

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By BRUCE D. CRIPPEN, CHAIRMAN, on February 9,
1995, at 10:00 A.M.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Feland, Committee Secretary

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

Committee Business Summary:

Hearing: SB 276, SB 297, SB 211, SB 314
Executive Action: SB 149, SB 297, SB 314

HEARING ON SB 314

Opening Statement by Sponsor:

SENATOR DON HARGROVE, Senate District 16, Belgrade, sponsored SB 314. He said the bill is not lengthy but requires a little bit of history in explanation. The Law Enforcement Academy has been in Gallatin County for the last 20 years and has been operating well. There are some compelling reasons to leave it there. Because of its success and its value to the state, it has been expanding and it needs some expansion in terms of physical environment. Gallatin County had a \$1.5 million dollar bond issued during the last election to do just that. The voters

rejected it, not by a large margin. Almost instantly the governor announced there would be \$7.5 million included in the budget to consolidate all of the law enforcement agencies in Helena which would include not only the Law Enforcement Academy but the firing range and the forensics laboratory in Missoula. The Governor wasn't sure about the reception, so they got a group together to prepare an alternate plan to get it to Bozeman and for the \$1.5 million dollars, they were going to include a 7,000 square foot facility with private funds, or about \$200 per square foot. The land for this facility would be donated by Gallatin County at \$1 per year. The state would rent the facility for \$64,000 per year. With that money, all a lending institution would need to build it with private money would be some sort of a guarantee. Three or four weeks ago the Governor's proposal went down to \$2 million for the Law Enforcement Academy. It was decided by the Bozeman officials that they would accept the Governor's plan. Now there are many alternative plans, he said, i.e., Galen, Lewistown, Great Falls, Helena and more. This bill does two things: It establishes the Law Enforcement Academy as being in Bozeman; and makes it incumbent on the County Commissioners as the lead agency to provide a plan for the next proposal.

Proponents' Testimony:

None.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

CHAIRMAN BRUCE CRIPPEN apologized on the timing of some of this. However, any of the proponents or opponents were welcome to submit written testimony if they wished to do so. He called for questions from the committee. There were none. **CHAIRMAN CRIPPEN** said that he understood from **REPRESENTATIVE BERGSAGEL** this proposal would be going through Long Range Planning. **SENATOR HARGROVE** said he wished the bill preserved until other options had been reviewed.

SENATOR MIKE HALLIGAN asked if the 7500 square feet would house just the Law Enforcement Academy or if it was the long range plan to try to include the crime lab in Missoula.

SENATOR HARGROVE responded that it was just the Law Enforcement Academy.

Marilyn Wessel arrived to represent **MSU, Bozeman** and **CHAIRMAN CRIPPEN** asked her if there was anything she would like to say on this. She said the law academy and the university had a long

cooperative relationship. The university had assisted them in providing meals and recreational services for the officers who train there, and the university would certainly want to continue that relationship in Bozeman.

SENATOR SUE BARTLETT asked **Sheriff Chuck O'Reilly** of Helena if there was support for bringing the Law Enforcement Academy to the Mountain View campus. **Sheriff O'Reilly, Sheriff of Lewis and Clark County and also Legislative Chairman for the Montana Sheriff's and Peace Officers' Association**, said that the board of the association unanimously voted to support Governor Racicot's attempt to move the Montana Law Enforcement Academy to the Mountain View School here in the Helena Valley. As a former student of the Bozeman facility, he appreciated **SENATOR HARGROVE'S** effort to assure the continuity of the academy. He said the association's position was such that they had been living with a temporary facility for years. He said they want to see a permanent academy, and the association believed that the Governor's proposal was the most viable and practical.

Closing by Sponsor:

SENATOR HARGROVE reiterated that he, as the representative of his district, and the Bozeman officials support the Governor's proposal if that proposal remains viable. If it doesn't, he felt that Bozeman is the best place for a variety of reasons and one of the more important ones was their relationship with Montana State University. This proposal is to be viable only in the event that the Governor's proposal is not accepted.

HEARING ON SB 211

Opening Statement by Sponsor:

SENATOR TOM KEATING, Senate District 5, Billings, sponsored SB 211. He said the bill dealt with limited liability for the recreational use of property. He pointed out that Line 7-8 of the heading repeals Section 70-16-301 and 302, which is the current language for recreational use liability. This bill would replace that language with a clarification. He stated that there had been two court cases which had clouded the interpretation of the issue. This bill would require a 2/3 vote, he said, because SB 211 would repeal one section and replace it, and also because it exempts the state from liability for recreational use. He turned the bill over to technical legal officers from Yellowstone County for an explanation.

Proponents' Testimony:

Charles Brooks, representing the Yellowstone County Commissioners, said there was a clear statement of purpose contained within the bill itself. He said that he hoped it would not be interpreted that this was a "Billings bill," but rather a

statewide bill to protect both private property owners as well as public property owners who extend recreational use of the land for no charge. He said we are living in a time when some people want the risk of living with little desire to take responsibility for their own actions, and then have someone else pay for what happens to them even if it is their own fault. He said that without this type of legislation, municipalities would have to reconsider plans to build bike paths and nature trails. They would be hesitant to expose themselves to the liabilities involved. He submitted a letter to **SENATOR KEN MESAROS** from **Harold Hanser**, a former county attorney. This bill is a composite of the efforts of **Mr. Hanser**; current County Attorney, **Dennis Paxinos**; **Rocky Brown, Jr.**, the attorney for the big ditch in Billings; **Larry Martin**, attorney for the school districts; and **Jim Tillson**, attorney for the City of Billings. They took as their foundation the Nebraska law, which was taken all the way to the Supreme Court and has held. He asked careful consideration to the document. **(EXHIBIT 1)** He read a statement from the memo, "the issue plainly stated is whether Montana sees a greater public good in expanded use of land and recreational use or in restricting such use in favor of liability litigation."

Mark Watson, City Administrator, City of Billings, briefly described how the pending law would affect his community. Numerous volunteer groups had opened hundreds of acres of land in the Yellowstone River Basin. They had held fund-raising events and were currently developing parkways up and down the river. To complement that they have developed a Bike-net Program, with planning funds from the State of Montana in conjunction with the commissioners involving the first \$600,000 phase. This could interact with the Billings Irrigation Greenways that could be utilized for recreation purposes, but the irrigation directors will not open those areas unless the liability is addressed. He thought the implementation of these types of programs were important not only in Billings, but would improve the quality of life all over Montana. The right to sue would always be available, he said, if there was evidence of wanton or willful acts. He asked the committee for careful consideration.

Dennis Paxinos, Yellowstone County Attorney, said he was part of the drafting committee for the proposed statute. He said several attorneys had worked on this problem and asked **SENATOR KEATING** to present the bill, showing its non-partisan nature in the agreement between the sponsor and **Mr. Hanser**.

Mr. Paxinos said that in the past there was a general rule, a person "could not sue the king," meaning that no city, county or state entity was subject to lawsuits or liability. It had changed through the years, he explained, so that a person could sue if willful, malicious conduct causing injury could be shown. The statute they proposed was in the codes prior to 1972 and carried over. In 1970, the statute was interpreted by Supreme Court Justice **Wesley Castles** and determined that the leasee of the "king" could be sued. It was also interpreted by Federal

Judge **Smith** in another case in Glacier Park wherein a small girl was killed in a bulldozer accident which she should not have been on. The judge, interpreting a state statute, said the law also extended to the federal government, but found there was no liability to the federal government. **Mr. Paxinos** said that it stood to reason that if Montana Power and the federal government could get an immunity from being sued from **Judge Castles**, then the state would be free from lawsuits as well, except in the case of wanton and willful acts. In August of 1994 in Billings, **Judge Holmstrom** ruled that the statute did not apply; there was no immunity from negligent acts. This was a completely different interpretation from either **Judges Castles or Judge Fisher**. He said that prior to the ruling a swimming accident had occurred in Billings at a pond which the city had been charging people to swim in. A child drowned in the pond. The pond was marked that no lifeguard would be on duty. The parents brought suit and it was found that because the city charged for use of the pond, they could not come under the provisions of the statute. The city removed the fees and disallowed swimming in the pond. In August of 1994, a child was injured in a fall after she climbed a tree from a picnic table someone had moved next to the tree. That family also sued. City Attorney **Jim Tillotson** filed a summary judgement motion based upon the current statute saying they were not responsible for the negligent acts of others, and **Judge Holmstrom** ruled this statute did not apply and that they had to defend the lawsuit. The city was able to prevail, he said, but the point is that cities, towns, and counties are devoting their resources to defending themselves in negligent acts of others. He said their drafting group had researched the laws of Nebraska which seemed to address the same problems. The whole idea is to clarify for the district court judges and members of the public that the idea is to allow property to be used for recreational purposes provided they do not make a charge for it. He said it would prevent needless litigation and all the costs associated with it in order to get land turned over for recreational purposes. The state is trying to offer more and more tourism and activities and people are willing to donate their land, but he thought they would not want to participate if they thought someone would sue them if injuries would occur on their properties. He urged adoption of the statute. He said it would go a long way toward adopting what everyone had always thought the current law intended.

Stan Kaleczyk, representing the Montana Municipal Insurance Authority, which he said was the group insurance program for cities and towns in Montana including Billings. His organization supported the legislation. He said his organization defended the suit **Mr. Paxinos** had just related in Billings. He stated that they went into the lawsuit believing that the statute applied to local governments. The judge's rationale was that city parks in Montana predated 301 and 302, the existing recreational immunity statutes. An appeal could not be granted to them because they received a defense verdict. He said that this bill was a common sense approach that ought to be taken by the legislature that

said the cities, towns and counties, as well as the state, should enjoy the same immunities and privileges as a private landowner.

Bob Stevens, representing the Montana Grain Growers Association, supported SB 211. He said this bill would help the agricultural community in regard to recreational lands.

Opponents' Testimony:

Russell Hill, representing the Montana Trial Lawyers Association, (MTLA), read from submitted testimony and also reviewed proposed amendments. (EXHIBIT 2)

Informational Testimony:

A hand-out, "Current Montana Law," was submitted by an unknown donor. (EXHIBIT 3)

Questions From Committee Members and Responses:

SENATOR STEVE DOHERTY asked **Mr. Paxinos** why the drafting committee took such a departure from Montana statute and wanted to adopt the Nebraska statute, especially if there was case law in the Montana statute?

Mr. Paxinos replied that they attempted to find a statute already on the books that addressed the specific issues that **Judge Holmstrom** had addressed and had already been ruled upon by a higher court. They contacted the Nebraska officials and found that their recreational people had not been sued since enactment of the law.

SENATOR DOHERTY further inquired if they incorporated current statute, 7-16-302, which references recreational use of any property, and inserted "governmental property," then would it address the judge's concern about the pre-dating of the parks, etc.? He said that would give instruction to the court to grant government landowners what is granted private landowners for recreational purposes.

Mr. Paxinos said it would perhaps clarify the point. He said an added concern would be the donated land and property safeguards. He wasn't sure the amendment would include that issue. He said they were thinking mostly of leased land at nominal price used for bike and hiking trails.

SENATOR DOHERTY asked **Mr. Kaleczyk** to respond to the question.

Mr. Kaleczyk said that with recreational easements where the private property owner retains title, he was not sure that the words suggested may cover it, but with fine-tuning, may work.

SENATOR HALLIGAN asked **Mr. Kaleczyk** about the \$5.00 recreation fee for public lands. He asked if that was considered "a charge"

under this ruling to make government liable?

Mr. Kaleczyk said he wasn't involved in the drafting. He thought a charge is a charge, and the issue would no longer come under the terms of SB 211.

SENATOR HALLIGAN asked about the attractive nuisance doctrine, as related to driving on a highway, and whether or not the doctrine would be abolished or defeated unknowingly.

Mr. Kaleczyk said driving on the highway would not be in his understanding of what the statute would do. His concern was more of "natural attractions" on the land, which he did not think would be considered an attractive nuisance, such as a tree in a park. He did think any judicial interpretation of attractive nuisance would fall into that category.

SENATOR REINY JABS asked how the law would relate to a landowner allowing goose hunting on his land. He said if the owner did not charge a fee, but the hunter left a goose on the doorstep, would it be considered a charge?

Mr. Paxinos said it would be considered a gift.

CHAIRMAN CRIPPEN asked about the 2/3 provision. He questioned why they would need that, especially if they accepted **SENATOR DOHERTY'S** amendments.

SENATOR HALLIGAN said it was clarifying governmental immunity and would require a 2/3 vote.

Valencia Lane stated that it was an expansion and they would be granting immunity for some activities that would not have been immune before. Also some types of land may be covered that were not covered before, she said.

CHAIRMAN CRIPPEN said the language "or leased by" may be a concern because he understood they wanted to be covered, for instance, bike path land that is leased.

SENATOR HALLIGAN stated that there are places not leased to be included, such as recreation corridors. In that instance landowners had banded together to allow use and the immunity should be extended to include them.

Valencia Lane said it could always be challenged on the basis that whatever you do, if you don't have the supermajority vote requirement, the bill probably would be challenged.

Mr. Hill was asked to comment on the 2/3 vote rule. He said his amendments were offered from a position of weakness. Even if the committee were to adopt all of MTLA's amendments, the bill would still expand the limited immunity and need the majority vote, he said. He was uncertain about **SENATOR DOHERTY'S** amendment, which

he understood to be a clarification of current law.

SENATOR HALLIGAN said he sensed the Democrats on the committee would want to accomplish what the bulk of the communities would want to do. He did not think a 2/3 vote would be a problem.

CHAIRMAN CRIPPEN said he was trying to reach a committee conclusion whether or not the 2/3 vote was required.

SENATOR DOHERTY said it was his understanding that whatever they would adopt would also include parks that had predated the action or public lands that had predated the actions. He wanted the understanding to be included in the record.

Closing by Sponsor:

SENATOR KEATING closed on SB 211. He reminded the committee that SB 211 was not just a "Billings bill." He recognized the source was Billings and that Billings officials were brought in to testify. He said that County Attorney Jovick from Livingston had stopped by to voice his support for the bill as well. He said it affects all of Montana.

The Senator said the agricultural community was putting together a similar bill to grant further immunity for recreational use of agricultural property. There is a perception that there is not sufficient protection right now for immunity from lawsuits for recreational use. He said landowners perceive the liability threat and many are taking unnecessary precautions to protect themselves. He said the grapevine would work if this measure was passed and people would soon realize they were not in harm's way or jeopardy in allowing recreational use. He said taxpayers' dollars would be better spent in other areas than in litigations over cities and towns. He asked the committee to take away some of the anxiety and give peace of mind to landowners in allowing use of volunteer property.

HEARING ON SB 297

Opening Statement by Sponsor:

SENATOR STEVE DOHERTY, Senate District 24, Great Falls, presented SB 297. He said it stemmed from an unhealthy interest he held in uninsured motorists and their privilege to use the roads in Montana without the concurrent responsibility of maintaining what was deemed to be adequate insurance on those vehicles. He said the issue was brought to his attention by a deputy county attorney in Cascade County who felt that they needed to add points to an individual's license when they are convicted of driving without insurance. Last session, he said, the fines were increased and seizure of license plates and registration were allowed. This bill would allow for some clean-up on the first three pages. The language on page 4 would simply put five points on to the record of a uninsured motorist violation. He said the

finances are helping the prosecutors in Cascade County in seizing the license plates, and this bill would add another hammer in helping law enforcement officials curb uninsured motorist violators.

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Proponents' Testimony:

Dean Roberts, Administrator, Motor Vehicle Division, said the measure originally came out of the task force of the Attorney General in 1990 which he and SENATOR DOHERTY served on. He said his department supported this bill. He said if a person was convicted of not having insurance, it was already a five-point violation. Under the new bill, it would give a five-point violation for any of the insurance violations on a conviction. He said that normally a law officer asks for insurance proof and if the person does not have a card, it does not mean they don't have insurance. The law officer would write a ticket for "failure to carry the card". If the person goes to court and produces the insurance proof, and there is no violation at all. This bill also makes it a five-point violation for a conviction of "failure to carry the card," and he urged support of the bill.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR JABS asked SENATOR DOHERTY that since the only time they usually find people without insurance is in an accident, he wondered how enforceable this law would be.

SENATOR DOHERTY said that was the primary reason that the Department of Justice, the Montana Automobile Dealers and the insurance companies have been concerned about uninsured motorists. They want to put out the message that if people want to drive, buy a car, spend money on gas, plates and registration, part of that deal is insurance. He said it is improving compliance with the law.

SENATOR LARRY BAER told SENATOR DOHERTY he, too, was all for getting tougher on people who don't insure themselves properly. He had suffered two accidents in the past year by uninsured motorists. But he had reservation about five points for forgetting to put the proof in the glove compartment. He wondered if they were really getting to the heart of the problem.

SENATOR DOHERTY said they were. He said a person would be written for "failure to carry the card." If, however, they go to the judge and say it was misplaced and they are really insured,

they would not be convicted. If they cannot show the judge the proof of insurance, then the judge would assign the five point violation.

SENATOR BARTLETT asked the sponsor if, in addition to the conviction, would they also get the five points for not having insurance.

Brenda Nordland from the Attorney General's Office, answered the question by saying that when the officer writes the ticket, it would be written for one offense, not two, and they will only be convicted for one offense. Typically, she said, it would be the "failure to exhibit" offense.

SENATOR BARTLETT asked for clarification through the process.

Brenda Nordland told the committee that under the current habitual offender law that a person's drivers' license would be revoked if, after three years they had accumulated 30 conviction points, or six of these violations.

SENATOR BARTLETT asked about current law.

Brenda Nordland stated that the five-point violation would be assessed only if a person was convicted of not having insurance. Due to oversight, there was no five-point conviction for "failure to produce."

CHAIRMAN CRIPPEN asked for clarification. He posed a problem wherein he might get picked up for no insurance card available.

Brenda Nordland said that unless an admission was made at the time of the stop, it is most likely that a person would be cited under 302, the failure to exhibit. If a person makes an admission, then a person would be cited under 304. If a person was unable to produce proof of insurance, they would be charged with "failure to exhibit." However, if a person has merely forgotten to carry the proof, there is an escape clause, and no violation would be issued.

THE CHAIRMAN thought that before he would lose his plates, registration and ultimately, the car.

Brenda Nordland explained that under current law, the first offense would be a fine of \$250.00 to \$500.00. The second offense would carry a \$350.00 to up to 10 days in jail. The third or subsequent offense would carry a fine of \$500.00 or 10 days in jail or both. The second offense or subsequent offense would also carry the penalty of forfeiture of plates and registration for a 180-day period. She said it is a tiered system and the status as a driver begins to change the first time.

SENATOR LINDA NELSON asked **Dean Roberts** for comment. He said

both "failure to carry the card" and "failure to carry insurance" have exactly the same penalties, exactly the same fines and exactly the same provisions when you lose your plates. The only difference is "failure to carry the card" is not a five-point violation. This bill would make it a five-point violation to be convicted of "failure to carry the card" along with all the other penalties.

SENATOR JABS asked if there was a fine on the first offense.

SENATOR DOHERTY explained that the first offense fine would be \$250.00 to \$500.00 and perhaps up to 10 days in jail, and be assessed a five-point conviction.

SENATOR SHARON ESTRADA asked if that was for the first offense of not carrying the card.

SENATOR DOHERTY said that if the person actually had insurance, there was an escape clause and no penalty would be assessed.

CHAIRMAN CRIPPEN asked if a person was driving some else's car, who would be responsible for the insurance?

SENATOR DOHERTY answered that it would be the owner that was required to have proof of insurance, not the driver.

Closing by Sponsor:

SENATOR DOHERTY closed SB 297 and thanked the committee for a good hearing. He said it was an area that was in need of additional clarification and to make it clear to those who drive without insurance that there could be consequences because most accidents involve injury. There should be consequences for irresponsible behavior, such as driving without insurance.

EXECUTIVE ACTION ON SB 314

Motion/Vote: **SENATOR JABS** MOVED THAT SB 314 BE TABLED. The MOTION CARRIED unanimously by oral vote.

Discussion: **CHAIRMAN CRIPPEN** said that the sponsor wished the action on the bill, until a later date.

EXECUTIVE ACTION ON SB 297

Motion: **SENATOR AL BISHOP** MOVED THAT SB 297 DO PASS.

Discussion: **SENATOR RIC HOLDEN** asked the sponsor for clarification.

SENATOR DOHERTY explained that the bill would allow prosecutors to plug a hole, not done initially, by making people pay on their permanent record for their habitual offenses if they fail to have insurance. A person would know they would have a fine, may be sent to jail and suffer a suspension of their license in a three-year period.

CHAIRMAN CRIPPEN reminded the committee that a drivers' license is not a right, but a privilege.

Vote: The **MOTION CARRIED** unanimously by oral vote.

HEARING ON SB 276

Opening Statement by Sponsor:

SENATOR MIGNON WATERMAN, Senate District 26, Helena, opened the hearing on SB 276, explaining that the bill would prohibit minors from being in the area where gaming machines are in a gambling facility. She said that two incidents in the past year prompted the bill. She saw a woman with a child on her lap and a toddler with her, playing a gaming machine. After one-and-one-half hours, the group was still there. Later, driving into Helena, she saw a billboard that advertised for a local casino with the words, "gaming machines, adult and children, family atmosphere." She said she was surprised because she did not know they had legalized children's gaming machines in this state. On checking, she found out they were amusement games that most people thought would be at fairs and in arcades. She found that some establishments have interspersed them with adult machines, so that children could play with a roll of tokens while the parents played the gambling machines. She did not think that was the intent of the legislature, which intended "adults only" machines. They were tied to alcohol licenses which do restrict the premises in which gaming can occur. She said her research showed that the two incidents she related could not have occurred in any other state in the nation. She distributed a sheet with some language taken from other states. (**EXHIBIT 4**) She read from those provisions.

SENATOR WATERMAN said it was not the intent in Montana for children to be near gaming machines. She believed it to be an adult entertainment and did not think it was an appropriate atmosphere for children to be permitted in.

Proponents' Testimony:

Mary Ellerd, Executive Secretary of the Montana Juvenile Probation Officers' Association, supported the bill, and asked that the committee consider the language that refers to youth court on lines 24 and 25. They did not believe that the intention would be to charge a minor with an offense, but as the language on lines 4 and 5 state, "making it a criminal offense

for a person allowing a minor". . . They also had some uncertainties as to what "a person" includes and suggested deleting the word, "enter," in line 20, and consider, perhaps, adding language about "remaining". She left written amendments. (EXHIBIT 5)

Ellen Engstedt, representing Don't Gamble with the Future, presented written testimony. (EXHIBIT 6)

David Hemien, represented the Montana Association of Churches, an organization that he said represents eight of the largest Christian denominations in Montana. He said they would support SB 276 and urge a Do Pass recommendation. Casinos are, in subtle and overt ways, raising a new generation of gamblers, he said. They recognized that the results of the bill may cause some adjustment to casino operators, but those in the gambling industry that keep pushing the line further and further on gambling as a family entertainment must be challenged. They asked that the line be drawn now.

Sharon Hoff, representing the Montana Catholic Conference, said she served as a liaison for Montana's two Catholic bishops on matters of public policy. She submitted and read from written testimony. (EXHIBIT 7)

Opponents' Testimony:

REPRESENTATIVE BOB PAVLOVICH, House District 37, Butte, opposed SB 276. He said he was a former tavern owner and was in the business for 41 years in the same bar, same building, same business. He said he had improved it somewhat, and all the machines were in the open. He did serve lunch five days a week; sometime people came in with their children. With this bill, he said, he would have had to build a new building. He spoke for 90 tavern owners in the City of Butte that are built the same way. The children don't play the machines. He said that of the 1,600 tavern owners, the bill would put 1,500 of them out of business. If the state would like to build new bars for them, they would support the bill. He said he sold his business two years ago, and if the bill passed, he felt he might be taking it back for lack of payment.

Mark Staples, representing the Montana Tavern Owners Association, said their organization had been very reasonable and willing to listen to discussions on numerous issues, such as the dial-up which has on-going conversations, raising the gambling age to 21, and compulsive gambling. This bill he considered out-of-bounds. Let's call the incidents what they are, he said, "poor parenting." That same kind of poor parenting could be abused in any situation, such as a prize fight, or people taking their children to R-rated movies, where the violence certainly

surpasses the bad influences of this example. He said that of the other states named, it was riverboat gambling discussed, and that was easily monitored by simply not having anyone under 18 on the boat. The proponents had mentioned Nevada, but he said anyone that had ever visited Nevada knew that gaming machines were in the airport, restaurants, carousels and all the businesses. You can't get to the rooms of any hotel without going past the gaming machines. He added that they are making Las Vegas the family resort center of the U.S. There is a law in Montana, **Mr. Staples** said, that the bartender must have the gaming machines in his viewsight in his establishment. How would the machines be in another room and yet have them in his viewsight. He mentioned some local examples. He maintained his opinion that the issue was in actuality, poor parenting.

Roselee Bullock, co-owner of the Silver Saddle Bar in Basin for 23 years, represented herself. She opposed SB 276. For 20 of those years, she said, the children of Basin had met the school bus for junior high and high school in Boulder. On many week-end nights the kids come into their establishment to play pool. They never go near the machines, she said. She asked the committee to recognize that the owners did not want any problems themselves. **Ms. Bullock also represented the Tri-County Tavern Association.** She said their association represented Lewis and Clark, Jefferson and Broadwater Counties. She said she spoke for many small businesses with gaming, bar and food. She said she was having a hard financial time with recovering the chairs, let alone a new room.

Rich Miller, representing the Missoula Tavern Association, stated unanimous opposition to the bill from his organization. Secondly, he said he **represented his family's establishment, Miller's Crossing,** and said he just finished moving. They could not afford to re-model the premises again to accommodate the provisions of this bill.

Todd Gilbreath, speaking for a family-owned casino in Helena, stated that their business is one big room. It would take massive remodeling to comply with the terms of the bill. He said he would have to tear out part of the parking lot. Children cannot even touch the machines in their business, but it would be tough to tell them they can't have a hamburger since he is in the restaurant business, he said.

Larry Akey, appeared for the Montana Coin Machine Operators Association. He stated that their organization provided coin operated devices including video gaming machines to primarily Montana bars and taverns. Most of the machines are in small rural establishments. This legislation is not do-able in Montana, he said. Like it or not, those same small bars are many times the social hub of the communities. If the law passed, a family could not go out for dinner in Hilger, Montana. He thought that it was not what the sponsor intended, but it would be the effect. He urged a Do Not Pass recommendation.

Steve Morris, owner of Jorgenson's Restaurant and Lounge, with his wife, said they had two separate areas in their business, but said the choices would be limited for someone wanting to watch a game on television with their children. They don't allow children to play the machines in their establishment. He urged opposition to the bill.

Dennis McCall, owner of a sandwich shop in downtown Helena, said he had one gaming machine. Over the years he had never had anyone leave the business because of the machine. He also had been a coach for Little League Baseball and had hosted teams for drinks and yogurt. He had never had any complaints. He thought this was a bad bill.

Orville Johnson, owner of Yacht Basin Marina at the Lake, said that kids would be restricted right to the doorway and unable to come in to get pop, food or to use the restrooms.

John Ferriter, manager of his parents' business, the Grub Stake Restaurant, Helena, said in his establishment there were two sides where the machines are located. If the bill would pass, they would have to remodel the building, which was not even conceivable. They would not be able to serve the tourists coming into Montana, he said. He urged a Do Not Pass recommendation.

Don Harrison, manager of Tony's Lounge and Restaurant in Helena for the past two years, said that they have put a great deal of effort to make their business an appropriate place to bring children and families feel unpressured by the machines being there. They made the business brighter and put machines in a position where they can be monitored at all times. They follow the letter of the law every day, he said. Children are not allowed to touch the machines at all. He said it was a bad bill and without point if casinos are following the present law.

Proponents' Testimony: Pat Melby, representing the Rimrock Chemical Addiction Treatment Center, Billings, supported SB 276 as they would any measure that reduced gambling addictions in the State of Montana.

Carolyn Ennis, Billings, sent written testimony by FAX. She was unable to testify because of the 8 a.m. rescheduling of the hearing. (EXHIBIT 8)

A letter was received after the hearing from **The Montana Tavern Association.** (EXHIBIT 9)

{Tape: 2; Side: 1; Approx. Counter: 00}

Questions from the Committee: SENATOR ESTRADA asked if the prohibition of children from the establishments also included when cleaning took place, as many people took their children with them to clean in a family business. She was informed by some others that it would not.

SENATOR ESTRADA further questioned **Ellen Engstedt** about the mix of machines she mentioned in her testimony and asked where that took place. **Mr. Engstedt** said it was the Amigo Lounge in Great Falls. She did not know of any in Helena.

SENATOR ESTRADA asked if misdemeanor charges were filed, would it be the parents or the bar owners who would be charged.

CHAIRMAN CRIPPEN said it would be the bar owners.

SENATOR DOHERTY asked **SENATOR WATERMAN** what she considered to be the "other parts of the premises. The door? The roof? The entrance?

SENATOR WATERMAN said it was never her intention to prohibit minors from the eating area of the establishments. She said she had spoken to Dennis Casey, the representative of the gaming industry, and made an offer to amend the language to better match that of other states. She said that she and the drafter, **Mr. McMaster**, had not been of one mind on whether children would be permitted on other parts of the establishments.

SENATOR DOHERTY asked **SENATOR WATERMAN** about the Great Falls Fair, where keno and bingo games are played. He guess that it was not her intent to disallow children from those premises.

SENATOR WATERMAN said, "no."

SENATOR BARTLETT asked **Mark Staples** if it would be a better approach to prohibit arcade games in gambling areas, and prohibit anyone under 18 from playing games in those environments.

Mr. Staples said he had no real objections, but that it would be hard to distinguish, as in the Stockman's Bar in Missoula where the hoop-shot game is about eight feet from a live poker table. At the Village Inn, Ulm, children must walk through the keno room to get to the party/pizza room for kids. He said that while separation might be a good idea, he did not know how it could be accomplished when most establishments were limited to so many square feet and he felt that she was saying either/or.

SENATOR HOLDEN told **SENATOR WATERMAN** that he and **SENATOR NELSON** were from small towns and he did not see how they could really work this, in spite of the fact that it may be a very good idea.

SENATOR WATERMAN said she would like to see the gambling machines separate from the eating area. She said that every other state has been able to handle this. She cited Louisiana where they do not have riverboats and Nevada. She told of her trip to Las Vegas where her minor son was not even allowed in the room where she went to cash a check. She cited examples of other states' laws. She told the committee that all states have rural areas. She contended that the bill would not put the bars out of business, it was only a way to arrange the rooms. She said that

in no other state would it be allowed for the child to sit on the lap of a gambling mother, or a child to be alongside.

SENATOR BISHOP asked **Dennis Casey** to speak to the subject. He said that there was some misunderstanding. He thought the bill had only addressed mixing childrens' machines with adults' and thought they could possibly work through that. He said the language in the bill was too broad when it included "under 18" and "part of the premises". He thought it would affect over 90 per cent of the establishments in Montana.

SENATOR JABS asked **Mr. Casey** if better enforcement might be the answer to this problem, to which **Mr. Casey** replied that he would be willing to work on it.

CHAIRMAN CRIPPEN wondered how the wording, "loitering" would work into the bill. He said everyone was pretty much in agreement they did not want a child to be on a player's lap or alongside.

Mark Staples said it might be desirable, but how would they apply it? He said if they could do that, and yet account for the free-flow of normal activity, he would be agreeable.

CHAIRMAN CRIPPEN asked if the laws of the other states mentioned in the testimony had the laws in existence or if they came in later? He said the reason he asked was because if they came in where gambling was first allowed, then the builders of the establishments would have had the opportunity to conform with the law. If they came in afterwards, it would be similar to Montana, which would be after the fact. The objection by the opponents, he said, was the cost. He would not like to tax out of existence any business in the state.

SENATOR WATERMAN agreed and stated that the "loitering" wording might work better. She said her two concerns were: 1) her objection to the interspersing of adult gaming machines with childrens' amusement games, and 2) children staying in the area where the gaming machines are. She said she had no problem with them going into the room where the machines were. She agreed to work with **Mr. Casey, Mr. Staples and Valencia Lane** in drawing up necessary amendments showing their common ground.

Closing by Sponsor:

SENATOR WATERMAN closed on SB 276 by saying that the bill was a policy decision. She said it was never the intention of the state legislature to authorize children to be around the machines when gambling was legalized. She said many establishments would be reconfiguring their businesses to accommodate the new dial-up legislation and she thought this would be an opportune time. The bottom line is that every other state in this nation that has gaming, does not allow children near the machines. Gambling is not a childrens' activity; it is an adult activity, she said.

EXECUTIVE ACTION ON SB 149

Discussion: CHAIRMAN CRIPPEN said he was in error on SENATOR CASEY EMERSON'S bill in saying he was willing to delete the language that was similar to the language of I-30, the tort reform proposal.

SENATOR EMERSON said a paragraph in the bill was put in by the Liability Coalition in 1986. When he proposed the bill, he put in the identical language. He wanted the citizens to know that. He said it may be a moot point.

Valencia Lane said the committee had already taken the language out. She explained the amendments, numbered sb014903.AVL, as shown in (EXHIBIT 10).

Motion: SENATOR ESTRADA MOVED THAT SUBSECTION 3, STARTING ON LINE 19-23, PAGE 1, BE RE-INSERTED INTO SB 149 FOR CLARIFICATION PURPOSES.

Discussion: SENATOR NELSON spoke against the motion. She said it was too wordy and confusing. She thought if it went out on the ballot, the people would not know what it said.

Vote: The MOTION PASSED on a roll call vote, with 6 members of the committee voting aye and 3 members voting no.

Motion/Vote: SENATOR DOHERTY MOVED HIS AMENDMENTS, DEALING WITH THE LANGUAGE OF ABOLISHING THE RIGHT TO FULL LEGAL REDRESS AND ALLOWING, INSTEAD, THE LEGISLATURE TO LIMIT OR ABOLISH REMEDIES AND CLAIMS FOR RELIEF TO BE THE BALLOT LANGUAGE. THIS IS FOUND ON PAGE 2, LINES 1-4, TO BE PRESENTED AS 041901.AVL. The MOTION FAILED on a roll call vote, with 5 members voting aye and 6 members voting no.

Motion: SENATOR ESTRADA MOVED THAT SB 149 DO PASS AS AMENDED.

Discussion: SENATOR DOHERTY said that if the issue went out to the voters and if it was defeated, it should be a clear message to the Supreme Court that the committee considers their decision in the Hillhaven vs. Meech case improper and an incorrect reading of the Montana Constitution and that when the words say, "full legal redress," they mean, "full legal redress," and the Supreme Court ought to take that meaning very well.

Vote: The MOTION FAILED by a roll call vote with 5 members voting aye and 6 members voting no.

Motion/Vote: SENATOR BARTLETT MOVED THAT SB 149 BE TABLED. The MOTION CARRIED on a roll call vote with 7 members voting aye and 4 members voting no.

ADJOURNMENT

Adjournment: CHAIRMAN CRIPPEN adjourned the hearing at 12:20
p.m.



BRUCE D. CRIPPEN, Chairman



JUDY FELAND, Secretary

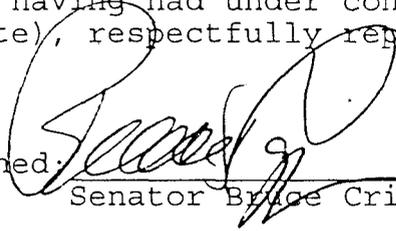
BDC/jf

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 9, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 297 (first reading copy -- white), respectfully report that SB 297 do pass.

Signed: 

Senator Bruce Crippen, Chair


Amd. Coord.
RWS Sec. of Senate

341245SC.SRF

HAROLD F. HANSER
ATTORNEY

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 2-9-95
OFFICE (406) 255-7163
RESIDENCE (406) 259-9655
SB 211

TRANSWESTERN I, RM 127
404 N. 31ST ST.
BILLINGS, MT 59101

To: Senator Ken Mesaros
Fish and Game Committee
From: Harold Hanser
Re: SB 211 (Gratuitous Permittee for Recreation, Title
70, Section 16, Part 3, MCA)
Date: January 31, 1995

1. The Montana Gratuitous Permittee for Recreation legislation (Title 70, Section 16, Part 3) was first enacted in 1965. I have to assume this was a model bill as many other states enacted similar legislation in the same time frame. The intent was to make land available for recreational purposes where the landowner granted permission and did not make a charge for the entry.

2. There is one Montana Supreme Court case, *State ex rel Tucker v. District Court*, 468 P2d 733 (1970); and one federal case, *Fisher v. U.S.*, 534 F Supp 514 (1982) which specifically address our Gratuitous Permittee for Recreation statute. There is one more recent case where the issue presented was whether or not a charge was made for entry to a play ground owned by a home owners association. The court did not suggest the association was not a landowner under the statute, but did determine the dues constituted a charging.

3. The *Tucker* case involved litigation against Montana Power Company for injury received by a member of a recreational group riding on the power company tram located at the Mystic Lake power plant. The supreme court held that the power company as a licensee from the Federal government was entitled to assert the gratuitous permittee statute as an affirmative defense under which they could be liable only for willful or wanton conduct. The court also held that Montana Power qualified as a *landowner or tenant*, as those terms were used in the statute, and that the word *property* included both real and personal.

The *Fisher* case involved the interpretation of the gratuitous permittee statute to determine the liability of the federal government for the death of a boy on the Lee Metcalf National Wildlife Refuge. A Missoula school had booked a free guided tour by the Fish and Wildlife service as part of the educational program for a group of kindergarten and special education students. Prior to starting the tour, the group ate lunch and disregarding the teacher's instructions, some of the children, including the deceased, played on a snow plow blade which fell on the plaintiff's daughter and killed her. The plaintiff claimed

the trip was educational and thus the federal government was not entitled to the affirmative defense of the gratuitous permittee statute.

Judge Russell E. Smith held:

(1) The purpose of the Montana recreational use statute is to encourage landowners to make their lands freely available to the public by limiting the landowner's tort liability;

(2) while the general purpose of a law may not control specific unambiguous language of it, policy gives guidance in cases where interpretation is needed;

(3) Montana's recreational use statute applies in any case where entry onto land is made for what could reasonably be regarded by the general public as a recreational purpose, regardless of some different purpose in the mind of a particular user; and

(4) Montana's recreational use statute, which limits liability of a landowner to a person who is permitted on the property for recreational purposes, applied in a wrongful death suit brought under the Federal Tort Claims Act by parents of the child who was killed while playing during a school field trip to federally owned wildlife refuge since the child entered the land for recreational purposes under the statute, despite the contention that the field trip was educational, and thus in view of the lack of contention that the employees of the federal government were willful or wanton, the United States could not be held liable, even assuming negligence of its employees.

4. SB 211 is offered to clarify the definition of landowner. In a case this last fall in the 13th Judicial District, Judge Holmstrom ruled that the City of Billings was not a landowner within the statute. The case was not appealed as the jury found for the city. The ruling by Judge Holmstrom appears to be at odds with the previous cases, but be that as it may, in light of this case, the ditch companies are not going to negotiate recreational use and the liability exposure of other governmental entities as school districts, counties and conservation districts is going to dramatically increase if the definition of landowner is not clarified.

5. The initial drafting of SB 211 was the work product of myself, Rocky Brown, atty for the Big Ditch Company, Jim Tillitson, Billings city attorney, Dennis Paxinos, Yellowstone county attorney and Larry Martin, school district #2. We used the Nebraska law as a model as it seemed to present the issues in a better way. Likewise the Nebraska Supreme court has held that governmental entities are covered under their statute so there is a body of good

case law for our courts to follow. For what it is worth there have no recent Nebraska supreme court cases after an initial group brought against governmental entities when the law was first enacted.

6. It is important to note that SB 211 does not change the existing law as interpreted in the *Tucker and Fisher* cases. It does not allow access to either public or private land without express permission. The higher standard of negligence is available only when there is no charge for the entry. Given the concern raised by Judge Holmstrom's ruling in the City of Billings case, the availability of both public and private land for gratuitous recreational use will be greatly diminished and the cost for liability insurance dramatically increased if SB 211 is not enacted.

7. The issue, plainly stated, is whether Montana sees a greater public good in expanded use of land for recreational use or in restricting such use in favor of liability litigation.

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Sen. Bruce Crippen, Chair
Senate Judiciary Committee
Room 325, State Capitol
Helena, MT 59620

RE: Senate Bill 211

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's opposition to Senate Bill 211, which dramatically alters current Montana law regarding recreational-use immunity.

Background. The impetus for this bill apparently came from a preliminary ruling by a Billings judge in a lawsuit which the City of Billings subsequently won. That ruling was never appealed and has no precedential authority. It certainly does not upset current Montana law, which (as the proponents of SB 211 themselves agree) extends recreational-use immunity to governmental landowners. See, for example, *Fisher v. U.S.*, 534n F.Supp 514 (1982), in which a federal district court applying Montana law ruled that the government, as owner of the Lee Metcalf National Wildlife Refuge, was immunized by Montana's recreational-use statute from liability for a young girl who died on an educational field trip when a raised snowplow blade fell.

With such slim justification, however, SB 211 proposes to completely abolish Montana's current recreational-use statutes, Secs. 70-16-301 and 70-16-302, MCA, and start from scratch with new legislation designed primarily to protect governmental, not private, property owners. Where a previous Montana Legislature enacted law encouraging landowners to make natural, undeveloped land accessible for recreation for free, the proponents of SB 211 are asking this Legislature to enact a law which grants immunity to landowners regardless of the character of the property, and regardless of the public's right already to access the property.

Senate Bill 211. This bill uses incredibly broad and imprecise language to exempt

government, commercial enterprises, and urban and rural property owners alike from accountability for their carelessness:

- The expansive definition of a property "owner" now genuinely includes "a person or entity of any nature": not just real private or governmental landowners, but also tenants, occupants, lessees, and anyone else in control of property or using property. *In fact, many so-called recreationists prejudiced by SB 211 will actually be owners.*

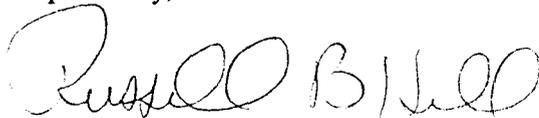
- The expansive definition of "property" no longer includes just natural, undeveloped land which an owner cannot reasonably maintain in a safe condition for recreationists. The definition of "property" now includes property which is extensively developed and requires constant maintenance: *highways, shopping centers, amusement parks, health clubs, sports stadiums, racetracks, even swimming pools and hot tubs.* Regardless of the intent of proponents, the language of SB 211 extends immunity to virtually every situation where an injury occurs during so-called recreational use of property.

- The expansive definition of "recreational purposes" no longer includes just outdoor activities in primarily natural settings. Anything that "serves to refresh a person's mind or body by amusement, stimulation, or exercise" will reduce accountability--from pleasure driving to exercising in a health club, from shopping to attending sports events. Moreover, since virtually every activity of young children comes within the definition of "recreational purposes" in SB 211, the bill will substantially abandon Montana's long-held "attractive nuisance" doctrine which protects small children from attractive dangers.

- The restrictive definition of "charge" in the bill encompasses only money and ignores the many other types of valuable consideration that can transform gratuitous access into paid access. Just as importantly, this restrictive definition guarantees that many so-called owners who actually receive substantial benefits in return for granting access to their property will nevertheless obtain immunity simply because a specific so-called recreationist did not pay money directly to that owner.

MTLA urges this committee to limit the global and unintentional scope of SB 211 by clarifying such definitions. If MTLA can provide more information or assistance to the Committee, please notify me. Thank you again for this opportunity to oppose SB 211.

Respectfully,



Russell B. Hill, Executive Director

0

Amendments to Senate Bill No. 211
Second Reading Copy

Requested by the Montana Trial Lawyers Association
For the Senate Judiciary Committee

Prepared by Russell B. Hill
February 9, 1995

1. Page 1, line 22.

Following: "property"

Strike: remainder of line 22 through "government" on line 23.

Reason for the amendment: Without deleting the entire subsection (b), this amendment still clarifies that a landowner which rents access to property to a group, organization, corporation, or governmental entity still owes a duty of care to that renter.

EXHIBIT 2
DATE 2-9-95
SB 211

Amendments to Senate Bill No. 211
Second Reading Copy

Requested by the Montana Trial Lawyers Association
For the Senate Judiciary Committee

Prepared by Russell B. Hill
February 9, 1995

1. Page 1, line 30.
Following: "any"
Insert: "outdoor"

Reason for the amendment: This amendment clarifies the intent of the bill and its proponents, consistent with current law, that recreational purposes consist of outdoor activities and do not include indoor activities at developed facilities which require extensive maintenance.

Amendments to Senate Bill No. 211
Second Reading Copy

Requested by the Montana Trial Lawyers Association
For the Senate Judiciary Committee

Prepared by Russell B. Hill
February 9, 1995

1. Page 2, line 19.

Following: "purposes."

Insert: "The term does not include such activities as pleasure driving on state highways, casual shopping in stores, amusement park rides, pleasure cruises, exercise at health clubs, participation or attendance at organized athletic events, and similar activities."

Reason for the amendment: This amendment, or any substantially similar amendment, will clarify the expressed intent of the bill and its proponents that the term "recreational purposes" does not include every activity which "serves to refresh a person's mind or body by amusement, stimulation, or exercise."

EXHIBIT 2
DATE 2-9-95
SB 211

Amendments to Senate Bill No. 211
Second Reading Copy

Requested by the Montana Trial Lawyers Association
For the Senate Judiciary Committee

Prepared by Russell B. Hill
February 9, 1995

1. Page 3, line 11.
Strike: "charges" on line 11
Insert: "allows"

2. Page 3, line 12.
Following: "purposes"
Insert: "in exchange for valuable consideration"

Reason for the amendment: This amendment will clarify that non-monetary benefits received by a landowner may also amount to payment for access to property. This amendment will guarantee that the intent of the bill and its proponents to address gratuitous access cannot be subverted (1) when a recreationist pays for access with something other than money, i.e., with labor, reciprocal access to other property, etc.; (2) when a recreationist gains access by virtue of payments from someone else, i.e., as a non-paying guest of someone who does pay; and (3) when a recreationist pays one owner but not another.

Amendments to Senate Bill No. 211
Second Reading Copy

Requested by the Montana Trial Lawyers Association
For the Senate Judiciary Committee

Prepared by Russell B. Hill
February 9, 1995

1. Page 2, line 30.

Following: "method."

Insert: "The provisions of [sections 1 through 4] do not apply to limit the liability of one owner to another."

Reason for the amendment: This amendment clarifies the intent of the bill and its proponents to extend limited immunity to non-owners, i.e., persons who have no right of their own to enter upon property for recreational purposes. This amendment will guarantee that the bill does not alter any pre-existing rights or duties between respective "owners" of property, i.e., ranch hands and ranchers; tenants and landlords; lessees and landowners; etc.

EXHIBIT 2
DATE 2-9-95
SB211

Amendments to Senate Bill No. 211
Second Reading Copy

Requested by the Montana Trial Lawyers Association
For the Senate Judiciary Committee

Prepared by Russell B. Hill
February 9, 1995

1. Page 2, line 22.
Following: "person"
Insert: "who is not also an owner"

Reason for the amendment: This amendment clarifies the intent of the bill and its proponents to extend limited immunity to non-owners, i.e., persons who have no right of their own to enter upon property for recreational purposes. This amendment will guarantee that the bill does not alter any pre-existing rights or duties between respective "owners" of property, i.e., ranch hands and ranchers; tenants and landlords; lessees and landowners; etc.

6
Amendments to Senate Bill No. 211
Second Reading Copy

Requested by the Montana Trial Lawyers Association
For the Senate Judiciary Committee

Prepared by Russell B. Hill
February 9, 1995

1. Page 1, lines 21-23.
Strike: Subsection (b) in its entirety

Reason for the amendment: This amendment will clarify the intent of the bill and its proponents to extend limited immunity for gratuitous recreational use. This amendment will protect citizens and taxpayers who do not need a landowner's permission to enter upon the property at issue.

CURRENT MONTANA LAW

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 2-9-95
FILE NO. SB 211

Part 3

Gratuitous Permittee for Recreation

Part Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.

Limitation on landowner liability to recreationists, 23-2-321.

Smith River Management Act, Title 23, ch. 2, part 4.
Liability, Title 27, ch. 1, part 7.

70-16-301. Recreational purposes defined. "Recreational purposes", as used in this part, includes hunting, fishing, swimming, boating, water skiing, camping, picnicking, pleasure driving, winter sports, hiking, touring or viewing cultural and historical sites and monuments, spelunking, or other pleasure expeditions.

History: En. Sec. 2, Ch. 138, L. 1965; R.C.M. 1947, 67-809; amd. Sec. 1, Ch. 531, L. 1987; amd. Sec. 8, Ch. 264, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 264 near end inserted "spelunking"; and made minor changes in style.

Cross-References

"Recreational use" defined, 23-2-301.

70-16-302. Restriction on liability of landowner or his agent or tenant. (1) A person who makes recreational use of any property in the possession or under the control of another, with or without permission and without giving a valuable consideration therefor, does so without any assurance from the landowner, his agent, or his tenant that the property is safe for any purpose. The landowner, his agent, or his tenant owes the person no duty of care with respect to the condition of the property, except that the landowner, his agent, or his tenant is liable to such person for any injury to person or property for an act or omission that constitutes willful or wanton misconduct.

(2) The department of fish, wildlife, and parks, when operating under an agreement with a landowner or tenant to provide recreational snowmobiling opportunities, including but not limited to a snowmobile area, subject to the provisions of subsection (1), on the landowner's property and when not also acting as a snowmobile area operator on the property, does not extend any assurance that such property is safe for any purpose, and the department, the landowner, or the landowner's tenant may not be liable to any person for any injury to person or property resulting from any act or omission of the department unless such act or omission constitutes willful or wanton misconduct.

History: En. Sec. 1, Ch. 138, L. 1965; R.C.M. 1947, 67-808; amd. Sec. 3, Ch. 209, L. 1987; amd. Sec. 8, Ch. 440, L. 1987.

Cross-References

Responsibility and liability of snowmobile area operators, 23-2-651 through 23-2-656.

The Language of Other State's Laws SB 276

Illinois:

"(10) A person under age 21 shall not be permitted on an area of a riverboat where gambling is being conducted, except for a person at least 18 years of age who is an employee of the riverboat gambling operation. No employee under the age of 21 shall perform any function involved in gambling by the patrons. No person under the age of 21 shall be permitted to make a wager under this Act."

Indiana:

"(a) Except as provided in subsection (b), a person who is less than twenty-one (21) years of age may not be present in the area of a riverboat where gambling is being conducted."

(b) A person who is at least eighteen (18) years of age and who is an employee of the riverboat gambling operation may be present in the area of the riverboat where gambling is being conducted. However, an employee who is less than twenty-one (21) years of age may not perform any function involving gambling by the patrons."

Iowa:

"6. A person under the age of eighteen years shall not make a wager on a excursion gambling boat and shall not be allowed in the area of the excursion boat where gambling is being conducted."

Louisiana:

"A. A person under the age of twenty-one shall not:

(1) Play, or be allowed to play, any licensed game or slot machine.

(2) Loiter, or be permitted to loiter, in or about any room, premises, or designated gaming area wherein any licensed game is operated or conducted."

Missouri:

"4. A person under twenty-one years of age shall not make a wager on an excursion gambling boat and shall not be allowed in the area of the excursion boat where gambling is being conducted."

Nevada:

"1. A person under 21 years shall not:

(a) Play...

(b) Loiter, or be permitted to loiter in or about any room or premises wherein any licensed game, race book, sports pool or pari-mutuel wagering is operated or conducted."

New Jersey:

"No person under the age at which a person is authorized to purchase and consume alcoholic beverages other than a person licensed under the provisions of this act in the regular course of his licensed activities, shall enter a licensed casino except by way of passage to another room."

Proponent of SB 276
SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 2-9-95
BY Montana SB 276
Juv. Prot. Officer
Linn

delete language that
refers to youth court
act in Title 24 &
25

delete the words " or
enter" in line 20
and in line 5 delete
"enter or"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. _____
DATE _____
BY _____

TESTIMONY - SENATE JUDICIARY COMMITTEE SB 276 - FEBRUARY 9, 1995 SKJTB

Mr. Chairman and Members of the Committee:

For the record, my name is Ellen Engstedt and I represent Don't Gamble With The Future, a statewide organization opposed to the expansion of gambling and in favor of stronger regulation of the gambling currently legal in Montana. Our membership is comprised mostly of small business folks and their families.

Don't Gamble With The Future strongly supports SB 276.

I am a native of Montana having been born and raised in Butte. My family spent many a weekend out fishing and travelling in the more rural areas around Butte, mainly Whitehall, Twin Bridges, Wisdom and Dillon. On those outings as a rare treat we sometimes stopped in a local bar and cafe for hamburgers and pop. I understand very thoroughly how important those establishments are to small towns in Montana. Now, however unlike in those days, most of those establishments have video gambling machines located somewhere on the premises.

In addition, there is a growing number of larger operations in Montana that are intermingling kids' video machines with adult gambling machines...not in a room separate from the gambling machines, but INTERMINGLED. This places our most impressionable population in close proximity to the bells and whistles of gambling machines. In many places, it also risks their young lungs to secondhand smoke, a proven health hazard. Some adults go so far as to sit in front of video gambling machines with a toddler on their lap while the child stares at the lights and

action on the screen. It would seem to me that Montana's adults are more creative than that and could find entertainment more wholesome for their children. This does not imply that gambling should not occur -- it is legal -- but it is not legal for children. It is a recreational activity allowed by law for those 18 and over.

SB 276 would make it illegal for persons under the age of 18, the current legal gambling age, to have access to a room or other part of a premises if a variety of gambling activities are being conducted. In most states, the gambling age is 21 to coincide with the drinking age and no one under the gambling and drinking age is allowed in areas open to gambling.

There is a dilemma produced by this bill. I'm not certain how the language could read so kids could walk past the gambling machines to another part of the building to have the hamburger and fries, and even if the food service was in the same room, but at least not right next to the gambling machines, if that would accommodate the small town places.

It seems logical that in larger establishments that have areas for food, gambling and drinks, it would be possible to rearrange the activities, with a minimum amount of expense on the part of the casino owner, to remove the gambling activities from the direct location of the children. The best case scenario would be a separate room for each activity. But in the event

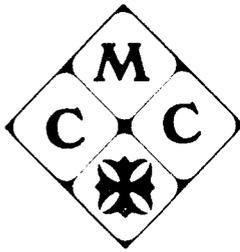
that is physically impossible, rearrangement could be likely that would allow casino owners to keep adult activities adult and eliminate the presence of children from that adult activity.

If gambling operators are truly concerned about families, children, and even compulsive gamblers as they claim to be -- and which I believe -- they should be willing to come up with some innovative, creative ways to remove children from the influence and the activity of gambling until they are at least old enough to make gambling decisions on their own at the legal age established by law.

A New Jersey study of May 1994 states that "Parents show kids, by their actions, that they want to win something for nothing. Young people are very impressionable. Taking them to gambling places as a family activity is a parental introduction to gambling which strongly influences children."

With gambling rapidly becoming the third addiction in equal standing with alcohol and drugs, it certainly is in the best interest of Montana's children to get them away from gambling machines at young ages.

Thank you for your time and I urge your support of SB 276.



Montana Catholic Conference

2-9-95
SB 276

February 9, 1995
SB 276

CHAIRMAN CRIPPEN, MEMBERS OF THE COMMITTEE, I AM SHARON HOFF, REPRESENTING THE MONTANA CATHOLIC CONFERENCE. IN THIS CAPACITY, I SERVE AS LIAISON FOR MONTANA'S TWO ROMAN CATHOLIC BISHOPS ON MATTERS OF PUBLIC POLICY. THE MONTANA CATHOLIC CONFERENCE SUPPORTS SB276.

A FEW WEEKS I HAD DINNER IN ONE OF THE HELENA RESTAURANTS. LIKE SO MANY EATING ESTABLISHMENTS IN MONTANA, THIS RESTAURANT HAS A CASINO ATTACHED TO ITS DINING AREA. THIS ESTABLISHMENT ALSO HAS AMUSEMENT GAMES IN THE DINING ROOM A FEW FEET AWAY FROM THE GAMBLING CASINO.

AS I WAS PREPARING TO LEAVE THE RESTAURANT, TWO WOMEN AND FOUR CHILDREN ENTERED, SAT AT A TABLE, AND ORDERED. ONE WOMAN IMMEDIATELY HEADED FOR THE CASINO AND THE SECOND WOMAN WROTE AND CASHED A CHECK AND DISTRIBUTED MONEY TO THE CHILDREN SO THEY COULD PLAY GAMES. THEN SHE JOINED HER FRIEND IN THE CASINO. THE OLDEST CHILD WAS APPROXIMATELY 11

YEARS OLD AND HE WAS IN CHARGE OF THE THREE YOUNGER CHILDREN.

WHEN THE CHILDREN RAN OUT OF MONEY, THEY STOOD AT THE CASINO ENTRANCE AND CALLED OUT TO THE TWO WOMEN. WHEN THEY RECEIVED NO RESPONSE, THE OLDEST CHILD ENTERED THE CASINO AND GOT MORE MONEY FROM ONE OF THE WOMEN.

THIS IS NOT AN UNUSUAL INCIDENT. MANY CASINOS DO NOT ATTEMPT TO ISOLATE THE ADULT GAMBLING FROM THE CHILDREN'S GAMES AND SMALL CHILDREN ARE FREQUENTLY SEEN INSIDE THE CASINOS. THE LITTLEST ONES ARE FASCINATED WITH THE MACHINES WITH THEIR LIGHTS AND BUTTONS.

GAMBLING IS AN ADDICTIVE ACTIVITY. IS GAMBLING THE EXAMPLE WE WANT SET FOR OUR CHILDREN? CHILDREN ARE COPY CATS--THEY DO WHAT THEY SEE ADULTS DO AND THEY ARE SUSCEPTIBLE TO INFLUENCES THEY HAVE NO MATURITY TO UNDERSTAND OR CONTROL.

WE URGE YOU SUPPORT OF SB276

3000 WALDEN PLACE
BILLINGS, MONTANA 59102

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 8

DATE 2-9-95

BILL NO. SB 276

2/8/95

Senator Mignon Waterman
State Capital
Helena MT 5

Re: SB 276

Dear Senator Mignon:

I had every intention of being here to support SB 276. Reaching Helena by 8am from Billings is more than I can do. Sorry!

However, I believe it is terribly important that we as citizens, and you as lawmakers, work actively to provide productive, wholesome educational opportunities for children. We do not need to succumb to a marketing ploy for the gambling industry.

Thank you for your leadership on this!

All best

Carolyn Ennis

The Montana Tavern Association

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 9DATE 2-9-95BILL NO. SB 276

February 12, 1995

Senator Al Bishop, Vice-Chairman
Senate Judiciary Committee

- **PLEASE VOTE "DO NOT PASS," or TO TABLE SB 276.** It is a harsh and well-nigh **unenforceable solution** to a problem that has only manifested itself in very rare circumstances.

FEW INSTANCES OF PROBLEMS The problem spoken of by the very few witnesses *for* the bill is basically a problem of poor *parenting*, **not** poor management of bars and taverns.

MAJOR OVERHAUL WOULD BE REQUIRED This would unfairly make literally every alcoholic beverage/gaming business in Montana reconfigure its premises and even reconstruct them! At incalculable expense!

OTHER STATE EXAMPLES POOR **Examples** given where this type of statutory language is applied **are misleading**: all but two of the states mentioned have their language applying to riverboats, where it is quite easy to simply keep children off the boat! Research since the hearing shows that in Louisiana the language is seldom if ever enforced, and in Las Vegas, one sees examples of children being near or around gambling everywhere. In fact, at the MGM Grand, the line for the children's amusement park snakes right past a row of slot machines. Meanwhile, in the rural areas of Nevada, which *do* exist, no such attempt is made to prohibit minors from being within the "area" of gaming.

AMENDED LANGUAGE WON'T WORK There is simply no way to make the amended language by Senator Waterman work. It now states that there shall be no "loitering" by a minor within the "area" of gaming, and no amusement games within the "immediate vicinity" of adult gaming machines. Footage seems to be as impossible to apply as these generally vague notions. In Representative Larson's Seelye Lake "Filling Station," which is a family restaurant, bar, meeting hall, bus stop, and snowmobilers rendezvous, the pinball machine is right next to the gaming machine. Arguably, he could move those a few feet, but then they'd be next to the dart machine or the pool table.

THINK OF THE BUSINESSES IN YOUR OWN DISTRICT You only have to **think of the bars and taverns in your own district** to realize what a massive undertaking this would be to reconfigure these establishments to ameliorate the concerns of very few people concerning very few instances.

- **This is** simply a matter of **over-kill**. We cannot regulate the behavior of parents toward children, or we'll be rewriting every statute on the books in Montana. Rural bars and taverns in Montana have long-existed as the meeting and greeting place for many people, including their children. The overwhelming majority of these taverns and the parents that patronize them take every effort to keep the children away from gambling, and *every* tavern or casino operator we know is adamant about not allowing children to even *touch* the machines!

This is an unworkable bill; please recommend a "do not pass" or table it. There are many other things the Legislature must wrestle with besides this non-existent problem. Thank you.

Amendments to Senate Bill No. 149 SB 149
First Reading Copy

Requested by Senator Crippen
For the Committee on Judiciary

Prepared by Valencia Lane
February 8, 1995

1. Title, lines 5 and 6.

Following: "CONSTITUTION TO" on line 5

Strike: remainder of line 5 through "THE" on line 6

Insert: "CLARIFY LANGUAGE REGARDING"

2. Page 1, line 17.

Strike: "Workmen's"

Insert: "Workers' "

3. Page 1, lines 19 through 23.

Strike: subsection (3) in its entirety

4. Page 2, lines 1 and 3.

Following: "constitution to"

Strike: "authorize the legislature to determine the"

Insert: "clarify language regarding"

DATE 2-9-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 276, 297, 211, 314

< ■ > PLEASE PRINT! < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
#				
Charles R Brooks	Yellowstone Ct	SB 211	✓	
STAN KALCZYK	MT MUNICIPAL INSURANCE FIDELITY	SB 211	✓	
MARK WATSON	CITY OF BILLINGS	SB 211	✓	
STEVE MORRIS	Helena	276		✓
Bubba Morris	Helena	276		✓
SHARON HOFF	MT CATHOLIC CONF	SB 276	✓	
Sarah Bond	Attorney General	SB 189	X	
Brenda Nordlund	LI	LI	LI	
MARY ELLERD	MUPOA	SB 276	✓	
ELLEN EUGSTEDT	Down's Syndrome of Montana	SB 276	X	
David H Emick	MT Assoc. of Churches	SB 276	X	
STEVE JOHNSTON	Mini Mart Inc	SB 276		X
LAURIE KOUTRUK	Christian Coalition of MT	SB 276	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-9-95

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: SB 276-297-211-314

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Rep. Pat Lambert	HP 37 Suite	SB 276		X
LARRY AXEN	MONT COIN MACHINE OPERATORS ASSOC	SB 276		✓
Ken Hooestol	MT. Snowmobile Assn.	211	✓	
Pat Melby	Remrock Foundation	SB 277	✓	
Jan Huddleston	City of Helena	276	✓	
Rich E Miller	Missa County TAVERN	276		✓
Dennis Casper	GLA	276		✓
YVONNE K. JOHNSON	YACHT BASIN BARN REST	276		✓
Roselee Bullock	Tri-County TAVERNS	276		✓
Chester Bullock	Silver Saddle Basin	276		✓
Orville Johnson	2035 Yacht Basin Boat Shop	276		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY