

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By **CHAIRMAN BRUCE T. SIMON**, on January 5, 1995,
at 8:00 AM.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Jon Ellingson (D)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

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

Committee Business Summary:

Hearing: HB 28, HB 33, HB 31
Executive Action: HB 28, HB 31

HEARING ON HB 28

Opening Statement by Sponsor:

REP. DORE SCHWINDEN, HD 98, Roosevelt County, stated this bill
was an act allowing the State Lottery Commission to provide for

the payment of a prize by a ticket or chance sales agent who did not sell the ticket or chance.

Proponents' Testimony:

Melissa Murphy, Director, Montana Lottery, said this bill was a housekeeping item. The current statute allows a retailer who sold the winning ticket to cash the ticket.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

CHAIRMAN SIMON questioned the need for the bill to be effective July 1, 1995 instead of the normal course of events. **Ms. Murphy** said it was not necessary for the bill to become effective immediately.

REP. SLITER asked if this bill would somewhat eliminate the need for \$1.00 and \$2.00 warrants issued by the state. **Ms. Murphy** said this would probably not be so depending upon the players who have the choice of cashing the ticket at the retailer or sending these tickets to the Montana Lottery. Many of the tourists that visit Montana are not able to go back to the retailer and in turn send these winning tickets to the Montana Lottery for redemption.

Closing by Sponsor:

Sponsor closes.

HEARING ON HB 33

Opening Statement by Sponsor:

REP. SCHWINDEN said this bill was an act authorizing the Board of Barbers to impose administrative fines on and recover costs from individuals violating certain provisions of law and administrative rules governing the practice of barbers. This bill would give the Board the authority to use administrative fining as opposed to revoking the licenses of barbers who are not in compliance with the codes. Many of the other boards have such authority and the board is asking for that along with a cost recovery provision for those proceedings. The board has taken action only 5 times in the last year. The board would have some administrative remedy rather than revoke licenses.

Proponents' Testimony:

Rod Grover, Board of Barbers said he had been a barber for 25 years, has owned his own shop and has been a private businessman

for 23 of those years. He then distributed information on the administrative fining authority and cost recovery provisions.
EXHIBIT 1.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. PAVLOVICH questioned the \$1,000 fine. **Lance Melton, Attorney, Department of Commerce** said the administrative fine of \$1,000 is taken based upon the range of administrative fines that are set. That range is \$5,000 down to \$500. This is a mid-range provision. This ties in with a larger bill which has been endorsed by the Governor and the Governor's Task Force on the rule of government. At the present time, there is no administrative fine for this board. There is a difference between an unlicensed practice which can result in a criminal fine.

REP. LARSON asked how many other boards have administrative fine authority. **Mr. Melton** indicated there were 8 boards that currently have that authority. The Board of Outfitters and the Board of Clinical Laboratory Technicians has recently obtained such authority.

REP. EWER questioned the illegal drug use and said he was bothered by this. If someone is using illegal drugs it appears to be more than a matter of something for the county attorney. He then proposed an amendment which would say habitual drunkenness or other incapacity due to alcohol or mood behavioral or altering drugs be should be of grave concern. **REP. SCHWINDEN** said there was no problem with this amendment. However, under this proposal the board would have much more ability to go out and inspect the shops. In the past many shops have gone uninspected for a number of years and with this increase in authority they are expecting to be able to inspect the shop on a much more regular basis and perhaps pick up that change in behavior that would be dangerous to the public. **REP. EWER** asked if barber shops were a place for this kind of activity. **REP. SCHWINDEN** said obviously there is a public health concern which is the reason there are professional licensing boards to oversee the safety of the public.

REP. TUSS asked if the penalty assessed would go right back into the board and wondered if the destiny of that fee was to the board's benefit. **REP. SCHWINDEN** said it would be a special revenue fund for cost recovery and assessed against the people.

REP. TUSS then asked for any objection to amending these fees to be returned to the general fund. **REP. SCHWINDEN** said there would

be a problem with that. He then discussed the Uniform Standards Act which may or may not be coming down the tract which could be a larger issue of concern.

REP. ELLINGSON asked that since the original title reflects only refusal, suspension and revocation of license and at the time it was originally enacted that this statute only dealt with suspension and revocation. **REP. SCHWINDEN** affirmed this.

REP. KEENAN asked who was charged with site inspections. **Mr. Grover** said there was a shop inspector who also inspected for the Board of Cosmetology.

REP. MILLS said he was troubled by the fact that malpractice and incompetence was omitted from the bill and asked if they were not as important as the other reasons for revoking or suspending a license. **Mr. Melton** said the provision on malpractice was stricken from the bill as a housekeeping measure in the legislative council. It is not something that was stricken from the bill as it was prepared by the department. There remains in the bill the provision that the board is allowed to discipline for unprofessional conduct as defined by rule of the board. The board has the ability to define specific types of malpractice. So individuals have a better idea of what specifically is intended in malpractice. **REP. MILLS** asked where in this change it occurs. **Mr. Melton** said this change was not in the bill as it existed but is in the last basis for disciplinary action as unprofessional conduct. **REP. MILLS** then said that he did not know that bad conduct was conducive to being incompetent.

REP. EWER said that with the deletion of malpractice, the violating of any of the rules adopted seems very circular. When there are rules you need to put every part of the rule back into law. He said he would support an amendment to put those two words back into the bill. **Mr. Melton** said the department would not be opposed to the amendment.

CHAIRMAN SIMON asked how many times a fine was going to be imposed during a year and how many times has there been instances where a fine would have been appropriate. **Mr. Melton** said that according to the fiscal note, these fines would be assumed in actions where the board determines the violation would be sufficiently serious to initiate formal action. This would probably consist of 5 instances per year which is about where the board runs on their disciplinary action. **CHAIRMAN SIMON** then said that given 5 times, how much impact is this going to have on the ability of the board to carry on the inspections that are necessary. Twenty five hundred dollars does not seem adequate. Earlier testimony indicated that one of the reasons of this bill was the recovery of costs so the money could be used for inspections. **Mr. Melton** said there were two separate provisions in the bill - one for the administrative fining which would raise approximately \$2500 in revenue and one for cost recovery which would allow the board to reapportion the cost of those

disciplinary actions. A certain portion of their budget goes towards handling disciplinary action. Currently, whether a person is law abiding or not, a certain portion is paid through fees and the board is trying to redress how those fees are apportioned.

CHAIRMAN SIMON asked if the fine was intended to punish or is the fine intended to collect monies to operate the Board of Barbers. **Mr. Melton** said the scope of the board's range of disciplinary actions is very narrow. Right now they can suspend, revoke, refuse to renew or refuse to issue. If the board comes across an instance where there is significant violation but not significant enough to justify shutting down a business. They are trying to find a mid-level approach to deal with those situations rather than having to follow through with what the statute specifically provides. The find would be a mid-level penalty.

CHAIRMAN SIMON said if a license was suspended even for a period of one week the same effect would occur. The ability to earn an income in that period of time the same effect would happen. To have a license suspended for a period of time would seem to be more powerful than a financial slap on the wrist with a \$500 fine. **Mr. Melton** said the administrative fine ranges from 0 to \$1000. There may be instances where there is a violation that justifies a \$50 administrative fine or more and may justify the commitment of resources to actually go into a full proceeding. The administrative fining system is a valuable settlement to help save money for the boards operating on the disciplinary actions, because it allows the individual to pay the administrative fine in lieu of other formal disciplinary action.

REP. MCKEE asked for concrete examples of some violators. **Mr. Grover** said there was an individual who owns a business that was not in compliance with the rules. This instance is an ongoing hearing. Closing a business down is very viable, but a fine is another approach as well and in placing that type of direction the situation would have been resolved sooner.

Closing by Sponsor:

Sponsor closed by asking the committee to postpone executive action on this matter until the fate is determined regarding setting the standards for all of the professional and occupational licensing in a uniform way and perhaps minimize the codes and get everyone off on the right foot.

HEARING ON HB 31

Opening Statement by Sponsor:

REP. DAVID EWER, HD 53, Lewis and Clark County stated this bill would expand the current list of exemptions regarding the child

labor law that was passed in 1993. A child who is being paid could be exempt from prohibition of the child labor law. This would not be a case of children refereeing adult games.

Proponents' Testimony:

Don Judge, AFL-CIO said he supported this bill.

Chris Alke stated he was in charge of the referees. His organization was notified by the YMCA that they could possibly be in violation of a statute. In checking with the state and federal personnel, using these children might be a problem if a child was injured.

Opponents' Testimony:

None.

Informational Testimony:

Father Jerry Lowney supports this bill per Don Judge.

Questions From Committee Members and Responses:

REP. LARSON asked if the child labor law applies to anybody under the age of 18. Mr. Judge stated this law applied to any under the age of 16.

CHAIRMAN SIMON questioned the insurance aspect. Should there be a provision in this bill to be certain the children are covered by insurance. Mr. Alke said they are insured on the way to the game, while they are there and on the way home. CHAIRMAN SIMON then questioned the issue of insurance in regard to nonprofit athletic events and the insurance requirements. REP. EWER said this should be done. He hoped there was not the circumstance where a child would referee an adult game but the bill is sound on that.

Closing by Sponsor:

Sponsor closes.

CHAIRMAN SIMON then discussed the subject of the subcommittee and it was his understanding there was a third bill that dealt with similar subject matter and it would be his intention for that subcommittee to wait for the third bill to arrive and coordinate the three bills. REP. HERRON stated he would coordinate these bills.

TAPE 1, SIDE B

EXECUTIVE ACTION ON HB 28

Motion: REP. PAVLOVICH MOVED DO PASS ON HB 28.

Discussion:

REP. LARSON suggested amendments to Title, line 7 and page 2, line 4 which strikes all of section 2 in its entirety.

Motion: Motion to adopt the amendments carried 18-0.

Motion/Vote: REP. LARSON MOVED HB 28 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 31

Motion: REP. ELLIS MOVED DO PASS.

Motion: REP. ELLIS MOVED THE AMENDMENTS.


Discussion:

REP. ELLIS then discussed the amendment on page 1, line 26 regarding "organization" and inserting "provided that the minor is not officiating adult events or activities"

Motion/Vote: REP. ELLIS MOVED DO PASS AS AMENDED ON HB 31. Motion passed unanimously.

ADJOURNMENT

Adjournment: 9:50 AM



REP. BRUCE T. SIMON, Chair



ALBERTA STRACHAN, Secretary

BTS/ajs

HOUSE OF REPRESENTATIVES

Business and Labor

ROLL CALL

DATE 1-5-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chairman, Majority	X		
Rep. Bob Pavlovich, Vice Chairman, Minority	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson	X		
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan	X		
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		

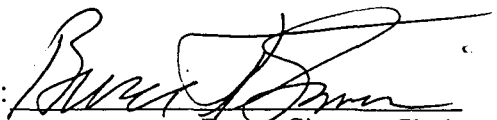


HOUSE STANDING COMMITTEE REPORT

January 5, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Business and Labor** report that **House Bill 28** (first reading copy -- white) do pass as amended.

Signed: 
Bruce Simon, Chair

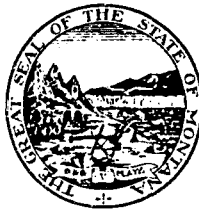
And, that such amendments read:

1. Title, line 7.
Following: "CHANCE;"
Insert: "AND"
Strike: "; AND PROVIDING AN EFFECTIVE DATE"
2. Page 2, line 4.
Strike: Section 2 in its entirety.

-END-

Committee Vote:
Yes 18, No ____.

041039SC.Hbk



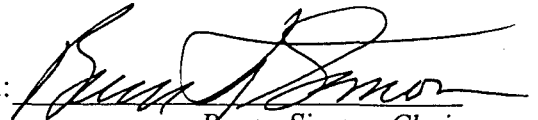
HOUSE STANDING COMMITTEE REPORT

January 5, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Business and Labor report that House Bill 31 (first reading copy -- white) do pass as amended.

Signed:


Bruce Simon, Chair

And, that such amendments read:

1. Page 1, line 26.

Following: "organization"

Insert: "provided that the minor is not officiating adult events
or activities"

-END-

Committee Vote:

Yes 18, No —.

041049SC.Hbk



MONTANA DEPARTMENT OF COMMERCE

Professional and Occupational Licensing Bureau
111 North Jackson PO Box 200513
Helena, MT 59620-0513

EXHIBIT 1
DATE 1-5-95
HB 33

Phone: (406) 444-3737
FAX: (406) 444-1667
TDD: (406) 444-2978

TO: Committee Members
House Business and Economic Development Committee

FROM: Rod Grover
Board Member
Board of Barbers

RE: House Bill 33

DATE: January 5, 1995

House Bill 33 has been presented by the Board of Barbers and has been approved and accepted by the Governor as part of his executive legislation. This bill, if passed, would give the Board of Barbers the authorization to assess administrative fines and recover costs of disciplinary actions. These provisions are necessary in order to allow the Board of Barbers to effectively regulate its profession. An explanation of the reasoning for each provision in House Bill 33 follows.

Administrative Fining Authority:

The purpose of any disciplinary process is protection of the public. The deterrent effect of an administrative fine has been and is an important tool in enforcing compliance with the various licensing acts regulating the professions. The Board of Barbers would like to obtain and appropriately apply this tool to better regulate its profession.

Administrative fining authority has been previously granted by the Montana Legislature to a number of professional and occupational licensing boards over the years. A list of licensing boards with administrative fining authority is as follows:

1. Board of Medical Examiners (37-3-323(4)(e));
2. Board of Dentistry (37-4-321(1));
3. Board of Chiropractic (37-12-322(4)(e));
4. Board of Hearing Aid Dispensers (37-16-411);
5. Board of Funeral Services (37-19-311);
6. Board of Clinical Laboratory Science Practitioners (37-34-306);
7. Board of Outfitters (37-47-346); and
8. Board of Private Security Patrol Officers and Investigators (37-60-411((4))).

Administrative fining gives the Board a less severe option in

disciplining an individual than what is currently provided in the law. Currently, the Board of Barbers may take any of the following actions when a licensee commits a violation under 37-30-502, MCA:

1. refuse to issue a license;
2. refuse to renew a license;
3. suspend a license; or
4. revoke a license.

These actions are appropriate in certain circumstances, but are too severe in most cases. The Board would like to have the authority to assess an administrative fine as an alternative to taking the actions discussed above. It's important to note that the bill provides for an administrative fine only after the individual has a right to a hearing on whether he or she committed a violation justifying disciplinary action, so the fine could not be imposed until the individual was proven to have committed a violation.

Cost Recovery Provision:

The cost recovery provision in House Bill 33 is designed in order to place the costs of disciplinary actions on the individuals causing such costs to be incurred. In the profession of Barbering, nearly all of the members of the profession practice without violation, and conduct themselves appropriately in their professional capacity. In spite of this fact, part of their fees go toward paying the costs of disciplining the few individuals who do not conduct themselves appropriately. The cost recovery provision would result in a potential reduction in fees for the members of the profession who comply with the statutes, by allowing the Board to assess such costs against the individual who has committed the violation.

The Board of Barbers requests that you recommend passage of House Bill 33, and thanks you for your time in considering House Bill 33.

STATE OF MONTANA - FISCAL NOTE

EXHIBIT 1DATE 1-5-95Fiscal Note for HB0033, as introducedHB 33

DESCRIPTION OF PROPOSED LEGISLATION: A bill authorizing the Board of Barbers to impose administrative fines on and recover costs from individuals violating certain provisions of law and administrative rules.

ASSUMPTIONS:

1. It is anticipated that five formal disciplinary actions will result in the imposition of administrative fines at an average of \$500.00 per incident.

FISCAL IMPACT:Expenditures: NoneRevenues:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Administrative Fines	<u>2,500</u>	<u>2,500</u>
Total	<u>2,500</u>	<u>2,500</u>

Net Impact:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Special Revenue Fund (02835)	<u>2,500</u>	<u>2,500</u>
Total	<u>2,500</u>	<u>2,500</u>

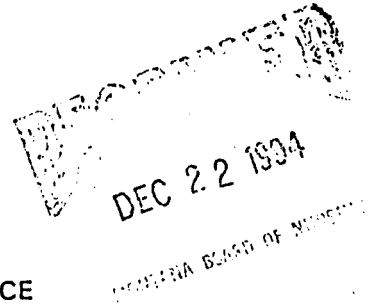
TECHNICAL NOTES:

There is no means of predicting the impact of cost-recovery provision as this will be invoked by the Board as part of its policy-making functions, which are exercised independent of Department control. The cost-recovery provision will likely be invoked only in cases where a licensee fails to present a good faith defense or where there is other abuse of the process.

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

DORE SCHWINDEN, PRIMARY SPONSOR DATE

Fiscal Note for HB0033, as introduced



HOUSE BILL NO. 33

INTRODUCED BY SCHWINDEN

BY REQUEST OF THE DEPARTMENT OF COMMERCE

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE BOARD OF BARBERS TO IMPOSE ADMINISTRATIVE FINES ON AND RECOVER COSTS FROM INDIVIDUALS VIOLATING CERTAIN PROVISIONS OF LAW AND ADMINISTRATIVE RULES GOVERNING THE PRACTICE OF BARBERS; AND AMENDING SECTION 37-30-502, MCA."

STATEMENT OF INTENT

This bill requires a statement of intent because it authorizes the board of barbers to impose administrative fines on and recover costs from individuals violating certain provisions of law and administrative rules governing the practice of barbers. Costs may not be recovered unless the licensee stipulates to a violation of a provision of law or administrative rule or the licensee, pursuant to a hearing, has been found to have violated a provision of law or administrative rule.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-30-502, MCA, is amended to read:

"37-30-502. Refusal, suspension, or revocation of license. (1) The board may, after notice and opportunity for a hearing, refuse to issue or renew or may suspend or revoke the license of a barber or the license of any barbershop, barber school, or college for any of the following acts of a licensee:

~~(1)(a)~~ the violation of any of the provisions of 37-30-308; 37-30-403, except subsection 37-30-403(1)(f); 37-30-406; 37-30-407; 37-30-412; 37-30-413; or 37-30-421;

~~(2) malpractice or incompetency;~~

~~(3)(b)~~ continued practice by a person knowingly having an infectious or contagious disease;

~~(4)(c)~~ advertising by means of knowingly false or deceptive statements;

~~(5)(d)~~ advertising, practicing, or attempting to practice under a trade name other than one's own;

~~(6)(e)~~ habitual drunkenness or addiction to the use of morphine, cocaine, or other habit-forming illegal drugs; or

1 ~~(7)(f)~~ the violation of any of the rules adopted pursuant to 37-30-203, including rules defining
2 unprofessional conduct.

3 (2). The board may impose an administrative fine not to exceed \$1,000 for each violation of this
4 chapter or rule adopted pursuant to this chapter, subject to the contested case procedures of the Montana
5 Administrative Procedure Act. If a licensee does not request a hearing or pay the fine within 20 days'
6 notice of the fine, the board may suspend the licensee's license until the fine is paid.

7 (3) Upon a finding of a violation of this chapter or a rule adopted pursuant to this chapter, the
8 board may assess and recover from a licensee its reasonable costs for any proceeding initiated under this
9 section. The board may suspend the licensee's license until the costs are paid if the licensee fails to pay
10 the costs within 20 days' notice of the costs."

-END-

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business & Labor COMMITTEE DATE 1/5/95
BILL NO. HB 31 SPONSOR(S) Rep Ewe

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Don Judge	MT STATE AFL-CIO	<input checked="" type="checkbox"/> Informer	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

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CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

BUSINESS + LABOR

COMMITTEE

DATE 1-5-95

BILL NO. HB33

SPONSOR(S) _____

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Brenda St. Clair	Commerce / POL	Info Only	
LANKE MELTON	COMMERCE	INFO. ONLY	
Paul Glover	Board of Barbers	✓	
Colleen Graham	Bd of Barbers	Info only	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

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CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business & Labor

COMMITTEE

DATE 1-5-95

BILL NO. HB28

SPONSOR(S) _____

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Charmaine Murphy	Montana Lottery	X	
Steve Maughan	Montana Lottery	X	
L. John Engstad	MT Lottery	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

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