

MINUTES

MONTANA SENATE  
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on February 2, 1995, at  
8:00 a.m.

ROLL CALL

**Members Present:**

Sen. John R. Hertel, Chairman (R)  
Sen. Steve Benedict, Vice Chairman (R)  
Sen. William S. Crismore (R)  
Sen. C.A. Casey Emerson (R)  
Sen. Ken Miller (R)  
Sen. Mike Sprague (R)  
Sen. Gary Forrester (D)  
Sen. Terry Klampe (D)  
Sen. Bill Wilson (D)

**Members Excused:** N/A

**Members Absent:** N/A

**Staff Present:** Bart Campbell, Legislative Council  
Lynette Lavin, Committee Secretary

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

**Committee Business Summary:**

Hearing: SB 242, SB 19, SB 22  
Executive Action: None

HEARING ON SB 242

Opening Statement by Sponsor:

SEN. DELWYN GAGE, SD 43, Cutbank, related his concern about horseracing, and particularly the Horseracing Board. Studying boards of various professions in the State of Montana, he found all of them had people from their profession on their boards. The Livestock Board not only has livestock people on their board, they also suggest to the Governor people to appoint to the board. This is the ultimate in independence and control. He stated the changes to be proposed will not do that. On page 1, lines 14, 15, 16, it says: no person holding a financial interest in the race track or race meet, member of a county fair board or owner, trainer, or breeder of a race horse is eligible for membership on

the board. That language will be stricken and be replaced with lines 17 and 18. Two of the 5 board members must be in the horseracing industry and the other 3 may not be in the horseracing industry. We debated whether or not to define 'being involved in the horseracing industry', but decided we were better off not enumerating what that might entail. He stated that he has an amendment to the bill. **EXHIBIT 1.**

Proponents' Testimony:

Joyce Bell, Member of the Montana Horse Breeders Association, read her written testimony, **EXHIBIT 2.**

Cheryl Allen, Member of Montana Horse Breeders Association and the Montana HBPA, read her written testimony, **EXHIBIT 3.**

Dale Mahlum, Owner of Mahlum Thoroughbred Farms, member of MHBA, read his written testimony, **EXHIBIT 4.**

Opponents' Testimony:

Lou Wojciechowski, member of the Montana Board of Horse Racing, read her written testimony, **EXHIBIT 5.** Also presented written testimony of Trish Fisher, member of the Montana Board of Horse Racing, **EXHIBIT 6.**

Jon Noel, Director, Department of Commerce, clarified for the committee that they were not talking about breeding horses, or whether horses are one strain or another. The conversation was about gambling. The Board of Horseracing regulates gambling. He said he had one other operation within the Department of Commerce that is also involved in gambling. An earlier statement was made which needs to be corrected. "This is the only board where the industry is not represented." He then quoted from a statute with respect to the Attorney General who regulates video gambling, "...an employee of the department directly involved with prosecution, investigation, regulation, or licensing of gambling as designated by the Attorney General may not serve as an officer of a business or organization that conducts a gambling activity other than as an officer of a nonprofit organization; be employed by a licensed operator in any capacity that requires assisting in conducting a gambling activity regulated under parts 1 through 6; or have a beneficial or pecuniary interest in a contract with the manufacture, lease, or sale of a gambling device..." With respect to the lottery, the lottery legislation states very specifically the powers and duties of the commission, which is the equivalent of this board, establish and operate a state lottery and may not become involved in any other gambling or gaming. It also states very specifically "conflict of interest; no commissioner, director, assistant director, state lottery employee, license ticket or chance sales agent, or member of his household may have a financial interest in any gambling supplier or any contract between the state lottery and gaming supplier or accept any gift or anything of value." More importantly, it says

"tickets and chances may not be sold to or purchased by commissioners, the director, his staff, gaming suppliers doing business with the state lottery, suppliers, officers, employees, employees of any firm auditing or investigating the state lottery, government employees auditing or investigation the state lottery or members of their households". Passage of this bill will fly directly in the face of the legislation that prevents conflict of interest in the other gambling activities under state jurisdiction.

**Dr. James Scott, Veterinarian, Great Falls,** read his written testimony, **EXHIBIT 7.**

**Peggy Buffington, member of the Board of Stewards,** read her written testimony, **EXHIBIT 8A.** Presented **EXHIBIT 8B** to the committee.

Informational Testimony: None

Questions From Committee Members and Responses:

**SEN. WILSON** asked **Dr. Scott** if he could give him a description of his other duties and responsibilities, if there were any. Obviously, the board regulates gambling. **Dr. Scott** replied that was fairly well covered in **Ms. Buffington's** testimony. **SEN. WILSON** asked **Sam Murfitt** what other duties, other than regulating gambling, does the board cover. His answer was that the duties/responsibilities are manifold. They license, impose fines, develop rules, discipline individuals, have stewards, state vets, state security, state auditors to audit the parimutuel system and simulcast facility. **SEN. WILSON** asked **Dr. Scott** if he did any business on the track. **Dr. Scott** replied: "No, I do not." I practiced for years and did business at the track. I have not been in practice for 8 years. **SEN. WILSON** asked if a vet who worked on race horses would be eligible for the board under the current law or would that be a conflict of interest. **Dr. Scott:** "Yes, it would."

**SEN. EMERSON** asked **Peggy Buffington** if the problem is really about horseracing going a downhill slope and that is the reason for the bill being brought before us. It seemed to him that the original bill was supposed to help that situation. Is there something that the board has done to cause this? **Peggy Buffington** answered that the board is a regulatory body and is not in the business of promoting the industry. As long as their integrity is intact they are an asset to the industry. They regulate everything that goes on in the horseracing industry as far as gambling goes. But as far as promotion of the industry, it should be left to the HBPA and the MHBA. That would be more in their field of expertise. **Mr. Mahlum** said to **SEN. EMERSON**, the industry believes the Board of Horseracing is doing a good job of regulating the racing. However, racing is just the end result of the breeding. There are a lot of other aspects of the industry besides the racing. **Mr. Mahlum** would like to have some breeders

on the board, as they do in Kentucky, who give guidance for long range planning for the industry. A plan of five years in advance is very important and we should have people on the board who are in the industry and want to see the sport survive. He said they would like to have input from the industry.

**SEN. MILLER** asked **SEN. GAGE** if he saw a conflict of interest with this bill and if so can we touch it up a bit. **SEN GAGE** answered he would not deny that there is a conflict of interest, there certainly is, but he said if you studied carefully the makeup of the board at the time they were having all these problems you would have noticed that there were 3 people on the 5 people board who were controlling the board. This is one of the things we discussed thoroughly before we made this proposal. We want to be sure that a majority of the board was controlled by public members.

**SEN. SPRAGUE** submitted **EXHIBIT 9**, and asked **SEN. GAGE** to elaborate on why this man would oppose SB 242. **SEN GAGE** stated that would all be answered in closing.

**CHAIRMAN HERTEL** noted **Dr. Jim Scott** has indicated by his testimony that he is presently on the board. **CHAIRMAN HERTEL** asked him if he thought the present board is knowledgeable enough to take care of all of the issues that come before the board or would it be easier to make some of those decisions having one or two persons directly involved in the industry. **Dr. Jim Scott** stated that he believes the board is knowledgeable and capable of handling problems and has demonstrated that capability on a number of occasions. This board, as a regulatory body, is open to participation from the industry, in general. He said he served on the board for five years. Many times the cases to be disputed in hearings had very few other people present, despite the fact that notices were sent to 200 individuals in the horseracing industry. We could address the answer to your question by asking for more advisory input from the industry and the board would welcome that.

**SEN. SPRAGUE** asked **SEN. GAGE** if he thought the reason these bills are being brought to the Business & Industry Committee rather than brought to the Agriculture Committee was due to the gaming ramifications. **SEN. GAGE** answered no, and said he thought they are here because they involve business more than agriculture.

Closing by Sponsor:

**SEN. GAGE** closed by saying the people who spoke against the bill are the "governess" people, they are not horse people, the people who put on the show, that should tell you something. He wanted also, in response to the Department of Commerce's comment, to point out that there is an immense difference between the lottery and poker machine folks and horseracing. The former put on their show by buying and installing a machine. But look at the vast array of people involved in putting on and keeping this industry

going in the State of Montana. **SEN. GAGE** added that he hasn't been that involved in Montana's industry for a number of years so he is not fully aware of the kind of problems people are having with the board of horseracing in Montana. He stated, in his experience from the past, when many persons were trying to get on the board, the Governor of that time stated, "I have one other appointment to make which I promised during my campaigning and I've got to use the horseracing board for that appointment". That may give you some inkling of how those appointments were made. It is clear to him that this industry should have some representation to see that their products are treated fairly with regard to decisions of boards, etc.

{Tape: 1; Side: B}

#### HEARING ON SB 19

#### Opening Statement by Sponsor:

**SEN. GAGE, SD 43, Cutbank**, announced this bill, as you can see, brings greyhound racing into the simulcast area.

#### Proponents' Testimony:

**Dave Mahlum, Owner of Mahlum Thoroughbred Farms**, read written testimony written by **Topper Tracy, Editor, Racing Journal**, EXHIBIT 10.

**Don Bentson, Executive Secretary, Montana Horse Breeders Association**, read his written testimony, EXHIBIT 11.

**Tom Tucker, Montana Simulcast Partners**, read his written testimony, EXHIBIT 12.

**Bill Nooney, Fair Board Member/Western Montana Fair, Missoula**, read his written testimony, EXHIBIT 13.

**Burton Farley, Vice President, HBPA**, stated his organization was in favor of SB 19.

**Doug Allen, attorney**, noted he has raced horses for years and represented many clients before the Board of Horseracing. This bill is necessary. The Board of Horseracing does not have authority to authorize simulcast racing. He was in agreement with all previous proponents that it was vital to our industry. When the board decided to test simulcasting in Montana, we thought it was incorrect for the board to do something against the law. We notified the board that they did not have the authority to allow the simulcast racing. We were ultimately proved to be correct in court. He urged that this bill be passed in order for the board to legally authorize simulcasting.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

**SEN. SPRAGUE** reminded **Sam Murfitt, Executive Secretary for the Board of Horseracing**, that the administration has been public about the fact they are not in favor of expansion of gambling.

**SEN. SPRAGUE** asked "how can I go home to my constituents and justify this"? **Sam Murfitt** replied that he could not speak for the Department of Commerce, but he, personally, did not regard this as an expansion of gambling. We could run around the clock horseracing, but we don't. We would like to bring the greyhound racing on another signal. Both are pari-mutuel, use the same machines and the betting menu is exactly the same. All the regulations and rules are applied. **SEN. SPRAGUE** noted that there was an absence of organizations that typically oppose expanded gambling, therefore they must neither oppose this nor consider it as expanded gambling. Do you, **Mr. Murfitt**, believe that we, as a body, are deliberating an item such as the dial-up system?.. that since this is video gaming, is this industry aware and prepared, if necessary, to dial-up? **Mr. Murfitt** replied that the industry, on the contrary, is a front runner in the dial-up business and gambling in Montana. They have had dial-up lines, with simulcast, for 4-5 years. They have been paying, at the expense of their organizations, to have auditors and dial-up lines to connect the hub in Great Falls into whichever track we are simulcasting.

**SEN. CRISMORE** asked **Mr. Allen** if the dog racing, which was a success at the time it shut down, did so because it wasn't properly authorized? **Mr. Allen** stated that was correct, it was not authorized by law. The board did not have the authority to authorize anything beyond the simulcasting of horseracing. Our concern was merely the integrity of the board.

**SEN. KLAMPE** asked **SEN. GAGE** if the bill was scheduled with short notice and if that was the reason no opponents showed up for the hearing. He added he had been handed a pamphlet with dead greyhounds on the front while he was in the hall. He wondered why no one was testifying against the bill if there are people who felt that way. Did they not know about the hearing?

**CHAIRMAN HERTEL** replied that there is a procedure that is followed in scheduling bills and it was followed for these bills also. **SEN. GAGE** stated that 2 of the bills were scheduled for hearing 2 weeks ago, so the public has had access to the information for a considerable amount of time.

**SEN. FORRESTER** addressed **SEN. GAGE** stating he had received a call from a lady in Missoula who is distressed about greyhound racing because of the disposal methods used for dogs that can no longer run competitively. Are we getting ourselves into a hornet's nest

if we allow simulcast greyhound racing? Are there special interest groups in Montana which may place us in a bad light? Would it be better just to leave it alone? **SEN. GAGE** replied that people he has talked to thought this was going to be live greyhound racing, but that is not what this bill conveys. The total horseracing industry would be opposed to bringing live dog racing into the State of Montana. **SEN. FORRESTER** stated that he wasn't talking about live greyhound racing. There is a faction out there that does not approve of the way dogs are handled after their racing days are over. The lady that called me believed that by allowing simulcasting we are in a sense endorsing greyhound racing. She did not oppose horseracing because horses are treated in a more humane way when their racing days are over. **SEN. GAGE** understood her concern but whether or not we permit the dog racing in Montana, we should find out how this is handled by other states that already allow it.

**SEN. WILSON** asked **SEN. GAGE** why no one has asked about mule races. Where are they shown? at rest homes? I've heard of dogs but never mules. Is that a big business? **SEN. GAGE** stated that we have had some in Montana and they are interesting.

**SEN. EMERSON** remarked to **SEN. GAGE** he heard there was a scramble for the gambling dollar. The payout seems to be the same. Was the payout to the state the same as poker or horseracing. **SEN. GAGE** stated that the simulcasting payout to the state is the same as live horseracing, but not the same as video poker or keno. Horseracing pays a higher percentage to the state.

**SEN. SPRAGUE** asked **Mr. Murfitt** about the testimony from various fair board members, state senators, etc., who have racing interests. Did you see this as a conflict of interest in any way? **Mr. Murfitt** replied that he did not understand the question as it relates to simulcast partners. **SEN. SPRAGUE** stated that he wanted to be sure the question of ethics is thoroughly discussed here. Board members are concerned about conflict of interest. He was uncertain where the ethics line lies. He wished the DOJ was present because there is a very fine line in owning, operating, and managing. Legislation and all kinds of other issues enter in and maybe even a financial or fiduciary relationship. **Mr. Murfitt** replied that the rules and regulations binding the Board of Horseracing to enforce, specifically limit the involvement of anyone from a fair board member to a major or minor racing official, and prohibit them from participating actively in that sport. As an example, a fair board member would not be allowed to own a race horse at the meet where he is a member. Also, the director of racing or stewards cannot actively participate at the meet where they are officiating. The public outcry would be terrible. As for involvement taking place in simulcast, where the horses or dogs are racing 500-1500 miles away, there is not an opportunity for a fair board member to interfere in the results of a race; it would be impossible. **Mr. Murfitt** stated he was not allowed to bet on horses or simulcast.

Closing by Sponsor:

SEN. GAGE addressed whether or not this is expansion of gambling. How many different games have the lottery people introduced in the State of Montana. They bring in a new thing when they believe their customers are getting bored with an old game. Is that considered expansion of gambling in the State of Montana? If it isn't, then neither should this be.

HEARING ON SB 22Opening Statement by Sponsor:

SEN. GAGE, SD 43, Cutbank, explained that SB 22 is an act exempting from Workers' Compensation coverage, a jockey or pony rider who is licensed by the Board of Horseracing. These are persons who are pretty much on their own. In some areas they have agents that go with them to line up their riding. He said, all of them, to his knowledge, file a schedule C tax return, which indicates a sole proprietorship as opposed to an employee.

Proponents' Testimony:

Sam Murfitt, Executive Secretary, Montana Board of Horse Racing, read his written testimony, EXHIBIT 14.

Bill Brown, MHBA and HBPA, owner and trainer from Butte, stated the passage of this bill is essential to small owners and trainers in the State of Montana. Jockeys are self-employed.

Burton Farley, Vice President, HBPA, added the HBPA is in favor of this bill.

Opponents' Testimony: None.

Informational Testimony: None.

{Tape: 2; Side: A}

Questions From Committee Members and Responses:

SEN. WILSON questioned Mr. Murfitt who replied to SEN. WILSON that in the packet of information there are copies of national publications which have a national subscription. There are articles on Montana and the legislation which is going to exempt jockeys. We have minutes of our meetings sent to regional representatives of jockeys. He received a call recently which he thought might concern Workers' Compensation. Instead, he was asked how many days of racing will we have in Montana this year. Apparently, they aren't too concerned about the bill. As far as the riders being a transient population, yes, that is true of most. As he stated in his testimony, approximately 60% are non-resident. They come to Montana. Depending on where they are,

for example, they may arrive in Hamilton from Washington and run two races and return. They might come to Great Falls, ride in one race and return to where they came from. Some may follow the whole circuit in Montana and as soon as it is over they go to another state. **SEN. WILSON** stated that he felt that if this hearing were held in June, we would probably have some opponent testimony.

**SEN. CRISMORE** asked **Mr. Murfitt** if the jockeys are still covered; if the bill just moves them to a private insurance coverage. **Mr. Murfitt** stated that was correct; we will be treating them the same way as all other states do, with the exception of the 5 states previously mentioned. **Mr. Murfitt** stated that **SEN. GAGE** has some amendments to offer. A jockey can not ride in Montana unless he/she is properly licensed. When they come to get their jockey license, they will be required to sign a statement notifying them they are not covered under Worker's Compensation. When the racing association comes in for their license, we will not issue a license unless they bring the proof that they have the proper insurance.

**SEN. FORRESTER** asked **Chuck Hunter, Department of Labor and Industry**, what is to stop this jockey from saying that he was coerced into signing the piece of paper and claiming to be an employee. **Mr. Hunter** replied there is nothing to prevent that from happening. The fact that it is done with the licensure, there would be some weight given to the fact that the jockey voluntarily sought the license.

**SEN. FORRESTER** asked **Sam Murfitt** how much it was going to cost to set up this licensure process. **Mr. Murfitt** replied that it would be the same licensing process that we have right now. We would just amend the application to include the notification of no Workers Compensation coverage. The race track already carries catastrophic injury insurance and jockeys will be covered under that.

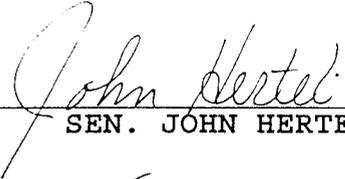
**SEN. EMERSON** asked **Mr. Hunter** whether that meant we could do the same for other fields. **Mr. Hunter** replied that the legislators have the authority to decide which employees, which workers, are covered by the Workers Compensation act and which are not.

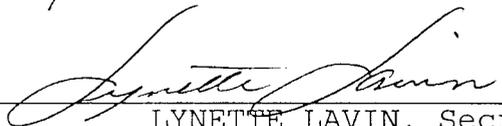
Closing by Sponsor:

**SEN. GAGE** on page 1, line 19, 20 and 21, said...unless the owner elects to carry coverage. Some owners may elect to do so as leverage to get a jockey to choose to ride his horse. This bill does not preclude the owner from doing this. The amendment comes as a result of the Department of Commerce and Workers' Compensation Divisions working together on this bill. I would like to talk to some people in the racing industry before I offer the amendment.

ADJOURNMENT

Adjournment: The meeting was adjourned at 10:25 a.m.

  
\_\_\_\_\_  
SEN. JOHN HERTEL, Chairman

  
\_\_\_\_\_  
LYNETTE LAVIN, Secretary

JH/11



SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 1

DATE 2/2/95

BILL NO. SB 242

Amendments to Senate Bill No. 242  
First Reading Copy

Requested by Senator Gage  
For the Committee on Business and Industry

Prepared by Greg Petesch  
January 31, 1995

1. Page 1, line 20.

Strike: "The"

Insert: "Except for members appointed pursuant to subsection  
(2) (b), the"

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 1

DATE 2-2-95

BILL NO. 242

2-2-95  
SENATE BUSINESS & INDUSTRY  
EXHIBIT NO. 2  
DATE 2-2-95  
BILL NO. 242

*Presented by  
Joyce Bell*

Mr. Chairman - Members of the Business and Industry Committee my name is Joyce Bell. I am the owner and breeder of thoroughbred horses and have been for the past 25 years. I am a member of the board of Directors of the Montana Horse Breeders Association, this association represents the owners and breeders of our State and consists of 135 + members. I am here speaking as an owner, and as a board member of the M.H.B.A. as a proponent of Senate Bill 242.

Horse racing is the eventual result of the Horse Breeding operation, both the racing and breeding of horses are agricultural related businesses that are extremely important to the economy of our state and is an immediate economic stimulus to those communities where live racing is conducted each year.

The horse racing industry has been in a steady decline for the past dozen or so years. I believe there are several factors

contributing to this decline. Electronic gaming such as Keno and Poker machines along with the Lottery has been a large and constant drain of the available entertainment dollars and has resulted in a most dramatic negative impact on the horse racing industry.

In addition to this pressure, the make up of the board of Horse Racing was changed to it's current form, required by the legislature in, I believe 1985. Currently if a person holds a financial interest in a race track or a race meet, or is a member of a county fair board, or owner, trainer, or breeder of a race horse that person is not eligible to be appointed to the Board of Horse Racing. In other words anyone that has a vested interest in the Racing or Breeding industry, is disqualified from having a role in the decision making that controls that industry. This has a direct impact on the economic vitality and existence of

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racing in Montana. This is not to imply that the current and past board members are incompetent but rather that they are not knowledgeable of the Horse Racing Industry. For all of the above reasons the industry has suffered further and has now reached a point of extreme fragility and vulnerable to the all out demise of this very important agricultural business.

There are numerous Horsemen in our state that have 6 figure investments in the Horse Racing and Breeding Industry but are not allowed to protect or direct horse related happenings because of the structure by statute of the board of Horse Racing.

The current structure of the board is badly flawed and implies that Horsemen have neither the Intelligence nor the Integrity to manage their own affairs and still protect the interest of the public. This is the only board in the State that does not allow industry people to serve on it. I believe it is

the only board of Horse Racing in the Nation that does not allow industry people to serve on it. It would be similar to say, that the board of Investments may not have any member on it that has financial skills, knowledge or background in investing, or that the board of Veterinary Medicine may not have any members who are immediately involved or have knowledge of the Veterinary Profession or that the board of Dentistry may not have dentists. Look at any board in the state and make this same analogy. Perhaps some of you senate members are involved in a business controlled by a state board, if so please Mentally place yourself and your investment in the position we in the Horse Racing Industry are forced by law to function in and you will quickly realize why this board needs changed.

The currant Board of Horse Racing is structured wrong, it is damaging to our industry and our individual investments and

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should be changed consistent with the contents of Senate Bill

242. I encourage you to support this bill and cast a yes vote

both in this meeting and on the senate floor.

My name is Cheryl Allen. I am speaking to you this morning 2/2/95

on behalf of my husband, Doug, and myself with regard to Senate Bill 242. Doug and I have been involved in the racing industry in Montana for 20 years. We are members of both the Montana Horse Breeders Association and the Montana HBPA. We have raced extensively not only in Montana but at most major tracks in western United States and Canada, including Calgary, Edmonton, Winnipeg, Vancouver, Minneapolis, Spokane, Yakima, Seattle, Portland, San Francisco, Phoenix, Denver, Santa Anita and Hollywood Park in Los Angeles.

Like many people who breed and own race horses, we came to the industry after establishing a separate successful business. And like many others, what may have begun as a hobby, grew into a business requiring a great deal of time, energy and investment. Many of the people who will speak to you today and are here in support of Senate Bill 242 have other successful businesses. Yet, those same individuals also have "hands on" breeding and racing operations. That is they physically, as well as financially run their horse operations.

The horse racing industry is big business generating an estimated nine to ten million dollar economic impact on the Great Falls area alone. In addition, to the millions that are wagered on horse racing, the industry impacts the surrounding area in many ways.

Long before the horses run in the afternoon at one of the race tracks, the business of the racing industry has been going on. In the breeding industry where Montana foals are produced, people have built farms with miles of horse safe fences, barns, breeding sheds and winter shelters. Expensive mares and stallions have been purchased from around the country. Thousands of tons of top quality hay and oats are purchased or produced each year. Many of us ship our mares around Montana and to Washington, California or Kentucky to be bred to some of the best stallions in the region and in the country.

When the foal is grown, it goes to the race track, creating another sector of the racing industry which employs a host of people from trainers and grooms, farriers and veterinarians to backside kitchen help. More, thousands of tons of hay, oats

and straw are utilized. Only after the horse breeder has raised the foal for several years and the trainer has conditioned it for many months, does the public see the end result, horses engaged in competition in the afternoon.

Once the races begin, other aspects of the racing industry swing into action - the handle, the tote, parimutuels, exotics, takeout, simulcasting, common pooling, exactas, quinellas, Lasix, Bute, also eligible, breakage, underpayments, minus pool, a furlong, the far turn, boxed in, clipped heels, overweight, morning line, 8/5, the payoff . . . These are just a few commonly used terms in racing that are peculiar to our industry. Understanding what all these phrases mean requires experience in the racing industry.

In addition, the space age of the 70's brought us computers which have been incorporated into present day parimutuels machines; the 80's brought us satellites so that now in the 90's we are able to place a wager in Montana on a race occurring thousands of miles away and our wagers will instantly be combined

with wagers at that track, creating common pooling. While racing looks much the same from the grandstand as it did 30 years ago, it has become a sophisticated industry utilizing space age technology.

The Board of Horse Racing is a governmental agency which regulates horse racing. It is the job of those who sit on the Board to insure that the statutes governing racing are followed. A Board of Horse Racing administers the owners and breeders bonus fund, awards racing dates and approves stakes schedules. It hires a state veterinarian whose job is to insure that unsound horses are not racing. The Board also hires a state steward who, along with local stewards, police the live meets and insure a level playing field for the participants and the public. The Board of Horse Racing is the body to which a steward's ruling against an owner, trainer or jockey is appealed. In addition, the Board also oversees simulcast racing.

Horse racing has come a long way since the first cowboy bet his buddy he had the fastest horse. but while racing has increased in complexity, the people who regulate it have by

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present law been limited to people outside the industry. No one directly involved in the business of horse racing is allowed to serve on the Board.

While it is important for the public at large to be represented on the Board, it is equally important for those with the knowledge and the largest interest in this industry to have a hand in regulating it. The interests of the public will be better served with the addition to the Board of people from the industry who have the experience and expertise to balance and assist the members from the public at large.

Therefore, we ask that you support Senate Bill 242 in this Committee and on the floor of the Senate.

DALE MAHLUM - MISSOULA - OWNER of MAHLUM T. B. FARM.

PRINCIPAL Activity in the Horse Industry is Breeder of T.B.S and selling these HORSES AS yearlings in Mont. & SEATH. WE STAND STALLIONS FOR VISITING MARES AT OUR FARM.

Currently Pres Mont. Horse Breeders Assoc.

SENATE BUSINESS & INDUSTRY

We are a agricultural industry that supplies the horse racing industry with the products to conduct live racing in the State.

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We have many large operations and a multitude of smaller operations in the state. These all account for dollars that are spent in the industry for feed and vet bills and many other normal farm /ranch expenses. For a total of approx. 261 mill.

Our state is unique in itself that it is one of the only states within the United States that says in order to become a member of the Montana Board of Horse Racing, you cannot be involved in the industry. To me, this is a travesty on our industry. With many people having hundreds of thousands of dollars invested in the thoroughbred/quarter horse industry, these people would like some representation on the board. Please let us have some industry say on the board, I believe that the board ought to have 3 public at large members and 2 people from the industry for a balance on minds and experience on the board.

SENATE BUSINESS & INDUSTRY  
EXHIBIT NO. 4  
DATE 2-2-95  
BILL NO. 242

WE, as part of a large agricultural industry, need to help focus on what our future might bring, we need to have input as to what our industry should be doing to make our industry a better one, we need, like any other business, long range planning. ---thus we need interested industry members on the board.

STATE

YEARS AGO the BOARD MAKEUP WAS CHANGED TO ELIMINATE ANY CONFLICT of INTEREST. HOWEVER, I BELIEVE the RULES THAT SAY "NO ONE FROM the INDUSTRY CAN SERVE" IS ARCHAIC and CERTAINLY DOES NOT SAY MUCH ABOUT the INTEGRITY OF OUR MEMBERS IN OUR INDUSTRY.

I RECOMMEND PASSAGE of SB 242

Mr. Chairman and Members of the Committee, Thank you for allowing me to appear before you. SB 242

I am Lou Wojciechowski of Billings, a recently appointed member of the Montana Board of Horse Racing. I have worked in the Horse Racing Industry for a number of years starting in Missoula in 1964. I've worked in various capacities -- as Secretary to the Racing Commission's Executive Secretary and State Steward and as Horsemen's Bookkeeper, in the Parimutuels, program, charting, Assistant Racing Secretary and as a license clerk for the State on the west slope.

I oppose Senate Bill 242. One of my biggest concerns in this bill would provide opportunities for conflict of interest. We have had many conflicts in the past, both real and imagined, creating distrust in the minds of the public and causing much bad press.

For those of you who are not familiar with the Board of Horse Racing -- The Montana Horse Racing Commission was created in 1965. Prior to that time, county horse racing commissions regulated the Industry. In 1971 under the Executive Reorganization Act, the Commission was renamed the Montana Board of Horse Racing and three members were seated.

The Primary purpose of the Board is to REGULATE, LICENSE AND SUPERVISE RACE MEETS held in the State of Montana in order to PROTECT THE BETTING PUBLIC.

In 1977 the Legislature enacted the Sunset Law which required a review and audit of all Boards. As a result of their findings, the Review Committee was mandated to recommend to re-establish, to modify or to terminate all Boards.

During this time Parimutuel racing in Montana was getting bad press. Among the headlines were the Independent Record Headlines of June 14, 1973 "JOCKEYS, PARI-MUTUEL EQUIPMENT TARGET OF CRITICISM". Great Falls Tribune March 25, 1973 "CHARGES OF CORRUPTION ANGER THE RACING COMMISSIONER", Helena Independent Record March 12, 1973 "RACING COMMISSION CHARGED WITH IRREGULAR ACTIVITIES", Butte Standard, March 11, 1973 "HORSE RACING CALLED CROOKED", Independent Record March 15, 1973 "FUROR OVER HORSE RACING CONTINUES", May 21, 1973 "HORSE RACING HASSLE", June 15, 1973 Excerpts "PRESIDENT OF BIG SKY RACING IN GREAT FALLS SAYS: I THINK IF RACING IS TO GROW THE BETTING PUBLIC HAS TO BE CONFIDENT, THEY SHOULD BE ASSURED THAT THE RACE IS RUN HONESTLY".

The composition of the Board at that time was five members, One a Breeder of Race Horse; one a member of an independent horse racing association; one a member of a county fair board and two who have occupations unrelated to horse racing.

The 1977 Sunset Audit and Review of the Board of Horse Racing cited the Board for many areas of conflict of interest --- some

examples--- Board Members who voted on items affecting the meets their associations sponsor; a track steward at one meet was a jockey in one of the races at the meet; race horse owners and trainers being racing officials, a state steward touting... which is offering advise on which horse to bet on.

The Sunset Review required the Board composition to be completely reorganized to eliminate conflict of interest or the Board would be terminated in July of 1983.

In 1977 Horse Racing was legal in 26 states. 18 of the 26 State allowed NO conflicts, meaning no member seated had any active interest in the horse racing industry. In 1977 the Montana Board of Horse Racing was the only one of the 26 that did allow Board members to hold financial interest in a race track.

During this time, in 1976, the Commission on the Review of the National Policy Toward Gambling, established by the United States Congress, conducted a study in which conflict of interest was discussed. The report GAMBLING IN AMERICA recommended that "Members and staff of state racing commissions be absolutely prohibited from holding any financial interest in race tracks under their regulatory jurisdiction. The National Commission recommended that laws be amended to eliminate the requirement that Board members be members of fair boards and private racing associations.

In 1983 House Bill 853 was introduced and passed by the Legislature. House Bill 853 addressed the concerns of the Sunset Audit Review. House Bill 853 re-established the Board of Horse Racing, providing for a five public member board from five geographic areas in the state, plus the addition of an Executive Secretary. House Bill 853 mandated that no person holding a financial interest in a race track or race meet, member of a county fair board, or owner, trainer or breeder of a race horse is eligible for membership on the Board. This bill clearly recognized the need to eliminate conflict of interest on the Board of Horse Racing. The passing of this bill was due to a group effort from the racing industry working together to support this legislation.

Since passage of House Bill 853 in 1983 (12 years) the restructured Board of Horse Racing has successfully carried out its mandate to Regulate, License and supervise parimutuel race meets held in the State of Montana thus protecting the Betting Public.

The integrity of the Board is intact!

I hope I have provided you with an overview of the Board, where it was and how it got there. do we want to travel backward in time? I think not!

I ask you, Mr Chairman and Committee Members to kill this Bill in

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Committee.

This Bill, SB 242 is not workable. For example it states:

Section 1-2(b) Two members must be in the horse racing industry.

Section 1-3 The Governor may not appoint any member who would have a conflict of interest during the Member's term of office.

This, in it's self, is a conflict!

The present Statute governing horse racing in Montana is working!  
The integrity of the Board of Horse Racing is not questioned!  
The best interest of all concerned will be served by killing SB 242 in Committee.

Thank you for your time and attention.

SENATE BUSINESS &amp; INDUSTRY

EXHIBIT NO. 6DATE 2-2-95BILL NO. 242

2-1-95

SENATE BUSINESS &amp; INDUSTRY

EXHIBIT NO. 6DATE 2/2/95BILL NO. SB 242

I am an active member of The Board of Horse Racing for the State of Montana.

As a member, I wish to inform the Business and Industry Committee that I am opposed to the passage of SB 242, introduced by Senator Gage.

On researching this bill and gathering past history of The Board of Horse Racing, I can see no logical reasoning for changing something that seems to be presently working.

Past history prior to 1983,

suggests very definite conflicts of interest when vested members of the board were allowed to participate;

creating an uncomfortable position for not only the board members, but also for The State of Montana. I have enclosed some newspaper clippings from that time period, that clearly shows the negative publicity thru the media, which resulted in public distrust of the industry, and the board.

It is my understanding that since the board was changed in 1983, to

all non-vested members, There has been no unfavorable press, and the Public has once again learned to trust the industry as a fair and competeable sport.

It is my concern that if a vested member, or members, be allowed participation on the Board of Horseracing, conflicts of interest are almost at some point inevitable. The members own horse could be on the track when a foul is called.

What Then? What type of position does that put the member, the rest of the board, and everyone else concerned, such as the Stewards, in?

Even if no conflict of interest exists, any "perceived" conflict of interest by the public could erode the creditability of the industry, and/or on the state.

When a conflict arises, what will "other" horse owners or trainers think when their animals are disqualified and a board member's horse benefits?

What will the regulators think

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in making their decisions, if these decisions affect a board members horse on race track?

When conflicts occur, what will the public think?

I don't understand why The Board of Housenacing should be allowed to function any differently than other regulatory boards where gambling is concerned.

"Especially" if there is even the slightest doubt of any possible future conflict that could cause public doubt of the industry and/or the state.

Another concern of mine is the bill itself.

Please note #3 and 2b.

It doesn't make sense. How can you 'not' have a conflict, and "BE allowed" to have a conflict?

Also in 2b, it specifies that two members of the board MUST BE in the industry. It also states that those members may not be in the industry.

Why not?

There are parts of the bill that contradicts itself.

I don't feel that this is being submitted as a good, clear, bill.

In closing, I would like to thank your committee for hearing a few of my concerns.

As a possible alternative to passage of SB242, I would like to suggest the industry members, i.e. owners, trainers, breeders and track management form an advisory committee, such as is in place for the video gaming industry, as an additional voice in relaying their concerns to The Board of Horseracing.

Sincerely,

Trish Fisher

TESTIMONY PRESENTED FEBRUARY 2, 1995, BEFORE THE MONTANA SENATE  
BUSINESS AND INDUSTRY COMMITTEE BY DR. JAMES SCOTT, CHAIRMAN OF  
THE MONTANA BOARD OF HORSE RACING:

SENATE BUSINESS & INDUSTRY  
EXHIBIT NO. 7  
DATE 2/2/95  
BILL NO. SB 242

CHAIRMAN HERTEL AND MEMBERS OF THE COMMITTEE, GOOD DAY, SIRs,  
MY NAME IS JIM SCOTT. I AM A VETERINARIAN FROM GREAT FALLS.

I STARTED PRIVATE PRACTICE AS A DOCTOR OF VETERINARY MEDICINE  
IN THE GREAT FALLS AREA 38 YEARS AGO. I HAVE BEEN A MEMBER  
OF TWO GROUP PRACTICES IN THAT AREA DURING THE ENSUING YEARS  
AND CONTINUE TODAY WITH A CONSULTING PRACTICE OUT OF GREAT FALLS.  
I SPEAK TO YOU TODAY AS AN OPPONENT OF SENATE BILL 242.

DURING THE 60'S AND EARLY 70'S MY PROFESSION TOOK ME FROM A  
GENERAL LARGE ANIMAL PRACTICE INVOLVING MAINLY CATTLE AND HORSES  
TO TEACHING AND RESEARCH AS A MEMBER OF THE VETERINARY COLLEGE  
FACULTY AT COLORADO STATE UNIVERSITY; THEN TO BECOMING DIRECTOR  
OF VETERINARY SERVICES FOR INTERNATIONAL BEEF BREEDERS OF DENVER;  
ON TO PRIVATE PRACTICE OF THERIOGENOLOGY IN COLORADO AND THEN  
AS A CONSULTANT IN THE APPRAISAL AND SELECTION OF EUROPEAN  
BOVINE AND EQUINE SEEDSTOCK IN EUROPE AND LATIN AMERICA ON  
BEHALF OF AMERICAN AND CANADIAN LIVESTOCK PEOPLE.

IN 1975 I RETURNED TO GREAT FALLS. THERE HAS BEEN MUCH  
OPPORTUNITY TO BE INVOLVED WITH THE HORSE RACING INDUSTRY  
IN MONTANA AND ELSEWHERE DURING THESE YEARS. I SAW HORSE  
RACING IN MONTANA GO THROUGH MANY GROWING PAINS FROM THE  
FAIR MEETS OF THE LATE 50'S TO TODAY WHERE IT IS

Presented by  
Jim Scott

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STRUGGLING TO STAY ALIVE IN COMPETITION WITH OTHER INDUSTRIES WHICH COMPETE FOR THE DISCRETIONARY DOLLARS THE PUBLIC IS WILLING TO EXPEND ON CHANCE OR WAGERING.

AFTER HAVING SERVED THE PUBLIC IN A VARIETY OF PROFESSIONAL CAPACITIES AS A VETERINARIAN WHICH INCLUDED A NUMBER OF YEARS SEEING RACING HORSES AND MINISTERING TO THEIR NEEDS AND THOSE OF THEIR OWNERS AT BOTH FARM AND TRACK I ACCEPTED AN APPOINTMENT TO THE MONTANA BOARD OF HORSE RACING 5 YEARS AGO. IT HAS BEEN A LEARNING EXPERIENCE AS ALL OF LIFE MOST DAYS IS. I BECAME CHAIRMAN ONLY QUITE RECENTLY. PART OF WHAT I HAVE LEARNED IS THAT THERE ARE MANY FINE PEOPLE IN MONTANA WHO VERY MUCH WANT TO SEE HORSE RACING SURVIVE AND CONTINUE AS AN INDUSTRY AND POPULAR FORM OF FUN AND ENTERTAINMENT FOR MONTANANS AND THEIR FAMILIES AND VISITORS.

BUT I HAVE ALSO LEARNED THAT WE HUMAN ANIMALS TEND TO BE SLOW LEARNERS SOME TIMES AND SEEM TO REPEAT RATHER THAN PROFIT FROM OUR MISTAKES.

WHY IS IT THAT WE SEE OTHER ENTITIES IN MONTANA MAKING A POINT OF REGULATING GAMBLING WITH EMPHASIS UPON AVOIDING CONFLICT OF INTEREST OR THE APPEARANCE OF CONFLICT OF INTEREST BUT HEAR PROponents HERE TODAY WISHING TO MAKE EXCEPTION FOR HORSE RACING?

I REFER YOU TO THE STATUTES OF THE MONTANA LOTTERY AND THE STATUTES OF THE DEPARTMENT OF JUSTICE GAMBLING CONTROL AND EVEN TO THE VERY CODE OF ETHICS FOR THE STATE OF MONTANA IN GENERAL RELATED TO PROVISIONS AND GUIDELINES CONCERNING ETHICS FOR EXECUTIVE AND LEGISLATIVE BRANCH OFFICIALS AND OTHERS WHICH ARE BEING ADDRESSED BY SENATE BILLS NO. 118 AND NO. 136, + NO. 115.

WHY WOULD MONTANA CONSIDER OVERLOOKING CONFLICT OF INTEREST CONCERNS WHEN 22 OF 29 OTHER STATE HORSE RACING JURISDICTIONS CURRENTLY REGULATING OUR SPORT AND INDUSTRY ARE ADAMANTLY STRUCTURED TO OPPOSE AND AVOID CONFLICT OF INTEREST WHERE THE NEEDS OF ALL THE PUBLIC ARE CONCERNED?

MONTANA HAS GONE THROUGH GROWING PAINS AND TERRIFIC CHALLENGES TO THE SURVIVAL OF ITS HORSE RACING INDUSTRY AS ALREADY EVIDENCED BY TESTIMONY YOU'VE HEARD FROM PROPONENTS AND OPPONENTS ALIKE OF THIS PROPOSAL.

WHY IS IT AFTER THE PROBLEMS EVIDENCED IN THE 70'S, LEADING TO THE MODIFICATIONS BROUGHT ABOUT IN 1983, THAT HORSE RACING IN MONTANA ENJOYED REASONABLE FREEDOM FROM BAD PRESS FOR AN ENSUING NEARLY DOZEN

YEARS WITH THE EXCEPTION OF ONE CIRCUMSTANCE OF ALLEGED RACE - FIXING BY A GROUP OF JOCKEYS IN GREAT FALLS AS WITNESSED BY FRONT PAGE HEADLINES IN THE JULY 3, 1994. GREAT FALLS TRIBUNE?

AND WHY IS IT THAT YOUR BOARD OF HORSE RACING WAS INTERFERED WITH IN ITS ATTEMPT~~ED~~ TO DEAL WITH THIS PROBLEM IN A REGULATORY WAY BY THE VERY TYPE INTEREST CONFLICT AND SELF-SERVING CONCERNS WHICH WERE ADDRESSED AND MUCH CORRECTED BACK PRIOR TO 1983?

THIS BILL WOULD PUT MONTANA TO RE-INVENTING THE WHEEL WHERE HORSE RACING IS CONCERNED. THIS BILL IS NOT WELL WRITTEN. IT CONTRADICTS ITSELF AND IS IN CONFLICT WITH ITS OWN INTENT. THERE ARE MANDATORY ELEMENTS CONFLICTING WITH DISCRETIONARY ELEMENTS INCLUDING THE TRANSITION SECTION. THIS BILL PLACES HORSE RACING, THE GOVERNOR AND THE STATE OF MONTANA IN AN UNTENABLE POSITION OF LOSE-LOSE.

I URGE YOUR COMMITTEE TO KILL THIS BILL AS IT DESERVES TO BE AND I URGE THE PROponents TO BRING THEIR FACTIONS TOGETHER IN A SPIRIT OF CO-OPERATION FOR A CHANGE TO ACHIEVE THEIR NEEDS FOR HORSE RACING'S FUTURE IN MONTANA!

THANK YOU

MEMBERS OF THE BUSINESS AND INDUSTRY COMMITTEE:

*Presented by -  
Peggy Buffington*

I HAVE BEEN INVOLVED IN THE HORSE BUSINESS SINCE 1961, A PERIOD OF 34 YEARS, AND HAVE BEEN AN OWNER, TRAINER, AND BREEDER OF BOTH QUARTER HORSES AND THOROUGHBREDS, BUT DURING THE PAST 6 YEARS, I HAVE BEEN EMPLOYED AS A STEWARD AT THE VARIOUS RACE TRACKS IN MONTANA. FOR THOSE OF YOU WHO ARE NOT FAMILIAR WITH THE WORKING OF A RACE TRACK, LET ME EXPLAIN THAT EACH HAS THE SERVICES OF A BOARD OF STEWARDS, TWO HIRED BY THE STATE OF MONTANA AND ONE BY THE INDIVIDUAL TRACK. THIS BOARD OF STEWARDS IS CHARGED WITH ENFORCING THE RULES OF RACING, HOLDING HEARINGS WHEN AN INFRACTION OF THESE RULES OCCURS, DISQUALIFICATION OF HORSES DURING RACES, IF NECESSARY, AND ALSO DEFENDING THESE DECISIONS IF THEY SHOULD BE APPEALED TO THE BOARD OF HORSE RACING. WE ARE IN THE BUSINESS OF PRESENTING OUR INDUSTRY TO THE PUBLIC, AND MOST ESPECIALLY, TO THE PEOPLE WHO WAGER ON RACES, IN THE BEST POSSIBLE LIGHT. THEY MUST BE ASSURED THAT OUR DECISIONS ARE FAIR, HONEST, AND UNBIASED. THERE SHOULD BE NOTHING TO ERODE THE CONFIDENCE OF THE PEOPLE WHO BET THEIR MONEY, AS THIS BASE IS WHAT PAYS THE PURSES, AND KEEPS THE HORSEMEN AND THE RACETRACKS IN BUSINESS. THE INTEGRITY OF RACING MUST BE KEPT INTACT AND THERE MUST BE NO PERCEPTION OF WRONG-DOING, REAL OR IMAGINED. THIS APPLIES NOT ONLY TO THE BOARD OF STEWARDS, BUT ALSO TO THE BOARD OF HORSE RACING. SENATE BILL 242 ATTACKS THE HEART OF THE RACING INDUSTRY...IT'S INTEGRITY AND THE IMAGE THAT IS PRESENTED TO

THE BETTING PUBLIC.

THE BEST ARGUMENT TO HAVE THIS BILL DIE A SWIFT AND SUDDEN DEATH IN COMMITTEE, IS THE BILL ITSELF. IN THE FIRST PLACE, THE BILL IS UNWORKABLE IN IT'S PRESENT FORM. IT REQUIRES TWO HORSEMEN TO SIT ON THE BOARD, YET PREVENTS THE SEATING OF ANYONE WHO WOULD HAVE A CONFLICT OF INTEREST WHILE SEATED. IF YOU WILL READ THE STATUTE AS IT NOW STANDS, WITHOUT ANY REVISIONS OR CHANGES, YOU WILL FIND THAT FORMER OWNERS, TRAINERS, BREEDERS, MEMBERS OF FAIR BOARDS, ETC. ARE **NOT EXCLUDED** FROM CONSIDERATION FOR THE BOARD OF HORSE RACING. THE ONLY PEOPLE EXCLUDED ARE CURRENT OWNERS, TRAINERS, BREEDERS, FAIR BOARD MEMBERS, ETC. AS THESE PEOPLE WOULD HAVE A CONFLICT OF INTEREST. WE HAVE HAD A FORMER MEMBER OF THE MARIAS FAIR BOARD, STEVE CHRISTIANS, SEATED ON THE BOARD OF HORSE RACING. THERE IS NO NEED TO CHANGE, OR REVISE, THE STATUTE AS IT NOW STANDS, AS THE PROVISIONS ARE ALREADY IN PLACE.

IN 1994, THERE WERE 2400 PEOPLE LICENSED IN THE INDUSTRY, AND THIS INCLUDES GROOMS, PONY PEOPLE, GATE CREW, AND MANY OTHERS IN THE SUPPORT TEAM. TAKING THEM FROM THE 2400, YOU MIGHT SEE THAT THE REMAINDER ARE THE OWNERS, TRAINERS, AND BREEDERS. IT IS VIRTUALLY IMPOSSIBLE FOR ANY OF THOSE PEOPLE TO BE SEATED ON THE BOHR WITHOUT SOME CONFLICT OF INTEREST. IT WOULD LEAVE THE GOVERNOR IN AN IMPOSSIBLE SITUATION, AND, NO MATTER WHO WAS APPOINTED, THERE WOULD BE

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PROTESTS FROM OTHERS WHO CAN SHOW A CONFLICT. THE HORSE INDUSTRY HAS A SMALL POPULATION, AND VERY FEW PEOPLE TO CHOOSE FROM.

THERE IS ALSO A GOOD REASON FOR BARRING PERSONS WHO HAVE A FINANCIAL INTEREST IN A RACE TRACK OR RACE MEET, AND MEMBERS OF COUNTY FAIR BOARDS. THE BOHR ALLOCATES RACE DATES TO EACH OF THESE FAIRS, AND THERE COULD CERTAINLY BE A PERCEPTION THAT ONE RACE MEETING HAD MUCH-SOUGHT-AFTER DATES, AND ANOTHER WAS EXCLUDED FROM THEM. CONFLICT OF INTEREST AND VESTED INTEREST WOULD BECOME A REAL QUESTION IN THE MINDS OF MANY, AS IT SHOULD.

SINCE THE STATUTE, AS IT NOW STANDS, ALREADY PROVIDES FOR FORMER HORSEMEN TO BE SEATED ON THE BOARD, THE PROPONENTS OF THIS BILL MUST BE SPEAKING OF SEATING CURRENT HORSEMEN. PEOPLE WHO ARE INDEPENDENT THINKERS, SUCH AS HORSEMEN, WOULD BE A WELCOME ADDITION TO ANY BOARD, BUT CERTAINLY NOT IF THEY ARE ACTIVELY INVOLVED IN BREEDING, OWNING, OR TRAINING RACE HORSES, OR, IF THEIR FAMILY IS ACTIVELY INVOLVED. THE CONFLICT OF INTEREST, AND VESTED INTEREST QUESTIONS, BECOME ENORMOUS, AND I WILL GIVE YOU AN EXAMPLE.

IF I WERE A MEMBER OF BOARD OF STEWARDS WHO DISQUALIFIED A HORSE, AND THIS DECISION WAS APPEALED TO THE BOARD, I WOULD HAVE TO ASK THAT A MEMBER OF THAT BOARD BE DISQUALIFIED FROM ANY INPUT, OR DECISION, IF;

THAT MEMBER, OR ANY OF HIS FAMILY, OWNED THE HORSE  
THAT MEMBER, OR ANY OF HIS FAMILY, TRAINED THE HORSE  
THAT MEMBER, OR ANY OF HIS FAMILY, OWNED OR TRAINED ANY  
**OTHER** HORSE IN THE RACE

THAT MEMBER, OR ANY OF HIS FAMILY, OWNED **ANY** HORSE IN  
THAT TRAINER'S BARN

IF THAT MEMBER, OR ANY OF HIS FAMILY, BRED ANY HORSE IN THE RACE, OR IF ANY HORSE IN THE FIELD WAS BY ANY OF HIS STALLIONS, OR A FOAL FROM ANY OF HIS MARES, I WOULD HAVE TO ASK THAT THE MEMBER BE DISQUALIFIED FROM ANY DECISION. IF THE DECISION COULD AFFECT THIS MEMBER'S OWNER OR BREEDER BONUS, THE MEMBER SHOULD BE DISQUALIFIED, BECAUSE OF CONFLICT OF INTEREST. IF THE DECISION COULD AFFECT ANY OF HIS FAMILY'S OWNER/BREEDER BONUS, IT WOULD ALSO BE A CONFLICT.

THE OUTCOME OF DECISIONS **CAN** INVOLVE THE RIGHT TO COMPETE FOR THOUSANDS OF DOLLARS IN PURSE MONEY, AND IT HAS, IN THE PAST, SUCH AS THE TRIAL FOR THE BUDWEISER \$100,000 WHEN SOME OF THE STALLS ON THE STARTING GATE FAILED TO OPEN. ANOTHER YEAR, IT ALSO INVOLVED THE BUDWEISER \$100,000, WHEN A HORSE TESTED POSITIVE FOR DRUGS IN A TRIAL RACE. IT WOULD HAVE BEEN UNTHINKABLE TO HAVE HAD AN OWNER, TRAINER, OR BREEDER OF ANY OF THOSE HORSES, IN ANY OF THOSE TRIALS, INVOLVED IN THE FINAL DECISION ABOUT THE OUTCOME OF THOSE RACES, AND WHICH HORSES QUALIFIED TO RUN IN THE FINALS. THE PURSE COULD HAVE BEEN UPWARDS OF \$40,000 TO THE WINNER. THIS IS

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WHAT SENATE BILL 242 ASKS TO DO...GIVE OWNERS, TRAINERS, AND BREEDERS THE ULTIMATE AND FINAL DECISIONS ABOUT CASES SUCH AS THESE.

HORSE RACING'S IMAGE IS VERY DIFFICULT TO PRESERVE AND MANY PEOPLE WORK 365 DAYS A YEAR TO PRESENT THE INDUSTRY WE ALL LOVE IN THE BEST POSSIBLE LIGHT, EACH TIME WE ARE BEFORE THE PUBLIC, AND THE BETTORS WHO SUPPORT THIS INDUSTRY. IF THERE IS ANY QUESTION OF IMPROPER CONDUCT, REAL OR IMAGINED, WE LOSE. THE WAGERING PUBLIC MUST KNOW THAT THIS INDUSTRY IS REGULATED... HONESTLY, FAIRLY, AND WITH NO BIAS OR PREJUDICE.

THERE SHOULD BE NO REQUIREMENT THAT ANY CERTAIN NUMBER OF HORSEMEN BE SEATED ON THE BOARD OF HORSE RACING, JUST AS THERE SHOULD BE NO REQUIREMENT THAT A CERTAIN NUMBER OF MEN, OR WOMEN, BE MEMBERS OF THE BOARD. WOMEN, MINORITIES, HORSEMEN, LAWYERS...SHOULD ALL BE CHOSEN BY THEIR ABILITIES, AND SHOULD NOT BE SEATED BY A "QUOTA SYSTEM".

I WOULD ASK THAT THIS BILL, 242, BE KILLED IN COMMITTEE, LEAVING THE BOARD OF HORSE RACING, IT'S INTEGRITY, AND UNBIASED JUDGEMENTS, INTACT, AS THEY ARE AT THE PRESENT TIME. THE STEWARDS, WHO ENFORCE THE RULES OF RACING, MUST HAVE CONFIDENCE THAT THE PEOPLE THEY REPORT TO ARE COMPLETELY UNBIASED IN THE DECISIONS THEY MUST MAKE, TO THE BEST OF THEIR ABILITIES.

READ THE STATUTE IN QUESTION, VERY CAREFULLY. YOU WILL FIND THAT THE BEST INTERESTS OF HORSE RACING ARE SERVED BY LEAVING THIS STATUTE IN IT'S PRESENT FORM, AND THAT NO CHANGES OR ADDITIONS ARE NECESSARY. CONSIDER THE OLD ADAGE, "IF IT AIN'T BROKE, DON'T FIX IT!"

A handwritten signature in cursive script that reads "Peggy Buffington". The signature is fluid and elegant, with a large initial 'P' and 'B'.

PEGGY BUFFINGTON

State of Montana

*Presented by  
Leggy Buffington*

# REPORT TO THE LEGISLATURE

## Sunset Audit

# BOARD OF HORSE RACING

The 1977 Sunset Law terminates the Board on July 1, 1983. This review provides information to assist the Legislature in making the decision to continue or modify the Board.

This report presents eight areas for legislative consideration (page 33) including:

- ▶ Conflict of interest.
- ▶ Board of Stewards.
- ▶ Handling of complaints.
- ▶ Track security.
- ▶ Compensation for board meetings.

Chapter .

BACKGROUND

This sunset performance audit addresses state regulation of the horse racing industry by the Board of Horse Racing, a state board attached to the Department of Commerce, Division of Business and Professional Licensing.

REPORT OBJECTIVES

\* The 1977 Legislature enacted legislation terminating numerous regulatory boards and agencies, including the Board of Horse Racing. This law, commonly referred to as the "sunset law," requires the Legislative Audit Committee to conduct a performance audit of each terminated agency. The performance audit must review the need for each regulatory board/agency and the Legislative Audit Committee must offer recommendations for board/agency reestablishment, modification, or termination.

The sunset law also requires an examination of the following questions during the conduct of the committee's review:

- (a) Would the absence of regulation significantly harm or endanger the public's health, safety, or welfare?
- (b) Is there a reasonable relationship between the exercise of the state's police power and the protection of the public's health, safety, or welfare?
- (c) Is there another less restrictive method of regulation available which could adequately protect the public?
- (d) Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?
- (e) Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?

- (f) Are all facets of the regulatory process designed solely for the purpose of, and have as their primary effect, the protection of the public?

Using the information contained in this report, and that gathered during a public hearing, the committee will address these six questions. During the hearing process, testimony and comments will be heard from the board/agency, the industry, and interested members of the public.

In defining legislative intent, the sunset law (section 2-8-101(2), MCA) states that, by requiring periodic evaluation in the form of a performance review, the legislature will be in a better position to ensure that agencies and programs exist only to be responsive to state residents' needs. The sunset law terminates the board on July 1, 1983. This sunset review is in response to the legal requirement for a review prior to the board's termination.

#### NATURE OF REGULATION

Horse racing in Montana is a multi-million dollar industry.  The major participants involved in the racing of the horses are the owners, trainers, jockeys, and the betting public.

The pari-mutuel betting system allows the public a legal way to wager at horse races. It also provides the funds for race track organizations to conduct the races. Eighty percent of the money bet on the horses is returned to the winning bettors. One percent of the money is given to the Board of Horse Racing. The remaining 19 percent is divided between the race track and the purses paid to the horsemen.

Each organization conducting a race meet is required by board rule to hire a specified number of racing officials to assure

After reasonable efforts, if a horse cannot be led or backed into position, the starter can order the horse be disqualified.

The identification of horses in the paddock is made by the horse identifier. No horse is to be permitted to start that has not been officially identified.

The jockey room attendant ensures that order, decorum, and cleanliness are maintained at all times in the jockey room. No one, other than racing officials and the attendant, is allowed in the jockey room without express permission of the stewards.

The security director is responsible for maintaining security at the race tracks. The director is in charge of the backstretch area, the pari-mutuel area, and is authorized to provide for the removal of unauthorized persons from restricted areas and for the removal of persons causing disturbances from the premises of the race tracks.

Horses entered in the races are the responsibility of the trainers. Each trainer is obligated to protect the horses against the administration of any substance which could affect the performance of a horse in a race. The trainers furnish the names of the jockeys who ride their horses when they enter the horses in a race. Horses in the paddock are attended by the trainer, and the trainer must be present to supervise the saddling, unless permission has been obtained from the stewards to send another licensed trainer as a substitute.

\* To facilitate independent regulation of the industry, the Legislature created the Board of Horse Racing, now administratively attached to the Department of Commerce. The department hires a

Chapter II

BOARD OF HORSE RACING

\* The Montana Horse Racing Commission was created in 1965.  
Prior to that time, county horse racing commissions regulated the industry. In 1971, under the Executive Reorganization Act, the commission was renamed the Montana Board of Horse Racing and was attached to the Department of Professional and Occupational Licensing (DPOL) for administrative purposes. Ten years later, the 47th Legislature transferred the functions of DPOL to the new Department of Commerce.

\* The primary purpose of the board is to license, regulate, and supervise race meets held in the state. To fulfill this purpose, the statutes dictate the board adopt rules governing race meets and the pari-mutuel wagering system. The rules include definitions and provisions for:

- (1) auditing race meets;
- (2) supervision of the pari-mutuel system;
- (3) corrupt practices and penalties;
- (4) supervision, duties, and responsibilities of the presiding steward, racing secretary, and other racing officials;
- (5) licensing of all personnel who have anything to do with the substantive operation of racing;
- (6) the establishment of dates for race meets and meetings so the best interests of breeding and racing in this state are considered; and
- (7) the veterinary practices and standards which must be observed in connection with race meets.

Implied in the statute is the function of handling complaints and inspecting race meets.

## BOARD OPERATIONS

### Structure

★ The governor appoints five members to the Board of Horse Racing. They must be residents and qualified electors of the state. One member must be a breeder of racing horses, one a member of an independent horse racing association, one a member of a county fair board that features pari-mutuel betting, and two who have occupations unrelated to horse racing. The senate must confirm new appointees. Terms are for three years and members can only be removed by the governor for "cause."

Board members receive per diem of \$25 a day while on board business. They are also allowed travel expenses as provided by sections 2-18-501 and 2-18-503, MCA.

The board convenes about once a month. During the racing season they usually meet in a city holding a racing meet.

### Staffing

The board is attached to the Department of Commerce for administrative purposes. The department provides the board with legal, budgetary, and accounting services, as well as a department staff member. (Prior to the 1982 racing season the department intends to hire an executive secretary.) The previous staff member handled the daily business of the board which included answering correspondence and the telephone. Some of the staff's duties were:

- handling administrative matters of the board including correspondence and maintenance of records (complaint registers, etc.);

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### Chapter III

#### OTHER REGULATION

In Montana, \*the Board of Horse Racing is the only state agency with regulatory control over the horse racing industry.

There are no federal regulations pertaining to horse racing.

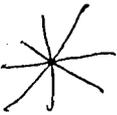
Professional associations exert some influence over various aspects of the horse racing industry. The American Quarter Horse Association (AQHA) can request quarter horses at an AQHA approved track be tattoo branded on the inside of the upper lip with an official identification number. The number is then placed on the horse's registration certificate and becomes part of its identifying features. There are six AQHA approved tracks in Montana - Helena, Kalispell, Shelby, Miles City, Missoula, and Hamilton.

The Jockey's Guild, Incorporated, represents the interests of the jockeys. The Guild requires each meet to have accident insurance of \$25,000 for jockeys. Also required are such items as ambulances and well maintained track surfaces, jockey rooms, and rails. Track evaluations are attempted at least once a year by the western manager of the Guild. If any unsatisfactory conditions are not corrected the jockeys can refuse to ride at that meet. A committee of four jockeys is appointed by the western manager of the Guild to represent the jockeys' interests at each race meet. The committee of jockeys will perform the track evaluations if the western manager is not available.

The Horsemen's Benevolent and Protective Association (HBPA) represents horsemen in dealing with race meet operators regarding

such matters as purses and facilities. The operators of the larger race meets, such as the races held in Helena, Great Falls, Billings, etc., sign a contract with the HBPA that states the minimum amount of the purses. Conditions are attached to the contract that the race meet sponsor will correct problems the horsemen have identified. At those meets where a contract has been signed, two percent of the purses paid by the sponsor of the meet goes to HBPA.

### Regulation in Other States

 At present, horse racing is legal in 29 states, including Montana. One state does not have horse races, but it does have regulations, and another only allows harness racing. The form of regulation is similar in each state and in most states the regulations are administered by a board. The following illustration compares various elements of Montana's regulation with those of other states that conduct horse races:

COMPARISON - MONTANA AND OTHER STATES REGULATION OF HORSE RACING

<u>Entity</u>	<u>Other</u>	<u>Montana</u>
* Licensing	25 States - Board/Commission 1 State - State administrative agency with an advisory board	Board of Horse Racing
* Board Size	1 Board - 1 Commissioner 9 Boards - 3 members 2 Board - 4 members 8 Boards - 5 members 1 Board - 5 members, 1 director of an agency 2 Board - 7 members 3 Boards - 10 or more members	5 members
* Board Make-up	18 Boards - Public members only 4 Boards - Horse owners/breeders, public members 1 Board - Horse owners/breeders, public members, county fair board member 1 Board - Horse owners/breeders, public members, 2 attorneys 1 Board - Racing association officials 1 Board - Commissioner	2 public members 1 horse owner/breeder 1 member of independent horse racing association 1 member of a county fair board
* Board Member Hold Financial Interest In Horse Racing Track	25 States - No 1 State - Yes	Yes
* Board Member Own Race Horses and Race In The State	20 States - No 6 States - Yes	Yes
Horse Owners and/or Trainers Can Be Racing Officials	25 States - No 1 State - Yes	Yes
Board Member Can Be Racing Official	22 States - No 3 State - Yes 1 State - Not prohibited by law, but do not as a practice	Yes

## Chapter IV

### AREAS FOR LEGISLATIVE CONSIDERATION

The design and effectiveness of certain aspects of the regulatory process may warrant legislative consideration. The intent of the following sections is to briefly discuss these aspects as they apply to the Board of Horse Racing.

The areas for consideration include:

1. Conflict of interest
2. Board of Stewards
3. Handling of complaints
4. Security at the race meets
5. Compensation for board members
6. Maintenance of records
7. Fees
8. Criminal conviction

In addition to the above aspects, we noted several other areas that warranted consideration. We discussed these areas with the board and the Department of Commerce. The following summarizes the concern and the response:

1. The board held a telephone conference call during which board rules were adopted. Conference calls constitute regular board meetings as defined in 2-3-202, MCA. The board or department took no steps to ensure the conference call was announced and open to the public. The department said it will ensure all conference calls are announced and open to the public in the future.
2. During the conference call noted above, a secretary was not provided by the department so there was no record of the call in the board minutes. The department said a secretary will be made available to record all meetings, whether by conference call or otherwise.

3. The board has the authority to close a meeting to the public to discuss litigation or a matter of individual privacy as per 2-3-203, MCA. One board meeting was held during our review in which the board called executive session to discuss the board's travel budget. In our discussions with horsemen, many mentioned they thought the board was abusing the use of executive session. The department noted that the board was not fully aware of executive session policy, and will inform the board of the criteria for closing a meeting for executive session.
4. As noted in Chapter II, the complaint register and complaint file maintained at the board office are not complete. Ten complaints found in separate file folders were not listed on the register. Other complaints were listed on the register yet no complaint forms were found. Of the 47 complaints listed on the register, only 25 completed complaint forms were in the file. The department has implemented new procedures to improve file maintenance and to ensure all complaints are registered and filed.

CONFLICT OF INTEREST

The Board of Horse Racing has sole regulatory authority over the sport of horse racing, a multi-million dollar industry in the state of Montana. In an industry of this size there should not be any appearance of a conflict of interest concerning the board, its representatives, or any of the tracks' representatives. In our review of the board we noted several areas in which there was an appearance of a conflict of interest:

1. two board members, pursuant to state statutes, are members of associations that conduct race meets, and vote on items that affect the meets their associations sponsor;
2. a track steward invited friends who had bet on a horse in a race into the stewards' stand to watch the race;
3. a track steward at one meet was a jockey in one of the races held during the meet;
4. a state steward was offering advice as to which horse to bet to win; and
5. race horse owners and trainers are racing officials.

## Board Members

In 1976 the Commission on the Review of the National Policy Toward Gambling, established by the United States Congress, conducted a study in which conflict of interest was discussed. The report, Gambling in America, recommended that ". . . members and staff of state racing commissions be absolutely prohibited from holding any financial interest in racetracks under their regulatory jurisdiction" (page 122). The report also outlined model statutes concerning pari-mutuel racing. The model statutes stated that a member of a state commission should ". . . have no pecuniary interest or engage in any private employment in a profession or business which is regulated by, interferes or conflicts with the performance or proper discharge of the duties as a State Racing Commissioner in the public interest." (Source: Gambling in America, Appendix 1, page 1117.)

The 1973 Legislature revised the board laws to increase the size of the Montana board to five members. One of the additional members is a member of a county fair board that features pari-mutuel betting. The other additional member is a member of an independent racing association. Past board members have voted on matters relating to the organizations of which they were members. One of the members also inspected the condition of the race track prior to the race meet sponsored by his association. The track inspections are conducted to ensure that needed repairs or improvements have been implemented. (See Chapter II.)

The conflict of interest presented by requiring board members to be members of a fair board or a private racing association should

X be resolved. One option to alleviate the conflict is to follow the recommendation of the National Commission and amend the law to eliminate the requirement that board members must be members of fair boards and private racing associations.

Another alternative is to have the board members file statements of disclosure with the Secretary of State and include the statements in the board minutes. In 1978 the board requested the department attorney to issue an opinion as to whether the board members representing the fair board and the private racing association were in conflict with the state's Code of Ethics (Title 2, Chapter 2, MCA). The attorney recommended that the board members prepare a disclosure statement and have it filed with the Secretary of State. All the minutes of the board meetings were also to have disclosure statements attached. However, there are no disclosure statements filed with the Secretary of State for the appropriate board members. In addition, none of the board minutes have disclosure statements attached.

Stewards

Gambling in America states "In any sport in which gambling is permitted, it is important to avoid the appearance as well as the fact of wrongdoing. Hence, any situations in racing creating the potential for conflicts of interest should be carefully examined" (page 122).

At one race meet attended by our auditors one of the track stewards invited two friends into the stewards' stand to watch the running of a race. The visitors had placed a bet on a horse in

the race. If a ruling by the stewards had been required concerning the race, and the horse bet on by the visitors had been involved, it could have appeared to have been a conflict of interest. The board should not allow anyone in the stewards' stand without prior permission from the state steward. X This would eliminate any appearance of conflict of interest.

Another meet attended by our auditors offered a race in which retired jockeys rode the horses. One of the jockeys that rode in the race was a track steward at the meet. A board member took the steward's place while the steward was absent from the stewards' stand. The situation gives the appearance of a conflict of interest on the part of the board member and the steward. The board should not allow a person to participate in a meet, in any way, while that person is officiating at the meet. X Also, board members should not participate at the race meets in any official capacity in the event they may have to act on a state steward's ruling. Twenty-two other states with horse racing prohibit board members to participate as racing officials. The board should take action to ensure that all appearances of a conflict of interest are eliminated.

What about  
part of the board?

In another instance a steward was observed telling members of the betting public to place a small bet on a particular horse to win. Again there is an appearance of a conflict of interest. Stewards should not be giving advice on any race.

It was also noted in our review that horse owners and/or trainers are employed as racing officials. The board attributes this situation to the small group of available and knowledgeable

people from which they have to choose officials. We found that  
one of the state stewards is a trainer and owner, and many of the  
officials employed by the tracks are race horse owners or trainers.

\* One racing official at one of the meets visited had a horse entered  
in one of the races of the meet. This also gives the appearance of  
a conflict of interest.

A survey taken of jockeys and horsemen showed that the  
majority of them believe a conflict of interest exists when a horse  
owner or trainer works as a racing official for the track or the  
state. \* Consideration should be given to prohibiting race horse  
owners or trainers from being racing officials so as to avoid any  
appearances of a conflict of interest.

#### BOARD OF STEWARDS

##### Statutory Authority

The powers and duties of the Board of Stewards are detailed  
in the Board of Horse Racing's administrative rules. The rules  
state the Board of Stewards is comprised of one state steward, one  
association steward, and one steward chosen by the other two (the  
third steward is paid by the association). According to the rules,  
the Board of Stewards' jurisdiction in any matter extends 30 days  
after the conclusion of the race meeting over which it presided.  
The rules also state the stewards may suspend the license of  
anyone whom they have the authority to supervise for up to a  
period of two years, impose a fine up to \$500, or both suspend  
and fine.

Although the Board of Stewards and its authority is detailed  
in the rules, there is no statutory authority for the Board of

23-5-802. Fantasy sports leagues authorized.  
23-5-803 and 23-5-804 reserved.  
23-5-805. Payoffs — administrative fees charged by commercial establishments.  
23-5-806. Sports betting prohibited — applicability.  
23-5-807 through 23-5-809 reserved.  
23-5-810. Violations.

Part 9 reserved

Part 10 — State Lottery  
(Renumbered, Sec. 57, Ch. 647, L. 1991)

Part 11 — Calcutta Pools  
(Renumbered and Repealed.  
Sec. 68, 72, Ch. 642, L. 1989)

Chapter Cross-References  
Gambling prohibited unless authorized by  
legislature or the people, Art. III, sec. 9, Mont.  
const.

General Provisions, Proceedings, and Penalties

Part 1

Part Cross-References  
Local government — no power to regulate  
gambling unless delegated. 7-1-112.  
Bingo, keno, and raffles authorized,  
3-5-405.  
Amusement games, Title 23, ch. 6, part 1.  
Gambling — basis for discharge of high-  
way patrol officer, 44-1-612.

- 23-5-101. Renumbered 23-5-112 by Code Commissioner, 1989.
- 23-5-102. Renumbered 23-5-151 by Code Commissioner, 1989.
- 23-5-103. Renumbered 23-5-152 by Code Commissioner, 1989.
- 23-5-104. Renumbered 23-5-153 by Code Commissioner, 1989.
- 23-5-105. Repealed. Sec. 68, Ch. 642, L. 1989.  
History: En. Sec. 4, Ch. 197, L. 1949; Sec. 94-2432, R.C.M. 1947; redes. 94-8-431 by  
ec. 29, Ch. 513, L. 1973; amd. Sec. 26, Ch. 508, L. 1977; R.C.M. 1947, 94-8-431.
- 23-5-106. Repealed. Sec. 68, Ch. 642, L. 1989.  
History: En. Sec. 4, Ch. 115, L. 1907; Sec. 8419, Rev. C. 1907; re-en. Sec. 11162, R.C.M.  
921; re-en. Sec. 11162, R.C.M. 1935; Sec. 94-2406, R.C.M. 1947; redes. 94-8-406 by Sec. 29,  
Ch. 513, L. 1973; R.C.M. 1947, 94-8-406; amd. Sec. 7, Ch. 198, L. 1981.
- 23-5-107. Repealed. Sec. 68, Ch. 642, L. 1989.  
History: En. Sec. 3, Ch. 115, L. 1907; Sec. 8418, Rev. C. 1907; re-en. Sec. 11161, R.C.M.  
921; Cal. Pen. C. Sec. 332; re-en. Sec. 11161, R.C.M. 1935; Sec. 94-2405, R.C.M. 1947; redes.  
4-8-405 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 70, Ch. 359, L. 1977; R.C.M. 1947, 94-8-405.
- 23-5-108. Renumbered 23-5-154 by Code Commissioner, 1989.
- 23-5-109. Repealed. Sec. 68, Ch. 642, L. 1989.  
History: En. Sec. 6, Ch. 115, L. 1907; Sec. 8421, Rev. C. 1907; re-en. Sec. 11164, R.C.M.  
921; re-en. Sec. 11164, R.C.M. 1935; Sec. 94-2408, R.C.M. 1947; redes. 94-8-408 by Sec. 29,  
Ch. 513, L. 1973; R.C.M. 1947, 94-8-408.

23-5-110. Public policy of state concerning gambling. (1) The legis-

in this state it is necessary and desirable to adopt a public policy regard-  
ing public gambling activities in Montana. The legislature therefore declares  
necessary to:

- (a) create and maintain a uniform regulatory climate that assu-  
res players, owners, tourists, citizens, and others that the gambling industry  
in this state is fair and is not influenced by corrupt persons, organizations  
or practices;
- (b) protect legal public gambling activities from unscrupulous players  
and vendors and detrimental influences;
- (c) protect the public from unscrupulous proprietors and operators  
of gambling establishments, games, and devices;
- (d) protect the state and local governments from those who would cond-  
one illegal gambling activities that deprive those governments of their  
revenues;
- (e) protect the health, safety, and welfare of all citizens of this state  
including those who do not gamble, by regulating gambling activities; and
- (f) promote programs necessary to provide assistance to those who  
adversely affected by legalized gambling, including compulsive gamblers and  
their families.

(2) The legislature adopts the policy that an applicant for a license  
to permit or other department approval under parts 1 through 8 of this chapter  
does not have a right to the issuance of a license or permit or the granting  
of the approval sought. The issuance of a license or permit issued or other  
department approval granted pursuant to the provisions of parts 1 through  
8 of this chapter is a privilege revocable only for good cause. A holder does  
not acquire a vested right in the license or permit issued or other departm-  
ent approval granted. A license or permit issued under parts 1 through 8 of this  
chapter may not be sold, assigned, leased, or transferred.

(3) Revenue to fund the expense of administration and control of gamb-  
ling as regulated by parts 1 through 8 of this chapter must be derived solely from  
fees, taxes, and penalties on gambling activities, except the gambling  
activities of the Montana state lottery and the parimutuel industry.  
History: En. Sec. 1, Ch. 642, L. 1989; amd. Sec. 1, Ch. 398, L. 1993.

Compiler's Comments  
1993 Amendment: Chapter 398 in (2) and  
(3) extended reference from parts 1 through 6  
to parts 1 through 8.

23-5-111. Construction and application. In view of Article III, sect-  
ion 9, of the Montana constitution, parts 1 through 8 of this chapter must  
be strictly construed by the department and the courts to allow only those types  
of gambling and gambling activity that are specifically and clearly allowed  
in those parts.

History: (1) En. Sec. 65, Ch. 642, L. 1989; (2) En. Sec. 2, Ch. 642, L. 1989; amd. Sec.  
Ch. 398, L. 1993.

Compiler's Comments  
1993 Amendment: Chapter 398 near  
beginning, after "constitution", substituted  
"parts 1 through 8 of this chapter" for "Chapter  
642, Laws of 1989" and at end substituted  
"those parts" for "Chapter 642, Laws of 1989"  
and deleted former (2) that read: "(2) This  
chapter applies only to public gambling  
activities within the state of Montana."

isdemeanor jurisdiction of the state of Montana. Within 6 months after receipt of the resolution, the governor shall issue a proclamation to that effect.

(2) The Confederated Salish and Kootenai tribes may, by separate resolution, withdraw consent to be subject to those areas of civil jurisdiction of the state of Montana that are delineated in tribal ordinance 40-A (revised and acted May 5, 1965). The withdrawal is limited to those delineated areas of civil jurisdiction agreed upon in writing by the governor after consultation with the attorney general and officials of affected local governments. The governor shall initiate this process by sending a certified letter to the governor. After consultation and execution of a written agreement between the governor and the tribes, the agreed-upon civil areas must be incorporated into a tribal resolution to be enacted by the tribes. Within 6 months after receipt of the tribal resolution, the governor shall issue a proclamation to that effect that reflects the terms of the written agreement.

(3) Subsections (1) and (2) do not alter the existing jurisdiction or authority of the Confederated Salish and Kootenai tribes or the state of Montana, except as expressly provided for in subsections (1) and (2).

History: En. Sec. 6, Ch. 81, L. 1963; R.C.M. 1947, 83-806; amd. Sec. 1, Ch. 542, L. 1993.

Amplifier's Comments: Chapter 542 substituted present section regarding withdrawal consent to state jurisdiction for former section that read: "Any Indian tribe, community, band, or group of Indians that may consent to the provisions of this part may within 2 years from the date of the governor's proclamation withdraw their consent to be subject to the criminal and/or civil jurisdiction of the state of Montana, by appropriate resolution, and within 60 days after receipt of such resolution, the governor shall issue a proclamation to that effect." Amendment effective April 24, 1993.

STANDARDS OF CONDUCT

CHAPTER 2

Part 1 — Code of Ethics

- 2-101. Statement of purpose.
2-102. Definitions.
2-103. Public trust.
2-104. Rules of conduct for all public officers, legislators, and employees.
2-105. Ethical principles for public officers and employees.
2-106 through 2-2-110 reserved.
2-111. Rules of conduct for legislators.
2-112. Ethical principles for legislators.
2-113 through 2-2-120 reserved.
2-121. Rules of conduct for state officers and state employees.
2-122 through 2-2-124 reserved.
2-125. Rules of conduct for local government officers and employees.
2-126 through 2-2-130 reserved.
2-131. Voluntary disclosure.
2-132. Powers of the secretary of state.

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Part 2 — Proscribed Acts Related to Contracts and Claims

- 2-2-201. Public officers, employees, and former employees not to have interest in contracts — local government waiver.
2-2-202. Public officers not to have interest in sales or purchases.
2-2-203. Voidable contracts.
2-2-204. Dealings in warrants and other claims prohibited.
2-2-205. Affidavit to be required by auditing officers.
2-2-206. Officers not to pay illegal warrant.
2-2-207. Settlements to be withheld on affidavit.

Part 3 — Nepotism

- 2-2-301. Nepotism defined.
2-2-302. Appointment of relative to office of trust or emolument unlawful — exceptions — publication of notice.
2-2-303. Agreements to appoint relative to office unlawful.
2-2-304. Penalty for violation of nepotism law.

Chapter Cross-References

Elected official's business disclosure statement, 5-7-213.

Part 1 Code of Ethics

Judges — removal and discipline, Art. VIII, sec. 11, Mont. Const.

Part Cross-References

Impeachment, Art. V, sec. 13, Mont. Const.

2-2-101. Statement of purpose. The purpose of this part is to set forth a code of ethics prohibiting conflict between public duty and private interest as required by the constitution of Montana. This code recognizes distinctions between legislators, other officers and employees of state government, and officers and employees of local government and prescribes some standards of conduct common to all categories and some standards of conduct adapted to each category. The provisions of this part recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances. History: En. 59-1701 by Sec. 1, Ch. 569, L. 1977; R.C.M. 1947, 59-1701.

Cross-References Constitutional mandate to provide Code of 13-35-301.

Ethics, Art. XIII, sec. 4, Mont. Const.

2-2-102. Definitions. As used in this part, the following definitions apply:

(1) "Business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

(2) "Compensation" means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.

(3) "Employee" means any temporary or permanent employee of the state or any subdivision thereof or member of the judiciary, including a member of

a board, commission, or committee except a legislator and an employee under contract to the state.

(4) "Financial interest" means an interest held by an individual, his spouse, or minor children which is:

- (a) an ownership interest in a business;
- (b) a creditor interest in an insolvent business;
- (c) an employment or prospective employment for which negotiations have begun;

(d) an ownership interest in real or personal property;

(e) a loan or other debtor interest; or

(f) a directorship or officership in a business.

(5) "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.

(6) "Public officer" includes any state officer except a legislator or member of the judiciary or any elected officer of any subdivision of the state.

(7) "State agency" includes the state, the legislature and its committees; all executive departments, boards, commissions, committees, bureaus, and offices; the university system; and all independent commissions and other establishments of the state government except the courts.

(8) "State officer" includes all elected officers and directors of the executive branch of state government as defined in 2-15-102.

History: En. 59-1702 by Sec. 2, Ch. 569, L. 1977; R.C.M. 1947, 59-1702.

**2-2-103. Public trust.** (1) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, legislators, and employees. A public officer, legislator, or employee shall carry out his duties for the benefit of the people of the state.

(2) A public officer, legislator, or employee whose conduct departs from his fiduciary duty is liable to the people of the state as a trustee of property, is liable to a beneficiary under 72-34-105, and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust. The county attorney of the county where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the aggrieved agency.

(3) The following sections set forth various rules of conduct, the transgression of any of which is, as such, a violation of fiduciary duty, and various ethical principles, the transgression of any of which is not, as such, a violation of fiduciary duty.

History: En. 59-1703 by Sec. 3, Ch. 569, L. 1977; R.C.M. 1947, 59-1703; amd. Sec. 216, Ch. 685, L. 1989.

**Cross-References**

All state officers and employees to be bonded, 2-9-602.

**2-2-104. Rules of conduct for all public officers, legislators, and employees.** (1) Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty. A public officer, legislator, or employee may not:

(a) disclose or use confidential information acquired in the course of his official duties in order to further substantially his personal economic interests; or

(b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift;

(i) which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties; or

(ii) which he knows or which a reasonable person in his position should know under the circumstances is primarily for the purpose of rewarding him for official action he has taken.

(2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of such services. Campaign contributions reported as required by statute are not gifts or economic benefits tantamount to gifts.

History: En. 59-1704 by Sec. 4, Ch. 569, L. 1977; R.C.M. 1947, 59-1704.

**Cross-References**

Prohibited campaign practices, Title 13, ch. 35, part 2. Reports of campaign contributions required, 13-37-225.

**2-2-105. Ethical principles for public officers and employees.** (1) The principles in this section are intended as guides to conduct and do not constitute violations as such of the public trust of office or employment in state or local government.

(2) A public officer or employee should not acquire an interest in any business or undertaking which he has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by his agency.

(3) A public officer or employee should not, within the months following the voluntary termination of his office or employment, obtain employment in which he will take direct advantage, unavailable to others, of matters with which he was directly involved during his term or employment. These matters are rules, other than rules of general application, which he actively helped formulate and applications, claims, or contested cases in the consideration of which he was an active participant.

(4) A public officer or employee should not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when he has a substantial financial interest in a competing firm undertaking.

History: En. 59-1709 by Sec. 9, Ch. 569, L. 1977; R.C.M. 1947, 59-1709. Public contracts generally, Title 18, ch.

**Cross-References**

Definitions of "rules" and "contested cases" relating to administrative rules, 2-4-102.

2-2-106 through 2-2-110 reserved.

**2-2-111. Rules of conduct for legislators.** Proof of commission of a act enumerated in this section is proof that the legislator committing the act has breached his fiduciary duty. A legislator may not:

(1) accept a fee, contingent fee, or any other compensation, except his official compensation provided by statute, for promoting or opposing the passage of legislation;

(2) seek other employment for himself or solicit a contract for his services by the use of his office.  
History: En. 59-1705 by Sec. 5, Ch. 569, L. 1977; R.C.M. 1947, 59-1705.

**Cross-References**  
Compensation of members of Legislature,  
Title 5, ch. 2, part 3.

**2-2-112. Ethical principles for legislators.** (1) The principles in this section are intended only as guides to legislator conduct and do not constitute violations as such of the public trust of legislative office.

(2) When a legislator must take official action on a legislative matter as to which he has a conflict created by a personal or financial interest which would be directly and substantially affected by the legislative matter, he should consider disclosing or eliminating the interest creating the conflict or abstaining from the official action. In making his decision, he should further consider:

(a) whether the conflict impedes his independence of judgment;

(b) the effect of his participation on public confidence in the integrity of the legislature; and

(c) whether his participation is likely to have any significant effect on the disposition of the matter.

(3) A conflict situation does not arise from legislation affecting the entire membership of a class.

(4) If a legislator elects to disclose the interest creating the conflict, he shall do so as provided in the joint rules of the legislature.  
History: En. 59-1708 by Sec. 8, Ch. 569, L. 1977; R.C.M. 1947, 59-1708.

**2-2-113 through 2-2-120 reserved.**

**2-2-121. Rules of conduct for state officers and state employees.**

(1) Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty.

(2) A state officer or a state employee may not:

(a) use state time, facilities, or equipment for his private business purposes;

(b) engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from his agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any state agency;

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom he regulates in the course of his

official duties without first giving written notification to the department director.

(3) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding subsection (2)(e) if his participation is necessary to the administration of a statute and if he complies with the voluntary disclosure procedures under 2-2-131.

(4) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless he is also a full-time state employee.  
History: En. 59-1706 by Sec. 6, Ch. 569, L. 1977; R.C.M. 1947, 59-1706; amd. Sec. 1, Ch. 59, L. 1991.

**Cross-References**  
"Quasi-judicial" defined, 2-15-102.  
Unofficial use of state-owned motor vehicle — misdemeanor, 2-17-432.

**2-2-122 through 2-2-124 reserved.**

**2-2-125. Rules of conduct for local government officers and employees.** (1) Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty.

(2) An officer or employee of local government may not:

(a) engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties; or

(b) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent.

(3) A member of the governing body of a local government may perform an official act notwithstanding this section when his participation is necessary to obtain a quorum or otherwise enable the body to act, if he complies with the voluntary disclosure procedures under 2-2-131.  
History: En. 59-1707 by Sec. 7, Ch. 569, L. 1977; R.C.M. 1947, 59-1707.

**2-2-126 through 2-2-130 reserved.**

**2-2-131. Voluntary disclosure.** A public officer or employee may, prior to acting in a manner which may impinge on his fiduciary duty, disclose the nature of his private interest which creates the conflict. He shall make the disclosure in writing to the secretary of state, listing the amount of his financial interest, if any, the purpose and duration of his services rendered if any, and the compensation received for the services or such other information as is necessary to describe his interest. If he then performs the official act involved, he shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act.  
History: En. 59-1710 by Sec. 10, Ch. 569, L. 1977; R.C.M. 1947, 59-1710.

**2-2-132. Powers of the secretary of state.** The secretary of state may

(1) issue advisory opinions with such deletions as are necessary to protect the identity of the requesting party or the party about whom the opinion is written;

(2) keep and permit reasonable public access to voluntary disclosure statements;

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associations may give away at public drawings at fairs and rodeos", and made minor changes in style.

Chapter 626 in definition of bingo, near end, substituted "one or more" for "a"; in definition of distributor, in (a), substituted "a licensed manufacturer, distributor, or route operator" for "another person" and in (b), after "sells", deleted "leases, or otherwise furnishes" and substituted "a licensed distributor, route operator, or operator" for "another person for use in public"; in definition of license substituted references to other manufacturer's, distributor's, and route operator's license for

reference to manufacturer-distributor license; in definition of manufacturer, after "device", inserted "and who sells the equipment directly to a licensed distributor, route operator, or operator"; in definition of promotional game of chance inserted last sentence regarding distribution or distribution of property; inserted definition of route operator; and made minor changes in style.  
The definition of license, amended by both chapters in a manner not creating a conflict, was slightly reworded by the codifier for grammatical purposes.

23-5-113. Department as criminal justice agency — seized property. (1) The department is a criminal justice agency. Designated agents of the department are granted peace officer status, with the power of search, seizure, and arrest, to investigate gambling activities in this state regulated by parts 1 through 8 of this chapter and the rules of the department and to report violations to the county attorney of the county in which they occur.

(2) Upon conviction for any violation of parts 1 through 8 of this chapter, the court may order any property seized by a department or local law enforcement agent during a lawful search to be forfeited to the department, sold, if necessary, and disposed of under 23-5-123.

History: En. Sec. 5, Ch. 642, L. 1989; amd. Sec. 2, Ch. 647, L. 1991; amd. Sec. 4, Ch. 398, L. 1993.

Compiler's Comments  
1993 Amendment: Chapter 398 in (1) and (2) extended reference from parts 1 through 6 to parts 1 through 8.

23-5-114. Department employees — activities prohibited. (1) An employee of the department directly involved with the prosecution, investigation, regulation, or licensing of gambling, as designated by the attorney general, may not:

- (a) serve as an officer of a business or organization that conducts a gambling activity, other than as an officer of a nonprofit organization;
- (b) be employed by a licensed operator in any capacity that requires assisting in conducting a gambling activity regulated under parts 1 through 6 of this chapter or maintaining records for the gambling activity;
- (c) have a beneficial or pecuniary interest in a contract for the manufacture, lease, or sale of a gambling device, the conduct of a gambling activity, or the provision of independent consultant services in connection with a gambling activity; or

(d) participate in a gambling activity governed by parts 1 through 6 of this chapter, except in performing assigned employment duties. An employee may participate in a gambling activity governed by chapter 4 or 7 of this title.

(2) The prohibitions in subsections (1)(a) through (1)(c) apply to a former designated department employee during the first year following termination from employment with the department if the employee was directly involved with the prosecution, investigation, regulation, or licensing of gambling immediately before termination.

History: En. Sec. 6, Ch. 642, L. 1989; amd. Sec. 26, Ch. 647, L. 1991.

23-5-115. Powers and duties of department — licensing. (1) department shall administer the provisions of parts 1 through 8 of chapter.

(2) The department shall adopt rules to administer and implement parts 1 through 8 of this chapter.

(3) The department shall provide licensing procedures, prescribe necessary application forms, and grant or deny license applications.

(4) The department shall prescribe recordkeeping requirements for licenses, provide a procedure for inspection of records, provide a method of collection of taxes, and establish penalties for the delinquent reporting payment of required taxes.

(5) The department may suspend, revoke, deny, or place a condition license issued under parts 1 through 8 of this chapter.

(6) The department may not make public or otherwise disclose information obtained in the application or tax reporting processes, except for general statistical reporting or studies or as provided in 23-5-116.

(7) The department shall assess, collect, and disburse any fees, tax charges authorized under parts 1 through 8 of this chapter.

History: En. Sec. 7, Ch. 642, L. 1989; amd. Sec. 3, Ch. 647, L. 1991; amd. Sec. 5 398, L. 1993.

Compiler's Comments  
1993 Amendment: Chapter 398 throughout section extended reference from parts 1 through 6 to parts 1 through 8.

23-5-116. Disclosure of information. (1) The department shall, upon request, disclose the following information from a license or permit application:

(a) the applicant's name;

(b) the address of the business where the activity under the license permit is to be conducted;

(c) the name of each person having an ownership interest in the business and

(d) types of permits requested by the applicant.

(2) In addition to the information enumerated in subsection (1), the department may disclose any other relevant information obtained in application or tax reporting process or as a result of other department operations to:

- (a) a federal, state, city, county, or tribal criminal justice agency; and
- (b) the department of revenue and the federal internal revenue service.

History: En. Sec. 4, Ch. 647, L. 1991.

23-5-117. Premises approval. (1) Except as provided in subsection the department may approve a premises for issuance of an operator's license if the premises meets the requirements contained in subsections (2) and (3).

(2) The premises must:

(a) be a structure or facility that is clearly defined by permanently installed walls that extend from floor to ceiling;

(b) have a unique address assigned by the local government in which premises is located; and

associations may give away at public drawings; at fairs and rodeos; and made minor changes in style.

Chapter 626 in definition of bingo, near end substituted "one or more" for "a"; in definition of distributor, in (A), substituted "a licensed manufacturer, distributor, or route operator" for "another person" and in (B), after "sells", deleted "leases, or otherwise furnishes" and substituted "a licensed distributor, route operator, or operator" for "another person for use in public"; in definition of license substituted references to other manufacturer's, distributor's, and route operator's license for

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(2) Upon conviction for any violation of parts 1 through 8 of this chapter, the court may order any property seized by a department or local law enforcement agent during a lawful search to be forfeited to the department, sold, if necessary, and disposed of under 23-5-123.

History: En. Sec. 5, Ch. 642, L. 1989; amd. Sec. 2, Ch. 647, L. 1991; amd. Sec. 4, Ch. 398, L. 1993.

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(a) serve as an officer of a business or organization that conducts a gambling activity, other than as an officer of a nonprofit organization;

(b) be employed by a licensed operator in any capacity that requires assisting in conducting a gambling activity regulated under parts 1 through 6 of this chapter or maintaining records for the gambling activity;

(c) have a beneficial or pecuniary interest in a contract for the manufacture, lease, or sale of a gambling device, the conduct of a gambling activity, or the provision of independent consultant services in connection with a gambling activity; or

(d) participate in a gambling activity governed by parts 1 through 6 of this chapter, except in performing assigned employment duties. An employee may participate in a gambling activity governed by chapter 4 or 7 of this title.

(2) The prohibitions in subsections (1)(a) through (1)(c) apply to a former designated department employee during the first year following termination from employment with the department if the employee was directly involved with the prosecution, investigation, regulation, or licensing of gambling immediately before termination.

History: En. Sec. 6, Ch. 642, L. 1989; amd. Sec. 26, Ch. 647, L. 1991.

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23-5-115. Powers and duties of the department shall administer the provisions of parts 1 through 8 of this chapter.

(2) The department shall adopt rules to administer and implement parts 1 through 8 of this chapter.

(3) The department shall provide licensing procedures, prescribe necessary application forms, and grant or deny license applications.

(4) The department shall prescribe recordkeeping requirements for licenses, provide a procedure for inspection of records, provide a method of collection of taxes, and establish penalties for the delinquent reporting payment of required taxes.

(5) The department may suspend, revoke, deny, or place a condition on a license issued under parts 1 through 8 of this chapter.

(6) The department may not make public or otherwise disclose information obtained in the application or tax reporting processes, except for general statistical reporting or studies or as provided in 23-5-116.

(7) The department shall assess, collect, and disburse any fees, taxes, charges authorized under parts 1 through 8 of this chapter.

History: En. Sec. 7, Ch. 642, L. 1989; amd. Sec. 3, Ch. 647, L. 1991; amd. Sec. 5, Ch. 398, L. 1993.

Compiler's Comments  
1993 Amendment: Chapter 398 throughout section extended reference from parts 1 through 6 to parts 1 through 8.

23-5-116. Disclosure of information. (1) The department shall, upon request, disclose the following information from a license or permit application:

(a) the applicant's name;

(b) the address of the business where the activity under the license or permit is to be conducted;

(c) the name of each person having an ownership interest in the business;

(d) types of permits requested by the applicant.

(2) In addition to the information enumerated in subsection (1), the department may disclose any other relevant information obtained in the application or tax reporting process or as a result of other department operations to:

(a) a federal, state, city, county, or tribal criminal justice agency; an operator; or

(b) the department of revenue and the federal internal revenue service.

History: En. Sec. 4, Ch. 647, L. 1991.

23-5-117. Premises approval. (1) Except as provided in subsection (2), the department may approve a premises for issuance of an operator's license if the premises meets the requirements contained in subsections (2) and (3).

(2) The premises must:

(a) be a structure or facility that is clearly defined by permanent installed walls that extend from floor to ceiling;

(b) have a unique address assigned by the local government in which the premises is located; and

representative of state and local law enforcement and criminal justice agencies directly related to the prevention and control of juvenile delinquency, units of general local government, and public agencies maintaining programs to reduce and control crime and shall include representatives of citizens and professional and community organizations, including organizations directly related to delinquency prevention.

History: En. 82A-1207 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 61, L. 1973; amd. ec. 1, Ch. 202, L. 1977; R.C.M. 1947, 82A-1207(1) thru (3); amd. Sec. 22, Ch. 184, L. 1979.

ross-References Board of Crime Control, 44-4-301.

2-15-2007. Highway traffic safety program. The highway traffic safety program provided for in 61-2-102 is attached to the department of justice for administrative purposes only as prescribed in 2-15-121. However, the program may hire its own personnel, and 2-15-121(2)(d) does not apply.

History: En. Sec. 8(2), Ch. 274, L. 1981; amd. Sec. 4, Ch. 3, L. 1985.

2-15-2008 through 2-15-2010 reserved.

2-15-2011. Repealed. Sec. 1, Ch. 77, L. 1993. History: En. 82-425, 82-426 by Secs. 1, 2, Ch. 522, L. 1977; R.C.M. 1947, 82-425, 82-426; amd. Sec. 1, Ch. 68, L. 1985.

2-15-2012 through 2-15-2014 reserved.

2-15-2015. Workers' compensation fraud office. There is a workers' compensation fraud investigation and prosecution office in the department of justice. The office shall investigate and prosecute cases referred by the state compensation insurance fund. The office is under the supervision and control of the attorney general and consists of:

(1) four persons qualified by education, training, experience, and high professional competence in investigative procedures who shall investigate violations of the provisions of Title 39, chapters 71 and 72, at the request of the state compensation insurance fund; and

(2) one person licensed to practice law in Montana who shall prosecute violations of the provisions of Title 39, chapters 71 and 72. The attorney may also assist county attorneys in prosecuting violations of Title 39, chapters 71 and 72, without charge to the county.

History: En. Sec. 1, Ch. 296, L. 1993.

Compiler's Comments

Name Change — Directions to Code Compiler: Section 14, Ch. 630, L. 1993. provided: "Whenever the name 'state compensation mutual insurance fund,' meaning the fund established in 39-71-2313, appears in the Montana Code Annotated or in legislation enacted by the 1993 legislature, the code compiler is directed to change the name to 'state compensation insurance fund.'" The phrase appeared in this section and was changed by the Code Commissioner as directed. Effective Date: Section 9, Ch. 296, L. 1993. provided: "[This act] is effective July 1, 1993."

2-15-2016 through 2-15-2020 reserved.

2-15-2021. Gaming advisory council — allocation — composition — compensation — biennial report. (1) There is a gaming advisory council.

(2) The gaming advisory council is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(3) The gaming advisory council consists of nine members. One member must be from the senate, and one member must be from the house of representatives. The senate committee on committees and the speaker of the house of representatives shall appoint the legislative members of the council. The seven remaining members must be appointed by the department, with one representing the public at large, two representing local government, one being a Native American, and three representing the gaming industry.

(4) Each gaming advisory council member is appointed to a 3-year term of office. A member of the council may be removed for good cause by the appointing body provided for in subsection (3).

(5) The gaming advisory council shall appoint a presiding officer from its members.

(6) Members of the gaming advisory council are entitled to travel, meals, and lodging expenses as provided for in 2-18-501 through 2-18-503. A member who is not a full-time salaried officer or employee of the state or of a political subdivision of the state is also entitled to be paid \$25 for each day during which the member is actually and necessarily engaged in the performance of council duties. Expenses of the council must be paid from licensing fees received by the department.

(7) The gaming advisory council shall, within its authorized budget, hold meetings and incur expenses as it considers necessary to study all aspects of gambling in the state.

(8) (a) The gaming advisory council shall submit a biennial report to the department, at a time designated by the department, with recommendations for amendments to the gambling statutes, the need for additional or modified department rules, the clarification of existing rules, and other recommendations on the operation of the department or any other gambling-related matter.

(b) The biennial report required under subsection (8)(a) must be affixed to the report on gambling in the state that the department submits that year.

(c) The council may submit interim reports to the department as the council considers necessary.

(d) The council shall meet with the department upon request of the department.

(e) The department shall meet with the council upon request of the council.

(9) The department shall give each council member notice and a copy of each proposed change in administrative rules relating to gambling. The notice and copy must be given at the time a notice of proposed rules changes is filed with the secretary of state. The council shall review the proposal, may comment on it, and may attend any hearing on the proposal. The department shall consider any comment by any council member or by the council as a whole prior to adopting the proposed change.

History: En. Sec. 64, Ch. 642, L. 1989; amd. Sec. 9, Ch. 112, L. 1991; amd. Sec. 53, Ch. 647, L. 1991; amd. Sec. 7, Ch. 349, L. 1993; amd. Sec. 1, Ch. 626, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 349 deleted second sentence of (8)(b) that read: "The department and council shall, as provided in 5-11-210, submit the two most recent department and council reports to the legislature"; and made minor changes in style. Chapter 626 in (4), after "term of office", deleted "except that three of the first appointed original members shall serve a 1-year term."

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years of age;

- (4) violate subsection (3) or (4) of 23-7-302;
- (5) serve as a commissioner, director, assistant director, employee, or licensed agent of the state lottery in violation of 23-7-306;
- (6) violate 23-7-307;
- (7) violate 23-7-310; or
- (8) influence the winning of a prize through the use of coercion, fraud, deception, or tampering with lottery equipment or materials.

23-7-201. State lottery commission -- allocation -- composition -- compensation -- quorum. (1) There is a state lottery commission.

(2) The commission consists of five members, who shall reside in Montana, appointed by the governor.

(3) At least one commissioner must have 5 years of experience as a law enforcement officer. At least one commissioner must be an attorney admitted to the practice of law in Montana. At least one commissioner must be a certified public accountant licensed in Montana.

(4) After initial appointments, each commissioner shall be appointed to a 4-year term of office, and the terms shall be staggered.

(5) A commissioner may be removed by the governor for good cause. An office that for any reason becomes vacant must be filled within 30 days by the governor, and the commissioner filling the vacancy shall serve for the rest of the unexpired term.

(6) The commission shall elect one of its members as chairman.

(7) Three or more commissioners constitute a quorum to do business, and action may be taken by a majority of a quorum.

(8) Commissioners are entitled to compensation, to be paid out of the state lottery fund, at the rate of \$50 for each day in which they are engaged in the performance of their duties and are entitled to travel, meals, and lodging expenses, to be paid out of the state lottery fund, as provided for in Title 2, chapter 18, part 5.

(9) The commission is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

23-7-202. Powers and duties of commission. The commission shall:

- (1) establish and operate a state lottery and may not become involved in any other gambling or gaming;
- (2) determine policies for the operation of the state lottery, supervise the director and his staff, and meet with the director at least once every 3 months to make and consider recommendations, set policies, determine types and forms of lottery games to be operated by the state lottery, and transact other necessary business;
- (3) maximize the net revenue paid to the superintendent of public instruction and to the board of crime control under 23-7-402 and ensure that all policies and rules adopted further

(13) A license may be suspended or revoked for failure to maintain the license qualifications provided in subsection (3) or for violation of any provision of this chapter or a commission rule. Prior to suspension or revocation, the licensee must be given notice and an opportunity for a hearing.

23-7-302. Sales restrictions. (1) The price of each lottery game ticket or chance must be clearly stated thereon. The price of a lottery game chance vended by a machine or electronic device must be clearly stated on the machine or device.

(2) Tickets and chances may not be sold to or purchased by persons under 18 years of age.

(3) Tickets and chances may be purchased only with cash or a check and may not be purchased on credit.

(4) Tickets and chances may not be sold to or purchased by commissioners, the director, his staff, gaming suppliers doing business with the state lottery, suppliers' officers and employees, employees of any firm auditing or investigating the state lottery, governmental employees auditing or investigating the state lottery, or members of their households.

(5) The names of elected officials may not appear on any ticket or chance.

23-7-303 and 23-7-304 reserved.

23-7-305. Disclosure of odds. The director shall make adequate disclosure of the odds with respect to each state lottery game by stating the odds in lottery game advertisements and by posting the odds at each place in which tickets or chances are sold.

23-7-306. Felony and gambling-related convictions -- ineligibility for lottery positions. No person who has been convicted of a felony or a gambling-related offense under federal law or the law of any state may be a commissioner, director, assistant director, employee of the state lottery, or licensed ticket or chance sales agent. Prior to appointment as a commissioner, director, assistant director, or employee, a person shall submit to the commission a full set of fingerprints made at a law enforcement agency by an agent or officer of such agency on forms supplied by the agency. The assistant director for security may require a ticket or chance sales agent to submit fingerprints prior to licensing.

23-7-307. Conflict of interest. No commissioner, director, assistant director, state lottery employee, licensed ticket or chance sales agent, or member of his household may have a financial interest in any gaming supplier or any contract between the state lottery and a gaming supplier or accept any gift or thing of value from a gaming supplier.

23-7-308 and 23-7-309 reserved.

23-7-310. Disclosures by gaming suppliers. (1) Any person, firm, association, or corporation that submits a bid or proposal for a contract to supply lottery equipment, tickets, or other material or consultant services for use in the operation of the state lottery shall disclose at the time of such bid or proposal:

(a) the supplier's business name and address and the names and addresses of the following:

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COMPOSITION OF BOARDS OR COMMISSIONS

- \* NO CONFLICTS ALLOWED MEANS THEY CAN'T  
BET/BREED/OWN/TRAIN/FINANCIAL INTEREST DIRECTLY OR INDIRECTLY
- IDAHO - 3 GOVERNOR APPOINTED COMMISSION - NO CONFLICT OF INTEREST  
- NO INDUSTRY MEMBERS
- IOWA - 5 GOVERNOR APPOINTED MEMBERS - NO CONFLICT OF INTEREST  
- NO INDUSTRY MEMBERS
- WASHINGTON - 3 GOVERNOR APPOINTED COMMISSION - CONFLICTS ALLOWED  
PLUS A 4 LEGISLATIVE NON VOTING ADVISORY MEMBERS  
- 2 SENATORS AND 2 REPRESENTATIVES - NO CONFLICTS
- CALIFORNIA - 7 GOVERNOR APPOINTED MEMBERS - NO FINANCIAL INTEREST  
IN TRACK OR ASSOCIATION  
- CAN OWN AND BET
- OREGON - 5 GOVERNOR APPOINTED MEMBERS - NO CONFLICTS ALLOWED
- WYOMING - 7 GOVERNOR APPOINTED MEMBERS - CAN'T TRAIN  
\* GOVERNOR GENERALLY DOES NOT APPOINT PEOPLE FROM THE  
INDUSTRY ( HE COULD BUT DOESN'T)
- COLORADO - 5 GOVERNOR APPOINTED COMMISSION - 1 VET - 5 YEARS EXP.  
- 1 BUSINESS PERSON  
- 1 GENERAL PUBLIC  
- 1 GREYHOUND EXP.  
- 1 HORSE RACING EXP.
- \* GREYHOUND AND HORSE RACING MEMBER'S EXPERIENCE NOT ACTIVELY
- NORTH DAKOTA - 5 GOVERNOR APPOINTED MEMBERS - 4 - NO CONFLICTS  
- 1 MEMBER FROM THE  
BREEDERS WITH NO  
FINANCIAL INTEREST
- SOUTH DAKOTA - 5 GOVERNOR APPOINTED MEMBERS - NO CONFLICT
- MINNESOTA - 9 GOVERNOR APPOINTED COMMISSION - NO CONFLICTS
- NEBRASKA - 3 GOVERNOR APPOINTED COMMISSION - NO CONFLICTS
- MICHIGAN - 1 COMMISSIONER APPOINTED BY GOVERNOR AND THE  
COMMISSIONER APPOINTS 2 DEPUTY COMMISSIONERS  
- NO CONFLICTS CAN'T OWN/TRAIN/BREED/BET/ETC
- ARIZONA - 5 GOVERNOR APPOINTED COMMISSION - NO CONFLICTS  
- DIRECT OR INDIRECT
- MARYLAND - 9 GOVERNOR APPOINTED COMMISSION - NO MORE THAN 4  
MEMBERS MAY BE ACTIVELY INVOLVED

LOUISIANA - 10 GOVERNOR APPOINTED - CAN'T BE FINANCIALLY INVOLVED  
IN A RACE TRACK BUT CAN OWN/TRAIN/BET/ETC

FLORIDA - NO BOARD OF COMMISSION

VIRGINIA - 5 GOVERNOR APPOINTED - NO CONFLICT ALLOWED

NEW HAMPSHIRE - 6 GOVERNOR APPOINTED - NO CONFLICTS ALLOWED

DELAWARE - 4 GOVERNOR APPOINTED - NO CONFLICTS ALLOWED

ALABAMA - NOT STATE - COMMISSION FOR EACH TRACK - 5 MEMBERS  
- NO CONFLICTS ALLOWED

CONNECTICUT - GREYHOUND BOARD - GOVERNOR APPOINTED - NO CONFLICTS  
ALLOWED

ILLINOIS - 9 GOVERNOR APPOINTED - NO CONFLICTS ALLOW  
MOSTLY ATTORNEYS ARE APPOINTED

INDIANA - 5 GOVERNOR APPOINTED - NO CONFLICTS ALLOWED

MASSACHUSETTS - 3 GOVERNOR APPOINTED COMMISSIONERS - NO CONFLICTS  
ALLOWED

MISSOURI - 5 GOVERNOR APPOINTED - CAN NOT BET BUT CAN OWN/TRAIN  
ETC.

OHIO - 5 GOVERNOR APPOINTED MEMBERS - NO CONFLICTS ALLOWED

OKLAHOMA - 7 GOVERNOR APPOINTED - 1 MEMBER SHALL HAVE PAST  
EXPERIENCE IN THE INDUSTRY BUT NOT ACTIVE DURING HIS TERM.  
- NO CONFLICTS ALLOWED

PENNSYLVANIA - 3 GOVERNOR APPOINTED COMMISSIONERS - NO CONFLICTS

NEW JERSEY - 9 GOVERNOR APPOINTED - NO CONFLICTS ALLOWED

29 called

Summary - i.e. 10 allow conflicts -

22 do not allow conflicts

1 - NO Bd or Commission

(2 require previous  
experience - not  
actively

# Jockey accused in race-fixing scheme

## But judge blocks suspension by board in Montana

By JAMES E. LARCOMBE  
Tribune Staff Writer

A judge has ruled that the leading jockey in Montana horse racing should be allowed to ride at the State Fair Race Meet in Great Falls despite being suspended by Montana's horse racing board for alleged race-fixing in Washington state.

Scott Bergsrud, three other jockeys, their agent and a trainer were

suspended in Washington last week on allegations of fixing the outcome of a number of races last November at Playfair Park in Spokane.

The Montana Board of Horse Racing last week issued an emergency suspension of Bergsrud and two of the other jockeys licensed in Montana after learning of the Washington allegations. The jockeys are not suspected of any wrongdoing in Montana races, said Sam Murfitt, executive secretary of the Montana racing board.

"All we were doing was reciprocating with Washington," Murfitt said Saturday. "We are not presuming guilt or innocence."

Also suspended by the Montana board as a result of the Washington



Bergsrud

allegations were Tim Masters and Jeff Jones. Masters has ridden recently in Great Falls but Murfitt said he didn't know if Jones was racing in Montana.

The Montana suspensions were issued last Tuesday. On Thursday, District Judge John McCarvel of Great Falls issued an order allowing Bergsrud to continue racing. The Montana racing board challenged the order Friday, but McCarvel let it stand.

Douglas Allen, the Great Falls attorney representing Bergsrud, questioned the suspension process. Allen also owns and trains race horses.

"Scott was suspended in Washington without any opportunity to be heard on those allegations," Allen said Saturday. "He was suspended without any hearing in Montana."

Efforts to contact Bergsrud were unsuccessful Saturday. In newspaper accounts published in Washington, Bergsrud has denied the allegations. Washington investigators say criminal charges are possible but none has been filed.

Bergsrud rode in two races Saturday, once on a horse owned by Allen's wife, Cheryl. The jockey

and horse finished fourth in race. Bergsrud won his other after the first to finish was disqualified.

"He's an excellent rider," attorney said. "He's ridden for the past and will ride for us again." Bergsrud, scheduled to Monday in Great Falls, has been very successful since coming Montana in the late 1980s.

"He's been the leading jockey in Montana and in the region for number of years," said Murfitt. "After a couple of weeks at the State Fair, he is the leading jockey there."

In Spokane, Bergsrud rode winners in 76 days at Playfair See JOCKEY, 2A

# State faces tinderbox year

## Digging for dinosaurs



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# Jockeys, parimutuel equipment targets of criticism

LANGLEY

The Bureau use who regulate the other targets and for criticism firm that op-

erates the parimutuel equipment on most Montana tracks. A certain percentage of jockeys, some critics assert, are corrupt and manipulate results of races so they can cash in on heavy bets.

The most popular trick, they say, is pulling mounts. This occurs when a trio of jockeys, riding favorites, place their mounts in order to let the long-shot place first or second so they can collect handsome payoffs.

The charge initially was raised last year by a Helena Independent Record reporter who, after talking to a number of horsemen during a race meet here, concluded such irregularities had occurred.

The assertion was raised most recently by Rep. Joe Quillet, D-Barre, who last winter told a House of Representatives committee that jockeys were caught betting out of the jockey room in Helena last year. Quillet won approval of a resolution calling for an investigation of horse racing, and told The Independent Record State Bureau recently he will continue to press for the study.

Several will testify "I have quite a few people who want to come in and testify," Quillet said in a telephone interview. "They are good reliable people who are interested in horse racing."

However, racing officials contend the charge come, not from reliable sources, but from horsemen unhappy over lost races or gamblers who have lost bets. "It's real easy to say it's the jockey's fault," said John Roberts, Missoula, the senior member of the horse racing commission. And Charles Huber, Great Falls, the state racing steward, says flatly: "It doesn't take place."

Yet it is the complaint heard most often at race tracks after the excitement of a race is over. Racing officials admit jockeys sometimes pull horses to keep them under control or to prevent accidents on the track. Aside from the danger of an uncontrolled horse, jockeys responsible for wrecks, jams and other such irregularities are fined or suspended from racing.

Unfortunately, they add, most jockeys in Montana have not acquired a mastery of racing, let alone the manipulation of results.

A training ground in Montana, because of low purses and a short season is viewed either as a training ground for aspiring apprentices or a haven for inebriety. One man closely associated with racing estimates 25 per cent use Montana tracks for their apprenticeship, another 50 per cent are jockeys "who can never quite make it," and the remainder are transients.

"In a state like Montana, where you've got the size of horses you've got here, you're not going to have the Eddie Arce and Willie Shoemakers," another man said.

Others contend that because of the limited parimutuel wagering in Montana, the payoffs are not sufficient temptation for jockeys to fix races. "They may try, but I don't think it works out for them," one horse owner said. "I'd rather make \$35 to win than make a couple of bucks the other way."

Jockeys generally are paid a certain fee to ride a mount and sometimes also receive a percentage of the purse if the horse wins.

Change of drug use Other charges of corruption, which extend to horsemen as

two races the owner or trainer was suspended for 15 days and fined \$50. In the third, the owner was suspended for 15 days.

All three instances involved the use of stimulants which are relatively easy to detect in urine samples taken from winners' laboratorics in Denver under lock and key. Last year \$79 samples were taken and sent to the laboratory which racing officials describe as one of the best in the country.

"It's too easy to get caught at something like that," explained Dr. Joseph Murphy, a Great Falls dentist who is vice president of the Big Sky association. "It's very rare."

However, one method of doping that is neither easy to spot nor apparently rare is the legal use of vitamins to rejuvenate older horses before races.

"If you've got an old sore horse, you get it fixed up so it will feel no pain," said one horseman. "You see a horse that's (a) 30-1 (underdog) and it jumps up and wins. There's a lot of unhappy people." The man added: "at every race you'll see one or two do that."

Area of disagreement Disagreement persists, however, over whether the practice accomplishes its most correct purpose. "I think that's probably an old wives tale," said Murphy. "I've been told the same thing."

He blames the condition of tracks — dust, wind and rain — for many of the malfunctions, but adds they have become less frequent in the past several years because he is continually reconditioning the equipment.

Others wouldn't do it. Because of the condition of Montana tracks, Shelhamer contends, "we have gone into many places where most jockey operator wouldn't consider going into."

Most tracks have not installed permanent facilities for the equipment and, consequently, he added, "make your equipment look bad."

Shelhamer said he exercises the equipment, most of which is 25 years old, on tracks in Montana, Wyoming, Idaho, Oregon and Alberta.

He said it would cost about \$500,000 to completely replace it, and because there is manufacturing in the United States, it is difficult to obtain.

He added he thinks he is accomplishing the same thing by reconditioning his machine. "You most is working right for that at any time — especially in the last five years, we spent a considerable amount," he said. "You have an expensive proposition for that at any time — especially in the last five years, we spent a considerable amount."

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EXHIBIT 8B  
DATE 2-2-95  
SB 242

## Butte solon wants horse racing study

By THE ASSOCIATED PRESS

As he promised more than a week ago, Rep. Joe Quilici, D-Butte, formally asked the House Thursday to call for an interim study of horse racing and pari-mutuel betting in Montana.

Quilici's resolution, signed by two other Democrats and two Republicans, including the present and former speakers, asks the Legislative Council to make the study.

The measure says that parimutuel wagering has been accepted in Montana since 1929 but has never been a source of revenue to the state.

For this reason, the resolution says the study should include a detailed comparison of state and local revenues derived from such wagering in other states.

It also says that Montana "currently has the most liberal returns to bettors of any of the 21 states which authorize parimutuel wagering."

Quilici made his promise to seek the interim study when he was supporting a Senate-passed bill that would increase the number of members on the Montana Horse Racing Commission to five members from three.

The commission is headed by John Roberts, Missoula, with Clean Carney, Great Falls, as vice chairman. The other mem-

ber is Dr. S. J. Skor, Helena.

The resolution was introduced on the day the bill made its second appearance in the debate stage. It was killed in the House on its first appearance by a vote of 51-41, but later was revived.

Sponsors of the resolution said the commission has been criticized by the legislative auditor for certain accounting and personal practices.

Their resolution asks that the study report be made to the 1974 session.

Also introduced on the 55th legislative day was a resolution urging the legislature to take steps during the interim and the next session to analyzing the problem of creating a better business climate in Montana.

The measure was signed by 16 representatives with Minority Leader Oscar S. Kvavlen, R-Lambert, as principal sponsor.

They ask that the legislature address itself to attracting clean technological industry; expanding Montana's travel, recreation and convention industry; expanding existing business; and encouraging further utilization and processing of Montana products and resources within the state.

## Racing board gets approval to expand

By J. D. HOLMES

Associated Press Writer

State representatives gave tentative approval Thursday to a once-rejected plan to expand the size of Montana's Board of Horse Racing to five members from three.

Their action came shortly after a resolution calling for an interim study of horse racing and parimutuel betting was introduced and assigned to the State Administration Committee for recommendation.

Principal sponsor of the resolution is Rep. Joe Quilici, D-Butte, who told the House more than a week ago that it was upcoming.

Bipartisan cosponsors include present and former House speakers.

The resolution said parimutuel wagering has been accepted in Montana since 1929 but has never been a source of revenue to the state.

In guiding the bill through debate, Quilici said the larger board will "in no way cause hardship to big or little tracks."

He said horse racing is growing more popular in Montana, adding that a new race circuit is expected to move into the state with horses from points between Calgary and Phoenix.

Before giving tentative approval to the Senate bill, the House accepted an amendment from Rep. John B. Driscoll, D-Hamilton.

This puts two representatives of the public on the board along with one horse breeder, one member of an independent horse-racing association and one member of a county fair board featuring parimutuel betting.

Originally, the legislation called for two horse breeders and one person having no relation to horse racing.

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*Helena 3-10-73 Monday*  
**Montana Racing Commission  
charged with irregularities**

By GARY LANGLEY  
IR State Bureau

Stiff charges were leveled at the Montana Racing Commission Saturday with a Butte legislator implying that horse racing throughout Montana is riddled with irregularities and controlled by jockeys and parimutuel operators.

Rep. Joe Quilici, D-Butte, appearing before the House State Administration Committee to push for his resolution calling for a detailed interim study of the sport, charged that the present commission is lax in correcting irregularities that range from personnel practices to actually tampering with results of races.

"I just believe they're lax and somebody's got to give them a shot in the arm," Quilici told the committee. "Why should they let these operators and these jockeys run horse racing in the state of Montana?"

**Jockeys are betting**

At one point during the 20-minute hearing, Quilici indicated that jockeys have bet on races, apparently knowing in advance the outcome.

"You mean that there's evidence that jockeys are determining the outcome of a race?" asked Rep. Walter Ulmer, R-Miles City.

"Yes there is," Quilici replied. "Right here in Helena they caught jockeys betting out of the jockey room and the commission did nothing about it."

Quilici went on to say Montana horse breeders and small fair operators "are not getting a fair shake" because racing is controlled by parimutuel operators and jockeys.

"It's tougher to regulate parimutuel boys and jockeys than it is anybody," he said.

**Audit shows irregularities**

To re-inforce his argument, the Butte Democrat distributed copies of a legislative audit of

the horse racing commission dated Dec. 6, 1971, which showed irregularities on race tracks in accounting and personnel practices and parimutuel operations.

Among its findings were these:

—Generally accepted accounting practices were not maintained.

—Financial reports did not adequately disclose activities of the commission, and revenue

and expenditure data presented in reports were not compatible.

—Cash collected by the commission staff at racing meets was not promptly deposited as required by state law and precautions against theft and loss were inadequate.

—Checks received by the commission were not properly controlled and control over commission expenditures was inadequate.

—Personnel, such as state

stewards, parimutuel supervisors and bookkeepers, were employed as independent contractors rather than employees "as they should be."

**Security was inadequate**

—Physical security of areas where the wagering proceeds were received and handled was inadequate.

—Personnel handling money were not covered by bonds.

—The commission had not established basic standards for parimutuel equipment. As a result, some equipment leased under contract from commercial operators, was almost obsolete and frequently malfunctioned, adversely affecting the efficiency of race results and the accuracy and reliability of wagering data.

What concerns Quilici the most is the machines that spit out wagering tickets on which he said mistakes often are made.

He said the legislative auditors office is "wondering what happens to these tickets once they're pushed aside."

**More study needed**

"They can't prove anything," he said of the old study. "But with a little more study, they could prove some things."

In a cover letter to Quilici, Legislative Auditor Morris L. Brusett said a determination of whether corrective action was taken at a result of the study cannot be made "until a follow-up audit is conducted."

Quilici's resolution, approved unanimously by the committee Saturday, comes amid a legislative attempt to increase the size of the Montana Racing Commission from three to five members. It is still pending before the legislature.

"They want to know what grounds to cover in a new study," Quilici said of the auditor's office.

# Jockeys Thought to Be Tampering With Mounts

BY KEN ROBERTSON

IR Staff Writer

Since horse racing started again in Helena in 1967, the Capital City Horse Racing Association has done a commendable job of keeping the Helena meet free of any "fixing" of the races. Part of the reason for the group's success no doubt is because there wasn't enough money in the races here to make the risk worthwhile during the first few years.

But, according to a number of horsemen this writer talked to during the meet, a trio of jockeys was thought to be pulling odds-on favorites, letting a long shot slip into first or second, and collecting good payoffs on a quinella wagers bet for them by another party.

## Sports Analysis

The system works like this: with one of the three "pullers" aboard either of the two favorite horses in a given race, that horse is pulled enough off the pace where he finishes third or worse, and, as a result, a long shot finishes second, or perhaps first if the co-favorite comes in no better than second.

### Hard to Discover

Such a setup is difficult to discover, and, for jockeys of reasonable skills, easy to manage. They set up races only when jockeys in the system can manipulate a given race.

In this case, it is claimed three apparently were working the system. In a 10-horse field, that leaves seven horses to worry about. If both of the betting favorites were ridden by those involved, one jockey pulled up his horse, the other rode to win and the third maneuvered his horse to hold out any unexpected challenges except by the long shot bet on.

If one of the three was on a favorite, he pulled his mount and all three maneuvered to keep other horses out of the money and let the second half of their bet, the long shot, sneak into the money along with the favorite who's ridden by a jockey not in on the system.

The beautiful part of this setup is that neither the first or second place horse have to be in any way involved in the hanky panky. And, if it's worked right, the horse the bettors favor that is pulled gets in for third — close enough to allay suspicions of any unethical practices.

### Refinements

There are refinements. Instead of pulling up a mount, a jockey can make his horse run too hard early, which keeps all but the best horses from holding off a stretch run by other mounts.

Or, a jockey can lose a stirrup, which means he'll have to break his rhythm on the horse to get it back. And even that slows up a horse.

There are many more ruses, but that should give some idea how such a system works.

Now, why does it appear such a system was used during the races this year? Because there were a number of cases in which three things indicated such a system apparently was used.

and three jockeys working such a system will pocket about \$640 — close to \$210 each.

There's no need to pay off the person making the bets for them. He can make his share by putting some of his money on the same horses. The tip on which horses are to win is payoff enough.

Losing one of the three means they've lost \$40, and their other two bets will cost \$80. But they'll collect \$800 on the two they manage correctly, making a \$640 profit.

### Can Mean \$2,300 Each

For an 11-day meet like Helena, that can mean over \$2,300 for each jockey in on the system.

Now, naming the three is something that this article won't do. It can't be proved that such a system was operating so long as the three jockeys involved keep quiet.

The purpose is to point out what was apparently going on, according to knowledgeable horsemen and according to certain results, so that perhaps the jockeys can be discovered and disciplined by the appropriate authorities.

Or, at the least, perhaps the jockeys involved will no longer involve themselves in the unethical conduct of betting on a horse they're not riding.

To illustrate the system in action, one of the races of the last weekend was described to this writer as being rigged in the following fashion:

After quinella bets were arranged to be placed on the horse established as one of the race's co-favorites and a 10-1 long shot, the three arranged to try to make sure these two horses finished first and second.

### "Puller" on Favorite

One of the jockeys thought to be a "puller" was on the favorite, so that horse was no problem. Another horse that figured to be close in the eight-horse field was scratched, so the job was made a bit easier.

That left seven horses, with two of them ridden by jockeys in on the system. Two of the seven ridden by "straight" jockeys had little chance to finish close to the other five, and they didn't.

Of the five in contention, the favorite was pulled and finished third. The two horses bet on were let run, meaning only two others had to be kept out of the first two places.

One of the other three in on the system was riding one of these two, so that left only one. And, that one was kept out of the money by being boxed in by the favorite ridden by a puller and the horse ridden by the second puller.

The result — the two horses bet on by the three finished first and second. Despite the co-favorite being a 3-1 shot and the other a 10-1 shot — not very good bets usually — the quinella paid only in the \$16 to \$20 range.

There were about 120 winning tickets on the combination. Races the same day with horses at similar odds taking first and second had quite different quinella payoffs: A 12-1 shot and a 3-1 shot that were in a race in which the three did not have the mounts to manipulate the results had only about 50 winning tickets and the payoff was about \$40 despite a smaller amount wagered in the quinella pool.

Another race in which there was no chance to tamper with the results had a \$40 quinella on a 12-1 shot and a 3-1 shot.





# Workmen's Com

By ARTHUR HUTCHINSON  
Standard State Bureau  
HELENA — Administrator James J. Carlen complained to a Senate Committee that a bill passed by the workmen's compensation division was designed to turn the \$10 million program "into a kind of lottery spoil system."

There is evidence in at least one much talked-about disability award that it already may be just that.

The case is that of George McGaffick, a Helena businessman and long-time personal friend of former Gov. Forrest H. Anderson.

The bare public record is that McGaffick then an em-

ploye of the state highway department, was awarded a \$5,200 settlement in December, 1970, last month of the Anderson administration, for an injury suffered July 31, 1969, three and one-half years earlier.

The disability was unspecified back and knee injuries, according to the division's public announcement. The announcement did not disclose how or where the accident occurred.

Further information is in the files of the workmen's compensation division, hidden from the public but open to inspection by legislators.

McGaffick has told a two persons including a reporter that he injured his back moving a trailer at a state park near Three Forks. He said he was accused by the former governor

of breaking my back. McGaffick said. He said Anderson saw a trailer wasn't quite right and scrounged a two-by-four to move it. I was bending and the governor said "George, don't stand

there." McGaffick, whose charges of submitting fraudulent expense claims resumes next week, said: "I feel it (the award) is only right. I had it

five years. Majority Leader Larry Fasbender, D-Butte, has been given a report by McGaffick awarding House leadership's role in the legislative committee. He and legislators also have the McGaffick file in men's compensation

They refused details to newsmen. The report was given to McGaffick on a confidential basis.

But examination of public records point to discrepancies in an unanswered question about the award.

The purpose of the insurance is to provide for a worker and his family while he is unable to work because he is unable to work due to his injury. Income substitution comes supplement

—McGaffick on nine days after the accident which he claimed to have received \$283.12 for the period including the accident, certain records discrepancy represented pay for 80 hours of work per year salary.

—McGaffick paid his full salary for the year 1969, when he was on the payroll of the board and the number assigned on natural re-

EXHIBIT 8B

DATE 2-2-95

SB 242

## Butte Sunday - Horse racing 3-11-73 called crooked

By GARY LANGLEY  
Standard State Bureau  
HELENA — Stiff charges were leveled at the state horse racing commission Saturday.

A Butte legislator implied that horse racing throughout Montana is riddled with irregularities and controlled by jockeys and parimutuel operators.

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"You mean that there's evidence that jockeys are determining the outcome of a race?" asked Rep. Walter Ulmer, R-Miles City.

"Yes, there is," Quilici replied. "Right here in Helena they caught jockeys betting out of the jockey room and the commission did nothing about it."

Quilici went on to say Montana horse breeders and small fair operators "are not getting a fair shake" because racing is controlled by parimutuel operators and jockeys.

"It's tougher to regulate parimutuel boys and jockeys than it is anybody," he said.

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# Horse racing being upgraded in Montana

By GARY LANGLEY  
IR State Bureau  
(Last in a series)

Racing officials, nudged by public pressure, are attempting to upgrade the sport's image in Montana with attempts to tighten security and improve quality.

"I think racing has come a long way in the last three years — mostly because of the 'racing commission,' one man closely associated with the sport said.

In the main, those connected with racing cite increased purses, a longer racing schedule, improved equipment and tight security precautions as major improvements.

And to racing officials, the heightened security is most important because it is the most obvious to the betting public on whose confidence the success of racing is dependent.

Must have confidence  
"I think if racing is to grow, the betting public has to be confident," said Dick Forster, president of the Big Sky Racing Association in Great Falls. "They should be assured that the race is run honestly."

It is the Big Sky meet, which began a season last weekend that will continue until June 24, that is held up most often as a showcase of fine racing and tight security.

"Our policy here is to try and have the best meet in the state," Forster said.

downs" to detect metal buzzers, first-rate parimutuel equipment operated by a California tailor firm and strict rules.

"They know we mean business," Forster said.

Although Big Sky has been the leader in initiating innovations, it no longer is the only track at which security has been strengthened. This year particularly the seven-year-old State Horse Racing Commission has tightened security across the state.

Among the new measures are:

- This year for the first time two television cameras, instead of one, will record races on tape from start to finish. The new camera has been added to the backstretch. "Everything will be in full view, so if there's any horsing around you can see it right away," Commissioner S. J. Score explained optimistically.

New security guard  
— A security guard has been hired to police the parimutuel and barn areas to keep unauthorized personnel to bays.

— At some tracks, deputies will be stationed at the paddock, a small field near the stables, to prevent jockeys from conversing with spectators and in the jockey room to shield them from intimidation and prevent them from taking illegal bets.

The State Legislature last winter passed a resolution authorizing a study of horse racing and parimutuel operations, and Rep. Joe Quill, Democrat, is heading the investigation.

The Butte Democrat said he already has uncovered "some things," he thinks need correction, but added he will "bring light" on any public comment until the probe is in full swing.

Quill indicated he is particularly concerned about the percentage of parimutuel wagers returned to bettors.

It generally averages about 75 per cent, with one per cent going to the racing commission.

by his summeers as state racing steward.

A personal affront: Nuber, whose primary job is enforcement of racing rules, many people at a back personal affront and can't understand what is sparking it.

"I think people are becoming more educated toward racing and they're starting to voice their opinions," he summarizes. Nuber thinks additional public education might stem the tide and the emotionalism in racing grows and becomes more popular in Montana.

"We've been over the last four years trying to upgrade racing," said Charles Nuber, a popular in Montana. "I think in Montana we have horse doesn't always win

pages 1

# Steps taken to assure public of honesty at races

was considerable discussion and debate on the honesty of some jockeys on the racing circuit last season, but light at the track and the addition of another camera is expected to eliminate some doubts in the minds of some "sore

J. "Skip" Score, a past president of the City Horse Racing Association and now of the Montana Racing Commission, lined some of the measures taken to the public that here is an "outing" of the public by the jockeys, or anyone else.

At least of the new procedures will come into effect when the Capital City Horse Racing Commission opens its four-day spring meet at the Clark County Fairgrounds, Races scheduled for 2 p.m. Saturday and Sunday on May 10-11.

and publicity.

Score says "much publicity has been and many conversations have been in regards to statements appearing in our state papers since our last race meeting in last year. These statements have and the jockeys mostly — their honesty, opportunities to fix races, their option to control other jockeys and the possibility of fix racing next to them in regards to horses and not allowing them to run

for this reason that Dr. Score emphasizes our coming race meet there are several the racing association and the racing commission are taking to see that jockey and officiating of the races are of the it rather possible to attain."

Score explains the security measures being the jockeys:

"This year, as always, the honesty of the jockeys will be questioned and it is our contention that jockeys are like all other people — some are honest and some are not. It is our experience that by far the majority of the jockeys are honest and thereby provide the bettors their greatest safeguard. It is nearly impossible to fix a race without the cooperation of everyone who has a chance to win. One thing that must be remembered is that the stewards have the authority to fine any jockey up to \$200 and suspend him for the balance of the meet if he is guilty of breaking any of the rules of racing.

"A suspension of just one day here could cost a jockey up to \$200 in lost riding fees. These penalties may be made more severe by action of the racing commission upon recommendation of the stewards. From this you can see that it would be very costly for a rider to subject himself to any such disciplinary action.

Only one way to bet

"Jockeys may bet in only one specified instance. They may have the owner or trainer of the horse that they are riding place a bet for them, but only on the horse they are riding.

There will be a deputy on duty at all times in the paddock to see that the jockeys have no opportunity to converse with the public after they have reported in for the day's racing program. In addition to the deputy, there are two officials present in the paddock — the clerk of scale who supervises the weighing in and out and the equipment a jockey uses and the paddock judge who has complete control over the paddock area. The clerk of scale usually doubles as custodian of the jockey room and as such sees that the premises are clean and orderly, that proper decorum is maintained and to keep out all unwarranted personnel."

Here Dr. Score stresses "only officials and

vets in addition to the jockeys are allowed in the jockey room."

Lots of security personnel

He adds "Other security personnel is furnished to police the barn area and to keep out all unauthorized visitors, to police the betting area and paddock to see that the rules of racing are followed and to remove any persons from restricted areas or to remove anyone creating a disturbance, or any known undesirables."

Dr. Score mentions that it is not uncommon to hear someone say "I saw a jockey pulling his horse and not letting him run." But he points out that "nearly many who see a jockey holding or rating his mount in the early stages of a race will see the horse come on at the end and win the race. All the jockey has done is to keep his horse out of traffic trouble and to conserve energy for the run down the stretch. This is particularly true here in Helena with our mile track and long straightaway to the finish line."

Jockeys take the blame

"Jockeys bear the brunt of every sore loser who may become obnoxious before or after a race," Dr. Score states. But he stresses "injury is possible in every race and on occasion crippling accidents and death have been the reward of these courageous little men. Yet their names have been used to enhance a wholly risk suspension when he has so much to lose."

Instant replay is a common occurrence at Montana race tracks as television cameras are used for "start to finish" surveillance of the field of horses in each race. Dr. Score says "this enables the officials to review any and all incidents which may result in a claim of foul against another participant in the race. In the

case of racing the officials may view the film as many times as they wish before they make a ruling on any claim made during the race."

Two cameras on each race

This year for the first time in Montana, there will be two television cameras, rather than the usual one, utilized and each will produce a tape of the complete race. Dr. Score explains that one of these cameras will be placed on the roof of the grandstand adjacent to the judges stand and the other will be on the far turn at the end of the backstretch.

Dr. Score explains the procedure this way: "In the officials stand there will be two closed circuit television sets and tape recorders, each of which is connected by cable in one of the cameras. By having both cameras cover the complete race there will be much improved coverage of each turn and head-on coverage of the complete backstretch and homestretch. This will also give two different angles for the start and finish, thereby giving the stewards far better coverage of the total race track."

No blind spots on track

"What this means to the betting public is that many of the blind spots on the track have been effectively eliminated so that whatever occurs on the race track during the running of any race it will be recorded on tape for instant replay by the officials. This is a real deterrent for any type of rule violation during the running of a race. The tapes will be files by the racing commission for review at any future date for use in schooling race track personnel anywhere in the state."

In conclusion the racing commissioner says "This is just one facet of racing that is being upgraded this year in the constant improvement of horse racing planned for Montana people involved in racing horses or betting on them."

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... racing officials the  
... must be  
... because it is the most  
... obvious to the betting public un  
... whose confidence the success of  
... racing is dependent.

**Must have confidence**

"I think if racing is to grow, the betting public has to be confident," said Dick Forster, president of the Big Sky Racing Association in Great Falls. "They should be assured that the race is run honestly."

It is the Big Sky meet, which began a season last weekend that will continue until June 24, that is held up most often as a showcase of fine racing and tight security.

"Our policy here is to try and have the best meet in the state," Forster said.

And strict security precautions are major contributors to that goal.

"Once they are warned at our track — OUI," Forster said. "One warning's enough."

**Some strict rules**

Both Forster and Dr. Joseph Murphy, vice president of the meet, cite such precautions as guards in the jockey room to prevent jockeys from betting, scanners and periodic "shake-

... from start to finish. The  
... been added  
... "If  
... will be in full view, so if there's  
... any losing around you can see  
... it right away," Commissioner  
... S. J. Scare explained optimist-  
... ally.

**New security guard**

— A security guard has been hired to police the paddock and barn areas to keep undesirable out and limit authorized personnel to barns.

— At some tracks, deputies will be stationed at the paddock, a small field near the stands, to prevent jockeys from conversing with spectators and in the jockey rooms to shield them from intimidation and prevent them from making illegal bets.

— A new identification system has been initiated with photographs on the identification badges issued to all licensed personnel. It is another attempt to keep unauthorized persons from certain areas, and is described by Commissioner John Roberts as "the biggest thing that has ever been done."

"We've done everything in the world to keep it straight," he said. "We've just used every precaution we have."

Roberts added he is convinced that racing personnel know "we're watching every move they make," and "they're not taking any chances."

Racing officials won't be the only ones with discriminating eyes trained on the tracks this year.

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Furor over horse racing continues <sup>3-15-73</sup>

## Legislator 'just badly misinformed'

### IN State Bureau

The furor over the Montana Horse Racing Commission continued Wednesday with every indication it will not end until activities on Montana's race tracks finally are investigated by the Legislative Council.

In the latest developments, Dr. S. J. Score, a member of the commission, softened a charge he had aimed at a Butte legislator Tuesday while the legislator—Rep. Joe Quilici, D-Butte—promised more information to re-enforce his contention that horse racing in Montana is riddled with irregularities.

Score, a Helena chiropractor whose appointment to the commission was confirmed just last week, had intimated Tuesday Quilici had lied in his recent charges of irregularities on race tracks.

**Badly misinformed**  
"I think I'd better retract what I said about his lying," Score

said in a telephone call to the Independent Record State Bureau. "He's just badly misinformed."

However, Score repeated his position that he would like to set the record straight with an appearance before legislators.

Quilici, meanwhile, said he would welcome testimony from Score or any other member of the commission.

"If he's still around, he can do it," Quilici told the State Bureau. "We'll be glad to hear from anybody and everybody."

Obviously miffed at the statement from Score, Quilici said of the retraction: "He'd better. As long as he makes a retraction that's fine with me."

### Re-enforcing charges

In addition, the Butte Democrat indicated he is compiling a list of persons to re-enforce the charges he made last week that the commission is lax in regulating horse racing.

"There's a lot of racing people going to help with this study," he said. "I've had lots of calls this morning from different people and they're just as mad as I am. We're getting more and more and more information on it."

Quilici is sponsor of a House-passed resolution requesting the study which apparently will take place during the interim.

In pressing for passage of the resolution, Quilici had asserted horse racing is controlled by jockeys and pari-mutuel operators. He specifically had implied that jockeys tamper with results of races on which they have placed wagers, and questioned the use of obsolete pari-mutuel equipment and the lack of security on race tracks.

In an angry reaction, Score had denied the charges, saying the conditions either do not exist or have been corrected since the release of a legislative audit in December 1971.

# OPINIONS & IMPRESSIONS

## Horse racing hassle

The first four days of a 14-day horse racing meet in Helena this year have passed into history. Observers say it was a good meet as spring horse racing meets go.

Shortly after the last day of the spring meet it was revealed that Glenn Carney, a retired Anaconda lobbyist who now calls Great Falls home, had resigned from the Montana Horse Racing Commission. The news story concerning Carney's resignation was more than a simple resignation type announcement.

Carney hasn't been too happy—particularly as regards news accounts concerning irregularities at race meets. Independent Record reporter Ken Robertson started it all last year when he wrote a column concerning the races here which was highly critical of the meet and cited alleged irregularities—specifically that jockeys were pulling their mounts and making a few extra bucks at the betting windows by doing so.

If memory serves, Carney was the first member of the racing commission to take exception to the story. Robertson was asked to appear before the commission

and he did. He again gave them his story. Last week Carney told an Independent Record State Bureau reporter that the attacks on the commission have been unwarranted. It is a little difficult to swallow this statement.

Just prior to the first day of the spring meet this newspaper carried a very detailed story outlining a number of new measures which the commission instituted. For the first time ever, the commission has two television cameras covering each race so that the race will be covered on videotape from beginning to end. There is now a deputy on duty at all times in the paddock, as well as two officials. There are other measures, all of which are designed to assure the public that the races are honest.

In view of the more strict security measures which have been instituted this year, it is extremely difficult to acknowledge that press criticism of horse racing in Montana was unwarranted. Rather, it is more reasonable to assume that the actions of the horse racing commission have vindicated the press.

# Carney quits racing panel

The criticisms contained in the report, Carney said, were for something that happened before the present board members were in office.

Carney also complained of legislation passed last winter that will increase the commission's membership to five from three and allow commission members salaries of \$95 a day for attending race meets.

He said the changes will cost the commission too much money. The commission operates on 1 per cent of the state's total horse racing receipts.

In addition, Carney said security measures put into effect this year will be costly. They include an identification system, a camera-tape system to scrutinize races and the employment of security guards.

Carney's term on the board was due to expire in June of 1973. Carney, 72, is retired. He was employed 30 years as a public relations representative for the Anaconda Co.

GREAT FALLS (AP) — Glenn Carney has disclosed, two weeks after the fact, that he has resigned his position on the three-member State Horse Racing Commission.

Carney, appointed to the commission last year and slightly more than a year ago, cited personal reasons for his resignation and indicated that recent criticism of and allegations of corruption in horse racing in Montana were contributing factors.

Carney, a Great Falls resident, disclosed his resignation Monday and said the delay in announcing it was due to efforts to encourage him to reconsider his decision.

The commission came under fire during the past year for allegedly failing to adequately control irregularities on race tracks. One newsman quoted sources within the racing industry in Helena as saying some races were fixed.

Carney indicated that he believes the attacks were unwarranted and cited in particular a Montana legislative audit which criticized certain of the com-

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January 31, 1995

SENATE BUSINESS & INDUSTRY  
 EXHIBIT NO. 9  
 DATE 2-2-95  
 BILL NO. 242

*Presented & read  
 by Sen. Sprague*

Senator Mike Sprague  
 Business and Industry Committee  
 Capital Station  
 Helena, MT 59601

Dear Senator Sprague:

I will be unable to attend the committee hearing Thursday morning where you will be taking under consideration Senate Bills 19, 22, and 242. I'm asking you to give favorable consideration to bills 19 & 22 as both of them will impact the positive financial stability of the horse racing industry.

The proponents of the bill will very thoroughly explain the need to reintroduce dog racing to simulcasting for our industry. Also, the proponents will, I think, make a great case to take jockeys out of the workmen's compensation coverage of horse racing to help the industry as a whole. Both of these pieces of legislation have broad based support from the tracks as well as from the horsemen.

Senate Bill #242 is another matter. It would call out that two members of the board be from the horse racing industry, which immediately creates a conflict of interest. We have worked very hard to make sure that the public is treated fairly at the pari-mutuel window and the perception of any amount of impropriety becomes reality with such bad legislation. I would ask that each of you be very careful in your deliberations and that this bill not be passed out of committee.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Bill Chiesa".

Bill Chiesa, CFE  
 General Manager  
 MetraPark/MontanaFair

BC/ns



## Testimony for SB 19 - Greyhound Legislation

*read by Dale Ashburn*

Submitted By: Topper Tracy, Editor of the Racing Journal

Horse racing, agriculture, gambling, simulcast, the Board of Horse Racing and the Legislature come together in a curious way to make up the horse industry. It's important to understand the relationships to completely understand the horse industry.

Horses fit naturally into the agricultural industry as much as sheep, cattle or hogs. They need a large amount of land to be raised on, they need grains and hay to eat and they are selectively bred to produce desired offspring. They are bought and sold but differ from other farm animals in the fact that they are not raised for food but rather for work, pleasure or competition.

The value of the horse is not determined by supply and demand as dictated by the market, but by value of use. For example, a trained rope horse's value is determined by speed, ability and earning potential. The horse may sell for \$1,000 or \$10,000 depending on the buyers belief in the potential of the horse to help him win back his purchase price in the roping arena. It is the same for all competitive type horses, the value is determined by earning potential. For a race horse then his value is based on his earning potential.

At the live race meets earning potential of a horse comes from the purse amounts that he can earn by winning or "placing in the money" in a race. This is where gambling is introduced to the horse industry.

To increase the race purse pari-mutuel wagering was invented and is used in 31 horse racing states. Pari-mutuel simply refers to the type of equipment used to dispense race tickets. However,

distribution of money wagered is similar to other forms of gaming. In Montana, for each \$1.00 wagered at the race meet \$ .76 to \$ .80 is returned to the bettor and \$ .20 to \$ .24 is taken out and distributed. The amount of the take out varies by the type of wager. The current distribution of the take out is 1% to the Board of Horse Racing, 9 1/2 % to the track for administration and 9 1/2 % to the race purse. For multiple horse wagers the additional take out is split between owners and breeders bonuses.

The sources of money for the race purse includes the 9 1/2 % take-out from the wagers, money from race sponsors, payments made by horseman and the income from simulcasting. Montana, because we have low population compared to other racing states can only produce a limited amount of money for the purse through sponsorships and the amount wagered at the race track. The only bright spot in this income picture for the past several years has been income generated through simulcasting.

Because Montana has some of the lowest race purses in the country it follows that the race tracks have difficulty attracting horses. As pointed out earlier race purses are a direct factor in determining earning potential and value of the horse.

The Board of Horse Racing and the Legislature come into play in the horse industry by virtue of this being a controlled industry because of the tie to gambling. The industry cannot go forth with a simulcast marketing plan without first getting Legislative approval. The industry needs the help of the board and the Legislature because we need to compete to assure that live racing remains a form of recreation in Montana.

I encourage this committee to give a do pass recommendation to SB 19.

## Greyhound Legislation - Senate Bill 19

**From: Don Bentson, Executive Secretary, Montana Horse Breeders Assn.**

This testimony is presented in the form of questions and responses to those questions intended to inform the committee about different aspects of the horse industry.

### **What is simulcasting?**

Simulcasting is the sending of a TV signal from a track conducting live racing that is received at a remote site. In Montana this is the same as if you were at that race track viewing a race at an inside TV monitor. Wagering or tote equipment at the Montana remote site is controlled so that all wagering stops when the race starts.

### **What does SB 19 do?**

SB 19 allows the simulcast of greyhound races into Montana under the control of the Montana Board of Horse Racing for the purpose of providing an additional source of income for live horse racing.

### **What is the Precise Issue that is being addressed by this bill?**

The issue is a declining number of horses and horseman willing to run at the Montana horse race meets for inadequate race purses.

Montana county fairs and other race meets need to provide increased purse money to horseman so they will run in Montana and assure the continuance of live horse racing in this state. Income generated from offering simulcast greyhound racing will be dedicated to providing increased purse money for live racing.

Keeping live horse racing in Montana keeps several thousand people employed at race meets and on the farms and ranches that break and train horses.

### **Background Information Needed to Help Understand SB 19**

In 1989 simulcast horse racing was introduced into Montana for the purpose of using income generated from that source to enhance race purse money for live racing along with some funding of bonuses for owners and breeders. Owner and breeder awards promote the breeding and racing of a horse in this state. In addition some income derived from the simulcasting is used to help fund county fair board expenses and the Board of Horse Racing.

In Montana in 1994 we conducted live horse race meets at Helena, Great Falls, Shelby, Missoula, Hamilton, Billings, Miles City and Kalispell. Live races were conducted every weekend from May 1st to September 25th. Simulcast or live TV horse racing from out-of-state tracks was presented every weekend that live racing was not conducted. Simulcast races are held in 10 locations in Montana. Some locations are at county fairgrounds sites and some at taverns and restaurants.

The most important single item that drives live horse racing is the amount of purse that is offered for winning or placing "in the money". To horse owners purse has the same connotation as pay check to a wage earner. Race tracks conduct the live meets and

determine what the purse amounts will be based on their estimated costs and estimated revenues. Horsemen look at the purses to determine if they want to run at that race meet or go to another track where purses are higher. The latter choice has been a typical choice in recent years. Montana horsemen would like to race horses in Montana but due to rising costs and reduced purses many have chosen to run out-of-state.

Income to owners of race horses running horses in Montana is not sufficient or economically feasible for them to continue to run in Montana or breed race horses in Montana. The reduced number of horses makes it unprofitable for tracks to run a race meet and still provide sufficient purses. Tracks respond by offering fewer race days. A downward spiraling effect takes place such that as tracks run fewer race days and fewer races more owners and jockeys leave to go where horses race more often for more money. Typically, Montana horsemen go to Spokane, Yakima, Calgary, and Winnipeg when we don't meet their needs in Montana.

The solution to reversing this trend is to increase revenue or race purses that owners run for so that we are more competitive with out-of-state tracks.

### **Why does the Horse Racing Industry Turn to the Legislature for Help in Solving Financial Problems?**

The horse racing industry is a controlled industry in that we operate according to guidelines set in law and rules set by the Mt. Bd. of Horse Racing. The Legislature becomes our "Board of Directors" when restricted activities are contained in the law. The future of Montana live horse racing is dependent on legislative action.

Industry financial problems began several years ago with the passage of laws that allow other forms of legalized gaming in the state such as bingo, keno, video machines and the lottery. Over a period of about 10 years the income to horse racing dropped in half as we were no longer the only legalized gaming in the state. That drop in income would have resulted in the loss of live horse racing except that the Legislature in the 1989 session passed a bill to allow live simulcast wagering on horse racing. This combination of live and simulcast racing brought the income in 1994 back to the 1985 level.

The net income from simulcast horse racing added to that from live racing has helped offset income lost to other forms of gaming. However, revenues from simulcast horse racing produce only about one-half the revenue from the same amount of wagering at live race meets due to the formula used to distribute the simulcast money. For this reason and because expenses have risen dramatically in the past 10 years the trend of owners leaving the business continues. This trend if not reversed will eventually result in the loss of live racing to Montana and place an additional burden on the local fairs.

State government and the Legislature appear to strongly back efforts to bring a new computer industry to Butte. I believe we should make just as strong an effort to keep the jobs and the industries we already have.

### **Proposed Solution**

The reason that greyhound simulcast racing is considered as the best source of increased revenue is that it has been tried and operated successfully already in Montana for about three months in 1993. Greyhound racing is well suited to the current Montana simulcast horse racing network because all the equipment used in

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horse racing can also be used for greyhound racing at no added cost. The greyhound racing provides evening entertainment and seems to attract different fans.

**Does passing this legislation result in increased gambling in the state?**

In the horse industry we do not consider this legislation to be an increase in gambling. From our point of view we our marketing another from of pari-mutuel wagering. This happens frequently when the lottery introduces new games or the video gaming industry brings out new machines. Our industry needs at least this much flexibility just to hold our market share of the recreation dollar that is spent on gaming.

Greyhound simulcast racing adds some variety to pari-mutuel wagering which we hope will bring back some of the wagering dollars that have been lost to other forms of gaming. This type of wagering appeals more than horse racing to those who like a little faster action and less handicapping of the animals.

One scenario that is very important for this committee to understand is that it was increased gaming in this state that almost destroyed the Montana live horse racing. Most people in the horse race industry supported bringing more gaming into the state for the same reason that many other people did and that was to avoid the outflow of gambling money to other states. We are currently in that same position with live horse racing such that if we cannot compete with other states we will lose the gaming dollars and the track and ranch jobs associated with live racing.

We believe a marginal increase in wagering if that should occur as a result of this bill is a very small price to pay in comparison to the

potential loss of industry jobs and recreational opportunities of thousands of horse race fans across the state.

**Does this bill have the full support of the horse race industry?**

This bill has the full support of all organizations involved in Montana horse racing including the Montana Horse Breeders, the Horseman's Benevolent and Protective Association, the Montana Simulcast Partners, the Montana Board of Horse Racing, Race track management and the Rocky Mountain Fair Association. We are not aware of any group in the horse race industry that opposes this bill.

**Montana Simulcast Partners - Today**

Montana Simulcast Partners is in charge of handling the simulcasting of races to Montana during the winter season in this state. Primarily, the simulcast partners offer television wagering on live horse races across the country to the patrons in Montana from the end of September, that is the closing weekend at MetraPark through the opening of the first race meet in Montana in the spring. This will consist of approximately 110 days of racing performances to the simulcast sites across Montana.

Montana Simulcast Partners was formed to control and administer the simulcasting so that all possible revenues could be filtered back into the industry in the form of purses, breeders awards, owners bonuses and site fees. Of the current 10 locations that MSP has in this state, the two sites that handle the most wagers are located at 2 of Montana's live race tracks; they are Great Falls & Billings.

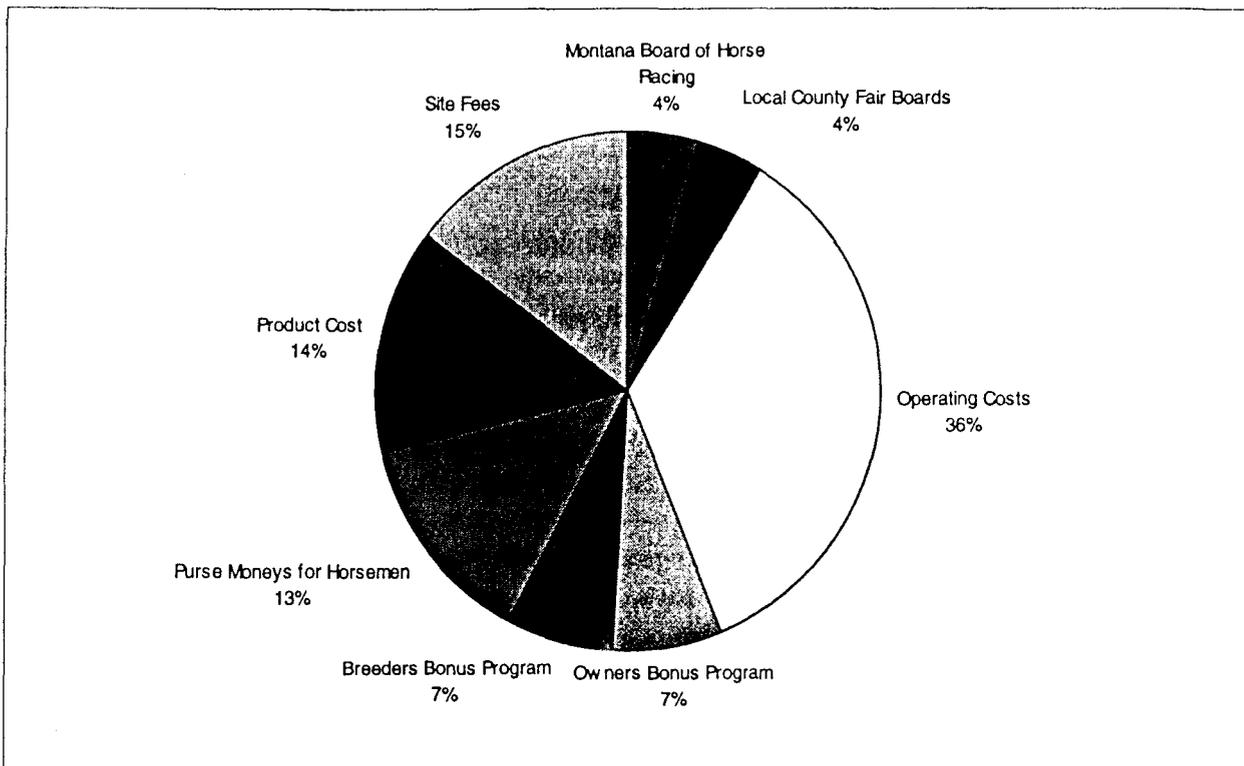
Montana Simulcast Partners is made up of an 8 member board. Each member represents one of the 8 live race meets in Montana. Of these 8 race meets, 6 of them are directly associated with their local fair. Each member has an equal vote. The makeup of this board is significant in that the race tracks themselves are controlling the simulcasting and in turn using any revenues and/or profits to support the live racing in the summer. The importance of this board lies in the fact that they are determined to continue to improve the simulcasting during the winter months because it has become such a vital part of financial support for the racing that exists during the summer in Montana and without such support, all of the live race tracks in Montana would be hard pressed to even open their doors.

**Financial Picture of Montana Simulcast Partners**

Since all 8 live race tracks in Montana are county owned facilities and 6 of the 8 race meets are operated by county or city employees, it was very apparent to Montana Simulcast Partners that a positive cash flow be created immediately. Over the past 5 years, the simulcast partners have demonstrated their ability to generate revenues for the live racing in Montana. In a brief review of the last couple years of simulcasting, from July 1, 1992 until today, Montana Simulcast Partners and their simulcast sites have contributed over \$400,000 to county facilities

including the Great Falls and Billings simulcast sites, over \$127,000 to the Montana Board of Horse Racing, \$198,000 to Montana owners awards, \$198,000 to Montana breeders awards and over \$532,000 to purses in Montana.

When an amount is wagered at simulcasting, approximately 80% is returned to the public. The remaining 20% is used to pay for horsemen's purses, bonus programs, operating costs and as well as some additional items. The following pie chart displays the breakdown of every dollar of revenue and where it is spent for the Montana simulcasting network:



Another important point to be made about this pie chart is that the horsemen in this state benefit directly by receiving over 27% of the income for their purses and awards. After expenses, all revenues go directly back into the industry. There isn't another racing jurisdiction in the United States that gives back more of the revenues to the horsemen than in Montana. Montana Simulcast Partners is very proud of that fact and supports the concept that without higher purses in Montana, this state will more than likely witness the loss of an entire breeding and racing industry that is a multi-million dollar business in Montana.

The 1993/94 simulcast season was Montana Simulcast Partners most successful to-date. This was due partly to the trial operation of greyhound simulcasting during the months of December, January, and February. The greyhound simulcasting handled just over \$500,000 in a 24 day test period which equates to an additional \$100,000 in revenues for the simulcasting

network. Almost 75% of these additional revenues were returned to the Montana racing industry in the form of purses, bonus awards and fees.

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### **Greyhound Simulcasting - An Important Step For Montana**

It is important that we recognize that fact that this legislation deals only with the simulcasting of live greyhound racing to Montana and in no way is intended for live greyhound racing to occur in Montana. The greyhound simulcasting would be a great help to the simulcasting network in Montana for three very important reasons:

(1) With the greyhounds and the flexibility of the number of races and facilities they run at, Montana Simulcast Partners is then able to offer our patrons simulcast racing on days other than just Friday, Saturday, and Sunday.

(2) Even though Montana Simulcast Partners have the option of showing simulcast horse racing on every day of the week, they felt that keeping the network financially stable was imperative to the success of simulcasting in Montana. With greyhound simulcasting, the network then can offer an additional product at a very low cost to the simulcast network and industry in general. The simulcasting of greyhound races gives our patrons more variety, but it still represents the same parimutuel wagering game we currently have in Montana with horse racing.

(3) By combining phone lines and totalisator equipment, Montana Simulcast Partners would be able to offer the greyhound simulcasting at a much lower cost per site than for the horses and thereby, generate more dollars for the live horse racing industry.

### **Conclusion**

With the ability to offer a greater variety of products at possibly more convenient times day or evening, Montana Simulcast Partners will be able to create additional revenues for the live horse racing industry in Montana. We ask for your support of Senate Bill #19, in an effort to keep this valuable Montana industry.

**Tom Tucker, Manager**

**Montana Simulcast Partners**

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WESTERN MONTANA FAIR BOARD  
MISSOULA, MONTANA

BILL NOONEY

Fair Board Member/Western Montana Fair in Missoula for over 30 years. About half of that time I have also raised and owned horses. As a fair board member, I represent the Western Montana Fair on the Montana Simulcast Partners Board of Directors (MSP).

As indicated prior, the live race meets in Montana, mostly county fairs started, funded and operate MSP which is regulated by the ~~by~~ ~~the~~ Montana Board of Horse Racing. Each race meet has one member representing it on the MSP Board of Directors.

With the introduction of video gaming and lotteries into the state of Montana, wagering on horse racing declined approximately 50 percent in the mid-80's. Because of this, state law was changed so that the industry could use simulcasting to supplement income to the industry. Without the funds from simulcasting to help supplement live race purses and awards, many fair-operated tracks would be forced to close.

At the Western Montana Fair, racing during our fair is not only part of our heritage, but contributes to the financial success of our fair. Racing is a part of our total entertainment package; i.e., racing, rodeo, carnival, night shows, horse shows, agricultural exhibits, 4-H, FFA and all other exhibits and

displays. Racing allows us to bring people to our fairgrounds to help support all of our non-profit food booths and so all exhibits will get the traffic they deserve. We have a down home family oriented and educational county fair at Missoula and we want to keep it that way as long as possible. Live racing is critical to the ongoing success of our fair and we need it.

To conduct a successful race meet you need horses and handle (wagering). Good purses will bring good horses. We in Missoula have the crowds willing to wager on a good horse race. Without good purses, horse owners and trainers go elsewhere. This is a business for them, they too have to pay their bills. They cannot do that unless the purses are adequate.

The contributions to purses and horsemen awards by MSP has helped keep the live racing industry in Montana viable. But the fairs, the tracks, and the horsemen continue to face increasing costs. We need to continue to improve on our purse structure. The most efficient way is to offer greyhound racing to our simulcast package. Presently, we could simulcast horse racing seven days per week, 24 hours a day if we wished. We do not want to do that; we only want to add more excitement and variety to our existing package.

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As in live racing, all simulcast betting operates under state law and the rules and regulations as set down by the Montana Board of Horse Racing.

We need to be able to compete for the entertainment dollar with video gaming and the various lotteries and scratch tickets. Video gaming changes its variety of video gaming. The scratch tickets change their games regularly; asking for greyhound simulcasting is no different than the state adding Tri-West Lotto.

Same game, different name.

As indicated prior, this bill does not allow for live greyhound racing, it is simulcast wagering only. All moneys generated by MSP other than direct cost of operation are returned to the industry and the local counties. We need to preserve this agricultural industry and its heritage.

Again, as was previously stated, we know of no one in the industry who does not support this bill. All of the fairs that conduct live racing and those that now have simulcast sites in their counties and the multitude of fans who enjoy horses and racing, ask for your support of Senate Bill #19.

We thank you in advance for your coopertion and favorable consideration.

Testimony presented to the Senate Business and Industry Committee by Sam Murfitt, Executive Secretary of the Montana Board of Horse Racing.

*Presented by  
Sam Murfitt*

Good morning. My name is Sam Murfitt, I am the Executive Secretary of the Montana Board of Horse Racing and I am appearing before this committee as a proponent of Senate Bill 22. In fact SB22 was proposed by the Board of Horse Racing through the Department of Commerce on behalf of the Horse Racing Industry in Montana.

SB 22 proposes to exempt Jockeys from workers compensation benefits during races as their claim to employee status is without merit during this period. Of 31 horse racing jurisdictions in the United States only six consider Jockeys to be employees and therefore eligible for workers compensation benefits. These states are: New York, New Jersey, Maryland, California, Colorado and Montana. At the present time Colorado in its legislature has legislation similar to this which would exempt jockeys from coverage also. These other 4 states are what one would consider to be "major league" in the world of horse racing. Between these state an estimated several thousand race days are contested. Purses (the amounts horses are racing to earn) are extremely high and the number of participants (owner/trainer, etc.) is very large. Large indeed when compared to horse racing in Montana where a total of 70 to 80 days of racing are held annually; where purses hoover in the \$600 range,

and not in the \$15,000 to \$20,000 range as they do in these other workers compensation states.

The other 25 racing jurisdiction (states) do not classify jockeys as employees. In these other racing non-workers compensation states, jockeys are insured by the race tracks through purchase of catastrophic insurance policies, medical accident policies and also through the Jockeys Guild which is basically a union for jockeys.

When Montana began enforcing its requirement that jockeys were employees, participation in racing by Montanans and non-residents dropped approximately 40%. Wyoming, Idaho, Washington, Oregon, North Dakota and South Dakota do not consider them to be employees and horsemen coming to Montana were given two choices - buy coverage or stay home. Many chose to stay home or quit the business.

SB 22 will rectify the misclassification of Jockeys riding during races as being employees. Employees of who? The owners, the trainers? It is interesting to note at this time that in filing income tax jockeys list themselves as self employed. Also, approximately 60% of the jockeys riding in Montana are non-residents. At this time I would like to explain how a jockeys services are obtained, to better help this committee understand the strange relationship that exists. An individual has a horse he or she wants to enter in a specific race on a specific day.

EXHIBIT 14  
DATE 2-2-95  
SB 22

On entry day for this race, the trainer fills out an entry blank and deposits in the race office. On this entry blank are such details such as horses name, age, sex, what race it is entering and the name of the jockey that the trainer desires to ride his horse. At closing of entries, the race office compiles a list of entrants for that race - this is known as the draw. During the draw often times the Jockeys which you want to ride your horse is also named to ride another or several other horses in that same race. At this time the Jockey or his/her agent (yes, agent) decides which horse the Jockeys will ride. Generally speaking this choice will be the one which the Jockey or his agent feels he or she has the best chance to win on. So it is highly possible that you will not have the jockey who you named to ride your horse, ride it and you then have to persuade another Jockey to ride. The Jockey or his/her agent is solely the determinant of whose horse he/she will ride. The Owner or trainer only lists a name.

If successful or when finally securing the service of a jockey, the owner or trainer has no control whatsoever over the jockey or horse once the race begins. The jockey provides his own riding gear, saddle, goggles, helmet, whip and expertise.

I previously mentioned jockey agents. Many jockeys themselves employ agents to act on their behalf in deciding which horses to ride. In this situation, the owners or trainer doesn't even see the jockey instead they see his/her agent. Employee status, I

don't think so.

In any event having jockey properly classified as exempt will not leave them out in the cold. Montana will cover them the same way as the other 25 states. Racing associations will be required to purchase a medical accident policy covering jockeys during races. This will be insured by the Board of Horse Racing not issuing an association racing licenses until proof of purchase of such a policy is shown. Secondly, the jockey will be covered under the National Jockeys Guild policy if they so choose.

An added bonus will also be realized by exempting jockeys from Workers Compensation benefits by the State Fund, other industry insureds and the horse racing industry itself. Jockeys constitute the heart of the liability issue. Using 1993 as an example State Fund estimates a liability for the horse racing industry to be \$2,693,035. If one subtracts from this amount the monies spent on jockey injuries during races, the new estimated liability for the industry would be somewhere in the \$150,000 range. Obviously the horse racing industry does not generate a 2 mill annual premium. Where does the extra come from? It comes from all the other industries insured by State Fund. With jockeys being properly classified as exempt the Montana Industries insured (which includes horse racing) will not have to pick up the slack. Their rates will not increase as a result and the horse racing industry should be able to enjoy affordable coverage once again, therefore increasing participation.

EXHIBIT 14  
DATE 2-2-95  
SB 22

In closing, I would like to say that the Montana Horse Racing Industry is simply asking this body for the ability to play on a level playing field and to be competitive with other states offering horse racing. Jockeys are not employees of owners and trainers never have and never will be. As a group they constitute the most independent of free spirits. Horsemen are basically at their mercy from a stand point of if they will ride their horse; if they will do their best once the starting gate opens; or even if they will show up to ride once they have consented. You've got to have them, they've got to have you, you can't hire them or fire them. The only thing for certain at this time is that the industry must insure them. I encourage this committee to act favorably on SB22.

Thoroughbred Times  
Dec 3, 1994

GUILD/TRA from page 19

takes an alternate stance.

The TRA says the issue is about responsibilities, or the lack thereof, of businesses to independent contractors. "We have absolutely no legal responsibilities to the jockeys whatsoever," said Tom Mecker, president and chief executive officer of Churchill Downs.

In the TRA view, providing health insurance to jockeys is analogous to homeowners providing the neighborhood plumber with an insurance policy and pension plan. Validating the TRA's argument is that six states had to write specific legislation to cover the riders under workers' compensation programs.

Although a plumber may be in the same employer/employee relationship as a jockey, the person fixing your pipes is very rarely placed in a life-threatening situation. Jockeys are at risk on every mount, and their insurance costs are much higher than other independent contractors.

For that reason, while the tracks actually have no legal obligation to provide the coverage, they have for the past 28 years. "It makes good business sense," said Mecker.

But due to the belief that they are

providing benevolence to the jockeys, TRA maintains racetracks are providing \$1.7-million of insurance coverage for which their obligation is zero, and therefore additional payments are out of the question. The difference in philosophy is worded well in a TRA media advisory: "The Jockeys' Guild members contributed only \$900,000 toward their own health plan, while the remaining \$1,700,000 was subsidized with payments from the tracks."

What about the other \$4.5-million in accident coverage? TRA has traded those funds for the riders' media rights, which is at the center of the continuing controversy. The Guild has come to the conclusion that, with the explosion of simulcasting across the country, their faces and images are worth a lot more than \$4.5 million.

"What are the media rights worth?" asked Bailey rhetorically. "We're putting it at one-tenth of 1% of the national handle. That's probably about \$9-million. But it could be less, it could be more."

TRA has put the cost, at least estimate, at \$11 million, forcing a national handle of \$11 billion in 1995.

No one really knows what media rights are worth or even what bene-

# Getting mandated help from the state

Owners help fund low-cost workers' compensation policies for jockeys in New York, California, New Jersey, Maryland, Colorado, and Montana

by Marianna Haun

THERE are currently six states nationally that cover jockeys under workers' compensation policies, though come January that number may be reduced to five when the Montana Legislature considers eliminating jockeys from that state's program.

According to Albert Goke, president of the Montana division of Horsemen's Benevolent and Protective Association (HBPA), "We are going to attempt in our legislative session that starts in January to exempt jockeys from workers' compensation. We simply feel that jockeys in a race are not employees. During a race they are acting as independent contractors.

"It is our intent to cover exercise riders riding in the morning under workers' compensation continuously. We wouldn't exempt them—only the race riding."

There are no expected changes in the workers' compensation policies of the five other states that cover jockeys—New York, California, New Jersey, Maryland, and Colorado.

In New York, there is good news for owners and trainers who participate in the New York Jockey Injury Compensation Fund (NYJICF). According to Rick Violette, chairman of the board of directors of the NYJICF, there will be a rebate of up to \$250 mailed to all owners and trainers at the end of the year. "We are planning a rebate for somewhere in the neighborhood of \$200 to \$250," Violette said. "We have to wait for year-end figures."

That is not the only good news, Violette said. "Next year, we are going down 20% in our base premiums (for owners and trainers). The \$375 premium paid by owners and trainers in 1994 will be \$345 next year. The 1% of purses paid by owners in 1994 will be reduced to eight-tenths of 1% in 1995, and the stall fees at New York Racing Association tracks will go from 50 cents a day in 1994 to 45 cents a day in 1995. At Finger Lakes, the stall fees will be down to 12 cents a day from 15 cents a day."

Under the workers' compensation policy in New York, Violette said, the jockeys and exercise riders are basically covered for any work-related injuries. "The payroll per week (for disabled riders) is currently \$400 in New York state," Violette said. "That is the same for anybody—jockey, taxi driver, whatever. All medical expenses, post-accident therapy, and sometimes even re-education, can be plugged into that. Even with catastrophic injuries, they are covered. So if there was a quadriplegic in New York—he's covered. His bills are paid. In New York, owners and trainers pay between \$1-million to \$1.5-million annually into compensation coverage."

To cover grooms, hotwalkers, and night watchmen, Violette said, trainers have to have their own policy.

"The exercise riders are the only ones you take out of your payroll and they are covered by the Jockey Injury Fund."

In California, trainers have to purchase a workers' compensation policy from an insurance company. Under California labor laws, jockeys are covered under that policy. According to insurance broker Chris Clark, former president of the California division of HBPA, who insures approximately 400 Californian trainers, jockeys are "...technically the employee of the owner, but the owner gives coverage for the jockeys by way of the trainer's policy.

and trainer's license fees.

In Maryland, in which the policy is strictly for jockeys riding during races, the 1994 fees were \$150 for both owner and trainer. In 1995, that will drop to \$125 for owner and trainer.

In New Jersey, the annual fee, due January 1, for owners and trainers is \$379. The policy is strictly for on-track and is limited to up to \$100,000 for each occurrence with a \$500,000 limit for each policy, and \$100,000 for each employee. In New Jersey, there will be an attempt next year in the state Legislature to have the workers' compensation fees taken out of purses.

In Colorado, jockeys are covered, along with everybody else on the backside, by a \$25 per start fee. Of that fee, the track pays \$5 per start and the owners pay \$20. According to Skip Sherman, president of Racing Associates of Colorado, Ltd., which operates Arapahoe Park in Aurora, Colorado, the Colorado Horsemen's Association carries the policy. Under an agreement with the Jockeys' Guild, the track applies the \$40,000 fee they were paying the Guild for a jockey's catastrophic policy to the Colorado workers' compensation policy, which affords better coverage for the jockeys.

"There is nothing paid up front—no annual fees—just per start," Sherman said. "If you start two horses, that is your whole contribution for the year. As soon as you come on the grounds, you are basically covered. It covers everybody on the backside—owners, grooms, trainers, jockeys, exercise riders—everybody that's back there."

That situation may change in Montana if the HBPA gets its way. Goke thinks the HBPA will accomplish its goal before the Legislature. "I think we will get it done," Goke said. "Montana's Department of Labor has indicated they will support us, as has Workmen's Compensation."

Under Montana's workers' compensation program, which has no cap, each racehorse owner pays an annual fee of \$100 per horse plus \$15 a mount. Each trainer pays an annual fee of \$150. "We have some side ones, too," Goke said. "We have to pay an extra \$150 a piece for grooms, as well."

Tracks carry catastrophic insurance for the jockeys and pay \$500 per race day. "The catastrophic insurance is bought by the tracks through the Jockeys' Guild," Goke said.

One of the problems with Montana having no cap on its workers' compensation claims, Goke said, is that the Jockeys' Guild's catastrophic policy never gets touched. "That has always bothered us," Goke said. "I don't think they've ever paid any claims in Montana."

Marianna Haun is a staff writer for THE HORSEMAN TIMES.



KEN DUNN  
"...here in Florida we will put the program on."



SHANE SELLERS  
"It's time we got what was rightfully coming to us."



RICK VIOLETTE  
Chairman of New York Jockey Injury Compensation Fund

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# Letters

(continued from page 6422)

about local horse racing news. All horsemen need to be involved in media relations.

Dr. Gerald Farris  
Longview, Texas

## JOCKEYS: LET THE RICH PAY FOR THE POOR

This is not an easy task, and I don't relish it. I know a lot of jockeys and greatly respect them, their ability and athleticism. I understand the risks they take when riding, and I have great compassion for those injured in their chosen line of work. But there are some things that have to be said, and I haven't seen anyone tell it like it really is...yet!

New York racing is being choked to a slow death and everyone is chipping in, attempting to save the sinking ship—everyone EXCEPT the jockeys. The New York Racing Association is downsizing, the owner's ranks are thinning because virtually all of us lose money (over 90% to the tune of around \$80 million a year in New York alone). The breeders' ranks have been halved due to bankruptcy and the trainers, some of whom work 12 hours a day, seven days a week, are barely making a living. All of us are struggling and yet there is only one group which only takes.

In New York, one of the only state to have this inane law, the owners pay the jockeys' workers' compensation insurance because the jockeys are considered to be our employees—which is really a laugh.

How did this happen? I've heard that late in a legislative session, the jockeys' lobbyist in Albany rammed through this insane, unreal, unreasonable, and totally ludicrous law. This was done in secret without the trainers or owners having the slightest clue, probably because the jockeys knew it was morally and ethically wrong and would have been disputed.

Everyone, especially an owner, knows that jockeys are INDEPENDENT CONTRACTORS and not employees of the owner. Yet each owner contributes a basic fee, about \$400, plus 1% of the entire purse structure in the state of New York comes off our accounts to pay the jockeys' workers' compensation insurance.

One trainer I know contributed around

\$9,000 last year to the fund.

This money leaves the game, never to be churned back by the owners in new horses. This reduces the supply of money, demand, and prices.

And now for the killer: Jockeys' Guild manager John Giovanni recently said in interviews that jockeys are INDEPENDENT CONTRACTORS. There's no argument about that. So why are they our employees in New York? And why are the owners paying their workers' compensation insurance? What have the jockeys done to help alleviate the desperate situation here and around the country where it is estimated that the owners lose about \$1 billion a year?

In most states, the jockeys are considered independent contractors. Hey, I'm an independent small businessman, jockey agents are small businessmen, independent contractors. Guess what? No one pays my health insurance for me, and no one pays health insurance for jockey agents or millions of other independent contractors. Why do the jockeys want someone else to pay for their insurance?

Ironically, the most vociferous voices in support of others paying their way are the most successful and I assume the most wealthy jockeys. I don't hear much from the journeyman jocks who toil daily at their arduous task and earn very little compensation for it.

That brings me to my most important point, a possible solution to the threatened jockey strike. The main leadership will think I'm nuts and the idea is ridiculous, but think about it: Just don't dismiss it out of hand.

In all facets of our lives in virtually every endeavor, those who are blessed with more ability and have the most earning power have helped the less fortunate. Wouldn't it be an appropriate gesture if the New York and California millionaire riders could help their comrades toiling at Grade C half-milers, putting their lives on the line hundreds of times a year for peanut wages?

It would have been a magnanimous gesture if the jockeys on Breeders' Cup Day, while donning their "47" caps, had said, "I just made \$60,000 in a little over a minute, and I'm going to give 1% or \$600, or .50% or \$300, to an insurance fund for jockeys who are less fortunate than me." I think half the viewing public would have fallen off their collective seats.

So, my proposal to end this jockey stalemate and to finally have the jockeys contribute to our dying game is this: Let all jockeys who get their 10% (most

# THE PRICE OF A SONG

SEATTLE SONG,  
The *BEST* Value  
Among Sons of  
Seattle Slew

**\$61,823**  
Average Earnings  
Per Starter,  
over 12x fee

**\$39,108**  
Lifetime Yearling  
Average, over 7x fee

SEATTLE SONG  
Seattle Slew - Incantation,  
by Prince Blessed  
1995 Fee: \$5,000 live foal



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Mr. and Mrs. Kenneth Jones Jr., Owners

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SEATTLE SONG TILT UP

owners pay them 10% across the board from all stakes races worth \$50,000 or more contribute .50% or 1% to their insurance fund. The wealthier would be offsetting expenses for the poorer jocks and before the wealthy ones start screaming, let them remember they're paying about 50% in taxes anyway, so it will cost them only half. Then the jockeys could join in with the rest of us supporting the game we love and we all support.

Isn't it the "American way" for the more fortunate to help those less fortunate?

Giovanni has said that jockeys "are the only people in racing who do not receive benefits out of purses or out of handle." That, of course, is ludicrous. And then he continues by berating the small amount of money given backstretch personnel out of purses. Some jockeys live in million-dollar homes while backstretch people live in third-world hovels and Giovanni is harping on the small benefits they receive. The man has to get his priorities straight.

This letter is being written out of love for the game and respect for the jockeys, not contempt, and a desire for the rank and file to hear some differing opinions, other than those of their leaders who

keep insisting that they're "independent contractors," yet are willing to be "employees" at times. They want it both ways.

*Richard Bonitz  
Lawrence, N.Y.*

"The Final Turn" column of Dec. 10 (page 6182) by Ronald K. Kirk of the Thoroughbred Owners and Breeders Association was right on target. Mr. Kirk and TOBA should be applauded by horse owners everywhere for having the courage to bluntly state what almost everyone in the industry knows. Jockeys in the past and today continue to play both sides of the fence. Wanting the freedom of independent contractors, they insist on being regarded as employees when it comes time to pay for insurance coverage and other benefits.

As Mr. Kirk states, jockeys do indeed receive a much larger share of racing's limited revenues than they are entitled to. When owners and racetracks are losing money every year and backstretch personnel work for limited wages under difficult working conditions, jockeys should consider themselves exceptionally fortunate to receive as much for a one-minute ride as a trainer who invests

many hours per week on the care of the horse.

Yes, it is a demanding and dangerous profession, but nobody forces any jockey to undertake the risks involved. The cynical and shameful grab for media attention during the Breeders' Cup by wealthy jockeys racing for \$1-million purses which they refuse to share with their less successful brethren, while asking the rest of the industry to foot the bill, was a disgrace.

If the Jockeys' Guild is really interested in helping injured riders, I would respectfully suggest that the winning riders in races with purses of \$50,000 or more contribute one-half of their winnings to a medical/retirement fund for the benefit of all jockeys.

Frankly, there is no reason for a rider to earn the same percentage of a \$1-million purse as they do of a \$5,000 purse, except outmoded tradition from 100 years ago, when there were no million dollar purses. Perhaps it's time for owners to start employing jockeys who will ride for more reasonable rates and take responsibility for their own benefits as all other independent contractors do.

*H. R. Levinsky  
Forestville, Calif.*

# Obituary

## JACK DEMPSEY

Jack Dempsey, who managed prominent California Thoroughbred farms for more than 54 years, died on Dec. 15 at his residence in Los Alamos, Calif. He was 69.

Born in Ireland in 1925, Dempsey began his career with the Bert Kerr Bloodstock Agency. After seven years with Kerr, Dempsey rode and assisted English trainers before relocating to Canada, where he worked for W. R. Conklin for three years.

Dempsey traded cold Canadian air for the sunny clime of Southern California in 1957, when he became associated with Dr. Jack Robbins' Conejo Ranch. He later managed Silver Creek Ranch before helping Fletcher Jones establish Westerly Stud Farm, which grew from its initial 40 acres to eventually encompass 4,000 acres. Among the leading California stallions standing at Westerly during the period was Promised Land.

Dempsey also managed Fred Sahadi's Cardiff Stud Farm during the tenure of Gumbojas California's leading sire.

In the 1970s, Dempsey purchased 20 acres and established his own Longview Stud. The farm was relocated to Solvang in the 1980s to a 128-acre tract, but Dempsey retained his original acreage, where he kept yearlings. Longview raised more than 20 stakes winners since being started by Dempsey, who also operated a bloodstock agency.

Dempsey is survived by his widow, Helen, and a daughter, Marianne, who manages Longview.

## MRS. HUMPHREY S. FINNEY

Mrs. Humphrey S. Finney, 83, widow of the late Fasig-Tipton Company chairman, died at her residence near Versailles, Ky., on Dec. 21. A Maryland native, Olive Macey married Humphrey Finney in 1930. The couple initially resided in Maryland, where Humphrey Finney joined Fasig-Tipton as an announcer in 1937, and moved to New York in 1953 after a group led by Finney purchased the company.

The Finneys relocated to Kentucky in 1962. During Humphrey Finney's career, his wife accompanied him on trips to Europe, Australasia, and the Far East. Humphrey Finney died in 1984. The Fasig-Tipton sale pavilion at Saratoga bears Humphrey Finney's name. John M. S. Finney, the couple's son, became Fasig-Tipton president and chief executive officer in 1968. The younger Finney died on June 1 of this year.

Mrs. Finney is survived by daughters Pat and Marge and eight grandchildren. Contributions are suggested to the memorial fund at St. Raphael's Episcopal Church in Lexington, where services for Mrs. Finney were scheduled to be held on Dec. 27, or to the National Wildlife Federation in Washington, D.C.

*By Ron Mitchell*

hat the money isn't there. When we look at the financial side, however, we uncover some very compelling facts in favor of our cause.

Since 1966, jockeys have signed a contract "selling" their media rights to the TRA. As individual contrac-

impact of simulcasting on national handle, the Guild still receives too little from the TRA to establish a decent insurance program.

The last seven years have left the Guild in debt trying to cover health care costs of its thousand-plus mem-

surance has stayed the same while the cost of health care has skyrocketed. In 1993, the contract with the TRA provided the Guild with \$1.7-million to cover health and hospital insurance. Actual costs were \$2.5-million.

to fund the plan, we ask that the Guild receive the equivalent of one-tenth of 1% of the entire betting handle throughout the year. In other words, for every \$10 bet, the Guild will receive one penny which will be put toward adequate health protec-

# Jockeys are independent contractors

## As such, jockeys should be responsible for their own insurance in an industry whose revenue is declining

by J. Brian McGrath

THE negotiations between the Thoroughbred Racing Associations (TRA) and the Jockeys' Guild have been difficult, as we are dealing with complex and emotional issues which do not lend themselves to easy solutions. At the crux of the situation are the elements of compensation, coverage, and financial wherewithal.

The threshold questions are threefold: 1) Are the jockeys fairly compensated for their participation in racing? 2) Do racetracks have a responsibility as it relates to accident coverage? 3) Do racetracks have a responsibility in the areas of health and welfare benefits? Each of these must be viewed in the context of the poor financial condition facing racetracks, other industry groups, and our sport overall.

As to the first, we believe that the jockeys receive fair and just compensation. Total payments to jockeys as their share of purses approximate \$60-million, of which \$33-million is derived from simulcasting. Payments made to cover insurance and health benefits by racetracks totaling \$6,244,000 and those made by horsemen in workers' compensation states amounting to \$4.6-million bring the total to nearly \$71-million.

Racetracks across America are operating on paper-slim profit margins at best, and many are experiencing losses. While simulcast revenues have increased, on-track attendance

and total handle have declined over the past three years. Several racetracks have closed, gone bankrupt, or reorganized. From the horsemen's perspective, the Thoroughbred Owners and Breeders Association (TOBA) pointed out at this year's Jockey Club Round Table that horse owners are losing more than \$1-billion annually. In this economic environment, one cannot justify paying jockeys an increased share of a declining business. Their entitlement or need is not greater than the other participants in our industry.

In the area of accident coverage, we do feel a responsibility and will continue to address this issue. We have offered to increase accident coverage by 25% and have undertaken an industry-wide study to determine if a national accident plan for both workers' compensation and non-workers' compensation states is feasible and cost-effective. The Guild has argued that our offer is grossly

*If anything, the value of media rights over the past several years to this industry has decreased, not increased.*

As to health and welfare benefits, it should be clearly stated that the jockeys are independent contractors. This status brings with it not only opportunities, but also responsibilities. As independent contractors, jockeys are able to offer their professional services to a broad cross section of owners and trainers. At the same time, they are free to establish self-funded benefit accounts and are responsible for funding their own health and welfare plans.

The Guild has argued that payments made by the TRA in this area are in exchange for media rights. Our view is that the jockeys are paid for their participation through purses. Our sport does not generate significant value from its media rights. Today, with the exception of the Triple Crown and the Breeders' Cup, access to broadcast television is achieved by buying time, not in exchange for license fees. If anything, the value of media rights

over the past several years to this industry has decreased, not increased.

In putting forth its case, the Guild has argued that an additional one-tenth of 1% be added to the handle for the benefit of jockeys and that the public would not find this objectionable. Importantly, in dollar terms, we are talking about something approximating \$10-million. Why should the patron be taxed for the benefit of the jockeys? If the customer will not mind, then why not take out additional pieces for other industry groups? It is contrary to well-accepted business principles that the way to increase revenues in a declining business is to raise your price. The jockeys argue that they just feel they deserve more. We do not agree.

The jockeys' contribution to racing is considerable, as is that of all industry groups. As pointed out, racing is facing very difficult financial times and the solution lies in developing ways to increase the overall revenues within the sport. If that development is successful, everyone will benefit.

A strike or boycott would be to the detriment of the sport and all participants. ☺

John Giovanni is national manager/secretary of the Jockeys' Guild.



POINT/COUNTERPOINT  
JOCKEY STRIKE

J. Brian McGrath is commissioner of the Thoroughbred Racing Associations, Inc.



DATE February 2, 1995

SENATE COMMITTEE ON Business & Industry

BILLS BEING HEARD TODAY: Senate Bills 19-22-242

Senator Delwyn Page

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Rosemary Yake	H B P. A.	242		X
Albert Yake	H. B. P. A.	242		X
Maxine Peterson	H B P A	242	X	
Ralph Peterson	H. B. P. A.	242	X	
Burton Farley	Vice Pres HBPA	242	X	
Burton Farley	" "	19	X	
Burton Farley	" "	22	X	
William Skumate	Self-Care	22-19-242	X	
Donna	Owner	242-19	X	
MAXINE PETERSON	H B P A	22	X	
"	"	19	X	
Ralph Peterson	"	22	X	
"		19	X	
Rosemary Yake	H. B. P. A.	19	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE Feb. 2, 1995

SENATE COMMITTEE ON Business & Industry

BILLS BEING HEARD TODAY: Senate Bills 19-22-242

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Name	Representing	Bill No.	Support	Oppose
Rosemary Gake	H.B.P.A.	22	X	
Albert Gake	H.B.P.A.	19	X	
Albert Gake	H.B.P.A.	22	X	
Bud SCRIBNER	H B P A	242	X	
"	"	22	X	
"	"	19	X	
Joyce Beel	H B P A Horse Breeders	242	X	
Charles R. Brooks	Yellowstone County		X	
Lou Wojciechowski	Mt. Bd Horse Racing	242		X
JAM MURPHY	MBO HR	22	X	
Jim Scott	M B H R	242		X
PEGGY BUFFINGTON	self	242		X
Tom Tucker	MONTANA Simulcast	19	X	
LAY CLARK	MARIAS FAIR	19/22	X	

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PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE February 2, 1995

SENATE COMMITTEE ON Business & Industry

BILLS BEING HEARD TODAY Senate Bill 19-22-242

Senator D. Gage

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Check One

Name	Representing	Bill No.	Support	Oppose
Bill Egg	Mt State Fair	19/22	X	
Cheryl Altom	HBPA - MHBA	242	X	
Jesse Dennis	Self as owner	all	X	
Wade Dennis	Self as owner/trainer	19-22 242	X	
Don Banta	MHBA	11	X	
EAL MAHLUM	MHBA	242 19	X	
Jim DeBruin	MHBA	242 19	X	
JOE W. ERICKSON	MHBA	19-22 242	X	
Bill Brown	MHBA HBPA	242	X	
Judith Veidt	NWMT FAIR	19/22	X	
SAM YEWOSIAK	MISSOURI, MT WESTERN MONT. FAIR	19/22	X	
Gary Koopman	Sanelli County Fair	19-22	X	
"	"	242		X
Don L Hall	MHBA	19-22 242	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY



