

MINUTES OF THE MEETING  
BUSINESS & INDUSTRY COMMITTEE  
MONTANA STATE SENATE

February 19, 1987

The twenty-fourth meeting of the Business and Industry Committee was called to order by Chairman Allen C. Kolstad at 9:30 a.m. on February 19, 1987 at 10 a.m. in Room 410 of the Capitol.

ROLL CALL: All committee members were present.

CONSIDERATION OF SENATE BILL NO. 293: Sen. Paul Boylan, Senate District 39, Bozeman, chief sponsor of the bill, said the bill amends the draw poker gaming machine law to legalize "21" machines. A place licensed to sell alcoholic beverages for consumption on the premises could license up to two machines. The state would charge the same license fee of \$1500 per machine for each machine licensed. A description of the machine is contained in section (2), subsection (6).

PROPOSERS: Steve Wilken, Steer In, Three Forks, and also the Gambling Chairman for the Montana Tavern Owners' Association, said they felt the video "21" would be just an extension of the games allowed presently. They thought this might be of help to some of the smaller areas.

Don W. Larson, registered lobbyist for the Montana Tavern Association, said on behalf of that Association he encouraged the support of SB 293.

Bob Fletcher, owner of the Cannery Lounge and a small package liquor store in Bozeman, encouraged the support of SB 293. The drop in liquor sales has been from 10 to 3 drinks per person and they look to a bill of this type to possibly help them stay in business. They figure to stay in business they have to sell at least three drinks per customer. He said it would be good for the state, cities and counties and they all need the revenue this would generate.

John Hooper, owner of the Hideaway Lounge in Bozeman, and also representing 80 tavern owners in Gallatin County, urged the committee to pass the bill.

OPPOSERS: There were no opposers.

DISCUSSION OF SENATE BILL NO. 293: Chairman Kolstad asked for questions from the committee members.

Sen. McLane asked Mr. Strobe if this was in any way contingent on the passing of the live "21". Mr. Strobe said it was not and they were totally independent.

Sen. Meyer referred to page 4 where it said the cards shall be shuffled after each hand and wondered if they were talking about

a card game also but the answer was that the cards were in the machine.

Sen. Williams asked about "insertion of cash" on page 2, if that means 25¢ or paper dollar or what does that mean. Sen. Boylan said the quarter machines have a \$2 limit which is the same as the draw poker machines. Mr. Strobe said it is designed to take the existing law that has been in effect for two years and add two more machines tied to that law.

Sen. Thayer asked why the difference in the payouts between these machines and the poker machines. Ms. McCue said she had the assistance of Rick Barber of Treasure State Games in drafting the bill and he told her that with this kind of game it is difficult to have a precise payout so those percentages were given to her by Mr. Barber. Mr. Strobe said he was not an authority on random selections by machines but he said that statement would be correct. In the case of the keno and poker machines where it is a five number selection the probability factor is easier to quantify than in playing the game of "21" which is primarily dominated by the first two selections that are made by the machine. Therefore, the other machines can be quantified more accurately. That is why they had to come up with a variable factor.

Sen. Thayer asked about the change from 5% to 3%. Ms. McCue said the bill would go into effect on July 1st and that 5% is only until the end of the fiscal year so after that it becomes superfluous. He pointed out that there is another bill that has been introduced to eliminate the fees altogether and go to a flat percentage; if that bill was passed would it also apply to this bill. Ms. McCue said that it would if it replaced that language with something else then that would be the law. It would perhaps need a coordination instruction, she said.

Sen. Williams referred to the 87 1/2 to 92 1/2% and asked if that was a percentage they could live with. Mr. Wilken said he believed that would be true and also said he had three machines in his establishment that pay over 90%. He said he had found out that the more the machine pays, the more money they make. One of his machines pays 93% and that is the most productive poker machine.

Chairman Kolstad asked Mr. Wilken if the machines were pretty simple to adjust as to the payout. He replied that they come from the factory already set and sealed. They can't change the setting of the machines as far as the odds.

Sen. Thayer said people in the gaming business have told him that everytime something is added to the gaming industry it just dilutes the market. He wondered if there was any validity to that statement. Sen. Boylan replied that it would give them some flexibility if they have the clientele and they think there is a market for this type of machine.

Mr. Hooper said he had people in his establishment that do not

play the poker machines but have interest in the bill and would play the "21" machines.

There being no further questions, Sen. Boylan closed on SB 293. He said this was not adding to the machines in an establishment; it just gives them the choice of machines to take care of different people in different areas.

CONSIDERATION OF SENATE BILL NO. 341: Sen. Thomas Keating, Senate District 44, Billings, chief sponsor, said the bill amends the laws concerning employment agencies. It transfers regulation of agencies from the department of labor and industry to the department of commerce. The bill also allows a privately owned employment agency to charge a fee for referring an applicant to a state employment office if a prospective employer does not accept a referral directly from a private employment agency and the applicant gets the job as a result of the referral by the private agency.

PROPOSERS: Jim Rowe, Personnel Systems, Inc., Missoula, which is an applicant paid fee agency. He asked that the inequities in the law be corrected. He said when a candidate goes into a job service office federal funds are dispensed to compensate the agency for the time that is spent on that registration. This is accomplished under a formula. He said they were prevented, at this time, from charging even a nominal registration fee. He pointed out that unions are allowed to charge a sign-up fee and as an example, the union in Missoula charges \$10 per month to put a person's name on the list waiting for the possibility of an opening and at present, they have over 200 people on that list. He said if they had a nominal front-end charge it would enable them to cut the contingency fees that they now charge. This makes it expensive for the candidate who is placed in a job. The mandate to the job service is to serve the handicapped, unskilled, farm labor and veterans and that is a proper area for the government to be working in, according to Mr. Rowe. However, he said, they do not need the job service in head-on competition with the private recruiting industry. He said he has also run into exclusive agreements between major employers and the job service and they will not consider a candidate from his agency.

Roger Koopman, Career Concepts, Bozeman, which has been in operation since 1980, encouraged the committee to direct any questions to the proponents present. He referred to a copy of a check in the amount of \$1,301 written in 1985 by the department of labor to Roger Koopman d/b/a Career Concepts. The reason for that check illustrated the need for this reform. He said that after a couple of years of harrassment and hammering by the department of labor, he talked to the department and the job service and asked them why these competitive practices were taking place so intensely on the part of the job service and the unfair harrassing type of regulations by the department of labor. They told him that as the laws were set up they saw the job service as very directly in competition with private agencies

and they would use all the means available to compete with him in the marketplace. He said about 1 1/2 years after that meeting there was a directive from the department of labor that essentially interpreted their current contract as possibly putting every agency in the state out of business had it been enforced and complied with. The justice court in Bozeman handed down a ruling that stated the department of labor was totally wrong in their interpretation of the contract. Following that, the job service denied him his license renewal even though there was the ruling by the local court. He said there was no notification, no opportunity to give input, no hearing. This was on the front page, headline of the Sunday Bozeman Chronicle. He sued the state and ultimately at the end of the year he had won and the court ruled that the department was not only wrong in its interpretation of the contract but had violated its own administrative procedures act and had denied him due process of law. The \$1300 was what they paid him back for court costs and attorneys fees. He said there is a serious conflict of interest by the department of labor regulating employment agencies. There is also a serious problem with denial of due process of law the way the current act is written. He said the bill would put them under the department of commerce where they properly belong, would allow them the proper judicial due process of law and the enforcement would be at the local level under the county attorneys' office. However, he said the current situation is not good and encouraged the committee's support of the bill.

Steve Whitney, Personnel Systems, Inc., Missoula, urged the committee to support SB 341. He said he had 8 years experience with the job service and 3 years in the private sector specializing in career change problems with adults. He said he felt that private agencies have their place in the marketplace and the improvements asked for in the bill would allow them to function more fully. His concern was that the field of mid-career changes has grown greatly and the majority of those people have come as referrals from private placement agencies. Some of the instruments to help these people are not available to the job service and are available only in the private sector. At the present time, he said, they are being precluded from offering those services. He said the improvement on page 4, line 3 where certain fee language is stricken is very good.

Peg Hartman, Department of Labor and Industry, said they encourage the enforcement of the Employment Agency Act. She referred to the fiscal note and said there was only about \$4,000 that comes with this per year. She said that the employment service, which had been painted as a villain, is funded by employers and when he chooses to exclusively list his job openings with an agency he should be free to do that. She called the committee's attention to page 4, line 11-16. This portion of the bill violates a section of federal law which forbids the public employment service from being an agent when the applicant is charged a fee. She felt if lines 11-16 were deleted the department would support the bill.

Sandy Nelson, Careers Unlimited, expressed her support of SB 341.

Dorothy Rowe, co-owner of Personnel Systems, Inc., said she also supported the bill for the reasons stated above.

OPPONENTS: There were no opponents.

Senator Neuman assumed the Chair in order that Sen. Kolstad could attend another hearing.

DISCUSSION OF SENATE BILL NO. 341: Questions were called for from the committee.

Sen. Williams asked Sen. Keating to respond to the statement that this violates federal law. Sen. Keating said he was not familiar with federal law that was cited in testimony. Sen. Keating noted that Sen. Van Valkenburg was also a co-signer and expressed his regrets that he couldn't remain because of executive action in another committee, however, he said he would have to see the federal law in order to understand it and he would want to make certain. He said he did not doubt Ms. Hartman's testimony at all but said he hadn't seen that section of the federal law as it applies to the wording in the bill. These agencies are denied their proper compensation because of an agreement between job service and an employer where it makes it exclusive and it's a restraint of trade and unfair. Sen. Keating said he challenged the department to provide some specific correlation between the language presented in the bill and the language in the federal law from which they derive their interpretation.

Sen. Williams asked if that challenge was met and it violates federal law, what would this do to the bill. Sen. Keating said he obviously wouldn't encourage the legislature to do something that would be unlawful or the private sector either. If that language should be stricken that is what would have to be done, obviously. It would only extract the section that dealt with the conflict between job service and the agencies. The rest of the bill, he said, was still necessary. He said he would fight to the bitter end to make certain that the content stays the same until determined otherwise.

Chairman Kolstad noted that the bill provides for a fee for the private employment agency services and asked if the fees were specified and how much. Sen. Keating replied that the fee is specified in the contract but he deferred it to other people present at the hearing, but it was not specified in the bill. He said there was an amendment to insert "placement" in several places throughout the bill to specify that it is a placement fee which differs from the other fees. The placement fee that is charged is written on the contract and they do vary somewhat. There would be a different contract where the employer pays the fee.

Mr. Rowe pointed out that it is a contingency fee and has to be reasonably substantial because for every fee they do collect they may also have five or six from which they collect nothing but yet put in a great deal of time.

Sen. Walker said he understood Sen. Keating to say there was an unfairness; that there are applications with the employment service that are not allowed for the private agencies. Sen. Keating responded that the department of labor regulates the private agencies and provides its own job service placement agencies so there is a conflict of interest. Federal programs such as SETA, WIN, etc., will not allow for the payment of a private employment agency fee from the employee if those people are placed. They can receive a placement fee from the employer if there is an agreement to that. It's unfair when an employer tells a candidate they have to go through job service in order to get the job even though they were sent to the employer in the first place by the private agency.

Chairman Kolstad asked Sen. Keating if he was familiar with how this was handled in other states. Sen. Keating deferred to Mr. Rowe who had worked in both the job service and the private sector.

Mr. Rowe said it was about 50-50 - 50% of the states are operating as this law would dictate. Some of the states have no regulation at all and no licensing. Ms. Hartman said the states that had deregulated are now reregulating and cited Arizona who recently passed a much more stringent law.

Sen. Thayer asked the department what their response was to the statement that these people have to get a slip from the job service before they can be hired. Ms. Hartman said they could not require an employer to use the services of the job service; the employer makes that decision.

Sen. Thayer asked Mr. Koopman if they were allowed to charge an up-front fee would they be able to decrease their other fees on the actual placement and asked him for an idea on what they might expect that up-front fee to be and what adjustments might be made following that. Mr. Koopman deferred to Mr. Rowe and said in his particular case he didn't think he would change his current structure to charge an up-front fee. Mr. Rowe said the restriction against that has been broadly interpreted by the department and this was directed specifically at Mr. Koopman in their complaint that was filed within the last year that said they could not make any charge for any other service. They explain to the candidate that it is a contingency basis, if they are interested they go to work and help them find employment.

Sen. Weeding asked how many and who had these exclusive agreements and what was the reason for that. Ms. Hartman said she

did not know and that they did not ask employers to sign an agreement but that it was an oral agreement and it was their choice. She presumed they chose the job service because it is free and also because their tax dollars are invested in it.

Sen. Williams asked Sen. Keating if the department of commerce was aware of this transfer. Sen. Keating replied that he really couldn't answer that but believed they follow the bills closely and, therefore, would be aware of it and he had not heard from them stating their objection.

Sen. Walker asked if there was a benefit for employers going exclusively through the job service. Mr. Rowe said he had asked them that question and they say they really can't answer that and in the case of Plum Creek, they say their head office has an exclusive agreement although they would like to work with the agencies. He said he had done a survey of some of the larger industries in the Gallatin valley and said there was probably a dozen that have exclusive agreements with the job service. Several of the people told him they would like to work with private agencies but they were precluded from doing that by the company policy. One company head remarked to him that the reason they use the job service is "they keep us out of trouble" as far as EEO, etc. He said the tragedy is, they have qualified applicants that they cannot refer and these people have a right to have access to those jobs.

Sen. Walker stated that other employers only go through private agencies because they feel they get very selective screening and get what they want. He thought the job service would have a legitimate gripe against that. Sen. Walker felt it was a management problem. Mr. Koopman said it was the policy of any professional employment agency to never seek exclusive hiring agreements with companies. One of the reasons he never had and never would is because it would be a violation of Federal Anti-Trust and the Sherman Act and would be a restraint of trade. Second, he said, he didn't feel it was right. The government has a lot of unfair advantages in this area.

Sen. Walker asked Ms. Hartman if the employers going through the job service are relieved of all liabilities because of the EEO. Ms. Hartman said that many employers have been sued because of that and sometimes the job service has been named as a party also.

There being no further questions, Sen. Keating closed on SB 341. Sen. Keating, addressing Sen. Walker directly, said that page 4, line 11-16, was not trying to deny the job service having those voluntary exclusive agreements at all. He pointed out that if that applicant voluntarily goes to an employment agency office and asks for help getting a job and that agency does find him employment and that employer then tells the applicant he has to go to the job service for the referral card so he can be hired -

as long as the private agency has done their service, they are entitled to the fee. That's all that part of the bill says, according to Sen. Keating. The private agency should receive their fee when it is warranted. However, if this section does turn out to be in violation of federal regulations he urged the committee to take it out of the bill, but the other parts of the bill are important, particularly the differentiation between application fee and the other fees that may be charged at the discretion of the agency. He emphasized the right of private contract. He also said it was not the job of the legislature to determine whether the fee is too high, too low or fair or unfair. That is a decision to be made by the two parties. This bill would allow the agencies some fair practices under the law, would allow them to function a little bit better, and it gives redress where it belongs - back in the county attorney's office. He referred to the amendment he had suggested in his original presentation regarding the word "placement" before the word "fee" throughout the bill.

The hearing was closed on SB 341.

CONSIDERATION OF SENATE BILL NO. 360: Sen. Al Bishop, Senate District 46, Billings, sponsor of the bill, said the bill would amend the notice requirements regarding a supplier's right of action on a bond under a public construction contract. It provides that, before a supplier of a subcontractor on a public contract who is not paid may sue on the bond that the prime contractor has to post, the supplier must give notice as provided in 18-2-206 (subsection (2) of section (1) of the bill). The notice must be in writing and delivered personally or sent by certified mail to the public body that contracted for the work, to the prime contractor, and to the licensed surety company that issued the bond.

PROPOSERS: Lloyd "Sonny" Lockrem, Montana Contractors Association, gave a scenario of why SB 360 was introduced. He explained a case that was appealed to the Supreme Court regarding this problem in Roundup in 1985. He pointed out that during the interim there was a committee to study lien laws. They sat in on those hearings and had hoped that these notification problems could be solved. That legislation, however, dealt only with real property, five-plexes and under. The full obligation to pay every person or firm that supplies all the subcontractors on a project rests with the general contractor. He said that is existing law and that would remain. What they hoped to do with SB 360 is identify the exposure of second and third tier exposure. He urged the support of SB 360.

OPPOSERS: There were no opposers.

DISCUSSION OF SENATE BILL NO. 360: Questions were called for from the committee members.

Sen. Thayer remarked that he had served on the interim committee



and it was their decision that the contractors were already well aware of the lien laws and that that was available to them. He asked Mr. Lockrem if he felt the bond was still necessary. Mr. Lockrem replied that in the case of filing a lien against a state building, which can be done, but that lien can never be satisfied because the building can't be sold, that bond is necessary.

Sen. Bishop said the bill that had previously been in the Senate was a completely different situation as this bill refers to the bond and the other bill just refers to the notice and the recording of the notice. He said they would like to exclude the portion regarding the name on the pickup or an invoice, etc., as being notice that they supplied materials and they had actual knowledge. He asked that Ms. McCue take a look at this bill, however, he pointed out they were under a time constraint. They just want to make sure that all notices possible are given so somebody isn't stuck because of these "secret" liens.

Ms. McCue said that is the purpose of requiring this notice - she did think it would be very good to have this language in the bill to make it absolutely clear that they have to go through this process before they could go against the bond. That would be a very simple amendment and could be done in the committee without slowing down the progress of the bill.

Mr. Lockrem said they would greatly appreciate the addition of the amendment if the committee has the time.

There being no further questions, Sen. Bishop closed on SB 360.

CONSIDERATION OF SENATE BILL NO. 336: Sen. Dick Manning, Senate District 18, Great Falls, sponsor, said the bill would revise video draw poker machine law to allow only local bodies to license the machines. Presently, the state licenses each machine at a fee of \$1,500 per machine. The state would continue to have the duty to certify that a machine meets the machine specifications of 23-5-606 (section 3 of the bill). The license fee charged by the locality would be determined on the basis of population (section 7). He said the bill also needs a technical amendment in the title to remove the reference to bingo machines.

PROPONENTS: Bob Durkee, Montana Tavern Association, said they endorse SB 336 as many of their smaller establishments have been unable to have even one poker machine because of the license fee and they hoped that this bill would relieve that situation. He said in the original poker machine act a lot of the revenue was dependent upon the licensing of 5,000 machines but the state has never achieved that goal in two years. He said the maximum number of machines at the present time is about 3900 and as a result of that the estimated income for both state and local

entities is falling short and this would certainly help their treasuries.

OPPONENTS: There were no opponents.

DISCUSSION OF SENATE BILL NO. 336: Questions were called for from the committee.

Sen. Thayer asked about the \$1500 in the bill two years ago. Mr. Durkee said that out of that \$1500 the state got \$500 and the counties and cities got the other \$1,000 but they had the option to charge whatever the traffic would bear on top of that. Ms. McCue interjected that they could charge up to \$1,000 more.

Sen. Weeding questioned what the revenue impact to the cities and counties would be. Sen. Manning said there was no Fiscal Note to the bill and told the committee that the people who requested the bill were supposed to be at the hearing with the figures, however, they were not present. He said that a Fiscal Note could be requested because they have to know what it is going to cost the state and he would go along with that.

Sen. Neuman said it would naturally decrease the state revenue because the bill strikes what the state gets now so it would be \$2 million for about 4000 machines.

Sen. Williams asked Sen. Manning what his recommendation would be for this bill. Sen. Manning replied that it would be a way to help cities and towns and the local taxpayers even though it will cause a problem with the state.

Sen. Thayer noted that Sen. Manning would be the one to request the Fiscal Note, as the sponsor, and Sen. Manning replied that he would do so.

There being no further questions from the committee, Sen. Manning closed his presentation of SB 336. He said it was important to remember that when this was originally enacted the purpose was for monies to help the cities and counties, mainly. However, this bill got mixed in with another bill and came out with a different end result. This would create good property tax relief for cities and towns, he said.

The hearing was closed on SB 336.

CONSIDERATION OF HOUSE BILL NO. 374: Rep. Bob Pavlovich, Senate District 70, Butte-Silver Bow, chief sponsor, said the bill amends the lottery law to allow Montana to take part in regional lotteries; to provide that commissions paid to sales agents are not operating expenses (they are in addition to the amount allowed for operating expenses); to provide for the assistant director's salary; to provide that prize installment payments may be paid out over 20 rather than 10 years; to provide

for the confidentiality of certain audit findings; and to provide for a legislative liason committee.

PROPONENTS: There were no proponents.

OPPONENTS: Laurie Ekanger, Personnel Division, Department of Administration, said she was not against the lottery but would speak on section 3 of the bill which establishes another exempt position from the State Classification Act. She read from her written testimony. (EXHIBIT 1)

Mignon Waterman, representing the Montana Association of Churches, appeared in opposition to HB 374. (EXHIBIT 2)

DISCUSSION OF HOUSE BILL NO. 374: Sen. Williams asked for an explanation of why the increase. Rep. Pavlovich said to run the lottery, and to run it right, it takes from 15-20% to do that; at least that much to set it up and it necessarily wouldn't have to be permanent. Mr. Andy Poole from the Department of Commerce, he said, could explain why they need that much money. Mr. Poole said from information from the five lowest population density states it would take that much money in order to include the commissions to the sales agents and other administrative costs. Montana would fall into that category as far as population density.

Sen. Neuman asked if the \$1.5 million was included in the Executive Budget. Rep. Pavlovich replied that was correct. He then asked about the credit and if that was binding on future legislatures. Diana Dowling said they had amended it to show that they could spend money from the general fund loan after June 30th so they don't cut off the loan on that date as they may still be spending money at that time. She said they have to pay that back to the general fund out of the first proceeds of the lottery at 10% interest. Sen. Neuman asked if there generally isn't a supplemental in a case like that. Mr. Poole said there is an existing state statute which says that the general fund loan cannot be carried over the end of the fiscal year or over the end of a biennium. The lottery will not be taking in any money until after July 1st, which is the end of the fiscal year, and said they need the amendment to allow them to repay the money after July 1st. They anticipate that money will be repaid within several months after the lottery becomes operational. It has been the experience in other states that these monies have been paid back very shortly.

Sen. Thayer asked Rep. Pavlovich the reason for exempting out the assistant director. He replied that the lottery is really an entity in itself and is separate from state government. Other states felt that the director should have the authority over the assistant director.

Mr. Hugh Ennis, former director of security for the Arizona State Lottery, said the reason for the exemption was two-fold.

First, the director of security is a very key part of the lottery and if there is a personality conflict or a problem between that person and the director, the director's wishes have priority. If the assistant director is in a civil service or state classification position that situation could end up being very counterproductive where they would be battling each other. He said it was a very sensitive position, one that has to be recruited and the director has to have absolute confidence in that person. He also stated that most of the states do it this way for that reason.

Sen. Thayer asked the title of the person that would be exempt. Mr. Ennis said that person would be the director of security; Mrs. Dowling is the director of the lottery. Mrs. Dowling submitted an organizational chart of the lottery. (EXHIBIT 3)

Sen. Williams asked Ms. Ekanger how many exempt positions there are in state government. Ms. Ekanger replied that section 10 contains the list of the exempt positions because this position is being amended into that section.

John McEwen, Chief of the Classification Bureau of the Personnel Division said the list contained about 150 exempt positions in the executive branch - probably around 100 - then he said there are the 150 legislators, judicial employees which would be about 50-60, the university exempts gets into thousands because that includes professors and administrative people that would be exempt. In other words, he said, there would be about 2500 out of 16,000 state employees.

Sen. Neuman said he had an amendment that was brought to him that would basically be to allow that employees of the department who didn't deal with the auditing function or deal directly with the lottery be allowed to buy the tickets. Rep. Pavlovich said they would have no problem with that. (EXHIBIT 4)

In closing, Rep. Pavlovich told the committee members if they had any problems or questions concerning the bill, Sen. Stimatz would have the answers to their questions.

The hearing was closed on HB 374.

Chairman Neuman asked Sen. Boylan, as the senior member of the committee to assume the Chair in order that he could present his bill.

CONSIDERATION OF SENATE BILL NO. 358: Sen. Ted Neuman, Senate District 21, Vaughn, chief sponsor of SB 358, stated that the card games act and bingo and raffles act (keno) of the gambling laws provide that a person may gamble only with cash. If an establishment accepts a check from a gambler as consideration for the chance to play and the check is later dishonored the establishment may not sue on the bad check because it was not

legal to accept it in consideration for the chance to play.

This bill provides that if a gambler cashes a check in an establishment licensed for gambling and then uses the cash to gamble and if the check is dishonored the establishment may sue on the check. The check is a valid debt and is recoverable under the law that sets a civil penalty for issuing a bad check. The gambler also may be criminally liable under 45-6-316 which makes issuing a bad check a crime.

PROPOSERS: Phil Strobe, representing the Montana Innkeepers' Association, said they endorsed the bill as these facilities do have to provide some kind of check cashing services for their customers. This law would state they could not write checks at the gaming table but could cash their check at the restaurant or bar or the main desk.

OPPOSERS: There were no opponents to the bill.

DISCUSSION OF SENATE BILL NO. 358: Sen. Meyer asked if they could write a check other than at the gaming table. Mr. Strobe said that was correct; that provision would still be in the bill where they could not write the check at the gaming table nor could they use a credit card.

There being no further questions, Sen. Neuman closed his presentation on SB 358 and said it was probably a good idea and didn't see why the establishment should be precluded from collecting on a dishonored check even though they have gaming in that establishment.

The hearing was closed on SB 358. Sen. Neuman resumed the Chair.

EXECUTIVE ACTION:

DISPOSITION OF SENATE BILL NO. 358: Sen. Thayer MOVED SB 358 DO PASS, seconded by Sen. McLane. Sen. Neuman said presently, apparently only the bare minimum of proof is required that the money was lost at the gaming table. The MOTION CARRIED UNANIMOUSLY.

DISPOSITION OF HOUSE BILL NO. 374: Sen. Williams MOVED HB 374 BE CONCURRED IN. Sen. Neuman pointed out that the bill did not have to meet the 45 day deadline, however, if the lottery is going to go into operation July 1st this bill should get on its way. Sen. Thayer said he had some reservations about parts of the bill and Sen. Neuman referred to the proposed amendment. Since the bill did not have to meet the deadline the decision was to hold the bill for further discussion and take action on Senate bills.

DISPOSITION OF SENATE BILL NO. 336: Sen. Boylan MOVED SB 336 BE TABLED, seconded by Sen. Meyer. Sen. Thayer spoke in opposition to the bill and referred to another bill which would set the

whole fee schedule on a percentage basis and if that should pass, that would solve the problem as it would equalize out the fees and would be much more fair. Sen. Neuman agreed with the statement of Sen. Thayer and said this approach would exclude the state forever of getting a part of the gambling proceeds from these machines. The MOTION CARRIED UNANIMOUSLY.

DISPOSITION OF SENATE BILL NO. 360: Sen. Thayer asked that Ms. McCue draft the amendment as discussed, agreed to by Sen. Meyer. Ms. McCue stated the following amendment: "Any other notice, whether constructive or actual, would not be sufficient to allow the supplier to go against the bond." Sen. Thayer MOVED ADOPTION OF THE AMENDMENT, seconded by Sen. Meyer. The MOTION CARRIED UNANIMOUSLY.

Sen. Thayer MOVED SB 360 DO PASS AS AMENDED, seconded by Sen. Meyer. The MOTION CARRIED UNANIMOUSLY.

Sen. Kolstad being present, stated he had a telephone call from the Department of SRS informing him they would be receiving some communication from the Federal Department of Health and Human Services in Denver in regard to SB 205, the pharmacy voucher bill.

RECONSIDERATION OF SENATE BILL NO. 210: Sen. Neuman stated that apparently when the bill was passed out of committee they didn't amend all the proper sections. Sen. Neuman asked Ms. McCue to explain what the problems were. She stated that in the bill they repeal a section of the codes and that section was mentioned in numerous other places and when a section is repealed it has to be deleted where that statute is referred to and that was not caught during the drafting process. These would be technical amendments, she said.

Sen. Thayer MOVED RECONSIDERATION OF SB 210, MOTION CARRIED UNANIMOUSLY.

Sen. Kolstad MOVED ADOPTION OF THE TECHNICAL AMENDMENTS, seconded by Sen. Meyer. The MOTION CARRIED UNANIMOUSLY.

Sen. Kolstad MOVED SB 210 DO PASS AS AMENDED, seconded by Sen. Meyer. The MOTION CARRIED with Sen. Neuman voting "no".

DISPOSITION OF SENATE BILL NO. 272: Sen. Neuman pointed out the proposed amendments by Sen. Lynch. Sen. Neuman explained the change in amount the non-profit organization could make from \$5 million to \$1 million before they would be subject to tax. The other amendment was to change the Class 3 railroad to the Interstate Commerce definition. Sen. Kolstad said the total mileage being looked at in this situation was 30 miles, as he recalled, or about 12.2 acres per mile so the tax was very insignificant.

Sen. Kolstad said that first of all, before it could qualify

under this bill, it would have to be sold to an organization or business that would be a non-profit organization that would have less than \$1 million gross. Sen. Neuman felt that the \$1 million was a little high and wondered if a grain elevator could form a non-profit corporation and move grain between elevators, etc. It was pointed out that it must be devoted solely to tourism.

Sen. Williams MOVED ADOPTION OF THE AMENDMENTS, seconded by Sen. Walker. The MOTION CARRIED UNANIMOUSLY.

Sen. Weeding MOVED SB 272 DO PASS AS AMENDED, seconded by Sen. McLane. The MOTION CARRIED UNANIMOUSLY.

CONSIDERATION OF THE WEEDING/COMMITTEE BILL: (Number to be assigned upon being introduced) Ms. McCue stated it was not ready at that time but would be delivered shortly. She explained the bill and said it was very simple, but unless the committee wanted to meet again that day they would have to pass it out without seeing it. She said it amends Title 50, or the portion of Title 50, that deals with health care facilities. It sets out definitions of health care facilities to include a new category called a medical assistance facility and sets out the requirements of what that facility would have to have. The third section of the bill would be an extension of the rule-making authority of the department of health because the licensing requirements are almost exclusively set by rule, according to Ms. McCue. This facility would have to apply to the department and then adhere to their rules that would be adopted. She also said it would have to be introduced this day so she would deliver it to the members as soon as it was completed. Sen. Kolstad MOVED that Sen. Weeding's Committee Bill be given a DO PASS RECOMMENDATION. The MOTION was Seconded by Sen. Walker and CARRIED UNANIMOUSLY. (COMMITTEE REPORT HELD UNTIL 2/20/87 FOR CONSIDERATION OF POSSIBLE AMENDMENTS)

Sen. Neuman said he would rather wait with the "21" bills until February 20th. Sen. Kolstad stated that the committee had a great deal of work scheduled for the 20th and one of them was the emergency chartering bill.

Sen. Thayer asked for a point of clarification on the committee bill regarding the emergency chartering - was that language the same language that was put into his bill and Sen. Boylan's bill. Sen. Neuman said he had requested only emergency chartering and not emergency branching. Ms. McCue said the language that was put into Sen. Boylan's bill was just emergency chartering without having to give notice.

Sen. Neuman informed the committee that the "21" bills would be taken up on February 20, 1987, plus other bills to be heard.

Discussion followed concerning all the bills to be heard the following day, therefore, the committee will meet in Room 410 at 9:30 a.m. instead of 10 a.m., February 20, 1987.

Sen. Williams remarked that Ms. Waterman had appeared to testify on a bill this day that had been posted for 10 a.m. but it was heard at 9:45. The written testimony of Mignon Waterman in opposition to SB 293 is attached to the minutes as EXHIBIT 5. Sen. Williams asked that they take executive action at 9:30 rather than have a hearing on a posted bill. Sen. Kolstad asked that they have a quorum present at 9:30 a.m.

There being no further business, the meeting was adjourned at 12:18 p.m.

  
SEN. TED NEUMAN, VICE CHAIRMAN



Business & Industry COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 2/19/87

NAME	PRESENT	ABSENT	EXCUSED
ALLEN C. KOLSTAD, CHAIRMAN	✓		
TED NEUMAN, VICE CHAIRMAN	✓		
PAUL BOYLAN	✓		
TOM HAGER	✓		
HARRY H. McLANE	✓		
DARRYL MEYER	✓		
GENE THAYER	✓		
MIKE WALKER	✓		
CECIL WEEDING	✓		
BOB WILLIAMS	✓		

Each day attach to minutes.

COMMITTEE ON

Business &amp; Industry

DATE

2/19/87

## VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Jim Rowe	Personnel Systems Inc.	341	✓	
Steve Whitney	Personnel Systems	341	✓	
Dorothy Rowe	Personnel Systems Inc.	341	✓	
SANDY NELSON	CAREERS UNLIMITED	341	✓	
Bob Durkin	MTA	293	✓	
Mike Stump	LABOR + INDUSTRY	341		
Bob Fletcher	Cannon, Lounges	293		
Charles Harper	Nido-A Way Lounges	293	✓	
Harry E. Smith	Mint Bar	293	✓	
Ken Buckley	East Side Bar	293	✓	
W. W. Larson	M. T. J.	293	✓	
Fred Van Valkenburg	Senate Dist. 30	341	✓	
Larry Mott	Log Cabin/Kalispell Bar	293	✓	
Larry Mott	Log Cabin/Kalispell Bar	374		✓
Dennis Fisher	Rose Room			
Marian Waterman	Mint Assoc. of Churches	SB 343 HB 374		✓
Lloyd Lockman	Mint - Cent. Ass.	SB 360	✓	
Mary Nee	MPA	SB 341	X	
Doug Donly	Lobby	HB 374	X	
Jac Zumbly	Suff	HB 374	X	
Roger Kaufman	Career Concepts	341	✓	
FRANK HOLLIST	BILLINGS DIST ASSOCIATION			

## Department of Administration

SENATE BUSINESS &amp; INDUSTRY

TESTIMONY OPPOSING PROVISIONS OF HB374 EXHIBIT NO. 1

That Provide for Assistant Director's Salary

DATE 2-19-87BILL NO. HB 374

## I. Statewide Classification and Pay Act

We are not testifying against the Lottery but for the statewide Classification Act. Passed in 1973, this Act brought order to the chaos of state pay practices. The Act sought for the State, as an employer, to establish fair, consistent rationale in setting pay for all state employees. It put an end to rich agencies, boards and commissions paying a lot and poor agencies unable to compete.

## II. Problems with the Classification Act

The Classification Act is frustrating for managers because they can't pay for performance, reward outstanding workers.

State salaries are below the market compared to surrounding states by about 12% on average.

Turnover rates are high in many high skill occupations because of above and limited advancement or earning potential.

These are not problems unique for the Lottery Commission. The Classification Act does allow pay exceptions to recruit and retain qualified workers.

## III. Problems with Exemptions to the Classification Act

Each new exemption encourages other boards and commissions to seek exemptions. This trend will send us back to pre-1973 pay practices.

Exemptions are not fair to other managers who do not have resources or authority to seek exemptions and now can't compete.

It is demoralizing to workforce to see some occupations exempt and others not. Exemptions make everyone question the fairness of classified salaries.

## IV. Recommend

Delete Page 4, Lines 18 and 19 ",who serves at the pleasure of the director".

Delete Page 5 lines 16 through 18 entirely.

For more information call Laurie Ekanger or John McEwen, State Personnel Division, 444-3871.



SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 2

DATE 2/19/87

BILL NO. HB 374

February 19, 1987

CHAIRMAN KOLSTAD AND MEMBERS OF THE SENATE BUSINESS AND  
INDUSTRY COMMITTEE:

WORKING TOGETHER:

American Baptist Churches  
of the Northwest

American Lutheran Church  
Rocky Mountain District

Christian Church  
(Disciples of Christ)  
in Montana

Episcopal Church  
Diocese of Montana

Lutheran Church  
in America  
Pacific Northwest Synod

Roman Catholic Diocese  
of Great Falls-Billings

Roman Catholic Diocese  
of Helena

United Church  
of Christ  
MT-N.WY Conference

United Methodist Church  
Yellowstone Conference

Presbyterian Church (U.S.A.)  
Glacier Presbytery

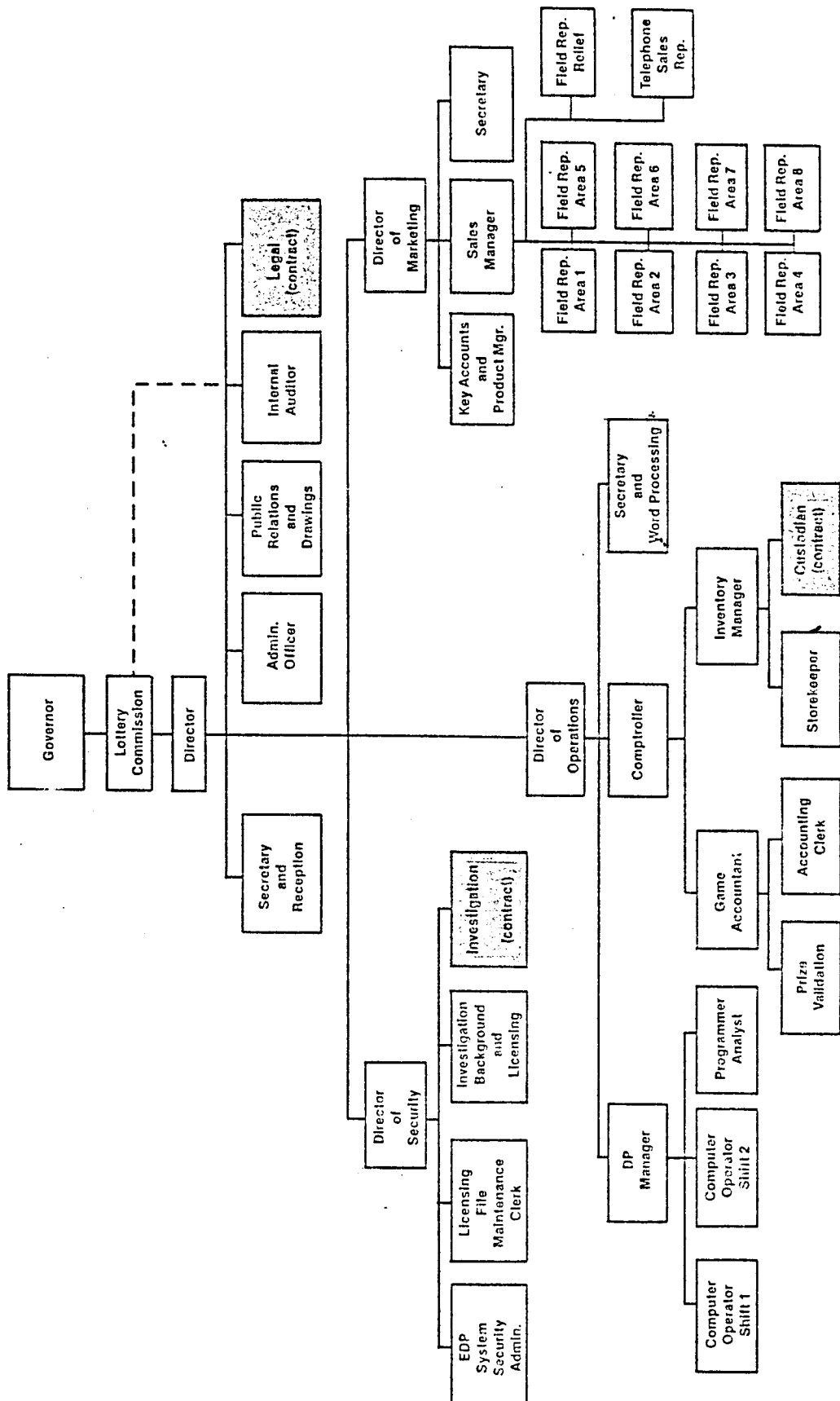
Presbyterian Church (U.S.A.)  
Yellowstone Presbytery

My name is Mignon Waterman and I represent the Montana Association of Churches.

When the 1985 Montana Legislature placed the lottery referendum on the ballot, it did so after considerable debate about how the proceeds of that lottery should be allocated. The option was available to ask voters to simply approve the lottery and to not specify how much money would go to prizes, to administration and to property tax relief. The 1985 legislature chose to be specific. They told the voters how the pie would be divided.

Now the lottery isn't even in operation and the 1987 Montana Legislature is being asked to redistribute the pie. In November, the voters not only said they wanted a lottery but they also stated loud and clear that they wanted property tax relief. It is a breach of the promise made by the 1985 legislature to take increased administrative costs of the lottery away from the promised property tax relief.

The Montana Association of Churches opposes HB374.



HOUSE BILL 374 IS AMENDED AS FOLLOWS:

Amend Title, HB 374, on page 1, line 14, following the word "expenses;" by adding the following words: "further defining sales restrictions;"

And further amending the title of HB 374, page 1, line 15, following the figure "8," by adding the figure "10,"

And further amending HB374 on page 6, following line 16, by adding:

"Section 10, Chapter 669, laws of 1985, is amended to read:

Section 10, Sales restrictions. (1) The price of each lottery game ticket or chance must be clearly stated thereon. The price of a lottery game chance vended by a machine or electronic device must be clearly stated on the machine or device.

(2) Tickets and chances may not be sold to or purchased by persons under 18 years of age.

(3) Tickets and chances must be paid for in cash.

(4) Tickets and chances may not be sold to or purchased by commissioners, the director, his staff, gaming suppliers doing business with the state lottery, suppliers' officers and employees, employees of any firm or governmental agency employees auditing or investigating the state lottery, or members of their families living with them.

(5) The names of elected officials may not appear on any ticket or chance."

# Montana Association of Churches

MONTANA RELIGIOUS LEGISLATIVE COALITION • P.O. Box 745 • Helena, MT 59624

## SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 5

DATE 2-19-87

BILL NO. SB 293

February 19, 1987

### WORKING TOGETHER:

American Baptist Churches  
of the Northwest

American Lutheran Church  
Rocky Mountain District

Christian Church  
(Disciples of Christ)  
in Montana

Episcopal Church  
Diocese of Montana

Lutheran Church  
in America  
Pacific Northwest Synod

Roman Catholic Diocese  
of Great Falls-Billings

Roman Catholic Diocese  
of Helena

United Church  
of Christ  
MT-N.W.Y. Conference

United Methodist Church  
Yellowstone Conference

Presbyterian Church (U.S.A.)  
Glacier Presbytery

Presbyterian Church (U.S.A.)  
Yellowstone Presbytery

CHAIRMAN KOLSTAD AND MEMBERS OF THE SENATE BUSINESS AND  
INDUSTRY COMMITTEE:

My name is Mignon Waterman and I represent the Montana  
Association of Churches.

The Montana Association of Churches opposes SB 293  
because we oppose the expansion of gambling in the  
State of Montana.

Once again your committee is being asked to expand  
gambling in Montana. As you are well aware, SB 293  
is one of numerous bills that would expand gambling  
in this state. The 1987 legislature will be asked to  
restrict and to control gambling that was authorized  
by previous legislatures.

Right now, less than a week before transmittal, I don't  
need to tell you that the last thing you need to do  
is to enact sweeping gambling legislation without  
considering the interrelation of the numerous gambling  
bills before you. That will simply increase the  
burden of future legislatures as they attempt to  
correct and control the gambling authorized in 1987.

There are social costs associated with gambling; there  
are enforcement and regulation costs associated with  
gambling; and there are promises of great financial  
gains associated with gambling. You need to take time  
to consider who will reap the benefits of expanded  
gambling in Montana and who will bear the costs of  
expanded gambling.

The Montana Association of Churches opposes SB 293.

# STANDING COMMITTEE REPORT

SB 210

February 19,

87

19.....

MR. PRESIDENT

## BUSINESS AND INDUSTRY

We, your committee on.....

## SENATE BILL

210

having had under consideration.....

No.....

second

yellow

reading copy (.....)

color

## DEFINING PROFESSIONAL COUNSELORS AS HEALTH CARE PROVIDERS

## SENATE BILL

210

Respectfully report as follows: That.....

No.....

Be amended as follows:

1. Title, line 9.

Following: "SECTIONS"

Insert: "33-1-104, 33-1-313, 33-1-317,"

Following: "33-30-101,"

Insert: "33-30-111 THROUGH 33-30-113,"

2. Page 7, following line 3.

Insert: "Section 6. Section 33-1-104, MCA, is amended to read:

"33-1-104. General penalty. Each violation of any provision of this code, except 33-30-1012, with respect to which violation a greater penalty is not provided by other applicable laws of this state shall, in addition to any administrative penalty otherwise applicable thereto, upon conviction in a court of competent jurisdiction of this state be punishable by a fine of not less than \$50 or more than \$1,000 or by imprisonment in the county jail for not less than 30 days or more than 90 days or by both such fine and imprisonment."

XXXXXX

XXXXXXXXXX

CONTINUED

Chairman.



Section 7. Section 33-1-313, MCA, is amended to read:

"33-1-313. Rules -- notice, hearing, and penalty.

(1) The commissioner may make reasonable rules necessary for or as an aid to effectuation of any provision of this code--except 33-30-1012. No such rule shall extend, modify, or conflict with any law of this state or the reasonable implications thereof. Any such rule affecting persons or matters other than the personnel or the internal affairs of the commissioner's office shall be made or amended only after a hearing thereon of which notice was given as required by 33-1-703. If reasonably possible the commissioner shall set forth the proposed rule or amendment in or with the notice of hearing. No such rule or amendment as to which a hearing is required shall be effective until it has been on file as a public record in the commissioner's office for at least 10 days.

(2) In addition to any other penalty provided, willful violation of any such rule shall subject the violator to such administrative penalties as may be applicable under this code as for violation of the provision as to which such rule relates."

Section 8. Section 33-1-317, MCA, is amended to read:

"33-1-317. Penalty imposed by commissioner. The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose a fine not to exceed the sum of \$5,000 upon a person found to have violated any provision of this code, except 33-30-1012, or regulation duly promulgated by the commissioner, except that the fine imposed upon agents or adjusters shall not exceed \$500. Said fine shall be in addition to all other penalties imposed by the laws of this state and shall be collected by the commissioner in the name of the state of Montana. Imposition of any fine hereunder shall be an order from which an appeal may be taken, pursuant to the provisions of 33-1-711."

Section 9. Section 33-30-111, MCA, is amended to read:

"33-30-111. Notice of violation -- conference. If the commissioner shall for any reason have cause to believe that violation of this chapter, except 33-30-1012, has occurred or is threatened, the commissioner may give written notice to the health service corporation and to the representatives or other persons who appear to be involved in the suspected violation to arrange a conference with the alleged violators or their authorized representative for the purpose of attempting to ascertain the facts relating to the suspected violation, and in the event it appears that a violation has occurred or is threatened, to arrive at an adequate and effective means of correcting or preventing the violation."

CONTINUED  
.....

Section 10. Section 33-30-112, MCA, is amended to read:

"33-30-112. Cease and desist order. (1) The commissioner acting in the name of the state may issue an order directing a health service corporation or a representative of a health service corporation to cease and desist from engaging in any act or practice in violation of the provisions of this chapter, ~~except 33-30-1012~~.

(2) Within 15 days after service of the order of cease and desist, the respondent may request a hearing on the question of whether acts or practices in violation of this chapter have occurred. These hearings shall be conducted under the Montana Administrative Procedure Act."

Section 11. Section 33-30-113, MCA, is amended to read:

"33-30-113. Injunctive relief. In the case of any violation of the provisions of this chapter, ~~except 33-30-1012~~, if the commissioner elects not to issue a cease and desist order or in the event of noncompliance with a cease and desist order issued under this chapter, the commissioner may institute a proceeding to obtain injunctive relief, receivership, or other appropriate relief in the district court of the county in which the violation occurs or in which the principal place of business of the health service corporation is located. Any proceeding under this section shall conform to the requirements of Title 27, chapter 19 or 20, except that the commissioner shall not be required to allege facts tending to show the lack of an adequate remedy at law or tending to show irreparable damage or loss.""

Renumber: subsequent section

# STANDING COMMITTEE REPORT

February 19 1987

MR. PRESIDENT

We, your committee on BUSINESS AND INDUSTRY  
having had under consideration SENATE BILL No. 272  
First reading copy ( white )  
color

**EXEMPT FROM BENEFICIAL USE TAXATION STATE-ACQUIRED RAILROAD PROPERTY**

Respectfully report as follows: That SENATE BILL No. 272

be amended as follows:

1. Page 2, lines 18 and 19.  
Following: "that" on line 18  
Strike: "Class III"  
Following: "railroads" on line 18  
Strike: "as defined by the interstate commerce commission in  
49 CFR, part 1201,"
2. Page 2, line 20.  
Following: "than"  
Strike: "\$5"  
Insert: "\$1"  
Following: "million"  
Insert: "that are devoted solely to tourism promotion"

AND AS AMENDED

DQ PASS.

~~DO NOT PASS~~

Senator Ted Neuman Vice Chairman.

# STANDING COMMITTEE REPORT

FEBRUARY 19, 1987

MR. PRESIDENT

We, your committee on BUSINESS AND INDUSTRY

having had under consideration SENATE BILL No. 358

FIRST reading copy ( WHITE color )

ENFORCEABILITY OF DISHONORED CHECK TO PREMISES OFFERING  
CARD GAMES

Respectfully report as follows: That SENATE BILL No. 358

DO PASS

~~DO NOT PASS~~

SENATOR ROBERT ROBERTSON, Chairman  
SENATOR TED NEUMAN, VICE CHAIRMAN

# STANDING COMMITTEE REPORT

February 19, 1937

MR. PRESIDENT

We, your committee on BUSINESS & INDUSTRY

having had under consideration SENATE BILL No. 360

1st reading copy ( white )  
color

## NOTICE REQUIREMENTS FOR PUBLIC CONSTRUCTION SUPPLIER ON RIGHT AGAINST BOND

Respectfully report as follows: That SENATE BILL No. 360

be amended as follows:

1. Page 2, following line 19.

Insert: "(3) To have a right of action against the contractor and his bond under this part, a person, firm, or corporation must give the written notice required by this section in substantially this form. Any other type of actual or constructive notice is not sufficient."

Renumber: subsequent subsection

AND AS AMENDED,

DO PASS.

XXXXXXXXXX  
DO NOT PASS

SENATOR NEUMAN, Vice-Chairman.