

MINUTES OF THE MEETING  
BUSINESS & INDUSTRY COMMITTEE  
MONTANA STATE SENATE

March 15, 1985

The thirty-ninth meeting of the Business & Industry Committee met in Room 413/415 of the Capitol Building on Friday, March 15, 1985. The meeting was called to order by Chairman Mike Halligan.

ROLL CALL: All committee members were present except for Senator Goodover who was excused.

CONSIDERATION OF HOUSE BILL 395: Representative Dave Brown, House District #72, of Butte, is the chief sponsor of this bill which is an act to provide that certain purveyors of alcoholic beverages are not liable for injury or damage caused by consumers as a result of the consumption of such beverages. The bill would put the responsibility with regard to consumption of alcoholic beverages back on the individual. He further explained his bill would not go much beyond what existing court cases have already decided. It would just put the responsibility back on the individual. He did offer one amendment to keep the liability for the employer if an employee should consume alcoholic beverages while on duty and then be involved in an accident. (EXHIBIT 1) He explained also that in the House hearings they had amended the bill to make certain that the effect of this statute does not impact the sale of liquor to minors nor remove the criminal penalties if one should push drinks on someone and be found guilty of such.

PROPOSERS: Donald Larson, representing the Montana Tavern Association, the National Beverage Association, and also a businessman here in Helena, testified in support of House Bill 395. He stated in 30 years of being in business, he had only filed three claims against his liability insurance and was now being told his policy will not be renewed. He feels he is not an isolated example that this is happening all over the country. Many business places have closed their doors because they were unable to obtain liability insurance. (EXHIBIT 2)

Roger McGlenn, Executive Director of the Independent Insurance Agents of Montana, stated they are in support of HB 395. He stated many clients are finding the costs of liquor liability insurance to be prohibitive. Many of the insurance companies have removed themselves from the market in past months and it is getting harder and harder to obtain this type of insurance. He feels this bill would place clear language in Montana statutes and assist in stabilizing the liquor liability insurance market in the state.

Glen Drake, representing the American Insurance Association, stated both the cost and being able to obtain the insurance is getting to be quite a factor. He feels this bill will address who is responsible for the act of drinking and he urged support.

Roland Pratt, Executive Director of the Montana Restaurant Association, appeared in support of the legislation proposed in HB 395.

OPPONENTS: Jean Bender, a research editor with "Montana Law Review" and an intern for the Missoula County Attorney's Office, appeared in opposition of HB 395. She stated that the Missoula County DUI task force also opposed this legislation. She feels it is overbroad and unnecessary and would seriously undermine the efforts being made to remove the drunk driver from the highway. She feels there is a gap in the bill because it does not address the problem of the person who is obviously intoxicated or the incompetent person who is unable to control his drinking if he is an adult. The current trend is toward imposition of responsibility. She feels the bill is unnecessary because Montana has never imposed liability on anyone who provides liquor to a third party. Concerning insurance, she felt that Montana barowners are not at a great risk of being liable because of the past decisions of the Supreme Court. She feels these costs could be passed on to the customer by raising the price of drinks. She feels Montana has a strong statutory policy in getting drunk drivers off the road. She thought this bill would tell the people that if a person sets someone out on the road who is drunk and should not be driving that he will not be held liable. (EXHIBIT 3) Ms. Bender also distributed a letter from the Missoula City-County Health Department summarizing their position. (EXHIBIT 4)

Karl Englund, of the Montana Trial Lawyers Association, spoke in opposition of the legislation proposed. He stated in Montana we have several statutes in regard to the selling of liquor to minors and intoxicated persons and our courts have never found a person liable for such acts committed by an intoxicated patron or guest. The court has upheld that the drinking and not the serving of alcoholic beverage has been the major cause of the accident. In a 1979 case the courts recognized that imposing dramshot liability is a departure from common law and have deferred to the legislature. There has not been any "outrageous" case where the individual was clearly intoxicated and then put into a car and later involved in an accident. He stated under this bill no person serving the alcohol would be liable in this type of situation. He feels if there is concern that the court will depart from its current position there may be an opportunity to work out some language for an exclusion. He submitted an amendment also. (EXHIBIT 5)

Questions were then called for. Senator Fuller asked if Karl Englund would support the bill if there was different language stating in effect no liability unless there is gross negligence or something of this nature in the bill. He felt that the increased thrust has been toward putting more responsibility on the individual and that this bill would be going along with this philosophy. Karl Englund agreed with this but felt such situations as the extreme example was still a matter of great concern.

Senator Boylan asked if by legislation they were trying not to protect the barowner and struggling to survive. Karl Englund stated if there has been a reaction by the insurance industry because of court actions and if the legislature wants to insure that the courts do not depart from this then this is their prerogative but he feels this bill goes

beyond what the courts have stated and excludes liability in the outrageous situation.

Senator Williams wondered if all parties were to go to court and were found guilty of serving the person if the insurance costs would go up. Roger McGlenn responded that he believes it is a national trend for costs to rise. He felt it is because there is no statute in Montana that there is some uncertainty and also because of bad faith punitive damages. Senator Christiaens asked Roger McGlenn if they underwrite on past history when writing a policy and Roger stated they do but also on speculative risk assumptions and with no statute to go by there is some fear. He stated more and more companies are ceasing to write this type of coverage and it is getting to be a case of availability rather than affordability in the state of Montana.

Senator Christiaens asked Karl Englund to give a definition of malice and he stated it is one who knows or has reason to know and then proceeds in conscious disregard of the facts. Senator Fuller then asked Karl Englund if it were possible to define the outrageous situation, if he would then respond favorably to the bill. Karl Englund stated it would take away some of his concerns.

Senator Gage wondered if the penalty for serving liquor to a minor was not affected in this bill because this is a criminal offense. Senator Brown explained his bill affects the situation of a person serving someone and then they in turn cause injury to someone else. He feels the consistency of the laws are to deal with alcohol in a responsible manner.

Senator Halligan asked Joan Bender how many other states do not impose penalties for gross negligence or misconduct. She felt there were none that were as broad or as encompassing as this particular piece of legislation. She was also opposed because this would close off people who may have a right to sue someone who was definitely in the wrong for their actions. Representative Brown stated in closing that the insurance situation is getting to the point of being unaffordable and unavailable. He feels the bill would have an impact on everyone. He feels the responsibility for drinking should remain with the individual and urged passage of his bill with the amendment. The hearing was closed on House Bill 395.

CONSIDERATION OF SENATE BILL 391: Senator Christiaens noted in subcommittee action they had decided to strike out the 60 month lease time period and make it a minimum of 30 months. There would also be an option of being able to lease or buy the machines. There would also be amendments by the department of revenue to raise the percentage from 15 to 30% the costs the first year to absorb the cost of setting up the program. Language was also struck stating the manufacturer had to be in state. They had changed coin to cash in the language and struck out manufactured or assembled on page 2. They inserted inspected in the state of Montana for certification and licensure by the department of revenue. They also recommended language that the machine must use a color display with images of cards to resemble poker cards. The department would have the authority to collect delinquent taxes. The percentage the department could use

would be 15% after the first year for administration. On page 10 they have inserted language concerning the administration and control by the department and also stated that the department is a criminal justice agency and designated employees are granted peace officer status.

On page 12 there is language stating that a distributor shall maintain a facility for the inspection of video draw 80 poker machines to ensure conformity. The annual fee would be from \$12,500 to \$10,000. The lease was changed to 30 months. Senator Christiaens noted there was still some questions as to the state's percentage.

CONSIDERATION OF HOUSE BILL 618: Representative Jack Sands, House District #90, Billings, explained his bill would change the legal interest rate from 6% to 10%. It just reflects commercial reality. He explained it would clarify the situation where someone owes some money and the interest rate has not been established. He felt it just reflects in a more realistic line what rates actually should be.

PROPOSERS: There were no proponents.

OPPOSERS: There were no opponents.

Questions were then called for from the committee. Senator Fuller wondered if the rate would have to be 10% and Rep. Sands stated no, this would just apply in a case where no interest rate had been stated.

DISPOSITION OF HOUSE BILL 618: Senator Thayer MOVED TO CONCUR IN HOUSE BILL 618. The motion carried with Senator Neuman voting no. Senator Goodover was not present for the vote. Senator Christiaens will carry the bill on the Senate floor.

FURTHER CONSIDERATION OF SENATE BILL 391: John LaFaver from the Department of Revenue stated their fiscal numbers indicate that a substantial startup cost would be approximately \$873,000 in FY86, but in FY87 they estimate it would fall back to \$556,000. He explained the net revenue figures he quoted would be on the assumption that the administrative costs were subtracted from the total revenues received. The way the bill stands presently, the general fund would receive \$10 million over the first biennium. The local governments would receive \$22 million. There could be other ways of breaking out the different options and he had these figures for the committee also. (EXHIBIT 6)

Questions were then asked from the committee. Senator Neuman wondered what the return would be to the tavern owner and Senator Christiaens responded that he felt we should not set this amount, it should be left up to the bar owner and the machine operator. He felt this was the free enterprise portion of the business and should not be tampered with. John LaFaver noted the way it stands currently the bar owner did not own the machine and therefore did not have any return on that investment. But if the amendment is agreed upon, the bar owner could own the machine. He felt that the return would still be 20% regardless

of who owns the machine. Senator Williams felt that \$850,000 was a bit low to set such a system up and John LaFaver responded with the technology available they would be saving personnel by using the computers and this was a reasonable figure. Senator Gage wondered about the figures that were quoted before concerning the time period for paying off the lease and Senator Christiaens felt by working up the lease themselves it would allow the freedom to pass on tax credits and leave an option open to them.

Senator Christiaens felt there were areas that still needed to be addressed. He suggested the 40% percentage to the licensee and the bar owner be stricken and be negotiated between the two parties themselves. Senator Fuller wanted to be certain that the bar owner could choose the machine operator he wanted. Senator Christiaens stated he thought there were between 20 to 26 companies they could choose from. John Poston confirmed this and that most of these were from out of state. Don Larson was asked if it would be a disadvantage to the bar owner to work out the percentages and he stated he felt not. Senator Neuman felt some areas would have more leverage than others such as a high volume area in a large town as opposed to a small rural town. Senator Gage felt by putting ownership into the bill this was just another leverage tool to the bar owner. Senator Christiaens then MOVED TO STRIKE LINE 18, 19 and 20 REMOVING THE PERCENTAGES ON PAGE 8. The motion carried. The committee will try to take more action of Senate Bill 391 on Monday, March 18.

CONSIDERATION OF A PROPOSAL BY THE BOARD OF ECONOMIC DEVELOPMENT:  
Dale Harris, Deputy Director of the Board of Economic Development for the State of Montana, explained that he wanted to discuss a matter of policy which has arisen as a result of a request to the board concerning multi-housing projects under \$1 million. He explained they have the authority by statute to do this but just wanted some legislative direction as they have received 3 or 4 inquiries now for this type of project. He noted the Board of Housing can do this but it is the size of the project that is at issue. They only do stand-alone projects.

Alan Nicholson, a developer from Helena, spoke briefly to the committee on the advantages of having the financing arranged through the board.

The meeting was adjourned at 12:10 p.m.

  
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SENATOR MIKE HALLIGAN, CHAIRMAN

ROLL CALL

BUSINESS & INDUSTRY

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3/15/85

SENATE  
SENT  
#

NAME	PRESENT	ABSENT	EXCUSED
Chairman Halligan	X		
V-chrm. Christiaens	X		
Senator Boylan	X		
Senator Fuller	X		
Senator Gage	X		
Senator Goodover	E		
Senator Kolstad	X		
Senator Neuman	X		
Senator Thayer	X		
Senator Williams	X		
Senator Weeding	X		

Each day attach to minutes.

MARCH 15, 1985

BILL NO. 395

## VISITOR'S REGISTER

[illegible]

(Please leave prepared statement with Secretary)

Proposed amendment to HB 395, third reading copy.

1. Page 1, line 24.

Following: "45-5-623"

Insert: "or to an employee of the person or entity if the employee is on duty  
and consumes the alcoholic beverage while on duty"

EXHIBIT 1  
BUSINESS & INDUSTRY  
March 15, 1985



MONTANA



# Tavern Association

Affiliated and Associated with the NLBA

STATE HEADQUARTERS / 7 EDWARDS / LIVESTOCK BLDG. / P. O. BOX 851  
HELENA, MONTANA 59624-0851 / PHONE 406-442-5040

TO: SENATOR MIKE HALLIGAN, CHAIRMAN  
MEMBERS OF THE SENATE BUSINESS & INDUSTRY COMMITTEE

RE: HB395 - HEARING DATE: MARCH 15, 1985

I AM DONALD W. LARSON AND I SPEAK TO YOU TODAY IN THREE CAPACITIES: AS CHAIRMAN OF THE BOARD OF THE MONTANA TAVERN ASSOCIATION, AS PRESIDENT OF THE NATIONAL LICENSED BEVERAGE ASSOCIATION, AND AS AN INDIVIDUAL RETAIL LIQUOR LICENSEE.

I AM A CO-OWNER AND MANAGER OF JORGENSEN'S RESTAURANT & LOUNGE IN HELENA. IN THE PAST 30 YEARS OF DOING BUSINESS HERE, WE HAVE FILED ONLY THREE CLAIMS AGAINST OUR LIABILITY POLICY. YET, I HAVE BEEN INFORMED THAT MY POLICY WILL NOT BE RENEWED BECAUSE THE INSURANCE CARRIER WILL NOT ASSUME THE RISK OF WRITING LIABILITY COVERAGE FOR LIQUOR LICENSEES BECAUSE OF THE UNCERTAINTIES IN STATE LAW, COUPLED WITH PUBLIC POLICY REGARDING DRINKING.

MINE IS NOT AN ISOLATED EXAMPLE, AND MONTANA IS NOT AN ISOLATED STATE. AS PRESIDENT OF THE NATIONAL LICENSED BEVERAGE ASSOCIATION, I CAN TELL YOU THAT THIS PROBLEM IS VERY REAL THROUGHOUT THE COUNTRY AND OUR MEMBERS IN MANY STATES ARE FACING ANOTHER OBSTACLE IN OPERATING THEIR BUSINESSES BECAUSE THEY ARE EITHER BEING REFUSED RENEWAL OF THEIR LIABILITY COVERAGE, OR THEY ARE BEING FACED WITH SUCH HIGH COSTS THAT MANY MAY HAVE TO CLOSE THEIR DOORS RATHER THAN ASSUME THE HIGH RISK OF OPERATING WITHOUT PROPER COVERAGE.

I URGE THE PASSAGE OF HB395, AS AMENDED, SO WE CAN HAVE SOME ESTABLISHED GUIDELINES IN OUR STATUTES AND, AS A VULNERABLE INDUSTRY, WE WILL BE ABLE TO SECURE INSURANCE PROTECTION THAT IS ABSOLUTELY ESSENTIAL TO THE OPERATION OF A TAVERN BUSINESS.

THE TREND IS CLEARLY TOWARD IMPOSITION OF RESPONSIBILITY

1. All fifty states have beverage control acts which make sale of alcohol to minors or intoxicated persons a crime. Twenty-four jurisdictions have held that these statutes are intended to protect the public. This indicates that members of the public then have a right to sue if they are injured by a violation of the beverage control statute.

2. Twenty-seven states have modified the common law rule and allow sellers to be held civilly liable.

3. Eighteen states currently have "dramshop acts" in effect which impose civil liability on sellers of liquor for acts of a customer which result in injury to a third person. Dramshop acts may limit the amount of recovery or the class of persons who can sue. Three states, California, Utah, and North Carolina, have passed these acts since 1978.

4. Only six states have "anti-dramshop" acts similar to the legislation before this committee. Those acts are all more limited than the one here.

Alaska only imposes liability on those who are licensed by the state and then only if the person who is given liquor is over 19 and not a "drunken person."

Florida also imposes liability if the seller willfully sells to one who is "not of lawful drinking age... or [is] ... habitually addicted to the use of any or all alcoholic beverages..."

Oregon excuses social hosts unless they serve a guest who is "visibly intoxicated" or who is known to be a minor. Licensees are only liable for serving minors if it can be shown that they should have requested identification or that they should have realized that the identification shown was faulty.

Pennsylvania excuses licensees unless the "customer was visibly intoxicated."

New Mexico limits liability to licensees who sell to an intoxicated person. The licensee must know the person is intoxicated. A social host is liable only if the alcoholic beverage is "provided in reckless disregard of the rights of others, including the social guest."

Indiana only limits liability if the liquor is furnished by an educational institution.

5. Only ten states -- including Montana -- still adhere to the rule that there is no liability for providing intoxicating liquor to another.

TO PROVE LIABILITY, A PLAINTIFF WOULD STILL HAVE TO SHOW THAT THE PROVIDER ACTED IN A NEGLIGENT MANNER.

THERE IS NO REASON TO SINGLE OUT PROVIDERS OF ALCOHOLIC BEVERAGES FOR THIS SPECIAL EXEMPTION.



# MISSOULA CITY-COUNTY HEALTH DEPARTMENT



301 West Alder • Missoula, Montana 59802 • Ph. (406) 721-5700

March 12, 1985

EXHIBIT 4  
BUSINESS & INDUSTRY  
March 15, 1985

Senator Mike Halligan, Chairman  
Business and Industry Committee  
Montana State Senate  
Helena, Montana 59624

Dear Senator Halligan:

Representative Dave Brown of Butte has proposed H.B. 395 which would remove all liability for purveyors of alcohol for damage done by a consumer. We are opposed to this bill.

This all-encompassing bill removes all liability for selling, serving or giving alcohol by bars, restaurants, clubs or individuals no matter what kind of injury, damage or death results from the consumption of the alcohol. The bill covers all circumstances no matter how gross the negligence of the server. Someone who directly serves an obviously intoxicated person knowing that person is about to leave the premises by automobile will not be liable.

Adults should be held to be responsible for their actions when they choose to consume alcohol. It is also true that a person under the influence of alcohol is in the poorest position to understand when he has had too much to drink. As alcohol is absorbed into the body, one of the first effects is the impairment of judgment. A sober person serving alcohol is in a better position to judge whether or not the drinker has had too much.

Certainly every person serving alcohol should not be held responsible for all actions of their consumers or guests. There may be, however, certain egregious circumstances in which a server's behavior is so negligent that he or she should be held liable. The wording of the bill is such that no liability may ever be found. A reasonable method of limiting liability is acceptable. This proposal is not reasonable and is in opposition to the public policy frequently expressed by the Montana Legislature discouraging actions which lead to drinking and driving.

We strongly urge you to oppose this bill.

MISSOULA COUNTY DUI TASK FORCE  
(See attached signature list)

cc. Senator William Norman, President  
Committee on Business and Industry  
Missoula delegation

James A. [unclear] [unclear] Court [unclear]

Ellen Leach Missoula City-County Health Dept.

W. H. Handlin 485 1st St.

Donag Baertoch Missoula County 9 1-1

Don Handlin M. H. P.

Don Millhouse Missoula Police Dept.

Betty Wing Deputy County Attorney

Harold Hoig Missoula Co. S.C.

Carroll Stull Missoula C.P.

W. Van Dicken Missoula P.D.

Wm. G. [unclear] Missoula City Attorney

Sam Warren Deputy City Attorney

Conneth S. Buchanan Ch. Missoula County P.D. Task Force

# Montana Trial Lawyers ASSOCIATION

## Directors:

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Bernard J. Everett  
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Secretary-Treasurer  
Governor:  
Wade J. Dahood  
Executive Director:  
Carol Harrison

Proposed Amendment to H.B. 395

Page 1, line 23:

Delete: "under the legal drinking age"

Page 1, line 24, after "16-3-301":

Add: "16-6-304"

EXHIBIT 5  
BUSINESS & INDUSTRY  
March 15, 1985

# DEPARTMENT OF REVENUE



TED SCHWINDEN, GOVERNOR

MITCHELL BUILDING

## STATE OF MONTANA

HELENA, MONTANA 59620

March 15, 1985

EXHIBIT 6  
BUSINESS & INDUSTRY  
March 15, 1985

### MEMO

TO: Senate Business and Industry Committee

FROM: John D. LaFaver *John D. LaFaver*  
Director

SUBJECT: Alternate Revenues for SB391

#### SB391 As Introduced

	<u>FY86</u>	<u>FY87</u>	<u>Biennium Total</u>
State (20% x 25%)	\$3.8M	\$6.3M	\$10.1M
Locals (20% x 75%)	<u>4.1M</u>	<u>7.8M</u>	<u>11.9M</u>
Total Public Revenues	\$7.9M	\$14.1M	\$22.0M

#### Version #2 SB391

State (30% x 50%)	\$6.5M	\$11.5M	\$18.0M
Locals (30% x 50%)	<u>4.1M</u>	<u>7.8M</u>	<u>11.9M</u>
Total Public Revenues	\$10.6M	\$19.3M	\$29.9M

#### Version #3 SB391

State (30% x 75%)	\$8.6M	\$15.4M	\$24.0M
Locals (30% x 25%)	<u>2.0M</u>	<u>3.9M</u>	<u>5.9M</u>
Total Public Revenues	\$10.6M	\$19.3M	\$29.9M

(The state revenue shown in all three versions also includes \$3.3 million in FY86 and \$4.2 million in FY87 for licensing fees.)

# STANDING COMMITTEE REPORT

MARCH 15

85

19.....

MR. PRESIDENT

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

having had under consideration..... **HOUSE BILL** No. **618**

third reading copy ( blue )  
color

**TO RAISE THE LEGAL INTEREST RATE FROM SIX PERCENT TO TEN PERCENT**  
**(Christiaens)**

Respectfully report as follows: That..... **HOUSE BILL** No. **618**

BE CONCURRED IN

~~XXXXXX~~

~~XXXXXXXXXX~~

**Nike Halligan**

Chairman.