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INTRODUCED BY Larsen ^{House Bill No. 537} Larovich

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING ESTABLISHMENTS THAT HAVE A COMMONALITY OF INTERESTS AND THE MAXIMUM ALLOWABLE NUMBER OF VIDEO GAMING MACHINES FROM BEING WITHIN 150 FEET OF EACH OTHER."

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

NEW SECTION. Section 1. Permit for premises within 150 feet of another premises. (1) (a) A licensee may not be granted a permit for the maximum number of video gambling machines allowed on a premises under 23-5-611 if, at the time of application for the permit, the licensee's premises are within 150 feet of, or have an external structural connection not amounting to a common internal wall, as that term is used in 23-5-117, to, a premises that already has a permit for the maximum number of video gambling machines allowed on a premises under 23-5-611 and if the two premises have one or more common owners. A measurement of the distance between two premises must be taken between the nearest exterior wall of each premises.

(b) A premises for which a gambling license was applied for prior to September 1, 1994, is not subject to subsection (1)(a) during the 10-year period following [the effective date of this section]. A premises licensed before January 1, 1985, is not subject to subsection (1)(a) for as long as ownership remains within the immediate family that owned the premises on January 1, 1985, if ownership of the premises on [the effective date of this section] was within the immediate family that owned the premises on January 1, 1985.

(2) For purposes of this section, the following definitions apply:

(a) "Affiliate" means a person or entity that controls, is controlled by, or is under common control with another person or entity. The term includes but is not limited to a premises that has:

(i) shareholders, partners, or other individual owners, by trust or otherwise, who are also shareholders, partners, or individual owners, by trust or otherwise, of the other premises;

(ii) shareholders, partners, or other individual owners, by trust or otherwise, who are income taxpayers related to the shareholders, partners, or other individual owners, by trust or otherwise, of the

1 other premises;

2 (iii) an agreement with the other premises or the other premises' shareholders, partners, or other
3 individual owners, by trust or otherwise, for the ownership and operation of gaming equipment if the
4 agreement has other financial components, such as a landlord and tenant relationship or noninstitutional
5 financing; or

6 (iv) a premises rental agreement with the other premises or its shareholders, partners, or other
7 individual owners, by trust or otherwise, at a rental rate other than the market rental rate, as determined
8 by a Montana independent appraisers association appraisal done at the time that the rental rate is set or
9 changed.

10 (b) "Commonality of business interests" means:

11 (i) management, bookkeeping, or accounting services that are provided by the same person or
12 entity;

13 (ii) a contract, deed, contract for deed, concession agreement, or lease, rental, or other agreement,
14 with the same person or entity, except a commercial mall with at least 50,000 square feet and at least eight
15 separate businesses;

16 (iii) that the same person or entity provides equipment, furnishings, fixtures, or supplies; or

17 (iv) that the same person or entity, except a financial institution, provides or guarantees the
18 financing for the purchase of the liquor license or of the premises or for operating costs.

19 (c) "Common owner" means an affiliate, immediate family member, manager, parent or subsidiary
20 business entity, investor, person or entity with a commonality of business interests, or other person or
21 entity able to influence the operator or manager of the premises or to prevent the operator or manager from
22 fully pursuing the premises' separate interests.

23 (d) "Control" means the power to cause or direct management and policies through ownership,
24 contract, or otherwise.

25 (e) "Immediate family" means a parent, children, siblings, grandchildren, grandparents, nieces, and
26 nephews.

27 (f) "Investor" means a person who:

28 (i) advances or pledges to advance funds with the expectation of a specified or unspecified return;

29 (ii) guarantees a loan; or

30 (iii) has an option to participate in the premises.

APPROVED BY COMMITTEE
ON BUSINESS AND LABOR

HOUSE BILL NO. 537

INTRODUCED BY LARSON, PAVLOVICH

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING ESTABLISHMENTS THAT HAVE A COMMONALITY OF INTERESTS AND ~~THE MAXIMUM ALLOWABLE NUMBER OF~~ VIDEO GAMING MACHINES FROM BEING WITHIN 150 FEET OF EACH OTHER."

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

NEW SECTION. **Section 1. Permit for premises within 150 feet of another premises.** (1) (a) A licensee may not be granted a permit for ~~the maximum number of~~ video gambling machines allowed on a premises under 23-5-611 if, at the time of application for the permit, the licensee's premises are within 150 feet of, or have an external structural connection not amounting to a common internal wall, as that term is used in 23-5-117, to, a premises that already has a permit for ~~the maximum number of~~ video gambling machines allowed on a premises under 23-5-611 and if the two premises have one or more common owners. A measurement of the distance between two premises must be taken between the nearest exterior wall of each premises.

(b) A premises for which ~~a gambling~~ **AN ON-PREMISES ALCOHOLIC BEVERAGES** license was **GRANTED OR** applied for prior to ~~September 1, 1994~~ **JANUARY 1, 1995**, is not subject to subsection (1)(a) during the 10-year period following [the effective date of this section]. A premises licensed before January 1, 1985, is not subject to subsection (1)(a) for as long as ownership remains within the immediate family that owned the premises on January 1, 1985, if ownership of the premises on [the effective date of this section] was within the immediate family that owned the premises on January 1, 1985.

(2) For purposes of this section, the following definitions apply:

(a) "Affiliate" means a person or entity that controls, is controlled by, or is under common control with another person or entity. The term includes but is not limited to a premises that has:

(i) shareholders, partners, or other individual owners, by trust or otherwise, who are also shareholders, partners, or individual owners, by trust or otherwise, of the other premises;

(ii) shareholders, partners, or other individual owners, by trust or otherwise, who are income taxpayers related to the shareholders, partners, or other individual owners, by trust or otherwise, of the

1 other premises;

2 (iii) an agreement with the other premises or the other premises' shareholders, partners, or other
3 individual owners, by trust or otherwise, for the ownership and operation of gaming equipment if the
4 agreement has other financial components, such as a landlord and tenant relationship or noninstitutional
5 financing; or

6 (iv) a premises rental agreement with the other premises or its shareholders, partners, or other
7 individual owners, by trust or otherwise, at a rental rate other than the market rental rate, as determined
8 by a Montana independent appraisers association appraisal done at the time that the rental rate is set or
9 changed.

10 (b) "Commonality of business interests" means:

11 ~~(i) management, bookkeeping, or accounting services that are provided by the same person or~~
12 ~~entity;~~

13 ~~(ii)(I)~~ a contract, deed, contract for deed, concession agreement, or lease, rental, or other
14 agreement, with the same person or entity, except a commercial mall with at least 50,000 square feet and
15 at least eight separate businesses; OR

16 ~~(iii) that the same person or entity provides equipment, furnishings, fixtures, or supplies; or~~

17 ~~(iv)(II)~~ that the same person or entity, except a financial institution, provides or guarantees the
18 financing for the purchase of the liquor license or of the premises or for operating costs.

19 (c) "Common owner" means an affiliate, immediate family member, manager, parent or subsidiary
20 business entity, investor, person or entity with a commonality of business interests, or other person or
21 entity able to influence the operator or manager of the premises or to prevent the operator or manager from
22 fully pursuing the premises' separate interests.

23 (d) "Control" means the power to cause or direct management and policies through ownership,
24 contract, or otherwise.

25 (e) "Immediate family" means a parent, children, siblings, grandchildren, grandparents, nieces, and
26 nephews.

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28 (i) advances or pledges to advance funds with the expectation of a specified or unspecified return;

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2 INTRODUCED BY LARSON, PAVLOVICH

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 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING ESTABLISHMENTS THAT HAVE A COMMONALITY
 5 OF INTERESTS AND ~~THE MAXIMUM ALLOWABLE NUMBER OF~~ VIDEO GAMING MACHINES FROM BEING
 6 WITHIN 150 FEET OF EACH OTHER."

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 11 licensee may not be granted a permit for ~~the maximum number of~~ video gambling machines allowed on a
 12 premises under 23-5-611 if, at the time of application for the permit, the licensee's premises are within 150
 13 feet of, or have an external structural connection not amounting to a common internal wall, as that term
 14 is used in 23-5-117, to, a premises that already has a permit for ~~the maximum number of~~ video gambling
 15 machines allowed on a premises under 23-5-611 and if the two premises have one or more common
 16 owners. A measurement of the distance between two premises must be taken between the nearest exterior
 17 wall of each premises.

18 (b) A premises for which ~~a gambling~~ AN ON-PREMISES ALCOHOLIC BEVERAGES license was
 19 GRANTED OR applied for prior to ~~September 1, 1994~~ JANUARY 1, 1995, is not subject to subsection (1)(a)
 20 during the ~~40-year~~ 5-YEAR period following [the effective date of this section]. A premises licensed before
 21 January 1, 1985, is not subject to subsection (1)(a) for as long as ownership remains within the immediate
 22 family that owned the premises on January 1, 1985, if ownership of the premises on [the effective date
 23 of this section] was within the immediate family that owned the premises on January 1, 1985.

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 28 shareholders, partners, or individual owners, by trust or otherwise, of the other premises;

29 (ii) shareholders, partners, or other individual owners, by trust or otherwise, who are income
 30 taxpayers related to the shareholders, partners, or other individual owners, by trust or otherwise, of the

1 other premises;

2 (iii) an agreement with the other premises or the other premises' shareholders, partners, or other
3 individual owners, by trust or otherwise, for the ownership and operation of gaming equipment if the
4 agreement has other financial components, such as a landlord and tenant relationship or noninstitutional
5 financing; or

6 (iv) a premises rental agreement with the other premises or its shareholders, partners, or other
7 individual owners, by trust or otherwise, at a rental rate other than the market rental rate, as determined
8 by a Montana independent appraisers association appraisal done at the time that the rental rate is set or
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12 ~~entity;~~

13 ~~(ii)(I) a contract, deed, contract for deed, concession agreement, or lease, rental, or other~~
14 ~~agreement, with the same person or entity, except a commercial mall with at least 50,000 square feet and~~
15 ~~at least eight separate businesses; OR~~

16 ~~(iii) that the same person or entity provides equipment, furnishings, fixtures, or supplies; or~~

17 ~~(iv)(II) that the same person or entity, except a financial institution, provides or guarantees the~~
18 ~~financing for the purchase of the liquor license or of the premises or for operating costs.~~

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21 entity able to influence the operator or manager of the premises or to prevent the operator or manager from
22 fully pursuing the premises' separate interests.

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24 contract, or otherwise.

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26 nephews.

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29 (ii) guarantees a loan; or

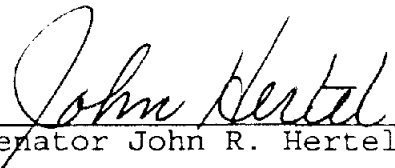
30 (iii) has an option to participate in the premises.

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 9, 1995

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration HB 537 (third reading copy -- blue), respectfully report that HB 537 be amended as follows and as so amended be concurred in.

Signed: 

Senator John R. Hertel, Chair

That such amendments read:

1. Title, lines 4 and 5.

Strike: "A" on line 4 through "INTERESTS" on line 5

Insert: "ONE OR MORE COMMON OWNERS"

2. Page 1, line 19.

Strike: "OR"

Insert: ", "

Following: "for"

Insert: "or the transfer of which was validly contracted for"

Strike: "JANUARY 1"

Insert: "February 1"

3. Page 1, line 20.

Strike: "5-YEAR"

Insert: "10-year"

4. Page 2, line 14.

Following: "agreement"

Insert: "involving real property"

Following: "except"

Insert: ": (A)"

5. Page 2, line 15.

Following: "businesses"

Insert: "; or (B) an agreement by a licensee to lease premises from a person or entity that also leases other premises in the same building or structure to one or more licensees if there is no other common ownership between any of the licensees"

6. Page 2, line 17.

Following: "provides"


Strike: "or guarantees"

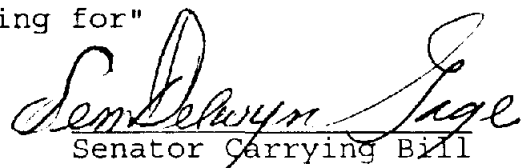
7. Page 2, line 18.

Following: "financing for"

HB 537

SENATE


Amd. Coord.
Sec. of Senate


Senator Carrying Bill

Strike: "the" through "costs."

Insert: ": (A) the purchase of the liquor license;

(B) the purchase of the premises; or

(C) operating expenses of more than \$25,000, except for expenses allowed under 23-5-130."

8. Page 2, line 29.

Following: "loan"

Insert: ", except a loan guaranteed by a route operator who would not otherwise be considered a common owner"

-END-

SENATE COMMITTEE OF THE WHOLE AMENDMENT

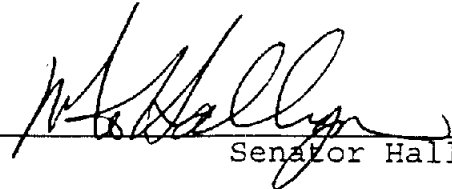
March 20, 1995 2:48 pm

Mr. Chairman: I move to amend HB 537 (third reading copy -- blue)

ADOPT

31-16

REJECT

Signed: 

Senator Halligan

That such amendments read:

1. Title, line 6.

Following: "OTHER"

Insert: "; EXTENDING THE EXEMPTION PERIOD FOR PREMISES NOT MEETING CURRENT PREMISES APPROVAL REQUIREMENTS; AND AMENDING SECTION 23-5-117, MCA"

2. Page 2.

Following: line 30

Insert: "Section 2. 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) 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~~ 2001, 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."

Renumber: subsequent section

-END-

HB 537

SENATE

641447CW.SRF

 Amd. Coord.



FREE CONFERENCE COMMITTEE

on House Bill 537

Report No. 1, April 6, 1995

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered House Bill 537 and considered:

- 1. Senate Committee on Business and Industry to the third reading copy, dated March 9, 1995; and
- 2. Senate Committee of the Whole Amendments to the third reading copy, dated March 20, 1995.

We recommend that the amendments for the Standing Committee and the amendments for the Committee of the Whole be adopted.

And this FREE Conference Committee report be adopted.

For the House:

R. Johnson

Chair

Keenan

Larson

Bolo Keenan

For the Senate:

Hertel

Chair

Crismore

Eck

H. S. Crismore

ADOPT

REJECT

HB 537

FCCR#1

791026CC.Hbk

1 HOUSE BILL NO. 537

2 INTRODUCED BY LARSON, PAVLOVICH

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING ESTABLISHMENTS THAT HAVE A COMMONALITY
 5 OF INTERESTS ONE OR MORE COMMON OWNERS AND THE MAXIMUM ALLOWABLE NUMBER OF VIDEO
 6 GAMING MACHINES FROM BEING WITHIN 150 FEET OF EACH OTHER; EXTENDING THE EXEMPTION
 7 PERIOD FOR PREMISES NOT MEETING CURRENT PREMISES APPROVAL REQUIREMENTS; AND
 8 AMENDING SECTION 23-5-117, MCA."

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

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 14 premises under 23-5-611 if, at the time of application for the permit, the licensee's premises are within 150
 15 feet of, or have an external structural connection not amounting to a common internal wall, as that term
 16 is used in 23-5-117, to, a premises that already has a permit for ~~the maximum number of~~ video gambling
 17 machines allowed on a premises under 23-5-611 and if the two premises have one or more common
 18 owners. A measurement of the distance between two premises must be taken between the nearest exterior
 19 wall of each premises.

20 (b) A premises for which ~~a gambling~~ AN ON-PREMISES ALCOHOLIC BEVERAGES license was
 21 GRANTED OR, WAS applied for, OR THE TRANSFER OF WHICH WAS VALIDLY CONTRACTED FOR prior
 22 to ~~September 1, 1994~~ JANUARY 1 FEBRUARY 1, 1995, is not subject to subsection (1)(a) during the
 23 ~~10-year~~ 5-YEAR 10-YEAR period following [the effective date of this section]. A premises licensed before
 24 January 1, 1985, is not subject to subsection (1)(a) for as long as ownership remains within the immediate
 25 family that owned the premises on January 1, 1985, if ownership of the premises on [the effective date
 26 of this section] was within the immediate family that owned the premises on January 1, 1985.

27 (2) For purposes of this section, the following definitions apply:

28 (a) "Affiliate" means a person or entity that controls, is controlled by, or is under common control
 29 with another person or entity. The term includes but is not limited to a premises that has:

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1 shareholders, partners, or individual owners, by trust or otherwise, of the other premises;

2 (ii) shareholders, partners, or other individual owners, by trust or otherwise, who are income
3 taxpayers related to the shareholders, partners, or other individual owners, by trust or otherwise, of the
4 other premises;

5 (iii) an agreement with the other premises or the other premises' shareholders, partners, or other
6 individual owners, by trust or otherwise, for the ownership and operation of gaming equipment if the
7 agreement has other financial components, such as a landlord and tenant relationship or noninstitutional
8 financing; or

9 (iv) a premises rental agreement with the other premises or its shareholders, partners, or other
10 individual owners, by trust or otherwise, at a rental rate other than the market rental rate, as determined
11 by a Montana independent appraisers association appraisal done at the time that the rental rate is set or
12 changed.

13 (b) "Commonality of business interests" means:

14 ~~(i) management, bookkeeping, or accounting services that are provided by the same person or~~
15 ~~entity;~~

16 ~~(ii)(I)~~ a contract, deed, contract for deed, concession agreement, or lease, rental, or other
17 agreement INVOLVING REAL PROPERTY, with the same person or entity, except:

18 (A) a commercial mall with at least 50,000 square feet and at least eight separate businesses; OR

19 (B) AN AGREEMENT BY A LICENSEE TO LEASE PREMISES FROM A PERSON OR ENTITY THAT
20 ALSO LEASES OTHER PREMISES IN THE SAME BUILDING OR STRUCTURE TO ONE OR MORE LICENSEES
21 IF THERE IS NO OTHER COMMON OWNERSHIP BETWEEN ANY OF THE LICENSEES; OR

22 ~~(iii) that the same person or entity provides equipment, furnishings, fixtures, or supplies; or~~

23 ~~(iv)(II) that the same person or entity, except a financial institution, provides or guarantees the~~
24 ~~financing for the purchase of the liquor license or of the premises or for operating costs;~~

25 (A) THE PURCHASE OF THE LIQUOR LICENSE;

26 (B) THE PURCHASE OF THE PREMISES; OR

27 (C) OPERATING EXPENSES OF MORE THAN \$25,000, EXCEPT FOR EXPENSES ALLOWED UNDER
28 23-5-130.

29 (c) "Common owner" means an affiliate, immediate family member, manager, parent or subsidiary
30 business entity, investor, person or entity with a commonality of business interests, or other person or

1 entity able to influence the operator or manager of the premises or to prevent the operator or manager from
2 fully pursuing the premises' separate interests.

3 (d) "Control" means the power to cause or direct management and policies through ownership,
4 contract, or otherwise.

5 (e) "Immediate family" means a parent, children, siblings, grandchildren, grandparents, nieces, and
6 nephews.

7 (f) "Investor" means a person who:

8 (i) advances or pledges to advance funds with the expectation of a specified or unspecified return;

9 (ii) guarantees a loan, EXCEPT A LOAN GUARANTEED BY A ROUTE OPERATOR WHO WOULD NOT
10 OTHERWISE BE CONSIDERED A COMMON OWNER; or

11 (iii) has an option to participate in the premises.

12

13 **SECTION 2. SECTION 23-5-117, MCA, IS AMENDED TO READ:**

14 **"23-5-117. Premises approval.** (1) Except as provided in subsection (4), the department may
15 approve a premises for issuance of an operator's license if the premises meets the requirements contained
16 in subsections (2) and (3).

17 (2) The premises must:

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

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

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

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

26 (4) A second operator's license may be issued or renewed until June 30, ~~1996~~ 2001, for a person
27 operating a gambling activity on a premises that did not meet the requirements of subsections (2) and (3)
28 if:

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

30 (b) (i) the application for the second operator's license was received by the department on or before

1 January 1, 1991;

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

4 (iii) substantial physical modifications to the premises were made on or before January 1, 1991."
5

6 **NEW SECTION. Section 3. Codification instruction.** [Section 1] is intended to be codified as an
7 integral part of Title 23, chapter 5, part 6, and the provisions of Title 23, chapter 5, apply to [section 1].

8 -END-