

MINUTES

MONTANA SENATE  
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on February 13, 1997, at  
9:00 A.M., in ROOM 410

ROLL CALL

**Members Present:**

Sen. John R. Hertel, Chairman (R)  
Sen. Steve Benedict, Vice Chairman (R)  
Sen. Debbie Bowman Shea (D)  
Sen. William S. Crismore (R)  
Sen. C.A. Casey Emerson (R)  
Sen. Bea McCarthy (D)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** Bart Campbell, Legislative Services Division  
Mary Gay Wells, Committee Secretary

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

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 259; SB 270, SB 295; 2/6/97  
Executive Action: SB 259

*{Tape: 1; Side: A; Approx. Time Count: 9:03 AM; Comments: N/A.}*

HEARING ON SB 295

**Sponsor:** SENATOR LORENTS GROSFIELD, SD 13, BIG TIMBER

**Proponents:** Ellen Engstedt, Don't Gamble With The Future  
Julie Ippolito, Citizens Against Gambling  
Expansion  
Betty Waddell, MT Assoc. of Churches

**Opponents:** Kotie Kintley, Lawyer  
Mark Staples, MT Tavern Assoc.  
Dave Brown, MT Independent Machine Operators

Opening Statement by Sponsor:

**SENATOR LORENTS GROSFIELD, SD 13, BIG TIMBER.** SB 295 does two things: it requires a public hearing and it requires a determination of public convenience and necessity. There is a fiscal note that has just come off the press. The fiscal note is about \$500,000 and it was not my intent to present a bill that would cost this kind of money. I would like to hand out some amendments (**EXHIBIT 1**) that would redress this. It would take out the public hearing process, but the bill will still allow public involvement but in a more limited fashion.

I would like to address the bill as though the amendments are already on it. For a gambling license to be issued, the Department has to determine there is public convenience and necessity. In liquor statutes, for transfers or issuance, the Department of Revenue goes through a finding process of public convenience and necessity. If there is a protest, there is a public hearing. It seems to me that the same thing should be required for a gambling license. Currently under law once you have the liquor license, and you meet certain other criteria, you are automatically granted a gambling license. There really is not an opportunity for local input into that process. I like public involvement and hope this bill will help this process along.

Proponents' Testimony:

**Ellen Engstedt, Don't Gamble With The Future.** We are a state-wide organization opposed to increased gambling and in favor of strict regulation of current legal gambling. We support SB 295 and thank **SEN. GROSFIELD** for carrying this bill. Under the current system of issuing liquor and gambling licenses, the public is usually the last to know what is happening. Over the past year and a half, I have been helping with numerous protests of liquor license transfers across the state. The issues are the same and unfortunately the results are often the same. The Department of Revenue and its statutes does have the ability to use public convenience and necessity in determining whether to grant either a new liquor license or transfer an existing one. In the cases I have been involved in, they have never invoked that section as a means of a denial of a license and that includes here in Helena where there were six casinos in a two block radius and they still would not look at using the public convenience and necessity part of their own statutes of rules. We are in favor of the public hearing part in the community. We don't want to break the state bank, but as long as there is some kind of public notification that will be good.

**Julie Ippolito, Citizens Against Gambling Expansion.** I will hand in my written testimony (**EXHIBIT 2**).

**Betty Waddell, MT Assoc. of Churches.** We support this bill out of compassion for the families living in areas where gambling has

been introduced. We believe that the public should have some input into the social costs that might be involved in introducing new gambling machines or activities into a neighborhood.

**Opponents' Testimony:**

**Cattie Kintley, Lawyer.** I represent tavern owners who transfer licenses, etc. I know that the public is involved in liquor license hearings. An applicant goes through rigorous routines to get a new liquor license as well as those who go for a transfer of license. The public does have an opportunity. A notice is published in the newspaper for a week or two. I feel that this bill would put a financial burden on the applicant and on the state. I understand there are amendments, but the state will still be heavily involved. If there is no liquor license, there will be no gambling license.

**Mark Staples, MT Tavern Assoc.** I would like to point out that as an attorney for the Tavern Assoc., I have been involved in a number of successful protests. One of the toughest legal points in my cases, was when the ones who wanted this next license said "wait a minute, public convenience and necessity should apply to my gambling players desire to have more machines to play" and if that had been the analysis, they may have won. I was able to successfully argue that public convenience and necessity as it now stands is that one of the criteria says that public convenience and necessity will be found when the issuance of the license will materially promote the public's ability to engage in the licensed activity. They were arguing that the licensed activity was gambling and since they had more people wanting to gamble than they had machines, then the public convenience and necessity should be applied to those machines and thus they should be granted a license. We argued that the public convenience and necessity statute refers to the consumption of alcohol and because there was enough alcohol distribution in this very small area, they couldn't legitimately argue that they needed more machines under the public convenience and necessity statute. I am concerned that if we now put this as the criteria, one could probably say, "well, since I have a demand for more machines, now the Department has to ascertain that it is a whole new demand" and perhaps a much easier one to construct. So the Department is going to be left to differentiate between a sheaf of letters from gamblers and a sheaf of letters from people who do not want the gambling. Bozeman has just zoned for five machines or less by an ordinance that is still on the books. The intent is noble but the consequences may be enabling what you would like to stop. I believe we have the tools to stop what this bill is trying to do.

**Dave Brown, MT Independent Machine Operators Assoc.** We are strongly opposed to this bill and it presents a burden on the industry and on the licensing agency.

*{Tape: 1; Side: A; Approx. Time Count: 9:25 AM; Comments: N/A.}*

Questions From Committee Members and Responses:

**SEN. DEBBIE SHEA** asked Janet Jessup, Justice Department, Gambling Control Division how the Department is going to make a determination of public convenience and necessity without a public hearing? **Ms. Jessup** felt the first step would be to examine the bill and testimony in support of the bill and then move to rule making and establish criteria and guidelines for the process of determining public need and convenience. In doing so, they would look at the Department of Revenue's process.

**SEN. STEVE BENEDICT** asked the sponsor if he had some rules on how big the posted notices should be. **SEN. GROSFIELD** said that the size of the signs had not been addressed. Signs similar to zoning information would be suitable.

**SEN. WILLIAM CRISMORE** asked if the sponsor felt, with the amendments, that the fiscal note would be moot? **SEN. GROSFIELD** replied that the amendments knocked the fiscal note in the head. There would be some additional work, but not so much that would cost a great deal. **Ms. Jessup** responded that she had not had enough time to really study the amendments, but that there could be a fiscal impact if there would be a protest and have to go through a public hearing. **SEN. HERTEL** asked if **Ms. Jessup** had anything to do with making the fiscal note. **Ms. Jessup** said that she had talked with the sponsor and hoped that she had made him aware of a costly fiscal note.

**SEN. CASEY EMERSON** asked that since a public notice must be put into the newspaper a week or two ahead of time, would the bill require an additional posting of notice. **SEN. GROSFIELD** replied that this was a misunderstanding. The hearing process that was described was for a liquor license and not a gambling license. At this time there is no requirement of public notice when a gambling license is applied for.

**SEN. BEA MCCARTHY** asked if this bill would make getting a gambling license take even longer? **Ms. Jessup** replied that it shouldn't take all that much longer. If both licenses should transfer at the same time, there should not be a lengthy process.

**SEN. BENEDICT** stated that about the only time this bill would come into play would be if someone did not have machines but had a liquor license and wanted some machines. **Mr. Staples** replied that he really couldn't speak for the sponsor. He felt that it would apply to a broad range of applications, transfers, etc.

**SEN. SHEA** asked who would design the signs and determine what was put on the signs? **Ms. Jessup** said that this would all be a part of the rule making process.

Closing by Sponsor:

SEN. GROSFIELD closed. The question of delay; yes, it is possible but not in every case. If you read Amendment 4, it does not apply in the case of going from five to six machines. It would apply in the case of going from five to eleven. As to who will design the signs, maybe there should be an amendment addressing this issue. There are reasons that liquor license transfers can be slow. These processes have been put into place for good public policy reasons. That is just part of the deal. There is a House Bill by REP. DICK SIMPKINS that is addressing several things and one of those is the time line of processing. There is a great deal of public interest in the expansion of gambling and a number of towns have grappled with how to deal with this expansion. Public involvement is important.

{Tape: 1; Side: B; Approx. Time Count: 9:50 AM; Comments: LOST ONE SENTENCE OF THE CLOSING BY SPONSOR.}

HEARING ON SB 259

Sponsor: SENATOR DEBBIE SHEA, 18, BUTTE

Proponents: Dave Brown, MT State Cosmetologists Assoc.  
Michelle Johnson, President, MT State  
Cosmetologists Assoc.  
Bev Ball, Ball's College of Beauty  
Perry Eskridge, Department of Commerce  
Lucas J. Foust, Helena  
Janet Duffy Fagan, Rocky Mountain Salon  
Consultants, Bozeman  
Laura Conway, Missoula  
Max Evans, Mr. Max's Bozeman Beauty College  
Deborah A. Kimmet, MT Assoc. for Bodywork &  
Massage Therapy

Opponents: None

Opening Statement by Sponsor:

SENATOR DEBBIE SHEA, 18, BUTTE, handed in her Opening Statement.  
(EXHIBIT 3)

Proponents' Testimony:

Dave Brown, Montana State Cosmetologists Association. I gave my Section-by-Section Analysis to the secretary. (EXHIBIT 4)

Michelle Johnson-Ryan, Montana State Cosmetologists Association. I gave a copy of my testimony to the secretary. (EXHIBIT 5)

Beverly Ball, Great Falls College of Beauty. I have a full cosmetology course and a manicuring course, both of which have ongoing support and interest. The school is accredited;

therefore, the courses offered are accredited and recognized by the Department of Education. The curriculums have credibility and need to have the focus of individual licensure and the ability to progress to instructor status. Our publishing companies are very supportive of the courses offered in the field of cosmetology; the published materials are conclusive and complete. I urge your support for SB 259.

**Perry Eskridge, Department of Commerce.** I am here to say the Board of Cosmetology supports this bill.

**Lucas Foust, Private Citizen, Helena,** gave a copy of his testimony to the secretary. (EXHIBIT 6)

**Janet Duffy Fagan, Rocky Mountain Salon Consultants,** gave a copy of her testimony to the secretary. (EXHIBIT 6A)

**Laura Conway, Private Citizen,** gave a copy of her testimony to the secretary. (EXHIBIT 7)

**Max Evans, Mr. Max's Bozeman Beauty College, Bozeman,** gave his written testimony to the secretary. (EXHIBIT 8)

**Deborah Kimmett, Montana Association for Bodywork & Massage Therapy.** We're interested in this bill because it talks about massage as a skin care thing. We support this bill in using massage as a skin care technique.

Opponents' Testimony: None.

{Tape: 1; Side: B; Approx. Time Count: 10:10 AM; Comments: N/A}

Questions From Committee Members and Responses:

**SEN. STEVE BENEDICT** said within esthetics we have a category called massage; however, massage therapists at this point are not licensed. Esthetics means skin care of face, hands and neck involving hot compresses, massage. Somebody could push the issue and say massage therapists are not licensed under this section because it's so broad. I'm worried we are going to unintentionally drag massage therapists into this bill. **Perry Eskridge** said as he read the bill, "massage" goes back to the skin care of face, neck and hands only.

**SEN. BENEDICT** asked that if a massage therapist is practicing facial therapy without a license, could someone come in and say they were practicing without a license and go after them? **Mr. Eskridge** said he did not know if massage therapists treat skin disorders or skin care. I think massage therapy goes more for muscular types of problems. **Lucas Foust** said this section had been lifted verbatim from Washington statute.

**SEN. BENEDICT** asked if massage therapists were licensed in the State of Washington. **Mr. Foust** said they were, but not in the State of Montana.

**SEN. BEA MCCARTHY** asked if the manicurists who finished the program could practice independently. **Beverly Ball** said manicurists who finished the course could be licensed to practice in a salon or manicuring salon; however, they currently do not have the option of testing for an instructor's license.

**SEN. MCCARTHY** asked for explanation of the massage issue. **Ms. Ball** said currently within both cosmetology and manicuring there are distinct portions of the curriculum that deal exclusively with massage. In cosmetology it pertains to the head, face, neck and shoulders while in manicuring it pertains to the hands, arms, feet and legs. The licensure is encompassing of an entire curriculum that has very specific massage requirements.

**SEN. MCCARTHY** asked for further explanation of the pedicure part. **Ms. Ball** said cosmetology students get manicuring and pedicuring. When the license comes in they are inclusive of hands, feet, arms and legs.

**SEN. MCCARTHY** asked if it was necessary to put "pedicuring license" in or did it go under "manicuring licensing." **Ms. Ball** said it came under both cosmetology and manicuring licensing.

**SEN. BENEDICT** said he visited with **Mr. Bart Campbell** and suggested removing "massage" and adding "including but not limited to". Then "massage" would not appear in the line. All agreed. (EXHIBIT 9)

**SEN. MCCARTHY** asked **Lucas Foust** if **SEN. BENEDICT'S** suggestion would have solved his finance problem. **Mr. Foust** said it would have.

**SEN. CASEY EMERSON** suggested SB 259 was involved in something unnecessary, and wondered how many people had been hurt or incapacitated in Montana because of the issue in SB 259. **Darlene Bateolli, Licensed Cosmetologist**, said she did not have exact numbers of people who had been hurt; however, she wanted to address the issue of added licensure in order to protect the public. We are very aware of the spread of infectious diseases through unsterilized instruments and of molds and mildews when treating individuals with artificial nails. Although I don't have the number of instances, they are documented throughout our industry publication. **SEN. EMERSON** asked if **Ms. Bateolli** could tell of one case and she said a lady came into her school the other day who had her nails done by a person who was not licensed. The nails had fungus and required medical attention. Another person came in who had masks and packs done by a home facial person. The person ended up with severe facial infection which required medical attention. **SEN. EMERSON** wondered if licensing would have prevented the tragedies. **Ms. Bateolli** said

hopefully licensing would have given the information, knowledge and expertise to eliminate those sort of things.

Closing by Sponsor:

SEN. DEBBIE SHEA read from a memo from Washington state. "As a result of AIDS and other viral infections, salons and schools are confronted with a daily need for infection control regulations covering implement and equipment sterilization by contaminated waste disposal, higher performance standards for chemical agents currently used to sanitize and clean implements and equipment." I thank the Committee for the questions and SEN. BENEDICT for bringing his concern to our attention.

{Tape: 1; Side: B; Approx. Time Count: 10:38 AM; Comments: N/A.}

HEARING ON SB 270

Sponsor: SENATOR STEVE BENEDICT, SD 30, HAMILTON

Proponents: Roger McGlenn, Independent Insurance Agents of MT  
Clyde Dailey, State Auditors Office  
Jacqueline Lenmark, American Insurance Assoc.  
Tom Hopgood, Health Insurance Assoc. of America  
Larry Akey, National Agency of Independent Insurers  
Don Allen, Montana Medical Benefit Plan  
Ward Shanahan, Farmers Insurance Group  
Tanya Ask, Blue Cross and Blue Shield of MT

Opponents: Charles Briggs, MT Assoc. of Agencies on Aging

Opening Statement by Sponsor:

SENATOR STEVE BENEDICT, SD 30, HAMILTON. SB 270 is a response to the bill, the Senior Fraud Protection Act, a bill which protected only a small class of people. I thought that bill was a great idea, but felt more classes of people should be protected so I asked to have a bill drafted which would broaden the latitude to say any consumer in Montana should be protected from the possibility of insurance fraud. I have visited with Clyde Dailey who suggested some amendments to make SB 270 better and I would consider that possibility. I ask for a DO PASS on the bill.

Proponents' Testimony:

Roger McGlenn, Independent Insurance Agents Association. We stand in support of the concepts of the bill.

Clyde Dailey, State Auditor's Office. I stand in support of the bill, with the understanding there may be amendments. In July we took a look at the same statute as SEN. BENEDICT is attempting to amend. The statute is 33-1-1200 and deals with fraud by consumers against insurance companies. We looked to see if we



could use basically the same wording to protect consumers; however, we found if we changed something in the act but added language to invert, we ended up fixing in one place and causing a problem in another. The State Auditor's Office also regulates securities but SB 270 does not deal in securities, which is more of an issue than the insurance side because it is easier to mock up a stock certificate. If we can move some securities-related materials into the bill and amend what's there in reference to Title 28, we will support it because this bill addresses a serious problem.

**Jacqueline Lenmark, American Insurance Association (AIA).** AIA is also in support of the concept of HB 270 and will be interested in seeing the amendments.

**Tom Hoppgood, Health Insurance Association of America (HIAA).** We stand in support of SB 270. I have not seen the amendments proposed by the Commissioner's Office, but conceptually they sound fine.

**Larry Akey, National Association of Independent Insurers.** I want to echo the comments others have made.

**Don Allen, Montana Medical Benefit Plan.** Comments by other proponents have covered the concept and we look forward to working together.

**Tanya Ask, Blue Cross & Blue Shield of Montana.** I would echo the comments already made, with a few exceptions.

Opponents' Testimony:

**Charles Briggs, Montana Association of Agencies on Aging.** We rise in opposition to the bill as it is presently written; however, we would be responsive to the suggestions already stated.

*{Tape: 2; Side: A; Approx. Time Count: 10:51 AM; Comments: N/A.}*

There is no mention of securities and the arguments of **Tom Hoppgood** on SB 17 could be applied to SB 270. The law is not clarified, but confused. We would be interested if language from SB 17 could be amended in SB 270; it would still be better if no bill were passed than to allow this one as it is.

Questions From Committee Members and Responses:

**SEN. BEA MCCARTHY** asked for clarification regarding fraud and exactly when is fraud accomplished? **Clyde Dailey** said SB 270 is addressing when and if the securities are sold or marketed to you in a fraudulent manner, and the issuance would be at the point of sale.

SEN. JOHN HERTEL said he thought we were pretty well covered in present statute and wondered what else was needed. Mr. Dailey said one thing was restitution and another was the educational component.

SEN. CASEY EMERSON asked when the change occurred from that of being agency regulated to government regulated. Mr. Dailey said that there were abuses in the market and the original Act was to be a deterrent to fraud.

SEN. HERTEL asked if this would alleviate some problems--senior citizens, in particular. SEN. BENEDICT said this bill would alleviate their concerns unless they wanted to be set up as a separate class of people protected under law, while other classes are not.

SEN. MCCARTHY asked if fraud was at the time of sale and SEN. BENEDICT said it was, or at the time of presentation.

SEN. STEVE BENEDICT said the average senior citizen did not know what went on during the legislature. There are groups who move issues through this process who do not go back and check the pulse of Montana senior citizens. Yet, they say the legislature is not doing what we want them to do.

Closing by Sponsor:

SEN. STEVE BENEDICT said he had no agenda on this bill -- he wanted to do it for everybody. He took issue with people who came in as proponents but did not stick around for questions.

*{Tape: 2; Side: A; Approx. Time Count: 11:08; Comments: N/A.}*

EXECUTIVE ACTION ON SB 259

Motion: SEN. BEA MCCARTHY MOVED DO PASS ON SB 259.

Motion: SEN. STEVE BENEDICT MOVED TO AMEND SB 259 (EXHIBIT 9).

Vote: Motion DO PASS ON AMENDMENTS CARRIED UNANIMOUSLY.

Motion: SEN. DEBBIE SHEA MOVED DO PASS AS AMENDED ON SB 259.

Discussion: SEN. CASEY EMERSON commented it would have been better to delete some language rather than adding another layer.

SEN. STEVE BENEDICT said cosmetologists had a much fuller practice than just the esthetics part. They need their full licensure requirements.

SEN. DEBBIE SHEA said she agreed with SEN. BENEDICT and said she had talked to some who were disappointed their recertification instruction was diminished as they take their profession seriously.

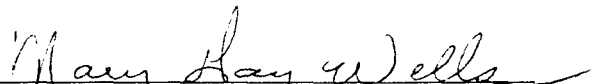
**SEN. EMERSON** said a good look should be taken at the licensing organizations because the market should take care of the controls.

Vote: The motion DO PASS AS AMENDED ON SB 259 CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 11:16 A.M.

  
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SEN. JOHN HERTEL, Chairman

  
\_\_\_\_\_  
MARY GAY WELLS, Secretary

JH/MGW