

MINUTES

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

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN RUSSELL FAGG, on February 13, 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. Vivian Brooke (D)
Rep. Dave Brown (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
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: Rep. Angela Russell

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: No Hearings Scheduled
Executive Action: HB 433, HB 502, HB 370, HB 483, HB 416

EXECUTIVE ACTION ON HB 433

Motion: REP. DAVE BROWN MOVED HB 433 DO PASS.

Motion/Vote: REP. BROWN moved an amendment. See Standing
Committee Report attached. Motion carried unanimously 17-0.
REP. RUSSELL was excused from this hearing.

Discussion:

CHAIRMAN FAGG proposed a concept amendment. He said he knows this particular business, and the proprietor doesn't collect any money from the situation for himself; 50% goes into a scholarship program or a charitable organization and the other 50% goes to participants or winners. The concept amendment is limited to situations where at least 50% of the money goes to a scholarship or charity organization and up to 50% goes to the participants, and the owner gets zero percent of the money.

REP. ALVIN ELLIS stated he is not opposed to that amendment providing the owner can take 15% for administrative costs.

REP. BROWN reiterated that the statute says 15 percent and is used for costs directly related to conducting the game, for example, administrative costs.

CHAIRMAN FAGG did not move the amendment. He doesn't like to expand on gambling and thinks this bill does that.

Motion/Vote: **REP. BROWN** MOVED HB 433 DO PASS AS AMENDED. Motion carried 11-6. Those voting for the bill were **REPS. BROWN, BIRD, BROOKE, McCULLOCH, RICE, SMITH, TASH, TOOLE, WHALEN, WINSLOW** and **WYATT**. Those voting against the bill as amended were **CHAIRMAN FAGG, REPS. VOGEL BERGMAN, CLARK, GRIMES, and SAYLES**.

EXECUTIVE ACTION ON HB 502

Motion: **REP. BROWN** MOVED HB 502 DO PASS.

Motion: **CHAIRMAN FAGG** moved an amendment to strike section 2 from the bill. He said he is opposed to that section because giving a person 90 days to come back after he jumps bond encourages jumping bond. **CHAIRMAN FAGG** said that when someone jumps bond on the county attorney's side, the punishment can be severe. In essence, striking section 2 means that current language will remain the same; all of that language in section 2, up until the underlined language, is current law.

REP. WHALEN asked **CHAIRMAN FAGG** whether the court would still have the power to hold that individual in contempt if he doesn't show up in court to pay his bond. **CHAIRMAN FAGG** concurred.

Vote: **CHAIRMAN FAGG's** amendment to strike section 2 from the bill. The motion failed 10-6. Those voting for the amendment were **CHAIRMAN FAGG, REPS. VOGEL, BERGMAN, RICE, WINSLOW** and **WYATT**. Those voting against the amendment were **REPS. BROWN, BIRD, CLARK, GRIMES, McCULLOCH, SAYLES, SMITH, TASH, TOOLE** and **WHALEN**. **REPS. BROOKE** and **RUSSELL** were excused from voting.

Motion/Vote **REP. LIZ SMITH** moved amendments proposed by **REP. BARNETT**. See Standing Committee Report. Motion carried

unanimously 18-0.

Motion/Vote: REP. BROWN MOVED HB 502 DO PASS AS AMENDED. Motion carried 17-1 with REP. WINSLOW voting no.

EXECUTIVE ACTION ON HB 370

Motion: CHAIRMAN FAGG moved REP. MOLNAR'S amendment.

Motion: REP. WHALEN offered a substitute motion to adopt all the amendments with exception to the last amendment. He also asked that the amendments be segregated. CHAIRMAN FAGG confirmed that the committee will vote on the amendments separately and will vote on the last amendment last.

Vote: The question was called on REP. MOLNAR'S amendments excluding the declaratory judgement amendment. First set of amendments passed unanimously 18-0.

Vote: Question was called on the Declaratory Judgement amendment. Amendment failed 15-3. Those voting for the amendment were CHAIRMAN FAGG, REPS. BERGMAN and CLARK.

Motion: REP. RICE offered an amendment to strike subparagraph (c), page 3, lines 15-18 from the bill.

Discussion:

REP. RICE said he believes that bringing in physicians who may or may not be doing a good job someplace else and giving them a license to practice in rural Montana with complete immunity is an incentive program based upon tax benefits but not liability.

REP. BROWN said this section implies taking a good doctor, one who is capable of obstetrics and surgery, and putting him/her in a rural setting. This bill, in its present form, gives complete liability from anything a doctor should do in his practice. It also says that the doctor is completely protected from whatever happens to patients.

Motion: REP. BROWN MOVED HB 370 BE TABLED.

REP. ELLEN BERGMAN commented that most of the rural doctors should only prescribe medication, i.e. antibiotics; some may practice obstetrics, but should not be allowed to do surgery.

REP. SMITH, related having been a rural Montanan, contended the rural areas have attracted physicians that urban areas didn't want. She said she is concerned about consumer protection.

REP. BROWN pointed out that on page 3, lines 9 and 10, there is an unconstitutional exemption and retirement fund. This can be applied specifically to one segment and not to an entire class.

There is also, under this bill, no liability. The definitions are lacking in this bill.

Vote: HB 370 BE TABLED. Motion carried 15-2. Those voting to table the bill were REPS. VOGEL, BROWN, BIRD BERGMAN, BROOKE, GRIMES, McCULLOCH, RICE, SAYLES, SMITH, TASH, TOOLE, WHALEN, WINSLOW and WYATT. Those voting against the table were CHAIRMAN FAGG and REP. CLARK.

EXECUTIVE ACTION ON HB 483

Motion: REP. HOWARD TOOLE MOVED HB 483 DO PASS.

Motion/Vote: REP. BROWN moved an amendment (See attached Standing Committee Report), the essence of which is there must be a second piece of evidence - left over marihuana cigarette, left over drugs. This bill only applies if the person is not over .10. This amendment only applies to the drugs in a person's system. If the person takes a blood test and shows up for a urine test, it says a person must have some other evidence. The amendment passed unanimously 17-0.

Vote: REP. TOOLE MOVED HB 483 DO PASS AS AMENDED. Motion carried 13-4. Those voting for the bill as amended were CHAIRMAN FAGG, REPS. VOGEL, BERGMAN, BROOKE, CLARK, GRIMES, RICE, RUSSELL, SMITH, TASH, TOOLE, WINSLOW, and WYATT. Those not voting for the bill as amended were REP. BROWN, McCULLOCH, SAYLES and WHALEN. REP. BIRD did not vote.

EXECUTIVE ACTION ON HB 416

Motion: REP. BROWN moved an amendment on behalf of REP. BIRD. EXHIBIT 1. Page 13, line 12, strike: "and other human rights organizations."

Motion: REP. BOB CLARK offered a substitute motion to strike all the language from the word "the" on line 11 through "curriculum" on line 15. He thinks law enforcement has the ability to determine whether the person is in violation or not.

Discussion:

REP. VIVIAN BROOKE said she recognizes the fact that the Human Rights Commission is a valid organization in the state that deals with many of the ongoing complaints and crimes. She added that she believes it is very appropriate that we use the agencies in our state that are trying to get the information needed for this training and education. REP. BROOKE is in favor is REP. BIRD'S amendment, but is opposed to REP. CLARK'S.

Vote: The question was called on REP. CLARK'S amendment. The amendment carried 9-7. Those in favor of REP. CLARK'S

amendment were CHAIRMAN FAGG, REPS. VOGEL, CLARK, GRIMES, RICE, SAYLES, TASH, WHALEN, and WYATT. Those not in favor of the amendment were REPS. BIRD, BROOKE, BROWN, MCCULLOCH, TOOLE, RUSSELL, and WINSLOW.

REP. WHALEN believes this bill is too political in nature. At the time of the hearing on this bill, he asked two questions of Ed Hall, Board of Crime Control, that he felt significant: 1) Is reporting hate crimes going to be public information, to which Mr. Hall answered yes; and 2) What is the purpose of collecting this kind of data? Mr. Hall said the primary reason the law enforcement agencies would need this kind of information is in allocating law enforcement resources.

REP. WHALEN stated he voted against the bill which created the state crime statute in the 1991 session. In the law, many crimes require that mental intent be proved, and he thinks it is virtually impossible to prove malicious intent towards a specific group of people. REP. WHALEN said this bill says the state will collect information which, based upon the answers he received, will only be used to allocate resources but that the information will be available to the public.

REP. SCOTT MCCULLOCH said he is not aware of any certain political agenda addressed by REP. WHALEN. He said all this bill does is require people to report and to keep active files specifically aimed at certain types of groups. There is no political agenda or self-motivating intent in this bill.

REP. BILL TASH spoke against the bill. He declared that he has every confidence in locally elected people to enforce and prosecute crimes. Leaving hate crime reporting to the local level will not cause significant problems.

REP. BROWN said this bill does two things and only two things: 1) It collects statistical information for submission to the U.S. Justice Department and the Montana Justice Department. 2) It helps train law enforcement officers to be more sensitive to this subject matter. He explained the bill came from a federal statute signed by President Bush in 1990 requiring U.S. Justice Department to start gathering data in all 50 states about hate crimes and their massive growth. Rejection of this bill would leave Montana as a non-participant in that oversight, and REP. BROWN does not want to be associated with that.

Motion/Vote: REP. BROWN MOVED HB 146 BE TABLED. Motion failed on a 9-9 tie vote. Those voting for the table motion were REPS. VOGEL, BERGMAN, CLARK, GRIMES, RICE, SAYLES, SMITH, TASH and TOOLE. Those voting against the table motions were CHAIRMAN FAGG, REPS. BROWN, BIRD, BROOKE, MCCULLOCH, TOOLE, WINSLOW and WYATT.

Motion: REP. BROWN moved the Department of Justice amendments 1, 2, and 4 (See Standing Committee Report of February 17, 1993).

Discussion:

REP. BROWN said it changes the statement of intent language to say that law enforcement shall seek the cooperation of anyone charged, because they can't be required to cooperate. Line 6, page 2, is a requirement for analysis of statistical information regarding crimes, and it strikes section 3 in its entirety.

Vote: The question was called on amendments 1, 2, and 4. Motion carried unanimously 18-0.

Motion/Vote: REP. BROWN moved to remove language regarding the words "actual or perceived" on page 2, line 9. Motion carried unanimously 18-0.

Motion: REP. RANDY VOGEL offered an amendment to strike "sexual orientation" from the bill.

Discussion:

REP. BROOKE referred her question directly to REP. VOGEL and asked him if he is aware that gays and lesbians are being attacked and physically assaulted. She said there are actual occurrences of this. REP. VOGEL affirmed that he is aware of these problems, and that child molesters are also attacked and assaulted.

CHAIRMAN FAGG said there's nothing improper about having to report sexual orientation hate crimes. He understands some of the connotations it brings with it, but it is his desire to have reliable statistics on all kinds of hate crimes, including hate crimes against homosexuals.

REP. ELLEN BERGMAN said there is a similarity in reporting hate crimes with McCarthyism. Hate crimes and hating groups of people have been going on for years, and these people have a free right, in this country, to do so. There are laws and law enforcement that cover crimes, and the general public should leave it up to law enforcement to handle real crimes.

Motion/Vote: REP. VOGEL moved a substitute amendment to strike sexual orientation on page 1, line 7; page 2, line 10; and page 3, line 10. Amendment carried 9-8 with REP. BIRD not voting. Those voting to strike sexual orientation from the bill were REPS. VOGEL, BERGMAN, CLARK, GRIMES, RICE, SAYLES, SMITH, TASH, and WHALEN. Those voting against the amendment were CHAIRMAN FAGG, REPS. BROWN, BROOKE, MCCULLOCH, RUSSELL, TOOLE, WINSLOW and WYATT.

Motion: REP. WHALEN moved a concept amendment to insert political activity in section 1, lines 11 after "human rights activities." He sees more malicious activities directed at people who are engaged in political activities.

Discussion:

REP. TOOLE asked REP. WHALEN what the intent of his amendment is and to clarify what he means by political activities. REP. WHALEN said his intention is to report civil rights activities, which is political. REP. VOGEL said this is too general and would include anything and anybody. REP. BROWN added politicians are set apart from slander, liable allegations, and are protected as a class in a lot of ways the rest of the population is not, and he doesn't think this amendment is appropriate for this bill.

Motion: REP. DUANE GRIMES again moved to table the bill based on the direction of the conversation during committee.

Discussion:

REP. RICE outlined two concerns he has with this bill. The first concern is that the federal government is already collecting this information; he doesn't know why the state should duplicate this work. The second issue concerns budgetary concerns; he doesn't believe the state can report hate crimes at \$435 per year.

Vote: HB 416 BE TABLED. Motion carried 9-8. REP. WINSLOW did not vote. Those voting to table the bill were REPS. VOGEL, BERGMAN, CLARK, GRIMES, RICE, SAYLES, SMITH, TASH and WHALEN. Those voting not to table the bill were CHAIRMAN FAGG, REPS. BROWN, BIRD, BROOKE, McCULLOCH, RUSSELL, TOOLE and WYATT.

ADJOURNMENT

Adjournment: 5:00 p.m.



REP. RUSSELL FAGG, Chairman



ELIZABETH MIKSCHKE, Secretary

RF/bcm

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

2-13-93

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. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

HR:1993

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CS-09

HOUSE STANDING COMMITTEE REPORT

February 15, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 483 (first reading copy -- white) do pass as amended .

Signed: [Signature]
Russ Fagg, Chair

And, that such amendments read:

1. Page 1, line 21.

Page 5, line 5.

Page 6, line 21.

Following: "alcohol"

Insert: "or drugs"

2. Page 5, line 7.

Strike: "; and"

Insert: ". A positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at the time the person was in control of a motor vehicle. A person may not be convicted of a violation of 61-8-401 based upon the presence of a drug or drugs in the person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state."

Committee Vote:

Yes 12, No 4.

371547SC.Fss

HOUSE STANDING COMMITTEE REPORT

February 15, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 502 (first reading copy -- white) do pass as amended .

Signed: _____
Russ Fagg, Chair

And, that such amendments read:

1. Page 1, line 14.

Following: "must be"

Insert: "released and"

2. Page 2, line 6.

Following: "address"

Insert: "within 10 working days or the bond becomes void and must
be released and returned to the surety within 5 working
days"

Committee Vote:
Yes 17, No 1.

371553SC.Hcs

collect from the operator, at the time of sale, a tax of \$1 for each 100 sports tabs sold and, within 15 days after the end of each calendar quarter, submit to the department any forms required by the department and the proceeds of the collected tax. The manufacturer shall keep a record of taxes collected as required by department rule. The records must be made available for inspection by the department upon request of the department. The department shall retain the proceeds of the tax to administer this part."

Renumber: subsequent sections

HOUSE STANDING COMMITTEE REPORT

February 15, 1993

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that House Bill 433 (first reading copy -- white) do pass as amended .

Signed: _____
Russ Fagg, Chair

And, that such amendments read:

1. Title, line 4.

Following: "AN ACT"

Insert: "PROVIDING THAT A BAR MAY CONDUCT A RACE BETWEEN PIGS, GERBILS, OR HAMSTERS AND CONDUCT ONE OR MORE SPORTS POOLS ON THE RACE;"

2. Title, line 6.

Strike: "SECTION"

Insert: "SECTIONS"

3. Title, line 7.

Following: "23-4-301"

Insert: "AND 23-5-502"

4. Page 2, line 24.

Following: line 23

Insert: "Section 2. Section 23-5-502, MCA, is amended to read:

"23-5-502. Sports pools and sports tab games authorized -- tax. (1) Conducting or participating in sports pools and sports tab games as defined and governed in this part is lawful, except that:

(a) sports tab games may only be conducted on premises licensed to sell alcoholic beverages for consumption on the premises; and

(b) only a licensee of premises that are located in an incorporated city or town with a population of less than 100 or located outside the boundaries of an incorporated city or town and that are licensed to sell alcoholic beverages for consumption on the premises may conduct a race between animals and conduct one or more sports pools on the race. The race may be conducted only if it is between pigs, gerbils, or hamsters and is conducted on the premises.

(2) A manufacturer licensed under 23-5-115 who sells sports tabs to a licensee operator for use in a sports tab game shall

Committee Vote:

Yes 14, No 6.

3715306C.Wss

Amendments to House Bill No. 416
First Reading Copy

Requested by Rep. Bird
For the Committee on Judiciary

Prepared by Valencia Lane
February 11, 1993

1. Page 3, line 13.
Following: line 12
Strike: "and other human rights organizations"

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 2-13-93 BILL NO. HB 416 NUMBER 17

MOTION: Motion to table carries 9-8

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	NO	VOTE
Rep. Diana Wyatt		✓
	9	8

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 2-13-93 BILL NO. HB433 NUMBER 17

MOTION: Motion to pass as amended carries 11-6

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	Excused	
Rep. Tim Sayles		✓
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	11	6