MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on March 17, 1993, at 10:06 a.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
Kelsey S. Chapman, Committee Secretary

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

Committee Business Summary:

Hearing:	HB 307, HB 272, HB 411
Executive Action:	HB 307, HB 272, HB 258, HB 429, HB 323, HB 121

HEARING ON HB 307

Opening Statement by Sponsor:

Representative Roger Debruycker, House District 13, told the Committee HB 307 would clarify that the Department of Justice would have the authority to change the games at a fair. Presently every time a game involving gambling is brought into Montana, it must be approved by the Legislature. HB 307 would provide the Attorney General with the authority to approve of the game. Representative Debruycker passed out proposed amendments

(hb030701.ajm).

Proponents' Testimony:

Bill Chiesa, General Manager, Metro Park, Billings, told the Committee he represented the various fairs and four carnivals that had business in Montana. He said in the 1989 session when the Comprehensive Gambling Bill was passed, games of skill were left out. In the 1991 session, a list of allowable games was legislated, and any game not on the list was illegal. HB 307 would allow the Attorney General to annually consider the list of games that could be played in Montana. If the definition of "games of skill or skill and chance" are added to legislation, the Attorney General would be able to add these games to the list. Then these games of skill would be legal.

Janet Jessup, Department of Justice, Gambling Control Division, said she did not believe it would take a great deal of time to analyze the list of games and the venture would not be costly. She said it would simplify and clarify the gaming situation for county attorneys.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

Representative Debruycker closed. Senator Yellowtail was assigned to carry HB 307 on the Senate Floor.

HEARING ON HB 272

Opening Statement by Sponsor:

Representative Jim Rice, House District 43, told the Committee HB 272 presented technical amendments to the Gambling Control Act.

Proponents' Testimony:

Janet Jessup, Administrator, Gambling Control Division, Department of Justice, told the Committee HB 272 was a companion bill to HB 411. Ms. Jessup said the provisions put into the Bill reflect incorrect references that were discovered during the administrative process at the Gambling Control Division. HB 272

was drafted at the request of the Department of Justice. The amendments were discussed before the Gaming Advisory Council and their comments made were incorporated in the Bill. Ms. Jessup handed descriptions of amendments to gambling laws (Exhibits #1a and #1b). She said there was little substantive matter in HB 272. She said there was an amendment (HB027201.agp) that corrected the references between HB 272 and HB 411.

Larry Akey, Montana Coin Operators Association, said provisions of HB 272 clarified the gaming statutes.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Blaylock asked Janet Jessup if the only area of substantive matter was subsection 7. Ms. Jessup answered this section was only a clarification of current law.

Closing by Sponsor:

Representative Rice closed on HB 272.

HEARING ON 411

Opening Statement by Sponsor:

Representative Royal Johnson, House District 88, explained the Justice Department and people in the gambling industry had worked to draft HB 411. He explained the Bill changed the current law and would limit the personal activities of gaming route operators. The new language in HB 411 provides that in order to promote a game of chance, the game must be legal in Montana. Section 3 of the Bill provides the Department of Justice must have clear and convincing evidence before there can be an action taken against a person. Section 5 and section 20 provide that an operator who reconditions gambling devices can import and recondition devices not legal in Montana, but cannot sell them in Montana. The importation and sale of non-mechanical illegal gambling devices would stay illegal under HB 411. Section 6 provides for laws on loans and gambling credit, and section 7 provides a serious felony penalty for breaking the laws in section 6. Section 8 clarifies there may be more than one shake-a-day game per day. Sections 11 and 12 limit the total amount of money paid out to one person. Sections 14, 15, 17, and 18, provide for separate licenses for manufacturers, distributors, and route operators. Under these provisions, a person in the gambling industry could still take part in all of these

activities under one license, but would pay for the most expensive license. Section 16 defines legal route operator activities. Section 19 defines a situation where an operator's license is not required for a sale of a gambling machine that occurs if a person who repossesses a gambling machine needs to sell it. Section 21 clarifies games such as the Cake Walk Amusement game, and would make it easier for county attorneys to interpret the law.

Proponents' Testimony:

Janet Jessup, Department of Justice Gambling Control Division, explained the process by which HB 411 was developed. She said the Bill was crafted using questions that had developed about the current law. The Department of Justice requested the Bill, and the Gaming Advisory Council and representatives of the gambling industry were involved in the pre-drafting discussions.

Gloria Hermison, Don't Gamble with the Future, rose in support of HB 411.

Opponents' Testimony:

Larry Akey, Montana Coin Machine Operators, said HB 411 took one existing license and divided it into a manufacturer's license, a distributor's license, and a route operator's license. He said the Department of Justice had helped the operators amend the Bill to clarify these sections. He told the Committee the changes may not be necessary. He said Section 16 also affected operators.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Towe asked Janet Jessup if there was a section for games that may not be games of skill. Ms. Jessup said this Bill had the only section that listed amusement games. She mentioned HB 191, HB 307, and HB 411 that all addressed amusement games. She said nothing in these bills contradicted each other.

Senator Towe asked if the games listed in HB 411 were all coin operated games. Ms. Jessup answered some were cave games, or coin operated, and some were carnival games, some of which are not coin operated.

Senator Towe asked Ms. Jessup if they were scattered through the list or if it mattered. Ms. Jessup answered that it did not matter.

Senator Towe asked if the rule-making in HB 191 applied to what HB 411 would do. Ms. Jessup answered this was correct.

Senator Towe asked Ms. Jessup to clarify Section 16 dealing with the route operator's license. He said the apparent intent was to limit the responsibility of the route operators. He asked if the section limited responsibility or activity of the route operators. Ms. Jessup answered the section clarified the financial arrangements that could occur between the route operator and another operator. The Section lists areas of activity in the financial area that would be allowable.

Senator Towe asked Janet Jessup if supplying funds to allow an operator to exchange money for other coin or currency meant replenishing the coin box. Ms. Jessup answered this was correct.

Closing by Sponsor:

Representative Johnson closed on HB 411.

EXECUTIVE ACTION ON HB 307

Motion:

Senator Rye moved HB 307 BE CONCURRED IN. He withdrew his motion.

Motion\Vote:

Senator Doherty moved to amend HB 307 (HB030701.ajm).
The Motion to amend HB 307 CARRIED UNANIMOUSLY with Senator Harp, Senator Blaylock, and Senator Crippen not voting.

Motion:

Senator Rye moved HB 307 BE CONCURRED IN AS AMENDED.

Discussion:

Senator Brown asked if the Bill conflicted with Representative Strizich's bill. Ms. Jessup answered the two bills were similar, and could be integrated. She said they dealt with different venues.

Motion\Vote:

The Motion that HB 307 BE CONCURRED IN AS AMENDED CARRIED UNANIMOUSLY with Senator Blaylock, Senator Harp, and Senator Crippen not voting.

Senator Yellowtail was assigned to carry HB 307 on the Senate Floor.

EXECUTIVE ACTION ON HB 272

Motion:

Senator Halligan moved HB 272 BE CONCURRED IN. He withdrew his motion.

Discussion:

Valencia Lane explained the amendments (HB027201.agp).

Motion/Vote:

Senator Halligan moved HB 272 BE AMENDED (HB027201.agp). The motion CARRIED UNANIMOUSLY with Senator Blaylock and Senator Harp not voting.

Motion\Vote:

Senator Halligan moved HB 272 BE CONCURRED IN AS AMENDED. The Motion CARRIED UNANIMOUSLY with Senator Blaylock and Senator Harp not voting.

EXECUTIVE ACTION ON HB 258

Discussion:

Valencia Lane explained Representative Howard Toole had suggested an amendment (HB025801.AVL).

Senator Yellowtail recognized Brent Cromley to explain the amendment.

Brent Cromley, practicing attorney, Billings, told the Committee he had represented a client in a wrongful termination suit. The law said that before litigation commenced, one side could make an offer to arbitrate. If the offer is successful, the client would be able to recover the attorney's fees. He said in the case he was involved in, his client made the offer to arbitrate, but the case went to litigation. The Montana Supreme Court originally decided in favor of Mr. Cromley's client to recover attorney's fees, but the Court said there was no written agreement to arbitrate. There was a petition for a rehearing which was denied. He said this decision was a disservice to all involved because it moved away from the decision to arbitrate rather than to sue. He said the amendment did not change the statute, but made clear that there was an incentive to go to arbitration.

Senator Towe asked Valencia Lane to explain what the amendment would do. Ms. Lane explained the language in the new Section 3 was the same as the first set of amendments. She said this did

not change the law, but instead would get the court's attention.

Senator Bartlett asked if the amendment passed what the practical effect would be. Valencia Lane answered the hope was that the courts would look at the new section and decide to overturn cases in which the client was denied compensation for attorney's fees.

Mr. Cromley told the Committee the amendments to HB 258 give for the Supreme Court reason to see that the statute was clarified.

Senator Bartlett asked if it would be good to adopt the amendment in order to signal attorneys what the Bill is attempting to make them understand. Mr. Cromley said that part of the legislative history of the Bill was an incentive to deal with problems outside of court, and thus the amendment may signal that.

Senator Towe asked Mr. Cromley if there should be something in the statement of intent to make the Court see the intent of the Committee. Mr. Cromley answered that this would be helpful if the intent was not already clear from the minutes of the Committee. Senator Towe asked if he thought it was clear. Mr. Cromley answered he thought the intent was clear.

Senator Halligan asked if there was normally a written and signed agreement to arbitrate. He noted all he saw in HB 258 was an offer to arbitrate, and that the court had turned on the fact there was no written agreement. Mr. Cromley said there was no offer in terms of dollars. He said if a person was fired, that person could make an offer to arbitrate. A letter would be sent to the employer with the offer. If the employer chooses not to arbitrate, and the employee sues and is successful, then the employee's attorney's fees can be recovered. The employer could also make an offer to arbitrate, and would have the same benefits of making that offer.

Senator Halligan asked if the person who made the offer to arbitrate would receive a letter back from the person who made the offer. Mr. Cromley answered that the statute provided for a system of going through the arbitration process.

Motion/Vote:

Senator Towe moved the amendment (HB025801.AVL) be adopted. The Motion CARRIED UNANIMOUSLY with Senator Blaylock and Senator Harp not voting.

Motion\Vote:

Senator Towe moved HB 258 BE CONCURRED IN AS AMENDED. The Motion CARRIED UNANIMOUSLY with Senator Blaylock and Senator Harp not voting. Senator Halligan was assigned to carry the Bill.

EXECUTIVE ACTION ON HB 429

Discussion:

Senator Yellowtail told the Committee amendments (hb042901.avl) had been adopted in previous action on HB 429.

Senator Grosfield asked John Connor, Attorney General's office, if he could comment on the number of marijuana plants mentioned in the Bill. He asked why the number provided for in the Bill was 30 and not some other number. Mr. Connor told the Committee there was a letter from an attorney that raised sentencing concerns with the Bill. He said he had called the crime lab to find out how marijuana plants were weighed in terms of trying to decide what weight amounted to testable weight. He was told that any time the lab tested or weighed the plants they were only in the dry form. He said only the leaves were weighed. He said the lab told him that from some individual plants a pound of dry leaves could be taken. He said the figure of 30 was arbitrary. He said the Federal Drug Enforcement Administration used the figure of 50 plants, which although arbitrary, was legitimate and legal. Mr. Connor explained that the courts realized there must be some limit set, and the Federal limit of 50 plants was set by Congress. He announced the DEA official he spoke with told him the United States was the number one marijuana exporting country in the world.

Senator Grosfield asked if the number should not be lower than 30, taking into account the co-op growing situation. Mr. Connor answered he thought some set figure had to be in the Bill from the prosecution's perspective. He said the weight of the plant would depend on the size, and thus there should be a weight or number cut-off. He said if 30 plants were involved there was little doubt a person was trying to grow them for profit rather than home use.

Senator Grosfield asked Mr. Connor if he had an idea of what the threshold number was between home use and profit growers. He said it would not make sense to have a figure high enough to include commercial operations. Senator Doherty answered that when the detectives were drafting the Bill, Detective Lockerby in Great Falls requested the number of 30. He said he did not know if this was number reasonable, but based on the detective's experience with grow operations and the co-ops, it made rational sense to choose that number.

Mr. Connor clarified he did not think if a person was growing 20 or 30 plants that the person was doing so for personal use.

Senator Grosfield asked about the inconsistency in sentencing. Mr. Connor said he had examined the letter from the attorney that addressed this issue, and the problem was the sentencing provisions of HB 429 were structurally based on the language of

MCA 49-9-101, the sale statute. He said the suggestion in the letter that there was no first offense for schedule 1 and 2 offenses was not correct because subsection 2 provides that if a person has violated MCA 50-32-101, the sentence shall be not less than 5 years. He said subsection 2 provided a first offence penalty for schedule 1 and 2 drugs. He said the lower the number of the schedule the more severe the drug, and the less the medical value. He said schedule 1 were the worst drugs. Mr. Connor continued subsection 3 provided a second or subsequent use penalty. He said the intent was not to subject marijuana growers to these harsh penalties. He said subsection 4 was just the same as MCA 49-9-101, and provided a penalty for other schedules not covered by the other subsections. He said the drug sentencing statutes were confused because they had been developed over a wide time span. He said subsection 4 had more severe penalties than its counterpart, 40-9-101, MCA. He said even though the statute said "not less than", the court had the option to defer or suspend if it deems it appropriate under the circumstances.

Motion:

Senator Doherty moved HB 429 BE CONCURRED IN AS AMENDED.

Motion:

Senator Grosfield made a substitute motion to Amend Page 2, line 22, striking "30" and inserting "20."

Discussion:

Senator Towe expressed that if the people who were working to construct HB 429 had some basis for wanting "30" in the Bill, than he would rather not amend it to read "20". He said he thought 30 was more valid.

Vote:

The Motion of Senator Grosfield to amend HB 429 FAILED with Senator Doherty, Senator Rye, Senator Halligan, Senator Towe, and Senator Bartlett voting NO. Senator Yellowtail, Senator Brown, Senator Crippen, and Senator Grosfield voted YES. Senator Harp, Senator Blaylock, and Senator Franklin did not vote.

Vote:

The original Motion of Senator Doherty that HB 429 BE CONCURRED IN AS AMENDED CARRIED UNANIMOUSLY with Senator Franklin voting YES by proxy. Senator Harp and Senator Blaylock did not vote.

EXECUTIVE ACTION ON HB 323

Discussion:

Valencia Lane explained Senator Grosfield was concerned about the effective date of HB 323, and thought there should be an immediate effective date. She explained she combined Senator Grosfield's proposed amendment to change the effective date with Senator Towe's amendment to provide for applying for an injunction to restrain the ownership of animals.

Motion:

Senator Grosfield moved amendments (hb032301.avl) be adopted.

Discussion:

Senator Towe told the Committee the purpose of his amendment was to solve procedural concerns he had. He said if there was going to be a denial of right to own an animal there should be a hearing on this fact. The person should not be denied this right solely on the basis that the person was convicted of animal abuse. He said the county attorney may apply for an injunction to restrain ownership, possession, or custody once there has been a conviction. If there is proof the person is not capable of adequately taking care of the animal, then the court may require the person to forfeit the animal. He said the concept was that once there was a conviction, there would be a petition to the court expressing that the convicted person should not have other animals. He said there must be evidence presented at the hearing to prove that the person is incapable or unwilling to adequately care for the animals mentioned in the petition.

Senator Halligan said the intent of the amendment was good, but many times the need was immediate, and if a conviction was waited for, it could take days or months.

Senator Towe asked if Senator Halligan would rather take away the right of a person to own an animal before the conviction of abuse or neglect. Senator Halligan answered there should be a pre-conviction option.

Senator Towe said that the point of severity of abuse and immediate need was understood, and that a subsection should be added that would allow the county attorney to seek the injunction before conviction.

Senator Halligan said there should be a civil law. Senator Towe said most of these laws were local ordinances.

Senator Halligan asked why the county must wait for the second subsequent offense to go in and get an injunction. He expressed if the first case was severe enough there should be that option.

If the county could not prove by a preponderance of evidence that the injunction was needed, then the injunction would not carry.

John Connor told the Committee that in the House, there was testimony that an injunction provision would allow the State to extend the control over the defendant's ownership of animals beyond the time of sentence. He said he did not think there could be control of the defendant by injunction or otherwise longer than what the court imposes a sentence for. He said if a person is convicted of cruelty to animals and the court imposes a six month suspended sentence, then any subsequent injunction provision could only exist for the period of the sentence.

Senator Towe told the Committee his original request was to amend the Bill to have the injunction completely separate from conviction. Valencia Lane explained that a criminal statute which creates a penalty for a crime. In this situation, amending the Bill to provide for an injunction completely separate from conviction could lead to a loophole for the defendant.

Senator Yellowtail said if it was the Committee's intent to pursue the notion of an injunction prior to conviction, then perhaps the amendment should be reconsidered, and action delayed.

Senator Towe said his preference would be to divorce the notion of the injunction from the criminal proceeding provided for in HB 323. He said he would prefer to authorize the county attorney to get a preliminary injunction, temporary restraining order, or permanent injunction when the attorney could prove with the facts available that a person is incapable of owning an animal. He said this would not deal with the criminal conviction.

Senator Yellowtail asked if it was possible to do this under the title of HB 323. Valencia Lane told Senator Yellowtail if the title was amended so as not to be completely away from the original intent, it could be amended and accepted. She said if there was a defect in the title, the statute of limitations on changing the error was only 2 years.

Senator Bartlett asked if it was a concern as to who would gain custody of the animals taken from abusive owners. Senator Bartlett asked if the State Department of Agriculture would be taking large animals. Mr. Connor answered that in one instance, where nine horses were starving, the county took the horses into possession as evidence and worked to find a place to keep them. Convicting the person on nine different charges of cruelty, each sentence for 4 months in jail, the court took the horses and sold them through the Department of Livestock. The money came back to the county. He said that in terms of Senator Towe's consideration of injunction, the animals could be taken as evidence.

The action on HB 323 was delayed.

EXECUTIVE ACTION ON HB 121

Motion:

Senator Grosfield moved to amend HB 121 (hb012104.amk).

Discussion:

Senator Grosfield explained amendments (hb012104.amk). He told the Committee Michael Kakuk, staff attorney for the Water Policy Committee, had prepared the amendments. He clarified HB 121 had been drafted in response to a water quality study.

Senator Halligan asked Senator Grosfield who was involved in the generation of the amendments. Senator Grosfield answered that Mr. Kakuk had talked to Mr. Russell Hill. He said the other set of amendments he had were by request of Mr. Hill.

Russell Hill, Montana Trial Lawyers Association, told the Committee that he had received the amendments that morning, and had spoke to Mike Kakuk the day before. He continued that in briefly looking at the amendments he thought that number 6 of (hb012104.amk) addressed a real problem in HB 121. He said that the amendments did not address the fact that the definition was "placing of structures" rather than "purchase of property." He said if he was correct, then a person who would by property after the effective date, would not be effected. The person who has owned property and builds a structure is effected.

Senator Halligan stated that if a person purchased property after the effective date of the act, then the gross negligence standard would not apply to the person. If the person was an owner of property before the act is effective, the gross negligence standard would apply. He stated it was odd that HB 121 was structured that way, and asked if this was the intent of the Water Policy Committee.

Mr. Kakuk said the intent of the Water Policy Committee was that if someone built a structure beneath an existing dam, that person should assume some of the liability for placing a structure downstream of an existing dam. If the structure is built before the dam is built, it is a negligence standard under HB 121. If someone buys the structure after the Bill becomes effective, Mr. Kakuk's interpretation was that the gross negligence liability standard would apply. Under the terms of HB 121, the person purchasing property downstream from an existing dam could claim some of the liability and risk. Mr. Kakuk said the applicability date allows that scenario.

Senator Towe said he was confused as to the language in HB 121 (Page 5, lines 8-12). He asked if a farmer lived on a piece of property, and the dam came in later, and the farmer builds a new

house on the property after the dam was built, would the farmer be on the property as a result of the new house or structure being placed downstream. Mr. Kakuk answered his interpretation was that the farmer was there as a result of the structure being located downstream from an existing dam.

Senator Towe asked if once the dam was built, the farmer could not build a new house. Mr. Kakuk answered that if the house was damaged due to structural failure of the dam, the farmer would have to prove gross negligence before collecting damages.

Senator Towe asked if the farmer's baby were killed the farmer would not have a claim against the dam company because of the negligence because he had built a new house. Mr. Kakuk answered this was correct.

Senator Towe gave a second example. He said if a farmer had been living on the property since 1903, and the dam was built in 1930. The farmer built a new barn and when his cousins came and visited they were in the barn when the dam broke, would they have a claim for negligence. Mr. Kakuk answered this would be a judicial determination. Were the people there because of the barn, or were they there because of the house? He said this would be up to the courts to determine.

Senator Towe said he was concerned with the concept that the farmer had been on a piece of property for thirty years, and in 1993 the Legislature was putting the farmer in great risk. He said with HB 121, the farmer would have no right to rely on the fact that if his property is damaged, children are injured, or cows are killed, the farmer would have no recourse. He said every conceivable case involving people like the farmer would be the subject of a lawsuit under HB 121.

Mr. Kakuk said this was hypothetically possible.

Vote:

Senator Grosfield's Motion to amend HB 121 (hb012104.amk) CARRIED unanimously. Senator Harp, Senator Halligan, Senator Crippen, and Senator Blaylock were not voting.

Discussion:

Senator Doherty explained his amendment (HB0121.avl). He said the idea behind the amendment was to embrace within HB 121 the legal doctrine called "assumption of the risk". He told the Committee an essential element of assumption of the risk was that the person would knowingly encounter the danger and risk. If a person is knowingly encountering the danger and risk, then benefits might not be received. If the person is unknowingly encountering the danger and risk, then the risk is not assumed. He said adding "knowingly" would deal with this doctrine.

Motion:

Senator Doherty moved HB 121 be amended (hb0121.avl).

Discussion:

Senator Bartlett said that amendment #6 of Senator Grosfield's amendments established a gross negligence factor. She said that Senator Doherty may want to include in his amendment the appropriate placement of the word "knowingly" within Senator Grosfield's amendment #6.

Senator Doherty said that Senator Bartlett was correct, although he was not sure where to place the word "knowingly" within the other amendment.

Mr. Kakuk said by putting in "knowingly" in subsections 2a and 2b, as would be done with Senator Doherty's amendments, it would be referring back to those sections and they would be covered.

Senator Towe said that the amendment would improve the Bill, though very little. He asked Senator Doherty if when he put "knowingly" on line 10, so that the person who was injured or killed was knowingly downstream, if Senator Doherty was saying the person was knowingly below the dam and this was enough, or if he was saying that the person was knowingly below the dam which was built before a structure that was built downstream. Senator Doherty answered that it was his intent that the person was knowingly downstream from an existing dam.

Senator Towe posed a hypothetical situation of a farmer who buys a farm in 1903, the dam is built in the 1930's, and in 1994 after HB 121 is enacted, he builds a fruit stand. A tourist comes to the fruit stand, knows nothing about the farmer, and nothing about the dam, and the dam breaks. He asked if the tourist is knowingly downstream. Senator Doherty answered the farmer would be knowingly downstream if he knew about the dam. He said he did not think the tourist would be knowingly downstream.

Senator Towe argued the tourist could see the dam. Senator Doherty answered if the tourist could see the dam he would be knowingly encountering a known risk for which the tourist would assume the risk. If the tourist could not see the dam, then the tourist would not be encountering a known risk. Senator Towe urged the Committee to support the amendment.

Vote:

Senator Doherty's motion that HB 121 be amended (hb0121.avl) CARRIED UNANIMOUSLY with Senator Halligan, Senator Blaylock, Senator Harp, and Senator Crippen not voting.

Discussion:

Senator Towe said the final action should be delayed. Senator Yellowtail said that would be in order.

Senator Towe asked Mr. Kakuk if in section 7, the applicability date said that it applies to causes of actions accruing on or after October 1, 1993. He asked if the placing of a structure was the accruing of an action. Mr. Kakuk said the question of whether HB 121 included all structures built downstream of an existing dam, or only those built below an existing dam after October 1, 1993 was considered in House Judiciary. He said he thought it was clear that the Water Policy Bureau's intent was that HB 121 applied to both of these instances. He said his interpretation was that the cause of action was the failure of the dam, and not the placing of the structure.

Senator Towe asked if he had language on this subject that would clarify this intent. Mr. Kakuk said it was part of the definition of "place" which was in subsection 2 of section 3.

Senator Towe asked Valencia Lane to draft an amendment that would clarify the intent of section 7.

ADJOURNMENT

Adjournment: 12:00 p.m.

Wm Yellowtail
BILL YELLOWTAIL, Chair

Kelsey Chapman
KELSEY S. CHAPMAN, Secretary

BY/rc

ROLL CALL

SENATE COMMITTEE Judiciary DATE 3/17/93

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

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 258 (first reading copy -- blue), respectfully report that House Bill No. 258 be amended as follows and as so amended be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Title, line 7.
Following: "EMPLOYMENT;"
Insert: "CLARIFYING THE ORIGINAL LEGISLATIVE INTENT OF THE WRONGFUL DISCHARGE FROM EMPLOYMENT ACT WITH RESPECT TO ARBITRATION;"

2. Title, line 8.
Strike: "SECTION"
Insert: "SECTIONS"
Following: "39-2-905"
Insert: "AND 39-2-914"

3. Page 2, line 8.
Following: line 7
Insert: "**Section 2.** Section 39-2-914, MCA, is amended to read:

"**39-2-914. Arbitration.** (1) ~~Under~~ A party may make a written ~~agreement of the parties,~~ offer to arbitrate a dispute that otherwise could be adjudicated under this part ~~may be resolved by final and binding arbitration as provided in this section~~.

(2) An offer to arbitrate must be in writing and contain the following provisions:

(a) A neutral arbitrator must be selected by mutual agreement or, in the absence of agreement, as provided in 27-5-211.

(b) The arbitration must be governed by the Uniform Arbitration Act, Title 27, chapter 5. If there is a conflict between the Uniform Arbitration Act and this part, this part applies.

(c) The arbitrator is bound by this part.

(3) If a complaint is filed under this part, the offer to arbitrate must be made within 60 days after service of the complaint and must be accepted in writing within 30 days after the date the offer is made.

~~(4) A party who makes a valid offer to arbitrate that is not accepted by the other party and who prevails in an action~~

~~under this part is entitled as an element of costs to reasonable attorney fees incurred subsequent to the date of the offer.~~

~~(5)~~(4) A discharged employee who makes a valid offer to arbitrate that is accepted by the employer and who prevails in such arbitration is entitled to have the arbitrator's fee and all costs of arbitration paid by the employer.

~~(6)~~(5) If a valid offer to arbitrate is made and accepted, arbitration is the exclusive remedy for the wrongful discharge dispute and there is no right to bring or continue a lawsuit under this part. The arbitrator's award is final and binding, subject to review of the arbitrator's decision under the provisions of the Uniform Arbitration Act."

NEW SECTION. **Section 3. Effect of rejection of offer to arbitrate.** A party who makes a valid offer to arbitrate that is not accepted by the other party and who prevails in an action under this part is entitled as an element of costs to reasonable attorney fees incurred subsequent to the date of the offer.

NEW SECTION. **Section 4. Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 39, chapter 2, part 9, and the provisions of Title 39, chapter 2, part 9, apply to [section 3]."

-END-

SENATE STANDING COMMITTEE REPORT

March 17, 1993

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration House Bill No. 272 (first reading copy -- blue), respectfully report that House Bill No. 272 be amended as follows and as so amended be concurred in.

Signed: W^m Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 26, line 9.
Following: "."
Insert: "[A manufacturer, distributor, or route operator may not supply a video gambling machine or associated equipment to a manufacturer, distributor, route operator, or operator unless the machine or equipment has been approved by the department.]"

2. Page 27, line 4.
Following: line 3
Insert: "
NEW SECTION. Section 19. Coordination instruction. If House Bill No. 411 is passed and approved, then the unbracketed amendment in [section 17(6) of this act], amending 23-5-631, is void and the bracketed language is effective. If House Bill No. 411 is not passed and approved, then the bracketed language is void."

-END-

m- Amd. Coord.
nw Sec. of Senate

Yellowtail
Senator Carrying Bill

601240SC.Sma

SENATE STANDING COMMITTEE REPORT

March 17, 1993

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration House Bill No. 307 (first reading copy -- blue), respectfully report that House Bill No. 307 be amended as follows and as so amended be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 13, line 19.
Following: "that"
Insert: "may be operated at a fair or carnival and that"

-END-

MM Amd. Coord.
MM Sec. of Senate

Yellowtail
Senator Carrying Bill

601547SC.Sma

SENATE STANDING COMMITTEE REPORT

March 17, 1993

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration House Bill No. 429 (first reading copy -- blue), respectfully report that House Bill No. 429 be amended as follows and as so amended be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 2, line 24.
Following: "weight of the"
Insert: "dry"

-END-

Amd. Coord.
Sec. of Senate

Yellowtail
Senator Carrying Bill

601242SC.Sma

ROLL CALL VOTE

SENATE COMMITTEE Judiciary BILL NO. HB 429

DATE 3/17/93 TIME 11: A.M. P.M.

NAME	YES	NO
Senator Yellowtail	X	
Senator Doherty		X
Senator Brown	X	
Senator Crippen	X	
Senator Rye		X
Senator Grosfield	X	
Senator Halligan		X
Senator Harp		
Senator Towe		X
Senator Bartlett		X
Senator Blaylock		
Senator Franklin		

Rebecca Court
SECRETARY

Bill Yellowtail
CHAIR

MOTION: Sen. Grosfield to amend.

STATE OF MONTANA

DEPARTMENT OF JUSTICE

GAMBLING CONTROL DIVISION

Joseph P. Mazurek
Attorney General

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

Department of Justice Substantive Amendments to Gambling Laws

The substantive changes as proposed by the Department and the Gambling Control Division, and as discussed by the Gaming Advisory Council, are summarized below. The type or category of the amendment is footnoted.

Section 1: Provides uniform compensation for Gaming Advisory Council Members (2-15-2021) This would pay Council members $25 per day for Council activities. The Division had been paying compensation until the Legislative Auditor pointed out that the law creating the Advisory Council did not provide for payment, which conflicts with provisions in Title 2. The $25 amount is typical for such activities.***

Section 2: Clarifies definitions to reflect actual activities in the gambling industry (example: defines a "route operator"). Also limits promotional activities to legal gambling activities only (23-5-112). The new language limits the use of promotional games of chance to those simulating a legal gambling enterprise. As such, no consideration should be paid to play. (See also Sections 10, 11 and 12.) ***

Section 3: Clarifies that the Department of Justice must have clear and convincing evidence before issuing a temporary cease and desist order (23-5-136). By including the words "clear and convincing evidence", the law would reflect the current practice and standards in use by the Division.**

New Section 4: Sets standards for the types of evidence that may be admitted during an administrative proceeding. This could allow the department or an applicant to admit into the record heresay evidence that had been determined to possess sufficient quaranties of trustworthiness.**

Sections 5 and 20: Clarifies the law with regard to the importation of illegal gambling devices for manufacturing purposes (23-5-152 and 631). Current law does allows a manufacturer to import some devices and the new language identifies why a manufacturer would want to import illegal devices; i.e., to be reconditioned or repaired in part or modified for eventual export out of the state.*

Section 6: Provides a felony penalty to the credit gambling law (23-5-157). This new language provides that the third or subsequent offense of credit gambling would be a felony.**

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1a
DATE 3/17/93
BILL NO. HB 272

Tel. (406) 442-7325

Page Two: Substantive Amendments

Sections 7 and 22: Provides penalty for minors violating the underage gambling law (23-5-158, 41-5-203). Currently there are no penalties for these violations; these revisions would establish a civil penalty not to exceed $50 or as entered in proceedings held in youth court.**

Section 8: Clarifies shake-a-day provisions (23-5-160). Mostly clarification, making the game more like the one played in the past. The language would allow more that one game per day.*

Section 9: Clarifies provisions regarding "grandfathered" establishments (23-5-306) in accordance with the legislative intent of the 1989 law. States that only natural persons (not businesses) are allowed to be grandfathered for video gambling machines on off-premises sites (non-liquor, convenience stores) and that this person must have continuously owned the establishment since January 15, 1989.*

Sections 10, 11, and 12: Clarifies provisions on live card game tournaments (23-5-312 and 317). Clearly states that the legislative intent in allowing theses tournaments was that such events be held only on occasion. The revisions would require that the operators use card games rules and would not allow them to roll-forward several games, resulting in a prize exceeding the current standard of $300. In addition, it limits promotional card game prizes to $300 and live bingo or keno promotional games to $100 (23-5-312, 23-5-412). This would restrict the amount of cash prizes that can be given for promotional games of chance (where no consideration is paid to play). Section 12 also redefines bingo to permit a game to consist of more than one arrangement of numbers (23-5-412). Allows multiple games on one set of bingo balls, but no award can exceed $100 as in current law. *, ***

Section 13: Deletes reference to sports pools on sporting events involving animals; this subject is being addressed in HB433, with an appropriate coordinating clause.

Sections 14, 15, 17 and 18: Creates separate licenses for manufacturers, distributors, and route operators (23-5-112, 23-5-625, 23-5-631). Separate licenses would be required instead of one license which covers all three functions since these are very different activities. It would not prevent one entity from having multiple licenses and would better define the activities allowed. Furthermore, the Department could waive fees if more than one license was requested. ***

New Section 16: Defines allowable route operator activities with regards to operators (23-5-625). Define the normal business relationship between a route operator and the premises operator (i.e., paying machine permit fees and taxes, maintenance and repair, promotion, change and prize payouts).***

New Section 19: Identifies circumstances when an operator's license is not needed for the sale of video gambling machines. For example, lienholders acquiring title through foreclosure (i.e., banks) can sell machines to licensed entities.***

Section 21: Clarifies definition of a cakewalk amusement game and the skill chutes and bulldozer amusement games (23-6-104). These changes will help County Attorneys who are most likely to be called on to interpret the law in this area.*

* Clarification of language or intent
** New or changed criminal penalties, or changed legal procedures
*** Procedural changes

STATE OF MONTANA

DEPARTMENT OF JUSTICE

GAMBLING CONTROL DIVISION

Joseph P. Mazurek
Attorney General

2687 Airport Road
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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.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 16
DATE 3/17/93
BILL NO. HB ~~307~~ 273

Tel. (406) 442-7325

DATE 3-17-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 272 - Rice

H.B. 411 - Johnson HB. 307 - Debruyckere

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Bill Chiesa	Metra Park Billings Mt	307	✓	
Gloria Hermanson	Civil Gamble with the Future	191	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

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