

THE NUMBER AND FORM IN WHICH THE QUESTION WILL
APPEAR UPON THE OFFICIAL BALLOT AT THE
GENERAL ELECTION, NOVEMBER 8, 1938,
IS AS FOLLOWS:

Referendum Measure No. 40

THIS MEASURE IS THE ACT PASSED BY THE TWENTY-FIFTH LEGISLATIVE ASSEMBLY IN 1937 AS HOUSE BILL NO. 196 REGULATING, LICENSING AND AUTHORIZING THE SALE OF LIQUOR AT RETAIL FOR CONSUMPTION ON THE PREMISES WHERE SOLD; PROVIDING FOR A LICENSE TAX, LICENSE FEES AND FOR AN EXCISE TAX ON LIQUOR; ALLOCATING THE REVENUE TO BE DERIVED FROM SAID LICENSES AND EXCISE TAXES; PROVIDING FOR LOCAL OPTION IN COUNTIES, AND FOR PENALTIES; REPEALING ACTS AND PARTS OF ACTS IN CONFLICT WITH THIS ACT; AND CONTAINING OTHER PROVISIONS RELEVANT TO THESE.

FOR REFERENDUM MEASURE NO. 40.

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Licensing sale of liquor at retail for consumption on premises.

AGAINST REFERENDUM MEASURE NO. 40.

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Licensing sale of liquor at retail for consumption on premises.

CHAPTER 84
HOUSE BILL 196

AN ACT TO REGULATE, LICENSE AND AUTHORIZE THE SALE OF LIQUOR AT RETAIL IN THE STATE OF MONTANA; AUTHORIZING, EMPOWERING AND DIRECTING THE MONTANA LIQUOR CONTROL BOARD TO ISSUE RETAIL LIQUOR LICENSES TO PERSONS QUALIFIED UNDER THIS ACT TO SELL LIQUOR AT RETAIL; DEFINING CERTAIN WORDS AND TERMS USED IN THIS ACT; PROVIDING FOR A LICENSE TAX AND FIXING THE AMOUNT OF LICENSE FEES TO BE PAID FOR SAID LICENSE; AUTHORIZING THE MONTANA LIQUOR CONTROL BOARD TO CHARGE AND COLLECT AN EXCISE TAX ON ALL LIQUOR SOLD BY IT; PRESCRIBING THE HOURS DURING WHICH LIQUOR MAY BE SOLD AND THE PLACE, MANNER AND CONDITIONS FOR THE SALE THEREOF; AUTHORIZING THE SALE OF LIQUOR TO LICENSEES BY STATE LIQUOR STORES; PROHIBITING THE SALE AND/OR TRAFFIC IN LIQUOR OTHER THAN PURCHASED AT STATE LIQUOR STORES, AND PROHIBITING THE SALE OF LIQUOR TO MINORS AND OTHER DESIGNATED PERSONS; AUTHORIZING THE MONTANA LIQUOR CONTROL BOARD TO PRESCRIBE AND PROMULGATE RULES AND REGULATIONS WITH STATUTORY EFFECT; PROVIDING FOR THE SUSPENSION AND REVOCATION OF LICENSES; PROVIDING FOR HEARINGS BY THE BOARD AND APPEALS FROM DECISIONS THEREOF; PROVIDING FOR LOCAL OPTION IN THE COUNTIES IN THE STATE AND HOLDING ELECTIONS IN RESPECT THERETO; GRANTING TO THE MONTANA LIQUOR CONTROL BOARD STRICT REGULATION AND CONTROL OF LICENSES AND LICENSEES AND DECLARING THE POLICY OF LAW IN THE SALE OF LIQUOR; PROVIDING FOR ALLOCATION OF REVENUE DERIVED FROM LICENSES AND EXCISE TAXES; DECLARING THIS ACT TO BE AN EMERGENCY MEASURE; AND PROVIDING PENALTIES FOR THE VIOLATION OF THIS ACT.

Be It Enacted by the Legislative Assembly of the State of Montana:

It is hereby declared as the policy of the State that it is necessary to further regulate and control the sale and distribution within the State of alcoholic beverages, and to eliminate certain illegal traffic in liquor now existing and to insure the entire control of the sale of liquor in the Montana Liquor Control Board, it is advisable and necessary, in addition to the operation of the State Liquor Stores now provided by law, that the said Board be empowered and authorized to grant licenses to persons qualified under this Act, to sell liquor purchased by them at State Liquor Stores at retail posted price in accordance with this Act and under rules and regulations promulgated by the said Board, and under its strict supervision and control, and to provide severe penalty for the sale of liquor except by and in State Liquor Stores and by persons licensed under this Act. The restrictions, regulations and provisions contained in this Act are enacted by the Legislature for the protection, health, welfare and safety of the people of the State.

Section 2. The following words and phrases used in this Act shall be given the following interpretation:

1. "Board" means the Montana Liquor Control Board.
2. "Club" means a National Fraternal Organization, except college fraternities, or an association of individuals organized for social purposes and not for profit, with a permanent membership and an existence of two years prior to making application for a license with permanent quarters or rooms.
3. "State Liquor Store" means a liquor store established and operated by the Montana Liquor Control Board under the laws of Montana.
4. "License" means a license issued by the Montana Liquor Control Board to a qualified person, under which it shall be lawful for the licensee to sell and dispense liquor at retail as provided in this Act.
5. "Licensee" means the person to whom a license is issued.
6. "Person" means every individual, co-partnership, corporation, hotel, restaurant, club and fraternal organization, and all licensed retailers of liquor, whether conducting the business singularly or collectively.

7. "Liquor" means all kinds of liquor sold by and/or in a State Liquor Store.

8. "Interdicted person" means a person to whom the sale of liquor is prohibited under the laws of Montana.

9. "Rules and regulations" means rules and regulations made and promulgated by the Montana Liquor Control Board in accordance with the provisions of this Act.

All other words and phrases used in this Act, the definition of which is not herein given, shall be given the ordinary meaning.

Section 3. The Montana Liquor Control Board is hereby empowered, authorized and directed to issue licenses to qualified applicants as herein provided, whereby the licensee shall be authorized and permitted to sell liquor at retail, and upon the issuance of such license the licensee therein named shall be authorized to sell liquor at retail but only in accordance with the rules and regulations promulgated by the said Board and the provisions of this Act. Qualified applicants shall include persons, hotels, clubs, fraternal organizations and railway systems.

Section 4. Each licensee licensed under the provisions of this Act shall pay an annual license fee as follows:

For each license in cities with a population of ten thousand (10,000) or more and within a distance of five (5) miles thereof, outside of an incorporated city or town, Six Hundred Dollars (\$600.00) per annum. For each license in cities with a population of more than five thousand (5,000) and less than ten thousand (10,000) and within a distance of five (5) miles thereof, outside of an incorporated city or town, Four Hundred Fifty Dollars (\$450.00) per annum. For each license in cities with a population of more than two thousand (2,000) and less than five thousand (5,000), Three Hundred Dollars (\$300.00) per annum. For each license in cities, towns and unincorporated villages and towns, with a population of less than two thousand (2,000), Two Hundred Dollars (\$200.00) per annum. Fraternal Organizations One Hundred Dollars (\$100.00) per annum.

For each railway system in the State of Montana, three hundred dollars (\$300.00) per annum.

The license fees herein provided for are exclusive of and in addition to other license fees chargeable in the State of Montana for the sale of liquor, beer and malt beverages.

Section 5. Prior to the issuance of a license as herein provided, the applicant shall file with the Montana Liquor Control Board an application in writing, signed by the applicant, and containing such information and statements relative to the applicant and the premises where the liquor is to be sold, as may be required by the Montana Liquor Control Board. The application shall be verified by the affidavit of the person making the same before a person authorized to administer oaths. If any false statement is made in any part of said application, the applicant, or applicants, shall be deemed guilty of misdemeanor and upon conviction thereof the license, if issued, shall be revoked and the applicant, or applicants, subjected to the penalties provided by law.

Section 6. Upon receipt of an application for a license under this Act, accompanied by the necessary license fee and bond, the Board shall within thirty (30) days thereafter, cause to be made a thorough investigation of all matters pertaining thereto, and shall determine whether such applicant is qualified to receive a license and his premises are suitable for the carrying on of the business, and whether the requirements of this Act and the rules and regulations promulgated by the Board are met and complied with.

Section 7. Any railroad operating a dining and buffet car in connection with regular operated train service desiring a license to sell liquor under the provisions of this Act in said dining and buffet car, shall first apply to the Board for a license so to do, accompanying the application with the license fee herein prescribed. Upon being satisfied from said application, or otherwise, that the applicant is qualified the Board shall issue a license to such railroad for the sale of liquor by such carrier in all of its dining and buffet cars, which shall at all times be prominently displayed in the cars where liquor is served. Upon the payment of the one license fee herein required to be paid, duplicates of said license shall be provided by the Board, to be posted in the different cars operated within the State under the one license.

Section 8. Every license issued under this Act shall set forth the name of the person to whom issued, the location by street and number of the premises where the business is to be carried on under said license, and such other information as the Board shall deem necessary. If issued to a partnership the names of the persons conducting the business. Such license shall be signed by the licensee, shall be non-transferable except and only with the consent of the Board, shall be posted in a conspicuous place on the premises in respect to which it is issued and shall be exhibited to any duly authorized representative of the Board whenever the same is requested. Every license issued under the provisions of this Act is separate and distinct, and no person, except the licensee therein named, shall exercise any of the privileges granted thereunder, and all licenses are applicable only to the premises in respect to which they are issued. All licenses shall expire on January first of each year.

Section 9. No person shall be granted more than one license in any year. No person, club, or fraternal organization shall be entitled to a license under this Act unless such person, club, or fraternal organization shall have a beer license issued under the laws of Montana.

Section 10. No license shall be issued by the Board to:

1. A person who has been convicted of being the keeper or is keeping a house of ill fame.

2. A person who has been convicted of pandering or other crime or misdemeanor opposed to decency and morality, or the laws of the Federal Government or the State of Montana.

3. A person whose license issued under this Act has been revoked for cause.

4. A person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application.

5. A person who is not qualified or whose premises do not conform to the provisions of this Act, or with the rules and regulations promulgated by the Board.

6. A person who is not a citizen of the United States and who has not been a citizen of the State of Montana for at least five (5) years and who has not been a citizen of the county in which the license is to be issued for at least one (1) year.

Section 11. No licensee shall sell, deliver or give away, or cause or permit to be sold, delivered or given away, any liquor to:

1. Any minor actually under the age of twenty-one (21) years, unless such minor is accompanied by his parent or guardian.

2. Any intoxicated person or any person actually, apparently or obviously intoxicated.

3. A habitual drunkard.

4. An interdicted person.

Section 12. No liquor shall be sold, offered for sale or given away upon any premises licensed to sell liquor at retail during the following hours:

(a) Sunday, from two a. m. to one p. m.;

(b) On any other day between two a. m. and eight a. m.;

(c) On any day of a general or primary election during the hours when the polls are open, excepting bond elections. When any city, or incorporated or unincorporated town has any ordinance further restricting the hours of sale of liquor, such restricted hours shall be the hours during which the sale of liquor at retail shall not be permitted within the jurisdiction of any such city or town.

Section 13. No license shall be granted for any premises which shall be on the same street or avenue and within six hundred feet of a building occupied exclusively as a church, synagogue or other place of worship, or school, except a commercially operated school; the measurements to be taken in a straight line from the center of the nearest entrance of such school, church, synagogue or other place of worship to the center of the nearest entrance of the premises to be licensed; except, however, that no license shall be denied because such restriction may apply to any premises so located which are maintained as a bona fide hotel, restaurant, railway car, club or fraternal organization or society except similar places of business established and in actual operation for one year prior to the passage and approval of this Act.

Section 14. The Board is hereby authorized to sell through its stores all kinds of liquor, wine and cordials kept in stock to licensees licensed under this Act at the posted price thereof in the store in which said liquor is sold. All sales shall be upon a cash basis. The posted price as used herein shall mean the retail price of such liquor as fixed and determined by the Montana Liquor Control Board and in addition thereto an excise tax as in this Act provided.

Section 15. The Montana Liquor Control Board 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 fifty cents (50c) per gallon or proportional part thereof on all liquor so sold and delivered. The Montana Liquor Control Board 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 so collected and received not later than the tenth day of each and every month.

Section 16. The State Liquor Store shall upon each and every sale of liquor to any licensee, issue a duplicate invoice of the liquor purchased as provided by said Board, a copy of which shall be delivered to the licensee and one copy retained at such store. The invoice shall show the date of purchase, name of employee making the sale, the quantity of of each kind of liquor purchased, the price paid therefor, the name of the licensee and the number of the license, with such other information as may be required by the Board. The Licensee shall keep and retain his duplicate invoice of all purchases made by him from the State Liquor Store, which shall at all times be subject to inspection by the duly authorized officers, agents and employees of the Board.

Section 17. It shall be unlawful for any licensee to sell or keep for sale and/or have on his premises for any purpose whatever, any liquor except that purchased from the State Liquor Store, and any licensee found in possession of, or selling and keeping for sale, any liquor which was not purchased from a State Liquor Store, shall, upon conviction, be fined not less than Five Hundred Dollars (\$500.00) nor more than fifteen hundred dollars (\$1500.00), or by imprisonment for not less than three (3) months nor more than one (1) year, or both such fine and imprisonment, and if the Board shall be satisfied that any such liquor was knowingly sold or kept for sale within the licensed premises by such licensee, or by his agents, servants or employees, it shall be mandatory that said Board immediately revoke the license of said licensee.

Section 18. Any person, who has not been issued a license under this Act, who shall sell or keep for sale any alcoholic liquor, shall be guilty of a felony and upon conviction thereof shall be fined not less than one thousand dollars (\$1000.00) nor more than five thousand dollars (\$5000.00), or be imprisoned in the State Prison for not less than one (1) nor more than five (5) years, or both such fine and imprisonment.

Section 19. It shall be unlawful for any licensee under the provisions of this Act to resell any liquor purchased by such licensee from a State Liquor Store for a sum less than the posted price established by the said store and paid by the licensee therefor.

Section 20. No member or employee of the Board, including those engaged in the sale of liquor at the various State Liquor Stores, shall be directly or indirectly engaged in dealing in liquor whether as owner, part owner, member of a syndicate, share holder or otherwise, whether for his own benefit or in a fiduciary capacity for others.

Section 21. Any sheriff, police officer, or inspector appointed under this Act, who shall find any alcoholic beverages, liquor or moonshine which is kept or held by any person for sale or other disposition in violation of this Act, may forthwith seize and remove the same, and keep the same as evidence, and upon conviction of a person for violation of the provisions hereof, the said liquor and all packages containing the same shall be forfeited to the State of Montana, and in addition the person so violating the law shall be subject to the penalties herein prescribed.

Section 22. For the purpose of the administration of this Act the Board shall make, promulgate and publish such rules and regulations as the said Board may deem necessary for carrying out the provisions of this Act and for the orderly and efficient administration hereof, and except as may be limited or prohibited by law

and the provisions of this Act, such rules and regulations so made and promulgated shall have the force of statute. Every licensee shall advise himself of such rules and regulations, and ignorance thereof shall be no defense. Without limiting the generality of the foregoing provision, the said Board shall be empowered and it is made its duty to prescribe forms to be used in the administration of this Act, the proof to be furnished and the conditions to be observed in the issuance of licenses, prescribing forms or records to be kept of the sale of liquor by stores, prescribing notices required by this Act or the regulations thereof, and the manner of giving and serving the same, prescribing, subject to the provisions of this Act, the conditions and qualifications necessary to obtain a license, the books and records to be kept by the licensee, the form of returns to be made by them, and providing for the inspection of such licensed premises, specifying and describing the place and manner in which the liquor may be lawfully kept or stored, covering the conduct, management and equipment of premises licensed to sell liquor and make regulations respecting the sale and consumption of liquor in clubs, hotels and other places of business of licensees.

Section 23. The Board may upon its own motion, and shall upon a written verified complaint of any other person, investigate the action and operation of any licensee hereunder, and shall have power to temporarily suspend and/or permanently revoke a license issued under this Act for violation of the provisions of this Act or any rule or regulation promulgated by the Board.

Section 24. Upon the filing with the Board of a verified complaint charging the licensee with the commission of any act which would be cause for the suspension or revocation of a license, within one year prior to the date of filing said complaint, the above said Board shall forthwith issue a citation directing the licensee to appear before the said Board within ten days after the date of the service of said citation and, by filing his verified answer to the complaint, show cause, if any, why his license should not be suspended or revoked. Service of the citation may be effected by mailing a true copy thereof with a true copy of the complaint by registered mail addressed to the licensee at his last address of record or by the sheriff of the county in which the licensee resides. Failure of the licensee to answer shall be deemed an admission by him of the truthfulness of the charge made and thereupon the said Board shall be authorized to forthwith suspend or revoke the license.

Section 25. Upon filing of the answer of the Board shall fix the time and place of the hearing on the charges made, which hearing shall be in the county where the licensee resides, and not less than five (5) days notice of said hearing shall be given to the complainant and licensee. The notice of hearing shall be served in the same manner as is the citation herein provided for. With the notice of the hearing to the complainant, there shall be attached a true copy of the answer of the licensee. If either party has appeared by counsel the notice shall be given in like manner to the counsel of said party. Upon the hearing the Board shall hear the evidence presented, which may be in the form of oral testimony or affidavits, or both. After the hearing has been concluded the said Board shall, within ten days, render its decision in writing, stating the reasons therefor. Notice of the decision, with copy thereof, shall be served upon the parties, or their counsel, in the manner herein provided as to other notices. When the Board shall have revoked or cancelled a license previously issued by it, the Board shall notify the licensee in writing by registered mail, to the address of such licensee, of its action, giving reasons thereof, and thereupon such licensee shall have the right to appeal to the District Court of the county in which he shall reside, from the action of the Board, by filing a notice of appeal with the Clerk of the District Court and paying the filing fee required to commence a suit or action in the District Court, which appeal must be so taken within thirty (30) days after the order made and entered by the Board. The trial shall be had before the District Court upon the record presented to the Board, and upon which its decision was rendered, and there shall not be any additional evidence introduced or anything in the nature of a trial de novo. Pending decision on appeal the licensee must file a good and sufficient bond in the sum of two thousand dollars (\$2,000.00), payable to the State of Montana, conditioned that he will pay all costs and be responsible for any and all violations of the law on his premises, pending final disposition of the appeal.

Section 26. The Board or any duly authorized representative thereof, or the

sheriff of any county, shall have the right at any time to make an examination of the premises of such licensee as to whether the law of Montana and the rules and regulations of the said Board are being complied with, and shall also have a right to inspect cars of any railway system licensed under this Act.

Section 27. After suspension or revocation of a license the Board shall have the power to renew the same if in its discretion a proper showing therefor has been made.

Section 28. The City Council of any incorporated town or city, or the County Commissioners outside of any incorporated town or city, may provide for the issuance of licenses to persons to whom a license has been issued under the provisions of this Act, and may fix license fees thereof, not to exceed a sum equal to fifty per cent (50%) of the license fee collected by the Board from such licensee under this Act.

Section 29. All receipts from license fees, fines and penalties collected under the provisions of this Act shall be paid to the State Treasurer and by him apportioned and allocated as follows: Fifty per cent (50%) to the State Public School General Fund and fifty per cent (50%) to the Public Welfare Fund for the administration of the social security laws.

Section 30. The provisions of this Act as to the issuance of licenses as herein provided shall be effective thirty (30) days after the passage and approval of this Act. In the event that during the said period of thirty (30) days, a duly verified petition in writing signed by not less than thirty-five per centum (35%) of the registered qualified electors of any County file with the Board of County Commissioners their protest against the issuance of any licenses as herein provided by the Montana Liquor Control Board under the provisions of this Act, then the said Montana Liquor Control Board shall not issue any license or licenses within said County, except as herein provided.

The Board of County Commissioners must within five (5) days after the filing of said petition, meet and determine the sufficiency of the petition presented by ascertaining whether or not at least thirty-five per centum (35%) of the signers of said petition are registered electors of the territory or county affected. The Board of County Commissioners must within ten (10) days after the filing of such petition, if such petition be sufficient therefor make an order calling an election to be held within the County in the manner and at the places of holding an election for county offices in such county. Such election to be held on a day fixed by the Board of County Commissioners not more than thirty (30) days after the filing of such petition for the purpose of determining whether or not any license for the sale of spirituous liquors may be sold within the limits of the County as provided by the provisions of this Act.

Section 31. The notice of election must be published once a week for four (4) weeks in such newspapers in the county where the election is to be held as the Board of County Commissioners may think proper.

Section 32. The County Clerk must furnish the ballots to be used at such election, as provided in the general election law, which ballots must contain the following words: "Sale of Alcoholic Beverages, yes," "Sale of Alcoholic Beverages, No." and the elector in order to vote must mark an "X" opposite one of the answers.

Section 33. The polling places must be established, the judges and other officers to conduct the election must be designated, and the election must be held, canvassed and returned in all respects in conformity to the laws of the State.

Section 34. If a majority of the votes cast are "Sale of Alcoholic Beverages, Yes," the provisions of this Act shall take effect immediately. If a majority of the votes cast are "Sale of Alcoholic Beverages, No," the Board of County Commissioners must publish the result once a week for four (4) successive weeks in the paper in which the notice of election was given, and at the expiration of the time of the publication of such notice all existing licenses shall be cancelled and it shall thereupon be unlawful to sell, either directly or indirectly, any liquor in such county under penalty of a fine of not more than five hundred dollars (\$500.00) or by imprisonment in the county jail for a period not exceeding six (6) months, or by both such fine and imprisonment; provided, however, that nothing herein contained shall be construed to prevent or prohibit the sale of liquor at or by a State Liquor Store under the Liquor Control Act.

Section 35. Any election held under the provisions of the Act may be contested in the same manner as provided by the general election laws.

Section 36. If no petition protesting against the issuance of licenses as herein provided be filed with the Board of County Commissioners within thirty (30) days after the passage and approval of this Act, or if a majority of the votes cast at any election held in pursuance of the filing of said petition as herein provided, are "Sale of Alcoholic Beverages, No," then there shall not be submitted to the qualified electors of said county any other or further question as to the sale of alcoholic beverages within said County for a period of two (2) years from and after the date of the filing of said petition protesting the issuance of said license as herein provided with the Board of County Commissioners.

Section 37. No business shall be carried on under any license issued under this Act except in the name of the licensee. No license shall be effective until a permit shall have been first secured under the laws of the United States if such a permit is necessary or is required under such law.

Section 38. Any person violating any of the provisions of this Act, shall upon conviction thereof, be deemed guilty of a misdemeanor and punishable by such fine or imprisonment, or both, as provided by law, except as is herein otherwise provided. If any such licensee is convicted of any offense under this Act his license shall be immediately revoked.

Section 39. If any clause, sentence, paragraph, section or any part of this Act shall be declared and adjudged to be invalid and/or unconstitutional, such invalidity or unconstitutionality shall not affect, impair, invalidate or nullify the remainder of this Act. This Act shall apply to the Montana Liquor Control Board as now composed and existing, and to any board or commission which may hereafter succeed the above said Board.

Section 40. All Acts and parts of Acts in conflict hereto are hereby repealed, but this Act shall not be construed to repeal or amend any provision or section of the State Liquor Control Act of Montana, except in so far as the same is in conflict with this Act.

Section 41. This Act, except as herein otherwise specifically provided, shall be in full force and effect from and after its passage and approval.

Approved March 5, 1937.



STORK PRINTING CO., BUTTE

THE NUMBER AND FORM IN WHICH THE QUESTION
WILL APPEAR UPON THE OFFICIAL BALLOT AT
THE GENERAL ELECTION NOVEMBER 8, 1938,
IS AS FOLLOWS:

Proposed Petition for Initiative No. 41

A BILL PROPOSING BY INITIATIVE A LAW KNOWN AS THE
STATE HIGHWAY TREASURY ANTICIPATION DEBEN-
TURES ACT: AUTHORIZING ISSUANCE OF DEBENTURES
IN THE SUM OF \$3,000,000; PROVIDING FOR THEIR SALE
AND USE OF PROCEEDS IN MATCHING FEDERAL HIGH-
WAY GRANTS; PROVIDING FOR CONTINUATION OF
PRESENT GASOLINE TAX OF 5c PER GALLON; PLEDG-
ING THE PROCEEDS FOR REPAYMENT OF THE DEBEN-
TURES ISSUED; BINDING THE STATE OF MONTANA NOT
TO REDUCE SUCH GASOLINE TAX UNTIL SUFFICIENT
MONEY HAS BEEN RECEIVED TO PAY THE PRINCIPAL
AND INTEREST ON SUCH DEBENTURES: PROHIBITING
DIVERSION OF THE PROCEEDS OF SUCH TAX FOR
OTHER THAN HIGHWAY PURPOSES.

FOR INITIATIVE MEASURE NO. 41

☐ ENACTING THE STATE HIGHWAY TREASURY ANTICIPATION
DEBENTURES ACT

☐ AGAINST INITIATIVE MEASURE NO. 41

**STATE HIGHWAY TREASURY ANTICIPATION
DEBENTURES ACT OF 1938**

INITIATIVE MEASURE

A BILL TO ENACT BY THE INITIATIVE A LAW TO BE KNOWN AS THE STATE HIGHWAY TREASURY ANTICIPATION DEBENTURES ACT OF 1938; AUTHORIZING THE ISSUANCE OF DEBENTURES OF THE STATE OF MONTANA IN THE PRINCIPAL SUM OF THREE MILLION DOLLARS (\$3,000,000) AT SUCH TIMES AND IN SUCH AMOUNTS UP TO THE SAID PRINCIPAL SUM, AS SHALL FROM TIME TO TIME BE REQUIRED FOR THE PURPOSE HEREINAFTER SET FORTH; AND PROVIDING FOR THE SALE THEREOF FOR THE USE OF THE STATE HIGHWAY FUND IN MATCHING FEDERAL HIGHWAY GRANTS AND ASSURING THE ABILITY OF THE STATE OF MONTANA TO SECURE MONEYS MADE AVAILABLE BY ACTS OF CONGRESS IN REFERENCE TO HIGHWAYS; PROVIDING FOR A TAX ON GASOLINE OR MOTOR FUELS AND ANTICIPATING REVENUES THEREFROM; PRESCRIBING THE FORM AND CONDITIONS OF SAID DEBENTURES AND INTEREST THEREON AT A RATE NOT EXCEEDING FOUR PERCENTUM (4%); PROVIDING THE DATE OF THEIR MATURITY AND OF CALLING OR PAYMENT THEREOF; PROVIDING A METHOD BY WHICH THE STATE TREASURER MAY PURCHASE SUCH DEBENTURES AND PROVIDING THAT SUCH DEBENTURES MAY BE ACCEPTED AS SECURITY FOR THE REPAYMENT OF PUBLIC MONEYS; PRESCRIBING THE CONDITIONS UNDER WHICH THE SALE OF SUCH DEBENTURES MAY BE MADE AND THE USE OF THE FUNDS TO BE DERIVED FROM THE SALE OF SUCH DEBENTURES; PROVIDING FOR THE REPAYMENT OF BOTH PRINCIPAL AND INTEREST OF SUCH DEBENTURES AND FOR THE PLEDGING AND SETTING ASIDE OF A SUFFICIENT AMOUNT OF SAID EXCISE TAX ON GASOLINE OR MOTOR FUEL TO PAY THE SAME FROM THE STATE HIGHWAY TREASURY REDEMPTION FUND HEREIN CREATED; PROVIDING FOR THE CREATION OF A LIABILITY BINDING THE STATE OF MONTANA NOT TO REDUCE THE LICENSE TAX ON GASOLINE OR MOTOR FUEL AS THE SAME NOW EXISTS, BEING NOW FIVE CENTS (5c) PER GALLON OF GASOLINE PURCHASED FOR USE IN PROPELLING MOTOR VEHICLES UPON THE HIGHWAYS OF THE STATE OF MONTANA, UNTIL AFTER THE ACCRUAL OF A SUFFICIENT AMOUNT OF MONEY IN SUCH HIGHWAY TREASURY REDEMPTION FUND TO PAY IN FULL THE PRINCIPAL AND INTEREST OF SUCH DEBENTURES LAWFULLY ISSUED UNDER THE AUTHORITY HEREOF; AND PROVIDING THAT NO PART OF THE GASOLINE EXCISE TAX MENTIONED BE DIVERTED TO ANY OTHER PURPOSE THAN USE FOR HIGHWAY CONSTRUCTION, BETTERMENT AND MAINTENANCE.

BE IT ENACTED BY THE PEOPLE OF MONTANA:

Section 1. That for the purpose of anticipating the revenue to accrue in the State Highway Fund of the State of Montana and for the purpose of assuring the ability of the State of Montana to secure any funds or moneys allocated to the State of Montana and made available to it by the Acts of the Congress of the United States in reference to the construction, betterment and maintenance of highways and to provide additional working funds for the State Highway Commission of the State of Montana in reference to the roads and highways of the State, a series of loans for the use and benefit and in the name of the State of Montana in a total principal sum of not to exceed three million dollars (\$3,000,000), is hereby authorized and directed, the proceeds of which loans shall be paid into the State Treasury of the State of Montana and placed in the State Highway Fund therein, to be used for the purposes herein provided.

Section 2. Such loans shall be negotiated by the issuance of a series of State Highway Anticipation Debentures of the State of Montana, at such times and in such amounts only as the State Highway Commission shall from time to time determine and by order direct, shall be necessary to make available to secure or match Federal funds or moneys allocated to the State of Montana for Highway purposes, and bearing interest at a rate not exceeding four per centum (4%) per annum, payable semi-annually.

All of such debentures so issued shall mature at the expiration of ten (10) years from and after the date thereof and shall be callable and payable at or on any

interest payment date after the expiration of five (5) years from and after the date thereof, at the option of the State Treasurer of the State of Montana and upon at least thirty (30) days' notice to the owner or holder thereof, by registered mail, prior to the date on which such debentures shall be called for payment.

The said State Highway Debentures shall be substantially in the following form, to wit:

No. _____ \$ _____

UNITED STATES OF AMERICA
STATE OF MONTANA
STATE HIGHWAY TREASURY ANTICIPATION
DEBENTURE
(State Highway Fund)

FOR VALUE RECEIVED, the State of Montana acknowledges itself to owe and promises to pay from the State Highway Fund of the State of Montana, at the office of the State Treasurer of the State of Montana, at Helena, Lewis and Clark County, Montana, on the _____ day of _____, A. D. 19____, the sum of _____

(\$ _____) Dollars in lawful money of the United States of America, together with interest thereon in like money at the rate of four percentum (4%) per annum from the date thereof, such interest to be payable semi-annually, on the first day of January and July each year. This debenture is one of a series of debentures aggregating the principal sum of a total par value of _____ (\$ _____)

Dollars, all of which debentures are identical in terms and conditions save and except as to the numbers, dates, denominations and maturities, unless called for payment at or on an interest payment date after the expiration of five (5) years from and after their dates. All debentures of this series are entitled to payment at maturity in the order of their presentation at the office of the State Treasurer of the State of Montana, but are otherwise entitled to no priority or preference, the one over the other, and all are issued in pursuance of and subject to the terms and provisions of the State Highway Treasury Anticipation Debentures Act of 1938. This debenture, and all other debentures of this series, may be called for payment and paid by the State Treasurer of the State of Montana, at his option, five years from and after the date of issue and after notice thereof by registered mail to the owner or holder thereof. This debenture and all other debentures of this series, is secured by the moneys derived from the excise or license tax on gasoline or motor fuels as provided for in said Act and not otherwise.

It is hereby certified, recited and declared that all matters, acts, conditions, and things required by law to make this debenture a valid outstanding and binding obligation against the State Highway Fund of the State of Montana, have happened and been done and performed, and the State of Montana hereby pledges its faith and credit that the excise or license tax on gasoline or motor fuels, as provided in said Act authorizing the issuance hereof, shall not be reduced so long as this debenture or any of the debentures of this series shall remain outstanding and unpaid, except as in said Act provided.

In witness whereof, and pursuant to the authority vested in them and each of them, and under and by direction of the aforesaid Act, the Governor and the State Treasurer of the State of Montana have hereunto affixed their and each of their official signatures, and the Secretary of State of the State of Montana has attested the same by his official signature and the Great Seal of the State of Montana, at Helena, the capital of said State, this _____ day of _____, A. D. 19____.

Governor of the State of Montana.

State Treasurer of the State of Montana.

Attest:

Secretary of State of the State of Montana.

On the back of each of said debentures shall be printed the following: "This debenture registered in my office this _____ day of _____, A. D. 19____.

State Treasurer of the State of Montana."

Section 3. All of said State Highway Anticipation Debentures shall bear date on the day they are actually issued and shall be issued serially and shall be due and payable as provided in Section 1 of this Act. The principal and interest of said debentures shall be payable to the bearer at the office of the State Treasurer of the State of Montana at Helena, Montana, at maturity and shall be entitled to

payment in the order of their presentation at maturity unless sooner called and paid as provided for in Section 2 of this Act; otherwise without preference or priority one over the other.

Section 4. The issue and sale of said debentures shall constitute an irrevocable contract between the State of Montana and the owner of any of said debentures that the excise or license tax on gasoline or motor fuels or dealers or distributors therein, as provided in this Act, or in any of the other laws of the State of Montana, shall not be reduced, nor any part thereof diverted to any other purpose than as at present provided by law so long as any of said debentures remain outstanding and unpaid, and that the State of Montana will cause such taxes to be promptly collected, and after the payment of drawbacks or refunds, that the State Treasurer shall set aside from the said proceeds of said license taxes, into a fund to be known as the State Highway Treasury Debenture Redemption Fund, a sufficient amount of money each month during the years 1939, 1940 and 1941, to provide for the payment of the interest accruing during said years, and beginning with the month of January, 1942, and each month thereafter, he shall set aside in such fund from said proceeds sufficient money to provide for the payment of the interest accruing in 1942 and each subsequent year, and in addition thereto he shall set aside in such fund at least a sufficient amount of money to provide in the aggregate for the payment of the principal amount of all such debentures at the maturity of each thereof and such further amounts as the State Highway Fund and the necessities for the use thereof will warrant, from time to time for the purpose of calling and retiring debentures before their maturity dates as in this Act permitted. The said license or excise taxes upon gasoline or motor fuels and dealers and distributors therein as herein provided, shall be irrevocable until all of said debentures and the interest to accrue thereon shall have been fully paid, and all of said debentures and the interest thereon shall be paid from the proceeds of said excise taxes; provided that nothing in this Act shall prevent the reduction of such excise taxes when sufficient moneys to pay the principal and accrued interest on all of said debentures have been set aside in said State Highway Treasury Debenture Redemption Fund.

Section 5. The State Highway Treasury Anticipation Debentures herein provided for shall be sold by the State Treasurer and the State Highway Commission to the highest or best bidder for cash at not less than par and accrued interest, and at such times and in such amounts, subject to the limitations herein provided, as may be authorized by said State Highway Commission by resolution to be entered of record in the minutes of their proceedings.

Immediately upon the passage or adoption by the said State Highway Commission of such resolution providing for the issuance and sale of any of said debentures, a certified copy of said resolution shall be delivered to the State Treasurer who, immediately upon receipt of such copy, shall advertise the time and place of sale by notice published once each week for four (4) consecutive weeks in at least one (1) newspaper published in the city of Helena, Montana, and by one (1) publication in one (1) newspaper published in the city of New York, State of New York, as provided by law. The first publication of such notice shall be made not less than thirty (30) days next preceding the date of sale. Such notice shall state that such sale will be made at the office of the State Treasurer of the State of Montana and shall specify the time of such sale. Such notice shall further state the amount of such debentures to be sold and that the denominations thereof will be made to suit the purchaser, and shall further state that said debentures shall bear interest at a rate not to exceed four per centum (4%) per annum and that sealed bids will be received therefor.

At the time and place stated in said notice the State Treasurer and the State Highway Commission shall open the bids in public and may award said debentures to the bidder or bidders offering to pay the highest price therefor, or offering to purchase said debentures at par and accrued interest at the least rate of interest. The State Treasurer and the State Highway Commission shall have the right to refuse any and all bids and they shall require as security for compliance with the terms of each bid, the deposit of a certified check equal to two per centum (2%) of the bid, drawn on some solvent bank or trust company payable to the order of the State Treasurer as a guaranty that said debentures will be paid for by the bidder whose bid is accepted. Said certified check and the proceeds therefrom shall be forfeited to the State of Montana in case such bidder fails to make good his bid.

The cost of the advertisement of the sale of any of said debentures shall be paid out of the State Highway Fund as other claims against said fund are paid.

Section 6. The proceeds from the sale of said State Highway Treasury Anticipation Debentures shall be placed in the State Treasury and credited to the State Highway Fund to be used for the purposes hereinbefore set out.

Section 7. The State Treasurer may, with the approval of the State Board of Examiners, and other officials whose approval is required by law for the investment

of public funds, purchase such debentures for public investment on a competitive basis with any other bidders.

Section 8. The said State Highway Treasury Anticipation Debentures may be accepted at their par value by all public officials of the State of Montana as security for the repayment of all deposits of public moneys of the State or of any county, municipality or public institution thereof, and as security for the faithful performance of any obligation or duty to guarantee the performance of which such officials are now authorized by law to accept deposits of the bonds of this State or of the United States of America.

Section 9. For the purpose of providing funds for the payment of the interest and the maturing principal of the State Highway Treasury Anticipation Debentures herein provided for every distributor referred to and defined in the gasoline license tax laws of the State of Montana now in effect shall pay for the year beginning April 1, 1939, and ending March 31, 1940, and each year thereafter until the principal and interest of all debentures issued under the authority of this Act shall have been paid, to the State Board of Equalization for deposit into the State Treasury, an excise or license tax for the privilege of engaging in and carrying on such business in this State in an amount equal to five cents (5c) for each gallon of gasoline refined, manufactured, produced or impounded by such distributor and sold by him in this State, or shipped, transported or imported by such distributor into and distributed and sold by him within this State, after it has arrived in and is brought to rest within this State, whether sold in the original packages or in the broken packages during such year; provided that all gasoline delivered by any distributor to any of his service stations in this State shall be deemed to have been sold and shall be treated and considered in computing such license tax in the same manner as though the same had been sold to dealers or to other persons. In making the computation of license tax due and in making payment thereof, two per centum (2%) of the amount of such tax shall be deducted by the distributor as an allowance for evaporation and other loss of gasoline handled by such distributor, and every dealer referred to and defined in the gasoline license tax laws of the State of Montana now in effect, shall, for the year beginning April 1, 1939 and ending March 31, 1940, and each year thereafter until the principal and interest of all debentures issued under the authority of this Act shall have been paid, while engaged in such business in this State, pay to the State Board of Equalization for deposit in the State Treasury, a license tax for the privilege of engaging in and carrying on such business in this State, in a sum equal to five cents (5c) for each gallon of gasoline sold or distributed by such dealer in the state during such year; provided, however, that no gasoline sold by such dealer, which was purchased by him from a producer or distributor, who has paid the tax thereon, shall be included or considered in determining the amount of such license tax to be paid by such dealer, but only such gasoline as was shipped, transported or imported into this State and purchased by such dealer before it had arrived in and was brought to rest within this State and then re-sold by such dealer, whether in the original packages or in broken packages, shall be included or considered for the purpose of computing such license tax due, provided that no gasoline exported out of the State of Montana shall be included in the computation of any dealer's license tax herein provided for. Two per centum (2%) of the amount of such tax shall be deducted as an allowance for evaporation and other loss of gasoline handled by such dealer.

Section 10. It is hereby provided that if this Act shall fail to receive the approval of the people at the general election herein provided for, nothing herein contained shall operate to repeal or amend any of the laws of the State of Montana relating to the excise taxes on gasoline or motor fuels.

Section 11. This Act shall be known as "The State Highway Treasury Anticipation Debentures Act of 1938."

Section 12. If any section, provision, clause, or phrase of this Act be adjudged unconstitutional, or invalid by any court, for any reason, such adjudication shall not affect the validity of this Act as a whole, or of any section or provision thereof which is not specifically so adjudged unconstitutional or invalid.

Section 13. This Act shall be in full force and effect from and after its passage and approval and proclamation to that effect by the Governor, providing the same shall have received a majority of the votes cast for and against it at the election herein called.

