

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on February 12, 1991,
at 10:00 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Valencia Lane (Legislative Council).

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

Announcements/Discussion: Representatives of the Lewis and Clark County Sheriff's Department demonstrated a home arrest unit for the Committee.

Marc Racicot, Administrator, Department of Justice, appeared before the Committee to provide information concerning the Indian Gaming Act. He said his agency is required by federal law to initiate compacts with the tribes, and since blackjack is a class 3 form of gaming, it is subject to negotiation. The Attorney General said that until compacts are reached with the tribes concerning generic forms of gambling, there is no guarantee of regulating gambling on the reservations.

Mr. Racicot reported he has had very fruitful discussions with the tribes, and said he believes compacts may soon be reached with the Cheyenne and Assiniboine Sioux Tribes. He told the Committee he is concerned with trust lands and several incorporated municipalities on the Flathead Reservation. He commented that if land were purchased in one of those cities and were then designated trust land, there could be a problem.

Senator Towe asked if the tribes to add to their trust land. Marc Racicot replied such land can be outside the boundaries of a reservation, but the designation must be approved by the Secretary of the Interior.

Senator Towe asked if it were unrealistic to expect the tribes to enter into compacts. Mr. Racicot replied it is not, and said some of the tribes appear to not want gambling.

Mr. Racicot explained that he is saying this is an opportunity to deal with another sovereign entity and to make sure opportunities are equalized.

Senator Harp asked if legalizing shake-a-day too quickly could affect the reservations. He also asked if there were a way for the Attorney General to help the Committee find middle ground. Mr. Racicot replied he did not believe he could supply solid help, since he is "already construed to be a zealot". He said he would not know until he had an actual case.

Senator Halligan asked what South Dakota was experiencing with its reservations. Mr. Racicot replied gambling is proliferating within the reservation nearest Deadwood, but is outside the provisions of that state. He said it is a matter of concern to South Dakota and to its attorney general.

Senator Mazurek commented that he had some experience negotiating water rights compacts with the tribes. He asked how the state would bargain with the tribes. Mr. Racicot replied his agency has had a very good relationship with the tribes. He said their councils have been very well-intentioned, but if a compact is not reached, the federal courts will appoint an arbitrator. Mr. Racicot explained that generally no laws are allowed on the reservation which are not allowed in the state, as applies to class 3 gaming.

Senator Grosfield asked if the tribes can negotiate for higher limits for poker. Mr. Racicot replied class 1 is traditional social or ceremonial games, class 2 is bingo, keno, and pull tabs, and class 3 encompasses most other forms of gaming. He added that class 2 does not allow blackjack or electronic games of chance.

Senator Doherty asked what the criteria is for negotiating in good faith. Marc Racicot replied there is no guidance in the law right now.

EXECUTIVE ACTION ON SENATE BILL 208

Motion:

Senator Brown made a motion that SB 208 DO NOT PASS.

Discussion:

Senator Halligan stated he had no feelings on the bill, and that he is a "traditionalist". He said he did not hear specifics in the bill and had problems with the fact that there appeared to be no interest in making this a better bill.

Senator Towe commented that HB 673 is a bill of the Gaming Advisory Council and would authorize blackjack and other games.

Senator Mazurek said he understood that blackjack was being removed from HB 673.

Senator Harp commented that the Committee heard from a county with ten years of drought and no oil industry, and said he believes that bringing in blackjack as an answer to economic development is a sad way to address the quality of life.

Senator Rye told the Committee he was originally in favor of blackjack, but felt he now had to vote against the bill. He added that if it were a local option, he might still be for it.

Chairman Pinsoneault advised the Committee that if blackjack were a local option, it would still be open to the reservations.

Senator Svrcek said he did not believe blackjack would benefit the highline counties, but might benefit larger towns in Cascade and Yellowstone Counties.

Senator Doherty said he believes the expansion of gambling may be warranted at some time in the future. He stated he believes both sides reacted hysterically, and that he wants to know what has happened in other areas.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Brown that SB 208 DO NOT PASS carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 204Motion:Discussion:

Amendments, Discussion, and Votes:

Valencia Lane provided amendments (Exhibit #2) requiring that \$50,000 be reduced to \$1000, that 2 years be reduced to 1 year, and that random testing be not less than once per month.

Senator Halligan made a motion that the amendments prepared by Valencia Lane be approved. The motion carried unanimously.

Senator Towe made a motion that his proposed amendments be approved (Exhibit #2a). He told the Committee that once Alternatives, Inc. in Billings got workers' compensation coverage workers' compensation was denied. He said he had no problem with immunity from individuals on the program, but was worried about people claiming damages from workers on the program. Senator Towe cited an incident where an escapee went to Great Falls and was involved in a high-speed chase where an individual's vehicle was damaged. He said that individual sued, and said the state should not have put the escapee in a position where he could escape. Senator Towe advised the Committee that this matter was settled with the insurance company.

Senator Towe cited a second case where an individual was working on a roof at Alternatives, Inc. and was severely injured by a power line. He said he did not see why communities should be immune from liability, and that it should be handled in normal sovereign immunity.

John Connor, Department of Justice, commented that he only intended that immunity cover situations where the defendant was being supervised and might sue the supervisor for certain supervisory action. He told the Committee it is almost universal that local governments won't allow community service because of fear of being sued. John Connor provided the Committee with amendments to the bill (Exhibit #1).

Chairman Pinsoneault stated he was concerned with smaller communities without the luxury of protecting themselves with insurance.

Senator Towe stated he did like the amendment whereby the supervising agency should not be the basis for the suit. John Connor replied that he believed the cost of defending suits is what gets the smaller local governments.

Senator Halligan made a substitute motion that the amendments prepared by John Connor be approved. The motion carried unanimously.

Mike Sherwood said he believes 2-1-91, MCA, addressing immunity, says automobiles are exempted whether they are insured or not. He said the subject of a recent suit in Gallatin County was determined to be a legislative act with a waiver of immunity to the extent of coverage.

Recommendation and Vote:

Senator Brown made a motion that SB 204 DO PASS AS AMENDED.
The motion carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 227

Motion:

Senator Halligan made a motion that SB 227 be tabled.

Discussion:

Senator Mazurek commented that market control seems to be a legitimate concern.

Senator Grosfield advised the Committee that a small operator in his district who owns about 50 machines was working on a 45/55 percent split with bar owners. He said a big group came in offering 60/40 or 70/30 percent splits.

Senator Towe said he believes there is merit in the concept of limiting the number of machines before it is too late.

Senator Mazurek stated that a large number of machines in Bozeman, Billings, Missoula, and Kalispell are all in the process of changing hands. He said an application is pending from a Nevada company.

Amendments, Discussion, and Votes:

Recommendation and Vote:

The motion made by Senator Halligan carried 8-4. Senators Yellowtail, Crippen, Mazurek and Brown voted no.

EXECUTIVE ACTION ON HOUSE BILL 148

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Towe made a motion that the amendments to HB 148 be approved (Exhibit #4). The motion carried unanimously.

Recommendation and Vote:


Senator Towe made a motion that HB 148 BE CONCURRED IN AS AMENDED. The motion carried unanimously and Senator Towe was asked to carry the bill.

ADJOURNMENT

Adjournment At: 11:15 a.m.



Senator/Dick Pinsoneault, Chairman



Joan T. Bird, Secretary

DP/jtb

ROLL CALL

SENATE JUDICIARY

COMMITTEE

52~~nd~~ LEGISLATIVE SESSION -- 1991

Date 12 Feb 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 12, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 208 (first reading copy -- white), respectfully report that Senate Bill No. 208 do not pass.

Signed: Richard Sinzoneault
Richard Sinzoneault, Chairman

Amend. Coord.

Sec. of Senate

121135EC.541

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 12, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 204 (first reading copy -- white), respectfully report that Senate Bill No. 204 be amended and as so amended do pass:

1. Page 2, line 9.

Strike: "\$50,000"

Insert: "\$1,000"

2. Page 2, lines 14 and 15.

Strike: "2 years"

Insert: "1 year"

3. Page 3, line 17.


Following: "randomly"

Insert: "not less than"

4. Page 5, line 3.

Following: "."

Insert: "The immunity granted by this section applies only to lawsuits filed by the defendant against the supervising agency and its agents and employees and only to acts alleged to have occurred during the course of supervision."

Signed: 
Richard Pinsonneault, Chairman

44 2-12-91
And. Coord.

SR 2-12 12:55
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 12, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 148 (third reading copy -- blue), respectfully report that House Bill No. 148 be amended and as so amended be concurred in:

1. Page 5, line 7.

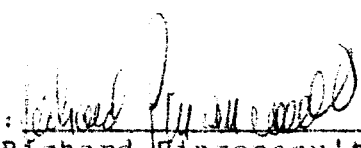
Following: "COURT"

Insert: "and must be distributed by the clerk to the supervising authority"

2. Page 7, line 10.

Following: "."

Insert: "However, this section does not prevent the use of a monitoring device as a part of an intensive supervision program or other program of the department of institutions."

Signed: 
Richard Pinsonneault, Chairman

per 2-12-71
And. Coord.

Sec. of Senate

32170280.511

EX-111-111
12 Feb 91
50 204

PROPOSED AMENDMENTS
SENATE BILL 204

This proposed amendment is offered for the Committee's consideration by the Drug Strategy Committee and prepared by John Connor. It relates to the immunity provisions of Section 3, pages 4 and 5. During questioning on the bill at the time of hearing, it appeared from the answers of the Montana Trial Lawyers Association that the immunity provisions were being construed too broadly. It was never the intention of the Drug Strategy to allow a general immunity from liability. Section 3 is intended to apply only to suit by the defendant being supervised against the supervising agency or its employees directly related to the supervision. Acts outside the scope of supervision or supervising acts involving harm to others were not intended to be covered. The following amendment hopefully clarifies the Committee's intent.

Page 5, line 3.

Following: "."

Insert: "Such immunity shall apply only to lawsuits filed by the defendant against the supervising agency, its agents and employees, and only to acts alleged to have occurred during the course of supervision."

Exhibit #2
12 Feb 91
SB 204

Amendments to Senate Bill No. 204
First Reading Copy (White)
Requested by Senator Pinsoneault

For the Committee on Judiciary

Prepared by Valencia Lane
February 8, 1991

1. Page 2, line 9.

Strike: "\$50,000"

Insert: "\$1,000"

2. Page 2, lines 14 and 15.

Strike: "2 years"

Insert: "1 year"

3. Page 3, line 17.

Following: "randomly"

Insert: "not less than"

Amended 12-22
12 Feb 91
SB 204

Amendments to Senate Bill No. 204
First Reading Copy (White)

Requested by Senator Towe
For the Committee on Judiciary

Prepared by Valencia Lane
February 8, 1991

1. Title, lines 7 and 8.
Following: "DRUGS;" on line 7
Strike: remainder of line 7 through "CIRCUMSTANCES;" on line 8
2. Page 4, line 20 through page 5, line 6.
Strike: section 3 in its entirety
Renummer: subsequent sections
3. Page 8, lines 21 and 24.
Strike: "through 4"
Insert: "and 3"
4. Page 8, line 25 through page 9, line 3.
Strike: section 7 in its entirety

Exhibit 3
2-12-91
SB 2041

Amendments to Senate Bill No. 204
First Reading Copy (White)

For the Committee on Judiciary

Prepared by Valencia Lane
February 12, 1991

1. Page 2, line 9.

Strike: "\$50,000"

Insert: "\$1,000"

2. Page 2, lines 14 and 15.

Strike: "2 years"

Insert: "1 year"

3. Page 3, line 17.

Following: "randomly"

Insert: "not less than"

4. Page 5, line 3.

Following: "."

Insert: "The immunity granted by this section applies only to lawsuits filed by the defendant against the supervising agency and its agents and employees and only to acts alleged to have occurred during the course of supervision."

Amend 17
12 Feb 91
HD 148

Amendments to House Bill No. 148
Third Reading Copy (Blue)

Requested by Senator Towe
For the Committee on Judiciary

Prepared by Valencia Lane
February 8, 1991

1. Page 5, line 7.

Following: "COURT"

Insert: "and must be distributed by the clerk to the supervising
authority"

2. Page 7, line 10.

Following: "."

Insert: "However, this section does not prevent the use of a
monitoring device as a part of an intensive supervision
program or other program of the department of institutions."

ROLL CALL VOTE

SENATE COMMITTEE

JUDICIARY

Date 12 Feb

Bill No. SB 208

Time 10:50 am

NAME	YES	NO
Sen. Brown	✓	
Sen. Crippen	✓	
Sen. Doherty	✓	
Sen. Grosfield	✓	
Sen. Halligan	✓	
Sen. Harp	✓	
Sen. Mazurek	✓	
Sen. Rye	✓	
Sen. Svrcek	✓	
Sen. Towe	✓	
Sen. Yellowtail	✓	
Sen. Pinsonneault	✓	

Jody Bird
Secretary

Sen. Dick Pinsonneault
Chairman

Motion: Brown - SB 208 - DNP - motion

carried