

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT**

**Call to Order:** By REP. BOB BACHINI, CHAIRMAN, on February 13, 1991, at 7:00 A.M.

#### **ROLL CALL**

**Members Present:**

Bob Bachini, Chairman (D)  
Sheila Rice, Vice-Chair (D)  
Joe Barnett (R)  
Steve Benedict (R)  
Brent Cromley (D)  
Tim Dowell (D)  
Alvin Ellis, Jr. (R)  
Stella Jean Hansen (D)  
H.S. "Sonny" Hanson (R)  
Tom Kilpatrick (D)  
Dick Knox (R)  
Don Larson (D)  
Scott McCulloch (D)  
Bob Pavlovich (D)  
John Scott (D)  
Don Steppler (D)  
Rolph Tunby (R)  
Norm Wallin (R)

**Staff Present:** Paul Verdon, Legislative Council  
Jo Lahti, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Announcements/Discussion:** HB 438, HB 552, and HB 499 were to be heard today. Executive action would be taken on HB 688, HB 503

#### **EXECUTIVE ACTION ON HB 688**

REP. BACHINI said it had been requested that HB 688 which was Tabled be reconsidered. The bill did not address the problems of the inspections. Mr. Verdon explained the bill as amended changed the purpose of the original bill 180 degrees. It was unconstitutional because it changes the original intent of the bill. The best way to accomplish the committee's wishes is to table or kill the bill and write a committee bill.

REP. ELLIS asked to talk about what a committee bill would encompass before reconsideration. Mr. Verdon passed out a 'gray

bill' to show what the committee bill will look like if requested. The committee bill will differ from the original bill in that the original bill struck subsection (4) of Section 1. The committee bill would provide the Department authority to have an inspector conduct inspections in 1991. The original bill removed the annual inspections completely. The second section of the bill provides an appropriation from the fees collected from the cosmetologists by the Department to pay for this extra inspection. He was told it would cost about \$36,000 a year for this extra inspector - about \$21,000 for personnel services, \$14,000 for travel, \$1,500 for equipment that would not be a recurring expense, \$36,000 the first year and \$35,000 the second year. HB 688 struck Section 4 completely, striking any provisions for the board to conduct an annual examination. The intention is to remove Board inspection and replace it with an annual inspection by the Department.

REP. ELLIS favors the motion, especially since the funding would be made from the fees paid to the Department.

MOTION/VOTE: REP. BACHINI asked those in favor of reconsideration of HB 688 to say Aye. Reconsideration was adopted unanimously.

REP. STELLA JEAN HANSEN moved a Committee bill be drafted in lieu of HB 688. Motion carried unanimously.

REP. RICE moved HB 688 be TABLED. Unanimously carried.

Mr. Verdon inserted language on page 1, line 13 into the committee bill regarding annual inspections. He included two inspectors since this was the gist of the Committee consensus. The Committee asked for 'one or more'. REP. KILPATRICK recommended there be at least one inspection annually.

#### EXECUTIVE ACTION ON HOUSE BILL 503

MOTION: REP. PAVLOVICH moved HB 503 DO PASS. REP. PAVLOVICH moved amendments prepared by the Department. He agreed with the amendments except the one on Page 2, amendment 20, following line 18 where new language has been inserted which says a sports tab game may be conducted only with a professional sporting event. Among the most important sports events in the rural areas are the high school events. There is no professional team in Montana. He has people coming into Butte from that whole valley in the next three days for a high school tournament. If this were legal now, he would be running one on every game. If high schools are eliminated, that eliminates the biggest percentage of sports tabs sold. He would like to change the language to say any sports event in Montana, not just read professional or collegiate. The only time a high school event is prohibited in state law is in a Calcutta Pool. They run square boards on all high school events, and it should not be prohibited from sports.

REP. KILPATRICK with the Committee's permission asked to have Ms. Lois Menzies, Administrative Officer of the Gambling Control Division, Department of Justice, respond to the suggestion. She said it is the tradition of the Department of Justice (DOJ) there should not be any sports betting on any elementary or high school sports events. If the legislation includes that condition they would apply that particular prohibition to sports pools as well as sports tabs if that is the will of the Legislature. The feeling is that minors are not allowed to participate in gambling activities. They are prohibited by law from doing that. By permitting betting on local events you may be placing a new pressure on the participants in those games, so the Department's position is to eliminate that possibility.

REP. KILPATRICK asked about the money part. REP. PAVLOVICH explained the sports tabs would not be any larger than \$5.00. On the sports pool it has been increased from \$5.00 to \$100.00, and from \$500 to \$10,000 at the request of the people in his community. They wanted that pool, so he put it in not expecting to get it, but perhaps a compromise could be arranged. That would be up to the Committee. That has not been amended.

REP. ELLIS asked if the proposed amendments pertain to the taxing part. REP. PAVLOVICH answered it does not. The profit on it is minimal. There are honorable people in that profession and they pay their taxes. REP. ELLIS believes it is easy for certain establishments to not include all profits from such an enterprise. If there are going to be pull tabs on sports events, they should be stamped so it is evident a tax is paid on them.

REP. SCOTT suggested in the case of sports tabs, a 10% overall tax be placed on the boards, with 5% going as a tax and using the spent tab of the winner as a receipt for the payoff, showing what was paid out on that board. When a tab is pulled from a board that board is not good for another sports event. Record keeping would not be too difficult since the winner would sign his spent tab. That would be the operator's receipt for that payoff.

REP. ELLIS suggested the state sell stamps. The difference between the payoff and the income from the whole board the operator keeps is 10%. This is mostly a trade stimulus.

REP. BACHINI asked for further information from the Department. Richard Ask, Audit Program Manager, Gambling Control Division, DOJ, suggests taxing it at the wholesaler or manufacturer level, and allowing the DOJ rulemaking authority to establish a to collect the tax.

VOTE: REP. BACHINI asked for a show of hands approving REP. PAVLOVICH's proposed amendment. It was unanimously approved.

REP. LARSON spoke in favor of the nominal tax on these boards and also the regulatory control given the Department of Revenue. REP. PAVLOVICH stated the bill reads 10%, of which the state will be

given 5% and the operator will keep 5%.

**MOTION/VOTE:** REP. PAVLOVICH moved to accept all the amendments on EXHIBIT #1 except #20 eliminating high school events on Page 2. He wants high school sports events included in the amendment.

**DISCUSSION ON THE AMENDMENT:** REP. KNOX said we should not in any way involve ourselves with gambling on a high school basketball game in Montana. He could not possibly support that.

REP. TUNBY feels the same way. He was wondering how this works. If the amendment is passed, that would include high school?

**MOTION:** REP. SONNY HANSON wanted to go through each amendment separately. REP. BACHINI said the motion was to accept the amendments as a package.

REP. KNOX asked that Ms. Menzies explain the amendments on EXHIBIT 1. Basically there are only three changes although there are a lot of amendments. She added the first amendment defines a sports tab as a pull tab that is used in professional sporting events. A second definition called a 'Sports Tab Game' on the last page (4) is defined as a means for a gambling enterprise conducted on a card to which sports tabs are attached. A person may purchase a sports tab from the card for the chance to win money or other items of value on a sports event as provided in 23-5-502. That makes reference to Section 3 which contains rules for conducting sports pools or tabs. The only other amendments that are of significance are #12 that says a card used for conducting a sports pool game must contain 100 sports tabs with each tab containing a different combination of numbers. The sports tab must be purchased from a manufacturer licensed under 23-5-152. The Department issues a license to people who manufacture devices that are illegal in the state but are allowed to be manufactured for export. They are talking about a clip board attached to another board which then makes it a sports tab game. This by itself is an illegal gambling device in Montana, and it will remain an illegal gambling device under this bill. It only becomes legal in conjunction with a sports event. This would give the Department a little regulatory control over the people who produce the device by saying you can only purchase the device from people that have it. We have three corporations in Montana that are licensed to produce pull tabs and other devices that other states have. Amendment #20 has already been talked about regarding high school and elementary wagering. Sub (b) of that new Subsection (4) simply describes how you determine a winner, and that is by matching numbers on the sports tab with the score at different intervals during the event.

REP. BACHINI repeated the motion to accept the amendments. The amendments passed unanimously.

**MOTION/VOTE:** REP. PAVLOVICH moved to amend Page 2, #20. He would include high school sports events.

**DISCUSSION:** REP. KILPATRICK does not agree with including high school events. He will vote against that. REP. PAVLOVICH explained there is no prohibition in the present law on sports pools on high school events. If this amendment passes, then there will be.

REP. McCULLOCH asked for clarification about betting on the outcome of the game; it appears the betting would be on numbers that coincide with the score.

REP. LARSON recommended that a portion of the amendment be stricken completely. High school games in Montana are the events in town. Perhaps every bar in every rural town in Montana has a sports board on high school events. Sports tabs can be used for any sports event.

REP. BENEDICT repeated it is not against the law to run a sports board or sports tab on high school sports. If it is decided to accept these amendments as is, we are breaking new ground, and are going backwards by saying something will be taken away. Ms. Menzies advised this provision would not apply to sports pools, it only applies to sports tab wagers. We are not changing current law. REP. PAVLOVICH said he can have different types of a pool or he can have a 100 square board on a high school event, but by the same token he can have this 100 pull sports tab, but he can't have it on a high school event. It doesn't make sense.

REP. ELLIS doesn't think sports tabs should be authorized for high school events, but if this part of the amendment is stricken altogether, we haven't addressed that and we won't change it at all. At high school events they have in-house bets on the score of the game.

REP. RICE said the holder of a sports tab knows the score that is going to let him win; on a sports pool board it is not known until the board is full, then the numbers are drawn. She spoke against the amendment.

**MOTION:** REP. PAVLOVICH moved to withdraw his amendment. Strike subsection (a) and strike the three lines completely, and leave (b) in. Leave it with just the sports pool and don't mention high school or collegiate events. Just leave the law as it is on a sports pool. He will let the Attorney General bring it up with HB 678 which REP. BROWN has.

REP. LARSON spoke in favor of the motion because it leaves the choice up to the local tavern operator. Ms. Menzies said if it is desired to strike all of (a), please just strike reference to professional and collegiate, because this has to be attached to a sports event.

REP. BACHINI asked those in favor of the amendment to say Aye. Amendment was adopted with REP. STEPLER voting NO.

**MOTION/VOTE:** REP. PAVLOVICH moved on Page 3, line 7 after 'consideration' insert the words 'not exceeding \$5.00 and the total amount paid to the winner of any of the sports tab may not exceed the value of \$500.' This is going back to the language on the top of the page, but is being put on line 7.

This amendment was adopted unanimously.

**MOTION/VOTE:** REP. RICE moved on Page 3, line 1, strike \$100, and reinsert \$5.00. On Page 3, line 3 strike \$10,000 and reinsert \$500. REP. PAVLOVICH said that is back to the original bill. A great deal of wagering is already done on sports events in Montana.

REP. RICE's amendment carried with REPS. PAVLOVICH, BENEDICT, LARSON, SCOTT voting NO.

REP. WALLIN said the Department had problems with the effective date. REP. PAVLOVICH explained the original effective date was on passage and approval.

**MOTION/VOTE:** REP. PAVLOVICH moved the effective date be July 1, 1991. Motion carried unanimously.

REP. TUNBY said he is opposed to any expansion of gambling and he views this as an expansion.

REP. BENEDICT said when the churches and the state want to get out of gambling, then he will take a serious look at getting out of gambling. These are small wagers that he doesn't have any problem with.

REP. BACHINI said all those in favor of HOUSE BILL 503 AS AMENDED SAY AYE, OPPOSED NO. REPS. TUNBY, WALLIN, KNOX, STEPLER, DOWELL, CROMLEY, BARNETT, ELLIS VOTED NO. MOTION HB 503 DO PASS AS AMENDED CARRIED 10-8.

#### HEARING ON HOUSE BILL 499

##### Presentation and Opening Statement by Sponsor:

REP. DIANA WYATT, Sponsor, HD 37, Great Falls, said HB 499 would exempt realtors who have been licensed for 10 years or more from continuing education requirements; amends 37-51-204, MCA. Tom Mather, a realtor from Great Falls, is very interested in having an adjustment made in current law exempting realtors with 10 years or more experience in the real estate business from being required to attend continuing education courses. She read a Note-O-Gram from Scott Stanley, H.H. Stanley Co., in support of HB 499. EXHIBIT 1.

##### PROPOSERS

Tom Mather, Realtor from Great Falls, passed out EXHIBIT 1A. He

read a letter from his Realty Company dated February 8, 1991, in which he commends continuing education. One percent is taken off the top of every commission in his office to go into an education fund. They pay for all of their associate education courses, seminars that they wish to attend they feel are important to their careers. To require mandatory continuing education for active real estate brokers and salespersons who have been actively engaged in the real estate profession for a long period of time is unnecessary and redundant. He hoped to get relief from this interruption of his time and career.

He read a letter from Bill Britsius dated February 8, 1991, **EXHIBIT 2A**, who is in support of HB 499 because he believes competency developed through training, self help and free choice education are the keys to any agent's success; however, experience has proven many of the courses are redundant, basic and helpful only to recent licensees, and are not what an experienced real estate agent would choose to further a career.

Jim Gillespie, Great Falls, said he has been in the real estate business for 33 years. If you have been in that industry for that long it isn't beneficial to have to sit in a class for two days for eight hours. It is good for the new licensee, but somebody who has been in the business for 10 or more years probably should be excluded from mandatory education. Education is good and has its place, but if you have been in business that long, you should have the choice of whether you want to go or not.

John Bolen was recorded as a proponent by the sponsor.

#### **Opponents' Testimony:**

Marcia Allen, Member of the Board of Realty Regulation, also a licensed Real Estate Broker for 11 years, spoke in opposition to HB 499. The Board of Realty Regulation charge is to protect the public. That is why the continuing education bill was introduced. Montana currently has one of the lowest continuing education requirements in the United States. The Real Estate profession has become more complex and licensees need to be informed and educated to protect themselves from costly mistakes and increased liability. The number of years you have a license should not be a measure of knowledge and expertise in a field. It is very important to have continuing education. Montana statutes currently require only fifteen hours of continuing education every two years - that is only one day a year. The Board does not feel one day per year is in any way excessive or is a hardship to maintain a real estate license. The number of complaints filed by the general public the Board hears every month continues to increase. These complaints are usually charging the licensee with misrepresentation, fraud and unethical practices. The Board is opposed to this bill and asks that HB 499 do not pass.

Brendan Beatty, Montana Association of Realtors, an Association representing about 2,000 real estate professionals statewide,

expressed strong opposition to HB 499. The 1985 Legislature enacted legislation requiring not only prelicensing education, but continuing education. The original legislation only required prelicensing education, but since statutes required other professions to have continuing education, the Legislature saw fit to require this for the real estate profession also. Montana Association of Realtors supported that measure as it ensures professionalism in the industry. Continuing education is necessary because this is not a static profession as evidenced by the rewriting of the real estate statutes and bills before this Committee this session. These types of changes are missed unless a real estate person keeps up to date. The Association feels that even after ten years in the profession, you shouldn't be exempt from these education requirements as you can begin to fall out of touch with changes. If these continuing education requirements are exempted, the only real estate professional who would be up-to-date would be the new licensee. They strongly oppose the bill.

Joe Bower, First Bank Helena, opposes HB 499 because as a real estate lender for 13 years and FHA endorser, they have seen many changes in the rules and regulations for home buyers with conventional FHA and VA loans. Rules and regs change weekly with FHA and VA. They get several messages monthly about changes. The consumers of Montana would be better served by knowledgeable realtors in the industry.

#### Questions From Committee Members:

REP. CROMLEY asked if the same reasons apply to all professions - engineering, law? Tom Mather answered this is a different field. This is new and they are trying to come up with courses that would be interesting; however, it is pretty hard to beat everyday experiences and self-help reading contemporary articles and studying provide. He encourages his people to go to the seminars that interest them and that can be beneficial to their careers. Basic education is not providing the best for the public. In 1963 their Association was able to pass the Real Estate Licensing law creating the Board of Realty Regulation. He has been a realtor all his life and will continue to safeguard and look out for the public.

REP. BACHINI asked if this bill were to pass, would you have access to any other legislation pertaining to real estate, so you could keep yourself informed? Mr. Mather answered he would be able to do so through various real estate and other periodicals, and through the Association.

REP. KILPATRICK asked who teaches these courses? Mr. Mather said ex-realtors or realtors who are taking time off from selling real estate temporarily. They make more money teaching than tending to their business. They are professional speakers, they do a good job. It gets a little redundant after 25 or 30 years.

REP. KNOX asked if he had a feel of the percentage of realtors



who fit that category. Mr. Beatty asked if he referred to inactive licensees? Ms. Allen said there are about 4,800 licensees. She didn't know the exact number of inactive licensees. They are not required to take continuing education until they bring their license out of the inactive status. They then have to attend continuing education classes for the proportionate number of hours for the years they have been inactive, but not to exceed what would have been required when they first started out.

REP. STELLA JEAN HANSEN asked what kind and how many courses are available? Ms. Allen said courses are increasing all the time. When continuing education legislation was first passed, they were faced with few good, quality courses. In 1990 the Board of Realty Regulation rewrote the rules and regulations for requirements for continuing education. Two-thirds of the hours have to be regarding real estate law, contracts, ethics, fair housing laws, and the other five can be picked at random for five hours. There are numerous places to get very good education. There are requirements for the instructor, a teaching degree or so many years in that field before an instructor is approved. A lot of teachers are from the extension services through the University, many engineering firms are teaching classes on structural detail; the National Association of Realtors sends instructors out here. There is a good variety of courses available to the licensee. The Board of Realty is forming a travelling caravan that will hire qualified instructors to go to the outlying areas to reach the people. In 1991 they will go to Miles City, Lewistown, Glasgow, Libby, Glendive, towns in those areas to teach where it is more difficult for people to get current education on real estate law and financing.

REP. BENEDICT said a real estate purchase is probably the largest purchase a person will make. There are people in every profession that others are very proud of and look up to; there are also people who are marginal as far as whether they should be in that business or not. Would you agree that there possibly are people in your profession that could use this kind of continuing education? Or is everybody in your profession after ten years very good? Mr. Mather said if they are doing a good job and have been in business for ten years, they are competitive and are serving the public well, this is fine. There are some people who may have licenses, but they are not really a threat because they are not active. He doesn't think the public needs to be apprehensive. There are many safeguards to protect the public. People will select courses they feel will benefit their careers.

REP. RICE asked if he knows of any cases where a potential buyer or buyer has been financially harmed through the ignorance of the realtor who sold the house. Mr. Mather said not by anybody who has been a realtor for a few years.

REP. ELLIS asked what is the bankruptcy law that allows the judge to write down the value of agricultural property when it is

valued at more in the sale than what its agricultural worth is? That is Chapter what? Mr. Mather did not know but would find out and get back to him.

REP. BACHINI asked the sponsor if she would have a problem with amending HB 499 to require reeducation every ten years? He had talked to a number of real estate agents and asked them what kind of class they had when they went back for the reeducation program. They commented they would have been better off staying home. REP. WYATT would not be averse to some amendment. If a person maintains an inactive license and doesn't study the continuing education, that is totally contrary to the philosophy. If you are in the business and you continue to learn from the sales and experience that you glean, continuing education would be important, but less important as you continue to function within the business. But if you maintain a license and are not active with it, the information that comes through in terms of laws that affect you, you are really going to be out of step. The continuing education does necessarily approach some of the problems, and the appeals that flood the Board of Realty Regulation are legal cases. She was not sure that fraud should be addressed in the continuing education units that are offered.

Closing by Sponsor:

REP. WYATT closed saying she believed strongly in continuing education, and all practicing real estate agents in the state do. Somewhere there has to be a balance between what a person already knows and what he can learn. The citizens in Montana are well protected by the real estate laws. She would agree to some kind of adjustment with HB 499. She thanked the Committee for their support.

HEARING ON HOUSE BILL 438

Presentation and Opening Statement by Sponsor

REP. MARK O'KEEFE, HD 45, Helena, sponsor explained HB 438 deals with the licensing of restaurants which can serve beer and wine. It sets up an on-premise license outside the quota for beer and wine restaurants. It requires that businesses must do 60% of their sales in food; it restricts the numbers of hours of serving; no gambling privileges will be attached to these licenses. People who want to work in the capitalistic system want to compete but because of the situation that has been set up by the Legislature with the quota system they cannot afford the \$80-90-100,000 that some of these licenses are selling for since gambling has been attached to them. This bill sets up a license that allows people who want to compete with casinos to do so with a restaurant. There are two amendments that do two things: the first one clarifies this new type of license will not carry any of the gambling privileges associated with quota licenses. HB 438 is only intended to help dining establishments. He wanted it to

be very clear this bill doesn't go near any gambling. Amendment two makes the annual filing fee \$400 instead of \$800 as listed in the bill. That brings the fee in line with the present quota beer and wine licenses. Revenue's fiscal note suggests that fee should be more than enough to cover any expenditures. Another set of amendments worked out with the Department of Revenue eliminates some of the technical bugs. Amendments 1, 2, and 5 are suggested because there was a difference between wines. Amendment 4 is suggested because the use of the term 'beer and wine licenses' is a misnomer, they will be referred to as beer licenses with a wine amendment. Amendment 3 which deals with take-out restaurants clarifies both sets of amendments will have to agree. We don't want this 60% of food to include take-out services. This is for sit-down restaurants where you go in with the family and have a meal. He passed it out with the Department of Revenue's comments attached to it.

Paul Cartwright, supports HB 438. EXHIBIT 1 It helps consumers, entrepreneurs, tourism. Restaurants could apply for and receive a license to serve beer in areas where the quota isn't filled. It would affect only a few license holders. Existing licenses will never be worthless, because they can get a gambling license to go with their quota license. This bill would be good for Montana's economy, it is good for consumers and doesn't cause any problems. He urged support.

David McEwen, a restaurateur from Missoula, said his wife and he owned and operated the Lily Restaurant for 20 years. It was a 50 seat family restaurant described as a unique turn of the century tea room. After many years of consistent quality, the Lily gained a three-star rating which was a feather in the cap of Missoula and attracted many tourists. They provided jobs for about a dozen people, with an annual payroll in excess of \$100,000, and spent \$150,000 yearly to local purveyors, utilities and taxes. Not a big place, but certainly an alternative to the usual eating out experience. In 1981 they gambled along with ten other restaurants almost \$20,000 of their money in legal fees to try to get one beer and wine license issued under the quota system. They lost, Two years later a beer and wine license was on the open market for sale, and because of their excellent reputation, their banker was willing to risk loaning the money to buy it. They then proceeded to take on large monthly payments for that piece of paper which hung on the wall, and all of this was a very silly and expensive game to play simply for the ability to serve a glass of wine. No one doubts the sheer power of the rich and unified tavern industry, nor should anyone be surprised about the lack of money and power the independent restaurants like the Lily have. We are clamoring out there in the sea of government sanctioned casinos and expensive liquor licenses. Classically the restaurant business is a very difficult business to be successful when competing with casinos that offer gambling. Subsidized low-priced meals certainly does not help, but not only that, the restaurant complements its food with beer and wine - it adds insult to injury. Perhaps there should be a resolution where

those establishments mixing liquor and gambling cannot serve food. This whole quota system does not foster a healthy variety of choices. At the worst it breeds sheer greed and at the best it produces boredom. After all, variety is the spice of life. This bill is real adjustment and with merit and he feels the tavern association has told members of the hospitality industry to cast aside their monopolistic greed, be satisfied with the monopoly of gambling and welcome with open arms the healthy diversity that truly would be generated by this bill. Is it not time to allow the pendulum to swing a little more freely and allow the deserving people of Montana to have a glass of wine with a plate of pasta in a casino free environment between the hours of 11:00 a.m. and 11:00 p.m.?

Robyn Andre, Pasta Pantry, Helena, has been in business for seven years. She specializes in very high quality meals made from scratch food. Being able to serve wine would enhance her dinners. Many customers wish they could have a glass of wine or beer with their dinner. During the summer a large influx of tourists can't believe they can't be served wine or beer with their dinner. Her restaurant has 27 seats and she would never be able to justify the price of a beer or wine quota license. She is definitely not interested in providing gambling; she is interested in selling good food and in order to do that she must be able to compete on a level with other restaurants. She strongly urged the committee to support this bill.

Mona Jamison, Wine Institute, Helena, said they are in support of HB 438. She concurs with the previous testimony. It is appropriate for people to enjoy wine with their dinners in a casino free environment. They should be given that opportunity by choice. The bill is intended to say that if this license is granted, they are just meant for truly food service establishments. When you go out for dinner you should have a choice of dining at a casino type establishment, or a non-casino restaurant. The Wine Institute does not believe there is any competition to those who would make that choice in terms of those already existing licenses. They think that is reasonable.

Conchetta Marie Eckel, The Pan Handler, Helena, said our system is set up in such a way that tourists are mystified at our lack of restaurants that can serve wine. More competition is needed in restaurant establishments. There is no place to go for a different dining experience than in a casino. This is another way to enhance our tourist industry. Competition is good for business, the consumer, Montana. Issuing more licenses hopefully would bring more revenue to the State. Selection is totally different in her environment than that in a grocery store where wine is also sold. She handed out the latest copy of "The Wine Spectator" EXHIBIT 2. which has a profile on "What America Thinks About Wine".

Shelly Laine, Director of Administrative Services, City of Helena, said she is neither a proponent nor opponent of HB 438.

She asked that a technical amendment be included which would allow local governments to charge a license fee equal to the State's charge for a local beer or beer-and-wine license. This was not indicated to be so on the fiscal note. She would present that amendment to the Committee. **EXHIBIT 3.**

**Adam McLane** supports HB 438 because it does a number of desirable straightforward things. It would encourage a few more restaurants in Montana. It could possibly generate a small amount of revenue for the State. It leaves the quota system essentially intact. He does not believe it will have a major impact on existing license holders with all the restrictions that would be imposed by the amendments proposed.

**Bob Kiesling**, Founder of The Wind Bag saloon, downtown Helena, in 1978 paid at that time the full value for a beer and wine license. This bill doesn't affect the value of a wine license. Even if it did, he wouldn't be frightened by that. This is a good measure and promotes the most diversity with the restaurant business that could be well used in Montana. They are one of the 15% of the restaurants in the State that do not have gambling. They would like to keep it that way. If this bill were passed, it wouldn't devalue his license. He could sell his old one and take one of the new licenses if all he wanted to do was serve food, wine and beer. He has looked into opening other establishments in other markets. Licenses that are available are at such outrageous prices now because of the gambling interests upping the value, it is impossible for regular income people to compete. This bill would do a great deal to open up that diversity and increase the quality.

**Shirley Juhl**, Missoula, owns a restaurant in Missoula. She and her husband have had this for 20 years. They have struggled. They have a license and believe that if any restaurants want to serve wine and beer they should be allowed to have that opportunity. That is free enterprise.

**Lynne M. Albright**, Upcountry Inn/Red Fox, lives two miles out of Helena. This is very important for them because they have tried to obtain a beer and wine license to compete with Helena establishments. She worked for 15 years with the travel industry in the highway department and department of commerce where they worked very hard to promote Montana. As a bed and breakfast owner who pays the 4% bed tax, she wants to offer every possible service she can to the visitors to Montana. She would like to offer her guests a bottle of Kessler beer when they arrive.

#### Opponents' testimony:

**Mark Staples**, Montana Tavern Association, has met a great many tavern operators who are opposed to HB 438 which they consider to be a 'quota buster'. Restaurants that would like to have a beer and wine license should have to pay the full price for such a license. Many people feel the restaurant business is the most

competitive business in Montana. The implication that casinos have killed fine dining is also not true. Page 7 **EXHIBIT 4** of the Montana department of justice's latest report shows that 85% of the casinos that have machines have five or less, and only 3% of the places that have machines would qualify for the designation of casinos. It is the consensus of the 15% with no games at all that the casinos have provided low-cost meals for the people that want to pay \$3.95 for a meal. The fine dining hasn't been hurt. He handed out **EXHIBIT 5** from the owners of the Depot Restaurant in Missoula and the Rex in Billings objecting to the issuance of beer-and-wine licenses to restaurants outside the quota system. They feel the new licenses would devastate the value of their present licenses as well as the all-beverage licenses. **EXHIBIT 5A** from Paul Polzin, Economist, Montana Bureau of Business and Economic Research, Missoula, states the value of the beer and wine licenses would decrease as a result of the deregulation and removal of restrictions on the number of beer and wine licenses proposed.

The proposal also creates an enforcement nightmare. There is already a 2:00 a.m. closing. Only 60% is required to be in food. Some people will just want to serve wine, but basically it creates a new category of bar. The owners of the present licenses will scramble to sell the one they have and buy one of these new ones. Either that or they are going to sue. In 1947 the Legislature passed a law based on the 21st amendment to the Constitution which gave them the right to control liquor in Montana. It created the quota system and those areas in the State they say are significantly over-quota are so because of the grandfathering allowance when population drops. A new license can be issued when the population is high enough to warrant one. Nationwide quota systems have been upheld against attacks on grounds that it denies equal protection, creates illegal monopolies, denies due process, discriminates in favor of a limited number of licensees, amounts to class legislation. None of these have been upheld. Also the Montana Supreme Court has repeatedly held that the license is personal property, and it is a legal interest in the nature of economic assets created and protected by statute. Destroying property has been held to be a taking for the purposes of the fifth amendment. Just compensation could be in the tens of millions of dollars or hundreds of millions of dollars. The Montana Tavern Association feels very strongly the quota system has passed Constitutional muster repeatedly in the past. Whether public good would be served here is questionable. Whether it would serve a few people and hurt thousands of people is questionable. Knocking out the quota system will only hurt and devalue the present licenses.

Tom Harrison, Montana Sheriffs and Peace Officers Association, said the obvious concern they have is with the numbers of licenses that could be added and the separate set of hours set forth for enforcement purposes. It would be illogical and pure folly to think that will not come at some great expenditure at the local level as far as enforcement and periodic inspection is

concerned. They oppose the bill.

**Roger Tippy, Montana Independent Bankers Association,** said lenders lend money against these licenses. They are recognized by the courts as personal property, can be taken as collateral, and held to secure the repayment of loans to get into business of this nature. Lenders would be concerned whether they would be destroyed or the value of such collateral diminished by the actions HB 438 proposes.

**Laurie Shadoan, representing the Bozeman Chamber of Commerce, and herself as the owner of two restaurants and a lounge on the main street of Bozeman which have an all-beverage liquor license,** opposes HB 438. She strongly believes as the owner of an all-beverage license or a wine-and-beer license there is a social responsibility in changing the system and exempting beer and wine licenses from the quota system. There is a direct relationship between the social responsibility and the cost of the license. If you have a \$100,000 on the line, you have a direct relationship with the social responsibility. It is naive to believe that fine dining restaurants do not deal with those same social issues as a bar or a tavern day in and day out. The 60-40 split for food and liquor would be allowing a number of existing restaurants, as well as existing bars, to be included. Bars and casinos have been chastised in recent years as they ventured into the restaurant market; they sell a large percentage of food in part because of the national decline of alcoholic sales. In her three businesses combined, she has an 80-20 split - 80% food, 20% alcohol. That 20% is broken down into 7% hard liquor, 7% wine, and 6% beer. It was testified that 86% of all-beverage licenses have gambling. She differs with that statement, she has one machine. In Bozeman there is a highly competitive industry within their market. On main street alone there are all different types of food establishments. She urges defeat of HB 438.

**Jay Printz, Sheriff & Coroner of Ravalli County, Hamilton,** opposes HB 438. Alcohol is one of the single biggest problems law enforcement faces. They do not need any more outlets for alcoholic beverages. Another problem is that restaurants are not used to checking on IDs and are going to be a much easier place for people who are not of legal age to go and consume alcohol. In his job as coroner he gets to see the very worst that alcohol and drugs do to people. This Committee should not be considering increasing his problems relating to law enforcement as well as coroner.

**Joe Bower, First Bank of Helena, Helena,** opposes HB 438. This bill would hurt their collateral position on existing borrowings. One bar is now in bankruptcy, and if this bill were to pass it would jeopardize \$70-80,000 value on a license and go into receivership by the SBA. Secondly, how can existing bar owners service approximately \$70-80,000 debt with market rates about 11% over a five-year period when new competition doesn't have this debt service? This would basically be subsidizing new borrowings.

There is a question about how many jobs will be created, and how many jobs will be lost; how existing restaurant owners will profit from the proposed bill and how much existing licensed businesses with the license will lose. Previous testimony did not indicate any credible feasible studies have been done to measure the impact this proposed bill will have on existing licensed small businesses, and how many new businesses this proposed bill will stimulate. He encouraged this bill not be passed.

Mike Cetraro, Village Inn Pizza Parlors, owns three beer and wine licenses in Helena and Missoula which he has had for 20-25 years. He included the licenses as part of his real estate plan when he purchased them. He paid the market price based on the Montana quota system at that time. EXHIBIT 6. The restaurant business is extremely competitive. His licenses will be available if this bill passes and he will get one of the new beer and wine licenses. His present licenses would be very lucrative for anyone wishing to have gambling. This will lead to chaos. He will seek just compensation through the courts for any money he would lose on his present licenses. Young people work in these restaurants and would have easy accessibility to alcohol.

Rich E. Miller, Missoula County Tavern Association, Ravalli County, has a business in Missoula. He expressed their unanimous opposition to HB 438. It is a detrimental financial impact on their existing licenses. The lack of financial investment in these licenses is going to cause increased police costs at the local level, and increased verification costs for the department of revenue.

Clark Pyfer, CPA, Chairman and Secretary-Treasurer of Stonehouse Corporation and Restaurant, said they had to pay full price for their beer and wine license. They have sympathy for those who have bed and breakfast; they are a fine addition as has been well demonstrated here. This is the piece of property they had to pay for and it should not be given to someone else. He hoped this legislation would be defeated.

Tom McCarvel, employee of Anderson, Zurmuehlen & Co. accountants, and also the founder and President of Bert & Ernie's which has restaurants in downtown Helena, Great Falls, Billings, testified this industry is highly competitive, both as an owner of this business and as an accountant who sees a number of businesses that are struggling to make a profit and keep their businesses afloat. Many of them have put those licenses up for collateral and stand to lose a lot if licenses are resold at a greatly reduced price. The Billings Gazette talked about the number of restaurants in Montana, saying Billings had one of the highest number per capita in the United States. They had more restaurants there than any other place. The SBA testified the restaurant business has the highest mortality rate of any industry. The casinos are assumed as having a heyday in their own market area, but as CPAs they are seen to be struggling as they try to give away a product and subsidize it with something else. That is



going to be a problem in the future. It is very competitive. The 60% in the bill from the point of reference Bert and Ernie's food sales would be 80% and that would not be uncommon with other similar restaurants serving this type of food and products. The 11:00 a.m. to 11:00 p.m. is certainly compatible with a lot of restaurants that are already in business. They have an all-beverage license in Billings. They put their license on the market and licenses have already been devalued because they have been told by a number of people who would be interested in purchasing that license they are not going to do anything until they find out what the Legislature is going to do. They all have debt service on those licenses which have been given as collateral and it would be very difficult to deal with people who now service that debt.

Jerry DeBacker, Stovetop Restaurant, Helena, opposes the bill. They don't have gambling, they have fine food; wine does not make fine food, fine food makes wine.

Kendall Olson, East Helena, opposes HB 438.

Soren DeTienne, Park Plaza Hotel, Helena, opposes this bill.

Dan Clark, Rose's Cantina, Last Chance Gulch, Helena, opposes HB 438.

Barbara Morris, Jorgenson's Restaurant and Lounge, Helena, opposes this bill.

REP. BOB PAVLOVICH, former President of the Silver Bow Tavern Association, Butte, opposes HB 438.

Orville Johnson, owner of the Yacht Basin Marina Bar and Restaurant, opposes this bill.

See the Visitor's Register for other opponents.

Questions from the Committee:

REP. PAVLOVICH said when grocery stores started selling beer and wine they became his competitors, so he began selling food about four years ago. They took about 50% of his business away then. He was not able to compete with the grocery stores because they could sell cheaper than he could. David McEwen thought the distributors had to sell at the same price to everyone. This was not correct he was advised.

REP. PAVLOVICH asked REP. O'KEEFE if more FTEs would be required. 4.7 would be required.

REP. ELLIS asked if the devaluation of the license was the reason for opposing HB 438, and what the present value of the licenses and what they might be devalued to would be? How did gambling affect the value of those licenses? Mark Staples answered that

was one of the top three reasons for his opposition. The latest statistics show the value really hasn't changed, but beer and wine licenses in the cities have ranged from \$10-30,000 over the last ten years before gambling and after gambling. Icabod's has been for sale for three years and has not been able to sell the all-beverage license at \$70,000. He has seen no statistics that the values have gone through the roof, but has seen a lot of statistics that show that casinos are now going bankrupt. There are two new bankruptcies in Butte, three in Helena that are wavering, five in Billings. He is concerned about all types of licenses. The economic analysis of bankers, CPAs, economists is that it will hurt them all because 60% of the sales of beer and wine licensed, also all-beverage licensed establishments, is for food. All-beverage licenses have already become somewhat devalued because of the increase of beer and wine. It would be difficult to get information that shows the historic values of those originally purchased under the quota system, and what they are valued at now. It would have to be on an individual basis.

REP. LARSON asked how many excess beer and wine licenses there are in Montana. Denis Adams, Director of the Department of Revenue, answered their recent annual report showed that in 1990 there were 416 licenses that were all priced under the quota system. There were 324 beer licenses issued under that quota. In the 137 areas that have a quota, in 87 or 64% there were still licenses available to be taken. So about 22% of the quota licenses are available.

REP. WALLIN said as people bring up their children, this bill would seem to have an added picture that in the normal American way of life everybody drinks. You wouldn't go to a cafe that didn't have wine or beer. Is that true? REP. O'KEEFE didn't believe that was true. Without this bill the norm kids are going to see is that everybody gambles. Kids are drawn to the machines when entering a cafe.

REP. SHEILA RICE said one of the concerns voiced was the debt service and the value of the license. What if the licenses were priced at some market value if it is going to be that highly valued, why couldn't the state get the money? What if this were a \$10,000 license instead of a \$200-400 license? REP. O'KEEFE answered licenses cost \$400 now. There are essentially two different classes of licenses - ones that are available cost \$400; where they are not available is what this bill concentrates on. If they think it is necessary to up-price in the areas where the quotas are available, they would have to do it with the constraints in the bill that these are for only twelve hours a day, they have a 60-80% food sales requirement, and no gambling. Those licenses become worth a lot less than casino licenses.

REP. STELLA JEAN HANSEN asked when the grocery stores were allowed to sell beer and wine, if the quota system was cracked? REP. O'KEEFE stated the people of the State mandated that. He agreed it did crack the quota system to a certain extent. The

Legislature has done it three other times for golf courses, resorts, etc. No lawsuits were instigated as a result.

Closing by Sponsor:

REP. O'KEEFE read the second paragraph in Paul Polzin's statement and disagreed with the statement 'there are restrictions on the number of licenses that may be issued in a county'. Economic projections that this would hurt licenses would be invalid. Sixty-three or four percent of the all-beverage licenses, and thirty-three percent of the beer and wine licenses are in areas where restaurants serving beer and wine could apply and get a license. Under the county form of government, if a person wants to open a bar in Seeley Lake or Butte, he could do so. There are beer and wine licenses available in Butte Silver Bow. They are over quota by 56%. Helena is over-quota by 34%. The sheriff talked about the difficulty of enforcement. It may not be enforced now. The law says that at 2:00 o'clock you have to stop serving. Currently 16-3-305 says the business can stay open, and they do stay open, but they can't serve beer and wine or hard liquor. Under this law, the same thing would happen. A restaurant could open at 6:00 a.m. to serve pancakes and at 11:00 a.m. begin to serve beer and wine with this license. They could serve until 2:00 a.m., but could not serve beer and wine after 11:00 p.m.

The fiscal note was written before it was clear to the department that gambling wasn't involved, so the number of FTEs required would be fewer. We are talking about a system that closes a free market on these beer and wine licenses. The all-beverage licenses are valuable enough to be collateral, but there doesn't seem to be any figures on whether the beer and wine license would be affected. One machine in a restaurant is gambling. Obviously to some of the opponents it is not gambling. He read figures from EXHIBIT 4 different from those read by Mr. Staples - 58.2% of the premises have five or less machines; 25.4% have between six and ten; 8% have between 11 and 15 machines; and 8.4% have between 16 and 20. He considers casinos between the 16 and 20 number. There is gambling, and youngsters do see the gambling and that is what they are drawn to. There are two philosophical questions. The question becomes whether we are paying more for less? How much is the cost of a beer paying for the artificial cost of the liquor licenses? The quota system limits the number of places where beer is served, and because of that quota system the price goes up. What are we doing to the citizens of the State when we say you can only go to certain places and you have to pay more because the number of places is limited. Is that capital? It sounds crazy. This bill doesn't affect it.

The other thing is quality of life. Since we allowed gambling and the people approved, our quality of life in the urban areas in some of these instances has gone down and in many cases we are talking about preserving an urban environment where a family or an elderly couple or a young couple who wanted to go out and have dinner outside of an area where gambling was involved would have

difficulty finding such a place. He gets upset over the idea that because this is the way it is, this is the way it has to stay. In the early 1980s the voters rejected reimbursing the owners of the liquor licenses for loss and buying them out. Arguments against that initiative said that if there is a problem with the beer and wine quota system, let's let the Legislature address it next time. It has been addressed. If there is a problem, try to find a way to fix it.

### HEARING ON HOUSE BILL 552

#### Presentation and Opening Statement by Sponsor:

REP. BRENT CROMLEY, HD 94, Billings, sponsor explained HB 552 is an act to generally revise the Montana Business Corporation Law, amends a great many sections and provides a delayed effective date and an applicability date. This has been studied for over a year and a half and a lot of input has been received from a variety of interests in the State with a lot of different interests represented. The Act is not to form a new law, but rather to revise the Montana Business Corporation Act. It primarily addresses matters of corporate operation consistent with present practices, also consistent with practices of state, practices of the industry. It most particularly explains and clarifies ambiguities that have been problems in the past; provides for protection of shareholders of small Montana corporations. It is consistent with existing practice and is a clarification measure to a large extent; however, because of its size there may be questions. There are a number of knowledgeable people who have discussed the bill.

#### Proponents' Testimony:

Steven C. Bahls, Professor of Law at the University of Montana School of Law, Missoula, MT, teaches the business organization courses as well as the agricultural courses. EXHIBIT 8. He explained the background of the bill as well as the objectives of the State Bar's Corporate Law Revision Committee. The Committee consisted of attorneys with diverse backgrounds and corporate counsel for both profit and nonprofit corporations. The Committee published a 268-page report entitled Suggested Revisions in the Montana Business Corporation Act and the Montana Nonprofit Corporation Act. EXHIBIT 9. The Executive Summary of the report EXHIBIT 10 was provided to this Committee. HB 552 is based on the revised model Business Corporation Act prepared by the American Bar Association. The Committee recommended adoption of the proposals for three reasons: (a) to make Montana's law more uniform with the laws of other states, (b) to clarify the Montana law, (c) to modernize Montana law. It seems fitting that the new suggestions of the American Bar Association be adopted since their former suggestions were adopted. One proposal which is HB 552 addresses business corporations, and another proposal addresses nonprofit corporations. These proposals do not deal with such matters as taxation, workers' compensation, labor law

or other revenue issues. Existing articles of incorporation, bylaws or corporate procedures need not be amended. This Act will come into play when there are disputes among the constituencies of the corporation. These revisions have been widely circulated and widely accepted. This bill involves no taxes, no public expenditures, and no sacrifices by any group. An up-to-date business law simply makes it easier to operate a corporation in Montana. Modernization of Montana corporate code produces only winners.

Bob Murdo, attorney in private practice in Helena, Vice Chairman of the Committee mentioned by Mr. Bahls, presented examples of situations where small corporations such as the Mom and Pop corporations, corner grocery store, gas station or any of those other corporate entities that simply run a business in Montana. This law provides more flexibility than the existing law. An example is how an individual capitalizes that corporation. Where does the corporation get its money to start its business. Presently people have to have money in the corporation before they can be a shareholder. Under the new law shareholders can obtain shares for any consideration the directors feel is appropriate - such as future services, promissory notes, future activities to be performed, past services, it isn't just money. As a corporate lawyer that is usually what is done for shareholders. People have the experience and want to do something for the business, but they do not have any money to put into it, yet they want a part of it. The existing law requires money to become a shareholder. The directors may provide that stock may go into escrow until the future services are performed, or they can put restrictions on that stock that say you can't vote certain things or you can't sell that stock until you have provided the services. That is the flexibility and the progress of the law in corporations that have come about in the past 25-30 years.

Another problem example is director conflicts of interests. The director who is a person running and making decisions affecting the finances of the corporation sometimes gets charged with conflicts of interest. Under existing law it is left up to the courts to determine when a conflict of interest exists. Under the proposed legislation there is a specific definition of conflicts of interest in Section 108 and in Section 110 of the Act after the definition is spelled out which requires knowledge by the director of that specific transaction. It defines who the parties to that transaction are and also defines what disclosures that director must make in order to make the action valid. This might have been of concern to anyone serving on a corporate board. This spells out when something has to be said about such a conflict. It provides clarity where the existing statutes are ambiguous.

Also, an important area which might be lacking is flexibility when various shareholders want to do something, such as a merger or sale of substantially all of the assets of a corporation, but under existing law a two-thirds provision in their articles of incorporation or under the existing law requires that two-thirds

of the shareholders approve. Under the new law there is a provision that shareholders can opt out of that two-thirds requirement and go with a simple majority. It provides simpler organizing of appropriations and flexibility to be able to determine that maybe just two people who might own 50% each or maybe 60% for one and 40% for another, would still be able to opt out of the super majority of the two-thirds vote and go for a simple majority vote to sell or merge with another company. An extremely frustrating situation is when shareholders deadlock over important issues. If a deadlock occurs under present law, the remedy is to ask a court to dissolve the corporation. This bill increases the flexibility of a court to make a decision. It authorizes courts to actually change articles of incorporation, change by-laws, change resolutions passed by that corporation; it authorizes courts to prohibit certain acts by shareholders or directors; it authorizes courts also to provide for the purchase of shares at fair market value from a shareholder who doesn't want to go along with that certain type of action. This allows the parties to go to court to resolve such a deadlock without dissolution. These are some of the minor but significant changes brought about from new legislation. He urged support for HB 552.

Robert (Jock) Michelotti, partner in the law firm of Balli, Boyd, Yance, Tulle and Dietrich in Billings, served on the Corporate Law Commission Committee. Derivative proceedings, directors and officers were to be his topics. Derivative proceedings are those actions brought by a shareholder in the name of the corporation against perceived illegal acts by management and directors. The current status of the law is contained in one section of Montana statutes, and primarily the courts are dealing without guidance from the statutes. One case, in particular, addressed issues and derivatives proceeding, but it didn't give clear guidance in the affected proceedings. The proposed law does. It is now the needs of the shareholders to challenge those illegal actions by management, but it provides as well a limitation to prevent unneeded lawsuits and litigation. It requires a written demand be given in all cases to management that a lawsuit is to be commenced, the board then has time to take derivative action. That gives the board the opportunity to review the basis for the suit and make a determination as to whether that suit should be filed and possibly get the corrective action taken and forestall litigation.

It also provides for dismissal of a lawsuit once it is filed, either through the use of a committee or independent board members making inquiry or investigation into the complaint of actions. It also provides in the alternative for a panel to be appointed by court to review these situations so that a suit can be dismissed if there are not proper grounds. Another area addressed is payment of fees and expenses. It provides a method for the court to require either side if it is warranted to pay the fees and expenses, including attorney's fees, for these types of actions. In addition it provides for the court to notify shareholders, if necessary, of any discontinuance or settlement

of lawsuit, so that if interested shareholders are affected, they will be notified of the intentions to consider as to whether their interests are such that the lawsuit should not be dismissed or settled.

As far as directors and officers, the key issues there are that it clarifies and amplifies. The bill is more of a clean-up type of bill with respect to those areas. Some of the areas that are covered are that normally the bylaws will fix the size of the board of directors and reserve to the shareholders the right to amend the number of directors. If the bylaws do not provide that, this bill gives the directors the opportunity to adjust the size of the board of directors by a 30% amount. The intention is to give them some leeway and to preserve the shareholders right to name directors and fix the number of directors and keep control in the shareholders.

This bill provides for a procedure whereby directors can resign. Current law has no provision for resignation of directors. HB 552 also allows for judicial proceedings to be taken to remove directors. The reason is there is no comparable MCA section right now. In the case of directors or shareholders who have a majority interest in a corporation it is not possible to remove those directors under current law. This bill gives shareholders opportunity to seek removal if need be.

Meetings can be conducted through electronic means under HB 552. Modern day technology conference calls can be conducted. It also allows for the appointment of committees. Many businesses nowadays do work by committees and this bill will allow them to do that. With respect to officers, the status of the law is that certain officers, president, vice president, secretary-treasurer are required. This law allows the directors to determine which officers are necessary and appoint those officers. It does not require all of those offices to be maintained. It also eliminates the prohibition that the president and secretary not be the same person. Officers' standards of conduct codify existing case law and it requires officers to be subject to the same courses of conduct under which the directors are placed. With respect to indemnification, this law does not change the existing statute, it just reorganizes it. Those are the key areas he wished to speak to. He urged support of HB 552.

Garth Jacobson, Secretary of State's office, said this is the product of countless hours of work. HB 552 does many things for many people. It impacts the Secretary of State's office in the way businesses interact with that office. The focus of his participation on this Committee and that of the Secretary of State's office has been toward minimizing the red tape businesses face in dealing with the State of Montana, particularly with the Secretary of State's office. This bill truly makes the conduct of business in Montana and the interaction with the Secretary of State's office much easier. There are three areas affecting the Secretary of State's office: One is the filing process which has

been simplified and clarified. An example is that if you want to dissolve your corporation, under present law you have to file a notice of intent to dissolve and file your articles of dissolution. Under the proposed law you only file once saving time and energy. Another area that is simplified is the fee structure. Under present law you have to consider the par value of the stock, the number of shares to be issued. You go through the formula and analysis to determine what the fees are going to be. The new proposed law sets a fee structure that establishes an average amount per share, and it is quick and easy to identify the amount it is going to cost to file your articles of incorporation. The filing fees, as compared to the license fees, will always remain the same as shown on the first page of the bill in the statement of intent. Those fees will be commensurate with the costs. No profit will be made from the business entities filing their documents. They will remain the same. The license fee has been clarified and simplified so it is very easy to understand. There is no revenue impact insofar as there will be no increase or decrease in the amount of money received by the State.

There is a slight difference in the foreign process of filing. It has been made simpler by specifying it is no longer necessary to submit original articles of incorporation; only a statement that is certified by the Secretary of State's office in the state of incorporation that they are in existence and in good standing with their application and an authority to operate in the State of Montana may then be issued.

Another major area that has been a major problem for the Secretary of State's office is the name disputes. Entities that want to incorporate must have a clearly distinguishable name that is clearly distinguishable and not deceptively similar to another business entity in Montana. That name standard is changed to be distinguishable on the records which will permit more filing of business names or corporate names with their office. One exception is that if someone tries to use a name that is deceptively similar to another business entity, a method is provided to resolve this type of dispute. This is an extremely important aspect of this bill. It works in Minnesota.

Service of process on corporations is presently done by the Secretary of State's office. There are many ambiguities on how to serve process on dissolved corporations. It has definitely been made very clear as to who you serve and how you serve. These types of provisions are extremely important and they make it easier to operate in Montana. His recommendation is that HB 552 do pass.

**Mike Zimmerman, counsel for Montana Power Company, said MPC was represented by Ms. Karla Gray who worked on this Commission and they did participate in fourteen changes made in this legislation.**



Bob Pyfer, appeared as a member of the Montana Bar Association Corporate Law Review Committee. He wished to lend his support to this bill and attest to the many state and national hours spent working on this legislation. He will address the nonprofit corporation bill next week. A lot of what was being said today about corporate government flexibility, etc., other than the aspects relating to capital, etc. applies to the nonprofit act as well as the for-profit act. They will not duplicate that testimony on Monday.

Katherine Donnelley, attorney at Browning, Kaleczyc, Berry & Hoven, Helena, believes the proposed provisions will benefit their corporate clients, and supports the bill.

Opponents' Testimony: None

Questions from the Committee:

REP. SONNY HANSON said from what has been stated, this really gives the judges more control over the individual corporations, and can in effect force decisions. In Section 146 a judge can dictate what they end up paying on a vote. Is the general intent of this bill to put more authority in the judges? Rather than judging the issue, they can make their decision and force 'cram downs', occurring in bankruptcies, etc. Mr. Bahls didn't think this gave judges more control. In fact the provisions of this bill come into play primarily when parties are in force already. Take a family farm situation where a shareholder works on the farm, and a shareholder works off the farm, and they can't see eye to eye on dividend and other matters. Currently those shareholders will proceed in court if they have disagreements and ask the judge to decide. Under the existing law the statute says the judge, if he finds one shareholder is oppressive, should dissolve the corporation. Under the new law in addition to dissolving the corporation, the irritant can be removed, that is, the bylaw section can be removed or nullified or require payment of dividends, the board of directors can be required to hold a meeting to resolve these issues. It gives judges more discretion, but there aren't going to be more matters in court as a result of this legislation. It gives judges more alternatives and discretion when matters are in court. In terms of the threshold of what the court can do, it does not give more discretion to the judges.

Attorney's fees with respect to the derivative actions, are under existing law. The existing statute addresses attorney's fees. That is when the attorney's fees are to be awarded to the corporation if the plaintiff has brought a frivolous action, or when the attorney's fees are to be awarded to the plaintiff because the plaintiff is representing a corporation benefiting all shareholders. This law simply sets forth standards. This proposal actually increases certainty. Now legal standards are known and how a judge is going to make that decision, and what power the judge has.

REP. HANSON asked what happens to all case law on this? The change seems so massive here that in effect it is starting over from zero. There are a lot of questions that are not resolved. Mr. Bahls feels this would not be starting from ground zero with respect to case law in this regard. The 200-plus page report identifies Montana cases which deal with the Business Corporation Act; identifies virtually all those Montana cases according to the report that are consistent with this legislation. There are a few cases that are clarified and are simply ambiguous. There is very little Montana Supreme Court law relating to corporate governance compared to other states. By keeping current, this allows the Montana Supreme Court on issues they have not spoken to before to invoke the law of other states because Montana law will be similar to that of other states. Furthermore, the official American Bar Association and the State Bar Committee comments ought to provide some guidance. There is one case where there is substantial clarification that is on derivative action, the SW case which is cited in the report, but there is no substantial impact on any other such cases.

REP. HANSON further asked how many other states have adopted something in this general form with their own modifications? Mr. Bahls said 35 states have adopted the ABA Model Business Corporation Act. About half of those have adopted updates or something very similar. Most of the other half are in the process Montana is in.

REP. HANSON mentioned Section 179 deals with additional filing for corporations. Mr. Jacobson advised that is pretty much verbatim from the existing law. The Secretary of State's office sends out forms to corporations for their annual reports asking if everything is the same. The filing fee is paid and the form returned to the Secretary of State's office. If any changes have been made in the corporation, they are shown on the preprinted form. This is just to keep the corporation alive. The provisions for foreign corporations is the same as for Montana corporations. All provisions are the same except for the requirement that officers should be named in the reports.

REP. ELLIS said there are provisions in the new law that would allow a court to decide when the majority of the stockholders wanted to do something and maybe only one person disagreed. He wanted an example. Mr. Bahls explained this particular provision deals with the ability of the court to intervene on the side of a minority shareholder owning less than 50% of the stock, if in fact, the conduct of the majority shareholder is determined by the court to be oppressive. Under existing law, if the conduct of the majority shareholder is oppressive, the court has one option according to the statute, and that is to dissolve the corporation. Under the new statute there are many options, perhaps to restructure the board of directors, buy out the other shareholders. An example would be from Montana case law a few years ago. The Supreme Court was faced with the problem of a family farm corporation where a majority shareholder refused to

keep books and records separate from his personal business and the other business and used corporate assets for personal purposes. The court will only intervene under the new legislation, as under Montana existing law, if there is a finding that one shareholder acted in a manner which was oppressive, so the court can't come in and second guess decisions, but needs to find something almost fraudulent in order to get into it in the first place. That section of the code is Section 155.

REP. STEPPLER said on page 70 testimony about bringing family members into corporations is under what section? Mr. Bahls said that section relates to contribution of assets to the corporation, issuance of shares is Section 38. That privilege applies not only to family members, but also to nonfamily members.

REP. STELLA JEAN HANSEN asked how a corporation is set up; also is a system for selling stock in that section? Mr. Bahls said the Secretary of State's office has indicated that should this legislation become law, there would be an assembly of a packet of material for individuals interested in incorporating to set forth in layman's language how this is done. The system relating to issuance of shares is addressed in Sections 33 through 48. The heart of that section is at Section 38 of the statute. The Montana Securities Commissioner also has a separate regulatory scheme for selling stock to the public.

REP. STEPPLER asked for further information about being able to opt out without two-thirds approval. Mr. Bahls explained the State of Montana has traditionally required a two-third vote of shareholders for major corporate action such as mergers, sale of substantially all of the assets. That is out of tune with the modern trend. In most states approval of one-half of the shareholders is necessary. The Committee believed that this has been an historical tradition in Montana and should not be changed. There may be investors in family corporations or other corporations that have invested thinking that one-third of them effectively would be able to block a change, so they didn't want to eliminate that from the law. But new corporations can elect to have an approval by a bare majority; for existing corporations two-thirds of them can elect to have a majority approval scheme. You need to get two-thirds of the votes so no one's rights are jeopardized. That is a provision of the law that is not in the ABA Act which suggests that it should be a flat majority vote. That was resisted because people may have invested on the assumption that one-third could block a specific action.

REP. WALLIN was wondering why we are hearing this kind of a law. There are no opponents. Were there any disagreements when this was put together by the Commission? Mr. Bahls thought there were no opponents to HB 552 because they identified and addressed all opposition last summer and fall. There were some suggestions that they did not address, one of which was to throw out the Workers' Compensation system and reduce business taxes. There probably are

no opponents because it could be categorized as a housekeeping bill. This is simply bringing legislation up-to-date. Any controversial matters have been eliminated. There was substantial debate within the Committee to try to extend some of the benefits to banks. It was decided from the banking community should request that change. What was known as anti-takeover legislation was hotly debated. That was the question of whether corporations should be protected from takeovers. It was decided that anything controversial should not be packaged with this bill; that it should be a housekeeping bill. The Committee couldn't agree whether they should have an anti-takeover bill or not, so as a result that is not an integral part of this legislation. REP. WALLIN said they do have that in the Senate.

REP. ELLIS asked if he had said the current stockholders could decide to liberalize their own bylaws so that in future times one-half could litigate major corporate decisions? Mr. Bahls thinks that current stockholders ought to have maximum flexibility to set forth rules relating to their own relationship so they can liberalize if they so agree by a two-thirds vote.

Closing by Sponsor:

REP. CROMLEY closed saying this is a large, important measure. The many sections shown in the Title of the bill will be recodified. There are a lot of laws which are being repealed as a result, but it is not a major change of practices, and not many changes in legislation. It is very significant that there were no amendments proposed.

REP. RICE stated HB 258, HB 541, HB 590 would be heard tomorrow, February 14. The Committee would meet at 7:15 a.m. for executive action.

ADJOURNMENT

Adjournment: 10:50 a.m.



BOB BACHINI, CHAIRMAN



JO LAHTI, SECRETARY

BB/jl

**HOUSE OF REPRESENTATIVES**

**BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE**

## ROLL CALL

DATE Feb. 13, 1991

[illegible]

HOUSE STANDING COMMITTEE REPORT

February 14, 1991

Page 1 of 3

Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 503 (first reading copy -- white) do pass as amended .

Signed: Bob Bachini  
Bob Bachini, Chairman

And, that such amendments read:

1. Title, lines 5 through 7.

Following: "," on line 5

Strike: remainder of line 5 through "POOL;" on line 7

2. Title, line 9.

Strike: "IMMEDIATE"

3. Page 2, line 4.

Following: line 3

Insert: "(3) "Sports tab" means a folded or banded ticket with a face covered to conceal a combination of two numbers, with each number ranging from zero through nine."

Renumber: subsequent subsection

4. Page 2, line 4.

Following: "tab"

Insert: "game"

Following: "a"

Insert: "gambling enterprise conducted on a"

Strike: "100"

Insert: "sports"

5. Page 2, lines 5 through 7.

Following: "attached" on line 5

Strike: remainder of line 5 through "tab" on line 7

Insert: ". A person may purchase a sports tab from the card"

6. Page 2, line 8.

Strike: "any"

Insert: "a"

7. Page 2, lines 8 and 9.

Following: "event" on line 8

Strike: remainder of line 8 through "animals" on line 9

Insert: "as provided in 23-5-503"

8. Page 2, line 11.

Strike: "tabs"

Insert: "tab games"

9. Page 2, line 12.

Strike: "tabs"

Insert: "tab games"

10. Page 2, line 15.

Strike: "recording"

Insert: "conducting"

11. Page 2, line 16.

Following: "tab"

Insert: "game"

12. Page 2, line 17.

Following: "or"

Insert: "sports"

Following: "must"

Insert: ";

(a)"

13. Page 2, line 19.

Following: "tab"

Insert: "game"

14. Page 2, line 21.

Following: "winners"

Insert: "; and

(b) contain 100 sports tabs, with each tab containing a different combination of numbers. The sports tabs must be purchased from a manufacturer licensed under 23-5-152"

15. Page 2, line 22.

Following: "A"

Insert: "sports tab or a"

16. Page 2, lines 22 and 23.

Strike: "or sports tab"

17. Page 2, line 24.

Following: "tab"

Insert: "game"

18. Page 3, line 1.

Strike: "\$100"

Insert: "\$5"

19. Page 3, line 3.

Strike: "\$10,000"

Insert: "\$500"

20. Page 3, lines 5 and 6.

Strike: "An individual chance to participate in a"

Insert: "A"

21. Page 3, line 7.

Following: "consideration,"

Insert: "not exceeding \$5, and the total amount to be paid to the winners of any individual sports tab may not exceed \$500,"

22. Page 3, line 9.

Following: "tab"

Insert: "game"

23. Page 3, line 10.

Following: "all"

Insert: "sports"

24. Page 3, line 18.

Following: "or"

Insert: "50% of the total amount paid for all"

Strike: "tab"

Insert: "tabs sold"

25. Page 3, line 19.

Following: line 18

Insert: "(4) (a) A sports tab game may be conducted only in conjunction with a sports event in which the participants in the event are natural persons.

(b) A winner in a sports tab game is determined by matching the numbers on the sports tab with the last or the only digit of the score of the sports event at specified intervals during the event or at the end of the event."

26. Page 3, line 20.

Strike: "on passage and approval"

Insert: "July 1, 1991"



HOUSE STANDING COMMITTEE REPORT

February 14, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 552 (first reading copy -- white) do pass .

Signed: \_\_\_\_\_

*Bob Bachini*

Bob Bachini, Chairman



The Drawing Board®

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NOTE-O-GRAM®

REORDER ITEM # NR73

**H. H. STANLEY CO.**317 CENTRAL AVENUE • P.O. BOX 2445 • GREAT FALLS, MONTANA 59401  
PHONE (406) 453-1681*Exhibit #1***MESSAGE**

TO

*Diana Wyath*  
*House of Representatives*  
*Capitol Building*  
*Helena MT. 59601*

DATE

*2-8-91* *Re: House Bill 499*

*Thank you for your introduction of the captioned. It is our understanding that Tom Mather could appear before the committee if you feel necessary if he could be informed as to when it would meet and maybe some of us can come over. John Boland has undoubtedly written to you and would be a good contact for you here Great Falls. Thanks again. Scott Stanley*

**REPLY**

DATE

EXHIBIT *1 B*DATE *2-13-91*HB *499*

SIGNED

n # NR73 The Drawing Board, Dallas, Texas 75266-0429  
 Wheeler Group, Inc., 1982

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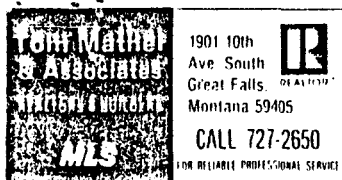


EXHIBIT 1A  
DATE 2-13-91  
HB 499

*Exhibit #*

**TOM MATHER & ASSOCIATES REALTY CO.**  
COMMERCIAL AND RESIDENTIAL REALTY

1901 10TH AVENUE SOUTH

TELEPHONE 727-2650

P.O. BOX 1770  
GREAT FALLS, MONTANA 59403

February 8, 1991

Diana Wyatt, Representative, State Legislature  
Montana House of Representatives  
State Capitol  
Helena, Montana 59601

Dear Diana:

This letter is written in support of House Bill 499 which you introduced.

As enclosure indicates I am an active licensed real estate broker and have been for over thirty two years.

I am exposed to continuous education in actively conducting my office seven days a week year round. Optional continuing education is certainly commendable.

To require mandatory continuing education for active real estate brokers and salespersons, considering the quality of much of this classroom education offered, is superfluous relative to professional real estate brokers and salespersons actively engaged in the real estate profession for a long period of time.

Your effort to enact quality legislation is appreciated.

Sincerely,

Tom Mather Broker/Owner  
Tom Mather & Associates

TM:de

Enclosure

Sunday, September 9, 1990

# Mather top Realtor for the third time

Tom Mather of Great Falls received the Great Falls Association of Realtors top award for the third time since the honor was started 27 years ago.

Mather, broker-owner of Mather & Associates, was selected "Realtor of the Year" for 1990-91. Mather is currently the chairman of the Montana Board of Housing and a state director of the Montana Association of Realtors.



Mather

According to the association, Mather was selected for the award on the merits of his professionalism and outstanding contribution to local, state and national associations of Realtors. Mather also received the award in 1983, and in 1963, he was the first recipient of the award.

Over the past 33 years, he has held many elective Realtor Association offices including national director for nine years, state president, local president, and state director for three terms.

In 1989, Gov. Stan Stephens appointed him to the Montana Board of Housing.

Joy Schenk of Century 21 McDonald Realty has been named Salesperson of the Year and Sherry Granell of the James Co. received Rookie of the Year by the Great Falls association.

Schenk recently served as president of the Great Falls Association of Realtors. The award was based on salesmanship, professionalism, local board involvement and civic activity.

Granell did committee work with the Young Realtors Action Group. Her award is based on salesmanship and professionalism selected from those realtors with less than two years in the real estate business.

## *Mather top Realtor*

Tom Mather, broker-owner of Mather & Associates was named Montana's Realtor of the Year by the Montana Association of Realtors. Mather got the honor at the association's annual convention recently in Kalispell.

This is the second time Mather has received the state honor and comes on the heels of his selection as Great Falls Association of Realtors Realtor of the Year.

RESUME  
OF  
TOM MATHER

EXHIBIT 1A  
DATE 2-13-91  
HB 499

February 22, 1988

Education: Graduated from Montana State University 1941

Military Service: U. S. Marine Corp, 1st Marine Division, 1941-1945  
Awarded Navy Cross by Admiral Halsey on Guadalcanal  
in 1942, (2 Presidential Unit Citations); Lt. Colonel,  
USMCR, Retired

Positions Held: Vice President, Pennington/Mather, Inc., 1946-1951  
Owner/Manager, Blue Ribbon Distributing Company, 1951-1958  
Secretary/Treasurer and Manager, Moon Realty Company, 1958-1960  
\* Past Commander, Great Falls American Legion  
Past Commandant, Great Falls Marine Corps League  
Past President-Director, Great Falls Council of Campfire Girls  
Past President, Great Falls Community Chest  
Past Director, Kiwanis  
Member, Past Director, Great Falls Chamber of Commerce  
✓ Owner/Manager, Tom Mather & Associates Realty Company since  
June, 1960  
✓ Past President, Great Falls Board of REALTORS  
✓ State Public Relations Chairman,  
✓ Legislative Chairman, State Convention Chairman, Montana  
REALTORS Association, 1963  
✓ Legislative Chairman, Montana Association of REALTORS and C.F.  
Board of REALTORS 1962-1964  
✓ Received Great Falls and Montana REALTOR of the Year Award  
for 1963 and Great Falls for 1983  
✓ Secretary/Treasurer Montana Association of REALTORS and Director,  
1966-1967 and 1968-1969  
✓ President, Great Falls Multiple Listing Service, 1972  
✓ President Elect, Montana Association of REALTORS, 1972-1973  
✓ President, Montana Association of REALTORS, 1973-1974  
✓ Chairman, Past Presidents Council, MAR, 1966-1967  
✓ Homebuilders "Builder of the Year" award 1985-1986  
✓ Member, MAR Nominating Committee, Professional Standards  
Committee, Legislative Committee and Long Range Planning Committee  
✓ Chairman, Great Falls Board of REALTORS Standards Committee  
✓ Director, (3 terms) National REALTORS Association  
✓ Chairman, Professional Standards Committee, Montana REALTORS  
Association  
✓ Immediate Past Chairman and member, MAR Political Action Committee  
✓ Past President and Director of Great Falls Real Estate  
Broker/Owners Association  
✓ Chairman, Director, Montana Association of REALTORS Political  
Action Committee  
✓ Montana Director and Life Member, Political Action Committee,  
National Association of REALTORS  
PAST ✓ Presently Chairman, Great Falls Board of REALTORS Multiple  
Listing Service  
✓ Presently State Director, MAR - 1990  
✓ Presently Chairman, Montana Board of Housing- 1990  
✓ Presently Member, MIS Committee  
✓ Active in condominium development and sales.

Other Activities,  
Memberships, Awards:

Member or Past Member: Boy Scouts of America -  
Century Member, Campfire Girls Council-Gulick Award  
Chamber of Commerce  
Member of Eagles, Elks  
Hod Carriers Union  
Homebuilders Association  
Jr. Chamber of Commerce -  
Great Falls Man of the Year Award 1948  
Kiwanis  
Lettermen's Club, Great Falls High School, Football and Track  
Mason - 32°  
REALTOR  
Shriner  
Mine, Mill and Smeltermen's Union  
Moose  
Montana Taxpayers Association  
P.T.A.  
Sigma Chi, Sigma Delta Chi  
Teamsters Union  
V.F.W.  
Y.M.C.A.  
✓ Free Enterprise Business Campaign Award, Montana Association  
of REALTORS 1978

Personal History:

Married Bette Y. Pennington in 1941; Daughter Penny Craig  
Jenkins; Grandchildren Tom, Lisa (deceased), Kristin;  
Wife deceased 1964. Married Bonnie M. Davidson 1971;  
Stepdaughters Mende, Jan; Daughter Michele Teresa born  
1972; Divorced, custody recently of Michele  
Member of First English Lutheran Church



1901 10th  
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Montana 59405  
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COMMERCIAL AND RESIDENTIAL REALTY

1901 10TH AVENUE SOUTH

TELEPHONE 727-2650

P.O. BOX 1770  
GREAT FALLS, MONTANA 59403

February 8, 1991

Diana Wyatt, Representative, State Legislature  
Montana House of Representatives  
State Capitol  
Helena, Montana 59601

Dear Diana:

House Bill 499, introduced by yourself in the 1991 session, is a most refreshing change from what we have come to expect from our lawmakers. A very welcome relief from more burdensome regulation that has hindered our practitioners over the years. You have my full support in this effort.

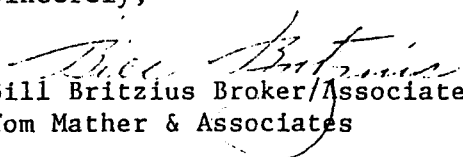
I am in my twenty third year as a licensed real estate agent, past president of the "Montana Association of Realtors", past president of the Montana Chapter of the "Farm and Land Institute", of the "National Association of Realtors", have participated in Realtor activities at all levels and chaired various committees at local, state and national levels.

I have attended many seminars to keep myself abreast of our constantly changing industry, generally by choice rather than through mandatory requirements. The nature of the business dictates to most of the survivors, competency developed through training and self help, free choice education, are the keys to any agents success.

Experience has proven, many of the courses approved for continuing education requirements, are redundant, basic and helpful only to recent licensees, rather than what a serious real estate agent would choose to further a career.

Thank you for your efforts on the behalf of the Montana Real Estate industry.

Sincerely,

  
Bill Britzius Broker/Associate  
Tom Mather & Associates

BB:de

EXHIBIT 2A  
DATE 2-13-91  
HB 499

*Exhibit #2*

EXHIBIT 1  
DATE 2-13-91  
HB 438

*Exhibit 1*

1

2-13-91  
HB438  
Paul Cartwright

My name is Paul Cartwright. I am not a lobbyist, highly paid or otherwise. I do not plan to open a restaurant. All the same, I do support this bill.

It helps consumers, who want more choice, especially an alternative to the 86% of existing licensed establishments that have gambling. It helps entrepreneurs, especially those wishing to start small restaurants that could never justify the cost of a quota license. And it helps the tourism industry, which currently is unable to offer the amenities expected by certain segments of the market.

However, I have heard some objections to this bill. I think they can be refuted. Let me list them.

SOME PEOPLE SAY, THIS BILL WILL AFFECT EVERY LICENSE HOLDER

Two-thirds of all-beverage licenses and one-third of beer licenses are in areas where a restaurant serving beer and wine could apply today and get a license. These are areas where the quota isn't filled or areas outside cities, which aren't subject to the beer quota. Whatever the impact of this bill, it can only affect a minority of existing license holders.

SOME PEOPLE SAY, THIS BILL WILL HURT EXISTING BUSINESSES

Let's leave aside the fact that this claim translates as: Consumers would go elsewhere if they had a choice.

This claim already has been refuted in Butte and Anaconda. When Butte-Silver Bow and Anaconda-Deer Lodge consolidated over a decade ago, they were treated as counties for purposes of beer quotas; that is, there was no quota. In that time, the increase in beer licenses has been minimal: Butte now has 3 more beer licenses than would be allowed under quota. Anaconda has 5 less than would be allowed. Not a major surge.

One interpretation is that in Butte and Anaconda, current license holders are providing what the public wants, so there's no market for new licensees.

On the other hand, some might object, saying these are stagnant markets. They claim it would be different in expanding markets. This may be true, but then there should be even more room for new restaurants.



SOME PEOPLE SAY, THIS BILL WILL DESTROY THE VALUE OF EXISTING LICENSES.

Existing licenses never will go to zero value. First of all, quota licenses don't have the additional restrictions in hours or type of sales.

More importantly, quota licenses allow the holder to get a gambling license, which the proposed licenses would not. 99.3% of the video machines last year netted over \$1,000. 80% netted over \$5,000. Those are net figures for individual machines. With those kind of returns, you could explain the current market value of licenses largely in terms of their gambling value.

Current license holders that merely want to run restaurants might well be able to sell their quota licenses for the same price after this bill is passed as before it is passed.

SOME PEOPLE SAY, THE LEGISLATURE CAN'T CHANGE THE VALUE OF EXISTING LICENSES WITHOUT COMPENSATING LICENSE HOLDERS.

The Legislature did just that in 1975, 1979, and 1985 when it authorized licenses outside quota for resorts, airports, and public golf courses. (15, 5, and 7 licenses issued so far.)

SOME PEOPLE SAY, THE HOURS WILL BE IMPOSSIBLE TO ENFORCE.

Current law (16-3-305) allows lawful businesses to remain open during hours when liquor can't be served. This law specifically covers restaurants, hotels, and the like. I haven't heard too many requests for more authority to enforce closing laws.

In summary, I think this bill is a good bill for Montana's economy. I think it is a good bill for Montana's consumers. I urge you to support it.

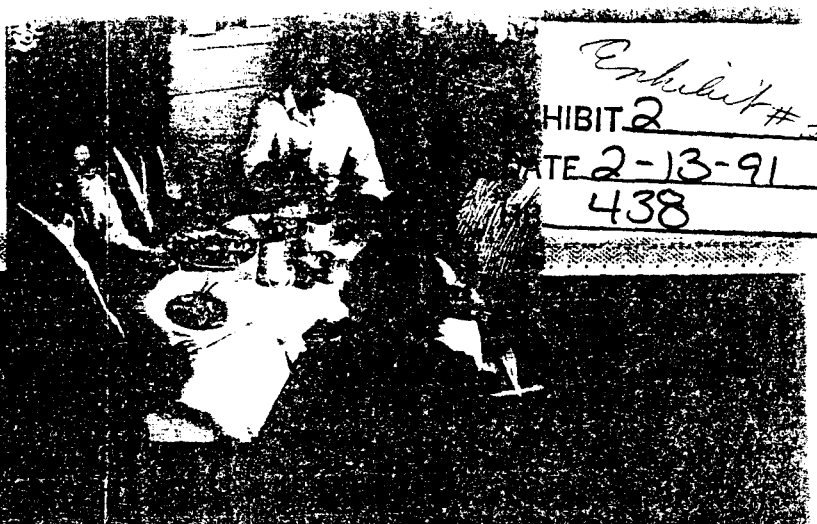


Exhibit # 2  
HIBIT 2  
DATE 2-13-91  
438

WHAT

# AMERICA THINKS ABOUT WINE

A GROUND-BREAKING  
NATIONWIDE SURVEY FINDS  
WINE'S PLACE IN  
SOCIETY SECURE, DESPITE  
ANTI-ALCOHOL THREAT



BY MARVIN R. SHANKEN

AND THOMAS HARTMAN

New York Times



## The Situation Today: Threats and Promise

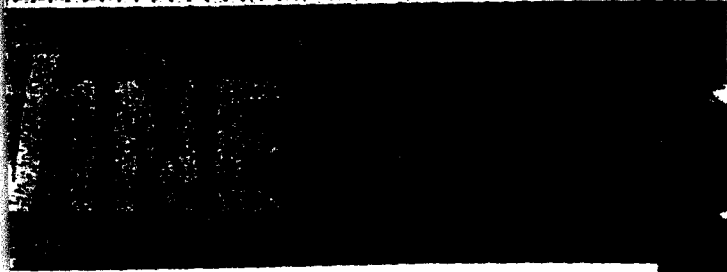
# THINKS

**W**ine is under attack today. Federal and state tax increases, warning labels and the drumbeat rhetoric of anti-alcohol forces threaten to force wine drinking to the margins of American life.

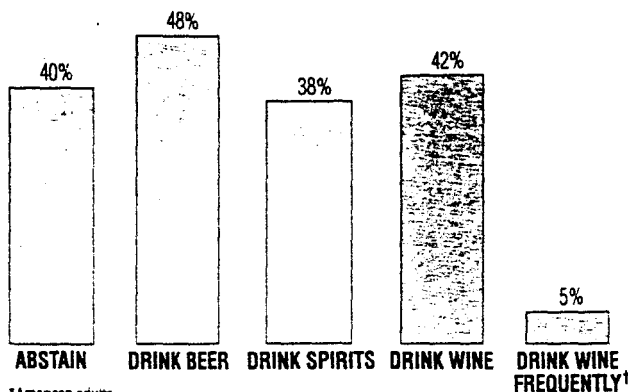
But don't underestimate its allies. There is a vast reserve of positive feeling toward wine in this country. An overwhelming majority of Americans—more than eight in 10, abstainers as well as drinkers—believe that it's all right to have a glass of wine on occasion. Prohibition has minimal support; only one in five would outlaw the sale of alcoholic beverages. Wine is an accepted part of American life.

These findings are among the results of a nationwide survey originated and underwritten by *The Wine Spectator*. The Roper Organization, an internationally recognized research company, was retained to conduct the survey. A nationally

*Marvin R. Shanken is editor and publisher of The Wine Spectator. Thomas Matthews is New York bureau chief.*



# 1 WHO'S DRINKING WHAT IN AMERICA? \*



\* American adults

† Frequent wine drinkers consume more than 5 glasses of wine per week.

Source: The Wine Spectator/Reader Survey

Graphics: Debra Tisler

representative sample of 1,500 American adults were interviewed in person, in their homes, to measure attitudes and opinions about wine and other beverages in the United States today. This is believed to be the largest survey of its type ever undertaken.

The survey asked two basic questions: What do Americans think about wine? Who are the wine drinkers in America? The answers are sometimes predictable, and sometimes surprising. They point out perceptions that must be addressed for the anti-wine forces to be counteracted. And they indicate some of the strengths that wine drinkers can use in its defense.

Wine drinking in America is like some rivers: a mile wide and an inch deep. Many Americans enjoy wine, but very few drink very much.

In America, 42 percent of adults drink wine, according to *The Wine Spectator* survey. In all, 60 percent sometimes drink alcoholic beverages, some more than one type (see chart No. 1). America is not generally considered a wine-drinking nation, 49 percent of the wine-drinking nation, 49 percent of the people drink wine, according to a 1990 survey by France's National Interprofessional Wine Office.

Yet the United States ranks only 29th among the world's countries in per capita consumption of wine, according to *Impact*, a drinks industry newsletter. Americans drink, on average, 1.8 gallons

of wine per year, or 9 bottles per person. The French are the world's leaders in wine consumption, averaging 19.5 gallons per year, or 98.5 bottles per person.

The difference results less from the number of people drinking wine than from the amount the wine drinkers consume. Among French wine drinkers, 62 percent have at least a glass or two of wine per week, and 37 percent drink wine every day. In the United States, wine drinkers are far more temperate.

Most Americans who drink wine do so only occasionally. Of the people who identified themselves as wine drinkers in the survey, 40 percent had not drunk any wine in the past 30 days. Only 39 percent had drunk any wine in the past week. Taking all wine drinkers into account, each had consumed, on average, a single glass of wine in the past week. A scant 5 percent of Americans could be called frequent wine drinkers, consuming an average of 5.9 glasses—about one bottle—of wine per week.

But while only small amounts of wine separate those who never drink wine from those who do so occasionally or even frequently, there are significant differences between the groups. The survey clearly shows these demographic variations.

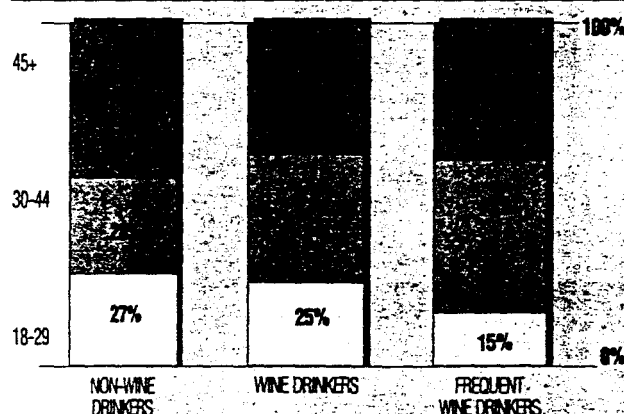
consumes more than five glasses of wine per week), to show how striking the differences can be as wine drinking becomes a more important part of people's life-styles.

**W**ine drinkers are baby boomers, in large part; the 30- to 44-year-old age group makes up a higher percentage of wine drinkers than in the rest of the population (see chart No. 2). They choose to live in urban areas, especially on the East and West coasts. They are about evenly divided between men and women, but frequent wine drinkers are more likely to be female (see chart No. 3). Among those who choose affiliation with a political party, non-wine drinkers are more likely to be Democrats, while wine drinkers are more likely to be Republicans (see chart No. 4).

In some important respects, wine drinkers enjoy substantial advantages over the general population. On average, they are better educated and earn more money than non-wine drinkers. Frequent wine drinkers climb even higher in these categories (see charts No. 5 and No. 6).

From another perspective, while 42 percent of all Americans drink wine, fully 63 percent of those who have attended college do. And while only 29 percent of

## 2 WINE DRINKERS BY AGE GROUP



Source: The Wine Spectator/Reader Survey

To draw as clear a portrait of wine drinkers as possible, the charts that accompany this story contrast people who drink wine with all those who don't, whether the non-wine drinkers consume other alcoholic beverages or not. Some of the charts include frequent wine drinkers as a separate category (a frequent wine drinker is defined as one who

Americans with annual household incomes below \$15,000 drink wine, the figure rises dramatically to 66 percent for families whose annual income exceeds \$50,000.

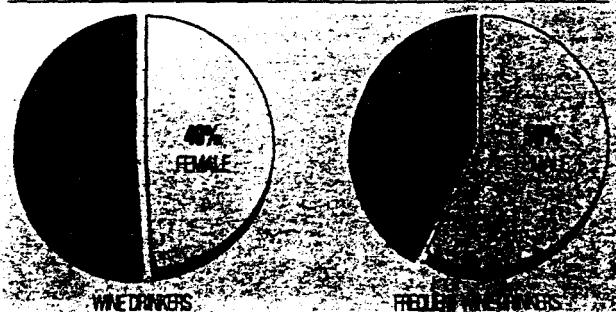
The survey shows that the media image of the "yuppie" enjoying wine with dinner, either at home or in a restaurant, is fairly close to the truth.

Other studies confirm these conclusions. In an article titled "Drinker Prototypes in American Society," social scientists David J. Pittman and Hugh Klein analyzed results from a national sample of drinkers to identify "drinker prototypes" for each class of alcoholic beverage.

"The wine drinker prototype," according to the article, which appeared in the scholarly *Journal of Substance Abuse* in 1990, "is a female, probably age 45 to 64. She will most likely be well-educated (i.e., have at least some college experience), and probably lives in a household which we have defined as upper income. When she drinks, she typically drinks at home, usually during a meal, in particular, dinner."

The prototypical wine drinker, as drawn by *The Wine Spectator* and Pittman studies, could almost be a portrait of

## 3 WINE DRINKERS BY GENDER



Source: The Wine Spectator/Reader Survey

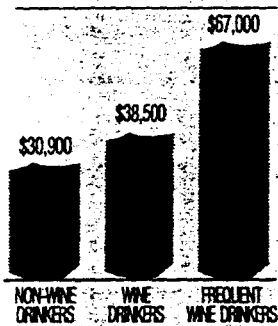
Moirra Hodgson. Now the restaurant critic for the *New York Observer*, she came to America from England in the late 1960s. She enjoys wine at home with her husband, but has plenty of opportunity to observe the dining habits of others.

"When I first came to New York, people drank martinis and the wine only came in great jugs," she said. "But things have definitely improved. Wine lists in restaurants have become more imaginative, and I see more bottles on the tables. People are more knowledgeable now, and they're willing to try new things. Wine is much more a part of American life now than it was 20 years ago."

### Current American Attitudes toward Wine Drinking

The image of a well-educated woman enjoying a glass of wine at dinner hardly fits into the nightmare scenarios of the drunken driver, the skid row wino or the abusive alcoholic. And, in fact, most Americans distinguish be-

#### 5 WINE DRINKERS BY INCOME



Source: The Wine Spectator Survey

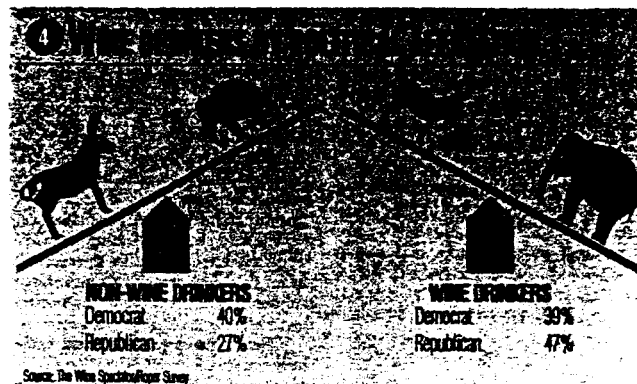
tween wine drinking and problem drinking. According to *The Wine Spectator* survey, wine is considered an appropriate part of life by an overwhelming majority of the population.

The survey asked, "Do you think there are some occasions where it is all right for people to have a drink of wine?" Eighty-two percent of those asked said yes. Only 15 percent said no. Even a majority of non-drinkers (61 percent) believes that an occasional glass of wine is acceptable social behavior (see chart No. 7).

This positive attitude toward wine becomes even more marked as the education level rises. While the belief that wine drinking is acceptable falls slightly among people who haven't graduated from high school, to 71 percent, fully 88 percent of college graduates believe it's all right to drink wine sometimes.

The data can't explain exactly why this shift occurs. But in an age of increasing emphasis on health, it demonstrates that acceptance of wine drinking rises with increasing education, which presumably heightens awareness of current scientific research and health-care trends.

American beliefs about wine and health were surveyed by the SRI Research Center for the National Wine Coalition in 1990. In a national sample, 500 people were asked if they believed moderate consumption of wine represented a health problem for Americans. Forty-four percent replied that it presented no problem at all, while an additional 23 percent



Source: The Wine Spectator Survey

ment of wine consumers. Only 11 percent believed moderate wine consumption was a major health problem for Americans.

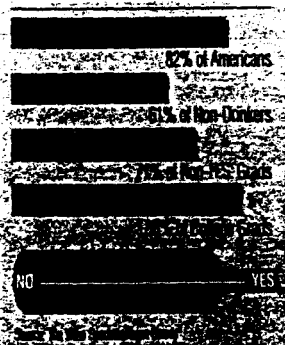
Wine's positive image among Americans appears to be related to the contexts in which it is typically consumed. When *The Wine Spectator* survey asked people to associate various conditions and consequences with different kinds of alcoholic beverages, wine was considered the most sophisticated, the best with a meal and the least likely to cause drunkenness. Only 1 percent of the adults interviewed believed that wine posed a great danger to society. The SRI survey asked whether wine drinking is an acceptable social activity at mealtimes or to celebrate special occasions. Eighty-three percent of the people said yes.

These contexts are confirmed by Pittman and Klein. "Wine is typically associated with integrative social contexts, as a beverage of enjoyment," their study concludes, "for instance, as a perfect complement to a nice dinner or on a celebratory occasion."

Christopher Smallhorn is an executive recruiter in Boston who says wine awareness and acceptance have increased dramatically among the people he works with.

"There's no disapproval of wine," he said. "I've even seen it on résumés. While the personnel department in large corporations might raise an eyebrow at a résumé that included wine appreciation, it could be a positive in a very professional, sophisticated world."

#### 7 IS IT OK TO DRINK WINE ON SOME OCCASIONS?

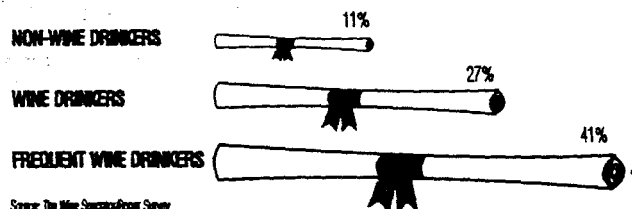


Anti-alcohol forces haven't been able to shake this perception of wine's appropriateness. *The Wine Spectator* survey asked drinkers if they sometimes find themselves in situations where they would

comfortable having one. According to the responses, this almost never happens (see chart No. 8). If people choose not to drink wine, it is for other reasons: personal health, rising costs or religious constraints, for example.

But while most Americans believe that wine drinking can be a positive addition to life, they also see dangers in its use.

#### 6 WINE DRINKERS BY EDUCATION - % OF THOSE WITH A COLLEGE DEGREE



Source: The Wine Spectator Survey

*The Wine Spectator* survey asked people to rank various beverages in terms of healthfulness, with a rating of 10 given to an extremely healthful drink and zero given to an extremely unhealthful one (see chart No. 9). All the alcoholic beverages were ranked below all the other beverages on the list; only coffee and soft drinks came close.

These responses don't have any bearing on whether wine can be scientifically proven as healthful or unhealthful, given various consumption levels. But they indicate that there is a limit to the positive attitudes Americans hold toward wine.

This limit is also reflected in the widespread support for warnings about the dangers of alcoholic beverages. Seventy-four percent of all respondents in *The Wine Spectator* survey favor putting warning labels on all alcoholic beverage containers, and the support hardly wavers among drinkers. Almost the same percentage favors including warnings in advertisements for alcoholic beverages.

There is even residual support for a return to Prohibition, which was repealed in the United States in 1933. According to *The Wine Spectator* survey, one in five Americans favors prohibiting the sale of alcoholic beverages (see chart No. 13 and story on page 28).

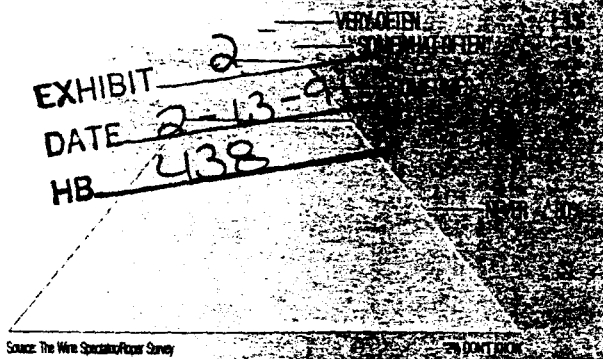
There is thus a tension between positive and negative in American attitudes toward alcoholic beverages, even wine. While they are considered socially appropriate, they also pose potential

MOST  
AMERICANS  
DISTINGUISH  
BETWEEN  
WINE DRINKING  
AND PROBLEM  
DRINKING

Exhibit # 2

2-13-91 HB 438

## 8 HOW OFTEN DO YOU FEEL UNCOMFORTABLE DRINKING WINE?



overconsumption can cause ill effects. The place of wine in American culture will be fluid and even contradictory as long as this tension remains.

Dr. Morris Chafetz, past director of the National Institute on Alcohol Abuse and Alcoholism, has spent nearly 40 years studying the place of alcohol in America. Perhaps his conclusions sum up this widespread ambivalence and final support. "Having seen every harm that alcohol can do," he said, "I still believe that it does more good to society than harm."

### Effects and Implications

Wine consumption in America grew rapidly from 1970 to 1985 and then began to decline. *Impact* newsletter predicts that this decline will continue through the end of this decade, ending up around 1.5 gallons per capita per year, or about 7.5 bottles per person.

The Roper survey bears out this trend. Drinkers were asked how their consumption had changed over the past few years—were they drinking more often, less often or about the same? In almost all cases, more people were drinking less than were drinking more (see chart No. 10).

Habits die hard, and any change in consumption patterns will be relatively slow. A majority of the people said their drinking had remained about the same over the past few years. But while 8 percent of drinkers said they were drinking more wine now, 21 percent said they were drinking less. These percentages remain relatively stable for most demographic categories, suggesting the trend is nationwide.

The change is even more striking when beer and spirits are considered. While the same 8 percent of drinkers are drinking more beer now, 25 percent are

drinking less. Only 3 percent of drinkers said they are drinking more spirits, while 29 percent said they're drinking less.

The only divergence from this pattern comes from frequent wine drinkers. In this category—made up of a disproportionately greater number of highly educated and highly paid people—wine consumption appears to be growing. Twenty-four percent said they're drinking more wine than before, and only 19 percent said they're drinking less.

What does it mean that these bright, successful people are bucking the trend and actually enjoying wine more often than before?

Chafetz interprets the data in a relatively pragmatic way. "As you go up the ladder of life, you look for signs of having made it," he said. "The wine industry has always marketed itself as a sign of elite living, so people turn to it as a status symbol."

The image of wine as a status symbol conjured up the caricature of the wine snob for some observers, who noted

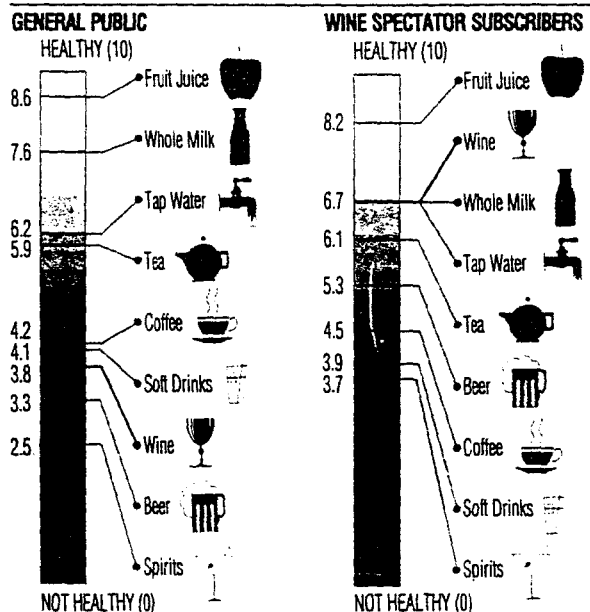
wine has in these gatherings.

"Wine is my beverage of choice for dinner," said Roger Kimball, managing editor of *The New Criterion*, a cultural review published in New York. He often eats out, for work and pleasure, and remarked that people have become more sophisticated about wine. "After a recent lecture I was invited to a restaurant," Kimball said. "I ordered lamb. The host chose *Marcus rose*. That's the exception now, rather than the rule."

Dr. Thomas Okin, a cardiologist in Denver, is an occasional wine drinker. "I have wine on festive occasions," he said, "or when I go out." It wasn't part of his growing up; he remembers an uncle who drank wine, but rarely around the family.

Yet today Okin shares wine with his children, now 20 and 17 years of age. "I've encouraged them to partake of wine," he said, "and now they appreciate a nice bottle." He's passing his pleasure in wine, rooted as much in its social function as its taste qualities, on to the next generation.

## 9 PERCEIVED HEALTHFULNESS OF BEVERAGES



that wine drinkers could sometimes be pretentious or intimidating. But according to data collected by the Wine Institute, about 75 percent of wine consumption takes place in someone's home, and 82 percent of those occasions center around a meal, particularly dinner. Common sense would argue that family dinners are not conducive to pretentious and intimidating behavior. They're more likely to be times of relaxation, communication and social education.

"Wine is used to facilitate social interaction," said Pittman, a professor of sociology at Washington University in St. Louis who has published more than 200 papers on alcohol use and abuse. "In general, the focus of the occasion is not the drinking per se, but some form of interaction—a meal, or a celebration. People tend to think of its use in conjunction with sociability."

This positive association emerges whenever wine drinkers talk about wine. They mention dinner parties, weddings, family gatherings and festive occasions. And they talk about the growing place

### The Road Ahead

The association of wine with dinner and the family may be its greatest opportunity to sink roots deeper into American culture.

Americans are great believers in the importance of family dinners. They provide an opportunity for communication and cohesion in a time plagued by fragmentation and distraction.

In November 1990, *The New York Times* and CBS News conducted a national survey of American family dining habits. The vast majority—80 percent of respondents—said that on a typical weeknight most of their family eats dinner together, and 74 percent of those polled said family dinners were very important to them.

Americans called dinner "the lynchpin of the day, a respite from the chaos and separation in daily life, as integral to family life as fidelity is to marriage," according to reporter Dena Kleiman.

## 10 ARE YOU DRINKING?

SPIRITS (Total Drinking)

BEER (Total Drinking)

WINE (Total Drinking)

WINE (Total Drinking)

Wine drinkers know that a glass of wine can help turn an ordinary dinner into a special occasion. It makes the food taste better, helps the flow of conversation, stretches out the time of sharing around the table. As the baby boomers become heads of their own families, their discovery of wine may become a linchpin in the evolving traditions of their family dinners. Wine could become a more integral part of Americans' social fabric, and an important element in nurturing important cultural customs.

Chafetz is acutely aware of the ability of anti-alcohol forces to stigmatize all drinking, even moderate wine consumption. "The negative attitude towards the use of alcohol has grown much too pervasive," he said. "In the American psyche today, the taking of alcohol is considered an unhealthy activity."

But Chafetz sees a ray of hope in the results of surveys such as those undertaken by *The Wine Spectator*, Pittman and Klein and others, which show wine drinking so clearly considered part of in-

tegrative social contexts.

"I think the strains of isolation and rampant individualism that resulted from the success-oriented 1980s are beginning to catch up with our society," Chafetz said. "The trend in the '90s will be towards greater social cohesiveness. If Dr. Pittman is right, that's an area where wine can make a real contribution."

"Wine has a very positive imagery in American society," Pittman observes. "There's probably a larger group of wine connoisseurs today than there was a generation ago. It's driven by positive forces, but it remains to be seen if the movement can overcome the restrictions advocated by the new temperance movement."

*The Wine Spectator* survey confirms that Americans approve of wine in moderation. Many people today acknowledge that wine adds great enjoyment to their lives. Time will tell if the reservoir of positive feeling toward wine in America will dry up, or nourish a land thirsty for the social values and pleasures that wine represents.

# READERS PROVE POSITIVE LINK

WINE SPECTATOR SUBSCRIBERS SEE

WINE AS NOT ONLY ACCEPTABLE BUT AS POSITIVELY

HEALTHFUL, AND POLL SHOWS

CORRELATION BETWEEN WINE DRINKING

AND SOCIAL SUCCESS

**S**ubscribers to *The Wine Spectator* prove that being serious about wine is no barrier to achievement. These enophiles outpace the population as a whole not only in average wine consumption, but in many categories of social success.

When the Roper Organization interviewed a nationally representative sample of Americans to survey drinking habits and attitudes toward wine in the United States today, it also polled 400 *Wine Spectator* subscribers to ask the same questions (300 were wine consumers, while the balance were members of the wine industry). The results of this survey showed that an intense interest in wine often accompanies achievement in many areas of life.

Predictably, subscribers enjoy wine more often than the general public: 7.6 glasses per week each, just over a bottle, compared with half a glass a week for Americans as a whole (see chart No. 11). While most American wine drinkers had

of wine in a typical week.

And, like frequent wine drinkers in general, *Wine Spectator* subscribers are bucking the trend toward lower consumption. Compared with their consumption

a few years ago, over half are drinking more, and only 7 percent are drinking less (see chart No. 12).

But the time spent sipping wine doesn't seem to detract from subscribers' abilities to get things done in the world. Subscribers are more likely than the average American to be college graduates, married and earning more than \$50,000 per year (see chart No. 11).

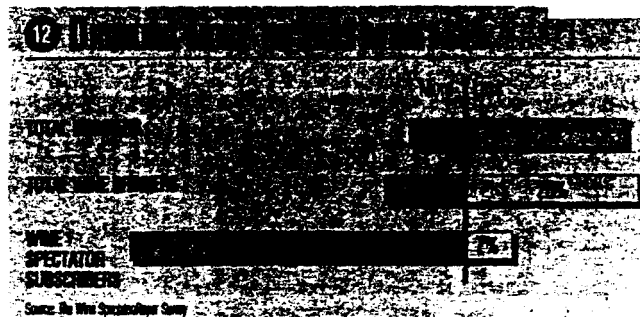
The national survey determined that wine consumption was positively linked to increasing education and income levels. Wine drinkers generally averaged higher in these categories than non-wine drinkers, while frequent wine drinkers averaged highest of all. *Wine Spectator* subscribers continued this trend, showing more education and higher incomes even than frequent wine drinkers in the general population.

*Wine Spectator* readers actively endorse wine's place in American society. They are almost unanimous in their belief that it's all right to drink wine on some occasions, and in their opposition to Prohibition. In fact, subscribers are convinced not only that wine is socially acceptable, but that it is even positively healthful. In a ranking of various beverages, subscribers rated only fruit juice as more healthful than wine (see chart No. 9).

However, as much as these wine buffs support wine, they too recognize its potential dangers. A majority of subscribers supports the inclusion of warning labels on alcoholic beverage containers and advertisements. This attitude toward wine's risks and benefits corresponds to the response of the general public.

The surveys suggest Americans believe that while alcohol's abuse can cause problems, adequate education and an emphasis on moderation can help wine consumption contribute to personal pleasure and social interaction. *Wine Spectator* subscribers, as successful participants in American life, confirm that this is the case.

—Thomas Matthews



AN INTENSE

INTEREST IN WINE

OFTEN

ACCOMPANIES

ACHIEVEMENTS

IN MANY AREAS

OF LIFE



Commissioners  
Russell J. Ritter, Mayor  
Margaret A. Crennen  
Tom Huddleston  
Mike Murray  
Blake J. Wordal



## City of Helena

*Exhibit 3*  
EXHIBIT 3  
DATE 2-13-91  
HB 438

City-County  
Administration Building  
316 North Park  
Helena, MT 59623  
Phone: 406/442-9920

William J. Verwolf  
City Manager

February 13, 1991

Representative Bob Bachini, Chairman  
House Business and Economic Development Committee  
House of Representatives  
State Capitol  
Helena, MT 59620

Dear Representative Bachini:

I attended the hearing on HB438 today and requested that, if favorable action is taken on the bill, an amendment be made to MCA 16-4-503. You requested that I prepare the amendment and make it available to your Committee.

Presently, local governments are allowed by this section to charge a license fee, equal to the State's charge, for a local beer or beer-and-wine license. We had assumed that the same would apply to the new license. The fiscal note stipulates that this section would have to be amended to specifically include this new "restaurant beer and wine" license. The attached amendment, I believe, would do that.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in cursive script that reads "Shelly Laine".

Shelly Laine, Director  
Administrative Services



Ex. 3

2-13-91

HB 438

PROPOSED AMENDMENT TO HOUSE BILL 438

Section 16-4-503, MCA, is amended to read:

"16-4-503. City and county licenses -- fees. The city council of any incorporated town or city or the county commissioners outside of any incorporated town or city may provide for the issuance of licenses to persons to whom a retail license has been issued under the provisions of this code and may fix license fees, not to exceed a sum equal to five-eighths of the fee for an all-beverages license or 100% of the fee for a beer, restaurant beer and wine, or beer-and-wine license collected by the department from such license under this code."

Video Gambling Machine Permits Issued Per Premises. Section 23-5-611, MCA, permits an operator to place up to 20 video gambling machines on his or her premises; no more than ten of the machines may be draw poker machines. The following table reflects the number of premises with a specific number of machines as of December, 1990.

<u>No. of Machines on Premise</u>	<u>No. of Premises</u>	<u>Total Machines</u>	<u>Percentages of: Premises Machines</u>	
1	183	183		
2	204	408		
3	199	597		
4	213	852		
5	<u>171</u>	<u>855</u>		
Totals	970	2,895	58.2%	27.8%
6	144	864		
7	107	749		
8	73	584		
9	46	414		
10	<u>53</u>	<u>530</u>		
Totals	423	3,141	25.4%	30.1%
11	33	363		
12	32	384		
13	25	325		
14	19	266		
15	<u>25</u>	<u>375</u>		
Totals	134	1,713	8.0%	16.4%
16	16	256		
17	11	187		
18	12	216		
19	9	171		
20	<u>92</u>	<u>1,840</u>		
Totals	140	2,670	8.4%	25.6%

As indicated above, 58.2 percent of the premises operate from one to five machines, which represents 27.8 percent of the video gambling machines in play. In contrast, 8.4 percent of the premises offer from 15 to 20 machines, which represents 25.6 percent of the video gambling machines in play.

Mike Munsey  
Depot Bar & Restaurant  
201 West Railroad  
Missoula, Montana 59802

EXHIBIT 5  
DATE 2-13-91  
HB 438

*Exhibit #5*

February 12, 1991

Chairman Bob Bachini  
House Business & Economic Development Committee  
Capitol Station  
Helena, Montana 59620

Re: Hearing on House Bill 438 - 8 a.m. on February 13th

Dear Chairman Bachini and Members of the Committee:

I am a partner in a corporation that owns both the Depot Restaurant in Missoula and the Rex in Billings. I think I can modestly say that the reputation of these establishments in both communities for "fine dining". We also have the reputation in both communities as establishments that do not have any gambling whatsoever on our premises. In contrast to the rationale behind House Bill 438, we find that the fact that we do not have gambling on our premises has actually enhanced our business, and we feel that it has done the same for other businesses that do not have gaming machines.

The idea that the restaurant business in Montana is not competitive enough is patently absurd. In Missoula and Billings, restauranteurs such as myself have to stay constantly innovative and find ways to be creative with our menu and our services to keep our popularity. It's also very much a function of the fact that many of our employees have been with us for a great many years and the public has come to trust not only the quality of our food and drinks, but also the quality of our service.

The casinos in Montana have not killed fine dining. What they have done is given those that want an inexpensive meal a place to go and made the true "fine dining" establishments stand out even more. If this bill were to pass, it would create a flood of beer and wine establishments for which food would only be an excuse. The worth of our licenses would collapse almost immediately and quite frankly, the opposite of what this Bill is intended for would happen. The time and care we have taken to understand and excel in the beer and wine market would be washed away and, the real impact would be, sadly, that these two, and other fine restaurants, would most probably have to become casinos themselves.

For these reasons we think that House Bill 438 is extremely illogical, ill-conceived and unfair. Please do not pass it.

Sincerely,

  
Mike Munsey

EXHIBIT 5A  
DATE 2-13-91  
HB 438

\*\*\*\*\*  
F A X   T R A N S M I T T A L   M E M O  
TO: Mark Staples  
DEPT: \_\_\_\_\_ FAX #: 443-7706  
FROM: P. Polzin PHONE: 243-5713  
CO: \_\_\_\_\_ FAX #: \_\_\_\_\_  
Post-It® brand fax transmittal memo 7671

NO. OF PAGES  1
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1222 Lincolnwood Rd.  
Missoula, MT 59802  
February 11, 1991

Mark Staples  
34 W. Sixth  
Helena, MT 59624

Dear Mark:

You asked for my professional opinion concerning the impacts of removing restrictions on the number of beer and wine licenses. I believe that the value of the licenses will decrease as a result of the deregulation and the current owners may suffer significant financial losses.

Currently, there are restrictions on the number of licenses that may be issued in a county. There are also numerous examples of existing licenses which have been bought and sold. These facts indicate to me that the regulatory procedures have created a commodity which has value to the owner. That is, the licenses are a valuable good and are part of the owner's assets, just like his building, inventory, and other items.

Easing the restrictions on the number of licenses in a county is equivalent to increasing the supply of those licenses. Holding everything else the same, an increase in the supply of any good will decrease its price. Those persons already holding the good will experience a decrease in their wealth because the decline in the value of the good.

Specifically, many of the existing licenses have value and are assets to their owners. This value owes its existence to the restrictions on the number of licenses. If these restrictions are modified and the number of licenses increases, the current owners will suffer losses.

I hope that this answers your question.

Sincerely,

Paul E. Polzin  
Economist

EXHIBIT 6  
DATE 2-13-91  
HB 438

*Exhibit # 6*

GAMING

TESTIFY FOR HEARING: HB 438 02/13/91

CHAIRMAN BACHINI, MEMBERS OF THE COMMITTEE.

MY NAME IS MICHAEL CETRARO

I OWN PERSONALLY THREE BEER AND WINE LICENSES IN BOZEMAN, HELENA & MISSOULA.

I HAVE PURCHASED THESE LICENSES WITHIN THE LAST 25 YEARS. THE REASON I MADE THIS INVESTMENT WAS BECAUSE OF THE EXISTING LAWS CONCERNING THE QUOTA.

IN ORDER TO SERVE BEER I HAD TO MAKE THIS PURCHASE BELIEVING THERE WAS A VALUE FOR THIS

I PAID A SUBSTANTIAL AMOUNT FOR EACH OF THESE LICENSES AND USED THEM TO ENHANCE MY PIZZA RESTAURANTS IN EACH OF THESE CITIES WHICH ARE KNOWN AS VILLAGE INN PIZZA PARLORS.

IT'S BEEN BY GREAT FINANCIAL SACRIFICE AND YEARS OF HARD WORK THAT THAT I HAVE BUILT THESE ESTABLISHMENTS INTO

SOMETHING OF VALUE, I OPPOSE THIS BILL WHICH WOULD ALLOW PEOPLE TO ERASE THE VALUE JUST BY SLAPPING DOWN \$800 BUCKS.

MY BANKERS HOLD THE PAPER ON THE LOANS I'VE TAKEN OUT TO

CONTINUALLY IMPROVE THESE BUSINESSES. THEY TELL ME THAT

IF THIS BILL PASSED I'D BETTER BRING IN SOME OTHER COLLATERAL BECAUSE MY BEER AND WINE LICENSES WILL BE WORTH

ZILCH!

THE PREMISE OF THIS BILL IS ALL SCREWED UP.

IT'S OBVIOUS MR. CARTWRIGHT HAS NEVER BEEN IN THE RESTAURANT BUSINESS IN MONTANA OR HE'D NEVER MAKE THE STATEMENT "THESE MARKETS COULD HANDLE A LOT MORE RESTAURANTS "

THAN THERE ARE BEER AND WINE LICENSES. I'M HERE TO TELL YOU

THAT THIS IS ALREADY THE MOST COMPETITIVE BUSINESS IN MONTANA, BAR NONE!

HE ALSO IMPLIES THAT THERE ARE NOT ENOUGH BEER AND WINE

LICENSES AVAILABLE. WELL, I'LL TELL YOU A COUPLE OF ONES THAT ARE

.....MINE..YOU PEOPLE THAT ARE LOOKING FOR ONE...COME TALK TO ME.

ALL I WANT IS FAIR MARKET VALUE. BECAUSE I TOOK THE RISK

IF YOU PASS THIS BILL WHAT'S GOING TO HAPPEN IS THAT PEOPLE ARE

GOING TO RUSH TO SELL THEIR PRESENT BEER AND WINE LICENSES

TO GAMBLING PEOPLE FOR WHATEVER PRICE MIGHT STILL BE THERE FOR THEM...

AND THEN, JUST GO OUT AND BUY ONE OF THE FREE ONES.

IT WILL LEAD TO ABSOLUTE CHAOS. AND I FOR ONE WILL BE IN COURT SEEKING SEEKING COMPENSATION FROM THE STATE OF MONTANA

FOR THE TENS OF THOUSANDS OF DOLLARS I WILL LOSE BECAUSE THEY CHANGED THE RULES THIRTY YEARS INTO THE GAME.

THANK YOU.



MICHAEL CETRARO

Ex. 7

2-13-91

HB 438

Amendments to House Bill No. 438  
First Reading Copy (White)

Requested by Representative O'Keefe  
For the Committee on Business and Economic Development

Prepared by Valencia Lane  
February 13, 1991

1. Title, line 6.

Following: "LIMITATIONS;"

Insert: "PROVIDING THAT THE LICENSE DOES NOT QUALIFY THE LICENSEE  
TO RECEIVE A GAMBLING LICENSE;"

Strike: "SECTION"

Insert: "SECTIONS"

2. Title, line 7.

Following: "16-4-501,"

Insert: "23-5-306, AND 23-5-611,"

3. Page 1, line 15.

Following: "restaurant"

Strike: "that derives at"

Insert: ". At"

Following: "of"

Strike: "its"

Insert: "the restaurant's"

4. Page 1, line 16.

Following: "food"

Strike: "to be"

Insert: ", beer, and wine"

Following: "premises"

Insert: "must come from the sale of food"

5. Page 5, line 21.

Strike: "\$800"

Insert: "\$400"

6. Page 6, line 8.

Following: line 7

Insert: "Section 3. Section 23-5-306, MCA, is amended to read:

"23-5-306. Live card game table -- permit -- fees --  
disposition of fees. (1) A person who has been granted an  
operator's license under 23-5-177 and a license to sell alcoholic  
beverages for consumption on the premises, except a restaurant  
beer and wine license under [section 1], may be granted an annual  
permit for the placement of live card game tables. 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.

(2) The annual permit fee in lieu of taxes for each live card game table operated in a licensed operator's premises may not be prorated and must be:

- (a) \$250 for the first table; and
- (b) \$500 for each additional table.

(3) The department shall retain for administrative purposes \$100 of the fee collected under this part for each live card game table.

(4) The department shall forward on a quarterly basis the remaining balance of the fee collected under subsection (2) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the live card game table is located for deposit to the county or municipal treasury. A county is not entitled to proceeds from fees assessed on live card game tables located in incorporated cities and towns within the county. The local government portion of this fee is statutorily appropriated to the department, as provided in 17-7-502, for deposit to the county or municipal treasury."

**Section 4.** Section 23-5-611, MCA, is amended to read:

**"23-5-611. Machine permit qualifications -- limitations.**

(1) (a) A person who has been granted an operator's license under 23-5-177 and a license to sell alcoholic beverages for consumption on the premises, except a restaurant beer and wine license under [section 11], may be granted a permit for the placement of video gambling machines in his premises.

(b) If video keno or bingo gambling machines were legally operated on a premises on January 15, 1989, and the premises were not on that date licensed to sell alcoholic beverages for consumption on the premises or operated for the principal purpose of gaming and there is an operator's license for the premises under 23-5-177, a permit for the same number of video keno or bingo gambling machines as were operated on the premises on that date may be granted to the person who held the permit for such machines on those premises on that date.

(c) A person who legally operated an establishment on January 15, 1989, for the principal purpose of gaming and has been granted an operator's license under 23-5-177 may be granted a permit for the placement of bingo and keno machines in his premises.

(2) An applicant for a permit shall disclose on the application form to the department any information required by the department consistent with the provisions of 23-5-176.

(3) A licensee may not have on the premises or make available for play on the premises more than 20 machines of any combination and no more than 10 may be draw poker machines."

Renumber: subsequent section

**TESTIMONY OF STEVEN C. BAHLS**

Professor of Law  
University of Montana School of Law  
Missoula, MT 59812

*Exhibit # 8*  
EXHIBIT 8  
DATE 2-13-91  
HB 552

before the  
**HOUSE BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE**  
**on February 13, 1990**  
in support of  
**House Bill 552**  
(An Act Generally to Revise Montana Business Corporation Act)

For the last 18 months, I have had the pleasure of chairing the State Bar's Corporate Law Revision Committee. The Committee has prepared two legislative proposals concerning corporate governance. We believe that these proposals will improve the business climate in Montana at no cost to the taxpayer. One proposal addresses business corporations and the other proposal addresses nonprofit corporations.

The bill before you addresses business corporations. The related nonprofit corporation bill will be before you soon. Corporate governance issues primarily deal with the relationship between a corporation and its owners, directors and officers. In addition, corporate governance issues, to a more limited extent, deal with the relationship between a corporation and state government (particularly the Secretary of State) and with the relationship between the corporation and creditors (particularly upon the dissolution of a corporation). The proposals do not deal with issues outside corporate governance such as taxation, workers compensation or labor law.



I would like to spend the next few minutes discussing the background of the bill, as well as the objectives of the Committee that drafted the bill.

In the summer of <sup>1989</sup>~~1990~~, the then president of the State Bar of Montana appointed the Corporate Law Revision Committee. The Committee was appointed to respond to the need to update and clarify Montana business corporation laws. The Committee consists of a diverse and nonpartisan group of lawyers from private practice, government, and academia, as well as corporate counsel for both a profit and nonprofit corporation.

The Corporate Law Revision Committee held five all-day meetings during 1989 and 1990 to discuss strengths and weaknesses of the existing corporate law. The Committee hired two research assistants to research various options.

On June 30, 1990, the Committee released a 262-page Exposure Draft of its proposed legislation, which included comments relating to the proposed legislation. The Committee widely circulated the Exposure Draft among members of the Bar, government agencies and the business community. The Committee solicited comments from each of these groups. Based on these comments, the Committee on October 24, 1990 published a 268-page report entitled Suggested Revisions in the Montana Business Corporation Act and the Montana Nonprofit Corporation Act. In December 1990, the Board of Trustees of the State Bar of Montana unanimously agreed to recommend the legislation described in the Report. Although the Legislative Council made minor changes, House Bill 552 contains the changes to the Montana Business Corporation Act recommended in that Report. I

am providing the Committee with a copy of that Report, as well as the Committee "Executive Summary" of the legislation. Please note that the full Report contains an analysis of each pertinent section of House Bill 552.

By the time the Committee completed its work late last year, it is estimated that in excess of 1000 hours were invested in the project. We are pleased to have the opportunity to present it to you today.

House Bill 552 is based largely on the Revised Model Business Corporation Act (1984) prepared by the American Bar Association Committee on Corporate Laws ("the ABA"). The Committee recommends ABA models for three reasons. First, the nation's foremost legal experts, after five years of study, prepared the ABA Model Business Corporation Act. The American Bar Association widely circulated the proposal among the business community for comments in 1983. After the proposals were revised to address the issues raised by the comments, the American Bar Association finalized the ABA Model in 1984. Second, about twenty-five years ago, this legislature adopted earlier versions of the law. As such, it makes sense to adopt the ABA's Revised Model Business Corporation Act in Montana. Third, the ABA has supplemented its Model Business Corporation Acts with four volumes of Official Comments and Annotations. These supplemental materials are extremely useful when applying the legislation.

The legislation is quite lengthy in that it entirely restates the law concerning corporate governance. Because Committee members will summarize

the salient provisions of the bill; I thought would spend a few minutes talking generally about the objectives of the bills.

The objectives of the Bar's proposals are threefold: (a) to make Montana's law more uniform with the laws of other states, (b) to clarify the Montana law, (c) to modernize Montana law.

Uniformity. The Bar's proposals will make Montana's law more uniform. The ABA's Model Business Corporation Act has been the basis for the Corporation Act in thirty-five states. Most of those states have adopted, or are in the process of adopting, the updated revised acts. Some states, such as Delaware, have sought to become "corporate havens" by adopting comprehensive, unambiguous legislation concerning corporate governance. Because the ABA's Revised Acts allow corporations the same comprehensive and unambiguous legislation, adoption of this legislation means corporations will have a reduced incentive to incorporate out of state. Uniformity in state laws also has the advantage of reducing costs for Montana corporations operating in more than one state. Uniform laws reduce the need to learn another regulatory scheme.

The State Bar's proposal does not blindly adopt the ABA's suggestion. Instead, the Committee has modified the ABA's suggestions, in places, to address properly the need of a typical, small Montana corporation. For example, the Committee included proposals to give courts mechanisms to resolve disputes between owners of small businesses. Likewise, The Committee modified the

ABA's proposals to respect certain Montana corporate law traditions such as cumulative voting.

Clarifying Montana's Law. The current corporate governance rules contain ambiguous provisions making it difficult for corporations and their constituents to know and understand their rights. Ambiguous provisions in the corporate law make transactions unnecessarily expensive and leads to burdensome litigation. During the 1980s, for example, the Montana Supreme Court has heard and decided numerous cases based on lawsuits that might have been avoided if the corporate laws had been clear.

Several ambiguities are resolved by the bill:

- The bill clearly specifies when shareholders or members may bring suits, in the name of the corporation, for damages as a result of actions taken by directors. It strikes a reasonable balance between competing considerations of discouraging litigation brought solely for its settlement value, while protecting the rights of shareholders to assert reasonable claims.
- The bill identifies when a transaction entered into with a director is a conflict of interest and states the consequences of those transactions. Until now, what amounted to a conflict of interest was unclear.

- The bill identifies when and how a creditor of a corporation may recover against the assets of a corporation when it is dissolved.
- The bill clarifies the rights of shareholders who, at the hands of other unscrupulous shareholders, have been frozen out of participation in the corporation. Montana case law has long struggled with this ambiguity.
- The bill clarifies the rights of existing shareholders to purchase unissued stock.
- The bill clarifies when the Secretary of State must file a document.

Modernization of the Law. Modernization of the law provides Montana corporations with the same benefits provided in other states. While the original Montana Business Corporation Act adopted in the 1960s was adequate then, it has not kept up with the evolution of the business corporation law in other states. House Bill 5<sup>5</sup>22 achieves these objectives.

- Needless formalities and needless filings with the secretary of state are abolished.

- The legislature expressly gives courts the authority to order remedies less severe than dissolution of a corporation when shareholders are deadlocked.
- The bill increases the ability of shareholders of a corporation to structure their relationship as they wish. As such, the law allows shareholders to agree to eliminate cumbersome provisions such as cumulative voting and clarifies when shareholders may agree that directors, acting in good faith, will be immune from shareholder suits.
- The bill provides an inexpensive, convenient procedure to contest a corporate name that is confusingly similar to another.
- The bill makes it easier to bring members of the family into a corporation by allowing family members to become shareholders by contributing future services or promissory notes for stock.

Enactment of the proposals will not burden corporations. Articles of incorporation need not be amended or refiled. Existing bylaws and corporate procedures need not be amended. The State Bar's Corporate Law Revision Committee has circulated its proposal to corporate lawyers, business groups and government officials. The reaction has been favorable.

Ex. 8  
2-13-91  
HB 552

Some might argue that adopting up-to-date corporate codes is not much more than necessary housekeeping. Keeping the house in order, however, will provide tangible benefits to Montana corporations, their shareholders, creditors, officers and directors, at no cost to the state. Bills designed to improve business climate often involve vexing tax issues, involve substantial public expenditures, or allows some Montanans to gain at the expense of another. This bill, however, involves no taxes, no public expenditures, and involves no sacrifice by any group. An up-to-date business corporation act simply makes Montana an easier place to operate a business. Modernization of Montana corporate code produces only winners!

CORPORATE LAW REVISION COMMITTEE

STATE BAR OF MONTANA

EXHIBIT 9  
DATE 2-13-91  
HB 552



SUGGESTED REVISIONS

IN THE

**MONTANA BUSINESS CORPORATION ACT**

**(MCA TITLE 35, CHAPTER ONE)**

**AND THE**

**MONTANA NONPROFIT CORPORATION ACT**

**(MCA TITLE 35, CHAPTER TWO)**

\* \* \* \* \*

October 24, 1990

Steven C. Bahls, Reporter



Exhibit # 90

**EXECUTIVE SUMMARY**  
**HOUSE BILL 552**  
**STATE BAR OF MONTANA**  
**CORPORATE LAW REVISION PROJECT**

EXHIBIT 10  
DATE 2-13-91  
HB 552

Steven C. Bahls, Missoula, Chair  
Robert Murdo, Helena, Vice Chair  
Karla Gray, Butte  
Garth Jacobson, Helena  
Bruce MacKenzie, Great Falls  
Robert G. Michelotti, Jr., Billings  
Robert Pyfer, Helena  
Jeff Pence, Bozeman  
Bob Goodale, Circle

*House Bill 552 was drafted by the Corporate Law Revision Committee of the State Bar of Montana. This Executive Summary discusses the drafting process and the material provisions of the bill.*

**BACKGROUND OF THE PROJECT**

On July 7, 1989, Gary Spaeth, President of the State Bar of Montana, appointed a special Corporate Law Revision Committee. The objective of the Committee was "to review Montana's corporation statutes and to propose to the 1991 Legislature necessary and desirable revisions aimed at providing the business community up-to-date and unambiguous laws addressing corporate governance."

The Committee, in accordance with its charge, limited its review to matters of corporate governance. Corporate governance issues are currently addressed in Chapter One of Title 35. Corporate governance issues primarily deal with the relationship between a corporation and its owners, directors and officers. In addition, corporate governance issues, to a more limited extent, deal with the relationship between a corporation and state government (particularly the secretary of state) and creditors (particularly upon the dissolution of a corporation). As such, the Committee did not examine taxation, workers' compensation and other issues outside the scope of corporate governance.

The membership of the Committee was a broad spectrum of attorneys including those in private practice and those employed by government, a nonprofit organization, private industry and academia. Committee members had expertise in all aspects of corporate governance including closely held businesses, publicly held businesses and nonprofit organizations. The expenses of the Committee were generously funded by the State Bar, the University of Montana School of Law, the Secretary of State and private business. The Committee members' employers have generously provided the services of the Committee members.

The Committee members have met numerous times since their appointment, reviewing the American Bar Association's Revised Model Business Corporation Act and legislation from various states. The Committee took into consideration the interests of shareholders, investors, directors and management, as well as the interests of the State of Montana and its citizens.

The Committee circulated an Exposure Draft on June 30, 1990 to attorneys, businesses, trade associations, government agencies and government officials having an interest or stake in the proposals. A summary of the proposal was published in the May 1990 edition of the *Montana Lawyer*. The comments received were favorable. After making a few revisions in response to comments received from the Committee members or those responding to the Exposure Draft, the Committee finalized the proposal. The final proposals are contained herein. This proposal is unanimously recommended by the Committee. The proposals are unanimously adopted by the State Bar's Board of Trustees in December 1990.

## **HISTORY OF THE ABA MODEL ACTS**

The Bar's proposals are based largely on the Revised Model Business Corporation Act (1984).

The RMBCA is the first complete revision of the Model Act in more than thirty years. Thirty-five states (including Montana) have adopted earlier versions of the Act, and several have already adopted the RMBCA. The RMBCA was drafted by the ABA's Committee on Corporate Laws, comprised of leading national corporate law experts. Exposure drafts of that Act were widely circulated nationally.

Because the Bar recommends staying with the ABA Model Acts, existing forms of articles of incorporation now on file need not be amended. Similarly, attorneys and the business community need not learn a new statutory scheme. The basic principles applicable to corporations remain largely unchanged.

## **ADVANTAGES OF PROPOSED REVISIONS TO THE MONTANA BUSINESS CORPORATION ACT**

The objectives of the proposals were threefold: (a) to standardize, (B) to clarify, and (c) to modernize the law relating to corporate governance.

The majority of the changes proposed by the State Bar are designed to clarify the law. While the Montana Supreme Court, on the whole, has done an admirable job in clarifying the existing statutes, additional clarity in the statutes has several advantages. First, a few of the court cases are outdated and it is uncertain whether the Court would follow the modern trend, if presented with these cases again. Second, attorneys and corporate officials ought to be able to ascertain the law with some certainty by referring to the statute. Finally, the Supreme Court has not had the opportunity to rule on the majority of the ambiguities in the existing statutes, further increasing the uncertainty in existing law.

Among the more significant clarifications in the proposal are:

a) *Derivative Shareholder Suits*. Existing law in Montana does not clearly address the conditions under which shareholders may bring a suit, in the name of the corporation, for damages as a result of actions taken by directors. The proposed revisions provide specific guidance to corporations, attorneys and the courts.

b) *Duty of Loyalty*. Existing law providing that director conflict of interest transactions are void or voidable leaves too much to the imagination (and the courts). The proposed revisions provide needed guidance

to corporate directors in defining exactly what transactions are conflict of interest transactions and defining the consequences to the parties to those transactions.

c) *Dissolution.* The ability of injured plaintiffs to recover against the assets of a dissolved corporation is not clear under existing law. In some cases, plaintiffs may be left without a remedy if a product is manufactured before dissolution but causes injury thereafter. The State Bar proposes a scheme to protect the interests of injured parties while at the same time protecting the interests of shareholders in winding up the affairs of corporations.

d) *Preemptive Rights.* Many corporations elect to provide for preemptive rights (rights of existing shareholders to purchase a prorata amount of any new stock issue) in their Articles of Incorporation. When a corporation elects preemptive rights, it is not always clear when these rights apply. The proposed legislation provides a definition.

e) *Service of Process.* The current statute does not "mesh" well with the Montana Rules of Civil Procedure concerning the issue of service of process on a dissolved corporation. The revisions clarify who may be served.

f) *Housekeeping.* The State Bar's proposals, throughout, clarify ambiguities in existing law, eliminate unnecessary technical requirements and provide for maximum flexibility in structuring a corporation. The proposals also clarify existing sections of the law that are difficult to read, and, as such, create traps for the unwary (e.g., indemnification of directors, dissenters' rights).

In addition, several provisions of the act modernize Montana law relating to corporate governance. In doing so, the legislation affords Montana corporations with the same advantages as businesses incorporated in other states. The legislation, however, balances the rights of those involved in corporate management with the rights of shareholders and creditors. Some of the more significant changes include

a) *Elimination of Needless Formalities.* The proposals seek to simplify corporate governance by eliminating needless formalities. For example, the two-step filing procedure for dissolution has been reduced to one step and the requirement of two persons acting as corporate officers has been eliminated.

b) *Shareholder Dissension.* The existing statute provides for the draconian remedy of dissolution of a corporation if a court finds majority shareholders oppressing minority shareholders. Oppression has been defined by the courts as violation of the reasonable expectations of shareholders. The State Bar, borrowing from a South Carolina statute, recommends adoption of a statute providing that courts have the power to order less drastic remedies, such as court-ordered purchase of shares or injunctions prohibiting certain wrongful acts.

c) *Consideration for Stock.* The proposed legislation changes existing law by allowing corporations to issue stock for any consideration deemed appropriate by the directors, including promissory notes or future services.

d) *Dissolution.* The existing law cuts off the rights of injured parties to sue dissolved corporations for damages, even though the applicable statute of limitations may not have expired. It does so, by establishing a special dissolved corporation statute of limitations, which, in effect, supersedes the regularly applicable statute of

limitations. The proposal abolishes the separate statute of limitations for dissolved corporations (whether foreign or domestic), leaving the otherwise applicable (e.g. tort statute of limitations, contract statute of limitations) statute of limitations to control.

e) *Increased Flexibility.* The current laws require cumulative voting, affirmative vote of two-thirds of the shareholders to take certain major corporate action and other provisions that, while appropriate for many corporations, are unnecessarily cumbersome for others. The proposal allows shareholders to opt out of these requirements if they so desire.

f) *Limitation of Director Liability.* Many states allow shareholders to amend articles of incorporation to give directors greater protection from liability to the shareholders or the corporation. The proposal clarifies that shareholders may adopt such limitations unless the directors acted intentionally in inflicting harm on the corporation.

g) *Incorporation.* The proposed revisions simplify and clarify the incorporation process. The law reduces the information required in the articles and reduces the amount of review by the Secretary of State (thereby eliminating potential delay).

h) *Alternative Dispute Resolution for Name Disputes.* The proposed legislation provides a simplified procedure for parties injured by a subsequently filed name, causing confusion, mistake or deception among the public. Under existing law, an aggrieved party must sue in state court under complex theories of unfair competition or other unclear and cumbersome common law theories.

The law should be simplified to eliminate needless paperwork and cumbersome computations. As such, the State Bar proposes the filing process simplify documents to be filed and eliminate the necessity of the issuance of "certificates" to acknowledge filing. For example, the cumbersome dual filing procedure for dissolution of a corporation has been simplified to require only one comprehensive filing.

Similarly, the cumbersome requirement of computing initial license fees for both domestic and foreign corporations has been simplified. Now based on the amount of stock issued and the par value of the stock, the fee structure has become a "trap" for the unsophisticated. Those corporations issuing high par value stock pay more fees than those issuing non par stock or low par value. Instead, under the fee scheme proposed by the State Bar, the fees are flat fees.

In addition, the language of several provisions of the existing law is cumbersome and difficult for many members of the business community to understand. The statutory sections regarding indemnification and dissenters rights are examples. This language has been simplified.

Finally, uniform and standardized filing requirements have been recommended.

## EXECUTIVE SUMMARY

## THE CORPORATE LAW REVISION PROJECT

## BACKGROUND OF THE PROJECT

On July 7, 1989, Gary Spaeth, President of the State Bar of Montana, appointed a special Corporate Law Revision Committee. The objective of the Committee was "to review Montana's corporation statutes and to propose to the 1991 Legislature necessary and desirable revisions aimed at providing the business community up-to-date and unambiguous laws addressing corporate governance."

The Committee, in accordance with its charge, limited its review to matters of corporate governance. Corporate governance issues are currently addressed in Chapter One and Chapter Two of Title 35. Corporate governance issues primarily deal with the relationship between a corporation and its owners, directors and officers. In addition, corporate governance issues, to a more limited extent, deal with the relationship between a corporation and state government (particularly the secretary of state) and creditors (particularly upon the dissolution of a corporation). As such, the Committee did not examine taxation, workers' compensation and other issues outside the scope of corporate governance.

The membership of the Committee was a broad spectrum of attorneys including those in private practice and those employed by government, a nonprofit organization, private industry and academia. Committee members had expertise in all aspects of corporate governance including closely held businesses, publicly held businesses and nonprofit organizations. The expenses of the Committee were generously funded by the State Bar, the University of Montana School of Law, the Secretary of State and private business. The principal expense of the Committee has been copying costs and student research assistants. The Committee members' employers have generously provided the services of the Committee members.

The Committee members have met numerous times since their appointment, reviewing the American Bar Association's Revised Model Business Corporation Act, Revised Model Nonprofit Corporation Act and legislation from various states. The Committee took into consideration the interests of shareholders, investors, directors and management, as well as the interests of the State of Montana and its citizens.

The Committee circulated an Exposure Draft on June 30, 1990 to attorneys, businesses, trade associations, government agencies and government officials having an interest or stake in the proposals. A summary of the proposal was published in the May 1990 edition of the *Montana Lawyer*. The comments received were favorable. After making a few revisions in response to comments received from the Committee members or those responding to the Exposure Draft, the Committee finalized the proposal. The final proposals are contained herein. This proposal is unanimously recommended by the Committee.

## HISTORY OF THE ABA MODEL ACTS

The Committee's proposals are based largely on the Revised Model Business Corporation Act (1984) and the Revised Model Nonprofit Corporation Act (1987) prepared by the American Bar Association. Both the Montana Business Corporation Act and the Montana Nonprofit Corporation Acts are based on earlier versions of the ABA Model Acts.

✓ The Revised Model Business Corporation Act (1984) (RMBCA). The RMBCA is the first complete revision of the Model Act in more than thirty years. Thirty-five states (including Montana) have adopted earlier versions of the Act, and several have already adopted the RMBCA. The RMBCA was drafted by the ABA's Committee on Corporate Laws, comprised of leading national corporate law experts. Exposure drafts of that Act were widely circulated nationally.

✓ The Revised Model Nonprofit Corporation Act (1987) (RMNCA). The RMNCA is the first complete revision of the ABA's Nonprofit Corporation Act since 1964. The drafters of the RMNCA used, as their starting point, the California Nonprofit Corporation Act. The ABA's Subcommittee on Model Nonprofit Corporation Law, composed of leading experts in the area of nonprofit corporations, circulated over one thousand copies of their exposure draft to nonprofit organizations, the IRS, academics, accountants and others. The ABA proposals were finalized and adopted in whole or in part by some jurisdictions. Other states are considering the law. *See Hone, Aristotle and Lyndon Baines Johnson: Thirteen Ways of Looking at Blackbirds and Nonprofit Corporations -- The American Bar Association's Revised Model Nonprofit Corporation Act*, 39 CASE W. R. L. REV. 751 (1988). *See generally* Moody, *The Who, What and How of the Revised Model Nonprofit Corporation Act*, 16 N. KENT. L. REV. 251 (1988).

The RMNCA is parallel to the RMBCA, except where there are policy reasons to depart from the RMBCA scheme.

Because the Committee recommends staying with the ABA Model Acts, existing forms of articles of incorporation now on file need not be amended. Similarly, attorneys and the business community need not learn a new statutory scheme. The basic principles applicable to corporations remain largely unchanged.

## ADVANTAGES OF PROPOSED REVISIONS TO THE MONTANA BUSINESS CORPORATION ACT

The objectives of the Committee were threefold: (a) to clarify, (B) to modernize, and (c) to simplify the law relating to corporate governance.

The majority of the changes proposed by the Committee are designed to clarify the law. While the Montana Supreme Court, on the whole, has done an admirable job in clarifying the existing statutes, additional clarity in the statutes has several advantages. First, a few of the court cases are outdated and it is uncertain whether the Court would follow the modern trend, if presented with these cases again. Second, attorneys and corporate officials ought to be able to ascertain the law with some certainty by referring to the statute. Finally, the Supreme Court has not had the opportunity to rule on the majority of the ambiguities in the existing statutes, further increasing the uncertainty in existing law.

Among the more significant clarifications in the proposal are:

a) *Derivative Shareholder Suits.* Existing law in Montana does not clearly address the conditions under which shareholders may bring a suit, in the name of the corporation, for damages as a result of actions taken by directors. The proposed revisions provide specific guidance to corporations, attorneys and the courts. See RMBCA §§ 7.40 through 7.47.

b) *Duty of Loyalty.* Existing law providing that director conflict of interest transactions are void or voidable leaves too much to the imagination (and the courts). The proposed revisions provide needed guidance to corporate directors in defining exactly what transactions are conflict of interest transactions and defining the consequences to the parties to those transactions. See RMBCA § § 8.60 through 8.63.

c) *Dissolution.* The ability of injured plaintiffs to recover against the assets of a dissolved corporation is not clear under existing law. In some cases, plaintiffs may be left without a remedy if a product is manufactured before dissolution but causes injury thereafter. The Committee proposes a scheme to protect the interests of injured parties while at the same time protecting the interests of shareholders in winding up the affairs of corporations. See RMBCA §§ 14.06 - 14.07.

d) *Preemptive Rights.* Many corporations elect to provide for preemptive rights (rights of existing shareholders to purchase a prorata amount of any new stock issue) in their Articles of Incorporation. When a corporation elects preemptive rights, it is not always clear when these rights apply. The proposed legislation provides a definition. See RMBCA § 6.30.

e) *Service of Process.* The current statute does not "mesh" well with the Montana Rules of Civil Procedure concerning the issue of service of process on a dissolved corporation. The revisions clarify who may be served. See RMBCA § 5.04.

f) *Housekeeping.* The Committee's proposals, throughout, clarify ambiguities in existing law, eliminate unnecessary technical requirements and provide for maximum flexibility in structuring a corporation. The proposals also clarify existing sections of the law that are difficult to read, and, as such, create traps for the unwary (e.g., indemnification of directors, dissenters' rights). Finally, the proposal modifies the existing laws by using sex neutral language.

In addition, several provisions of the act modernize Montana law relating to corporate governance. In doing so, the legislation affords Montana corporations with the same advantages as businesses incorporated in other states. The legislation, however, balances the rights of those involved in corporate management with the rights of shareholders and creditors. Some of the more significant changes include

a) *Elimination of Needless Formalities.* The proposals seek to simplify corporate governance by eliminating needless formalities. For example, the two-step filing procedure for dissolution has been reduced to one step (*see* § 14.03) and the requirement of two persons acting as corporate officers has been eliminated (*see* § 8.40).

b) *Shareholder Dissension.* The existing statute provides for the draconian remedy of dissolution of a corporation if a court finds majority shareholders oppressing minority shareholders. Oppression has been defined by the courts as violation of the reasonable expectations of shareholders. The Committee, borrowing from a South Carolina statute, recommends adoption of a statute providing that courts have the power to order less drastic remedies, such as court-ordered purchase of shares or injunctions prohibiting certain wrongful acts.

c) *Consideration for Stock.* The proposed legislation changes existing law by allowing corporations to issue stock for any consideration deemed appropriate by the directors, including promissory notes or future services. *See* RMBCA § 6.21.

d) *Dissolution.* The existing law cuts off the rights of injured parties to sue dissolved corporations for damages, even though the applicable statute of limitations may not have expired. It does so, by establishing a special dissolved corporation statute of limitations, which, in effect, supersedes the regularly applicable statute of limitations. The Committee's proposal abolishes the separate statute of limitations for dissolved corporations (whether foreign or domestic), leaving the otherwise applicable (e.g. tort statute of limitations, contract statute of limitations) statute of limitations to control. *See* RMBCA § 14.06.

e) *Increased Flexibility.* The current laws require cumulative voting, affirmative vote of two-thirds of the shareholders to take certain major corporate action and other provisions that, while appropriate for many corporations, are unnecessarily cumbersome for others. The proposal allows shareholders to opt out of these requirements if they so desire. *See, e.g.,* RMBCA §§ 8.24, 10.03, 12.03, 14.03.

f) *Limitation of Director Liability.* Many states allow shareholders to amend articles of incorporation to give directors greater protection from liability to the shareholders or the corporation. The proposal clarifies that shareholders may adopt such limitations unless the directors acted intentionally in inflicting harm on the corporation. *See* RMBCA § 2.02.

g) *Incorporation.* The proposed revisions simplify and clarify the incorporation process. The law reduces the information required in the articles and reduces the amount of review by the Secretary of State (thereby eliminating potential delay). *See* RMBCA §§ 1.25 and 2.02.

The law should be simplified to eliminate needless paperwork and cumbersome computations. As such, the Committee proposes the filing process simplify documents to be filed and eliminate the necessity of the issuance of "certificates" to acknowledge filing. For example, the cumbersome dual filing procedure for dissolution of a corporation has been simplified to require only one comprehensive filing.



EXHIBIT 10  
DATE 2-13-91  
HB 552-741

Similarly, the cumbersome requirement of computing initial license fees for both domestic and foreign corporations has been simplified. Now based on the amount of stock issued and the par value of the stock, the fee structure has become a "trap" for the unsophisticated. Those corporations issuing high par value stock pay more fees than those issuing non par stock or low par value. Instead, under the fee scheme proposed by the Committee, the fees are flat fees.

In addition, the language of several provisions of the existing law is cumbersome and difficult for many members of the business community to understand. The statutory sections regarding indemnification and dissenters rights are examples. This language has been simplified. See RMBCA §§ 8.50 and 8.58 and §§ 13.20 through 13.28.

Finally, uniform and standardized filing requirements have been recommended (RMBCA §§ 1.20, 1.21, 1.22 and 1.23).

## ADVANTAGES OF PROPOSED REVISIONS TO THE MONTANA NONPROFIT CORPORATION ACT

The law governing nonprofit organizations has not historically received the attention it deserves. Professor Howard Oleck observes: "American society has consisted, to an extraordinary extent, of voluntary associations of persons and organizations not for profit, but for the public good." H. OLECK, *NONPROFIT ORGANIZATIONS AND ASSOCIATIONS* (1980). Approximately 11.5 million people (nationally) serve on the boards of nonprofit organizations. C.N. WALDO, *A WORKING GUIDE FOR DIRECTORS OF NONPROFIT ORGANIZATIONS* xi (1986). Nonprofit organizations employ seven million workers (6% of the work force in the U.S.), contributing \$228.2 billion to the national economy. Reiss, *The Hidden Economy: The Nonprofit Sector*, *MANAGEMENT REVIEW* 49 (July 1989). In addition, 45 percent of all adult Americans act as volunteers for charities, averaging 4.7 hours of contributed time a week. *Id.* at 50. Up-to-date laws for nonprofit organizations, as such, are a must.

The Committee's proposals for the Montana Nonprofit Corporation Act are parallel to its proposals for the Montana Business Corporation Act, except where policy reasons indicate a different treatment. The objectives of the Committee, when revising the Montana Nonprofit Corporation Act, were (a) to clarify, (b) to modernize, and (c) to simplify the law relating to governance of these organizations.

Because of the dearth of court decisions regarding nonprofit corporations, questions that are not addressed in the statute create substantial uncertainty for nonprofit corporations and those who represent them. As such, the Committee proposals *clarify* the following issues that would otherwise be left to the courts:

a) *Increased Flexibility.* The proposal specifically allows self-perpetuating boards, simplifies filing documents with the secretary of state, makes it easier to call and hold meetings, makes it easier to structure an organization with delegates, allows more flexibility in methods of choosing directors, allows directors meetings to be held by phone and generally simplifies corporate governance.

b) *Indemnification.* While Montana law, as it now exists, provides substantial protection to officers and directors of nonprofit corporations against liability, the law is largely silent as to when and how a nonprofit corporation may (or must) reimburse its officers and directors for liability they incur when acting for the corporation. The proposal allows nonprofit corporations substantial flexibility in establishing policies in this regard, while at the same time protecting officers and directors. *See* RMNCA §§ 8.50 - 8.58.

c) *Duty of Loyalty.* Courts carefully scrutinize transactions between nonprofit corporations and their officers and directors for conflicts of interest. The standards, however, are not clearly defined by the courts. As such, the Committee proposes specific conflict of interest rules that balance the need to balance the need to preserve the public perception that nonprofit corporations are worthy of trust, while at the same time allowing those organizations to deal with directors who might also be officers of financial institutions, landlords or other businesses. Directors who act in good faith and meet the other standard of the proposal are protected. *See* § 8.31.

d) *Derivative Actions.* The statute is currently silent as to the ability of a member of the corporation to sue the director derivatively (in the name of the corporation) if they stray from the nonprofit purpose or otherwise mismanage the corporation. The Proposal provides specific standards to limit these actions when the risk of a harassment lawsuit exceeds the public interest in allowing those suits to go forward.

e) *Rights of Members.* The proposal clarifies the rights of members of *mutual benefit associations*, if permitted by articles of incorporation or bylaws, to transfer memberships (for consideration) and receive distributions when a corporation dissolves. Members of religious corporations and public benefit corporations do not have this privilege.

f) *Dissolution.* The abilities of creditors and injured plaintiffs to recover against the assets of a dissolved corporation is not clear. In some cases, plaintiffs may be left without a remedy. The proposal balances the rights of creditors of the dissolved corporation with the necessity for the dissolving organization to wind up its affairs.

g) *Housekeeping.* The Committee's proposals, throughout, clarify ambiguities in existing law, eliminate unnecessarily technical requirements and provide for maximum flexibility in structuring a corporation. For example, the law authorizes the use of delegates. RMNCA § 6.40. It also clarifies the circumstances under which a membership may be purchased. RMNCA § 6.22.

h) *Terminations of Membership.* Whether a member may be expelled or terminated is now left to the courts. The proposal contains specific provisions as to how a nonprofit corporation may expel a member without fear of liability. RMNCA § 6.21.

In addition, the proposals adopt a growing trend in the law treating mutual benefit corporations, religious organizations and public benefit corporations differently. To fail to distinguish this is to force a square peg into a round hole. Under the proposal, each newly formed nonprofit corporation must choose between designation as a public benefit, mutual benefit or religious corporation. Existing nonprofit corporations may choose a designation before 1995. The Committee's proposal recognizes the difference between these different types of nonprofit corporations:

a) *Public Benefit Corporations* are those corporations operating for public or charitable purposes. As such, members may not sell their interest or receive distributions from the organizations. Because members of public benefit corporations have little economic interest in their corporations, they usually do not carefully monitor activities to prevent corporate abuse. The Committee's proposal addresses this problem by increasing the statutory authority of the Attorney General to monitor these organizations.

b) *Mutual Benefit Corporations* are organizations such as trade associations, social clubs, and fraternal organizations designed to benefit their members. Members, as such, are given broader voting rights. Members, while not entitled to receive distributions while the organization is operating, will be entitled to sell their memberships and receive distributions when the organization dissolves.

c) *Religious Corporations* are treated under the proposal in a way similar to public benefit corporations. For constitutional and public policy reasons, however, the proposal allows more flexibility in the governance of these organizations. Similarly, the power of the Attorney General to oversee a religious corporation is limited.

Self designation by nonprofit corporations has the advantage of eliminating the uncertainty of courts making an inappropriate designation. Courts, when deciding such issues as the property rights of members, of course, are already forced to categorize nonprofit organizations when deciding such issues as the property rights of members. H. OLECK, *NONPROFIT CORPORATIONS, ORGANIZATIONS, AND ASSOCIATIONS* § 266 (1980).

Finally, just as the RMBCA eliminates unnecessary complexity in the laws governing business corporations, the RMNCA eliminates unnecessary complexity in the laws governing nonprofit corporations.

## OTHER RECOMMENDATIONS

The Committee, in the Exposure Draft, proposed clarifying the applicability of the corporate statutes to banks incorporated under Title 32, Chapter One of the Montana Code Annotated. Specifically the Committee proposed that MCA § 32-1-112 be amended to extend the benefits of the general corporate statute to banks, except where the corporate statutes conflict with banking laws. The Idaho legislature, for example, has taken this action. While the Committee was generally in favor of the approach, it agreed not to pursue the approach unless it received affirmative support from the banking community. The Committee dropped the proposed clarification because of lack of interest from the banking community.

The Committee also proposes to create a streamlined procedure to enable businesses to claim that another business' subsequent registration of a name with the secretary of state creates confusion, mistake or deception among the public. The current procedure to make such a showing is burdensome and expensive. The legislation also clarifies the standards to determine whether a name is confusing.

The Committee discussed the appropriateness of making a recommendation concerning change in control (also known as "anti-takeover" legislation). In light of the controversy surrounding that issue and the Committee's heavy work load, the Committee thought it inappropriate to address the issue. Committee members, however, prepared reports available to those interested describing the pros and cons of such legislation.

**WITNESS STATEMENT**

**COMMENTS:** \_\_\_\_\_

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