

1 HOUSE BILL NO. 454

2 INTRODUCED BY O'CONNELL

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT LEGALIZING CERTAIN
5 GAMBLING; CREATING THE MONTANA GAMING CONTROL BOARD;
6 PRESCRIBING ITS DUTIES AND POWERS; PROVIDING FOR LICENSE
7 FEES AND TAXES; PROVIDING FOR THE COLLECTION AND DISPOSITION
8 OF LICENSE FEES AND TAXES; PROVIDING FOR LOCAL OPTION
9 ELECTIONS; AMENDING SECTION 94-8-428, R.C.M. 1947."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Short title. This act may be cited as the
13 Montana Gaming Control Act.

14 Section 2. Definitions. As used in this act, unless
15 the context otherwise requires the following definitions
16 apply:

17 (1) "Applicant" means any person, partnership, firm,
18 or corporation who has applied for the issuance of a state
19 gaming license under the provisions of this act.

20 (2) "Application" means a request for the issuance of
21 a state gaming license under the provisions of this act.

22 (3) "Board" means the state gaming control board
23 established by this act.

24 (4) "Chairman" means the chairman of the state gaming
25 control board.

1 (5) "Member" or "board member" means a member of the
2 state gaming control board.

3 (6) "City" means any incorporated city or town.

4 (7) "County" means any political subdivision of the
5 state designated by state law as a county.

6 (8) "Establishment" means any premises wherein or
7 whereon any slot machine is operated.

8 (9) "Gaming" or "gambling" means to operate, carry on,
9 conduct, maintain or expose for play a slot machine as
10 herein defined.

11 (10) "Gaming device" means any mechanical or electrical
12 contrivance or machine commonly known as a slot machine as
13 herein defined.

14 (11) "Hearing examiner" means a member of the state
15 gaming control board or other person authorized by the state
16 gaming control board to conduct investigative hearings.

17 (12) "License" or "gaming license" means any license
18 issued by the state gaming control board pursuant to this
19 act which authorizes the person named therein to engage in
20 the operation of slot machines.

21 (13) "Licensee" means any person to whom a valid gaming
22 license has been issued.

23 (14) "License fees" means any money required by law to
24 be paid to obtain or renew a gaming license.

25 (15) "Operation" means the conduct of gaming.

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1 (16) "Party" means the state gaming control board or
 2 any licensee or other person appearing of record in any
 3 proceedings before the state gaming control board or hearing
 4 examiner, and any licensee or other person appearing of
 5 record in any proceedings for judicial review of any action,
 6 decision, or order of the board.

7 (17) "Year" means a period of 12 consecutive months
 8 commencing on July 1 in any year.

9 (18) "Person" means any corporation, firm, association,
 10 trust, or partnership as well as a natural person.

11 (19) "Respondent" means any licensee or other person
 12 against whom a complaint has been filed with the board.

13 (20) "Slot machine" means any mechanical, electrical,
 14 or other device, contrivance, or machine which, upon the
 15 insertion of a coin, token, or similar object therein or
 16 upon the payment of any consideration whatsoever of a
 17 denomination of 25 cents or less, is available to play or
 18 operate, the play or operation of which, whether by reason
 19 of the skill of the operator or application of the element
 20 of chance, or both, may deliver or entitle the person
 21 playing or operating the machine to receive cash, premiums,
 22 merchandise, tokens, or anything of value whatsoever,
 23 whether the pay-off is made automatically from the machine
 24 or in any other manner. Each machine must provide at least
 25 an 85% payback.

1 (21) "Distributor's license" means a license to sell,
 2 lease, or distribute slot machines.

3 (22) "Manufacturer's license" means a license to
 4 manufacture a slot machine.

5 (23) "Earmarked gaming fund" is that fund derived by
 6 the board from the collection of all gaming fees.

7 Section 3. State gaming control board. (1) There is
 8 created a state gaming control board. The board shall be
 9 composed of the most qualified persons available, no two of
 10 whom may be of the same profession or major field of
 11 industry.

12 (2) Not more than three members of the board may be of
 13 the same major political affiliation.

14 (3) The members of the board shall be appointed by the
 15 governor with the advice and consent of the senate of the
 16 state of Montana.

17 (4) The governor shall designate a member to serve as
 18 chairman of the board.

19 (5) Appointment to the first board, except those to
 20 fill unexpired terms, shall be for terms as follows:

21 (a) three members for 4 years;

22 (b) two members for 2 years;

23 (6) Thereafter, all members shall be appointed for the
 24 term of 4 years.

25 (7) Appointments to fill vacancies on the board shall

1 be for the unexpired term of the member to be replaced and
2 shall be appointed by the governor with the concurrence of
3 the senate.

4 (8) The board shall be allocated to the department of
5 business regulation for administrative purposes only
6 pursuant to 82A-108.

7 Section 4. Compensation of members -- travel and per
8 diem expense. The board members shall each receive \$50 per
9 day while engaged in board business and shall be reimbursed
10 for travel and expenses as provided in 59-538, 59-539, and
11 59-801 incurred while attending meetings of the board.

12 Section 5. Organization of board -- administrator --
13 other personnel -- equipment -- administrative costs. (1)
14 The board may:

15 (a) establish and from time to time alter such plan or
16 organization as it considers expedient;

17 (b) employ and discharge an administrator who is
18 entitled to receive an annual salary not to exceed \$20,000
19 to be set by the board;

20 (c) employ and discharge such other personnel as it
21 considers necessary;

22 (d) acquire such furnishings, equipment, supplies,
23 stationery, books, license forms, tax stamps and all other
24 things as it considers necessary or desirable in carrying
25 out its functions;

1 (e) incur such other expense, within the limit of
2 funds available, as it considers necessary.

3 (2) All costs of administration incurred by the board
4 shall be paid out on claims from the earmarked gaming fund.

5 (3) The board shall classify its employees as
6 executive, supervisory, investigative, and clerical, as it
7 considers appropriate.

8 Section 6. Meetings -- quorum -- investigative
9 hearings. (1) Regular and special meetings of the board may
10 be held, at the discretion of the board, at such times and
11 places as it considers convenient, but at least one regular
12 meeting shall be held each month.

13 (2) Public notice of the time and place of special
14 meetings shall be given at least 7 days prior to such
15 meeting.

16 (3) All meetings of the board shall be open to the
17 public. Investigative hearings may be conducted by the board
18 or a member in private at the discretion of any member.

19 (4) A majority of the members constitutes a quorum of
20 the board, and a majority of members present at any meeting
21 may determine the action of the board.

22 (5) Investigative hearings may be conducted by one or
23 more members with the concurrence of a majority of the board
24 without notice at such times and places as the member or
25 members consider convenient.

1 Section 7. Records of the board. (1) The board shall
2 make and keep a record of all proceedings held at regular or
3 special meetings of the board, which records shall be open
4 for public inspection.

5 (2) The board shall keep and maintain a file of all
6 applications for licenses under this act, together with a
7 record of all action taken with respect to such
8 applications, which file and record shall be open to public
9 inspection.

10 (3) The board may maintain such other files and
11 records as it considers desirable.

12 (4) All information and data required by the board to
13 be furnished to it hereunder or which may be otherwise
14 obtained relative to the earnings or revenue of any
15 applicant or licensee shall be considered confidential and
16 may not be revealed in whole or in part except as follows:

17 (a) in the course of the necessary administration of
18 this act;

19 (b) upon the lawful order of a court of competent
20 jurisdiction;

21 (c) to a duly authorized agent of the federal bureau
22 of investigation, the United States treasury department, or
23 the director of the internal revenue service of the United
24 States.

25 (5) All files, records, and reports and other

1 information pertaining to gaming matters in possession of
2 the department of revenue of the state of Montana shall be
3 made available to the state gaming control board as is
4 necessary in the administration of this act.

5 Section 8. License requirements. (1) All
6 establishments where slot machines are operated in the state
7 of Montana shall be licensed and regulated so as to better
8 protect the public health, safety, morals, good order and
9 general welfare of the inhabitants of the state of Montana.

10 (2) Any license issued pursuant to this act is a
11 revocable privilege, and no owner thereof may acquire any
12 vested rights therein or thereunder.

13 Section 9. Powers and duties of the state gaming
14 control board. (1) The provisions of this act with respect
15 to state gaming licenses shall be administered by the state
16 gaming control board for the protection of the public and in
17 the public interest in accordance with the policy of this
18 state.

19 (2) The board shall investigate the qualifications of
20 each applicant for licenses under this act before any
21 license is issued and shall continue to observe the conduct
22 of all licensees to the end that licenses may not be issued
23 to or held by unqualified or disqualified persons or
24 unsuitable persons or persons whose operations are conducted
25 in an unsuitable manner or in unsuitable or prohibited

1 places or locations. The board may deny any application for
 2 license or impose any limitation, condition, or restriction
 3 on such license, or suspend or revoke any license for any
 4 violation of this act or the rules established by the board.

5 (3) The board and its agents, inspectors, and
 6 employees may:

7 (a) inspect and examine all premises wherein gaming is
 8 conducted;

9 (b) inspect all equipment and supplies in, upon, or
 10 about such premises;

11 (c) summarily seize and remove from such premises and
 12 impound any such equipment or supplies for the purpose of
 13 examination and inspection;

14 (d) demand access to and inspect, examine, and audit
 15 all papers, books, and records of applicants and require
 16 verification of income and all other matters affecting the
 17 enforcement of the policy of or any of the provisions of
 18 this act.

19 Section 10. Rules -- adoption, amendment, and repeal.

20 (1) The board shall, from time to time, adopt, amend, or
 21 repeal such rules, consistent with the policy, objects, and
 22 purposes of this act as it considers necessary or desirable
 23 in the public interest in carrying out the policy and
 24 provisions of this act.

25 (2) Such rules may, without limiting the general

1 powers herein conferred, include the following:

2 (a) prescribing the method and form of application
 3 which the applicant for a gaming license shall follow and
 4 complete prior to consideration of his application by the
 5 board;

6 (b) prescribing the information to be furnished by any
 7 applicant or licensee concerning such person's habits,
 8 character, associates, criminal record, business activities,
 9 and financial affairs, past or present;

10 (c) requiring finger printing of an applicant or
 11 licensee or employee of a licensee or other methods of
 12 identification;

13 (d) prescribing the manner and procedure of all
 14 hearings conducted by the board or any hearing examiner of
 15 the board, including special rules of evidence applicable
 16 thereto and notices thereof;

17 (e) requiring any applicant to pay all or any part of
 18 the cost of investigation of such applicant;

19 (f) prescribing the manner and method of collection
 20 and payment of fees and issuance of licenses;

21 (g) defining and limiting the area and the method of
 22 operation of slot machines for the purpose of this act;

23 (h) requiring any applicant or licensee to waive any
 24 privilege with respect to any testimony at any hearing or
 25 meeting of the board, except any privilege afforded by the

1 constitution of the United States or this state;

2 (i) prescribing the qualifications of and the
3 conditions under which attorneys, accountants, and others
4 may be permitted to practice before the board.

5 Section 11. Investigations of violations -- complaints
6 -- disciplinary proceedings -- suspension and revocation of
7 licenses. (1) The board shall investigate any apparent
8 violations of this act or any rule adopted hereunder which
9 comes to its attention and, when disciplinary or other
10 action is to be taken against a licensee, shall conduct such
11 investigative hearings with respect thereto as may be
12 necessary.

13 (2) If, after such investigation, the board is
14 satisfied that a license should be limited, conditioned,
15 suspended, or revoked, it shall issue an order to show cause
16 setting forth the name of the licensee, the nature of the
17 violation alleged to have been committed, and the time and
18 place of the hearing. The licensee may appear at such time
19 and place with his attorney and witnesses and produce
20 testimony for and on his behalf and he may cross-examine any
21 witnesses appearing for and on behalf of the board and the
22 attorney for the board may cross-examine the witnesses
23 produced by the licensee. A record or transcript of all
24 testimony adduced at such hearing shall be made. The board
25 shall, at the conclusion of all testimony, make its findings

1 and order, a copy of which shall be sent to the licensee by
2 certified mail. The licensee may appeal to the district
3 court of the first judicial district of the state of
4 Montana, in and for the county of Lewis and Clark, and such
5 appeal shall be heard on the record made at the hearing
6 before the board. No other testimony may be introduced
7 unless the court shall, upon good cause shown, allow such
8 additional testimony.

9 (3) The order of the board so made is effective until
10 reversed or modified upon appeal, except the board may stay
11 its order pending such appeal upon such terms and conditions
12 as it considers proper.

13 (4) The transcript of the hearing on the order to show
14 cause shall be furnished by the board at the expense of the
15 licensee.

16 (5) Notice of appeal shall be filed with the board and
17 the district court within 10 days of receipt by the licensee
18 of the findings and order of the board. The transcript of
19 the record shall be filed in the district court within 60
20 days thereafter.

21 Section 12. License required. (1) It is unlawful for
22 any person, either as owner, lessee, or employee, whether
23 for hire or not, either solely or in conjunction with others
24 to operate, carry on, conduct, maintain, or expose for play
25 in the state of Montana, any slot machine not authorized in

1 this act.

2 (2) It is unlawful for any person to lend, let, lease,
3 or otherwise deliver or furnish any slot machine for any
4 interest or any percentage or share of the money or property
5 played, under guise of any agreement whatever, without
6 having first procured a state gaming license for the same.

7 (3) Any person who knowingly permits any slot machine
8 to be operated in any house or building or other premises
9 owned by him, in whole or in part, except by a person who is
10 licensed hereunder or his employee, is guilty of a
11 misdemeanor.

12 Section 13. Purchase of gaming devices. Any person
13 licensed by the board may purchase, lease, own, and operate
14 gaming devices as herein defined and may purchase such
15 gaming devices by bona fide sale for cash or on a time
16 payment plan, conditional sales contract, or other
17 commercial security instrument.

18 Section 14. Qualification for license. (1) A person
19 must have the following qualifications to obtain a state
20 license:

- 21 (a) be a resident of the state of Montana for 1 year
- 22 prior to application;
- 23 (b) be a citizen of the United States;
- 24 (c) have not been convicted of a felony or of a crime
- 25 which, if convicted in the state of Montana, would have been

1 a felony or of a crime involving moral turpitude;

2 (d) have good moral character and reputation.

3 Section 15. Application for state licenses -- contents
4 and supplemental forms. (1) Application for a state gaming
5 license shall be made to the state gaming control board on
6 forms furnished by it and in accordance with the rules of
7 the board. Such applications shall include:

- 8 (a) the name of the proposed licensee;
- 9 (b) the location of his place of business;
- 10 (c) the number of slot machines to be operated;
- 11 (d) the names of all persons directly or indirectly
- 12 interested in the business and the nature of such interest;
- 13 and
- 14 (e) such other information and details as the board
- 15 may require in order to discharge its duties hereunder.

16 (2) The board shall furnish to the applicant
17 supplemental forms which the applicant shall complete and
18 file with the application. Such supplemental forms shall
19 require but are not limited to complete information and
20 details with respect to the applicant's habits, character,
21 criminal record, business activities, financial affairs, and
22 business associates, covering at least a 5-year period
23 immediately preceding the date of filing of the application.

24 Section 16. Gaming license fees. A person whose
25 license is limited to the operation of slot machines only

1 shall pay an annual license of \$1,000 per machine. A
2 pro-rata portion of such payment may be made quarterly.

3 Section 17. Limitation on number of slot machines. (1)
4 The maximum number of slot machines, as herein defined, to
5 be operated, maintained, or conducted on any premises
6 licensed under this act shall be limited to five in number.

7 Section 18. Posting and inspection of licenses. (1)
8 All licenses unless otherwise provided shall be posted by
9 the licensee in a conspicuous place in the establishment for
10 which it was issued until replaced by a succeeding license.

11 (2) All licenses may be inspected by authorized state,
12 county, or municipal officers who shall report, in writing,
13 to the board and sheriff of the county where such slot
14 machines are located, any slot machines found to be
15 operating without a valid license.

16 Section 19. Renewal of licenses. (1) Subject to the
17 power of the board to deny, revoke, suspend, condition, or
18 limit licenses, any license in force may be renewed by the
19 board for the next succeeding license year by the proper
20 application for renewal and payment of all required fees.

21 (2) All licenses shall become subject to renewal on
22 July 1 of each year.

23 (3) Application for renewal shall be filed with the
24 board and all license fees may be paid quarterly on a
25 pro-rata basis beginning on July 1 of each year.

1 (4) Renewal fees shall be the same as are required for
2 the issuance of a new license.

3 Section 20. Legal shipments of slot machines into the
4 state of Montana. All shipments of slot machines into this
5 state, the registering, recording, and labeling of which has
6 been duly had by the manufacturer or dealer thereof in
7 accordance with 15 U.S.C. 1171 through 1177 are legal
8 shipments thereof into this state.

9 Section 21. License fees and tax collections --
10 deposits -- disbursement. License fees and taxes collected
11 pursuant to this act shall be deposited in the state
12 treasury not later than the close of business the next
13 business day after receipt. All funds, exclusive of costs
14 for administration of this act, shall be paid to the county
15 treasurer of each county in the proportion that the gross
16 revenue received by the board from license fees and taxes is
17 received from each respective county. The proceeds received
18 by each county shall be deposited in the automobile license
19 tax account to provide a replacement so far as possible for
20 the personal property tax on private, noncommercial
21 automobiles.

22 Section 22. Gaming declared lawful -- local option. As
23 defined herein any gaming conducted in conformity with this
24 act is lawful in the state of Montana. However, any county
25 or city may, by a majority of the votes cast in an election

1 called for such purpose, declare gaming in that county or
 2 city unlawful. The election shall be called by the county
 3 commissioners or the city council, as the case may be, upon
 4 presentation of a petition containing the names of 30% of
 5 the registered voters of the county or city as shown by the
 6 number of votes cast for governor at the last general
 7 election within that county or city. The procedures of the
 8 general election laws shall govern the conduct of the
 9 election insofar as they are applicable. If a majority of
 10 the votes cast are opposed to gaming in the county or city,
 11 then the operation, possession, or maintenance of any gaming
 12 device as herein defined shall be a misdemeanor and the
 13 penalty shall be as prescribed in 94-8-431.

14 Section 23. Gaming by minors prohibited -- loitering
 15 prohibited -- revocation of license. (1) No person under the
 16 age of 18 years may:

17 (a) play or be allowed to play any gaming device
 18 licensed under this act;

19 (b) loiter or be permitted to loiter or be employed in
 20 any room or immediate area wherein any license gaming device
 21 is operated.

22 (2) Any licensee, employee, agent, or other person
 23 knowingly violating or knowingly permitting the violation of
 24 any of the provisions of this section, and any person under
 25 16 years of age who violates any of the provisions of this

1 section is guilty of a misdemeanor.

2 (3) Conviction of a licensee for violation of this
 3 section may be grounds for suspension or revocation of a
 4 license.

5 Section 24. Cheating -- penalty. (1) It is unlawful to
 6 allow to be operated a slot machine which has in any manner
 7 been tampered with to deceive the public, or equipped with
 8 an electrical or other device which might render the slot
 9 machine more liable to win or lose.

10 (2) It is unlawful for any individual player to use
 11 any device or combination of devices to in any way tamper
 12 with, damage, or otherwise control any slot machine.

13 (3) Any violation of the provisions of this section is
 14 a misdemeanor and punishable by a fine of not more than
 15 \$1,000 or by imprisonment in the county jail for not more
 16 than 1 year, or by both fine and imprisonment.

17 Section 25. Power invested in board. For the purposes
 18 of administration of this act, the board, its agents,
 19 inspectors, and employees shall be vested with the power of
 20 a peace officer of the state of Montana.

21 Section 26. Other penalties. (1) A person who
 22 willfully violates any provision of this act is guilty of a
 23 misdemeanor, unless another penalty is specifically
 24 provided.

25 (2) In addition, upon certification to the board by

1 any court of competent jurisdiction that a licensee has been
 2 convicted of a violation of any of the provisions of this
 3 act, the board may revoke the license or, at its discretion,
 4 may suspend the license for any period of time considered
 5 justifiable, considering the gravity of the violation.

6 (3) Any person who willfully fails to report, pay, and
 7 truthfully account for any license fee or tax imposed by the
 8 provisions of this act or willfully attempts in any manner
 9 to evade or defeat any such license fee or tax or payment
 10 thereof is guilty of a misdemeanor and upon conviction
 11 thereof may be punished by a fine of not more than \$1,000 or
 12 by imprisonment in the county jail for not more than 1 year,
 13 or by both such fine and imprisonment.

14 Section 27. Summary seizure of unlicensed slot
 15 machines. (1) Whenever it comes to the attention of any
 16 sheriff, peace officer, or employee of the board that any
 17 person has in his possession any unlicensed slot machine
 18 such sheriff, peace officer, or employee of the board shall
 19 seize the slot machine and take it before a magistrate of
 20 the county in which the same is found.

21 (2) It is lawful for officers, in executing the duties
 22 imposed upon them by this section, to break open doors for
 23 the purpose of obtaining possession of any unlicensed slot
 24 machine only after first having obtained a search warrant
 25 based on an affidavit of probable cause.

1 (3) The magistrate shall inquire of such witnesses as
 2 he summons or as may appear before him concerning the nature
 3 of such unlicensed slot machine, and if the magistrate
 4 determines that such slot machine is unlicensed in violation
 5 of this act, he shall order the same forfeited to the state
 6 for appropriate disposition.

7 Section 28. Penalty. The violation of any provision of
 8 this act designated as a misdemeanor and for which a
 9 specific penalty is not set forth is punishable by a fine
 10 not exceeding \$1,000 or by imprisonment in the county jail
 11 not exceeding 1 year, or by both fine and imprisonment.

12 Section 29. Forfeiture of bail. Forfeiture of bail by
 13 a person charged with the violation of this act constitutes
 14 a conviction.

15 Section 30. Section 94-8-428, R.C.M. 1947, is amended
 16 to read as follows:

17 "94-8-428. Slot machines -- possession unlawful. From
 18 ~~and after the passage and approval of this act~~ Except as
 19 otherwise provided by law, it shall be is a misdemeanor and
 20 punishable, as hereinafter provided, for any person to use,
 21 possess, operate, keep or maintain for use or operation or
 22 otherwise, anywhere within the state of Montana, any slot
 23 machine of any sort or kind whatsoever."

-End-

STATE OF MONTANA

REQUEST NO. 512-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 14, 19 77, there is hereby submitted a Fiscal Note for House Bill 454 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:

An act legalizing certain gambling; creating the Montana gaming control board; prescribing its duties and powers; providing for license fees and taxes; providing for the collection and disposition of license fees and taxes; providing for local option elections.

ASSUMPTIONS:

1. From data made available from the Department of Revenue on the number of establishments which may logically qualify under the law for housing the gaming devices, it is estimated that 8,075 slot machines would be licensed, at \$1,000 per license, \$8,075,000 would be generated.
2. It is estimated that 30 additional persons would be needed to implement the enforcement requirements of this bill.

FISCAL IMPACT:

	<u>FY78</u>	<u>FY79</u>
Revenue:	<u>\$8,075,000</u>	<u>\$8,075,000</u>
Expenditure:		
Personal Services	450,507	480,833
Operating Expenses	263,590	243,010
Capital Outlay	<u>20,600</u>	<u>2,000</u>
TOTAL	<u>\$ 734,697</u>	<u>\$ 725,843</u>

CONCLUSION:

Deducting the cost of operation from the revenue source, \$7,340,303 in FY78 and \$7,349,157 in FY79 would be available to counties to be deposited in their automobile license tax accounts as a replacement, so far as possible, for personal property tax on private, noncommercial automobiles.

TECHNICAL NOTE:

Section 4.(b) designates a \$20,000 per year salary maximum for an administrator which would be in conflict with classification and pay procedures.

Richard L. Dancy for
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-15-77