

HOUSE BILL NO. 648

2/02 Introduced  
2/02 Referred to Business & Labor  
2/04 Fiscal Note Requested  
2/07 Hearing  
2/08 Adverse Committee Report  
2/09 Fiscal Note Received  
2/09 Bill Killed

1                                    HOUSE BILL NO. 648  
 2    INTRODUCED BY Karlene [Signature] Miles [Signature] [Signature]  
 3

4    A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A RESTAURANT  
 5    LICENSE FOR ON-PREMISES CONSUMPTION BUT NOT SALE OF BEER AND  
 6    WINE AND IMPOSING AN ANNUAL FEE; AMENDING SECTIONS 16-4-401,  
 7    16-4-501, AND 16-6-306, MCA; AND PROVIDING AN APPLICABILITY  
 8    DATE AND AN EFFECTIVE DATE."  
 9

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

11        NEW SECTION. Section 1. Restaurant licenses for  
 12    on-premises consumption of beer and wine. (1) For purposes  
 13    of this section, "restaurant" means a public eating house  
 14    where meals are prepared and served for consumption on the  
 15    premises.

16        (2) Upon application and payment of the necessary fee,  
 17    the department shall issue to the proprietor of a bona fide  
 18    restaurant a license permitting the consumption on the  
 19    premises of beer and wine purchased elsewhere. The  
 20    department shall issue a license for this purpose regardless  
 21    of the number of beer and wine licenses already issued  
 22    within the quota area where the restaurant is located, if  
 23    the applicant meets the requirements of this section.

24        (3) Any person 19 years of age or older who purchases  
 25    a meal at a restaurant licensed under this section may

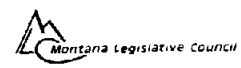
1    consume with the meal his own beer or table wine purchased  
 2    elsewhere.

3            (4) A restaurant licensed under this section is not  
 4    entitled to sell or keep for sale or store for eventual  
 5    service any alcoholic beverage, but it may charge its  
 6    customers for any services it provides to facilitate their  
 7    consumption of beer or wine purchased elsewhere.

8            (5) Premises licensed for the retail sale of beer or  
 9    all beverages may be licensed under this section upon  
 10   application by the proprietor to the department for an  
 11   amendment to the existing license. No fee may be charged for  
 12   this amendment, and it is in effect for as long as the  
 13   retail beer or all-beverages license is annually renewed.

14           (6) The criteria provided in 16-4-401 do not apply to  
 15   licenses issued under this section, but in every case in  
 16   which it makes an order for the issuance of a new license  
 17   the department must find that:

- 18            (a) in the case of an individual applicant:
  - 19            (i) the applicant operates a bona fide restaurant;
  - 20            (ii) the applicant is not under 19 years of age; and
  - 21            (iii) the applicant's past record and present status as
- 22   a restaurant proprietor demonstrate that he is likely to
- 23   operate his establishment in compliance with all applicable
- 24   laws of the state and local government; and
- 25            (b) in the case of a corporate applicant:



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1 (i) the applicant operates a bona fide restaurant;  
 2 (ii) each owner of 10% or more of the outstanding stock  
 3 is 19 years of age or older;  
 4 (iii) the corporation is authorized to do business in  
 5 Montana; and  
 6 (iv) the applicant's past record and present status as  
 7 a restaurant proprietor demonstrate that it is likely to  
 8 operate its establishment in compliance with all applicable  
 9 laws of the state and local government.

10 (7) A restaurant licensed for the consumption on the  
 11 premises of beer and wine purchased elsewhere must:  
 12 (a) have been operated by the applicant for at least 6  
 13 months prior to the date of application; and  
 14 (b) be licensed as a food service establishment by the  
 15 department of health and environmental sciences as provided  
 16 in 50-50-201.

17 (8) A license issued under this section is not  
 18 transferable to premises other than the restaurant  
 19 originally licensed.

20 Section 2. Section 16-4-401, MCA, is amended to read:  
 21 "16-4-401. License as privilege -- criteria for  
 22 decision on application. (1) A license under this code is a  
 23 privilege which the state may grant to an applicant and is  
 24 not a right to which any applicant is entitled.  
 25 (2) Except as provided in subsection (6), in the case

1 of a license that permits on-premises consumption, the  
 2 department must find in every case in which it makes an  
 3 order for the issuance of a new license or for the approval  
 4 of the transfer of a license that:  
 5 (a) in the case of an individual applicant:  
 6 (i) the applicant will not possess an ownership  
 7 interest in more than one establishment licensed under this  
 8 chapter for all-beverages sales;  
 9 (ii) the applicant or any member of his immediate  
 10 family is without financing from or any affiliation to a  
 11 manufacturer, bottler, or distributor of beer, wine, or  
 12 liquor;  
 13 (iii) the applicant is a resident of the state and is  
 14 qualified to vote in a state election;  
 15 (iv) the applicant's past record and present status as  
 16 a purveyor of alcoholic beverages and as a businessman and  
 17 citizen demonstrate that he is likely to operate his  
 18 establishment in compliance with all applicable laws of the  
 19 state and local governments; and  
 20 (v) the applicant is not under the age of 19 years;  
 21 and  
 22 (b) in the case of a corporate applicant:  
 23 (i) the owners of at least 51% of the outstanding  
 24 stock meet the requirements of subsection (2)(a)(iii);  
 25 (ii) each owner of 10% or more of the outstanding stock

1 meets the requirements for an individual applicant listed in  
2 subsection (2)(a) of this section;

3 (iii) the corporation is authorized to do business in  
4 Montana; and

5 (iv) in the case of a corporation not listed on a  
6 national stock exchange, each owner of stock meets the  
7 requirements of subsection (2)(a)(i).

8 (3) In the case of a license that permits only  
9 off-premises consumption, the department must find in every  
10 case in which it makes an order for the issuance of a new  
11 license or for the approval of the transfer of a license  
12 that:

13 (a) in the case of an individual applicant:

14 (i) the applicant will not possess an ownership  
15 interest in more than one establishment licensed under this  
16 chapter for all-beverages sales;

17 (ii) the applicant or any member of his immediate  
18 family is without financing from or any affiliation to a  
19 manufacturer, bottler, or distributor of beer, wine, or  
20 liquor;

21 (iii) the applicant has not been convicted of a felony  
22 or, if the applicant has been convicted of a felony, his  
23 rights have been restored;

24 (iv) the applicant's past record and present status as  
25 a purveyor of alcoholic beverages and as a businessman and

1 citizen demonstrate that he is likely to operate his  
2 establishment in compliance with all applicable laws of the  
3 state and local governments; and

4 (v) the applicant is not under the age of 19 years;  
5 and

6 (b) in the case of a corporate applicant:

7 (i) the owners of at least 51% of the outstanding  
8 stock meet the requirements of subsection (3)(a)(iii);

9 (ii) each owner of 10% or more of the outstanding stock  
10 meets the requirements for an individual listed in  
11 subsection (3)(a) of this section; and

12 (iii) the corporation is authorized to do business in  
13 Montana.

14 (4) In the case of a license that permits the  
15 manufacture or wholesaling of an alcoholic beverage, the  
16 department must find in every case in which it makes an  
17 order for the issuance of a new license or for the approval  
18 of the transfer of a license that:

19 (a) in the case of an individual applicant:

20 (i) the applicant has no ownership interest in any  
21 establishment licensed under this chapter for retail  
22 alcoholic beverages sales;

23 (ii) the applicant has not been convicted of a felony  
24 or, if the applicant has been convicted of a felony, his  
25 rights have been restored;

1 (iii) the applicant's past record and present status as  
 2 a purveyor of alcoholic beverages and as a businessman and  
 3 citizen demonstrate that he is likely to operate his  
 4 establishment in compliance with all applicable laws of the  
 5 state and local governments;

6 (iv) the applicant is not under the age of 19 years;  
 7 and

8 (v) an applicant for a wholesale license is neither a  
 9 manufacturer of an alcoholic beverage nor is owned or  
 10 controlled by a manufacturer of an alcoholic beverage; and

11 (b) in the case of a corporate applicant:

12 (i) the owners of at least 51% of the outstanding  
 13 stock meet the requirements of subsection (4)(a)(ii);

14 (ii) each owner of 10% or more of the outstanding stock  
 15 meets the requirements for an individual listed in  
 16 subsection (4)(a) of this section;

17 (iii) an applicant for a wholesale license is neither a  
 18 manufacturer of an alcoholic beverage nor is owned or  
 19 controlled by a manufacturer of an alcoholic beverage; and

20 (iv) the corporation is authorized to do business in  
 21 Montana.

22 (5) In the case of a corporate applicant, the  
 23 requirements of subsections (2)(b), (3)(b), and (4)(b) apply  
 24 separately to each class of stock.

25 (6) The provisions of subsection (2) do not apply to

1 an applicant for or holder of a license pursuant to 16-4-302  
 2 or [section 1]."

3 Section 3. Section 16-4-501, MCA, is amended to read:

4 "16-4-501. License and permit fees. (1) Each beer  
 5 licensee licensed to sell either beer or table wine only, or  
 6 both beer and table wine, under the provisions of this code,  
 7 shall pay an annual license fee as follows:

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

11 (b) each beer wholesaler, \$400; each table wine  
 12 distributor, \$400;

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

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

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

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

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

4 (4) Passenger carrier licenses shall be issued upon  
5 payment by the applicant of an annual license fee in the sum  
6 of \$300.

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

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

12 (7) Each licensee licensed under the quotas of  
13 16-4-201 shall pay an annual license fee as follows:

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

20 (b) except as hereinafter provided, for each license  
21 in incorporated cities with a population of more than 2,000  
22 and less than 5,000 or within a distance of 5 miles thereof,  
23 measured in a straight line from the nearest entrance of the  
24 premises to be licensed to the nearest boundary of such  
25 city, \$350 for a unit of a nationally chartered veterans'

1 organization and \$500 for all other licensees;

2 (c) except as hereinafter provided, for each license  
3 in incorporated cities with a population of more than 5,000  
4 and less than 10,000 or within a distance of 5 miles  
5 thereof, measured in a straight line from the nearest  
6 entrance of the premises to be licensed to the nearest  
7 boundary of such city, \$500 for a unit of a nationally  
8 chartered veterans' organization and \$650 for all other  
9 licensees;

10 (d) for each license in incorporated cities with a  
11 population of 10,000 or more or within a distance of 5 miles  
12 thereof, measured in a straight line from the nearest  
13 entrance of the premises to be licensed to the nearest  
14 boundary of such city, \$650 for a unit of a nationally  
15 chartered veterans' organization and \$800 for all other  
16 licensees;

17 (e) the distance of 5 miles from the corporate limits  
18 of any incorporated cities and incorporated towns is  
19 measured in a straight line from the nearest entrance of the  
20 premises to be licensed to the nearest boundary of such city  
21 or town; and where the premises of the applicant to be  
22 licensed are situated within 5 miles of the corporate  
23 boundaries of two or more incorporated cities or  
24 incorporated towns of different populations, the license fee  
25 chargeable by the larger incorporated city or incorporated

1 town applies and shall be paid by the applicant. When the  
 2 premises of the applicant to be licensed are situated within  
 3 an incorporated town or incorporated city and any portion of  
 4 the incorporated town or incorporated city is without a  
 5 5-mile limit, the license fee chargeable by the smaller  
 6 incorporated town or incorporated city applies and shall be  
 7 paid by the applicant.

8 (f) an applicant for the issuance of an original  
 9 license to be located in areas described in subsection (d)  
 10 of this subsection shall provide an irrevocable letter of  
 11 credit from a financial institution that guarantees that  
 12 applicant's ability to pay a \$20,000 license fee. A  
 13 successful applicant shall pay a one-time original license  
 14 fee of \$20,000 for any such license issued. The one-time  
 15 license fee of \$20,000 shall not apply to any transfer or  
 16 renewal of a license duly issued prior to July 1, 1974. All  
 17 licenses, however, are subject to the annual renewal fee.

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

20 (9) The annual license fee for a restaurant license  
 21 permitting the on-premises consumption of beer and wine  
 22 purchased elsewhere is \$100.

23 ~~(10)~~ The license fees herein provided for are  
 24 exclusive of and in addition to other license fees  
 25 chargeable in Montana for the sale of alcoholic beverages.

1 ~~(10)~~(11) In addition to other license fees, the  
 2 department of revenue may require a licensee to pay a late  
 3 fee of 33 1/3% of any license fee delinquent on July 1 of  
 4 the renewal year, 66 2/3% of any license fee delinquent on  
 5 August 1 of the renewal year, and 100% of any license fee  
 6 delinquent on September 1 of the renewal year."

7 Section 4. Section 16-6-306, MCA, is amended to read:  
 8 "16-6-306. Bottle clubs prohibited. The operation of  
 9 beer or liquor or alcoholic beverage bottle clubs is hereby  
 10 prohibited by any person, persons, partnership, firm,  
 11 corporation, or association, except for bona fide  
 12 restaurants licensed for the on-premises consumption of beer  
 13 and wine purchased elsewhere, as provided in [section 1]. A  
 14 bottle club is defined as any person, persons, partnership,  
 15 firm, corporation, or association maintaining premises not  
 16 licensed for the sale of beer or liquor, for a fee or other  
 17 consideration, including the sale of food, mixes, ice, or  
 18 any other fluids for alcoholic liquors, or otherwise  
 19 furnishing premises for such purposes and from which they  
 20 would derive revenue."

21 NEW SECTION. Section 5. Extension of authority. Any  
 22 existing authority of the department of revenue to make  
 23 rules on the subject of the provisions of this act is  
 24 extended to the provisions of this act.

25 NEW SECTION. Section 6. Codification instruction.

1 Section 1 is intended to be codified as an integral part of  
2 Title 16, chapter 4, part 1, and the provisions of Title 16,  
3 chapters 1 through 6, apply to section 1.

4 NEW SECTION. Section 7. Coordination instruction. If  
5 Article II, section 14, of the Montana Constitution is  
6 amended by the electorate to permit the legislature to  
7 establish 21 years as the legal age for consuming alcoholic  
8 beverages, the phrase "19 years of age" must be changed to  
9 "21 years of age" in subsections 1(3) and 1(6) of this act.

10 NEW SECTION. Section 8. Applicability date. This act  
11 applies to licenses issued or renewed after June 30, 1985.

12 NEW SECTION. Section 9. Effective date. This act is  
13 effective July 1, 1985.

-End-



STATE OF MONTANA  
FISCAL NOTE

REQUEST NO. FNN 331-85

Form BD-15

In compliance with a written request received February 6, 19 85, there is hereby submitted a Fiscal Note for House Bill 648 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:

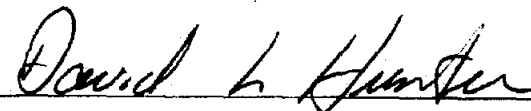
An act creating a restaurant license for on-premises consumption but not sale of beer and wine and imposing annual fee.

FISCAL IMPACT:

Restaurants that might apply for the restaurant license for on-premise consumption of beer and wine number about 1,600 (Montana Restaurant Association estimate). License revenue would be increased by \$100 for each license purchased. Rulemaking and enforcement costs would be increased significantly. Total general fund revenues would be increased by approximately \$160,000 per annum.

TECHNICAL OR MECHANICAL DEFECTS OR CONFLICTS WITH EXISTING LEGISLATION:

The proposed legislation would cause an enforcement problem because it does not provide any penalties or sanctions against either the patron or licensee.



BUDGET DIRECTOR  
Office of Budget and Program Planning

Date: Feb 9, 1985  
HB 648