

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on April 6, 1989, at
10:15 a.m.

ROLL CALL

Members Present: All members were present with the following
exception:

Members Excused: Rep. Kelly Addy

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

Announcements/Discussion: Executive Action on SB 431.

DISPOSITION OF SENATE BILL 431

Motion: Rep. Strizich moved SB 431 BE CONCURRED IN, motion
seconded by Rep. Gould.

Discussion: Rep. Brown stated that the committee would examine
SB 341, third reading copy (gray bill) with amendments
(EXHIBIT 1).

Rep. Brown stated that the guidelines the committee set out to
accomplish in this legislation is to create uniformity
statewide. The subcommittee wanted to assure that existing
gambling practices stayed in affect as much as possible by
this legislation, but no new practices or expansions are to
be added to gambling to any great extent. SB 431 does not
expand gambling in the state of Montana. Rep. Brown
commented that the Attorney General asked the committee to
put in the latter part of the bill to make it clear that he
will enforce this law strictly. Rep. Brown stated that the
committee did not add poker-all keno because it would be an
expansion of gambling.

Rep. Brown stated that line 17, page 36 should be struck.

Attorney General Marc Racicot stated that they brought this
forward to strike a balance between the things that the
department can do on its own administratively with the due
process of the concerns of the industry. He presented Larry
Akey amendments to SB 431 (EXHIBIT 2).

Amendments, Discussion, and Votes: Rep. Strizich moved amendments proposed by Larry Akey (EXHIBIT 2), motion seconded by Rep. Gould.

Rep. Brown asked Mr. Akey whether he had any problems with the Attorney General's position. Mr. Akey stated that with the reinsertion of the language in subsection b, subsection 3 and subsection 4, including the addition of gambling device enterprise or activity, the Attorney General's changes to these proposed amendments are good changes. The important thing to make clear is that the imposition of administrative sanctions come only pursuant to the contested case hearing provisions for Montana Administrative Procedures Act. That imposition of any penalties under the subsection are in fact, reviewable by the District Court. With the reinsertion of the language, the AG's changes are good changes.

A vote was taken on the proposed amendments and CARRIED unanimously.

Rep. Eudaily moved to strike the language on page 46, line 12 of the gray bill and insert, "no more than a combined total of 20 keno, bingo and draw poker machines of which the total shall not exceed 10 draw poker machines." This amendment will allow for 20 machines, as many keno machines as they want to have, but they cannot have more than 10 poker machines. Motion seconded by Rep. Eudaily.

Rep. Hannah questioned Rep. Daily as to why he is concerned that they would go to all poker machines. Rep. Daily stated that he thinks that Montana will go to more open gambling. He said if they limit it to 10, then they protect the small to average tavern owner that has poker machines.

Rep. Mercer asked what the arguments are on why the committee should restrict this. They should be able to have 20 machines, whatever kind of machines they want. Rep. Pavlovich stated that the consensus at the MTA convention was that there would be a total of 20 machines, a combination of no more than 10 poker machines. He said that he felt that it would hurt the small taverns.

Rep. Daily stated that if any of them have ever been into a casino or a bar where they have poker machines or keno machines, there is an obvious difference as to which machines are being played the most.

Question was called on Rep. Daily's amendments and CARRIED unanimously.

Rep. Boharski moved to eliminate the language on page 46, lines 18 - 22, and strike the subcommittee's reinsertion on section 32 and section 56.

A vote was taken on Rep. Boharski's proposed amendments and CARRIED with Rep. Gould voting against the motion.

Rep. Hannah asked how the committee is leaning on uniformity. Rep. Brown stated that the only single additional game included in the name of uniformity was the jacks or better card game. They eliminated poker-all keno because a majority of places don't allow it now.

Rep. Mercer stated that he supports the motion because he agrees with equalization. He asked why the committee is going to allow the hours to be regulated. The language that they are reinserting where it says 8:00 a.m. to 2:00 a.m., does that allow then for the gambling establishment to be opened 24 hours as well as to be restricted to say 9:00 a.m. to 5:00 p.m.? Rep. Daily stated that it says it may be open from 8:00 a.m. to 2:00 a.m. and they may be open 24 hours, but local option, they can't close earlier.

Rep. Brown stated that uniformity and actual practice is what they tried to deal with as best they could to equalize it on that basis. The 8:00 a.m. to 2:00 a.m. has been the standard uniformity as that has been in the state and they are retaining it, and actual practice has been because of the existing statute.

Rep. Gould stated that he opposes Rep. Boharski's amendment. He commented that in most towns, there are stores and hospitals that are open 24 hours a day. The loss of revenue per year between 2:00 a.m. and 8:00 a.m. is approximately \$80,000.

Rep. Daily moved a substitute motion to amend page 32, line 2 - 5 where the language has been stricken, on line 4 following "ordinance", strike the language and insert: the local government may adopt an ordinance allowing play between the hours of 2:00 a.m. and 8:00 a.m. each day. Motion was seconded by Rep. McDonough.

Rep. Hannah asked Rep. Daily if his amendment is intended to say that all gaming will be shut down between the hours of 2:00 a.m. and 8:00 a.m. unless the local government allows otherwise. Rep. Daily said yes.

Continuing, Rep. Hannah asked Rep. Daily, under SB 431 as currently drafted, is all gaming allowed between the hours of 2:00 a.m. and 8:00 a.m.? Rep. Daily said none of it is unless the local government wants to do it.

A vote was taken on Rep. Daily's substitute motion and CARRIED with Rep. Brown voting No.

Marc Racicot stated that on page 61, line 13 and line 20 on the implementation and reorganization, it mentions the Department of Commerce. The Dept. of Commerce does receive the authorization or the appropriation of funds in this

area; however, they do contract with the Dept. of Revenue for all of their investigations in the FTE's for the investigation side of this project in revenue. Include line 13 adding an s to the word department and following the word "commerce", insert and revenue, and the same on line 20 (EXHIBIT 3).

Rep. Gould moved Attorney General Racicot's proposed amendments, motion seconded by Rep. Strizich. Motion CARRIED unanimously.

Rep. Hannah said that following page 48, the bill deals with those locations that were mentioned that have machines now, the grandfather clause. He asked what does section 23-5-611 deal with? Randy Reagor said all that is needed to have a video keno machine is a consumable product in their establishment, a coke machine is a consumable product. Section 23-5-611 deals with poker machines and the other establishments have bingo and keno machines.

Rep. Hannah asked if SB 431 allows or has flexibility in it enough to allow for when a new keno machine is invented that it will be covered by the law. Rep. Brown said yes, that is what they tried to do in changing the definition.

Rep. Mercer stated that there was not a desire to make this into a property right, but they should think about the neighborhood grocery store that perhaps might have two machines and it makes a difference between closing it and staying in business. Should they allow the permit to be transferred at least to family members? Rep. Daily stated that on the extra page following 48, instead of saying "a person", they may want to insert a firm or a place of business.

Rep. Daily moved on line 1, strike "person", insert an establishment who, on January 15, 1989, legally operated one or more video, bingo or keno gambling machines. Strike "in an establishment not", strike subparagraph 2 "for the purpose of which was not gaming and who has been granted an operators license under section 3 may be granted a permit for the placement for the same number of machines its premises operated". Strike "as he" operated on January 15, 1989. Strike "person", insert establishment may not transfer the permit to other premises or to another establishment.

Rep. Mercer stated that if they strike "or to another person" at the end of the line then they would be saying the person may not transfer the permit to other premises. What if it is the individual who has the license and the may not transfer it to other premises, can they transfer their premises and the permit to another person if they delete that?

Rep. Brown asked the committee if they want to have the machines that are grandfathered stay within the place they are in and if the business itself ceases to exist, then the machine goes. As long as the business is there the machine stays.

The committee had a unanimous consent on Rep. Daily's and Rep. Strizich's motion to prepare an amendment for approval for this provision.

Recommendation and Vote: Rep. Daily moved SB 431 BE CONCURRED IN AS AMENDED, motion seconded by Rep. Aafedt.

Rep. Mercer moved to amend page 11, line 18 following "organization" insert other than a fraternal organization. Motion was seconded by Rep. Daily.

Rep. Strizich commented that the only concern he has with that amendment is whether or not the individual has financial responsibility or not.

Rep. Mercer withdrew his amendment.

Rep. Mercer then moved to insert other than fraternal or other non-profit organizations. If the concern is over the appearance of impropriety, there is no difference between liquor laws and gambling laws. Motion seconded by Rep. Daily.

A vote was taken on Rep. Mercer's proposed amendment and CARRIED with Rep.'s Strizich, Gould and Rice voting Nay.

Rep. Boharski referring to page 36 where the insert was added, questioned if that was an expansion of gambling? Rep. Brown stated that this amendment says that a person can go to the counter and purchase one set of four numbers for whatever amount of games the house allows so that they can stay seated at their table without getting up.

Rep. Boharski asked that on page 35 there be a new taxing scheme. Growth proceeds minus equipment, supplies and advertising, so they can write that off and not get any taxes. Rep. Brown commented that they didn't include heat, building utilities and those types of things. It is entirely possible that particularly on smaller operations that they won't pay a fee if they don't make a profit in that given year. It is tied to the data they use for reporting the federal income tax.

Rep. Boharski moved to use the net income but not less than 1% of gross proceeds.

Rep. Strizich stated that he would argue that they are going to get a tax on this. If they are defrauding the Dept. of Justice in the collection of these taxes, then they are defrauding the IRS. If they misrepresent their overheads to

the IRS, they will have more than the Dept. of Justice on them.

Rep. Boharski stated that he isn't saying the person is necessarily going to be defrauding anyone, maybe he will do it completely legitimate. They should collect at least the first 1% of the proceeds.

Rep. Mercer stated that he supports the motion.

A vote was taken on Rep. Boharski's amendment and CARRIED unanimously.

There was no further discussion on the bill.

A voice vote was taken on the motion that SB 431 BE CONCURRED IN AS AMENDED and CARRIED unanimously.

ADJOURNMENT

Adjournment At: 12:40 p.m.



REP. DAVE BROWN, Chairman

DB/je

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DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date APRIL 6, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN			X
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

STANDING COMMITTEE REPORT

April 10, 1989

Page 1 of 13

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 431 (third reading copy -- blue), with statement of intent attached, be concurred in as amended .

Signed: 
Dave Brown, Chairman

[REP. STRIZICH WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Title, line 10.

Following: "~~APPROPRIATION,~~"

Insert: "PROVIDING FOR STATUTORY APPROPRIATION;"

2. Title, line 11.

Following: "~~17-7-502,~~"

Insert: "17-7-502,"

3. Page 3, line 13.

Strike: "and fund"

4. Page 3, line 23.

Strike: "revocable"

Following: "privilege"

Insert: "revocable only for good cause"

5. Page 3, lines 23 through 25.

Strike: "A holder" on line 23 through "granted." on line 25

6. Page 5, lines 6 through 14.

Strike: "the receptacle" on line 6 through "bingo" on line 14

Insert: "equipment that may be inspected by the department and that randomly selects the numbers or symbols"

7. Page 5, line 15.

Strike: "game of chance"

Insert: "gambling activity"

8. Page 5, line 19.

Following: "75 numbers"

Insert: "or symbols"
Following: "One number"
Insert: "or symbol"

9. Page 5, line 21.

Following: "play"
Insert: ", except for the center square, which may be considered
a free play"
Strike: "and letters"
Insert: "or symbols"

10. Page 5, lines 22 and 23.

Strike: "from a receptacle and announced by a bingo caller"

11. Page 5, line 23.

Strike: ", and"
Insert: "until"

12. Page 5, line 24.

Following: "the person"
Insert: "or persons"
Strike: "covers"
Insert: "cover"

13. Page 5, line 25.

Following: "numbers"
Insert: "or symbols"

14. Page 6, lines 1 and 2.

Strike: "licensed by the department to work as a live bingo
caller"
Insert: "18 years of age or older"

15. Page 6, line 3.

Strike: "objects"
Insert: "numbers or symbols"

16. Page 7, line 15.

Following: line 14
Insert: "at least"

17. Page 7, lines 16 and 17.

Strike: "licensed by the department to work as a live keno
caller"
Insert: "18 years of age or older"

18. Page 7, line 21.

Strike: "caller's"

Insert: "or symbols"
Following: "One number"
Insert: "or symbol"

9. Page 5, line 21.

Following: "play"

Insert: ", except for the center square, which may be considered
a free play"

Strike: "and letters"

Insert: "or symbols"

10. Page 5, lines 22 and 23.

Strike: "from a receptacle and announced by a bingo caller"

11. Page 5, line 23.

Strike: ", and"

Insert: "until"

12. Page 5, line 24.

Following: "the person"

Insert: "or persons"

Strike: "covers"

Insert: "cover"

13. Page 5, line 25.

Following: "numbers"

Insert: "or symbols"

14. Page 6, lines 1 and 2.

Strike: "licensed by the department to work as a live bingo
caller"

Insert: "18 years of age or older"

15. Page 6, line 3.

Strike: "objects"

Insert: "numbers or symbols"

16. Page 7, line 15.

Following: line 14

Insert: "at least"

17. Page 7, lines 16 and 17.

Strike: "licensed by the department to work as a live keno
caller"

Insert: "18 years of age or older"

18. Page 7, line 21.

Strike: "caller's"

19. Page 11, line 9.

Following: "status"

Insert: ", with the power of search, seizure, and arrest,"

20. Page 11, lines 9 and 10.

Strike: ", regulate, and control all legal and illegal"

21. Page 11, line 12.

Following: "department"

Insert: "and to report violations to the county attorney of the county in which they occur"

22. Page 11, line 14.

Following: "department"

Insert: ", a former department employee during the first 365 days following termination of employment,"

23. Page 11, line 15.

Strike: "OTHER PERSON"

Insert: "peace officer or prosecutor"

24. Page 11, line 18.

Following: "organization"

Insert: ", other than a nonprofit corporation or organization,"

25. Page 12, line 25 through page 14, line 20.

Strike: "it appears" on line 25 through page 14, line 20

Insert: "a person has engaged or is engaging in an act or practice constituting a violation of a provision of parts 1 through 6 of this chapter or a rule or order of the department, the department may:

(a) issue a temporary order to cease and desist from the act or practice for a period not to exceed 60 days; and

(b) following notice and an opportunity for hearing, and with the right of judicial review, under the Montana Administrative Procedure Act:

(i) issue a permanent order to cease and desist from the act or practice, which order remains in effect pending judicial review;

(ii) place a licensee on probation;

(iii) suspend for a period not to exceed 180 days a license or permit for the gambling activity, device, or enterprise involved in the act or practice constituting the violation;

(iv) revoke a license or permit for the gambling activity, device, or enterprise involved in the act or practice constituting the violation;

(v) impose a civil penalty not to exceed \$10,000 for

each violation, whether or not the person is licensed by the department; and

(vi) impose any combination of the penalties contained in this subsection (1)(b); and

(c) bring an action in district court for relief against the act or practice. The department may not be required to post a bond. On proper showing, the court may:

(i) issue a restraining order, a temporary or permanent injunction, or other appropriate writ;

(ii) suspend or revoke a license or permit; and

(iii) appoint a receiver or conservator for the defendant or the assets of the defendant.

(2) A civil penalty imposed under this section must be collected by the department and deposited in the state's general fund as required by 23-5-123. If a person fails to pay the civil penalty, the amount due is a lien on the person's licensed premises and gambling devices in the state and may be recovered by the department in a civil action."

26. Page 15, lines 7 through 14.

Strike: "a special" on line 7 through "problems" on line 14

Insert: "the state's general fund"

27. Page 15, line 18.

Following: "may"

Insert: ", based on information available to, required by, or supplied to the department under department rules,"

28. Page 15, line 20 through page 16, line 22.

Strike: subsection (2) in its entirety

Insert: "(2) The department shall issue a license unless the department can demonstrate that the applicant is:

(a) a person whose prior activities or criminal record:

(i) poses a threat to the public interest of the state or the effective regulation and control of gambling; or

(ii) creates a danger of illegal practices, methods, or activities in the conduct of gambling or in the carrying on of the business and financial arrangements incidental to gambling; or

(b) receiving a substantial amount of financing for the proposed operation from an unsuitable source. A lender or other source of money or credit that the department finds to meet the provisions of subsection (2)(a) may be considered an unsuitable source."

29. Page 18, line 13.

Strike: "must"

Insert: "may"

30. Page 18, line 14.

Strike: "and cannot be set aside by the court"

31. Page 19, line 23.

Following: "losses at"

Insert: "illegal"

32. Page 21, line 25.

Following: "of a"

Insert: "judgment in a"

33. Page 24, line 2.

Strike: "[SECTION 41]"

Insert: "23-5-413"

34. Page 24, line 8.

Following: "activity."

Insert: "The use of a check or credit card to pay for other goods or services in the establishment or to obtain cash is not a violation of this section."

35. Page 26, lines 13 through 16.

Strike: "An" on line 13 through line 16

Insert: "For the purposes of this section, an antique slot machine is a slot machine manufactured prior to 1950, the operation of which is exclusively mechanical in nature and is not aided in whole or in part by any electronic means."

36. Page 26, line 23.

Following: "city."

Insert: "A licensed manufacturer-distributor may possess and sell antique slot machines."

37. Page 27, line 5.

Following: "conviction"

Insert: "of a first offense"

Strike: "less"

Insert: "more"

38. Page 27, lines 5 through 7.

Strike: "or more" on line 5 through "violation" on line 7

39. Page 27, line 7.

Following: "."

Insert: "Upon a second conviction within 5 years of a first conviction, a person must be fined not more than \$1,000 or imprisoned in the county jail for not more than 6 months, or both. Upon a third conviction within 5 years of a second conviction, a person must be fined not more than \$10,000 or

imprisoned in the county jail for not more than 1 year or both. Upon a fourth conviction within 5 years of a third conviction, a person must be fined not more than \$10,000 or imprisoned in the county jail for not more than 1 year, or both, and the department shall revoke all licenses and permits the person holds under parts 1 through 6 of this chapter and the person is forever barred from receipt of any license or permit under this chapter. When 5 years have passed following a conviction, the record of that conviction may be made available only to criminal justice agencies or upon court order."

40. Page 27, lines 13 through 16.

Strike: "However" on line 13 through end of line 16

41. Page 28, line 7.

Following: "poker"

Insert: "(including jacks or better)"

42. Page 28, line 24.

Strike: "each"

Insert: "the first"

43. Page 28, line 25 through page 29, line 2.

Strike: "must be" on line 25 through "rules" on page 29, line 2

Insert: "is \$75, and the annual renewal fee is \$25"

44. Page 29, line 9.

Strike: "may"

Insert: "shall"

45. Page 29, line 11.

Following: "dealer."

Insert: "The rules must provide that a temporary license may be obtained at the place where a person locally applies for a driver's license and that the receipt received upon mailing an application for a permanent license by certified mail, return receipt requested, also constitutes a temporary license."

46. Page 29, lines 11 through 13.

Strike: "delegate" on line 11 through "authority to" on line 13

Insert: "not"

Following: "assess" on line 13

Strike: "and retain"

47. Page 30, line 1.

Following: ";

Insert: "and"

48. Page 30, line 2.

Strike: "\$750"

Insert: "\$500"

49. Page 30, lines 2 and 3.

Strike: "the second" on line 2 through "third and" on line 3

50. Page 30, line 17.

Following: "~~treasury.~~"

Insert: "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."

50. Page 32, line 5.

Following: "~~jurisdiction.~~"

Page 39, line 24.

Page 53, line 13.

Following: "~~{section 23}~~"

Insert: "However, in the jurisdiction of a local government where a game is played, the local government may adopt an ordinance allowing play between 2 a.m. and 8 a.m."

52. Page 33, line 12.

Following: "and (c)(4)"

Insert: "on January 15, 1989,"

53. Page 33, line 13.

Following: "part."

Insert: "An organization qualified for exemption under that section after that date is exempt from taxation under, and need only pay one-half the license fees under, this part if the organization carries on gambling activities for no more than 60 days a calendar year and if the activities are limited to its main premises or place of operations and to events at other places operated by other charitable organizations or by a government unit or entity."

54. Page 33, line 23 through page 34, line 17.

Strike: section 37 in its entirety

Re-number: subsequent sections

55. Page 35, lines 3 and 4 and line 18.

Strike: "gross proceeds"

56. Page 35, line 7.

Strike: "gross proceeds"

Insert: "net income"

57. Page 35, line 9.

Following: "premises."

Insert: "For purposes of this section, "net income" means gross proceeds, as defined in 23-5-101, minus the cost of equipment, supplies, personnel, and advertising allocated to the games. If in any year 5% of net income does not equal 1% of gross proceeds, then the licensee shall pay a tax of 1% of gross proceeds."

58. Page 35, lines 10 and 16.

Following: "gross proceeds"

Insert: "and net income"

59. Page 35, lines 14 and 15.

Strike: ", within 15 days after the end of each quarter,"

Insert: "annually"

60. Page 35, line 19.

Strike: "quarter"

Insert: "year"

61. Page 36, line 5.

Following: "~~treasury.~~"

Insert: "The tax collected under subsection (3) is statutorily appropriated to the department, as provided in 17-7-502, for deposit to the county or municipal treasury."

62. Page 36, line 17.

Following: "award."

Insert: "A player may give the caller a card with instructions on the card to play that card and its marked numbers for up to the number of successive games that the house allows and that the player has indicated on the card, upon payment of the price per game times the number of successive games indicated. The caller shall keep the card until the end of the number of games indicated, and the department may by rule provide that at that time the caller shall pay the player any prizes won."

63. Page 43, line 16.

Following: "makes,"

Insert: "or"

64. Page 43, lines 16 and 17.

Strike: ", or repairs"

65. Page 43, line 25.

Following: "the"

Insert: "number of approved"

66. Page 44, line 7.
Following: "Only"
Insert: "the number of approved"

67. Page 45, line 6.
Following: "Only a"
Insert: "(a)"

68. Page 45, line 13.
Following: "premises."
Insert: "(b) A person who has been granted an operator's license under [section 11] and is not entitled to a permit under subsection (1)(a) may be granted a permit for the placement of up to two video keno or bingo gambling machines in his premises if the premises have been licensed for the sale of food, cigarettes, or any other consumable product other than liquor or beer. If only one machine is allowed under subsection (1)(c), one more may be allowed under this subsection (b).

(c) If video keno or bingo gambling machines were legally operated on a premises on January 15, 1989, and the premises were not on that date licensed under 16-4-401(2) or operated for the principal purpose of gaming and there is an operator's license for the premises under [section 11], a permit for the same number of video keno or bingo gambling machines as were operated on the premises on that date may be granted to the person who held the permit for such machines on those premises on that date; to an ancestor, descendant, sibling, or spouse of that person; or to a person who purchases or leases the business that is on the premises. If the business is moved to another premises, the permittee remains eligible for the same number of permits.

(d)"

69. Page 46, line 12.
Strike: "10 KENO AND BINGO"
Insert: "20"

70. Page 46, line 13.
Following: "AND"
Insert: "no more than"
Following: "10"
Insert: "may be"

71. Page 46, lines 18 through 22.
Strike: "IN THE" on line 18 through the end of line 22

72. Page 47, line 7.

Strike: "each"
Insert: "an approved"

73. Page 47, line 11.
Following: "machine"
Insert: "permit"

74. Page 48, line 1.
Following: "~~1989.~~"
Insert: "(4) A used keno machine may be licensed under subsection (1) without meeting the requirements of 23-5-609 if the applicant for licensure can establish to the satisfaction of the department that, on the date of application, he owns or possesses a machine that was owned or operated in the state prior to June 30, 1987. A license issued under this subsection expires for all purposes no later than June 30, 1989."

75. Page 49, line 10.
Following: "part."
Insert: "The specifications in the rules must substantially follow the specifications contained in 23-5-606 and 23-5-609 as those sections read on September 30, 1989. The department shall adopt rules allowing video gambling machines to be imported into this state and used for the purposes of trade shows, exhibitions, and similar activities."

76. Page 49, line 15.
Following: "department"
Insert: "which specification or requirement existed at the time the machine was approved"

77. Page 49, line 24.
Following: "~~distribute~~"
Insert: "or"
Following: "supply"
Strike: ", or repair"

78. Page 52, line 11.
Strike: "\$100"
Following: "~~a hand or \$800~~"
Insert: "\$800"

79. Page 53, lines 24 and 25.
Strike: "or a rule promulgated"
Strike: "by the department" on line 25

80. Page 59, line 9.

Following: line 8

Insert: "Section 62. 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; 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; [section 29], [section 38],
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.)"

Renumber: subsequent sections

81. Page 59, line 24.

Strike: "TWO"

Insert: "one"

82. Page 59, line 25.
Following: "GOVERNMENTS,"
Insert: "one being a Native American,"

83. Page 60, line 3.
Strike: "2-YEAR"
Insert: "3-year"
Following: "OFFICE"
Insert: ", except that three of the first-appointed original members shall serve a 1-year term, three (including both legislative members) shall serve a 2-year term, and three shall serve a 3-year term"

84. Page 61, line 3.
Following: "STATE."
Insert: "The department and council shall submit the two most recent department and council reports to each of the next two regular sessions of the legislature."

85. Page 61, line 10.
Following: line 9
Insert: "(9) The department shall give each council member notice and a copy of each proposed change in administrative rules relating to gambling. The notice and copy must be given at the time a notice of proposed rules changes is filed with the secretary of state. The council shall review the proposal, may comment on it, and may attend any hearing on the proposal. The department shall consider any comment by any council member or by the council as a whole prior to adopting the proposed change.

NEW SECTION. Section 65. Construction. In view of Article III, section 9, of the Montana constitution, [this act] must be strictly construed by the department and the courts to allow only those types of gambling and gambling activity that are specifically and clearly allowed by [this act]."

Renumber: subsequent sections

86. Page 61, lines 13 and 20.
Following: "commerce"
Insert: "and the department of revenue"

87. Page 62, line 25.
Page 63, line 3.
Strike: "39"
Insert: "38"
Strike: "43"

Insert: "42"

88. Page 63, lines 4 and 7.

Strike: "50"

Insert: "49"

Strike: "56"

Insert: "55"

Strike: "58"

Insert: "57"

89. Page 63, line 14.

Following: line 13

Insert: "NEW SECTION. Section 71. Coordination instruction.

(1) The reference copy of House Bill No. 576 of the 51st legislature is amended to insert, on page 2, line 9, after "23-5-609(4)(L)", the phrase ", as that section read on September 30, 1989".

(2) The reference copy of House Bill No. 251 of the 51st legislature is amended to change "license" to "permit" on page 2, lines 2 and 13.

(3) The reference copy of House Bill No. 448 of the 51st legislature is amended to delete the amendments made to 23-5-104(1). Subsection (1) of 23-5-104 and the first sentence of 23-5-104(2) are deleted, as provided in [section 22], and the amendments to the remainder of 23-5-104 by [section 22] and House Bill No. 448 take effect."

Renumber: subsequent section

EXHIBIT 1.
DATE 4-6-89
HB SB 431

SB 0431/04

SB 0431/04

Stat Legislature

1 23-5-627, 23-5-635, 23-5-636, 23-5-1103, AND 23-5-1104,
 2 MCA."
 3
 4 STATEMENT OF INTENT
 5 This bill requires a statement of intent because
 6 [section 7] authorizes the department of justice to adopt
 7 administrative rules to implement [this act]. [This act] is
 8 intended to provide uniform statewide regulation of gambling
 9 in Montana under the supervision of the attorney general.
 10 It is the intent of the legislature that the department
 11 of justice adopt necessary rules to implement uniform
 12 statewide regulation of gambling in Montana consistent with
 13 the purposes and policies set forth in [section 1] of this
 14 bill.
 15
 16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 17 NEW SECTION. Section 1. Public policy of state
 18 concerning gambling. (1) The legislature finds that for the
 19 purpose of ensuring the proper gambling environment in this
 20 state it is necessary and desirable to adopt a public policy
 21 regarding public gambling activities in Montana. The
 22 legislature therefore declares it is necessary to:
 23 (a) create and maintain a uniform regulatory climate
 24 that assures players, owners, tourists, citizens, and others
 25 that the gambling industry in this state is fair and is not

1 SENATE BILL NO. 431
 2 INTRODUCED BY GAGE, HARPER, B. BROWN, MAZUREK,
 3 ADDY, STRIZICH, MERCER, CRIPPEN, HANNAH,
 4 HARP, VAN VALKENBURG
 5 BY REQUEST OF THE DEPARTMENT OF JUSTICE
 6
 7 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
 8 PUBLIC GAMBLING LAWS OF MONTANA; PROVIDING FOR LICENSURE AND
 9 REGULATION OF GAMBLING ACTIVITIES BY THE DEPARTMENT OF
 10 JUSTICE; PROVIDING FOR STATUTORY APPROPRIATION; PROVIDING
 11 FOR A GAMING ADVISORY COUNCIL; AMENDING SECTIONS 17-7-502,
 12 23-5-101 THROUGH 23-5-104, 23-5-108, 23-5-123, 23-5-131,
 13 23-5-135, 23-5-311 THROUGH 23-5-313, 23-5-321, 23-5-331,
 14 23-5-412 THROUGH 23-5-414, 23-5-431, 23-5-503, 23-5-509,
 15 23-5-602, 23-5-603, 23-5-607, 23-5-608, 23-5-610 THROUGH
 16 23-5-613, 23-5-616, 23-5-625, 23-5-631, 23-5-1101, AND
 17 23-5-1105, MCA; AND REPEALING SECTIONS 23-5-105 THROUGH
 18 23-5-107, 23-5-109, 23-5-121, 23-5-122, 23-5-124 THROUGH
 19 23-5-127, 23-5-132 THROUGH 23-5-134, 23-5-141 THROUGH
 20 23-5-144, 23-5-201 THROUGH 23-5-211, 23-5-301 THROUGH
 21 23-5-303, 23-5-314 THROUGH 23-5-316, 23-5-322, 23-5-323,
 22 23-5-332, 23-5-401 THROUGH 23-5-403, 23-5-411, 23-5-415
 23 THROUGH 23-5-418, 23-5-421 THROUGH 23-5-423, 23-5-504
 24 THROUGH 23-5-508, 23-5-510, 23-5-511, 23-5-601, 23-5-605,
 25 23-5-606, 23-5-609, 23-5-615, 23-5-617, 23-5-618, 23-5-626,

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Insert "D" on page 61, following line 9

Ex. #1
4-6-89

(9) The department must give each council member notice and a copy of each proposed change in administrative rules relating to gambling. The notice and copy must be given at the time a notice of proposed rules changes is filed with the secretary of state. The council must review the proposal, may comment on it, and may attend any hearing on the proposal. The department must consider any comment by any council member or by the council as a whole prior to adopting the proposed change.

NEW SECTION. Section 65. Construction. In view of Article III, section 9, of the Montana constitution, [this act] must be strictly construed by the department and the courts to allow only those types of gambling and gambling activity that are specifically and clearly allowed by [this act].

Renumber: subsequent sections

EXHIBIT 1
DATE 4-6-89
HB SB 431

Prepared by Larry Akey, April 3

1. Page 12, line 24 through page 14, line 20.

Strike: section 8 in its entirety

insert: "NEW SECTION. Section 8. Administrative and civil remedies. (1) If a person has engaged in or is engaging in an act or practice constituting a violation of a provision of parts 1 through 6 of this chapter or a rule or order of the department, the department may:

(a) issue a temporary order ⁶⁰ ~~for a period not to exceed 30 days~~ ⁴⁵ to cease and desist from the act or practice constituting a violation; ^{pursuant to MAPA}

(b) following reasonable notice and opportunity for hearing ~~within 20 days of the issuance of a temporary cease and desist order:~~

(i) issue a permanent order to cease and desist from the act or practice constituting a violation, which shall remain in effect pending an appeal or judicial review;

(ii) place a licensee ^{OR LICENSE} on probation;

(iii) suspend for a period not to exceed 180 days ^{A LICENSE OR} the permit ~~for the gambling device or gambling enterprise giving rise to the act or practice constituting a violation;~~

(iv) revoke the permit ~~for the gambling device or gambling enterprise giving rise to the act or practice constituting a violation;~~

(v) impose a civil penalty not to exceed \$10,000 for each violation of a provision of parts 1 through 6 of this chapter or a rule of the department, whether or not the person is licensed by the department;

(vi) impose a combination of the penalties provided in subsections (1) (b) (i) through (1) (b) (v);

(c) ~~bring, without issuance of a temporary cease and desist order and without administrative hearing, an action in district court to enjoin the act or practice. The department may not be required to post a bond. On proper showing, the court may:~~

(i) grant a temporary or permanent injunction, a restraining order, or other appropriate writ;

(ii) suspend or revoke a license ^{OR PERMIT} and,

(iii) appoint a receiver or conservator for the defendant or the defendant's assets.

(2) (a) A civil penalty imposed ^{by a district court OR} under subsection (1) (b) (v) must be collected by the department and deposited in the state's general fund as provided in 23-5-123.

(b) If a person fails to pay a penalty imposed under subsection (1) (b) (v), the penalty is a lien on the person's licensed premises and gambling devices in the state and may be recovered by the department in a civil action. ^{by a district court OR}

~~(c) If a person fails to pay a penalty imposed under subsection (1) (b) (v), he may not be licensed to operate a gambling device or gambling enterprise in the state under parts 1 through 6 of this chapter.~~

(3) Imposition of a penalty under subsection (1) (b) is an order from which an appeal may be taken pursuant to [section 12]."

Coordination of SB431 With Other Bills

(1) Section 48 of SB431 deletes 23-5-612(2), while section 1 of HB576 (scheduled for House 2nd reading on Senate amendments on March 31) amends that subsection. Subsection (2) is the grandfather clause for used KENO machines. Section 48 of SB431 deletes that grandfather clause, while HB576 extends it for another 1 1/2 years (to Dec. 31, 1990) and amends it.

SB431 needs a coordination instruction that, if both bills pass, either voids the deletion of 23-5-612(2) by SB431 or voids the amendment of that subsection by HB576.

(2) Section 1 of SB251, which the Governor signed on March 14, adds language to 23-5-413. That section is also amended by SB431. The only conflict is that the language added by SB251 twice refers to a "license", whereas SB431 has changed the word "license" to "permit" wherever the word is used in 23-5-413.

A coordination instruction is needed in SB431 stating that if both bills pass, "license" is changed to "permit" wherever that word is used in the language added to 23-5-413 by SB251.

(3) SB431 deletes subsections (1) and (2) of 23-5-104. It makes no substantive changes in the rest of the section (subsections (3) through (5)). Subsection (1) of 23-5-104 makes it a crime to possess slot machines, except antiques. Subsection (2) of 23-5-104 allows and defines antique slot machines. After deleting 23-5-104(1) and (2), SB431 inserts, as a new subsection (1), a new definition of antique slot machine.

The effect of the amendments to 23-5-104 by SB431 is to redefine "antique slot machine" and get rid of the criminal offense and penalty. The criminal offense and penalty are probably deleted because SB431 generally changes the criminal offenses and penalties part of the gambling laws, so that the offense for owning a non-antique slot machine is, under SB431, elsewhere than in 23-5-104.

HB448, which the Governor signed on March 28, conflicts with the SB431 amendments to 23-5-104. HB448, in 23-5-104(1), inserts a reference to 23-5-105. Section 23-5-105, which states the penalty for owning slots, is repealed by SB431. HB448 also amends 23-5-104(2), by redefining "antique slot machine"

A coordination instruction is needed to take care of these conflicts. It should probably state that if both bills pass the amendment to 23-5-104(1) by HB448 is void. That appears to be only a cleanup amendment anyway. The other thing the coordination instruction must address is the fact that each bill redefines "antique slot machine". The coordination instruction must state which bill gives way to the other bill if both bills pass.

(4) SB431 repeals 23-5-606 and 23-5-609. Those sections are amended by HB573, which the Governor signed on March 27. HB573 amended those two code sections to allow machine manufacturer bill acceptors on video draw poker and video KENO machines. If the committee wants this to be the law SB431 should be amended to say so. See Larry Akey's suggested amendment on this.