

MINUTES

MONTANA SENATE  
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on February 10, 1995, at  
8:00 a.m.

ROLL CALL

**Members Present:**

Sen. John R. Hertel, Chairman (R)  
Sen. Steve Benedict, Vice Chairman (R)  
Sen. William S. Crismore (R)  
Sen. C.A. Casey Emerson (R)  
Sen. Ken Miller (R)  
Sen. Mike Sprague (R)  
Sen. Gary Forrester (D)  
Sen. Terry Klampe (D)  
Sen. Bill Wilson (D)

**Members Excused:** N/A

**Members Absent:** N/A

**Staff Present:** Bart Campbell, Legislative Council  
Carla Turk, Recording Secretary, in absence of  
Lynette Lavin, Committee Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing: SB 260, SB 298, SB 261  
Executive Action: SB 260 DO PASS AS AMENDED  
SB 302 DO PASS

HEARING ON SB 260

Opening Statement by Sponsor:

SEN. BOB PIPINICH, SD 29, Missoula, distributed copies of amendments to SB 260, EXHIBIT #1. He said SB 260 was designed to help problem gamblers, and explained the amendments diluted the bill. He said he had worked with many groups, including the gambling commission, lottery, boards and industry. SEN. PIPINICH informed the committee when he first drafted SB 260, he had 5% which hit education and local government too hard; also, the bill cut the \$2 million per year trust fund to \$400,000 and the \$50

million cap was cut to \$20 million. He said Montana currently had five gambling addiction counselors, which were not enough to supply the need; in fact, some referrals went out-of-state to receive needed counseling. **SEN. PIPINICH** reported the assessment of treatment resources had been moved to Human Services from the Judiciary Department. He gave assurance **SB 260** would not be too financially painful for anyone; rather, \$400,000 per year would be a funding start available to those who needed help for their gambling addiction.

**Proponents' Testimony:**

**Norma Jean Boles, Department of Corrections and Human Services,** read her written testimony. **EXHIBIT #2.**

**Dennis Casey, Executive Director, Gaming Industry Association of Montana,** expressed support for **SB 260**, explaining the whole gaming advisory council would, within the next few weeks, begin a thorough examination of problem gambling. He said the examination would include defining the problem, best ways to obtain treatment, and funding. **Mr. Casey** stated **SB 260** would supply a modest amount of money to start the program. He urged **DO PASS** for **SB 260.**

**Janet Jessup, Department of Justice,** said her department supported the concept of the treatment program for those who were most harmed by the availability of legalized gambling. She reminded the committee the above provision was in the gambling statutes. **Ms. Jessup** expressed hope the legislature would consider **SB 260** favorably. She said they supported the amendment which moved the assessment from the Department of Justice to the Human Services Department, explaining her department did not have the expertise. **Ms. Jessup** urged support for **SB 260.**

**Ellen Engstedt, Don't Gamble With The Future,** read her written testimony, **EXHIBIT #3.**

**Charmaine Murphy, Director, Montana Lottery,** said they supported **SB 260.** She said she had not had time to review the amendments; however, she recommended the committee look at the funding.

**Opponents' Testimony:**

**Larry Akey, Montana Coin Machine Operators,** said his organization did not oppose treatment for pathological gambling, explaining they recognized the type of entertainment his organization offered could produce a compulsive disorder for some people. He expressed opposition for **SB 260**, saying he hoped the legislature would enact a solid treatment program for probable and pathological gamblers.

**Mr. Akey** said **SB 260** had a number of problems in glossing over treatment for pathological gamblers, explaining if the sponsor and proponents wanted to attack those problems head-on, an

acceptable piece of legislation could be drafted. He maintained **SB 260** would put the revenue into a slush fund without guidelines for administration. **Mr. Akey** suggested treatment of pathological gambling was different from treatment of chemical dependency, i.e. counselors would need certification in gambling counseling. He said to take a serious look at how money was spent; the 1993 legislature focused on intensive outpatient treatment, and nothing in **SB 260** directed funds to be spent in that way.

**Mr. Akey** suggested pathological gambling was something the 1995 legislature needed to come to grips with; there was not a consensus to develop a solid treatment program. He described two alternatives for **SB 260**: (1) DO NOT PASS and allow the study group to come to the 1997 legislative session with a solid proposal; (2) Put **SB 260** into a subcommittee in order to create a pathological treatment program which made sense for people who suffered from the disease and for the people of Montana.

Questions From Committee Members and Responses:

**SEN. MIKE SPRAGUE** asked if the Gaming Industry of America was represented on the Gaming Advisory Council. **Dennis Casey** said it was.

**SEN. SPRAGUE** asked if starting a process was a path of solution. **Mr. Casey** said the parameters of treatment had to be developed; however, **SB 260** said the recommendations of how to spend the funds would come back to the legislature. He remarked the study would dovetail with **SB 260**.

**SEN. CASEY EMERSON** asked what kind of treatment was available for pathological gamblers. **Norma Jean Boles** said mental health centers and chemical dependency treatment centers offered intensive out-patient treatment.

**SEN. EMERSON** said both Alcoholics Anonymous and a gambling group met in his business building and he wondered if they came under the auspices of the welfare program. **Ms. Boles** said AA was a voluntary organization and Gamblers Anonymous was growing. **SEN. PIPINICH** said the above-mentioned organizations were voluntary support groups who helped each other.

**SEN. EMERSON** commented AA was recognized as one of the better groups and wondered if Gamblers Anonymous would ultimately have that recognition, i.e. would addressing gambling problems through **SB 260** do more harm than good. **SEN. PIPINICH** said he didn't think so, because an individual had to wean himself before he would be ready to help others.

**SEN. GARY FORRESTER** asked where the money was coming from and wondered who the loser would be. **SEN. PIPINICH** said it would come from the lump sum of the 15% coming in, its amount would be 1%, and everybody would share in the \$400,000 financial hit.

**SEN. FORRESTER** said he tried to introduce a bill in the 1991 session to treat compulsive gamblers and was told there was no such thing as a compulsive gambler; furthermore, even if there was, nobody wanted to pay for the treatment of such. He wondered why the change of opinion. **SEN. PIPINICH** said the issue had been studied enough and it was now time to do something. He said his answer to opposition was if the problems weren't solved through financial aid to the fund, they would be in the cities and counties and the solutions would become much more expensive.

**SEN. FORRESTER** reiterated 1991 showed no problem, 1993 showed a pathological gambling problem; now a request was made for a two-year study. He wondered why that would be necessary. **Larry Akey** said probably no new information would be found; however, studies had shown .6% of the adult population were pathological gamblers. He stated an undefined term was "problem gambling". He reminded the committee the study said the counselor was required to be certified and money was needed for intensive outpatient treatment; **SB 260** didn't provide for either stipulation. He supported his remarks by stating he advocated this legislation in the past but he wanted to make sure the recommendations of the study were being accomplished, i.e. treat the pathological gambler with certified counselors in an intensive out-patient setting. **Mr. Akey** stressed **SB 260** did not do that.

**SEN. FORRESTER** asked **Mr. Akey** if he would assist the committee and would his industry support it. **Mr. Akey** said his organization assisted in the financial support of the study, had pledged work assistance to the committee to develop a plan for presentation to the 1997 legislature, and personally pledged his organization would bring a well-developed program to the 1997 legislature.

**SEN. BILL WILSON** inquired where, exactly, the money was going. **SEN. PIPINICH** said Montana now had five certified counselors, associated with private chemical dependency centers, who would organize a program which would use the money from the trust fund to help pathological gamblers go for help from one of the five counselors. He said the money from the trust fund would be issued by Human Services.

**SEN. WILSON** asked if the money from the trust fund would supplement the income of the present counselors or hire more counselors. **SEN. PIPINICH** said the money would be used to direct pathological gamblers, who recognized their need for help, toward one of the certified counselors.

**SEN. WILSON** said the dependency centers were private for-profit institutions and he wondered if the money would go to the institutions. **SEN. PIPINICH** said it would not, unless the gambler was admitted to those centers.

**SEN. WILSON** asked **Mr. Akey** who he represented. **Mr. Akey** replied the Montana Coin Machine Operators, i.e. businesses which owned

about half the video gaming machines in Montana and placed them in bars and taverns.

**SEN. FORRESTER** asked if a managed care system would be used, or would the fee be set low enough in order to treat the maximum number of people. **Ms. Boles** said it would be a managed care approach, and her interpretation of **SB 260** was the department would inspect who was willing to do it for less money and report to the legislature on the mechanism for awarding grants. **Ms. Boles** related there was a national connection which certified counselors after 60 hours of training. She informed the committee **SB 260** showed a relationship between their priorities and legislative sanction.

**SEN. FORRESTER** asked how many compulsive gamblers could be treated the first year, and how long it would take to build the fund to the maximum. **Ms. Boles** said there probably would not be any distribution the first year. **SEN. PIPINICH** said because the fund was a trust, the \$400,000 would first be built up and then the interest would be spent. He agreed with **Ms. Boles** there probably wouldn't be anything paid from the fund the first year.

**SEN. SPRAGUE** asked if all addiction was similar. **Larry Akey** said evidence showed gambling addiction to be worse than other kinds, and needed to be treated differently from other addictions. He said all compulsive behavior disorders were lumped together as a type of mental illness, which was a common thread in addictions.

**SEN. SPRAGUE** asked if getting started wouldn't ensure having a plan for the 1997 legislature. **Mr. Akey** said it would, to the extent the legislature wanted to create a slush fund from which no expenditures could be made until the program was well-designed. He said he would rather see a program designed and the \$400,000 spent directly on treatment on an annual basis, instead of putting it into a trust account from which only the interest could be spent.

Closing by Sponsor:

**SEN. PIPINICH** reminded the committee if there wasn't a start, the program would never go anywhere. He admitted he didn't have all the answers, but **SB 260** was a start which could be developed along the way. He urged DO PASS for **SB 260**.

HEARING ON SB 298

Opening Statement by Sponsor:

**SEN. FRED VAN VALKENBURG, SD 32, Missoula,** said **SB 298** would authorize charging a service charge on a bad check, which was something merchants were not authorized to currently charge. He reported **SB 298** set the bad check fee at \$15, which was close to

the average charge across the state. He maintained page 2, subsection 7, lines 17-19, allowed merchants to raise the \$1 per calendar year, beginning a year after the effective date of the bill, up to \$25. **SEN. VAN VALKENBURG** explained SB 298 provided for notice to be sent by regular mail to the party who wrote the bad check.

**SEN. VAN VALKENBURG** said there may not be consensus among the committee regarding the fee; however, he stressed the fact he and others who sponsored the bill would be willing to work with the members on that issue. He asserted the need was for a legal basis to be in place to collect the fee.

Proponents' Testimony:

**Jeff Koch, Collection Bureau Services, Missoula**, said about half the states had specific language addressing the situation, and the fees ranged from \$10-\$25. He expressed merchants needed protection because their own banks charged them a fee for depositing a NSF check. **Mr. Koch** stated merchants needed to recoup the costs and consumers needed some protection; currently, with no law, check collection agencies were able to charge an arbitrary fee and in some cases, put the checkwriter's name on the black list. He maintained if the checkwriter's refused to pay the service fee, they could find themselves unable to write checks at any Montana location.

{Tape: 1; Side: B}

**Mr. Koch** urged support for SB 298.

**Dan McLean, Credit Bureau of Missoula, Inc.**, said he rose in support of SB 298, but said he would like to see the fee limit change from \$15 to a reasonable fee. **Mr. McLean** stated he would be happy to work with **SEN. VAN VALKENBURG** in drafting an amendment. He reported setting the fee at a certain price would require legislative action to change. He admitted the definition of "reasonable fee" would have to be established, and the merchants and collection agencies could work together on that. He declared he was of the opinion \$20 was not an unreasonable fee; in any case, he supported SB 298.

**Sarah McQueen, Check-Rite, Bozeman**, distributed copies of her testimony, **EXHIBIT #4**, her proposed amendments, **EXHIBIT #5**, and read her written testimony. She referred the committee to Page 3, Number 2, of her written testimony and said she supported much of SB 298, except the 10 days to send a demand letter and not give the individual 30 days to dispute the debt seemed to be in violation of the Fair Debt Collection Practices Act. **Ms. McQueen** said Check-Rite protected the merchants, and their fee was \$22. She said other collection agencies in Montana pursued civil action the 10th day, which was what her agency saw problems with, because protecting the merchants was very important. **Ms. McQueen** explained if a customer wrote a bad check and immediately got a

notice, they would be able to pay the check at Check-Rite; in contrast, they could write a bad check inadvertently, leave town and then have a civil suit filed against them the 10th day. She asked the committee to consider her amendments.

**Jean Hanich, Check-Rite, Helena & Billings**, stated she agreed with **Sarah McQueen's** testimony, explaining she had been in her office 18 years and had seen the service fee go from \$5 to \$20. She said it was her opinion the marketplace would dictate what a reasonable fee was, and a \$15 fee was going backwards; the ultimate result would be a flooding of courts with unnecessary litigation. She reminded the committee her agency worked for the merchant, but was not against the general public. **Ms. Hanich** expressed support for **SB 298** with the amendments **Ms. McQueen** referred to in her testimony.

#### Opponents' Testimony:

**Charles Brooks, Montana Food Distributors Association**, said when he sold his retail business, they wrote off over \$15,000 in bad checks. He declared he believed in free enterprise for both products and services; however, **SB 298** allowed the legislature to fix prices. He suggested using "reasonable" instead of stating a specific fee; he thought the legislature should not be setting prices and fees. **Mr. Brooks** opined consumers already had enough protection and the competition among agencies handling check collection would set a fair and reasonable price. **Mr. Brooks** urged DO NOT PASS for **SB 298**, but would agree to an amendment which would say "reasonable fee."

#### Questions From Committee Members and Responses:

**SEN. STEVE BENEDICT** asked if people involved in credit reporting and check collection had an association. **Sarah McQueen** said they did -- National Collectors Association and Montana Collectors Association.

**SEN. BENEDICT** asked if they discussed the above issue to bring to the consensus. **Ms. McQueen** replied they had been working with other collection agencies and were looking forward to strengthening that relationship.

**SEN. BENEDICT** questioned why the 1993 testimony did not include the comments heard today. He wondered why the issue had not been discussed among collection agencies between 1993 and now, so as to have a consensus. **Ms. Hanich** explained the American Collectors Association (ACA) was a group directed more toward collection agencies than check collection offices. She informed the committee her agency was a member primarily because of the Errors and Omissions Insurance, which was through American Collectors Association.

**SEN. BENEDICT** maintained he was referring specifically to the Montana agencies. **Jean Hanich** contended the Montana organization

was directed toward collection agencies, rather than stand-alone check collection places; in Montana, the organization had never been particularly strong.

**SEN. BENEDICT** repeated his question by commenting there wasn't this opposition to the bill in 1993; why hadn't the collection agencies and check collection businesses gotten together to determine the needs. **Jeff Koch** related they had and the consensus was to support **SB 298** if it allowed a service fee of a reasonable nature, and \$15 was what was discussed. **Mr. Koch** told the committee they had talked to **SEN. VAN VALKENBURG** who said it would be better to support an amended **SB 298** than draw up a second bill; for that reason only, he represented the association to support **SB 298**.

**SEN. EMERSON** wondered if **SB 298** was necessary, since the Fair Debt Collection Practices was in place. **Ms. McQueen** contended **SB 298** was necessary in order to get the language of the service charge in statute so check collection agencies were not in the gray area.

**SEN. BENEDICT** asked if the vagueness of "reasonable service charge" would be more of an attorney's bonanza, than a specifically stated service charge. **Daniel McLean** answered that he didn't see it as beneficial to attorneys because of the time involved in the processing and going to court; the less attorneys were involved in the collection process, the better off all involved would be.

**SEN. BENEDICT** said he thought "reasonable cost" would open opportunity for private action, because of the vagueness. **Mr. McLean** stated it was possible; however, he believed it was overridden by price-fixing. He stated other kinds of statutes said "reasonable attorney's fees", which seemed to be working well.

**SEN. JOHN HERTEL** asked if collection agencies had the flexibility to charge whatever fee they wanted. **Mr. McLean** said he thought so, but **SB 298** gave authority to charge a fee. He informed the committee a bad check was a different matter from a debt, explaining he wasn't sure the Collections Act applied to bad checks.

Closing by Sponsor:

**SEN. VAN VALKENBURG** stated he agreed with **Mr. McLean** when he said bad checks and debt were not equivalent terms, and he doubted the Fair Debt Collection Act equated debt with bad checks.

**SEN. VAN VALKENBURG** said he wanted **SB 298** to pass, and if it could be accomplished through raising the fee to \$22, he was in favor of the fee change. He related it was his opinion the bill would be harder to pass if the language was "reasonable fee";

although, he could understand the intent. He announced \$15 was in the bill as an answer to "the economy won't bear anymore".

**SEN. VAN VALKENBURG** said there currently was no legal authority to collect any fee, though agencies were doing so because the consumers generally felt the \$10 or \$15 wasn't worth fighting over; however, there was opportunity for lawsuits. He reminded the committee the authority should be in statute because merchants paid banks for the cost of bad checks and had no way of recovering the expense.

#### HEARING ON COMMITTEE BILL PROPOSAL

##### Opening Statement by Sponsor:

**SEN. DELWYN GAGE, SD 43, Cut Bank,** said Montana statute currently covered an organization, Pacific Northwest Economic Region, whose members were Montana, Idaho, Washington, Oregon, Alaska, British Columbia and Alberta. He said it was started in 1989, was composed of legislators and Canadian legislative counterparts (4 from each state or province) and its' purpose was to promote the region world-wide. **SEN. GAGE** informed the committee the membership had been expanded to include each governor or premier; the purpose of this bill was to give permission for the Governor to serve on the Pacific Northwest Economic Region Committee.

Proponents' Testimony: None.

Opponents' Testimony: None.

##### Questions From Committee Members and Responses:

**SEN. FORRESTER** asked who would pay the Governor's expenses. **SEN. GAGE** said it would come from his budget or he would have to find other funding for it.

**SEN. FORRESTER** asked if, after this legislative session, the funding would be in place for the Pacific Northwest Economic Region Conference. **SEN. GAGE** said he was not sure, but he would like to have the mechanism available, in the event the Governor would like to take part.

#### EXECUTIVE ACTION ON COMMITTEE BILL PROPOSAL

Motion/Vote: **SEN. STEVE BENEDICT MOVED TO ALLOW A COMMITTEE BILL.** The motion **CARRIED UNANIMOUSLY** by voice vote.

{Tape: 2; Side: A}

HEARING ON SB 302Opening Statement by Sponsor:

**SEN. REINY JABS, SD 3, Hardin**, said **SB 302** amended the Territorial Integrity Act of 1972, explaining integrity was a concern among Montana electric co-ops and other electric suppliers, because duplication and distribution of facilities had an impact on electrical rates. He said **SB 302** was an attempt to avoid this waste and to allow for resolution in disputed areas. **SEN. JABS** stated negotiated agreements were viable ways to resolve differences; **SB 302** would allow for agreements between suppliers and service areas. He distributed copies of Montana statute, **EXHIBIT #6**, and explained how **SB 302** would fit in.

Proponents' Testimony:

**Jay Downen, Montana Electric Co-op Association**, expressed appreciation for **SEN. JABS'** efforts and said attempts were made to settle territorial disputes between utilities and cooperatives involved. **Mr. Downen** told the committee the Montana Electric Co-op Association supported **SB 302**.

**Terry Holzer, Yellowstone Valley Co-op**, expressed support for **SB 302**. He said a minor change would have a far-reaching impact, i.e. enabling utilities such as Montana Power Company (MPC) to become like electric co-ops to develop service agreements within confines of city boundaries, thereby preventing service duplication. **Mr. Holzer** explained present law mandated facilities of electric co-operatives not be used to provide service to customers; therefore, utilities would have to buy service within annexed areas, which caused duplication of services. He commented passing **SB 302** would allow utility companies to avoid costly duplication, and urged DO PASS for **SB 302**.

**Tim Gregori, Big Horn Electric Co-op**, announced they supported **SB 302**, which would amend the Territorial Integrity Act of 1972. He stated the amendment would serve two purposes: (1) allow modification to existing legislation which would grant amicable settlement of which electric utility would be best situated, facility-wise, to serve a portion of a community; (2) allow for drafting of an agreement to better enable electric utilities and cooperatives to focus on providing quality, affordable electric service to the consumers. **Mr. Gregori** urged DO PASS for **SB 302**.

**John Murphy, Montana Power Company (MPC)**, said he worked with rural electric co-ops and agreed with **SEN. JABS'** testimony of working toward sensibly resolving differences between utilities and co-operatives. He said MPC supported **SB 302**.

John Alke, Montana Dakota Utilities (MDU), expressed support for SB 302.

Opponents' Testimony: None.

Questions From Committee Members and Responses: None.

Closing by Sponsor:

SEN. JABS said SB 302 would allow utilities to supply electric service without the unnecessary expense of duplicating services. He reminded the committee SB 302 would allow electric co-ops to serve annexed areas upon agreement. SEN. JABS thanked the committee for a good hearing.

EXECUTIVE ACTION ON SENATE BILL 302

Motion/Vote: SEN. GARY FORRESTER MOVED SB 302 DO PASS. Motion CARRIED UNANIMOUSLY by voice vote.

EXECUTIVE ACTION ON SENATE BILL 246

Motion: SEN. MIKE SPRAGUE MOVED TO ADOPT AMENDMENTS SB024601.ACE, EXHIBIT #7.

Discussion: Greg Petesch explained the amendments. SEN. SPRAGUE asked what would happen, if in the 30-day period, no one would be heard from. Mr. Petesch said if nobody was heard from, the property would be dealt with by the pawnbroker through the usual course of trade.

Vote: Motion TO ADOPT AMENDMENTS SB024601.ACE CARRIED UNANIMOUSLY by voice vote.

Motion: SEN. BILL WILSON MOVED SB 246 AS AMENDED DO PASS.

Discussion: SEN. SPRAGUE requested and was granted permission to abstain from voting.

SEN. FORRESTER said SB 246 was a bill he could not support and reminded the committee the law enforcement people told the committee to leave it alone.

Substitute Motion/Vote: SEN. GARY FORRESTER MOVED A SUBSTITUTE MOTION TO TABLE SB 246. The substitute motion FAILED 5-4 on roll call vote (#1).

No further executive action was taken at this time on SB 246.

EXECUTIVE ACTION ON SENATE BILL 260

Motion: SEN. GARY FORRESTER MOVED TO ADOPT AMENDMENTS  
SB026001.agp.

Discussion: SEN. WILLIAM CRISMORE asked for clarification. It was his understanding the issue was the starting of a fund. Greg Petesch said SB 260 as amended put one percent of the state's portion of revenue into a fund; the provision was the fund would grow until it reached \$50 million. At that point, future deposits and interest would be attributable to the Department of Corrections who would make grants to programs which provided treatment for gambling addiction. Mr. Petesch said a very small amount would be available the second year of the biennium, and none the first year.

SEN. CRISMORE asked if the amendments dropped the fund to \$20 million and was told it did.

Vote: Motion TO ADOPT AMENDMENTS SB026001.agp PASSED by UNANIMOUS voice vote.

Motion: SEN. GARY FORRESTER MOVED SB 260 AS AMENDED DO PASS.

Discussion: SEN. KEN MILLER expressed reluctance for passing the bill, wondering if it would accomplish its intent.

SEN. SPRAGUE said, in his opinion, action had to be started somewhere, and expressed support for SB 260.

SEN. EMERSON claimed his problem with SB 260 was the fear it could become like the welfare system -- a bigger and bigger program which ultimately did more and more damage because the emphasis was not placed on helping oneself.

SEN. CRISMORE expressed agreement with SEN. EMERSON.

SEN. MILLER stated he supported free enterprise, which was what Alcoholics Anonymous was. He said a program such as SB 260 covered would be a perfect funding for endowments.

SEN. EMERSON referred to his teaching experiences where parents would help their children too much; thereby, compounding the problem.

SEN. WILSON asserted AA was not free enterprise, and treatment centers for dependent disorders acted as facilitators and referral systems to AA, Gamblers Anonymous, etc. He stated the help received from these groups was group help, not self or professional help; the problems were not caused by weak will, moral issues, but by a chemical issue.

**SEN. SPRAGUE** stated the industry who brought the bill were in agreement that there was a problem; the legislature's role was not micromanagement.

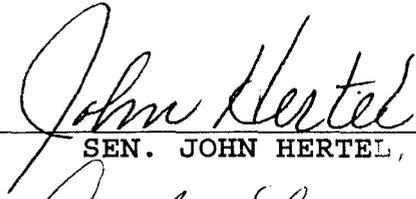
**SEN. WILSON** contended he had a problem with people getting labeled at an early age, and with treatment becoming a for-profit industry; however, there were people who need the professional help.

**SEN. MILLER** commented the industry came to the legislature, hoping the taxpayers would help the situation.

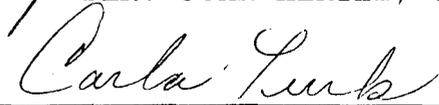
Vote: The motion **DO PASS SB 260 AS AMENDED PASSED 5-3** on roll call vote (**#2**).

ADJOURNMENT

**Adjournment:** The meeting adjourned at 10:25 a.m.



SEN. JOHN HERTEL, Chairman



CARLA TURK, Secretary



LYNETTE LAVIN, Secretary

The minutes were recorded by Carla Turk and edited and proofread for content by Lynette Lavin.

JH/11

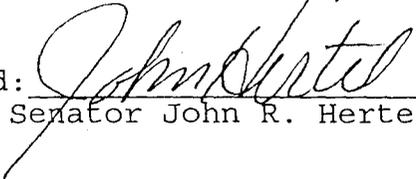


SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 10, 1995

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration SB 260 (first reading copy -- white), respectfully report that SB 260 be amended as follows and as so amended do pass.

Signed:   
Senator John R. Hertel, Chair

That such amendments read:

1. Page 1, lines 22 and 23.

Strike: "\$50"

Insert: "\$20"

2. Page 2, line 1.

Strike: "justice"

Insert: "corrections and human services"

3. Page 3, lines 6 and 15.

Page 4, lines 3 and 27.

Page 5, line 18.

Page 6, line 22.

Strike: "5%"

Insert: "1%"

4. Page 6, line 25.

Strike: "instruction"

Insert: "instructions"

Following: "."

Insert: "(1)"

Strike: "through 3"

Insert: "and 2"

5. Page 6, line 26.

Strike: "through 3"

Insert: "and 2"

6. Page 6, line 27.

Insert: "(2) [Section 3] is intended to be codified as an integral part of Title 53, chapter 1, part 2, and the provisions of Title 53, chapter 1, part 2, apply to [section 3]."

-END-



Amd. Coord.

Sec. of Senate

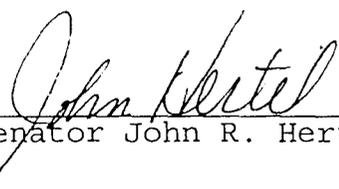
351230SC.SPV

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 10, 1995

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration SB 302 (first reading copy -- white), respectfully report that SB 302 do pass.

Signed:   
Senator John R. Hertel, Chair

  
 Amd. Coord.  
SA Sec. of Senate

351227SC.SPV





Amendments to Senate Bill 260  
First Reading Copy*(Presented by Sen. Lipinich)*Prepared by  
Beth Baker, Department of Justice

1. Page 1, line 22.  
Strike: "\$50"  
Insert: "\$20"
2. Page 1, line 23.  
Strike: "\$50"  
Insert: "\$20"
3. Page 2, line 1.  
Strike: "justice"  
Insert: "corrections and human services"
4. Page 3, line 6.  
Strike: "5%"  
Insert: "1%"
5. Page 3, line 15.  
Strike: "5%"  
Insert: "1%"
6. Page 4, line 3.  
Strike: "5%"  
Insert: "1%"
7. Page 4, line 27.  
Strike: "5%"  
Insert: "1%"
8. Page 5, line 18.  
Strike: "5%"  
Insert: "1%"
9. Page 6, line 22.  
Strike: "5%"  
Insert: "1%"
10. Page 6, lines 25 and 26.  
Strike: "through 3"  
Insert: "and 2"
11. Page 6, line 26.  
Following: "."  
Insert: [Section 3] is intended to be codified as an integral part of Title 53, chapter 1, part 2, and the provisions of Title 53, chapter 1, part 2, apply to [section 3.]"

## TESTIMONY FOR SB 260

The Alcohol and Drug Abuse Division applauds the efforts of SB 260 to mitigate the social consequences of gambling in Montana.

The 52nd legislature in 1991, mandated the Department of Corrections and Human Services to study the following:

- . Minimum requirements for certification of persons providing counseling for gambling addictions;
- . Availability of effective treatment resources in Montana for persons suffering from gambling addictions.

The Department of Corrections and Human Services, Alcohol and Drug Abuse Division contracted for two studies

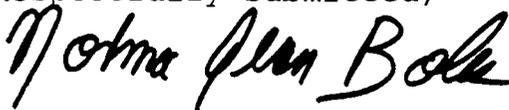
- 1) An incidence and prevalence study
- 2) Treatment of Pathological gamblers in Montana.

The results of the incidence and prevalence indicated a lifetime prevalence rate of 3.6% for problem and pathological gamblers in Montana. This means at a minimum, over 5,500 adults in Montana are currently experiencing moderate to severe problems related to their involvement in gambling.

60% of the treatment professionals surveyed in Montana indicated that they had treated problem gamblers at some time in their career. Additionally, those who had treated problem gamblers were more likely to have over 10 years of professional experience and to specialize in chemical dependency treatment.

Given the research the Department of Corrections and Human Services has conducted, the Department agrees with the amendment which designates the Department of Corrections and Human Services the responsibility of assessing the treatment resources and awarding grants.

Respectfully submitted,



Norma Jean Boles, Manager  
Standards and Quality Assurance  
Alcohol and Drug Abuse Division

TESTIMONY - SB 260 - FEBRUARY 10, 1995

Mr. Chairman and Members of the Committee:

For the record, my name is Ellen Engstedt and I represent Don't Gamble With The Future, a statewide organization opposed to the expansion of gambling and in favor of stronger regulation of the gambling currently legal in Montana. Our membership is comprised mostly of small business folks and their families.

Don't Gamble With The Future applauds Senator Pipinich for SB 260, the Gaming Indemnity Trust Act.

FINALLY, in new Section 1, there is an admission that there are detrimental effects that result from gambling and that there are social costs to the citizens of Montana caused by gambling. There are those of us who oppose gambling who have known what gambling can do to individuals and families, but could not prove what this activity does. Unfortunately, it takes several years for studies to be developed that can prove the social consequences of any activity. Those studies are now being done and the results are alarming. Gambling is rapidly becoming the third addiction in equal standing with alcohol and drugs. The time has come for Montana to face that consequence and deal with it straight on -- which is the Montana way of dealing with problems.

SB 260 establishes a trust fund into which monies would flow coming from those gambling activities already in place and from those entities reaping the benefits of the large amount of tax revenue received from the tax source. This is not a new source

of money -- it is a reallocation of the funds already paid and received. Each gambling activity contributes to the trust fund because each gambling activity contributes to the problem of compulsive gambling.

The entities who would oppose SB 260 -- local governments, general fund recipients (general state government and public school equalization) should be the VERY people supporting a program as proposed by SB 260.

Local governments, if honest in the assessment of the REAL social impacts in police, welfare, domestic abuse instances in their communities, would come in with guns blazing in support of this bill because they would admit to the problems caused by gambling and the COST of those problems in local communities. Local governments need to admit to the costs they are enduring because of gambling and not just take the money and run. If the cities and towns in this state looked at the social impacts and were honest about those costs, the amount they would give up under SB 260 would be minuscule.

Schools across Montana are affected by gambling. I would bet any teacher in any school in Montana could tell a story about how gambling has affected a student or a family that the teacher has dealt with. And, the schools should use the same approach as the cities and towns...what is the impact on the students in the State of Montana. If there is none, take the money and feel good about it...if there is an impact and there is, address it and put the money in a place where it will help.

No one should accept money from any activity and not look at how that money was acquired and who was hurt in the process of getting the revenue. The very least the local governments and the schools can do is acknowledge that they are taking money and looking the other way when the problems arise.

I, as an opponent of gambling in general, have been told countless times by those in the gambling industry to do something worthwhile -- what that has meant was to stop being a DOGOODER by trying to stop gambling -- and do something that would help the compulsive gamblers. SB 260 does just that..it is the first step to establishing a program that would help those addicted. If gambling advocates are being honest in saying they support programs to help the problem gamblers, they should be here in support of SB 260.

This bill is a big step in the right direction to start gathering the funds necessary to develop a program for compulsive gamblers and by new Section 1 ADMITTING there are problem gamblers in Montana. What a giant step forward and Montanans should be proud that this step is being taken.

There are many studies that have been done to indicate the problems of compulsive gambling both in Montana and nationwide and I would be happy to provide the Committee with as much information as the members can stand to absorb.

Thank you for your attention and I encourage your support of SB 260.

February 10, 1995

Business and Industry Committee Members  
Senate Hearing on SB 298  
Montana Senate  
Helena, Montana,

Dear Senator:

Enclosed please find a copy of the proposed amendments to Senate Bill 298. This bill has been introduced to the Montana legislature to amend and clarify the state's bad check statute, MCA 27-1-717. The proposed amendment is positive in that it specifically addresses the need for a service charge to assist in the collection of bad checks.

First of all, a service charge should be determined by the market place. Competition currently, and in the future, can set a "reasonable" service charge. A capped service charge will effectively increase the losses incurred by merchants that use private sector collection agencies. Furthermore, the legislature would have to review the capped service charge from time to time, and the effect would be an increase in the number of bills introduced.

Most importantly, this bill appears to be in direct conflict with the Fair Debt Collection Practices Act. The FDCPA, which is regulated by the Federal Trade Commission, is a federal act that stringently governs the actions of the collection industry. "Debt collectors", as defined by the FDCPA, would be forced to demand payment in 10 days. The FDCPA gives consumers 30 days to dispute

the validity of any debt. Consequently, if passed in its present form, SB 298 would violate the consumer's rights during the 30 day validation period.

Graziano v. Harrison, 950 F. 2d 107 (3rd Cir., Nov. 1991). Using the "least sophisticated consumer" standard, the court reasoned that a notice containing a threat that suit would be filed if the debt was not paid within 10 days, as well as, stating that the consumer had 30 days to dispute the debt violated Section 1692G. The court further stated, "The notice must not be overshadowed or contradicted by accompanying messages from the debt collector." In the past, collectors would send letters to consumers demanding payment in full within 10 days. Consumer Counsel has advocated that such 10 day demands violate the FDCPA. Consumer Counsel has argued that it is inconsistent to demand payment in full within the 10 days. There is a strong presumption that the federal act in the area of "notices and timeliness" has preempted the field.

A limitation on a service charge would force collectors and merchants to use the overburdened court system far more frequently. This potential increase in court obligations would transfer the costs of collecting bad checks to the taxpayers via the courts. The person who writes a bad check should be the one who pays the cost of collection. This can be accomplished through the private sector's collection agencies and the merchants who accept checks in the normal course of their business.

The proposed amendments provide the following:

1. Reasonable collection charges to the writers of bad checks. The language proposed is from the State of Washington statutes dealings with the same issue.
2. The change from the 10 day **demand** for payment, to the 30 day notice, complies with the Fair Debt Collection Practices Act. Montana does not need a court challenge to this notice issue. Other states have experienced challenges with notice periods shorter than the federal standard.
3. Removal of the set fees lets the market forces work. The legislature revisiting fees is an onerous burden on both the legislative body and the taxpayers.
4. Any increase in public collection efforts via the county prosecuting attorney and court system is a waste of taxpayer money when a collection agency will do the job in the private sector.
5. The person who writes a "bad check" should be the one who pays for the debt collector's efforts, not the Montana taxpayers.

Thank you for your attention in this matter.

Respectfully yours,



Michael McQueen



Sarah McQueen

1 PROPOSED AMENDMENT TO SENATE BILL 298

2 A BILL FOR AN ACT ENTITLED: "AN ACT FOR A SERVICE CHARGE UPON THE  
3 DISHONOR OR STOP PAYMENT OF A CHECK, DRAFT, OR ORDER FOR PAYMENT;  
4 AND AMENDING SECTION 27-1-717, MCA."

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

6 Section 1. Section 27-1-717, MCA, is amended to read:

7 "27-1-717. Issuing a bad check or stopping payment--civil  
8 liability.

9  
10 (1) A person who issues a check, draft, or an order for the  
11 payment of money is liable for a reasonable handling fee for each  
12 such instrument. (2), or for damages in a civil action, as provided  
13 in subsection ~~(2)~~(3), to the ~~person~~ payee to whom the check, draft,  
14 or order is issued, or the payee's assignee, if the check, draft,  
15 or order is:

16 (a) dishonored for lack of funds or credit or because the  
17 issuer has no account with the drawee; or

18 (b) issued in partial or complete fulfillment of a valid and  
19 legally binding obligation and the issuer stops payment with the  
20 intent to fraudulently defeat a possessory lien or otherwise  
21 defraud the payee of the check.

22 (2) ~~Except as provided in subsection (7),~~ the person who  
23 issues the check, draft, or order is liable to the payee or payee's  
24 assignee for a reasonable service charge for each instrument in an  
25 amount not greater than \$15. The payee or the payee's assignee may

1 waive the service charge. Demand for the service charge must be  
2 made in writing by the payee or the payee's assignee and mailed to  
3 the address shown on the check, draft, or order or to the issuer's  
4 last-known address. The demand must state that the issuer has a  
5 period of ~~10~~ 30 calendar days from the date of the written demand  
6 to pay the value of the check, draft or order and must state the  
7 service charge provided for in this section.

8 (3) The amount of damages awarded pursuant to subsection (1)  
9 must be an amount equal to the sum of ~~\$15~~ \$30 plus the greater of  
10 \$100 or three times the amount for which the check, draft, or order  
11 was issued. However, damages may not exceed the value of the  
12 check, draft, or order by more than \$500.

13 ~~(3)~~(4) The remedy provided by ~~this section~~ subsection (3) is  
14 available only if:

15 (a) the person to whom the check, draft, or order was issued  
16 as payee or payee's assignee has made the written demand, mailed to  
17 the last known address or the address shown on the check, to the  
18 drawer for payment of the amount of the check, draft, or order  
19 required in subsection (2) not less than ~~10~~ 30 days before  
20 commencing the action; and

21 (b) the issuer has failed to tender an amount of money equal  
22 to the amount demanded under subsection (2) prior to the  
23 commencement of the action.

24 ~~(4)~~(5) The remedy provided by this section:

25 (a) may be pursued notwithstanding the provisions of 27-1-312;

26 (b) may be pursued whether or not a criminal penalty is sought  
27 under 45-6-316 or any other statute providing a criminal penalty;  
28 and

1 (c) does not affect the obligation of the ~~drawer~~ issuer  
2 provided for in 30-3-423 to pay the amount of the draft. However,  
3 in case of any inconsistency with the provisions of Title 30,  
4 chapter 3, the provisions of this section apply.

5 (6) Upon introduction by the payee or the payee's assignee of  
6 evidence sufficient to establish the fact of mailing as required  
7 under subsection (2), the failure to receive the written demand is  
8 not a defense to the action allowed under subsection (3).

9 (7) ~~The limit on the service charge provided for in subsection~~  
10 ~~(2) increases by \$1 each calendar year beginning October 1, 1995,~~  
11 ~~but the service charge may not exceed \$25 without further action by~~  
12 ~~the legislature.~~

13 -END-

### Cross-References

Rural Electric and Telephone Cooperative Act, Title 35, ch. 18.

**69-5-104. Continuation of service to existing consumers.** Every electric supplier shall have the right to serve all premises being served by it or to which any of its facilities are attached on February 1, 1971.

History: En. Sec. 3, Ch. 7, L. 1971; R.C.M. 1947, 70-503(1).

**69-5-105. Service to new consumers.** (1) Subject to 69-5-106, the electric supplier having a line nearest the premises, as measured in accordance with subsection (2), shall serve premises initially requiring service after February 1, 1971.

(2) All measurements under this part shall be made on the shortest straight line which can be drawn from the conductor nearest the premises to the nearest permanent portion of the premises. Construction power for premises to be constructed shall be supplied by the electric supplier having the right to serve the completed premises.

History: En. Sec. 3, Ch. 7, L. 1971; R.C.M. 1947, 70-503(2).

**69-5-106. Service to industrial or commercial premises.** (1) An electric utility has the right to furnish electric service to any industrial or commercial premises if the estimated connected load for full plant operation at such industrial or commercial premises will be 400 kilowatts or larger within 2 years from the date of initial service provided such electric utility can extend its lines to such industrial or commercial premises at less cost to the electric utility or the industrial or commercial customer than the electric cooperative cost. The estimated connected load shall be determined from the plans and specifications prepared for construction of the premises or, if such estimate is not available, shall be determined by agreement of the electric supplier and the customer. The fact that actual connected load after 2 years from the date of initial service is less than 400 kilowatts does not affect the right of the electric supplier initially providing service to continue service to such premises.

(2) An independent consultant engineer agreeable to both electric suppliers or, in the event of failure of the electric suppliers to agree on a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110, shall determine which electric supplier can extend its lines to the consumer at the least cost. The cost of such engineering services shall be paid equally by the electric suppliers involved.

(3) No premises other than another such commercial or industrial premises shall be served from a line constructed under this section.

History: En. Sec. 3, Ch. 7, L. 1971; R.C.M. 1947, 70-503(3); amd. Sec. 12, Ch. 43, L. 1979.

**69-5-107. Service to property owned by electric supplier.** Nothing in 69-5-103 through 69-5-106 shall restrict the right of an electric supplier to furnish electric service to any property owned by the electric supplier.

History: En. Sec. 3, Ch. 7, L. 1971; R.C.M. 1947, 70-503(4).

**69-5-108. Agreements between electric suppliers as to service areas.** Notwithstanding the provisions of 69-5-103 through 69-5-107, any electric supplier may furnish electric service to any consumer at any premises

being served by another electric supplier upon written agreement of the affected electric suppliers or at premises which another electric supplier has the right to serve pursuant to this part, upon written agreement of the affected electric suppliers.

History: En. Sec. 4, Ch. 7, L. 1971; R.C.M. 1947, 70-504.

**69-5-109. Special provisions for annexed areas.** With respect to service in areas which are annexed to incorporated municipalities having a population in excess of 3,500 persons, electric suppliers have rights and are subject to restrictions as follows:

(1) Every electric supplier has the right to serve all premises being served by it on the date of annexation.

(2) An electric cooperative does not have the right to serve any premises initially requiring service on or after the date of annexation. The restriction stated in this subsection does not apply to incorporated municipalities in which 95% or more of the premises were served by an electric cooperative on February 1, 1971.

History: En. Sec. 5, Ch. 7, L. 1971; R.C.M. 1947, 70-505; amd. Sec. 13, Ch. 43, L. 1979.

**69-5-110. Jurisdiction of district courts over disputes.** The district courts of the county or counties within which the premises or lines involved in any dispute are located shall have jurisdiction under this part over all electric suppliers subject to the provisions thereof.

History: En. Sec. 6, Ch. 7, L. 1971; R.C.M. 1947, 70-506.

**69-5-111. Judicial remedies.** (1) Whenever it shall appear that any electric supplier is failing or omitting or about to fail or omit to do anything required of it by this part or is doing or is about to do anything or to permit anything to be done contrary to or in violation of this part, any electric supplier affected thereby shall have the right to file a complaint in the district court briefly setting forth the acts or omissions complained of and requesting an injunction.

(2) If an affidavit showing that grounds exist therefor is filed with the complaint, a temporary restraining order shall be issued without notice. A copy of the temporary restraining order, complaint, and affidavit shall be served upon the defendant, together with an order to show cause why the temporary restraining order should not be made permanent, within 5 days after issuance of the temporary restraining order. The hearing on the order to show cause must be held at a date specified therein, which shall not be more than 10 days after service thereof and shall take precedence over all matters pending before the district court. A judgment making the injunction permanent or dissolving the temporary restraining order theretofore issued shall be made not later than 10 days after the filing of the complaint. Dismissing the complaint must be made not later than 10 days after the hearing on the order to show cause.

(3) Any party aggrieved by the order may appeal to the supreme court of Montana by filing a notice of appeal in the district court within 20 days from the entry of the order. The appeal must be perfected within 20 days thereafter and shall take precedence over all matters pending before the supreme court of Montana.

History: En. Sec. 7, Ch. 7, L. 1971; R.C.M. 1947, 70-507.

58304  
 Press Fed  
 Sen. Jabe

DATE February 10, 1995

SENATE COMMITTEE ON Business and Industry

BILLS BEING HEARD TODAY: SB 260 Senator Pipinick  
SB 298 Senator Van Valkenburg SB 302 Senator Jabs

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
<del>Jeff</del> <u>Rock</u>	<u>Collect. on Bureau</u>	<u>298</u>	<input checked="" type="checkbox"/>	
<u>Ellen G. Stent</u>	<u>Wetlands with the Future</u>	<u>260</u>	<input checked="" type="checkbox"/>	
<u>Dennis Casry</u>	<u>GIA</u>	<u>260</u>	<input checked="" type="checkbox"/>	
<u>Noama Jean Bales</u>	<u>DCHS - ADAD</u>	<u>260</u>	<input checked="" type="checkbox"/>	
<u>Charles R. Brooks</u>	<u>MT Food Dist Assoc</u>	<u>298</u>		<input checked="" type="checkbox"/>
<u>Daniel N. McLean</u>	<u>Missouri Credit Bureau of</u> <u>Missouri, Inc</u>	<u>298</u>	<input checked="" type="checkbox"/>	
<u>Jay Danner</u>	<u>Mert Elze Co-op</u>	<u>302</u>	<input checked="" type="checkbox"/>	
<u>Tim Gregori</u>	<u>Big Horn River Loop</u>	<u>302</u>	<input checked="" type="checkbox"/>	
<u>Terry M. Hoken</u>	<u>Yellowstone Valley Co-op</u>	<u>302</u>	<input checked="" type="checkbox"/>	
<u>Janet Jessup</u>	<u>Dept of Justice</u>	<u>260</u>	<input checked="" type="checkbox"/>	
<u>LARRY AKEY</u>	<u>MONTANA COIN MACHINE</u>	<u>260</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Channaine Murphy</u>	<u>MONTANA LOTTERY</u>	<u>260</u>	<input checked="" type="checkbox"/>	
<u>John Alke</u>	<u>MDU</u>	<u>302</u>	<input checked="" type="checkbox"/>	
<u>John Murphy</u>	<u>NPC</u>	<u>302</u>	<input checked="" type="checkbox"/>	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Amendments to Senate Bill No. 246  
First Reading CopyRequested by Senator Weldon  
For the Senate Committee on Business and IndustryPrepared by Connie Erickson  
February 9, 1995

1. Title, line 6.  
Strike: "PAWNBROKER"  
Insert: "PERSON SUFFERING ECONOMIC LOSS AS A RESULT OF THE CRIME"
2. Page 1, line 12.  
Following: "warrant."  
Strike: "(1)"
3. Page 1, line 16.  
Following: "~~demand,~~"  
Strike: "The"  
Insert: "Following expiration of the 30-day period, the"
4. Page 1, line 17.  
Following: "officer"  
Insert: "upon demand"
5. Page 1, lines 17 and 18.  
Strike: "if" on line 17 through "warrant" on line 18
6. Page 1, line 19.  
Strike: "The"  
Insert: "During the 30-day period, the"
7. Page 1, line 20.  
Following: "court"  
Insert: "or municipal court"
8. Page 1.  
Following: line 20  
Insert: "(2) As used in this section, "administrative warrant"  
means a warrant:  
(a) issued by the chief law enforcement officer of the  
jurisdiction;  
(b) that describes the property to be held; and  
(c) that states that the pawnbroker shall hold the property

for 30 days from the date of receipt."

9. Page 1, line 24.

Strike: "pawnbroker"

Insert: "a person suffering an economic loss as a result of the  
crime"