

HOUSE BILL 743

Introduced by Gould, et al.

2/17	Introduced
2/22	Referred to Business & Economic Development
3/01	Hearing
3/02	Fiscal Note Requested
3/07	Revised Fiscal Note Requested
3/07	Fiscal Note Received
3/08	Revised Fiscal Note Received
3/10	Revised Fiscal Note Printed
3/14	Tabled in Committee

1 *House* BILL NO. *743*  
2 INTRODUCED BY *State* *Robert*  
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE  
5 WINE LAWS; ALLOWING THE SALE OF DESSERT WINES AS OTHER WINES  
6 ARE SOLD; LEVYING A TAX ON DESSERT WINE AND ALLOCATING THE  
7 REVENUE; REGULATING BUSINESS RELATIONS BETWEEN WINE  
8 DISTRIBUTORS AND SUPPLIERS; PROHIBITING CERTAIN ACTS BY  
9 SUPPLIERS; PROVIDING PROCEDURES FOR TERMINATION OF  
10 AGREEMENTS; PROVIDING FOR DISTRIBUTORS' OBLIGATIONS;  
11 PROVIDING REMEDIES FOR DISPUTES; AMENDING SECTIONS 16-1-106,  
12 16-3-406, AND 17-7-502, MCA; AND PROVIDING AN APPLICABILITY  
13 DATE."

14  
15 WHEREAS, some types of wine have been marketed through the  
16 state liquor system and licensed distributors and retailers  
17 for 10 years while other types of wine have been marketed  
18 only through the state liquor system; and

19 WHEREAS, all types of wine need to be marketed on the  
20 same basis, through both the state liquor system and the  
21 licensed distributors and retailers; and

22 WHEREAS, the relationship between the wineries who  
23 produce the wines and their licensed distributors need to be  
24 subject to statutory guidelines.  
25

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

2 NEW SECTION. **Section 1.** Short title. [Sections 1  
3 through 7] may be cited as the "Wine Distribution Act".

4 NEW SECTION. **Section 2.** Purpose. (1) [Sections 1  
5 through 7] govern relationships between suppliers and  
6 wholesale distributors of wine.

7 (2) The legislature recognizes the public interest and  
8 the interests of suppliers and wholesale distributors in the  
9 fair, efficient, and competitive distribution of wine. This  
10 law promotes those goals by:

11 (a) protecting the distributor's independence in  
12 managing its own business, including establishing its  
13 selling prices; and

14 (b) encouraging distributors to devote their best  
15 efforts to the sale and distribution of the wines they sell  
16 and distribute.

17 NEW SECTION. **Section 3.** Definitions. As used in  
18 [sections 1 through 7], unless the context requires  
19 otherwise, the following definitions apply:

20 (1) "Agreement of distributorship" means a contract,  
21 agreement, commercial relationship, license, or other  
22 arrangement for a definite or indefinite period of time  
23 between a supplier and a wholesale distributor that provides  
24 for the sale of wine by the supplier to the wholesale  
25 distributor.

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1 (2) "Person" means a natural person, corporation,  
2 partnership, trust, agency, or other entity and includes  
3 individual officers, directors, or other persons in active  
4 control of the activities of the entity.

5 (3) "Supplier" means a winery or an importer of wines  
6 who enters into or is a party to any agreement of  
7 distributorship with a wholesale distributor.

8 (4) "Wholesale distributor" means a person importing  
9 into or purchasing in the state any wine for sale or resale  
10 to retailers licensed in the state.

11 NEW SECTION. **Section 4. Prohibited acts by wine**  
12 **suppliers.** A supplier may not:

13 (1) coerce or induce or attempt to coerce or induce a  
14 wholesale distributor to engage in an illegal act or course  
15 of conduct;

16 (2) require a wholesale distributor to accept delivery  
17 of a product or other item or commodity that was not ordered  
18 by the wholesale distributor; or

19 (3) fail or refuse to enter into an agreement of  
20 distributorship with a wholesale distributor that provides  
21 for purchases of the supplier's products from the supplier.

22 NEW SECTION. **Section 5. Wholesale distributor**  
23 **provisions.** The following provisions must be incorporated in  
24 an agreement of distributorship:

25 (1) An agreement must be in writing.

1 (2) A supplier shall give a wholesale distributor  
2 written notice at least 60 days prior to cancellation or  
3 termination of an agreement of distributorship, unless a  
4 cancellation or termination without notice is permitted as  
5 provided in [section 6]. The written notice shall state the  
6 reasons for cancellation or termination. Upon receipt of the  
7 written notice, the wholesale distributor has 60 days to  
8 rectify claimed deficiencies. If the deficiencies are  
9 corrected within the 60-day period, the proposed termination  
10 or cancellation is null and void.

11 (3) A supplier may not unreasonably withhold or delay  
12 approval of a sale or transfer of the ownership, management,  
13 or control of a wholesale distributor. However, a wholesale  
14 distributor shall give a supplier prior written notice of  
15 not less than 60 days of any material change in ownership,  
16 management, or control.

17 NEW SECTION. **Section 6. Supplier provisions.** The  
18 following provisions must be incorporated in an agreement of  
19 distributorship:

20 (1) A wholesale distributor shall:

21 (a) maintain the financial and competitive capability  
22 necessary to achieve efficient and effective distribution of  
23 a supplier's products;

24 (b) maintain the quality and integrity of a supplier's  
25 products in a manner set forth by the supplier;

(c) exert best efforts to sell the supplier's wines;  
and

(d) merchandise the products in retail stores as agreed between the wholesale distributor and supplier.

(2) A wholesale distributor shall give a supplier prior written notice of not less than 60 days of a wholesale distributor's intent to cancel or terminate an agreement of distributorship.

(3) Pursuant to [section 5], a supplier may cancel or terminate an agreement of distributorship based on a deficiency or other reasonable cause by giving 60 days prior written notice to the wholesale distributor. However, a supplier may cancel or terminate an agreement of distributorship immediately and without notice if the reason for the termination or cancellation is insolvency, assignment for the benefit of creditors, bankruptcy, or revocation or suspension of a license, for more than 14 days, that is required by the state or federal government to operate.

**NEW SECTION. Section 7. Remedies.** A person injured by a violation of [sections 1 through 7] may bring a civil action in a court of competent jurisdiction to enjoin further violations in addition to other remedies as provided by law.

**NEW SECTION. Section 8. Tax on dessert wine --**

**distribution of proceeds.** (1) A tax of 62 cents a liter is levied and imposed on dessert wine, as defined in 16-1-106, acquired and sold by a wine distributor or the department or produced and sold to the public by a domestic winery.

(2) (a) The tax on dessert wine acquired and sold by a wine distributor or sold by a domestic winery must be paid by the wine distributor or winery by the 15th day of the month following the sale of the wine from the warehouse or winery. Failure to file a dessert wine tax return or pay the tax required by this section is punishable as provided in 16-1-409.

(b) The tax on dessert wine sold by the department must be collected at the time of sale.

(3) The tax levied and collected under this section must be distributed as follows:

(a) 77% to the general fund;

(b) 1%, which is statutorily appropriated as provided in 17-7-502, to the department for allocation to the counties, based on population, for the purposes established in 16-1-404;

(c) 5%, which is statutorily appropriated as provided in 17-7-502, to the department for allocation to incorporated cities, towns, and counties, based on population, for the purposes established in 16-1-405; and

(d) 17% to the state special revenue fund to the

1 credit of the department of institutions for the treatment,  
2 rehabilitation, and prevention of alcoholism.

3 (4) The tax computed and paid in accordance with this  
4 section is the only tax on dessert wine imposed by the state  
5 or any of its subdivisions, including those with  
6 self-government powers.

7 **Section 9.** Section 16-1-106, MCA, is amended to read:

8 **"16-1-106. Definitions.** As used in this code, the  
9 following definitions apply:

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

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

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

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

20 (5) "Beer importer" means a person other than a brewer  
21 who imports malt beverages.

22 (6) "Brewer" means a person who produces malt  
23 beverages.

24 (7) "Department" means the department of revenue.

25 (8) "Dessert wine" means a wine that contains more

1 than 16% and not more than 24% of alcohol by volume.

2 ~~(8)~~(9) "Immediate family" means a spouse, dependent  
3 children, or dependent parents.

4 ~~(9)~~(10) "Import" means to transfer beer or table wine  
5 from outside the state of Montana into the state of Montana.

6 ~~(10)~~(11) "Industrial use" means a use described as  
7 industrial use by the federal Alcohol Administration Act and  
8 the federal rules and regulations of 27 CFR.

9 ~~(11)~~(12) "Liquor" means an alcoholic beverage except  
10 beer and table wine.

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

20 ~~(13)~~(14) "Package" means a container or receptacle used  
21 for holding an alcoholic beverage.

22 ~~(14)~~(15) "Posted price" means the retail price of  
23 liquor and table wine as fixed and determined by the  
24 department and in addition thereto an excise and license tax  
25 as provided in this code.

1        ~~15~~(16) "Proof gallon" means a U.S. gallon of liquor  
2        at 60 degrees on the Fahrenheit scale that contains 50% of  
3        alcohol by volume.

4        ~~16~~(17) "Public place" means a place, building, or  
5        conveyance to which the public has or may be permitted to  
6        have access and any place of public resort.

7        ~~17~~(18) "Rules" means rules published by the  
8        department pursuant to this code.

9        ~~18~~(19) "State liquor facility" means a facility owned  
10       or under control of the department for the purpose of  
11       receiving, storing, transporting, or selling alcoholic  
12       beverages.

13       ~~19~~(20) "State liquor store" means a retail store  
14       operated by the department in accordance with this code for  
15       the purpose of selling liquor and table wine.

16       ~~20~~(21) "Storage depot" means a building or structure  
17       owned or operated by a brewer at any point in the state of  
18       Montana off and away from the premises of a brewery, and  
19       which structure is equipped with refrigeration or cooling  
20       apparatus for the storage of beer and from which a brewer  
21       may sell or distribute beer as permitted by this code.

22       ~~21~~(22) "Subwarehouse" means a building or structure  
23       owned or operated by a licensed beer wholesaler or table  
24       wine distributor, located at a site in Montana other than  
25       the site of such beer wholesaler's or table wine

1       distributor's warehouse or principal place of business, and  
2       used for the receiving, storage, and distribution of beer or  
3       table wine as permitted by this code.

4        ~~22~~(23) "Table wine" means wine as defined below which  
5        contains not more than 16% alcohol by volume.

6        ~~23~~(24) "Warehouse" means a building or structure  
7        located in Montana owned or operated by a licensed beer  
8        wholesaler or table wine distributor for the receiving,  
9        storage, and distribution of beer or table wine as permitted  
10       by this code.

11       ~~24~~(25) "Wine" means an alcoholic beverage made from  
12       or containing the normal alcoholic fermentation of the juice  
13       of sound, ripe fruit or other agricultural products without  
14       addition or abstraction, except as may occur in the usual  
15       cellar treatment of clarifying and aging, and that contains  
16       more than 0.5% but not more than 24% of alcohol by volume.  
17       Wine may be ameliorated to correct natural deficiencies,  
18       sweetened, and fortified in accordance with applicable  
19       federal regulations and the customs and practices of the  
20       industry. Other alcoholic beverages not defined as above  
21       but made in the manner of wine and labeled and sold as wine  
22       in accordance with federal regulations are also wine."

23       **Section 10.** Section 16-3-406, MCA, is amended to read:

24       **"16-3-406. Financial interest in retailers prohibited.**

25       (1) No A winery or table wine distributor ~~shall~~ may not

advance or loan money to, or furnish money for, or pay for or on behalf of any retailer, any license or tax ~~which may~~ be required to be paid by any a retailer, and ~~no a~~ winery or ~~table~~ wine distributor ~~shall~~ may not be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer.

(2) A winery or ~~table~~ wine distributor ~~shall be deemed to have~~ has such a financial interest if:

(a) ~~such the~~ winery or ~~table~~ wine distributor owns or holds any interest in or a lien or mortgage against the retailer or his premises; or

(b) ~~such the~~ winery or ~~table~~ wine distributor is under any contract with a retailer concerning future purchases and/or sale of merchandise by one from or to the other; or

(c) ~~such--table the~~ wine distributor extends more than 7 days' credit to a retail licensee or furnishes to any retail licensee any furniture, fixtures, or equipment to be used in the dispensation or sale of ~~table~~ wine; or

(d) any retailer holds an interest as a stockholder, or otherwise, in the business of the ~~table~~ wine distributor.

(3) The department may adopt by reference federal regulations promulgated under 27 U.S.C. 205 to govern supply and distribution of wines containing less than 7% alcohol by volume."

**Section 11.** Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; [section 8]; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111; 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101; 75-7-305; 76-12-123; 80-2-103; 80-2-228; 82-11-136; 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306;

90-15-103; section 13, House Bill No. 861, Laws of 1985; and section 1, Chapter 454, Laws of 1987.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. (In subsection (3): pursuant to sec. 15, Ch. 607, L. 1987, the inclusion of 15-65-121 terminates June 30, 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991; and pursuant to sec. 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L. 1987, terminates July 1, 1988.)"

**NEW SECTION. Section 12. Applicability.** [This act] applies to agreements:

(1) in existence on [the effective date of this act]; and

(2) entered into or renewed after [the effective date of this act].

**NEW SECTION. Section 13. Saving clause.** [This act]

does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**NEW SECTION. Section 14. Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

**NEW SECTION. Section 15. Instruction to code commissioner.** To comply with the intent of [this act], the code commissioner shall strike the word "table" from the term "table wine" where that term appears in 16-1-302 through 16-1-304, 16-2-101, 16-2-103, 16-2-104, 16-2-106, 16-2-108, 16-2-203, 16-2-303, 16-3-106, 16-3-401 through 16-3-405, 16-4-105 through 16-4-108, 16-4-201, 16-4-301, 16-4-303, 16-4-501, and any material enacted by the 51st legislature.

**NEW SECTION. Section 16. Codification instruction.** (1) [Sections 1 through 7] are intended to be codified as an integral part of Title 16, chapter 3, and the provisions of Title 16 apply to [sections 1 through 7].

(2) [Section 8] is intended to be codified as an integral part of Title 16, chapter 1, part 4, and the provisions of Title 16, chapter 1, part 4, apply to [section 8].

-End-



STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB743, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the wine laws; allowing the sale of dessert wine and allocating the revenue; regulating business relations between wine distributors and suppliers; prohibiting certain acts by suppliers; providing procedures for termination of agreements; providing for distributors' obligations; providing remedies for disputes; and providing an applicability date.

ASSUMPTIONS:

1. Dessert (fortified) wine sales will increase in approximately the same proportion that table wine increased (after initial one-year increase) when table wine went to the open market. It is assumed that dessert wine sales will double in sales in FY90 and FY91 from the FY88 sales volume with no offsetting decrease in table wine or liquor sales.
2. The Department of Revenue will sell the same proportion of the statewide total dessert wine sales as it currently does for table wine.
3. The proposed tax is \$0.62 per liter with 77% of the tax distributed to the General Fund, 5% to cities, 1% to counties, and 17% to the Department of Institutions.
4. The proposal provides no effective date. Therefore, the change in taxes or marketing will not occur until October 1, 1989 when the proposal will become effective.



DATE 3/8/89

RAY SHACKLEFORD, BUDGET DIRECTOR  
OFFICE OF BUDGET AND PROGRAM PLANNING



DATE 3/09/89

R. BUDD GOULD, PRIMARY SPONSOR

Fiscal Note for HB743, as introduced

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Fiscal Note Request, HB743, as introduced  
Form BD-15  
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FISCAL IMPACT:						
				FY90		
				FY91		
Revenue Impact:	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Liquor Profit Trans.	\$3,153,000	\$3,075,000	(\$78,000)	\$2,680,000	\$2,592,000	(\$88,000)
Liquor Excise Tax	\$4,691,000	\$4,624,000	(\$67,000)	\$4,402,000	\$4,318,000	(\$84,000)
Liquor License Tax	\$2,932,000	\$2,890,000	(\$42,000)	\$2,751,000	\$2,698,000	(\$53,000)
Wine Tax	\$1,464,000	\$1,681,000	\$217,000	\$1,409,000	\$1,687,000	\$278,000
Net Liquor Sales	\$27,012,000	\$26,673,000	(\$339,000)	\$25,620,000	\$25,198,000	(\$422,000)
Other Income	\$40,000	\$40,000	\$0	\$42,000	\$42,000	\$0
Total	\$39,292,000	\$38,983,000	(\$309,000)	\$36,904,000	\$36,535,000	(\$369,000)
Fund Information:						
General Fund	\$8,712,000	\$8,734,000	\$22,000	\$7,917,000	\$7,959,000	\$42,000
Special Revenue Funds						
Institutions	\$2,372,000	\$2,381,000	\$9,000	\$2,237,000	\$2,250,000	\$13,000
Local Government	\$1,156,000	\$1,154,000	(\$2,000)	\$1,088,000	\$1,087,000	(\$2,000)
Proprietary Fund	\$27,052,000	\$26,713,000	(\$339,000)	\$25,662,000	\$25,240,000	(\$422,000)
Total	\$39,292,000	\$38,982,000	(\$309,000)	\$36,904,000	\$36,536,000	(\$369,000)
Expenditure Impact: (Proprietary Fund)						
Personal Services	\$2,725,000	\$2,725,000	\$0	\$2,692,000	\$2,692,000	\$0
Other Expenses	\$3,001,000	\$3,001,000	\$0	\$2,963,000	\$2,963,000	\$0
Cost of Goods	\$21,326,000	\$20,989,000	(\$337,000)	\$20,007,000	\$19,585,000	(\$422,000)
	\$27,052,000	\$26,715,000	(\$337,000)	\$25,662,000	\$25,240,000	(\$422,000)
NET EFFECT	\$12,240,000	\$12,268,000	\$29,000	\$11,242,000	\$11,295,000	\$53,000

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

The revenue that is distributed to the counties will not change due to this proposal, but the revenue distributed to the cities will decrease by \$2,000 in each year.

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