

SENATE BILL NO. 405

Introduced: 02/12/83

Referred to committee on Business & Industry: 02/12/83

Rereferred to Committee on State Administration: 02/15/83

Hearing: 2/17/83

Report: 02/18/83, Do Not Pass. Report Adopted.

On Motion, 2/18/83, That The Bill Be Reconsidered. Motion
Failed.

Bill Killed.

1 *State* BILL NO. *405*
 2 INTRODUCED BY *Don* *Hager* *Don* *Shaw*
 3 *Paul E. Smith* *Hall* *Shaw*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING THE RETAIL
 5 LIQUOR BUSINESS FROM STATE CONTROL; PROVIDING FOR THE SALE
 6 OF EXISTING STATE RETAIL LIQUOR STORES; PROVIDING FOR AN
 7 OFF-PREMISES-CONSUMPTION-ONLY LICENSE AND A STATE LIQUOR
 8 WAREHOUSE PERMIT; AMENDING SECTIONS 16-1-103, 16-1-105,
 9 16-1-106, 16-1-303, 16-1-304, 16-1-401, 16-1-404, 16-2-101,
 10 16-2-103, 16-2-201, 16-2-203, 16-4-403, 16-4-405, AND
 11 16-4-501, MCA; REPEALING SECTION 16-3-307, MCA; AND
 12 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

16 "16-1-103. Policy as to retail sale of liquor. It is
 17 the policy of the state that it is necessary to further
 18 regulate and control the sale and distribution of alcoholic
 19 beverages within the state and to ensure the entire control
 20 of the sale of liquor in the department of revenue. It is
 21 advisable and necessary ~~in addition to the operation of the~~
 22 ~~state liquor stores now provided by law~~ that the department
 23 be empowered and authorized to grant licenses to persons
 24 qualified under this code to sell liquor purchased by them
 25 ~~at state liquor stores at retail posted price from the state~~

1 in accordance with this code and under rules promulgated by
 2 the department and under its strict supervision and control
 3 and to provide severe penalty for the sale of liquor except
 4 ~~by--and-in-state-liquor-stores--and~~ by persons licensed under
 5 this code. The restrictions, regulations, and provisions
 6 contained in this code are enacted by the legislature for
 7 the protection, health, welfare, and safety of the people of
 8 the state."

9 Section 2. Section 16-1-105, MCA, is amended to read:

10 "16-1-105. Divisions of code. This code is divided
 11 into six chapters. Chapter 1 relates to the authority of
 12 the department of revenue to administer this code and the
 13 powers and functions of the department. Chapter 2 relates to
 14 the establishment of state liquor stores and the keeping and
 15 selling of liquors. Chapter 3 relates to the control of
 16 liquor, wine, and beer. Chapter 4 relates to license
 17 administration. Chapter 5 relates to identification cards.
 18 Chapter 6 relates to enforcement."

19 Section 3. Section 16-1-106, MCA, is amended to read:

20 "16-1-106. Definitions. As used in this code, the
 21 following definitions apply:

22 {1}--"Agency--agreement"--means an agreement between the
 23 department and a person appointed to sell liquor as a
 24 commission merchant rather than as an employee.

25 {2}{11} "Alcohol" means ethyl alcohol, also called

1 ethanol, or the hydrated oxide of ethyl.

2 (33)(2) "Alcoholic beverage" means a compound produced
3 and sold for human consumption as a drink that contains more
4 than .5% of alcohol by volume.

5 (44)(3) "Beer" means a malt beverage containing not
6 more than 7% of alcohol by weight.

7 (55)(4) "Brewer" means a person who produces malt
8 beverages.

9 (66)(5) "Department" means the department of revenue.

10 (77)(6) "Immediate family" means a spouse, dependent
11 children, or dependent parents.

12 (88)(7) "Industrial use" means a use described as
13 industrial use by the federal Alcohol Administration Act and
14 the federal rules and regulations of 27 CFR.

15 (99)(8) ~~"Licensed retailer" means the owner of an~~
16 ~~all-beverages license or an off-premises consumption-only~~
17 ~~license.~~

18 (9) "Liquor" means an alcoholic beverage except beer
19 and table wine.

20 (10) "Malt beverage" means an alcoholic beverage made
21 by the fermentation of an infusion or decoction, or a
22 combination of both, in potable brewing water, of malted
23 barley with or without hops or their parts or their products
24 and with or without other malted cereals and with or without
25 the addition of unmalted or prepared cereals, other

1 carbohydrates, or products prepared therefrom and with or
2 without other wholesome products suitable for human food
3 consumption.

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

6 (12) "Posted price" means the ~~retail~~ wholesale price of
7 liquor as fixed and determined by the department and in
8 addition thereto an excise and license tax as provided in
9 this code.

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

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

16 (15) "Public road or highway" means the same as in
17 15-70-301(5).

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

20 (17) "State liquor facility" means a facility owned or
21 under control of the department for the purpose of
22 receiving, storing, transporting, or selling alcoholic
23 beverages.

24 (18) "State liquor store" means a retail store operated
25 by the department in accordance with this code for the

purpose of selling liquor ~~to licensed retailers with a state warehouse permit.~~

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

(20) "Table wine" means wine as defined below which contains not more than 14% alcohol by volume.

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

~~(22) "Wholesale price" means the price established by the department and charged to persons with a valid state liquor warehouse permit.~~

~~(22)(23)~~ "Wine" means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains not less than 7% or more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the

industry. Other alcoholic beverages not defined as above but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

Section 4. Section 16-1-303, MCA, is amended to read:

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

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

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

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

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

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

1 store;

2 (a) prescribing, subject to this code, the hours
3 during which state liquor stores shall be kept open for the
4 sale of alcoholic beverages;

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

9 (g) prescribing an official seal which shall be
10 attached to every package of liquor sold or sealed under
11 this code;

12 (h) prescribing forms to be used for the purpose of
13 this code or of the rules made thereunder and the terms and
14 conditions in permits and licenses issued and granted under
15 this code;

16 (i) prescribing the form of records of purchase of
17 liquor and table wine and the reports to be made thereon to
18 the division and providing for inspection of the records so
19 kept;

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

22 (k) prescribing the fees payable in respect of permits
23 and licenses issued under this code for which no fees are
24 prescribed in this code and prescribing the fees for
25 anything done or permitted to be done under the rules made

1 thereunder;

2 (l) prescribing, subject to the provisions of this
3 code, the conditions and qualifications necessary for the
4 obtaining of a liquor or beer license and the books and
5 records to be kept and the returns to be made by the
6 licensees and providing for the inspection of such licensed
7 premises;

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

10 (n) specifying and regulating the time and periods
11 when and the manner, methods, and means by which state
12 liquor ~~warehouse permit~~ holders, vendors, and brewers shall
13 deliver liquor under this code and the time and periods when
14 and the manner, methods, and means by which liquor, under
15 this code, may be lawfully conveyed or carried;

16 (o) governing the conduct, management, and equipment
17 of any premises licensed to sell liquor or beer under this
18 code;

19 (p) providing for the imposition and collection of
20 taxes and making rules respecting returns, accounting, and
21 payment of the taxes to the department.

22 (3) Whenever it is provided in this code that any act,
23 matter, or thing may be done if permitted or authorized by
24 the rules or may be done in accordance with the rules or as
25 provided by the rules, the department, subject to the

1 restrictions set out in subsection (1) hereof, shall have
2 the power to make rules respecting such act, matter, or
3 thing."

4 Section 5. Section 16-1-304, MCA, is amended to read:

5 "16-1-304. Prohibited acts within division. (1) No
6 officer or employee of the liquor division, including those
7 engaged in the sale of liquor at the various state liquor or
8 table wine stores, may be directly or indirectly interested
9 or engaged in any other business or undertaking dealing in
10 liquor or table wine, whether as owner, part owner, partner,
11 member of syndicate, shareholder, agent, or employee and
12 whether for his own benefit or in a fiduciary capacity for
13 some other person.

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

20 (3) No person selling or offering for sale to or
21 purchasing liquor or table wine from the state liquor
22 division may either directly or indirectly offer to pay any
23 commission, profit, or remuneration or make any gift to any
24 member or employee of the division, to any employee of the
25 state, or to anyone on behalf of such member or employee.

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

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

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

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

23 (5) No liquor, wine, or other alcoholic beverage may
24 be withdrawn from the regular warehouse inventory or ~~from~~ of
25 the state liquor stores of the Montana liquor division for

any purpose other than sale at the prevailing state ~~retail~~ wholesale prices or for destroying damaged or defective merchandise. The division shall maintain a written record including the type, brand, container size, number of bottles or other units, signatures of witnesses, and method of destruction or other disposition of damaged or defective warehouse or state store merchandise."

Section 6. Section 16-1-401, MCA, is amended to read:

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

Section 7. Section 16-1-404, MCA, is amended to read:

"16-1-404. License tax on liquor -- amount -- distribution of proceeds. (1) The department is hereby authorized and directed to charge, receive, and collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax

of 10% of the ~~retail~~ wholesale selling price on all liquor sold and delivered. Said tax shall be charged and collected on all liquor brought into the state and taxed by the department. The ~~retail~~ wholesale selling price shall be computed by adding to the cost of said liquor the state markup as designated by the department. Said 10% license tax shall be figured in the same manner as the state excise tax and shall be in addition to said state excise tax. The department shall retain in a separate account the amount of such 10% license tax so received. Thirty percent of these revenues shall be allocated to the counties according to the amount of liquor purchased in each county to be distributed to the incorporated cities and towns, as provided in subsection (2). Four and one-half percent of these revenues shall be allocated to the counties according to the amount of liquor purchased in each county, and this money may be used for county purposes. The remaining revenues shall be deposited in the earmarked revenue fund to the credit of the department of institutions for the treatment, rehabilitation, and prevention of alcoholism. Provided, however, in the case of purchases of liquor by a ~~retail~~ ~~liquor--licensee~~ licensed-retailer for use in his business, the department shall make such regulations as are necessary to apportion that proportion of license tax so generated to the county where the licensed establishment is located, for

1 use as provided in 16-1-405. The department shall pay
2 quarterly to each county treasurer the proportion of the
3 license tax due each county to be allocated to the
4 incorporated cities and towns of the county.

5 (2) The license tax proceeds allocated to the county
6 under subsection (1) for use by cities and towns shall be
7 distributed by the county treasurer to the incorporated
8 cities and towns within 30 days of receipt from the
9 department. The distribution of funds to the cities and
10 towns shall be based on the proportion that the gross sale
11 of liquor in each city or town is to the gross sale of
12 liquor in all of the cities and towns of the county.

13 (3) The license tax proceeds that are allocated to the
14 department of institutions for the treatment,
15 rehabilitation, and prevention of alcoholism shall be
16 credited quarterly to the department of institutions. The
17 legislature may appropriate a portion of the license tax
18 proceeds to support alcohol programs. The remainder shall be
19 distributed as provided in 53-24-206."

20 Section 9. Section 16-2-101, MCA, is amended to read:

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

1 code and the rules made thereunder.

2 (2) The department shall enter---into---an---agency
3 agreement--or employ the necessary help to operate said
4 stores and shall designate the duties to be performed by the
5 agent-or employees.

6 (3) The department may from time to time fix the
7 prices at which the various classes, varieties, and brands
8 of liquor may be sold, and prices shall be the same at all
9 state stores."

10 Section 9. Section 16-2-103, MCA, is amended to read:

11 "16-2-103. Duplicate invoices of sales required. (1)
12 The state liquor store shall, upon each sale of liquor to
13 any licensee, issue a duplicate invoice of the liquor
14 purchased, as provided by the department, a copy of which
15 shall be delivered to the licensee and one copy retained at
16 such store.

17 (2) The invoice shall show the date of purchase, name
18 of employee making the sale, the quantity of each kind of
19 liquor purchased, the price paid therefor, the name of the
20 licensee, and the number of the license and the state
21 warehouse permit, with such other information as may be
22 required by the department.

23 (3) The licensee shall keep and retain his duplicate
24 invoice of all purchases made by him from the state liquor
25 store, which shall at all times be subject to inspection by

the duly authorized officers, agents, and employees of the department."

Section 10. Section 16-2-201, MCA, is amended to read:

"16-2-201. Reduction for quantity sales of liquor. Reduction of 5% ~~10%~~ of the ~~retail~~ wholesale price of liquor sold at the state liquor store shall be made by the department for sales of liquor to any person ~~licensee with a state wholesale permit~~ purchasing liquor in unbroken case lots. No other reduction shall be made by the department for quantity sales of liquor. ~~All sales must be on a cash basis.~~"

Section 11. Section 16-2-203, MCA, is amended to read:

"16-2-203. Department sales to ~~licensees permittees~~. The department may sell through its stores to ~~licensees~~ ~~licensed wholesale permittees~~ under this code all kinds of liquor, wine containing more than 14% alcohol by volume, and cordials kept in stock, at the posted price thereof in the store in which the liquor is sold. All sales shall be upon a cash basis."

Section 12. Section 16-4-403, MCA, is amended to read:

"16-4-403. Fingerprints required of licensees and mortgagees. All applicants for a Montana retail ~~all-beverages, off-premises-consumption-only license,~~ or beer license, including corporate officers and managers, may be required by the department when applying for said license

to have their fingerprints taken for use in determining the eligibility of the applicant for such license. This provision shall also apply to all who file a security interest against such license except as to banks, savings and loan institutions, and licensed lending agencies."

Section 13. Section 16-4-405, MCA, is amended to read:

"16-4-405. Denial of license. (1) The department may deny the issuance of a retail beer, ~~off-premises-consumption-only,~~ or all-beverages license if it determines that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

(2) No retail license may be issued by the department for any premises situated within any zone of such city or town where the sale of beer or liquor is prohibited by ordinance, a certified copy of which has been filed with the department.

(3) Nor may a license under this code be issued if the department finds from the evidence at the hearing that the welfare of the people residing in the vicinity of the place for which such license is desired will be adversely and seriously affected or that the purposes of this code will not be carried out by the issuance of such license."

Section 14. Section 16-4-501, MCA, is amended to read:

"16-4-501. License and permit fees. (1) Each beer

1 licensee licensed to sell either beer or table wine only, or
2 both beer and table wine, under the provisions of this code,
3 shall pay an annual license fee as follows:

4 (a) each brewer, wherever located, whose product is
5 sold or offered for sale within the state, \$500; for each
6 storage depot, \$400;

7 (b) each beer wholesaler, \$400; each table wine
8 distributor, \$400;

9 (c) each beer retailer, \$200; with a wine license
10 amendment, an additional \$200;

11 (d) for a license to sell beer at retail for
12 off-premises consumption only, the same as a retail beer
13 license; for a license to sell table wine at retail for
14 off-premises consumption only, either alone or in
15 conjunction with beer, \$200;

16 (e) any unit of a nationally chartered veterans'
17 organization, \$50.

18 (2) The permit fee under 16-4-301(1) is computed at
19 the rate of \$15 a day for each day beer and table wine are
20 sold at those events lasting 2 or more days but in no case
21 be less than \$30.

22 (3) The permit fee under 16-4-301(2) is \$10 for the
23 sale of beer and table wine only or \$20 for the sale of all
24 alcoholic beverages.

25 (4) Passenger carrier licenses shall be issued upon

1 payment by the applicant of an annual license fee in the sum
2 of \$300.

3 (5) The annual license fee for a license to sell wine
4 on the premises, when issued as an amendment to a beer-only
5 license, is \$200.

6 (6) The annual fee for resort retail liquor licenses
7 within a given resort area shall be \$2,000 for each license.

8 (7) Each licensee licensed under the quotas of
9 16-4-201 shall pay an annual license fee as follows:

10 (a) except as hereinafter provided, for each license
11 outside of incorporated cities and incorporated towns or in
12 incorporated cities and incorporated towns with a population
13 of less than 2,000, \$250 for a unit of a nationally
14 chartered veterans' organization and \$400 for all other
15 licensees;

16 (b) except as hereinafter provided, for each license
17 in incorporated cities with a population of more than 2,000
18 and less than 5,000 or within a distance of 5 miles thereof,
19 measured over the shortest public road or highway from the
20 nearest entrance of the premises to be licensed to the
21 nearest boundary of such city, \$350 for a unit of a
22 nationally chartered veterans' organization and \$500 for all
23 other licensees;

24 (c) except as hereinafter provided, for each license
25 in incorporated cities with a population of more than 5,000

and less than 10,000 or within a distance of 5 miles thereof, measured over the shortest public road or highway from the nearest entrance of the premises to be licensed to the nearest boundary of such city, \$500 for a unit of a nationally chartered veterans' organization and \$650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles thereof, measured over the shortest public road or highway from the nearest entrance of the premises to be licensed to the nearest boundary of such city, \$650 for a unit of a nationally chartered veterans' organization and \$800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured over the shortest public road or highway from the nearest entrance of the premises to be licensed to the nearest boundary of such city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and shall be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or

incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and shall be paid by the applicant.

(f) an applicant for the issuance of an original license to be located in areas described in subsection (d) of this subsection shall pay a one-time original license fee of \$20,000 for any such license issued. The one-time license fee of \$20,000 shall not apply to any transfer or renewal of a license duly issued prior to July 1, 1974. All licenses, however, are subject to the annual renewal fee.

(g) The fee for one all-beverage license to a public airport shall be \$800. This license is nontransferable.

~~(9) The applicant for the issuance of an off-premises-consumption-only license for cities with a population of 10,000 or more shall pay a one-time license fee of \$10,000 for any such license issued. The annual renewal fee is \$800.~~

~~(10) The applicant for the issuance of an off-premises-consumption-only license to be located in an area not included in subsection (9) shall pay a one-time license fee of \$5,000 for any such license issued. The annual renewal fee is \$800.~~

~~(11) The annual fee for a state liquor warehouse permit~~

1 is \$2,000.

2 (9)(12) The license fees herein provided for are
3 exclusive of and in addition to other license fees
4 chargeable in Montana for the sale of alcoholic beverages."

5 **NEW SECTION.** Section 15. Off-premises-consumption-only
6 license. The department may issue an
7 off-premises-consumption-only license for the sale of liquor
8 for off-premises consumption only, to a fit and proper
9 person, firm, or corporation upon compliance with the
10 provisions of [sections 15 through 18].

11 **NEW SECTION.** Section 16. License requirements. (1)
12 The department shall issue an off-premises-consumption-only
13 license to a qualified applicant if the department
14 determines that issuing the license is justified by public
15 convenience and necessity.

16 (2) A license issued under [sections 15 through 18]
17 must set forth the name of the person, firm, or corporation
18 to whom issued, the location, by street and number or other
19 appropriate specific description of location if no street
20 address exists, of the premises where the business is to be
21 carried on under the license, and such other information as
22 the department considers necessary. If the licensee is a
23 partnership or if more than one person has an interest in
24 the business operated under the license, the names of all
25 persons in the partnership or interested in the business

1 must appear on the license. Every license must be posted in
2 a conspicuous place on the premises where the business
3 authorized under the license is conducted, and such license
4 must be exhibited upon request to any authorized
5 representative of the department or to any peace officer of
6 the state.

7 (3) A license issued under the provisions of [sections
8 15 through 18] is a privilege personal to the licensee named
9 in the license and is good until the expiration of the
10 license unless sooner revoked or suspended.

11 (4) Each off-premises-consumption-only license is
12 limited to a single place of business described in the
13 license.

14 (5) No off-premises-consumption-only license may be
15 transferred, sold, or used at any location not described in
16 the license, except as provided in [sections 15 through 18].

17 (5) The licensee may apply to the department for a
18 transfer of the license to different premises. The
19 department may in its discretion permit a transfer if it
20 appears to the department that the transfer is in the best
21 interest of the community in which the licensee is
22 authorized to transact business.

23 (7) Upon the sale of a business operated under an
24 off-premises-consumption-only license, the license is
25 revoked. The purchaser of the business may apply to the

1 department for a new license and is subject to the same
2 requirements as any other applicant for an
3 off-premises-consumption-only license.

4 NEW_SECTION. Section 17. Notice of application --
5 publication -- protest. (1) When an application has been
6 filed with the department for a license to sell alcoholic
7 beverages for off-premises consumption only or to transfer
8 such license, the department shall promptly publish in a
9 newspaper of general circulation in the city, town, or
10 county from which the application comes a notice that such
11 applicant has made application for a license and that
12 protests against the issuance of a license to the applicant
13 may be mailed to a named administrator in the department of
14 revenue within 10 days after the final notice is published.
15 Notice of application for a new license must be published
16 once a week for 4 consecutive weeks. Notice of application
17 for transfer of a license must be published once a week for
18 2 consecutive weeks. Notice must be substantially in the
19 following form:

20 NOTICE OF APPLICATION FOR

21 OFF-PREMISES-CONSUMPTION-ONLY LICENSE

22 Notice is hereby given that on the day of,
23 19.., one (name of applicant) filed an application for an
24 off-premises-consumption-only license with the Montana
25 department of revenue, to be used at (describe location of

1 premises where beverages are to be sold), and protests, if
2 any there be, against the issuance of such license may be
3 mailed to, department of revenue, Helena, Montana, on
4 or before the day of, 19...
5

Dated

Signed

ADMINISTRATOR

7 (2) Each applicant shall, at the time of filing his
8 application, pay to the department an amount sufficient to
9 cover the costs of publishing the notice.

10 (3) If the administrator receives no protests, the
11 department may issue or transfer the license without holding
12 a public hearing. If, however, any protests against the
13 issuance or transfer of the license are received, the
14 department shall hold a hearing at its office in Helena.

15 NEW_SECTION. Section 18. Sale of liquor to be primary
16 source of income. No off-premises-consumption-only license
17 may be issued pursuant to [sections 15 through 18] to any
18 person, firm, or corporation that intends to operate a
19 business in which the sale of liquor is not the primary
20 source of income.

21 NEW_SECTION. Section 19. Application for state liquor
22 warehouse permit. An all-beverages licensee or an
23 off-premises-consumption-only licensee may apply to the
24 department for a state liquor warehouse permit. The
25 applicant must have a fixed place of business and sufficient

capital and facilities for the distribution and sale of liquor to other licensed retailers.

NEW_SECTION. Section 20. Notice of application -- publication -- protest. (1) When an application has been filed with the department for a state liquor warehouse permit, the department shall promptly publish in a newspaper of general circulation in the city, town, or county from which the application comes a notice that such applicant has made application for a permit and that protests against the issuance of a permit to the applicant may be mailed to a named administrator in the department of revenue within 10 days after the final notice is published. Notice of application for a permit must be published once a week for 4 consecutive weeks. Notice must be substantially in the following form:

NOTICE OF APPLICATION FOR STATE

LIQUOR WAREHOUSE PERMIT

Notice is hereby given that on the day of, 19.., one (name of applicant) filed an application for a state liquor warehouse permit with the Montana department of revenue, to be used at (describe location of the applicant's existing license), and protests, if any there be, against the issuance of such permit may be mailed to, department of revenue, Helena, Montana, on or before the day of, 19...

Dated

Signed

ADMINISTRATOR

(2) Each applicant shall, at the time of filing his application, pay to the department an amount sufficient to cover the costs of publishing the notice.

(3) If the administrator receives no protests, the department may issue the permit without holding a public hearing. If, however, any protests against the issuance of the permit are received, the department shall hold a hearing at its office in Helena.

NEW_SECTION. Section 21. Issuance of state liquor warehouse permit. (1) The department shall issue a state liquor warehouse permit to an otherwise qualified applicant upon compliance with [section 20] if the department finds that issuance of the permit is justified by public convenience and necessity.

(2) A state liquor warehouse permit may not be issued to an applicant who does not in good faith intend to maintain an adequate inventory and to carry on a business for the distribution and sale of liquor at wholesale to other licensees or at retail to the public at the location stated in his license.

NEW_SECTION. Section 22. Discount for sales of unbroken case lots. As a condition of retaining a state liquor warehouse permit, the permitholder must give a

1 discount of 5% or more to retail licensees who purchase
2 liquor from the permitholder in unbroken case lots.

3 **NEW_SECTION.** Section 23. Renewal of permit. The state
4 liquor warehouse permit must be renewed each year on the
5 anniversary date of its issuance. The permit may not be
6 renewed if the department determines that the permitholder
7 has failed to comply with the provisions of [sections 19
8 through 23].

9 **NEW_SECTION.** Section 24. Sale of existing state
10 retail liquor stores. (1) The department of revenue shall
11 sell all existing state retail liquor stores, including
12 agency stores. The sales must be made through a sealed bid
13 procedure to qualified bidders and sold, if possible, by
14 December 31, 1984.

15 (2) A qualified bidder is a person, firm, or
16 corporation that would be eligible to purchase an
17 off-premises-consumption-only license.

18 (3) The department shall establish a minimum price for
19 the state-operated store that may not be less than the value
20 of the average daily inventory at the store. The highest
21 qualified bidder is entitled to assume title to the store
22 inventory, store fixtures, lease, and related merchandise
23 and equipment. The department shall develop a list of items
24 that will be assumed by the highest qualified bidder.

25 (4) The highest qualified bidder must be issued an

1 off-premises-consumption-only license and a state liquor
2 warehouse permit without any additional license fee being
3 paid.

4 (5) In the event a state store is not sold by the
5 department, it may be operated by the department until July
6 1, 1985, at which time the department shall return the
7 inventory remaining at the store to the central warehouse in
8 Helena.

9 **NEW_SECTION.** Section 25. Temporary restrictions. The
10 department may not issue an off-premises-consumption-only
11 license or a state liquor warehouse permit prior to January
12 1, 1985, except to the purchaser of an existing state retail
13 liquor store.

14 **NEW_SECTION.** Section 26. Repealer. Section 16-3-307,
15 MCA, is repealed.

16 **NEW_SECTION.** Section 27. Codification instruction.
17 Sections 15 through 25 are intended to be codified as an
18 integral part of Title 16, chapter 4, and the provisions of
19 Title 16, chapter 4, apply to sections 15 through 25.

20 **NEW_SECTION.** Section 28. Effective date. This act is
21 effective on passage and approval.

-End-

STATE OF MONTANA

REQUEST NO. 387-83

FISCAL NOTE

Form BD-15

In compliance with a written request received February 14, 19 83, there is hereby submitted a Fiscal Note for Senate Bill 405 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

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

DESCRIPTION OF PROPOSED LEGISLATION:

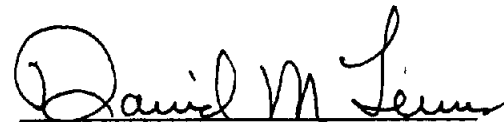
Senate Bill 405 removes the retail liquor business from state control; provides for the sale of existing state retail liquor stores; provides for an off-premises-consumption-only license and a state liquor warehouse permit; and provides an immediate effective date.

ASSUMPTIONS:

- 1) Gross sales in the state liquor stores declined .87% from FY 82 to FY 83 and will continue to decline at that rate through FY 85.
- 2) Discounted sales were 34.7% of gross sales in FY 82. No change in this percentage is projected under the present law. Under the proposed law, it is assumed that all sales would be discounted.
- 3) Taxes were 19.57% of gross sales in FY 82 and will continue at that rate through FY 85.
- 4) Expenditures will increase 6% per year, from FY 82 through FY 85.
- 5) Breakage and shortage are estimated as .116% of adjusted gross sales, under the current and proposed law.
- 6) Revenue from the sale of existing wine, beer, and all-beverage licenses increased 1.34% from FY 81 to FY 82 and will continue to increase at that rate through FY 85.
- 7) Under the proposed law, the warehouse would be remodeled and reequipped in FY 84, at an estimated cost of \$302,800.
- 8) Under the proposed law, 8.5 positions would be added to the warehouse staff, at a cost of \$161,266 in FY 84 and \$170,942 in FY 85.
- 9) Under the proposed law, Stores Bureau operating expenses would be eliminated, but other costs incurred by the Liquor Division and other Revenue Department divisions would continue to be charged against liquor revenues.
- 10) In addition, expenditures for Licensing Bureau salaries, benefits, travel, and communications would increase by approximately 30%. The portion of Legal and Enforcement Division expenses allocated to the Liquor Division also would increase by approximately 30%.
- 11) The depreciated value of the state-owned equipment and furniture in the state stores is approximately \$330,723. Proceeds are divided equally between FY 84 and FY 85.

Continued

FISCAL IMPACT 15:R/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-19-83

- 12) The cost of selling the stores, closing the agencies, and transporting unsold inventory would be approximately \$300,000, divided equally between FY84 and FY85.
- 13) Under the proposed law, a minimum of 51 off-premises-consumption-only licenses would be sold in FY84, one for each state liquor store or agency in cities of 10,000 population. All of the new retailers would buy warehouse permits, and a warehouse permit would also be purchased for each of the grade 9, 10, and 11 stores in cities of less than 10,000 population.
- 14) Under the proposed law, approximately one-third of the existing 1,551 all-beverage licensees would buy warehouse permits.
- 15) The state's markup percentages will continue to be set at the FY82 levels.

FISCAL IMPACT:

	<u>FY84</u>	<u>FY85</u>
<u>Revenue from Merchandising</u>		
Liquor Excise Tax		
Under Current Law	\$ 6,551,248	\$ 6,494,253
Under Proposed Law	<u>6,551,248</u>	<u>6,494,253</u>
Estimated Increase	--	--
Liquor License Tax		
Under Current Law	4,094,264	4,058,644
Under Proposed Law	<u>4,094,264</u>	<u>4,058,644</u>
Estimated Increase	--	--
Gross Profit from Sale of Liquor		
Under Current Law	11,581,709	11,470,037
Under Proposed Law	<u>7,091,004</u>	<u>7,018,401</u>
Estimated Decrease	(4,490,705)	(4,451,636)
Sale of Furniture and Equipment		
Under Current Law	--	--
Under Proposed Law	165,362	165,362
Estimated Increase	<u>165,362</u>	<u>165,362</u>
<u>TOTAL REVENUE FROM MERCHANDISING</u>		
Under Current Law	22,227,221	22,022,934
Under Proposed Law	<u>17,901,878</u>	<u>17,736,660</u>
Estimated Decrease	(4,325,343)	(4,286,274)

(Continued)

SB 405

	<u>FY84</u>	<u>FY85</u>
<u>Revenue from Sale of Licenses</u>		
Existing License Fees		
Under Current Law	\$1,515,195	\$1,535,499
Under Proposed Law	<u>1,515,195</u>	<u>1,535,499</u>
Estimated Increase	--	--
Off-Premise Consumption License Fees		
Under Current Law	--	--
Under Proposed Law	<u>355,000</u>	<u>40,800</u>
Estimated Increase	<u>355,000</u>	<u>40,800</u>
Liquor Warehouse Permit Fees		
Under Current Law	--	--
Under Proposed Law	<u>1,034,000</u>	<u>1,034,000</u>
Estimated Increase	<u>1,034,000</u>	<u>1,034,000</u>
TOTAL REVENUE FROM SALE OF LICENSES		
Under Current Law	1,515,195	1,535,499
Under Proposed Law	<u>2,904,195</u>	<u>2,610,299</u>
Estimated Increase	<u>1,389,000</u>	<u>1,074,800</u>
<u>Expenditures for Merchandising</u>		
Personal Services and Administration		
Under Current Law	4,585,834	4,861,351
Under Proposed Law	<u>1,284,853</u>	<u>1,361,943</u>
Estimated Decrease	<u>(3,300,981)</u>	<u>(3,499,408)</u>
Operating Expenses		
Under Current Law	2,135,115	2,263,221
Under Proposed Law	<u>320,922</u>	<u>331,177</u>
Estimated Decrease	<u>(1,814,193)</u>	<u>(1,932,044)</u>
Capital Outlay (Equipment)		
Under Current Law	66,724	70,727
Under Proposed Law	<u>302,800</u>	<u>--</u>
Estimated Increase/Decrease	<u>236,076</u>	<u>(70,727)</u>
TOTAL EXPENDITURES FOR MERCHANDISING		
Under Current Law	6,787,673	7,195,299
Under Proposed Law	<u>1,908,575</u>	<u>1,693,120</u>
Estimated Decrease	<u>(4,879,098)</u>	<u>(5,502,179)</u>
NET EFFECT ON MERCHANDISING		
Under Current Law	15,439,548	14,827,635
Under Proposed Law	<u>15,993,303</u>	<u>16,043,540</u>
Estimated Increase	<u>553,755</u>	<u>1,215,905</u>

(Continued)

SB 405

	<u>FY84</u>	<u>FY85</u>
<u>Expenditures for Licensing</u>		
Personal Services		
Under Current Law	\$96,453	\$102,204
Under Proposed Law	125,389	132,912
Estimated Increase	<u>28,936</u>	<u>30,708</u>
Operating Expenses		
Under Current Law	41,809	44,318
Under Proposed Law	54,352	57,613
Estimated Increase	<u>12,543</u>	<u>13,295</u>
 TOTAL EXPENDITURES FOR LICENSING		
Under Current Law	138,262	146,522
Under Proposed Law	179,741	190,525
Estimated Increase	<u>41,479</u>	<u>44,003</u>
 NET EFFECT ON LICENSING		
Under Current Law	1,376,933	1,388,977
Under Proposed Law	2,724,454	2,419,774
Estimated Increase	<u>1,347,521</u>	<u>1,030,797</u>
 General Fund		
Under Current Law	23,367,729	22,710,829
Under Proposed Law	25,269,005	24,956,657
Estimated Increase	<u>1,901,276</u>	<u>2,245,828</u>
 Department of Institutions		
Under Current Law	2,681,743	2,658,412
Under Proposed Law	2,681,743	2,658,412
Estimated Increase	<u>--</u>	<u>--</u>

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The projected average retail price per bottle in the state retail liquor stores, under the present law, will be approximately \$7.40 in FY84. Under the proposed law, assuming that the retailers would add a 22% markup, the average retail price per bottle will be approximately \$9.69 in FY84. A price increase of this size may cause sales to decline more rapidly than was assumed for purposes of estimating the fiscal impact of the proposed law.

Retailers under the proposed law would not be required to equalize prices, so that the retail price probably would vary according to the distance from Helena.

(Continued)

SB 405

TECHNICAL NOTES:

1. On page 15, lines 8 and 15, reference is evidently to the warehouse permits defined in Section 19 (new section), but the phrase "wholesale permit" is used instead. No definition of "wholesale permit" is included.
2. On page 4, line 24, "State Liquor Store" is defined as a "retail store" but 16-1-304(5) and 16-2-203, as revised, indicate that all sales will be wholesale, to retail licensees with warehouse permits only.
3. On page 13, line 21, through page 14, line 1, Section 16-2-101 requires the state to "maintain one or more... 'state liquor stores,' " but on page 27, lines 10-12, the Department of Revenue is required to "sell all existing state retail liquor stores, including agency stores."
4. On page 2, lines 22-24, and page 14, line 2-3, agency agreements are eliminated, effective on passage of the bill, but on page 27, lines 10-14, provision is made for selling "agency stores" by December 31, 1984. Agency stores are owned by the agent, not by the state.
5. New Section 24 does not provide for termination of the contracts under which all state liquor stores are leased from private individuals or corporations. Provision should also be made to store owners who wish to purchase the state's inventory and equipment and become the off-premises licensee.
6. Page 26, line 21, indicates that a warehouse permit holder may sell either to other licensees or at retail to the public. This would give liquor wholesalers a privilege not enjoyed by beer and wine wholesalers, who are forbidden to sell to the public under 16-3-233 and 16-3-403, MCA.
7. Federal law does not allow liquor wholesalers to sell at retail unless they own 100% of the retail business. The proposed law would allow any retail licensee, regardless of ownership status, to become a wholesaler by obtaining a warehouse permit.

LOCAL IMPACT:

Section 16-4-503 authorizes counties and cities to charge license fees to "persons to whom a retail license has been issued...". The bill is not clear as to whether local governments may issue licenses similar to Section 12,(9), (10), (11). If they can, then new revenue to local governments would be approximately 5/8 of the new revenue estimated to accrue to the state.