

HOUSE BILL NO. 272

INTRODUCED BY J. RICE  
BY REQUEST OF THE DEPARTMENT OF JUSTICE

IN THE HOUSE

JANUARY 20, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.  FIRST READING.
JANUARY 21, 1993	ON MOTION, REREFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 5, 1993	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 6, 1993	PRINTING REPORT.
FEBRUARY 8, 1993	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 9, 1993	ENGROSSING REPORT.
FEBRUARY 10, 1993	THIRD READING, PASSED. AYES, 96; NOES, 2.
FEBRUARY 11, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 12, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.  FIRST READING.
MARCH 18, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 19, 1993	SECOND READING, CONCURRED IN.
MARCH 20, 1993	THIRD READING, CONCURRED IN. AYES, 42; NOES, 0.  RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 1, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
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APRIL 2, 1993

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 272  
2 INTRODUCED BY Joe  
3 BY REQUEST OF THE DEPARTMENT OF JUSTICE  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING  
6 THE GAMBLING LAWS; DEFINING "GIFT ENTERPRISE"; EXPANDING THE  
7 DEFINITION OF "LICENSE"; REVISING THE TRANSFER OF OWNERSHIP  
8 NOTIFICATION REQUIREMENT AND REQUIRING DEPARTMENT APPROVAL;  
9 REVISING THE THEFT DEDUCTION FROM THE VIDEO GAMBLING MACHINE  
10 TAX; CLARIFYING THAT A MANUFACTURER-DISTRIBUTOR MAY NOT  
11 SUPPLY UNAPPROVED MACHINES; AND AMENDING SECTIONS 23-5-110,  
12 23-5-111, 23-5-112, 23-5-113, 23-5-115, 23-5-117, 23-5-118,  
13 23-5-123, 23-5-136, 23-5-157, 23-5-161, 23-5-162, 23-5-171,  
14 23-5-172, 23-5-309, 23-5-610, AND 23-5-631, MCA."

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 **Section 1.** Section 23-5-110, MCA, is amended to read:

18 "23-5-110. Public policy of state concerning gambling.

19 (1) The legislature finds that for the purpose of ensuring  
20 the proper gambling environment in this state it is  
21 necessary and desirable to adopt a public policy regarding  
22 public gambling activities in Montana. The legislature  
23 therefore declares it is necessary to:

24 (a) create and maintain a uniform regulatory climate  
25 that assures players, owners, tourists, citizens, and others

1 that the gambling industry in this state is fair and is not  
2 influenced by corrupt persons, organizations, or practices;

3 (b) protect legal public gambling activities from  
4 unscrupulous players and vendors and detrimental influences;

5 (c) protect the public from unscrupulous proprietors  
6 and operators of gambling establishments, games, and  
7 devices;

8 (d) protect the state and local governments from those  
9 who would conduct illegal gambling activities that deprive  
10 those governments of their tax revenues;

11 (e) protect the health, safety, and welfare of all  
12 citizens of this state, including those who do not gamble,  
13 by regulating gambling activities; and

14 (f) promote programs necessary to provide assistance to  
15 those who are adversely affected by legalized gambling,  
16 including compulsive gamblers and their families.

17 (2) The legislature adopts the policy that an applicant  
18 for a license or permit or other department approval under  
19 parts 1 through 6 8 of this chapter does not have a right to  
20 the issuance of a license or permit or the granting of the  
21 approval sought. The issuance of a license or permit issued  
22 or other department approval granted pursuant to the  
23 provisions of parts 1 through 6 8 of this chapter is a  
24 privilege revocable only for good cause. A holder does not  
25 acquire a vested right in the license or permit issued or

other department approval granted. A license or permit issued under parts 1 through 6 8 of this chapter may not be sold, assigned, leased, or transferred.

(3) Revenue to fund the expense of administration and control of gambling as regulated by parts 1 through 6 8 of this chapter must be derived solely from fees, taxes, and penalties on gambling activities, except the gambling activities of the Montana state lottery and the parimutuel industry."

**Section 2.** Section 23-5-111, MCA, is amended to read:

"23-5-111. Construction and application. ~~{1}~~ In view of Article III, section 9, of the Montana constitution, Chapter ~~6427-laws-of-1989~~, parts 1 through 8 of this chapter must be strictly construed by the department and the courts to allow only those types of gambling and gambling activity that are specifically and clearly allowed by Chapter-~~6427-laws-of-1989~~ those parts.

~~{2}--This--chapter--applies--only--to--public--gambling activities--within--the--state--of--Montana--"~~

**Section 3.** Section 23-5-112, MCA, is amended to read:

"23-5-112. Definitions. Unless the context requires otherwise, the following definitions apply to parts 1 through 6 8 of this chapter:

(1) "Applicant" means a person who has applied for a license or permit issued by the department pursuant to parts

1 through 6 8 of this chapter.

(2) "Application" means a written request for a license or permit issued by the department. The department shall adopt rules describing the forms and information required for issuance of a license.

(3) "Authorized equipment" means, with respect to live keno or bingo, equipment that may be inspected by the department and that randomly selects the numbers.

(4) "Bingo" means a gambling activity played for prizes with a card bearing a printed design of 5 columns of 5 squares each, 25 squares in all. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns. ~~No--more~~ More than 75 numbers may not be used. One number must appear in each square, except for the center square, which may be considered a free play. Numbers are randomly drawn using authorized equipment until the game is won by the person or persons who first cover a previously designated arrangement of numbers on the bingo card.

(5) "Bingo caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live bingo.

(6) "Card game table" or "table" means a live card game table:

(a) authorized by permit and made available to the public on the premises of a licensed gambling operator; or

1 (b) operated by a senior citizen center.

2 (7) "Card game tournament" means a gambling activity

3 for which a permit has been issued involving participants

4 who pay valuable consideration for the opportunity to

5 compete against each other in a series of live card games

6 conducted over a designated period of time.

7 (8) "Dealer" means a person with a dealer's license

8 issued under part 3 of this chapter.

9 (9) "Department" means the department of justice.

10 (10) "Distributor" means a person who:

11 (a) purchases or obtains from another person equipment

12 of any kind for use in gambling activities; and

13 (b) sells, leases, or otherwise furnishes the equipment

14 to another person for use in public.

15 (11) "Gambling" or "gambling activity" means risking

16 money, credit, deposit, check, property, or any other thing

17 of value for a gain that is contingent in whole or in part

18 upon lot, chance, or the operation of a gambling device or

19 gambling enterprise. The term does not mean conducting or

20 participating in a promotional game of chance and does not

21 include amusement games regulated by Title 23, chapter 6,

22 part 1.

23 (12) "Gambling device" means a mechanical,

24 electromechanical, or electronic device, machine, slot

25 machine, instrument, apparatus, contrivance, scheme, or

1 system used or intended for use in any gambling activity.

2 (13) "Gambling enterprise" means an activity, scheme, or

3 agreement or an attempted activity, scheme, or agreement to

4 provide gambling or a gambling device to the public.

5 (14) "Gift enterprise" means a gambling activity in

6 which persons have qualified to obtain property to be

7 awarded by purchasing or agreeing to purchase goods or

8 services. The term does not mean:

9 (a) a cash or merchandise attendance prize or premium

10 that county fair commissioners of agricultural fairs and

11 rodeo associations may give away at public drawings at fairs

12 and rodeos;

13 (b) a promotional game of chance; or

14 (c) an amusement game regulated under chapter 6 of this

15 title.

16 ~~{14}~~(15) "Gross proceeds" means gross revenue received

17 less prizes paid out.

18 ~~{15}~~(16) "Illegal gambling device" means a gambling

19 device not specifically authorized by statute or by the

20 rules of the department. The term includes:

21 (a) a ticket or card, by whatever name known,

22 containing concealed numbers or symbols that may match

23 numbers or symbols designated in advance as prize winners,

24 including a pull tab, punchboard, push card, tip board,

25 pickle ticket, break-open, or jar game, except for one used

under chapter 7 or under part 5 of this chapter or in a promotional game of chance approved by the department; and

(b) an apparatus, implement, or device, by whatever name known, specifically designed to be used in conducting an illegal gambling enterprise, including a faro box, faro layout, roulette wheel, roulette table, or craps table or a slot machine except as provided in 23-5-153.

~~(16)~~(17) "Illegal gambling enterprise" means a gambling enterprise that violates or is not specifically authorized by a statute or a rule of the department. The term includes:

(a) a card game, by whatever name known, involving any bank or fund from which a participant may win money or other consideration and that receives money or other consideration lost by the participant and includes the card games of blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;

(b) a dice game, by whatever name known, in which a participant wagers on the outcome of the roll of one or more dice, includes including craps, hazard, or chuck-a-luck, but does not include--an-activity-in-which-a-participant-rolls one-or-more-dice-for-a-chance-to-obtain--a--drink--or--music including activities authorized by 23-5-160; and

(c) sports betting, by whatever name known, in which a person places a wager on the outcome of an athletic event, including bookmaking, parlay bets, or sultan sports cards,

but not including those activities authorized in chapter 4 of this title and parts 2, and 5, and 8 of this chapter.

~~(17)~~(18) "Keno" means a game of chance in which prizes are awarded using a card with 8 horizontal rows and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at random at least 20 numbers out of numbers between 1 and 80, inclusive.

~~(18)~~(19) "Keno caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live keno.

~~(19)~~(20) "License" means an--operator's,--dealer's, a license for an operator, dealer, card room contractor, manufacturer of devices not legal in Montana, sports tab card manufacturer, manufacturer of electronic live bingo or keno equipment, or manufacturer-distributor's---license manufacturer-distributor issued to a person by the department.

~~(20)~~(21) "Licensee" means a person who has received a license from the department.

~~(21)~~(22) "Live card game" or "card game" means a card game that is played in public between persons on the premises of a licensed gambling operator or in a senior citizen center.

~~(22)~~(23) "Lottery" or "~~gift-enterprise~~" means a scheme,

by whatever name known, for the disposal or distribution of property by chance among persons who have paid or promised to pay valuable consideration for the chance of obtaining the property or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance. However, "gift-enterprise" The term does not mean:

(a) lotteries authorized under chapter 7, or

~~(b) cash or merchandise attendance prizes or premiums that the county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos of this title.~~

~~(23)(24)~~ "Manufacturer" means a person who assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind to be used as a gambling device.

~~(24)(25)~~ "Nonprofit organization" means a nonprofit corporation or nonprofit charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, senior citizens', or service organization established for purposes other than to conduct a gambling activity.

~~(25)(26)~~ "Operator" means a person who purchases, receives, or acquires, by lease or otherwise, and operates or controls for use in public, a gambling device or gambling

enterprise authorized under parts 1 through 6 8 of this chapter.

~~(26)(27)~~ "Permit" means approval from the department to make available for public play a gambling device or gambling enterprise approved by the department pursuant to parts 1 through 6 8 of this chapter.

~~(27)(28)~~ "Person" or "persons" means both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

~~(28)(29)~~ "Premises" means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator's license application and approved by the department.

~~(29)(30)~~ "Promotional game of chance" means a scheme, by whatever name known, for the disposal or distribution of property by chance among persons who have not paid or are not expected to pay any valuable consideration or who have not purchased or are not expected to purchase any goods or services for a chance to obtain the property, a portion of it, or a share in it.

~~(30)(31)~~ "Public gambling" means gambling conducted in:

(a) a place, building, or conveyance to which the public has access or may be permitted to have access;

(b) a place of public resort, including but not limited

1 to a facility owned, managed, or operated by a partnership,  
2 corporation, association, club, fraternal order, or society,  
3 including a religious or charitable organization; or

4 (c) a place, building, or conveyance to which the  
5 public does not have access if players are publicly  
6 solicited or the gambling activity is conducted in a  
7 predominantly commercial manner.

8 ~~(32)~~ (32) "Raffle" means a form of lottery in which each  
9 participant pays valuable consideration for a ticket to  
10 become eligible to win a prize. Winners must be determined  
11 by a random selection process approved by department rule.

12 ~~(33)~~ (33) "Senior citizen center" means a facility  
13 operated by a nonprofit or governmental organization that  
14 provides services to senior citizens in the form of daytime  
15 or evening educational or recreational activities and does  
16 not provide living accommodations to senior citizens.  
17 Services qualifying under this definition must be recognized  
18 in the state plan on aging adopted by the department of  
19 family services.

20 ~~(34)~~ (34) "Slot machine" means a mechanical, electrical,  
21 electronic, or other gambling device, contrivance, or  
22 machine that, upon insertion of a coin, currency, token,  
23 credit card, or similar object or upon payment of any  
24 valuable consideration, is available to play or operate, the  
25 play or operation of which, whether by reason of the skill

1 of the operator or application of the element of chance, or  
2 both, may deliver or entitle the person playing or operating  
3 the gambling device to receive cash, premiums, merchandise,  
4 tokens, or anything of value, whether the payoff is made  
5 automatically from the machine or in any other manner. This  
6 definition does not apply to video gambling machines  
7 authorized under part 6 of this chapter.

8 ~~(35)~~ (35) "Video gambling machine" is a gambling device  
9 specifically authorized by part 6 of this chapter and the  
10 rules of the department."

11 **Section 4.** Section 23-5-113, MCA, is amended to read:

12 \*23-5-113. Department as criminal justice agency --  
13 seized property. (1) The department is a criminal justice  
14 agency. Designated agents of the department are granted  
15 peace officer status, with the power of search, seizure, and  
16 arrest, to investigate gambling activities in this state  
17 regulated by parts 1 through 6 8 of this chapter and the  
18 rules of the department and to report violations to the  
19 county attorney of the county in which they occur.

20 (2) Upon conviction for any violation of parts 1  
21 through 6 8 of this chapter, the court may order any  
22 property seized by a department or local law enforcement  
23 agent during a lawful search to be forfeited to the  
24 department, sold, if necessary, and disposed of under  
25 23-5-123."



**Section 5.** Section 23-5-115, MCA, is amended to read:

"23-5-115. Powers and duties of department -- licensing. (1) The department shall administer the provisions of parts 1 through 6 8 of this chapter.

(2) The department shall adopt rules to administer and implement parts 1 through 6 8 of this chapter.

(3) The department shall provide licensing procedures, prescribe necessary application forms, and grant or deny license applications.

(4) The department shall prescribe recordkeeping requirements for licensees, provide a procedure for inspection of records, provide a method for collection of taxes, and establish penalties for the delinquent reporting and payment of required taxes.

(5) The department may suspend, revoke, deny, or place a condition on a license issued under parts 1 through 6 8 of this chapter.

(6) The department may not make public or otherwise disclose information obtained in the application or tax reporting processes, except for general statistical reporting or studies or as provided in 23-5-116.

(7) The department shall assess, collect, and disburse any fees, taxes, or charges authorized under parts 1 through 6 8 of this chapter."

**Section 6.** Section 23-5-117, MCA, is amended to read:

"23-5-117. Premises approval. (1) Except as provided in subsection (4), the department may approve a premises for issuance of an operator's license if the premises meets the requirements contained in subsections (2) through--~~(4)~~ and (3).

(2) The premises must:

(a) be a structure or facility that is clearly defined by permanently installed walls that extend from floor to ceiling;

(b) have a unique address assigned by the local government in which the premises is located; and

(c) have a public external entrance, leading to a street or other common area, that is not shared with another premises for which an operator's license has been issued.

(3) If the premises shares a common internal wall with another premises for which an operator's license has been issued, the common wall must be permanently installed, opaque, and extend from floor to ceiling and may not contain an internal entrance through which public access is allowed.

(4) A second operator's license may be issued or renewed until June 30, 1996, for a person operating a gambling activity on a premises that did not meet the requirements of subsections (2) and (3) if:

(a) the second operator's license was issued to the person on or before January 1, 1991; or

(b) (i) the application for the second operator's license was received by the department on or before January 1, 1991;

(ii) a second on-premises alcoholic beverages license was obtained for the premises on or before January 1, 1991; and

(iii) substantial physical modifications to the premises were made on or before January 1, 1991."

**Section 7.** Section 23-5-118, MCA, is amended to read:

"23-5-118. Transfer of ownership interest. A-licensed operator (1) In this section, "licensed gambling operation" means a business for which a license was obtained under parts 1 through 8 of this chapter.

(2) Except as provided in subsection (3), an owner of an interest in a licensed gambling operation shall notify the department in writing and receive approval from the department before transferring any ownership interest in his premises the operation.

(3) This section does not apply to the transfer of a security interest in a licensed gambling operation or to the transfer of less than 5% of the interest in a publicly traded corporation."

**Section 8.** Section 23-5-123, MCA, is amended to read:

"23-5-123. Disposal of money confiscated by reason of violation of gambling laws. All fines, penalties,

forfeitures, and confiscated money collected by criminal, civil, or administrative process for a violation of a provision of parts 1 through 6 8 of this chapter or a rule of the department must be deposited one-half in the state general fund and one-half in the general fund of the county in which the violation occurred."

**Section 9.** Section 23-5-136, MCA, is amended to read:

"23-5-136. Injunction and other remedies. (1) If a person has engaged or is engaging in an act or practice constituting a violation of a provision of parts 1 through 6 8 of this chapter or a rule or order of the department, the department may:

(a) issue a temporary order to cease and desist from the gambling activity, act, or practice for a period not to exceed 60 days;

(b) following notice and an opportunity for hearing, and with the right of judicial review, under the Montana Administrative Procedure Act:

(i) issue a permanent order to cease and desist from the act or practice, which order remains in effect pending judicial review;

(ii) place a licensee on probation;

(iii) suspend for a period not to exceed 180 days a license or permit for the gambling activity, device, or enterprise involved in the act or practice constituting the

1 violation;

2 (iv) revoke a license or permit for the gambling

3 activity, device, or enterprise involved in the act or

4 practice constituting the violation;

5 (v) impose a civil penalty not to exceed \$10,000 for

6 each violation, whether or not the person is licensed by the

7 department; and

8 (vi) impose any combination of the penalties contained

9 in this subsection (1)(b); and

10 (c) bring an action in district court for relief

11 against the act or practice. The department may not be

12 required to post a bond. On proper showing, the court may:

13 (i) issue a restraining order, a temporary or permanent

14 injunction, or other appropriate writ;

15 (ii) suspend or revoke a license or permit; and

16 (iii) appoint a receiver or conservator for the

17 defendant or the assets of the defendant.

18 (2) The department may issue a warrant for distraint

19 against an operator who fails to pay a civil penalty imposed

20 under subsection (1) or a tax imposed under 23-5-409 or

21 23-5-610. The department may issue the warrant for the

22 amount of the unpaid penalty or for the amount of the unpaid

23 tax, plus penalty and accumulated interest on the tax, and

24 shall follow the procedures provided in 15-1-701 through

25 15-1-708.

1 (3) (a) A civil penalty imposed under this section must

2 be collected by the department and distributed as provided

3 in 23-5-123. The local government portion of the penalty

4 payment is statutorily appropriated to the department, as

5 provided in 17-7-502, for deposit to the county or municipal

6 treasury.

7 (b) If a person fails to pay the civil penalty, the

8 amount due is a lien on the person's licensed premises and

9 gambling devices in the state and may be recovered by the

10 department in a civil action."

11 **Section 10.** Section 23-5-157, MCA, is amended to read:

12 "23-5-157. Gambling on cash basis. (1) In every

13 gambling activity, except raffles as authorized in 23-5-413,

14 the consideration paid for the chance to play must be made

15 in cash. A check or credit card may be used to obtain cash

16 to participate in a gambling activity. A participant shall

17 present the money cash needed to play the game as the game

18 is being played. A check, credit card, note, ~~I-O-U~~ IOU, or

19 other evidence of indebtedness may not be offered or

20 accepted as part of the price of participation in the

21 gambling activity or as payment of a debt incurred in the

22 gambling activity. ~~The use of a check or credit card to pay~~

23 ~~for other goods or services in the establishment or to~~

24 ~~obtain cash is not a violation of this section.~~

25 (2) A person who violates this section is guilty of a

1 misdemeanor and must be punished in accordance with  
2 23-5-161."

3 **Section 11.** Section 23-5-161, MCA, is amended to read:

4 "23-5-161. Criminal liabilities -- misdemeanor. A  
5 person who purposely or knowingly violates a provision of  
6 parts 1 through 6 8 of this chapter, the punishment of which  
7 is for a misdemeanor, must shall upon conviction of a first  
8 offense be fined not more than \$500. Upon a second  
9 conviction within 5 years of a first conviction, a person  
10 must shall be fined not more than \$1,000 or imprisoned in  
11 the county jail for not more than 6 months, or both. Upon a  
12 third conviction within 5 years of a second conviction, a  
13 person must shall be fined not more than \$10,000 or  
14 imprisoned in the county jail for not more than 1 year, or  
15 both. Upon a fourth conviction within 5 years of a third  
16 conviction, a person must shall be fined not more than  
17 \$10,000 or imprisoned in the county jail for not more than 1  
18 year, or both, and the department shall revoke all licenses  
19 and permits the person holds under parts 1 through 6 8 of  
20 this chapter and the person is forever barred from receipt  
21 of any license or permit under this chapter. When 5 years  
22 have passed following a conviction, the record of that  
23 conviction may be made available only to criminal justice  
24 agencies or upon court order."

25 **Section 12.** Section 23-5-162, MCA, is amended to read:

1 "23-5-162. Criminal liabilities -- felony. (1) A person  
2 who purposely or knowingly violates a provision of parts 1  
3 through 6 8 of this chapter, the punishment for which is a  
4 felony, may upon conviction be fined not more than \$50,000  
5 or imprisoned for not more than 10 years, or both, for each  
6 violation.

7 (2) In addition to any penalty imposed under subsection  
8 (1), the department shall revoke all licenses or permits  
9 issued to the person under parts 1 through 6 8 of this  
10 chapter and may not issue the person another license or  
11 permit under parts 1 through 6 8 of this chapter."

12 **Section 13.** Section 23-5-171, MCA, is amended to read:

13 "23-5-171. Authority of local governments to regulate  
14 gambling. (1) A local government may not license or regulate  
15 a form of gambling authorized by parts 1 through 6 8 of this  
16 chapter or assess or charge any fees or taxes unless  
17 specifically authorized by statute.

18 (2) An incorporated city or town may enact an ordinance  
19 or resolution zoning certain areas within its incorporated  
20 limits in which gambling is prohibited.

21 (3) A county may enact a resolution zoning certain  
22 areas in the county, not within an incorporated city or  
23 town, in which gambling is prohibited.

24 (4) A county or incorporated city or town may not  
25 restrict the number of licenses that the department may

1 issue."

2 **Section 14.** Section 23-5-172, MCA, is amended to read:

3 "23-5-172. Prosecution. The county attorney of the  
4 county in which a violation of a provision of parts 1  
5 through 6 8 of this chapter occurs shall prosecute all  
6 gambling actions within the jurisdiction of the department.  
7 However, if the county attorney declines prosecution or  
8 fails to commence an action within a reasonable time, the  
9 attorney general may initiate and conduct the prosecution on  
10 behalf of the state."

11 **Section 15.** Section 23-5-309, MCA, is amended to read:

12 "23-5-309. Requirements for conducting card games. (1)  
13 Except as provided in 23-5-310 and 23-5-317, a live card  
14 game must be played on a live card game table for which a  
15 permit has been issued and on the premises of a licensed  
16 operator.

17 (2) A live card game of panguingue or poker must be  
18 played in the presence and under the control of a licensed  
19 dealer."

20 **Section 16.** Section 23-5-610, MCA, is amended to read:

21 "23-5-610. (Temporary) Video gambling machine gross  
22 income tax -- records -- distribution -- quarterly statement  
23 and payment. (1) A licensed operator issued a permit under  
24 this part shall pay to the department a video gambling  
25 machine tax of 15% of the gross income from each video

1 gambling machine licensed under this part. A licensed  
2 operator may deduct from the gross income amounts equal to  
3 amounts stolen from machines if the amounts are not repaid  
4 by insurance and if a law enforcement agency investigated  
5 the theft.

6 (2) A licensed operator issued a permit under this part  
7 shall keep a record of the gross income from each machine in  
8 such form as the department may require. The records must at  
9 all times during the business hours of the licensee be  
10 subject to inspection by the department.

11 (3) A licensed operator issued a permit under this part  
12 shall, within 15 days after the end of each quarter,  
13 complete and deliver to the department a statement showing  
14 the total gross income from each video gambling machine  
15 licensed to him, together with the total amount due the  
16 state as video gambling machine gross income tax for the  
17 preceding quarter. The statement must contain other relevant  
18 information as the department may require.

19 (4) (a) The department shall forward one-third of the  
20 tax collected under subsection (3) and the surtax imposed by  
21 23-5-646 to the general fund.

22 (b) The department shall forward the remaining  
23 two-thirds of the tax collected under subsection (3) to the  
24 treasurer of the county or the clerk, finance officer, or  
25 treasurer of the city or town in which the licensed machine

is located, for deposit to the county or municipal treasury. Counties are not entitled to proceeds from taxes on income from video gambling machines located in incorporated cities and towns. The two-thirds local government portion of tax collected under subsection (3) is statutorily appropriated to the department as provided in 17-7-502 for deposit to the county or municipal treasury.

23-5-610. (Effective on receipt of taxes for calendar quarter ending June 30, 1993) Video gambling machine gross income tax -- records -- distribution -- quarterly statement and payment. (1) A licensed operator issued a permit under this part shall pay to the department a video gambling machine tax of 15% of the gross income from each video gambling machine licensed under this part. A licensed operator may deduct from the gross income amounts equal to amounts stolen from machines if the amounts stolen are not repaid by insurance or under a court order and if a law enforcement agency investigated the theft and if the theft is the result of either unauthorized entry and physical removal of the money from the machines or of machine tampering and the amounts stolen are documented.

(2) A licensed operator issued a permit under this part shall keep a record of the gross income from each machine in such a form as the department may require. The records must at all times during the business hours of the licensee be

subject to inspection by the department.

(3) A licensed operator issued a permit under this part shall, within 15 days after the end of each quarter, complete and deliver to the department a statement showing the total gross income from each video gambling machine licensed to him the operator, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information as the department may require.

(4) (a) The department shall forward one-third of the tax collected under subsection (3) to the general fund.

(b) The department shall forward the remaining two-thirds of the tax collected under subsection (3) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the licensed machine is located, for deposit to the county or municipal treasury. Counties are not entitled to proceeds from taxes on income from video gambling machines located in incorporated cities and towns. The two-thirds local government portion of tax collected under subsection (3) is statutorily appropriated to the department as provided in 17-7-502 for deposit to the county or municipal treasury."

**Section 17.** Section 23-5-631, MCA, is amended to read:

"23-5-631. Examination and approval of new video gambling machines and associated equipment -- fee. (1) The

1 department shall examine and may approve a new video  
2 gambling machine and associated equipment which that are  
3 manufactured, sold, or distributed for use in the state  
4 before the video gambling machine or associated equipment is  
5 sold, played, or used.

6 (2) A video gambling machine or associated equipment  
7 may not be examined or approved by the department until the  
8 video gambling machine manufacturer-distributor is licensed  
9 as required in 23-5-625.

10 (3) All video gambling machines approved by the  
11 department of commerce prior to October 1, 1989, must be  
12 considered approved under this part.

13 (4) The department shall require the  
14 manufacturer-distributor seeking the examination and  
15 approval of a new video gambling machine or associated  
16 equipment to pay the anticipated actual costs of the  
17 examination in advance and, after the completion of the  
18 examination, shall refund overpayments or charge and collect  
19 amounts sufficient to reimburse the department for  
20 underpayments of actual costs.

21 (5) Payments received under subsection (4) are  
22 statutorily appropriated to the department, as provided in  
23 17-7-502, to defray the costs of examining and approving  
24 video gambling machines and associated equipment and to  
25 issue refunds for overpayments.

1 (6) The department may inspect and test and approve,  
2 disapprove, or place a condition upon a video gambling  
3 machine prior to its distribution and placement for play by  
4 the public. A manufacturer-distributor may not supply a  
5 video gambling machine or associated equipment to another  
6 licensed manufacturer-distributor or a licensed operator  
7 unless the machine or equipment has been approved by the  
8 department."

-End-

RE-REFERRED AND  
APPROVED BY COMMITTEE  
ON JUDICIARY

LC 0741/01

LC 0741/01

*House* BILL NO. *272*

INTRODUCED BY *[Signature]*

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING  
THE GAMBLING LAWS; DEFINING "GIFT ENTERPRISE"; EXPANDING THE  
DEFINITION OF "LICENSE"; REVISING THE TRANSFER OF OWNERSHIP  
NOTIFICATION REQUIREMENT AND REQUIRING DEPARTMENT APPROVAL;  
REVISING THE THEFT DEDUCTION FROM THE VIDEO GAMBLING MACHINE  
TAX; CLARIFYING THAT A MANUFACTURER-DISTRIBUTOR MAY NOT  
SUPPLY UNAPPROVED MACHINES; AND AMENDING SECTIONS 23-5-110,  
23-5-111, 23-5-112, 23-5-113, 23-5-115, 23-5-117, 23-5-118,  
23-5-123, 23-5-136, 23-5-157, 23-5-161, 23-5-162, 23-5-171,  
23-5-172, 23-5-309, 23-5-610, AND 23-5-631, MCA."

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

**Section 1.** Section 23-5-110, MCA, is amended to read:**"23-5-110. Public policy of state concerning gambling.**

(1) The legislature finds that for the purpose of ensuring  
the proper gambling environment in this state it is  
necessary and desirable to adopt a public policy regarding  
public gambling activities in Montana. The legislature  
therefore declares it is necessary to:

(a) create and maintain a uniform regulatory climate  
that assures players, owners, tourists, citizens, and others

THERE ARE NO CHANGES ON THIS BILL  
AND WILL NOT BE REPRINTED. PLEASE  
REFER TO INTRODUCED (WHITE) BILL  
FOR COMPLETE TEXT.

**SECOND READING**

-2-

*HB 272***SECOND READING**



HOUSE BILL NO. 272

INTRODUCED BY J. RICE

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING THE GAMBLING LAWS; DEFINING "GIFT ENTERPRISE"; EXPANDING THE DEFINITION OF "LICENSE"; REVISING THE TRANSFER OF OWNERSHIP NOTIFICATION REQUIREMENT AND REQUIRING DEPARTMENT APPROVAL; REVISING THE THEFT DEDUCTION FROM THE VIDEO GAMBLING MACHINE TAX; CLARIFYING THAT A MANUFACTURER-DISTRIBUTOR MAY NOT SUPPLY UNAPPROVED MACHINES; AND AMENDING SECTIONS 23-5-110, 23-5-111, 23-5-112, 23-5-113, 23-5-115, 23-5-117, 23-5-118, 23-5-123, 23-5-136, 23-5-157, 23-5-161, 23-5-162, 23-5-171, 23-5-172, 23-5-309, 23-5-610, AND 23-5-631, AND 23-7-302, MCA."

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

**Section 1.** Section 23-5-110, MCA, is amended to read:

"23-5-110. Public policy of state concerning gambling.

(1) The legislature finds that for the purpose of ensuring the proper gambling environment in this state it is necessary and desirable to adopt a public policy regarding public gambling activities in Montana. The legislature therefore declares it is necessary to:

(a) create and maintain a uniform regulatory climate

that assures players, owners, tourists, citizens, and others that the gambling industry in this state is fair and is not influenced by corrupt persons, organizations, or practices;

(b) protect legal public gambling activities from unscrupulous players and vendors and detrimental influences;

(c) protect the public from unscrupulous proprietors and operators of gambling establishments, games, and devices;

(d) protect the state and local governments from those who would conduct illegal gambling activities that deprive those governments of their tax revenues;

(e) protect the health, safety, and welfare of all citizens of this state, including those who do not gamble, by regulating gambling activities; and

(f) promote programs necessary to provide assistance to those who are adversely affected by legalized gambling, including compulsive gamblers and their families.

(2) The legislature adopts the policy that an applicant for a license or permit or other department approval under parts 1 through 6 8 of this chapter does not have a right to the issuance of a license or permit or the granting of the approval sought. The issuance of a license or permit issued or other department approval granted pursuant to the provisions of parts 1 through 6 8 of this chapter is a privilege revocable only for good cause. A holder does not

acquire a vested right in the license or permit issued or other department approval granted. A license or permit issued under parts 1 through 6 8 of this chapter may not be sold, assigned, leased, or transferred.

(3) Revenue to fund the expense of administration and control of gambling as regulated by parts 1 through 6 8 of this chapter must be derived solely from fees, taxes, and penalties on gambling activities, except the gambling activities of the Montana state lottery and the parimutuel industry."

**Section 2.** Section 23-5-111, MCA, is amended to read:

"23-5-111. Construction and application. (1) In view of Article III, section 9, of the Montana constitution, Chapter ~~6427-Laws-of-1989~~, parts 1 through 8 of this chapter must be strictly construed by the department and the courts to allow only those types of gambling and gambling activity that are specifically and clearly allowed by Chapter--~~6427--Laws--of-1989~~ those parts.

~~(2)--This---chapter---applies---only---to---public---gambling activities-within-the-state-of-Montana--"~~

**Section 3.** Section 23-5-112, MCA, is amended to read:

"23-5-112. Definitions. Unless the context requires otherwise, the following definitions apply to parts 1 through 6 8 of this chapter:

(1) "Applicant" means a person who has applied for a

license or permit issued by the department pursuant to parts 1 through 6 8 of this chapter.

(2) "Application" means a written request for a license or permit issued by the department. The department shall adopt rules describing the forms and information required for issuance of a license.

(3) "Authorized equipment" means, with respect to live keno or bingo, equipment that may be inspected by the department and that randomly selects the numbers.

(4) "Bingo" means a gambling activity played for prizes with a card bearing a printed design of 5 columns of 5 squares each, 25 squares in all. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns. ~~No-more~~ More than 75 numbers may not be used. One number must appear in each square, except for the center square, which may be considered a free play. Numbers are randomly drawn using authorized equipment until the game is won by the person or persons who first cover a previously designated arrangement of numbers on the bingo card.

(5) "Bingo caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live bingo.

(6) "Card game table" or "table" means a live card game table:

(a) authorized by permit and made available to the

public on the premises of a licensed gambling operator; or

(b) operated by a senior citizen center.

(7) "Card game tournament" means a gambling activity for which a permit has been issued involving participants who pay valuable consideration for the opportunity to compete against each other in a series of live card games conducted over a designated period of time.

(8) "Dealer" means a person with a dealer's license issued under part 3 of this chapter.

(9) "Department" means the department of justice.

(10) "Distributor" means a person who:

(a) purchases or obtains from another person equipment of any kind for use in gambling activities; and

(b) sells, leases, or otherwise furnishes the equipment to another person for use in public.

(11) "Gambling" or "gambling activity" means risking money, credit, deposit, check, property, or any other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise. The term does not mean conducting or participating in a promotional game of chance and does not include amusement games regulated by Title 23, chapter 6, part 1.

(12) "Gambling device" means a mechanical, electromechanical, or electronic device, machine, slot

machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling activity.

(13) "Gambling enterprise" means an activity, scheme, or agreement or an attempted activity, scheme, or agreement to provide gambling or a gambling device to the public.

(14) "Gift enterprise" means a gambling activity in which persons have qualified to obtain property to be awarded by purchasing or agreeing to purchase goods or services. The term does not mean:

(a) a cash or merchandise attendance prize or premium that county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos;

(b) a promotional game of chance; or

(c) an amusement game regulated under chapter 6 of this title.

~~(14)~~(15) "Gross proceeds" means gross revenue received less prizes paid out.

~~(15)~~(16) "Illegal gambling device" means a gambling device not specifically authorized by statute or by the rules of the department. The term includes:

(a) a ticket or card, by whatever name known, containing concealed numbers or symbols that may match numbers or symbols designated in advance as prize winners, including a pull tab, punchboard, push card, tip board,

1 pickle ticket, break-open, or jar game, except for one used  
2 under chapter 7 or under part 5 of this chapter or in a  
3 promotional game of chance approved by the department; and

4 (b) an apparatus, implement, or device, by whatever  
5 name known, specifically designed to be used in conducting  
6 an illegal gambling enterprise, including a faro box, faro  
7 layout, roulette wheel, roulette table, or craps table or a  
8 slot machine except as provided in 23-5-153.

9 ~~(16)~~(17) "Illegal gambling enterprise" means a gambling  
10 enterprise that violates or is not specifically authorized  
11 by a statute or a rule of the department. The term includes:

12 (a) a card game, by whatever name known, involving any  
13 bank or fund from which a participant may win money or other  
14 consideration and that receives money or other consideration  
15 lost by the participant and includes the card games of  
16 blackjack, twenty-one, jacks or better, baccarat, or chemin  
17 de fer;

18 (b) a dice game, by whatever name known, in which a  
19 participant wagers on the outcome of the roll of one or more  
20 dice, includes including craps, hazard, or chuck-a-luck, but  
21 does not include an activity in which a participant rolls  
22 one or more dice for a chance to obtain a drink or music  
23 including activities authorized by 23-5-160; and

24 (c) sports betting, by whatever name known, in which a  
25 person places a wager on the outcome of an athletic event,

1 including bookmaking, parlay bets, or sultan sports cards,  
2 but not including those activities authorized in chapter 4  
3 of this title and parts 2, and 5, and 8 of this chapter.

4 ~~(17)~~(18) "Keno" means a game of chance in which prizes  
5 are awarded using a card with 8 horizontal rows and 10  
6 columns on which a player may pick up to 10 numbers. A keno  
7 caller, using authorized equipment, shall select at random  
8 at least 20 numbers out of numbers between 1 and 80,  
9 inclusive.

10 ~~(18)~~(19) "Keno caller" means a person 18 years of age or  
11 older who, using authorized equipment, announces the order  
12 of the numbers drawn in live keno.

13 ~~(19)~~(20) "License" means an operator's, dealer's, a  
14 license for an operator, dealer, card room contractor,  
15 manufacturer of devices not legal in Montana, sports tab  
16 card manufacturer, manufacturer of electronic live bingo or  
17 keno equipment, or manufacturer-distributor's license  
18 manufacturer-distributor issued to a person by the  
19 department.

20 ~~(20)~~(21) "Licensee" means a person who has received a  
21 license from the department.

22 ~~(21)~~(22) "Live card game" or "card game" means a card  
23 game that is played in public between persons on the  
24 premises of a licensed gambling operator or in a senior  
25 citizen center.

1       ~~{22}~~(23) "Lottery" or "~~gift-enterprise~~" means a scheme,  
2 by whatever name known, for the disposal or distribution of  
3 property by chance among persons who have paid or promised  
4 to pay valuable consideration for the chance of obtaining  
5 the property or a portion of it or for a share or interest  
6 in the property upon an agreement, understanding, or  
7 expectation that it is to be distributed or disposed of by  
8 lot or chance. ~~However,--"gift-enterprise"~~ The term does not  
9 mean:

10       ~~{a}~~ lotteries authorized under chapter 7;--or

11       ~~{b}--cash--or--merchandise-attendance-prizes-or-premiums~~  
12 ~~that-the-county-fair-commissioners-of-agricultural-fairs-and~~  
13 ~~redeo-associations-may-give-away-at-public-drawings-at-fairs~~  
14 ~~and-rodeos of this title.~~

15       ~~{23}~~(24) "Manufacturer" means a person who assembles  
16 from raw materials or subparts a completed piece of  
17 equipment or pieces of equipment of any kind to be used as a  
18 gambling device.

19       ~~{24}~~(25) "Nonprofit organization" means a nonprofit  
20 corporation or nonprofit charitable, religious, scholastic,  
21 educational, veterans', fraternal, beneficial, civic, senior  
22 citizens', or service organization established for purposes  
23 other than to conduct a gambling activity.

24       ~~{25}~~(26) "Operator" means a person who purchases,  
25 receives, or acquires, by lease or otherwise, and operates

1 or controls for use in public, a gambling device or gambling  
2 enterprise authorized under parts 1 through 6 8 of this  
3 chapter.

4       ~~{26}~~(27) "Permit" means approval from the department to  
5 make available for public play a gambling device or gambling  
6 enterprise approved by the department pursuant to parts 1  
7 through 6 8 of this chapter.

8       ~~{27}~~(28) "Person" or "persons" means both natural and  
9 artificial persons and all partnerships, corporations,  
10 associations, clubs, fraternal orders, and societies,  
11 including religious and charitable organizations.

12       ~~{28}~~(29) "Premises" means the physical building or  
13 property within or upon which a licensed gambling activity  
14 occurs, as stated on an operator's license application and  
15 approved by the department.

16       ~~{29}~~(30) "Promotional game of chance" means a scheme, by  
17 whatever name known, for the disposal or distribution of  
18 property by chance among persons who have not paid or are  
19 not expected to pay any valuable consideration or who have  
20 not purchased or are not expected to purchase any goods or  
21 services for a chance to obtain the property, a portion of  
22 it, or a share in it.

23       ~~{30}~~(31) "Public gambling" means gambling conducted in:

24       (a) a place, building, or conveyance to which the  
25 public has access or may be permitted to have access;

(b) a place of public resort, including but not limited to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization; or

(c) a place, building, or conveyance to which the public does not have access if players are publicly solicited or the gambling activity is conducted in a predominantly commercial manner.

~~(31)~~(32) "Raffle" means a form of lottery in which each participant pays valuable consideration for a ticket to become eligible to win a prize. Winners must be determined by a random selection process approved by department rule.

~~(32)~~(33) "Senior citizen center" means a facility operated by a nonprofit or governmental organization that provides services to senior citizens in the form of daytime or evening educational or recreational activities and does not provide living accommodations to senior citizens. Services qualifying under this definition must be recognized in the state plan on aging adopted by the department of family services.

~~(33)~~(34) "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance, or machine that, upon insertion of a coin, currency, token, credit card, or similar object or upon payment of any valuable 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 gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner. This definition does not apply to video gambling machines authorized under part 6 of this chapter.

~~(34)~~(35) "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the rules of the department."

#### Section 4. Section 23-5-113, MCA, is amended to read:

"23-5-113. Department as criminal justice agency -- seized property. (1) The department is a criminal justice agency. Designated agents of the department are granted peace officer status, with the power of search, seizure, and arrest, to investigate gambling activities in this state regulated by parts 1 through 6 8 of this chapter and the rules of the department and to report violations to the county attorney of the county in which they occur.

(2) Upon conviction for any violation of parts 1 through 6 8 of this chapter, the court may order any property seized by a department or local law enforcement agent during a lawful search to be forfeited to the department, sold, if necessary, and disposed of under

1 23-5-123."

2 **Section 5.** Section 23-5-115, MCA, is amended to read:

3 "23-5-115. Powers and duties of department --  
4 licensing. (1) The department shall administer the  
5 provisions of parts 1 through 6 8 of this chapter.

6 (2) The department shall adopt rules to administer and  
7 implement parts 1 through 6 8 of this chapter.

8 (3) The department shall provide licensing procedures,  
9 prescribe necessary application forms, and grant or deny  
10 license applications.

11 (4) The department shall prescribe recordkeeping  
12 requirements for licensees, provide a procedure for  
13 inspection of records, provide a method for collection of  
14 taxes, and establish penalties for the delinquent reporting  
15 and payment of required taxes.

16 (5) The department may suspend, revoke, deny, or place  
17 a condition on a license issued under parts 1 through 6 8 of  
18 this chapter.

19 (6) The department may not make public or otherwise  
20 disclose information obtained in the application or tax  
21 reporting processes, except for general statistical  
22 reporting or studies or as provided in 23-5-116.

23 (7) The department shall assess, collect, and disburse  
24 any fees, taxes, or charges authorized under parts 1 through  
25 6 8 of this chapter."

1 **Section 6.** Section 23-5-117, MCA, is amended to read:

2 "23-5-117. Premises approval. (1) Except as provided in  
3 subsection (4), the department may approve a premises for  
4 issuance of an operator's license if the premises meets the  
5 requirements contained in subsections (2) through ~~(4)~~ and  
6 (3).

7 (2) The premises must:

8 (a) be a structure or facility that is clearly defined  
9 by permanently installed walls that extend from floor to  
10 ceiling;

11 (b) have a unique address assigned by the local  
12 government in which the premises is located; and

13 (c) have a public external entrance, leading to a  
14 street or other common area, that is not shared with another  
15 premises for which an operator's license has been issued.

16 (3) If the premises shares a common internal wall with  
17 another premises for which an operator's license has been  
18 issued, the common wall must be permanently installed,  
19 opaque, and extend from floor to ceiling and may not contain  
20 an internal entrance through which public access is allowed.

21 (4) A second operator's license may be issued or  
22 renewed until June 30, 1996, for a person operating a  
23 gambling activity on a premises that did not meet the  
24 requirements of subsections (2) and (3) if:

25 (a) the second operator's license was issued to the

person on or before January 1, 1991; or

(b) (i) the application for the second operator's license was received by the department on or before January 1, 1991;

(ii) a second on-premises alcoholic beverages license was obtained for the premises on or before January 1, 1991; and

(iii) substantial physical modifications to the premises were made on or before January 1, 1991."

**Section 7.** Section 23-5-118, MCA, is amended to read:

"23-5-118. Transfer of ownership interest. A--licensed operator (1) In this section, "licensed gambling operation" means a business for which a license was obtained under parts 1 through 8 of this chapter.

(2) Except as provided in subsection (3), an owner of an interest in a licensed gambling operation shall notify the department in writing and receive approval from the department before transferring any ownership interest in his premises the operation.

(3) This section does not apply to the transfer of a security interest in a licensed gambling operation or to the transfer of less than 5% of the interest in a publicly traded corporation."

**Section 8.** Section 23-5-123, MCA, is amended to read:

"23-5-123. Disposal of money confiscated by reason of

violation of gambling laws. All fines, penalties, forfeitures, and confiscated money collected by criminal, civil, or administrative process for a violation of a provision of parts 1 through 6 8 of this chapter or a rule of the department must be deposited one-half in the state general fund and one-half in the general fund of the county in which the violation occurred."

**Section 9.** Section 23-5-136, MCA, is amended to read:

"23-5-136. Injunction and other remedies. (1) If a person has engaged or is engaging in an act or practice constituting a violation of a provision of parts 1 through 6 8 of this chapter or a rule or order of the department, the department may:

(a) issue a temporary order to cease and desist from the gambling activity, act, or practice for a period not to exceed 60 days;

(b) following notice and an opportunity for hearing, and with the right of judicial review, under the Montana Administrative Procedure Act:

(i) issue a permanent order to cease and desist from the act or practice, which order remains in effect pending judicial review;

(ii) place a licensee on probation;

(iii) suspend for a period not to exceed 180 days a license or permit for the gambling activity, device, or



enterprise involved in the act or practice constituting the violation;

(iv) revoke a license or permit for the gambling activity, device, or enterprise involved in the act or practice constituting the violation;

(v) impose a civil penalty not to exceed \$10,000 for each violation, whether or not the person is licensed by the department; and

(vi) impose any combination of the penalties contained in this subsection (1)(b); and

(c) bring an action in district court for relief against the act or practice. The department may not be required to post a bond. On proper showing, the court may:

(i) issue a restraining order, a temporary or permanent injunction, or other appropriate writ;

(ii) suspend or revoke a license or permit; and

(iii) appoint a receiver or conservator for the defendant or the assets of the defendant.

(2) The department may issue a warrant for distraint against an operator who fails to pay a civil penalty imposed under subsection (1) or a tax imposed under 23-5-409 or 23-5-610. The department may issue the warrant for the amount of the unpaid penalty or for the amount of the unpaid tax, plus penalty and accumulated interest on the tax, and shall follow the procedures provided in 15-1-701 through

15-1-708.

(3) (a) A civil penalty imposed under this section must be collected by the department and distributed as provided in 23-5-123. The local government portion of the penalty payment is statutorily appropriated to the department, as provided in 17-7-502, for deposit to the county or municipal treasury.

(b) If a person fails to pay the civil penalty, the amount due is a lien on the person's licensed premises and gambling devices in the state and may be recovered by the department in a civil action."

**Section 10.** Section 23-5-157, MCA, is amended to read:

"23-5-157. Gambling on cash basis. (1) In every gambling activity, except raffles as authorized in 23-5-413, the consideration paid for the chance to play must be made in cash. A check or credit card may be used to obtain cash to participate in a gambling activity. A participant shall present the money cash needed to play the game as the game is being played. A check, credit card, note, ~~I-O-U~~ IOU, or other evidence of indebtedness may not be offered or accepted as part of the price of participation in the gambling activity or as payment of a debt incurred in the gambling activity. ~~The use of a check or credit card to pay for other goods or services in the establishment or to obtain cash is not a violation of this section.~~

(2) A person who violates this section is guilty of a misdemeanor and must be punished in accordance with 23-5-161."

**Section 11.** Section 23-5-161, MCA, is amended to read:

"23-5-161. Criminal liabilities -- misdemeanor. A person who purposely or knowingly violates a provision of parts 1 through 6 8 of this chapter, the punishment of which is for a misdemeanor, must shall upon conviction of a first offense be fined not more than \$500. Upon a second conviction within 5 years of a first conviction, a person must shall be fined not more than \$1,000 or imprisoned in the county jail for not more than 6 months, or both. Upon a third conviction within 5 years of a second conviction, a person must shall be fined not more than \$10,000 or imprisoned in the county jail for not more than 1 year, or both. Upon a fourth conviction within 5 years of a third conviction, a person must shall be fined not more than \$10,000 or imprisoned in the county jail for not more than 1 year, or both, and the department shall revoke all licenses and permits the person holds under parts 1 through 6 8 of this chapter and the person is forever barred from receipt of any license or permit under this chapter. When 5 years have passed following a conviction, the record of that conviction may be made available only to criminal justice agencies or upon court order."

**Section 12.** Section 23-5-162, MCA, is amended to read:

"23-5-162. Criminal liabilities -- felony. (1) A person who purposely or knowingly violates a provision of parts 1 through 6 8 of this chapter, the punishment for which is a felony, may upon conviction be fined not more than \$50,000 or imprisoned for not more than 10 years, or both, for each violation.

(2) In addition to any penalty imposed under subsection (1), the department shall revoke all licenses or permits issued to the person under parts 1 through 6 8 of this chapter and may not issue the person another license or permit under parts 1 through 6 8 of this chapter."

**Section 13.** Section 23-5-171, MCA, is amended to read:

"23-5-171. Authority of local governments to regulate gambling. (1) A local government may not license or regulate a form of gambling authorized by parts 1 through 6 8 of this chapter or assess or charge any fees or taxes unless specifically authorized by statute.

(2) An incorporated city or town may enact an ordinance or resolution zoning certain areas within its incorporated limits in which gambling is prohibited.

(3) A county may enact a resolution zoning certain areas in the county, not within an incorporated city or town, in which gambling is prohibited.

(4) A county or incorporated city or town may not

1 restrict the number of licenses that the department may  
2 issue."

3 **Section 14.** Section 23-5-172, MCA, is amended to read:

4 "23-5-172. Prosecution. The county attorney of the  
5 county in which a violation of a provision of parts 1  
6 through 6 8 of this chapter occurs shall prosecute all  
7 gambling actions within the jurisdiction of the department.  
8 However, if the county attorney declines prosecution or  
9 fails to commence an action within a reasonable time, the  
10 attorney general may initiate and conduct the prosecution on  
11 behalf of the state."

12 **Section 15.** Section 23-5-309, MCA, is amended to read:

13 "23-5-309. Requirements for conducting card games. (1)  
14 Except as provided in 23-5-310 and 23-5-317, a live card  
15 game must be played on a live card game table for which a  
16 permit has been issued and on the premises of a licensed  
17 operator.

18 (2) A live card game of panguingue or poker must be  
19 played in the presence and under the control of a licensed  
20 dealer."

21 **Section 16.** Section 23-5-610, MCA, is amended to read:

22 "23-5-610. (Temporary) Video gambling machine gross  
23 income tax -- records -- distribution -- quarterly statement  
24 and payment. (1) A licensed operator issued a permit under  
25 this part shall pay to the department a video gambling

1 machine tax of 15% of the gross income from each video  
2 gambling machine licensed under this part. A licensed  
3 operator may deduct from the gross income amounts equal to  
4 amounts stolen from machines if the amounts are not repaid  
5 by insurance and if a law enforcement agency investigated  
6 the theft.

7 (2) A licensed operator issued a permit under this part  
8 shall keep a record of the gross income from each machine in  
9 such form as the department may require. The records must at  
10 all times during the business hours of the licensee be  
11 subject to inspection by the department.

12 (3) A licensed operator issued a permit under this part  
13 shall, within 15 days after the end of each quarter,  
14 complete and deliver to the department a statement showing  
15 the total gross income from each video gambling machine  
16 licensed to him, together with the total amount due the  
17 state as video gambling machine gross income tax for the  
18 preceding quarter. The statement must contain other relevant  
19 information as the department may require.

20 (4) (a) The department shall forward one-third of the  
21 tax collected under subsection (3) and the surtax imposed by  
22 23-5-646 to the general fund.

23 (b) The department shall forward the remaining  
24 two-thirds of the tax collected under subsection (3) to the  
25 treasurer of the county or the clerk, finance officer, or

1 treasurer of the city or town in which the licensed machine  
2 is located, for deposit to the county or municipal treasury.  
3 Counties are not entitled to proceeds from taxes on income  
4 from video gambling machines located in incorporated cities  
5 and towns. The two-thirds local government portion of tax  
6 collected under subsection (3) is statutorily appropriated  
7 to the department as provided in 17-7-502 for deposit to the  
8 county or municipal treasury.

9 23-5-610. (Effective on receipt of taxes for calendar  
10 quarter ending June 30, 1993) Video gambling machine gross  
11 income tax -- records -- distribution -- quarterly statement  
12 and payment. (1) A licensed operator issued a permit under  
13 this part shall pay to the department a video gambling  
14 machine tax of 15% of the gross income from each video  
15 gambling machine licensed under this part. A licensed  
16 operator may deduct from the gross income amounts equal to  
17 amounts stolen from machines if the amounts stolen are not  
18 repaid by insurance or under a court order and if a law  
19 enforcement agency investigated the theft and if the theft  
20 is the result of either unauthorized entry and physical  
21 removal of the money from the machines or of machine  
22 tampering and the amounts stolen are documented.

23 (2) A licensed operator issued a permit under this part  
24 shall keep a record of the gross income from each machine in  
25 such a form as the department may require. The records must

1 at all times during the business hours of the licensee be  
2 subject to inspection by the department.

3 (3) A licensed operator issued a permit under this part  
4 shall, within 15 days after the end of each quarter,  
5 complete and deliver to the department a statement showing  
6 the total gross income from each video gambling machine  
7 licensed to him the operator, together with the total amount  
8 due the state as video gambling machine gross income tax for  
9 the preceding quarter. The statement must contain other  
10 relevant information as the department may require.

11 (4) (a) The department shall forward one-third of the  
12 tax collected under subsection (3) to the general fund.

13 (b) The department shall forward the remaining  
14 two-thirds of the tax collected under subsection (3) to the  
15 treasurer of the county or the clerk, finance officer, or  
16 treasurer of the city or town in which the licensed machine  
17 is located, for deposit to the county or municipal treasury.  
18 Counties are not entitled to proceeds from taxes on income  
19 from video gambling machines located in incorporated cities  
20 and towns. The two-thirds local government portion of tax  
21 collected under subsection (3) is statutorily appropriated  
22 to the department as provided in 17-7-502 for deposit to the  
23 county or municipal treasury."

24 **Section 17.** Section 23-5-631, MCA, is amended to read:

25 "23-5-631. Examination and approval of new video

1 gambling machines and associated equipment -- fee. (1) The  
2 department shall examine and may approve a new video  
3 gambling machine and associated equipment which that are  
4 manufactured, sold, or distributed for use in the state  
5 before the video gambling machine or associated equipment is  
6 sold, played, or used.

7 (2) A video gambling machine or associated equipment  
8 may not be examined or approved by the department until the  
9 video gambling machine manufacturer-distributor is licensed  
10 as required in 23-5-625.

11 (3) All video gambling machines approved by the  
12 department of commerce prior to October 1, 1989, must be  
13 considered approved under this part.

14 (4) The department shall require the  
15 manufacturer-distributor seeking the examination and  
16 approval of a new video gambling machine or associated  
17 equipment to pay the anticipated actual costs of the  
18 examination in advance and, after the completion of the  
19 examination, shall refund overpayments or charge and collect  
20 amounts sufficient to reimburse the department for  
21 underpayments of actual costs.

22 (5) Payments received under subsection (4) are  
23 statutorily appropriated to the department, as provided in  
24 17-7-502, to defray the costs of examining and approving  
25 video gambling machines and associated equipment and to

1 issue refunds for overpayments.

2 (6) The department may inspect and test and approve,  
3 disapprove, or place a condition upon a video gambling  
4 machine prior to its distribution and placement for play by  
5 the public. A manufacturer-distributor may not supply a  
6 video gambling machine or associated equipment to another  
7 licensed manufacturer-distributor or a licensed operator  
8 unless the machine or equipment has been approved by the  
9 department."

10 **SECTION 18. SECTION 23-7-302, MCA, IS AMENDED TO READ:**

11 "23-7-302. Sales restrictions. (1) The price of each  
12 lottery game ticket or chance must be clearly stated  
13 thereon. The price of a lottery game chance vended by a  
14 machine or electronic device must be clearly stated on the  
15 machine or device.

16 (2) Tickets and chances may not be sold to or purchased  
17 by persons under 18 years of age.

18 (3) Tickets and chances may be purchased only with cash  
19 or a check and may not be purchased on credit.

20 (4) Tickets and chances may not be sold to or purchased  
21 by commissioners, the director, his staff, gaming suppliers  
22 doing business with the state lottery, suppliers' officers  
23 and employees, employees of any firm auditing or  
24 investigating the state lottery, governmental employees  
25 auditing or investigating the state lottery, or members of

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1 their households.

2 (5) The names of elected officials may not appear on  
3 any ticket or chance."

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 17, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 272 (first reading copy -- blue), respectfully report that House Bill No. 272 be amended as follows and as so amended be concurred in.

Signed: Wm Yellowtail  
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 26, line 9.

Following: ". "

Insert: "[A manufacturer, distributor, or route operator may not supply a video gambling machine or associated equipment to a manufacturer, distributor, route operator, or operator unless the machine or equipment has been approved by the department.]"

2. Page 27, line 4.

Following: line 3

Insert: "

NEW SECTION. Section 19. Coordination instruction. If House Bill No. 411 is passed and approved, then the unbracketed amendment in [section 17(6) of this act], amending 23-5-631, is void and the bracketed language is effective. If House Bill No. 411 is not passed and approved, then the bracketed language is void."

-END-

m- Amd. Coord.  
m/ Sec. of Senate

Yellowtail  
Senator Carrying Bill

SENATE  
HB 272  
601240SC.Sma

## HOUSE BILL NO. 272

INTRODUCED BY J. RICE

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING THE GAMBLING LAWS; DEFINING "GIFT ENTERPRISE"; EXPANDING THE DEFINITION OF "LICENSE"; REVISING THE TRANSFER OF OWNERSHIP NOTIFICATION REQUIREMENT AND REQUIRING DEPARTMENT APPROVAL; REVISING THE THEFT DEDUCTION FROM THE VIDEO GAMBLING MACHINE TAX; CLARIFYING THAT A MANUFACTURER-DISTRIBUTOR MAY NOT SUPPLY UNAPPROVED MACHINES; AND AMENDING SECTIONS 23-5-110, 23-5-111, 23-5-112, 23-5-113, 23-5-115, 23-5-117, 23-5-118, 23-5-123, 23-5-136, 23-5-157, 23-5-161, 23-5-162, 23-5-171, 23-5-172, 23-5-309, 23-5-610, AND 23-5-631, AND 23-7-302, MCA."

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

**Section 1.** Section 23-5-110, MCA, is amended to read:**"23-5-110. Public policy of state concerning gambling.**

(1) The legislature finds that for the purpose of ensuring the proper gambling environment in this state it is necessary and desirable to adopt a public policy regarding public gambling activities in Montana. The legislature therefore declares it is necessary to:

(a) create and maintain a uniform regulatory climate

that assures players, owners, tourists, citizens, and others that the gambling industry in this state is fair and is not influenced by corrupt persons, organizations, or practices;

(b) protect legal public gambling activities from unscrupulous players and vendors and detrimental influences;

(c) protect the public from unscrupulous proprietors and operators of gambling establishments, games, and devices;

(d) protect the state and local governments from those who would conduct illegal gambling activities that deprive those governments of their tax revenues;

(e) protect the health, safety, and welfare of all citizens of this state, including those who do not gamble, by regulating gambling activities; and

(f) promote programs necessary to provide assistance to those who are adversely affected by legalized gambling, including compulsive gamblers and their families.

(2) The legislature adopts the policy that an applicant for a license or permit or other department approval under parts 1 through 6 8 of this chapter does not have a right to the issuance of a license or permit or the granting of the approval sought. The issuance of a license or permit issued or other department approval granted pursuant to the provisions of parts 1 through 6 8 of this chapter is a privilege revocable only for good cause. A holder does not



1 acquire a vested right in the license or permit issued or  
2 other department approval granted. A license or permit  
3 issued under parts 1 through 6 8 of this chapter may not be  
4 sold, assigned, leased, or transferred.

5 (3) Revenue to fund the expense of administration and  
6 control of gambling as regulated by parts 1 through 6 8 of  
7 this chapter must be derived solely from fees, taxes, and  
8 penalties on gambling activities, except the gambling  
9 activities of the Montana state lottery and the parimutuel  
10 industry."

11 **Section 2.** Section 23-5-111, MCA, is amended to read:

12 "23-5-111. Construction and application. ~~{}~~ In view of  
13 Article III, section 9, of the Montana constitution, ~~Chapter~~  
14 ~~6427--Laws-of-1989,~~ parts 1 through 8 of this chapter must be  
15 strictly construed by the department and the courts to allow  
16 only those types of gambling and gambling activity that are  
17 specifically and clearly allowed by ~~Chapter--6427--Laws--of~~  
18 ~~1989 those parts.~~

19 ~~{2}--This---chapter---applies---only---to---public---gambling~~  
20 ~~activities-within-the-state-of-Montana--"~~

21 **Section 3.** Section 23-5-112, MCA, is amended to read:

22 "23-5-112. Definitions. Unless the context requires  
23 otherwise, the following definitions apply to parts 1  
24 through 6 8 of this chapter:

25 (1) "Applicant" means a person who has applied for a

1 license or permit issued by the department pursuant to parts  
2 1 through 6 8 of this chapter.

3 (2) "Application" means a written request for a license  
4 or permit issued by the department. The department shall  
5 adopt rules describing the forms and information required  
6 for issuance of a license.

7 (3) "Authorized equipment" means, with respect to live  
8 keno or bingo, equipment that may be inspected by the  
9 department and that randomly selects the numbers.

10 (4) "Bingo" means a gambling activity played for prizes  
11 with a card bearing a printed design of 5 columns of 5  
12 squares each, 25 squares in all. The letters B-I-N-G-O must  
13 appear above the design, with each letter above one of the  
14 columns. ~~No-more~~ More than 75 numbers may not be used. One  
15 number must appear in each square, except for the center  
16 square, which may be considered a free play. Numbers are  
17 randomly drawn using authorized equipment until the game is  
18 won by the person or persons who first cover a previously  
19 designated arrangement of numbers on the bingo card.

20 (5) "Bingo caller" means a person 18 years of age or  
21 older who, using authorized equipment, announces the order  
22 of the numbers drawn in live bingo.

23 (6) "Card game table" or "table" means a live card game  
24 table:

25 (a) authorized by permit and made available to the

1 public on the premises of a licensed gambling operator; or

2 (b) operated by a senior citizen center.

3 (7) "Card game tournament" means a gambling activity  
4 for which a permit has been issued involving participants  
5 who pay valuable consideration for the opportunity to  
6 compete against each other in a series of live card games  
7 conducted over a designated period of time.

8 (8) "Dealer" means a person with a dealer's license  
9 issued under part 3 of this chapter.

10 (9) "Department" means the department of justice.

11 (10) "Distributor" means a person who:

12 (a) purchases or obtains from another person equipment  
13 of any kind for use in gambling activities; and

14 (b) sells, leases, or otherwise furnishes the equipment  
15 to another person for use in public.

16 (11) "Gambling" or "gambling activity" means risking  
17 money, credit, deposit, check, property, or any other thing  
18 of value for a gain that is contingent in whole or in part  
19 upon lot, chance, or the operation of a gambling device or  
20 gambling enterprise. The term does not mean conducting or  
21 participating in a promotional game of chance and does not  
22 include amusement games regulated by Title 23, chapter 6,  
23 part 1.

24 (12) "Gambling device" means a mechanical,  
25 electromechanical, or electronic device, machine, slot

1 machine, instrument, apparatus, contrivance, scheme, or  
2 system used or intended for use in any gambling activity.

3 (13) "Gambling enterprise" means an activity, scheme, or  
4 agreement or an attempted activity, scheme, or agreement to  
5 provide gambling or a gambling device to the public.

6 (14) "Gift enterprise" means a gambling activity in  
7 which persons have qualified to obtain property to be  
8 awarded by purchasing or agreeing to purchase goods or  
9 services. The term does not mean:

10 (a) a cash or merchandise attendance prize or premium  
11 that county fair commissioners of agricultural fairs and  
12 rodeo associations may give away at public drawings at fairs  
13 and rodeos;

14 (b) a promotional game of chance; or

15 (c) an amusement game regulated under chapter 6 of this  
16 title.

17 ~~(14)~~(15) "Gross proceeds" means gross revenue received  
18 less prizes paid out.

19 ~~(15)~~(16) "Illegal gambling device" means a gambling  
20 device not specifically authorized by statute or by the  
21 rules of the department. The term includes:

22 (a) a ticket or card, by whatever name known,  
23 containing concealed numbers or symbols that may match  
24 numbers or symbols designated in advance as prize winners,  
25 including a pull tab, punchboard, push card, tip board,

1 pickle ticket, break-open, or jar game, except for one used  
2 under chapter 7 or under part 5 of this chapter or in a  
3 promotional game of chance approved by the department; and

4 (b) an apparatus, implement, or device, by whatever  
5 name known, specifically designed to be used in conducting  
6 an illegal gambling enterprise, including a faro box, faro  
7 layout, roulette wheel, roulette table, or craps table or a  
8 slot machine except as provided in 23-5-153.

9 ~~(16)~~(17) "Illegal gambling enterprise" means a gambling  
10 enterprise that violates or is not specifically authorized  
11 by a statute or a rule of the department. The term includes:

12 (a) a card game, by whatever name known, involving any  
13 bank or fund from which a participant may win money or other  
14 consideration and that receives money or other consideration  
15 lost by the participant and includes the card games of  
16 blackjack, twenty-one, jacks or better, baccarat, or chemin  
17 de fer;

18 (b) a dice game, by whatever name known, in which a  
19 participant wagers on the outcome of the roll of one or more  
20 dice, ~~includes including~~ craps, hazard, or chuck-a-luck, but  
21 ~~does not include an activity in which a participant rolls~~  
22 ~~one or more dice for a chance to obtain a drink or music~~  
23 including activities authorized by 23-5-160; and

24 (c) sports betting, by whatever name known, in which a  
25 person places a wager on the outcome of an athletic event,

1 including bookmaking, parlay bets, or sultan sports cards,  
2 but not including those activities authorized in chapter 4  
3 of this title and parts 2, and 5, and 8 of this chapter.

4 ~~(17)~~(18) "Keno" means a game of chance in which prizes  
5 are awarded using a card with 8 horizontal rows and 10  
6 columns on which a player may pick up to 10 numbers. A keno  
7 caller, using authorized equipment, shall select at random  
8 at least 20 numbers out of numbers between 1 and 80,  
9 inclusive.

10 ~~(18)~~(19) "Keno caller" means a person 18 years of age or  
11 older who, using authorized equipment, announces the order  
12 of the numbers drawn in live keno.

13 ~~(19)~~(20) "License" means an operator's, dealer's, a  
14 license for an operator, dealer, card room contractor,  
15 manufacturer of devices not legal in Montana, sports tab  
16 card manufacturer, manufacturer of electronic live bingo or  
17 keno equipment, or manufacturer-distributor's license  
18 manufacturer-distributor issued to a person by the  
19 department.

20 ~~(20)~~(21) "Licensee" means a person who has received a  
21 license from the department.

22 ~~(21)~~(22) "Live card game" or "card game" means a card  
23 game that is played in public between persons on the  
24 premises of a licensed gambling operator or in a senior  
25 citizen center.

1        ~~{22}~~{23} "Lottery" or "~~gift-enterprise~~" means a scheme,  
 2 by whatever name known, for the disposal or distribution of  
 3 property by chance among persons who have paid or promised  
 4 to pay valuable consideration for the chance of obtaining  
 5 the property or a portion of it or for a share or interest  
 6 in the property upon an agreement, understanding, or  
 7 expectation that it is to be distributed or disposed of by  
 8 lot or chance. However, ~~"gift-enterprise"~~ The term does not  
 9 mean:

10        ~~{a}~~ lotteries authorized under chapter 77 or

11        ~~{b}--cash--or--merchandise-attendance-prizes-or-premiums~~  
 12 ~~that-the-county-fair-commissioners-of-agricultural-fairs-and~~  
 13 ~~rodeo-associations-may-give-away-at-public-drawings-at-fairs~~  
 14 ~~and-rodeos of this title.~~

15        ~~{23}~~{24} "Manufacturer" means a person who assembles  
 16 from raw materials or subparts a completed piece of  
 17 equipment or pieces of equipment of any kind to be used as a  
 18 gambling device.

19        ~~{24}~~{25} "Nonprofit organization" means a nonprofit  
 20 corporation or nonprofit charitable, religious, scholastic,  
 21 educational, veterans', fraternal, beneficial, civic, senior  
 22 citizens', or service organization established for purposes  
 23 other than to conduct a gambling activity.

24        ~~{25}~~{26} "Operator" means a person who purchases,  
 25 receives, or acquires, by lease or otherwise, and operates

1 or controls for use in public, a gambling device or gambling  
 2 enterprise authorized under parts 1 through 6 8 of this  
 3 chapter.

4        ~~{26}~~{27} "Permit" means approval from the department to  
 5 make available for public play a gambling device or gambling  
 6 enterprise approved by the department pursuant to parts 1  
 7 through 6 8 of this chapter.

8        ~~{27}~~{28} "Person" or "persons" means both natural and  
 9 artificial persons and all partnerships, corporations,  
 10 associations, clubs, fraternal orders, and societies,  
 11 including religious and charitable organizations.

12        ~~{28}~~{29} "Premises" means the physical building or  
 13 property within or upon which a licensed gambling activity  
 14 occurs, as stated on an operator's license application and  
 15 approved by the department.

16        ~~{29}~~{30} "Promotional game of chance" means a scheme, by  
 17 whatever name known, for the disposal or distribution of  
 18 property by chance among persons who have not paid or are  
 19 not expected to pay any valuable consideration or who have  
 20 not purchased or are not expected to purchase any goods or  
 21 services for a chance to obtain the property, a portion of  
 22 it, or a share in it.

23        ~~{30}~~{31} "Public gambling" means gambling conducted in:  
 24        (a) a place, building, or conveyance to which the  
 25 public has access or may be permitted to have access;

1 (b) a place of public resort, including but not limited  
2 to a facility owned, managed, or operated by a partnership,  
3 corporation, association, club, fraternal order, or society,  
4 including a religious or charitable organization; or

5 (c) a place, building, or conveyance to which the  
6 public does not have access if players are publicly  
7 solicited or the gambling activity is conducted in a  
8 predominantly commercial manner.

9 ~~{31}~~{32} "Raffle" means a form of lottery in which each  
10 participant pays valuable consideration for a ticket to  
11 become eligible to win a prize. Winners must be determined  
12 by a random selection process approved by department rule.

13 ~~{32}~~{33} "Senior citizen center" means a facility  
14 operated by a nonprofit or governmental organization that  
15 provides services to senior citizens in the form of daytime  
16 or evening educational or recreational activities and does  
17 not provide living accommodations to senior citizens.  
18 Services qualifying under this definition must be recognized  
19 in the state plan on aging adopted by the department of  
20 family services.

21 ~~{33}~~{34} "Slot machine" means a mechanical, electrical,  
22 electronic, or other gambling device, contrivance, or  
23 machine that, upon insertion of a coin, currency, token,  
24 credit card, or similar object or upon payment of any  
25 valuable consideration, is available to play or operate, the

1 play or operation of which, whether by reason of the skill  
2 of the operator or application of the element of chance, or  
3 both, may deliver or entitle the person playing or operating  
4 the gambling device to receive cash, premiums, merchandise,  
5 tokens, or anything of value, whether the payoff is made  
6 automatically from the machine or in any other manner. This  
7 definition does not apply to video gambling machines  
8 authorized under part 6 of this chapter.

9 ~~{34}~~{35} "Video gambling machine" is a gambling device  
10 specifically authorized by part 6 of this chapter and the  
11 rules of the department."

12 **Section 4.** Section 23-5-113, MCA, is amended to read:

13 "23-5-113. Department as criminal justice agency --  
14 seized property. (1) The department is a criminal justice  
15 agency. Designated agents of the department are granted  
16 peace officer status, with the power of search, seizure, and  
17 arrest, to investigate gambling activities in this state  
18 regulated by parts 1 through 6 8 of this chapter and the  
19 rules of the department and to report violations to the  
20 county attorney of the county in which they occur.

21 (2) Upon conviction for any violation of parts 1  
22 through 6 8 of this chapter, the court may order any  
23 property seized by a department or local law enforcement  
24 agent during a lawful search to be forfeited to the  
25 department, sold, if necessary, and disposed of under

23-5-123."

**Section 5.** Section 23-5-115, MCA, is amended to read:

"23-5-115. Powers and duties of department -- licensing. (1) The department shall administer the provisions of parts 1 through 6 8 of this chapter.

(2) The department shall adopt rules to administer and implement parts 1 through 6 8 of this chapter.

(3) The department shall provide licensing procedures, prescribe necessary application forms, and grant or deny license applications.

(4) The department shall prescribe recordkeeping requirements for licensees, provide a procedure for inspection of records, provide a method for collection of taxes, and establish penalties for the delinquent reporting and payment of required taxes.

(5) The department may suspend, revoke, deny, or place a condition on a license issued under parts 1 through 6 8 of this chapter.

(6) The department may not make public or otherwise disclose information obtained in the application or tax reporting processes, except for general statistical reporting or studies or as provided in 23-5-116.

(7) The department shall assess, collect, and disburse any fees, taxes, or charges authorized under parts 1 through 6 8 of this chapter."

**Section 6.** Section 23-5-117, MCA, is amended to read:

"23-5-117. Premises approval. (1) Except as provided in subsection (4), the department may approve a premises for issuance of an operator's license if the premises meets the requirements contained in subsections (2) through-~~(4)~~ and (3).

(2) The premises must:

(a) be a structure or facility that is clearly defined by permanently installed walls that extend from floor to ceiling;

(b) have a unique address assigned by the local government in which the premises is located; and

(c) have a public external entrance, leading to a street or other common area, that is not shared with another premises for which an operator's license has been issued.

(3) If the premises shares a common internal wall with another premises for which an operator's license has been issued, the common wall must be permanently installed, opaque, and extend from floor to ceiling and may not contain an internal entrance through which public access is allowed.

(4) A second operator's license may be issued or renewed until June 30, 1996, for a person operating a gambling activity on a premises that did not meet the requirements of subsections (2) and (3) if:

(a) the second operator's license was issued to the

1 person on or before January 1, 1991; or

2 (b) (i) the application for the second operator's  
3 license was received by the department on or before January  
4 1, 1991;

5 (ii) a second on-premises alcoholic beverages license  
6 was obtained for the premises on or before January 1, 1991;  
7 and

8 (iii) substantial physical modifications to the premises  
9 were made on or before January 1, 1991."

10 **Section 7.** Section 23-5-118, MCA, is amended to read:

11 "23-5-118. Transfer of ownership interest. A--licensed  
12 operator (1) In this section, "licensed gambling operation"  
13 means a business for which a license was obtained under  
14 parts 1 through 8 of this chapter.

15 (2) Except as provided in subsection (3), an owner of  
16 an interest in a licensed gambling operation shall notify  
17 the department in writing and receive approval from the  
18 department before transferring any ownership interest in his  
19 premises the operation.

20 (3) This section does not apply to the transfer of a  
21 security interest in a licensed gambling operation or to the  
22 transfer of less than 5% of the interest in a publicly  
23 traded corporation."

24 **Section 8.** Section 23-5-123, MCA, is amended to read:

25 "23-5-123. Disposal of money confiscated by reason of

1 violation of gambling laws. All fines, penalties,  
2 forfeitures, and confiscated money collected by criminal,  
3 civil, or administrative process for a violation of a  
4 provision of parts 1 through 6 8 of this chapter or a rule  
5 of the department must be deposited one-half in the state  
6 general fund and one-half in the general fund of the county  
7 in which the violation occurred."

8 **Section 9.** Section 23-5-136, MCA, is amended to read:

9 "23-5-136. Injunction and other remedies. (1) If a  
10 person has engaged or is engaging in an act or practice  
11 constituting a violation of a provision of parts 1 through 6  
12 8 of this chapter or a rule or order of the department, the  
13 department may:

14 (a) issue a temporary order to cease and desist from  
15 the gambling activity, act, or practice for a period not to  
16 exceed 60 days;

17 (b) following notice and an opportunity for hearing,  
18 and with the right of judicial review, under the Montana  
19 Administrative Procedure Act:

20 (i) issue a permanent order to cease and desist from  
21 the act or practice, which order remains in effect pending  
22 judicial review;

23 (ii) place a licensee on probation;

24 (iii) suspend for a period not to exceed 180 days a  
25 license or permit for the gambling activity, device, or

1 enterprise involved in the act or practice constituting the  
2 violation;

3 (iv) revoke a license or permit for the gambling  
4 activity, device, or enterprise involved in the act or  
5 practice constituting the violation;

6 (v) impose a civil penalty not to exceed \$10,000 for  
7 each violation, whether or not the person is licensed by the  
8 department; and

9 (vi) impose any combination of the penalties contained  
10 in this subsection (1)(b); and

11 (c) bring an action in district court for relief  
12 against the act or practice. The department may not be  
13 required to post a bond. On proper showing, the court may:

14 (i) issue a restraining order, a temporary or permanent  
15 injunction, or other appropriate writ;

16 (ii) suspend or revoke a license or permit; and

17 (iii) appoint a receiver or conservator for the  
18 defendant or the assets of the defendant.

19 (2) The department may issue a warrant for distraint  
20 against an operator who fails to pay a civil penalty imposed  
21 under subsection (1) or a tax imposed under 23-5-409 or  
22 23-5-610. The department may issue the warrant for the  
23 amount of the unpaid penalty or for the amount of the unpaid  
24 tax, plus penalty and accumulated interest on the tax, and  
25 shall follow the procedures provided in 15-1-701 through

1 15-1-708.

2 (3) (a) A civil penalty imposed under this section must  
3 be collected by the department and distributed as provided  
4 in 23-5-123. The local government portion of the penalty  
5 payment is statutorily appropriated to the department, as  
6 provided in 17-7-502, for deposit to the county or municipal  
7 treasury.

8 (b) If a person fails to pay the civil penalty, the  
9 amount due is a lien on the person's licensed premises and  
10 gambling devices in the state and may be recovered by the  
11 department in a civil action."

12 **Section 10.** Section 23-5-157, MCA, is amended to read:

13 "23-5-157. Gambling on cash basis. (1) In every  
14 gambling activity, except raffles as authorized in 23-5-413,  
15 the consideration paid for the chance to play must be made  
16 in cash. A check or credit card may be used to obtain cash  
17 to participate in a gambling activity. A participant shall  
18 present the money cash needed to play the game as the game  
19 is being played. A check, credit card, note, ~~I-O-U~~ IOU, or  
20 other evidence of indebtedness may not be offered or  
21 accepted as part of the price of participation in the  
22 gambling activity or as payment of a debt incurred in the  
23 gambling activity. ~~The use of a check or credit card to pay~~  
24 ~~for other goods or services in the establishment or to~~  
25 ~~obtain cash is not a violation of this section.~~



(2) A person who violates this section is guilty of a misdemeanor and must be punished in accordance with 23-5-161."

**Section 11.** Section 23-5-161, MCA, is amended to read:

"23-5-161. Criminal liabilities -- misdemeanor. A person who purposely or knowingly violates a provision of parts 1 through 6 8 of this chapter, the punishment of which is for a misdemeanor, must shall upon conviction of a first offense be fined not more than \$500. Upon a second conviction within 5 years of a first conviction, a person must shall be fined not more than \$1,000 or imprisoned in the county jail for not more than 6 months, or both. Upon a third conviction within 5 years of a second conviction, a person must shall be fined not more than \$10,000 or imprisoned in the county jail for not more than 1 year, or both. Upon a fourth conviction within 5 years of a third conviction, a person must shall be fined not more than \$10,000 or imprisoned in the county jail for not more than 1 year, or both, and the department shall revoke all licenses and permits the person holds under parts 1 through 6 8 of this chapter and the person is forever barred from receipt of any license or permit under this chapter. When 5 years have passed following a conviction, the record of that conviction may be made available only to criminal justice agencies or upon court order."

**Section 12.** Section 23-5-162, MCA, is amended to read:

"23-5-162. Criminal liabilities -- felony. (1) A person who purposely or knowingly violates a provision of parts 1 through 6 8 of this chapter, the punishment for which is a felony, may upon conviction be fined not more than \$50,000 or imprisoned for not more than 10 years, or both, for each violation.

(2) In addition to any penalty imposed under subsection (1), the department shall revoke all licenses or permits issued to the person under parts 1 through 6 8 of this chapter and may not issue the person another license or permit under parts 1 through 6 8 of this chapter."

**Section 13.** Section 23-5-171, MCA, is amended to read:

"23-5-171. Authority of local governments to regulate gambling. (1) A local government may not license or regulate a form of gambling authorized by parts 1 through 6 8 of this chapter or assess or charge any fees or taxes unless specifically authorized by statute.

(2) An incorporated city or town may enact an ordinance or resolution zoning certain areas within its incorporated limits in which gambling is prohibited.

(3) A county may enact a resolution zoning certain areas in the county, not within an incorporated city or town, in which gambling is prohibited.

(4) A county or incorporated city or town may not

1 restrict the number of licenses that the department may  
2 issue."

3 **Section 14.** Section 23-5-172, MCA, is amended to read:

4 "23-5-172. Prosecution. The county attorney of the  
5 county in which a violation of a provision of parts 1  
6 through 6 8 of this chapter occurs shall prosecute all  
7 gambling actions within the jurisdiction of the department.  
8 However, if the county attorney declines prosecution or  
9 fails to commence an action within a reasonable time, the  
10 attorney general may initiate and conduct the prosecution on  
11 behalf of the state."

12 **Section 15.** Section 23-5-309, MCA, is amended to read:

13 "23-5-309. Requirements for conducting card games. (1)  
14 Except as provided in 23-5-310 and 23-5-317, a live card  
15 game must be played on a live card game table for which a  
16 permit has been issued and on the premises of a licensed  
17 operator.

18 (2) A live card game of panguingue or poker must be  
19 played in the presence and under the control of a licensed  
20 dealer."

21 **Section 16.** Section 23-5-610, MCA, is amended to read:

22 "23-5-610. (Temporary) Video gambling machine gross  
23 income tax -- records -- distribution -- quarterly statement  
24 and payment. (1) A licensed operator issued a permit under  
25 this part shall pay to the department a video gambling

1 machine tax of 15% of the gross income from each video  
2 gambling machine licensed under this part. A licensed  
3 operator may deduct from the gross income amounts equal to  
4 amounts stolen from machines if the amounts are not repaid  
5 by insurance and if a law enforcement agency investigated  
6 the theft.

7 (2) A licensed operator issued a permit under this part  
8 shall keep a record of the gross income from each machine in  
9 such form as the department may require. The records must at  
10 all times during the business hours of the licensee be  
11 subject to inspection by the department.

12 (3) A licensed operator issued a permit under this part  
13 shall, within 15 days after the end of each quarter,  
14 complete and deliver to the department a statement showing  
15 the total gross income from each video gambling machine  
16 licensed to him, together with the total amount due the  
17 state as video gambling machine gross income tax for the  
18 preceding quarter. The statement must contain other relevant  
19 information as the department may require.

20 (4) (a) The department shall forward one-third of the  
21 tax collected under subsection (3) and the surtax imposed by  
22 23-5-646 to the general fund.

23 (b) The department shall forward the remaining  
24 two-thirds of the tax collected under subsection (3) to the  
25 treasurer of the county or the clerk, finance officer, or

1 treasurer of the city or town in which the licensed machine  
2 is located, for deposit to the county or municipal treasury.  
3 Counties are not entitled to proceeds from taxes on income  
4 from video gambling machines located in incorporated cities  
5 and towns. The two-thirds local government portion of tax  
6 collected under subsection (3) is statutorily appropriated  
7 to the department as provided in 17-7-502 for deposit to the  
8 county or municipal treasury.

9 23-5-610. (Effective on receipt of taxes for calendar  
10 quarter ending June 30, 1993) Video gambling machine gross  
11 income tax -- records -- distribution -- quarterly statement  
12 and payment. (1) A licensed operator issued a permit under  
13 this part shall pay to the department a video gambling  
14 machine tax of 15% of the gross income from each video  
15 gambling machine licensed under this part. A licensed  
16 operator may deduct from the gross income amounts equal to  
17 amounts stolen from machines if the amounts stolen are not  
18 repaid by insurance or under a court order and if a law  
19 enforcement agency investigated the theft and if the theft  
20 is the result of either unauthorized entry and physical  
21 removal of the money from the machines or of machine  
22 tampering and the amounts stolen are documented.

23 (2) A licensed operator issued a permit under this part  
24 shall keep a record of the gross income from each machine in  
25 such a form as the department may require. The records must

1 at all times during the business hours of the licensee be  
2 subject to inspection by the department.

3 (3) A licensed operator issued a permit under this part  
4 shall, within 15 days after the end of each quarter,  
5 complete and deliver to the department a statement showing  
6 the total gross income from each video gambling machine  
7 licensed to him the operator, together with the total amount  
8 due the state as video gambling machine gross income tax for  
9 the preceding quarter. The statement must contain other  
10 relevant information as the department may require.

11 (4) (a) The department shall forward one-third of the  
12 tax collected under subsection (3) to the general fund.

13 (b) The department shall forward the remaining  
14 two-thirds of the tax collected under subsection (3) to the  
15 treasurer of the county or the clerk, finance officer, or  
16 treasurer of the city or town in which the licensed machine  
17 is located, for deposit to the county or municipal treasury.  
18 Counties are not entitled to proceeds from taxes on income  
19 from video gambling machines located in incorporated cities  
20 and towns. The two-thirds local government portion of tax  
21 collected under subsection (3) is statutorily appropriated  
22 to the department as provided in 17-7-502 for deposit to the  
23 county or municipal treasury."

24 **Section 17.** Section 23-5-631, MCA, is amended to read:

25 "23-5-631. Examination and approval of new video

1 gambling machines and associated equipment -- fee. (1) The  
 2 department shall examine and may approve a new video  
 3 gambling machine and associated equipment which that are  
 4 manufactured, sold, or distributed for use in the state  
 5 before the video gambling machine or associated equipment is  
 6 sold, played, or used.

7 (2) A video gambling machine or associated equipment  
 8 may not be examined or approved by the department until the  
 9 video gambling machine manufacturer-distributor is licensed  
 10 as required in 23-5-625.

11 (3) All video gambling machines approved by the  
 12 department of commerce prior to October 1, 1989, must be  
 13 considered approved under this part.

14 (4) The department shall require the  
 15 manufacturer-distributor seeking the examination and  
 16 approval of a new video gambling machine or associated  
 17 equipment to pay the anticipated actual costs of the  
 18 examination in advance and, after the completion of the  
 19 examination, shall refund overpayments or charge and collect  
 20 amounts sufficient to reimburse the department for  
 21 underpayments of actual costs.

22 (5) Payments received under subsection (4) are  
 23 statutorily appropriated to the department, as provided in  
 24 17-7-502, to defray the costs of examining and approving  
 25 video gambling machines and associated equipment and to

1 issue refunds for overpayments.

2 (6) The department may inspect and test and approve,  
 3 disapprove, or place a condition upon a video gambling  
 4 machine prior to its distribution and placement for play by  
 5 the public. A manufacturer-distributor may not supply a  
 6 video gambling machine or associated equipment to another  
 7 licensed manufacturer-distributor or a licensed operator  
 8 unless the machine or equipment has been approved by the  
 9 department. [A MANUFACTURER, DISTRIBUTOR, OR ROUTE OPERATOR  
 10 MAY NOT SUPPLY A VIDEO GAMBLING MACHINE OR ASSOCIATED  
 11 EQUIPMENT TO A MANUFACTURER, DISTRIBUTOR, ROUTE OPERATOR, OR  
 12 OPERATOR UNLESS THE MACHINE OR EQUIPMENT HAS BEEN APPROVED  
 13 BY THE DEPARTMENT.]"

14 **SECTION 18. SECTION 23-7-302, MCA, IS AMENDED TO READ:**

15 "23-7-302. Sales restrictions. (1) The price of each  
 16 lottery game ticket or chance must be clearly stated  
 17 thereon. The price of a lottery game chance vended by a  
 18 machine or electronic device must be clearly stated on the  
 19 machine or device.

20 (2) Tickets and chances may not be sold to or purchased  
 21 by persons under 18 years of age.

22 (3) Tickets and chances may be purchased only with cash  
 23 or a check and may not be purchased on credit.

24 (4) Tickets and chances may not be sold to or purchased  
 25 by commissioners, the director, his staff, gaming suppliers

1 doing business with the state lottery, suppliers' officers  
2 and employees, employees of any firm auditing or  
3 investigating the state lottery, governmental employees  
4 auditing or investigating the state lottery, or members of  
5 their households.

6 (5) The names of elected officials may not appear on  
7 any ticket or chance."

8 NEW SECTION. SECTION 19. COORDINATION INSTRUCTION. IF  
9 HOUSE BILL NO. 411 IS PASSED AND APPROVED, THEN THE  
10 UNBRACKETED AMENDMENT IN [SECTION 17(6) OF THIS ACT],  
11 AMENDING 23-5-631, IS VOID AND THE BRACKETED LANGUAGE IS  
12 EFFECTIVE. IF HOUSE BILL NO. 411 IS NOT PASSED AND APPROVED,  
13 THEN THE BRACKETED LANGUAGE IS VOID.

-End-