

## HOUSE BUSINESS AND INDUSTRY COMMITTEE

Chairman, Rep. Jerry Metcalf, called the Business & Industry Committee to order on January 18, 1983, at 9:00 a.m. in Room 420 of the Capitol Building, Helena, Montana. All members were present.

### HOUSE BILL 132

REP. J. MELVIN WILLIAMS, District 70, sponsor, opened by saying he was requested by the Department of Revenue Oversight Committee to sponsor this bill. The purpose of this bill is to impose a late fee of up to \$500 on any beer, wine or liquor license holder who fails to pay the annual renewal fee by July 1. A tally in August showed there were 60 delinquent holders whose fee was due June 30th. No penalty is levied when a fee is late.

ELLEN FEAVER, Department of Revenue, said the administrative costs of collecting the late fees is very expensive. They have not shut businesses down because of failure to pay, but she thought it prudent to propose a penalty as a means to encourage prompt payment. She said this bill would be a good idea as far as the department was concerned and in the management of the State's money.

### OPPONENTS:

BOB DURKEE, Registered lobbyist for the Montana Tavern Association. He opposes the bill basically in theory. The law reads that if you are dispensing liquor on July 1 without having paid your license you're doing it illegally. We fail to understand why there is such an enforcement problem. Also, we don't feel this bill is legal. You are giving a judicial discretion to an agency of the government.

REP. WILLIAMS: We have to manage the Department of Revenue as well as we can. We need a penalty for late fees to do this. We need to stay out of the courts as much as possible also.

### QUESTIONS:

REP. ELLERD: If a license isn't paid, do you ever cancel them?

Ms. Feaver: Liquor licenses are property rights. I have a question about going in on July 1 and cutting off a person's property rights. The property right still remains with the licensee. Rep. Ellerd: Why don't they pay their fees? Are they hurting financially? Ms. Feaver: That's part of the problem but there is no incentive to pay if there is no penalty to pay.

REP. METCALF: Are all your licenses July 1 to July 1? Ms. Feaver: Yes.

REP. WALLIN: How did you arrive at the \$500 figure? Ms. Feaver: By the average cost of collecting any fees.

REP. ELLISON: What remedies do you use now if someone is two months late? Do you notify the sheriff? Ms. Feaver: After notification from us that we are about to take enforcement action, we put our enforcement people on it. They act like collection agents.

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REP. ELLISON: When they are due June 30, what is the effective date of renewal - anytime? Ms. Feaver: Yes.

REP. BUCHINI: How many licenses do you have in the State?

Ms. Feaver: 2,500.

REP. SAUNDERS: What type of enforcement tactics do you use?

Ms. Feaver: We try to get payment instead of putting them in jail. Rep. Saunders: Have you shut any down? Ms. Feaver:

I can't name any but I am sure there have been some.

REP. PAVLOVICH: Do you give any kind of a grace period after June 30? I know many wait until after the 4th of July and a big weekend to buy their license. Ms. Feaver: Because there

is no penalty, we have been giving a grace period until they pay or until we shut them down. Rep. Pavlovich: How many inspectors do you have throughout the State? Ms. Feaver:

We have four liquor inspectors.

REP. METCALF: What is your estimate of the cost to the Department to actually go out and enforce licensing? Ms. Feaver:

\$500. Rep. Metcalf: That's approximately \$45,000 per year.

REP. LYBECK: Do you see this problem as being chronic among the same people? Ms. Feaver: It's not always the same people.

REP. HARPER: Do you plan to adopt rules to implement this late fee? Ms. Feaver: Yes.

REP. FABREGA: Isn't it clearly a violation to dispense liquor without a license? Mr. Durkee, what do you think would be more effective - locking them up or putting on a late fee? Mr.

Durkee: The fee was established at \$50 and that is not enough of a threat to make anyone pay. They should call the man and say "Don't serve a drink today." Rep. Fabrega: Then for sure they will not be able to come up with the money. Mr. Durkee: If he hasn't made his profit by July 1, then he shouldn't be in the business.

REP. HART: What about the county the business is located in.

Can't the sheriff go out and enforce this law? PHIL STROPE,

Montana Tavern Association: It would make a great law suit.

The sheriff could walk into an establishment and say I'm locking your doors because you failed to renew your license on June 30 and you're selling liquor without a license and I charge you with violation of the criminal code. Their defense could be that there is another statute that says they can pay a late fee of up to \$500. That makes business for lawyers.

REP. FABREGA: If the sheriff comes up and shuts them down, you have deprived them of their property right? Mr. Strobe: You now raise the issue of whether the statute that says that licenses expire on June 30 is a valid exercise of the duties of the Legislature to not impose on people penalties so severe that they violate their constitutional rights, which is taking property without due process of law. It would seem to me that this Committee has a handsome opportunity to avoid situations where sheriffs and the Department of Revenue set the stage for law suits. If you want the law to say that these licenses don't expire but are subject to expiration because of non payment, then you should probably clean up the other statute. If you

want the licenses to be terminated for non payment, then you probably should kill this bill.

REP. ELLERD: I don't understand why a liquor license can't be cancelled. Ms. Feaver: The court has deemed them property rights. That allows them to be bought and sold. Rep. Ellerd: Does it state that it's non transferable? How is it sold? Mr. Strobe: It can be transferred with the approval of the Dept. of Revenue with stipulations.

REP. FABREGA: If I have a Cadillac whose license expires on July 1, I can still take it out on the street but they can give me a ticket every time I drive it. You can make use of your property but under certain conditions. If people can pay when they feel like it on everything else, we would have chaos. This is a reasonable approach to making people pay on time.

Mr. Strobe: If you want to make it so people can pay a fine for non payment like Ms. Feaver wants you to do, then I think you should do something about the section of the law that says that all licenses expire on June 30.

#### HOUSE BILL 134

REP. J. MELVIN WILLIAMS, district 70, sponsor, opened by saying this bill amends the all beverage license law to remove the requirement for a waiting period of 10 days after filing an application for a catering license for a special event or for a special permit to sell alcohol beverages at a sporting event or similar event. It reduces the fee for a catering license from \$40 to \$10 and exempts applicants for catering endorsements.

ELLEN FEAVER, Department of Revenue, said the people involved in annual events know the 10 day requirement law but folks planning a wedding reception or special benefit often don't and their office is constantly running into the problem of waiving the requirement for shocked citizens. The number of special events permits in a year is about 1,000 so there is no way we could go out and inspect the premises for these special events. We do contact local law enforcement and sanitarian people to see if there is any problem with issuing a special permit. As regards catering endorsements, all licensees can get a catering endorsement along with their all beverage license. It enables a licensee to cater all beverages to a special event. One of the concerns of the Revenue Oversight Committee was that the catering endorsement fee was too much, especially concerning events like wedding receptions, etc. It should be more like \$10.

#### OPPONENTS:

DON LARSON, Montana Tavern Association, said if the 10 day requirement is removed, there would be no control over who or for what the permits would be issued. As regards catering, he said if a licensee isn't aware of the 10 day rule, he shouldn't have a license.

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REP. WILLIAMS: The Revenue Oversight Committee carefully analyzed this bill and it would not hurt the catering business - it would help it by making it equitable to those who want to use it.

QUESTIONS:

REP. ELLERD: How many folks did you tell to go ahead without the 10 day waiting? Ms. Feaver: We issued most permits.

REP. SCHULTZ: The \$40 was hard to raise? Ms. Feaver: It was a burden after everything else that must be purchased. The fee should be commensurate with our costs of issuing.

REP. FABREGA: How many of the people in violation of the 10 day requirement were licensees? Ms. Feaver: One that I'm aware of.

REP. PAVLOVICH: If you eliminate the 10 day requirement don't you still have to call the sheriff and different people before you issue it? Ms. Feaver: Yes, it's up to us to issue this permit and we have to have their application and a letter from the sanitarian and local law enforcement. That can take up to three days, but it virtually never takes ten days. Why build an artificial day requirement into this - we have no problem administering it without a day requirement. The citizens will be better served.

REP. FABREGA: It's an additional fee each time a licensee caters a different event. Rep. Pavlovich: The license is \$250 then it's \$40 for each event.

REP. NISBET: What is the fee for the special permits? Ms. Feaver: It's about \$25 - fairly low.

EXECUTIVE SESSION:

HOUSE BILL 132

MCA 16-4-407 Expiration of License: Paul Verdon said the statute does say specifically that the license expires on June 30.

REP. METCALF: The license expires and is subject to revocation.

REP. FABREGA: The license is a property right so it can't expire but its operation can.

REP. METCALF: I still have the problem that this bill addresses and that is that the Dept. of Revenue is out \$45,000 every year trying to collect these fees.

REP. ELLERD: I propose an amendment as follows: Line 6 following "of" strike "not to exceed". Line 8 following "here" add the following language: "if not paid within 30 days license will be cancelled." The \$500 would still have to be paid if it's late. I so move.

REP. FABREGA: I would have to oppose the amendment at this time until we decide if it's a renewal of the basic license or a renewal of the use of that license. We should clear this up before we go on.

REP. PAVLOVICH: \$500 is excessive. The original license only cost \$400. Rep. Metcalf: Then you are not covering the cost to the Department. Rep. Harper: The fee has to be based on the cost to the Department. That's their only guarantee. We are dealing with more than one license here.

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REP. WALLIN: Perhaps we should insert "use of the license."

REP. ELLISON: It's not clear to me whether or not you can cancel a license. We should clear that up.

REP. METCALF: With the consent of the Committee, I will appoint a small subcommittee to work out these problems.

REP. PAVLOVICH: When you do not renew your license, they can put a padlock on your door. They cannot take away your license, they are just suspending your business until you buy your license.

SUB COMMITTEE:

REP. PAVLOVICH, REP. KADAS, REP. FABREGA & PAUL VERDON.

They are to report back to the Committee as soon as possible.

HOUSE BILL 134

EXECUTIVE SESSION

REP. PAVLOVICH: I make the motion to DO NOT PASS. The catering endorsement should be \$40. We need the 10 day requirement for control. Leave it like it is.

REP. FAGG: We should make life as easy as possible for people.

I make a substitute motion that HB 134 DO PASS.

REP. ELLERD: If somebody wants to know the rules, they just have to call.

REP. HARPER: We have such pressing problems in this Legislature. This is not a great problem. The Department has to administer and they have indicated they need this bill.

REP. KADAS: I think it is worthwhile. The Department is going to be involved in issuing these permits, they just don't need the limit.

Question: Rep. Fagg

Motion failed 11 to 8

Motion reversed to DO NOT PASS

Motion carried 11 to 8. (Roll Call Vote Attached)

The hearing adjourned at 10:45 a.m.

  
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JERRY METCALF, Chairman

  
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Linda Palmer, Secretary

HB 134 HB 134

	Date: No:	Date: No:	Date: No:	Date: No:	Date: No:
<del>METCALF, Jerry</del>	DO PASS	REVERSE NO	DO PASS		
PAVLOVICH, Robert	yes	DO PASS			
BACHINI, Robert	no	11 yes			
ELLERD, Bob	no	8 no			
ELLISON, Orval	no				
FABREGA, Jay	yes				
FAGG, Harrison	yes				
HANSEN, Stella Jean	yes				
HARPER, Hal	no				
HART, Marjorie	no				
HOWE, Ramona	no				
JENSEN, William	yes				
KADAS, Mike	yes				
KITSELMAN, Les	no				
LYBECK, Ray	yes				
MISBET, Gerald	no				
BAUNDERS, Glenn	yes				

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MONTANA



# Tavern Association

Affiliated and Associated with the NLBA

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## STATEMENT IN OPPOSITION TO HB134 BEFORE THE HOUSE BUSINESS & INDUSTRY COMMITTEE

By: Donald W. Larson, Registered Lobbyist, Montana Tavern Association - 1/18/83

THE MONTANA TAVERN ASSOCIATION OPPOSES HB134 FOR SEVERAL REASONS, PRIMARILY THE FACT THAT THIS BILL REPRESENTS A DETERIORATION OF THE CONTROL OF SALE OF ALCOHOLIC BEVERAGES. VOTERS OF MONTANA CLEARLY SAID LAST NOVEMBER, IN SOUNDLY DEFEATING INITIATIVE #94, THAT THEY WANT REINS KEPT ON THE DISPENSING OF THESE PRODUCTS.

THE PRESIDENT OF THE UNITED STATES, OUR GOVERNOR AND ATTORNEY GENERAL ARE LEADING FIGURES IN THE NATIONWIDE EFFORT TO CURB UNDERAGE DRINKING AND DRUNK DRIVING, AND THE MONTANA TAVERN ASSOCIATION CONTINUES TO TAKE AN ACTIVE PART IN BOTH THE NATIONAL AND STATE PROGRAMS.

IF EVERYONE IS AS SERIOUS ABOUT CURBING DRUNK DRIVING AND AVAILABILITY OF ALCOHOLIC BEVERAGES FOR UNDER-AGE CONSUMPTION AS I BELIEVE THEY ARE, THIS IS NOT THE TIME TO BE RELAXING LAWS THAT CONTROL THE DISPENSING OF THESE PRODUCTS SIMPLY TO RELIEVE THE DEPARTMENT OF REVENUE FROM PROPERLY ENFORCING EXISTING AND WORKABLE LAWS.

I WOULD REMIND THE COMMITTEE THAT THIS BILL (PAGE 9, LINES 17-19) REMOVES THE REQUIREMENT FOR INSPECTION OF PREMISES FOR SPECIAL EVENTS, SUCH AS KEGGERS. MOST OF THESE FUNCTIONS TAKE PLACE IN AREAS THAT ARE FAR MORE ACCESSIBLE TO YOUTHS THAN A LICENSED PREMISE. THERE ARE COMMUNITIES IN THIS STATE THAT HAVE HAD SOME SAD EXPERIENCES WITH KEGGERS, AS EVERYONE MUST BE AWARE. THERE IS NOTHING TO BE GAINED...



BUT PLENTY TO LOSE...IF WE RELAX THE RESTRICTIONS ON THESE EVENTS.

THE BILL CALLS FOR THE APPLICATION TO BE FILED WITH THE DEPARTMENT "PRIOR" TO THE EVENT. THIS IMPLIES A TIME FRAME, BUT WE DON'T KNOW WHAT THAT IS. ONE DAY? ONE HOUR?

WHAT IS SO WRONG WITH THE 10 DAYS? AT LEAST THIS GIVES THE PUBLIC AN OPPORTUNITY TO PROTEST THE ISSUANCE OF THE PERMIT AND THE OFFICIALS A CHANCE TO CHECK THE VALIDITY OF THE APPLICATIONS...AND THE QUALIFICATIONS OF THE APPLICANTS.

WE HOPE THIS COMMITTEE WILL NOT SCUTTLE A LAW THAT HAS SERVED TO PROTECT THE PUBLIC AND HAS, AT LEAST, SOME MEASURES OF CONTROLLING THE OPERATION OF FUNCTIONS OUTSIDE REGULARLY LICENSED PREMISES.

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Donald W. Larson  
Registered Lobbyist  
Chairman of the Board  
Montana Tavern Association  
Jorgenson's Restaurant & Lounge  
Helena, Montana

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HB 134

# STANDING COMMITTEE REPORT

January 18

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**Speaker:**

MR. ....

We, your committee on ..... **BUSINESS & INDUSTRY** .....

having had under consideration ..... **HOUSE** ..... Bill No. **134** .....

**A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE 10-DAY APPLICATION FILING REQUIREMENT FOR ALL-ALCOHOLIC BEVERAGES LICENSE CATERING ENDORSEMENTS AND BEER AND TABLE WINE SPECIAL PERMITS; REMOVING THE DEPARTMENT OF REVENUE'S INVESTIGATORY DUTIES FOR SUCH ENDORSEMENTS AND PERMITS; REDUCING THE CATERING APPLICATION FEE; AMENDING SECTIONS 16-4-204, 16-4-301, AND 16-4-402, MCA."**

Respectfully report as follows: That ..... **HOUSE** ..... Bill No. **134** .....

**DO NOT PASS**

**REMARKS**

## VISITORS' REGISTER

HOUSE

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COMMITTEE

BILL

HB 132 HB 134

Date

1-18-83

SPONSOR

Williams

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IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.