

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on January 24, 1997, at 10:00 A.M., in the Senate Judiciary Chambers (Room 325) of the State Capitol, Helena, Montana.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 96, SB 173
posted January 24, 1997

Executive Action: None

NOTE: There are no tapes for this meeting. They did not record properly.

HEARING ON SB 173

Sponsor: SENATOR WALTER MCNUTT, SD 50, Sidney.

Proponents: John Cadby, Montana Bankers Association
Steve Turkiewicz, Montana Auto Dealers Association
Bob Pyfer, Senior Vice President, Montana Credit Union
League
Bud Williams, Manufactured Housing Dealers Association

**Ron Ashabraner, State Farm Insurance
Dave Brown, Montana Independent Auto Dealers
Association**

Opponents: None

Opening Statement by Sponsor: **SENATOR WALTER MCNUTT, SD 50, Sidney.** The purpose of SB 173 is to allow motor vehicles to be free and clear of liens when purchased after seizure by the Department of Justice for failure to pay child support. This bill may not solve all of the problem, but it is a step toward correcting it. Other legislation is pending for electronic filing and a bulletin board for vehicle licensure.

Proponents' Testimony: **John Cadby, Montana Bankers Association,** stated his support of the bill.

Steve Turkiewicz, Montana Auto Dealers Association, stated his support of the bill.

Bob Pyfer, Senior Vice President, Montana Credit Union League, stated his support of the bill.

Bud Williams, Manufactured Housing Dealers Association, stated his support of the bill.

Ron Ashabraner, State Farm Insurance, stated his support of the bill.

Dave Brown, Montana Independent Auto Dealers Association, stated his support of the bill.

Opponents' Testimony: None

Questions From Committee Members and Responses: **SENATOR AL BISHOP.** How does your bill affect this legislation? **SENATOR MIKE HALLIGAN.** This lien won't affect the child support issue.

SENATOR SUE BARTLETT. Please expand on whether this bill would be necessary once electronic filing and bulletin boards are operational. **SENATOR WALTER MCNUTT.** Electronic filing is a pilot project, and will take some time. The Bulletin Board is being worked on now, but is complex, so I don't envision it for the next two years as least.

SENATOR BARTLETT. Once these programs are up and running and proven, would you be willing to support restoration of the language being stricken by this bill. **SENATOR MCNUTT.** I'm not sure, as it's been a problem. Right now, I would say no.

SENATOR BARTLETT. Is anyone here from the Child Support Enforcement Bureau? **SENATOR MCNUTT.** No.

Closing by Sponsor: **SENATOR MCNUTT** made no closing comments.

HEARING ON SB 96

Sponsor: VICE CHAIRMAN LORENTS GROSFIELD, SD 13, Big Timber.

Proponents: Attorney General, Joe Mazurek

Mick Robinson, representing Governor Marc Racicot
Janet Jessup, Administrator, Gambling Control Division,
Department of Justice
Wilbur Rehmann, Administrative Officer, Gambling
Control Division
Alan Ruby, Kalispell
Jean Agather, Public Member-at-Large, Governor's
Gaming Advisory Council, (representing self)
Rev. George Harper, Helena
Verner Bertelsen, Montana Senior Citizens Association
Ellen Engstedt, Don't Gamble with the Future
Ed Hogan, Missoula
Arlette Randash, Eagle forum
Betty Waddell, Montana Association of Churches
Rep. Davis Ewer, HD 53, Helena
Mary Ruby, Don't Gamble with the Future, Kalispell

Opponents: Rep. Vicki Cocchiarella, HD 64, Missoula

Mark Staples, Montana Tavern Association
Dennis Casey, Executive Director, Gaming Industry
Association
Dave Brown, Butte, Montana Independent Machine
Operators Association
Darrell Keck, Montana Tavern Association, Dixie Inn,
and Governor's Gaming Advisory Council
Lynn Seelye, Great Falls attorney
Phil Kiser, Great Falls tavern, restaurant, and
machine owner
Jim Johnson, Red Lodge (also for Art Havin and the
Stillwater Tavern Association)
Nichole LaSalle, Professional Data Services, Butte
Dean Clinkenbeard, Diamond D Casino, Missoula
Bob Fletcher, Cannery Lounge, Bozeman
Bill Lincoln, Kalispell
Dennis Higbee, Gold Dust Casino, Missoula
Fran Curran, Carter's Camp, Nye
Gary Hildenbrand, Flathead Tavern Association &
Shortbranch Lounge, Lakeside
Harry Klock, President, Montana Tavern Association
& Stockman's Bar, Harlowtown
John Touson, Great Falls, Cascade County Tavern
Association
Jeff Windorski, Cattleman's Bar & Casino, Kalispell
Sharon Kirkness, Chrome Bar, Absarokee
Dennis Powell, Great Falls, Gaming International
Bob Lincoln, Bill's Bar, Somers
Matthew Gould, O'Malley's Tavern, Canyon Ferry
John Skufca, York Tavern, York

**Bert Lively, Melrose Bar, Casino, Restaurant, Gas
Station, Melrose
Rene Abbe, Elks Lodge**

Opening Statement by Sponsor: SENATOR LORENTS GROSFIELD, SD 13, Big Timber. SB 96 deals with the tremendous growth in the gaming industry. In 1987 gaming income in Montana was about \$70, by 1990 it nearly doubled to about \$137 million. In 1992 it brought in \$180 million, and by 1996 the 1987 figure had nearly tripled at about \$213 million.

SB 96 authorizes the Department of Justice to operate and maintain an automated accounting and reporting system of gaming machines in Montana to correct deficiencies in accountability of funds being experienced now.

The current system of monitoring is antiquated and generates many reports. The Department of Justice is currently one and one-half years behind on these reports. They must deal with the mechanical problem, change of machines is a nightmare right now. With the proposed changes, the Department could theoretically never be more than 24 hours behind on these reports.

Proponents' Testimony: Attorney General Joe Mazurek. The Department of Justice has the responsibility for regulation of 1600 licensed businesses operating approximately 16,000 machines in Montana. More than \$525 million was put into machines last year, of which \$213 million was returned as gross, resulting in \$32 million in taxes paid to the State.

The Department wants to bring this system into the computer age, as it doesn't make sense to regulate with paper and pencil today. The change will be cost-effective for both the public and private sector, and will ask for less, being simpler, faster, and cheaper.

The Legislative Auditor found a 22-30 percent error rate in industry reports. Joe Murray conducted the audit, and I encourage the Committee to ask him questions. There are also two private auditors, of which one, Mr. Jack Stevens, is here today. The Department's Gambling Control Division audit has found "inavailability" of records in conducting audits.

Many tavern owners do not oppose this legislation. The representatives of the industry want to work with the Department and get this issue behind them. Although we've been working together from August through December of last year, unfortunately, we have been unable to reach full agreement - but we are very close.

The price of the bill is already \$400,000 less than it was two years ago, and it is possible that we could use the Lottery's computer at night. Last session \$800 payouts were passed, and no one complained about costs then.

Many businesses are using this same technology for customer credit card charges now. Fish, Wildlife and Parks recently was recently authorized to do the same thing with its licensing process.

This process would eliminate 60,000 reports per year, as well as storage of reams and reams of paper. The bill makes good sense for all, and fiscal sense for the State. I believe the public supports the idea.

Leaders in the industry realized the importance of earning and maintaining the trust of the public. I ask the industry to listen to the public. It is much easier to kill a bill than to pass one, but the industry could be killing the goose laying the golden egg in this instance.

Mick Robinson, representing Governor Marc Racicot. One purpose of the bill is to preserve the integrity of gaming machines, in addition to simplifying reporting. The tax credit issue is very important to the Governor. The cost, over time, would be more than covered by reduced costs, and enhanced accounting. It would help owners of five or fewer machines.

Janet Jessup, Administrator, Gambling Control Division. The permit number allows all machines to be tracked quarterly via two meter readers in the machine. [Ms. Jessup showed the printer device to the Committee.] The device prints tape, and the machines generate 65,000 quarterly reports which are reviewed by two compliance analysts. Verification of this information takes time.

There are only two machine inspectors for the entire state and 16,000 machines. The inspectors can only get to a machine each 4.5 years. A computer chip would improve this situation.

Licensees are required to maintain machines and print audit tapes weekly, which they must keep for three years. They must report service on each machines, as service can affect the audit trail of the machine. The Department receives about 12,600 service forms annually.

Thirty-six percent of locations receive compliance letters annually, and fifty percent of those have problems. Thirty-two to fifty percent of the problem cases have desk audits, and can result in a field audit. [Ms. Jessup showed the Committee boxes of records to indicate the volume of records which must be retained.] Penalties are assessed for unclear audit trails.

Of \$456,000 in machine returns since 1989, the Department saw the need for more efficient record maintenance by machine owners. The independent account firms on contract to the Department can't determine proper amounts due now in some instances. We would need to add 23 FTE to meet the auditing levels Nevada has.

Wilbur Rehmann, Administrative Officer, Gambling Control Division, Department of Justice (EXHIBITS #1a, 1b, 1c, 1d). [Mr. Raymond showed a retrofit conversion kit to the Committee]. The Division would control the computer in gaming machines with a management terminal for the terminal help desk via telephone lines. Each location would need only one modem to carry the signal. Ninety percent of machines in use in Montana can be converted.

The control computer would call each machine and read the electronic meters between approximately 2 a.m. and 6 a.m. and verify correct EPROM for a few seconds each day. Problems would be manageable this way.

The control system would calculate taxes due each quarter, and will eliminate manual quarterly reports from the Department of Justice. The system won't access any other personal information of tavern owners, such as bank accounts. We anticipate most calls to be local, and with minimal charges.

The current system doesn't work. This system works in Oregon, Louisiana, South Dakota, Saskatchewan, and Alberta.

Alan Ruby, Kalispell. I was here in 1995, and I believe this legislation is fiscally responsible and necessary for this vast cash business. The industry wants to use this system as a bargaining chip for expansion of gambling. Please don't ignore the majority of Montanans who don't want expanded gambling.

Jean Agather, Kalispell. I served as the public-at-large member of the Governor's Council on Gaming (EXHIBIT #1). The Legislature said gambling laws are paramount to the good of the public. Private citizens can't disregard the law, nor can the government. The Legislative Audit Committee recommended 22 FTE for this purpose. We could change the law, as have other states, except Nevada.

Reverend George Harper (EXHIBIT #2a). I believe citizens are partners of this, and ought to have a clear idea of what this income is.

Verner Bertelsen, Montana Senior Citizens Association. We are strongly supportive of SB 96. Years ago, as a Representative in the House, we heard a man request fast, accurate and concise monitoring of gaming in Montana, via a strong controlled system.

Ellen Engstedt, Don't Gamble with the Future, and for Ed Hogan, Missoula, Arlette Randash, Eagle Forum, and Betty Waddell, Montana Association of Churches (EXHIBITS #2, 3, 4, 5). Our members believe in policy setting, regulation, and the courts. SB 96 fills the first two. During the negotiations referred to earlier, the Attorney General offered a proposal which the industry declined. The Industry wanted "real games" or slot

machines and larger bill acceptors, which we see as an expansion of gambling.

We would support an exemption for machines which can't be retrofitted. We find tax credits difficult to accept, but still support the bill. The \$400 costs of retrofitting each machine can't possibly put owners out of business.

REPRESENTATIVE DAVID EWER. I am also concerned about the tax credit. I applaud the Attorney General's efforts.

Mary Ruby, Don't Gamble with the Future, Kalispell. Let's move the system into the next century.

Opponents' Testimony: REPRESENTATIVE VICKI COCCHIARELLA. I am speaking for constituents in my district. I appreciate the efforts of the Attorney General, but I believe we're not there yet. The mini-Mart owners feel they are being intruded upon. The industry needs more help on the front end with paper work.

Mark Staples, Montana Tavern Association. I asked for a better methodology, and a tax reduction. I don't believe we have sought expansions for three or four session. The \$800 payout was espoused by the Attorney General and the Governor, as not being an expansion of gambling. This is the State's system.

I am providing copies of a quote by the Governor in the February 1995 issued of Montana Magazine. (EXHIBIT #6).

In 1991 the industry invested in gaming heavily, and so the system needs to be cost-effective. What state agency couldn't do better with more people?

Other states started with the system they have now. North Carolina decided against mid-course conversion. Nevada does have monitoring of larger machines.

The audits could find some bad bookkeeping and those thirty worst operators are not a fair representation of the industry at large. What is the error rate of sales tax reporting in other states? When licensees pay a fortune (\$200,000) for a license, they're not going to risk losing it by cheating.

There was also rejection of legislation to pay a \$600 tax credit. The cost of the bill would be passed on to the operator, and would prevent small owners from buying more machines. The average return per machine is 8-12 percent overall. A very few make more. This industry has put \$35 million into taxes and fees for the state of Montana. We, and you, can't afford the bill.

Dennis Casey, Executive Director of the Gaming Industry Association. When I examined the details of the Legislative Audit Committee Report, I found the actual error rate to be about

2.5 percent, many of which were in the range of \$3-\$8. Operators are notified of these errors.

In 1995, the Gaming Industry Association contracted with a CPA firm in Great Falls. Tim Addle of that firm, conducted an audit of the Legislative Auditor's audit. Mr. Addle said the net potential of \$16,000-\$24,000 per year doesn't seem significant. There are a number of good software products that can help the Department with calculations. Machine operators have become more sophisticated in the past four years, and I believe an audit now would show an improvement. Of the 1994 press reports, one was irresponsible in casting doubts on individual owners.

Scott Seacat, the Legislative Auditor, said machine owners have an obligation under statute. He made it clear that there were no instances of tampering, illegal acts or activity.

The Fiscal Note assumptions are not valid, even if there is no difference between Montana and South Dakota machines. There are several very successful Native American gambling businesses in South Dakota. This Fiscal Note estimates \$1.4 million per year. If at all, I believe taxes are underpaid by only three-tenths of one percent. I don't believe the system will increase state revenue.

Dave Brown, Butte, Montana Independent Machine Operators Association. The Association voted unanimously to oppose SB 96.

Darrell Keck, member of Governor's Gaming Advisory Council for the past three and one-half years and recently reappointed, and current Chairman of the Montana Tavern Association. Many statements are half-truths. Actually the error rate is about .25 percent or fourth-tenths of one percent, so it is ridiculous to implement this unjust bill.

Lynn Sellye, Great Falls attorney. I received my Masters from New York University in taxation and taught at the Law School for ten years. Among my clientele are bankers, lawyers, accountants, farmers, tavern owners. I haven't been called on to defend any tavern owners.

I also own a bar-restaurant in Great Falls with twenty machines. My bookkeeper reconciles twice per week, meets with my accountant once per month, and files quarterly and annual reports. To cheat, I must involve four other people, which increases my chances of being caught.

Reporting income is very important to me. My business is appraised at over \$1 million, so I'm not going to risk jeopardizing my license.

My \$2000 investment in 15 machines each became obsolete with the last changes, and I had to replace them. It ended up costing me

\$120,000 overall. I stand prepared to work with the Department of Justice to explore solutions.

Phil Kizer, Great Falls, machine, tavern, restaurant owner. The current system works for me, and it's my money. The system works, and I haven't counted money for over three years. The EPROM is one of the stumbling points when we speak of hooking up to the system. In four years of investigating, I have never found a case or Eprom damaged or altered. I am providing for the Committee a one-page form used for reporting in South Dakota (EXHIBIT #7).

Jim Johnson, Red Lodge, and for Art Havin and the Stillwater Tavern Association. These are mostly mom and pop businesses. Rodeo is a big deal in Red Lodge. Like a clown in bull riding, we all feel the "straw man" setup is hurting us. A \$3300 fine for \$212 worth of mistakes over a period of three years seems wrong. I ask the Committee to look at the real people being hurt, the people who can't afford this legislation, and not at the "straw man".

Nichole LaSalle, Professional Data Services, Butte. I am a computer and accounting consultant. The tavern owners ask for my services as they're eager to comply with state requirements. I have experienced problems with the old machines which didn't have technological adaptability. I believe it is unfair that gaming operators must bear this cost, as an industry and as operators.

Dean Clinkenbeard, Diamond D Casino, Missoula. I've been in business for 35 years in Missoula. I am honest in business and can't afford a new system.

Bob Fletcher, Cannery Lounge, Bozeman. I am a taxpayer and also a and also a farmer and rancher. I would rather see this sent to the courthouse.

Bill Lincoln, Kalispell. The Fiscal Note is not correct. Each report is done with four meters, for checks and balances. Two meters are used to do the entire report, and figures from the other two are given, but not dealt with. These figures can give some information via different formulas. The soft meters also have two checks and balance. With this bill we "are shooting a howitzer at a fly problem".

Natalie Taylor, Juke Box Annie's, Butte. I have 20 machines which I balance daily, using hard meters, and they are quite accurate. I received a letter from the Department that my figures were off \$27.40, or \$1.37 per machine for the entire year.

Dennis Higbee, Gold Dust Casino, Missoula and Missoula Tavern Association. I wonder if checking the current system a bit could reduce a lot of error. For instance, if characters are missing on the computer tape, that looks like a correction notice.

Fran Curran, Carter's Camp, Nye. I am opposed to this legislation.

Gary Hildenbrand, Shortbranch Lounge, Lakeside, and Kalispell Area Montana Tavern Association. These machines have been in operation in Alberta for 20 years, and the error rate has been found to be immaterial in their audits. Thus, I believe the costs in the bill are unjust.

Harry Clock, President, Montana Tavern Association, and Stockman's Bar, Harlowtown. We oppose this bill.

John Touson, Cascade County Tavern Association, Great Falls. All 72 members are opposed to SB 96. These are mostly small operators, but are diverse - owning taverns, lounges, and restaurants. The proposed pilot system doesn't account for this diversity.

Jeff Windorski, Cattleman's Bar & Casino, Kalispell. I believe we deserve the rights and privileges of small business owners in Montana.

Sharon Kirkness, Chrome Bar, Absarokee. I am in opposition to SB 96.

Susan Cazir, Cheerio Lounge, Moore. We cannot afford this bill.

Dennis Powell, Gaming International, Great Falls. We have approximately 800 machines on the market, and we don't know the cost of retrofitting them, so we are supposed to this bill.

Bob Lincoln, Bill's Bar, Somers. I am opposed to this legislation.

Matthew Gould, O'Malley's Tavern, Canyon Ferry. I believe this bill will be very expensive.

John Skufca, York Tavern, northeast of Helena. I opposed this bill.

Burt Lively, Melrose Bar, Casino, Restaurant, and Gas Station. This business has been in my family for 50 years. Many small operators in less populated areas are dependent upon summer tourism. I urge opposition to this bill.

Rene Abbe, Manager, Elks Lodge, Hamilton. Gaming machines have raised our scholarship money significantly since they were installed two years ago.

Questions From Committee Members and Responses: SENATOR STEVE DOHERTY. What was the error rate the Legislative Auditor found? **Joe Murray, Office of the Legislative Auditor.** We looked at one quarter of returns at the end of FY 92, and found error rates in 28-38 percent of establishments reviewed. The problem was with

the current system the Gambling Control Division uses to regulate the industry.

SENATOR DOHERTY. What does a 2.5-3 percent error rate mean? **Joe Murray.** I can't really speak to that number right now. I really believe we're getting lost in figures. Mr. O'Dell's statement was that he got his figures from net figures of tax returns which we were able to review. Forty percent of the returns we tried to review lacked documentation for sufficient evaluation.

SENATOR DOHERTY. Even with tax credits and loans, what would it cost to make the industry "whole", and if made whole, would the industry oppose this bill? **Mark Staples.** \$600 seems to be a decent estimate in the 1995 Session, but some may have to replace machines and/or get them converted. Some manufacturers are doing a conversion kit. Businesses could survive, but those not doing the conversions would be hurt. The Legislature balked before when we got to the amount of tax required to make the industry whole.

SENATOR MIKE HALLIGAN. What about the errors you spoke of. **Janet Jessup, Gambling Control Division.** The errors I spoke of are major, and there is not documentation to go to, no audit trail.

SENATOR HALLIGAN. How much of the error rate is substantial, and how much isn't? **Joe Murray.** Twenty-four percent of machines reviewed had significant error rates.

SENATOR HALLIGAN. What would that dollar figure be? **Joe Murray.** I am unable to come up with a hard dollar effect, because of lack of documentation.

SENATOR ESTRADA. I don't believe we're getting the answer we're after. I want this information prior to executive session. **Joe Murray.** I will see if I can get this information together.

Closing by Sponsor: SENATOR LORENTS GROSFIELD. I want to thank the Chairman and the opponents for a good hearing. The draft report from the Gambling Control Division should be ready in a few days. There was also a good article in today's paper concerning average income of casinos. With fewer machines generating in rural areas, income is generally much less. There are nearly two times as many establishments now (110) which are operating at over \$600,000 in the past two years.

We need to be careful with using numbers from the audit. Page 35 of the audit states 30-40 percent of machines have insufficient documentation to make estimates. The problem is that we don't have enough information, and that it comes in boxes of paper.

Page 2, lines 11-13 of the bill deal with exemptions for approximately 1300 machines statewide, of which about 700 are incapable of conversion. On page 5, lines 13-14, the tax credit

gets reimbursed over 3-4 years, and is taken care of up front via a loan. The estimate of \$200-600 is quite a variable.

This is not 1984, and we are not talking about "big brother" for all of Montana. We are talking about a newer industry, that is highly regulated in Montana. With \$213.5 million in gross income from players, less prizes paid out, that is losses of \$521 million in a year. It doesn't make sense to have a high-speed, high-tech computer business being monitored by pencil and paper. I don't believe this makes good policy sense.

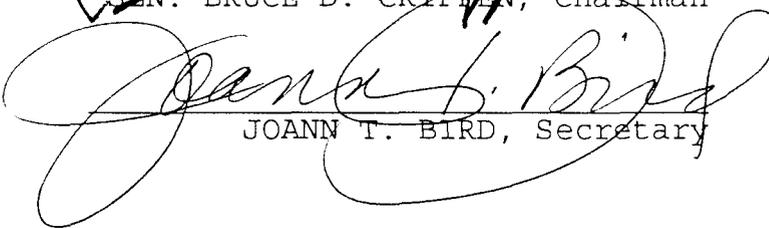
If you think of this in terms of the biennium, this is over \$1 billion, and more than 20 percent of all dollars dealt with in the budget of the government of the State of Montana. Would the taxpayers feel good if we did the state budget with paper and pencil?

It is good public policy to have timely assurance to the public that dollars spent were lost fairly, and that the public was protected. I am talking about \$32 million in tax dollars.

ADJOURNMENT

Adjournment: 12:37 p.m.


SEN. BRUCE D. CRIPPEN, Chairman


JOANN T. BIRD, Secretary

BDC/JTB