

MINUTES

**MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on April 3, 1991, at 7:05 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: Chairman Pinsoneault asked members of the Committee to review the resolution draft for HB 797 and to provide their comments to the Committee Secretary.

EXECUTIVE ACTION ON HOUSE BILL 776

Motion:

Discussion:

Valencia Lane explained Senator Towe's amendments (Exhibit #1).

Amendments, Discussion, and Votes:

Senator Harp made a motion to approve Senator Towe's amendments. The motion carried unanimously.

Recommendation and Vote:

Senator Harp made a motion that HB 776 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 559**Motion:****Discussion:****Amendments, Discussion, and Votes:**

Valencia Lane presented two sets of amendments and a gray bill, and said Peter Funk no longer wants to strike Section 10 of the bill. She said this puts drug testing back in the bill, as originally introduced (Exhibits #2, #3, and #4).

Senator Halligan stated that he was concerned about probable cause, and believes this is a reasonable compromise.

Senator Harp made a motion to approve Peter Funk's amendments (Exhibit #2), except for amendment #6 (striking Section 10). The motion carried unanimously.

Valencia Lane explained that #2 of Senator Towe's amendments are the same as #4 of Peter Funk's amendments. She stated that if all the amendments are adopted, she would merge those two.

Senator Towe made a motion to approve his amendments (Exhibit #4). The motion carried unanimously.

Recommendation and Vote:

Senator Harp made a motion that HB 559 BE CONCURRED IN AS AMENDED. The motion carried unanimously. Senator VanValkenburg or Senator Halligan will carry the bill.

EXECUTIVE ACTION ON HOUSE BILL 825**Motion:****Discussion:****Amendments, Discussion, and Votes:**

Valencia Lane reminded the Committee that they adopted Representative Dave Brown's amendments and Senator Mazurek's

amendments. She said Senator Towe's amendments add a new section on page 3, line 12, denying permits for mentally ill, mentally defective, and mentally disabled. She said she also added Senator Mazurek's language concerning people who are a threat to the community.

Senator Crippen said he could see a sheriff being put in the same position that a judge is in now, and asked why the Committee would want to put this language into the bill. Senator Svrcek replied that, without this amendment, a sheriff has to grant a permit.

Senator Svrcek made a motion to amend Senator Towe's amendments by placing a two-year sunset on this section of the bill. He said it gives the opportunity to see how the sheriffs are doing, and that he believes taking all discretion away from law enforcement is dangerous. The amendment would add a termination date to new Section 1, subsection (2). The motion carried unanimously.

Senator Towe stated that he believes a sheriff needs some discretion.

Senator Halligan stated he believes the sunset provision is a good idea, but for the entire bill. He said he didn't believe law enforcement, as a whole, has had a chance to look at this issue.

Senator Crippen commented that any problems that develop can be taken care of next session.

Senator Towe made a motion to approve his amendments, as amended by Senator Svrcek. The motion carried unanimously.

Recommendation and Vote:

Senator Svrcek made a motion that HB 825 BE CONCURRED IN AS AMENDED.

Senator Halligan said he was concerned about language on page 10, line 14 of the bill. Representative Clark replied that the application form was modified in the House Judiciary Committee. He said an applicant must apply in his or her county of residence.

Senator Halligan commented that a background check is required on new applications, but is not required upon renewal. Representative Clark replied that he believes any violation of the law would be a matter of record.

Senator Halligan said he believes this language needs to be changed to allow routine criminal records checks upon renewal.

Senator Towe suggested striking "who has not submitted prior application to the sheriff", on page 9, line 19.

Senator Halligan made a motion to approve the amendment suggested by Senator Towe. The motion carried unanimously.

Senator Towe said he did not explain #6 of his amendments, "except for actions constituting negligence or wilful misconduct".

Senator Svrcek's motion that HB 825 BE CONCURRED IN AS AMENDED carried with all members voting aye except Senator Harp who voted no.

EXECUTIVE ACTION ON HOUSE BILL 451

Motion:

Discussion:

Amendments, Discussion, and Votes:

Valencia Lane reported that the sponsor's amendment would return the bill to its original form (Exhibit #5). She reminded the Committee that the bill would remove deviate sexual conduct and the penalty from the Code and would repeal bestiality and homosexual consensual sex.

Valencia Lane advised the Committee that Section 20, page 12, of the Second Reading copy of the bill (blue) is amended to leave bestiality in the law and remove homosexual consensual sex from the law. She also provided amendments proposed by Senator Svrcek (Exhibit #6).

Senator Halligan stated that he has been on the Governor's AIDS Advisory Council for about four years. He said pediatric and heterosexual AIDS also needs to be addressed, and that his focus is on children. Senator Halligan stated he did not want to get into an emotional conflict. He said he believes decriminalization will get people in for testing, as shown by national statistics.

Senator Crippen stated that Representative Lee's amendment was designed to meet this problem, and asked why it wouldn't work. Senator Towe replied that Representative Lee's amendment (page 38, lines 8-14) says the fact that a person seeks testing or treatment may not be used as a basis for prosecution, but it is still a crime. He said he agreed with Senator Halligan, and that as much as he personally detests this activity, he doesn't see why the Committee should not pass this legislation.

Chairman Pinsoneault stated that the answer to the AIDS problem is testing every individual in this country. He said he is not in favor of decriminalizing bestiality or homosexual behavior among men.

Valencia Lane stated that Senators Pinsoneault and Svrcek's amendments are essentially similar enough to merge.

Senator Crippen asked Senator Halligan if he were saying that the only way to meet the testing problem is to decriminalize homosexual consensual sex.

Senator Doherty commented that John Connor stated this is a very difficult crime to prosecute.

Chairman Pinsoneault stated that just because it isn't prosecuted doesn't mean it can't be.

Senator Doherty stated that the virus is not specific to homosexual men. He said Representative Lee's amendment should be looked upon as an attempt to justify what is there, medically.

Senator Rye stated that laws are passed reflective of values. He said he believes the Legislature needs to occasionally make a statement regarding what it values most, and that it should stay that way.

Senator Halligan said he somewhat agreed with Senator Rye, but the Constitution guarantees the right of privacy.

Recommendation and Vote:

Senator Svrcek made a motion that HB 451 BE TABLED. The motion failed 6-6 in a roll call vote (attached).

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The meeting was recessed at 7:56 a.m. and reconvened at 12 noon.

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EXECUTIVE ACTION ON SENATE BILL 427

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Mazurek, Subcommittee Chairman, for SB 427, said he and Senators Brown, Svrcek, and Halligan met last week and on April 2, 1991 with all concerned parties (Gambling Control Division, Tavern Owners, Gaming Association, Don't Gamble with the Future, Association of Churches) to come up with proposed changes in the gaming law.

Lois Menzies, Gambling Control Division, Department of Justice, explained the amendments prepared by Valencia Lane from the First Reading copy of the bill (white). She said there are substantial amendments on page 2, line 8, for Departmental adoption of rules on sports tabs; Section 9 adds the definition of card games, illegal gambling devices, and non-profit organizations, and revises the definition of public gambling.

Ms. Menzies further stated that amendment #12 on page 3 adds subsection (3), a further definition of public gambling; amendments #13 and #14 revise the definition of raffles; amendments #16 and #17 refer to disclosure of information to the public; amendments #19 and #20 deal with illegal gambling devices and permit them to be displayed in public places if they are made permanently inoperable and are used for decorative purposes only.

Lois Menzies further advised the Committee that amendments #23 and #24 define premises as a structure facility clearly defined by permanently installed walls, having an address and no internal entrance if it is connected to a bar. She said this would prevent stacking. She said amendment #25 grandfathers the stacking issue where an application is applied for by December 31, 1990 and that it terminates June 20, 1996; amendment #26 creates a card room contractors license; amendment #27 strikes Section 10 in its entirety; amendment #38 includes new Sections 21-25, authorizing sports games.

Senator Mazurek interrupted the explanation of amendments to advise the Committee that amendments from this point come from HB 958 and HB 673 (pages 7-10 of Exhibit #7).

Lois Menzies continued, and said Section 28 permits the sale of machines; Section 29 provides a misdemeanor for participating in an illegal gambling enterprise; Section 10 clarifies the misdemeanor penalty concerning fraud or illegal operation; Section 31 adds minors, who can participate only in certain raffles; Section 32 is addressed on page 9 of Exhibit #7; Section 33 revised qualifications for licensure.

Ms. Menzies further stated that Section 34 is a new section; Sections 35-36 concern card dealers and require licensed dealers for pan or poker; Section 37 concerns social and commercial tournaments; Section 38 concerns exemptions from live bingo and keno tax and permit fees for fraternal, veterans, retirement and nursing homes, and for senior citizens centers.

Ms. Menzies stated the fee for keno is reduced to \$250; Section 41, on page 14, provides for weigh tickets in live keno games with a \$100 cap; Section 42 addresses raffles and clarifies existing statute; Sections 43-45 concerns sports pools, and eliminates the precise definition by making it more broad and generic, but with a \$5 cap on wagers and a \$500 cap on a win, and operators cannot keep any amounts wagered.

Ms. Menzies advised the Committee that Section 46 addresses placement of video gambling machines in rooms where alcoholic beverages are sold; Section 47 addresses theft from video gambling machines with exceptions if they are not paid by insurance or if law enforcement is not called; Section 47 also removes the internal quota on machines and allows 20 poker machines; Section 49 provides for fees on a pro-rated, quarterly basis; Section 50 addresses sale of gambling machines; Section 51 statutorily appropriates payments received by the Department of Justice for approval costs; Section 53 revises the statutory appropriation law to include retention of permit fees; 23-5-136, MCA, provides that one-half of fees go to the counties and the other half go to the General Fund.

Senator Mazurek made a motion to approve the amendments on Exhibit #7.

Senator Towe asked if sports betting is illegal (new Section 24). Lois Menzies replied this section was put in the bill to limit sports betting, as bookmaking is illegal.

Senator Mazurek stated that the broader definition of sports pools conforms to existing practices.

Chairman Pinsoneault asked if a wager on an NCAA game is prohibited. Lois Menzies replied it would be.

Senator Towe asked if office sports pools would be banned. Senator Mazurek replied they are allowed currently.

Senator Grosfield asked about "pan" in Section 35 on page 10. Lois Menzies replied that dealers must have a license. She stated that an operator with a liquor license who is not interested in operating a card game could contract with a card room contractor as an independent agent.

Senator Mazurek's motion to amend SB 427 carried unanimously.

Senator Mazurek made a motion to amend SB 427 to allow fishing derbies and wagers on natural occurrences. The motion carried unanimously.

Recommendation and Vote:

Senator Mazurek made a motion that SB 427 DO PASS AS AMENDED. The motion carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 451

Motion:

Senator Halligan made a motion that HB 451 BE CONCURRED IN as it came from the House.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

Senator Halligan's motion carried with all members voting aye except Senators Rye, Svrcek, Doherty who voted no.

EXECUTIVE ACTION ON HOUSE BILL 159Motion:Discussion:Amendments, Discussion, and Votes:

Valencia Lane provided Chairman Pinsoneault's amendments, and stated that since she drafted them she found that changes need to be made. She commented that a gray bill was not made up, and said one concern is with the measure of damages (Exhibit #8 - hb015902.av1). Valencia Lane further stated that page 2, lines 5-8 would be changed to "the same as provided in 27-1-311, MCA, except that the total amount assessed against the successful bidder by all litigants may not exceed ten percent of the successful bidder's bid".

Valencia Lane provided Senator Towe's amendments, which are not limited to the next lowest bidder, and said it provides for proof to recover damages and also limits damages (Exhibit #9).

Chairman Pinsoneault asked Bill Gianoulias, Tort Claims Division, Department of Administration, to comment on who makes determinations concerning violation of law. Mr. Gianoulias replied that the bill creates a private cause of action and that it would be up to the plaintiff. He said he spoke with David Scott, Department of Labor, who advised him it would not stop a contract. He said labor has authority, as workers can enforce their right to prevailing wage.

Senator Towe said he tried to make this point in his amendment #2.

Chairman Pinsoneault asked if anything in the law addresses this now. Dal Smilie, Chief Counsel, Tort Claims Division, said he believes there is prevailing wage, workers' compensation, and unemployment compensation, and that the Department of Labor told

him there are few real complaints in these areas. He said that in construction of public works contractors previous negotiations must be in contracts, and contractors must pay the difference to workers. Mr. Smilie further stated that HB 159 doesn't provide for workers to get their money, which is the big reason for performance bonds. He stated the Union watches for contractors who are not paying proper wages.

Senator Pinsonneault said he was talking about the small operator who pays cash under the table. Dal Smilie replied that private industry doesn't require bids, so prevailing wage would not count.

Senator Towe made a motion to approve his amendments #1 and #2 (Exhibit #9), and Senator Pinsonneault's amendment #1 with the changes stated by Valencia Lane (from Exhibit #8).

Senator Harp stated this bill deals with architecture and engineering construction. Valencia Lane replied that there is nothing in the bill to limit it to public contracts, other than prevailing wage. She said she believes it could apply in the other two areas, if a bid were put out to build an addition on to a private home. Dal Smilie commented that the next person in line to get the bid is not necessarily the next lowest bidder. He stated he liked the amendment concerning any other loses.

Senator Towe's motion to amend HB 159 carried unanimously.

Recommendation and Vote:

Senator Towe made a motion that HB 159 BE CONCURRED IN AS AMENDED. The motion carried with all members voting aye except Senator Mazurek who voted no. Senator Harp was asked to carry the bill.

EXECUTIVE ACTION ON HOUSE BILL 503

Motion:

Senator Mazurek made a motion to table HB 503.

Discussion:

There was no discussion on the bill.

Amendments, Discussion, and Votes:

There were none.

Recommendation and Vote:

Senator Mazurek's motion to TABLE HB 503 carried with all members voting aye except Senators Harp, Rye, Doherty, and Halligan who voted no.

EXECUTIVE ACTION ON SENATE BILL 300

Motion:

Chairman Pinsoneault made a motion to take SB 300 off the table.

Discussion:

Chairman Pinsoneault asked if the rules could be suspended to take SB 300 to the House. Senator Mazurek asked if the Chairman had any idea what would happen in the House.

Amendments, Discussion, and Votes:

There were none.

Recommendation and Vote:

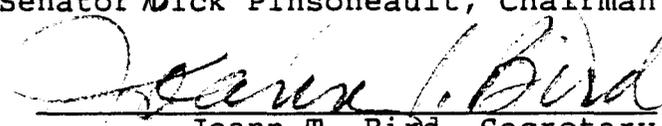
Chairman Pinsoneault's motion to take SB 300 off the table carried unanimously.

ADJOURNMENT

Adjournment At: 1:15 p.m.



Senator Dick Pinsoneault, Chairman



Joann T. Bird, Secretary

DP/jtb

ROLL CALL

SENATE JUDICIARY COMMITTEE

52nd LEGISLATIVE SESSION -- 1991

Date 3 Apr 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 4, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 776 (third reading copy -- blue), respectfully report that House Bill No. 776 be amended and as so amended be concurred in:

1. Page 1, line 15.

Following: "(2)"

Strike: "Prior to an auction"

Insert: "At the expiration of the period of default"

2. Page 1, line 24.

Following: "."

Insert: "If the certified notice is returned undelivered, notice must be given as provided in Rule 4 of the Montana Rules of Civil Procedure."

3. Page 2, lines 7 and 8.

Following: "newspaper of" on line 7

Strike: "an adjacent"

Insert: "general circulation in the"

Following: "county"

Strike: strike remainder of line 7 through "state" on line 8

4. Page 2, line 11.

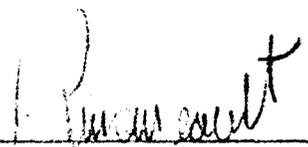
Following: "to the"

Insert: "owner. If the owner or the"

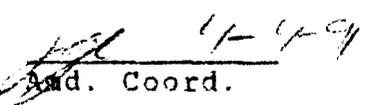
5. Page 2, line 12.

Following: "proceeds"

Insert: "cannot be located, the proceeds escheat to the state as provided in Title 72, chapter 14"

Signed: 

Richard Pinsoneault, Chairman


And. Coord.


Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
April 4, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 559 (third reading copy -- blue), respectfully report that House Bill No. 559 be amended and as so amended be concurred in:

1. Page 3, line 25.
Page 4, lines 7 and 23.
Page 5, lines 8 and 17.
Page 7, lines 4 and 19.
Page 8, line 10.
Page 9, lines 16 and 13.
Page 24, line 9.
Page 26, lines 9 and 16.
Page 27, line 2.

Following: "~~tests~~"

Insert: "or tests"

2. Page 4, line 4.
Page 7, line 15.
Page 9, lines 3 and 12.
Page 23, line 24.
Page 24, line 13.
Page 25, line 20.
Page 26, line 12.
Page 27, lines 5 and 13.

Following: "~~two~~"

Insert: ", drugs, or a combination of the two"

3. Page 4, line 12.

Following: "."

Insert: "A drug test may be performed under this section only if the arresting officer has reasonable grounds to believe the person to have been driving or in actual physical control of a vehicle upon ways of the state open to the public, while under the influence of drugs or a combination of alcohol and drugs or if a test for the presence of alcohol results in the arresting officer possessing reasonable grounds to believe the person to have been driving or in actual physical control of a vehicle upon ways of this state open to the public, while under the influence of drugs or a combination of alcohol or drugs."

4. Page 4, line 16.

Following: " "

Insert: "A person may not be required to provide more than two
bodily substance samples under this section."

5. Page 7, line 17.

Following: "admissible"

Strike: ";

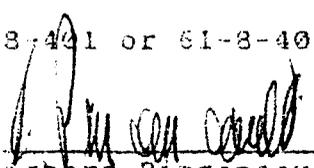
Following: "and"

Insert: ". A positive test result may not, in itself, prove that
the person was under the influence of that drug at the time
he was in control of a motor vehicle. A person may not be
convicted of a violation of 61-8-401 based upon the presence
of a drug or drugs in his person unless some other competent
evidence exists that tends to establish that the person was
under the influence of a drug or drugs while driving or in
actual physical control of a motor vehicle within this
state."

6. Page 9, line 6.

Strike: "under arrest"

Insert: "cited for a violation of 61-8-401 or 61-8-406"

Signed: 
Richard Plazoneault, Chairman

1991 4-4-91
Amd. Coord.

SB 4-4 6:15
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
April 4, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 825 (third reading copy as amended -- blue), respectfully report that House Bill No. 825 be amended and as so amended be concurred in:

1. Title, lines 9 and 10.

Following: ";" on line 9

Strike: "AND"

Following: "MCA" on line 10

Insert: "; AND PROVIDING A TERMINATION PROVISION"

2. Page 1, line 22.

Following: "."

Strike: "This"

Insert: "Except as provided in subsection (2), this"

3. Page 3, lines 5 through 9.

Following: "court" on line 5

Strike: remainder of line 5 through "weapon" on line 9

4. Page 3, line 12.

Following: line 11

Insert: "(2) The sheriff may deny an applicant a permit to carry a concealed weapon if the sheriff has reasonable cause to believe that the applicant is mentally ill, mentally defective, or mentally disabled [or otherwise may be a threat to the peace and good order of the community to the extent that the applicant should not be allowed to carry a concealed weapon]."

Renumber: subsequent subsections

5. Page 4, line 7.

Strike: "(2)(a)"

Insert: "(3)(a)"

Strike: "(2)(c)"

Insert: "(3)(c)"

6. Page 4, lines 9 and 15.

Strike: "(2)"

Insert: "(3)"

7. Page 9, lines 19 and 20.

Following: "applicant" on line 19

Strike: remainder of line 19 through "sheriff" on line 20

8. Page 11, line 5.

Following: "weapon"

Insert: ", except for actions that constitute willful misconduct
or gross negligence"

9. Page 12, line 19.

Following: "AND"

Insert: ", except for a person referred to in subsection (7),"

10. Page 14, line 2.

Strike: "concealed or"

11. Page 14, lines 3 and 4.

Following: "shotgun," on line 3

Strike: "or"

Following: "handgun" on line 4

Insert: ", or concealed handgun"

12. Page 11, line 23.

Strike: "full meals are not served and"

13. Page 15.

Following: line 13

Insert: "NEW SECTION. Section 16. Termination. The bracketed
language in [section 1 (2)] terminates July 1, 1993."

Signed: *R. Pinsonneault*

Richard Pinsonneault, Chairman

4-4-91
Mad. Coord.

B 4-4 6:45 pm
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 3, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 451 (third reading copy -- blue), respectfully report that House Bill No. 451 be concurred in.

Signed: *Richard P. Pinsonneault*
Richard Pinsonneault, Chairman

4-3-91
And. Coord.

EB 4-3-91 2:15
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 28
April 3, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 427 (first reading copy -- white), respectfully report that Senate Bill No. 427 be amended and as so amended do pass:

1. Title, lines 8 and 9.

Following: "CHANCE" on line 8

Strike: remainder of line 8 through "GAMES" on line 9

2. Title, lines 14 through 17.

Following: line 13

Strike: line 14 through "LEVEL;" on line 17

3. Title, line 20.

Following: "NIGHTS;"

Insert: "EXPANDING PROVISIONS GOVERNING SPORTS POOLS; PRORATING VIDEO GAMBLING MACHINE PERMIT FEES; ALLOWING A DEDUCTION FOR THEFT FOR PURPOSES OF CALCULATING THE VIDEO GAMBLING MACHINE TAX; AUTHORIZING FANTASY SPORTS LEAGUES, FISHING DERBIES, AND WAGERING ON NATURAL OCCURRENCES; REQUIRING BIENNIAL REPORTS FROM THE DEPARTMENT OF JUSTICE AND GAMING ADVISORY COUNCIL; REVISING CERTAIN GAMBLING DEFINITIONS; CLARIFYING CERTAIN CRIMINAL GAMBLING OFFENSES; ESTABLISHING A PENALTY FOR SALE, ASSIGNMENT, LEASE, OR TRANSFER OF A LICENSE OR PERMIT; STATUTORILY APPROPRIATING VIDEO GAMBLING MACHINE TESTING FEES TO THE DEPARTMENT OF JUSTICE; REVISING PROVISIONS CONCERNING ANTIQUE SLOT MACHINES; CLARIFYING PROHIBITED ACTIVITIES FOR DEPARTMENT OF JUSTICE EMPLOYEES; CLARIFYING DISPOSITION OF PENALTIES, FINES, AND FORFEITURES; AUTHORIZING THE DEPARTMENT OF JUSTICE TO ISSUE WARRANTS FOR DISTRAINT; ESTABLISHING THE CRIME OF SOLICITING ANOTHER PERSON TO PARTICIPATE IN AN ILLEGAL GAMBLING ENTERPRISE AND ESTABLISHING A PENALTY; PROHIBITING A MINOR FROM PARTICIPATING IN CERTAIN FORMS OF GAMBLING; REQUIRING LICENSE AND PERMIT REVOCATION UPON CONVICTION OF A FELONY GAMBLING OFFENSE; CREATING ADDITIONAL EXEMPTIONS FROM THE LIVE BINGO AND KENO TAX AND PERMIT FEE; CLARIFYING RAFFLE PROVISIONS; PROVIDING FOR SALE OF VIDEO GAMBLING MACHINES; REVISING CARD DEALER PROVISIONS; AUTHORIZING WAY TICKETS IN KENO GAMES; REMOVING THE 10-MACHINE LIMIT ON VIDEO DRAW POKER MACHINES; REVISING LICENSURE QUALIFICATIONS; PROVIDING FOR CARD GAME TOURNAMENTS; CLARIFYING PLACEMENT OF VIDEO GAMBLING MACHINES; ELIMINATING NET TAX ON LIVE BINGO AND KENO GAMES AND REVISING THE PERMIT FEE;"

Following: "SECTIONS"

Insert: "2-15-2021, 17-7-502,"

Following: "23-5-113,"

Insert: "23-5-114,"

4. Title, line 21.

Following: "23-5-115,"

Insert: "23-5-136,"

Following: "23-5-152,"

Insert: "23-5-153, 23-5-154, 23-5-156, 23-5-158, 23-5-162, 23-5-176,"

Following: "23-5-177,"

Strike: "23-5-312,"

Insert: "23-5-308, 23-5-309,"

Following: "23-5-312,"

Strike: "AND"

Insert: "23-5-406, 23-5-407, 23-5-409,"

Following: "23-5-412,"

Insert: "23-5-413, 23-5-501, 23-5-503, 23-5-502, 23-5-603, 23-5-610, 23-5-611, 23-5-612, 23-5-625, AND 23-5-631,"

5. Page 2, line 1.

Strike: "16 and 23"

Insert: "13, 20, and 44"

6. Page 2, line 3.

Strike: "16"

Insert: "13"

7. Page 2, line 8.

Strike: "23"

Insert: "20"

8. Page 2, line 17.

Following: line 16

Insert: "[Section 44] requires the department to adopt rules describing the types of sports pools authorized under 23-5-501, 23-5-503, and [section 44]."

9. Page 3, line 24.

Following: line 23

Insert: "(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."

Renumber: subsequent subsections

10. Page 4, line 24.

Page 5, line 15.

Strike: "but is not limited to"

11. Page 7, line 17.

Following: line 16

Insert: "(24) "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."

Renumber: subsequent subsections

12. Page 8, line 21.

Following: "organization"

Insert: "; 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 predominately commercial manner"

13. Page 8, line 22.

Following: "a"

Strike: "gift enterprise"

Insert: "form of lottery"

14. Page 8, line 23.

Following: "participant"

Strike: "buys a chance or chances"

Insert: "pays valuable consideration for a ticket to become eligible"

Following: "prize."

Insert: "Winners must be determined by a random selection process approved by department rule."

15. Page 11, line 10.

Following: ";

Insert: "and"

16. Page 11, line 11.

Strike: subsection (d) in its entirety

17. Page 11, line 12.

Strike: "(e)"

Insert: "(d)"

Strike: "; and"

Insert: "."

18. Page 11, lines 13 through 15.

Strike: subsection (f) in its entirety

19. Page 13, lines 3 and 4.

Following: "located" on line 3

Strike: remainder of line 3 through "city" on line 4

20. Page 13, line 5.

Following: "operation"

Insert: ":

- (a) in a public or private museum; or
- (b) any other public place if the device has been made permanently inoperable for purposes of conducting a gambling activity"

21. Page 13, line 25.

Strike: "Regardless"

Insert: "Except as provided in [section 7], regardless"

22. Page 14, line 23.

Strike: "for"

Insert: "who has submitted"

Following: "license"

Insert: "application on or after July 1, 1991,"

23. Page 15, line 8.

Strike: "The"

Insert: "Except as provided in subsection (4), the"

24. Page 15, line 24.

Following: "ceiling"

Insert: "and may not contain an internal entrance through which public access is allowed"

25. Page 15, line 25 through page 16, line 5.

Following: "(4)" on line 25

Strike: remainder of line 25 through page 16, line 5

Insert: "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."

26. Page 16, lines 10 through 24.

Following: "Section 9." on line 10

Strike: remainder of line 10 through "machines." on line 24

Insert: "Card room contractor's license -- fee -- submission of contract. (1) It is a misdemeanor for a person to enter into a contract with a licensed operator to operate one or more live card game tables on the operator's premises without obtaining a card room contractor's license from the department.

(2) The department shall charge an annual license fee of \$150 for issuing or renewing a card room contractor's license. The department shall retain the fee for administrative purposes.

(3) The applicant shall submit at the time of application for a card room contractor's license a copy of the agreement entered into with the licensed operator."

27. Page 16, line 25 through page 19, line 3.

Strike: section 10 in its entirety

Re-number: subsequent sections

28. Page 19, line 13 through page 20, line 19.

Strike: sections 12 and 13 in their entirety

Re-number: subsequent sections

29. Page 22, line 7.

Strike: "15"

Insert: "12"

30. Page 22, lines 12 and 13.

Following: "otherwise," on line 12

Strike: remainder of line 12 through "to" on line 13

Insert: "for purposes of"

31. Page 22, line 13.

Strike: "17"

Insert: "14"

Strike: "23"

Insert: "20"

32. Page 22, lines 13 and 14.

Strike: "

(1) "Casino"

Insert: ", "casino"

33. Page 22, line 16.

Strike: "18"

Insert: "15"

34. Page 22, lines 17 through 21.
Strike: subsection (2) in its entirety

35. Page 23, line 23.
Page 24, line 3.
Strike: "19"
Insert: "16"

36. Page 24, lines 6 and 12.
Strike: "20"
Insert: "17"

37. Page 24, line 24.
Strike: "17"
Insert: "14"
Strike: "22"
Insert: "19"

38. Page 25, line 2.

Following: line 1

Insert: "NEW SECTION. Section 21. Fantasy sports leagues defined. As used in [sections 21 through 25], a "fantasy sports league" means a gambling activity conducted in the following manner:

(1) A fantasy sports league consists of a limited number of persons or groups of persons who pay an entrance fee for membership in the league. The entrance fee may include an administrative fee.

(2) Each league member creates a fictitious team composed of athletes from a given professional sport, such as baseball, basketball, or football. Player selection is conducted through random drawings or a bidding process.

(3) After the initial teams are selected, interim replacement of players may occur by trade or purchase. A specific fee, which may not exceed the total entrance fee, is charged for each transaction.

(4) A method, as defined by league rules, is devised to permit each team to compete against other teams in the league. Points are awarded to a team according to the performance of individual players or teams or both during a designated time period.

(5) A member may be eligible to receive a payout based on the number of points accumulated. Payouts, which may be in the form of cash or prizes, are awarded according to league rules.

(6) Rules governing the conduct of the fantasy sports league must be provided in writing to each member.

NEW SECTION. Section 22. Fantasy sports leagues authorized. It is lawful to conduct or participate in a fantasy sports league.

NEW SECTION. Section 23. Payouts -- administrative fees charged by commercial establishments. (1) The total value of payouts to all league members must equal the amount collected for entrance, administrative, and transactions fees, minus payment for administrative expenses.

(2) If a commercial establishment charges an administrative fee for conducting a fantasy sports league, the fee for each participant may not be more than 15% of the amount charged as a participant's entrance fee.

NEW SECTION. Section 24. Sports betting prohibited -- applicability. [Sections 21 through 23] do not:

- (1) authorize betting or wagering on the outcome of an individual sports event; or
- (2) apply to gambling activities governed under chapter 4 or chapter 5, part 2 or 5, of this title.

NEW SECTION. Section 25. Violations. A person who purposely or knowingly violates or procures, aids, or abets in a violation of [sections 21 through 24] is guilty of a misdemeanor punishable under 23-5-161.

Section 26. Section 23-5-114, MCA, is amended to read:

"23-5-114. Department employees -- activities prohibited.

(1) An employee of the department, a former department employee during the first 365 days following termination of employment, or any peace officer or prosecutor directly involved with the prosecution, investigation, regulation, or licensing of gambling, as designated by the attorney general, may not:

(1)(a) serve as an officer or manager of a corporation business or organization, other than a nonprofit corporation or organization, that conducts a gambling activity, other than as an officer of a nonprofit organization;

(b) be employed by a licensed operator in any capacity that requires assisting in conducting a gambling activity regulated under parts 1 through 6 of this chapter or maintaining records for the gambling activity;

(2) receive or share in, directly or indirectly, any profit of a gambling activity regulated by the department;

(3)(c) have a beneficial or pecuniary interest in a contract for the manufacture, lease, or sale of a gambling device, the conduct of a gambling activity, or the provision of

independent consultant services in connection with a gambling activity; or

(d) participate in a gambling activity governed by parts 1 through 6 of this chapter, except in performing assigned employment duties. An employee may participate in a gambling activity governed by part 10 of this chapter or chapter 4 of this title.

(2) The prohibitions in subsections (1)(a) through (1)(c) apply to a former designated department employee during the first year following termination from employment with the department if the employee was directly involved with the prosecution, investigation, regulation, or licensing of gambling immediately before termination."

Section 27. 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 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 deposited in the state's general fund as required by 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 28. Section 23-5-153, MCA, is amended to read:

"23-5-153. Possession and sale of antique slot machines.

(1) For the purposes of this section, an antique slot machine is a mechanically or electronically operated slot machine that at any present time is more than 25 years old.

(2) Except as provided in subsection (3), an antique slot machine may be possessed, located, and operated only in a private residential dwelling.

(3) (a) An antique slot machine may be possessed or located for purposes of display only and not for operation in any public museum owned and operated by the state, a county, or a city.

(b) A licensed manufacturer-distributor or a person licensed under subsection (4) may possess and sell antique slot machines for purposes of commercially selling or otherwise supplying the machines.

(4) A person other than a licensed manufacturer-distributor may not sell more than three antique slot machines in a 12-month period without first obtaining from the department an annual license for selling the machines. The fee for the license is \$50 a year. The fee must be retained by the department for administrative purposes. The department may not issue a license under this subsection to a licensed operator.

(5) A person or entity legally possessing a slot machine under subsection (2) or (3) may sell or otherwise supply a machine to another person or entity who may legally possess a slot machine.

~~+~~(6) An antique slot machine may not be operated for any commercial or charitable purpose."

Section 29. Section 23-5-154, MCA, is amended to read:

"23-5-154. ~~Soliciting or persuading persons to play participation in illegal gambling device activity~~ prohibited. A person who purposely or knowingly advertises for or solicits another person to play or engage in the participate in an illegal gambling enterprise or use of an illegal gambling device is guilty of a misdemeanor and is punishable under 23-5-161."

Section 30. Section 23-5-156, MCA, is amended to read:

"23-5-156. Obtaining anything of value by fraud or operation of illegal gambling device or enterprise. (1) A person who by gambling in an activity involving gambling obtains money, property, or anything of value that does not exceed \$300 in value by misrepresentation, fraud, or the use of an illegal gambling device or an illegal gambling enterprise is guilty of a misdemeanor and is punishable as provided in 23-5-161.

(2) A person who by gambling in an activity involving gambling obtains money, property, or anything of value that exceeds \$300 in value by misrepresentation, fraud, or the use of an illegal gambling device or an illegal gambling enterprise is guilty of a felony and is punishable as provided in 23-5-162."

Section 31. Section 23-5-158, MCA, is amended to read:

"23-5-158. Minors not to participate -- penalty -- exception. (1) Except as provided in subsection (2), a person may not purposely or knowingly allow a person under 18 years of age to participate in a gambling activity.

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

(2) A person under 18 years of age may sell or buy tickets for or receive prizes from a raffle conducted in compliance with 23-5-413 if proceeds from the raffle, minus administrative expenses and prizes paid, are used to support charitable activities, scholarships or educational grants, or community service projects."

Section 32. 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 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 of this chapter and may not issue the person another license or permit under parts 1 through 6 of this chapter."

Section 33. Section 23-5-176, MCA, is amended to read:

"23-5-176. Qualifications for licensure. (1) A person whom the department determines is qualified to receive a license under the provisions of this chapter, except for the provisions of part 10, may, based on information available to, required by, or supplied to the department under department rules, be issued a state gambling license.

(2) The Except as provided in subsection (4), the department shall issue a license unless the department can demonstrate that the applicant ~~is~~:

(a) is a person whose prior financial or other activities or criminal record:

(i) poses a threat to the public interest of the state ~~or~~;

(ii) poses a threat to the effective regulation and control of gambling; or

~~(iii)~~ (iii) creates a danger of illegal practices, methods, or activities in the conduct of gambling or in the carrying on of the business and financial arrangements incidental to gambling; or

(b) has been convicted of a felony offense within 5 years of the date of application or is on probation or parole or under deferred prosecution for committing a felony offense; or

~~(b)~~ (c) is receiving a substantial amount of financing for the proposed operation from an unsuitable source. A lender or other source of money or credit that the department finds to meet the provisions of subsection (2)(a) may be considered an unsuitable source.

(3) The provisions of 37-1-203 and 37-1-205 do not apply to licensing determinations made under this section.

(4) The department may deny a license or permit to an applicant who has falsified a license or permit application. If the falsification is determined after the license or permit has been issued, the department may revoke the license or permit."

NEW SECTION. Section 34. Illegal sale, assignment, lease, or transfer of license -- penalty. A licensee who purposely or knowingly sells, assigns, leases, or transfers a license or permit in violation of 23-5-110 is guilty of a misdemeanor punishable in accordance with 23-5-161.

Section 35. Section 23-5-308, MCA, is amended to read:

"23-5-308. Card game dealers -- license. (1) A person may not deal cards in a live card game of panguingue or poker without being licensed annually by the department.

(2) The fee for the first year in which the license is effective is \$75, and the annual renewal fee is \$25. The fee may not be prorated.

(3) The department shall retain for administrative purposes the license fee charged for the issuance of a dealer's license.

(4) A licensed dealer shall have on his person, and display upon request, his dealer's license when he is working as a dealer.

(5) (a) The department shall adopt rules to implement temporary licensing procedures until a permanent license is issued to a dealer.

(b) The rules must provide that:

(i) a temporary license may be obtained at the place where a person locally applies for a driver's license; and ~~that~~

(ii) the receipt received upon mailing by certified mail on a completed license application for a permanent license and the fee required under subsection (2) by certified mail, return receipt requested, also constitutes a temporary license.

(c) The department may not assess a fee for the temporary license."

Section 36. Section 23-5-309, MCA, is amended to read:

"23-5-309. ~~Presence and control of dealer Requirements for conducting card games.~~ (1) Except as provided in [section 37], a live card game may not must be played except on a live card game table in the presence and under the control of a licensed dealer for which a permit has been issued and on the premises of a licensed operator.

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

NEW SECTION. Section 37. Tournaments. (1) Subject to the department's approval, a licensed operator who has a permit for placing at least 1 live card game table on his premises may conduct up to 12 live card game tournaments a year on his premises. Each tournament may be conducted for no more than 5 consecutive days. If an operator conducts more than one tournament a year, at least 7 days must lapse between the conclusion of one tournament and the beginning of the next tournament.

(2) (a) At least 10 days before the start of a tournament, the operator shall submit to the department an application for a tournament permit. The permit application must be accompanied by a \$10 fee. The department shall retain the fee for administrative purposes.

(b) If a tournament is to be conducted on the premises of more than one licensed operator, each operator shall submit a permit application and processing fee. The permit is applied toward each operator's annual 12-tournament limit.

(3) Permits for placement of additional live card game tables, as provided in 23-5-306, are not required for additional tables authorized under a tournament permit.

(4) Tournament participants must be provided with a copy of the tournament rules before the start of the tournament. A copy of the rules must be posted in a conspicuous location in each area where the tournament is conducted.

(5) A person must be present on the premises during the tournament to oversee the conduct of the card games and to settle disputes among players. This person may be a dealer licensed under 23-5-308.

(6) A licensed operator may charge a tournament participant an entry fee, which may include a fee to cover expenses incurred in conducting the tournament. A participant who has been eliminated from competition during the tournament may reenter the tournament by paying an additional fee if permitted to do so under tournament rules. A rake-off may not be taken during a tournament card game.

(7) The face value of the chips used does not govern the value of the pot awarded at the end of the tournament.

(8) The provisions of this part and the department rules governing live card games apply to live card games conducted as part of a tournament unless otherwise provided.

Section 38. Section 23-5-406, MCA, is amended to read:

"23-5-406. Exempt charitable organizations and facilities.

(1) (a) An organization ~~qualified for granted an exemption under 26 U.S.C. 501(c)(3) and, (c)(4), (c)(8), or (c)(19):~~

(i) on or before January 15, 1989, is exempt from the taxation and license fees the permit fee imposed by this part. ~~An organization qualified for exemption under that section,~~

(ii) after that date January 15, 1989, is exempt from taxation under, and need only pay one-half the license fees under, permit fee imposed by this part if the organization carries on gambling activities for no more than 60 days a calendar year and if the

(b) An organization provided for in subsection (1)(a) shall:

(i) limit its live bingo and keno activities ~~are limited~~ to its main premises or place of operations and to events at other places operated by other charitable organizations or by a government unit or entity. ~~The organization shall:~~

(ii) comply with other statutes and rules relating to the operation of live bingo and keno ~~or raffles. A qualified organization shall;~~ and

(iii) apply to the department for a ~~cost-free~~ permit to conduct charitable live bingo ~~and or~~ keno games ~~or raffles.~~

(2) A long-term care facility, as defined in 50-5-101, or a retirement home or senior citizen center, as defined in subsection (4), that has obtained an operator's license and a permit from the department to operate live bingo or keno is exempt from taxation and the permit fee imposed by this part if the facility:

(a) limits participation in live bingo and keno games to persons using the facility and their guests;

(b) limits live bingo or keno activities to its main premises or place of operation; and

(c) complies with other statutes and rules relating to the operation of live bingo and keno.

(3) The department may revoke or suspend the permit of a ~~qualified~~ an organization or a facility provided for in subsection (1) or (2) if that, after investigation, the department determines that the organization or facility is contracting operating or has contracted with a nonqualified organization to operate that is operating live bingo, or keno, or raffles in a predominantly commercial manner.

(4) For purposes of this section:

(a) "retirement home" means a building in which sleeping rooms without cooking facilities in each room are rented to three or more persons who are 60 years of age or older and who do not need skilled nursing care, intermediate nursing care, or personal nursing care, as defined in 50-5-101; and

(b) "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 or sell food or beverages under a license furnished by the state. Services qualifying under this subsection (b) must be recognized in the state plan on aging adopted by the department of family services."

Section 39. Section 23-5-407, MCA, is amended to read:

"23-5-407. Live bingo or keno permit -- fees -- disposition of fees. (1) A person who has been granted an operator's license may be granted an annual permit by the department to conduct live bingo or keno games on specified premises. The permit expires June 30 of each year.

(2) The permit fee for each ~~of the~~ premises in which a live bingo or keno game is conducted ~~may not be prorated and must be \$500~~ is \$250.

(3) The department shall retain the permit fee for administrative costs purposes."

Section 40. Section 23-5-409, MCA, is amended to read:

"23-5-409. Bingo and keno tax -- records -- distribution -- statement and payment. (1) A licensee who has received a permit to operate bingo or keno games shall pay to the department a tax of ~~5% 1%~~ of the ~~net income~~ gross proceeds from the operation of each live bingo and keno game operated on his premises. ~~For purposes of this section, "net income" means gross proceeds, as defined in 23-5-112, minus the cost of equipment, supplies, personnel, and advertising allocated to the games. If in any year 5% of net income does not equal 1% of gross proceeds, then the licensee shall pay a tax of 1% of gross proceeds.~~

(2) A licensee shall keep a record of gross proceeds and ~~net income~~ in the form the department requires. At all times during the business hours of the licensee the records must be available for inspection by the department.

(3) A licensee shall annually complete and deliver to the department a statement showing the total gross proceeds and ~~net income~~ for each live keno or bingo game operated by him and the total amount due as live bingo or keno tax for the preceding year. This statement must contain any other relevant information required by the department.

(4) The department shall forward 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 game is located for deposit to the county or municipal treasury. A county is not entitled to proceeds from taxes on live bingo or keno games located in incorporated cities and towns within the county. The 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 41. Section 23-5-412, MCA, is amended to read:

"23-5-412. Card prices and prizes -- exception. The (1) Except as provided in subsection (3):

(a) the price for an individual bingo or keno card may not exceed 50 cents. Bingo prizes may be paid in either tangible personal property or cash. It;

(b) a prize may not exceed the value of \$100 for each individual bingo award or keno card. It; and

(c) it is unlawful to, in any manner, combine any awards so as to increase the ultimate value of the award.

(2) Bingo and keno prizes may be paid in either tangible personal property or cash.

(3) A variation of the game of keno, as approved by the department, in which a player selects three or more numbers and places a wager on various combinations of these numbers is permissible if:

(a) no more than 50 cents is wagered on each combination of numbers; and

(b) a winning combination does not pay more than \$100.

(4) A player may give the a keno caller a card with instructions on the card to play that card and its marked numbers for up to the number of successive games that the house allows and that the player has indicated on the card, upon payment of the price per game times the number of successive games indicated. The player shall remain on the house premises until the card is played or withdrawn. The caller shall keep the card until the end of the number of games indicated, and the department may by rule provide that at that time the caller shall pay the player any prizes won."

Section 42. Section 23-5-413, MCA, is amended to read:

"23-5-413. Raffle prizes -- permits -- exception. (1) Raffle prizes may not exceed the value of \$5,000 for each individual raffle ticket. It is unlawful to, in any manner, combine any awards so as to increase the ultimate value of the prize awarded for each ticket.

(2)(1) (a) A separate Except as provided in subsection (1)(b), a permit must be issued by the board of county commissioners for each raffle conducted within its jurisdiction. The permit must be issued before the raffle may be conducted. The board of county commissioners may not charge a permit fee or an investigative fee for a raffle conducted by a religious corporation sole or nonprofit organization if the organization presents sufficient documentation of its nonprofit status.

(b) If tickets for a raffle are to be sold in more than one county, a permit must be obtained only in the county where the winners of the raffle are to be determined.

(2) Except for a religious corporation sole or nonprofit organization, a person or organization conducting a raffle shall own all prizes to be awarded as part of the raffle before the sale of any tickets.

(3) A person who has conducted a raffle must submit an accounting to the board of county commissioners within 30 days following the completion of the raffle.

(4) The sale of raffle tickets authorized by this part is restricted to events and participants within the geographic confines of the state.

(5) The value of a prize awarded for an individual ticket for a raffle conducted by a person or an organization, other than a religious corporation sole or nonprofit organization may not exceed \$5,000. The prize may be in the form of cash, other intangible personal property, tangible personal property, or real property. Prizes may not be combined in any manner to increase the ultimate value of the prize awarded for each ticket.

~~(3) (a) The restrictions of subsection (1) do not apply to a raffle conducted by a nonprofit corporation,~~

(6) (a) In addition to complying with the requirements of subsections (1) through (5), a religious corporation sole, or other nonprofit organization as defined in 23-5-112 if the corporation or organization is permitted by the board of county commissioners to conduct the raffle. The board of county commissioners may not charge a permit fee or an investigative fee for a raffle conducted by a nonprofit veterans' organization.

~~(b) The nonprofit organization or corporation seeking permission under subsection (3)(a) shall apply provide the following information to the board of county commissioners when applying for the a raffle permit and provide the following information:~~

~~(i) the cost and number of raffle tickets to be sold;~~

~~(ii) the charitable purposes the proceeds of the raffle are intended to benefit; and~~

~~(iii) the proposed prizes and their value.~~

~~(c) A veterans' organization seeking exemption from the permit fee or an investigative fee shall present evidence of the organization's nonprofit status to the board of county commissioners.~~

~~(d)~~(b) The proceeds from the sale of the raffle tickets for a raffle conducted by a religious corporation sole or a nonprofit organization may be used only for charitable purposes or to pay for prizes. The raffle prize must be in tangible personal property only and not in money, cash, stock, bonds, evidence of indebtedness, or other intangible personal property. None of the proceeds Proceeds may not be used for the administrative cost of conducting the raffle.

(c) The value of a prize awarded for an individual ticket for a raffle conducted by a religious corporation sole or nonprofit organization may equal or exceed \$5,000 if the prize is in the form of tangible personal property. If the value of the prize is less than \$5,000, the prize may be in the form of cash, other intangible personal property, tangible personal property, or real property."

Section 43. Section 23-5-501, MCA, is amended to read:

"23-5-501. ~~Definitions~~ Definition. As used in this part, unless the context clearly requires otherwise, ~~the following definitions apply:~~

~~(1) "Nonprofit organization" means a charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, or service organization, other than one established for the purpose of conducting or participating in a sports pool.~~

~~(2) "Sports "sports pool" means a card divided into squares or spaces, with the names of the participants in the pool written within such squares or spaces, for gambling activity, other than an activity governed under chapter 4 or chapter 5, part 2 of this title in which consideration in a person wagers money is paid by the person playing for each square or space for the chance to win money or other items of value based on any the outcome of a sports event or series of sports events wherein the participants competitors in such the sports event or series of sports events are natural persons or animals."~~

NEW SECTION. Section 44. Sports pool design -- department rules. (1) A sports pool must be designed to ensure that:

(a) there is at least one winner from among the participants in the pool; and

(b) each participant has an equal chance to win the pool.

(2) Competitors in a sports event or series of sports events may be randomly assigned to each participant in the sports pool.

(3) The department shall by rule describe the types of sports pools authorized by this part. Variations in the authorized sports pools must be submitted to the department for review and approval before they are made available for public play.

Section 45. Section 23-5-503, MCA, is amended to read:

"23-5-503. Rules. (1) The card or other device used for recording the sports pool and upon which the squares or spaces appear shall must clearly indicate in advance of the sale of any

chances the number of chances to be sold in that specific pool, the name of the event or series of events, the consideration to be paid for each chance, and the total amount or percentage to be paid to the winners.

~~(2) A chance to participate in a sports pool may not be sold other than upon the premises in which the sports pool is conducted. An individual~~ Each chance to participate in a sports pool may not must be sold for a consideration in excess of the same amount, which may not exceed \$5, and the total amount to be paid to the all winners of any individual sports pool may not exceed the value of \$500. Chances for a series of events may be purchased all at once prior to the occurrence of the first event.

(3) (a) Except as provided in subsection (3)(b), the winner winners of any sports pool shall receive a 100% payout of the value of the sports pool.

~~(3)(b)~~ A nonprofit organization that maintains records and opens the records to inspection upon reasonable demand records to verify that the retained portion is used to support charitable activities, scholarships or educational grants, or community service projects may retain up to 50% of the value of a sports pool.

(4) A person or nonprofit organization conducting a sports pool may purchase chances to participate in the sports pool but may not:

(a) retain any portion of the amount wagered in the sports pool, except as provided in subsection (3)(b);

(b) charge a fee for participating in the sports pool; or

(c) use the sports pool in any manner to establish odds or handicaps or to allow betting or booking against the person or nonprofit organization conducting the pool."

Section 46. Section 23-5-603, MCA, is amended to read:

"23-5-603. Video gambling machines -- possession -- play -- restriction. (1) A person licensed operator may make available for public play only the number of approved video gambling machines specifically authorized by this part.

(2) The video gambling machines specifically authorized by this part are bingo, keno, and draw poker machines. Only the number of approved machines for which permits have been granted under 23-5-612 may be made available for play by the public on the premises of a licensed operator. The department shall adopt rules allowing a video gambling machine that needs repair to be temporarily replaced while it is being repaired with a video gambling machine that is approved under the permit provisions of this part. A fee may not be charged for the replacement machine.

(3) Machines on premises licensed to sell alcoholic beverages for on-premises consumption ~~on the premises~~ must be placed:

(a) ~~in the a~~ room, area, or other part of the premises in which ~~the~~ alcoholic beverages are sold ~~and normally~~ or consumed; and

(b) within control of the operator for the purpose of preventing access to the machines by persons under 18 years of age."

Section 47. Section 23-5-610, MCA, is amended to read:

"23-5-610. Video gambling machine net gross income tax -- records -- distribution -- quarterly statement and payment. (1) ~~An~~ A licensed operator issued a permit under this part shall pay to the department a video gambling machine tax of 15% of net machine 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 are not repaid by insurance and if a law enforcement agency investigated the theft.

(2) ~~An~~ A licensed operator issued a permit under this part shall keep a record of ~~net machine the gross~~ income from each machine in such 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) ~~An~~ 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 ~~net machine gross~~ income from each video gambling machine licensed to him, together with the total amount due the state as video gambling machine net 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 48. Section 23-5-611, MCA, is amended to read:

"23-5-611. Machine permit qualifications -- limitations.

(1) (a) A person who has been granted an operator's license under 23-5-177 and a license to sell alcoholic beverages for consumption on the premises may be granted a permit for the placement of video gambling machines in his premises.

(b) If video keno or bingo gambling machines were legally operated on a premises on January 15, 1989, and the premises were not on that date licensed to sell alcoholic beverages for consumption on the premises or operated for the principal purpose of gaming and there is an operator's license for the premises under 23-5-177, a permit for the same number of video keno or bingo gambling machines as were operated on the premises on that date may be granted to the person who held the permit for such machines on those premises on that date.

(c) A person who legally operated an establishment on January 15, 1989, for the principal purpose of gaming and has been granted an operator's license under 23-5-177 may be granted a permit for the placement of bingo and keno machines in his premises.

(2) An applicant for a permit shall disclose on the application form to the department any information required by the department consistent with the provisions of 23-5-176.

(3) A licensee may not have on the premises or make available for play on the premises more than 20 machines of any combination ~~and no more than 10 may be draw poker machines."~~

Section 49. Section 23-5-612, MCA, is amended to read:

"23-5-612. Machine permits -- fee. (1) The department, upon payment of the fee provided in subsection (2) and in conformance with rules adopted under this part, shall issue to the operator an annual permit for an approved video gambling machine.

(2) The department shall charge an annual permit fee of \$200 for each video gambling machine permit. The fee must be prorated on a quarterly basis but may not be prorated to allow a permit to expire before June 30. The department may not grant a refund if the video gambling machine ceases operation before the permit expires.

(3) The department shall retain ~~\$100~~ 50% of the total permit fee collected under subsection (2) for purposes of administering this part. The remaining \$100 balance must be returned on a quarterly basis to the local government jurisdiction in which the gambling machine is located. The local government portion of the fee is statutorily appropriated to the department, as provided in 17-7-502, for deposit in the local government treasury.

~~(3) The permit expires on June 30 of each year, and the fee may not be prorated.~~

~~(4) A used keno machine may be licensed under subsection (1) without meeting the requirements of 23-5-609 [as that section read on September 30, 1989] if the applicant for licensure can establish to the satisfaction of the department that, on the date of application, he owns or possesses a machine that was owned or operated in the state prior to June 30, 1987. A license issued under this subsection expires for all purposes no later than June 30, 1989."~~

Section 50. Section 23-5-625, MCA, is amended to read:

"23-5-625. Video gambling machine manufacturer-distributor -- license -- fees. (1) Except as provided in subsections (2) and (3), it is unlawful for any person to assemble, produce, manufacture, or supply any video gambling machine or associated equipment for use or play in the state without having first been issued a video gambling machine manufacturer-distributor's license by the department. A licensed manufacturer-distributor may supply a video gambling machine only to another licensed manufacturer-distributor or a licensed operator.

~~(2)(b)~~ The department shall charge an annual license fee of \$1,000 for the issuance or renewal of a video gambling machine manufacturer-distributor's license.

~~(3)(c)~~ In addition to other license fees, the department may charge the applicant a one-time video gambling machine manufacturer-distributor's license application processing fee. The processing fee may not exceed the department's actual costs for processing an application.

~~(4)(d)~~ All video gambling machine manufacturer-distributor's licenses expire on June 30 of each year, and the license fee may not be prorated.

~~(5)(e)~~ The department shall retain the license and processing fees collected for purposes of administering this part, unless otherwise provided.

(2) A licensed operator who is not licensed as a manufacturer-distributor may sell up to 20 video gambling machines in a calendar year if the operator:

(a) had obtained permits for the machines and legally operated them prior to the sale; and

(b) sells the machines to another licensed operator or a licensed manufacturer-distributor.

(3) A lienholder who acquires title to video gambling machines through a foreclosure action involving a licensed operator or manufacturer-distributor may sell the machines to a licensed operator or licensed manufacturer-distributor."

Section 51. 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 department shall examine and may approve a new video gambling machine and associated equipment which are manufactured, sold, or distributed for use in the state before the video gambling machine or associated equipment is sold, played, or used.

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

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

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

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

~~(5)~~(6) The department may inspect and test and approve, disapprove, or place a condition upon a video gambling machine prior to its distribution and placement for play by the public."

Section 52. Section 17-7-502, MCA, is amended to read:

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

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

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

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

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-912; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; 20-9-361; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; and section 13, House Bill No. 861, Laws of 1985.

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

Section 53. Section 2-15-2021, MCA, is amended to read:

"2-15-2021. Gaming advisory council -- allocation -- composition -- compensation -- ~~annual~~ biennial report. (1) There is a gaming advisory council.

(2) The gaming advisory council is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(3) The gaming advisory council consists of nine members. One member must be from the senate, and one member must be from the house of representatives. The senate committee on committees and the speaker of the house of representatives shall appoint the legislative members of the council. The seven remaining members must be appointed by the department, with one representing the public at large, two representing local governments, one being a Native American, and three representing the gaming industry.

(4) Each gaming advisory council member is appointed to a 3-year term of office, except that three of the first-appointed original members shall serve a 1-year term, three (including both legislative members) shall serve a 2-year term, and three shall serve a 3-year term. A member of the council may be removed for good cause by the appointing body provided for in subsection (3).

(5) The gaming advisory council shall appoint a chairman from its members.

(6) Legislative members of the gaming advisory council are entitled to compensation and expenses, as provided in 5-2-302, while the council is meeting. The remaining members are entitled to travel, meals, and lodging expenses as provided for in 2-18-501 through 2-18-503. Expenses of the council must be paid from licensing fees received by the department.

(7) The gaming advisory council shall, within its authorized budget, hold meetings and incur expenses as it considers necessary to study all aspects of gambling in the state.

(8) (a) The gaming advisory council shall submit ~~an annual~~ a biennial report to the department, at a time designated by the department, with recommendations for amendments to the gambling statutes, the need for additional or modified department rules, the clarification of existing rules, and other recommendations on the operation of the department or any other gambling-related matter.

(b) The ~~annual~~ biennial report required under subsection (8)(a) must be affixed to the ~~annual department~~ report on gambling in the state that the department submits that year. The department and council shall submit the two most recent department and council reports to each of the next two regular sessions of the legislature.

(c) The council may submit interim reports to the department as the council considers necessary.

(d) The council shall meet with the department upon request of the department.

(e) The department shall meet with the council upon request of the council.

(9) The department shall give each council member notice and a copy of each proposed change in administrative rules relating to gambling. The notice and copy must be given at the time a notice of proposed rules changes is filed with the secretary of state. The council shall review the proposal, may comment on it, and may attend any hearing on the proposal. The department shall consider any comment by any council member or by the council as a whole prior to adopting the proposed change."

Section 54. Section 23-5-602, MCA, is amended to read:

"23-5-602. Definitions. As used in this part, the following definitions apply:

(1) "Associated equipment" means all proprietary devices, machines, or parts used in the manufacture or maintenance of a video gambling machine, including but not limited to integrated circuit chips, printed wired assembly, printed wired boards, printing mechanisms, video display monitors, metering devices, and cabinetry.

(2) "Bingo machine" means an electronic video gambling machine that, upon insertion of cash, is available to play bingo as defined by rules of the department. The machine utilizes a video display and microprocessors in which, by the skill of the player, by chance, or both, the player may receive free games or credits that may be redeemed for cash. The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

(3) "Draw poker machine" means an electronic video gambling machine that, upon insertion of cash, is available to play or simulate the play of the game of draw poker as defined by rules of the department. The machine utilizes a video display and microprocessors in which, by the skill of the player, by chance, or both, the player may receive free games or credits that may be redeemed for cash. The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

(4) "Keno machine" means an electronic video gambling machine that, upon insertion of cash, is available to play keno as defined by rules of the department. The machine utilizes a video display and microprocessors in which, by the skill of the player, by chance, or both, the player may receive free games or credits that may be redeemed for cash. The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

(5) "~~Net machine~~ Gross income" means money put into a video gambling machine minus credits paid out in cash.

(6) "Video gambling machine manufacturer-distributor" means a person who assembles, produces, makes, or supplies video gambling machines or associated equipment for sale, use, or distribution in the state."

NEW SECTION. Section 55. Fishing derbies and wagering on natural occurrences. (1) The following are authorized gambling activities:

(a) a fishing derby in which two or more persons pay valuable consideration for an opportunity to win a prize for the species, size, weight, or otherwise specified fish caught in a fishing event; and

(b) wagering on the outcome of a natural occurrence in which two or more persons pay valuable consideration for an opportunity to win a prize by most accurately predicting the date or time of an event resulting from a climatological or meteorological activity.

(2) Except as provided in subsection (3), all consideration paid to participate in a gambling activity authorized in subsection (1) must be paid to the winners.

(3) A nonprofit organization sponsoring a gambling activity authorized in subsection (1) may retain up to 50% of the total amount paid to participate.

(4) This section does not apply to a gambling activity conducted under chapter 4 or chapter 5, part 2 or 3 of this title."

Renumber: subsequent sections

39. Page 25, line 4.
Strike: "11, and 14 through 23"
Insert: "25, 34, and 55"

40. Page 25, line 5.
Strike: "17"
Insert: "14"

41. Page 25, line 6.
Strike: "23"
Insert: "20 and 21 through 25"
Following: "are"
Insert: "each"

42. Page 25, lines 7 and 8.
Following: "chapter 5,"
Strike: "part 1,"

43. Page 25, line 8.
Following: "7 through"
Strike: "11, and 14 through 23"
Insert: "25, 34, and 55"

44. Page 25, line 9.

Following: line 8

Insert: "(2) [Section 37] is intended to be codified as an integral part of Title 23, chapter 5, part 3, and the provisions of Title 23, chapter 5, part 3, apply to [section 37].

(3) [Section 44] is intended to be codified as an integral part of Title 23, chapter 5, part 5, and the provisions of Title 23, chapter 5, part 5, apply to [section 44]."

45. Page 25, lines 14 through 16.

Strike: section 25 in its entirety

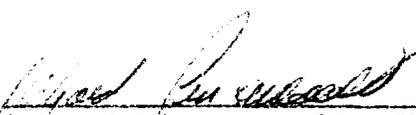
Renumber: subsequent section

46. Page 25, lines 18 through 20.

Strike: subsections (1) and (2) in their entirety

Insert: "(1) [Section 26 and this section] are effective on passage and approval.

(2) [Sections 1 through 25 and 27 through 56] are effective July 1, 1991."

Signed: 
Richard Pinsonneault, Chairman

Jan 4-3-91
And. Coord.

DB 4-3 4:50 PM
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 4, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 159 (third reading copy as amended -- blue), respectfully report that House Bill No. 159 be amended and as so amended be concurred in:

1. Page 1, lines 15 and 16.

Following: "~~loses a~~" on line 15

Strike: "SUBMITTED THE NEXT LOWEST VALID"

Insert: "loses a"

2. Page 2, lines 3 through 5.

Following: "BIDDER." on line 3

Strike: remainder of line 3 through "SUE." on line 5

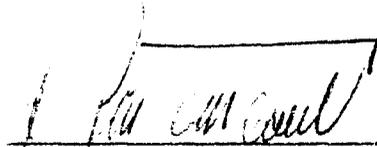
Insert: "Upon proof that payment by the successful bidder of standard prevailing wages, workers' compensation premiums, and contributions to the state unemployment insurance fund for the job would have increased the successful bidder's bid amount in excess of the plaintiff's bid, the plaintiff may recover damages."

3. Page 2, lines 6 through 8.

Following: "AS" on line 6

Strike: remainder of line 6 through "BIDDER" on line 8

Insert: "provided in 27-1-311, except that the total amount assessed against the successful bidder by all litigants may not exceed 10% of the successful bidder's bid"

Signed: 
Richard Pinsoneault, Chairman

Apr 4-4-91
Add. Coord.

EB 4-4 7:10
Sec. of Senate

2x, 1a

3 April 91
for HB 797

THIS IS A DRAFT

THIS IS A DRAFT

SENATE/HOUSE JOINT RESOLUTION

THIS IS A SENATE JUDICIARY COMMITTEE RESOLUTION WHICH IS PREPARED AS A RESULT OF HOUSE BILL 797 WHICH WAS A BILL THAT WOULD HAVE ALLOWED THE CONFEDERATED SALISH AND KOOTENAI TRIBES TO RETROCEDE FROM PL 280, WHICH IS CONCURRENT CRIMINAL JURISDICTION WITH THE STATE OF MONTANA ON THE FLATHEAD INDIAN RESERVATION.

WHEREAS, THE CS&KT ARE ONE OF THE SEVEN INDIAN RESERVATIONS WITHIN THE EXTERIOR BOUNDARIES OF THE STATE OF MONTANA; AND

WHEREAS, THE SENATE JUDICIARY COMMITTEE SUPPORTS AND ENCOURAGES SELF-DETERMINATION AMONG ALL SEVEN OF THE TRIBAL RESERVATIONS IN THE STATE OF MONTANA; AND,

WHEREAS, THE CS&KT HAVE DISTINGUISHED THEMSELVES AS BEING THE LEADER AMONG THE INDIAN RESERVATIONS IN THE UNITED STATES IN MATTERS OF LAW AND ORDER; THEIR TRIBAL JUDICIAL SYSTEM; THEIR EDUCATION SYSTEM; THEIR EFFORTS IN ESTABLISHING A DRUG AND ALCOHOL REHABILITATION CENTER ON THE NORTH SHORE OF FLATHEAD LAKE; TO MENTION ONLY A FEW OF THE AREAS OF EXCELLENCE IN WHICH THEY HAVE RECEIVED NATIONAL RECOGNITION AND ARE CRITICAL IN THE SELF-DETERMINATION PROCESS; AND,

WHEREAS, THE ISSUE OF CRIMINAL JURISDICTION ON INDIAN RESEVATIONS IS COMPLICATED AND CRITICAL TO BOTH TRIBAL AND NONTRIBAL REESIDENTS OF THE FLATHEAD RESERVATION; AND

WHEREAS, THE CS&KT AS PART OF THEIR SELF-DETERMINATION EFFORTS WISH TO RETROCEDE FROM PL 280; AND

WHEREAS, IT IS IMPERATIVE THAT TRIBAL AND NONTRIBAL RESIDENTS UNDERSTAND FULLY WHAT DISPOSITION WILL BE MADE OF CRIMINAL VIOLATIONS COMMITTED ON THE RESERVATION BY ANY OF ITS RESIDENTS; AND,

WHEREAS, TO INSURE THAT A COMPREHENSIVE STUDY BE MADE PRIOR TO MAKING FINAL DECISIONS CONCERNING RETROCESSION AND ALL OF ITS RAMIFICATIONS,

NOW THEREFORE,

BE IT RESOLVED THAT THE MATTER OF RETROCESSION BY THE CS&KT BE THE SUBJECT OF AN INTERIM STUDY BY THE LEGISLATIVE SELECT COMMITTEEE ON INDIAN AFFAIRS;

THAT THE STUDY SHALL INCLUDE PUBLIC FORUMS HELD ON THE FLATHEAD

INTERIM STUDY
PAGE -2-

INDIAN RESERVATION WITH PARTICIPATION BY ALL OF THOSE FEDERAL, STATE AND LOCAL GOVERNMENT AGENCIES THAT WILL BE IMPACTED BY RETROCESSION FROM PL280;

THAT OF INITIAL CONSIDERATION SHOULD BE GIVEN TO THE ISSUE OF CROSS-DEPUTIZATION OF THE LAKE COUNTY SHERIFF'S PERSONNEL AND THE LAW AND ORDER ENFORCEMENT PERSONNEL OF THE CS&KT IT BEING CONSIDERED OF PRIMARY IMPORTANCE IF EFFECTIVE LAW ENFORCEMENT IS TO CONTINUE ON THE FLATHEAD RESERVATION SHOULD THE COMMITTEE DETERMINE THAT RETROCESSION TAKE PLACE;

THAT THE COMMITTEE SHALL CAREFULLY CONSIDER THE POSSIBILITY OF PARTIAL RETROCESSION AS AN OPTION WHICH WOULD FILL A LAW ENFORCEMENT VOID THAT WAS DEMONSTRATED DURING THE HEARINGS THAT WERE HELD ON HB797 BEFORE THE SENATE JUDICIARY COMMITTEE;

FURTHER RESOLVED:

THAT UPON THE COMPLETION OF THE HEARINGS NECESSARY TO FULLY INVESTIGATE AND INQUIRE INTO THIS COMPLICATED MATTER, THAT THE SELECT COMMITTEE ON INDIAN AFFAIRS SHALL MAKE A REPORT BACK TO THE MONTANA LEGISLATURE THAT WILL CONVENE IN JANUARY OF 1993 WITH SPECIFIC RECOMMENDATIONS AS TO HOW RETROCESSION CAN BE MOST EFFECTIVELY ACCOMPLISHED, INSURING THAT THERE SHALL BE A LAW ENFORCEMENT PLAN THAT WILL INSURE THE SAFETY AND WELL-BEING OF ALL RESERVATION RESIDENTS.

SIGNED:

[ALL MEMBERS OF THE SENATE JUD. COMMITTEE]

THIS WAS A DRAFT THAT THE AG'S OFFICE PREPARED AND IS MUCH BROADER
. . . WE MIGHT INCORPORATE SOME OF ITS PROVISIONS INTO OURS.

SENATE JOINT RESOLUTION NO. _____ Exhibit # 1a
4/3/91 HB 797

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES
OF THE STATE OF MONTANA REQUESTING THE INDIAN AFFAIRS COMMITTEE TO
STUDY THE JURISDICTIONAL RELATIONSHIP BETWEEN THE STATE OR ITS
POLITICAL SUBDIVISIONS AND THE SEVERAL INDIAN TRIBES LOCATED WITHIN
THE STATE OF MONTANA IN ALL RESPECTS AND REQUIRING THE COMMITTEE
TO REPORT ITS FINDINGS TO THE 53RD LEGISLATURE.

WHEREAS, numerous disputes and difficulties have arisen over
a long period of time between the state of Montana or its political
subdivisions and Indian tribes over the scope of their respective
civil and criminal jurisdictions; and

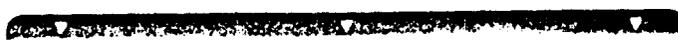
WHEREAS, such disputes have, in some instances, precipitated
lengthy and costly litigation; and

WHEREAS, jurisdictional questions, even if not precipitating
litigation, have caused disagreement between tribes and state
and/or local governments and among the Indian and non-Indian
citizens of Montana; and

WHEREAS, many of those disagreements are capable of resolution
when the parties involved possess a thorough understanding of the
rights, responsibilities, and positions of tribal, state and local
governments as established by state and federal law; and

WHEREAS, it is in the best interests of all Montanans that
state, local and tribal governments avoid unnecessary conflict over
jurisdictional issues.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF
REPRESENTATIVES OF THE STATE OF MONTANA:



The Indian Affairs Committee be assigned during the interim between the 52nd and 53rd Legislatures to:

(1) examine the principal types of jurisdictional disputes which have arisen between state, local and tribal governments since 1980;

(2) examine the major litigation which has resulted from such disputes;

(3) evaluate existing case law to determine those legal standards used in resolving such disputes;

(4) determine any modifications in state statutes it believes necessary to render them consistent with controlling federal law; and

(5) determine any modifications in state statutes which, while not required to avoid conflict with controlling federal law, are deemed appropriate for the purpose of reducing jurisdictional conflict between the state or its political subdivisions and Indian tribes or otherwise facilitating delivery of governmental services.

BE IT FURTHER RESOLVED, that the Indian Affairs Committee report its findings to the 53rd Legislature and present options for legislative consideration if the Committee determines that options are necessary.

-End-

CFI
4-3-91
HB 776

Amendments to House Bill No. 776
Third Reading Copy

For the Committee on Judiciary

Prepared by Greg Petesch
April 1, 1991

1. Page 1, line 16.
Following: "(2)"
Strike: "Prior to an auction"
Insert: "At the expiration of the period of default"

2. Page 1, line 24.
Following: "."
Insert: "If the certified notice is returned undelivered, notice must be given as provided in Rule 4 of the Montana Rules of Civil Procedure."

3. Page 2, lines 7 and 8.
Following: "newspaper of" on line 7
Strike: "an adjacent"
Insert: "general circulation in the"
Following: "county"
Strike: strike remainder of line 7 through "state" on line 8

4. Page 2, line 11.
Following: "to the"
Insert: "owner. If the owner or the"

5. Page 2, line 12.
Following: "proceeds"
Insert: "cannot be located, the proceeds escheat to the state as provided in Title 72, chapter 14"

House BILL NO. 776
 D. J. Dawson
 MERCER Abbott

1 INTRODUCED BY

2 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE

3 CONTENTS OF A STORAGE UNIT MAY BE SOLD WHEN THE OWNER OF THE

4 CONTENTS DEFAULTS IN PAYING RENTAL FEES ON THE STORAGE

5 UNIT."

6 RE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

7 NEW SECTION. Section 1. Default in payment of storage

8 space rental fees -- notice -- sale of contents. (1) A

9 person who rents storage space to another may sell at public

10 auction the contents of the storage space if the owner of

11 the contents is more than 30 days in default in paying

12 rental fees of the space.

13 (2) ~~Prior to an auction~~ provided for in subsection (1),

14 the person renting the storage space shall send written

15 notice by certified mail to the last-known address of the

16 owner of the contents that he has 30 days from the date of

17 the certified letter to pay the past due rental fees and to

18 claim the contents of the storage space or the contents will

19 be sold at public auction. The notice must contain the date,

20 time, and place of the auction if the past due rental fees

21 are not paid.

22 *If the certified notice is returned undelivered, the person*

23 *notice must be given as provided in Rule 4 of the Montana Rules of*

24 *Civil Procedure.*

25 (1) Prior to an auction provided for in subsection (1),

1 notice of the date, time, place, terms, and description of

2 the property must be published in a newspaper in the county

3 in which the property to be sold is located. The notice must

4 be published once a week for 2 weeks prior to the day of the

5 sale. If there is no newspaper published in the county in

6 which the property to be sold is located, then the notice

7 may be published in a newspaper of ~~an adjacent~~ *general circulation in the* county of

8 ~~this state.~~

9 (4) Proceeds of the auction must first be applied

10 to the costs of the sale, then to the unpaid storage rental

11 fees, and the excess, if any, must be paid to the ~~person~~ *owner of the*

12 *entitled to the proceeds. cannot be located, the person*

13 *each to the state as provided in Title 72, chapter*

14 *(b) All sales under this section vest title to the*

15 property sold in the purchaser of the property.

16 NEW SECTION. Section 2. Codification instruction.

17 [Section 1] is intended to be codified as an integral part

18 of Title 70, chapter 6, and the provisions of Title 70,

19 chapter 6, apply to [section 1].

-End-

THIRD READING
HB 776

-2-



Exhibits 2, 3
3 Apr 91
HB 559

HOUSE BILL NO. 559

INTRODUCED BY FAGG, VAN VALKENBURG, O'KEEFE
BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO OPERATING MOTOR VEHICLES, BOATS, AND AIRCRAFT WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AND AMENDING SECTIONS 23-2-523, 23-2-535, 45-5-205, 61-8-401, 61-8-402, 61-8-403, 61-8-404, 61-8-405, 61-8-406, 61-8-714, 61-8-722, 61-8-805, ~~61-8-806~~ 61-11-101, AND 67-1-211, MCA."

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

Section 1. Section 61-8-401, MCA, is amended to read:

"61-8-401. Persons under the influence of alcohol or drugs. (1) It is unlawful and punishable as provided in 61-8-714 and 61-8-723 for any person who is under the influence of:

- (a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;
- (b) a narcotic dangerous drug to drive or be in actual physical control of a vehicle within this state;
- (c) any other drug to drive or be in actual physical control of a vehicle within this state; or
- (d) alcohol and any dangerous or other drug to drive or

be in actual physical control of a vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use alcohol or such a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination thereof, a person's ability to safely operate a motor vehicle has been diminished.

(4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person's blood person at the time alleged, as shown by chemical analysis of the person's blood, urine, or breath, or other bodily substance shall give rise to the following presumptions inferences:

(a) If there was at that time an alcohol concentration of 0.05 or less, it shall may be presumed inferred that the person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, that fact shall not give rise to any presumption inference that the person was or was not under the influence of alcohol but such fact may.

A drug test may be performed under this section only if the arresting officer has reasonable grounds to believe the person to have been driving or in actual physical control of a vehicle upon ways of the state open to the public, while under the influence of drugs or a combination of alcohol and drugs or if a test for the presence of alcohol results in the arresting officer possessing reasonable grounds to believe the person to have been driving or in actual physical control of a vehicle upon ways of this state open to the public, while under the influence of drugs or a combination of alcohol or drugs. (TOWE)

HB 01

1 be considered with other competent evidence in determining
2 the guilt or innocence of the person.
3 (c) If there was at that time an alcohol concentration
4 of 0.10 or more, it shall may be presumed inferred that the
5 person was under the influence of alcohol. Such presumption
6 The inference is rebuttable.
7 (5) The provisions of subsection (4) do not limit the
8 introduction of any other competent evidence bearing upon
9 the issue of whether the person was under the influence of
10 alcohol, drugs, or a combination of the two.

11 (6) Each municipality in this state is given authority
12 to enact 61-8-406, 61-8-408, 61-8-714, 61-8-722, and
13 subsections (1) through (5) of this section, with the word
14 "state" in 61-8-406 and subsection (1) of this section
15 changed to read "municipality", as an ordinance and is given
16 jurisdiction of the enforcement of the ordinance and of the
17 imposition of the fines and penalties therein provided.

18 (7) Absolute liability as provided in 45-2-104 will be
19 imposed for a violation of this section."

20 **Section 2.** Section 61-8-402, MCA, is amended to read:

21 "61-8-402. Chemical---blood Blood, breath, or urine
22 tests. (1) Any person who operates or is in actual physical
23 control of a vehicle upon ways of this state open to the
24 public shall be deemed to have given consent, subject to the
25 provisions of 61-8-401, to a chemical test or tests of his
or tests (FUNK) [^]

1 blood, breath, or urine for the purpose of determining the
2 alcoholic content of his blood any measured amount or
3 detected presence of alcohol, drugs, or a combination of the
4 drugs, or a combination of the two (FUNK)
5 two [^] in his body if arrested by a peace officer for driving
6 or for being in actual physical control of a vehicle while
7 under the influence of alcohol, drugs, or a combination of
8 the two. The test or tests or tests (FUNK) shall be administered at the
9 direction of a peace officer having reasonable grounds to
10 believe the person to have been driving or in actual
11 physical control of a vehicle upon ways of this state open
12 to the public, while under the influence of alcohol, drugs,
13 or a combination of the two. The arresting officer may
14 designate which one of the aforesaid test or tests shall be
15 administered. A person may not be given more than two tests

15 ~~unless the person chooses to have a test as provided in~~
16 **A person may not be required to provide more than two**
17 **bodily substance samples under this section. (FUNK + TOWE)**

17 (2) Any person who is unconscious or who is otherwise
18 in a condition rendering him incapable of refusal shall be
19 deemed not to have withdrawn the consent provided by
20 subsection (1) of this section.

21 (3) If a resident driver under arrest refuses upon the
22 request of a peace officer to submit to a chemical test or
23 tests or tests (FUNK) [^] designated by the arresting officer as provided in
24 subsection (1) of this section, none shall be given, but the
25 officer shall, on behalf of the department, immediately

1 seize his driver's license. The peace officer shall forward
 2 the license to the department, along with a sworn report
 3 that he had reasonable grounds to believe the arrested
 4 person had been driving or was in actual physical control of
 5 a vehicle upon ways of this state open to the public, while
 6 under the influence of alcohol, drugs, or a combination of
 7 the two, and that the person had refused to submit to the
 8 test ~~or tests~~ ^{of tests (FUNK)} upon the request of the peace officer. Upon
 9 receipt of the report, the department shall suspend the
 10 license for the period provided in subsection (5).

11 (4) Upon seizure of a resident driver's license, the
 12 peace officer shall issue, on behalf of the department, a
 13 temporary driving permit, which is valid for 72 hours after
 14 the time of issuance.

15 (5) The following suspension and revocation periods are
 16 applicable upon refusal to submit to a chemical test ~~or~~
 17 ~~tests~~ ^{of tests (FUNK)}

18 (a) upon a first refusal, a suspension of 90 days with
 19 no provision for a restricted probationary license;
 20 (b) upon a second or subsequent refusal within 5 years
 21 of a previous refusal, as determined from the records of the
 22 department, a revocation of 1 year with no provision for a
 23 restricted probationary license.

24 (6) ~~bike-refusal-by-a~~ nonresident driver's license
 25 seized under this section shall must be subject--to

1 suspension sent by the department in like manner--and--the
 2 same--temporary--driving--permit--shall--be--issued--to
 3 nonresidents to the licensing authority of the nonresident's
 4 home state with a report of the nonresident's refusal to
 5 submit to a test.

6 (7) All such suspensions are subject to review as
 7 hereinafter provided."

8 Section 3. Section 61-8-403, MCA, is amended to read:

9 "61-8-403. Right of appeal to court. The department
 10 shall immediately notify any person whose license or
 11 privilege to drive has been suspended or revoked, as
 12 hereinbefore authorized, in writing and such person shall
 13 have the right to file a petition within 30 days thereafter
 14 for a hearing in the matter in the district court in the
 15 county wherein such person resides or in the district court
 16 in the county in which this arrest was made. Such court is
 17 hereby vested with jurisdiction and it shall be its duty to
 18 set the matter for hearing upon 10 days' written notice to
 19 the county attorney of the county wherein the appeal is
 20 filed and such county attorney shall represent the state,
 21 and thereupon the court shall take testimony and examine
 22 into the facts of the case, except that the issues shall be
 23 limited to whether a peace officer had reasonable grounds to
 24 believe the person had been driving or was in actual
 25 physical control of a vehicle upon ways of this state open

A positive test result may not, in itself, prove that the person was under the influence of that drug at the time he was in control of a motor vehicle. Therefore, a person may not be convicted of a violation of 61-8-401 based upon the presence of a drug or drugs in his person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

Towe

Towe + Funk

1 to the public, while under the influence of alcohol, drugs,
2 or a combination of the two, whether the person was placed
3 under arrest, and whether such person refused to submit to
4 the test or tests. The court shall thereupon determine
5 whether the petitioner is entitled to a license or is
6 subject to suspension as heretofore provided."

7 **Section 4.** Section 61-8-404, MCA, is amended to read:
8 "61-8-404. Evidence admissible -- conditions of
9 admissibility. (1) Upon the trial of any criminal action or
10 other proceeding arising out of acts alleged to have been
11 committed by any person in violation of 61-8-401 or
12 61-8-406:

13 (a) evidence of the any measured amount or detected
14 presence of amount of alcohol, drugs, or a combination of
15 the two, in the person's blood, breath, or urine
16 alleged, as shown by a chemical analysis of his blood,
17 breath, or urine, is admissible and

18 (b) a report of the facts and results of any chemical
19 test or tests of a person's blood, breath, or urine
20 administered under 61-8-402 is admissible in evidence if:

21 (i) the breath analysis report test was prepared and
22 verified performed by the a person who performed the test
23 certified by the forensic sciences division of the
24 department to administer breath tests or the blood or urine
25 test was a laboratory analysis and the analysis was done in

1 a laboratory operated by the department of justice or by any
2 other laboratory or facility certified or exempt from
3 certification under the rules of the department; and
4 (ii) the report was prepared in accordance with any
5 applicable rules of the department; and
6 (iii) if the test was on a blood sample, the person
7 withdrawing the blood must have been competent to do so
8 under 61-8-405(1).

9 (2) If the person under arrest refused to submit to the
10 test or tests as heretofore provided in this section, proof
11 of refusal shall be admissible in any criminal action or
12 proceeding arising out of acts alleged to have been
13 committed while the person was driving or in actual physical
14 control of a vehicle upon the ways of this state open to the
15 public, while under the influence of alcohol, drugs, or a
16 combination of the two.

17 (3) The provisions of this part do not limit the
18 introduction of any other competent evidence bearing on the
19 question of whether the person was under the influence of
20 alcohol, drugs, or a combination of the two."

21 **Section 5.** Section 61-8-405, MCA, is amended to read:
22 "61-8-405. Administration of tests. (1) Only a
23 physician or registered nurse or other qualified person
24 under the supervision and direction of a physician or
25 registered nurse acting at the request of a peace officer

1 may withdraw blood for the purpose of determining alcoholic

2 content any measured amount or detected presence of alcohol
3 drugs, or a combination of the two, in the person. This

4 limitation does not apply to the taking of breath or urine

5 specimens.
6 (2) The person cited for a violation of 61-8-401 or 61-8-406

7 expense, have a physician or registered nurse of his own
8 choosing administer a test, in addition to any administered
9 at the direction of a peace officer, for the purpose of
10 determining the amount of alcohol in his blood any measured

11 amount or detected presence of alcohol, drugs, or a combination of the two
12 combination of the two, in the person at the time alleged, as

13 shown by chemical analysis of his blood, breath, or urine.

14 The failure or inability to obtain an additional test by a
15 person does not preclude the admissibility in evidence of
16 the test or tests taken at the direction of a peace officer.

17 (3) Upon the request of the person tested, full
18 information concerning the test or tests or tests (FUNK)
19 direction of the peace officer must be made available to him
20 or his attorney.

21 (4) No physician or registered nurse or other qualified
22 person under the supervision and direction of a physician or
23 registered nurse shall incur any civil or criminal liability
24 as a result of the proper administering of a blood test when
25 requested in writing by a peace officer to administer such a

1 test.

(5) If the a test given under 61-8-102 or 61-8-806 is a
chemical test of urine, the person tested must be given such
privacy in the taking of the urine specimen as will insure
ensure the accuracy integrity of the specimen and, at the
same time, maintain the dignity of the individual involved.

(6) The department of justice in cooperation with any
appropriate agency shall adopt uniform rules for the giving
of blood-alcohol tests and may require certification of
training to administer the tests as considered necessary."

Section 6. Section 61-8-406, MCA, is amended to read:
"61-8-406. Operation of vehicle by a person with
alcohol concentration of 0.10 or more. It is unlawful and
punishable as provided in 61-8-722 and 61-8-723 for any
person to drive or be in actual physical control of a
vehicle upon the ways of this state open to the public while
the person's alcohol concentration in his, as shown by
analysis of the person's blood, breath, or urine, is 0.10 or
more. Absolute liability as provided in 45-2-104 will be
imposed for a violation of this section."

Section 7. Section 61-8-714, MCA, is amended to read:
"61-8-714. Penalty for driving under the influence of
alcohol or drugs. (1) A person convicted of a violation of
61-8-401 shall be punished by imprisonment in the county
jail for not less than 24 consecutive hours or more than 60

1 days and shall be punished by a fine of not less than \$100
 2 or more than \$500. The jail sentence may not be suspended
 3 unless the judge finds that the imposition of the jail
 4 sentence will pose a risk to the defendant's physical or
 5 mental well-being.

6 (2) On a second conviction, he shall be punished by a
 7 fine of not less than \$300 or more than \$500 and by
 8 imprisonment for not less than 7 days, at least 48 hours of
 9 which must be served consecutively, or more than 6 months.
 10 Three days of the jail sentence may not be suspended unless
 11 the judge finds that the imposition of the jail sentence
 12 will pose a risk to the defendant's physical or mental
 13 well-being.

14 (3) On the third or subsequent conviction, he shall be
 15 punished by imprisonment for a term of not less than 30
 16 days, at least 48 hours of which must be served
 17 consecutively, or more than 1 year, and by a fine of not
 18 less than \$500 or more than \$1,000. Notwithstanding any
 19 provision to the contrary providing for suspension of
 20 execution of a sentence imposed under this subsection, the
 21 imposition or execution of the first 10 days of the jail
 22 sentence imposed for a third or subsequent offense that
 23 occurred within 5 years of the first offense may not be
 24 deferred or suspended.

25 (4) In addition to the punishment provided in this

1 section, regardless of disposition, the defendant shall
 2 complete an alcohol information course at an alcohol
 3 treatment program approved by the department of
 4 institutions, which may, in the sentencing court's
 5 discretion and upon recommendation of a certified chemical
 6 dependency counselor, include alcohol or drug treatment, or
 7 both. On conviction of a second or subsequent offense under
 8 this section, in addition to the punishment provided in this
 9 section, regardless of disposition, the defendant shall
 10 complete an alcohol information course at an alcohol
 11 treatment program approved by the department of
 12 institutions, which must include alcohol or drug treatment,
 13 or both. Each counselor providing education or treatment
 14 shall, at the commencement of the education or treatment,
 15 notify the court that the defendant has been enrolled in a
 16 course or treatment program. If the defendant fails to
 17 attend the course or the treatment program, the counselor
 18 shall notify the court of the failure. As long as the
 19 alcohol information course and treatment program are
 20 approved as provided in this subsection, the defendant may
 21 attend the information course and treatment program of his
 22 choice. The treatment provided to the defendant at a
 23 treatment program must be at a level appropriate to his
 24 alcohol problem, as determined by the judge based upon the
 25 recommendation from the certified chemical dependency

1 counselor.

2 (5) For the purpose of determining the number of
3 convictions under this section, "conviction" means a final
4 conviction, as defined in 45-2-101, in this state,
5 conviction for a violation of a similar statute in another
6 state, or a forfeiture of bail or collateral deposited to
7 secure the defendant's appearance in court in this state or
8 another state, which forfeiture has not been vacated. An
9 offender is considered to have been previously convicted for
10 the purposes of this-section sentencing if less than 5 years
11 have elapsed between the commission of the present offense
12 and a previous conviction. If there has been no additional
13 conviction for an offense under this section for a period of
14 5 years after a prior conviction hereunder, then all records
15 and data relating to the prior conviction are confidential
16 criminal justice information as defined in 44-5-103 and
17 public access to the information may only be obtained by
18 district court order upon good cause shown.

19 (6) For the purpose of calculating subsequent
20 convictions under this section, a conviction for a violation
21 of 61-8-406 also constitutes a conviction for a violation of
22 61-8-401."

23 **Section 8.** Section 61-8-722, MCA, is amended to read:

24 "61-8-722. Penalty for driving with excessive blood
25 alcohol concentration. (1) A person convicted of a violation

1 of 61-8-406 shall be punished by imprisonment for not more
2 than 10 days and shall be punished by a fine of not less
3 than \$100 or more than \$500.

4 (2) On a second conviction of a violation of 61-8-406,
5 he shall be punished by imprisonment for not less than 48
6 consecutive hours or more than 30 days and by a fine of not
7 less than \$300 or more than \$500.

8 (3) On a third or subsequent conviction of a violation
9 of 61-8-406, he shall be punished by imprisonment for not
10 less than 48 consecutive hours or more than 6 months and by
11 a fine of not less than \$500 or more than \$1,000.

12 (4) The provisions of 61-5-205(2), 61-5-208(2), and
13 61-11-203(2)(d) relating to revocation and suspension of
14 driver's licenses shall apply to any conviction under
15 61-8-406.

16 (5) In addition to the punishment provided in this
17 section, regardless of disposition, the defendant shall
18 complete an alcohol information course at an alcohol
19 treatment program approved by the department of
20 institutions, which may include alcohol or drug treatment,
21 or both, if considered necessary by the counselor conducting
22 the program. Each counselor providing such education or
23 treatment shall, at the commencement of the education or
24 treatment, notify the court that the defendant has been
25 enrolled in a course or treatment program. If the defendant

1 fails to attend the course or the treatment program, the
2 counselor shall notify the court of the failure.

3 (6) For the purpose of determining the number of
4 convictions under this section, "conviction" means a final
5 conviction, as defined in 45-2-101, in this state or a
6 similar statute in another state or a forfeiture of bail or
7 collateral deposited to secure the defendant's appearance in
8 court in this state or another state, which forfeiture has
9 not been vacated. An offender is considered to have been
10 previously convicted for the purposes of this--section
11 sentencing if less than 5 years have elapsed between the
12 commission of the present offense and a previous conviction.
13 If there has been no additional conviction for an offense
14 under this section for a period of 5 years after a prior
15 conviction hereunder, then such prior offense shall be
16 expunged from the defendant's record."

17 **Section 9.** Section 61-8-805, MCA, is amended to read:

18 "61-8-805. Suspension for operating a commercial
19 vehicle with a-blood alcohol concentration of 0.04 or more
20 -- hearing. (1) A person whose blood alcohol concentration
21 is 0.04 or more while he drives or is in actual physical
22 control of a commercial motor vehicle is subject to the
23 suspension of his commercial vehicle operator's endorsement.
24 If the department receives a sworn report from a peace
25 officer that the person was operating a commercial motor

1 vehicle while his blood alcohol concentration was 0.04 or
2 more, the department shall suspend the driver's commercial
3 vehicle operator's endorsement:

4 (a) for 1 year, with no provision for a restricted
5 probationary license or endorsement, upon receipt of the
6 first report, except that if the offense occurred in a
7 commercial motor vehicle transporting hazardous materials,
8 the suspension must be for 3 years; and

9 (b) for 10 years, with no provision for a restricted
10 probationary license or endorsement, upon receipt of a
11 second or subsequent report at any time as determined from
12 the records of the department.

13 (2) A peace officer who determines that a commercial
14 motor vehicle operator's blood alcohol concentration is 0.04
15 or more shall place the commercial motor vehicle operator
16 out of service as mandated by federal regulations for 24
17 hours.

18 (J) The fact that any person charged with a violation
19 of the provisions of subsection (1) is entitled to use
20 alcohol under the laws of Montana is not a defense against
21 any charge of violating the provisions of subsection (1).

22 (4) The department shall immediately notify in writing
23 any person whose commercial vehicle operator's endorsement
24 is suspended under this section. The person suspended has
25 the right to file a petition within 30 days after the notice

1 is given for a hearing in the matter in the district court
 2 in the county in which the finding of blood alcohol
 3 concentration was made. The court has jurisdiction and shall
 4 set the matter for hearing upon 10 days' written notice to
 5 the county attorney of the county in which the appeal is
 6 filed. The county attorney shall represent the state. The
 7 court shall take testimony and examine the facts of the
 8 case, except that the issue is limited to whether the person
 9 was driving or had actual physical control of a commercial
 10 motor vehicle while his blood alcohol concentration was 0.04
 11 or more. The court shall determine whether the petitioner is
 12 entitled to a commercial vehicle operator's endorsement or
 13 is subject to suspension as provided in this section. The
 14 provisions of 61-8-404 apply to any proceedings under this
 15 section."

(FYAK)

~~Section 10. Section 61-8-806, MCA, is amended to read:~~

17 "61-8-806. Chemical-blood Blood, breath, or urine tests
 18 of commercial vehicle operators -- procedure -- suspension.
 19 (1) A person who operates a commercial motor vehicle upon
 20 the ways of this state open to the public is considered to
 21 have given consent, subject to the provisions of 61-8-401
 22 and 61-8-805, to a chemical test of his blood, breath, or
 23 urine for the purpose of determining the alcohol-content-of
 24 his blood any measured amount of alcohol in his body if he
 25 is requested to submit to the test by a peace officer having

1 ~~reasonable grounds to believe the person to have been~~
 2 driving or in actual physical control of a commercial motor
 3 vehicle upon the ways of this state open to the public while
 4 his blood alcohol concentration was 0.04 or more. The peace
 5 officer may designate a blood, breath, or urine test to be
 6 administered.

7 (2) A person who is unconscious or who is otherwise
 8 incapable of refusal is considered not to have withdrawn the
 9 consent provided in subsection (1).

10 (3) If a commercial motor vehicle operator who is a
 11 resident of Montana refuses upon the request of a peace
 12 officer to submit to a chemical test designated by the
 13 officer as provided in subsection (1), the test may not be
 14 given. On behalf of the department, the officer shall
 15 immediately seize the person's driver's license showing the
 16 commercial vehicle operator's endorsement and forward the
 17 license to the department, along with a sworn report that he
 18 had reasonable grounds to believe the person had been
 19 driving or was in actual physical control of a commercial
 20 motor vehicle upon ways of this state open to the public
 21 while having a blood alcohol concentration of 0.04 or
 22 more and that the person had refused to submit to the test
 23 upon the request of the officer. Upon receipt of the report,
 24 the department shall suspend the license for a period
 25 ~~provided in subsection (5).~~

(FYAK)

~~(4) Upon seizure of a resident's driver's license showing a commercial vehicle operator's endorsement, the peace officer shall issue, on behalf of the department, a temporary driving permit without the commercial vehicle operator's endorsement. The temporary driving permit is valid for 72 hours after issuance.~~

~~(5) If a commercial motor vehicle operator refuses to submit to a chemical test as provided in subsection (3), the department shall suspend his commercial vehicle operator's endorsement:~~

- ~~(a) upon first refusal, for 1 year, with no provision for a restricted probationary license or endorsement, except that if the offense occurred in a commercial motor vehicle transporting hazardous materials, the suspension for a first refusal must be for 3 years;~~
- ~~(b) upon a second or subsequent refusal at any time as determined from the records of the department, for 10 years, with no provision for a restricted probationary license or endorsement.~~

~~(6) A nonresident commercial motor vehicle operator who refuses to submit to a chemical test as provided in subsection (3) is subject to suspension by the department as provided in subsection (5) and may receive must be given a temporary driving permit as provided in subsection (4)~~

Section M. Section 61-11-101, MCA, is amended to read:

61-11-101. Report of convictions and suspension or revocation of driver's licenses -- surrender of licenses. (1) Whenever any person is convicted of any offense for which chapter 5 makes mandatory the suspension or revocation of the driver's license of the person by the department, the court in which such conviction is had shall require the surrender to it of all driver's licenses then held by the person so convicted. The court shall thereupon, within 5 days, forward the license to the department and at the same time forward a record of such conviction to the department, providing that if such person does not possess a driver's license the court shall so indicate in its report to the department.

(2) Every court having jurisdiction over offenses committed under any act of this state or municipal ordinance regulating the operation of motor vehicles on highways shall forward, within 5 days, to the department a record of the conviction or forfeiture of bail, not vacated, of any person in the court for a violation of any such laws, other than regulations governing standing or parking, and may recommend the suspension of the driver's license of the person so convicted. The court may also recommend that the department issue a restricted probationary license in lieu of the suspension-required-in-61-5-208(2) on the condition that the individual comply with the requirement that he attend and

(K)

10

1 complete a driver-improvement-school-or an alcohol treatment
2 program--if--one-is-available information course as provided
3 in 61-8-714 and 61-8-722. The department shall issue a
4 restricted probationary license unless the person otherwise
5 is not entitled to a Montana driver's license. Upon issuance
6 of a probationary license, the licensee is subject to the
7 restrictions set forth thereon and may not operate a vehicle
8 in violation of those restrictions.

9 (3) Any court or other agency of this state, or a
10 subdivision thereof, which has jurisdiction to take any
11 action suspending, revoking, or otherwise limiting a license
12 to drive shall report any such action and the adjudication
13 upon which it is based to the department within 5 days on
14 forms furnished by the department."

15 **Section 23-2-523.** Section 23-2-523, MCA, is amended to read:

16 **"23-2-523. Prohibited operation and mooring --**
17 **enforcement.** (1) No person may operate or knowingly permit
18 any person to operate any motorboat or vessel or manipulate
19 any water skis, surfboard, or similar device or other
20 contrivance in a reckless or negligent manner so as to
21 endanger the life, limb, or property of any person.

22 (2) No person may operate any motorboat, including a
23 sailboat propelled by a motor of any kind, or manipulate any
24 water skis, surfboard, or similar device attached to a
25 motorboat while under the influence of alcohol, or drugs, or

1 a combination of the two.

2 (3) It is unlawful for the owner of any motorboat or
3 vessel or any person having such in charge or in control to
4 authorize or knowingly permit the same to be operated by any
5 person who by reason of physical or mental disability is
6 incapable of operating such watercraft under the prevailing
7 circumstances.

8 (4) No person may operate or knowingly permit any
9 person to operate any motorboat or vessel at a rate of speed
10 greater than will permit such person, in the exercise of
11 reasonable care, to bring the vessel to a stop within the
12 assured clear distance ahead. However, nothing in this part
13 is intended to prevent the operator of a vessel actually
14 competing in a regatta which is sanctioned by an appropriate
15 governmental unit from attempting to attain high speeds on a
16 marked racing course.

17 (5) No person may make a reckless approach to,
18 departure from, or passage by a dock, ramp, diving board, or
19 float.

20 (6) Skiers being pulled by motorboats must have on
21 their person a life preserver, buoyant vest, or ski belt.

22 (7) No person may moor a vessel to any of the buoys or
23 beacons placed in any waters of this state by the authority
24 of the United States, an agency of the United States, or the
25 department or in any manner hang on with a vessel to such

1 buoy or beacon, except in the act of maintenance work on
 2 such buoy or beacon, nor may any person deface, remove, or
 3 destroy any such buoy, beacon, or other authorized
 4 navigational marker maintained in the waters of this state.
 5 (8) If an officer whose duty it is to enforce the
 6 sections of this law observes a vessel being used without
 7 sufficient lifesaving or firefighting devices or in an
 8 overloaded or other unsafe condition and in his judgment
 9 such use creates an especially hazardous condition, he may
 10 direct the operator to take whatever immediate and
 11 reasonable steps would be necessary for the safety of those
 12 aboard the vessel, including directing the operator to
 13 return to mooring or launching site and to remain there
 14 until the situation creating the hazard is corrected or
 15 ended."

16 **Section 12.** Section 23-2-535, MCA, is amended to read:
 17 "23-2-535. Blood---alcohol Alcohol concentration
 18 standards -- drug detection -- evidence admissible --
 19 administration of tests. (1) The presumptions inferences
 20 contained in 61-8-401(3)(4) apply to any criminal action or
 21 proceeding arising out of acts alleged to have been
 22 committed in violation of 23-2-523(2).

23 (2) Evidence of the any measured amount or detected
 24 presence of alcohol-drugs-or-a-combination-of-the-two in a two (FUNK)
 25 person's--blood person at the time of the act alleged, as

1 shown by analysis of the person's blood, breath, or urine,
 2 and any other competent evidence bearing on the question of
 3 whether the person was under the influence of alcohol,
 4 drugs, or a combination of the two at the time of the act
 5 alleged is admissible in any criminal action or proceeding
 6 arising out of acts alleged to have been committed in
 7 violation of 23-2-523(2).

8 (3) If a person charged with violation of 23-2-523(2)
 9 refuses to submit to a chemical test of tests (FUNK) of his blood,
 10 breath, or urine for the purpose of determining the
 11 alcoholic-content--of--his--blood any measured amount or
 12 detected presence of alcohol-drugs-or-a-combination-of-the
 13 drugs, or a combination of the two (FUNK)
 14 in any criminal action or proceeding arising out of acts
 15 alleged to have been committed in violation of 23-2-523(2).

16 (4) The provisions relating to administration of tests
 17 provided in 61-8-405 and the definition of blood alcohol
 18 concentration provided in 61-8-407 apply to any testing done
 19 to determine-the-blood-alcohol--concentration--of a person
 20 charged with violation of 23-2-523(2).

21 (5) As used in 23-2-523(2), the term "under the
 22 influence" shall have the meaning provided in 61-8-401(3)."

23 **Section 13.** Section 45-5-205, MCA, is amended to read:
 24 "45-5-205. Negligent vehicular assault -- penalty. (1)

25 If a person operates a motor vehicle in a negligent manner

1 and he is driving while under the influence of alcohol, or
2 drugs a dangerous drug, any other drug, or any combination
3 of the three, as provided for in 61-8-401(1), and his
4 conduct is the cause of bodily injury to another, he commits
5 the offense of negligent vehicular assault.

6 (2) A person convicted of the offense of negligent
7 vehicular assault shall be fined an amount not to exceed
8 \$1,000 or imprisoned in the county jail for a term not to
9 exceed 1 year, or both."

10 ¹⁴ Section 67-1-211, MCA, is amended to read:

11 "67-1-211. Blood alcohol Alcohol concentration
12 standards -- evidence admissible -- administration of tests.

13 (1) If a person acting or attempting to act as a crewmember
14 of an aircraft has a blood alcohol concentration of 0.04%
15 by weight or more as defined in 61-8-407, it may be inferred
16 that the person is conclusively-presumed-to-be under the
17 influence of alcohol or--drugs and is in violation of
18 67-1-204.

19 (2) Evidence of the any measured amount or detected
20 presence of alcohol--drugs¹ or a combination² of the two in a
21 person's blood at the time of the act alleged
22 under subsection (1) and any other competent evidence
23 bearing on the question of whether the person was under the
24 influence of alcohol, drugs, or a combination of the two at
25 the time of the act alleged is admissible in any criminal

1 action or proceeding arising out of acts alleged to have
2 been committed in violation of 67-1-204.

3 (3) In any criminal action or proceeding arising out of
4 acts alleged to have been committed in violation of
5 67-1-204, the court or jury may consider federal regulations
6 governing aeronautics.

7 (4) A person who operates an aircraft over the lands
8 and waters of this state is considered to have given consent
9 to a chemical test or-tests of his blood, breath, or urine
10 for the purpose of determining the any measured amount or

11 detected presence of alcohol, or drug-content-of-his-blood
12 drugs, or a combination of the two (FUNK)
13 drugs, or a combination-of-the-two in his body if arrested

14 by a peace officer for operating, attempting to operate, or
15 being in actual physical control of an aircraft while under
16 the influence of alcohol, or drugs, or a combination of the
17 two. The test or-tests must be administered at the direction
18 of a peace officer who has reasonable grounds to believe the
19 person was operating, attempting to operate, or in actual
20 physical control of an aircraft while under the influence of

21 alcohol, or drugs, or a combination of the two. The
22 arresting officer may designate which one of the aforesaid
23 tests must be administered. A person who is unconscious or
24 who is otherwise in a condition rendering him incapable of
25 refusal is considered not to have withdrawn the consent
provided by this subsection.

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1 (5) If a person charged with violation of 67-1-204
2 refuses to submit to a chemical test or ~~tests~~ ^{of tests (FUNK)} tests of his blood,
3 breath, or urine for the purpose of determining the alcohol
4 content of any measured amount or detected presence of
5 ~~alcohol, drugs, or any combination of the two~~ ^{drugs, or a combination of the two (FUNK)} in his blood
6 body, none will be given, but proof of refusal is admissible
7 in any criminal action or proceeding arising out of acts
8 alleged to have been committed in violation of 67-1-204.
9 (6) The provisions relating to administration of tests
10 provided in 61-8-405 and the definition of alcohol
11 concentration provided in 61-8-407 apply to any testing done
12 to determine any measured amount or detected presence of
13 alcohol, drugs, or a combination of the two ^{drugs, or a combination of the two (FUNK)} in a person and
14 the blood alcohol concentration of a person charged with
15 violation of 67-1-204."

-End-

2X#4
3Apr9
HB 559

Amendments to House Bill No. 559
Third Reading Copy (BLUE)

Requested by Senator Towe
For the Committee on Judiciary

Prepared by Valencia Lane
March 26, 1991

1. Page 4, line 12.

Following: "."

Insert: "A drug test may be performed under this section only if the arresting officer has reasonable grounds to believe the person to have been driving or in actual physical control of a vehicle upon ways of the state open to the public, while under the influence of drugs or a combination of alcohol and drugs or if a test for the presence of alcohol results in the arresting officer possessing reasonable grounds to believe the person to have been driving or in actual physical control of a vehicle upon ways of this state open to the public, while under the influence of drugs or a combination of alcohol or drugs."

2. Page 4, line 16.

Following: " "

Insert: "A person may not be required to provide more than two bodily substance samples under this section."

3. Page 7, line 17.

Following: "admissible"

Strike: ";"

Following: "and"

Insert: ". A positive test result may not, in itself, prove that the person was under the influence of that drug at the time he was in control of a motor vehicle. Therefore, a person may not be convicted of a violation of 61-8-401 based upon the presence of a drug or drugs in his person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state."

4. Page 9, line 6.

Strike: "under arrest"

Insert: "cited for a violation of 61-8-401 or 61-8-406"

3 Apr. 91

Exhibit # 5 (amendments) was not transmitted with the minutes.

EX #6
HB 451
4/3/91

Amendments to House Bill No. 451
Third Reading Copy (BLUE)

Requested by Senator Svrcek
For the Committee on Judiciary

Prepared by Valencia Lane
April 1, 1991

1. Title, line 13.
Following: "~~45-2-104~~,"
Insert: "45-2-101,"

2. Page 38, line 13.
Following: line 12
Insert: "Section 8. Section 45-2-101, MCA, is amended to read:
"45-2-101. General definitions. Unless otherwise specified
in the statute, all words will be taken in the objective standard
rather than in the subjective, and unless a different meaning
plainly is required, the following definitions apply in this
title:

- (1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and where relevant, a failure or omission to take action.
- (2) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.
- (3) "Another" means a person or persons, as defined in this code, other than the offender.
- (4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.
- (5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.
- (6) "Cohabit" means to live together under the representation of being married.
- (7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan which results in the repeated commission of the same offense or affects the same person or the same persons or the property thereof.
- (8) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to such a device in a system or network.
- (9) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

(10) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(11) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(12) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(13) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(14) "Conduct" means an act or series of acts and the accompanying mental state.

(15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(16) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(17) "Deception" means knowingly to:

- (a) create or confirm in another an impression which is false and which the offender does not believe to be true;
- (b) fail to correct a false impression which the offender previously has created or confirmed;
- (c) prevent another from acquiring information pertinent to the disposition of the property involved;
- (d) sell or otherwise transfer or encumber property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not of value or is or is not a matter of official record; or
- (e) promise performance which the offender does not intend to perform or knows will not be performed. Failure to perform standing alone is not evidence that the offender did not intend to perform.

(18) "Defamatory matter" means anything which exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to his or its business or occupation.

(19) "Deprive" means to withhold property of another:

- (a) permanently;
- (b) for such a period as to appropriate a portion of its value;
- (c) with the purpose to restore it only upon payment of reward or other compensation; or
- (d) to dispose of the property and use or deal with the property so as to make it unlikely that the owner will recover it.

(20) "Deviate sexual relations" means ~~sexual contact or sexual intercourse between two persons of the same sex or any~~

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form of sexual intercourse with an animal.

(21) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding 1 year.

(22) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

(23) A "frisk" is a search by an external patting of a person's clothing.

(24) "Government" includes any branch, subdivision, or agency of the government of the state or any locality within it.

(25) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any person or entity in whose welfare he is interested.

(26) A "house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(27) "Human being" means a person who has been born and is alive.

(28) An "illegal article" is an article or thing which is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(29) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(30) "Intoxicating substance" means any controlled substance as defined in Title 50, chapter 32, and any alcoholic beverage, including but not limited to any beverage containing 1/2 of 1% or more of alcohol by volume. The foregoing definition does not extend to dealcoholized wine or to any beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

(31) An "involuntary act" means any act which is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(32) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(33) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware of his conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when he is aware that it is highly probable that such result will be caused by his conduct. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established

if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

(34) "Mentally defective" means that a person suffers from a mental disease or defect which renders him incapable of appreciating the nature of his conduct.

(35) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling his conduct as a result of the influence of an intoxicating substance.

(36) "Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or the sentence imposed is imprisonment in the state prison for any term of 1 year or less.

(37) "Negligently"--a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when he consciously disregards a risk that the result will occur or that the circumstance exists or when he disregards a risk of which he should be aware that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms such as "negligent" and "with negligence" have the same meaning.

(38) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance thereof.

(39) "Obtains or exerts control" includes but is not limited to the taking, carrying away, or sale, conveyance, or transfer of title to, interest in, or possession of property.

(40) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(41) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(42) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(43) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. Official detention does not include supervision of probation or parole, constraint incidental to

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release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(44) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with such proceeding.

(45) "Other state" means any state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(46) "Owner" means a person other than the offender who has possession of or any other interest in the property involved, even though such interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(47) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(48) "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

(49) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(50) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of any government or subdivision thereof.

(51) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(52) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(53) "Premises" includes any type of structure or building and any real property.

(54) "Property" means any tangible or intangible thing of value. Property includes but is not limited to:

- (a) real estate;
- (b) money;
- (c) commercial instruments;
- (d) admission or transportation tickets;
- (e) written instruments which represent or embody rights concerning anything of value, including labor or services, or which are otherwise of value to the owner;
- (f) things growing on, affixed to, or found on land and things which are part of or affixed to any building;
- (g) electricity, gas, and water;
- (h) birds, animals, and fish which ordinarily are kept in a state of confinement;
- (i) food and drink, samples, cultures, microorganisms,

specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

(j) any other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof which constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine- or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and any copies thereof.

(55) "Property of another" means real or personal property in which a person other than the offender has an interest which the offender has no authority to defeat or impair, even though the offender himself may have an interest in the property.

(56) "Public place" means any place to which the public or any substantial group thereof has access.

(57) "Public servant" means any officer or employee of government, including but not limited to legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The term "public servant" includes one who has been elected or designated to become a public servant.

(58) "Purposely"--a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is his conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms such as "purpose" and "with the purpose" have the same meaning.

(59) "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ. It includes serious mental illness or impairment.

(60) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

(61) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(62) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an

offense.

(63) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above such land and water.

(64) "Statute" means any act of the legislature of this state.

(65) "Stolen property" means property over which control has been obtained by theft.

(66) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in his presence.

(67) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(68) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit any criminal offense;

(d) accuse any person of a criminal offense;

(e) expose any person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of any person;

(g) reveal any information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause such action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the property is not demanded or received for the benefit of the groups which he purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(69) (a) "Value" means the market value of the property at the time and place of the crime or, if such cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value shall be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be considered the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(ii) The value of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be considered the amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network shall be considered to be the amount of economic loss that the owner of the item might

reasonably suffer by virtue of the loss of the item. The determination of the amount of such economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than \$300 by the standards set forth in subsection (69)(a) above, its value shall be considered to be an amount less than \$300.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(70) "Vehicle" means any device for transportation by land, water, or air or mobile equipment with provision for transport of an operator.

(71) "Weapon" means any instrument, article, or substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(72) "Witness" means a person whose testimony is desired in any official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Renumber: subsequent section

Ex. 69

HB 451

4-3-91

March 31st 1991

Senator Pinsoneault,

I am a Montanan. I have lived in the state for the entirety of my 28 years. I am a graduate of Charles M. Russell High School, of the University of Montana, a child of the wide sky and rolling plains of the east where I worked summers on my uncle's farm, a child of the rugged mountains of the west where I camped, fished and backpacked with my father. I am a Montanan and I am gay.

There is perhaps in the imagination of some of the members of the legislature the idea that gay men and women are the products of the decadent urbanity of New York City or San Francisco. The irony in this perception is the fact that the highly vocal and visible gay civil rights movements of America's metropolitan cities are made up of the alienated children of the hinterlands: Montanans, Iowans, Oklahomans(etc.) who have left their rural homes in search of the tolerance and respect that was there lacking. Gay people are not some "other" that have invaded the state from the outside. Those of us who have remained here(for love of our families or for love of the land) ask only for equal protection under the law, the right to privacy and the right to love.

I have been gay all of my life, aware of my predisposition toward my own sex since my memories begin. I was gay when I played flag football at Riverview Elementary School, when I ran for student body president of North Junior High, when I attended National 4-H Congress after 9 years of club service and when I was elected president of the Rocky Mountain District Youth of the American Lutheran Church. And I was gay when I fell in love with the man with whom I have lived for the past six years. A law that names us as felons does nothing to invalidate our relationship and does nothing to stop either the sexual instinct or the instinct to love. What such a law does do is breed the sort of intolerance that was voiced in last week's judiciary committee meeting, the sort of intolerance that is behind gay-bashing incidents by way of saying that gay women and men are second-class citizens, the sort of intolerance that has no place in a democracy.

It may be true that tolerance cannot be legislated anymore than morality can, but it is equally true that bigotry and bias have no place in the law of this state or of this nation. I encourage you to support the Halligan amendment that would include decriminalization of consensual acts between adults in HB 451. Some Montanans are gay. The law cannot change that fact so it is time for the law to change.

Sincerely,

T. Sean Dwyer
205 Chestnut
Missoula Mt 59802

P.S. I encourage you to share my thoughts and copies of this letter with other members of the committee and of the legislature if you think it may win support for the amendment.

Ex. 69
HB 451
4-3-91

Fax-Kinko's

Senator Dick Pinsoneault-State Capitol-Helena, Mt.
Senator Bill Yellowtail
Senator Tom Towe
Senator Paul Svrcek
Representative Vivian Brooke

Re: H.B. 451: Senator Dick Pinsoneault's legal commentary Military homosexual views are outdated fifty years with many states making these necessary changes. The Supreme Court has made legal rulings favoring homosexuals. They are not criminals for persecution in our society. Montana State laws need favorable changes with the removal of bias opinions in laws that were enacted 50 years ago.

I urge your help to not enact laws that place homosexuals as criminals under Montana State laws.

Edward Clark
Wilson Bldg
Missoula, Mont 59802
(406) 543-4166

proposed

EX # 7
30 Apr 91
SB 427

Amendments to Senate Bill No. 427
First Reading Copy (WHITE)

Requested by Subcommittee
For the Committee on Judiciary

Prepared by Valencia Lane and Lois Menzies
April 2, 1991

1. Title, lines 8 and 9.

Following: "CHANCE" on line 8

Strike: remainder of line 8 through "GAMES" on line 9

2. Title, lines 14 through 17.

Following: line 13

Strike: line 14 through "LEVEL;" on line 17

3. Title, line 20.

Following: "NIGHTS;"

Insert: "EXPANDING PROVISIONS GOVERNING SPORTS POOLS; PRORATING VIDEO GAMBLING MACHINE PERMIT FEES; ALLOWING A DEDUCTION FOR THEFT FOR PURPOSES OF CALCULATING THE VIDEO GAMBLING MACHINE TAX; AUTHORIZING FANTASY SPORTS LEAGUES; REQUIRING BIENNIAL REPORTS FROM THE DEPARTMENT OF JUSTICE AND GAMING ADVISORY COUNCIL; REVISING CERTAIN GAMBLING DEFINITIONS; CLARIFYING CERTAIN CRIMINAL GAMBLING OFFENSES; ESTABLISHING A PENALTY FOR SALE, ASSIGNMENT, LEASE, OR TRANSFER OF A LICENSE OR PERMIT; STATUTORILY APPROPRIATING VIDEO GAMBLING MACHINE TESTING FEES TO THE DEPARTMENT OF JUSTICE; REVISING PROVISIONS CONCERNING ANTIQUE SLOT MACHINES; CLARIFYING PROHIBITED ACTIVITIES FOR DEPARTMENT OF JUSTICE EMPLOYEES; CLARIFYING DISPOSITION OF PENALTIES, FINES, AND FORFEITURES; AUTHORIZING THE DEPARTMENT OF JUSTICE TO ISSUE WARRANTS FOR DISTRRAINT; ESTABLISHING THE CRIME OF SOLICITING ANOTHER PERSON TO PARTICIPATE IN AN ILLEGAL GAMBLING ENTERPRISE AND ESTABLISHING A PENALTY; PROHIBITING A MINOR FROM PARTICIPATING IN CERTAIN FORMS OF GAMBLING; REQUIRING LICENSE AND PERMIT REVOCATION UPON CONVICTION OF A FELONY GAMBLING OFFENSE; CREATING ADDITIONAL EXEMPTIONS FROM THE LIVE BINGO AND KENO TAX AND PERMIT FEE; CLARIFYING RAFFLE PROVISIONS; PROVIDING FOR SALE OF VIDEO GAMBLING MACHINES; REVISING CARD DEALER PROVISIONS; AUTHORIZING WAY TICKETS IN KENO GAMES; REMOVING THE TEN-MACHINE LIMIT ON VIDEO DRAW POKER MACHINES; REVISING LICENSURE QUALIFICATIONS; PROVIDING FOR CARD GAME TOURNAMENTS; CLARIFYING PLACEMENT OF VIDEO GAMBLING MACHINES; ELIMINATING NET TAX ON LIVE BINGO AND KENO GAMES AND REVISING THE PERMIT FEE;"

Following: "SECTIONS"

Insert: "2-15-2021, 17-7-502,"

Following: "23-5-113,"

Insert: "23-5-114,"

4. Title, line 21.

Insert: "application on or after July 1, 1991,"

23. Page 15, line 8.

Strike: "The"

Insert: "Except as provided in subsection (4), the"

24. Page 15, line 24.

Following: "ceiling"

Insert: "and may not contain an internal entrance through which public access is allowed"

25. Page 15, line 25 through page 16 line 5.

Following: "(4)" on line 25

Strike: remainder of line 25 through page 16, line 5

Insert: "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 subsection (2) and subsection (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."

26. Page 16, lines 10 through 24.

Following: "Section 9." on line 10

Strike: remainder of line 10 through "machines." on line 24

Insert: "Card room contractor's license -- fee -- submission of contract. (1) It is a misdemeanor for a person to enter into a contract with a licensed operator to operate one or more live card game tables on the operator's premises without obtaining a card room contractor's license from the department.

(2) The department shall charge an annual license fee of \$150 for issuing or renewing a card room contractor's license. The department shall retain the fee for administrative purposes.

(3) The applicant shall submit at the time of application for a card room contractor's license a copy of the agreement entered into with the licensed operator."

27. Page 16, line 25 through page 19, line 3.

Strike: section 10 in its entirety

Renumber: subsequent sections

28. Page 19, line 13 through page 20, line 19.

Strike: sections 12 and 13 in their entirety

Renumber: subsequent sections

29. Page 22, line 7.

Strike: "15"
Insert: "12"

30. Page 22, lines 12 and 13.
Following: "otherwise," on line 12
Strike: remainder of line 12 through "to" on line 13
Insert: "for purposes of"

31. Page 22, line 13.
Strike: "17"
Insert: "14"
Strike: "23"
Insert: "20"

32. Page 22, lines 13 and 14.
Strike: ":"
 (1) "Casino"
Insert: ", "casino"

33. Page 22, line 16.
Strike: "18"
Insert: "15"

34. Page 22, lines 17 through 21.
Strike: subsection (2) in its entirety

35. Page 23, line 23.
 Page 24, line 3.
Strike: "19"
Insert: "16"

36. Page 24, lines 6 and 12.
Strike: "20"
Insert: "17"

37. Page 24, line 24.
Strike: "17"
Insert: "14"
Strike: "22"
Insert: "19"

38. Page 25, line 2.
Following: line 1
Insert: "NEW SECTION. Section 21. **Fantasy sports leagues**
defined. As used in [sections 21 through 25], a "fantasy
sports league" means a gambling activity conducted in the
following manner:
(1) A fantasy sports league consists of a limited number of
persons or groups of persons who pay an entrance fee for
membership in the league. The entrance fee may include an
administrative fee.
(2) Each league member creates a fictitious team composed
of athletes from a given professional sport, such as baseball,
basketball, or football. Player selection is conducted through

random drawings or a bidding process.

(3) After the initial teams are selected, interim replacement of players may occur by trade or purchase. A specific fee, which may not exceed the total entrance fee, is charged for each transaction.

(4) A method, as defined by league rules, is devised to permit each team to compete against other teams in the league. Points are awarded to a team according to the performance of individual players or teams or both during a designated time period.

(5) A member may be eligible to receive a payout based on the number of points accumulated. Payouts, which may be in the form of cash or prizes, are awarded according to league rules.

(6) Rules governing the conduct of the fantasy sports league must be provided in writing to each member.

NEW SECTION. Section 22. **Fantasy sports leagues authorized.** It is lawful to conduct or participate in a fantasy sports league.

NEW SECTION. Section 23. **Payouts -- administrative fees charged by commercial establishments.** (1) The total value of payouts to all league members must equal the amount collected for entrance, administrative, and transactions fees, minus payment for administrative expenses.

(2) If a commercial establishment charges an administrative fee for conducting a fantasy sports league, the fee for each participant may not be more than 15% of the amount charged as a participant's entrance fee.

NEW SECTION. Section 24. **Sports betting prohibited -- applicability.** [Sections 21 through 23] do not:

(1) authorize betting or wagering on the outcome of an individual sports event; or

(2) apply to gambling activities governed under chapter 4 or chapter 5, part 2 or 5, of this title.

NEW SECTION. Section 25. **Violations.** A person who purposely or knowingly violates or procures, aids, or abets in a violation of [sections 21 through 24] is guilty of a misdemeanor punishable under 23-5-161.

Section 26. Section 23-5-114, MCA, is amended to read:

"23-5-114. Department employees -- activities prohibited.

(1) An employee of the department, a former department employee during the first 365 days following termination of employment, or any peace officer or prosecutor directly involved with the prosecution, investigation, regulation, or licensing of gambling, as designated by the attorney general, may not:

(1)(a) serve as an officer or manager of a corporation business or organization, other than a nonprofit corporation or organization, that conducts a gambling activity, other than as an officer of a nonprofit organization;

(b) be employed by a licensed operator in any capacity that

requires assisting in conducting a gambling activity regulated under parts 1 through 6 of this chapter or maintaining records for the gambling activity;

~~(2) receive or share in, directly or indirectly, any profit of a gambling activity regulated by the department;~~

~~(3)(c) have a beneficial or pecuniary interest in a contract for the manufacture, lease, or sale of a gambling device, the conduct of a gambling activity, or the provision of independent consultant services in connection with a gambling activity; or~~

(d) participate in a gambling activity governed by parts 1 through 6 of this chapter, except in performing assigned employment duties. An employee may participate in a gambling activity governed by part 10 of this chapter or chapter 4 of this title.

(2) The prohibitions in subsections (1)(a) through (1)(c) apply to a former designated department employee during the first year following termination from employment with the department if the employee was directly involved with the prosecution, investigation, regulation, or licensing of gambling immediately before termination.

Section 27. 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 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.

~~(2)~~ (3) (a) A civil penalty imposed under this section must be collected by the department and deposited in the state's general fund as required by 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 28. Section 23-5-153, MCA, is amended to read:

"23-5-153. Possession and sale of antique slot machines.

(1) For the purposes of this section, an antique slot machine is a mechanically or electronically operated slot machine that at any present time is more than 25 years old.

(2) Except as provided in subsection (3), an antique slot machine may be possessed, located, and operated only in a private residential dwelling.

(3) (a) An antique slot machine may be possessed or located for purposes of display only and not for operation in any public museum owned and operated by the state, a county, or a city.

(b) A licensed manufacturer-distributor or a person licensed under subsection (4) may possess and sell antique slot machines for purposes of commercially selling or otherwise supplying the machines.

(4) A person other than a licensed manufacturer-distributor may not sell more than three antique slot machines in a 12-month period without first obtaining from the department an annual license for selling the machines. The fee for the license is \$50 a year. The fee must be retained by the department for administrative purposes. The department may not issue a license under this subsection to a licensed operator.

(5) A person or entity legally possessing a slot machine under subsection (2) or (3) may sell or otherwise supply a machine to another person or entity who may legally possess a slot machine.

~~(4)~~ (6) An antique slot machine may not be operated for any commercial or charitable purpose."

Section 29. Section 23-5-154, MCA, is amended to read:

"23-5-154. Soliciting or persuading persons to play participation in illegal gambling device activity prohibited. A person who purposely or knowingly advertises for or solicits

another person to ~~play or engage in the~~ participate in an illegal gambling enterprise or use of an illegal gambling device is guilty of a misdemeanor and is punishable under 23-5-161.

Section 30. Section 23-5-156, MCA, is amended to read:

"23-5-156. Obtaining anything of value by fraud or operation of illegal gambling device or enterprise. (1) A person who ~~by gambling in an activity involving gambling~~ obtains money, property, or anything of value that does not exceed \$300 in value by misrepresentation, fraud, or the use of an illegal gambling device or an illegal gambling enterprise is guilty of a misdemeanor and is punishable as provided in 23-5-161.

(2) A person who ~~by gambling in an activity involving gambling~~ obtains money, property, or anything of value that exceeds \$300 in value by misrepresentation, fraud, or the use of an illegal gambling device or an illegal gambling enterprise is guilty of a felony and is punishable as provided in 23-5-162.

Section 31. Section 23-5-158, MCA, is amended to read:

"23-5-158. Minors not to participate -- penalty -- exception. (1) ~~A~~ Except as provided in subsection (2), a person may not purposely or knowingly allow a person under 18 years of age to participate in a gambling activity.

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

(2) A person under 18 years of age may sell or buy tickets for or receive prizes from a raffle conducted in compliance with 23-5-413 if proceeds from the raffle, minus administrative expenses and prizes paid, are used to support charitable activities, scholarships or educational grants, or community service projects."

Section 32. 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 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 of this chapter and may not issue the person another license or permit under parts 1 through 6 of this chapter."

Section 33. Section 23-5-176, MCA, is amended to read:

"23-5-176. Qualifications for licensure. (1) A person whom the department determines is qualified to receive a license under the provisions of this chapter, except for the provisions of part 10, may, based on information available to, required by, or supplied to the department under department rules, be issued a

state gambling license.

(2) The Except as provided in subsection (4), the department shall issue a license unless the department can demonstrate that the applicant ~~is~~:

(a) is a person whose prior financial or other activities or criminal record:

(i) poses a threat to the public interest of the state ~~or~~;

(ii) poses a threat to the effective regulation and control of gambling; or

~~(ii)~~ (iii) creates a danger of illegal practices, methods, or activities in the conduct of gambling or in the carrying on of the business and financial arrangements incidental to gambling; ~~or~~

(b) has been convicted of a felony offense within 5 years of the date of application or is on probation, parole, or deferred prosecution for committing a felony offense; or

~~(b)~~ (c) is receiving a substantial amount of financing for the proposed operation from an unsuitable source. A lender or other source of money or credit that the department finds to meet the provisions of subsection (2)(a) may be considered an unsuitable source.

(3) The provisions of 37-1-203 and 37-1-205 do not apply to licensing determinations made under this section.

(4) The department may deny a license or permit to an applicant who has falsified a license or permit application. If the falsification is determined after the license or permit has been issued, the department may revoke the license or permit.

NEW SECTION. Section 34. **Illegal sale, assignment, lease, or transfer of license -- penalty.** A licensee who purposely or knowingly sells, assigns, leases, or transfers a license or permit in violation of 23-5-110 is guilty of a misdemeanor punishable in accordance with 23-5-161.

Section 35. Section 23-5-308, MCA, is amended to read:

"23-5-308. **Card game dealers -- license.** (1) A person may not deal cards in a live card game of panguingue or poker without being licensed annually by the department.

(2) The fee for the first year in which the license is effective is \$75, and the annual renewal fee is \$25. The fee may not be prorated.

(3) The department shall retain for administrative purposes the license fee charged for the issuance of a dealer's license.

(4) A licensed dealer shall have on his person, and display upon request, his dealer's license when he is working as a dealer.

(5) (a) The department shall adopt rules to implement temporary licensing procedures until a permanent license is issued to a dealer.

(b) The rules must provide that:

(i) a temporary license may be obtained at the place where a person locally applies for a driver's license; and ~~that~~

(ii) the receipt received upon mailing by certified mail an

a completed license application for a permanent license and the fee required under subsection (2) by certified mail, return receipt requested, also constitutes a temporary license.

(c) The department may not assess a fee for the temporary license.

Section 36. Section 23-5-309, MCA, is amended to read:

"23-5-309. Presence and control of dealer Requirements for conducting card games. (1) Except as provided in [section 37], a live card game may not must be played except on a live card game table in the presence and under the control of a licensed dealer for which a permit has been issued and on the premises of a licensed operator.

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

NEW SECTION. Section 37. Tournaments. (1) Subject to the department's approval, a licensed operator who has a permit for placing at least 1 live card game table on his premises may conduct up to 12 live card game tournaments a year on his premises. Each tournament may be conducted for no more than 5 consecutive days. If an operator conducts more than one tournament a year, at least 7 days must lapse between the conclusion of one tournament and the beginning of the next tournament.

(2) (a) At least 10 days before the start of a tournament, the operator shall submit to the department an application for a tournament permit. The permit application must be accompanied by a \$10 fee. The department shall retain the fee for administrative purposes.

(b) If a tournament is to be conducted on the premises of more than one licensed operator, each operator shall submit a permit application and processing fee. The permit is applied toward each operator's annual 12-tournament limit.

(3) Permits for placement of additional live card game tables, as provided in 23-5-306, are not required for additional tables authorized under a tournament permit.

(4) Tournament participants must be provided with a copy of the tournament rules before the start of the tournament. A copy of the rules must be posted in a conspicuous location in each area where the tournament is conducted.

(5) A person must be present on the premises during the tournament to oversee the conduct of the card games and to settle disputes among players. This person may be a dealer licensed under 23-5-308.

(6) A licensed operator may charge a tournament participant an entry fee, which may include a fee to cover expenses incurred in conducting the tournament. A participant who has been eliminated from competition during the tournament may reenter the tournament by paying an additional fee if permitted to do so under tournament rules. A rake-off may not be taken during a tournament card game.

(7) The face value of the chips used does not govern the value of the pot awarded at the end of the tournament.

(8) The provisions of this part and the department rules governing live card games apply to live card games conducted as part of a tournament unless otherwise provided.

Section 38. Section 23-5-406, MCA, is amended to read:

"23-5-406. Exempt charitable organizations and facilities.

(1) (a) An organization ~~qualified for~~ granted an exemption under 26 U.S.C. 501(c)(3) and, (c)(4), (c)(8), or (c)(19):

(i) on or before January 15, 1989, is exempt from the taxation and ~~license fees~~ the permit fee imposed by this part. ~~An organization qualified for exemption under that section;~~

(ii) after ~~that date~~ January 15, 1989, is exempt from taxation ~~under,~~ and need only pay one-half the ~~license fees~~ ~~under,~~ permit fee imposed by this part if the organization carries on gambling activities for no more than 60 days a calendar year ~~and if the.~~

(b) An organization provided for in subsection (1)(a) shall:

(i) limit its live bingo and keno activities ~~are limited~~ to its main premises or place of operations and to events at other places operated by other charitable organizations or by a government unit or entity. ~~The organization shall;~~

(ii) comply with other statutes and rules relating to the operation of live bingo and keno ~~or raffles. A qualified organization shall; and~~

(iii) apply to the department for a ~~cost-free~~ permit to conduct charitable live bingo and ~~or~~ keno games ~~or raffles.~~

(2) A long-term care facility, as defined in 50-5-101, or a retirement home or senior citizen center, as defined in subsection (4), that has obtained an operator's license and a permit from the department to operate live bingo or keno is exempt from taxation and the permit fee imposed by this part if the facility:

(a) limits participation in live bingo and keno games to persons using the facility and their guests;

(b) limits live bingo or keno activities to its main premises or place of operation; and

(c) complies with other statutes and rules relating to the operation of live bingo and keno.

(3) The department may revoke or suspend the permit of a ~~qualified an~~ organization or a facility provided for in subsection (1) or (2) if ~~that,~~ after investigation, the department determines that the organization or facility is ~~contracting~~ operating or has contracted with a nonqualified organization ~~to operate that is operating~~ live bingo, ~~or~~ keno, ~~or~~ raffles in a predominantly commercial manner.

(4) For purposes of this section:

(a) "retirement home" means a building in which sleeping rooms without cooking facilities in each room are rented to three or more persons who are 60 years of age or older and who do not need skilled nursing care, intermediate nursing care, or personal nursing care, as defined in 50-5-101; and

(b) "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 or sell food or beverages under a license furnished by the state. Services qualifying under this subsection (b) must be recognized in the state plan on aging adopted by the department of family services."

Section 39. Section 23-5-407, MCA, is amended to read:

"23-5-407. Live bingo or keno permit -- fees -- disposition of fees. (1) A person who has been granted an operator's license may be granted an annual permit by the department to conduct live bingo or keno games on specified premises. The permit expires June 30 of each year.

(2) The permit fee for each ~~of the~~ premises in which a live bingo or keno game is conducted ~~may not be prorated and must be \$500~~ is \$250.

(3) The department shall retain the permit fee for administrative costs purposes.

Section 40. Section 23-5-409, MCA, is amended to read:

"23-5-409. Bingo and keno tax -- records -- distribution -- statement and payment. (1) A licensee who has received a permit to operate bingo or keno games shall pay to the department a tax of ~~5% 1%~~ 1% of the ~~net income~~ gross proceeds from the operation of each live bingo and keno game operated on his premises. ~~For purposes of this section, "net income" means gross proceeds, as defined in 23-5-112, minus the cost of equipment, supplies, personnel, and advertising allocated to the games. If in any year 5% of net income does not equal 1% of gross proceeds, then the licensee shall pay a tax of 1% of gross proceeds.~~

(2) A licensee shall keep a record of gross proceeds ~~and net income~~ in the form the department requires. At all times during the business hours of the licensee the records must be available for inspection by the department.

(3) A licensee shall annually complete and deliver to the department a statement showing the total gross proceeds ~~and net income~~ for each live keno or bingo game operated by him and the total amount due as live bingo or keno tax for the preceding year. This statement must contain any other relevant information required by the department.

(4) The department shall forward 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 game is located for deposit to the county or municipal treasury. A county is not entitled to proceeds from taxes on live bingo or keno games located in incorporated cities and towns within the county. The 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 41. Section 23-5-412, MCA, is amended to read:
"23-5-412. Card prices and prizes -- exception. The (1)
Except as provided in subsection (3):

(a) the price for an individual bingo or keno card may not exceed 50 cents. Bingo prizes may be paid in either tangible personal property or cash. A;

(b) a prize may not exceed the value of \$100 for each individual bingo award or keno card. It; and

(c) it is unlawful to, in any manner, combine any awards so as to increase the ultimate value of the award.

(2) Bingo and keno prizes may be paid in either tangible personal property or cash.

(3) A variation of the game of keno, as approved by the department, in which a player selects three or more numbers and places a wager on various combinations of these numbers is permissible if:

(a) no more than 50 cents is wagered on each combination of numbers; and

(b) a winning combination does not pay more than \$100.

(4) A player may give the a keno caller a card with instructions on the card to play that card and its marked numbers for up to the number of successive games that the house allows and that the player has indicated on the card, upon payment of the price per game times the number of successive games indicated. The player shall remain on the house premises until the card is played or withdrawn. The caller shall keep the card until the end of the number of games indicated, and the department may by rule provide that at that time the caller shall pay the player any prizes won."

Section 42. Section 23-5-413, MCA, is amended to read:

"23-5-413. Raffle prizes -- permits -- exception. (1)
~~Raffle prizes may not exceed the value of \$5,000 for each individual raffle ticket. It is unlawful to, in any manner, combine any awards so as to increase the ultimate value of the prize awarded for each ticket.~~

~~(2)~~ (1) (a) A separate Except as provided in subsection (1)(b), a permit must be issued by the board of county commissioners for each raffle conducted within its jurisdiction. The permit must be issued before the raffle may be conducted. The board of county commissioners may not charge a permit fee or an investigative fee for a raffle conducted by a religious corporation sole or nonprofit organization if the organization presents sufficient documentation of its nonprofit status.

(b) If tickets for a raffle are to be sold in more than one county, a permit must be obtained only in the county where the winners of the raffle are to be determined.

(2) Except for a religious corporation sole or nonprofit organization, a person or organization conducting a raffle shall own all prizes to be awarded as part of the raffle before the sale of any tickets.

(3) A person who has conducted a raffle must submit an accounting to the board of county commissioners within 30 days following the completion of the raffle.

(4) The sale of raffle tickets authorized by this part is restricted to events and participants within the geographic confines of the state.

(5) The value of a prize awarded for an individual ticket for a raffle conducted by a person or an organization, other than a religious corporation sole or nonprofit organization may not exceed \$5,000. The prize may be in the form of cash, other intangible personal property, tangible personal property, or real property. Prizes may not be combined in any manner to increase the ultimate value of the prize awarded for each ticket.

~~(3) (a) The restrictions of subsection (1) do not apply to a raffle conducted by a nonprofit corporation,~~

(6) (a) In addition to complying with the requirements of subsections (1) through (5), a religious corporation sole, or other nonprofit organization as defined in 23-5-112 if the corporation or organization is permitted by the board of county commissioners to conduct the raffle. The board of county commissioners may not charge a permit fee or an investigative fee for a raffle conducted by a nonprofit veterans' organization.

~~(b) The nonprofit organization or corporation seeking permission under subsection (3)(a) shall apply provide the following information to the board of county commissioners when applying for the a raffle permit and provide the following information:~~

(i) the cost and number of raffle tickets to be sold;

(ii) the charitable purposes the proceeds of the raffle are intended to benefit; and

(iii) the proposed prizes and their value.

~~(c) A veterans' organization seeking exemption from the permit fee or an investigative fee shall present evidence of the organization's nonprofit status to the board of county commissioners.~~

(d)(b) The proceeds from the sale of the raffle tickets for a raffle conducted by a religious corporation sole or a nonprofit organization may be used only for charitable purposes or to pay for prizes. The raffle prize must be in tangible personal property only and not in money, cash, stock, bonds, evidence of indebtedness, or other intangible personal property. None of the proceeds Proceeds may not be used for the administrative cost of conducting the raffle.

(c) The value of a prize awarded for an individual ticket for a raffle conducted by a religious corporation sole or nonprofit organization may equal or exceed \$5,000 if the prize is in the form of tangible personal property. If the value of the prize is less than \$5,000, the prize may be in the form of cash, other intangible personal property, tangible personal property, or real property.

Section 43. Section 23-5-501, MCA, is amended to read:

"23-5-501. Definitions Definition. As used in this part, unless the context clearly requires otherwise, ~~the following definitions apply:~~

~~(1) "Nonprofit organization" means a charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic,~~

~~or service organization, other than one established for the purpose of conducting or participating in a sports pool.~~

~~(2) "Sports "sports pool" means a card divided into squares or spaces, with the names of the participants in the pool written within such squares or spaces, for gambling activity, other than an activity governed under chapter 4 or chapter 5, part 2 of this title in which consideration in a person wagers money is paid by the person playing for each square or space for the chance to win money or other items of value based on any the outcome of a sports event or series of sports events wherein the participants competitors in such the sports event or series of sports events are natural persons or animals."~~

NEW SECTION. Section 44. Sports pool design -- department rules. (1) A sports pool must be designed to ensure that:

(a) there is at least one winner from among the participants in the pool; and

(b) each participant has an equal chance to win the pool.

(2) Competitors in a sports event or series of sports events may be randomly assigned to each participant in the sports pool.

(3) The department shall by rule describe the types of sports pools authorized by this part. Variations in the authorized sports pools must be submitted to the department for review and approval before they are made available for public play.

Section 45. Section 23-5-503, MCA, is amended to read:

"23-5-503. Rules. (1) The card or other device used for recording the sports pool and ~~upon which the squares or spaces appear shall~~ must clearly indicate in advance of the sale of any chances the number of chances to be sold in that specific pool, the name of the event or series of events, the consideration to be paid for each chance, and the total amount or percentage to be paid to the winners.

(2) ~~A chance to participate in a sports pool may not be sold other than upon the premises in which the sports pool is conducted. An individual~~ Each chance to participate in a sports pool ~~may not~~ must be sold for a ~~consideration in excess of the same amount, which may not exceed~~ \$5, and the total amount ~~to be~~ paid to ~~the~~ all winners of any individual sports pool may not exceed the value of \$500. Chances for a series of events may be purchased all at once prior to the occurrence of the first event.

(3) (a) Except as provided in subsection (3) (b), the ~~winner~~ winners of any sports pool shall receive a 100% payout of the value of the sports pool.

~~(3) (b)~~ (b) A nonprofit organization that maintains records and opens the records to inspection upon reasonable demand ~~records~~ to verify that the retained portion is used to support charitable activities, scholarships or educational grants, or community service projects may retain up to 50% of the value of a sports pool.

(4) A person or nonprofit organization conducting a sports

pool may purchase chances to participate in the sports pool but may not:

(a) retain any portion of the amount wagered in the sports pool, except as provided in subsection (3)(b);

(b) charge a fee for participating in the sports pool; or

(c) use the sports pool in any manner to establish odds or handicaps or to allow betting or booking against the person or nonprofit organization conducting the pool.

Section 46. Section 23-5-603, MCA, is amended to read:

"23-5-603. Video gambling machines -- possession -- play -- restriction. (1) A person licensed operator may make available for public play only the number of approved video gambling machines specifically authorized by this part.

(2) The video gambling machines specifically authorized by this part are bingo, keno, and draw poker machines. Only the number of approved machines for which permits have been granted under 23-5-612 may be made available for play by the public on the premises of a licensed operator. The department shall adopt rules allowing a video gambling machine that needs repair to be temporarily replaced while it is being repaired with a video gambling machine that is approved under the permit provisions of this part. A fee may not be charged for the replacement machine.

(3) Machines on premises licensed to sell alcoholic beverages for on-premises consumption ~~on the premises~~ must be placed:

(a) in the a room, area, or other part of the premises in which the alcoholic beverages are sold and normally or consumed; and

(b) within control of the operator for the purpose of preventing access to the machines by persons under 18 years of age.

Section 47. Section 23-5-610, MCA, is amended to read:

"23-5-610. Video gambling machine ~~net~~ gross income tax -- records -- distribution -- quarterly statement and payment. (1) ~~An A~~ A licensed operator issued a permit under this part shall pay to the department a video gambling machine tax of 15% of ~~net machine the gross~~ 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 are not repaid by insurance and if a law enforcement agency investigated the theft.

(2) ~~An A~~ A licensed operator issued a permit under this part shall keep a record of ~~net-machine the gross~~ gross income from each machine in such 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) ~~An A~~ 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 ~~net machine~~ gross income from each video gambling machine licensed to

him, together with the total amount due the state as video gambling machine ~~net~~ 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 48. Section 23-5-611, MCA, is amended to read:

"23-5-611. Machine permit qualifications -- limitations.

(1) (a) A person who has been granted an operator's license under 23-5-177 and a license to sell alcoholic beverages for consumption on the premises may be granted a permit for the placement of video gambling machines in his premises.

(b) If video keno or bingo gambling machines were legally operated on a premises on January 15, 1989, and the premises were not on that date licensed to sell alcoholic beverages for consumption on the premises or operated for the principal purpose of gaming and there is an operator's license for the premises under 23-5-177, a permit for the same number of video keno or bingo gambling machines as were operated on the premises on that date may be granted to the person who held the permit for such machines on those premises on that date.

(c) A person who legally operated an establishment on January 15, 1989, for the principal purpose of gaming and has been granted an operator's license under 23-5-177 may be granted a permit for the placement of bingo and keno machines in his premises.

(2) An applicant for a permit shall disclose on the application form to the department any information required by the department consistent with the provisions of 23-5-176.

(3) A licensee may not have on the premises or make available for play on the premises more than 20 machines of any combination and ~~no more than 10 may be draw poker machines.~~

Section 49. Section 23-5-612, MCA, is amended to read:

"23-5-612. Machine permits -- fee. (1) The department, upon payment of the fee provided in subsection (2) and in conformance with rules adopted under this part, shall issue to the operator a an annual permit for an approved video gambling machine.

(2) The department shall charge an annual permit fee of \$200 for each video gambling machine permit. The fee must be prorated on a quarterly basis but may not be prorated to allow a permit to expire before June 30. The department may not grant a

refund if the video gambling machine ceases operation before the permit expires.

~~(3)~~ The department shall retain ~~\$100~~ 50% of the total permit fee collected under subsection (2) for purposes of administering this part. The ~~remaining \$100~~ balance must be returned on a quarterly basis to the local government jurisdiction in which the gambling machine is located. The local government portion of the fee is statutorily appropriated to the department, as provided in 17-7-502, for deposit in the local government treasury.

~~(3)~~ ~~The permit expires on June 30 of each year, and the fee may not be prorated.~~

~~(4)~~ ~~A used keno machine may be licensed under subsection (1) without meeting the requirements of 23-5-609 [as that section read on September 30, 1989] if the applicant for licensure can establish to the satisfaction of the department that, on the date of application, he owns or possesses a machine that was owned or operated in the state prior to June 30, 1987. A license issued under this subsection expires for all purposes no later than June 30, 1989.~~

Section 50. Section 23-5-625, MCA, is amended to read:

"23-5-625. Video gambling machine manufacturer-distributor -- license -- fees. ~~(1)~~ ~~(a)~~ Except as provided in subsections (2) and (3), it is unlawful for any person to assemble, produce, manufacture, or supply any video gambling machine or associated equipment for use or play in the state without having first been issued a video gambling machine manufacturer-distributor's license by the department. A licensed manufacturer-distributor may supply a video gambling machine only to another licensed manufacturer-distributor or a licensed operator.

~~(2)~~ ~~(b)~~ The department shall charge an annual license fee of \$1,000 for the issuance or renewal of a video gambling machine manufacturer-distributor's license.

~~(3)~~ ~~(c)~~ In addition to other license fees, the department may charge the applicant a one-time video gambling machine manufacturer-distributor's license application processing fee. The processing fee may not exceed the department's actual costs for processing an application.

~~(4)~~ ~~(d)~~ All video gambling machine manufacturer-distributor's licenses expire on June 30 of each year, and the license fee may not be prorated.

~~(5)~~ ~~(e)~~ The department shall retain the license and processing fees collected for purposes of administering this part, unless otherwise provided.

(2) A licensed operator who is not licensed as a manufacturer-distributor may sell up to 20 video gambling machines in a calendar year if the operator:

(a) had obtained permits for the machines and legally operated them prior to the sale; and

(b) sells the machines to another licensed operator or a licensed manufacturer-distributor.

(3) A lienholder who acquires title to video gambling

machines through a foreclosure action involving a licensed operator or manufacturer-distributor may sell the machines to a licensed operator or licensed manufacturer-distributor."

Section 51. 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 department shall examine and may approve a new video gambling machine and associated equipment which are manufactured, sold, or distributed for use in the state before the video gambling machine or associated equipment is sold, played, or used.

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

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

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

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

~~(5)~~(6) The department may inspect and test and approve, disapprove, or place a condition upon a video gambling machine prior to its distribution and placement for play by the public."

Section 52. Section 17-7-502, MCA, is amended to read:

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

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

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

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

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-

504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; 20-9-361; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; and section 13, House Bill No. 861, Laws of 1985.

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

Section 53. Section 2-15-2021, MCA, is amended to read:

"2-15-2021. Gaming advisory council -- allocation -- composition -- compensation -- ~~annual~~ biennial report. (1) There is a gaming advisory council.

(2) The gaming advisory council is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(3) The gaming advisory council consists of nine members. One member must be from the senate, and one member must be from the house of representatives. The senate committee on committees and the speaker of the house of representatives shall appoint the legislative members of the council. The seven remaining members must be appointed by the department, with one representing the public at large, two representing local governments, one being a Native American, and three representing the gaming industry.

(4) Each gaming advisory council member is appointed to a 3-year term of office, except that three of the first-appointed original members shall serve a 1-year term, three (including both legislative members) shall serve a 2-year term, and three shall serve a 3-year term. A member of the council may be removed for good cause by the appointing body provided for in subsection (3).

(5) The gaming advisory council shall appoint a chairman from its members.

(6) Legislative members of the gaming advisory council are entitled to compensation and expenses, as provided in 5-2-302, while the council is meeting. The remaining members are entitled to travel, meals, and lodging expenses as provided for in 2-18-501 through 2-18-503. Expenses of the council must be paid from licensing fees received by the department.

(7) The gaming advisory council shall, within its authorized budget, hold meetings and incur expenses as it considers necessary to study all aspects of gambling in the state.

(8) (a) The gaming advisory council shall submit ~~an annual~~ a biennial report to the department, at a time designated by the department, with recommendations for amendments to the gambling statutes, the need for additional or modified department rules, the clarification of existing rules, and other recommendations on the operation of the department or any other gambling-related matter.

(b) The ~~annual~~ biennial report required under subsection (8)(a) must be affixed to the ~~annual department~~ report on gambling in the state that the department submits that year. The department and council shall submit the two most recent department and council reports to each of the next two regular sessions of the legislature.

(c) The council may submit interim reports to the department as the council considers necessary.

(d) The council shall meet with the department upon request of the department.

(e) The department shall meet with the council upon request of the council.

(9) The department shall give each council member notice and a copy of each proposed change in administrative rules relating to gambling. The notice and copy must be given at the time a notice of proposed rules changes is filed with the secretary of state. The council shall review the proposal, may comment on it, and may attend any hearing on the proposal. The department shall consider any comment by any council member or by the council as a whole prior to adopting the proposed change."
Renumber: subsequent sections

39. Page 25, line 4.
Strike: "11, and 14 through 23"
Insert: "25, and 34"

40. Page 25, line 5.
Strike: "17"
Insert: "14"

41. Page 25, line 6.
Strike: "23"
Insert: "20"
Following: "]"
Insert: "and [sections 21 through 25]"
Following: "are"
Insert: "each"

42. Page 25, lines 7 and 8.
Following: "chapter 5,"
Strike: "part 1,"

43. Page 25, line 8.
Following: "7 through"
Strike: "11, and 14 through 23"
Insert: "25, and 34"

44. Page 25, line 9.

Following: line 8

Insert: "(2) [Section 37] is intended to be codified as an integral part of Title 23, chapter 5, part 3, and the provisions of Title 23, chapter 5, part 3, apply to [section 37].

(3) [Section 44] is intended to be codified as an integral part of Title 23, chapter 5, part 5, and the provisions of Title 23, chapter 5, part 5, apply to [section 44]."

45. Page 25, lines 14 through 16.
Strike: section 25 in its entirety
Renumber: subsequent section

46. Page 25, lines 18 through 20.
Strike: subsections (1) and (2) in their entirety
Insert: "(1) [Section 26 and this section] are effective on passage and approval.
(2) [Sections 1 through 25 and 27 through 54] are effective July 1, 1991."

POSSIBLE REVISIONS TO SENATE BILL NO. 427

EX #70
SB427
3 April 91

Prepared by the Gambling Control Division
April 2, 1991

SECTION 1 amends the general definition section of the gambling laws to:

(1) exclude a promotional game of chance from the definition of gambling (23-5-112(10), MCA);

(2) provide specific examples of illegal gambling devices and illegal gambling enterprises (23-5-112(14) and (15), MCA) [ELIMINATE "BUT IS NOT LIMITED TO" ON PAGE 4, LINE 24 AND PAGE 5, LINE 15]; and

(3) define a promotional game of chance as a scheme for disposing of property by chance among persons who have not paid or are not expected to pay valuable consideration or who have not purchased or are not expected to purchase any goods or services for a chance to obtain the property (23-5-112(27), MCA).

SECTION 2 amends 23-5-113, MCA, to allow a court to order, upon conviction for a gambling violation, the forfeiture of property seized by a Department of Justice agent during a lawful search.

SECTION 3 amends 23-5-115, MCA, to permit the Department of Justice to disclose certain information obtained in the gambling application or tax reporting processes as provided in section 4.

SECTION 4 is a new code section addressing the authority of the Department of Justice to disclosure information. Subsection (1) permits the Department to disclose the following information from a license or permit application:

(1) the applicant's name;

(2) the address of the business where the activity under the license or permit is to be conducted;

(3) the name of each person having an ownership interest in the business;

- ~~(4) the applicant's source of financing;~~
- (5) types of permits requested by the applicant; and
- ~~(6) any other information that the Department, after balancing the public's right to know against the applicant's right to privacy, considers suitable for disclosure.~~

Subsection (2) permits the Department to disclose the above information plus any other relevant information to:

- (1) a federal, state, city, county, or tribal criminal justice agency; or
- (2) the Montana Department of Revenue or the federal Internal Revenue Service.

SECTION 5 amends 23-5-152, MCA, to make it a misdemeanor offense to operate an illegal gambling enterprise. The section further provides that an illegal gambling device may be possessed or located in a public OR PRIVATE museum for display purposes only.

DRAFT LANGUAGE

SECTION 6 amends 23-5-177, MCA, to:

- (1) require the Department of Justice to approve the premises in which the gambling activity is to be conducted before issuing an operator's license;
- (2) prohibit the Department from issuing more than one operator's license per premises, regardless of the number of on-premises alcoholic beverage licenses that have been issued for the premises;
- (3) impose a one-time operator's license application processing fee FOR APPLICATIONS SUBMITTED ON OR AFTER JULY 1, 1991, to cover the cost incurred by the Department in determining whether the applicant qualifies for licensure.

SECTION 7 is a new code section establishing requirements that a premises must meet before the Department of Justice may issue an operator's license. SUBSECTION (4), WHICH CONCERNS "FINANCIALLY OR OPERATIONALLY INTERRELATED" PREMISES, IS STRICKEN AND REPLACED WITH LANGUAGE PROHIBITING TWO ADJOINING PREMISES WITH OPERATOR'S LICENSES FROM HAVING AN INTERNAL ENTRANCE THROUGH WHICH THE PUBLIC HAS ACCESS. A PREMISES

LICENSED ON OR BEFORE JANUARY 1, 1991, THAT DOES NOT MEET THE REQUIREMENTS FOR PREMISES APPROVAL MAY CONTINUE TO OPERATE UNTIL JUNE 30, 1996, AND THEN MUST COME UNDER COMPLIANCE. LIKEWISE, A PERSON APPLYING FOR AN OPERATOR'S LICENSE ON OR BEFORE JANUARY 1, 1991, FOR A PREMISES THAT DOES NOT MEET THE PREMISES APPROVAL REQUIREMENTS MAY BE ISSUED A LICENSE IF: (1) AN ON-PREMISES ALCOHOLIC BEVERAGES LICENSE FOR THE PREMISES WAS OBTAINED BEFORE JANUARY 1, 1991; AND (2) SUBSTANTIAL PHYSICAL MODIFICATIONS TO THE PREMISES WERE COMPLETED BEFORE JANUARY 1, 1991. SUCH PREMISES MUST COME UNDER COMPLIANCE BY JUNE 30, 1996.

SECTION 8 is a new code section requiring an operator to notify the Department of Justice before transferring any ownership interest in his premises.

SECTION 9 is a new code section requiring:

- ~~(1) a person who is involved in conducting a gambling activity on an operator's premises to be an employee of the operator; and~~
- ~~(2) all revenue derived from conducting a gambling activity on an operator's premises to first accrue to the operator.~~

~~The requirements listed above do not apply to a manufacturer or distributor who furnishes video gambling machines to an operator or to revenue derived from the operation of video gambling machines.~~ ESTABLISHING AN INDEPENDENT CARD ROOM CONTRACTOR LICENSE. [LANGUAGE PROPOSED BY GCD AND GIA]

SECTION 10 is a new code section that is tied to House Bill No. 919 (HB 919), a gambling license and permit bill introduced at the Department of Justice's request.

~~HB 919 breaks a manufacturer-distributor's license into three separate licenses: a manufacturer's, distributor's, and route operator's. In addition, HB 919 renames an~~

~~operator's license as a premises license. Based on this new classification of licenses, subsection (1) of section 10 of this bill provides that issuance of each of the following licenses for operating a business constitutes a different marketing level:~~

- ~~(1) a premises license;~~
- ~~(2) a route operator's license; and~~
- ~~(3) a manufacturer's or distributor's license.~~

~~Subsection (2) of section 10 prohibits a person who has obtained a gambling license from:~~

- ~~(1) obtaining another license to operate a business at a different marketing level;~~
- ~~(2) having a substantial interest in another business operating at a different marketing level;~~
- ~~(3) allowing an officer of his business to have a substantial interest in another business operating at a different marketing level;~~
- ~~(4) employing a person who is also employed by another business operating at a different marketing level; or~~
- ~~(5) allowing another business operating at a different marketing level or a person with a substantial interest in the business to have a substantial interest in his business.~~

~~Subsection (3) defines the term "substantial interest".~~

~~Subsection (4) is a "grandfather" clause that exempts from the provisions of section 10 those persons who on January 1, 1991, were licensed by the Department of Justice to operate businesses at different marketing levels.~~

SECTION 11 is a new code section that permits the Department of Justice or local law enforcement officials to inspect a premises where a gambling activity is being conducted or a facility where gambling devices are manufactured or distributed.

SECTION 12 ~~amends 23-5-312, MCA, to subject a promotional game of chance involving a live card game (i.e., a card game in which no consideration is paid to participate) to a prize~~

~~limit of \$300. The same prize limit is imposed on live card games in which consideration is paid.~~

~~SECTION 13 amends 23-5-412, MCA, to subject a promotional game of chance involving bingo or keno (i.e., a bingo or keno game in which no consideration is paid to participate) to a prize limit of \$100 per card. The same prize limit is imposed on bingo and keno games in which consideration is paid.~~

SECTION 14 is a new code section requiring a person who manufactures or supplies electronic bingo or keno equipment to obtain an annual manufacturer's license from the Department of Justice. The license fee is \$1,000. In addition to the license fee, the Department may charge a one-time application fee to cover the cost of processing the original license. The license and processing fees are retained by the Department for administrative purposes.

SECTION 15 is a new code section requiring a licensed manufacturer to submit to the Department of Justice for examination a prototype of any electronic bingo or keno equipment intended for use in the state. The manufacturer must pay the anticipated examination costs. After completing the examination, the Department may approve, disapprove, or conditionally approve use of the equipment.

SECTION 16 is a new code section authorizing the Department of Justice to adopt rules describing the electronic bingo and keno equipment that may be approved for use in the state.

SECTION 17 is a new code section defining the terms "casino night" and "nonprofit organization".

SECTION 18 is a new code section authorizing a nonprofit organization to conduct a casino night that may offer the following gambling activities:

- (1) live card games authorized under 23-5-311, MCA (bridge, cribbage, hearts,

panguingue, pinochle, pitch, poker, rummy, solo, and whist);

- (2) live bingo and keno games; and
- (3) raffles.

SECTION 19 is a new code section describing the process for applying for a casino night permit. The permit fee is \$25.

SECTION 20 is a new code section authorizing the Department of Justice to issue to a nonprofit organization one casino night permit per year. The permit fee is retained by the Department for administrative purposes.

SECTION 21 is a new code section imposing certain requirements on conducting casino nights (e.g., maximum duration of 12 hours, merchandise prizes only, etc.).

SECTION 22 is a new code section exempting gambling activities conducted during a casino night from the licensure and other regulatory requirements imposed on live card games, live bingo, live keno, and raffles. *Added to allow Sr. Parties.*

*Permit to
see top.*

SECTION 23 is a new code section authorizing the Department of Justice to adopt rules to administer the casino night provisions.

SECTION 24 is a new code section indicating where the new sections of the bill are to be codified within current law.

~~SECTION 25 is a new code section providing that section 10 of this bill is void if HB 919 (i.e., the Department of Justice's license and permit bill) is not passed and approved.~~

SECTION 26 is a new code section providing that all sections of the bill, ~~except section 10,~~ are effective October 1, 1991. ~~Section 10 is effective July 1, 1992.~~

8673
POSSIBLE ADDITIONS FROM OTHER BILLS:

1. Prorating video gambling machine permits (section 44 of HB 673)
2. Providing a tax credit for money stolen from video gambling machines (similar in part to amendment to 23-5-610, MCA, adopted by House Judiciary Committee)
3. Legalizing fantasy sports leagues (sections 53 through 57 of HB 673)
4. Providing a limited expansion of sports pools to include those pools in which the competitors are randomly assigned to participants (sections 36 through 39 of HB 673 as adopted by House Judiciary Committee)

*Clarify the underlying event
is not contrived.*

-
- 958
5. Requiring biennial, rather than annual, reports from the Gambling Control Division and Gaming Advisory Council (section 1 of HB 958)
 6. Revising definition of "public gambling" (section 2(31) of HB 958))
 7. Clarifying that it is a criminal offense for a person in an activity involving gambling to obtain anything of value by misrepresentation, fraud, or the use of an illegal gambling device or enterprise (section 8 of HB 958)
 8. Making it a misdemeanor for a gambling licensee to sell, assign, lease, or transfer a license or permit (section 13 of HB 958)
 9. Statutorily appropriating video gambling machine testing payments to Department of Justice (section 28 of HB 958)
 10. Permitting a person or entity who may legally possess an antique slot machine to sell the machine and providing for the commercial sale of antique slot machines (section of

6 of HB 958 plus amendment introduced by sponsor)

11. Defining the term "nonprofit organization" (section 2 and 3 of HB 673; section 2 of HB 958)
12. Clarifying prohibited activities for Department of Justice employees (section 4 of HB 673; section 3 of HB 958)
13. Clarifying disposition of penalties, fines, and forfeitures (section 1 of HB 134)
14. Permitting Department of Justice to issue warrants for distraint (section 7 of HB 673; section 5 of HB 958)
15. Making it a misdemeanor for a person to solicit another person to participate in an illegal gambling enterprise (section 9 of HB 673; section 7 of HB 958)
16. Prohibiting a minor from participating in all forms of gambling except noncommercial raffles (section 10 of HB 673 as amended by the House Judiciary Committee)
17. Requiring revocation of all gambling licenses and permits upon conviction of a felony gambling offense (section 11 of HB 673; section 10 of HB 958)
18. Clarifying existing exemptions to the live bingo and keno tax and permit fee and extending exemptions to veterans' and fraternal organizations, retirement homes, and senior citizen centers (section 32 of HB 673; section 18 of HB 958)
19. Revising definition of "raffle" (sections 2 and 3 of HB 673; section 2 of HB 958)
20. Clarifying raffle provisions (section 35 of HB 673; section 21 of HB 958)

21. Providing for sale of video gambling machines (section 46 of HB 673; section 27 of HB 958)
22. Requiring a card dealer's license only if a person intends to deal cards in a game of panguingue or poker (sections 18 and 19 of HB 673; section 15 of HB 958)
23. Requiring a game of panguingue or poker to be played under the control of a licensed dealer (sections 20 and 21 of HB 673; section 16 of HB 958)
24. Authorizing the use of way tickets in keno games (section 34 of HB 673; section 20 of HB 958)
25. Removing the ten-machine limit on draw poker machines but retaining the cap of 20 video gambling machines per premises (section 43 of HB 673; section 25 of HB 958)
26. Revising licensure qualifications (section 12 of HB 673 as adopted by House Judiciary Committee with addition of prohibiting issuance of a license if applicant is on deferred prosecution for committing a felony offense or has falsified an application)
27. Providing for card game tournaments (section 31 in HB 673 as adopted by the House Judiciary Committee)
28. Clarifying placement of video gambling machines (section 40 of HB 673 as adopted by the House Judiciary Committee)
29. Eliminating net tax on live bingo and keno and provide for a \$250 permit fee on both games (section 19 of HB 958 and section 33 of HB 673)

PROPOSED AMENDMENT TO SENATE BILL NO. 427

Ex# 70
3 Apr 91
SB 427

1. Page 25.

Following: line 1

Insert: "NEW SECTION. Section 24. Fishing derbies and wagering on natural occurrences. (1) The following are authorized gambling activities:

(a) a fishing derby in which two or more persons pay valuable consideration for an opportunity to win a prize for the species, size, weight, or otherwise identified fish caught in a fishing event.

(b) wagering on the outcome of a natural occurrence in which two or more persons pay valuable consideration for an opportunity to win a prize by most accurately predicting the date or time of an event resulting from a climatologic or meteorologic activity.

(2) Except as provided in subsection (3), all consideration paid to participate in a gambling activity authorized in subsection (1) must be paid to the winners.

(3) A nonprofit organization sponsoring a gambling event authorized in subsection (1) may retain up to 50% of the total amount paid to participate.

(4) This section does not apply to a gambling activity conducted under chapter 4 or chapter 5, part 2 or 3 of this title."

Renumber: subsequent sections

CX# 8
3 Apr 91
HB 159

Amendments to House Bill No. 159
Third Reading Copy (BLUE)

Requested by Senator Pinsoneault
For the Committee on Judiciary

Prepared by Valencia Lane
April 2, 1991

1. Page 2, lines 6 through 8.
Following: "AS" on line 6
Strike: remainder of line 6 through "BIDDER" on line 8
Insert: "provided for in 27-1-311, except that the total amount
of damages may not exceed the amount of profits the
successful bidder would have realized under the contract"

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(b) the amount the plaintiff paid from date of injury to date of judgment; and

(c) the present value of the amount the plaintiff is thereafter obligated to pay to keep the policy in force for the period for which any reduction of an award is made pursuant to subsection (3).

(3) The jury shall determine its award without consideration of any collateral sources. After the jury determines its award, reduction of the award must be made by the trial judge at a hearing and upon a separate submission of evidence relevant to the existence and amount of collateral sources. Evidence is admissible at the hearing to show that the plaintiff has been or may be reimbursed from a collateral source that does not have a subrogation right. If the trial judge finds that, at the time of hearing, it is not reasonably determinable whether or in what amount a benefit from such a collateral source will be payable, he shall:

(a) order any person against whom an award was rendered and who claims a deduction under this section to make a deposit into court of the disputed amount, at interest; and

(b) reduce the award by the amount deposited. The amount deposited and any interest thereon are subject to the further order of the court, pursuant to the requirements of this section.

(4) Except for subrogation rights specifically granted by state or federal law, there is no right to subrogation for any amount paid or payable to a plaintiff from a collateral source if an award is reduced by that amount under subsection (1).

History: En. Sec. 2, Ch. 628, L. 1987.

27-1-309 reserved.

27-1-310. Damages for emotional or mental distress prohibited in contract actions — exception. In an action for breach of an obligation or duty arising from contract, recovery is prohibited for emotional or mental distress, except in those actions involving actual physical injury to the plaintiff. Emotional or mental distress, as used in this section, includes mental anguish or suffering, sorrow, grief, fright, shame, embarrassment, humiliation, anger, chagrin, disappointment, or worry.

History: En. Sec. 1, Ch. 488, L. 1987.

27-1-311. Breach of contract. For the breach of an obligation arising from contract, the measure of damages, except when otherwise expressly provided by this code, is the amount which will compensate the party aggrieved for all the detriment which was proximately caused thereby or in the ordinary course of things would be likely to result therefrom. Damages which are not clearly ascertainable in both their nature and origin cannot be recovered for a breach of contract.

History: Ap. p. Sec. 4300, Civ. C. 1895; re-en. Sec. 6048, Rev. C. 1907; re-en. Sec. 8667, R.C.M. 1921; Cal. Civ. C. Sec. 3300; Based on Field Civ. C. Sec. 1840; re-en. Sec. 8667, R.C.M. 1935; Sec. 17-301, R.C.M. 1947; Ap. p. Sec. 4301, Civ. C. 1895; re-en. Sec. 6049, Rev. C. 1907; re-en. Sec. 8668, R.C.M. 1921; Cal. Civ. C. Sec. 3301; Field Civ. C. Sec. 1841; re-en. Sec. 8668, R.C.M. 1935; Sec. 17-302, R.C.M. 1947; R.C.M. 1947, 17-301, 17-302; amd. Sec. 4, Ch. 12, L.

EX # 9
3 Apr 91
HB 159

Amendments to House Bill No. 159
Third Reading Copy (BLUE)

Requested by Senator Towe
For the Committee on Judiciary

Prepared by Valencia Lane
April 2, 1991

1. Page 1, lines 15 and 16.

Following: "~~loses a~~" on line 15

Strike: "SUBMITTED THE NEXT LOWEST VALID"

Insert: "loses a"

2. Page 2, line 3 through 5.

Following: "BIDDER." on line 3

Strike: remainder of line 3 through "SUE." on line 5

Insert: "Upon proof that the payment by the successful bidder of all of these items on this job would have increased the successful bidder's bid amount in excess of the plaintiff's bid, the plaintiff may recover damages."

3. Page 2, line 8.

Following: "BIDDER."

Insert: "Provided no person may be required to pay more than this same measure of damages no matter how many unsuccessful bidders have sued for recovery."

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 3 Apr Bill No. HB451 Time 7:55 am

NAME	YES	NO
Sen. Brown		✓
Sen. Crippen	✓	
Sen. Doherty		✓
Sen. Grosfield		✓
Sen. Halligan		✓
Sen. Harp	✓	
Sen. Mazurek		✓
Sen. Rye	✓	
Sen. Svrcek	✓	
Sen. Towe		✓
Sen. Yellowtail		✓
Sen. Pineseault	✓	
	5	7

Jody Bird
Secretary

Sen. Dick Pineseault
Chairman

Motion: ①. S.R. - tabled

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 3 Apr 91 Bill No. HB451 Time 9:55am

NAME	YES	NO
Sen. Brown		✓
Sen. Crippen		✓
Sen. Doherty	✓	
Sen. Grosfield		✓
Sen. Halligan	✓	
Sen. Harp		✓
Sen. Mazurek	✓	
Sen. Rye		✓
Sen. Svrcek	✓	
Sen. Towe	✓	
Sen. Yellowtail	✓	
Sen. Pineseault		✓
	6	6

Jody Bird
Secretary

Sen. Dick Pineseault
Chairman

Motion: (L) Hall - not to amend