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A BIEL FOR RN ACT ENTITLED: "AN ACT TO LICENSE AND TAX PUNCH BOARDS AND SLOT MIRCHINES AND TO UTILIZE THE EUNDS DERIVED TO OFFSET LOCAL PEAL PROPERTY TAXES, TO FROVIDE PENALTIES FOR VIOLATION THEREOF ANS TO DEPEAL SECTIONS 94-8-428 AND 94-8-431, R.C.A. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
Section 1. Short Title. This act may be cited as "The Slot Machine and Punch Board Act of 1975".

Section 2. Purpose. The purpose of this act is to provide financial relief to the people of Nontana in the form of lower assessments on real property by licensing and taxing punch boards and slot machines.

Section 3. Definitions. hs used in this act:
(1) "Punch boards" means the game from which prizes are awarded on the basis of designated numbers or symbols on pieces of paper which are inserted in a board, and which may be removed from that board by a punch or device inserted into the board, and where exposed, the designated numbers or symbols conform to numbers or symbols selecteā at random.
(2) "Slot machine" means any mechanical, electrical or other device, contrivance or machine which, upon insertion
of a coin, token or similar object therein, or upon payment of any consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the machine to receive cash, premiums, merchandise, tokens or any thing of value, whether the payoff is made automatically from the machine or in any other manner.
(3) "Licensed wholesaler" means any person licensed under the provisions of this act wo is engaged in the business of:
(a) selling punch boarās, or
(b) leasing or selling slot machines.
(4) "Licensed retailer" means any person who is licensed under the provisions of this act and is engaged in the business of:
(a) selling chances on punch boards; or
(b) operating or controlling slot machines.
(5) "Licensee" means any cualified person to whom a license ias been issued under this act.
(6) "Person" means a natural person, firm, association, corporation or other legal entity.
(7) "Department" means department of revenue.

Section 4. Departnent of revenue licensing authority.
(1) The department is designated as the licensing authority
under this act. The department shall enforce the terms and provisions of this act, and shall:
(a) Grant or refuse licenses under this act. The department, on its own motion based on reasonable grounds, or on complaint made and after investigation and public hearing, at which the licensee is afforded an opportunity to be heard, may suspend or revoke any license issued by the department for any violation by the licensee or any officer, director, agent, member or employee of that licensee of the provisions of this act or any rule authorized hereunder. Notice of suspension or revocation, as well as notice of hearing, shall be given by certified mail to the licensee at the address contained on the license
(b) Supervise the administration of this act and adopt, amend, and repeal rules governing the operation and conduct of punch boards and slot machines.
(c) Hear and determine at public hearing all complaints against any licensee, and administer oaths and issue subpoenas to require the presence of persons and production of papers, books and records necessary to the determination of any hearing so held.
(d) Keep records of all actions and transactions of the department concerning this act.
(e) Report annually to the governor or legislature respecting the administration of this act, including an
accounting of all licenses issued and moneys collected and make recomendations in regard to legislation.
(f) Enforce the provisions of this act. The department, its members and agents have the powers of peace officers, and are authorized to arrest any person violating any provision of this act, and to file a complaint before any court of competent jurisdiction, and to lawfuily searci and seize and use as evidence, any unlawful or unlawfully possessed license, punch board, slot machine, or insignia found in the possession of any person or place.
(2) Proceedings to suspend or to revoke any license shall be brought by the department in accordance with the Montana Administrative Frocedure Act. The department nay stop the operation of punch boards and slot machines by notice to a licensee pending hearing, in which case the hearing shall be held within thirty (30) days of notice.
(3) When a license is ordered suspended or revoked, the licensee shall surrender the license to the department on or before the effective date of the suspension or revocation. No license is valid beyond the effective date of the suspension or revocation, whether surrendered or not.
(4) In addition to any other penalty imposed under this act the department may declare the violator ineligible to conduct punch boards and to operate or control slot machines for no more than twio (2) years after the
declaration.
Section 5. Wholesale license. (1) Each wholesaler shall obtain a license from the department before engaging in the business of wholesaler or retailer.
(2) A separate application and a separate license is required for each place of business owned, controlled, or operated by the licensed wholesaler within the state af IIontana.
(3) Application forms supplied by the department shall contain:
(a) the type and general description of applicant's organization
(b) names and home addresses of all owners, stating whether or not principals of these organizations have been convicted of a felony,
(c) identification of each convicted indiviđual, and
(d) other pertinent information as the department requires by rule.
(4) All applicants for a wholesaler's license and all persons, owners or others who have a financial interest in the applicant's organization shall be at least eighteen (18) years of age and a resident of the state at least five (5) years prior to the date of application.
(5) Each application for a wholesaler's license shall be accompanied by a fee of five hundred dollars ( $\$ 500$ ).
(6) The department shall adopt proper insignia to indicate the applicable fee has been paid. The fee shall be collected before the department issues the insignia, unless the licensed wholesaler is allowed a credit under section 6 of this act. Other requirements applicable to insignia are:
(a) only licensed wholesalers shall purchase insignia,
(b) licensed wholesalers shall affix insignia to punch boards and slot machines prior to transfer to a licensed retailer or any use by the licensed wholesaler, and
(c) licensed wholesalers shall not resell insignia, but may return them to the department for a refund.
(7) Each punch board that a licensed wholesaler distributes shall have firmly affixed and in a conspicuous place, a statement which indicates the following:
(a) the charge for each play or chance,
(b) the total number of plays or chances in that punch board,
(c) the prizes or awards which will be provided in that punch board.

This statement shall not be altered, modified or changed in any manner by any person. The charge for playing the punch board may not be exceeded. All prizes indicated on the statement for each punch board must be awarded.

Section 6. Wholesaler credit. (1) Each licensed Wholesaler shall pay on a cash basis for one (1) complete
calendar year, before he is eligible to delay payment as provided in this section.
(2) The cepartment shall permit a licensed wholesaler to pay for the insignia purchased within thirty (30) days after the date of purchase if that wholesaler files with the department a bond issued by a surety company, approved by the department, of insurance as to solvency and responsibility and authority to transact business in the state, for any amount the department may fix, but not in excess of an amount equal to the maximum insignia purchase incurred for any thirty (30) day period in the previous calendar year.
(3) The aroount of the bond required above may be added to the amount of any other bond which a wholesaler furnishes to the state of Montana so that only one bond may be provided for the total amount.

Section 7. Cash basis only. No sale or delivery of punch boards or rental, sale or delivery of slot machines shall be made to any licensed retailer, except for cash paid on or before the date of delivery. A correctly dated check which is honored upon presentment shall be considered as cash for purposes of this section.

Section 8. Retail licenses. (1) Licenses for retailers under this act are of three types:
(a) punch boards only;
(b) slot machines only; and
(c) combined punch board and slot machine.
(2) A separate application and a separate license is required for each place of business owned, operated, or controlled by the licensed retailer within the state of Montana.
(3) Application forms supplied by the department shall contain:
(a) the type and general description of applicant's organization;
(b) names and home addresses of all owners, stating whether or not principals of the organizations have been convicted of a felony;
(c) identification of each convicted individual; and
(d) other pertinent information the department requires by rule.
(4) All applicants for a retailer's license and all persons, owners, or others who have a financial interest in the applicant's organization shall be at least eighteen (18) years of age and a resident of the state of Montana at least five (5) years prior to the date of application.
(5) Applications for retailer's licenses shall be accompanied by fees as follows:
(a) retailer's punch board-only license, $\$ 250$;
(b) retailer's slot machine-only license, $\$ 100$ for -8-
each machine up to and including 15 machines; for each machine above 15 the fee is $\$ 40$;
(c) combined retailer's punch board and slot machine license, $\$ 2000$ for establishments operating or controlling 15 machines or less; with 16 or more machines, $\$ 50$ additional for each machine.

Section 9. License renewal -- display. (1) The licenses may be renewed annually upon payment of the annual fee and shall. be effective for one (1) year, without proration.
(2) Each license shall be prominently displayed on the licensed premises, and a separate license shall be displayed at each place of business owned, controlled, or operated by the licensed wholesaler or licensed retailer.

Section 10. Gross revenue tax. (1) In addition to any other taxes or fees there are imposed the following taxes on gross revenue:
(a) Retailer punch board-only license; an establishment operating or planning to operate under retailer's punch board-only licenses shall pay three percent (38) of the total gross revenue of each punch board game. The total gross revenue shall be determined by multiplying the cost charged for each individual chance or play times the total number of chances or plays in the punch board.
(b) Retailer slot machine-only Iicense; an -9-
establishment operating or planning to operate under a retailer's slot machine-only license shall pay a gross revenue tax computed as follows:
(i) Three percent (38) of all the gross revenue from slot machines which does not exceed $\$ 150,000$ per fuarter year: and
(ii) Four percent (4\%) of all the gross revenue from slot machines which exceeds $\$ 150,000$ per quarter year and does not exceed $\$ 400,000$ per quarter year: and
(iii) Five and one-half percent (5 $1 / 2 \%$ ) of all the gross revenue from slot machines which exceeds $\$ 400,000$ per quarter year.
(c) Retailer combined slot machine and punch board licenses; those establishments operating or planning to operate under a retailer's combined punch board and slot machine license shall pay a tax as follows:
(i) the punch board tax as prescribed in this section; and
(ii) the slot machine tax as prescribed in this section.
(2) The department shall charge and collect the tax prescribed in this section:
(a) on or before the last day of the last month in a calendar quarter, for the ensuing calendar cuarter, Eron a licensee whose operation is continuing;
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(b) in advance from a licensee who begins operation or puts additional slot machines into play during a calendar quarter.
(3) No proration of the fee prescribed in this section may be allowed for any reason.
(4) The operator of the location where slot machines are situated shall pay the tax prescribed in this section upon the total number of slot machines situated in that location, whether those machines are owned by one or rore licensee-owners.

Section 11. Payment of gross revenue tax. (1) The department shall charge and collect the tax prescribed in section 10 based upon the gross revenue for the preceding calendar quarter, on or before the last day of the first month of the calendar quarter for which the license is issued.
(2) When a licensed retailer is operating for the first time, he shall present to the department an estir:ate of his first quarter's gross revenue. This estimate shall be treated as the gross revenue for the preceding calendar quarter and taxed as provided in subsection (1) of this section.
(3) If the estimate presented under subsection (2) of this section differs from the the actual gross revenue for the first quarter of operation, the department shall enter a
credit or debit to the amount the licensed retailer shall pay the next succeeding guarter.

Section 12. Failure to pay tax -- penalty. If a person fails or refuses to pay when due the tax or fee required by this act, the department shall proceed to determine the tax or fee due from any information the department can obtain and shall assess the tax or Fee so determined against the person and notify him of the arount thereof. After notice the tax or fee is due and payable, together with a penalty of five percent (5\%) of the tax or fee or five dollars ( $\$ 5$ ) per day for each day after recejpt of the notice, whichever is greater.

Section 13. Deposit of fees and taxes -- allocation to local governments. All license fees and taxes collected under this act shall be deposited monthly with the state treasurer in the department's punch board and slot machine enforcement account in the earmarked revenue fund. There shall be appropriated to the department, from the enforcement account, the sum necessary to carry out the provisions of this act for each fiscal year. on or before June 30 , at the end of each fiscal year the department shall pay to the treasurer of each county and incorporated dity or town which has certified to the department punch boards and slot machines are acceptable to the people thereof, to the credit of the general fund, all funds in excess of ten -12-
thousand dollars $(\$ 10,000)$ in the enforcement account not needed for the administration of this act. The amount received by each certified county and incorporated city or town is determined by dividing the total population of all certified counties, cities or towns, as determined by the most recent United States census, into the population of the respective local govermmental unit, as determined by the most recent United States census and multiplyins the quotient, as a percentage, times the total available funcs. For purposes of this determination population of a certified county does not include the population of certified incorporated cities or towns located within the county boundaries.

Section 14. Certification procedure. Eaci county or incorporated city or town of the state of Montana shall certify to the department that the people thereaf accept licensed punch boards and slot machines as a metioa of contributing to the general revenue of that local government. This certification shall be a verified copy of the results of an election in which the question of acceptance is presented to the people of the local governmental unit and a majority voted to accept.

Section 15. Interstate shipment. Every common carriar hauling, transporting, or shipping into or out of the state of Montana, from or to any other state, any punch board or
slot machine shall report in writing the shipments or deliveries to the department, on forms furnished by the departnent, giving the date, the person to whom the same was consigned and delivered, the quantity as shown oy the bill of lading and other information as the department may require.

All punch boards and slot machines without the required insignia affixed may only be transported into or out of the state by common carrier or United states mail.

The transportation of punch boards is nereby declared exempt from the provisions of 15 U.S.C.i.., 1172.
section 16. Intrastate shipment. (1) It shall be unlawful for any person, except a licensed wholesaler, to possess, transport into, receive, carry or move from place to place within this state any punch boards or slot machines which do not bear the insignia required by this act, except in the following cases:
(a) when in interstate comarce; or
(b) when transported from a manufacturer directly to a licensed wholesaler.
(2) Any motor vehicle, airplane, conveyance, vehicle, or other means of transportation, in which punch boards or slot machines are being unlawfully transportec, together with the punch boards, slot machines and other equipment or personal property used in connection with that
transportation, and found in that means of transportation, are subject to seizure by the department or any peace officer.
(3) If no application for return is made as provided in section 17 of this act, upon completion of all legal and department proceedings, the seized items shall be sold for a reasonable price at public auction and the funds obtained disbursed as provided in section 94-8-412, R.C.M. 1947.

Section 17. Seizure of punch board or slot machine. fipon the seizure of any punch board or slot machine and within two (2) days tnereafter, the person or officer making the seizure shall deliver an inventory of the property seized to the person from whom the seizure was made, if known, and file a copy thereof with the department. The person from whom the seizure was made, or any other person claiming an interest in the property seized, may apply for its return as provided in sections 95-713 through 95-716, R.C.2. 1947.

Section 18. Grievance procedure -- hearing under Administrative Procedure Act. Any person aggrieved by any action of the department may apply to the department, in writing, for a hearing or rehearing thereon within thirty (30) days after the action of the department or its duly authorized acents. Whe department shall promptly consider the application, set it for hearing and notify the applicant
of the time and place fixed for that hearing or renearing, which may be at its office or in the county of the applicant. Any hearing shall be held in accordance with the Vontana Administrative Procecure Act. After a hearing or rehearing, the department may make any order it deems proper and lawful and shall furnish $\equiv$ copy thereof to the applicant. The department, on its own initiative, ray order a hearing on any matter concerned with the administration of this act, upon at least ten (10) days notice in writing to the person or persons to be investigated.

Section 19. Appeal to district court. Any person aggrieved by any action or decision of the department, made under the provisions of this act, may appeal therefrom to the district court of the county where appellant resides, in accordance with the provisions of the Montana Administrative Proceđure Act.

Section 20. Gambling on a cash basis. (1) In every gamblinc gane conducted under any gambling law of this state the consideration paid for the chance to play shall be cash. Every participant shall present the money with which he intends to play the gambling game at the time the game is played. No check, credit card, note, I.O.U. or other evidence of indebtedness shall be offered or accepted as part of the price of participating in a gambling gane or as payment of a gambling debt.
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(2) No action based on a gambling debt is maintainable in a court of this state.
section 21. Cheating unlawful. It shall be uniawful to conduct or participate in a gambling game authorized by this act or any other gambling law in any manner thich results in cheating, misrepresentation or other disreputaile tactics which distract from a fair and equal chance for all participants or which otherwise affects the outcone of the ganbling game.

Section 22. Minors not permitted to participate. io person under the age of eighteen (18) years shall be permitted to play a punch board or operate a slot machine and no licensee shall allow any person under eighteen (18) zears to play a punch bcard or operate a slot machine.

Saction 23. Prohibition against playing where no proper insignia. Ho person shall use or play a punch board or slot machine not laving affixed thereto the insignia required by this act.

Section 24. Assistance of county attorneys and local peace officers. The department may call to its assistance, any county attorney or any peace officer, in this state, who shall assist the department in the enforcement of this act.

Section 25. Venue. Venue for any violation of this act lies in the judicial district where the departrient maintains its principal office. The department may sue the
violator for the amount of any unpaid tax or fee and costs, including reasonable expenses. There the court finds the failure to pay the tax has been willful, the court shall assess damages in treble the amount of the tax or fee due.

Section 26. Violation -- Jublic nuisance. Every person having possession or control of, or who maintains $a$ building or place where punch boards are sold or played or slot machines played in violation of this act, or permits the same to be carried out in any place or building possessed, controlled or maintained by him, is guilty of maintaining and keeping a puilic nuisance and the building or place so used, together with the personal property and fixtures used in connection therewith shall be considered a public nuisance, and the person shall be enjoined and the building or place, personal property and fixtures abated as a public nuisance, under section 94-8-107, R.C.2. 1947.

Section 27. Violation -- a misdemeanor. Any person violating any provision of this act, except as provided in section 28 of this act, shall be punished by a fine of not less than one hundred dollars ( $\$ 100$ ), or more than two thousand dollars $(\$ 2,000)$, or by inprisonment in the county jail for not more than six (5) months, or by imprisonment in the state prison for any term not to exceed five (5) years, or by both fine and imprisonment.

Section 28 . Suecial penalties -- punch board keys --
tampering with slot machines. (1) Any person providing leys to punch boards to any person within the state of Montana, and any person, other than authorized department personnel, who possesses a key commits a felony and upon conviction shall be imprisoned in the state prison for a term not less than two (2) years nor more than ten (10) years.
(2) Any person who tampers as defined in section 94-2-101 (62), R.C.M. 1947, with a slot machine in any manner which lowers the gross revenue computation of any slot machine, or any person who manufactures a slot machine which can he tampered with in a manner wich lowers the gross revenue computation of any slot machine commits a felony and upon conviction shall be imprisoned in the state prison for a term not less than two (2) years nor more than ten (10) years.

Section 29. Prior laws still in effect. To the extent that they are not specifically superseded by provisions of this act or any other gambiing law, the provisions of sections 94-8-401 through 94-8-431, R.C.4. 1947, remain in effect.

Section 30. Severability. If a part of this act is invalid, all valid parts that are severable from tine invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the -19-

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invalic applications.
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Section 31. Repealer. Sections 94-8-428 and 94-8-431, B.C.S. 1947 are repealed.

Section 32. Effective date. This act is effective January 1, 1976.

In compliance with a written request received ___ Eebruary 11__19_75, there is hereby submitted a Fiscal Note for House Bill 422 pursuant to Chapter 53, Laws of Montana, 1965-Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

## DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 422 licenses and taxes punchboards and slot machines, utilizes a portion of such collections to offset local real property taxes, provides penalties for violation thereof, repeals section 94-8-428 and 94-8-431, R.C.M. 1947, and provides a January 1, 1976 effective date.

## ASSUMPTIONS:

1. House Bill 422 provides for the following licenses, license fees, and taxes:

| Wholesale annual license | $\$ 500$ |
| :--- | :---: |
| Retail Punchboard annual license | $\$ 250$ |
| Retail slot machine annual license | $\$ 100$ per machine up to 15 machines; $\$ 40$ per machine after 15. |
| Combination retail punchboard and |  |
| slot machine annual license | $\$ 2,000$ up to 15 machines; $\$ 50$ per machine after 15. |
| Gross revenue tax - punchboard | $3 \%$ |
| Grosş revenue tax - slotmachine | 3,4, or $5 \%$ depending on the level of gross revenue. |

2. In light of the various taxes and license fees imposed, it is not feasible to provide estimates of the revenue impact of the proposed legislation.
3. The Department of Revenue will require a three member office staff and a five member investigation team to administer the proposed legislation. A nine percent salary increase for $F Y 77$ is assumed.
4. Required office space is available without added cost. Five automobiles, special electronic equipment and miscellaneous office equipment will be needed.
5. All license fees and taxes collected are to be deposited in the punchboard and slot machine enforcement account in the earmarked revenue fund. The administrative costs of the legislation will be paid from the account. At the end of each fiscal year, funds in excess of $\$ 10,000$ (after administrative costs) are to be distributed, on a population basis, to county and city governments which have certified that punchboards and slot machines are acceptable to the people thereof.

FISCAL IMPACT:
Estimated increase in expenditures by category:
Personal Services
Operating Expenses
Capital Outlay
Total estimated increase in expenditures

Total estimated increase in expenditures

| FY 76 |
| ---: |
| $\$ 49,599$ |
| 26,560 |
| 35,000 |
| $\$ 111,159$ |

FY 77 \$103,663

48,239
0
$\$ 151,902$
$\qquad$
$\qquad$

## FISCALNOTE

In compliance with a written request received February 11 $\qquad$ . 19.75
$\qquad$ there is hereby submitted a Fiscal Note for ... House Bill 422 $\qquad$ pursuant to Chapter 53, Laws of Montana, 1965 - Thirty Ninth Legislative Assembly.
Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

## CONCLUSION:

Enactment of House Bill 422 will result in an indeterminable increase in license fee and tax collections. Revenue in excess of $\$ 10,000$ plus administrative expenses, will be distributed to cities and counties which have certified their acceptance of punchboards and slot machines. The distribution will be according to population. The estimated administrative expenses for the proposed legislation is $\$ 263,000$ during the 1975-77 Biennium.

## TECHNICAL NOTES:

1. Section 10 (1)(a), page 9, places a tax on punchboards of $3 \%$ of the total gross revenue of each punchboard game. Total gross revenue is defined as the product of the number of chances or plays in the punchboard and the price per chance. In cases where all the chances in the punchboard are not exhausted, what is the correct taxable base?
2. Section $10(2)(a)$, page 10 , and Section $11(1)$, page 11 , appear to disagree as to the time of payment of the gross revenue tax.
3. Section 11 (1), page 11, refers to "the calendar quarter for which the license is issued". Other references, throughout the bill, are to annual licenses.


Office of Budget and Program Planning
Date: February 21, 1975 $\qquad$

