

HOUSE BILL 746

Introduced by Pavlovich, et al.

2/20	Introduced
2/22	Referred to Busines & Economic Development
2/28	Fiscal Note Requested
3/06	Fiscal Note Received
3/09	Fiscal Note Printed
3/10	Hearing
3/20	Committee Report--Bill Passed as Amended
3/29	2nd Reading Do Pass Motion Failed

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INTRODUCED BY *Boysse* BILL NO. *746*  
*Whalen* *Quair* *Quarles* *Harvigh* *McLure*  
 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR  
 LICENSING AND PLACEMENT OF PUNCHBOARD AND PULLTAB GAMES; TO  
 PROVIDE QUALIFICATIONS FOR A LICENSE TO MANUFACTURE OR  
 DISTRIBUTE AUTHORIZED GAMES; TO PROVIDE FOR STATUTORY  
 APPROPRIATION AND DISTRIBUTION OF REVENUE; TO PROVIDE FOR  
 PENALTIES; AMENDING SECTIONS 17-7-502 AND 23-5-103, MCA; AND  
 PROVIDING AN EFFECTIVE DATE."

#### STATEMENT OF INTENT

A statement of intent is required for this bill because  
 [section 7] gives the department of commerce authority to  
 make rules to implement and regulate the licensing of  
 punchboard and pulltab games and the distribution of the  
 fees received from the licensing of and taxes on the games.

It is the intent of the legislature that rules be  
 adopted to protect the health, welfare, and safety of the  
 citizens of Montana and to assure compliance with this bill.

The rules should at a minimum:

- (1) ensure the integrity and security of the games;
- (2) provide a method of examining the qualifications  
 of license applicants and licensees;
- (3) provide for investigation procedures;



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(4) provide a procedure for monitoring the games in  
 play to assure their compliance with this bill;

(5) provide that no game be made available to the  
 public for play unless the retailer has been duly licensed  
 and has paid the fee provided for in [section 6].

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

NEW SECTION. **Section 1.** Short title. [Sections 1  
 through 12] may be cited as the "Punchboard and Pulltab  
 Games Control Act".

NEW SECTION. **Section 2.** Definitions. As used in  
 [sections 1 through 12], the following definitions apply:

- (1) "Department" means the department of commerce.
- (2) "Distributor" means an individual, partnership,  
 corporation, or association that sells, markets, or  
 otherwise distributes games authorized by [sections 1  
 through 12].
- (3) "Gross proceeds" means all money collected or  
 received from games authorized by [sections 1 through 12].
- (4) "Licensee" means an individual, partnership,  
 corporation, or association that has been issued a license  
 by the department.
- (5) "Manufacturer" means an individual, partnership,  
 corporation, or association that designs, assembles,  
 fabricates, produces, constructs, or otherwise prepares a

1 product or component part of a product that is authorized  
2 for use under [sections 1 through 12].

3 (6) "Pulltab" means a folded or banded ticket or a  
4 card with a face covered to conceal one or more numbers or  
5 symbols, where one or more of each set of tickets or cards  
6 has been designated in advance as a winner.

7 (7) "Punchboard" means a board or device containing a  
8 number of holes or receptacles of a uniform size in which  
9 are placed, mechanically and at random, serially numbered  
10 slips of paper, some of which have been designated in  
11 advance as winners, that may be punched or drawn from a hole  
12 or receptacle.

13 NEW SECTION. Section 3. Licensure -- restriction. (1)  
14 A person may not possess, place, manufacture, distribute, or  
15 offer for play a game of chance authorized by [sections 1  
16 through 12] unless the person is licensed by the department  
17 under [section 4 or 5].

18 (2) A person under 18 years of age may not play,  
19 possess, or offer for play a game of chance authorized by  
20 [sections 1 through 12].

21 NEW SECTION. Section 4. Retail license qualifications  
22 -- right to hearing. (1) A person who has been granted a  
23 license under 16-4-201 to sell alcoholic beverages for  
24 consumption on the premises may be granted a license by the  
25 department for offering to the public at the licensed

1 establishment the games authorized by [sections 1 through  
2 12].

3 (2) A person who is denied a license has the right to  
4 a hearing before the department. The hearing must be  
5 conducted in accordance with the provisions of the Montana  
6 Administrative Procedure Act.

7 NEW SECTION. Section 5. Manufacturer's or  
8 distributor's license -- qualifications -- right to hearing.

9 (1) It is unlawful for any person to manufacture, sell, or  
10 distribute any punchboard or pulltab game as defined in  
11 [section 2] unless the person has been issued a license by  
12 the department.

13 (2) An applicant for issuance or renewal of a  
14 manufacturer's or distributor's license shall:

15 (a) have been a resident of the state for 30 days  
16 prior to application;

17 (b) apply to the department on forms prescribed by the  
18 department;

19 (c) supply any information that the department  
20 considers necessary to determine suitability for licensure;

21 (d) establish to the satisfaction of the department  
22 that the applicant's past record and present status as a  
23 manufacturer or distributor of gambling devices and as a  
24 business person and citizen demonstrate that the applicant  
25 is likely to conduct business in compliance with all laws.

1 If the applicant is a corporation, the officers and any  
2 stockholders possessing 10% or more of the total outstanding  
3 stock shall meet the same requirements as an individual  
4 applicant under this section.

5 (3) A person denied a license has the right to a  
6 hearing before the department. The hearing must be conducted  
7 in accordance with the provisions of the Montana  
8 Administrative Procedure Act.

9 NEW SECTION. Section 6. License fees -- expiration.

10 (1) The department shall charge the following annual license  
11 fees:

- 12 (a) for a retail license, \$100;
- 13 (b) for a distributor's license, \$1,000;
- 14 (c) for a manufacturer's license, \$2,000.

15 (2) A license issued by the department expires on the  
16 next June 30, and the license fee may not be prorated.

17 (3) The department shall retain the license fees for  
18 the purpose of administering [sections 1 through 12]. There  
19 is an account in the state special revenue fund into which  
20 money from the license fees collected under the provisions  
21 of subsection (1) must be deposited. The money in the  
22 account is appropriated, as provided in 17-7-502, to the  
23 department for the purpose of administering [sections 1  
24 through 12].

25 NEW SECTION. Section 7. Powers and duties of the

1 department. (1) The department shall administer the  
2 provisions of [sections 1 through 12].

3 (2) The department shall adopt rules to implement  
4 [sections 1 through 12] and:

5 (a) with respect to state licenses:

- 6 (i) provide licensing procedures;
- 7 (ii) prescribe the necessary forms; and
- 8 (iii) grant or deny license applications;

9 (b) with respect to the gross proceeds tax in [section  
10 9]:

- 11 (i) prescribe recordkeeping requirements for  
12 licensees;
- 13 (ii) provide a procedure for inspection of records; and
- 14 (iii) establish penalties for the delinquent reporting  
15 and payment of the required tax;

16 (c) establish the design, format, and criteria that a  
17 game must meet in order to be authorized for play in the  
18 state.

19 (3) The department may not suspend, revoke, deny, or  
20 place a condition on a license except for reasonable cause.

21 (4) The department is a criminal justice agency, and  
22 designated employees and duly authorized representatives are  
23 granted peace officer status with the powers of search,  
24 seizure, and arrest to regulate and control persons licensed  
25 under [sections 1 through 12].

**NEW SECTION. Section 8. Punchboard and pulltab games**

-- costs -- prizes. The price per ticket for a game authorized by [sections 1 through 12] may not exceed \$2 and the maximum prize may not exceed \$800. In the case of merchandise prizes, the value is determined by current retail price. Each game offered under [sections 1 through 12] must be a random game and must award prizes at a minimum of 80% of the gross value of the game. All winning possibilities must be displayed.

**NEW SECTION. Section 9. Gross proceeds tax -- records**

-- distribution -- quarterly statement and payment. (1) Each licensed distributor of games shall:

(a) collect, at the time of sale of the game to a retail licensee, a gross proceeds tax of 3% of the gross value of the game;

(b) submit, within 15 days after the end of each quarter, the proceeds of the tax on forms and with any information as the department may require; and

(c) keep a record of all taxes collected in the manner required by the department. The records must be available for inspection by the department, its agents, or employees at all times during the business hours of the licensee.

(2) The department shall:

(a) retain 10% of the collected tax for the purpose of administering [sections 1 through 12];

(b) deposit one-third of the remainder of the tax collected under subsection (1) in the general fund; and

(c) forward the remainder of the tax collected under subsection (1) to the treasurer or finance officer of the city or town in which the authorized game is offered or to the treasurer or finance officer of the county if the game is not offered in a city or town, for deposit to the treasury.

(3) Money from the taxes collected under the provisions of subsection (1) must be deposited in the account created in [section 6]. The money in the account is statutorily appropriated, as provided in 17-7-502, to the department for the purpose of administering [sections 1 through 12] and the local government portion of tax as provided in subsection (2) must be deposited to the county or municipal treasury.

**NEW SECTION. Section 10. Investigations and violations.** (1) The department or duly authorized department representatives shall make necessary investigations, suspend or revoke licenses for violations of [sections 1 through 12], and hold hearings on such matters.

(2) A violation of [sections 1 through 12] or a rule promulgated under the provisions of [sections 1 through 12] is a criminal offense and upon conviction is punishable by a fine not to exceed \$10,000 for the first offense. A \$15,000

1 fine must be imposed for a subsequent violation.

2 (3) If a game or device is operated in violation of  
3 [sections 1 through 12], it may be seized under 23-5-121,  
4 and the provisions of 23-5-122 apply.

5 (4) Employees or duly authorized representatives of  
6 the department designated as enforcement agents may  
7 investigate the background of license applicants to the  
8 extent judged necessary by the department, but a person may  
9 not be investigated prior to submission of an application  
10 for a license.

11 NEW SECTION. Section 11. Penalties -- hearing. If the  
12 department determines after a hearing conducted pursuant to  
13 the Montana Administrative Procedure Act that a person  
14 licensed under [section 4 or 5] has violated any of the  
15 provisions of [sections 1 through 12] or the department's  
16 rules, the department may, in addition to the other  
17 penalties prescribed:

18 (1) suspend the license for a period of not more than  
19 180 days;

20 (2) impose a civil penalty not to exceed \$6,000;

21 (3) place a license on probation and set terms of the  
22 probation;

23 (4) deny renewal of the license on expiration;

24 (5) revoke a license; or

25 (6) impose a combination of any two of the penalties

1 set forth in subsections (1) through (5).

2 NEW SECTION. Section 12. Judicial review of agency  
3 decision. (1) An interested party has the right to judicial  
4 review of a final decision of the department concerning the  
5 granting, denial, renewal, revocation, or suspension of a  
6 license required under [sections 1 through 12].

7 (2) A petition for judicial review must conform to the  
8 provisions of Title 2, chapter 4, part 7.

9 **Section 13.** Section 17-7-502, MCA, is amended to read:

10 **"17-7-502. Statutory appropriations -- definition --**  
11 **requisites for validity.** (1) A statutory appropriation is an  
12 appropriation made by permanent law that authorizes spending  
13 by a state agency without the need for a biennial  
14 legislative appropriation or budget amendment.

15 (2) Except as provided in subsection (4), to be  
16 effective, a statutory appropriation must comply with both  
17 of the following provisions:

18 (a) The law containing the statutory authority must be  
19 listed in subsection (3).

20 (b) The law or portion of the law making a statutory  
21 appropriation must specifically state that a statutory  
22 appropriation is made as provided in this section.

23 (3) The following laws are the only laws containing  
24 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;  
25 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304;

1 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101;  
 2 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424;  
 3 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205;  
 4 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606;  
 5 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111;  
 6 23-5-610; 23-5-1027; [section 6]; [section 9]; 33-31-212;  
 7 33-31-401; 37-51-501; 39-71-2504; 53-6-150; 53-24-206;  
 8 67-3-205; 75-1-1101; 75-7-305; 76-12-123; 80-2-103;  
 9 80-2-228; 82-11-136; 90-3-301; 90-3-302; 90-3-412; 90-4-215;  
 10 90-9-306; 90-15-103; section 13, House Bill No. 861, Laws of  
 11 1985; and section 1, Chapter 454, Laws of 1987.

12 (4) There is a statutory appropriation to pay the  
 13 principal, interest, premiums, and costs of issuing, paying,  
 14 and securing all bonds, notes, or other obligations, as due,  
 15 that have been authorized and issued pursuant to the laws of  
 16 Montana. Agencies that have entered into agreements  
 17 authorized by the laws of Montana to pay the state  
 18 treasurer, for deposit in accordance with 17-2-101 through  
 19 17-2-107, as determined by the state treasurer, an amount  
 20 sufficient to pay the principal and interest as due on the  
 21 bonds or notes have statutory appropriation authority for  
 22 such payments. (In subsection (3): pursuant to sec. 15, Ch.  
 23 607, L. 1987, the inclusion of 15-65-121 terminates June 30,  
 24 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion  
 25 of 39-71-2504 terminates June 30, 1991; and pursuant to sec.

1 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L.  
 2 1987, terminates July 1, 1988.)"

3 **Section 14.** Section 23-5-103, MCA, is amended to read:

4 "23-5-103. Possession of gambling implements  
 5 prohibited. Any person who has in his possession or under  
 6 his control or who permits to be placed, maintained, or kept  
 7 in any room, space, enclosure, or building owned, leased, or  
 8 occupied by him or under his management or control any faro  
 9 box, faro layout, roulette wheel, roulette table, crap  
 10 table, ~~punchboard~~, or any machine or apparatus of the kind  
 11 mentioned in 23-5-102 is punishable by a fine of not less  
 12 than \$100 or more than \$1,000 and may be imprisoned for not  
 13 less than 3 months or more than 1 year in the discretion of  
 14 the court, provided that this section shall not apply to a  
 15 public officer or to a person coming into possession thereof  
 16 in or by reason of the performance of an official duty and  
 17 holding the same to be disposed of according to law."

18 NEW SECTION. **Section 15.** Codification instruction.  
 19 [Sections 1 through 12] are intended to be codified as an  
 20 integral part of Title 23, chapter 5, and the provisions of  
 21 Title 23, chapter 5 apply to [sections 1 through 12].

22 NEW SECTION. **Section 16.** Effective date. [This act]  
 23 is effective July 1, 1989.

-End-

In compliance with a written request, there is hereby submitted a Fiscal Note for HB746, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

HB746 would provide for the licensing and placement of punchboard and pulltab games under the authority of the Department of Commerce, with related licenses, rules, statutory appropriation and penalties.

ASSUMPTIONS:

1. A retail license will be obtained by 2,000 of the possible 2,200 retail outlets.
2. There will be ten distributors in the state.
3. There will be five manufacturers in the state.
4. There will be a \$23 per capita expenditure on punchboards and pulltabs per year for total annual gross sales of \$18,860,000. The national average per capita expenditure is \$30 in states where punchboards and pulltabs are available, but a lower per capita amount is used for purpose of this fiscal note because of the variety of other gaming activities available to Montana residents.
5. Assume a population of 820,000 for purposes of this fiscal note.
6. The Department of Commerce will determine the amount of service required for field investigation and enforcement required for implementation of the proposed law and contract with the Department of Revenue for the services. For purposes of this fiscal note, the Department of Commerce assumes a \$25,000 per year contract with the Department of Revenue.
7. Based on the experiences of other states, the Department of Commerce would require 7.00 FTE at an annual cost of \$154,300, plus operating and equipment expenses of \$122,280 per year, including the cost of service contracts with the Department of Revenue.
8. These costs of administration can be funded by the tax and license fees contained in the proposed law.

FISCAL IMPACT:

Expenditures:

Dept. of Commerce	Current	FY90	Difference	Current	FY91	Difference
	<u>Law</u>	<u>Proposed</u> <u>Law</u>		<u>Law</u>	<u>Proposed</u> <u>Law</u>	
Personal Expenses	\$ -0-	\$154,300	\$154,300	\$ -0-	\$154,300	\$154,300
Operating Expenses	-0-	92,680	92,680	-0-	91,880	91,880
Equipment	-0-	29,600	29,600	-0-	30,400	30,400
Total	\$ -0-	\$276,580	\$276,580	\$ -0-	\$276,580	\$276,580

*Ray Shackelford*

DATE 3/6/89

RAY SHACKLEFORD, BUDGET DIRECTOR  
OFFICE OF BUDGET AND PROGRAM PLANNING

*Robert J. Pavlovich*

DATE 3/8/89

ROBERT J. PAVLOVICH, PRIMARY SPONSOR

Fiscal Note for HB746, as introduced

**HB 746**



Fiscal Note Request HB746, as introduced  
Form BD-15  
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	Current <u>Law</u>	FY90 Proposed <u>Law</u>	<u>Difference</u>	Current <u>Law</u>	FY91 Proposed <u>Law</u>	<u>Difference</u>
<u>Funding:</u>						
License Fees	\$ -0-	\$220,000	\$220,000	\$ -0-	\$220,000	\$220,000
Gaming Tax Administration	-0-	56,580	56,580	-0-	56,580	56,580
Total	\$ -0-	\$276,580	\$276,580	\$ -0-	\$276,580	\$276,589
<u>Revenues:</u>						
To General Fund	\$ -0-	\$169,723	\$169,723	\$ -0-	\$169,723	\$169,723
To Local Governments	\$ -0-	339,497	339,497	\$ -0-	339,497	339,497

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

Distributions to local governments will increase by approximately \$339,497 per year.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

There will be increased general fund revenue of approximately \$169,723 per year.

APPROVED BY COMM. ON BUSINESS  
AND ECONOMIC DEVELOPMENT

## HOUSE BILL NO. 746

INTRODUCED BY PAVLOVICH, DAILY, MENAHAN, WHALEN,

DRISCOLL, D. BROWN, HARRINGTON, MCCORMICK,

O'CONNELL, QUILICI, STANG, GERVAIS

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR  
LICENSING AND PLACEMENT OF PUNCHBOARD AND PULLTAB GAMES; TO  
PROVIDE QUALIFICATIONS FOR A LICENSE TO MANUFACTURE OR  
DISTRIBUTE AUTHORIZED GAMES; TO PROVIDE FOR STATUTORY  
APPROPRIATION AND DISTRIBUTION OF REVENUE; TO PROVIDE FOR  
PENALTIES; AMENDING SECTIONS 17-7-502 AND 23-5-103, MCA; AND  
PROVIDING AN A DELAYED EFFECTIVE DATE."

## STATEMENT OF INTENT

A statement of intent is required for this bill because  
[section 7] gives the department of commerce authority to  
make rules to implement and regulate the licensing of  
punchboard and pulltab games and the distribution of the  
fees received from the licensing of and taxes on the games.

It is the intent of the legislature that rules be  
adopted to protect the health, welfare, and safety of the  
citizens of Montana and to assure compliance with this bill.

The rules should at a minimum:

- (1) ensure the integrity and security of the games;
- (2) provide a method of examining the qualifications

of license applicants and licensees;

(3) provide for investigation procedures;

(4) provide a procedure for monitoring the games in  
play to assure their compliance with this bill;

(5) provide that no game be made available to the  
public for play unless the retailer has been duly licensed  
and has paid the fee provided for in [section 6].

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

NEW SECTION. Section 1. Short title. [Sections 1  
through ~~12~~ 13] may be cited as the "Punchboard and Pulltab  
Games Control Act".

NEW SECTION. Section 2. Definitions. As used in  
[sections 1 through ~~12~~ 13], the following definitions apply:  
(1) "ADJUSTED GROSS PROCEEDS" MEANS ALL MONEY  
COLLECTED OR RECEIVED FROM GAMES AUTHORIZED BY [SECTIONS 1  
THROUGH 13] MINUS PRIZES PAID.

~~{1}~~(2) "Department" means the department of commerce.

~~{2}~~(3) "Distributor" means an individual, partnership,  
corporation, or association that sells, markets, or  
otherwise distributes games authorized by [sections 1  
through ~~12~~ 13].

~~{3}~~--"Gross--proceeds"--means--all--money--collected--or  
received--from--games--authorized--by--{sections--1--through--~~12~~--}

(4) "Licensee" means an individual, partnership,

1 corporation, or association that has been issued a license  
2 by the department.

3 (5) "Manufacturer" means an individual, partnership,  
4 corporation, or association that designs, assembles,  
5 fabricates, produces, constructs, or otherwise prepares a  
6 product or component part of a product that is authorized  
7 for use under [sections 1 through ~~12~~ 13].

8 (6) "Pulltab" means a folded or banded ticket or a  
9 card with a face covered to conceal one or more numbers or  
10 symbols, where one or more of each set of tickets or cards  
11 has been designated in advance as a winner.

12 (7) "Punchboard" means a board or device containing a  
13 number of holes or receptacles of a uniform size in which  
14 are placed, mechanically and at random, serially numbered  
15 slips of paper, some of which have been designated in  
16 advance as winners, that may be punched or drawn from a hole  
17 or receptacle.

18 NEW SECTION. Section 3. Licensure -- restriction. (1)  
19 A person may not possess, place, manufacture, distribute, or  
20 offer for play a game of chance authorized by [sections 1  
21 through ~~12~~ 13] unless the person is licensed by the  
22 department under [section 4 or 5].

23 (2) A person under 18 years of age may not play,  
24 possess, or offer for play a game of chance authorized by  
25 [sections 1 through ~~12~~ 13].

1 NEW SECTION. Section 4. Retail license qualifications  
2 -- right to hearing. (1) A person who has been granted a  
3 license under 16-4-201 to sell alcoholic beverages for  
4 consumption on the premises may be granted a license by the  
5 department for offering to the public at the licensed  
6 establishment the games authorized by [sections 1 through ~~12~~  
7 13].

8 (2) A person who is denied a license has the right to  
9 a hearing before the department. The hearing must be  
10 conducted in accordance with the provisions of the Montana  
11 Administrative Procedure Act.

12 NEW SECTION. Section 5. Manufacturer's or  
13 distributor's license -- qualifications -- right to hearing.  
14 (1) It is unlawful for any person to manufacture FOR SALE IN  
15 THIS STATE, sell, or distribute any punchboard or pulltab  
16 game as defined in [section 2] unless the person has been  
17 issued a license by the department.

18 (2) An applicant for issuance or renewal of a  
19 ~~manufacturer's or distributor's license shall:~~

20 (a) MUST have been a resident of the state for 30 days  
21 prior to application.

22 (3) AN APPLICANT FOR ISSUANCE OR RENEWAL OF A  
23 MANUFACTURER'S OR DISTRIBUTOR'S LICENSE SHALL:

24 (b) (A) apply to the department on forms prescribed by  
25 the department;

~~(c)~~(B) supply any information that the department considers necessary to determine suitability for licensure; ~~(d)~~(C) establish to the satisfaction of the department that the applicant's past record and present status as a manufacturer or distributor of gambling devices and as a business person and citizen demonstrate that the applicant is likely to conduct business in compliance with all laws. If the applicant is a corporation, the officers and any stockholders possessing 10% or more of the total outstanding stock shall meet the same requirements as an individual applicant under this section.

~~(3)~~(4) A person denied a license has the right to a hearing before the department. The hearing must be conducted in accordance with the provisions of the Montana Administrative Procedure Act.

**NEW SECTION. Section 6. License fees -- expiration.**

(1) The department shall charge the following annual license fees:

- (a) for a retail license, \$100;
- (b) for a distributor's license, \$1,000;
- (c) for a manufacturer's license, \$2,000.

(2) A license issued by the department expires on the next June 30, and the license fee may not be prorated.

(3) The department shall retain the license fees for the purpose of administering [sections 1 through ~~12~~ 13].

There is an account in the state special revenue fund into which money from the license fees collected under the provisions of subsection (1) must be deposited. The money in the account is appropriated, as provided in 17-7-502, to the department for the purpose of administering [sections 1 through ~~12~~ 13].

**NEW SECTION. Section 7. Powers and duties of the department.** (1) The department shall administer the provisions of [sections 1 through ~~12~~ 13].

(2) The department shall adopt rules to implement [sections 1 through ~~12~~ 13] and:

(a) with respect to state licenses:

- (i) provide licensing procedures;
- (ii) prescribe the necessary forms; and
- (iii) grant or deny license applications;

(b) with respect to the ADJUSTED gross proceeds tax in [section 9]:

- (i) prescribe recordkeeping requirements for licensees;
- (ii) provide a procedure for inspection of records; and
- (iii) establish penalties for the delinquent reporting and payment of the required tax;

(c) establish the design, format, and criteria that a game must meet in order to be authorized for play in the state.

(3) The department may not suspend, revoke, deny, or place a condition on a license except for reasonable cause.

(4) The department is a criminal justice agency, and designated employees and duly authorized representatives are granted peace officer status with the powers of search, seizure, and arrest to regulate and control persons ~~licensed under~~ WHO OFFER OR MAKE AVAILABLE GAMES AUTHORIZED BY [sections 1 through ~~12~~ 13].

NEW SECTION. Section 8. Punchboard and pulltab games  
 -- costs -- prizes. The price per ticket for a game authorized by [sections 1 through ~~12~~ 13] may not exceed \$2 and the maximum prize may not exceed \$800 ~~\$500~~. In the case of merchandise prizes, the value is determined by current retail price. Each game offered under [sections 1 through ~~12~~ 13] ~~must be a random game~~ COMPLY WITH STANDARDS PROMULGATED BY THE DEPARTMENT and must award prizes at a minimum of ~~80%~~ 70% of the gross value of the game. All winning possibilities must be displayed.

NEW SECTION. Section 9. Gross ~~ADJUSTED GROSS~~ proceeds tax -- records -- distribution -- quarterly statement and payment. (1) Each licensed distributor of games shall:

(a) collect, at the time of sale of the game to a retail licensee, a AN ADJUSTED gross proceeds tax of ~~3%~~ 5% of the gross value of the game;

(b) submit, within 15 days after the end of each

quarter, the proceeds of the tax on forms and with any information as the department may require; and

(c) keep a record of all taxes collected in the manner required by the department. The records must be available for inspection by the department, its agents, or employees at all times during the business hours of the licensee.

(2) The department shall:

(a) retain 10% of the collected tax for the purpose of administering [sections 1 through ~~12~~ 13];

(b) deposit one-third of the remainder of the tax collected under subsection (1) in the general fund; and

(c) forward the remainder of the tax collected under subsection (1) to the treasurer or finance officer of the city or town in which the authorized game is offered or to the treasurer or finance officer of the county if the game is not offered in a city or town, for deposit to the treasury.

(3) Money from the taxes collected under the provisions of subsection (1) must be deposited in the account created in [section 6]. The money in the account is statutorily appropriated, as provided in 17-7-502, to the department for the purpose of administering [sections 1 through ~~12~~ 13], and the local government portion of tax as provided in subsection (2) must be deposited to the county or municipal treasury.

**NEW SECTION. Section 10.** Investigations and violations. (1) The department or duly authorized department representatives shall make necessary investigations, suspend or revoke licenses for violations of [sections 1 through ~~12~~ 13], and hold hearings on such matters.

(2) A violation of [sections 1 through ~~12~~ 13] or a rule promulgated under the provisions of [sections 1 through ~~12~~ 13] is a criminal offense and upon conviction is punishable by a fine not to exceed \$10,000 for the first offense. A \$15,000 fine must be imposed for a subsequent violation.

(3) If a game or device is operated in violation of [sections 1 through ~~12~~ 13], it may be seized under 23-5-121, and the provisions of 23-5-122 apply.

(4) Employees or duly authorized representatives of the department designated as enforcement agents may investigate the background of license applicants to the extent judged necessary by the department, but a person may not be investigated prior to submission of an application for a license.

**NEW SECTION. SECTION 11. TAMPERING VIOLATION. A PERSON WHO PURPOSELY OR KNOWINGLY TAMPERS WITH OR CONSPIRES TO TAMPER WITH ANY GAME OR THE PLAY OF ANY GAME TO INFLUENCE THE OUTCOME OF THE GAME IS GUILTY OF A MISDEMEANOR.**

**NEW SECTION. Section 12.** Penalties -- hearing. If the

department determines after a hearing conducted pursuant to the Montana Administrative Procedure Act that a person licensed under [section 4 or 5] has violated any of the provisions of [sections 1 through ~~12~~ 13] or the department's rules, the department may, in addition to the other penalties prescribed:

(1) suspend the license for a period of not more than 180 days;

(2) impose a civil penalty not to exceed \$6,000;

(3) place a license on probation and set terms of the probation;

(4) deny renewal of the license on expiration;

(5) revoke a license; or

(6) impose a combination of any two of the penalties set forth in subsections (1) through (5).

**NEW SECTION. Section 13.** Judicial review of agency decision. (1) An interested party has the right to judicial review of a final decision of the department concerning the granting, denial, renewal, revocation, or suspension of a license required under [sections 1 through ~~12~~ 13].

(2) A petition for judicial review must conform to the provisions of Title 2, chapter 4, part 7.

**Section 14.** Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an

1 appropriation made by permanent law that authorizes spending  
2 by a state agency without the need for a biennial  
3 legislative appropriation or budget amendment.

4 (2) Except as provided in subsection (4), to be  
5 effective, a statutory appropriation must comply with both  
6 of the following provisions:

7 (a) The law containing the statutory authority must be  
8 listed in subsection (3).

9 (b) The law or portion of the law making a statutory  
10 appropriation must specifically state that a statutory  
11 appropriation is made as provided in this section.

12 (3) The following laws are the only laws containing  
13 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;  
14 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304;  
15 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101;  
16 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424;  
17 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205;  
18 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606;  
19 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111;  
20 23-5-610; 23-5-1027; [section 6]; [section 9]; 33-31-212;  
21 33-31-401; 37-51-501; 39-71-2504; 53-6-150; 53-24-206;  
22 67-3-205; 75-1-1101; 75-7-305; 76-12-123; 80-2-103;  
23 80-2-228; 82-11-136; 90-3-301; 90-3-302; 90-3-412; 90-4-215;  
24 90-9-306; 90-15-103; section 13, House Bill No. 861, Laws of  
25 1985; and section 1, Chapter 454, Laws of 1987.

1 (4) There is a statutory appropriation to pay the  
2 principal, interest, premiums, and costs of issuing, paying,  
3 and securing all bonds, notes, or other obligations, as due,  
4 that have been authorized and issued pursuant to the laws of  
5 Montana. Agencies that have entered into agreements  
6 authorized by the laws of Montana to pay the state  
7 treasurer, for deposit in accordance with 17-2-101 through  
8 17-2-107, as determined by the state treasurer, an amount  
9 sufficient to pay the principal and interest as due on the  
10 bonds or notes have statutory appropriation authority for  
11 such payments. (In subsection (3): pursuant to sec. 15, Ch.  
12 607, L. 1987, the inclusion of 15-65-121 terminates June 30,  
13 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion  
14 of 39-71-2504 terminates June 30, 1991; and pursuant to sec.  
15 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L.  
16 1987, terminates July 1, 1988.)"

17 **Section 15.** Section 23-5-103, MCA, is amended to read:

18 "23-5-103. Possession of gambling implements  
19 prohibited. Any person who has in his possession or under  
20 his control or who permits to be placed, maintained, or kept  
21 in any room, space, enclosure, or building owned, leased, or  
22 occupied by him or under his management or control any faro  
23 box, faro layout, roulette wheel, roulette table, crap  
24 table, punchboard, or any machine or apparatus of the kind  
25 mentioned in 23-5-102 is punishable by a fine of not less

1 than \$100 or more than \$1,000 and may be imprisoned for not  
2 less than 3 months or more than 1 year in the discretion of  
3 the court, provided that this section shall not apply to a  
4 public officer or to a person coming into possession thereof  
5 in or by reason of the performance of an official duty and  
6 holding the same to be disposed of according to law."

7 NEW SECTION. **Section 16.** Codification instruction.  
8 [Sections 1 through ~~12~~ 13] are intended to be codified as an  
9 integral part of Title 23, chapter 5, and the provisions of  
10 Title 23, chapter 5 apply to [sections 1 through ~~12~~ 13].

11 NEW SECTION. **Section 17.** Effective date. [This act]  
12 is effective ~~July--17--1989~~ 6 MONTHS AFTER PASSAGE AND  
13 APPROVAL.

-End-