

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON SENATE BILL 431

Call to Order: By Chairman Gage, on April 18, 1989 at 2:00 p.m.

ROLL CALL

Members Present: Senators: Bob Brown, Joe Mazurek, Delwyn Gage. Representatives: Dave Brown, Bill Strizich, Budd Gould.

Others Present: Attorney General Marc Racicot
John McMasters, Legislative Council

Members Excused: None

Members Absent: None

Staff Present: Ann Glenn, Secretary

SENATE BILL 431

Chairman Gage stated he would like to keep the meeting as informal as possible to save time unless it became necessary because of the nature of the bill - it becomes less than informal we will go to very formal. He asked for comments from Committee members regarding their positions as regards to the House amendments.

Representative Brown The House spent 13 to 14 hours in sub-committee, which he chaired. His ground rules at the outset were: (1) this bill would not be an expansion of gambling and (2) that if we were going to create uniformity we should have it as uniform as possible to pass the board with those things that directly relate to gambling, and (3) the Attorney General was gracious enough to sit through that entire process as were most of the folks in attendance here. What we tried to do was take a look across the state to create uniformity and at the base that we started with, we didn't want to restrict the average activity that was going on, and we specifically excluded a number of games. The bottom line was not to reduce and have an impact on the industry that is out there now. Overall, I think we restricted on the kind of gambling that is going on in Montana now. We also operated under the Attorney General's guidelines - if it's not in this bill it isn't legal. Under all the constraints, I hope we can deal with this Committee so we can find a common ground that is fair to everyone and

still provide what I think this legislation overall wants to do and that is control gambling in Montana. Another two and one-half to three hours were spent in full committee. The bill came out of the House with good solid support. Regarding the packet of amendments which say "from the Attorney General's office", some of those are the Attorney General's and some of those were requested by others. As we go through them I want clearly noted those amendments that were requested by the Attorney General and which were not.

Senator Mazurek In particular I asked where are the areas of expansion in this from current practice that is going on right now, and the areas that were identified were "Jacks or better", the \$800 dollar limit on poker machines, the hours and the ability of local governments to go beyond the 8:00 a.m. to 2:00 a.m., the number of machines, use of the term "symbols", cashing of checks, existing small business (non-liquor) machines, grandfather clause, existing machines, a permanent license, the effective date, and other technical concerns.

Representative Gould Is not personally "hung up" on anything in the bill except a couple of points which were brought up by Joe. I think house should be a local option. For example, at our hearings the Missoula city fathers were very much in favor of having local option because presently they are receiving about \$80,000 a year in the 8:00 a.m. to 2:00 a.m. time. Missoula is a strong shift town between the mills, hospitals, etc. There are 26 keno machines that the city and county are receiving revenue off of and I think it is totally unfair to have machines one place and I build a convenience store across the street from someone who has two machines - you have the advantage over me. I should be able to put in a couple of keno machines. The rest of the amendments are certainly up for discussion.

Senator Brown Echoed some of the comments made by Senator Mazurek. He indicated that Rep. Brown said he laid down the ground rules for the sub-committee in the House of Representative Judiciary Committee and that they didn't want SB 431 to be a vehicle for expansion but felt it was useful to move towards uniformity in our state's gambling laws. That was the philosophy that predominated the Senate Judiciary Committee as well and it certainly did on the Senate floor. We may have a rather major and significant disagreement in the area of "Jacks or better". It may be pretty fundamental because it is not utilized in the law. There isn't any reference to "Jacks or better" in the existing law. So in my estimation it is expansion right there but furthermore since it is alleged that it is going on right now we might as well go ahead and legalize it. That is a poor basis for any kind of public policy to say

that people are doing it then we ought to make it legal. Certainly, we would not be able to make anything legal if we followed that philosophy in all cases.

I think "Jacks or better" is an expansion since it is not in the existing law. The facts are not upheld that it is widely played now according to the evidence in a document, dated April 18, 1989, from Rick Day, Bureau Chief of the Investigations Bureau, Department of Revenue. It is especially significant in light of increasing the pot money from \$800 to \$1000 - the fast moving house games, such as "Jacks or better", then I think if you increase the pot limit you expand even more significantly gambling if you let this game become part of our law. The local option questions such as the number of machines and closing hours, etc., I have personal viewpoints on but they are not as strongly held as these first two - "Jacks or better" and amount of pot money. I also think we should look carefully at the transferability of businesses. I think we may be able to come to a fairly easy agreement in the area of the symbols. I have some concerns also in the area of the check cashing.

Representative Strizich From the very start my intentions were to try and find uniformity on the issues and I think we have to hear current practice against where we want to be in the future. Current practice in my view has been one of expansion because we don't have state-wide regulation and because we don't have uniformity. I think in our effort to describe current practice we uncovered the diversity in the application of law across the state and that is the problem in and of itself. "Jacks or better" is a good example - which came out of a discussion of what current live games are being played that seems to be a popular game in several counties - whether or not it's an expansion is a subject for some discussion. I think we need to avoid expansion of gambling in Montana - by default that we have been doing for many years - and I think the legislature has been terribly at fault for not doing something uniform state-wide for many years. Any perceived expansions in this bill I believe are counter-balanced by what I feel are pretty good teeth - administratively and criminally which were not there before. I hope we can avoid, to quote the Attorney General, "throwing the baby out with the bath water". We have a lot more here at stake.

House Floor Amendments

The Committee addressed each House amendment with Representative Brown commenting on the reasons for changes. Attached to these minutes (Exhibit A) are the amendments which Committee members have approved thus far in this

meeting.

License and Permit Fees and Effective Dates

Attached to these minutes as (Exhibit B) is a report from John McMaster of the Legislative Council regarding the proposed effective date for the bill.

Representative Gould moved that both Sections referred to as 63, 64, 65, 66, 67, 68, 70, 71, Section 7, (2) and the effective date section be effective on typing and approval, and the Appropriation Section be effective July 1, 1989. All other sections to be effective October 1, 1989. Motion passed.

Section 48 (3)

John Wallin with Video Games gave testimony that machines in the state have only been conditionally approved. They have not had the ability to check to the fullest extent possible the random of the game. While some of the machines will certainly pass the final test, he anticipates that some of them will certainly fail and there will be some people who will not be able to bring their machines into compliance.

Representative Brown noted that the bill states All video gambling machines approved by the department of commerce prior to the effective date of this act must be considered approved under this part. He said either they are approved or they are not approved. If they are conditionally approved then they are not approved.

Senator Mazurek stated the position of Senate Committee members that they give on cashing checks, local hours, local options on machines and leave those as is - so by local ordinance you could extend hours but by local ordinance you could not reduce machines, give on \$100 to \$300 and in exchange what we would like to have is go from \$800 to \$1000 on poker and "Jacks or better", off with language included that card games must be played amongst the dealer and the players and not be played against the house, and we would want to "grandfather" existing non-gaming, non-alcohol premises only - no sale, no transfer, no devise. We have card games in this state and apparently there is disagreement what that contemplates. Just because some county attorneys may be willing to look the other way, I don't think we should make what is currently illegal, legal, because it's played in some areas around the state.

Attorney General Marc Racicot We do not want being involved being a lobby for various games - that shouldn't be our

function. We have 10 agents for the state of Montana to investigate serious problems. From our perspective we would like to know what you want us to do and we'll do it.

Senator Mazurek I am concerned about having live action games against the house. Secondly, I feel very strongly about allowing locals a number of machines so we fell we are giving on that. The Senate would like to get machines out of non-gaming, non-licensed establishments. What we are trying to do is concede, compromise, if you will - we will go along with those who already have them but gradually phase them out so that you limit games to licensed gaming or alcohol beverage establishments. From that perspective we think we are giving away on two points which the Senate has already voted directly the opposite on.

Senator Brown The thrust of this bill is control and with the number of people that the Attorney General has to help him enforce the laws he can maintain control. We will "grandfather" the people who operated in establishments that weren't taverns but would eventually phase them out under the language the Attorney General has proposed. It seems to me contrary to the thrust and purpose of the whole bill to then say we are going to allow two of these things in any place that serves food.

Representative Gould In Missoula County we have 26 keno machines located in truck stops and convenient stores. The City attorney and sheriff's office have no problems and they feel it would be a loss of revenue if presently they could only have 15 machines.

Representative Strizich We tried to balance restriction of gambling and the expansion of gambling. What we were trying to do is find existing practice, regulating it and controlling it. Currently, there is no control over those non-alcohol places - there is control with the amendments we have made. I am also assuming that now that we have good law here, that has some criminal and some administrative sanctions for people who operate these machines that the problem folks have with having these things placed out in the public with the possibility of having kids play them is going to be severely limited. More so, under this law, we are controlling gambling, we are restricting gambling.

Senator Brown If you have these machines in drug stores and convenient marts it would be very difficult to police.

Senator Mazurek It is also consistent with what we have done with bingo establishments - under this bill no one can open a bingo establishment who have machines. All we are trying to do is be consistent in treating existing

establishments.

Representative Gould We have seen the expansion of gambling because we have had SB 431 in place. The most important thing in all our conversations is have a bill in place - I don't want to lose the bill but also feel that places such as ours where we are not having any problem - we are restricted. I just hate to see us get totally "hung up" on one really small issue and any issue in this bill can be changed in two years.

Senator Mazurek The difficulty I have with that is the very purpose of this bill is to have state-wide standards. What you are saying is that Missoula will decide where they want it and everyone else can decide the way they want it.

Representative Strizich We put a lot of time in this bill and at no time did I hear testimony before any committee, in letter-writing or phone calls that there is a problem out there with the truck stops having these machines. I didn't hear it from county attorneys, city attorneys - I heard concerns about exposed to children, concerns about insidious expansion - I don't hear a problem with the bill.

Senator Mazurek Having machines in truck stops, convenience stores, grocery stores - that is what we are talking about here and I would suggest that a majority vote in the Senate to delete those machines ought to be evidence of some concern.

Senator Gage You are letting the local folks vote that determination but the burden of control of that whole thing is thrown back on the Attorney General's office with no control whatsoever on the workload.

Senator Brown The Attorney General has indicated to us this morning that we have a control problem.

Senator Gage To summarize what our concerns are - it is our feeling and the feeling of the Senate that the full thrust of the bill is to put the control on the enforcement for uniformity under state control. It is our feeling that we are straying towards local control in pretty major ways - when we start going towards local control of numbers of machines and locations of machines. We feel like we are moving opposite to what we have done in the past as far as trying to limit where those machines are as far as keno machines - as far as keeping them in licensed and beverage establishments. We feel like we are putting more burden on the A.G. for enforcement because of the expansion of the numbers of places these machines will be. I have a big concern about the fact that we may potentially be

disallowing machines in those places that presently have them if we "grandfather" those folks in. I would not like to see us take the "grandfather" out. The Senate and the Conferees don't feel we would like to expand the machines into any more non-beverage places than they presently are.

ADJOURNMENT

Adjournment At: 10:00 a.m.



DELWYN GAGE, Chairman

DG/sh

SENMIN.431

FREE CONFERENCE

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 4-18-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BOB BROWN	X		
SENATOR JOE MAZUREK	X		
SENTOR DELWYN GAGE	X		
REP. DAVE BROWN	X		
REP. BILL STRIZICH	X		
REP. BUDD GOULD	X		

Each day attach to minutes.

Amendments to Senate Bill No. 431
Reference (salmon-colored) Copy

Requested by Joint Free Conference Committee

Prepared by John MacMaster
April 19, 1989

1. Title, line 11.
Following: "FOR"
Insert: "AN APPROPRIATION AND A"
2. Title, line 18.
Strike: "AND"
3. Title, line 2 on page 2.
Following: "MCA"
Insert: "; AND PROVIDING EFFECTIVE DATES"
4. Page 4, line 1.
Following: "~~granted.~~"
Insert: "A holder does not acquire a vested right in the license or permit issued or other department approval granted."
5. Page 5, lines 16, 21, and 25.
Page 6, lines 4 and 9.
Strike: "OR SYMBOLS"
6. Page 5, line 22.
Strike: "OR SYMBOL"
7. Page 12, line 9.
Following: "manufacture"
Insert: ", lease,"
8. Page 15, line 12.
Following: "THE"
Insert: "gambling activity,"
Following: "ACT"
Insert: ", "
9. Page 17, line 7.
Following: "deposited"
Insert: "one-half"
10. Page 17, line 14.
Following: "FUND"
Insert: "and one-half in the general fund of the county in which the violation occurred"
11. Page 18, line 14 through line 14 of page 19.
Strike: subsections (3) and (4) in their entirety

12. Page 24, lines 17 through 19.
Strike: subsection (3) in its entirety

13. Page 33, line 20.
Following: "tables."

Insert: "If one or more live card game tables were legally operated on a premises on January 15, 1989, and the premises were not on that date licensed under 16-4-401(2) but were licensed on that date to sell food, cigarettes, or any other consumable product, an operator's license and an annual permit for the placement of live card game tables may be granted to the person who legally operated the premises on January 15, 1989."

14. Page 49, line 21.
Following: "operator."

Insert: "The department shall adopt rules allowing a video gambling machine that needs repair to be temporarily replaced while it is being repaired with a video gambling machine that is approved under the permit provisions of this part. A fee may not be charged for the replacement machine."

15. Page 54, line 3.
Following: "located."

Insert: "The local government portion of the fee is statutorily appropriated to the department, as provided in 17-7-502, for deposit in the local government treasury."

16. Page 61, line 3.
Following: "part,"

Insert: "a person who purposely or knowingly violates or procures, aids, or abets"

17. Page 61, line 5.
Following: "department"

Insert: "or an ordinance, resolution, or rule adopted under this part"

Following: "is"

Insert: "guilty of"

18. Page 63, lines 24 and 25.

Strike: "qualified" on line 24 through "(4) and" on line 25

19. Page 64, lines 3 and 4.

Strike: subsection (2) in its entirety

Insert: "(2) the proceeds from the pool, minus administrative costs and prizes paid, are contributed to a charitable or nonprofit corporation, association, or cause."

ReNUMBER: subsequent sections

20. Page 67, line 11.

Following: "23-5-610;"

Insert: "23-5-612;"

21. Page 72, line 4.

Following: line 3

Insert: "NEW SECTION. Section 69. Proration of certain fees. A fee imposed under 23-5-321, 23-5-421, 23-5-612, 23-5-625, or 23-5-631 between [the effective date of this section] and October 1, 1989, must be prorated to cover only the period between the date the permit or license takes effect and October 1, 1989.

NEW SECTION. Section 70. Appropriation. The following appropriation is made from a state special revenue account to the department of justice for the purpose of implementing [this act] and administering chapter 5 of Title 23:

Fiscal year beginning July 1, 1989	\$527,081
Fiscal year beginning July 1, 1990	\$449,081"

Renumber: subsequent sections

22. Page 74.

Following: line 2

Insert: "NEW SECTION. Section 75. Effective dates. (1) [Subsection (2) of section 7 and sections 63 through 67, 69, 72, 73, and this section] are effective on passage and approval.

(2) [Section 70] is effective on July 1, 1989.

(3) The remaining sections are effective on October 1, 1989."

April 19, 1989

TO: SB 431 Joint Free Conference Committee members
FROM: John MacMaster

I have studied the various license and permit fee sections of the bill and the subject of effective dates, particularly the idea of making most of the bill, including the licensing and regulatory functions, effective on July 1, 1989, and the problem of double licensing (on July 1 under current law and again on Oct. 1 after the bill becomes effective) if the bill becomes effective on October 1, 1989.

It is my opinion that there is no way the Attorney General and Department of Justice will be able to consider, propose, and adopt by July 1, 1989, rules implementing the bill. A July 1, 1989, effective date would leave approximately two months to consider, propose, and adopt rules before the bill becomes effective on this July 1. That is simply not enough time for a major bill such as this, containing the large number of areas in which rules will have to be adopted. I say this as one who has for many years worked with gambling laws and has been the staff attorney for the Administrative Code Committee for 3 years. I can guarantee you that if you put a July 1 effective date on the bill you will create big problems, because when July 1 rolls around and the bill becomes effective there won't be any rules, or there will be totally inadequate rules.

With respect to a possible double payment of fees if October 1 is the effective date, section 28 of the bill imposes a new fee so is not a problem. The fee does not exist now and won't until section 28 takes effect. The other fee sections that must be considered are in the code sections cited in the suggested new section set forth below. These can be taken care of (if October 1 remains the effective date for most of the bill) by inserting in the bill a new section reading:

NEW SECTION. Section 68. A fee imposed under 23-5-321 and 23-5-322, 23-5-421 and 23-5-422, 23-5-612, 23-5-631, or 23-5-625 between [the effective date of this section] and October 1, 1989, must be prorated to cover only the period between the date the permit or license takes effect and October 1, 1989.

The sections in the new section suggested above are either amended in the bill or repealed by the bill and replaced with a fee section covering the same activity as the repealed section.

The new section suggested above should be made effective on passage and approval.

Atty General Amendments

4-18-89

SB 431

Amendments to SB431
from Attorney General's Office
4-17-89

4-18-89

SB 431

Page 5, line 16.
Strike: "OR SYMBOLS"

Page 5, line 21.
Strike: "OR SYMBOLS"

Page 5, line 22.
Strike: "OR SYMBOL"

Page 5, line 25.
Strike: "OR SYMBOLS"

Page 6, line 4.
Strike: "OR SYMBOLS"

Page 6, line 9.
Strike: "OR SYMBOLS"

A.G. Amendments

2/7

4-18-89

SB 431

Page 31, lines 24 and 25.

Strike: "(INCLUDING JACKS OR BETTER)"

A.G. Amendments 3/17

SB 431

4-18-89

Page 51, line 2 through page 52, line 3.

Strike: subsections (B) through (D) in their entirety

Insert: "(B) A person who on January 15, 1989, legally operated one or more video bingo or keno gambling machines in an establishment not licensed under 16-4-401(2) and the principal purpose of which was not gaming, and who has been granted an operator's license under [section 11], may be granted a permit for the placement of the same number of machines in his premises as he operated on January 15, 1989; the person may not transfer the permit to other premises or to another person."

A.G. Amendments

4/7

4-18-89

SB 431

Page 59, line 13.

Strike: "\$800"

Insert: "\$100"

A.G. Amendments 5/7

4-18-89

SB 431

Page 71, line 12.

Strike: "may"

Insert: "shall"

Page 71, line 13.

Following: "in a manner consistent with this act"

Insert: "upon the date of effect of this section"

4-18-89

SB 431

Page 74, line 3.

Following: line 2

Insert: "NEW SECTION. Section 73. Appropriation. The following appropriation is made to the department of justice for the purpose of implementing [this act]:

	FY 1990	FY 1991
Expenditures:		
Personal Services	\$ 276,792	\$ 276,292
Operating Expenses	109,289	109,289
Equipment	141,000	63,000
	<hr/>	<hr/>
TOTAL	\$ 527,081	\$ 449,081
Funding:		
Gambling License Fee Account	\$ 527,081	\$ 449,081

Page 74, following last line.

Insert:

NEW SECTION. Section 74. EFFECTIVE DATE.

(1) Sections 66, 67, 73 and this section are effective
July 1, 1989.

(2) The remaining sections are effective October 1, 1989.