

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN RUSSELL FAGG, on February 3, 1993, at 8:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

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

Committee Business Summary:

Hearing: HB 307, HB 272
Executive Action: HB 272, HB 307, HB 236, HB 267
HB 258, HB 121, HB 323, SB 29

HEARING ON HB 307Opening Statement by Sponsor:

REP. ROGER DEBRUYCKER, House District 13, Floweree, stated that the purpose of this bill is to allow the Department of Justice to make room for new carnival games of skill and chance.

Proponents' Testimony:

Bill Chiesa, General Manager, Metra Park, Billings, also serving as Legislative Chairman for 37 fairs in the state, stated that when the comprehensive gambling bill was passed in 1989, the carnival business was left out of the bill; as a result of that, carnival business was illegal. In the 1991 Legislature, a comprehensive carnival gaming bill modeled after other states was introduced. Ultimately, what was a compromise bill was enacted.

Mr. Chiesa said this bill would simply allow new games of skill and chance to be introduced. Once a year, the Attorney General's office will review the new games that come before the industry and publish the acceptable list.

Reed Williams, Owner, Inland Empire Shows, Inc., requested support for this bill to introduce not only new games of skill and chance but also a new game called Wacky Wire to the state.

Larry Stollfuss, Executive Secretary, Rocky Mountain Association of Fairs, stated that current law requires that the RMA lobby every session for new games. Mr. Stollfuss believes it is a logical and sensible way to provide that new games can be introduced without going through the legislature every two years.

Janet Jessup, Administrator of Gambling Control Division, Department of Justice, said the Attorney General is in support of this legislation but would like to offer an amendment. The amendment is included in the attached Standing Committee Report. EXHIBIT 1 This amendment will give the Department of Justice more possibilities to develop rules and will also allow them to collect fees that will pay for any costs of testing.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

REP. RICE asked Ms. Jessup if she knew the difference between this bill and one introduced by BILL STRIZICH, House District 41, Great Falls. Ms. Jessup said that REP. STRIZICH's bill comes from the Gaming Advisory Council, and it sets limits on the amounts paid out on games. It also introduces an amusement game

which is coin operated, but it doesn't make it very clear that it has to be a game of skill. REP. RICE asked if the committee needs to coordinate the bills or keep them separate. Ms. Jessup said that, even though they are the same type of bill, they use different language.

Closing by Sponsor:

REP. DEBRUYCKER said the bill is self-explanatory and supports the Department of Justice's amendments.

HEARING ON HB 272

Opening Statement by Sponsor:

REP. JIM RICE, House District 43, Helena, said that HB 272 is a gambling bill presented upon request of the Attorney General's office that offers technical changes to the Gambling Control Act.

Proponents' Testimony:

Janet Jessup, Administrator of Damage Control Division, Department of Justice, presented written testimony. EXHIBIT 2

Larry Akey, Montana Coin Machine Operators Association (MCMOA), said that, although MCMOA supports this bill, he wanted to call the committee's attention to page 15, section 7. This bill gives the department the authority to approve transfers in instances of substantial amounts of financing.

Opponents' Testimony: None.

Questions From Committee Members and Responses: None.

Closing by Sponsor: None.

EXECUTIVE ACTION ON HB 272

Motion/Vote: REP. TOOLE MOVED HB 272 DO PASS. Motion carried unanimously 18-0.

EXECUTIVE ACTION ON HB 307

Motion: REP. BROWN moved to approve the amendments provided by Janet Jessup, where on page 13, line 18, between "October 1 and

December 15 of each year" and after "parks" on line 19 would be added: "and may fix and collect fees to offset the costs associated with review and approval."

REP. VOGEL asked if the industry accepted open fees. REP. BROWN replied they do because it's better than the circumstance they have now. The bill came about because of distrust with the previous director of the gambling control division.

Vote: The question was called on REP. BROWN'S amendment. Amendment carried unanimously 18-0.

Motion/Vote: REP. BROWN MOVED HB 307 DO PASS AS AMENDED. Motion carried unanimously 18-0.

EXECUTIVE ACTION ON HB 236

Motion: REP. TOOLE MOVED HB 236 DO PASS.

Discussion:

REP. TOOLE discussed amendments providing that a health care provider should not rely on an outdated file; the information must be in compliance with the Health Care Information Act. EXHIBIT 3

CHAIRMAN FAGG confirmed that the amendments are from the Department of Health and Environmental Sciences. REP. TOOLE suggested the committee discuss and vote on each amendment separately.

Motion: REP. TOOLE moved amendments to strike lines 20-25, page 1, and lines 1-2 on page 2 and adding the paragraph starting with "Any and all health..."

REP. SAYLES said there are too many amendments on the bill to contend with.

Motion: REP. SAYLES MADE A SUBSTITUTE MOTION DO NOT PASS ON HB 236.

Discussion:

REP. WINSLOW asked REP. TOOLE how he came up with the amendments and asked him to explain the purpose of the bill. REP. TOOLE said the purpose of the bill is to enable a care provider to have some protection whenever there is a request for medical records accompanied by a release. In numerous offices, doctors will only release records that their office generates, even though there may be a significant amount of information in the file.

REP. VOGEL said there are contradictions in REP. TOOLE'S amendments. He is referring to the paragraph on page 1 which

refers to the signed waiver, because it is duplicated in amendment numbers 5, 6, 7, and 8. It is also duplicated on page 2 of the amendments. REP. TOOLE said he would only use the second paragraph on page 1 of the document; he will not move any second page amendments. He is only moving the second paragraph on page 1.

Mr. MacMaster read the amendments on pages 2 and 3. He explained that page 1 is how the bill reads with the amendments, and page 2 is how the amendments read technically.

REP. TOOLE said he doesn't want to offer any more amendments and believes these are straightforward. He addressed REP. WINSLOW'S concern regarding patients getting records upon request. He assured REP. WINSLOW that patients are not the only people requesting their files. He doesn't want doctors compelled to copy all records, but they should comply with release of records should a patient sign a waiver. Doctors need access to records from other sources, i.e. health insurers.

REP. SAYLES said he can understand how this bill could reduce Medicare and Medicaid claims, but it will also take more man hours to process paperwork. This could be pretty expensive.

REP. WINSLOW believes that if there's something in her medical records, for example, that she doesn't think should be included, i.e. information that could influence her position or hinder her chance for employment in a company, and she sued because of how her medical records are worded, then she doesn't have that option open to her.

REP. TOOLE said what is intended is for disclosures to be made to the patient. When a patient goes to a doctor's office and asks for his/her records, if this bill passes, the doctor will give the patient all the records, providing the patient signed a release.

REP. WINSLOW asked what the exact source of motivation was to introduce this bill. REP. TOOLE said there is a widespread problem among insurance and health providers trying to get records. If health providers can't get records, they can't adequately handle the case. If patient wants their documents, they should sign the waiver.

REP. SMITH said helping patients request medical records gives patients medical control. On the other hand, it does cause more paperwork and expenses.

REP. VOGEL and CHAIRMAN FAGG emphasized the intent of this bill is to provide medical records for the patient as well as total immunity to health care providers.

Vote: Question was called on the bill as amended. REP. TOOLE and REP. WINSLOW will collaborate to produce a gray bill; action

was deferred for 24 hours.

EXECUTIVE ACTION ON HB 267

Motion: REP. CLARK MOVED HB 267 DO PASS.

Discussion:

CHAIRMAN FAGG stated he is opposed to the bill. If this bill is passed, he is concerned that there will be nothing left of the Federal Gun Free School Zone Act (GFSZ). There are already a lot of exemptions under that law. It covers private property on school grounds and covers individuals who are qualified under the law to receive their firearms license. REP. CLARK'S bill allows everyone who is not a felon to be licensed. While he appreciates what REP. CLARK is trying to do, he totally disagrees with the bill and believes it obliterates the Federal GFSZ Act.

REP. CLARK said this bill does not, in any way, shape or form, protect anyone who is taking a gun to school. People carrying guns for their own protection are breaking the firearms law. It does not give them a license to carry a gun. Most people in rural areas have guns in their vehicles because they live on ranches. This bill allows law-abiding citizens to legally carry guns on school grounds.

REP. VOGEL indicated he doesn't think the State can get federal firearms out of the GFSZ Act simply because federal law cannot be expanded. It can be restricted further, but it can't be expanded.

Motion/Vote: REP. WINSLOW MOVED THAT HB 267 BE TABLED. Motion carried 8-7. Those voting to table the bill were CHAIRMAN FAGG, REPS. WINSLOW, BERGMAN, TASH, GRIMES, WYATT, BROOKE, and RUSSELL. Those voting against the motion were REPS. BIRD, CLARK, SMITH, SAYLES, WHALEN, VOGEL and BROWN. REPS. MCCULLOCH and TOOLE did not vote.

EXECUTIVE ACTION ON HB 258

Motion: REP. TOOLE MOVED HB 258 DO PASS.

Discussion:

REP. TOOLE discussed the following amendment.

1. Title, line 6.
Following: "TO THE"
Insert: "REASONABLE"

2. Page 1, line 20.

Following: "any"
Insert: "reasonable"

REP. BIRD asked for a definition of "reasonable." Mr. MacMaster defined reasonable as a standard word often used in civil law, especially in tort law areas. The typical man or woman is considered "reasonably prudent," and what they do within reason in a given fact situation is "reasonable." The term "reasonable" is seen throughout the code, especially in court law areas.

Motion/Vote: REP. TOOLE moved the amendment. The amendment carried 17-1 with REP. WHALEN voting no.

Motion: CHAIRMAN FAGG moved an amendment proposed by former Rep. Gary Spaeth on behalf of the Montana Liability Coalition: On page 1, at the end of line 21 add: "During the twenty-four months following the date of discharge." This same sentence would also be added to page 1, line 7 after the word employment to correct the title.

Discussion:

REP. WHALEN opposed the amendment. He said he believes if this language is included in the bill, it creates a public policy situation where 24 months discourages a person from actively seeking employment. As a practical matter, he can't imagine a person not finding a job within two years, but it is conceivable that a person might not be able to do so.

CHAIRMAN FAGG said he believes that adding the amendment encourages people to try to find work within the first two years, because any expenses expended during the first two years would be recouped by then; after that time, it wouldn't be. CHAIRMAN FAGG said he is concerned there might be people who half-heartedly look for work and expend some funds to do that. This bill would encourage them to get on the payroll within a couple of years. He believes two years is a significant amount of time to give somebody to try to find a job again. It is a compromise and gives more balance to the bill.

REP. WYATT said she believes that this amendment limits the time that is deducted against a person's wages. It is very difficult for a white collar, professional worker to seek a comparable position in two years. It's extremely difficult for an individual or a couple to find a job that equalizes what they're worth, and it's also difficult to make a living off half the salary they may have been used to. It could take more than two years to find a professional job again, comparable to their former pay scale.

CHAIRMAN FAGG said this amendment does not limit a person's ability to seek employment after the 24-month period. It limits their ability to be reimbursed for the expenses which they expend and encourages people to try to work harder during the first two

years to find a job.

REP. WHALEN responded by saying a person may look for a job within the first two years and may take something part time, and in that period time, the person may continue to look for work throughout the four-year period. REP. WHALEN believes the bill limits a person's ability to have those expenses taken into account. He said he agrees with REP. WYATT and doesn't believe there's any incentive to look for a job when someone has been wrongfully discharged, especially in a job where a person was earning a decent salary. The amount of damages were limited in 1987 quite drastically. In fact, it's been limited to such an extent that, in many cases, even though a person may have been wrongfully discharged, the person cannot, from an economic point of view, even bring a lawsuit because the limitation on the ability to recover is such that, by the time attorney's fees and costs are paid, it's just not economical to bring those kinds of cases to court. REP. WHALEN believes that was the intent of the 1987 law, and he thinks the very type of people who suffer the most by that limitation are the people being turned out in their fifties who have already developed a course in life, have gotten married, have raised children and put them through college. The large companies turn those people out because they can get rid of people who are starting to develop seniority and pension benefits. This is a real serious problem in this country.

Vote: Question was called on the amendment on page 1, line 21, and in the title of the bill. The amendment failed on a tie vote of 9-9. Those in favor of the amendment were CHAIRMAN FAGG, REPS. BIRD, WINSLOW, TASH, SMITH, SAYLES, BERGMAN, VOGEL and CLARK. Those voting against the amendment were REPS. BROWN, WYATT, GRIMES, RICE, BROOKE, RUSSELL, WHALEN, TOOLE, and MCCULLOCH.

Motion/Vote: REP. BROWN MOVED HB 258 DO PASS AS AMENDED. Motion carried unanimously 18-0.

EXECUTIVE ACTION ON HB 121

Motion: CHAIRMAN FAGG MOVED HB 121 DO PASS.

Motion/Vote: REP. BROWN moved an amendment to the effect that the provision of 85-15-305 does not apply to dams and reservoirs at a national superfund priority site as defined by the Federal CERCLA Act of 1980. This amendment ensures that the liability for the Berkeley Pit remains with its existing and previous owners. Motion carried unanimously 18-0.

Motion: CHAIRMAN FAGG moved the following amendments.

1. Page 4, line 13.
Following: "failure" on line 12
Strike: "or rupture"

2. Page 4, line 16.

Following: "and"

Strike: "regularly"

Insert: "properly"

3. Page 5, line 2.

Following: "death"

Insert: "resulting from flows of water from failure of the dam or reservoir"

4. Page 5, line 8.

Following: "and"

Strike: "regularly"

Insert: "properly"

Discussion:

These are technical amendments proposed by Michael Kakuk, Water Policy Committee, after discussion with Russell Hill, Montana Trial Lawyers Association. There was some confusion about page 4, line 13 "caused by the failure or rupture" which seemed to be redundant, and Mr. Kakuk and Mr. Hill struck "or rupture." On page 4, line 16, "regularly" was stricken and "properly maintained" was inserted because the dams have to be maintained according to the Dam Safety Act, which means engineers have to inspect the dams at least once every five years. On page 5, line 2, following "death", language will be written to clarify death resulting from flows of water failure of the dam or reservoir. CHAIRMAN FAGG finds these amendments more technical than substantive.

Vote: The question was called on the amendments. Motion carried unanimously 18-0.

Discussion:

CHAIRMAN FAGG discussed the intent and purpose of the bill, specifically, gross negligence, since REP. TOOLE was unable to attend the hearing. CHAIRMAN FAGG read from page 5, line 2, "In the absence of gross negligence, the dam owner is not liable for personal injury or death resulting from failure of the dam if the person injured or killed was downstream from an existing dam as a result of a structure being placed downstream from the existing dam."

REP. TOOLE asked if this bill is retroactive. CHAIRMAN FAGG said the bill is not retroactive, and it will go into effect October 1, 1993.

CHAIRMAN FAGG said the bill is written fairly straightforward, and the purpose of the bill is to maintain that if someone builds

below an existing dam, they should be aware they are moving to a potential danger site and must be more conscientious in order to recover damages if a dam fails. The Water Policy Committee thought this was the best language to accomplish this.

REP. WHALEN made an observation about the bill which he perceived to be a problem. First, he believes there is an underlying presumption that people will be held accountable for moving under the shadow of these dams or, for that matter, engaging in any kind of conduct where there is an associated risk. Second, the term negligence means that a person can only be held liable for his conduct if a reasonable person could foresee that either doing or not doing something could cause injury to another person; just because a dam breaks or an incident happens, it doesn't mean that people are automatically held accountable.

REP. WHALEN said he sees a lot of technical problems with the way this bill is put together. However, he does understand the policy that CHAIRMAN FAGG says underlies the purpose of this bill. The fact is, the law right now is assumption of risk.

CHAIRMAN FAGG said rational basis, in this case, is simply putting some of the burden on people who build underneath an existing dam. It is putting some of the responsibility on those people for building in a potentially dangerous situation.

REP. TOOLE'S main concern is that the Montana Supreme Court may take up this bill unless the committee takes some different approaches to it.

CHAIRMAN FAGG said that if REP. TOOLE'S main objection to the bill is the October 1, 1993, deadline and treating people on the other side of that deadline differently, the bill could be made retroactive. The legislature would have the authority to do that if the committee would show a reason for doing so. The WPC decided they did not want to make it retroactive because that causes problems for people who have already built below the dam. After October 1, 1993, people will be on notice that, if they build below an existing dam, they have a higher standard of recovery. That's the rational basis that the WPC concluded was reasonable, and that's why they made that distinction.

REP. GRIMES asked CHAIRMAN FAGG if he is aware of how this legislation correlates with other states. CHAIRMAN FAGG said he is aware that the WPC spent 18 months studying the Dam Safety Acts of other states. CHAIRMAN FAGG told REP. GRIMES that after studying what all the other states are doing, the WPC determined it was in the best interest of Montana to follow this sort of a scheme. It fits Montana's statutes and negligence standards, which is comparative negligence.

Motion/Vote: REP. TOOLE moved an amendment to make it retroactive in order to eliminate the problem of people in two different classes. Amendment failed by a vote of 11-7. Those

voting for the amendment were REPS. BROWN, BERGMAN, BROOKE, MCCULLOCH, RUSSELL, TOOLE and WYATT. Those voting against the amendment were CHAIRMAN FAGG, REPS. VOGEL, BIRD, CLARK, GRIMES, RICE, SAYLES, SMITH, TASH, WHALEN and WINSLOW.

REP. TOOLE said cases like this will be thrown out before they even get to court. He believes there are better ways to do this; he'd rather see some sort of limit on the overall liability being paid out.

Motion/Vote: CHAIRMAN FAGG moved Mr. Petesch's amendment for a new section in the applicability clause at the end of the bill, which would say, "This act applies to causes of action occurring on or after October 1, 1993." The amendment passed 15-3 with REPS. TOOLE, RUSSELL and BROWN voting no.

Vote: REP. VOGEL MOVED HB 121 DO PASS AS AMENDED. Motion carried 10-8. Those voting for the bill as amended are CHAIRMAN FAGG, REPS. VOGEL, BERGMAN, CLARK, GRIMES, RICE, SAYLES, SMITH, TASH and WINSLOW. Those voting against the bill as amended are REPS. BIRD, BROOKE, BROWN, MCCULLOCH, RUSSELL, TOOLE, WHALEN and WYATT.

EXECUTIVE ACTION ON HB 323

Motion: REP. BROWN MOVED HB 323 DO PASS.

Discussion:

REP. BROWN stated that the committee should ignore the kind of haphazard amendments proposed and stay with the bill as originally written. It may not give judges any more authority than they generally have, but it focuses their attention to the fact that they have that authority. He believes the rest of the proposed amendments complicate the issue; therefore, he supports the bill the way it is.

REP. RICE distributed a letter from John Conner, Assistant Attorney General, Bureau Chief, County Prosecutor Services Bureau. EXHIBIT 4 REP. RICE said the one positive aspect of the bill is that perhaps it would be helpful to justices of the peace if this specific condition was placed in the statute.

Vote: HB 323 DO PASS. Motion carried unanimously 18-0.

EXECUTIVE ACTION ON SB 29

Motion: REP. BROWN MOVED SB 29 BE CONCURRED IN.

Motion/Vote: REP. WHALEN moved to amend the bill on page 2, line 24: striking the word "counseling" from the original language of "reasonable and medical counseling costs." The amendment carried unanimously 18-0.

Motion: REP. BROWN MOVED SB 29 BE CONCURRED IN AS AMENDED.

Discussion:

REP. RICE said he is concerned about the language on page 2, subsection (b). He asked Mr. Petesch to search for better language to describe what is written. Mr. Petesch said this language was inserted by the Senate, and the explanation given to him was that the Senate was concerned that the original language, could be interpreted to mean "simultaneously." The language inserted by the Senate was intended to make the criminal offense apply to anyone who is present, and participated in, an act of sexual intercourse without consent with the same victim.

REP. BERGMAN stated she was also concerned about the language on page 2, line 16, "increases the penalty," and asked CHAIRMAN FAGG to clarify that section of the bill. CHAIRMAN FAGG said that Section 2, subsection (b) is new language under SEN. TOWE'S bill. The Senate moved the imprisonment time from 10 to 5 years, and the \$100,000 fine to \$50,000, but that is still an increase over current statute. The increase is as follows: two years sentence, as a minimum, for sexual intercourse without consent, under SEN. TOWE'S bill; with two or more persons, the minimum sentence is five years.

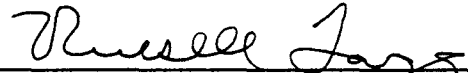
REP. RUSSELL said federal statutes have a standard term of imprisonment or fine for rape, and asked CHAIRMAN FAGG how state guidelines compare to federal statute. CHAIRMAN FAGG said he did not know the federal sentencing structure on rape or gang rape and asked Mr. MacMaster to assist. Mr. MacMaster said he did not have the answer; however, there are a number of federal crimes without a state counterpart, and he doesn't think they necessarily follow each other as to penalties. Mr. MacMaster said his impression is the federal sentence is on the books, but the penalty on the books is often higher for federal offenses than state offenses.

REP. BERGMAN asked CHAIRMAN FAGG how this bill is different from a lone rapist, and whether two or more offenders make it worse than if a person were a lone offender. She asked why the penalty should be increased just because there's more than one offender. CHAIRMAN FAGG said that SEN. TOWE felt it was more grievous to have more than one individual raping a person as opposed to a single individual. It is a policy decision.

Vote: SB 29 BE CONCURRED IN AS AMENDED. Motion carried 14-4. REP. VOGEL will carry the bill to the House floor. Those voting for the bill were CHAIRMAN FAGG, REPS. VOGEL, BROOKE, BROWN, CLARK, GRIMES, MCCULLOCH, RICE, RUSSELL, SAYLES, TASH, TOOLE, WINSLOW, and WYATT. Those voting against the bill were REPS. BIRD, BERGMAN, SMITH and WHALEN.

ADJOURNMENT

Adjournment: 11:30 a.m.



REP. RUSSELL FAGG, ~~Chairman~~



BETH MIKSCHKE, Secretary

RF/bcm

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

2-3-93

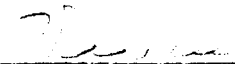
NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Savles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karvl Winslow	✓		
Rep. Diana Wyatt	✓		

HOUSE STANDING COMMITTEE REPORT

February 4, 1993

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Mr. Speaker: We, the committee on Judiciary report that House Bill 272 (first reading copy -- white) do pass.

Signed: 

Russ Fagg, Chair

Committee Vote:
Yes 15, No 2.

280855SC.Hpf

HOUSE STANDING COMMITTEE REPORT

February 4, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 307 (first reading copy -- white) do pass as amended .

Signed: _____
Russ Fagg, Chair

And, that such amendments read:

1. Page 13, lines 17 and 18.

Following: "justice may" on line 17

Strike: "," on line 17 through "each year," on line 18

2. Page 13, line 19.

Following: "part"

Insert: "and may set and collect fees to offset the costs associated with review and approval"

-END-

Committee Vote:
Yes 1, No 2.


280943SC.Hpf

HOUSE STANDING COMMITTEE REPORT

February 4, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 258 (first reading copy -- white) do pass as amended .

Signed: 
Russ Fagg, Chair

And, that such amendments read:

1. Title, line 6.
Following: "TO THE"
Insert: "REASONABLE"
2. Page 1, line 20.
Following: "any"
Insert: "reasonable"

-END-

Committee Vote:
Yes 15, No 2.

280910SC.Hpf

February 4, 1993

Page 2 of 2

T. Page 5.

Following: line 24

Insert: "NEW SECTION. Section 7. Applicability. [This act]
applies to causes of action accruing on or after October 1,
1993."

-END-

HOUSE STANDING COMMITTEE REPORT

February 4, 1993

Page 1 of 3

Mr. Speaker: So, the committee on Judiciary report that House Bill 121 (first reading copy -- white) do pass as amended.

Signed: _____
Russ Fagg, Chair

And, that such amendments read:

1. Title, line 11.

Strike: "AND"

Following: "MCA"

Insert: "; AND PROVIDING AN APPLICABILITY DATE"

2. Page 2.

Following: line 22

Insert: "(3) The provisions of 85-15-305 do not apply to dams and reservoirs at a national priority list site as defined by the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), Public Law 96-510."

3. Page 4, line 13.

Strike: "or rupture"

4. Page 4, line 16.

Following: "and"

Strike: "regularly"

Insert: "properly"

5. Page 5, line 2.

Following: "death"

Insert: "resulting from flows of water from failure of the dam or reservoir"

6. Page 5, line 8.

Following: "and"

Strike: "regularly"

Insert: "properly"

Committee Vote:
Yes 10, No 2.

291017SC.Hpf

HOUSE STANDING COMMITTEE REPORT

February 4, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 323 (first reading copy -- white) do pass .

Signed: Russ Fagg
Russ Fagg, Chair

Committee Vote:
Yes 12, No 2.


280856SC.Hpf

HOUSE STANDING COMMITTEE REPORT

February 4, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 29 (third reading copy -- blue) be concurred in as amended .

Signed: 

Russ Fagg, Chair

And, that such amendments read:

Carried by: Rep. Vogel

1. Title, line 6.
Strike: "SECTIONS"
Insert: "SECTION"
Strike: "AND"

2. Title, line 7.
Strike: "46-18-231"

3. Page 2, line 24.
Following: "reasonable"
Insert: "medical and counseling"
Strike: "of counseling"

4. Page 3, line 2 through line 3 of page 4.
Strike: section 2 of the bill in its entirety

-END-

Committee Vote:
Yes 14, No 4.

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 2-3-93 BILL NO. HB 272 NUMBER 18

MOTION: Motion to pass carried unanimously 18-0

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	✓	

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 2-3-93 BILL NO. HB 307 NUMBER 18

MOTION: Motion to pass carried unanimously 18-0

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	✓	

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 2-3-93 BILL NO. HB 267 NUMBER 16

MOTION: Motion to table the bill carried 8-7

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vocel, Vice-Chair		✓
Rep. Dave Brown, Vice-Chair		✓
Rep. Jodi Bird		✓
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark		✓
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	NO	VOTE
Rep. Jim Rice		
Rep. Angela Russell	✓	
Rep. Tim Sayles		✓
Rep. Liz Smith		✓
Rep. Bill Tash	✓	
Rep. Howard Toole	NO	VOTE
Rep. Tim Whalen		✓
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	8	7

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 2-3-93 BILL NO. HB 253 NUMBER 18

MOTION: Motion to pass carried Unanimously 18-0

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	18	0

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 2-3-93 BILL NO. HB 121 NUMBER 18

MOTION: Motion to pass carried 10-8

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair		✓
Rep. Jodi Bird		✓
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke		✓
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch		✓
Rep. Jim Rice	✓	
Rep. Angela Russell		✓
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole		✓
Rep. Tim Whalen		✓
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt		✓
	10	8

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 2-3-93 BILL NO. HR 323 NUMBER 18

MOTION: Motion to pass carried unanimously 18-0

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	18	0

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 2-3-93 BILL NO. SB 29 NUMBER 18

MOTION: Motion to pass carried 14-4
Rep. Vogel carried the bill to the House floor.

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird		✓
Rep. Ellen Bergman		✓
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith		✓
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen		✓
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	

EXHIBIT 1
DATE 2-3-93
SB HB 307

HOUSE STANDING COMMITTEE REPORT

February 4, 1993
Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 307 (first reading copy -- white) do pass as amended .

Signed: [Signature]
Russ Fagg, Chair

And, that such amendments read:

1. Page 13, lines 17 and 18.
Following: "justice may" on line 17
Strike: "," on line 17 through "each year," on line 18
2. Page 13, line 19.
Following: "part"
Insert: "and may set and collect fees to offset the costs associated with review and approval"

-END-

[Handwritten initials]
2-5-93
RFD

Committee Vote:
Yes 15, No 2.

STATE OF MONTANA
DEPARTMENT OF JUSTICE
GAMBLING CONTROL DIVISION

EXHIBIT 2
DATE 2/3-93
HB 272 J. Rice

Joseph P. Mazurek
Attorney General



2687 Airport Road
PO Box 201424
Helena, MT 59620-1424

Department of Justice Technical Amendments to Gambling Laws

Sections 1, 2, 4, 5, 8, 9, 11, 12, 13 and 14 (23-5-110, 23-5-111, 23-5-113, 23-5-115, 23-5-123, 23-5-136, 23-5-161, 23-5-162, 23-5-171, 23-5-172): correct references to the existing law which has eight chapters, not six as indicated in these sections.

Section 3 (23-5-112): also corrects the number of parts in the chapter. In addition, Subsection 14 places the definition of gift enterprise, which was discussed under the subsection describing public gambling, in a category of its own so that it can be found more easily without changing the original definition. Subsection 17 is corrected to include all references to dice games in existing law. Subsection 20 lists all the types of gambling-related licenses, reflecting current practice.

Section 6 (23-5-117): corrects an internal reference to the number of subsections.

Section 7 (23-5-118): expands on the provision for transfer of ownership interest by stating what this section is intended to regulate: i.e., licensed gambling operations. Clarifies that transfers must be approved by the department unless the transfer involves a security interest of less than 5% of the interest in a publicly traded corporation.

Section 10 (23-5-157): clarifies language to make it clear that "cash" includes checks or credit cards that may be used to obtain cash to participate in a gambling activity.

Section 15 (23-5-309): corrects internal references to the conduct of card games to include an existing section that refers to these games.

Section 16 (23-5-610): clarifies language on the deduction an operator may take against gross income for amounts stolen from machines by defining theft as the result of unauthorized entry and physical removal of money; also adds that repayments of stolen funds made through court restitution cannot be deducted from gross income, similar to amounts repaid to the operator by insurance claims.

Section 17 (23-5-631): Subsection 6 is amended to clarify that all video gaming machines supplied to licensed operators or manufacturers must have been approved by the department as being in compliance with state law; this is intended to make it clear that the secondary market for used machines must be in full compliance with state regulations in the same way as new machines.

DATE 2-3-93
SB HB 236

AMENDMENTS TO HOUSE BILL 236
(introduced copy)

A health care provider who discloses any health care information, whether from its own records, records obtained from other providers, current records, past records, or any combination of records, is immune from any civil cause of action provided for under 50-16-553, if the individual whose records were released first signed a written authorization of disclosure in accordance with the following language:

"Any and all health care information in your possession, whether generated by you or by any other source, may be released to me or to _____ (named person) for _____ (purpose of the disclosure). This consent is subject to revocation at any time except to the extent that the health care provider which is to make the disclosure has already taken action in reliance on the authorization. If not revoked, this consent will terminate in accordance with 50-16-527."

(Signature of patient)

(Date)

Amend 50-16-553(3) to read: A health care provider who relies in good faith upon a certification pursuant to 50-16-536(2) or a written authorization pursuant to [NEW SECTION 1] is not liable for disclosures made in reliance on that certification or written authorization.

AMENDMENTS TO HOUSE BILL 236
(introduced copy)

1. Title, page 1, line 7.
Following: "DISCLOSURE;"
Strike: "AND"
2. Title, page 1, line 8.
Following: "AUTHORIZATION"
Insert: "AND AMENDING SECTION 50-16-553, MCA."
3. Page 1, line 13.
Following: "discloses"
Insert: "any"
4. Page 1, line 14 through 19.
Strike: "including" on line 14 through "language" on line 19
Insert: "whether from its own records, records obtained from other providers, current records, past records, or any combination of records, is immune from any civil cause of action provided for under 50-16-553, if the individual whose records were released first signed a written authorization of disclosure in accordance with the following language:"
5. Page 1, line 20.
Strike: "All"
Insert: "Any and all"
6. Page 1, lines 22 through 25.
Following: "person)"
Insert: "for _____ (purpose of the disclosure)."
Strike: "I" on line 22 through "request" on line 25.
7. Page 1, line 25.
Following: "request."
Insert: "This consent is subject to revocation at any time except to the extent that the health care provider which is to make the disclosure has already taken action in reliance on it. If not previously revoked, this consent will terminate in accordance with 50-16-527."
8. Page 2, line 2 and 3.
Following: patient)
Insert: _____
(date)
9. Page 2, line 3.
Insert: "Section 2. Section 50-16-553, MCA, is amended to read:
50-16-553. Civil remedies. (1) A person aggrieved by a violation of this part may maintain an action for relief as provided in this section.
(2) The court may order the health care provider or other person to comply with this part and may order any other appropriate

EXHIBIT 3
DATE 2-3-93
HB-236

relief.

(3) A health care provider who relies in good faith upon a certification pursuant to 50-16-536(2) or a written authorization pursuant to [NEW SECTION 1] is not liable for disclosures made in reliance on that certification or written authorization.

(4) No disciplinary or punitive action may be taken against a health care provider or his employee or agent who brings evidence of a violation of this part to the attention of the patient or an appropriate authority.

(5) In an action by a patient alleging that health care information was improperly withheld under 50-16-541 and 50-16-542, the burden of proof is on the health care provider to establish that the information was properly withheld.

(6) If the court determines that there is a violation of this part, the aggrieved person is entitled to recover damages for pecuniary losses sustained as a result of the violation and, in addition, if the violation results from willful or grossly negligent conduct, the aggrieved person may recover not in excess of \$5,000, exclusive of any pecuniary loss.

(7) If a plaintiff prevails, the court may assess reasonable attorney fees and all other expenses reasonably incurred in the litigation.

(8) An action under this part is barred unless the action is commenced within 3 years after the cause of action accrues.

10. Page 2, line 3.
Renumber: subsequent sections.

STATE OF MONTANA
DEPARTMENT OF JUSTICE
COUNTY PROSECUTOR SERVICES BUREAU

EXHIBIT # 4
DATE 2-3-93
SB HB 323

Joseph P. Mazurek
Attorney General



Justice Building
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

February 3, 1993

Hon. Jim Rice
Montana House of Representatives
Capitol Station
Helena MT 59620

Re: House Bill 323

Dear Representative Rice:

As requested, I have reviewed the above-referenced proposal and would offer the following observations.

The substantive amendments simply allows the court, upon second or subsequent conviction to impose restrictions on possession or ownership of animals. Because the offense as presently defined is a misdemeanor, even for second or subsequent offenses, cruelty to animals actions would be prosecuted in justice court. It is not an offense for which the district court has concurrent jurisdiction. Thus, any sentences imposed, including conditions thereof, would be imposed by the justice of the peace.

Montana Code Annotated § 46-18-201, allows the sentencing court, whether district or justice court, to sentence the defendant to jail for any time up to the maximum, to defer imposition of sentence for up to one year for a misdemeanor, or to suspend execution of the sentence up to the maximum time allowed for the offense. In the case of a cruelty to animals conviction, the court could suspend the sentence for up to six months. If the sentence is deferred or suspended, the court is also permitted to impose any reasonable conditions or restrictions upon defendant during the period of suspension or deferment.

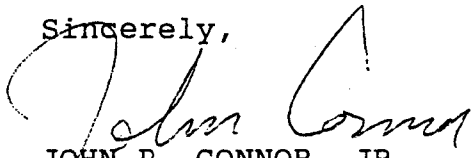
I believe that the provisions of § 46-18-201 mentioned above, allow the court the discretion to impose the restrictions that are the substance of House Bill 323. I once prosecuted a multiple count cruelty to animals case in which the court did, as a condition to consecutive suspended sentences, restrict ownership of animals by the defendant. However, there certainly is no harm articulating such authority in the law and, in fact, it may be helpful in those instances in which the justice of the peace is not comfortable imposing such conditions unless they are specified in the statute.

Hon. Jim Rice
Page 2
February 3, 1993

I do not believe, however, that the court can impose the restrictions of HB 323 for a term longer than that allowed by statute as punishment for the offense. In other words, if the court were to impose a deferred sentence on one count of cruelty to animals, it could only restrict ownership of animals for up to one year. If it were to impose a suspended sentence on one count, it could restrict ownership for up to six months only, or only for such a period of time as the court maintains jurisdiction over the case. As stated in § 46-18-201(1)(b), the court can "suspend execution of [the] sentence up to the maximum sentence allowed for each particular offense." Once that period of time expires, and there has been no revocation, the court loses jurisdiction of the case and has no authority thereafter to enforce conditions.

I hope this information is of some use. Please give me a call if you have any questions.

Sincerely,



JOHN P. CONNOR, JR.
Assistant Attorney General
Bureau Chief
County Prosecutor Services Bureau

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Judiciary

COMMITTEE

BILL NO. HB 307

DATE Feb 3, 1993

SPONSOR(S) H. De Brinycker

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Bill Chiesa Billings MT	H.B. 307 MONTANA PARK	✓	
L. REED WILLIAMS NAMPA, ID	H.B. 307 INLAND EMPIRE SHOWS INC.	✓	
KEN HEIKES	YELLOWSTONE COUNTY Billings Area Chamber Comm.	✓	
Janet Jessop	Dept of Justice	✓	
Larry Stollfuss	Rocky Mtn Assoc of Fairs	✓	
Denna Rae Stollfuss	Rocky Mtn Assoc of Fairs	✓	
Laurie Korbak		✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Judiciary COMMITTEE BILL NO. HB 272
DATE Feb 3, 1993 SPONSOR(S) Jim Rice

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Janet Gossyp	Dept of Justice	✓	
Rob Smith	DOJ	✓	
DENNIS H. TAYLOR	JUSTICE	✓	
Laurie Kortuk	Christian Coalition of Mt	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.