

SENATE BILL 240

Introduced by Eck, et al.

1/23	Introduced
1/23	Referred to Taxation
1/23	First Reading
1/23	Fiscal Note Requested
1/29	Fiscal Note Received
1/29	Fiscal Note Printed
2/03	Hearing
3/10	Tabled in Committee
3/23	Motion Failed to Take from Committee and Place on 2nd Reading

1 Senate BILL NO. 240
 2 INTRODUCED BY Eck Swanson
 3 Shirley Mann Con Blaylock B. C. Brown Hayes
 4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A
 5 RESTAURANT BEER AND WINE LICENSE TO ALLOW RESTAURANTS TO
 6 SERVE BEER AND WINE AND TO PROHIBIT GAMBLING ON THOSE
 7 PREMISES; PROVIDING A SEPARATE QUOTA SYSTEM; PROVIDING FOR
 8 LICENSE AND PERMIT FEES AND LICENSURE; AMENDING SECTIONS
 9 23-5-306, 23-5-502, AND 23-5-603, MCA; AND PROVIDING A
 10 DELAYED EFFECTIVE DATE."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 NEW SECTION. **Section 1.** Restaurant beer and wine
 14 license. (1) The department shall issue a restaurant beer
 15 and wine license whenever:

16 (a) the applicant is otherwise qualified to own a beer
 17 and wine license;

18 (b) the applicant operates a restaurant at the location
 19 where the restaurant beer and wine license will be used or
 20 satisfies the department:

21 (i) of the intent to open a restaurant; and

22 (ii) that the restaurant beer and wine license will be
 23 used in conjunction with that restaurant;

24 (c) the applicant understands that this license
 25 prohibits the applicant from the licensure of any gambling

1 activity or machines and if any gambling activity or
 2 machines exist at the location where the restaurant beer and
 3 wine license will be used, that they must be discontinued or
 4 removed before the restaurant beer and wine license is in
 5 effect; and

6 (d) the owner of an existing all-beverages, beer, or
 7 wine license agrees to sell any existing license before the
 8 restaurant beer and wine license is in effect.

9 (2) For purposes of this section, "restaurant" means a
 10 public eating place where individually priced meals are
 11 prepared and served primarily for on-premises consumption.
 12 At least 75% of the restaurant's gross income from the
 13 operation must be from the sale of food and not from the
 14 sale of alcoholic beverages. This means that the building
 15 must have a dining room, a kitchen, and the number and kinds
 16 of employees necessary for the preparation, cooking, and
 17 serving of meals in order to satisfy the department that the
 18 space is intended for use as a full-service restaurant.

19 (3) The restaurant beer and wine license may be sold by
 20 the licensee only in conjunction with the sale of the
 21 restaurant to which it applies. The price of the license
 22 must be the amount of the original purchase price, indexed
 23 for inflation.

24 (4) The department shall issue a restaurant beer and
 25 wine license to a qualified applicant regardless of the

1 number of beer and wine licenses already issued within a
2 beer license quota area in which the restaurant is located.
3 The restaurant beer and wine license may not be used in
4 determining the number of beer licenses in a quota area
5 under 16-4-105.

6 (5) Under a restaurant beer and wine license, beer and
7 wine may be sold in a dining room and may also be sold in an
8 area within the restaurant that is used primarily for the
9 sale of beer and wine and that is separate from a dining
10 room. Beer and wine may not be sold for off-premises
11 consumption under a restaurant beer and wine license. This
12 license allows beer and wine to be sold and consumed on the
13 premises between 11 a.m. and 11 p.m.

14 (6) Possession of a restaurant beer and wine license
15 may not be used as a qualification for licensure of any
16 gambling or gaming activity on the premises of the
17 restaurant with a restaurant beer and wine license.

18 **NEW SECTION. Section 2. Restaurant beer and wine**
19 **license limit.** Except as otherwise provided by law, a
20 license to sell beer and wine at retail in a restaurant, in
21 accordance with the provisions of this code and the rules of
22 the department, may be issued to any person, firm, or
23 corporation that operates or intends to operate a restaurant
24 and is approved by the department as a fit and proper
25 person, firm, or corporation, except that:

1 (1) the number of restaurant beer and wine licenses
2 that the department may issue for premises situated within
3 incorporated cities and incorporated towns and within a
4 distance of 5 miles from the corporate limits of
5 incorporated cities and towns must be determined on the
6 basis of population prescribed in [section 3], as follows:

7 (a) in incorporated towns of 500 inhabitants or less
8 and within a distance of 5 miles from the corporate limits
9 of the towns, not more than one restaurant beer and wine
10 license, which may not be used in conjunction with retail
11 all-beverages, beer, or wine licenses;

12 (b) in incorporated cities and incorporated towns of
13 more than 500 inhabitants and not over 2,000 inhabitants and
14 within a distance of 5 miles from the corporate limits of
15 the cities and towns, one restaurant beer and wine license
16 for each 500 inhabitants, which may not be used in
17 conjunction with retail all-beverages, beer, or wine
18 licenses;

19 (c) in incorporated cities of over 2,000 inhabitants
20 and within a distance of 5 miles from the corporate limits
21 of the cities, four restaurant beer and wine licenses for
22 the first 2,000 inhabitants, two additional restaurant beer
23 and wine licenses for the next 2,000 inhabitants or major
24 fraction of inhabitants, and one additional restaurant beer
25 and wine license for each additional 2,000 inhabitants,

1 which may not be used in conjunction with retail
2 all-beverages, beer, or wine licenses;

3 (2) the number of inhabitants in the cities and towns,
4 exclusive of the number of inhabitants residing within a
5 distance of 5 miles from the corporate limits of the cities
6 and towns, governs the number of restaurant beer and wine
7 licenses that may be issued for use within the cities and
8 towns and within a distance of 5 miles from the corporate
9 limits of the cities and towns. If two or more incorporated
10 municipalities are situated within a distance of 5 miles
11 from each other, the total number of restaurant beer and
12 wine licenses that may be issued for use in both of the
13 municipalities and within a distance of 5 miles from their
14 respective corporate limits must be determined on the basis
15 of the combined populations of both of the municipalities
16 and may not exceed the limitations in subsection (1). The
17 distance of 5 miles from the corporate limits of any
18 incorporated city or incorporated town must be measured in a
19 straight line from the nearest entrance of the premises
20 proposed for licensing to the nearest corporate boundary of
21 a city or town.

22 (3) the number of restaurant beer and wine licenses
23 that the department may issue for use at premises situated
24 outside of any incorporated city or incorporated town and
25 outside of the area within a distance of 5 miles from the

1 corporate limits of the city or town or for use at premises
2 situated within any unincorporated town must be as
3 determined by the department in the exercise of its sound
4 discretion, except that a restaurant beer and wine license
5 may not be issued for any premises located beyond the
6 distance established in this subsection unless the
7 department determines that the issuance of the license is
8 required by public convenience and necessity.

9 NEW SECTION. **Section 3. License and permit fees.** (1)

10 Each licensee licensed under the quotas of [section 2] shall
11 pay an annual license fee, as follows:

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

18 (b) except as provided in subsection (2), for each
19 license in incorporated cities with a population of 2,000 or
20 more and less than 5,000 or within a distance of 5 miles of
21 the city, measured in a straight line from the nearest
22 entrance of the premises to be licensed to the nearest
23 boundary of the city, \$350 for a unit of a nationally
24 chartered veterans' organization and \$500 for all other
25 licensees;

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

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

(2) The distance of 5 miles from the corporate limits of an incorporated city or incorporated town is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city or town. When 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 must be paid by the applicant. When the premises of the

applicant to be licensed are situated within an incorporated city or incorporated town and any portion of the incorporated city or incorporated town is outside a 5-mile limit, the license fee chargeable by the smaller incorporated city or incorporated town applies and must be paid by the applicant.

(3) The license fees provided in this section are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages.

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

(5) All license and permit fees collected under this section must be deposited as provided in 16-2-108.

NEW SECTION. Section 4. Census. The census taken under the direction of congress is the basis upon which the respective populations of the counties and incorporated cities and towns are determined. However, in the interim between censuses, the department shall use as a basis the most recent population estimates published by the bureau of the census, United States department of commerce.

Section 5. Section 23-5-306, MCA, is amended to read:

1 **"23-5-306. (Temporary) Live card game table -- permit**
 2 **-- fees -- disposition of fees.** (1) A person who has been
 3 granted an operator's license under 23-5-177 and a license
 4 to sell alcoholic beverages for consumption on the premises
 5 may be granted an annual permit for the placement of live
 6 card game tables. If one or more live card game tables were
 7 legally operated on a premises on January 15, 1989, and the
 8 premises were not on that date licensed under 16-4-401(2)
 9 but were licensed on that date to sell food, cigarettes, or
 10 any other consumable product, an operator's license and an
 11 annual permit for the placement of live card game tables may
 12 be granted to the person who legally operated the premises
 13 on January 15, 1989.

14 (2) The annual permit fee in lieu of taxes for each
 15 live card game table operated in a licensed operator's
 16 premises may not be prorated and must be:

17 (a) \$250 for the first table; and

18 (b) \$500 for each additional table.

19 (3) The department shall retain for administrative
 20 purposes \$100 of the fee collected under this part for each
 21 live card game table.

22 (4) Except as provided in subsection (5), the
 23 department shall forward on a quarterly basis the remaining
 24 balance of the fee collected under subsection (2) to the
 25 treasurer of the county or the clerk, finance officer, or

1 treasurer of the city or town in which the live card game
 2 table is located for deposit to the county or municipal
 3 treasury. A county is not entitled to proceeds from fees
 4 assessed on live card game tables located in incorporated
 5 cities and towns within the county. The local government
 6 portion of this fee is statutorily appropriated to the
 7 department, as provided in 17-7-502, for deposit to the
 8 county or municipal treasury.

9 (5) On June 30, 1993, the department shall transfer to
 10 the general fund the remaining fund balance from the account
 11 funded by this section. (Terminates July 1, 1993--sec. 2,
 12 Ch. 18, Sp. L. January 1992.)

13 **23-5-306. (Effective July 1, 1993) Live card game table**
 14 **-- permit -- fees -- disposition of fees.** (1) A person who
 15 has been granted an operator's license under 23-5-177 and a
 16 license, except for a restaurant beer and wine license, to
 17 sell alcoholic beverages for consumption on the premises may
 18 be granted an annual permit for the placement of live card
 19 game tables. If one or more live card game tables were
 20 legally operated on a premises on January 15, 1989, and the
 21 premises were not on that date licensed under 16-4-401(2)
 22 but were licensed on that date to sell food, cigarettes, or
 23 any other consumable product, an operator's license and an
 24 annual permit for the placement of live card game tables may
 25 be granted to the person who legally operated the premises

on January 15, 1989.

(2) The annual permit fee in lieu of taxes for each live card game table operated in a licensed operator's premises may not be prorated and must be:

(a) \$250 for the first table; and

(b) \$500 for each additional table.

(3) The department shall retain for administrative purposes \$100 of the fee collected under this part for each live card game table.

(4) The department shall forward on a quarterly basis the remaining balance of the fee collected under subsection (2) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the live card game table is located for deposit to the county or municipal treasury. A county is not entitled to proceeds from fees assessed on live card game tables located in incorporated cities and towns within the county. The local government portion of this fee is statutorily appropriated to the department, as provided in 17-7-502, for deposit to the county or municipal treasury."

Section 6. Section 23-5-502, MCA, is amended to read:

"23-5-502. Sports pools and sports tab games authorized -- tax. (1) Conducting or participating in sports pools and sports tab games as defined and governed in this part is lawful, except that sports tab games may only be conducted

on premises, except for a restaurant with a restaurant beer and wine license, licensed to sell alcoholic beverages for consumption on the premises.

(2) A manufacturer licensed under 23-5-115 who sells sports tabs to a licensed operator for use in a sports tab game shall collect from the operator, at the time of sale, a tax of \$1 for each 100 sports tabs sold and, within 15 days after the end of each calendar quarter, submit to the department any forms required by the department and the proceeds of the collected tax. The manufacturer shall keep a record of taxes collected as required by department rule. The records must be made available for inspection by the department upon request of the department. The department shall retain the proceeds of the tax to administer this part."

Section 7. Section 23-5-603, MCA, is amended to read:

"23-5-603. Video gambling machines -- possession -- play -- restriction. (1) A licensed operator may make available for public play only the number of approved video gambling machines specifically authorized by this part.

(2) The video gambling machines specifically authorized by this part are bingo, keno, and draw poker machines. Only the number of approved machines for which permits have been granted under 23-5-612 may be made available for play by the public on the premises of a licensed operator. The

department shall adopt rules allowing a video gambling machine that needs repair to be temporarily replaced while it is being repaired with a video gambling machine that is approved under the permit provisions of this part. A fee may not be charged for the replacement machine.

(3) Machines Subject to subsection (4), machines on premises licensed to sell alcoholic beverages for on-premises consumption must be placed:

(a) in a room, area, or other part of the premises in which alcoholic beverages are sold or consumed; and

(b) within control of the operator for the purpose of preventing access to the machines by persons under 18 years of age.

(4) A person with a restaurant beer and wine license may not have video gambling machines on the restaurant premises."

NEW SECTION. Section 8. Codification instruction.
[Sections 1 through 4] are intended to be codified as an integral part of Title 16, chapter 4, part 1, and the provisions of Title 16, chapter 4, part 1, apply to [sections 1 through 4].

NEW SECTION. Section 9. Effective date. [This act] is effective January 1, 1994.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0240, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act establishing a restaurant beer and wine license to allow restaurants to serve beer and wine and to prohibit gambling on those premises; providing a separate quota system; providing for license and permit fees and licensure; and providing a delayed effective date.

ASSUMPTIONS:

1. There are 59 incorporated communities in Montana that are at their quota for current system beer/wine licenses.
2. Only restaurants in and around cities and towns that are currently at their quota for present system beer/wine licenses will apply for a new restaurant beer and wine license.
3. Per this legislation, new system restaurant beer and wine licensees cannot have any gambling activity in their establishments.
4. There are an estimated 209 restaurants in and around the 59 incorporated communities that would be potential applicants for the new beer and wine license.
5. All 209 restaurants are assumed to have at least 75% of gross receipts from the sale of food, excluding alcoholic beverages.
6. All 209 restaurants apply for and are granted a restaurant beer and wine license.
7. Based in part on the delayed effective date, 25% of the 209 potential applicants (52) are assumed to be processed in FY94, 50% in FY95 (105), and 25% in FY96 (52).
8. All 52 applicants granted licenses in FY94 will renew their licenses in FY95.
9. Per the legislation, the licensing fee ranges from \$400 for restaurants in and around incorporated communities with a population less than 2,000, to \$800 for eating establishments in incorporated communities with a population of 10,000+.
10. The average licensing fee for the 209 potential applicants is \$691.
11. A \$100 one-time processing fee is charged at the time of the issuance of the new license (\$5,200-FY94, \$10,500-FY95).
12. Collections from the new restaurant licenses will be deposited to the liquor account in the state enterprise fund.
13. This legislation will require an additional 0.75 FTE in FY94, and 1.50 in FY95.

FISCAL IMPACT: (See next page)

David Lewis 1-28-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Dorothy Eck 1/29/93
DOROTHY ECK, PRIMARY SPONSOR DATE

Fiscal Note for SB0240, as introduced

SB 240

Fiscal Note Request, SB0240 as introduced
Form BD-15 page 2
(continued)

FISCAL IMPACT:

Expenditures:

Liquor Division (DOR)

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	10.50	11.25	0.75	10.50	12.00	1.50
Personal Services	\$ 313,802	\$335,819	\$22,017	\$ 314,804	\$358,838	\$44,034
Operating Expenses	<u>349,065</u>	<u>351,451</u>	<u>2,386</u>	<u>357,397</u>	<u>362,169</u>	<u>4,772</u>
Total	\$ 662,867	\$687,270	\$24,403	\$ 672,201	\$721,007	\$48,806
Proprietary (Enterprise) Fund	\$ 662,867	\$687,270	\$24,403	\$ 672,201	\$721,007	\$48,806

Revenues:

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Restaurant Beer/Wine License Fee	\$ 0	\$ 41,313	\$ 41,313	\$ 0	\$ 118,838	\$ 118,838

Net Impact:

Proprietary (Enterprise) Fund		\$ 16,910			\$ 70,032	
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SB 240