

## **MINUTES**

### **MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By Senator Yellowtail, on February 11, 1993, at 10 p.m.

#### **ROLL CALL**

##### **Members Present:**

Sen. Bill Yellowtail, Chair (D)  
Sen. Steve Doherty, Vice Chair (D)  
Sen. Sue Bartlett (D)  
Sen. Chet Blaylock (D)  
Sen. Bob Brown (R)  
Sen. Bruce Crippen (R)  
Sen. Eve Franklin (D)  
Sen. Lorents Grosfield (R)  
Sen. Mike Halligan (D)  
Sen. John Harp (R)  
Sen. David Rye (R)  
Sen. Tom Towe (D)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** Valencia Lane, Legislative Council  
David Martin, Committee Secretary

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

##### **Committee Business Summary:**

Hearing: SB 210, SB 246, SB 304  
Executive Action: None

#### **HEARING ON SB 210**

##### **Opening Statement by Sponsor:**

Sen. Nathe, District 10, said that SB 210 concerned an issue of fairness, to raise the level of payout on a poker machine to that of a keno machine. He offered amendments to SB 210 (Exhibit #1). Sen. Nathe said SB 210 would increase the payout limit from \$100 to \$800 for live keno and poker machines. He reiterated that it was an issue of fairness and there has always been a \$800 limit on the keno machine and he did not know the reason why there was a difference between the poker and the keno machines. SB 210

would not be an expansion of gambling but rather an issue of fairness concerning payouts.

**Proponents' Testimony:**

Dore Schwinden, Rep. from District 20, Roosevelt County and the Assiniboine and Sioux tribes of Fort Peck supported SB 210. He said raising these caps would have a positive economic impact on his county which was among the poorest in Montana, by bringing Canadian visitors to the area. He said it was also an issue of fairness since the tribal payout limits are \$1,000.

Mark Staples spoke in support of SB 210. He said there was an issue involving equity of two types, specific and general.

Specific equity would concentrate on tribal areas and the closely surrounding areas. Non-tribal operators both on and off the reservation are competing against tribal limits of \$1,000. The attorney general has told the Lake County Tavern County Association that payoff levels should be increased. In this situation the \$100 payoff of a poker machine cannot compete against a \$1,000 payoff on a machine which pays no taxes, and has \$10 and \$20 bill acceptors, which pays none of the other fees and does not amortize a liquor license. He submitted a letter from the Lake County Tavern Association (Exhibit #2).

Mr. Staples said general equity deals with the question of whether SB 210 is an expansion of gambling. He cited former attorney general, current governor, Marc Racicot as an anti-expansionist as being in favor of \$800 payoffs. (Exhibit #3)

Steve Arntzen, Silvertip Tavern and the Gaming Industry Association, supported SB 210. He said SB 210 addressed two specific types of gaming activities that are offered in Montana, keno and poker. Any other form of limited gaming activities would not be affected. SB 210 only affects poker machines and live keno games which would only be slightly modified.

He said SB 210 could be titled "Consistency and Fairness for the Players of Gaming in Montana". Consistency in respect to the payoff levels both between machine types and among similar gaming activities. Fairness in relation to payoff levels which progressively increase with the size of the customer's wager. He said the discussion of expansion of gambling in the United States focuses on 3 areas: 1) Types of the gambling game 2) Total number of gambling devices to be offered and 3) Amount of bet limit. The size of the wager determines the size of the payoffs. SB 210 would not alter the size of the wager. Mr. Arntzen said that SB 210 would not allow for a greater number of machines. A licensed establishment can have any number of poker or keno machines up to a 20 machine maximum per location.

Mr. Artzen said this would allow patrons a top prize in relation to the wager they make. For example if you play 25 cents on most keno machines in Montana you can win a top prize that will win you \$100, play \$1.00 and the top prize is \$400.00, play \$2.00 it will pay a top prize of \$800.00.

On a poker machine if a person bets 25 cents, and hits a royal flush the highest paid reward in poker would be \$100.00, play \$2.00 and your prize will also be \$100.00 under current law. This is neither consistent nor fair and SB 210 would correct this.

Mr. Artzen said live keno is a game that has actually shown decreased play in Montana over the past few years. In 1992, 15% fewer locations offered live keno than they did in 1990. Live keno requires additional employees to operate the game. The decrease in the number of live keno establishments had cost people jobs. Live Keno play was low because the payouts were inconsistent with the keno machines that were on the premises. SB 210 would not increase the size of a wager a customer may bet on a live keno card from the present level. No other changes would be made under SB 210 except for the same maximum prize of \$800 that is allowed on a keno machine.

Lynn Seelye, operates a live bingo game and plays percentage bingo in his establishment, supported the amendment limiting payoff on live bingo to \$100. He said most of the customers have limited incomes, and the prize for an \$800 payout would have to come from the cost of the cards that they play, and thus be unable to play. He supported SB 210 as amended.

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

Jean Agather, Don't Gamble With the Future, opposed SB 210 and read a statement. (Exhibit #4) In addition she stated that equity should not be used as a rationale for expansion. This would lead to escalation of payoffs in the future and thus increase gambling.

Gloria Hermanson, Don't Gamble with the Future opposed SB 210 and read a statement (Exhibit #5) and submitted two others (Exhibit 6 & 7).

Pat Melby, Rimrock Foundation, an in-patient treatment center that treats gambling related problems, opposed SB 210. He cited a Wall Street Journal article, September 6, 1992, which dubbed video machine gambling as the "crack" of gambling. Video gambling is relatively inexpensive, there is immediate feedback, the player can increase the speed at which they gamble, illusion of skill, and ever increasing stakes which allows for easy addiction. He referred to various research showing a direct correlation between increased stakes and increased addiction to gambling. He stated that women are especially vulnerable to

gambling addiction because of video machines. Video machines are the gambling of choice for women. Women have become nearly equal in percentage of addicted persons after the advent of video gambling machines.

He cited a Nevada program where 97% of the female gambling addicts were addicted to video machines. He suggested a solution to fairness and consistency would be to reduce the limit on the keno machines to \$100. He said that higher limits on Indian Reservations does not make good gambling policy for the rest of the state or increasing the limits.

Harley Warner, Montana Association of Churches, opposed SB 210, because of the value his organization places on families. He said gambling places stress on families in the form of bankruptcies, suicides and other stresses. SB 210 would encourage more people to play more often and would represent an increase in gambling.

**Questions From Committee Members and Responses:**

Sen. Halligan asked for the rationale of the governor in signing the pact with the Fort Peck Tribe that had the difference in pay offs. Mr. Staples said some legal analysts believed that the Indian Gaming Regulatory Act, which is federal legislation, was also an economic enabling act, so it should have a built in advantage in it and the question then becomes to what degree. However in contract negotiations since then the Fort Peck Tribe payout has been the starting level or the threshold for payouts. The gambling industry never sought to increase the number of machines and supported the effort to stop stacking, which limited the number of machines to 20.

Sen. Halligan said assuming that increasing the \$100 payoff will increase the amount of play on those machines, has the industry discussed the possible increase of the rate from 15 to a higher percent if the expansion is allowed. Mr. Staples said the question would be a contemplated trade for tax increases and this was not expected. The difference in payoff was something that many people thought should have previously been corrected. He said the change in payoff will not result in increased gambling but could lead to poker machines being dumped and replaced with keno machines.

Sen. Crippen asked if the payoff limit was raised would the owners expect to make less per machine. Mr. Staples agreed with Sen. Crippen and replied that there were less than enthusiastic responses to this within his own organization regarding areas that were in direct competition with tribal areas. Mr. Staples said he was not sure of the outcome of raising the payout on machines.

Sen. Crippen asked if he was saying that the poker machines would become obsolete and replaced with keno machines. Mr. Staples agreed that could be one possibility.

Sen. Crippen said another possibility would be to reduce the payoff on the keno machines, that more money would be made on the poker machines and equalize the situation. Mr. Staples said that approach ignores the question of competition with tribal machines having higher payoffs.

Sen. Crippen said there may be an inconsistency, but he was only looking at payoff consistency outside of the reservation.

Sen. Brown said that the materials presented today were not very consistent, and that other proponents said their purpose was to bring the payoffs between tribal and non-tribal machines closer together. Mr. Staples said he covered that in his introduction i.e. that non-tribal owners were at a competitive disadvantage, machines with \$10 and \$20 bill acceptors, no taxes, etc.

Sen. Brown said there was a difference between fairness and consistency and there were two different issues were being addressed. He said gambling may be inherently unfair because bettors lose on an unfair basis, their ability to pay. He said Jean Agather said that bankruptcies are up, merchants have to compete with gambling dollars. Sen. Brown said an auto dealer in his district said the used car market had gotten softer in certain price ranges, because the salesman thought people were gambling rather than buying used cars. He asked Charles Brookes of the Montana Retail Association to comment on the possible effect of expanded gambling that SB 210 might encourage.

Mr. Brookes said the Montana Retail Association's Board has taken the position gambling takes away discretionary spending and therefore was a deterrent to the retail industry as a whole. An expansion of gambling would further lessen the availability of discretionary spending.

Sen. Rye asked Mr. Staples if it was the job of government to protect people from other people, themselves (their own worst instincts), or both. Mr. Staples said that was a decision for government to make, not him. Jean Agather said that people are responsible for themselves, but the equation becomes lopsided when the government condones gambling. Lynn Seelye said there was an expansion of business that had been brought in by gambling. Persons were spending discretionary/entertainment money on gambling.

Sen. Bartlett asked about the relationship of live keno payoffs when the wager would still be limited to 50 cents for an \$800 payoff. Mr. Artzen replied that the maximum wager is \$2.00 on a keno machine and 50 cents on a live keno game. He said Keno has a multiple number of formats and since you pick a multiple of numbers it becomes more difficult to win the top prize. There

are legal machines right now that allow an \$800 payout from a 50 cent bet. Live keno would duplicate the keno machine. Sen. Bartlett asked if the programs take into account the complexity of larger numbers being necessary to win, and would that apply to the machines. Mr. Artzen said the machines have 2 requirements under the law: 1) They cannot accept a wager on a keno machine over \$2.00, 2) Nor can they pay out over \$800. For example, on a typical 25 cent Keno machine, if you wager \$2.00, pick six numbers and hit all six numbers a person would win \$800. On a nickel keno machine if a person wagered 50 cents, picked 7 numbers and hit all 7 numbers a person would also win \$800. This would allow live keno to simulate a keno machine.

Sen. Grosfield asked Mark Staples how his organization felt about equalizing the payoffs at \$200 or \$300. Mr. Staples said his organization would be opposed to this disruption and if parity was not allowed then the situation should be left alone. He emphasized that non-tribal operators were still at a competitive disadvantage with tribal operators near reservations.

Sen. Yellowtail asked if the Fort Peck Tribe supported SB 210. Sen. Nathe relied yes. Sen. Yellowtail asked why the tribe would want to remove a competitive advantage. Sen. Nathe said he did not know why except that it may be an effort by everyone to cooperate and may be unique to the nature of the Fort Peck Indian Reservation.

**Closing by Sponsor:**

Sen. Nathe said SB 210 would not increase the number of machines, but it would increase the payout. For a \$2.00 bet on a Keno machine you would receive an \$800 payout and a similar consideration should be given to the poker machine. He did not know why this situation existed originally. He said machine owners will replace lower payout poker machines with higher payout keno machines and not increase the number of machines in an establishment. He said increased bankruptcies in Montana were more attributable to the economy rather than gambling. Another implication was the level of gambling set by the legislature is fair, and that is not true. The worst example was the 45% payout on the state approved lottery. SB 210 would address a fairness issue, since the machines are basically the same but with different payouts.

He said another fairness issue involves the Indian Regulatory Gaming Act and the competition between Indian and non Indian owners near reservations. Not dealing with this issue would turn people into lawbreakers by forcing non-Indians to have native Americans as "fronts" for their establishments.

Sen. Nathe said gambling dollars were competing for discretionary dollars.

**HEARING ON SB 246****Opening Statement by Sponsor:**

Sen. Harp said that SB 246 would provide limited immunity to the Building Codes Bureau in local jurisdictions administering and enforcing building codes and provided limited immunity to two or more building code enforcement jurisdictions that generally employ a building inspector for code enforcement in which a causative action arises.

He said Section 1 was a new section that dealt with immunity for the Building Code Bureau in local jurisdictions in cases where certified inspectors, in an urban area, go outside that area to perform inspections. Section 1 covered immunity for certain enforcement, but not if the inspecting agency has any active knowledge. He used the Flathead Valley as an example. At this time an inspector, either state or local, will visit building sites under various stages of construction. If they have knowledge of a building violation they would be liable for their actions. If an interior wall was already built it would be impossible to inspect it. The state does not have enough inspectors to cover all these building sites and SB 246 would allow the inspector to be immune from small infractions.

Sen. Harp said some cities are combining their interests whereby they jointly hire one inspector. Under subsection 2, a city would not be liable for actions in another jurisdiction. Sen. Harp introduced letters from the cities of Kalispell and Missoula in support of SB 246 (Exhibits #8 and 8A).

He said the crux of the problem was if you heard secondhand about a violation in an interior wall. It would be impractical to have the wall torn apart to check for the infraction. He said state or local agencies should not be liable for this situation.

**Proponents' Testimony:**

Rick Kopel, Agency Counsel for the State Building Codes Bureau, Department of Commerce, said Sen. Harp outlined the provisions of SB 246 well. He said there were presently 54 local Certified Building Code Enforcement Jurisdictions that included 3 counties with the rest being municipalities. The state enforces all building codes that are not enforced by a local jurisdiction. Statewide there are currently 3 building inspectors. It is impossible with the current construction boom for them to cover all construction projects, either legal or illegal. In 1992 there were over 1,000 projects and the inspectors traveled 50,000 miles which resulted in an average of 4 inspections per day. This emphasized it was impossible for inspectors to oversee every aspect of construction. The 14 state electrical inspectors covered 12,00 projects many of which had multiple inspections which averaged out to 1 inspection every 15 minutes. He said the other reason for asking for limited immunity was that 35%-40% of projects, that were ultimately discovered and issued building

permits, were illegal projects. Most projects were not discovered until they were either partially constructed or completed. He said it was not practical or realistic to dismantle a structure to check that each aspect of the Universal Building Code has been met.

Mr. Kopel said the alternative to SB 246 would be to increase manpower. He said the Department of Commerce has tried to limit manpower, but it was impossible to visit every component of every project with current constraints.

Mr. Kopel said the second portion of the limited immunity request applied to joint appointment situations. He said that formation of such cooperative situations would not occur if there was not a provision to exempt communities from acts of negligence by a "joint-employee" performed in another jurisdiction. This provision would allow local communities to perform inspections using local manpower.

Alec Hanson, League of Cities and Towns supported SB 246 for 2 reasons. He said the limited immunity was necessary. He gave an example of a city that was sued over a building code violation when it did not even have knowledge of the building project. He said it is important to encourage joint cooperative programs.

Gordon Morris, Montana Association of Counties, MACo, supported SB 246.

Tom McNab, Montana Technical Council, supported SB 246.

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

Don Judge, Montana AFL-CIO, said he was not sure that he was an opponent but would like to bring some points to the Committee's attention so that they could proceed with caution. He said SB 246 absolves state and local governments from any responsibility to inspect any buildings. It would in fact encourage this, because if a building violation was found then the inspecting agency must assume liability. If building violations were ignored then liability would not be assumed because the inspecting agency was not aware of violations. He said he could understand the concerns relating to the limited number of inspectors that were employed in the state and commended the efforts of local governments that wished to jointly hire inspectors. Mr. Judge said he understood that it may be difficult for a private person to get an inspector to inspect their project, however SB 246 also covers public buildings, such as shopping malls, theaters, and the Capitol. He cautioned the Committee passage of SB 246 that provides immunity from prosecution if there was not an inspection. He said a possible solution could be an amendment that addressed private housing versus public buildings.

Russell Hill, Montana Trail Lawyers Association, opposed SB 246. He said his organization's objection to this bill was similar to

opposition that it has expressed towards other legislation. He said civil liability was an effective method to enforce standards and values. Civil liability in fact could be more effective than government agencies. He said that people who abide by building standards are not rewarded when people who do not benefit economically from the consequences of their actions. He said government entities already have an immense protection from liability by \$750,000 and \$1.5 million limits.

He said it would be poor policy not to encourage the inspections to take place even when there is fast growth. It would be more direct and honest for the state to admit that it could not make the inspection and remove the laws from the books.

Mr. Hill said another advantage of civil liability is that the court could look at each case individually. Section 1 would replace the negligence standard with actual knowledge. Subsection 2 would then eliminate actual knowledge and would insulate negligent parties in a cooperative venture from liability. He said civil liability encouraged people to work together in cooperative situations.

**Questions From Committee Members and Responses:**

Sen. Towe asked Mr. Kopel if he drafted SB 246. He said it was his idea but was drafted by a consultant that had worked on companion legislation. Sen. Towe asked what the intent of subsection 2 was. Mr. Kopel said that it provides immunity to a joint employer for a cause of action which occurred in a jurisdiction other than the one where the cause of action occurred. For example, if Helena and East Helena used a joint employee. If a cause of action occurred in East Helena, Helena would not be held responsible for the act of that employee.

Sen. Towe asked what would happen if that employee made an inspection in Townsend. Mr. Kopel replied that the inspector would not be permitted to make an inspection in Townsend. Sen. Towe read Section 1, Subsection 2 of SB 246. Mr. Kopel said that an employee of the joint employment agreement could not make an inspection outside that area. Outside of that area it would be the responsibility of the state or that communities's inspector. Sen. Towe asked what would happen if the inspector performed the inspection anyway. Mr. Kopel said that it would have no legal effect. He would be performing an act he was not authorized to do and he said it was his opinion if the state would not be liable at all.

Sen. Towe asked if the immunity in Section 2 also refers to the immunity granted in Section 1 or was that blanket immunity even if there was actual knowledge. Mr. Kopel replied it was not blanket immunity, Section 1, Subsection 1 would set a new standard of liability. It would change the standard of care or duty that is required. He said subsection 2 would not alter the

standard of care. In a joint employment situation liability would be limited to the jurisdiction where the action occurred.

Sen. Towe said that the standard in subsection 2 is the standard in subsection 1. Mr. Kopel said that it does not alter that standard of care.

Sen. Bartlett asked how many times the state had been sued for negligence while conducting building inspections. Mr. Kopel said that he had been in Montana 1 year and that fortunately there have been no suits. He said that several local jurisdictions have been sued. He said he had obtained releases from the owners by helping them in suits against the contractors. Sen. Bartlett asked if he had knowledge of lawsuits prior his tenure in Montana. He said no.

Sen. Crippen asked about the number of buildings built in violation of the buildings codes. Mr. Kopel said that roughly 35%-40% are in violation until builders are required to submit plans and obtain building permits. Without destroying or altering the structure there was no way to insure that every aspect of the building code had been met. He said SB 246 did not ask for total immunity but wanted to establish a reasonableness standard. When a building code violation was seen then action would be taken. Manpower at the current level does not allow inspection at each level of the building process.

Sen. Crippen asked if Mr. Kopel was implying that local building inspectors were not doing their job on 30% to 40% of the inspections. Mr. Kopel clarified that the "30% to 40%" figure were the projects started without going through the building code process. What has been caught by the inspectors was then determined if it reasonably complied with the building code, but they do not require that structures be torn down to check all aspects of construction.

Sen. Crippen asked how someone could get around the building codes and avoid being investigated by building inspectors. Mr. Kopel said that building inspectors on the local level are doing an excellent job to enforce the law and protect the public. However, in that 30%-40% figure of structures, caught in on-going construction, it would be impossible to insure that all codes were followed unless the structures were dismantled.

Sen. Crippen said the uninspected buildings have avoided the process and should be inspected. Mr. Kopel said the problem occurred when construction had been partially completed and there was no authority to have these structures torn down for inspection.

Sen. Towe asked what was really meant by part 2. He referred to "immunity" on page 2, line 2 and asked if that referred to that portion of paragraph 1. Mr. Kopel said that subsection 2 does not change the standard of care as provided in subsection 1.

Sen. Towe asked if the use of "immunity" in subsection 2 was defined by "immunity" in subsection 1. Mr. Kopel said that "immunity" used in subsection 2 is complete immunity for a jurisdiction where the cause of action did not occur.

Sen. Towe asked if "immunity" will have a different meaning in subsection 2 than in subsection 1. Mr. Kopel said different only in that the cause of action did not occur.

Sen. Towe said the subsection 2 would be 100% total immunity and not the same standard in subsection 1. Mr. Kopel said it would be 50-50. Subsection 2 would maintain the standard for "actual" knowledge. The other member in a joint employer relationship would maintain total immunity because they did not have actual knowledge. He said subsection 2 would not alter subsection 1.

Sen. Towe said a serious amendment was needed because subsection 2 would withdraw the immunity granted in subsection 1. Mr. Kopel responded that the language was prepared by the Legislative Counsel.

**Closing by Sponsor:**

Sen. Harp said there were some problems with SB 246, but they could be fixed and hoped that some "middle ground" could be reached.

**HEARING ON SB 304**

**Opening Statement by Sponsor:**

Sen. Christiaens, District 18, said SB 304 would provide for the forfeiture and disposal of motor vehicles involved in an accident if neither the driver nor the owner has insurance covering the vehicle, and if the driver is convicted of an offense for actions involving the accident. He gave an example of a neighbor that had a vehicle that has been struck 3 times by 3 different uninsured motorists.

Sen. Christiaens said SB 304 would confiscate the vehicle and within a reasonable time frame sell the vehicle and disperse the funds to the appropriate parties. If after the sale there were any additional funds they would be given to the victims to compensate for their loss. He said many times these confiscated vehicles have a low value but confiscating the vehicles will encourage others to have insurance and give some compensation to the victims.

**Proponents' Testimony:**

George Ochenski supported SB 304.

**Opponents' Testimony:**

Dan Shea, Low Income Coalition, opposed SB 304 and asked the Committee to look at this bill from the viewpoint of low income people. He said this legislation was well meaning but the reality was low income people or working poor cannot afford insurance often due to their low income. He said a car is a necessity for medical emergencies or going to the grocery store. He said it is difficult to afford even minimum liability on a low income. If SB 304 was approved, he would hope the minimum wage was raised so that insurance could be purchased. A second solution would be a pool of money to benefit very low income people to help them buy insurance.

**Questions From Committee Members and Responses:**

Sen. Grosfield asked for clarification about the definition of "accident" on page 1, line 13 and "traffic offense" on page 1, line 19. Sen. Christiaens said a speeding ticket would not generally involve an accident. He said "accident" included a dented fender and would involve physical damage to property.

Sen. Halligan asked about the fines and penalties associated with SB 304 that seemed to be greater than the standard fines associated with driving without insurance. Sen. Christiaens said the level of the fines would "get someone's attention". For example, if a \$5,000 car was confiscated and sold the "public would know about it".

Sen. Halligan asked what would happen if the value of the confiscated car was exceeded by the cost of impoundment. Sen. Christiaens said he originally asked for a 90-day time limit but was told by the Legislative Council that was not appropriate. He said one of the problems is defining what is a reasonable time limit for a municipality to have an auction for confiscated items. He said there should be a more expeditious manner to handle the disposal of confiscated cars that would avoid the issue of excessive impoundment fees.

**Closing by Sponsor:**

Sen. Christiaens said describing SB 304 as "bad policy" forgets the victims, and they need to be compensated for their losses. He said he is concerned about the plight of poor people. Driving is responsibility that includes obtaining insurance and can be done with proper budgeting. Insurance companies have pay plans so that insurance can be paid for on a weekly basis, although the rate is higher. He said the opportunity is out there for people to obtain insurance to cover possible victims.

**Further Discussion:**


At Sen. Doherty's request George Ochenski told the Judiciary Committee about a possible committee bill. The bill would be an amendment to the Fish and Game agreement in the Flathead. The proposed legislation was sometimes called the "Del Palmer"

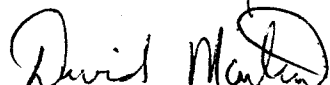
amendment. This amendment would clarify the law regarding who has authority to issue joint licenses and for what purposes. The Salish-Kootenai Tribe has worked this out with the Attorney General's Office and the Administration. He said he would bring the language individually to the Senators later. Mr. Ochenski read a draft letter to further explain the situation.

Chair Yellowtail asked Mr. Chris Tweeten to explain a possible amendment to the proposed "Open Meeting" law. Mr. Tweeten said the information had been distributed to the Committee and was acceptable to the Attorney General's Office.

**ADJOURNMENT**

**Adjournment:** Meeting adjourned at 12:12 p.m.

  
\_\_\_\_\_  
SENATOR YELLOWTAIL, Chair

  
\_\_\_\_\_  
DAVID MARTIN, Secretary

BY/dm

# ROLL CALL

SENATE COMMITTEE

Judiciary

DATE 2-11-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	✓		
Senator Doherty	✓		
Senator Brown	✓		
Senator Crippen	✓		
Senator Grosfield	✓		
Senator Halligan	✓		
Senator Harp	✓		
Senator Towe	✓		
Senator Bartlett	✓		
Senator Franklin	✓		
Senator Blaylock	✓		
Senator Rye	✓		

FC8

Attach to each day's minutes

**AMENDMENT TO SB210  
SENATE JUDICIARY COMMITTEE**

1. Page 1, line 5  
Following: "For"  
Strike: "Live Bingo,"

Page 1, line 5  
Following: "KENO"  
Strike: ", "

Page 1, line 15  
Following: "~~\$100~~"  
Strike: "\$800"  
Insert: "\$100"

Page 1, line 16  
Following: "bingo"  
Strike: "award"  
Insert: "game"

Page 1, line 16  
Following: "or"  
Insert: "\$800 for each individual"

SENATE JUDICIARY  
HIBIT NO. 1  
DATE 2-11-93  
BY SB 210



# Lake County Tavern Association

Post Office Box 53

Ronan, Montana 59864-0053

L.C.T.A. meets the second Wednesday of each month

SENATE JUDICIARY  
SUBMIT NO. 2  
DATE 2-11-93  
BILL NO. SB 210

2-11-93

Senate Judiciary Committee  
Montana Legislature  
State Capitol  
Helena, Mt.

RE: Testimony on SB 210

Dear Mr. Chairman and Committee Members,

The members of the Lake County Tavern Association have reviewed SB 210 and would like to offer the following information in support of this bill.

As residents of the Flathead Indian Reservation there are several conditions which place non tribal members at a competitive disadvantage. These conditions include machine play with \$1000.00 pay out values, bill acceptors which allow for \$10.00 and \$20.00 play, and of course the issue of no taxes collected on tribal member owned machines. Given the recent interpretation of the IGRA we would anticipate that at some point the number of machines and pay out limits for tribal owned machines will also increase placing our state licensed operators at an even further disadvantage.

P 2

Authorizing \$800.00 pay out values on poker machines would be a method of closing the existing gap without expanding the type of gaming currently authorized by the state. As keno machines currently provide for an \$800.00 pay out it would appear logical that poker machine pay out values should be increased to a similar level removing the current disparity and allowing for a level of reasonable competition.

Thank you in advance for your consideration.

Respectfully,



Bob Pierce, President  
for Lake County Tavern Association Members

The following Lake County Tavern Association members strongly support SB 210 and request your favorable vote on this important issue.

44 Bar- Babe Charett, Big Arm Pit Stop-Gene Watne, Branding Iron-John Herak, Cheers Etcetera-Al Monte, Diamond Horseshoe-Bert Schultz Dicks Pheasant-Dick Jungers, Eagles Club-Kevin Dupuis, BPOE Elks-Ann Events, Freddies- Cal Brown, Model Tavern-Barb King, Pizza Hut, Linda Perry, Polson Bay Grocery, George Mahoney, The Rabbit Tree Inn, John Gardner, Rancho Deluxe, Regatta Pizza- Bill Brownell, The Schiefelbein Haus, Steve Schiefelbein, Second Chance- Rod Smart, South Shore Inn- Denny Asper-The Tackle Box-Pat Farly, The Valley Club-Ken Snyder-VFW Club, Pete Mangels-Lucky Strike Lanes, Chuck Jennison-Club Montana, Bob Pierce-The Silver Dollar Bar, Gil Michel

SENATE JUDICIARY  
EXHIBIT NO. 3  
DATE 2-11-93  
BILL NO. SB 210

EXCERPTS OF COMMENTS OF THEN ATTORNEY GENERAL MARC RACICOT  
BEFORE THE EXECUTIVE BOARD OF THE MONTANA TAVERN ASSOCIATION  
ON MAY 12, 1992

	BENNETT	BRADLEY	MCCRATH	MORRISON	RACICOT
<u>GAMBLING ISSUES:</u>					
OPINION ON EXISTING FORMS OF GAMBLING	Adequate	Adequate	Will support whatever industry gets thru legislature	Might consider local option 21 but mind not made up.	Adequate; best kept in hands of small business.
EQUALIZE PAYOUT LIMITS W/VIDEO KENO (\$800)?	Support	\$ amount should be up to DOJ but if Reservations negotiate greater payouts, everyone should abide by the same rules.	Support; doesn't make sense to have different payouts.	Inclined to support but would not commit.	Support; has proposed this in the past.
POSITION ON EXISTING 15% MACHINE TAX	Keep as is Would veto increase.	Keep as is; will not seek sin taxes.	Keep as is; on record to veto any increase	Keep as is. Would veto any increase	His tax pkg does not include increase; no commitment to veto because revenue picture might require him to consider one "but I would not like to see that happen."
CREATE GAMING COMMISSION OR LEAVE REGULATION W/ATTY.GEN.?	Supports Commission	Better off being regulated by elected official	Whatever we get thru legislature is OK. No strong opinion.	Supports Commission; AG too political.	Better off being regulated by elected officials who are responsible to the people.
SUPPORT/OPPOSE \$10 LIMIT, MAX. 5 TABLES BLACKJACK?	Oppose Would veto	Oppose; no commitment to veto; Likes present level. No on punchboards/pull tabs.	Would support anything industry can get through legislature.	Undecided, but leans toward local option "21"; sympathetic for towns bordering N.Dakota.	Oppose

SENATE JUDICIARY  
EXHIBIT NO. 4  
DATE 2-11-93  
BILL NO. SB 210

SENATE JUDICIARY COMMITTEE

FEBRUARY 11, 1993 - SB 210

My name is Jean Agather and my home is in Kalispell. I am one of several spokespersons for a grassroots organization, Don't Gamble With the Future. Our membership is entirely volunteer and independent, covering the gamut of occupations, lifestyles and viewpoints. Supporters and contributors span from Miles City and Volberg to Billings, Bozeman, Carter, Clancy, Helena, Kalispell, Missoula, Highwood and even Butte. We've discovered a common concern: the continual and unrelenting expansion of gambling in our communities. Together we have made an exhaustive search for accurate, research-based data on the social, economic and criminal impact of this phenomenon in Montana and other states. We have attempted to communicate reasonably with our representatives in Helena. Because of our concerns, we have urged the Legislature to refrain from endorsing any expansion of gambling and to begin to assess and address the impact of present gambling in Montana.

It is also our wish to preserve the integrity of the small traditional tavern owner who is doing extremely well with the present level of gambling in Montana. Many of these small business owners that we have talked to understand that the balance in this industry is very delicate and that greed and thoughtless expansion could threaten their existence.

I talk to hundreds of ordinary Montanans about gambling and want to bring you their concerns:

1. Accountants and bankers who are seeing an alarming rise in gambling related bankruptcies.

2. Retail businesses that must compete for the \$350 million going into video gambling machines and not the marketplace.

3. Employers who are victims of employee embezzlement and other gambling related losses.

4. Restaurants unable to compete with casino supported food prices and would-be new restaurants unable to afford gambling inflated liquor licenses.

5. Educators who must increasingly deal with the deprivation of children in families with problem and compulsive gamblers.

6. Law enforcement personnel who see almost daily gambling related crime and fear what further expansion will bring.

All of these "ordinary" Montanans can't be here today to share their concerns about this bill. They have become our contributors and supporters and ask that we be their voice to you.

SB 210 is a major expansion, an 800 percent increase in payouts on poker machines as well as live keno and bingo. If there is value in consistency as some representatives of the gambling industry would say, we suggest \$100 payouts on all forms. This level has created a very healthy industry and will undoubtedly maintain the healthiness if left at the current level of payout.

Not only does Don't Gamble With the Future oppose expansion

of payouts and machines, but also will extend fairness to the industry by opposing increases of taxation on gambling machines. We believe there is grave danger in governments reliant and fiscally addicted to this source of revenue.

For these reasons, we urge your Committee to exercise a strong DO NOT PASS on SB 210.

Thank you for your time in allowing this testimony.

JEAN AGATHER

DON'T GAMBLE WITH THE FUTURE

P. O. Box 2301

Kalispell, MT 59901

EXHIBIT 4  
DATE 2-11-93  
SB 210

Mr. Chair, members of the Committee, my name is Gloria Hermanson. I represent the group of Montana citizens called "Don't Gamble With The Future". We are against any expansion of gambling in Montana.

The gambling we already have in Montana, although it generates some income to the state and local governments in the form of taxes, is proving very costly. It bears both personal costs to many of Montana's people and costs the state in areas of investigation, enforcement, judicial procedures, welfare and more.

A 1992 study of gambling involvement and problem gambling in Montana, initiated by the Montana Department of Corrections and Human Services reveals some startling information. Between 11,500 and 30,100 Montanans are estimated to have been problem or pathological gamblers at some time in their lives. It is estimated, based on the response to the study, there are between 3,500 and 11,500 Montana residents that can currently be classified as lifetime probable pathological gamblers. Pathological gamblers have significant legal problems with associated costs to the civil and criminal justice systems. At a minimum, well over 5,000 adults in our state are currently experiencing severe problems related to their involvement in gambling.

The study indicates that problem and pathological gamblers in Montana are more likely to have played gaming machines and less likely to have wagered on other forms of gambling. There has been a recent increase in the rate of gambling involvement among Montana residents. In 1989 55% of respondents had participated in gambling. In 1992, 73% of respondents had participated. In Montana, for the first time, there is no significant gender difference in problem gamblers. At this point women are just as likely to be pathological gamblers as men and the most popular type of gambling is gaming machines. The number of AFDC mothers in this state and our fiscal inability to deal with their plight appropriately is bad enough without adding to it by luring them with the prospect of high winnings, to putting their money into machines in the hopes of improving their plight.

Those who work in the field of compulsive gambling treatment say there is a direct correlation between the urge to gamble and the size of payout.

In addition, I have with me written testimony from a businesswomen in Kalispell, Sherry Sander, who tells her story of being victimized by a gambling addict in her employ who embezzled nearly \$100,000 from her to feed her habit.

*Sue Rolfing*  
*1795 Middle Road*  
*Columbia Falls, Montana 59912*

SENATE JUDICIARY *6*  
EXHIBIT NO. \_\_\_\_\_  
DATE *2-11-93*  
FILE NO. *SB 210*

TO: Members of the Senate Judiciary Committee

2/9/93

RE: SB 210 An act increasing from \$100 to \$800 the maximum allowable prize for live bingo, live keno and video draw poker gambling machines

I have read this bill and consider it an enormous expansion of the gambling industry far beyond the limit of what most Montanans consider acceptable. There is already a significant number of Montanans with a ruinous attraction to these games of chance, and an increase in the "prize" would only encourage more. I believe the majority of Montanans wish for gambling activities to remain on a small scale, and not be conducted in a casino atmosphere which this sort of high stakes gambling promotes. If prize equalization is sought, it may be more appropriate to reduce the prize on video keno to match the other games at \$100.

---

*Sherry Sander Studio*  
P.O.Box 5448  
Kalispell, Montana 59903-5448  
406-755-3507

SENATE JUDICIARY

EXHIBIT NO. 2DATE 2-11-93BILL NO. SB 210

February 9, 1993

TO: SB210 LEGISLATIVE COMMITTEE MEMBERS

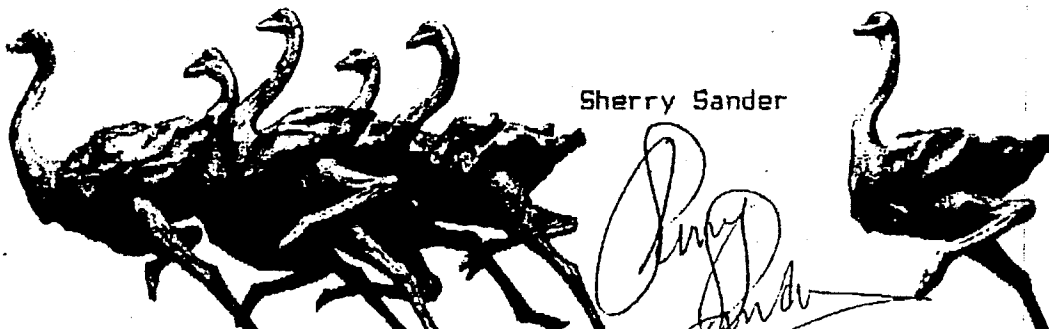
My opposition to SB210 results from being victimized by a gambling addict who embezzled nearly \$100,000 from me to feed her habit. Prior to discovery of this crime, this person was known as a responsible member of the community, a respected wife and mother, loyal employee and good friend. The profound shock experienced by discovering this behavior was matched only by the knowledge that my case was merely a statistic, one among many, many cases of a similar nature. This has been a personally and financially devastating experience.

Legalized gambling produces tax revenue. Unfortunately, the State of Montana lost all tax revenue from otherwise taxable income in the amount of the embezzled money. The embezzled money represented the working capital of my business. This loss forced a sharp reduction in inventory production. The local foundry that produces my inventory (bronze castings) was greatly affected, as well. I am a major customer of this business which employs up to 17 people. Cutting back my production, resulted in lost revenue for the business, lost wages for those employees whose hours were affected, therefore, more lost tax revenue for the State of Montana. My business, a foundry business and the jobs of 17 people were jeopardized by the actions of one gambling addict. In addition to the lost revenue, cost of prosecution, and cost of supervising the 20-year sentence imposed, born by state and county governments, is tremendous.

Legalized gambling is a fact. Its limited foothold is becoming an ever-increasing bureaucratic burden to the State and threat to the community. My experience and statistics bear this out. Desensitization has been a huge factor in the promotion of gambling. It is well known that state sponsored gambling has been a driving force behind the huge increase in all types of gambling sending the message that gambling is respectable. Players increase, payouts get bigger and people become increasingly desensitized to winnings previously considered huge.

Gambling addicts respond to the high they get from the action of the game. Increasing the stakes, eight-fold, as SB210 proposes, increases the risks, the high and the gambling fever. Backers of this Bill are counting on this. Backers of this Bill are not concerned that it also increases gambling addiction, social burden, moral decay and government bureaucracy. It's not their problem...its yours.

Backers of SB210 attempt increasing desensitization and greater control. Red lights flash from all directions. I urge you to reject the notion SB210 will help solve budget problems. I urge you to have the courage to legislate responsibly. I urge you to oppose SB210. Thank you.



# The City of Kalispell

Incorporated 1892

Telephone (406)752-6600

Fax: (406)752-6639

PO Box 1997

Zip 59903-1997

Building Department

February 11, 1993

Douglas Rauthe  
MayorBruce Williams  
City ManagerCity Council  
Members:Gary W. Nystul  
Ward ICliff Collins  
Ward IBarbara Moses  
Ward IIFred Buck  
Ward IIJim Atkinson  
Ward IIILauren Granmo  
Ward IIIPamela B. Kennedy  
Ward IVM. Duane Larson  
Ward IVCraig Kerzman  
Building OfficialBrian Wood  
Zoning AdministratorDwain Elkins  
Building InspectorWilliam (Bill) Muller  
Building Inspector

Senator Bill Yellowtail, Chairman  
Senate Judiciary Committee  
Capitol Station  
Helena, MT 59620

Re: SB246

Dear Chairman Yellowtail:

I am the Building Official for Kalispell, and I favor passage of SB 246. Such a bill should allow jurisdictions to consolidate for more efficient public service while not exposing the separate portions to greater risk than each would have separately.

Sincerely,



Craig A. Kerzman,  
Building Official

CAK/mw

SENATE JUDICIARY

BILL NO. 8

2-11-93

BILL NO. SB 246



## DEPARTMENT OF PUBLIC WORKS/BUILDING INSPECTION DIVISION

435 RYMAN • MISSOULA, MT 59802-4297 • (406) 523-4629

February 10, 1993

SENATE JUDICIARY

EXHIBIT NO. 8ADATE 2-11-93BILL NO. SB 246

Senator William P. Yellowtail  
Chairman, Judiciary Committee  
Capitol Station  
Helena, MT 59620

RE: Senate Bill #246

Honorable Senator Yellowtail:

I am writing, as a code enforcement official, in support of Senate Bill No. 246 on limiting immunity as introduced by Senator Harp.

This bill addresses a continuing problem for code enforcement throughout the State. Under the present system, inspections are made at pre-set intervals during the construction process, and it's the contractors responsibility to call and request the required inspection. Often during these inspections it is impossible for an inspector to check every item, for example, all the nails in the roof shingles. Several States have already addressed this issue, for example, New York which understands that a Code Inspector is not present for every moment of the construction process and therefore holds the Municipality harmless where items are not readily visible for inspection. Another problem that we often face is where construction has already begun without permits, or inspections. We discover the project and stop it, then when we issue the permits and make inspections there are areas which cannot be inspected short of dismantling the building, which is politically, impossible. Then we are faced with issuance of the permits and making inspections, however, at the Final inspection, we are requested to issue a Certificate of Occupancy (A statement of compliance), then if there is a failure, which could happen in the uninspected area, the City is held liable for damages.

Part two of the Bill is a sensible solution for the size of communities in Montana, since they are small they often cannot afford to pay competitive salaries for a competent inspector. Pursuant to SB 246 several communities can join together and hire a capable person and if there is a lawsuit in one community the other communities do not have to worry about being liable for what happened in another community.

I thank you for your favorable consideration on this matter.

Sincerely,

Peter A. Mion, C.B.I.O.  
Building Official

DATE 2-11-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 210 - Mathis SB 246 - Harp  
SB 304 - Christians

Name	Representing	Bill No.	Check One	
			Support	Oppose
Lynn M. Seely	SAILBOAT GT FALK	210	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pam Ehl	Little Bear Bldg	210	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Randy Regor	Gold Nugget	210	<input checked="" type="checkbox"/>	<input type="checkbox"/>
STEVE ARNTZEN	SILVERTIP MSLA	210	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dennis Casey	Gaming Industry Assn	210	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HARLEY WARNER	ASSOC. OF CHURCHES	210	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Helen DAWSON	SELF STOP GAMBLING NO MORE	210	<input type="checkbox"/>	<input checked="" type="checkbox"/>
TOM MCNAB	MONTANA TECHNICAL COUNCIL	246	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jim Kember	Public Safety DOC	246	<input checked="" type="checkbox"/>	<input type="checkbox"/>
James F. Brown	Bldg. Codes Bureau, DOC	246	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Kay CONNER	1200 Henderson #3 Helena	210	<input type="checkbox"/>	<input checked="" type="checkbox"/>
BILL CONIVER	1200 HENDERSON HELENA	210	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Dan Shea	MLTC	304	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Gloria Hermanon	Boil the milk w/ the future	210	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Jean Agostini	D. H. W. 7		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Pat Melby	Riviera Foundation	210	<input type="checkbox"/>	<input checked="" type="checkbox"/>

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-11-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 210 , SB 246 , SB 304

Name	Representing	Bill No.	Check One	
			Support	Oppose
Dore Schwinden	Reg. Dist #20	210	✓	
Gordon Morris	MACo	246	✓	
Deub Mauds	Gorgensons			
Charles R. Brooks	MT. Retail Assoc	210		✓
RICHARD L. KOPEL	MT. DEPT. OF COMM.	246	✓	
DON Judge	MT STATE AFL-CIO	SB 246		✓ Amend

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY