

Senate Bill 380

In The Senate

February 6, 1981	Introduced and referred to Committee on Business and Industry.
February 20, 1981	Committee recommend bill do pass.
February 21, 1981	Bill printed and placed on members' desks.
February 23, 1981	Second reading do pass as amended.
February 24, 1981	Correctly engrossed.
February 25, 1981	Third reading passed.

In The House

March 3, 1981	Introduced and referred to Committee on Judiciary.
March 31, 1981	Committee recommend bill not concurred.

In The Senate

April 1, 1981	Returned from House not concurred.
---------------	------------------------------------

1 *Senate* BILL NO. *380*  
 2 INTRODUCED BY *Ryan P. Quinn*  
 3 *Meyer, Mays, Johnson, Van Vleet, Harty, Manly*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO INCLUDE WINERY-WINE  
 5 DISTRIBUTOR FRANCHISE AGREEMENTS WITHIN THE LAWS REGULATING  
 6 BREWERY-BEER DISTRIBUTOR AGREEMENTS; AMENDING SECTIONS  
 7 16-3-222 THROUGH 16-3-226, MCA."

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

10 Section 1. Section 16-3-222, MCA, is amended to read:

11 "16-3-222. Mandatory provisions of brewer-wholesaler  
 12 and winery-wholesaler contracts, agreements, and franchises.  
 13 All contracts, agreements, or franchises between a brewer or  
 14 winery and a wholesaler shall specifically set forth or  
 15 contain the following:

16 (1) that the brewer or winery or any officer, agent,  
 17 or representative of any brewer or winery and the wholesaler  
 18 involved mutually shall determine the size or extent of the  
 19 area in which the wholesaler may sell or distribute the  
 20 products of the brewer or winery to the retail licensees.  
 21 Said territory will be the territory agreed upon between the  
 22 wholesaler and brewer or between the wholesaler and winery  
 23 and may not be changed without the mutual consent of both  
 24 the wholesaler and brewer or winery.

25 (2) the agreed-upon brands of the brewer or winery to

1 be sold by the wholesaler;

2 (3) that the brewer or winery recognizes that the  
 3 wholesaler is free to manage his business in the manner the  
 4 wholesaler deems best and that this prerogative vests in the  
 5 wholesaler the exclusive right to establish selling prices,  
 6 to select the brands he wishes to handle, to determine the  
 7 effort and resources the wholesaler will exert to develop  
 8 and promote the sale of the brewer's or winery's products  
 9 handled by the wholesaler;

10 (4) a procedure for the review of alleged wholesaler  
 11 deficiencies, including the submission in writing to the  
 12 wholesaler by the brewer or winery of said deficiencies, if  
 13 the deficiencies are susceptible of correction and if the  
 14 wholesaler desires to correct said deficiencies, and that a  
 15 reasonable period of time shall be given the wholesaler for  
 16 rectification of said deficiencies prior to any notice of  
 17 intent to terminate;

18 (5) a termination clause providing that the brewer or  
 19 winery shall deliver, in writing, to the wholesaler a 60-day  
 20 notice of intent to terminate the agreement, contract, or  
 21 franchise."

22 Section 2. Section 16-3-223, MCA, is amended to read:

23 "16-3-223. Transfer of wholesaler's interest in  
 24 business. A wholesaler shall have the right to sell or  
 25 transfer his business or an interest in his business to any

1 person or to one or more members of his family or heirs or  
 2 legatees, whether the wholesaler operates as an individual,  
 3 a partnership, or corporation. Provided, however, the  
 4 consent of the brewer or winery in writing is required for  
 5 such transferee to continue as a wholesaler of said brewer  
 6 or winery, which consent shall consider the personal,  
 7 financial, and managerial responsibilities and capabilities  
 8 of such transferee and which consent shall not unreasonably  
 9 be withheld."

10 Section 3. Section 16-3-224, MCA, is amended to read:

11 "16-3-224. Contractual or franchise relationship --  
 12 existence by actions. The doing or accomplishing of any of  
 13 the following acts constitutes prima facie evidence of a  
 14 contractual or franchise relationship between a licensed  
 15 wholesaler and a brewer or winery within the contemplation  
 16 of 16-3-221 through 16-3-226 and [section 6]:

17 (1) the shipment, preparation for shipment, or  
 18 acceptance of any order by any brewer or its agent for any  
 19 beer to a licensed wholesaler within this state;

20 ~~(2) the shipment, preparation for shipment, or~~  
 21 ~~acceptance of any order by any winery or its agent for any~~  
 22 ~~wine to a licensed distributor within this state;~~

23 ~~(2)(3)~~ (3) the payment by any licensed wholesaler within  
 24 this state or the acceptance of payment by any brewer or  
 25 winery or its agent for the shipment of an order of beer or

1 wine intended for sale within this state."

2 Section 4. Section 16-3-225, MCA, is amended to read:

3 "16-3-225. Injunction to prevent franchise  
 4 cancellation. Any court of competent jurisdiction may enjoin  
 5 the cancellation or termination of a franchise or agreement  
 6 between a wholesaler and a brewer or winery at the instance  
 7 of a wholesaler who is or would be adversely affected by the  
 8 cancellation or termination. In granting an injunction, the  
 9 court shall provide that the brewer or winery shall not  
 10 supply the customers or territory of the wholesaler who is  
 11 servicing the territory or customers through other  
 12 distributors or means while the injunction is in effect."

13 Section 5. Section 16-3-226, MCA, is amended to read:

14 "16-3-226. Brewer-wholesaler or winery-wholesaler  
 15 agreements filed with department. An exact copy of all  
 16 agreements, contracts, or franchises between a brewer or  
 17 winery and a wholesaler shall be filed with the department  
 18 as a public document and shall be available to any of the  
 19 parties to a dispute. The department, upon the instigation  
 20 of any action in a court of record, shall file an exact  
 21 certified copy of the agreement with the court for the  
 22 court's consideration in determining any matter before it.  
 23 Any contracts, agreements, or franchises not upon record  
 24 with the department shall not be considered by any court as  
 25 having any force or effect."

1        NEW SECTION. Section 6. Illegal acts by wineries. It  
2 is unlawful for any winery or its agent to:

3        (1) coerce or attempt to coerce or persuade any person  
4 licensed to distribute table wine at wholesale to enter into  
5 any agreement or to take any action in violation of state  
6 law or rules of the department;

7        (2) sell its products to licensed distributors in the  
8 state without a written contract, which conforms to the  
9 provisions of 16-3-221 through 16-3-226 and this section,  
10 with each appointed distributor; or

11        (3) designate or allow more than one wholesale  
12 distributor to sell a specific brand of table wine to retail  
13 licensees in the same area. A winery may sell various brands  
14 to the department, notwithstanding such territorial  
15 agreements, and may authorize different distributors to sell  
16 different brands of table wine of the same winery within the  
17 same territory.

18        Section 7. Codification instruction. Section 6 is  
19 intended to be codified as an integral part of Title 16,  
20 chapter 3, part 2.

-End-

Approved by Committee  
on Business and Industry

1 *Senate* BILL NO. *380*  
2 INTRODUCED BY *Ryan Patrick*  
3 *Mayor Mesquite Johnson, Dan Vellebery*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO INCLUDE WINERY-WINE  
5 DISTRIBUTOR FRANCHISE AGREEMENTS WITHIN THE LAWS REGULATING  
6 BREWERY-BEER DISTRIBUTOR AGREEMENTS; AMENDING SECTIONS  
7 16-3-222 THROUGH 16-3-226, MCA."

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

10 Section 1. Section 16-3-222, MCA, is amended to read:

11 "16-3-222. Mandatory provisions of brewer-wholesaler  
12 ~~and winery-wholesaler~~ contracts, agreements, and franchises.  
13 All contracts, agreements, or franchises between a brewer or  
14 winery and a wholesaler shall specifically set forth or  
15 contain the following:

16 (1) that the brewer or winery or any officer, agent,  
17 or representative of any brewer or winery and the wholesaler  
18 involved mutually shall determine the size or extent of the  
19 area in which the wholesaler may sell or distribute the  
20 products of the brewer or winery to the retail licensees.  
21 Said territory will be the territory agreed upon between the  
22 wholesaler and brewer or between the wholesaler and winery  
23 and may not be changed without the mutual consent of both  
24 the wholesaler and brewer or winery.

25 (2) the agreed-upon brands of the brewer or winery to

1 be sold by the wholesaler;  
2 (3) that the brewer or winery recognizes that the  
3 wholesaler is free to manage his business in the manner the  
4 wholesaler deems best and that this prerogative vests in the  
5 wholesaler the exclusive right to establish selling prices,  
6 to select the brands he wishes to handle, to determine the  
7 effort and resources the wholesaler will exert to develop  
8 and promote the sale of the brewer's or winery's products  
9 handled by the wholesaler;

10 (4) a procedure for the review of alleged wholesaler  
11 deficiencies, including the submission in writing to the  
12 wholesaler by the brewer or winery of said deficiencies, if  
13 the deficiencies are susceptible of correction and if the  
14 wholesaler desires to correct said deficiencies, and that a  
15 reasonable period of time shall be given the wholesaler for  
16 rectification of said deficiencies prior to any notice of  
17 intent to terminate;

18 (5) a termination clause providing that the brewer or  
19 winery shall deliver, in writing, to the wholesaler a 60-day  
20 notice of intent to terminate the agreement, contract, or  
21 franchise."

22 Section 2. Section 16-3-223, MCA, is amended to read:

23 "16-3-223. Transfer of wholesaler's interest in  
24 business. A wholesaler shall have the right to sell or  
25 transfer his business or an interest in his business to any

1 person or to one or more members of his family or heirs or  
 2 legatees, whether the wholesaler operates as an individual,  
 3 a partnership, or corporation. Provided, however, the  
 4 consent of the brewer or winery in writing is required for  
 5 such transferee to continue as a wholesaler of said brewer  
 6 or winery, which consent shall consider the personal,  
 7 financial, and managerial responsibilities and capabilities  
 8 of such transferee and which consent shall not unreasonably  
 9 be withheld."

10 Section 3. Section 16-3-224, MCA, is amended to read:

11 "16-3-224. Contractual or franchise relationship --  
 12 existence by actions. The doing or accomplishing of any of  
 13 the following acts constitutes prima facie evidence of a  
 14 contractual or franchise relationship between a licensed  
 15 wholesaler and a brewer or winery within the contemplation  
 16 of 16-3-221 through 16-3-226 and [section 6]:

17 (1) the shipment, preparation for shipment, or  
 18 acceptance of any order by any brewer or its agent for any  
 19 beer to a licensed wholesaler within this state;

20 ~~(2) the shipment, preparation for shipment, or~~  
 21 ~~acceptance of any order by any winery or its agent for any~~  
 22 ~~wine to a licensed distributor within this state;~~

23 ~~(2)(3)~~ the payment by any licensed wholesaler within  
 24 this state or the acceptance of payment by any brewer or  
 25 winery or its agent for the shipment of an order of beer or

1 wine intended for sale within this state."

2 Section 4. Section 16-3-225, MCA, is amended to read:

3 "16-3-225. Injunction to prevent franchise  
 4 cancellation. Any court of competent jurisdiction may enjoin  
 5 the cancellation or termination of a franchise or agreement  
 6 between a wholesaler and a brewer or winery at the instance  
 7 of a wholesaler who is or would be adversely affected by the  
 8 cancellation or termination. In granting an injunction, the  
 9 court shall provide that the brewer or winery shall not  
 10 supply the customers or territory of the wholesaler who is  
 11 servicing the territory or customers through other  
 12 distributors or means while the injunction is in effect."

13 Section 5. Section 16-3-226, MCA, is amended to read:

14 "16-3-226. Brewer-wholesaler ~~or winery-wholesaler~~  
 15 agreements filed with department. An exact copy of all  
 16 agreements, contracts, or franchises between a brewer or  
 17 winery and a wholesaler shall be filed with the department  
 18 as a public document and shall be available to any of the  
 19 parties to a dispute. The department, upon the instigation  
 20 of any action in a court of record, shall file an exact  
 21 certified copy of the agreement with the court for the  
 22 court's consideration in determining any matter before it.  
 23 Any contracts, agreements, or franchises not upon record  
 24 with the department shall not be considered by any court as  
 25 having any force or effect."

1        **NEW SECTION.** Section 6. Illegal acts by wineries. It  
2 is unlawful for any winery or its agent to:

3            (1) coerce or attempt to coerce or persuade any person  
4 licensed to distribute table wine at wholesale to enter into  
5 any agreement or to take any action in violation of state  
6 law or rules of the department;

7            (2) sell its products to licensed distributors in the  
8 state without a written contract, which conforms to the  
9 provisions of 16-3-221 through 16-3-226 and this section,  
10 with each appointed distributor; or

11           (3) designate or allow more than one wholesale  
12 distributor to sell a specific brand of table wine to retail  
13 licensees in the same area. A winery may sell various brands  
14 to the department, notwithstanding such territorial  
15 agreements, and may authorize different distributors to sell  
16 different brands of table wine of the same winery within the  
17 same territory.

18           Section 7. Codification instruction. Section 6 is  
19 intended to be codified as an integral part of Title 16,  
20 chapter 3, part 2.

-End-

SENATE BILL NO. 380

INTRODUCED BY RYAN, PAVLOVICH, HAZELBAKER, MANLEY,  
MEYER, MAZUREK, THOMAS, VAN VALKENBERG

A BILL FOR AN ACT ENTITLED: "AN ACT TO INCLUDE WINERY-WINE  
DISTRIBUTOR FRANCHISE AGREEMENTS WITHIN THE LAWS REGULATING  
BREWERY-BEER DISTRIBUTOR AGREEMENTS; AMENDING SECTIONS  
16-3-222 THROUGH 16-3-226, MCA."

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

Section 1. Section 16-3-222, MCA, is amended to read:

"16-3-222. Mandatory provisions of brewer-wholesaler  
and winery-wholesaler contracts, agreements, and franchises.  
All contracts, agreements, or franchises between a brewer or  
winery and a wholesaler shall specifically set forth or  
contain the following:

(1) that the brewer or winery or any officer, agent,  
or representative of any brewer or winery and the wholesaler  
involved mutually shall determine the size or extent of the  
area in which the wholesaler may sell or distribute the  
products of the brewer or winery to the retail licensees.  
Said territory will be the territory agreed upon between the  
wholesaler and brewer or between the wholesaler and winery  
and may not be changed without the mutual consent of both  
the wholesaler and brewer or winery.

(2) the agreed-upon brands of the brewer or winery to  
be sold by the wholesaler;

(3) that the brewer or winery recognizes that the  
wholesaler is free to manage his business in the manner the  
wholesaler deems best and that this prerogative vests in the  
wholesaler the exclusive right to establish selling prices,  
to select the brands he wishes to handle, to determine the  
effort and resources the wholesaler will exert to develop  
and promote the sale of the brewer's or winery's products  
handled by the wholesaler;

(4) a procedure for the review of alleged wholesaler  
deficiencies, including the submission in writing to the  
wholesaler by the brewer or winery of said deficiencies, if  
the deficiencies are susceptible of correction and if the  
wholesaler desires to correct said deficiencies, and that a  
reasonable period of time shall be given the wholesaler for  
rectification of said deficiencies prior to any notice of  
intent to terminate;

(5) a termination clause providing that the brewer or  
winery shall deliver, in writing, to the wholesaler a 60-day  
notice of intent to terminate the agreement, contract, or  
franchise."

Section 2. Section 16-3-223, MCA, is amended to read:

"16-3-223. Transfer of wholesaler's interest in  
business. A wholesaler shall have the right to sell or

1 transfer his business or an interest in his business to any  
 2 person or to one or more members of his family or heirs or  
 3 legatees, whether the wholesaler operates as an individual,  
 4 a partnership, or corporation. Provided, however, the  
 5 consent of the brewer or winery in writing is required for  
 6 such transferee to continue as a wholesaler of said brewer  
 7 or winery, which consent shall consider the personal,  
 8 financial, and managerial responsibilities and capabilities  
 9 of such transferee and which consent shall not unreasonably  
 10 be withheld."

11 Section 3. Section 16-3-224, MCA, is amended to read:  
 12 "16-3-224. Contractual or franchise relationship --  
 13 existence by actions. The doing or accomplishing of any of  
 14 the following acts constitutes prima facie evidence of a  
 15 contractual or franchise relationship between a licensed  
 16 wholesaler and a brewer or winery within the contemplation  
 17 of 16-3-221 through 16-3-226 and [section 6]:

18 (1) the shipment, preparation for shipment, or  
 19 acceptance of any order by any brewer or its agent for any  
 20 beer to a licensed wholesaler within this state;

21 (2) the shipment, preparation for shipment, or  
 22 acceptance of any order by any winery or its agent for any  
 23 wine to a licensed distributor within this state;

24 ~~(2)~~(3) the payment by any licensed wholesaler within  
 25 this state or the acceptance of payment by any brewer or

1 winery or its agent for the shipment of an order of beer or  
 2 wine intended for sale within this state."

3 Section 4. Section 16-3-225, MCA, is amended to read:  
 4 "16-3-225. Injunction to prevent franchise  
 5 cancellation. Any court of competent jurisdiction may enjoin  
 6 the cancellation or termination of a franchise or agreement  
 7 between a wholesaler and a brewer or winery at the instance  
 8 of a wholesaler who is or would be adversely affected by the  
 9 cancellation or termination. In granting an injunction, the  
 10 court shall provide that the brewer or winery shall not  
 11 supply the customers or territory of the wholesaler who is  
 12 servicing the territory or customers through other  
 13 distributors or means while the injunction is in effect."

14 Section 5. Section 16-3-226, MCA, is amended to read:  
 15 "16-3-226. Brewer-wholesaler or winery-wholesaler  
 16 agreements filed with department. An exact copy of all  
 17 agreements, contracts, or franchises between a brewer or  
 18 winery and a wholesaler shall be filed with the department  
 19 as a public document and shall be available to any of the  
 20 parties to a dispute. The department, upon the instigation  
 21 of any action in a court of record, shall file an exact  
 22 certified copy of the agreement with the court for the  
 23 court's consideration in determining any matter before it.  
 24 Any contracts, agreements, or franchises not upon record  
 25 with the department shall not be considered by any court as

1 having any force or effect."

2 NEW SECTION. Section 6. Illegal acts by wineries. It  
3 is unlawful for any winery or its agent to:

4 (1) coerce or attempt to coerce or persuade any person  
5 licensed to distribute table wine at wholesale to enter into  
6 any agreement or to take any action in violation of state  
7 law or rules of the department;

8 (2) sell its products to licensed distributors in the  
9 state without a written contract, which conforms to the  
10 provisions of 16-3-221 through 16-3-226 and this section,  
11 with each appointed distributor; or

12 (3) designate or allow more than one wholesale  
13 distributor to sell a specific brand of table wine to retail  
14 licensees in the same area. A winery may MUST sell various  
15 ALL ITS brands to the department, notwithstanding such  
16 territorial agreements, and may authorize different  
17 distributors to sell different brands of table wine of the  
18 same winery within the same territory.

19 Section 7. Codification instruction. Section 6 is  
20 intended to be codified as an integral part of Title 16,  
21 chapter 3, part 2.

-End-