

HOUSE BILL NO. 402

1/23 Introduced  
1/23 Referred to Business & Labor  
2/06 Hearing  
Died in Committee

1                                    HOUSE BILL NO. 402  
 2 INTRODUCED BY William Brady, Republican  
 3                                    J. Brown    HARP Amended

4 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE  
 5 TERMINATION AND RENEWAL OF TABLE WINE DISTRIBUTION  
 6 AGREEMENTS; PROHIBITING CERTAIN ACTS BY A WINERY OR TABLE  
 7 WINE IMPORTER; AND PROVIDING FOR DAMAGES AND ATTORNEY FEES."

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

10        Section 1. Required termination or renewal provisions  
 11 in table wine distribution agreements. An oral or written  
 12 distribution agreement between a winery or table wine  
 13 importer registered under 16-4-107 and a wine distributor  
 14 licensed under 16-4-108 providing for the sale and  
 15 distribution of table wine in this state must contain the  
 16 following provisions:

17        (1) Neither party may terminate a distribution  
 18 agreement or exercise a right not to renew the agreement  
 19 upon less than 60 days' written notice to the other party,  
 20 except that a party may terminate the agreement upon shorter  
 21 written notice if the reason for termination is the  
 22 insolvency of one of the parties, the occurrence of an  
 23 assignment for the benefit of creditors, bankruptcy, or  
 24 suspension for more than 14 days or revocation of the  
 25 party's license or registration by the department.

1                                    (2) If a winery or table wine importer terminates or  
 2 refuses to renew a distribution agreement within 24 months  
 3 after initially making the agreement with the distributor on  
 4 any grounds other than those specified in the preceding  
 5 subsection as grounds for shorter notice, or on no grounds,  
 6 the winery or table wine importer is presumed to have acted  
 7 without cause. A winery or table wine importer may overcome  
 8 this presumption with evidence that the distributor failed  
 9 to meet standards adequately communicated to it by the  
 10 winery or table wine importer, which standards were being  
 11 met by other distributors under contract to that winery or  
 12 table wine importer.

13                                    (3) A winery or table wine importer may terminate or  
 14 refuse to renew a distribution agreement after it has been  
 15 in effect more than 24 months for any reasonable cause that  
 16 is put in writing in compliance with the notice requirements  
 17 of subsection (1). In any litigation over whether such cause  
 18 was reasonable, this section may not be construed to create  
 19 any presumption or place any burden regarding the evidence.

20        Section 2. Procedure upon termination. Whenever a  
 21 table wine distribution agreement has been terminated or  
 22 expires in a manner consistent with [section 1], the  
 23 distributor shall maintain a normal marketing effort in  
 24 support of the brand until the effective date of the  
 25 termination. Upon termination or expiration, the distributor



1 shall immediately surrender all table wines and all pallets,  
 2 bottles, cases, supplies, signs, and advertising displays  
 3 acquired from the winery or table wine importer to such  
 4 supplier's authorized representative, who shall promptly  
 5 refund to the distributor the cost to him of such items. The  
 6 parties shall as soon as possible adjust all outstanding  
 7 accounts, and the party owing the other any balance due  
 8 shall promptly pay it.

9 Section 3. Prohibited actions by wineries or table  
 10 wine importer. (1) A winery or table wine importer may not:

11 (a) prohibit a distributor from selling the products  
 12 of any other winery or table wine importer or impose  
 13 requirements on a distributor that impede the ability of the  
 14 distributor to sell such other table wines;

15 (b) require a distributor to accept delivery of any  
 16 product or commodity not ordered by the distributor; or

17 (c) coerce or induce any distributor to engage in any  
 18 illegal act or course of conduct.

19 (2) The refusal of a distributor to assent to any  
 20 recommendation or requirement of a winery or table wine  
 21 importer that is prohibited by subsection (1) is not  
 22 reasonable cause for the winery or table wine importer to  
 23 terminate or refuse to renew its distribution agreement with  
 24 that distributor.

25 Section 4. Termination of table wine distribution

1 agreement -- damages and attorney fees. (1) In any  
 2 litigation arising out of the termination or expiration of a  
 3 table wine distribution agreement, a winery or table wine  
 4 importer is entitled to damages, based on that part of the  
 5 fair market value of its share of the relevant market that  
 6 was diminished by its distributor's action or inaction, if  
 7 the distributor:

8 (a) fails to give adequate notice of termination or  
 9 intent not to renew; or

10 (b) fails to maintain its normal marketing effort in  
 11 support of the table wines while a termination or expiration  
 12 of the agreement is pending.

13 (2) In any litigation arising out of the termination  
 14 or expiration of a table wine distribution agreement, if the  
 15 court finds that the winery or table wine importer has  
 16 violated [sections 1 through 3], a distributor is entitled  
 17 to damages based on:

18 (a) the laid-in cost of all table wine it purchased  
 19 under the agreement that is not compensated for under  
 20 [section 2];

21 (b) net profits on the table wines involved for a  
 22 reasonable future time, not exceeding 2 years; and

23 (c) costs of adjusting its distribution operations, if  
 24 the winery or table wine importer terminates or refuses to  
 25 renew the agreement in violation of [section 1].

1           (3) The prevailing party is entitled to attorney fees  
2 and costs of suit in any litigation arising out of the  
3 termination or expiration of a table wine distribution  
4 agreement.

5           Section 5. Extension of authority. Any existing  
6 authority of the department of revenue to make rules on the  
7 subject of the provisions of this act is extended to the  
8 provisions of this act.

9           Section 6. Codification instruction. Sections 1  
10 through 4 are intended to be codified as an integral part of  
11 Title 16, chapters 1 through 6, and the provisions of Title  
12 16, chapters 1 through 6, apply to sections 1 through 4.

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