

HOUSE BILL 876

IN THE HOUSE

February 19, 1979

Introduced and referred to
Committee on Business and
Industry.

1 House BILL NO. 876
2 INTRODUCED BY Trupilo

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE
5 AUTHORIZATION AND LICENSING OF TRADE STIMULATORS AND TO
6 PROVIDE PENALTIES FOR VIOLATION OF THIS ACT; AMENDING
7 SECTION 23-5-101, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 NEW SECTION. Section 1. Definitions. As used in
11 [sections 1 through 15], the following definitions apply:

- 12 (1) "Department" means the department of revenue.
- 13 (2) "Person" means an individual, partnership,
14 corporation, association, or organization.
- 15 (3) "Trade stimulator" means a device that dispenses
16 numbered tickets mechanically from a spindle which provides
17 that an award of merchandise will be made to the purchaser
18 of the numbered tickets, upon selection of the proper
19 numbers or symbols. The term does not include a slot machine
20 or other similar device.
- 21 (4) "Licensed wholesaler" means:
22 (a) any person who is a resident in this state who
23 brings or causes to be brought into the state a trade
24 stimulator purchased directly from an approved manufacturer
25 outside or within the state and stores or otherwise disposes

1 of it after it reaches the state; or
2 (b) any person who, within the state, manufactures or
3 produces, sells, or distributes a trade stimulator as
4 authorized by [sections 1 through 15].

5 (5) "Approved manufacturer" means any manufacturer of
6 a trade stimulator outside or within the state who has been
7 approved and licensed under [sections 1 through 15] to sell
8 to a licensed wholesaler resident of the state.

9 (6) "Licensed retailer" means any person other than a
10 licensed wholesaler, who is licensed under [sections 1
11 through 15] to purchase from a licensed wholesaler a trade
12 stimulator and distribute or sell to an exhibitor under the
13 terms of [sections 1 through 15].

14 (7) "Exhibitor" means any person with licensed
15 premises authorized to exhibit a trade stimulator to the
16 public for sale on a chance-by-chance basis only, under the
17 terms of [sections 1 through 15].

18 (8) "Bootleg trade stimulator" means a device
19 authorized by [sections 1 through 15] but manufactured,
20 wholesaled, retailed, exhibited, bought, sold, traded,
21 bartered, used, or stored in violation of the terms of
22 [sections 1 through 15].

23 NEW SECTION. Section 2. Trade stimulators legalized
24 -- winning numbers to be posted. (1) It is lawful for any
25 person to manufacture, sell, or exhibit for use or sale a

1 trade stimulator authorized under [sections 1 through 15].

2 (2) A trade stimulator shall have the winning
3 combinations posted clearly on the device.

4 NEW SECTION. Section 3. Police power. The control
5 exercised by the state relating to trade stimulators is an
6 exercise of the police power of this state for the
7 protection and the general welfare and health of its
8 citizens. All licenses issued hereunder are a privilege and
9 not a vested property right and are revocable for cause by
10 the department under the terms of [sections 1 through 15].

11 NEW SECTION. Section 4. Wholesaler's license --
12 multiple places of business -- application forms. (1) A
13 wholesaler shall obtain a license from the department before
14 engaging in the business of wholesaler. A separate license
15 shall be required for each place of business owned,
16 controlled, or operated by such wholesaler within the state.

17 (2) The application for a wholesaler's license shall
18 include but not be limited to the following information:

19 (a) a general description of the applicant's
20 organization;

21 (b) the names and home addresses of the owners or
22 board of directors and officers of the organization;

23 (c) the citizenship, length of Montana residence, and
24 principal business of each member; and

25 (d) a financial condition statement as may be required

1 by the department to insure financial responsibility.

2 (3) Wholesalers who purchase directly from an approved
3 manufacturer outside Montana shall furnish to the department
4 the name and locations of the manufacturer and the
5 manufacturer's Montana license number.

6 (4) Wholesalers who are in-state manufacturers must
7 submit to an inspection of their manufacturing facility by
8 the department.

9 (5) An application for a wholesaler's license shall be
10 accompanied by a fee of \$100. Upon approval of the
11 application, this fee shall be considered the annual license
12 fee for a wholesaler's license.

13 NEW SECTION. Section 5. Retailer's license --
14 multiple places of business -- application form. (1) Every
15 retailer must obtain a license from the department before
16 engaging in the business of retailer. A separate license is
17 required for each place of business owned, controlled, or
18 operated by the retailer within the state.

19 (2) The application for a retailer's license shall
20 include but not be limited to the following information:

21 (a) a general description of the applicant's
22 organization;

23 (b) the names and addresses of the owners or board of
24 directors and officers of the organization;

25 (c) the citizenship, length of Montana residence, and

1 principal business of each member; and

2 (d) a financial condition statement as required by the
3 department to insure financial responsibility.

4 (3) An application for a retailer's license shall be
5 accompanied by a fee of \$50. Upon approval of the
6 application, this fee shall be considered the annual license
7 fee for a retailer's license.

8 NEW SECTION. Section 6. Approved manufacturer's
9 license requirements -- application form. (1) An approved
10 manufacturer shall obtain a license from the department
11 before selling or shipping a trade stimulator to a licensed
12 wholesaler in the state. Each person shall apply to the
13 department in person.

14 (2) An application for an approved manufacturer's
15 license shall include but not be limited to the following
16 information:

17 (a) a general description of the applicant's
18 organization;

19 (b) the names and home addresses of the owners, board
20 of directors, members, and officers of the organization; and

21 (c) a financial condition statement to insure
22 financial responsibility.

23 (3) Each applicant shall sign a written consent to
24 conform to the regulations of the department when shipping
25 or selling trade stimulators in the state and post a

1 performance bond if considered necessary by the department.
2 A bond is subject to forfeiture together with license in the
3 event of willful violation of the regulations of the
4 department.

5 (4) An application for an approved manufacturer's
6 license shall be accompanied by a fee of \$600. Upon approval
7 of the application, this fee shall be considered the annual
8 license fee for a manufacturer's license. Upon approval of
9 the application, this fee shall be considered the annual
10 license fee for a manufacturer license.

11 NEW SECTION. Section 7. Exhibitor's license --
12 application form -- fee. (1) Every exhibitor shall obtain a
13 license from the department before engaging in the business
14 of an exhibitor.

15 (2) An application for an exhibitor's license shall
16 include but not be limited to the following information:

17 (a) the name and type of the applicant's business;

18 (b) the name and home address of the owners, board of
19 directors, members, and officers and their length of
20 residence in Montana; and

21 (c) a financial disclosure to insure financial
22 responsibility.

23 (3) An application for an exhibitor's license shall be
24 accompanied by a fee of \$30. Upon approval of the
25 application, this fee shall be considered the annual license

1 fee for an exhibitor's license.

2 NEW SECTION. Section 8. License restricted --
3 residency required. (1) No license for the business of
4 wholesaler or retailer or exhibitor may be issued to a
5 person who has been convicted of a felony or who has had a
6 license revoked under the Montana Card Games Act or Bingo
7 and Raffles Law.

8 (2) A person must have resided in Montana a minimum
9 of:

10 (a) 1 year immediately prior to the application for an
11 exhibitor's license;

12 (b) 3 years immediately prior to the application for a
13 retailer's license; and

14 (c) 5 years immediately prior to the application for a
15 wholesaler's license.

16 NEW SECTION. Section 9. Renewal and display of
17 license. (1) A wholesaler, retailer, manufacturer, or
18 exhibitor shall renew his license annually upon payment of
19 the annual fee in the amount set forth in [sections 1
20 through 15]. Each license is effective for 1 year.

21 (2) Each license, except the manufacturer's license,
22 shall be prominently displayed on the licensed premises, and
23 separate licenses shall be displayed in each place of
24 business owned or controlled by the licensee.

25 NEW SECTION. Section 10. Duties of approved

1 manufacturer -- licensed wholesaler -- licensed retailer.

2 (1) An approved manufacturer shall report, in writing,
3 delivery of trade stimulators to a licensed wholesaler in
4 the state. The report shall be on a form provided by the
5 department, including but not limited to the following
6 information:

7 (a) the date the trade stimulator was delivered;

8 (b) the wholesaler to whom the trade stimulator was
9 delivered;

10 (c) the number of trade stimulators delivered; and

11 (d) the value of the trade stimulators delivered.

12 (2) Licensed wholesalers who purchase trade
13 stimulators from a manufacturer shall keep a record of the
14 number, kind, quantity, and value of all sales to licensed
15 retailers. These records shall be made available to the
16 department on request and maintained for a period of time to
17 be determined by the department.

18 (3) In-state manufacturing licensed wholesalers shall
19 keep a record of the serial number, kind, quantity, and
20 value of all sales to licensed retailers in the state. These
21 records shall be maintained and made available as provided
22 in subsection (2).

23 (4) All licensed retailers shall keep a record of the
24 serial number, device description, and value of all trade
25 stimulators sold to exhibitors and the exhibitor's name and

1 address.

2 NEW SECTION. Section 11. Disposition of license fees
3 — transfer to general fund — justification of expense. (1)
4 All license fees collected under the provisions of [sections
5 1 through 15] shall be deposited monthly with the state
6 treasurer in the department's trade stimulator account.
7 There shall be appropriated to the department from the trade
8 stimulator account such sums as may be necessary to comply
9 with the provisions of [sections 1 through 15] during the
10 fiscal biennium. On or before June 30 of each fiscal
11 biennium, the department shall pay to the state treasurer to
12 the credit of the trade stimulator account all funds in
13 excess of those funds needed to administer [sections 1
14 through 15].

15 (2) All expenses charged against the account created
16 by [sections 1 through 15] shall be justified by itemized
17 claims together with standard accounting reports.

18 NEW SECTION. Section 12. Enforcement — penalties.
19 (1) The department has the duty to enforce the provisions of
20 [sections 1 through 15].

21 (2) A person who purposely or knowingly violates or
22 who procures, aids, or abets in a violation of the
23 provisions of [sections 1 through 15] is guilty of a
24 misdemeanor and upon conviction shall be punished by a fine
25 of not more than \$1,000 or imprisonment in the county jail

1 for a term of not more than 3 months, or both. If the person
2 convicted holds a license issued under [sections 1 through
3 15], the license shall be revoked by the department for a
4 period of not less than 1 year.

5 (3) Any person who purposely or knowingly comes into
6 possession of a bootleg trade stimulator as defined in
7 [sections 1 through 15] or aids or abets in its use,
8 transport, or creation is guilty of a misdemeanor and upon
9 conviction shall be punished by a fine of not more than
10 \$1,000 or imprisonment in the county jail for a term of not
11 more than 3 months, or both. If the person convicted holds a
12 license issued under [sections 1 through 15], the license
13 shall be revoked for a period of not less than 5 years.

14 NEW SECTION. Section 13. Transportation exempt from
15 federal law. The transportation of devices authorized herein
16 is declared exempt from the provisions of 15 U.S.C. 1172.

17 NEW SECTION. Section 14. Minors not to participate.
18 No person under 18 years of age may be permitted to play a
19 trade stimulator authorized by [sections 1 through 15].

20 NEW SECTION. Section 15. Rules adopted by the
21 department. The department shall adopt rules necessary for
22 the administration of [this act] in accordance with the
23 Montana Administrative Procedure Act.

24 Section 16. Section 23-5-101, MCA, is amended to read:
25 "23-5-101. Definitions. (1) A slot machine is defined

1 as a machine operated by inserting a coin, token, chip,
2 trade check, or paper currency therein by the player and
3 from the play of which he obtains or may obtain money,
4 checks, chips, tokens, or paper currency redeemable in
5 money. Merchandise vending machines and trade stimulators as
6 defined in [section 1] where the element of chance does not
7 enter into their operation are not within the provisions of
8 this part.

9 (2) In addition to their ordinary meaning, the words
10 "person" or "persons", as used in this part, include both
11 natural and artificial persons and all partnerships,
12 corporations, associations, clubs, fraternal orders, and
13 societies, including religious, fraternal, and charitable
14 organizations."

15 Section 17. Severability. If a part of this act is
16 invalid, all valid parts that are severable from the invalid
17 part remain in effect. If a part of this act is invalid in
18 one or more of its applications, the part remains in effect
19 in all valid applications that are severable from the
20 invalid applications.

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