code;

10 ~~(2) to buy from licensed table wine distributors, have~~  
 11 ~~in its possession for sale, and sell table wine in the~~  
 12 ~~manner set forth in this code;~~

13 ~~(3) to control the possession, sale, and delivery~~  
 14 ~~of liquors in accordance with the provisions of this code;~~

15 ~~(4) to determine the municipalities within which~~  
 16 ~~state liquor stores shall be established throughout the~~  
 17 ~~state and the situation of the stores within every such~~  
 18 ~~municipality;~~

19 ~~(5) to lease, furnish, and equip any building or~~  
 20 ~~land required for the operation of this code;~~

21 ~~(6) to buy or lease all plants and equipment it may~~  
 22 ~~consider necessary and useful in carrying into effect the~~  
 23 ~~objects and purposes of this code;~~

24 ~~(7) to employ store managers and also every~~  
 25 ~~officer, investigator, clerk, or other employee required for~~

1 the operation or carrying out of this code and to dismiss  
 2 the same, fix their salaries or remuneration, assign them  
 3 their title, define their respective duties and powers, and  
 4 to engage the service of experts and persons engaged in the  
 5 practice of a profession, if deemed expedient;

6 ~~(8) to determine the nature, form, and capacity of~~  
 7 ~~all packages to be used for containing liquor kept or sold~~  
 8 ~~under this code;~~

9 ~~(9) to grant and issue licenses under and in~~  
 10 ~~pursuance to this code;~~

11 ~~(10) without in any way limiting or being limited by~~  
 12 ~~the foregoing, to do all such things as are deemed necessary~~  
 13 ~~or advisable by the department for the purpose of carrying~~  
 14 ~~into effect the provisions of this code or the rules made~~  
 15 ~~thereunder."~~

16 Section 6. Section 16-1-303, MCA, is amended to read:

17 "16-1-303. Department rules. (1) The department may  
 18 make such rules not inconsistent with this code as to the  
 19 department seem necessary for carrying out the provisions of  
 20 this code and for the efficient administration thereof.

21 (2) Without thereby limiting the generality of the  
 22 provisions contained in subsection (1) hereof, it is  
 23 declared that the power of the department to make rules in  
 24 the manner set out in that subsection shall extend to and  
 25 include the following:

1 (a) regulating the equipment and management of state  
2 stores and warehouses in which liquor or table wine is kept  
3 or sold and prescribing the books and records to be kept  
4 therein;

5 (b) prescribing the duties of the employees of the  
6 liquor division and regulating their conduct while in the  
7 discharge of their duties;

8 (c) governing the purchase of liquor and the  
9 furnishing of liquor to state stores established under this  
10 code;

11 (d) determining the classes, varieties, and brands of  
12 liquor and table wine to be kept for sale at any state  
13 store;

14 (e) prescribing, subject to this code, the hours  
15 during which state liquor stores shall be kept open for the  
16 sale of alcoholic beverages;

17 (f) providing for the issuing and distributing of  
18 price lists showing the price to be paid by purchasers for  
19 each class, variety, or brand of liquor and table wine kept  
20 for sale under this code;

21 (g) prescribing an official seal which shall be  
22 attached to every package of liquor sold or sealed under  
23 this code;

24 (h) prescribing forms to be used for the purpose of  
25 this code or of the rules made thereunder and the terms and

1 conditions in permits and licenses issued and granted under  
2 this code;

3 (i) prescribing the form of records of purchase of  
4 liquor and table wine and the reports to be made thereon to  
5 the division and providing for inspection of the records so  
6 kept;

7 (j) prescribing the manner of giving and serving  
8 notices required by this code or the rules thereunder;

9 (k) prescribing the fees payable in respect of permits  
10 and licenses issued under this code for which no fees are  
11 prescribed in this code and prescribing the fees for  
12 anything done or permitted to be done under the rules made  
13 thereunder;

14 (l) prescribing, subject to the provisions of this  
15 code, the conditions and qualifications necessary for the  
16 obtaining of a liquor or beer license and the books and  
17 records to be kept and the returns to be made by the  
18 licensees and providing for the inspection of such licensed  
19 premises;

20 (m) specifying and describing the place and the manner  
21 in which liquor or beer may be lawfully kept or stored;

22 (n) specifying and regulating the time and periods  
23 when and the manner, methods, and means by which vendors and  
24 brewers shall deliver liquor under this code and the time  
25 and periods when and the manner, methods, and means by which

1 liquor, under this code, may be lawfully conveyed or  
2 carried;

3 (o) governing the conduct, management, and equipment  
4 of any premises licensed to sell liquor or beer under this  
5 code;

6 (p) providing for the imposition and collection of  
7 taxes and making rules respecting returns, accounting, and  
8 payment of the taxes to the department.

9 (3) Whenever it is provided in this code that any act,  
10 matter, or thing may be done if permitted or authorized by  
11 the rules or may be done in accordance with the rules or as  
12 provided by the rules, the department, subject to the  
13 restrictions set out in subsection (1) hereof, shall have  
14 the power to make rules respecting such act, matter, or  
15 thing."

16 Section 7. Section 16-1-304, MCA, is amended to read:

17 "16-1-304. Prohibited acts within division. (1) No  
18 officer or employee of the liquor division, including those  
19 engaged in the sale of liquor at the various state liquor ~~OR~~  
20 TABLE\_WINE stores, may be directly or indirectly interested  
21 or engaged in any other business or undertaking dealing in  
22 liquor or table wine, whether as owner, part owner, partner,  
23 member of syndicate, shareholder, agent, or employee and  
24 whether for his own benefit or in a fiduciary capacity for  
25 some other person.

1 (2) No member or employee of the division or any  
2 employee of the state may solicit or receive directly or  
3 indirectly any commission, remuneration, or gift whatsoever  
4 from any person or corporation having sold, selling, or  
5 offering liquor or table wine for sale to the state or  
6 division pursuant to this code.

7 (3) No person selling or offering for sale to or  
8 purchasing liquor or table wine from the state liquor  
9 division may either directly or indirectly offer to pay any  
10 commission, profit, or remuneration or make any gift to any  
11 member or employee of the division, to any employee of the  
12 state, or to anyone on behalf of such member or employee.

13 (4) The prohibition contained in subsection (3) of  
14 this section does not prohibit the division from receiving  
15 samples of liquor or table wine for the purpose of chemical  
16 testing, subject to the following limitations:

17 (a) Each manufacturer, distiller, compounder,  
18 rectifier, importer, or wholesale distributor or any other  
19 person, firm, or corporation proposing to sell any liquor or  
20 table wine to the Montana liquor division shall submit,  
21 without cost to the division prior to the original purchase,  
22 an analysis of each brand and may submit a representative  
23 sample not exceeding 25 fluid ounces of such merchandise to  
24 the division.

25 (b) When a brand of liquor or table wine has been

1 accepted for testing by the division, the division shall  
2 forward the sample, unopened and in its entirety, to a  
3 qualified chemical laboratory for analysis.

4 (c) The division shall maintain written records of all  
5 samples received. The records shall show the brand name,  
6 amount and from whom received, date received, the laboratory  
7 or chemist to whom forwarded, the division's action on the  
8 brand, and the person to whom delivered or other final  
9 disposition of the sample.

10 (5) No liquor, wine, or other alcoholic beverage may  
11 be withdrawn from the regular warehouse inventory or from  
12 the state liquor stores of the Montana liquor division for  
13 any purpose other than sale at the prevailing state retail  
14 prices or for destroying damaged or defective merchandise.  
15 The division shall maintain a written record including the  
16 type, brand, container size, number of bottles or other  
17 units, signatures of witnesses, and method of destruction or  
18 other disposition of damaged or defective warehouse or state  
19 store merchandise."

20 NEW SECTION. Section 8. Retail selling price on table  
21 wine sold by the state. The retail selling price at which  
22 table wine is sold by the department shall be computed by  
23 adding to the statewide weighted average cost of table wine  
24 the state markup as designated by the department.

25 NEW SECTION. Section 9. STATE DISTRIBUTION. (1) The

1 department may, upon petition, notice, opportunity for  
2 hearing, and making of findings, import and distribute one  
3 or more named table wines to one or more designated state  
4 liquor stores, in the same manner as if the table wine  
5 contained more than 14% alcohol by volume.

6 (2) An interested person may petition the department  
7 to import one or more table wines to be sold in a state  
8 liquor store or a group of stores in a designated area, upon  
9 the grounds that the particular table wine is not available  
10 from any table wine distributor serving the area. The  
11 department shall give notice of the petition to all table  
12 wine distributors serving the area and shall conduct a  
13 contested case hearing if any distributor files a protest to  
14 the petition.

15 (3) The department must find, upon the record of the  
16 hearing if one is demanded, that a particular table wine  
17 cannot be reasonably obtained from any table wine  
18 distributor before the department may import that table wine  
19 as provided in subsection (1).

-End-

STATEMENT OF INTENT RE: SB 99

A statement of intent is required for S.B. No. 99 in that it delegates rulemaking authority to the Department of Revenue in Section 6.

Section 6 of the bill expands the rulemaking powers of the department of revenue by authorizing the department to adopt rules on various aspects of marketing table wine. Montana liquor laws have traditionally given wide discretion and power to the state liquor control agency. This should also be the case for regulated wine handling. This statement is therefore not a comprehensive list of anticipated agency rules. If a problem not now foreseen arises in the wine handling area and the department can handle the problem with a rule, the legislature should expect the department to take the necessary action.

Rules that can presently be anticipated would deal with the manner in which distributors would sell to state stores and the retail markup to be applied in state stores. The department may require distributors to sell wine on invoices which are consistent with the department's recordkeeping systems. ~~The state markup should not be so low as to create a competitive advantage for the state. The special order procedure in Section 9 may be implemented by department~~

~~rules to require customer prepayment for small individual orders. SECTION 9 OF THE BILL ALLOWS THE DEPARTMENT TO ADOPT TEMPORARY RULES IN ORDER TO MAKE AN ORDERLY TRANSITION TO THE NEW WINE MARKETING POLICIES. RULES THAT CAN BE ANTICIPATED INCLUDE RULES REGARDING THE ISSUANCE OF TEMPORARY AUTHORIZATION TO DISTRIBUTE AND RETAIL TABLE WINE AND PROCEDURES ALLOWING DISTRIBUTORS AND RETAILERS TO MAKE TABLE WINE AVAILABLE UNDER THE NEW SYSTEM ON JULY 1, 1979. THE RULEMAKING AUTHORITY GRANTED IN SECTION 10 IS NOT AN EXPANSION OF THE RULEMAKING AUTHORITY GRANTED TO THE DEPARTMENT IN SECTION 6, BUT IS ONLY TO PROVIDE FOR AN ORDERLY TRANSITION. THE STATE MARKUP SHOULD NOT BE SO LOW AS TO CREATE A COMPETITIVE ADVANTAGE FOR THE STATE. THE SPECIAL ORDER PROCEDURE IN SECTION 9 MAY BE IMPLEMENTED BY DEPARTMENT RULES TO REQUIRE CUSTOMER PREPAYMENT FOR SMALL INDIVIDUAL ORDERS.~~

SENATE BILL NO. 99

INTRODUCED BY GOODOVER, FABREGA, MOORE, TURNAGE,  
O'CONNELL, MATHERS, GRAHAM, NATHE, MEMAHAN, METCALF,  
ROSENTHAL, GILLIGAN, ROTH, RYAN, SCULLY, MANUEL,  
STAIGHILLER, MEYER, KOLSTAD

BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE THE  
DEPARTMENT OF REVENUE TO BUY ~~IMPORT~~, IMPORT, AND SELL  
TABLE WINE; ALLOCATING THE TAX ON WINE; AMENDING SECTIONS 1,  
2, ~~4~~ AND 5 ~~AND 2~~ OF INITIATIVE NO. 81; AND SECTIONS  
16-1-302, 16-1-303, AND 16-1-304, MCA."

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

Refer to Introduced Bill

(Strike everything after the enacting clause and insert:)

Section 1. Section 1 of Initiative No. 81 is amended  
to read:

"Section 1. There is a new section in Title ~~4~~ RE  
~~1947~~ 16, MCA, that reads as follows:

The public policy of the state of Montana is to retain  
~~a complete monopoly by the state over the acquisition~~  
~~importation and distribution of wine containing more than~~  
~~14% alcohol by volume but to maintain a system for the~~  
IMPORTATION AND sale of wine by the state through state

~~liquor facilities and provide for,~~ regulate, and control the  
acquisition, importation, and distribution of table wine  
containing not more than 14% alcohol by volume ~~in a manner~~  
~~permitted by the regulation and control of importation~~  
~~acquisition and distribution of beer within this state~~ BY  
LICENSED WINE DISTRIBUTORS AND THE STATE. When the words  
"table wine" are used in this act in either the singular or  
plural they refer only to wine containing not more than 14%  
alcohol by volume."

Section 2. Section 2 of Initiative No. 81 is amended  
to read:

"Section 2. Section ~~4-1-107~~, RCH 1947, is amended to  
read as follows:

"4-1-107. Definitions. As used in this code:

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

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

"(3) 'Alcoholic beverage' means a compound produced  
and sold for human consumption as a drink that contains more  
than one-half of one percent (0.5%) of alcohol by volume.

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

"(5) 'Brewer' means a person who produces malt

1 beverages.

2       "(6) 'Department' means the Montana department of  
3 revenue.

4       "(7) 'Immediate family' means a spouse, dependent  
5 children, or dependent parents.

6       "(8) 'Industrial use' means a use described as  
7 industrial use by the Federal Alcohol Administration Act and  
8 the federal rules and regulations of 27 CFR.

9       "(9) 'Liquor' means an alcoholic beverage except beer  
10 and table wine.

11       "(10) 'Malt beverage' means an alcoholic beverage made  
12 by the fermentation of an infusion or decoction, or a  
13 combination of both, in potable brewing water, of malted  
14 barley with or without hops or their parts, or their  
15 products, and with or without other malted cereals and with  
16 or without the addition of unmalted or prepared cereals,  
17 other carbohydrates or products prepared therefrom, and with  
18 or without other wholesome products suitable for human food  
19 consumption.

20       "(11) 'Package' means a container or receptacle used  
21 for holding an alcoholic beverage.

22       "(12) 'Proof gallon' means a U.S. gallon of liquor at  
23 sixty degrees on the Fahrenheit scale that contains fifty  
24 percent (50%) of alcohol by volume.

25       "(13) 'Public place' means a place, building, or

1 conveyance to which the public has or may be permitted to  
2 have access and any place of public resort.

3       "(14) 'Residence' means a building, part of a building  
4 where a person resides, but does not include any part of a  
5 building that is not actually and exclusively used as a  
6 private residence.

7       "(15) 'Rules and regulations' means rules and  
8 regulations published by the department pursuant to this  
9 act.

10       "(16) 'State liquor facility' means a facility owned or  
11 under control of the department for the purpose of  
12 receiving, storing, transporting, or selling alcoholic  
13 beverages.

14       "(17) 'State liquor store' means a retail store  
15 operated by the department in accordance with this code for  
16 the purpose of selling distilled spirits and wines  
17 containing more than 14% alcohol by volume.

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

24       "(19) 'Warehouse' means a building or structure owned  
25 or operated by a licensed wholesaler for the receiving,



1 storage and distribution of beer or table wine as permitted  
2 by this code.

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

16 \*(21) 'Table wine' means wine as defined above which  
17 contains not more than 14% alcohol by volume.\*\*

18 SECTION 3. SECTION 4 OF INITIATIVE NO. 81 IS AMENDED  
19 TO READ:

20 \*Section 4. There is a new section in Title 4--REM  
21 1947 16, MCA, that reads as follows:

22 Wine distributor's license -- records. (1) Any person  
23 desiring to sell and distribute table wine at wholesale to  
24 retailers under the provisions of this code shall apply to  
25 the department of revenue for a license to do so and shall

1 tender with his application the annual license fee of \$400  
2 and the department may issue licenses to qualified  
3 applicants in accordance with the provisions of this code.  
4 All table wine distributors' licenses issued in any year  
5 shall expire on the 30th day of June at midnight of such  
6 year. No license fee may be imposed upon table wine  
7 distributors by a municipality or any other political  
8 subdivision of the state. The license shall be at all times  
9 prominently displayed in the place of business of such table  
10 wine distributor.

11 To qualify for a table wine distributor's license the  
12 applicant shall be a resident of Montana; provided, however,  
13 any individual or partnership which has been licensed as a  
14 table wine distributor may, upon incorporation in accordance  
15 with the laws of Montana, transfer such license to the  
16 corporation if a majority of the capital stock thereof is  
17 held by said individual or the members of said partnership;  
18 or if applicant is a foreign corporation said corporation  
19 shall be authorized to do business in Montana; and said  
20 applicant shall have a fixed place of business, sufficient  
21 capital, the facilities, storehouse, receiving house or  
22 warehouse for the receiving of, storage, handling, and  
23 moving of table wine in large and jobbing quantities for  
24 distribution and sale in original packages to other licensed  
25 table wine distributors or licensed retailers. Each table

1 wine distributor shall be entitled to only one (1) wholesale  
 2 table wine license, which license shall be issued for his  
 3 principal place of business in Montana; a duplicate license  
 4 may be issued for one (1) subwarehouse only in Montana for  
 5 each table wine distributor's license, which said duplicate  
 6 license shall at all times be prominently displayed at said  
 7 subwarehouse. A table wine distributor may also hold a  
 8 license to sell beer at wholesale but shall not hold or have  
 9 any interest, direct or indirect, in any license to sell  
 10 beer, wine, or liquor at retail.

11 ~~All with the exception of table wine purchased by the~~  
 12 ~~department and shipped to its warehouse, all table wine~~  
 13 ~~manufactured outside of the state of Montana and shipped~~  
 14 ~~into Montana shall be consigned to and shipped to a licensed~~  
 15 ~~table wine distributor, and by him unloaded into his~~  
 16 ~~warehouse in Montana or subwarehouse in Montana; said~~  
 17 ~~distributor shall distribute said table wine from such~~  
 18 ~~warehouse or subwarehouse; said distributor shall keep~~  
 19 ~~records at his principal place of business of all table wine~~  
 20 ~~including the name or kind received, on hand, sold and~~  
 21 ~~distributed; said records may at all times be inspected by~~  
 22 ~~any member or representative of the department of revenue;~~  
 23 ~~any table wine which has been shipped into Montana and has~~  
 24 ~~not been shipped to and distributed from a warehouse of a~~  
 25 ~~licensed table wine distributor or the department shall be~~

1 seized by any peace officer or representative of the  
 2 department and may be confiscated in the manner as provided  
 3 for the confiscation of intoxicating liquor."

4 Section 4. Section 5 of Initiative No. 81 is amended  
 5 to read:

6 "Section 5. There is a new section in Title 47--REM  
 7 1947 16, MCA, that reads as follows:

8 To whom table wine distributor may sell. A table wine  
 9 distributor may sell and deliver table wine purchased or  
 10 acquired by him to another table wine distributor, retailer,  
 11 or common carrier which holds a license issued by the  
 12 department of revenue, or to the department. It shall be  
 13 unlawful for any table wine distributor to sell, deliver or  
 14 give away any table wine to be consumed on such  
 15 distributor's premises or to give, sell, deliver, or  
 16 distribute any table wine purchased or acquired by him to  
 17 the public. ~~A distributor may not deliver wine to a state~~  
 18 ~~liquor store at a different price than that offered for~~  
 19 ~~similar goods under similar circumstances to retailers in~~  
 20 ~~the same county in which the state liquor store is located."~~

21 Section 5. Section 9 of Initiative No. 81 is amended  
 22 to read:

23 "Section 9. There is a new section in Title 47--REM  
 24 1947 16, MCA, that reads as follows:

25 Tax on Wine. (1) A tax of seventy-five (75)

1 per gallon LITER is hereby levied and imposed on table wine  
2 imported by any table wine distributor, ~~and such tax~~ OR THE  
3 DEPARTMENT.

4 (2) THE TAX ON TABLE WINE IMPORTED BY A TABLE WINE  
5 DISTRIBUTOR shall be paid by the table wine distributor by  
6 the 15th of the month following receipt of the table wine at  
7 the table wine distributor's warehouse.

8 (3) THE TAX ON TABLE WINE IMPORTED BY THE DEPARTMENT  
9 SHALL BE COLLECTED AT THE TIME OF SALE, BE RETAINED IN A  
10 SEPARATE ACCOUNT, AND BE DEPOSITED WITH THE STATE TREASURER  
11 TO THE CREDIT OF THE GENERAL FUND NOT LATER THAN THE 10TH  
12 DAY OF THE MONTH FOLLOWING THE SALE.

13 (4) The tax computed and paid in accordance with this  
14 section shall be the only tax imposed by the state or any of  
15 its subdivisions, including cities and towns, ~~and~~

16 (5) THE TAX PAID BY A TABLE WINE DISTRIBUTOR shall be  
17 distributed ~~in accordance with applicable statutes and~~  
18 ~~regulations~~ 60- 16 CENTS to the state general fund; 5- AND  
19 OF THE REMAINING 4 CENTS ONE-THIRD to the earmarked revenue  
20 account to the credit of the department of institutions for  
21 the treatment, rehabilitation, and prevention of alcoholism  
22 5- ONE-THIRD to the counties, based on population, for the  
23 purpose established in 16-1-404, and 5- ONE-THIRD to the  
24 cities and towns, based on population, for the purpose  
25 established in 16-1-405.\*

1 SECTION 6. THERE IS A NEW MCA SECTION THAT READS AS  
2 FOLLOWS:

3 Retail selling price on table wine sold by the state.  
4 The retail selling price at which table wine is sold by the  
5 department shall be computed by adding to the cost of table  
6 wine the state markup and state tax as designated by the  
7 department.

8 Section 7. Section 16-1-302, MCA, is amended to read:  
9 "16-1-302. Functions, powers, and duties of  
10 department. The department shall have the following  
11 functions, duties, and powers:

12 (1) to buy, import, have in its possession for sale,  
13 and sell liquors AND TABLE WINE in the manner set forth in  
14 this code;

15 ~~(2) to buy from licensed table wine distributors, have~~  
16 ~~in its possession for sale, and sell table wine in the~~  
17 ~~manner set forth in this code;~~

18 ~~(2)(3)~~(2) to control the possession, sale, and  
19 delivery of liquors in accordance with the provisions of  
20 this code;

21 ~~(3)(4)~~(3) to determine the municipalities within which  
22 state liquor stores shall be established throughout the  
23 state and the situation of the stores within every such  
24 municipality;

25 ~~(4)(5)~~(4) to lease, furnish, and equip any building or

1 land required for the operation of this code;

2 ~~(5)(4)(5)~~ to buy or lease all plants and equipment it  
3 may consider necessary and useful in carrying into effect  
4 the objects and purposes of this code;

5 ~~(6)(7)(6)~~ to employ store managers and also every  
6 officer, investigator, clerk, or other employee required for  
7 the operation or carrying out of this code and to dismiss  
8 the same, fix their salaries or remuneration, assign them  
9 their title, define their respective duties and powers, and  
10 to engage the service of experts and persons engaged in the  
11 practice of a profession, if deemed expedient;

12 ~~(7)(8)(7)~~ to determine the nature, form, and capacity  
13 of all packages to be used for containing liquor kept or  
14 sold under this code;

15 ~~(8)(9)(8)~~ to grant and issue licenses under and in  
16 pursuance to this code;

17 ~~(9)(10)(9)~~ without in any way limiting or being  
18 limited by the foregoing, to do all such things as are  
19 deemed necessary or advisable by the department for the  
20 purpose of carrying into effect the provisions of this code  
21 or the rules made thereunder."

22 Section 8. Section 16-1-303, MCA, is amended to read:  
23 "16-1-303. Department rules. (1) The department may  
24 make such rules not inconsistent with this code as to the  
25 department seem necessary for carrying out the provisions of

1 this code and for the efficient administration thereof.

2 (2) Without thereby limiting the generality of the  
3 provisions contained in subsection (1) hereof, it is  
4 declared that the power of the department to make rules in  
5 the manner set out in that subsection shall extend to and  
6 include the following:

7 (a) regulating the equipment and management of state  
8 stores and warehouses in which liquor or table wine is kept  
9 or sold and prescribing the books and records to be kept  
10 therein;

11 (b) prescribing the duties of the employees of the  
12 liquor division and regulating their conduct while in the  
13 discharge of their duties;

14 (c) governing the purchase of liquor and the  
15 furnishing of liquor to state stores established under this  
16 code;

17 (d) determining the classes, varieties, and brands of  
18 liquor and table wine to be kept for sale at any state  
19 store;

20 (e) prescribing, subject to this code, the hours  
21 during which state liquor stores shall be kept open for the  
22 sale of alcoholic beverages;

23 (f) providing for the issuing and distributing of  
24 price lists showing the price to be paid by purchasers for  
25 each class, variety, or brand of liquor and table wine kept

1 for sale under this code;

2 (g) prescribing an official seal which shall be  
3 attached to every package of liquor sold or sealed under  
4 this code;

5 (h) prescribing forms to be used for the purpose of  
6 this code or of the rules made thereunder and the terms and  
7 conditions in permits and licenses issued and granted under  
8 this code;

9 (i) prescribing the form of records of purchase of  
10 liquor ~~and table wine~~ and the reports to be made thereon to  
11 the division and providing for inspection of the records so  
12 kept;

13 (j) prescribing the manner of giving and serving  
14 notices required by this code or the rules thereunder;

15 (k) prescribing the fees payable in respect of permits  
16 and licenses issued under this code for which no fees are  
17 prescribed in this code and prescribing the fees for  
18 anything done or permitted to be done under the rules made  
19 thereunder;

20 (l) prescribing, subject to the provisions of this  
21 code, the conditions and qualifications necessary for the  
22 obtaining of a liquor or beer license and the books and  
23 records to be kept and the returns to be made by the  
24 licensees and providing for the inspection of such licensed  
25 premises;

1 (m) specifying and describing the place and the manner  
2 in which liquor or beer may be lawfully kept or stored;

3 (n) specifying and regulating the time and periods  
4 when and the manner, methods, and means by which vendors and  
5 brewers shall deliver liquor under this code and the time  
6 and periods when and the manner, methods, and means by which  
7 liquor, under this code, may be lawfully conveyed or  
8 carried;

9 (o) governing the conduct, management, and equipment  
10 of any premises licensed to sell liquor or beer under this  
11 code;

12 (p) providing for the imposition and collection of  
13 taxes and making rules respecting returns, accounting, and  
14 payment of the taxes to the department.

15 (3) Whenever it is provided in this code that any act,  
16 matter, or thing may be done if permitted or authorized by  
17 the rules or may be done in accordance with the rules or as  
18 provided by the rules, the department, subject to the  
19 restrictions set out in subsection (1) hereof, shall have  
20 the power to make rules respecting such act, matter, or  
21 thing."

22 Section 9. Section 16-1-304, MCA, is amended to read:

23 "16-1-304. Prohibited acts within division. (1) No  
24 officer or employee of the liquor division, including those  
25 engaged in the sale of liquor at the various state liquor ~~DB~~

1 TABLE WINE stores, may be directly or indirectly interested  
2 or engaged in any other business or undertaking dealing in  
3 liquor or table wine, whether as owner, part owner, partner,  
4 member of syndicate, shareholder, agent, or employee and  
5 whether for his own benefit or in a fiduciary capacity for  
6 some other person.

7 (2) No member or employee of the division or any  
8 employee of the state may solicit or receive directly or  
9 indirectly any commission, remuneration, or gift whatsoever  
10 from any person or corporation having sold, selling, or  
11 offering liquor or table wine for sale to the state or  
12 division pursuant to this code.

13 (3) No person selling or offering for sale to or  
14 purchasing liquor or table wine from the state liquor  
15 division may either directly or indirectly offer to pay any  
16 commission, profit, or remuneration or make any gift to any  
17 member or employee of the division, to any employee of the  
18 state, or to anyone on behalf of such member or employee.

19 (4) The prohibition contained in subsection (3) of  
20 this section does not prohibit the division from receiving  
21 samples of liquor or table wine for the purpose of chemical  
22 testing, subject to the following limitations:

23 (a) Each manufacturer, distiller, compounder,  
24 rectifier, importer, or wholesale distributor or any other  
25 person, firm, or corporation proposing to sell any liquor or

1 table wine to the Montana liquor division shall submit,  
2 without cost to the division prior to the original purchase,  
3 an analysis of each brand and may submit a representative  
4 sample not exceeding 25 fluid ounces of such merchandise to  
5 the division.

6 (b) When a brand of liquor or table wine has been  
7 accepted for testing by the division, the division shall  
8 forward the sample, unopened and in its entirety, to a  
9 qualified chemical laboratory for analysis.

10 (c) The division shall maintain written records of all  
11 samples received. The records shall show the brand name,  
12 amount and from whom received, date received, the laboratory  
13 or chemist to whom forwarded, the division's action on the  
14 brand, and the person to whom delivered or other final  
15 disposition of the sample.

16 (5) No liquor, wine, or other alcoholic beverage may  
17 be withdrawn from the regular warehouse inventory or from  
18 the state liquor stores of the Montana liquor division for  
19 any purpose other than sale at the prevailing state retail  
20 prices or for destroying damaged or defective merchandise.  
21 The division shall maintain a written record including the  
22 type, brand, container size, number of bottles or other  
23 units, signatures of witnesses, and method of destruction or  
24 other disposition of damaged or defective warehouse or state  
25 store merchandise."

1 ~~NEW SECTION~~ Section 810. Retail selling price on  
 2 table wine sold by the state. The retail selling price at  
 3 which table wine is sold by the department shall be computed  
 4 by adding to the statewide weighted average cost of table  
 5 wine the state markup as designated by the department.

6 ~~NEW SECTION~~ Section 911. STATE DISTRIBUTION (1) The  
 7 department may upon petition, notice, opportunity for  
 8 hearing, and making of findings, import and distribute one  
 9 or more named table wines to one or more designated state  
 10 liquor stores in the same manner as if the table wine  
 11 contained more than 14% alcohol by volume.

12 (2) An interested person may petition the department  
 13 to import one or more table wines to be sold in a state  
 14 liquor store or a group of stores in a designated area upon  
 15 the grounds that the particular table wine is not available  
 16 from any table wine distributor serving the area. The  
 17 department shall give notice of the petition to all table  
 18 wine distributors serving the area and shall conduct a  
 19 contested case hearing if any distributor files a protest to  
 20 the petition.

21 (3) The department must find upon the record of the  
 22 hearing if one is demanded that a particular table wine  
 23 cannot be reasonably obtained from any table wine  
 24 distributor before the department may import that table wine  
 25 as provided in subsection (1).

1 ~~SECTION 8~~ THERE IS A NEW MGA SECTION THAT READS:

2 Department prohibited from engaging in unfair  
 3 competition. (1) The department in engaging in the retail  
 4 sale of table wine is subject to the provisions of Title 30,  
 5 chapter 14, parts 1 and 2, except those provisions relating  
 6 to enforcement and penalties.

7 (2) A person aggrieved by a violation of this section  
 8 by the department may maintain an action to enjoin the  
 9 alleged violation and for the recovery of damages in the  
 10 district court of the district where the conduct complained  
 11 of occurred or where the department's principal office is  
 12 located.

13 ~~SECTION 9~~ THERE IS A NEW MGA SECTION THAT READS:

14 Transition periods (1) In order to make an orderly  
 15 transition to the wine marketing policies set forth in  
 16 initiative 81 and (this act), the department shall prior to  
 17 July 1, 1979:

18 (a) issue licenses or temporary authorizations to  
 19 distribute or retail wine to applicants who qualify under  
 20 the provisions of initiative 81; and

21 (b) authorize licensed wine distributors to import  
 22 and during the last 20 days of June 1979, distribute to  
 23 licensed wine retailers, stocks of table wine that may not  
 24 be sold to the public prior to July 1, 1979.

25 (2) The department may:

1 ~~(a) sell at retail after July 1, 1979, and until~~  
 2 ~~liquidated, the inventory of table wine on hand in its~~  
 3 ~~warehouse and state liquor stores at the close of business~~  
 4 ~~on June 30, 1979, and~~

5 ~~(b) adopt temporary rules under 2-4-303 to implement~~  
 6 ~~initiative 01 and [this act] without being required to find~~  
 7 ~~on imminent peril to public health, safety, or welfare~~

8 ~~Section 10. Effective date. (1) Sections 1 through 8~~  
 9 ~~of this act are effective on July 1, 1979.~~

10 ~~(2) Section 9 of this act is effective on passage and~~  
 11 ~~approval.~~

12 NEW SECTION. Section 12. Retail selling price on  
 13 table wine sold by the state. The retail selling price at  
 14 which table wine is sold by the department shall be computed  
 15 by adding to the statewide weighted average cost of table  
 16 wine the state markup as designated by the department.

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 22 contained more than 14% alcohol by volume.

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-End-



SENATE BILL NO. 99

INTRODUCED BY GOODOVER, FABREGA, MOORE, TURNAGE,  
D'CONNELL, MATHERS, GRAHAM, NATHE, MENAHAN, METCALF,  
ROSENTHAL, GILLIGAN, ROTH, RYAN, SCULLY, MANUEL,  
STAIGMILLER, MEYER, KOLSTAD

BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE THE  
DEPARTMENT OF REVENUE TO BUY ~~IMPORT~~, IMPORT, AND SELL  
TABLE WINE; ALLOCATING THE TAX ON WINE; AMENDING SECTIONS 1,  
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liquor facilities and provide for, regulate, and control the  
acquisition, importation, and distribution of table wine  
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~~acquisition and distribution of beer within this state BY~~  
LICENSED WINE DISTRIBUTORS AND THE STATE. When the words  
"table wine" are used in this act in either the singular or  
plural they refer only to wine containing not more than 14%  
alcohol by volume."

Section 2. Section 2 of Initiative No. 81 is amended  
to read:

"Section 2. Section 4-1-107, RCM 1947, is amended to  
read as follows:

"4-1-107. Definitions. As used in this code:

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

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

"(3) 'Alcoholic beverage' means a compound produced  
and sold for human consumption as a drink that contains more  
than one-half of one percent (0.5%) of alcohol by volume.

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

"(5) 'Brewer' means a person who produces malt

1 beverages.

2       "(6) 'Department' means the Montana department of  
3 revenue.

4       "(7) 'Immediate family' means a spouse, dependent  
5 children, or dependent parents.

6       "(8) 'Industrial use' means a use described as  
7 industrial use by the Federal Alcohol Administration Act and  
8 the federal rules and regulations of 27 CFR.

9       "(9) 'Liquor' means an alcoholic beverage except beer  
10 and table wine.

11       "(10) 'Malt beverage' means an alcoholic beverage made  
12 by the fermentation of an infusion or decoction, or a  
13 combination of both, in potable brewing water, of malted  
14 barley with or without hops or their parts, or their  
15 products, and with or without other malted cereals and with  
16 or without the addition of unmalted or prepared cereals,  
17 other carbohydrates or products prepared therefrom, and with  
18 or without other wholesome products suitable for human food  
19 consumption.

20       "(11) 'Package' means a container or receptacle used  
21 for holding an alcoholic beverage.

22       "(12) 'Proof gallon' means a U.S. gallon of liquor at  
23 sixty degrees on the Fahrenheit scale that contains fifty  
24 percent (50%) of alcohol by volume.

25       "(13) 'Public place' means a place, building, or

1 conveyance to which the public has or may be permitted to  
2 have access and any place of public resort.

3       "(14) 'Residence' means a building, part of a building  
4 where a person resides, but does not include any part of a  
5 building that is not actually and exclusively used as a  
6 private residence.

7       "(15) 'Rules and regulations' means rules and  
8 regulations published by the department pursuant to this  
9 act.

10       "(16) 'State liquor facility' means a facility owned or  
11 under control of the department for the purpose of  
12 receiving, storing, transporting, or selling alcoholic  
13 beverages.

14       "(17) 'State liquor store' means a retail store  
15 operated by the department in accordance with this code for  
16 the purpose of selling distilled spirits and wines  
17 containing more than 14% alcohol by volume.

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

24       "(19) 'Warehouse' means a building or structure owned  
25 or operated by a licensed wholesaler for the receiving,

1 storage and distribution of beer or table wine as permitted  
2 by this code.

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

16 "~~(21) 'Table wine' means wine as defined above which~~  
17 ~~contains not more than 14% alcohol by volume."~~

18 SECTION 3, SECTION 4 OF INITIATIVE NO. 81 IS AMENDED  
19 TO READ:

20 "Section 4. There is a new section in Title 49-RCM  
21 1947 16, MCA, that reads as follows:

22 Wine distributor's license -- records. (1) Any person  
23 desiring to sell and distribute table wine at wholesale to  
24 retailers under the provisions of this code shall apply to  
25 the department of revenue for a license to do so and shall

1 tender with his application the annual license fee of \$400  
2 and the department may issue licenses to qualified  
3 applicants in accordance with the provisions of this code.  
4 All table wine distributors' licenses issued in any year  
5 shall expire on the 30th day of June at midnight of such  
6 year. No license fee may be imposed upon table wine  
7 distributors by a municipality or any other political  
8 subdivision of the state. The license shall be at all times  
9 prominently displayed in the place of business of such table  
10 wine distributor.

11 To qualify for a table wine distributor's license the  
12 applicant shall be a resident of Montana; provided, however,  
13 any individual or partnership which has been licensed as a  
14 table wine distributor may, upon incorporation in accordance  
15 with the laws of Montana, transfer such license to the  
16 corporation if a majority of the capital stock thereof is  
17 held by said individual or the members of said partnership;  
18 or if applicant is a foreign corporation said corporation  
19 shall be authorized to do business in Montana; and said  
20 applicant shall have a fixed place of business, sufficient  
21 capital, the facilities, storehouse, receiving house or  
22 warehouse for the receiving of, storage, handling, and  
23 moving of table wine in large and jobbing quantities for  
24 distribution and sale in original packages to other licensed  
25 table wine distributors or licensed retailers. Each table

1 wine distributor shall be entitled to only one (1) wholesale  
 2 table wine license, which license shall be issued for his  
 3 principal place of business in Montana; a duplicate license  
 4 may be issued for one (1) subwarehouse only in Montana for  
 5 each table wine distributor's license, which said duplicate  
 6 license shall at all times be prominently displayed at said  
 7 subwarehouse. A table wine distributor may also hold a  
 8 license to sell beer at wholesale but shall not hold or have  
 9 any interest, direct or indirect, in any license to sell  
 10 beer, wine, or liquor at retail.

11 ~~With the exception of table wine purchased by the~~  
 12 ~~department and shipped to its warehouse, all~~ table wine  
 13 manufactured outside of the state of Montana and shipped  
 14 into Montana shall be consigned to and shipped to a licensed  
 15 table wine distributor, and by him unloaded into his  
 16 warehouse in Montana or subwarehouse in Montana; said  
 17 distributor shall distribute said table wine from such  
 18 warehouse or subwarehouse; said distributor shall keep  
 19 records at his principal place of business of all table wine  
 20 including the name or kind received, on hand, sold and  
 21 distributed; said records may at all times be inspected by  
 22 any member or representative of the department of revenue;  
 23 any table wine which has been shipped into Montana and has  
 24 not been shipped to and distributed from a warehouse of a  
 25 licensed table wine distributor ~~or the department~~ shall be

1 seized by any peace officer or representative of the  
 2 department and may be confiscated in the manner as provided  
 3 for the confiscation of intoxicating liquor."

4 Section 4. Section 5 of Initiative No. 81 is amended  
 5 to read:

6 "Section 5. There is a new section in Title 4v--REM  
 7 ~~1947 16x MCA~~, that reads as follows:

8 To whom table wine distributor may sell. A table wine  
 9 distributor may sell and deliver table wine purchased or  
 10 acquired by him to another table wine distributor, retailer,  
 11 or common carrier which holds a license issued by the  
 12 department of revenue, ~~or to the department~~. It shall be  
 13 unlawful for any table wine distributor to sell, deliver or  
 14 give away any table wine to be consumed on such  
 15 distributor's premises or to give, sell, deliver, or  
 16 distribute any table wine purchased or acquired by him to  
 17 the public. ~~A distributor may not deliver wine to a state~~  
 18 ~~liquor store at a different price than that offered for~~  
 19 ~~similar goods under similar circumstances to retailers in~~  
 20 ~~the same county in which the state liquor store is located."~~

21 Section 5. Section 9 of Initiative No. 81 is amended  
 22 to read:

23 "Section 9. There is a new section in Title 4v--REM  
 24 ~~1947 16x MCA~~, that reads as follows:

25 Tax on Wine. ~~(1)~~ A tax of seventy-five ~~20~~ cents ~~(75-)~~

1 per gallon LIER is hereby levied and imposed on table wine  
2 imported by any table wine distributor ~~and such tax~~ OR THE  
3 DEPARTMENT.

4 (2) THE TAX ON TABLE WINE IMPORTED BY A TABLE WINE  
5 DISTRIBUTOR shall be paid by the table wine distributor by  
6 the 15th of the month following receipt of the table wine at  
7 the table wine distributor's warehouse.

8 (3) THE TAX ON TABLE WINE IMPORTED BY THE DEPARTMENT  
9 SHALL BE COLLECTED AT THE TIME OF SALE, BE RETAINED IN A  
10 SEPARATE ACCOUNT, AND BE DEPOSITED WITH THE STATE TREASURER  
11 TO THE CREDIT OF THE GENERAL FUND NOT LATER THAN THE 10TH  
12 DAY OF THE MONTH FOLLOWING THE SALE.

13 (4) The tax computed and paid in accordance with this  
14 section shall be the only tax imposed by the state or any of  
15 its subdivisions, including cities and towns, and ~~it~~

16 (5) THE TAX PAID BY A TABLE WINE DISTRIBUTOR shall be  
17 distributed in accordance with applicable statutes and  
18 regulations ~~60-~~ 16 CENTS to the state general fund; ~~5-~~ AND  
19 OF THE REMAINING 4 CENTS ONE-THIRD to the earmarked revenue  
20 account to the credit of the department of institutions for  
21 the treatment, rehabilitation, and prevention of alcoholism;  
22 ~~5-~~ ONE-THIRD to the counties, based on population, for the  
23 purpose established in 16-1-404, and ~~5-~~ ONE-THIRD to the  
24 cities and towns, based on population, for the purpose  
25 established in 16-1-405.

1 ~~SECTION 6. THERE IS A NEW MCA SECTION THAT READS AS~~  
2 ~~FOLLOWS:~~

3 ~~Retail selling price on table wine sold by the state~~  
4 ~~The retail selling price at which table wine is sold by the~~  
5 ~~department shall be computed by adding to the cost of table~~  
6 ~~wine the state markup and state tax as designated by the~~  
7 ~~department.~~

8 Section 6. Section 16-1-302, MCA, is amended to read:  
9 "16-1-302. Functions, powers, and duties of  
10 department. The department shall have the following  
11 functions, duties, and powers:

12 (1) to buy, import, have in its possession for sale,  
13 and sell liquors AND TABLE WINE in the manner set forth in  
14 this code;

15 ~~(2) to buy from licensed table wine distributors have~~  
16 ~~in its possession for sale and sell table wine in the~~  
17 ~~manner set forth in this code;~~

18 (2)(2) to control the possession, sale, and  
19 delivery of liquors in accordance with the provisions of  
20 this code;

21 (3)(3) to determine the municipalities within which  
22 state liquor stores shall be established throughout the  
23 state and the situation of the stores within every such  
24 municipality;

25 (4)(4) to lease, furnish, and equip any building or

1 land required for the operation of this code;

2 ~~(5)(6)(5)~~ to buy or lease all plants and equipment it  
3 may consider necessary and useful in carrying into effect  
4 the objects and purposes of this code;

5 ~~(6)(7)(6)~~ to employ store managers and also every  
6 officer, investigator, clerk, or other employee required for  
7 the operation or carrying out of this code and to dismiss  
8 the same, fix their salaries or remuneration, assign them  
9 their title, define their respective duties and powers, and  
10 to engage the service of experts and persons engaged in the  
11 practice of a profession, if deemed expedient;

12 ~~(7)(8)(7)~~ to determine the nature, form, and capacity  
13 of all packages to be used for containing liquor kept or  
14 sold under this code;

15 ~~(8)(9)(8)~~ to grant and issue licenses under and in  
16 pursuance to this code;

17 ~~(9)(10)(9)~~ without in any way limiting or being  
18 limited by the foregoing, to do all such things as are  
19 deemed necessary or advisable by the department for the  
20 purpose of carrying into effect the provisions of this code  
21 or the rules made thereunder."

22 Section 7. Section 16-1-303, MCA, is amended to read:  
23 "16-1-303. Department rules. (1) The department may  
24 make such rules not inconsistent with this code as to the  
25 department seem necessary for carrying out the provisions of

1 this code and for the efficient administration thereof.

2 (2) Without thereby limiting the generality of the  
3 provisions contained in subsection (1) hereof, it is  
4 declared that the power of the department to make rules in  
5 the manner set out in that subsection shall extend to and  
6 include the following:

7 (a) regulating the equipment and management of state  
8 stores and warehouses in which liquor or table wine is kept  
9 or sold and prescribing the books and records to be kept  
10 therein;

11 (b) prescribing the duties of the employees of the  
12 liquor division and regulating their conduct while in the  
13 discharge of their duties;

14 (c) governing the purchase of liquor and the  
15 furnishing of liquor to state stores established under this  
16 code;

17 (d) determining the classes, varieties, and brands of  
18 liquor and table wine to be kept for sale at any state  
19 store;

20 (e) prescribing, subject to this code, the hours  
21 during which state liquor stores shall be kept open for the  
22 sale of alcoholic beverages;

23 (f) providing for the issuing and distributing of  
24 price lists showing the price to be paid by purchasers for  
25 each class, variety, or brand of liquor and table wine kept

1 for sale under this code;

2 (g) prescribing an official seal which shall be  
3 attached to every package of liquor sold or sealed under  
4 this code;

5 (h) prescribing forms to be used for the purpose of  
6 this code or of the rules made thereunder and the terms and  
7 conditions in permits and licenses issued and granted under  
8 this code;

9 (i) prescribing the form of records of purchase of  
10 liquor ~~and table wine~~ and the reports to be made thereon to  
11 the division and providing for inspection of the records so  
12 kept;

13 (j) prescribing the manner of giving and serving  
14 notices required by this code or the rules thereunder;

15 (k) prescribing the fees payable in respect of permits  
16 and licenses issued under this code for which no fees are  
17 prescribed in this code and prescribing the fees for  
18 anything done or permitted to be done under the rules made  
19 thereunder;

20 (l) prescribing, subject to the provisions of this  
21 code, the conditions and qualifications necessary for the  
22 obtaining of a liquor or beer license and the books and  
23 records to be kept and the returns to be made by the  
24 licensees and providing for the inspection of such licensed  
25 premises;

1 (m) specifying and describing the place and the manner  
2 in which liquor or beer may be lawfully kept or stored;

3 (n) specifying and regulating the time and periods  
4 when and the manner, methods, and means by which vendors and  
5 brewers shall deliver liquor under this code and the time  
6 and periods when and the manner, methods, and means by which  
7 liquor, under this code, may be lawfully conveyed or  
8 carried;

9 (o) governing the conduct, management, and equipment  
10 of any premises licensed to sell liquor or beer under this  
11 code;

12 (p) providing for the imposition and collection of  
13 taxes and making rules respecting returns, accounting, and  
14 payment of the taxes to the department.

15 (3) Whenever it is provided in this code that any act,  
16 matter, or thing may be done if permitted or authorized by  
17 the rules or may be done in accordance with the rules or as  
18 provided by the rules, the department, subject to the  
19 restrictions set out in subsection (1) hereof, shall have  
20 the power to make rules respecting such act, matter, or  
21 thing.\*

22 Section 8. Section 16-1-304, MCA, is amended to read:

23 \*16-1-304. Prohibited acts within division. (1) No  
24 officer or employee of the liquor division, including those  
25 engaged in the sale of liquor at the various state liquor ~~OR~~

1 TABLE WINE stores, may be directly or indirectly interested  
 2 or engaged in any other business or undertaking dealing in  
 3 liquor or table wine, whether as owner, part owner, partner,  
 4 member of syndicate, shareholder, agent, or employee and  
 5 whether for his own benefit or in a fiduciary capacity for  
 6 some other person.

7 (2) No member or employee of the division or any  
 8 employee of the state may solicit or receive directly or  
 9 indirectly any commission, remuneration, or gift whatsoever  
 10 from any person or corporation having sold, selling, or  
 11 offering liquor or table wine for sale to the state or  
 12 division pursuant to this code.

13 (3) No person selling or offering for sale to or  
 14 purchasing liquor or table wine from the state liquor  
 15 division may either directly or indirectly offer to pay any  
 16 commission, profit, or remuneration or make any gift to any  
 17 member or employee of the division, to any employee of the  
 18 state, or to anyone on behalf of such member or employee.

19 (4) The prohibition contained in subsection (3) of  
 20 this section does not prohibit the division from receiving  
 21 samples of liquor or table wine for the purpose of chemical  
 22 testing, subject to the following limitations:

23 (a) Each manufacturer, distiller, compounder,  
 24 rectifier, importer, or wholesale distributor or any other  
 25 person, firm, or corporation proposing to sell any liquor or

1 table wine to the Montana liquor division shall submit,  
 2 without cost to the division prior to the original purchase,  
 3 an analysis of each brand and may submit a representative  
 4 sample not exceeding 25 fluid ounces of such merchandise to  
 5 the division.

6 (b) When a brand of liquor or table wine has been  
 7 accepted for testing by the division, the division shall  
 8 forward the sample, unopened and in its entirety, to a  
 9 qualified chemical laboratory for analysis.

10 (c) The division shall maintain written records of all  
 11 samples received. The records shall show the brand name,  
 12 amount and from whom received, date received, the laboratory  
 13 or chemist to whom forwarded, the division's action on the  
 14 brand, and the person to whom delivered or other final  
 15 disposition of the sample.

16 (5) No liquor, wine, or other alcoholic beverage may  
 17 be withdrawn from the regular warehouse inventory or from  
 18 the state liquor stores of the Montana liquor division for  
 19 any purpose other than sale at the prevailing state retail  
 20 prices or for destroying damaged or defective merchandise.  
 21 The division shall maintain a written record including the  
 22 type, brand, container size, number of bottles or other  
 23 units, signatures of witnesses, and method of destruction or  
 24 other disposition of damaged or defective warehouse or state  
 25 store merchandise."



1 ~~NEW SECTION. Section 8. Retail selling price on table~~  
 2 ~~wine sold by the state. The retail selling price at which~~  
 3 ~~table wine is sold by the department shall be computed by~~  
 4 ~~adding to the statewide weighted average cost of table wine~~  
 5 ~~the state markup as designated by the department.~~

6 ~~NEW SECTION. Section 9. STATE DISTRIBUTION. (1) The~~  
 7 ~~department may, upon petition, notice, opportunity for~~  
 8 ~~hearing, and making of findings, import and distribute one~~  
 9 ~~or more named table wines to one or more designated state~~  
 10 ~~liquor stores in the same manner as if the table wine~~  
 11 ~~contained more than 14% alcohol by volume.~~

12 ~~(2) An interested person may petition the department~~  
 13 ~~to import one or more table wines to be sold in a state~~  
 14 ~~liquor store or a group of stores in a designated area upon~~  
 15 ~~the grounds that the particular table wine is not available~~  
 16 ~~from any table wine distributor serving the area. The~~  
 17 ~~department shall give notice of the petition to all table~~  
 18 ~~wine distributors serving the area and shall conduct a~~  
 19 ~~contested case hearing if any distributor files a protest to~~  
 20 ~~the petition.~~

21 ~~(3) The department must find upon the record of the~~  
 22 ~~hearing if one is demanded, that a particular table wine~~  
 23 ~~cannot be reasonably obtained from any table wine~~  
 24 ~~distributor before the department may import that table wine~~  
 25 ~~as provided in subsection (1).~~

1 ~~SECTION 8. THERE IS A NEW MGA SECTION THAT READS:~~  
 2 ~~Department prohibited from engaging in unfair~~  
 3 ~~competitions. (1) The department in engaging in the retail~~  
 4 ~~sale of table wine is subject to the provisions of Title 30,~~  
 5 ~~chapter 14, parts 1 and 2, except those provisions relating~~  
 6 ~~to enforcement and penalties.~~

7 ~~(2) A person aggrieved by a violation of this section~~  
 8 ~~by the department may maintain an action to enjoin the~~  
 9 ~~alleged violation and for the recovery of damages in the~~  
 10 ~~district court of the district where the conduct complained~~  
 11 ~~of occurred or where the department's principal office is~~  
 12 ~~located.~~

13 ~~SECTION 9. THERE IS A NEW MGA SECTION THAT READS:~~

14 ~~Transition periods. (1) In order to make an orderly~~  
 15 ~~transition to the wine marketing policies set forth in~~  
 16 ~~initiative 81 and [this act], the department shall, prior to~~  
 17 ~~duty 1, 1979:~~

18 ~~(a) issue licenses or temporary authorizations to~~  
 19 ~~distribute or retail wine to applicants who qualify under~~  
 20 ~~the provisions of initiative 81; and~~

21 ~~(b) authorize licensed wine distributors to import~~  
 22 ~~and, during the last 20 days of June 1979, distribute to~~  
 23 ~~licensed wine retailers, stocks of table wine that may not~~  
 24 ~~be sold to the public prior to duty 1, 1979.~~

25 ~~(2) The department may:~~

~~(a) sell at retail after July 1, 1979, and until liquidated, the inventory of table wine on hand in its warehouse and state liquor stores at the close of business on June 30, 1979; and~~

~~(b) adopt temporary rules under 2-4-303 to implement initiative 01 and [this act] without being required to find an imminent peril to public health, safety, or welfare.~~

~~Section 10. Effective dates. (1) Sections 1 through 8 of this act are effective on July 1, 1979.~~

~~(2) Section 9 of this act is effective on passage and approval.~~

NEW SECTION. Section 9. Retail selling price on table wine sold by the state. The retail selling price at which table wine is sold by the department shall be computed by adding to the statewide weighted average cost of table wine the TAX AND state markup as designated by the department.

NEW SECTION. Section 10. STATE DISTRIBUTION. (1) The department may, upon petition, notice, opportunity for hearing, and making of findings, import and distribute one or more named table wines to one or more designated state liquor stores, in the same manner as if the table wine contained more than 14% alcohol by volume.

~~(2) An interested person may petition the department to import one or more table wines to be sold in a state liquor store or a group of stores in a designated area, upon~~

~~the grounds that the particular table wine is not available from any table wine distributor serving the area; the department shall give notice of the petition to all table wine distributors serving the area and shall conduct a contested case hearing if any distributor files a protest to the petition.~~

~~(3) The department must find, upon the record of the hearing if one is demanded, that a particular table wine cannot be reasonably obtained from any table wine distributor before the department may import that table wine as provided in subsection (1).~~

SECTION 11. THERE IS A NEW MGA SECTION THAT READS:

Department prohibited from engaging in unfair competition. (1) The department in engaging in the retail sale of table wine is subject to the provisions of Title 30, chapter 14, parts 1 and 2, except those provisions relating to enforcement and penalties.

(2) A person aggrieved by a violation of this section by the department may maintain an action to enjoin the alleged violation and for the recovery of damages in the district court of the district where the conduct complained of occurred or where the department's principal office is located.

SECTION 12. TRANSITION PERIOD. (1) IN ORDER TO MAKE AN ORDERLY TRANSITION TO THE WINE MARKETING POLICIES SET

1 FORTH IN INITIATIVE 81 AND [THIS ACT], THE DEPARTMENT SHALL,  
2 PRIOR TO JULY 1, 1979:

3 (A) ISSUE LICENSES OR TEMPORARY AUTHORIZATIONS TO  
4 DISTRIBUTE OR RETAIL WINE TO APPLICANTS WHO QUALIFY UNDER  
5 THE PROVISIONS OF INITIATIVE 81 AND [THIS ACT]; AND

6 (B) AUTHORIZE LICENSED WINE DISTRIBUTORS TO IMPORT  
7 AND, DURING THE LAST 20 DAYS OF JUNE 1979, DISTRIBUTE TO  
8 LICENSED WINE RETAILERS, STOCKS OF TABLE WINE THAT MAY NOT  
9 BE SOLD TO THE PUBLIC PRIOR TO JULY 1, 1979.

10 (2) THE DEPARTMENT MAY ADOPT TEMPORARY RULES UNDER  
11 2-4-303 TO IMPLEMENT INITIATIVE 81 AND [THIS ACT] WITHOUT  
12 BEING REQUIRED TO FIND AN IMMINENT PERIL TO PUBLIC HEALTH,  
13 SAFETY, OR WELFARE.

14 SECTION 13, EFFECTIVE DATE, (1) SECTIONS 1 THROUGH 11  
15 OF THIS ACT ARE EFFECTIVE ON JULY 1, 1979.

16 (2) SECTION 12 OF THIS ACT IS EFFECTIVE ON PASSAGE AND  
17 APPROVAL.

-End-

HOUSE OF REPRESENTATIVES  
APRIL 16, 1979

Committee on Taxation amendments to Senate Bill No. 99, third reading copy, as follows:

1. Title, line 9.  
Following: "BUY"  
Strike: ", IMPORT,"
2. Page 6, line 13.  
Following: "of"  
Strike: "seventy-five"  
Insert: "20"  
Following: "cents"  
Strike: "(75)"
3. Page 6, line 14.  
Following: line 13  
Strike: "gallon"  
Insert: "liter"
4. Page 6, line 22.  
Following: "regulations."  
~~XXXXXX~~ Strike: "60"  
Insert: "16 cents"

(CONTINUED)

.....April 16..... 19 79.....

5, Page 6, line 23,  
Following: "fund"  
Strike: "; 5"  
Insert: "and of the remaining 4 cents one-third"

6. Page 6, line 25.  
Following: "alcoholism"  
Strike: "; 5"  
Insert: ", one-third"

7, Page 7, line 2,  
Following: "16-1-404"  
Strike: "; 1"  
Insert: ", 1"  
Following: "and"  
Strike: "5"  
Insert: "one-third"

8. Page 13, line 20 through line 19 on page 21.  
Following: line 19 on page 20  
Strike: Sections 8 and 9 in their entirety  
Insert: "SECTION 8. THERE IS A NEW MCA SECTION THAT READS:

Department prohibited from engaging in unfair competition.  
(1) The department in engaging in the retail sale of table wine is subject to the provisions of Title 30, chapter 14, parts 1 and 2, except those provisions relating to enforcement and penalties.

(2) A person aggrieved by a violation of this section by the department may maintain an action to enjoin the alleged violation and for the recovery of damages in the district court of the district where the conduct complained of occurred or where the department's principal office is located.

SECTION 9. THERE IS A NEW MCA SECTION THAT READS:

Transition period. (1) In order to make an orderly transition to the wine marketing policies set forth in Initiative 81 and [this act], the department shall, prior to July 1, 1979:

(a) issue licenses or temporary authorizations to distribute or retail wine to applicants who qualify under the provisions of Initiative 81; and

(b) authorize licensed wine distributors to import and, during the last 20 days of June 1979, distribute to licensed wine retailers, stocks of table wine that may not be sold to the public prior to July 1, 1979.

(2) The department may:

(CONTINUED)

.....April 16..... 1979.....

(a) sell at retail after July 1, 1979, and until liquidated, the inventory of table wine on hand in its warehouse and state liquor stores at the close of business on June 30, 1979; and

(b) adopt temporary rules under 2-4-303 to implement Initiative 81 and [this act] without being required to find an imminent peril to public health, safety, or welfare.

Section 10.

^ Effective date, (1) Sections 1 through 8 of this act are effective on July 1, 1979.

(2) Section 9 of this act is effective on passage and approval."

AMEND STATEMENT OF INTENT, second reading copy, as follows:

1. Page 1, line 23 through line 2 on page 2.

Following: "systems."

Strike: Remainder of line 23 on page 1 through line 2 on page 2.

2. Page 2.

Following: line 2

Insert: "Section 9 of the bill allows the department to adopt temporary rules in order to make an orderly transition to the new wine-marketing policies. Rules that can be anticipated include rules regarding the issuance of temporary authorization to distribute and retail table wine and procedures allowing distributors and retailers to make table wine available under the new system on July 1, 1979.

The rule-making authority granted in Section 10 is not an expansion of the rule-making authority granted to the department in section 6, but is only to provide for an orderly transition."

AND AS AMENDED  
BE CONCURRED IN

HOUSE OF REPRESENTATIVES

April 18, 1979

Committee of the Whole amendments to House Taxation Committee amendments to SENATE BILL NO. 99, third reading copy. (dated April 16, 1979)

1. Amendment No. 1.  
Strike: Amendment No. 1

2. Amendment No. 8  
Strike: Amendment No. 8

MR. CHAIRMAN, I further move to amend House Committee on Taxation amendments to Senate Bill No. 99, statement of intent, Second Reading copy, dated April 16, 1979, as follows:

1. Amendments 1 and 2.  
Strike: Amendments 1 and 2.

MR. CHAIRMAN, I further move to amend Senate Bill No. 99, Third Reading copy, as follows:

1. Title, line 10.  
Following: "2,"  
Insert: "4,"

2. Page 1, line 24.  
Following: "the"  
Insert: "importation and"

3. Page 2, lines 3 through 5.  
Following: "volume"  
Strike: the remainder of line 3 through "state" on line 5  
Insert: "by licensed wine distributors and the state"

4. Page 5.  
Following: line 16  
Insert: "Section 3. Section 4 of Initiative No. 81 is amended to read:

"Section 4. There is a new section in Title 47--REM-1947 16, MCA, that reads as follows:

Wine distributor's license -- records. (1) Any person desiring to sell and distribute table wine at wholesale to retailers under the provisions of this code shall apply to the department of revenue for a license to do so and shall tender with his application the annual license fee of \$400 and the department may issue licenses to qualified applicants in accordance with the provisions of this code. All table wine distributors' licenses issued in any year shall expire on the 30th day of June at midnight of such year. No license

(continued)

fee may be imposed upon table wine distributors by a municipality or any other political subdivision of the state. The license shall be at all times prominently displayed in the place of business of such table wine distributor.

To qualify for a table wine distributor's license the applicant shall be a resident of Montana; provided, however, any individual or partnership which has been licensed as a table wine distributor may, upon incorporation in accordance with the laws of Montana, transfer such license to the corporation if a majority of the capital stock thereof is held by said individual or the members of said partnership; or if applicant is a foreign corporation said corporation shall be authorized to do business in Montana; and said applicant shall have a fixed place of business, sufficient capital, the facilities, storehouse, receiving house or warehouse for the receiving of, storage, handling, and moving of table wine in large and jobbing quantities for distribution and sale in original packages to other licensed table wine distributors or licensed retailers. Each table wine distributor shall be entitled to only one (1) wholesale table wine license, which license shall be issued for his principal place of business in Montana; a duplicate license may be issued for one (1) subwarehouse only in Montana for each table wine distributor's license, which said duplicate license shall at all times be prominently displayed at said subwarehouse. A table wine distributor may also hold a license to sell beer at wholesale but shall not hold or have any interest, direct or indirect, in any license to sell beer, wine, or liquor at retail.

All With the exception of table wine purchased by the department and shipped to its warehouse, all table wine manufactured outside of the state of Montana and shipped into Montana shall be consigned to and shipped to a licensed table wine distributor, and by him unloaded into his warehouse in Montana or subwarehouse in Montana; said distributor shall said distributor shall keep records at his principal place of business of all table wine including the name or kind received, on hand, sold and distributed; said records may at all times be inspected by any member or representative of the department of revenue; any table wine which has been shipped into Montana and has not been shipped to and distributed from a warehouse of a licensed table wine distributor or the department shall be seized by any peace officer or representative of the department and may be confiscated in the manner provided for the confiscation of intoxicating liquor."

Renumber: subsequent sections

5. Page 6, line 13.  
Following: "Wine."  
Insert: "(1)"



6. Page 6, line 15.

Following: "distributor"

Strike: ", and such tax"

Insert: "or the department. (2) The tax on table wine imported by a table wine distributor"

7. Page 6, line 18.

Following: "warehouse."

Insert: "(3) The tax on table wine imported by the department shall be collected at the time of sale, be retained in a separate account, and be deposited with the state treasurer to the credit of the general fund not later than the 10th day of the month following the sale. (4)"

8. Page 6, line 21.

Following: "towns"

Strike: ", and it"

Insert: ". (5) The tax paid by a table wine distributor"

9. Page 7.

Following: line 3

Insert: "SECTION 6. THERE IS A NEW MCA SECTION THAT READS AS FOLLOWS:

"Retail selling price on table wine sold by the state. The retail selling price at which table wine is sold by the department shall be computed by adding to the cost of table wine the state markup, as designated by the department." and state tax

10. Page 7, line 9.

Following: "liquors"

Insert: "and table wine"

11. Page 7, lines 10 through 12.

Strike: subsection 2 in its entirety

Renumber: subsequent subsections

AND AS AMENDED  
BE CONCURRED IN.