

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on February 17, 1989, at 10:00 a.m.

ROLL CALL

Members Present: Chairman Bruce Crippen, Vice Chairman Al Bishop, Senators Tom Beck, Mike Halligan, Bob Brown, Joe Mazurek, Loren Jenkins, R.J. "Dick" Pinsoneault, John Harp and Bill Yellowtail

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Staff Attorney; Rosemary Jacoby, Secretary

Announcements/Discussion: Chairman Crippen announced that the committee would probably work through the lunch hour in an attempt to act on bills pending.

HEARING ON SENATE BILL 433

Presentation and Opening Statement by Sponsor:

Senator Bob Williams, District #15, Hobson, Montana presented SB 433. He stated that the bill would allow child support action over a non-resident parent. The bill would authorize state district courts to exercise personal jurisdiction over a non-resident parent in a child support action, when a non-resident parent has significant ties to the state. The bill is not to take the place of URESA, but is to supplement URESA.

List of Testifying Proponents and What Group they Represent:

Brenda Nordlund, lobbyist for the Montana Women's Lobby
Cindy Thornton, Missoula

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Brenda Nordlund testified in support of the bill as an alternative to URESA for private actions and in child support.

Cindy Thornton testified in support of the bill. She said that the main reason for the bill was to enhance the state's ability to adjudicate child support over a non-resident parent. It was her understanding that there is a terrible backlog from the time a URESA action is initiated. She pointed out that it takes 3 to 4 months before the petition is sent to another state and possibly another 6 months before it is reviewed. In certain circumstances, the state is powerless to award child support, she stated.

Questions From Committee Members:

Senator Mazurek asked Cindy Thornton if she was aware that the URESA statute was presently being rewritten and is addressing the private right of action. Cindy replied that her main concern was cutting out the delaying tactics that attorneys use and she wasn't sure that URESA was addressing the private right of action.

Closing by Sponsor:

Senator Williams stated that passage of the bill would certainly not hurt anyone and would help several children who have been abandoned by their fathers or mothers. He urged a Do Pass.

DISPOSITION OF SENATE BILL 433

Discussion:

Amendments and Votes:

Recommendation and Vote: Senator Halligan MOVED that Senate Bill 433 DO PASS. The MOTION CARRIED UNANIMOUSLY.

HEARING ON SENATE BILL 425

Presentation and Opening Statement by Sponsor:

Senator John Harp, of Kalispell, representing District #4, presented SB 425. He explained the bill as an act to abolish the office of workers compensation judge and replace

it with a three-member board with the same qualifications as the workers compensation judge. The concept of the board of industrial benefits would give a balanced approach rather than the current system, he said. At present, the system is controlled by one man with virtually unlimited power. He thought more involvement prior to going to the supreme court and less involvement with attorneys and litigation was needed. He thought it was dangerous having so much power in one person over workers' benefits. Other boards similar to the proposed industrial benefits board are labor and appeals, personnel appeals, tax appeals, natural resource board and health. Decisions that have come down have impacted the ability of the supreme court to expand the benefits. This board, he stated, would only act on factual matters with more reliability than the present system. In Idaho, their system of an industrial benefits board recently put \$14 million in dividends back to business people in Idaho, he stated.

List of Testifying Proponents and What Group they Represent:

Stan Kaleczyc, representing Plum Creek Timber Company
and Columbia Falls Aluminum Company
Chris Strob, representing Safe Montana Jobs
Keith Olson, executive director of the Montana Logging
Association
Charles Brooks, Montana Retail Association
Mark Simonich, forester for F.H. Stoltz Land and Lumber
Company in Columbia Falls, Montana
Ben Havdahl, representing Montana Motor Carriers

List of Testifying Opponents and What Group They Represent:

Monte Beck, attorney from Bozeman, Montana
George Wood, executive secretary of Montana Self-
Insurers Association
Tom Keegan, attorney from Helena
Allen Chronister, State Bar Association
Norm Grossfield, attorney from Helena
Don Judge, AFL-CIO
Jan Van Riper, attorney from Helena
Michael Sherwood, Montana Trial Lawyers Association
Sue Weingartner, Montana Defense Trial Attorneys

Testimony:

Proponents:

Stan Kaleczyc testified in favor of SB 425. He represented Plum Creek Timber Company and Columbia Falls Aluminum Company which are large employers in the northwestern part

of the state. He said his clients felt this was a desirable bill for both claimants and employers and will allow a quicker and better resolution of claims.

Chris Strobe, representing Safe Montana Jobs, felt a three member board, broadly based, would better represent people regarding claims than a one-person system. Forty-four other states have a three-man board. He felt there would be less litigation if the plaintiffs were treated fairly and promptly. In addition, he said there would be more continuity.

Keith Olson, executive director of the Montana Logging Association, said Montana's workers compensation system was designed to be funded by employers to provide benefits for injured employees in a non-litigious environment. The system should discourage litigious review to the majority of cases, he said, and he felt the three-man board would be a better vehicle.

Charles Brooks, Montana Retail Association, said the provisions of the bill would bring a balanced, broader base for the review process of disputes arising out of the workers' comp division. It would bring increased opportunities for fairness to all parties involved and a reduced abuse of the system.

Mark Simonich, forester for the F.H. Stoltz Land and Lumber Co. located in Columbia Falls, spoke in support of the bill because the current system with one judge has gotten a little out of hand. He doesn't believe it is in the best interest of Montana business or in the best interest of the worker on the job.

Ben Havdahl, representing Montana Motor Carriers, asked to go on record as supporting the bill.

Opponents:

Monte Beck, attorney practicing law in Bozeman, said he came to the hearing because he was concerned about the protection of workers in work-related accidents. The court was founded in 1975 after the proposal in this bill was found to be unworkable. The legislature decided that a duly sworn judge and court would be the best forum to protect individuals who have to come before a judge to have their disputes heard. For many of his clients, a court is the place of last resort. If it is impossible for a worker to work out a dispute to compensate him for injuries he received, the

option of going before an impartial judge is a good solution. He feels this bill is an example of a special interest group taking away rights of citizens.

George Wood, executive secretary of Montana Self-Insurers Association, said the judge is paid \$50,000 and the bill proposes hiring a three-member board, each of which will get \$40,000. In addition, he said, people would have to go to mediation, then a hearings examiner, then to this board, then to a district court and then to the supreme court. Presently, there are just three layers: Mediation, the workers' compensation court and the supreme court. He said he was a hearings examiner under the previous system and it wasn't very successful.

Tom Keegan, an attorney from Helena, a former chief counsel for the division of workers' compensation, who represents both claimants and insurers testified against the bill. He also was counsel for the House Judiciary Committee when this workers' compensation board was created. He felt the proposed legislation was a system whose time had come and passed. The old board did not work. It installs a 5-layer process, and is a process in which the claimant may not be well represented, but the insurer will, he said. He said as he understands it, claimants will have to go to a hearings examiner and 3 board members who sit back and wait for a case. The boards Senator Harp mentioned are citizen board who meet once a month, he stated. For the first five years, under the present system, he said, dividends were paid. He said he saw no qualifications for the board members and felt that could cause problems if unqualified people were appointed. He also felt that nearly all cases would go to the supreme court, which is not what Senator Harp intended.

Allen Chronister, State Bar Association, said the proponents were long on generalities and short on specifics. The present problems are not just the fault of the system of having a judge or the present judge. He has done a lot of workers' comp defense and feels this is a good and fair system.

Norm Grossfield, an attorney who lives in Helena, said he does both claimant and defense work. He said he was administrator of the workers' compensation when the worker's compensation court was created in 1975 by bi-partisan effort, and his opinion was that the court works very well. At that point it was thought that one line of authority would be more easily understood; it eliminated conflict and

brought fewer cases to the supreme court, he felt after the mediation process was enacted in 1987.

Don Judge, AFL-CIO, appeared before the committee in opposition to the bill and distributed written testimony to the members (See Exhibit 1). He said the process would shove the burden of making the decisions back down to the district courts of the state of Montana, courts that are backlogged and financially strapped.

Jan Van Riper, attorney in private practice in Helena, has worked for the division of workers' compensation as bureau chief for the fund and as chief counsel for the department of labor and industry agreed with the other opponents. The reason this is not a good time for change is that the system is reeling from changes. Court decisions, the unfunded liability problem, increasing rate problem, changes in administration -- all have compounded, placing people in a reactive mode, she stated.

Michael Sherwood, Montana Trial Lawyers Association, opposed the bill for the reasons set forward by other opponents.

Sue Weingartner, Montana Defense Trial Attorneys, opposed the bill and presented written copies of testimony to members of the committee (See Exhibit 2).

Questions From Committee Members:

Senator Mazurek said he was concerned about adding two additional layers onto the system for the single judge. It appears that the bill would make the present 3-layer system a 5-layer system. It would cost more to the state and the claimant and perhaps not make the system any better.

Senator Harp replied that granting an opportunity to avoid going to district court and to the supreme court. In some cases, they are running from 4 to 12 months behind. If you look at the board of labor appeals, some of those are going 60 days, he stated.

Senator Mazurek said the way the system works currently is the judge goes to seven or eight different locals around the state. The board would have to do the same thing. So, instead of one person and the court reporter or clerk, there will be three people and the court reporter or clerk, the employers having to pick up the cost.

Senator Harp said that after looking at financial costs

there was a trade-off for adding additional people to the board. But when you look at a fund that annually paid out over \$200 million dollars in benefits, there should be additional people looking at those issues. He thought the savings would result in a more economic system.

Senator Pinsoneault felt that proponents were searching for consistency. Senator Harp felt the board would offer consistency and fair decisions.

Senator Jenkins asked about the unfunded liability in 1975. Mr. Keegan said there wasn't any until 4 or 5 years later, although there presently is \$150,000 to \$175,000. He said there were major changes which raised the benefits in 1975 in an attempt to be in line with federal regulations. The state was told that rates weren't to be raised at the same time, he said, which resulted in the debt.

Senator Mazurek pointed out that the myth is the industrial accident board would have not made the same decisions and then the supreme court would have not made the same decisions. Whether you had a industrial accident board or a workers' comp court, it would not have changed the supreme court decisions, he felt.

Chairman Crippen explained that in 1975 there was not a deficit. The court interprets the law, and then the supreme court receives that decision and then there is another layer of interpretation, he said.

Senator Mazurek asked Mr. Keating if there were any problems recalled with the industrial accident board that there should be a judge instead of a board. Mr. Keating replied that the system just wasn't very good. He described hearings that were held in motel rooms; he said that was very demeaning for injured claimants who are having their "day in court."

Closing by Sponsor:

Senator Harp said this bill was necessary. He pointed out that the hearing was well attended by attorneys. Senator Harp closed.

DISPOSITION OF SENATE BILL 425

Recommendation and Vote: Senator Harp MOVED that Senate Bill 425 DO PASS. The MOTION CARRIED on a vote of 6 to 4 with Senators Halligan, Mazurek, Pinsoneault and Yellowtail voting NO.

HEARING ON SENATE BILL 452

Presentation and Opening Statement by Sponsor:

Senator Del Gage, presented SB 452. He explained the bill as being developed by the board of crime control during the interim concerning jail recodification. He pointed out the problem with the statute of incarceration and of mandating regional jails. He said regional centers instead of regional jails were being looked at in order to keep the state from having too many employees scattered throughout the state. This would grant the opportunity of centering related state agencies in those regional centers. The bill would address the problems of federal mandates, he said.

List of Testifying Proponents and What Group they Represent:

Don Crabbe, representing the Board of Crime Control
Chuck O'Reilly, Sheriff-Lewis & Clark County, representing
the Montana Sheriff and Peace Officers

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Don Crabbe from the Board of Crime Control testified in support of the bill. He explained the background of the bill and the intent of the legislation. He described the 16 member committee that worked on the bill for two years, composed of sheriffs, jail administrators, county, city and state officials. He said the purpose of the legislation is to bring jail law and jail administration into the twentieth century. He said the jail recodification committee made an effort to look at all of the sections of the current law and broke them into current conditions, in terms of getting rid of work houses and that type of thing. He noted in the legislation that jail administrators and detention officers liked to be called something other than a jailer. He pointed out a terminology change contained in the legislation.

Mr. Crabbe pointed out the new provisions in the bill. One was the method of payment for housing of prisoners in jails which would place everyone into a common payment schedule with a negotiated rate between various governmental entities. There are also parts of this legislation that deal specifically with allowing state prison inmates to be

housed in local jails under a contract basis. Presently, there is no statutory authority for that and this bill would provide that authority. Additional flexibility written in the bill would allow regionalization of jails. He pointed out that with the economy at the county and city level the Jail Recodification Committee felt it was very important that the counties be given greater flexibility in terms of combining jail facilities to be used by multijurisdictional entities.

Chuck O'Reilly, Sheriff of Lewis and Clark County, spoke in favor of the bill. He represented the Montana Sheriffs and Peace Officers Association who supported the bill. He asked Senator Gage to amend page 4, line 19 to insert "and with the consent of the sheriff". He said this was current law. He explained that this insures a working relationship between the judge and the sheriff so a lot of prisoners don't get assigned to this particular type of sentence. He offered a second amendment on page 17, line 4, concerning prisoners from Montana State Prison. He said this is currently done even though there is nothing in the law that specifically allows it. It should be checked with the Sheriff or Jail Administrator so he asked that they strike on line 3, "government" and on line 4 and insert "administrator". He said the reason that prisoners are held from Montana State Prison are generally emergency type situations.

John Connor testified in support of the bill. He said he was a member of the commission that worked on this issue. He emphasized that this bill was a cooperative effort of everybody involved with law enforcement and the administration of jails including the American Civil Liberties Union that had a member on the committee. He urged support of the bill.

Questions From Committee Members:

Senator Beck asked Sheriff O'Reilly about changes in the bill. Sheriff O'Reilly said that under the bill there was no change except in one area. He explained that currently they can charge the highway patrol \$20 a day and other state agencies the cost of incarceration. They cannot charge cities or towns unless the sentence is charged with a state crime then the county has to pick up all charges.

Senator Jenkins discussed the new county jail in Cascade County and whether regional centers or jails would affect that. Don Crabbe replied that the bill does not specify that without the concurrence of all governing units involved

will there be a regional jail. Cascade County designated their facility a regional jail center, without talking to anyone else, as a planning scheme on their part, he stated. An agreement between all of the counties and cities involved in the process of regionalization will still be necessary.

Senator Mazurek asked if the amendment offered by Sheriff O'Reilly gave the sheriff the ability to veto the judges order concerning work release. Sheriff O'Reilly said that it forces the judge to have the sheriffs concurrence. Otherwise the burden is placed on the jail administrator. He pointed out that prisoners assigned to work release programs, the book keeping and keeping track of the prisoners is a huge job and should be controlled.

John Connor explained to the committee that the statutes pertaining to work releases are contained in a different area and were not proposing any changes to the work release statutes.

Senator Jenkins asked if a prisoner was confined at a county jail and the judge had ordered him to be on work release and he committed a terrible crime. Who would be liable the judge, the sheriff's department or county jail because that prisoner was loose. John Connor replied that in terms of his current understanding of the liability issue that the judge would not be liable because he has judicial immunity and the local governments would not be liable because that judicial immunity would extend to the local government units.

Closing by Sponsor:

Senator Gage pointed out that the bill was an improvement in the current situation and asked that the committee do pass SB 452.

DISPOSITION OF SENATE BILL 452

Discussion:

Amendments and Votes:

Senator Brown moved the O'Reilly amendment on page 4, line 19, following: "order", insert "and with the consent of the sheriff" and on page 17, lines 3 and 4, following: "and the" on line 3, strike: remainder of line 3 through government on line 4 and insert "administrator". The MOTION PASSED UNANIMOUSLY.

Recommendation and Vote: Senator Pineseault MOVED that
Senate Bill 452 DO PASS AS AMENDED. The MOTION CARRIED
UNANIMOUSLY.

HEARING ON SENATE BILL 431

Presentation and Opening Statement by Sponsor:
Senator Del Gage, Senate District 5, presented SB 431. He
explained that the bill was at the request of the Department
of Justice.

List of Testifying Proponents and What Group they Represent:

Marc Racicot, Attorney General
John Willems, Dept. of Commerce, Video Gaming Control bureau
chief
Jim Durkin, Dir., Gaming Industry Association
Ed Kennedy, Mayor of Kalispell, State Gaming Advisory
Council
Mignon Waterman, Montana Association of Churches
Phil Strobe, Montana Tavern Association
Al Donahue, Gaming Advisory Council
Andy Poole, Dept. of Commerce
Pious Ehli, Big B Bingo Parlors, Billings
Tex Pate, Montana Auction Association
Terry Will, owner of a bingo parlor

List of Testifying Opponents and What Group They Represent:

Lynn Seelye, Attorney and Sailboat Bingo Parlor, Great Falls
Randy Reger, Gaming Industry Association
Sid Smith, Bingo Palace, Helena

Testimony:

Marc Racicot explained the bill as a result of an advisory
council that was appointed by Governor Schwinden to study
the issue of Gambling in the state of Montana. He explained
that in 1972 there was no gambling by the Constitution.
Gambling has grown since that time in terms of the type of
gambling which are legal but a form of regulation and kind
of revenue that is generated. The 1972 Constitution states
that all gambling in Montana is illegal unless specifically
authorized by the Legislature. The Legislature has
authorized live bingo, live keno, live poker, and other live
card games. The Legislature has also authorized the state

lottery, para-mutual racing, sport pools, raffles, and calcuttas. Finally the Legislature has authorized video gambling machines on which you can play bingo, keno and poker.

Attorney General Racicot explained that in terms of the different kinds of gambling authorized, Montana is the third largest gambling state in the country following Nevada and New Jersey. At this point in time approximately 250 million dollars in quarters are being fed into video gambling machines gambling in the state. Of that amount, 80 million dollars is the profit that the industry is realizing before taxes are paid. 8 million dollars are being returned to local governments and 4 million dollars are going into the state general fund. This is only video gambling machine revenues and does not include the revenues expended on other legal forms of gambling in Montana, let alone illegal gambling that takes place in the state. How much money is wagered on live keno, bingo and poker; how much is wagered on sports pools and calcuttas; the answer is not known. The reason that no one knows is that these forms of gambling are regulated or not, as the case may be, regulated by local government.

Attorney General Racicot pointed out that the gaming advisory council surveyed local governing bodies on the forms of gambling and their statutory power to tax and regulate. The surveys went out to all 156 local governing bodies in Montana. 135 of those responded, only 15% created a local regulatory council to oversee the gambling in their area. Only 40% taxed or assessed fees on that gambling even though they were empowered to do so by the Legislature. One of the survey questions asked local governments to identify the types of gambling in their area. Incredibly some of the local governments identified games that are clearly illegal, he said. He did not want to imply that local governments do not care. Most of the larger cities and counties in the state take responsibility for the gambling in their area and regulate and tax that gambling. There are two problems that exist. One small communities and counties do not have the resources to tax and regulate the gambling in their area. Large communities, while taking a much more active role in the regulation of their gambling, interpret the statutes much different from jurisdiction to jurisdiction. That is why there are forms of illegal gambling in Montana. The result of that kind of fragmentation in the state is that local governments are losing authorized tax revenue, not only because they do not tax the legal gambling but even if

they do the illegal gambling dollar is a dollar spent outside of a regulatory process that will never be collected. The industry is having to compete with illegal gambling enterprises that otherwise would be available on a competitive basis. One business person may be paying \$1500 a year to run a poker machine or game, which within a mile in a different jurisdiction, there is no annual fee. A card dealer loses his or her dealer licence in Missoula, because of illegal behavior like skinning or dealing good hands to a partner, and that person moves to a jurisdiction where they don't licence card dealers. The possibilities of moving from one jurisdiction to another, once found out, are endless here in the Big Sky Country.

The real question is who benefits from any fragmentation in the state of Montana. Neither local governments, state, legitimate businesses, or players. The person that benefits are the person with the desire or willingness to hide behind the statutes as they currently exist. The person who wants and currently gives the state in the 250 million dollars of video gambling machine revenues and all the rest of it without playing by the rules such as they are. There is definitely a need for uniformity and regulation at the state level. Local control has led not to less gambling but to more. The Gaming Advisory Council at Montana State University conducted a statically valid gambling survey last Spring where they asked a number of pertinent questions about gambling to all citizens both male and female. The question receiving the highest positive response was whether they were in favor of uniform regulation and control. 92% of the response favored uniform control and regulation of gambling in Montana. Gambling is not a local government issue it is a Montana issue. It has always been a legislative issue, year in and year out. The question we face today are what do we need to do in Montana to assist local governments, state government, the industry, law enforcement and the players regarding gambling legislation. What do we need to do to force the illegal gambling element out of business in this state.

These are major questions that the gaming advisory council wrestled with throughout the last year. He pointed out that they did not work in a back room but held public hearings throughout the state so that citizens could express their opinions about gambling in Montana. They held over 18 council meetings all over Montana, received input from the industry, local governments, church groups and organizations, law enforcement agencies and other interest groups including players. They conducted a local government

survey, they contracted with a survey research center at MSU to conduct a public opinion survey on relative gambling issues. He pointed out the objective nature of the membership of the council that gave the report validity and a useful basis for action.

The recommendation is that gambling rules be uniform statewide and that a regulatory scheme ensure that gambling be uniform and fair statewide. It also recommends that all forms of gambling be taxed by the state with the revenue being returned to local governments. It also recommends that the provision of licensing revenues be used to treat and help fund programs for addictive gamblers. He discussed other recommendations contained in the report.

Mr. Racicot proposed amendments in section 2, in the definition of bingo where "one number must appear in each square, except for the center square which is considered a free play", should be eliminated from the bill. On page 10, line 13, we are talking about ability to license or regulate or otherwise limit the form of gambling, there is a request to place that particular section after the word chapter on line 15, "or assess or charge any fees or taxes". In other words the industry cannot charge twice. In paragraph 2 on that same page on line 16 where it says where "ordinance or resolution defining certain areas" we request the word "defining" and replace with the word "zoning" so that local governments could not enact an ordinance or resolution that prohibit gambling at all within the entire jurisdiction. The same is true on line 18, subsection three replace the word "defining" with the word "zoning". On page 12, line 11, he explained the application process should be protected from disclosure so after the word "the" that you insert "application or". On page 15, line 20, after the word create replace "or enhance the" and substitute "the". On page 50, line 22, "\$800" should be "\$100".

John Willems, bureau chief of the Video Game Control Bureau in the Department of Commerce, went on record supporting the bill. He pointed out the goal of the gaming advisory council was if this was good for the state.

Jim Durkin, director of the gaming industry association in the state of Montana, testified in favor of the bill. He pointed out that the gaming association has been in support of a good gaming commission along with 75% of the people in the state of Montana. A gaming commission would regulate and license this industry in order to allow you to know who the gamblers are and where their investment money comes from.

We support full disclosure of every part of the industry, he stated.

He mentioned that he received phone calls concerning the unfairness of taking away from the truck stops and stores what was given them in the past year. It is not fair that you tell bingo halls that have keno machines that they must now sell booze to the players in order to keep their machines. There is a sentence in the bill that says "must be imprisoned for at least two years". He pointed out that frightened a lot of people. Also the operators participation is taken away in the process.

Ed Kennedy, Mayor of the city of Kalispell and a member of the Montana Gaming Advisory Council, spoke in favor of the bill. He said the council was formed to review the legislation to correct the technical defects in the statutes, analyze and recommending potential legislation, reviewing jurisdictional authority on gambling matters, reviewing current and potential tax rates, and analyzing gambling in the state of Montana both present and future. The gaming advisory council spent hundreds of hours studying debating and formulating ideas and recommendations that would be beneficial to the state and local governments and to all citizens in the state. He said SB 431 was a good bill and urged passage.

Mignon Waterman spoke on behalf of the Montana Association of Churches. She said that the statewide regulation of gambling is strongly supported (See Exhibit 3).

Phil Strobe, representing the Montana Tavern Association, supported the basic purpose of the bill. He suggested an amendment on section 4, line 12, page 10 that says a local government may not license, regulate or otherwise limit forms of gambling, it would see that was inconsistent with the authority granted the cities over on page 38, section 43, and the last line says the local government may adopt an ordinance defining other hours within that jurisdiction. He pointed out the language in Section 43, 56, 32 should be left all the same to give local governments the power to shut down the hours. If it is to be made state control, then take that out and leave it as it is in Section 4, on page 10, as a matter of policy review. He addressed two minor issues, one on page 54, Section 59, line 9, sports pools should be \$10. One amendment on page 32, section 36, exempting a charitable organization, the commercial industry that participates in the gaming that it is unfair

competition with charitable organizations that do not have to pay the taxes. He suggested striking the charitable organizations.

Al Donahue, a member of the Gaming Advisory Council and represent the tourism industry on that council. He said that he is now involved in gaming in a place called Mac's Casino. Gaming should only exist under the proper rules and regulations. He pointed out that gambling provides an economic stimulant and provides local government with good spending money and would increase if the proper regulatory agency is involved. He stated that this was the medicine that the industry needed to get better.

Andy Poole, director of operations at the Department of Commerce, said the official position is support of SB 431. He briefly talked about the numbers proposed. He said they estimated that local governments would receive approximately 1.9 million dollars each year as a result of passage of this legislation. The cost of administering this bill in addition to what the state currently does would be about \$350,000.

Pious Ehli from Billings, operate the Big B Bingo Parlor, spoke in favor of the bill. He pointed out that on page 44, section 47, that he has not had a beer license for the past six years and had no desire to have one. He said they had keno machines ever since the supreme court ruled that they were legal. The bill would take him out of the business and could no longer have the machines in his establishment. He said this was a good part of his income, he built a building for this reason, spent over \$200,000 building it and improving the property. He said he did not want a beer license. He felt that other people in the business should be able to have the machines without having a beer license. He pointed out that no children were allowed in any bingo parlor in the state but that children were allowed in establishment that sold liquor.

Tex Pate, representing the Montana Auctioneers Association, spoke in favor of the bill. He said they are here to say thank you to section 61 which addresses the calcuttas which auctioneers are involved in for fund raising activities for different organizations.

Terry Will, owner of a bingo business in Helena for the past ten years, said he did not have a beer or liquor license. He said that Section 29 requires a liquor license to run an establishment having live poker games, or Section 44

machines. He does not have a liquor license and yet these machines are about 75% of his income. If this bill passes the way it is he is out of business.

Opponents:

Lynn Seelye, attorney and owner of a bingo parlor, restaurant and lounge in Great Falls, and a member of the Cascade County Tavern Association, testified in opposition to the bill. He commented that the bill was very complex, and that he had had little time to study it. He said he was concerned and wanted to point out to the committee that the industry was presently regulated by a number of agencies and were licensed by a number of agencies. He said they were in favor of regulation, but were concerned about the need for another regulatory body. He said the Department of Commerce, had video licensing with a big budget and a number of personnel, Department of Revenue, Internal Revenue, County Attorney, and yet another bureaucratic agency duplicate the regulations that are already being performed. He pointed out the need to have the industry represented on a gaming commission. One concern was why bingo callers would need to be licensed. He explained that he had approximately 20 employees that work in the bingo room. They alternate and the callers do not handle any money. The balls are popped up in a machine that is closed. Bingo callers are normally unskilled people and there is a large turnover. He said that in a year's time 60-70 initial people that with a licensing fee of \$250 dollars multiplied by 60 people would become a very significant cost. He pointed out another concern the bill proposes 3% of the gross, he said their bingo was paying out almost 90% so 3% of his gross constitutes 33%. Gross is not defined and the payouts are not excluded. He said this would mean he would be taxed a third of his income before he took out operating expenses. He said he strongly objects and this portion should be reconsidered or they will be taxed right out of the business.

Another concern he had was Section 19 about business being done on a cash basis. The problem in an establishment like his is that he has a restaurant, bar, and someone will come in cash a check for fifty dollars. They may spend ten dollars on food, five dollars on drinks and allow the rest on gambling. The problem is the owner would be guilty of a felony and would have to spend two years in prison according to the bill, he said. He said if he cashed a check for somebody he would endanger his whole business and face prison. He pointed out that Section 31, page 30 that the \$300 prize was too much and the people in the industry only

wanted a \$100 limit. He said this is a way that gambling could become a problem to the players.

Randy Reger, vice president of the gaming industry of Montana, spoke in opposition to the bill. He said the state needs sound regulations. He said that gambling was a big incentive for tourists to come into the state. However, one major problem in the gambling commission report stated that they needed a gaming advisory commission. He said this was all in the report and they were 100% for it because people from the industry could be on that board and offer their expertise. He said the bill, as it stood, did not have that advisory commission. He said the bill had terrible penalties in it and that a state gaming commission was needed. He opposed the industry not having any input into the regulation.

Sid Smith, owner of the bingo palace, spoke in opposition to the bill. He said he supported the concept of the gaming commission but the bill cannot be supported unless it had some amendments. He pointed out problems with section 39, page 34, about bingo and keno gross proceeds tax. He discussed the visit to Washington State by the gaming advisory board and read part of the report done regarding Washington's charitable gaming enterprises. He disagreed with the commission making comparison between the Seattle area and Montana. He proposed an amendment to use a chair tax for revenue because the 3% tax was unrealistic for Montana.

Questions From Committee Members:

Senator Brown asked Attorney General Racicot to comment on Calcuttas. Marc Racicot replied that the old definition was no definition at all and virtually allowed for unlimited kinds of gambling in that definition--everything from bookmaking and numbers of one sort or another. The statutes have been amended to reflect the kind of qualifications which make a calcutta pool truly calcutta pool so as to prevent any kind of illegal book making.

Senator Brown asked if this was what the Attorney General had codified. Marc Racicot replied that they have placed into this definition the qualification that were announced earlier in an opinion by Attorney General Mike Greeley.

Senator Brown asked if the change in definition of slot machines provided an expansion in that area. Marc Racicot said the definition was broader, but there previously was a

prohibition against all slot machines. He said the language is more definite and precise.

Senator Brown referred to p. 15, qualification for licensure. He asked if a felon would be prohibited from being licensed. The Attorney General said it would be judged on an individual basis. He didn't know if present law prohibited licensure.

Senator Pineseault asked about local control. Marc Racicot described his experience for the past 13 years at the prosecutorial level with gambling across the state of Montana. He realized how much difficulty it poses everyone, from the people operating in the industry, to those in enforcement and regulation. As a consequence, when the bill was initially considered by the Governors Office, they did not feel that they had enough time to consider presenting this bill to the Legislature. However, he felt time should be taken and felt it would result in substantial benefit to Montana.

Senator Pineseault asked if this law is passed, would it have an effect on reservation gambling. Marc Racicot replied that there was a negotiating team created by the tribes to reach agreements. He pointed out that there cannot be gambling above and beyond that authorized by the state.

Senator Halligan asked about page 44 of the bill concerning keno machines. He felt exemptions for live keno and bingo could be worked out. He pointed out one reason for containing a provision that linked to the sale of alcoholic beverages is to prevent the proliferation of the machines in convenience store and laundromats or high school lobby. He said they have the potential to raise significant revenue.

Mr. Crafter discussed the three percent of the gross and said it was arrived at after several months of study. The gaming advisory council found a real problem with a flat fee system. Marc Racicot said the three percent gross tax was something that was negotiable. He said they were not out to gouge anyone or make it impossible to operate.

Senator Jenkins asked if it would be appropriate to grandfather people that operate machines without a liquor license. Marc Racicot said it was important to be fair to everyone, rather than do grandfathering.

Senator Van Valkenburg offered two amendments. On page 11, section 6, there is a prohibition in the involvement of an employee of the department directly involved in prosecution and investigation, regulation or licensing from having any connection in an organization that is engaged in gambling. He pointed out that the county attorneys and deputies of the state have a significant role in the state with respect to investigation, prosecution and law enforcement. They are not literally employees of the department, but the committee may want to consider making them such within this bill. Follow the word "department" on line 7, he suggested inserting "or any other person", because the general intent is to avoid conflicts of interest. He said he had an interest in the bill (because of being a director for the Big Brothers and Sisters and their bingo parlor in Missoula). He said a way of resolving the problem in live bingo is by establishing a definition of gross proceeds. He suggested "gross revenue received less prizes paid out". He thought that might help the problem the Great Falls man had with that section of the bill.

Senator Mazurek asked about the definition of a gambling device on page 6, line 18. Marc Racicot said it could be done by use or intended use by any gambling activity. Senator Mazurek asked about the local hours referring to Mr. Strobe and what the response would be to his proposed amendment. Marc Racicot viewed that as unequal time from jurisdiction to jurisdiction and it ought to be standardized across the state. Senator Mazurek asked about his position on the \$300 limit. Marc Racicot said in the area of card games someone more knowledgeable about what is a reasonable figure to expect. If everyone is in agreement that it should be kept at \$100 then it should be. Senator Mazurek asked if it would be acceptable to amend that, if the principal purpose of the establishment is gaming, such as a bingo parlor, then a liquor license would not be necessary but it would still prevent every Circle K from gaming.

Senator Mazurek said he wanted to hear some industry reaction to Senator Van Valkenburg's proposal of defining gross proceeds. Mr. Seelye said the proposal would be better than the bill was right now. He pointed out that the problem is that all his income was already taxed at 33 percent level and 12 percent to the state and additional 15 percent on licensing and the tax dollars are being taxed about 70 percent. He said the prizes paid out should be considered and he should not be forced into a different form of accounting.

Senator Crippen asked Mr. Racicot his feeling on having an advisory commission. Mr. Racicot said he, personally, had taken the opportunity to discuss openly any portion of the bill with any representative of the industry who had spoken to him about it. He said he would have no objections to an advisory council and said an amendment had been prepared to allow for one.

Closing by Sponsor: Senator Gage closed the hearing.

EXECUTIVE SESSION

DISCUSSION OF SENATE BILL 373

Steve Browning presented amendments to the committee (Exhibit 4) and reviewed them. They addressed five concerns: Exemplary business, review, random testing, assurance of privacy and applicant provisions. He had spoken with the nurses lobbyist and the AFT representative, he said, but hadn't been able to talk to the OCAW representative. He said that Montana was the only state in the union where applicants couldn't be tested.

Wilbur Rehman said the amendments didn't address all the issues.

After further discussion, it was decided to postpone action until the next meeting, as several members were absent for the last part of the meeting. In addition, more time to work on amendments was requested.

DISPOSITION OF SENATE BILL 393

Recommendation and Vote: Senator Harp MOVED that Senate Bill 393 BE TABLED. The MOTION CARRIED on a vote of 8 to 2 with Senators Halligan and Yellowtail voting NO.

DISPOSITION OF SENATE BILL 394

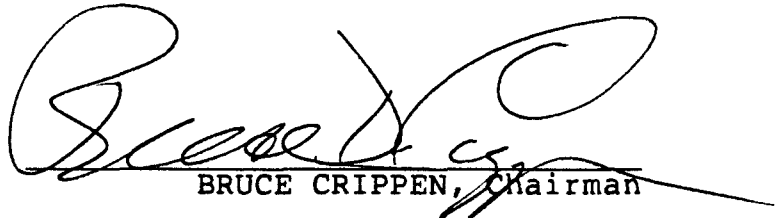
Recommendation and Vote: Senator Harp MOVED that Senate Bill 394 BE TABLED. The MOTION CARRIED on a vote of 8 to 1 with Senator Halligan voting NO and with Senator Beck absent.

DISPOSITION OF SENATE BILL 414

Recommendation and Vote: Senator Halligan MOVED that Senate Bill 414 DO NOT PASS. The MOTION CARRIED on a vote of 7 to 3, with Senators Bishop, Pinsoneault and Yellowtail voting NO.

ADJOURNMENT

Adjournment At:



BRUCE CRIPPEN, Chairman

BC/rj/dt

JUD217

ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 2-17-89

| NAME | PRESENT | ABSENT | EXCUSED |
|---------------------|---------|--------|---------|
| SENATOR CRIPPEN | ✓ | | |
| SENATOR BECK | ✓ | | |
| SENATOR BISHOP | ✓ | | |
| SENATOR BROWN | ✓ | | |
| SENATOR HALLIGAN | ✓ | | |
| SENATOR HARP | ✓ | | |
| SENATOR JENKINS | ✓ | | |
| SENATOR MAZUREK | ✓ | | |
| SENATOR PINSONEAULT | ✓ | | |
| SENATOR YELLOWTAIL | ✓ | | |
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Each day attach to minutes.



Ex. 1.

SENATE JUDICIARY

EXHIBIT NO. 1

DATE 2-17-89

BILL NO. SB 425

JAMES W. MURRY
EXECUTIVE SECRETARY

110 WEST 13TH STREET
P.O. BOX 1176
HELENA, MONTANA 59624

(406) 442-1708

Testimony of Don Judge on Senate Bill 425 before the Senate Judiciary Committee, February 17, 1989

Mr. Chairman, members of the committee, for the record my name is Don Judge and I'm representing the Montana State AFL-CIO in opposition to Senate Bill 425.

This bill would abolish the Workers' Compensation Court and judge and return the Montana Workers' Compensation system's court of last resort to its pre-1975 condition. That previous system was so fraught with inconsistency, delay and difficulty that it precipitated the creation of the Workers' Compensation Court. We find it difficult to believe that anyone would want to return to the previously inadequate system that proved to be a burden to both workers and the state.

It's clear that the creation of a Board of Industrial Benefits in the manner proposed in this bill will make it harder for workers to make claims and have them fully, fairly and readily adjudicated.

It also appears to us that the state will not end up achieving its ulterior purpose here, which is to save money. For example, under this bill, three board members will receive annual salaries of \$45,000, plus the usual benefits. Under the current system, only one judge exists and draws a salary.

Under this bill, appeals of ^{benefit} ~~court~~ awards are filed with the district court for the county in which the claimant resides, instead of directly into the Supreme Court. When you couple the likelihood of more appeals under a board system with the increased willingness of people to enter a cause of action in a lower court, you create a significant new burden for district courts. We don't think it's necessary to remind this committee of the already great burden faced by our district courts and the financial condition in which many must operate. This bill will only worsen that problem. This committee should also remember the disparity of decisions issued on Workers' Compensation appeals by the various district courts.

Those district court caseloads will translate into greater financial burdens for the state's taxpayers, but also greater judicial delays and difficulties for the injured workers. Such delays fly in the face of the stated purpose of Montana's Workers' Compensation Law, which is to assist injured workers and return them to the workplace as quickly as possible.

TESTIMONY OF DON JUDGE, PAGE TWO
SENATE BILL 425
FEBRUARY 17, 1989

The present Workers' Compensation Court may not be perfect in every way, just as with other courts across the land, but it has cured many of the previous system's ills. In large part because of the quality of the work done by the court's judge, the court system has proven responsive to the reasonable needs of all parties and has dispensed justice with fairness and compassion, and within the confines of existing law.

At the risk of trotting out a tired old cliché, let me close by saying:
"If it ain't broke, don't fix it."

Thank you.



Ex 2.

MONTANA DEFENSE TRIAL LAWYERS, INC.

36 SOUTH LAST CHANCE GULCH, SUITE A □ HELENA, MONTANA 59601 □ 406/443-1160

SENATE JUDICIARY

EXHIBIT NO. 2

DATE 2-17-89

BILL NO. SB 425

February 16, 1989

Senator Bruce Crippen and Committee Members
Senate Judiciary Committee
State Capitol
Helena, MT

RE: Senate Bill 425

Dear Senator Crippen and Committee Members:

The Board of Directors of the Montana Defense Trial Lawyers Association has reviewed and considered the provisions of Senate Bill 425 relating to the creation of a new industrial commission and the abolition of the Workers' Compensation Court. We respectfully submit that the bill should not be favorable reported upon. The basis of our position and concern is broad.

There is no question that the workers' compensation system in Montana has many problems. The problems range from a significant unfunded liability in the State Compensation Insurance Fund to many administrative difficulties in the operation of the system through the Division of Workers' Compensation.

There is no question that expansion of workers' compensation principles by the courts over the last ten years has been a factor in the increasing cost of the system. However, the courts are not totally to blame by any means. In addition, the courts were interpreting a Workers Compensation Act that begged for such construction given the fact that it was never updated in any comprehensive fashion and was segmented by piecemeal amendments over the years.

The 1987 Legislature considered and debated significant workers' compensation statutory reform. The product of the last session's work is a workers' compensation system that is significantly refined and far less subject to interpretation. In addition, informal dispute resolution requirements and mandatory mediation procedures were established. Such procedures are already proving their worth in reducing litigation significantly and will continue to do so. With appropriate tightening of administrative regulations in regard to mediation, the amount of litigation will continue to decrease.

SENATE JUDICIARY

EXHIBIT NO. 2, P. 2

DATE 2-17-89

FILE NO. SB 425

Senator Bruce Crippen and Committee Members

SB 425

Page 2

Senate Bill 425, seeking to make a scape goat of the Workers' Compensation Court, creates a board of three to ostensibly handle the function of a single Workers' Compensation Court Judge. The creation of additional bureaucracy is not the answer. Recent history tells us that each allocation of additional administrative authority to the Division of Workers' Compensation has resulted in more cost, more delay and more, not less, litigation. In addition, the budget of the new board, far exceeding the cost of the present system, will be an excessive expense devoid of any cost effective attribute.

The Workers' Compensation Court is a specialized forum that allows for consistent and speedy adjudication of cases that involve a difficult field of the law. The insertion of the District Courts around the state as an appeal forum in ill-advised. These courts, in the first instance, are already overburdened. The time delay inherent in District Court review does not serve the interests of either claimants or employers. In addition, by having the several District Court Judges around the state independently considering workers' compensation cases we invite inconsistency in decisions. In so doing, we will increase, not decrease, further appeals, further opportunity for the Supreme Court to interpret and reinterpret the Act and further litigation at the initial levels.

We are also concerned that the wholesale reworking of the adjudication process in workers' compensation may create a practical nightmare depending upon the date of a worker's injury. We already know that those injured before the effective date of the July 1, 1987 amendments have to be considered under one set of statutes and those injured after July 1, 1987 by another. If we now rework the system again, there is a high probability that we will have to maintain and fund three separate systems of adjudication depending upon the employee's date of injury.

Finally, when all is said and done, there can be only one purpose for the bill in question. The bill seeks to replace an independent judge with a board of three appointees. The purpose of the board and the court is represented to be the same. As such, it is clear that the bill seeks, innocently or not, to influence the impartial adjudication of workers' compensation claims. Such a situation must be unpalatable from both the employer's and employee's standpoint.

SENATE JUDICIARY

EXHIBIT NO. 2-p.3

DATE 2-17-89

BILL NO. SB 425

Senator Bruce Crippen and Committee Members
SB 425
Page 3

Thank you very much for considering the comments of our association. We would be most happy to provide further detail if the committee desires. Again, we respectfully urge you to defeat this bill.

Very truly yours,

GARLINGTON, LOHN & ROBINSON

By
Bradley J. Luck

WITNESS STATEMENT

NAME Keith Olson JUDGE SB 425
ADDRESS P.O. Box 1716 Kalispell MT 59903
WHOM DO YOU REPRESENT? Montana Logging Assn.
SUPPORT * OPPOSE _____ AMEND _____

COMMENTS: _____

Montana's work comp system was designed to be funded by employers to provide benefits for injured employees in a non-litigious environment.

It would seem to us, placing such a system should discourage judicial review of the vast majority of disputes.

We respectfully suggest an industrial board may be a ^{better} vehicle to protect the integrity of Montana's work comp system.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

SB 425

2/17/89

WITNESS STATEMENT

NAME Cyndi Thornton BUDGET _____

ADDRESS 2415 Mary Tesla, MT

WHOM DO YOU REPRESENT? _____

SUPPORT OPPOSE _____ AMEND _____

COMMENTS: _____

*due to the backlog of URESA actions
in the state of Montana, this bill
is needed*

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

SB 452

① Page 4, line 19.

Following: "order"

Insert: "and with the consent of the sheriff"

② Page 17, lines 3 and 4.

Following: "and the" on line 3

Strike: remainder of line 3 through
government on line 4

Insert: "administrators"



Ex 3

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 2-17-89
BILL NO. SB 431

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

CHAIRMAN CRIPPEN AND MEMBERS OF THE SENATE JUDICIARY COMMITTEE:

WORKING TOGETHER:

American Baptist Churches
of the Northwest

I am Mignon Waterman and I am speaking on behalf of the Montana Association of Churches.

Christian Churches
of Montana
(Disciples of Christ)

I applaud the Montana legislature, the Department of Justice and the Gaming Advisory Council for their open and comprehensive review of gaming in Montana. During the past eighteen months, the Bureau of Gaming and the advisory council have held numerous public meetings that were adequately noticed and that not only provided opportunity for input but also encouraged active participation from all interested parties. The council sought public input through an extensive survey conducted by Montana State University.

Episcopal Church
Diocese of Montana

The result is the legislation that is before this committee today. It provides, for the first time in Montana's history, a statewide policy on gaming, statewide regulation of gaming and most of all, a clear statement of the rules and policies by which all players in the gaming industry must abide.

Evangelical Lutheran
Church in America
Montana Synod

I would like to mention several provisions of the bill that the Montana Association of Churches supports.

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

First of all, the Montana Association of Churches strongly supports statewide regulation of gambling.

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

The bill recognizes the obligation of the gaming industry to provide assistance to those adversely impacted by gambling by providing funding for programs designed to treat persons with habitual gambling problems. Hopefully this progressive provision will curb the social costs associated with gambling. The Montana Association of Churches believes that early intervention in this area will benefit all Montanans.

Roman Catholic Diocese
of Great Falls - Billings

SB431 limits video gaming machines to premises that have liquor licenses and we support that provision.

Roman Catholic Diocese
of Helena

United Church
of Christ
Mt.-N. Wyo. Cont.

United Methodist Church
Yellowstone Conference

p. 2

I am pleased to see that SB431 reaffirms the current law that mandates that any gambling activity must be on a cash basis. If a person wishes to gamble, it should be a conscious decision that is planned for far enough ahead to allow an individual to determine the amount of money that he/she can afford to gamble. The lure of "winning on the next gamble," combined with alcohol and the opportunity to use a check or credit card provide an unhealthy risk of money that either isn't available or is needed for a family's basic needs such as food, clothes and shelter.

The Montana Association of Churches supports SB431 and once again we wish to express our appreciation for the openness of the review process that led to this legislation and for the opportunity for input from all parties.

I urge a do pass recommendation for SB431.

SB431
2/17/89

WITNESS STATEMENT

NAME Mignon Waterman BUDGET SB431
ADDRESS 530 Hazelgreen
WHOM DO YOU REPRESENT? MT- Assoc of Churches
SUPPORT X OPPOSE _____ AMEND _____
COMMENTS: see exhibit 3

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Ex 4

SENATE JUDICIARY

EXHIBIT NO. 4

DATE 2-17-89

BILL NO. SB431

Lynn M. Seelye
P.O. Box 1673
Great Falls, MT 59403

June 27, 1988

Becky Erickson
Chairwoman
Taxation Subcommittee/
Gaming Advisory Council
c/o Department of Commerce
Video Gaming Control Bureau
1125 Missoula Avenue
Helena, MT 59620

This correspondence is in response to your letter dated June 10, 1988. Therein you requested input and participation in developing a licensing system on all games associated with legal gambling. This letter sets forth our attention and efforts in the area of live bingo. I recently traveled to Great Falls, Montana and discussed the contents of your letter with the additional bingo operators whose name appear at the end of this letter.

The first item addressed was the extended scope of bingo operations being conducted in the State of Montana. As nearly as possible we determined there presently exist approximately 16 commercial live bingo operations throughout the State. These bingo operations are located in Montana's larger cities and conduct live bingo games on a regular basis each week. In addition, we believe there may be as many as 150 fraternal or service organizations which conduct limited bingo operations on an irregular basis. This group would include fraternal organizations, churches, and charities. It is not possible for us to accurately predict the extent of their participation in live bingo games. However, it appears that such organizations do conduct live bingo games in the larger cities on an ongoing intermittent basis.

Becky Erickson
June 27, 1988
Page 2

With respect to the charging of license fees, it was determined by the individuals present that the licensing fee should be a flat fee paid by individual commercial and charity organizations on an annual basis. The fee should be based on the occupancy rate for the individual establishments. It was determined that a minimum occupancy of 50 people would be in the lowest rate and this would progress by increments of 50 people up to 200 people and over. It was further suggested that the licensing fee increase in increments of \$250. Thus, a commercial or charitable operation who has an occupancy area allowing 100 patrons would be required to pay an annual licensing fee of \$500. If the operator has the capacity to seat 150 people, the license fee would be increased by an increment of \$250 to \$750. It was felt that a flat licensing fee based upon the size or potential size of the gaming operation would be the simplest to administer from both the standpoint of the operator and the standpoint of the State. It was felt that occupancy should be used as the criteria in that most buildings have a permit granted by the City or County in which they are located which states the occupancy allowed on the individual premises.

It was the opinion of the individuals at the meeting that charities should be treated the same as commercial operations. In the event your committee should determine that charities should be granted a more favorable status with respect to licensing, we would suggest that such favorable status carry with it, the restriction that bingo be restricted to participation by members of the particular fraternal organization or charitable community organization conducting the game. It seems unfair to grant charities a favored status when they are in direct competition with private enterprise. This is particularly true when their favored tax treatment and utilization of volunteer help is taken into consideration.

We would like to set forth herein, a couple of comments that came out during the course of discussion by the individuals present at the Great Falls meeting. For members of the gambling advisory committee who are not familiar with bingo operations, we would like to point out the following:

1. Most bingo games carried on by commercial operations utilize hard cards. These are cards which allow the players to clear the board after each game and use the board on a repeated basis during the period of time they participate in the bingo session.

Becky Erickson
 June 27, 1988
 Page 3

2. The bingo balls are picked by a mechanical device and are placed before TV monitors scattered throughout the bingo room. The individual caller has no control over the ball selection in question. In addition, the caller does not handle the collection of monies, nor account for the prize. The bingo caller occupies a distinct and separate status which is monitored not only by co-workers, but also by players and TV monitors and cameras located throughout the bingo hall.

3. To the best of knowledge by the individuals present, there has been no violations of regulations set forth under the recently enacted statutory provisions concerning payouts to customers in conjunction with the conduct of live bingo games. To a large extent this is due to the high visibility of the caller and the separation of functions. We feel strongly that very little additional regulation needs to be enacted in order to ensure the safe conduct of live bingo operations. In particular we want to emphasize that bingo callers' functions are completely separate and distinct from those undertaken by a dealer in a poker or 21 game for example.

4. The conduct of a live bingo game involves a number of employees. This includes the caller, the individuals who are required to collect money (bingo runners), individuals who are present to help individual players, and individuals who account for the money and pay off on each game. There is a fairly substantial turnover in the employment force during the course of a year and it would be extremely time consuming and expensive to attempt to license each individual employee which helps the operator carry on his bingo game. Furthermore, the successful bingo game requires a trade-off of bingo callers on a continuous basis. Thus, it would be nearly impossible for the bingo operator to license one or two callers to the exclusion of the balance of his workforce. With respect to charitable organizations, most of the calling is done by volunteers and the licensing of such volunteers would be extremely onerous.

5. We feel that the \$100 payoff limitation per game should be continued.

6. We do not feel seasonal licenses should be issued. Here again, such licenses are more likely to be utilized by charities or fraternal organizations and, once again, would

SENATE JUDICIARY
EXHIBIT NO. 4, p. 4
DATE 2-17-89
BILL NO. SB 431

Becky Erickson
June 27, 1988
Page 4

allow them to operate and compete within the State at an advantage to private enterprise. Where charities are competing for the identical dollars against private enterprise, we feel they should compete on the same basis and not be given an artificial advantage due to State regulatory measures.

We would welcome and invite any of the Advisory Council to meet with us personally or to observe the conduct of our games. We feel there are some misconceptions as to the profitability and the operation of bingo enterprises. We are proud of our industry and feel the participants are getting prizes represented by the operators. Because of the high visibility of the conduct of the game, we feel the games are being correctly monitored by the players and co-workers in conjunction with TV cameras. Should you desire to visit any of our individual operations or to meet with us with any further questions, please do not hesitate to call any of the individuals whose name appears in conjunction with this correspondence. We thank you in advance for the opportunity to give you our opinions and input concerning the potential adoption of further regulation and licensing of live bingo games.

Very truly yours,

"Ole" Ehli
Little Nevada Casino
1413 - 13th Street West
Billings, MT 59102

Sid Smith
Bingo Palace
2425 Highway 12 East
Helena, MT 59601

Lynn M. Seelye
Sailboat
2401 - 12th Avenue South
Great Falls, MT 59405

Tom Heisler
Bingo Bonanza
2412 - 11th Avenue South
Great Falls, MT 59405

bb

cc Morty Boyd
2401 - 12th Avenue South
Great Falls, MT 59405

88.1584/10082

EX 5

SENATE JUDICIARY
EXHIBIT NO. 510.1
DATE 2-17-89
BILL NO. SB 373

51st Legislature

LC 1109/01

1 *Senate* BILL NO. 373
2 INTRODUCED BY *Russell Sage*
3 *Frank* HARP

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE REGULATION
5 OF BLOOD AND URINE TESTING OF EMPLOYEES AND PROSPECTIVE
6 EMPLOYEES; AND AMENDING SECTION 39-2-304, MCA."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Section 39-2-304, MCA, is amended to read:
10 "39-2-304. Lie detector tests prohibited -- regulation
11 of blood and urine testing. (1) No Except as provided in
12 subsection (2), a person, firm, corporation, or other
13 business entity or representative thereof shall may not
14 require:

15 (a) as a condition for employment or continuation of
16 employment, any person to take a polygraph test or any form
17 of a mechanical lie detector test;

18 (b) as a condition for employment, any person to submit
19 to a blood or urine test, except for employment in hazardous
20 work environments or in jobs the primary responsibility of
21 which is security, public safety, or fiduciary
22 responsibility; and

23 (c) as a condition for continuation of employment, any
24 employee to submit to a blood or urine test unless the
25 employer has reason to believe that the employee's faculties

(1)

1 are impaired on the job as a result of alcohol consumption
 2 or illegal drug use.
 3 (2) Job applicants and employees may be required to
 4 submit to blood and urine testing by employers that meet all
 5 the following requirements:

Strike all language in (a) and replace with

6 ~~(a) The employer maintains an organized program to~~
 7 ~~maintain an alcohol-free and drug-free work environment for~~
 8 ~~the benefit of all its employees and customers. The program~~
 9 ~~recognizes that the use of nonmedically prescribed~~
 10 ~~controlled substances is potentially damaging to the~~
 11 ~~employees and should be remedied. The employer's written~~
 12 ~~policies state that one of the purposes of its drug and~~
 13 ~~alcohol program is to prevent and eliminate the abusive use~~
 14 ~~of such substances by its employees.~~

(a) The employer maintains an organized program providing confidential assistance and rehabilitation to employees with problems of alcohol or drug abuse. Such a program shall include assistance in the prevention, assessment, referral, and treatment of physical, psychological and social problems by certified professionals. The assistance available to employees shall include both inpatient and outpatient rehabilitation services provided by an approved chemical dependency program or by a hospital. Payment for employee assistance and rehabilitation services shall be either directly by the employer or, to the extent provided, under a health insurance program as established by the employer. An employers program of employee assistance and rehabilitation for drug and alcohol abuse must be in writing and must be submitted to the Department of Labor and Industry for review to assure conformity with the intent of this subsection.

Strike all language in (b) and replace with

15 ~~(b) The employer provides to its employees a bona fide~~
 16 ~~drug and alcohol assistance program that is paid for by the~~
 17 ~~employer or is available to the extent provided by a policy~~
 18 ~~of health insurance or provided under contract by a~~
 19 ~~hospital.~~

(b) The employer shall not use random drug or alcohol testing of employees under this subsection, however unscheduled testing of employees who have recognized drug or alcohol abuse problems may be permitted for a reasonable period of time to assure that they remain drug or alcohol free.

20 (c) The employer allows job applicants who test
 21 positive to blood or urine tests for alcohol or drugs to
 22 reapply for a job after a reasonable period of time has
 23 elapsed, and if retested, the original positive test results
 24 may not be considered as part of the new job selection
 25 process.

(d) No drug testing program under this subsection shall be allowed unless implemented according to the following criteria:

(1) Testing may occur only if at least one of the following conditions is met:

(a) Testing is part of a pre-employment screening, provided that an offer of employment has been made to the applicant, the same testing is required of all job applicants conditionally offered employment for that position, the applicant is given prior notice of such testing, and the testing is in accord with the standards established for employees by this sub-section.

(b) There is reasonable suspicion of impairment based upon visible evidence of erratic job behavior, including but not limited to significant decline in employee's productivity, higher than average accident rates on the job, repeated lateness or absence from work, violent behavior, emotional unsteadiness, sensory or motor skill malfunctions, or possession of a controlled dangerous substance, or there is reasonable suspicion, based upon evidence of any kind, that an employee may be impaired and presents a safety risk to himself or other persons.

(2) The employer must ensure that the program minimizes the intrusion upon employee privacy and includes a prohibition against the direct observation of the tested individual urinating.

(3) The employer must ensure that strict confidentiality will be maintained and that only the employer, employee and the employer's health personnel will have access to the results of a drug test.

1 †3†3 Prior to the administration of a drug or alcohol
2 test, the person, firm, corporation, or other business
3 entity or its representative shall adopt a written testing
4 procedure and make it available to all persons subject to
5 testing. A testing procedure must provide for the:
6 (a) collection of a blood or urine specimen in a manner
7 that minimizes invasion of personal privacy while ensuring
8 the integrity of the collection process;
9 (b) collection of a quantity of specimen sufficient to
10 ensure the administration of several tests;
11 (c) collection, storage, and transportation of the
12 specimen in tamper-proof containers;
13 (d) adoption of chain-of-custody documentation
14 procedures identifying how the specimen was handled and
15 tested;
16 (e) verification of test results by two or more
17 different testing procedures before judging a test positive;
18 and
19 (f) prohibition of the release of test results, except
20 as authorized by the person tested or as required by a court
21 of law.

22 †3†4 The upon request by the person tested, the
23 person, firm, corporation, or other business entity or its
24 representative shall provide a copy of drug or alcohol test
25 results to the person tested and provide him the

1 opportunity, at the expense of the person requiring the
2 test, to obtain a confirmatory test of the blood or urine by
3 an independent laboratory selected by the person tested.
4 The person tested must be given the opportunity to rebut or
5 explain the results of either test or both tests.
6 †4†5 Adverse action may not be taken against a person
7 tested under subsections (1)(b), (1)(c), (2), 3 and †3†
8 or 4 if the person tested presents a reasonable
9 explanation or medical opinion indicating that the results
10 of the test were not caused by alcohol consumption or
11 illegal drug use.
12 †5†6 A person who violates this section is guilty of
13 a misdemeanor."

-End-

4

5

Amendments to Senate Bill No. 373
First Reading Copy (WHITE)

For the Committee on Judiciary

Prepared by Valencia Lane
February 15, 1989

J. Amend

1. Page 2, line 4.

Following: "testing"

Insert: "as a condition for employment or continued employment or for the purpose of compulsory enrollment in the program specified in subsection (2)(b),"

P. Amend

2. Page 2, line 16.

Following: "program"

Insert: "that includes outpatient or inpatient treatment as needed and"

3. Page 2, line 19.

Following: "hospital"

Insert: "or approved chemical dependency treatment program"

DATE Feb. 17, 1989

COMMITTEE ON Judiciary

VISITORS' REGISTER

| NAME | REPRESENTING | BILL # | Check One | |
|------------------------|--|--------|-----------|-------|
| | | | Support | Oppos |
| Ruben Allard | Governer Office | 431 | | |
| Randy Roger | 61A | 431 | | X |
| John A. ... | SALSBAT | 451 | | X |
| Cyril Thurston | | 433 | X | |
| Carol Mosher | Mt. Lattle Women | 431 | X | |
| Marie Aegyan | | 433 | X | |
| Pius de Elhi | Big 6 Bingo Bellin | 431 | | X |
| Pat Martin | Big Bros & Sisters | 431 | | |
| Linda Lefavour | Big Bros & Sisters | 431 | | |
| Jerry G. Will | S W's Bingo | 431 | | |
| Boris Durkes | MTA | 431 | X | |
| Steve Mandeville | Self | | | |
| Tex Fote | M.A.A. | 431 | | |
| MICHAEL P. CRETARU | PRIVATE BUSINESS | 431 | X? | |
| Tom Lehman | Private Bus | 431 | X | |
| Bob Smith | Dept. of Justice | 431 | | |
| Carly Poole | Dept. of Commerce | 431 | X | |
| John Ed Kennedy Jr. | Mayor of Kalspell | 431 | X | |
| Brad Schweg | Gaming Adv. Council | 431 | X | |
| John Willers | Dept. of Commerce | 431 | X | |
| MIKE McMEEKIN | GAMING ADVISORY COUNCIL | 431 | X | |
| Jan Van Riper | self | 425 | | X |
| Brenda Nordlund | MT Women's Lobby | 433 | X | |
| SPAN KALCZYK | COLUMBIA FALLS ALUMINUM CO BLUM-GREEK TIMBER CO | 425 | X | |
| George Wood | Mt Self Insurance Assoc | 425 | | X |
| Morte Bach | Self | 425 | | X |

VISITORS' REGISTER

Judiciary COMMITTEE

BILL NO. SB425

DATE Feb. 17, 1989

SPONSOR _____

| NAME (please print) | RESIDENCE | SUPPORT | OPPOSE |
|---------------------|------------------------------|------------------|--------|
| MARK Simonich | P.O. Box 1429 Columbia Falls | X | |
| Don Judge | MT STATE AFL-CIO | SB425 | SB425 |
| Sue Weingarten | MT Defense Trial Lawyers | | SB425 |
| Mignon Waterman | MT. Assoc. of Churches | SB425 X | |
| Ben Houdson | MT. Motn Conv. Assn | SB425 | |
| Mike Sherwood | MTLA | | SB425 |
| Charles R. Brooks | Montana Nat. Assoc. | SB425 | |
| Chuck Kelly | MT. Sheriff's Peace Officer | SB452 | |
| Don Crabbe | Board of Crime Control | SB452 | |
| Don Allen | MT. Wood Prod. Assn | SB425 | |
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IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-17-89 Senate Bill No. 433 Time William

| NAME | YES | NO |
|------------------|-----|----|
| SEN. BISHOP | ✓ | |
| SEN. BECK | ✓ | |
| SEN. BROWN | ✓ | |
| SEN. HALLIGAN | ✓ | |
| SEN. HARP | ✓ | |
| SEN. JENKINS | ✓ | |
| SEN. MAZUREK | ✓ | |
| SEN. PINSONEAULT | ✓ | |
| SEN. YELLOWTAIL | ✓ | |
| SEN. CRIPPEN | ✓ | |
| | | |
| | | |

UNAN

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Halligan No Pass. UNAN

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-17-89 Senate Bill No. 425 Time _____

| NAME | YES | NO |
|------------------|-----|----|
| SEN. BISHOP | ✓ | |
| SEN. BECK | ✓ | |
| SEN. BROWN | ✓ | |
| SEN. HALLIGAN | | ✓ |
| SEN. HARP | ✓ | |
| SEN. JENKINS | ✓ | |
| SEN. MAZUREK | | ✓ |
| SEN. PINSONEAULT | | ✓ |
| SEN. YELLOWTAIL | | ✓ |
| SEN. CRIPPEN | ✓ | |
| | | |
| | | |

6 to 4

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Harp DoPass Passed 6-4

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-17-89 Senate Bill No. 452 Time _____

| NAME | YES | NO |
|------------------|-----|----|
| SEN. BISHOP | ✓ | |
| SEN. BECK | ✓ | |
| SEN. BROWN | ✓ | |
| SEN. HALLIGAN | ✓ | |
| SEN. HARP | ✓ | |
| SEN. JENKINS | ✓ | |
| SEN. MAZUREK | ✓ | |
| SEN. PINSONEAULT | ✓ | |
| SEN. YELLOWTAIL | ✓ | |
| SEN. CRIPPEN | ✓ | |
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Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: P. Moved DPA UNAN

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-17 Senate Bill No. 373 Time _____

| NAME | YES | NO |
|------------------|-----|----|
| SEN. BISHOP | | |
| SEN. BECK | | |
| SEN. BROWN | | |
| SEN. HALLIGAN | | |
| SEN. HARP | | |
| SEN. JENKINS | | |
| SEN. MAZUREK | | |
| SEN. PINSONEAULT | | |
| SEN. YELLOWTAIL | | |
| SEN. CRIPPEN | | |
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Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Hold for amend & more Comm. members

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-17-89 Senate Bill No. 393 Time _____

| NAME | YES | NO |
|------------------|-----|----|
| SEN. BISHOP | ✓ | |
| SEN. BECK | ✓ | |
| SEN. BROWN | ✓ | |
| SEN. HALLIGAN | | ✓ |
| SEN. HARP | ✓ | |
| SEN. JENKINS | ✓ | |
| SEN. MAZUREK | ✓ | |
| SEN. PINSONEAULT | ✓ | |
| SEN. YELLOWTAIL | | ✓ |
| SEN. CRIPPEN | ✓ | |
| | | |
| | | |

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Harp - Table 8-2

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-17-89 Senate Bill No. 394 Time _____

| NAME | YES | NO |
|------------------|----------|----|
| SEN. BISHOP | ✓ | |
| SEN. BECK | (absent) | |
| SEN. BROWN | ✓ | |
| SEN. HALLIGAN | | ✓ |
| SEN. HARP | ✓ | |
| SEN. JENKINS | ✓ | |
| SEN. MAZUREK | ✓ | |
| SEN. PINSONEAULT | ✓ | |
| SEN. YELLOWTAIL | ✓ | |
| SEN. CRIPPEN | ✓ | |
| | | |
| | | |
| | | |

8 to 1

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Harp
Table the bill

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-17-89 Senate Bill No. 414 Time _____
a.m. Bishops

| NAME | YES | NO |
|------------------|-----|----|
| SEN. BISHOP | | ✓ |
| SEN. BECK | ✓ | |
| SEN. BROWN | ✓ | |
| SEN. HALLIGAN | ✓ | |
| SEN. HARP | ✓ | |
| SEN. JENKINS | ✓ | |
| SEN. MAZUREK | ✓ | |
| SEN. PINSONEAULT | | ✓ |
| SEN. YELLOWTAIL | | ✓ |
| SEN. CRIPPEN | ✓ | |
| | | |
| | | |

7 to 3

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Halligan DNP (Do Not Pass)
