

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672  
6657 SENATE STATE AFFAIRS

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1 directly dispenses coins, cash, tokens, or anything else of  
2 value.

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

12 (3)(4) "Keno machine" means an electronic video game  
13 gambling machine that, upon insertion of cash, is available  
14 to play or simulate the play of the game of keno or bingo as  
15 provided in part 4 of this chapter, utilizing defined by  
16 rules of the department. The machine utilizes a video  
17 display and microprocessors, in which, by the skill of the  
18 player, or by chance, or both, the player may receive free  
19 games or credits that can may be redeemed for cash. The term  
20 does not include a slot machine or a machine that directly  
21 dispenses coins, cash, tokens, or anything else of value.

22 (4) "Licensed establishment" means:

23 (a) with respect to the licensure of keno machines, an  
24 establishment that is licensed to sell alcoholic beverages  
25 for consumption on the premises or an establishment licensed

1 under 23-5-421; and

2 (b) with respect to the licensure of video draw poker  
3 machines, an establishment that is licensed to sell  
4 alcoholic beverages for consumption on the premises;

5 (5) "Licensee" means an individual, partnership,  
6 corporation, or association that has been issued a license  
7 by the department for the placement and operation of video  
8 draw poker machines or keno machines in the licensed  
9 establishment of the individual, partnership, corporation,  
10 or association;

11 (6) "Manufacturer-distributor" means an individual,  
12 partnership, corporation, or association that assembles,  
13 produces, and makes or supplies video draw poker machines or  
14 associated equipment for sale, use, or distribution in this  
15 state;

16 (7)(5) "Net machine income" means money put into a  
17 video draw poker or keno gambling machine minus credits paid  
18 out in cash.

19 (8) "Used keno machine" means a keno machine, as that  
20 term is defined in this section, that is owned or possessed  
21 by an applicant on the day he applies for a license for the  
22 used machine and that was owned or operated in the state  
23 prior to June 30, 1987;

24 (9) "Used video draw poker machine" means a video draw  
25 poker machine, as that term is defined in this section;

1 which--is--owned--or--possessed--by--an--applicant--on--the--day--he  
2 applies--for--a--license--for--the--used--machine--and--which--was  
3 owned--or--operated--in--the--state--prior--to--February--31--1984.

4 (10) "Video--draw--poker--machine"--means--an--electronic  
5 video--game--machine--that--upon--insertion--of--cash--is  
6 available--to--play--or--simulate--the--play--of--the--game--of--draw  
7 poker--as--provided--in--this--part--utilizing--a--video--display  
8 and--microprocessors--in--which--by--the--skill--of--the--player--or  
9 by--chance--or--both--the--player--may--receive--free--games--or  
10 credits--that--can--be--redeemed--for--cash--The--term--does--not  
11 include--a--machine--that--directly--dispenses--coins--cash--  
12 tokens--or--anything--else--of--value.

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

17 Section 45. Section 23-5-603, MCA, is amended to read:

18 "23-5-603. Video draw-poker-or-keno gambling machines  
19 -- possession -- play -- hours-of-play-- restriction. (1)  
20 No-person-may-place-an-electronic-video-game-machine-that  
21 simulates--or--offers-a-game-of-poker--bingo--or-keno-in-his  
22 licensed-establishment-unless-he-is-licensed-under-23-5-612.  
23 A person may only make available for public play ONLY the  
24 NUMBER OF APPROVED video gambling machines specifically  
25 authorized by this part.

1 (2) The video gambling machines specifically  
2 authorized by this part are bingo, keno, and draw poker  
3 machines. A-person-may-not-make-available-for-public-play--a  
4 video-gambling-machine-unless-he-has-obtained-an-operator's  
5 license. Machines--licensed Only THE NUMBER OF APPROVED  
6 machines for which permits have been granted under 23-5-612  
7 are-legal--and-it-is-legal-to--play--such--machines--except  
8 that-a-person-under-the-age-of-18-years-may-not-play-a-video  
9 draw-poker-or-keno-machine may be made available for play by  
10 the public on the premises of a licensed operator. THE  
11 DEPARTMENT SHALL ADOPT RULES ALLOWING A VIDEO GAMBLING  
12 MACHINE THAT NEEDS REPAIR TO BE TEMPORARILY REPLACED WHILE  
13 IT IS BEING REPAIRED WITH A VIDEO GAMBLING MACHINE THAT IS  
14 APPROVED UNDER THE PERMIT PROVISIONS OF THIS PART. A FEE  
15 MAY NOT BE CHARGED FOR THE REPLACEMENT MACHINE.

16 (2)--Except--as--provided--in--subsection--(3)--an  
17 establishment--that--receives-a-license-to-make-a-video-draw  
18 poker-machine-available-for-play-must-have-the-machine--shut  
19 off--each--day--during--the--hours--provided--in--16-3-304--for  
20 closure--of--licensed--retail--alcoholic--beverage  
21 establishments.

22 (3)--A--local-governing-body--may-establish-any-hours-of  
23 play-for--video--draw--poker--machines--that--it--determines  
24 proper.

25 (4)--The--provisions--of--part-3-of-this-chapter--do--not

1 apply--to--or--prohibit--video--draw--poker--or--keno--machines--or  
2 the--playing--of--such--machines--

3 (3) MACHINES ON PREMISES LICENSED TO SELL ALCOHOLIC  
4 BEVERAGES FOR CONSUMPTION ON THE PREMISES MUST BE PLACED IN  
5 THE ROOM, AREA, OR OTHER PART OF THE PREMISES IN WHICH THE  
6 ALCOHOLIC BEVERAGES ARE SOLD AND NORMALLY CONSUMED."

7 Section 46. Section 23-5-611, MCA, is amended to read:

8 "23-5-611. State-license Machine permit qualifications  
9 -- limitations ---right-to-hearing. (1) (a) A person who has  
10 been--granted--a--license--under--16-4-401(2)--to--sell--alcoholic  
11 beverages--for--consumption--on--the--premises--may--be--granted--a  
12 license--for--the--placement--of--video--draw--poker--machines--in  
13 his--licensed--establishment; Only-a (A) A person who has been  
14 granted an operator's license under [section 11] and a  
15 license under--16-4-401(2) to sell alcoholic beverages for  
16 consumption on the premises OR WHO OPERATES AN ESTABLISHMENT  
17 FOR THE PRINCIPAL PURPOSE OF GAMING AND HAS BEEN GRANTED AN  
18 OPERATOR'S--LICENSE--UNDER--[SECTION--11] may be granted a  
19 permit for the placement of video gambling machines in his  
20 premises.

21 (b) --A--PERSON--WHO--HAS--BEEN--GRANTED--AN--OPERATOR'S  
22 LICENSE--UNDER--[SECTION--11]--AND--IS--NOT--ENTITLED--TO--A--PERMIT  
23 UNDER--SUBSECTION--(1)(A)--MAY--BE--GRANTED--A--PERMIT--FOR--THE  
24 PLACEMENT--OF--UP--TO--TWO--VIDEO--KENO--OR--BINGO--GAMBLING--MACHINES  
25 IN--HIS--PREMISES--IF--THE--PREMISES--HAVE--BEEN--LICENSED--FOR--THE

1 SALE--OF--FOOD,--CIGARETTES,--OR--ANY--OTHER--CONSUMABLE--PRODUCT  
2 OTHER--THAN--LIQUOR--OR--BEER;--IF--ONLY--ONE--MACHINE--IS--ALLOWED  
3 UNDER--SUBSECTION--(1)(C),--ONE--MORE--MAY--BE--ALLOWED--UNDER--THIS  
4 SUBSECTION--(B);

5 (c) (B) IF VIDEO KENO OR BINGO GAMBLING MACHINES WERE  
6 LEGALLY OPERATED ON A PREMISES ON JANUARY 15, 1989, AND THE  
7 PREMISES WERE NOT ON THAT DATE LICENSED UNDER--16-4-401(2) TO  
8 SELL ALCOHOLIC BEVERAGES FOR CONSUMPTION ON THE PREMISES OR  
9 OPERATED FOR THE PRINCIPAL PURPOSE OF GAMING AND THERE IS AN  
10 OPERATOR'S LICENSE FOR THE PREMISES UNDER [SECTION 11], A  
11 PERMIT FOR THE SAME NUMBER OF VIDEO KENO OR BINGO GAMBLING  
12 MACHINES AS WERE OPERATED ON THE PREMISES ON THAT DATE MAY  
13 BE GRANTED TO THE PERSON WHO HELD THE PERMIT FOR SUCH  
14 MACHINES ON THOSE PREMISES ON THAT DATE;--TO--AN--ANCESTOR,  
15 DESCENDANT,--SIBLING,--OR--SPOUSE--OF--THAT--PERSON;--OR--TO--A  
16 PERSON--WHO--PURCHASES--OR--LEASES--THE--BUSINESS--THAT--IS--ON--THE  
17 PREMISES;--IF--THE--BUSINESS--IS--MOVED--TO--ANOTHER--PREMISES,--THE  
18 PERMITEE--REMAINS--ELIGIBLE--FOR--THE--SAME--NUMBER--OF--PERMITS.

19 (b) (C) A PERSON WHO LEGALLY OPERATED AN ESTABLISHMENT  
20 ON JANUARY--1 JANUARY 15, 1989, FOR THE PRINCIPAL PURPOSE OF  
21 GAMING AND HAS BEEN GRANTED AN OPERATOR'S LICENSE UNDER  
22 [SECTION 11] MAY BE GRANTED A PERMIT FOR THE PLACEMENT OF  
23 BINGO AND KENO MACHINES IN HIS PREMISES.

24 (b) --Each--applicant--for--a--license--shall--on--the  
25 application--form--disclose--to--the--department--any--previous

1 experience--or--involvement--as--an--owner--or--operator--of  
2 gambling-devices-and-establishments;-Previous-experience--or  
3 involvement--includes:

4 (i)--controlling--of--gambling--devices--as--an--owner--or  
5 operator;

6 (ii)--employment-with-the-owner-or-operator-of--gambling  
7 devices;

8 (iii)--employment--in--establishments--where-gambling-is  
9 offered-to-the-public;-and

10 (iv)--conviction-of-violation-of-state-or-local-gambling  
11 laws-in-any-jurisdiction;

12 (2) A applicant for a permit shall disclose on the  
13 application form to the department any information required  
14 by the department consistent with the provisions of [section  
15 10].

16 (2)(3) A licensee may not have on the premises or make  
17 available for play on the premises of---his---licensed  
18 establishment more than five 20 10--KENO--AND--BINGO 20  
19 machines of any combination that are legal under--this--part  
20 AND NO MORE THAN 10 MAY BE DRAW POKER MACHINES. In the  
21 jurisdiction of a--local--government--where--video--gambling  
22 machines--are--played, the local government may by ordinance  
23 or resolution limit the number of video gambling machines to  
24 no less than five per operator premises; IN THE JURISDICTION  
25 OF A--LOCAL--GOVERNMENT--WHERE--VIDEO--GAMBLING--MACHINES--ARE

1 PLAYED, THE LOCAL GOVERNMENT MAY BY ORDINANCE OR RESOLUTION  
2 LIMIT THE NUMBER OF VIDEO GAMBLING MACHINES TO NO LESS THAN  
3 FIVE PER OPERATOR PREMISES AND NO MORE THAN ALLOWED BY THIS  
4 SECTION.

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

9 Section 47. Section 23-5-612, MCA, is amended to read:

10 "23-5-612. State--license Machine permits -- fee --  
11 used keno machines. (1) (a) The department, upon payment of  
12 the fee provided in subsection (1)(b) (2) and in conformance  
13 with rules adopted under 23-5-605 this part, shall issue to  
14 the licensee operator a license permit for each AN APPROVED  
15 video draw-poker-or-keno gambling machine.

16 (b)(2) The department shall charge an annual license  
17 permit fee of \$100 \$200 for each video draw--poker--machine  
18 and--\$100--for--each--keno gambling machine PERMIT. The  
19 department shall retain \$100 of the total license permit fee  
20 collected for purposes of administering this part--except  
21 23-5-615. The remaining \$100 must be returned on a quarterly  
22 basis to the local government jurisdiction in which the  
23 gambling machine is located. THE LOCAL GOVERNMENT PORTION OF  
24 THE FEE IS STATUTORILY APPROPRIATED TO THE DEPARTMENT, AS  
25 PROVIDED IN 17-7-502, FOR DEPOSIT IN THE LOCAL GOVERNMENT

1 TREASURY.

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

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

12 (4) A USED KENO MACHINE MAY BE LICENSED UNDER  
13 SUBSECTION (1) WITHOUT MEETING THE REQUIREMENTS OF 23-5-609  
14 IF THE APPLICANT FOR LICENSURE CAN ESTABLISH TO THE  
15 SATISFACTION OF THE DEPARTMENT THAT, ON THE DATE OF  
16 APPLICATION, HE OWNS OR POSSESSES A MACHINE THAT WAS OWNED  
17 OR OPERATED IN THE STATE PRIOR TO JUNE 30, 1987. A LICENSE  
18 ISSUED UNDER THIS SUBSECTION EXPIRES FOR ALL PURPOSES NO  
19 LATER THAN JUNE 30, 1989.

20 Section 48. Section 23-5-631, MCA, is amended to read:

21 "23-5-631. Examination and approval of new video draw  
22 poker gambling machines and associated equipment -- fee. (1)  
23 The department shall examine and may approve a new video  
24 draw-poker machines gambling machine and associated  
25 equipment which is are manufactured, sold, or distributed

1 for use in this the state before the video draw-poker  
2 gambling machine or associated equipment is sold, played, or  
3 used.

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

9 (3) All video gambling machines approved by the  
10 department of commerce prior to [the effective date of this  
11 act] must be considered approved under this part.

12 (3)(4) The department shall require the  
13 manufacturer-distributor seeking the examination and  
14 approval of a new video draw-poker gambling machine or  
15 associated equipment to pay the anticipated actual costs of  
16 the examination in advance and, after the completion of the  
17 examination, shall refund overpayments or charge and collect  
18 amounts sufficient to reimburse the department for  
19 underpayments of actual costs.

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

24 NEW SECTION. Section 49. Video gambling machine  
25 specifications -- rules. The department shall adopt rules

1 describing the video gambling machines authorized by this  
 2 part and stating the specifications for video gambling  
 3 machines authorized by this part. THE SPECIFICATIONS IN THE  
 4 RULES MUST SUBSTANTIALLY FOLLOW THE SPECIFICATIONS CONTAINED  
 5 IN 23-5-606 AND 23-5-609 AS THOSE SECTIONS READ ON SEPTEMBER  
 6 30, 1989. THE DEPARTMENT SHALL ADOPT RULES ALLOWING VIDEO  
 7 GAMBLING MACHINES TO BE IMPORTED INTO THIS STATE AND USED  
 8 FOR THE PURPOSES OF TRADE SHOWS, EXHIBITIONS, AND SIMILAR  
 9 ACTIVITIES.

10 **Section 50.** Section 23-5-616, MCA, is amended to read:

11 "23-5-616. Removal of machine from public access. If a  
 12 machine fails to meet the specifications and requirements of  
 13 23-5-606, 23-5-607, or 23-5-608 this part or any rule of the  
 14 department WHICH SPECIFICATION OR REQUIREMENT EXISTED AT THE  
 15 TIME THE MACHINE WAS APPROVED at any time after its initial  
 16 license permit has been issued, the licensee operator  
 17 shall immediately remove the machine from public access  
 18 until it meets all requirements."

19 **Section 51.** Section 23-5-625, MCA, is amended to read:

20 "23-5-625. ~~Manufacturer-distributor--of---video---draw~~  
 21 ~~poker-----machines~~ Video gambling machine  
 22 manufacturer-distributor -- license -- fees. (1) It is  
 23 unlawful for any person to assemble, produce, manufacture,  
 24 sell, or distribute OR supply, or repair any video draw  
 25 poker gambling machine or associated equipment for use or

1 play ~~in~~ this the state without having first been issued a  
 2 video gambling machine manufacturer-distributor's license by  
 3 the department.

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

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

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

15 (5) The department shall retain the license and  
 16 processing fees collected for purposes of administering this  
 17 part, ~~except 23-5-615~~ unless otherwise provided."

18 **Section 52.** Section 23-5-610, MCA, is amended to read:

19 "23-5-610. Video draw-poker-and-keno gambling machine  
 20 net income tax -- records -- distribution -- quarterly  
 21 statement and payment. (1) Each A licensee AN OPERATOR  
 22 ISSUED A PERMIT UNDER THIS PART shall pay to the department  
 23 a video draw-poker-and-keno gambling machine tax of 15% of  
 24 net machine income from each video draw-poker-and-keno  
 25 gambling machine licensed under this part.

1 (2) Each A licensee AN OPERATOR ISSUED A PERMIT UNDER  
 2 THIS PART shall keep a record of net machine income in such  
 3 form as the department may require. The records must at all  
 4 times during the business hours of the licensee be subject  
 5 to inspection by the department, ~~its agents, or employees.~~

6 (3) Each A licensee AN OPERATOR ISSUED A PERMIT UNDER  
 7 THIS PART shall, within 15 days after the end of each  
 8 quarter, complete and deliver to the department a statement  
 9 showing the total net machine income from each video draw  
 10 poker ~~and keno~~ gambling machine licensed to him, together  
 11 with the total amount due the state as video draw poker ~~and~~  
 12 keno gambling machine net income tax for the preceding  
 13 quarter. The statement must contain such other relevant  
 14 information as the department may require.

15 (4) (a) The department ~~must deposit~~ shall forward  
 16 one-third of the tax collected under subsection (3) in to  
 17 the general fund.

18 (b) The department ~~must~~ shall forward the remaining  
 19 two-thirds of the tax collected under subsection (3) to the  
 20 treasurer of the incorporated county or the clerk, finance  
 21 officer, or treasurer of the city or town in which the  
 22 licensed machine is located, for deposit to the county or  
 23 municipal treasury. Counties are not entitled to proceeds  
 24 from taxes on income from video draw poker ~~and keno~~ gambling  
 25 machines located in incorporated cities and towns. The

1 two-thirds local government portion of tax collected under  
 2 subsection (3) is statutorily appropriated to the department  
 3 as provided in 17-7-502 for deposit to the county or  
 4 municipal treasury."

5 **Section 53.** Section 23-5-608, MCA, is amended to read:

6 "23-5-608. Limitation on amount of money played and  
 7 value of prizes -- payment of credits in cash. (1) A video  
 8 draw-poker-or-keno gambling machine may not allow more than  
 9 \$2 to be played on a game or award free games or credits in  
 10 excess of the ~~value of \$100 per hand~~ following amounts:

11 (a) \$100 a hand or \$800 \$800 \$100 a game for a video  
 12 draw poker machine; and

13 (b) \$800 a game for a video keno or bingo machine.

14 (2) Each A licensee shall pay in cash all credits owed  
 15 to a player as shown on a valid ticket voucher provided in  
 16 23-5-606(4)(k)."

17 **Section 54.** Section 23-5-607, MCA, is amended to read:

18 "23-5-607. Expected payback -- verification. The  
 19 department shall prescribe the expected payback value of one  
 20 credit played awarded to be at least 80% of the value of a  
 21 one credit played. Each video draw-poker-or-keno gambling  
 22 machine must have an electronic accounting device that the  
 23 department may use to verify the winning percentage. ~~The~~  
 24 ~~department may not publish or otherwise disseminate income~~  
 25 ~~figures and other statistics obtained in the payback~~



1 verification--process--or--contained-in-payback-verification  
 2 reports-in-a-manner--that--allows--or--helps--a--person--to  
 3 identify--a--particular--machine--or--to--match-a-particular  
 4 machine-with-a-particular-income-or-statistic;"

5 NEW SECTION. Section 55. Video gambling machines --  
 6 hours of play ---penalty. (1) A video gambling machine may  
 7 not be played between the hours of 2 a.m. and 8 a.m. each  
 8 day. However,--in--the--jurisdiction--of--a--local--government  
 9 where--the--video--gambling--machine--is--played,--the--local  
 10 government--may--adopt--an--ordinance--defining--the--hours--of--play  
 11 within--that--jurisdiction;

12 (2)--A--violation--of--this--section--is--a--misdemeanor  
 13 punishable--under--(section-23); HOWEVER, IN THE JURISDICTION  
 14 OF A LOCAL GOVERNMENT WHERE A GAME IS PLAYED, THE LOCAL  
 15 GOVERNMENT MAY ADOPT AN ORDINANCE ALLOWING PLAY BETWEEN 2  
 16 A.M. AND 8 A.M.

17 Section 56. Section 23-5-613, MCA, is amended to read:  
 18 "23-5-613. Investigations--and--violations Violations.  
 19 (1)---The---department---or---duly---authorized---department  
 20 representatives--shall--make--necesary--investigations,--suspend  
 21 or--revoke--state--licenses--for--violations--of--this--part,--except  
 22 23-5-615,--and--hold--hearings--on--such--matters. A--license--may  
 23 be--suspended--prior--to--a--hearing--upon--a--finding--of--danger--to  
 24 public--health--and--welfare--but--may--not--be--revoked--until--the  
 25 hearing--is--completed;

1 (2)--A Unless otherwise provided in this part, A PERSON  
 2 WHO PURPOSELY OR KNOWINGLY VIOLATES OR PROCURES, AIDS, OR  
 3 ABETS a violation of this part,--except--23-5-615, or--a--rule  
 4 promulgated under--23-5-605 by--the---department OR AN  
 5 ORDINANCE, RESOLUTION, OR RULE ADOPTED UNDER THIS PART is  
 6 GUILTY OF a criminal--offense,--and--a--fine--not--to--exceed  
 7 \$10,000--for--the--first--violation--and--\$15,000--for--a--subsequent  
 8 violation--must--be--imposed misdemeanor punishable under  
 9 [section 23].

10 (3)--If--a--video--draw--poker--machine--is--operated--in  
 11 violation--of--this--part,--except--23-5-615,--it--may--be--seized  
 12 under--23-5-121--and--the--provisions--of--23-5-122--apply;

13 (4)--Employees--of--the--department--or--duly--authorized  
 14 department--representatives--designated--as--enforcement--agent,  
 15 may--investigate--the--background--of--license--applicants--to--the  
 16 extent--judged--necessary--by--the--department,--but--no--person--may  
 17 be--investigated--prior--to--his--submission--of--an--application  
 18 for--a--license;

19 (5)--(a)--Findings--of--suspected--illegal--activity--must--be  
 20 reported--to--the--appropriate--law--enforcement--agency;

21 (b)--The--clerk--of--the--court--shall,--upon--final--judgment  
 22 of--conviction--of--a--licensee,--report--to--the--department--the  
 23 name--of--the--licensee--convicted--of--violating--a--local--gambling  
 24 ordinance;

25 (c)--On--receipt--of--such--report,--the--department--may

1 ~~501(c)(3) or (c)(4) and authorized by the department. The~~  
2 ~~Calcutta pool must be an auction pool in which:~~

- 3 ~~(1) a person's wager is equal to his bid;~~
- 4 ~~(2) the organization conducting the pool has no direct~~
- 5 ~~interest in the pool;~~

6 ~~(2) THE PROCEEDS FROM THE POOL, MINUS ADMINISTRATIVE~~  
7 ~~COSTS AND PRIZES PAID, ARE CONTRIBUTED TO A CHARITABLE OR~~  
8 ~~NONPROFIT CORPORATION, ASSOCIATION, OR CAUSE;~~

- 9 ~~(3) the rules of the pool are publicly posted;~~
- 10 ~~(4) no more than one wager for each competitor is~~
- 11 ~~allowed;~~

12 ~~(5) at least 50% of the total pool is paid out in~~  
13 ~~prizes;~~

14 ~~(6) persons may not bid or wager money on any~~  
15 ~~elementary school or high school sports event; and~~

16 ~~(7) the underlying event has more than two entrants."~~

17 **Section 61.** Section 23-5-1105, MCA, is amended to  
18 read:

19 "23-5-1105. Penalty. Any A person who violates a  
20 provision of this part is guilty of a misdemeanor and upon  
21 conviction shall be fined not more than \$1,000 or imprisoned  
22 in the county jail for a term not to exceed 3 months, or  
23 both punishable pursuant to [section 23]."

24 **Section 63.** Section 17-7-502, MCA, is amended to read:  
25 "17-7-502. Statutory appropriations definition--

1 ~~requisites for validity:--(1) A statutory appropriation is~~  
2 ~~an appropriation made by permanent law that authorizes~~  
3 ~~spending by a state agency without the need for a biennial~~  
4 ~~legislative appropriation or budget amendment;~~

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

8 ~~(a) The law containing the statutory authority must be~~  
9 ~~listed in subsection (3);~~

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

13 ~~(3) The following laws are the only laws containing~~  
14 ~~statutory appropriations:--2-9-202;--2-17-105;--2-18-012;~~  
15 ~~10-3-203;--10-3-312;--10-3-314;--10-4-301;--13-37-304;~~  
16 ~~15-25-123;--15-31-702;--15-36-112;--15-65-121;--15-70-101;~~  
17 ~~16-1-404;--16-1-410;--16-1-411;--17-3-212;--17-5-404;--17-5-424;~~  
18 ~~17-5-804;--19-8-504;--19-9-702;--19-9-1007;--19-10-205;~~  
19 ~~19-10-305;--19-10-506;--19-11-512;--19-11-513;--19-11-606;~~  
20 ~~19-12-301;--19-13-604;--20-4-109;--20-6-406;--20-8-111;~~  
21 ~~23-5-610; [section 24]; [section 39]; 23-5-1027; 33-31-212;~~  
22 ~~33-31-401;--37-51-501;--39-71-2594;--53-6-150;--53-24-206;~~  
23 ~~67-3-205;--75-1-1101;--75-7-305;--76-12-123;--80-2-103;~~  
24 ~~80-2-220;--82-11-136;--90-3-301;--90-3-302;--90-3-412;--90-4-215;~~  
25 ~~90-9-306;--90-15-101; section 13; House Bill No. 861; laws of~~

1 1985, and section 17, Chapter 454, Laws of 1987;  
 2 (4) There is a statutory appropriation to pay the  
 3 principal, interest, premiums, and costs of issuing, paying,  
 4 and securing all bonds, notes, or other obligations, as due,  
 5 that have been authorized and issued pursuant to the laws of  
 6 Montana; Agencies that have entered into agreements  
 7 authorized by the laws of Montana to pay the state  
 8 treasurer, for deposit in accordance with 17-2-101 through  
 9 17-2-107, as determined by the state treasurer, an amount  
 10 sufficient to pay the principal and interest as due on the  
 11 bonds or notes have statutory appropriation authority for  
 12 such payments; (in subsection (3), pursuant to sec. 157, Ch.  
 13 607, b, 1987, the inclusion of 15-65-121 terminates June 30,  
 14 1989; pursuant to sec. 107, Ch. 664, b, 1987, the inclusion  
 15 of 39-71-2504 terminates June 30, 1991; and pursuant to sec.  
 16 67, Ch. 454, b, 1987, the inclusion of sec. 17, Ch. 454, b,  
 17 1987, terminates July 1, 1988.)"

18 **SECTION 62. SECTION 17-7-502, MCA, IS AMENDED TO READ:**

19 "17-7-502. Statutory appropriations -- definition --  
 20 requisites for validity. (1) A statutory appropriation is an  
 21 appropriation made by permanent law that authorizes spending  
 22 by a state agency without the need for a biennial  
 23 legislative appropriation or budget amendment.

24 (2) Except as provided in subsection (4), to be  
 25 effective, a statutory appropriation must comply with both

1 of the following provisions:

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

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

7 (3) The following laws are the only laws containing  
 8 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;  
 9 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304;  
 10 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101;  
 11 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424;  
 12 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205;  
 13 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606;  
 14 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111;  
 15 23-5-610; 23-5-612; [section 29]; [section 38]; 23-5-1027;  
 16 33-31-212; 33-31-401; 37-51-501; 39-71-2504; 53-6-150;  
 17 53-24-206; 67-3-205; 75-1-1101; 75-7-305; 76-12-123;  
 18 80-2-103; 80-2-228; 82-11-136; 90-3-301; 90-3-302; 90-3-412;  
 19 90-4-215; 90-9-306; 90-15-103; section 13, House Bill No.  
 20 861, Laws of 1985; and section 1, Chapter 454, Laws of 1987.

21 (4) There is a statutory appropriation to pay the  
 22 principal, interest, premiums, and costs of issuing, paying,  
 23 and securing all bonds, notes, or other obligations, as due,  
 24 that have been authorized and issued pursuant to the laws of  
 25 Montana. Agencies that have entered into agreements

1 authorized by the laws of Montana to pay the state  
 2 treasurer, for deposit in accordance with 17-2-101 through  
 3 17-2-107, as determined by the state treasurer, an amount  
 4 sufficient to pay the principal and interest as due on the  
 5 bonds or notes have statutory appropriation authority for  
 6 such payments. (In subsection (3): pursuant to sec. 15, Ch.  
 7 607, L. 1987, the inclusion of 15-65-121 terminates June 30,  
 8 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion  
 9 of 39-71-2504 terminates June 30, 1991; and pursuant to sec.  
 10 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L.  
 11 1987, terminates July 1, 1982.)"

12 NEW SECTION. SECTION 63. EXEMPTION FROM SUNRISE  
 13 PROVISIONS. THE PROVISIONS OF TITLE 2, CHAPTER 8, PART 2,  
 14 AND 5-4-207 DO NOT APPLY TO [THIS ACT].

15 NEW SECTION. SECTION 64. GAMING ADVISORY COUNCIL --  
 16 ALLOCATION -- COMPOSITION -- COMPENSATION -- ANNUAL REPORT.

- 17 (1) THERE IS A GAMING ADVISORY COUNCIL.  
 18 (2) THE GAMING ADVISORY COUNCIL IS ALLOCATED TO THE  
 19 DEPARTMENT FOR ADMINISTRATIVE PURPOSES ONLY AS PRESCRIBED IN  
 20 2-15-121.  
 21 (3) THE GAMING ADVISORY COUNCIL CONSISTS OF NINE  
 22 MEMBERS. ONE MEMBER MUST BE FROM THE SENATE, AND ONE MEMBER  
 23 MUST BE FROM THE HOUSE OF REPRESENTATIVES. THE SENATE  
 24 COMMITTEE ON COMMITTEES AND THE SPEAKER OF THE HOUSE OF  
 25 REPRESENTATIVES SHALL APPOINT THE LEGISLATIVE MEMBERS OF THE

1 COUNCIL. THE SEVEN REMAINING MEMBERS MUST BE APPOINTED BY  
 2 THE DEPARTMENT, WITH TWO ONE REPRESENTING THE PUBLIC AT  
 3 LARGE, TWO REPRESENTING LOCAL GOVERNMENTS, ONE BEING A  
 4 NATIVE AMERICAN, AND THREE REPRESENTING THE GAMING INDUSTRY.

5 (4) EACH GAMING ADVISORY COUNCIL MEMBER IS APPOINTED  
 6 TO A 2-YEAR 3-YEAR TERM OF OFFICE, EXCEPT THAT THREE OF THE  
 7 FIRST-APPOINTED ORIGINAL MEMBERS SHALL SERVE A 1-YEAR TERM,  
 8 THREE (INCLUDING BOTH LEGISLATIVE MEMBERS) SHALL SERVE A  
 9 2-YEAR TERM, AND THREE SHALL SERVE A 3-YEAR TERM. A MEMBER  
 10 OF THE COUNCIL MAY BE REMOVED FOR GOOD CAUSE BY THE  
 11 APPOINTING BODY PROVIDED FOR IN SUBSECTION (3).

12 (5) THE GAMING ADVISORY COUNCIL SHALL APPOINT A  
 13 CHAIRMAN FROM ITS MEMBERS.

14 (6) LEGISLATIVE MEMBERS OF THE GAMING ADVISORY COUNCIL  
 15 ARE ENTITLED TO COMPENSATION AND EXPENSES, AS PROVIDED IN  
 16 5-2-302, WHILE THE COUNCIL IS MEETING. THE REMAINING MEMBERS  
 17 ARE ENTITLED TO TRAVEL, MEALS, AND LODGING EXPENSES AS  
 18 PROVIDED FOR IN 2-15-501 THROUGH 2-18-503. EXPENSES OF THE  
 19 COUNCIL MUST BE PAID FROM LICENSING FEES RECEIVED BY THE  
 20 DEPARTMENT.

21 (7) THE GAMING ADVISORY COUNCIL SHALL, WITHIN ITS  
 22 AUTHORIZED BUDGET, HOLD MEETINGS AND INCUR EXPENSES AS IT  
 23 CONSIDERS NECESSARY TO STUDY ALL ASPECTS OF GAMBLING IN THE  
 24 STATE.

25 (8) (A) THE GAMING ADVISORY COUNCIL SHALL SUBMIT AN

1 ANNUAL REPORT TO THE DEPARTMENT, AT A TIME DESIGNATED BY THE  
 2 DEPARTMENT, WITH RECOMMENDATIONS FOR AMENDMENTS TO THE  
 3 GAMBLING STATUTES, THE NEED FOR ADDITIONAL OR MODIFIED  
 4 DEPARTMENT RULES, THE CLARIFICATION OF EXISTING RULES, AND  
 5 OTHER RECOMMENDATIONS ON THE OPERATION OF THE DEPARTMENT OR  
 6 ANY OTHER GAMBLING-RELATED MATTER.

7 (B) THE ANNUAL REPORT REQUIRED UNDER SUBSECTION (B)(A)  
 8 MUST BE AFFIXED TO THE ANNUAL DEPARTMENT REPORT ON GAMBLING  
 9 IN THE STATE. THE DEPARTMENT AND COUNCIL SHALL SUBMIT THE  
 10 TWO MOST RECENT DEPARTMENT AND COUNCIL REPORTS TO EACH OF  
 11 THE NEXT TWO REGULAR SESSIONS OF THE LEGISLATURE.

12 (C) THE COUNCIL MAY SUBMIT INTERIM REPORTS TO THE  
 13 DEPARTMENT AS THE COUNCIL CONSIDERS NECESSARY.

14 (D) THE COUNCIL SHALL MEET WITH THE DEPARTMENT UPON  
 15 REQUEST OF THE DEPARTMENT.

16 (E) THE DEPARTMENT SHALL MEET WITH THE COUNCIL UPON  
 17 REQUEST OF THE COUNCIL.

18 (9) THE DEPARTMENT SHALL GIVE EACH COUNCIL MEMBER  
 19 NOTICE AND A COPY OF EACH PROPOSED CHANGE IN ADMINISTRATIVE  
 20 RULES RELATING TO GAMBLING. THE NOTICE AND COPY MUST BE  
 21 GIVEN AT THE TIME A NOTICE OF PROPOSED RULES CHANGES IS  
 22 FILED WITH THE SECRETARY OF STATE. THE COUNCIL SHALL REVIEW  
 23 THE PROPOSAL, MAY COMMENT ON IT, AND MAY ATTEND ANY HEARING  
 24 ON THE PROPOSAL. THE DEPARTMENT SHALL CONSIDER ANY COMMENT  
 25 BY ANY COUNCIL MEMBER OR BY THE COUNCIL AS A WHOLE PRIOR TO

1 ADOPTING THE PROPOSED CHANGE.

2 NEW SECTION. SECTION 65. CONSTRUCTION. IN VIEW OF  
 3 ARTICLE III, SECTION 9, OF THE MONTANA CONSTITUTION. [THIS  
 4 ACT] MUST BE STRICTLY CONSTRUED BY THE DEPARTMENT AND THE  
 5 COURTS TO ALLOW ONLY THOSE TYPES OF GAMBLING AND GAMBLING  
 6 ACTIVITY THAT ARE SPECIFICALLY AND CLEARLY ALLOWED BY [THIS  
 7 ACT].

8 NEW SECTION. Section 66. Reorganization procedure.  
 9 The provisions of sections 2-15-131 through 2-15-137 govern  
 10 the transfer of the various functions contained in [this  
 11 act] from the department of commerce AND THE DEPARTMENT OF  
 12 REVENUE to the department of justice.

13 NEW SECTION. Section 67. Implementation. (1) The  
 14 governor shall by executive order implement the provisions  
 15 of [this act].

16 (2) The governor may by executive order assign to the  
 17 department of justice in a manner consistent with [this act]  
 18 functions allocated to the department of commerce AND THE  
 19 DEPARTMENT OF REVENUE by the 51st legislature relating to  
 20 the implementation of Title 23, chapter 5, parts 1 through  
 21 6, that are not transferred by [this act].

22 NEW SECTION. Section 68. Repealer. Sections 23-5-105  
 23 through 23-5-107, 23-5-109, 23-5-121, 23-5-122, 23-5-124  
 24 through 23-5-127, 23-5-132 through 23-5-134, 23-5-141  
 25 through 23-5-144, 23-5-201 through 23-5-211, 23-5-301

1 through 23-5-303, 23-5-314 through 23-5-316, 23-5-322,  
 2 23-5-323, 23-5-332, 23-5-401 through 23-5-403, 23-5-411,  
 3 23-5-415 through 23-5-418, 23-5-421 through 23-5-423,  
 4 23-5-504 through 23-5-508, 23-5-510, 23-5-511, 23-5-601,  
 5 23-5-605, 23-5-606, 23-5-609, 23-5-615, 23-5-617, 23-5-618,  
 6 23-5-626, 23-5-627, 23-5-635, 23-5-636, 23-5-1103,  
 7 23-5-1104, MCA, are repealed.

8 NEW SECTION. SECTION 69. PRORATION OF CERTAIN FEES.  
 9 A FEE IMPOSED UNDER 23-5-321, 23-5-421, 23-5-612, 23-5-625,  
 10 OR 23-5-631 BETWEEN [THE EFFECTIVE DATE OF THIS SECTION] AND  
 11 OCTOBER 1, 1989, MUST BE PRORATED TO COVER ONLY THE PERIOD  
 12 BETWEEN THE DATE THE PERMIT OR LICENSE TAKES EFFECT AND  
 13 OCTOBER 1, 1989.

14 NEW SECTION. SECTION 70. APPROPRIATION. THE  
 15 FOLLOWING APPROPRIATION IS MADE FROM A STATE SPECIAL REVENUE  
 16 ACCOUNT TO THE DEPARTMENT OF JUSTICE FOR THE PURPOSE OF  
 17 IMPLEMENTING [THIS ACT] AND ADMINISTERING CHAPTER 5 OF TITLE  
 18 23:

19	<u>FISCAL YEAR BEGINNING JULY 1, 1989</u>	<u>\$527,081</u>
20	<u>FISCAL YEAR BEGINNING JULY 1, 1990</u>	<u>\$449,081</u>

21 NEW SECTION. Section 71. Extension of authority. Any  
 22 existing authority to make rules on the subject of the  
 23 provisions of [this act] is extended to the provisions of  
 24 [this act].

25 NEW SECTION. Section 72. Codification instruction.

1 (1) [Sections 1, 2, 4 through 8, 10 through 12, 16, 18  
 2 through 20, and 23 through 25] are intended to be codified  
 3 as an integral part of Title 23, chapter 5, part 1, and the  
 4 provisions of Title 23, chapter 5, part 1, apply to  
 5 [sections 1, 2, 4 through 8, 10 through 12, 16, 18 through  
 6 20, and 23 through 25].

7 (2) [Sections 27 through 29 and 32] are intended to be  
 8 codified as an integral part of Title 23, chapter 5, part 3,  
 9 and the provisions of Title 23, chapter 5, part 3, apply to  
 10 [sections 27 through 29 and 32].

11 (3) [Sections 35 through 39 38 and 43 42] are intended  
 12 to be codified as an integral part of Title 23, chapter 5,  
 13 part 4, and the provisions of Title 23, chapter 5, part 4,  
 14 apply to [sections 35 through 39 38 and 43 42].

15 (4) [Sections 50 49, 56 55, and 58 57] are intended to  
 16 be codified as an integral part of Title 23, chapter 5, part  
 17 6, and the provisions of Title 23, chapter 5, part 6, apply  
 18 to [sections 50 49, 56 55, and 58 57].

19 (5) The code commissioner shall recodify the  
 20 provisions of Title 23, chapter 5, part 11, as an integral  
 21 part of Title 23, chapter 5, part 7.

22 (6) [SECTION 64] IS INTENDED TO BE CODIFIED AS AN  
 23 INTEGRAL PART OF TITLE 2, CHAPTER 15, PART 20, AND THE  
 24 PROVISIONS OF TITLE 2, CHAPTER 15, APPLY TO [SECTION 64].

25 NEW SECTION. SECTION 73. COORDINATION INSTRUCTION.

1 (1) THE REFERENCE COPY OF HOUSE BILL NO. 576 OF THE 51ST  
 2 LEGISLATURE IS AMENDED TO INSERT, ON PAGE 2, LINE 9, AFTER  
 3 "23-5-609(4)(L)", THE PHRASE ", AS THAT SECTION READ ON  
 4 SEPTEMBER 30, 1989".

5 (2) THE REFERENCE COPY OF HOUSE BILL NO. 251 OF THE  
 6 51ST LEGISLATURE IS AMENDED TO CHANGE "LICENSE" TO "PERMIT"  
 7 ON PAGE 2, LINES 2 AND 13.

8 (3) THE REFERENCE COPY OF HOUSE BILL NO. 448 OF THE  
 9 51ST LEGISLATURE IS AMENDED TO DELETE THE AMENDMENTS MADE TO  
 10 23-5-104(1). SUBSECTION (1) OF 23-5-104 AND THE FIRST  
 11 SENTENCE OF 23-5-104(2) ARE DELETED, AS PROVIDED IN (SECTION  
 12 22), AND THE AMENDMENTS TO THE REMAINDER OF 23-5-104 BY  
 13 (SECTION 22) AND HOUSE BILL NO. 448 TAKE EFFECT.

14 NEW SECTION. Section 74. Severability. If a part of  
 15 [this act] is invalid, all valid parts that are severable  
 16 from the invalid part remain in effect. If a part of [this  
 17 act] is invalid in one or more of its applications, the part  
 18 remains in effect in all valid applications that are  
 19 severable from the invalid applications.

20 NEW SECTION. SECTION 75. EFFECTIVE DATES. (1)  
 21 [SUBSECTION (2) OF SECTION 7 AND SECTIONS 63 THROUGH 67, 69,  
 22 72, 73, AND THIS SECTION] ARE EFFECTIVE ON PASSAGE AND  
 23 APPROVAL.

24 (2) [SECTION 70] IS EFFECTIVE ON JULY 1, 1989.

25 (3) THE REMAINING SECTIONS ARE EFFECTIVE ON OCTOBER 1,

1 1989.

-End-

**JOHN K. WILLEMS**

BUREAU CHIEF

(406) 442-7325




**STATE OF MONTANA**

VIDEO GAMING CONTROL BUREAU  
DEPARTMENT OF COMMERCE

1125 MISSOULA AVENUE  
HELENA, MONTANA 59620

Copy also  
in SB 263  
file

The seal of the State of Montana is faintly visible in the background. It features a central figure holding a bow and arrow, surrounded by the text "SEAL OF THE STATE OF MONTANA" and the date "1889".

**GAMBLING IN MONTANA  
FUTURE DIRECTIONS  
GAMING ADVISORY COUNCIL  
REPORT AND RECOMMENDATIONS**

OCTOBER 1988

## FOREWORD AND ACKNOWLEDGMENT

This report represents the commitment of time and talent of the nine council members, and of the very competent staff of the Department of Commerce of the State of Montana, without whose hard work this result would not have been possible. It is particularly important to thank Mr. Andy Poole, Mr. Brint Markle, Mr. John Willems and Ms. Kathy Anderson for their diligence and total support of the council, and Mr. Keith Colbo, whose good guidance caused this study to occur.

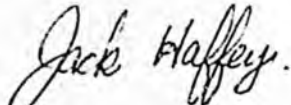
The subject matter is of course one that brings out strong opinions and feelings from most Montanans, either in support or opposition to gambling. It is clearly not a ho-hum issue for the people of our state.

We have endeavored to study the subject objectively and thoroughly - by researching existing statutes, surveying local governments, conducting public hearings and commissioning a survey of Montanans, as well as by conducting our several working meetings around Montana.

It is important for me to both thank my fellow council members for their hard and productive work, and to advise the readers of this report that these council members truly committed themselves to finding the best path for gambling in Montana's future - the path wanted by Montanans. It is my opinion that the objective nature of their work gives this report validity and credibility as a useful basis for action, both by the legislative and administrative branches of state government, as well as local governments in Montana.

It has been an honor to be part of this work. I express hope that it will serve the people of Montana well, through consideration and implementation of its recommendations.

Sincerely,



Senator Jack Haffey, Chairman  
Gaming Advisory Council

## PREFACE

The Gaming Advisory Council was established in January of 1988 upon the recommendation of Keith Colbo, director of the Department of Commerce, and upon subsequent approval of Governor Ted Schwinden. Statutory authority for the creation of the Gaming Advisory Council is found in 2-15-122, MCA.

In creating the Gaming Advisory Council, the Director of the Department of Commerce determined that gambling in Montana required serious study for the following reasons;

Gambling and wagering in various forms have far-reaching economic and social impacts upon the State of Montana and its citizens that necessitate control and regulation.

Title 23, Chapter 5, MCA, imposes on local and state governments the responsibility for controlling, regulating and taxing gambling, and this situation has resulted in fragmentation and disparity.

The 1987 legislature amended various parts of Title 23, Chapter 5 to the effect that the state of Montana is required to license video gaming machines (keno, bingo and poker) and to verify payback percentages and collect revenue from net machine income.

State and local departments and agencies are experiencing difficulty administering statutory provisions relating to video gaming machines, and this difficulty is due, in part, to interpretation of the gaming laws as written, and, in part, to existing structures and interrelationships of agencies to enforce those laws.

Given these administrative difficulties for all parties concerned including the industry being regulated by these statutes, Mr. Colbo asked that the Council conduct;

1. A review of existing legislation to correct technical defects in the existing statutes;
2. An analysis of potential legislation to modify the environment under which regulated gambling operates in the State;
3. A review of jurisdictional authority in gambling matters with respect to the following:
  - a. inequitable enforcement of existing gaming statutes across the state, and;
  - b. potential problems and remedies associated with

local-option gambling including types of games allowed, hours of play, regulation and enforcement of state and local statutes and ordinances, and law enforcement and regulatory problems crossing jurisdictional boundaries.

4. A review of the current gaming tax rate on video games; study of a potential tax on live games and pools; and, an analysis of the methods, laws and rules related to the collection of tax revenues.
5. A long term analysis of the direction the state of Montana is going and should be going in relation to gaming in the state including:
  - a. a review of the regulatory organizational structure in state and local governments;
  - b. some comment through analysis of the types and proliferation of games and gambling in Montana; and,
  - c. an analysis of the tax receipts available under various options discussed in (b), including some discussion of the higher social, regulatory and law enforcement costs associated with gaming.

The Director asked the Council that their analysis and advice include all existing and potential areas of gambling except the Montana State Lottery and the area of pari-mutual betting in the state. These areas were excluded because the state lottery has a statutory commission and, the Board of Horse Racing regulates pari-mutual betting. The Director felt that each of these statutory entities could provide their own recommendations for change if needed.

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## PART I: PUBLIC/INDUSTRY OUTREACH

In conducting the analysis requested by the Director of the Department of Commerce, the Gaming Advisory Council was acutely aware that the participation of all interested groups in the evaluation and eventual recommendation for change in the gambling regulatory environment was essential. Keeping this in mind, the recommendations included in this document represent input from numerous public and private associations and groups as well as the input from citizens of Montana.

### A: GAMING ADVISORY COUNCIL

In choosing the membership of the Gaming Advisory Council, the Department of Commerce attempted to choose individuals representing those parties closely associated with legal gambling in the state. Members of the council and their affiliations are as follows;

**Jack Haffey:** State Senator District 33; Chairman - Gaming Advisory Council

**Al Donohue:** Owner of Heritage Inn (Great Falls); Chairman - Tourism Advisory Council; Video Gaming Machine Licensee; Gaming Industry Association Member

**Harold Hanser:** Yellowstone County Attorney; Member - Board of Crime Control; State Youth Advisory Council

**Becky Erickson:** Owner - Sam's Supper Club (Glasgow); Glasgow City Council; Video Gaming Machine Licensee; Montana Tavern Owners Association Member

**Bill Ware:** Helena Police Chief; President - Montana Association of Chiefs of Police; Crime Control Drug Policy Committee

**Brad Schoepf:** Owner - Schoepf Amusement (Video Gaming Machine Supplier); Montana Coin Operators Association Member; Manufacturer/Distributor Licensee

**Bob Fletcher:** Owner - Cannery Lounge (Bozeman); Chairman - Montana Tavern Owners Association Gaming Committee; Video Gaming Machine Licensee

**Ed Kennedy:** Mayor - Kalispell; Kalispell City Gaming Commission; Montana League of Cities and Towns

**Mike McMeekin:** Lieutenant - Missoula Sheriff's Office

### B: MEETINGS AND PUBLIC HEARINGS

A number of meetings and public hearings were conducted across Montana during 1988 to receive input from citizens and interest groups in different geographic areas of the state. The council was encouraged by the fact that all parts of Montana shared the same general views regarding subjects under study by the council.

Meetings and public hearings were conducted in the following Montana locations;

January 1988 - Council meeting - Helena  
February 1988 - Subcommittee meetings - Great Falls  
Public Hearing - Great Falls  
Council Meeting - Great Falls  
March 1988 - Taxation subcommittee meeting - Missoula  
Legal review subcommittee - Helena  
April 1988 - Council Meeting - Helena  
Legal review subcommittee - Bozeman  
May 1988 - Taxation subcommittee - Helena  
June 1988 - Council meeting - Billings  
Public hearing - Billings  
Taxation subcommittee - Kalispell  
July 1988 - Public hearing - Kalispell  
- Council meeting - Kalispell  
August 1988 - Taxation subcommittee - Billings  
September 1988 - Council Meeting - Helena  
October 1988 - Council Meeting - Helena

Meetings conducted under the authority of the council dealt with a number of issues. Many of those meetings were well attended by persons in the industry as well as various interest groups including the Montana Association of Churches, the Montana Tavern Owners Association, the Gaming Industry Association, the Montana Association of Counties, the League of Cities and Towns, the Montana Coin Operators Association, representatives of many of the different Indian Tribes in Montana, legislators from across the state, and many other interested groups and individuals.

#### C: PUBLIC OPINION SURVEY

The Council also felt it was important to ask a number of critical questions of Montana adult citizens about gambling in Montana and the way in which it is regulated.

The Council contracted with the Survey Research Center at Montana State University to conduct a survey and during late April and early May of 1988, 635 interviews were completed. The interviews conducted were done in a manner which assured the Council that it adequately represented the opinions of both men and women, and all age groups over the age of seventeen.

The sample size of the survey is sufficiently large to predict statewide results with a margin of error due to chance of plus or minus four percentage points at the 95 percent confidence level. The results of the survey are incorporated within the text of this document and lend very strong support to most of the council recommendations.

## PART II : GAMING ADVISORY COUNCIL RECOMMENDATIONS

### A: COUNCIL ORGANIZATION

During the initial meeting of the council it was determined that because of the scope of work to be accomplished, subcommittees would be formed from the membership of the council. The task given to the council breaks out in logical issues related to three main areas. Those subcommittees formed include the following;

1. Subcommittee on Jurisdiction
2. Subcommittee on Taxation
3. Subcommittee on Legal Review

As mentioned earlier in this document, a number of subcommittee meetings were conducted across Montana to receive input on relevant issues. The remainder of this part of the report discusses the recommendations of the council with regard to these important issues.

B: RECOMMENDATIONS - SUBCOMMITTEE ON JURISDICTION

**Membership:** The subcommittee on jurisdiction includes Al Donohue, chairman, owner of the Heritage Inn, chairman of the Tourism Advisory Council, member of the Gaming Industry Association and a video gaming machine licensee; Jack Haffey, State Senator representing District 33; and Harold Hanser, Yellowstone County Attorney and a member of the Board of Crime Control.

**RECOMMENDATION 1. Create a Montana State Gaming Commission**

Current statutes in Montana segregate the powers and duties related to gaming regulation between the state and local governments. This segregation of duties has led to extremely diverse methods and degrees of control and regulation among the various governing bodies within the state. This has resulted in fragmentation and a gambling framework where certain type of gaming are strictly regulated in some jurisdictions while others have allowed gambling to occur without any regulation and in fact, some of those jurisdictions have allowed the provision of illegal gambling activities.

Of all of the legal forms of gambling in Montana, the legislature has given authority to state regulators only in the area of video gaming machines, specifically, video keno, video bingo and video poker. The regulation of video gaming, in the opinion of the council, has been for the most part beneficial to residents and the industry alike. State regulation has resulted in identical regulation and taxation statewide which has allowed the industry and the players a degree of confidence that the games being played and provided are uniform and legal in Montana. In addition, these games are providing a stable and much needed source of tax revenue for local governments. However, because of problems with statutory language, work needs to be done in this area and will be discussed later in this document.

All other forms of legal gambling in the state with the exception of the state lottery and horse racing are regulated or not, as the case may be, by local jurisdictions. These games include live poker, live keno, live bingo, raffles, sports pools and various other forms of live card games. Some local governments have created gaming commissions to oversee, tax and regulate these forms of gambling. Other local jurisdictions have ignored the potential and sometimes real problems associated with the gambling in their area. Therefore, a person can visit parts of this state which do not conform to any of the statutory provisions related to these forms of gambling and can in fact gamble in games which are clearly illegal such as punch boards, pull tabs, bookmaking, illegal video games, high stake poker

games etc. These facts are confirmed by a local government survey conducted by the council in which many local governments have no capacity to regulate the gambling in their area.

**Public Opinion Survey:** Findings from the public opinion survey clearly indicate that Montanans want uniformity in both the types of gambling allowed and in the regulation of that gambling. When asked whether or not they would support the creation of a state gaming commission, an overwhelming majority of the respondents (76%) favored the creation of a gaming commission.

This recommendation has been publicly supported by most persons and organizations giving testimony to the council during the last year. Persons and organizations supporting in concept the creation of a state gaming commission include the Montana Tavern Association, the Montana Association of Chiefs of Police, the Montana Association of Churches, the Gaming Industry Association, the Montana Sheriffs and Peace Officers Association, the United States Attorney for Montana, both candidates for the position of Attorney General in Montana, a number of city and local government officials, several of Montanas Indian Tribes and numerous private citizens and business people. All members of the Gaming Advisory Council support the creation of a gaming commission except for Bob Fletcher.

**RECOMMENDATION 2.** The Montana State Gaming Commission should have statutory authority to regulate all legal forms of gambling in Montana except the state lottery and horse racing.

Because of the disparity mentioned in the previous recommendation regarding the local regulation of legal gambling, the council recommends that the gaming commission should have the statutory authority to regulate all forms of legal gambling in Montana with the exception of the state lottery and horse racing. Without a statutorily created legal entity regulating legal gambling in the state, the rules and regulation under which that gambling occurs will always be diverse, and often times unfair in this state.

The local government survey conducted by the council clearly indicates the diversity of regulation in Montana for those forms of gambling not regulated by the state. Surveys were sent to all of the local government jurisdictions to find out a number of things including whether or not they had created a gaming commission, if they had adopted regulations related to the provision of legal gambling in their jurisdiction, and whether or not gambling was taxed by them. Of the 156 surveys forms mailed, 79% of those jurisdictions responded. Only 10% responding had created some governing regulatory body for gambling activities and over 50% had not adopted any rules or regulation related to gambling in their jurisdiction. Therefore, we can surmise that over 50% of the legal gambling in Montana not regulated by the state is unregulated.

The Gaming Advisory Council considered the possibility of combining the duties of a state gaming commission with the state lottery commission and rejected the idea because the purpose of each commission would be incompatible with the other.

The state lottery was created and exists to promote the sale of lottery products including instant tickets and electronic lotto games using machines similar to the video gaming machines which currently exist in Montana. The lottery was given an advertising budget by the legislature for the purpose of promoting the sale of lottery products and is expected to function much as a private business would.

To ask one commission to promote the sale of gambling products in which it has a direct interest and statutory mandate to do so, and then to regulate and enforce statutes and rules on its competition, the private gambling industry in Montana, cannot work. Because of this fundamental conflict of interest, the Gaming Advisory Council recommends a separate gaming commission.

**Public Opinion Survey:** Findings from the public opinion survey clearly indicate that Montanans want uniformity in both the types of gambling allowed and in the regulation of that gambling. An overwhelming majority of the respondents to the public opinion survey (96%), indicated that they favored identical regulations statewide. When asked whether local governments should be allowed to legalize games not legal everywhere in the state (local option gambling), only 20% of the respondents were favorable.

**RECOMMENDATION 3.** The Montana State Gaming Commission should have statutory authority to regulate all illegal forms of gambling in Montana.

Through the work of the council, it has become very apparent that most of the local jurisdictions in Montana do not have the expertise or capacity to understand and regulate the gambling laws. With limited tax bases and budgets, gambling as a law enforcement issue has not been an important priority. This is one of the most pernicious issues that the council considered because those who would provide and participate in illegal gambling activities are unregulated and therefore cheat the local governments out of their legal taxing revenue from legal gaming, provide unfair competition and impair the business of those business persons involved in gaming who follow the rules and pay the taxes, consume the resources of those law enforcement agencies who choose to investigate and prosecute these illegal activities - and because these games are unregulated, the players are often cheated. By giving a state gaming commission authority to act against illegal gambling activity, we can minimize the potential harm to all Montanans.

In addition, a state gaming commission can acquire the expertise

necessary to limit these activities as well as providing local law enforcement with appropriate training. This would be a shared responsibility among the state gaming commission where the primary role at that level would be to investigate complaints of illegal activity and working in conjunction with local law enforcement and prosecutorial services, have the resources, training and commitment to stop the activity when found.

**RECOMMENDATION 4. Local option gambling should be prohibited.**

Because of the decision on the part of many jurisdictions not to control and regulate the legal gambling currently available, the council cannot recommend a mechanism which would allow those same jurisdictions to legalize games not legal everywhere in the state. This kind of gambling disparity would exacerbate the problems already being experienced statewide due to the fact that there isn't a gambling commission with authority to regulate all forms of gambling in the state. Local option gambling can also be expected to have a deleterious affect on local jurisdictions bordering a county or city which has adopted local option gambling. That jurisdiction would see none of the benefits from economic development or taxation related to the expanded gambling but would definitely feel the adverse affects of increased law enforcement and social service costs.

With further study and appropriate statutory control, it may be possible in the future that some jurisdictions meeting developed control criteria could be given authority to adopt forms of gambling not readily available throughout the state. This issue needs further study before that authority should be considered.

**Public Opinion Survey:** The survey found that 92% of the respondents want uniformity of gambling in the state. Only 20% felt that local governments should have the option of providing games over and above those games legal statewide. It is interesting to note that a survey question was asked about whether or not designated areas of the state should be allowed to legalize Nevada style gambling. When asked this question, a higher percentage supported this concept (38%) than supported local option gambling. This result suggests some support, although significantly less than 50%, for resort area gambling in Montana.

**RECOMMENDATION 5. No member of the gaming commission should have any financial interest in gaming activities.**

The council feels that the gaming commission, if established, should not include an individual having a monetary interest in a gambling activity. There are several strong reasons why the council supports this motion. There is a potential for a continuing conflict of interest on the part of the individual

every time the commission must make a decision which would have an impact on the personal finances of that individual. Even an appearance of a conflict of interest would be harmful to the integrity of the commission. In addition, there are several major industry groups having divergent goals in the area of gambling in this state. Representation of one group and not the others would create continuing administrative difficulties. The council also considered the fact that neither Nevada nor New Jersey, the other two large gambling states, has a commission member with a financial interest in gambling. The council does not intend to exclude any stockholder in a publicly traded corporation from being on the commission as long as that individual is a minority stockholder and does not serve in any decision making capacity for the corporation.

The council understands the importance of informed decision making and believes that the best solution to provide that informed input to the commission while avoiding the conflict of interest issue, is to create an advisory council to the commission which would include four industry representatives as well as two legislators, two representatives of local government and a public member. The advisory council would provide input to the commission on the need for new or modified rules and legislation. Recommendations of the council would be included with the annual report of the commission to the governor and the legislature.

This particular motion is favored by a majority of the Gaming Advisory Council members. Bob Fletcher, Brad Schoepf and Al Donohue do not agree with this recommendation and would support industry representation of the commission.

RECOMMENDATION 6. That the commission study gaming machine leases between manufacturers/distributors and gambling machine operators to determine if legislation or administrative rules are needed to correct any problems which may exist.

C: RECOMMENDATIONS : SUBCOMMITTEE ON TAXATION

**Membership:** The subcommittee on taxation includes Becky Erickson, co-owner of Sam's Supper Club in Glasgow, Glasgow City Council member, Montana Tavern Owners Association member, video gaming machine licensee; Ed Kennedy, Mayor of Kalispell, Kalispell gaming commission member, Montana League of Cities and Towns; and Brad Schoepf, owner of Schoepf amusement - a supplier of video gaming machines, Montana Coin Operators Association member, and a manufacturer/distributor licensee.

**RECOMMENDATION 1.** All forms of legal gambling in Montana should be taxed by the state.

There is no question that the provision of legal gambling results in higher administrative costs for those jurisdictions where that gambling occurs. These additional costs can be seen in the law enforcement area and the administrative clerical area and may be seen in higher social costs. These costs should be borne by those who choose to participate in this form of entertainment.

Local jurisdictions have the option to impose a fee on live games and video games operating within their jurisdictions. Some local jurisdictions take full advantage of this taxing authority while others do not. This again leads to a situation where a system has developed which is basically skewed. As an example, there are jurisdictions, such as within a city limit, where an operator of a live poker game will pay a high annual fee to provide that game to the public and within blocks, outside the city limit, another proprietor will pay nothing to have the same game which may in fact be more profitable. The jurisdictional costs associated for both the county and the city are affected by both operations. By analyzing the figures from the local government survey, it is estimated that less than 50% of the live games in Montana pay an annual fee to the local jurisdictions where they operate.

**Public Opinion Survey:** The survey found that 75% of the respondents feel that all forms of gambling including live games and video games should be taxed by the state.

**RECOMMENDATION 2.** That the taxes imposed on live card games should be in the form of an annual fee because of the difficulty in verifying income on live card games.

In order to reduce the administrative work related to the taxing of live card games, the council feels that it would be more appropriate and save administrative costs by charging an annual table fee. This fee should be progressively greater depending upon the number of tables operated in a particular establishment.

This progressive fee structure allows the very small operations to continue with a minimal tax and, as the operations become larger, assesses a higher annual fee.

**RECOMMENDATION 3.** The current tax of 15% of net machine income on video gaming machines is appropriate and should not be changed.

At the writing of this report, video gambling has been taxed by the state for one year. The receipts from that tax have been shared by the state and local governments with 1/3 going to the state general fund and 2/3 being returned to the local government where the tax was collected.

During this time period, the tax has resulted in revenues of approximately \$10,500,000. Each quarter the tax was collected resulted in a new record for video gambling receipts with the latest quarter showing tax revenues of 2.95 million. There is no question that this revenue, particularly for local governments, has been most timely. Based upon the last four quarters tax figures, proprietors of video gaming machines are realizing gross profits of approximately \$70,000,000. This averages out to about \$9,300 per machine for the 7,500 licensed machines in the state. This is not net profit for the owner of the machine however. The video gaming tax of 15%, state and federal income taxes along with license fees, equipment and maintenance expenses must be deducted from that amount.

**RECOMMENDATION 4.** The gaming commission should earmark a percentage of revenues coming from late payments, delinquent taxes and administrative fines for the training of licensees, the training of local law enforcement officials, and for providing assistance to persons with habitual gambling problems.

One of the greatest problems currently experienced in the regulation of video gambling as well as the local regulation of live games is the level of expertise on the part of both the licensees and law enforcement officials. Providing monies for the training of these individuals in the law and adopted administrative rules will go a long way toward alleviating regulatory problems.

Giving those licensees the knowledge necessary to operate their establishments and games in the manner provided by law, and local law enforcement personnel the training and expertise necessary to identify problems is highly recommended. This may seem straight forward, however it is not. Gambling just like many other things has entered the high tech 20th century. Understanding the games, equipment and rules associated with that equipment is not as easy as it would seem. Training in this area is essential for the well being of all concerned parties.

It is also necessary and desirable to provide funds for the provision of services for problem gamblers who are out of control. Gambling can and has destroyed the lives of individuals because they cannot control their gambling habits. It therefore makes sense that some of the funds received should be used to create or support programs such as gamblers anonymous.

RECOMMENDATION 5. That all currently authorized table games be required to pay an annual flat fee in lieu of a tax. The recommended fee schedule for those licenses are:

1. One table - \$250/yr.
2. Second table - \$750/yr.
3. Third and following tables - \$1,000/yr.

The state would retain \$100.00 for each table licensed for administrative purposes and the remainder of the fee should be forwarded to the City Clerk or County Treasurer where the table is located. The fee should be annual and should not be prorated.

This fee schedule is appropriate in the council's opinion because it allows the very small operator to pay a low fee for the first table and recognizes the income made by the larger operators and taxes them accordingly. The fee schedule is not excessive. When comparing it to the average tax paid on video gaming machines during the last year, the council considered the fact that each video gaming machine in Montana paid on average over \$900 in tax.

Public Opinion Survey: The survey found that 75% of the respondents felt that all forms of legal gambling in Montana should be taxed including live games and machine games.

RECOMMENDATION 6. That live bingo and live keno should be assessed a 3% gross proceeds tax.

The council spent a great deal of time and effort in trying to determine an easy and equitable way of taxing live bingo and keno. In studying this issue, several members of the council visited Washington State where live bingo is played for charitable purposes and taxed. It was very apparent from that visit that commercial bingo establishments have the potential to make considerable profits from that enterprise. As an example, Seattle Junior Hockey grossed approximately \$3,000,000 during 1987. This indicated to the council that a flat fee, or even a fee based upon occupancy rates would not result in a fair assessment of the true activity of the establishment.

The difference between this form of gambling and a live card game is that the number of players in a live card game is limited to no more than 10. A bingo or keno game can have a wide range of players and therefore does not fairly lend itself to a flat fee assessment as do live card games.

Public Opinion Survey: The survey found that 75% of the respondents felt that all forms of legal gambling in Montana should be taxed including live games and machine games.

RECOMMENDATION 7. That statutory authorization be given for the licensing of card dealers and keno/bingo callers. This license is to be valid statewide upon issuance. This authorization should include the following provisions;

1. A temporary or immediate license can be issued upon the verification of need. The only need considered should be verification of immediate employment.
2. The gaming commission will track all persons licensed or applying for license under this provision. This information will include a record of any violation of gambling laws. A conviction of a gambling statute shall be sufficient for the denial or immediate revocation of this license.
3. The gaming commission should be given the necessary rule making authority to establish licensing procedures including the provision of multi-year licenses and the authority to delegate temporary licensing authority to local governments. Further to give authority to use the Montana drivers license, Montana identification card, and the Montana Drivers Services Bureau in a licensing process if necessary.

Montana is one of the few states which has authorized live card games. The only method of regulating the persons running those games - the dealers - is to license them. A number of dealers working in Montana have worked in Nevada and other states. Questions should be asked and the background of the dealers should be verified through a licensing process.

D: RECOMMENDATIONS - SUBCOMMITTEE ON LEGAL REVIEW

Membership: The subcommittee on legal review includes Bill Ware, Helena Chief of Police, President - Montana Association of Chiefs of Police, Crime Control Drug Policy Committee; Mike McMeekin, Lieutenant - Missoula Sheriff's Office; Bob Fletcher, Owner of the Cannery Lounge in Bozeman, Chairman - Montana Tavern Owners Association Gaming Committee, and a video gaming machine licensee.

RECOMMENDATION 1. That a new license called an "Operator's License" be created which would provide a description of the "premises" in which the gaming would be provided; list all of the gaming license numbers and decal numbers at that premises; provide for the payment of one annual fee for all games and machines on the premises; and allow the state to collect all mandatory fees and distribute them to the local governments.

The council feels that it would be in the best interest of the state and the providers of legal gambling in Montana if an operator's license is created which provides the business person with the authority to operate the various individual games provided in that persons establishment. This licensing mechanism will reduce the administrative hardship necessary in licensing each individual game or device each year and provides an easy way to accomplish this task through one straightforward process. It is also necessary to license the owner or proprietor of the business in order to make that person accountable for the actions which take place in their establishment. Without this license, there is a real question of accountability when an enforcement action is necessary. Because the proprietor must pay for all of the games and devices incorporated within the operator's license, the council recommends that there be no fee for the operator's license.

RECOMMENDATION 2. That gaming laws be uniform statewide and that primary enforcement authority rests with the state. Local governments should have no options or ordinance making authority related to gambling except in the area of zoning.

There is no question that gaming regulation, whether in Billings, Libby or anywhere else in the state, should be uniform. At the writing of this report, less than 50% of the local governments in Montana actively regulate the gambling in their jurisdiction. Other than enforcing the statutes, local governments currently have the option of extending the hours of play from 18 to 24

hours, and the number of machines which can be located in an establishment as long as they allow at least five. It is the council's position that all areas of the state should by statute allow only 18 hours of play - between the hours of 8 a.m. and 2 a.m. It is also the opinion of the council that the state statutory limit on the number of machines remain at 20. This number of machines is not excessive and would allow a business owner wherever in the state that person is located, to operate under the same terms and conditions as any other operator.

This particular recommendation was discussed at length by the members of the council and there are specific local issues which some council members felt should be left at the local government level. Al Donohue felt that local governments should have the option of increasing the gaming hours to 24 if a local government chose to do so. Mr. Donohue also felt that the number of machines an establishment can operate should be determined by the marketplace - the number of machines which are economically profitable for a particular location. Mike McMeekin felt that local governments should have the option of licensing dealers and callers along with the state gaming commission.

**Public Opinion Survey:** Findings from the public opinion survey clearly indicate that Montanans want uniformity in both the types of gambling allowed and in the regulation of that gambling. An overwhelming majority of the respondents to the public opinion survey - 96% - indicated that they favored identical regulations statewide.

**RECOMMENDATION 3.** That gaming be limited to the hours between 8 a.m. and 2 a.m. of the following day.

The council supports the position that 24 hour gambling can create problems which, at this point in time, are not warranted given the attitude of the respondents to the survey. Those responding to the survey generally favor the existing forms of legal gambling and were not anxious to see an expansion. The commission believes that statewide 24 hour gambling would definitely be an expansion not desired by a majority of Montanans. It is also true that very few jurisdictions have adopted a resolution to go to 24 hour gambling.

This recommendation was not supported by Al Donohue who feels that local governments should have the option of allowing 24 hour gaming if they choose to do so.

RECOMMENDATION 4. That commercial gaming, with the exception of live keno and live bingo, be restricted to establishments licensed to sell alcoholic beverages for consumption on the premises.

The council feels that gambling and gaming must necessarily be exclusively available for adults who choose to play. The provision of gambling devices on premises generally available to any age group is not, in the opinion of the council, a responsible form of gambling regulation. While it is generally true that a minor, even if he or she should play a video gambling device, would not be able to receive the amount won without interacting with the clerk etc., the availability of gambling devices to minors without some "premises" related restrictions are not advisable and therefore we recommend the provision of gambling only for on premises consumption licensees. The exception to this recommendation would be live bingo and live keno where the individual must interact with an employee of the business before playing.

Public Opinion Survey: The survey found that 77% of the respondents feel that video poker should be limited to bars and that 63% of the respondents would restrict video keno and video bingo to bars.

RECOMMENDATION 5. That video gaming machines be limited to 20 per premises of any mix.

Current statute restricts the allowable number of keno, bingo and poker machines allowed in an establishment to a total of 20. Within that total, a premises can have no more than 5 poker machines and 15 keno and/or bingo machines for a total of 20. It makes no sense to the council that statute should determine the "mix" of legal video gaming machines allowable in an establishment. Therefore, the council recommends that the statutory limit of 20 be maintained but that the types of legal video gaming machines within that limit be at the discretion of the licensee.

Mr. Donohue did not agree with this council recommendation on the basis that it unfairly limits the larger hotel and motel operators who cannot accommodate all of their gambling customers because of these limitations.

RECOMMENDATION 6. That penalties be progressive, both administrative and criminal.

The council believes that a penalty scheme, in order to work well, for those who have broken either criminal laws or administrative rules, must be progressively severe. First time offenders will often change their ways without the extremely severe penalties necessary to deter or eliminate a threat from a career offender.

RECOMMENDATION 7. That gaming devices which are illegal to play in Montana, may be manufactured in Montana for out-of-state only by persons specially licensed for that purpose by the gaming commission.

Current Montana statutes make it illegal to possess any gambling device which is illegal for play in Montana. Unfortunately, there are a number of Montana manufacturers who have the capability and in fact are producing gambling equipment/ devices for export outside of Montana where those devices are legal. Strict interpretation of the statute would put these companies out of business in Montana and further impair the economic picture for the state. This does not make sense and we strongly recommend modification of the statute to enact this recommendation.

This recommendation was adopted by the council with one dissenting vote. Bill Ware did not agree with this council recommendation.

RECOMMENDATION 8. That the Gaming Commission be allowed to issue warrants of distraint for tax collection purposes.

The Gaming Advisory Council recommends that the commission be given the authority to attach property of individuals licensed by the commission who fail to pay statutory taxes related to gambling. As an example, this would give the commission authority to put a lien on a gaming machine or actually seize the machine if the taxes for the receipts on that gambling are not paid. The Department of Revenue currently has this statutory authority for tax collections under their authority and the council feels that this authority would be appropriate for the commission.

RECOMMENDATION 9. That the betting limit for all video gaming machines should not exceed the existing \$2.00 limit and that video gaming machines be allowed to offer games for play for less than 25 cents.

The existing betting limit for video gambling machines is \$2.00 and the advisory council believes that this betting limit is appropriate. The council further believes that existing statute should be changed to allow for the play of games at less than 25 cents. There are a number of people in Montana, both players and owners of machines, who want 5 cent and 10 cent machines to be legal. State statutes should be changed to accommodate this desire.

Public Opinion Survey: When asked if persons gambling in Montana should be limited in the amount of money they can bet, 68% of the respondents said that there should be a betting limit. Twenty five percent said there should not be a bet limit and seven percent had no opinion.

RECOMMENDATION 10. That the winning limit for all legal forms of gambling under the authority of the commission will not exceed \$800 per game.

Through the public testimony received by the council, it was made clear that the existing \$100 win limit for video poker machines is not proportional to the risk of the \$2.00 bet. As an example, the chances of getting a royal flush on a poker game are so low that a \$2.00 bet should statistically pay a much larger prize than the statutory \$100. The existing \$100 win limit is unfair to the players and should be changed.

Public Opinion Survey: The survey found that 48% of the respondents feel that there should be a limit on the amount an individual can win in a game while 44% feel that there should be no winning limit. This finding is within the margin of error of the survey and shows that Montanans are almost evenly divided on this issue.

RECOMMENDATION 11. That the betting limit for all legal live card games be defined by the Gaming Commission such that the winning limit does not exceed a maximum payout in any game in excess of \$800.

The betting limit and method of betting in legal live card games needs to be modified to reflect the way the games are played. The gaming commission should adopt betting rules which conform to the way in which the games are conducted. As in recommendation 10,

the council supports a winning limit of \$800 for legal live card games.

**Public Opinion Survey:** The survey found that 48% of the respondents feel that there should be a limit on the amount an individual can win in a game while 44% feel that there should be no winning limit. This finding is within the margin of error of the survey and shows that Montanans are almost evenly divided on this issue.

### PART III - GAMBLING IN THE FUTURE

#### A: GENERAL

The public opinion survey conducted on behalf of the council by the Survey Research Center in Bozeman asked a number of questions of those responding relevant to the role gambling should play in Montana. There is a consistent theme running through the results of the survey which indicates that Montanans are generally satisfied with the types of games which are legal in the state.

The level of support for continuing the currently legal games was associated with the degree of familiarity with the game. Except for calcuttas, people were reasonably familiar with most currently legal games. Calcuttas were the least familiar of the currently legal games - 35% were not familiar with calcuttas - and they received only a 40% approval to remain legal. Next in order, only 6% were not familiar with commercial sports pools and they received a 60% approval rating. At the other extreme, almost everyone was familiar with commercial bingo and raffles, and they received 81 and 76 percent approvals respectively.

No currently illegal game received more than a 50% support for legalization. Furthermore, there was no consistent pattern relating game familiarity with the degree of support. Almost everyone was familiar with slot machines and they received the highest rating of approval of any of the illegal games with 48%. Legalization of "21" was second with an approval rating for legalization of 47 percent. Each of these forms of gambling are within the margin of error due to the sample size and therefore might be favored for legalization by a small majority of the citizens of Montana.

The results of the survey and the information provided at public hearings and council meetings seems to indicate generally that most Montanans;

- are comfortable with the types of games currently legal;
- would not substantially favor the legalization of any currently illegal game;
- want the legal gambling which is available to be uniform across the state;
- want all forms of gambling to be taxed;
- want strong, uniform, statewide regulation;
- want the legislature to create a state gaming commission.

B: LEGALIZATION OF "21", PUNCHBOARDS AND PULL TABS.

Through the public testimony which the council heard, it is anticipated that a "21" bill will be introduced during the next legislative session. It is also likely that a "punchboard" and/or "pull-tab" bill will be introduced. The Gaming Advisory Council makes no recommendation regarding whether or not these forms of gambling should be legalized in Montana. The council does however recommend that any form of gambling legalized in the future in Montana come under the authority of the proposed Gaming Commission. The legalization of any form of gambling should occur only if that gambling is subject to the rules and regulations recommended for video gambling machines or the live card games act depending on the form in which it is legalized, that is, machine play or live play.

The subcommittee on taxation met with Mr. Richard Tessier, head of the Gaming Division of the North Dakota State Attorney General's Office. In discussing the gambling environment in North Dakota, Mr. Tessier indicated that North Dakota has legalized live "21" as well as "punchboards" and "pull tabs". North Dakota operates these games under the guidelines of charitable gambling but that difference is behind the scenes and has little affect on the players perception of the game, the operation of the game, or the adequate regulation of the game.

The Gaming Advisory Council upon the recommendation of the subcommittee on taxation recommends that, prior to the implementation or the actual playing of "21", punchboards, pull tabs, or any other form of currently illegal gambling activity;

1. stringent regulatory rules and laws are in place prior to the first game being played;
2. the regulatory agency must know the game and the pitfalls of the game if certain rules are not in place;
3. the state gaming commission or similar regulatory agency must be in place prior to implementation;
4. blackjack or "21" should be uniformly regulated in all 56 counties to include consideration of the use of card shoes, 4 to 6 deck minimums, color coded chips, licensing of "21" dealers etc.;
5. the commission should study and understand the potential problems with punch boards and pull tabs including the provision of insider information and the pointing out of "hot jars" by those with insider information.

Based upon the previous discussion, materials received from North Dakota which are available at the Department of Commerce, the complexity of gambling issues in general, the fact that there is no statewide gambling regulatory agency, and the potential for the public not being protected from improper or illegal gambling activity -- the Gaming Advisory Council recommends that the gaming commission be given six months from the date of passage and approval of any bill authorizing new forms of gambling to study all relevant materials including information from other states so that well thought out rules and procedures can be adopted before the game is played in this state.

#### C: AMUSEMENT GAME REGULATION

Amusement or carnival games are those games where a player bets or gambles that, either through chance or a combination of skill and chance, the player can perform a task which will result in winning a prize (not cash). This is a form of gambling in that the player is risking money for a chance to win something.

A number of states regulate amusement and carnival games in order to assure the player that the game is not "rigged" and that there is a reasonable expectation based upon the amount wagered and the prize offered that the player can win. Several of the council members visited Washington State and found that these types of games are licensed and regulated. Personnel from the Washington State Gambling Commission stated that, based upon their experience, cheating is present and a definite threat to the player of these games. Washington has instituted a licensing and regulatory function related to amusement and carnival games to protect the players, many of whom are children attending carnivals and amusement parks.

The council believes and has recommended that the gaming commission study and recommend a mechanism for regulating amusement and carnival games in Montana.

D: CHARITABLE GAMBLING

The Gaming Advisory Council recommends that the legislature adopt a statutory definition of Charity Gambling, and that the state gaming commission be authorized to adopt rules and regulations for charity gambling. It is not the intent of the council to propose any specific charity games. Should the legislature decide to authorize specific charity games, the council recommends that an appropriate legal mechanism be developed to do so. Likewise, issues such as whether charity gaming should be revenue neutral except for administrative costs or for revenue enhancement of the charity and the purpose for which it exists is not addressed by the council.

The following definitions are offered to illustrate the basic differences between commercial gambling and charitable gambling;

COMMERCIAL GAMBLING: Those forms of legalized gambling where the total amount wagered, less prizes, license fees and taxes belong to the licensee and may be used for any purpose.

CHARITABLE GAMBLING: Describes those forms of gambling authorized only for certain defined IRS qualified nonprofit and charitable organizations where the total amount wagered, less prizes, license fees, and taxes, belong to the licensee and, except for regulated administrative costs, can be used only for statutorily defined public purposes.

# APPENDIX A

## Part 1 Prohibited Games — Penalties

## Part 1

### Prohibited Games -- Penalties

23-5-101. Definitions. (1) "Gambling" and "gaming" are synonymous and mean risking any money, credit, deposit, check, property or thing of value for a gain contingent in whole or in part upon lot, chance or the operation of a gambling device or enterprise."

(2) "Gambling device or enterprise" means any mechanical, electromechanical or electronic device, machine, instrument, apparatus, scheme, system, or organization, including a system for processing information which can alter the normal criteria of random selection, employed, conducted or operated for the purpose of gambling.

(3) "Slot machine" means any mechanical, electrical, or other gambling device or enterprise, contrivance or machine which, upon insertion of a coin, token, credit card or similar object therein, or upon payment of any consideration whatsoever, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the gambling device to receive cash, premiums, merchandise, tokens or any thing of value whatsoever, whether the payoff is made automatically from the machine or in any manner whatsoever.

(4) A "lottery" or "gift enterprise" is any scheme for the disposal or distribution of property by chance among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property or a portion of it or for any share or interest in such property upon any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance, whether it is called a lottery, gift enterprise, or by whatever name the same may be known; provided that this part shall not apply to lotteries authorized under Part 10 of this chapter; and provided further that the county fair commissioners of agricultural fairs and rodeo associations in this state may give away at such fairs and rodeos cash or merchandise attendance prizes or premiums by public drawings.

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

(6) "Commission" means the Montana state gaming commission.

(7) "Public" means, in the context of this chapter, except for Part 10, means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort, including, but not limited to, facilities owned, managed, or operated by partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious, fraternal, and charitable organizations.

(8) A person is engaged in "commercial gambling" when, acting other than as a player, he owns, operates, or makes available for play in public any gambling device or enterprise in anticipation of receiving any remuneration, or any of the proceeds of, the gambling activity.

(9) "Operator" is any person who purchases, receives, or acquires, by lease or otherwise, and operates or controls for public use any gambling device or enterprise authorized by this chapter, except for Part 10.

(10) "Manufacturer" is any person who assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind to be used as a gambling device or enterprise.

(11) "Distributor" is any person who purchases or obtains equipment of any kind for use in gambling activities from any person and sells or otherwise furnishes such equipment to another person for use in public.

(12) "Premises" means the physical building or property within or upon which a licensed gambling activity occurs, as set out and approved on an operator's license application.

(13) "video gambling machine" is a machine specifically authorized by part 6 and the rules of the commission.

23-5-102. Gambling prohibited -- penalty. Except as specifically provided by statute and/or the rules of the commission, all forms of gambling, lotteries, and gift enterprises are illegal.

23-5-103. Possession of illegal gambling device or enterprise prohibited - exception. (1) Except as provided in subsection (2), Any person who has in his possession or under his control or who permits to be placed, maintained, or kept in any room, space, enclosure, or building owned, leased, or occupied by him or under his management or control any illegal gambling device or enterprise shall be punished in accordance with the laws of this chapter, provided that this section shall not apply to a public officer or to a person coming into possession thereof in or by reason of the performance of an official duty and holding the same to be disposed of according to law.

(2) The commission may adopt rules to license persons to manufacture gambling devices not legal in Montana for export outside of Montana. No person may manufacture or possess any illegal gambling device without first having obtained a license from the commission specifically for this purpose. The commission may charge an administrative fee for this license which must be commensurate with costs.

23-5-104. Possession of antique Slot machines. (1) An antique slot machine is a slot machine manufactured prior to 1950, the operation of which is exclusively mechanical in nature and is not aided in whole or in part by any electronic means.

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

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

(4) No antique slot machine may be operated for any commercial or charitable purpose.

23-5-107. Obtaining money by operation of illegal gambling device or enterprise. Obtaining money, property or anything of value by cheating, fraud, or the use of an illegal gambling device or enterprise not exceeding \$300 is punishable as a misdemeanor. Obtaining money, property, or anything of value by cheating, fraud, or the use of an illegal gambling device or enterprise exceeding \$300 is punishable by a fine of not less than \$500 or more than \$5,000 or imprisonment of not less than 1 year or more than 10 years, or both.

23-5-108. Soliciting or persuading persons to play illegal gambling devices or enterprises prohibited. Any person who persuades, advertises or solicits another to play or engage in the use of an illegal gambling device or enterprise is punishable as a misdemeanor.

23-5-121. Duty of public officials and peace officer(s) -- negligence. (1) It is the duty of all public officials to inform against, make complaint and diligently prosecute any person whom they know or concerning whom they may be informed or have reasonable cause to believe to be offenders of the provisions of this chapter.

(2) It is the duty of every peace officer to seize any illegal gambling device or enterprise and to arrest any person actually or apparently in possession or control thereof, and to bring the illegal gambling device or enterprise, and the prisoner, if there be one, before a magistrate.

(3) This section does not apply to antique slot machines, the possession, location, or use of which is authorized by 23-5-104.

(4) Any public official or peace officer who refuses or neglects to perform any of the duties imposed upon him by any of the provisions of this chapter shall be punished in accordance with 23-5-144, and any such prosecution shall not bar or interfere with any proceeding or action for removal from office.

23-5-122. Destruction of gambling apparatus -- when required. The magistrate before whom any illegal gambling device or enterprise is brought pursuant to 23-5-121 must, if there is a prisoner and if he holds such prisoner, cause the illegal gambling device or enterprise to be delivered to the county attorney to be used as evidence on the trial of such prisoner. If there is no prisoner or if the magistrate does not hold the prisoner, the magistrate must cause the immediate and public destruction of the gambling device or enterprise in his own presence. No person owning or claiming to own any such gambling device or enterprise so destroyed has any right of action against any person or against the state, county, or city for the value of such article, for any monies found within or upon such article, or for damages. It is the duty of the county attorney to produce such articles in court on the trial of the case. It is the duty of the trial court, after the disposition of the case and whether the defendant is convicted, acquitted, or fails to appear for trial, to cause the immediate and public destruction of any such article by the sheriff or any other officer or person designated by the court.; provided that the court may, upon request, authorize the commission to possess such article to be used for training purposes, or other disposition as deemed appropriate by the commission.

23-5-123. Disposal of money confiscated by reason of violation of gambling laws. All fines, penalties, forfeitures, or confiscated money, imposed or collected, whether by criminal, civil, or administrative process, for violation of any of the provisions of this chapter or rules of the commission shall be deposited in a special revenue account for use by the commission in training law enforcement personnel, training persons licensed under the authority of the commission, and for funding programs designed to treat persons with habitual gambling problems.

23-5-131. Losses at gambling may be recovered in civil action. If any person, by playing or betting at any illegal gambling device or enterprise loses to another person any sum of money or thing of value and pays or delivers the same or any part thereof to any person connected with the operating or conducting of such game, either as owner, dealer, or operator, the person who so loses and pays or delivers may, at any time within 60 days next after the loss and payment or delivery, sue for and recover the money or thing of value so lost and paid or delivered or any part thereof from any person having any interest, direct or contingent, in the game as owner, backer, or otherwise, with costs of suit, by civil action before any court of competent jurisdiction, together with exemplary damages which in no case shall be less than \$50 or more than \$500, and may join as defendants in said suit all persons having any interest, direct or contingent, in such illegal gambling device or enterprise as backers, owners, or otherwise.

23-5-132. Remedy available to dependents. If any person losing such money or thing of value does not, within 60 days, without collusion or deceit, sue and with effect prosecute for the money or thing of value so lost and paid or delivered, any person or a guardian of any person dependent in any degree for support upon or entitled to the earnings of such persons losing said money or thing of value or any citizen for the use of the person so dependent may, within 1 year, sue for and recover the same, with costs of suit and exemplary damages as aforesaid, against any and all person having any interest, direct or contingent, in the illegal gambling device or enterprise as backers, owners, or otherwise.

23-5-133. Pleadings in actions to recover money lost. In the prosecutions of such actions it shall be sufficient for the complaint to allege that the defendant is indebted to the plaintiff's use the money or thing of value so lost and paid or delivered, whereby the plaintiff's action accrued to him or to the person for whose use the suit is brought, without setting forth the special matter. In case suit is brought by a plaintiff for the use of another person, that fact and the name of the person for whose use the suit is brought shall be stated.

23-5-134. Discovery. Every person liable in a civil action under this part may be compelled to answer, upon oath, interrogatories annexed to the complaint in such civil action for the purpose of discovery of his liability.

23-5-135. Discharge of defendant. (1) Upon discovery and repayment of the money or other thing, the person discovering and repaying the same, with costs and such an amount of exemplary damages as may be agreed upon by the parties or fixed by the court, shall move to have the case against him dismissed.

(2) Any civil case brought for the recovery of a gambling debt shall not bar or interfere with, for reasons of double jeopardy or otherwise, any other proceeding or action, whether criminal, civil or administrative, which may be taken against such person under the laws of this state.

(3) Any case founded upon violation of the laws of this chapter shall be forwarded by the clerk of court to the commission.

23-5-142. Ordinances concerning gambling. All local governments are prohibited the exercise of the power to regulate any form of gambling, lotteries, or gift enterprise, except as specifically authorized and delegated in this chapter.

23-5-143. Lessor of buildings used for gambling purposes treated as principal. Whenever premises are occupied for the operation, playing or storage of an illegal gambling device or enterprise, the lease or agreement under which they are so occupied shall be absolutely void at the instance of the lessor, who may at any time obtain possession by civil action or by action of unlawful detainer. If any person leases premises for any such purpose or knowingly permits them to be used or occupied for such purpose or purposes or, knowing them to be so occupied or used, fails immediately to prosecute in good faith an action or proceeding for the recovery of the premises, such lessor shall be considered in all cases, civil and criminal, as a principal in operating, playing, or storing such illegal gambling device or enterprise in such building in violation of this chapter and shall be dealt with and punished accordingly.

23-5-144. Maintaining gambling apparatus a nuisance. Any article, machine, or apparatus maintained or kept in violation of any of the provisions of this part is a public nuisance, but the punishment for the maintaining or keeping of the same shall be as provided in this chapter.

# APPENDIX B

## Part 2

### Montana State Gaming Commission

Part 2

Montana State Gaming Commission

23-5-201. Short title. This part may be cited as the "Montana State Gaming Commission Act of 1989".

23-5-202. Public policy of state concerning gambling. (1) The legislature finds that for the purposes of ensuring the proper provision of a gambling environment in Montana, it is necessary and desirable to create a Montana gaming commission in order to:

(a) create and maintain a uniform regulatory climate which assures players, owners, tourists, citizens and others that the gambling industry in Montana is fair and that the industry is not influenced by corrupt practices or persons.

(b) protect the gambling industry from unscrupulous players, vendors or influences which would be detrimental to the viability of the legal gambling community;

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

(d) protect the state and local governments from those who would illegally conduct gambling in such a manner as to defraud those governments from their legal taxing revenue;

(e) protect the health, safety and welfare of all citizens of the state, including those who do not gamble, by regulating the industry in a manner which inhibits the growth of illegal activities;

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

(2) The Montana legislature adopts the policy that no applicant for a license or other affirmative commission approval has any right to a license or the granting of the approval sought. Any license issued or other commission approval granted pursuant to the provisions of this chapter except part 10 is a revocable privilege, and no holder acquires any vested right therein or thereunder.

(3) The determination of suitability for licensure is totally within the authority of the commission and is not subject to judicial review.

(4) Revenue to fund the expense of administration and control of gambling as regulated by this chapter will be derived solely from fees, taxes and penalties on legal and illegal gaming activities, except the Montana State Lottery and the pari-mutuel industry.

(5) The commission is hereby given authority to adopt rules necessary to implement this chapter except part 10 and further, to adopt rules which assure that gambling will not impair the health, safety, morals, good order and general welfare of the inhabitants of the State of Montana.

(6) Unless otherwise provided, the commission is hereby given authority to adopt rules to license and regulate the gambling activities of any class of individuals working or receiving a monetary benefit as a result of employment or ownership in a gambling enterprise except the state lottery and the pari-mutuel industry. License fees adopted for this purpose shall be commensurate with the costs of regulation.

23-5-203. Purpose. (1) The purpose of this part is to create a Montana State Gaming Commission to enforce the statutes and adopt rules related to all forms of legal gambling, including amusement and carnival games with the exception of the Montana State Lottery and the pari-mutuel industry.

(2) The gaming commission is also given authority to act against persons, establishments, devices, implements, or any other thing which may be used for gambling purposes which are prohibited by the Montana Constitution or other statutes.

23-5-204. Definitions. As used in this part the following definitions apply:

(1) "Commission" means the Montana state gaming commission created by 23-5-206.

(2) "Administrator" means the administrator of the state gaming commission appointed by the commission under 23-5-209.

(3) "Department" means the department of commerce.

(4) "Applicant" means any person who has applied for or is about to apply for any license issued by the commission, or approval of any act or transaction for which commission approval is required or permitted under the provisions of this chapter except part 10.

(5) "Application" means a request for the issuance of any license issued under the authority of the commission, or for approval of any act or transaction for which commission approval is required or permitted under the provisions of this chapter except part 10.

(6) "License" means the documentary approval required by state statute or the rules of the commission needed to conduct, participate, sell, lease, possess, or in any other way have an interest as determined by the commission in gambling activities or devices. No license issued under the authority of the commission is valid for more than a period of one year.

23-5-205 reserved.

23-5-206. Montana state gaming commission - allocation - composition - compensation - quorum. (1) There is a Montana state gaming commission.

(2) The commission consists of five members, who shall be appointed by the governor, and confirmed by the state senate. The commission members must be residents of the state of Montana.

(3) After initial appointments, each commissioner shall be appointed to a 4-year term of office, and the terms shall be staggered in accordance with 2-15-124.

(4) A commissioner may be removed by the governor for good cause. An office that for any reason becomes vacant must be filled within 30 days by the governor, and the commissioner filling the vacancy shall serve the rest of the unexpired term.

(5) The governor shall appoint the chairman of the commission.

(6) Three or more commissioners constitute a quorum to do business, and action may be taken by a majority of the quorum.

(8) The chairman is entitled to annual compensation of \$6,000. Other commissioners are entitled to annual compensation of \$5,000. Each commissioner shall be entitled to travel, meals and lodging as provided for in Title 2, chapter 18, part 5.

(9) The commission is allocated to the department of commerce for administrative purposes only.

(10) The commission is a quasi-judicial agency for the purposes of 2-15-124.

(11) The commission is a criminal justice agency, and designated employees and duly authorized commission representatives are granted peace officer status with powers of search, seizure, and arrest to regulate and control all legal and illegal gambling activities in the state with the exception of Title 23, Chapter 4, and Title 23, Chapter 5, Part 10.

23-5-207. Powers and duties of commission. The commission shall:

- (1) devote such time to the business of the commission as is necessary to the discharge of their duties;
- (2) meet at least once each month to conduct business;
- (3) provide training opportunities for licensees, giving them the information necessary to be responsible members of the legal gambling community;
- (4) provide training opportunities for local law enforcement personnel, giving them the information necessary to enforce the state gambling laws;
- (5) cause to be made and keep a record of all proceedings at regular and special meetings of the commission, and maintain a file of all applications for licenses issued under the authority of the commission, together with a record of all final actions taken with respect to license applications. These files and records will be open to public inspection;
- (6) maintain confidential records not open to public inspection concerning the finances, earnings, revenues, criminal records, antecedents and background relating to any applicant for licensure under the authority of the commission;
- (7) be granted access to all files, records, reports and other information pertaining to gaming matters in the possession of the Montana department of revenue upon demand;
- (8) inspect and examine all premises wherein gambling devices or equipment is stored, manufactured, sold, distributed or operated; inspect all equipment, supplies and records in, upon or about such premises pertaining to gambling matters;
- (9) demand access to and inspect, examine, photocopy and audit all papers, books and records of applicants and licensees, on their premises, or elsewhere as practicable, and in the presence of the licensee or his agent, respecting gross income produced by any gaming enterprise, and require verification of income, and all other matters affecting the enforcement of the policy or any provisions of this chapter except Part 10;
- (10) issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the commission or before its authorized agents conducting the investigation;
- (11) adopt rules to inspect, approve and license any form of gambling within the policies, guidelines and limitations established by the legislature except for Title 23, Chapter 4 and Title 23, Chapter 5, Part 10;
- (12) adopt rules to investigate, approve and license any individual associated with gambling activities in this state subject to the policies, guidelines and limitations established by the legislature except for Title 23, Chapter 4 and Title, Chapter 5, Part 10. Licensing fees adopted by the commission for the purpose of licensing individuals must be commensurate with costs unless otherwise provided for in this chapter;

- (13) conduct a continuing study of gambling in other states in order to make gambling secure from violations of the law;
- (14) conduct a continuing study of all forms of gambling in Montana and prepare an annual report on all aspects of the operation of the commission, including but not limited to types of games licensed, gross revenue, payback, operating expenses, revenue collected, enforcement actions taken and pending and recommendations for amendments to gambling laws, and deliver a copy of the report to the governor, the legislative auditor, the president of the senate, and the speaker of the house of representatives;
- (15) adopt rules necessary to carry out the provisions of this chapter except Part 10. Rules adopted by the commission have the force of law.
- (16) exercise any proper power and authority necessary to perform the duties assigned to it by the legislature, this authority is not limited by any enumeration of powers in this chapter.

23-5-208. Gaming advisory council - allocation - composition - compensation - bipartisan. (1) There is a gaming advisory council.

(2) 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 speaker of the house and the senate committee on committees shall appoint the legislative members of the advisory council. The seven remaining members will be appointed by the commission with one representing the public at large, two representing local governments, and the four remaining members being representative of the gaming industry.

(3) Each advisory council member shall be appointed to a two year term of office and members of the advisory council may be removed by the appointing body as defined in (2) for good cause.

(4) The advisory council shall appoint its own chairman.

(5) The legislative members of the advisory council are entitled to compensation and expenses as provided in 5-2-302 while the advisory council is meeting. The remaining members are entitled to compensation in the amount of \$50 per day while the advisory council is meeting and shall be entitled to travel, meals and lodging as provided for in Title 2, chapter 18, part 5. Expenses of the gaming advisory council shall be paid from licensing fees received by the commission.

(6) The advisory council shall, within their authorized budget, hold such meetings and incur such expenses as they deem necessary to study all aspects of gambling in Montana.

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

(b) The annual report shall be affixed as an appendix to the commission annual report.

(c) The advisory council may submit interim reports to the commission as it deems necessary.

(d) When requested, the gaming advisory council shall meet with the commission.

(e) When requested, the commission shall meet with the gaming advisory council.

23-5-209. Administrator - appointment - qualifications. (1) The administrator shall be appointed by the commission and shall hold office at the pleasure of the commission. For the purposes of appointing an administrator, the commission will consult with the director of the department of commerce as the administratively attached agency.

(2) The administrator must be qualified by training and experience to direct the activities and operations of the state gambling commission. The administrator must be a full-time employee and may not have any interest whatsoever in any form of gambling enterprise.

23-5-210. Gambling commission -- members and employees -- Activities prohibited. A member or employee of the gambling commission shall not:

- (1) Serve as an officer or manager of any corporation or organization which conducts a lottery or gambling activity;
- (2) Receive or share in, directly or indirectly, any profits of any gambling activity regulated by the commission;
- (3) Be beneficially interested in any contract for the manufacture or sale of gambling devices, the conduct of gambling activity, or the provision of independent consultant services in connection with a gambling activity.

23-5-211. Qualifications for license or finding of suitability.

(1) Any person who the commission determines is qualified to receive a license or be found suitable under the provisions of this chapter except part 10, having due consideration for the proper protection of the health, safety, morals, good order and general welfare of the inhabitants of the State of Montana and the declared policy of this state, may be issued a state gaming license or found suitable. The burden of proving the applicants qualification to receive any license or be found suitable is on the applicant.

(2) An application to receive a license or be found suitable shall not be granted unless the commission is satisfied that the applicant is:

(a) A person of good character, honesty and integrity;  
(b) A person whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest of this state or to the effective regulation and control of gambling, or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gambling or the carrying on of the business and financial arrangements incidental thereto; and

(c) In all other respects qualified to be licensed or found suitable consistently with the declared policy of the state.

(3) A license to operate an establishment or business related to the gambling industry shall not be granted unless the applicant has satisfied the commission that:

(a) The applicant has adequate business probity, competence and experience, in gambling or generally; and  
(b) The proposed financing of the entire operation is:  
(i) adequate for the nature of the proposed operation; and  
(ii) from a suitable source. Any lender or other source of money or credit which the commission finds does not meet the standards set forth in subsection (2) may be deemed unsuitable.

(4) The commission may, by regulation, establish such other qualifications for licenses as they may, in their discretion, deem to be in the public interest and consistent with the declared policy of this state.

23-5-212. Operator's of gambling establishments - license - fee. (1) It is unlawful for any person to conduct gambling on a premises without having first been issued an operator's license by the commission.

(2) The operator's license shall include the following information;

(a) a description of the premises upon which the gambling will take place;

(b) the operator's name;

(c) a description of each gaming device or table game licensed to the operator by the commission for play upon that premises including the type of game and license number or decal number for each licensed game;

(d) any other information determined to be necessary by the commission.

(3) The operator's license shall be issued annually along with all other licenses for devices or games licensed to the operator. The operator's license shall be updated each time a gaming device or table game license is either newly issued or removed from the premises.

(4) The commission will not charge a fee for the issuance of an operator's license.

(5) The operator's license shall be prominently displayed upon the premises for which it is issued.

23-5-213. Penalties - hearing. If the commission determines after a hearing conducted pursuant to the Montana Administrative Procedures Act that a person has violated any of the provisions of this chapter except part 10, or the commission's rules, the commission may, in addition to other penalties prescribed:

(1) suspend the license for a period of not more than 180 days if the individual is licensed by the commission;

(2) impose a civil penalty not to exceed \$6,000 for each violation whether or not the person is licensed by the commission;

(3) revoke the license of the individual, such license being issued by the commission;

(4) deny renewal of the license issued by the commission on expiration thereof; or

(5) impose a combination of any two of the penalties set forth in subsections (1) through (4).

23-5-214. Emergency orders of the commission. The commission may issue an emergency order for suspension, limitation or conditioning of a license, registration, finding of suitability, or prior approval when the commission believes that such action is necessary to the immediate preservation of the public peace, health, safety, morals, good order or general welfare of the inhabitants of the state. An emergency order;

(1) Must set forth the grounds upon which it is issued, including a statement of facts constituting the alleged emergency necessitating such action.

(2) May be issued only with the approval and signature of not less than three members of the commission.

(3) Is effective immediately upon issuance and service upon the licensee or resident agent of the licensee.

(4) Remains effective until further order of the commission or disposition of the case. Within 5 days after the issuance of an emergency order, the commission shall cause a complaint to be filed and served upon the person or entity involved.

23-5-215. Judicial review of commission decision. (1) Any interested party has the right to judicial review of a final decision of the commission concerning the grant, denial, renewal, revocation, or suspension of a license, or the imposition of a civil penalty, required under this chapter, except that part 10 does not apply.

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

(3) Any limitation, condition, revocation, suspension, denial, fine or imposition of a civil penalty enacted by the commission is effective until reversed upon judicial review.

23-5-216. Legal Advisor - Prosecution. (1) The attorney general shall be the legal advisor to the state gaming commission.

(2) The attorney general shall have concurrent jurisdiction with the respective county attorneys to prosecute criminal actions relating to those gambling matters within the jurisdiction of the commission.

(3) The commission may employ its own attorney(s) and, with the concurrence of the attorney general, shall have the same authority to prosecute as the attorney general under paragraph (2).

# APPENDIX C

## Part 3 Live Card Games Act

### Part 3

#### Live Card Games Act

23-5-301. Short title. This part may be cited as the "Montana Live Card Games Act."

23-5-302. Definitions. As used in this part and unless the context requires otherwise, the following terms or phrases mean:

(1) "Authorized card game", "card game" or "game" means any card game specifically permitted by this part to be played in public and none other.

(2) "dealer" means a person with a dealer's permit issued under this part.

(3) "card game table" or "table" means a licensed live card game table made available to the public by a licensed gambling operator on his premises.

(4) "commission" means the Montana state gaming commission defined in 23-5-206.

(5) "operator" means a person licensed to operate a gambling establishment as defined in 23-5-212.

23-5-303. Prior laws still in effect. (1) To the extent that they are not specifically superseded by provisions of this part, or any other gambling law, the provisions of part 1 and part 2 of this chapter remain in effect.

(2) This part has no application to games simulated on electronic video gambling machines authorized in part 6.

23-5-310. Live card game tables -- hours of play -- restriction. Live card game tables licensed under this part must be closed for play between the hours of 2 a.m. and 8 a.m. each day.

23-5-312. Card game dealers - qualifications - license - fee. (1) It is unlawful for any person to deal cards in a legal card game as defined in this part without first having received a dealers license from the commission. (2) The dealers license may be issued annually or every two years pursuant to rules adopted by the commission. (3) The fee for each year in which the license is effective shall be \$25. This fee is not to be prorated. (4) The license fee charged for the issuance of a dealers license will be retained by the commission for administration. (5) The dealers license shall be worn upon the person licensed as a dealer whenever they are working as a dealer. (6) Qualifications to become licensed as a dealer shall be in conformance with the provisions of 23-5-211. (7) The commission may adopt rules to implement temporary licensing procedures until a permanent license is issued to an individual and the commission may delegate this authority to local governments including the ability to assess fees for the temporary licenses.

23-5-311. Authorized card games - card game tournaments. (1) No person shall conduct or participate in any live card game, or make any tables available for the playing in public of any live card game not specifically authorized by this part and described by rules of the Commission. (2) The live card games authorized by this part are and are limited to the card games known as bridge, cribbage, hearts, panguingue, pinochle, pitch, rummy, whist, solo, and poker. (3) The commission may adopt rules for card game tournaments or special events and issue limited tournament licenses specifying tournament restrictions and conditions.

23-5-312. Prizes not to exceed eight hundred dollars.

(1) No prize for any individual live card game shall exceed the value of \$800. Games shall not be combined in any manner so as to increase the value of the ultimate prize awarded. The commission shall adopt rules defining and strictly enforcing this section.

(2) For the game of poker only, the commission may, at its discretion, limit the maximum size of a pot by establishing a system of maximum bets and raises which may be made by players during one betting round. Under no circumstances may any person not a player in the game bet upon or in any other way influence the betting or the pot.

23-5-313. Rules of play to be posted -- rake-off approved. (1) Rules governing the conduct of each game shall be prominently posted within sight of the table where a live card game is played on the premises of a licensed gambling operator as defined in 23-5-212. Such rules shall include notice of the maximum percentage rake-off, if any, and shall require that the person taking the rake-off do so in an obvious manner.

(2) No live poker game shall be played in public except on a licensed card game table in the presence and under the control of a dealer or gambling operator duly licensed under the authority of the commission.

23-5-314. Gambling on cash basis. In every authorized card game the consideration paid for the chance to play shall be strictly cash. Every participant must present the money with which he intends to play the game at the time the game is played. No check, credit card, note, I O U, or other evidence of indebtedness may be offered or accepted as part of the price of participating in a card game or as payment of a debt incurred therein.

23-5-315. Minors not to participate. No person under the age of 18 years may be permitted to participate in any live card game held, operated, or conducted pursuant to this part.

23-5-316. Cheating unlawful. It shall be unlawful to conduct or participate in a card game authorized by this part in any manner which results in cheating, misrepresentation, or other such disreputable tactics which distract from a fair and equal chance for all participants or which otherwise affects the outcome of the game.

23-5-317. Live card tables - license - fees - disposition of fees. (1) A person who has been granted an operator's license as defined in 23-5-212 and a license under 16-4-401(2) to sell alcoholic beverages for consumption on the premises may be granted a license for the placement of live card games in his licensed establishment.

(2) Annual license fee in lieu of taxes for each live card game table operated in a licensed operator's premises shall be:

- (a) \$250 for the first table;
- (b) \$750 for the second table; and
- (c) \$1,000 for the third, and each additional table.

(3) The first \$100 of fees for each table collected under this part shall be retained by the Commission for administrative purposes.

(4) The commission must forward the remaining balance of the fee collected under subsection (2) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the licensed table is located, for deposit to the county or municipal treasury. The local government portion of this fee is statutorily appropriated to the commission as provided in 17-7-502 for deposit to the county or municipal treasury.

23-5-321. Licensing by local governing bodies forbidden.

(1) No city, town or county may issue licenses for the games or tables provided for in this part.

(2) Any license issued pursuant to this part shall be deemed to be a revocable privilege, and no licensed operator, or any other person or entity, may acquire any vested rights therein or thereunder.

23-5-322. Gambling prohibited by ordinance. (1) An incorporated city may enact an ordinance defining certain areas in its incorporated limits where gambling activities may or may not occur.

(2) A county may enact an ordinance or resolution defining certain areas in the county, not within the incorporated limits of a city, where gambling may or may not occur

(3) No county or incorporated city may by ordinance restrict the number of licenses that the commission may issue.

23-5-323. Peace officers' responsibilities. It shall be the duty of all peace officers to enforce the provisions of this part and to arrest and complain against any person violating any provision of this part. It shall be the duty of the county attorney for the respective county to prosecute all violations of this part in the manner and form as is provided by law, and it shall be a misdemeanor for any such person or persons to knowingly fail to perform his or her duty under this section.

23-5-331. Penalty. (1) Every person who willingly violates or who procures, aids, or abets in the willful violation of this part shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$1,000 or imprisonment in the county jail for not more than 3 months, or both.

(2) If the commission determines after a hearing conducted pursuant to the Montana Administrative Procedures Act that a person has violated any of the provisions of this part, or the commission's rules, the commission may, in addition to other penalties prescribed:

- (a) suspend the license for a period of not more than 180 days if the individual is licensed by the commission;
- (b) impose a civil penalty not to exceed \$6,000 for each violation whether or not the person is licensed by the commission;
- (c) revoke the license of the individual, such license being issued by the commission;
- (d) deny renewal of the license issued by the commission on expiration thereof; or
- (e) impose a combination of any two of the penalties set forth in subsections (1) through (4).

# **APPENDIX D**

## **Part 4 Live Bingo, Keno and Raffles**

Part 4

Live Bingo, Keno and Raffles

23-5-401. Short title. This part shall be known and may be cited and referred to as the "Live Bingo, Keno and Raffles Law".

23-5-402. Definitions. (1) As used in this part the following games, and no others, are specifically authorized and shall have the following meanings:

(a) "bingo" is a game of chance in which prizes are awarded using a card with a playing surface that bears a printed design of 5 rows of 5 squares each -- 25 squares in all. The letters B-I-N-G-O appear above this design, each letter above one of the vertical columns. No more than 75 numbers may be used which shall appear in each of the squares, except for the center square which is considered a free play;

(b) "keno", is a game of chance in which prizes are awarded using a card with 8 horizontal columns and 10 vertical columns on which a player may pick up to 10 numbers out of a total of 20 numbers selected at random out of numbers between 1 and 80.

(c) "raffles", which are conducted by drawing for prizes.

(2) "Equipment" means:

(a) with respect to bingo or keno, the receptacle and numbered objects drawn from it, the master board upon which such objects are placed as drawn, the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them, the boards or signs, however operated, used to announce or display the numbers or designations as they are drawn, public address system, and all other articles essential to the operation, conduct, and playing of bingo or keno; or

(b) with respect to raffles, the implements, devices, and machines designed, intended, or used for the conduct of raffles and the identification of the winning number or unit and the ticket or other evidence of right to participate in raffles.

(4) "commission" means the Montana state gaming commission as defined in 23-5-206.

(5) "caller" means a person licensed by the commission to work as a live bingo or keno caller who announces the order of the objects drawn in either live keno or live bingo from the equipment defined in 3(a).

23-5-404. Prior laws still in effect. (1) To the extent that they are not specifically superseded by provisions of this part or any other gambling law, the provisions of part 1 and part 2 of this chapter remain in effect.

(2) This part has no application to games simulated on video gambling machines authorized by part 6 of this chapter.

23-5-405. Bingo and keno gross proceeds tax - records - distribution - quarterly statement and payment. (1) Each bingo and keno licensee shall pay to the commission a tax of 3% of gross proceeds from the operation of each bingo and keno game licensed under this part.

(2) Each licensee shall keep a record of gross proceeds in such form as the commission may require. The records must at all times during the business hours of the licensee be subject to inspection by the commission, its agents, or employees.

(3) Each licensee shall, within 15 days after the end of each quarter, complete and deliver to the commission a statement showing the total gross proceeds for each keno or bingo game licensed to him, together with the total amount due the state as live bingo and keno gross proceeds tax for the preceding quarter. The statement must contain such other information as the commission may require.

(4) The commission must 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. Counties are not entitled to proceeds from taxes on live bingo or keno games located in cities and towns. The tax collected under subsection (3) is statutorily appropriated to the commission as provided in 17-7-502 for deposit to the county or municipal treasury.

23-5-406. Bingo/Keno callers - qualifications - license - fee. (1) It is unlawful for any person to work as a live bingo or keno caller as defined in this part without first having received a bingo/keno callers license from the commission. (2) The callers license may be issued annually or every two years pursuant to rules adopted by the commission. (3) The fee for each year in which the license is effective shall be \$25. This fee is not to be prorated. (4) The license fee charged for the issuance of a callers license will be retained by the commission for administration. (5) The keno/bingo callers license shall be worn upon the person licensed as a caller whenever they are working as a dealer. (6) Qualifications to become licensed as a keno/bingo caller shall be in conformance with the provisions of 23-5-211. (7) The commission may adopt rules to implement temporary licensing procedures until a permanent license is issued to an individual and the commission may delegate this authority to local governments including the ability to assess fees for the temporary licenses.

23-5-407. Live bingo and keno - license - license fee - disposition of fees. (1) All live bingo and keno games conducted by a gambling operator as defined in 23-5-212 must, prior to operation, be licensed by the Commission. Licensure of each game shall be noted upon the gambling operator's license as defined in 23-5-212.

(2) Licenses will be issued by the commission for the provision of either live keno or live bingo on an annual basis and are not prorated.

(3) The license fee for each bingo and keno game is \$100 annually.

(4) The license fee will be retained by the commission for administrative purposes.

23-5-410. Live Bingo and Keno -- hours of play -- restriction. Live keno and bingo games licensed under this part must be closed for play between the hours of 2 a.m. and 8 a.m. each day.

23-5-411. Bingo, keno, and raffles authorized. Conducting or participating in games of chance as specifically authorized and defined in 23-5-402 and in accordance with the provisions of this part and the rules of the commission is lawful.

23-5-412. Bingo and keno prizes. Bingo prizes may be paid in either tangible personal property or cash. A prize may not exceed the value of \$800 for each individual bingo award. or keno card. The price for an individual bingo or keno card may not exceed 50 cents. It shall be unlawful to, in any manner, combine any awards so as to increase the ultimate value of such award. The commission shall adopt rules defining and strictly enforcing this section.

23-5-413. Raffle prizes restricted -- exemption. (1) Raffle prizes must be in tangible personal property only and not in money, cash, stocks, bonds, evidences of indebtedness, or other intangible personal property and must not exceed the value of \$10,000 for each individual raffle card. It shall be unlawful to, in any manner, combine any awards so as to increase the ultimate value of such award.

(2) (a) The restrictions of subsection (1) do not apply to a raffle conducted by a nonprofit corporation, religious corporation sole, or other nonprofit organization when the corporation or organization is licensed by the commission to conduct the raffle. A separate license shall be required for each raffle conducted.

(b) The organization or corporation seeking the license under subsection (2)(a) must apply to the commission for the license and must provide information which the commission deems by rule to be required prior to the issuance of a license.

(3) The proceeds from the sale of the raffle tickets are to 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 may be used for the administrative cost of conducting the raffle.

(4) The corporation or organization conducting the raffle must submit an accounting to the commission within 30 days following the completion of the raffle. The person or persons submitting the application to the commission along with the corporation or organization conducting the raffle shall be responsible for submitting the accounting to the commission.

23-5-414. Restrictions on bingo, keno, and raffles. (1) In the playing of bingo or keno, no person who is not physically present on the premises where the game is actually conducted shall be allowed to participate as a player in the game.

(2) The sale of raffle tickets authorized by this part shall be restricted to events and participants within the geographic confines of the state of Montana.

23-5-415. Time limitations on raffle drawing. No raffle drawing may be held or winner determined unless the chances to participate have been offered for sale for at least 30 days prior to the drawing. The drawing shall take place no later than 90 days after the first offering for sale of chances to participate.

23-5-416. Minors not to participate. No person under the age of 18 years shall be permitted to participate in any game or games of chance held, operated, or conducted pursuant to this part.

23-5-417. Gambling on cash basis. (1) In every game of chance the consideration paid for the chance to play shall be strictly cash. Every participant must present the money with which he intends to play the game at the time the game is played. No check, credit card, note, I O U, or other evidence of indebtedness shall be offered or accepted as part of the price of participation in such game or as payment of a debt incurred therein.

23-5-418. Cheating unlawful. It shall be unlawful to conduct or participate in a game of chance authorized by this part in any manner which results in cheating, misrepresentation, or other such disreputable tactics which distract from a fair and equal chance for all participants or which otherwise affect the outcome of the game.

23-5-421. Gambling prohibited by ordinance. (1) An incorporated city may enact an ordinance defining certain areas in its incorporated limits where gambling activities may or may not occur.

(2) A county may enact an ordinance or resolution defining certain areas in the county, not within the incorporated limits of a city, where gambling may or may not occur

(3) No county or incorporated city may by ordinance restrict the number of licenses that the commission may issue.

23-5-423. Peace officers' responsibilities. It shall be the duty of all peace officers to enforce the provisions of this part and to arrest and complain against any person violating any provision of this part. It shall be the duty of the county attorney of the respective county to prosecute all violations of this part in the manner and form as is provided by law, and it shall be a misdemeanor for any such person or persons to knowingly fail to perform his or her duty under this section.

23-5-431. Penalty. Every person who willfully violates or who procures, aids, or abets in the willful violation of this part or any ordinance, resolution, or regulation adopted pursuant thereto shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$1,000 or imprisonment in the county jail for not more than 3 months, or both.

(2) If the commission determines after a hearing conducted pursuant to the Montana Administrative Procedures Act that a person has violated any of the provisions of this part, or the commission's rules, the commission may, in addition to other penalties prescribed:

- (a) suspend the license for a period of not more than 180 days if the individual is licensed by the commission;
- (b) impose a civil penalty not to exceed \$6,000 for each violation whether or not the person is licensed by the commission;
- (c) revoke the license of the individual, such license being issued by the commission;
- (d) deny renewal of the license issued by the commission on expiration thereof; or
- (e) impose a combination of any two of the penalties set forth in subsections (1) through (4).

# APPENDIX E

## Part 5 Sports Pools

Part 5

Sports Pools

23-5-501. Definitions . (1) "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 which consideration in money is paid by the person playing for each square or space for the chance to win money or other items of value on any sports event wherein the participants in such sports event are natural persons or animals.

(2) "commission" means the Montana state gaming commission as defined in 23-5-206.

23-5-502. Sports pools authorized. Conducting or participating in sports pools as defined and governed in this part is lawful.

23-5-503. Rules. (1) The card used for recording the pool and upon which the squares or spaces appear shall clearly state in advance of the sale of any chances the number of chances to be sold in that specific pool, the name of the event, the consideration to be paid for each chance, and the total amount to be paid to the winners.

(2) No chance to participate in a sports pool may be sold other than upon the premises in which the sports pool is conducted. The commission shall adopt rules and license any sports pool exceeding a total prize value of \$1000. The proceeds of any sports pool played in violation of this section and the rules of the commission may be confiscated by the commission. The winner or winners of any sports pool shall receive a 100% payout of the value of the sports pool.

23-5-504. Transportation exempt from federal law. The transportation of sports pool cards is hereby declared exempt from the provisions of 15 U.S.C. 1172.

23-5-505. Gambling on cash basis. (1) In every sports pool the consideration paid for the chance to play shall be strictly cash. Every participant must present the money with which he intends to play at the time the pool is entered.

23-5-506. Minors not to participate. No person under the age of 18 years may be permitted to participate in any sports pool held, operated, or conducted pursuant to this part.

23-5-507. Cheating unlawful. It shall be unlawful to conduct or participate in a sports pool authorized by this part in any manner which results in cheating, misrepresentation, or other such disreputable tactics which distract from a fair and equal chance for all participants or which otherwise affects the outcome of the pool.

23-5-508. Peace officers' responsibilities. It shall be the duty of all peace officers to enforce the provisions of this part and to arrest and complaint against any person violating any provision of this part. It shall be the duty of the county attorney of the respective county to prosecute all violations of this part in the manner and form as is provided by law, and it shall be a misdemeanor for any such person or persons to knowingly fail to perform his or her duty under this section.

23-5-509. Penalty. Every person who willfully violates or who procures, aids, or abets in the willful violation of this part shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$1,000 or imprisonment in the county jail for not more than 3 months, or both.

(2) If the commission determines after a hearing conducted pursuant to the Montana Administrative Procedures Act that a person has violated any of the provisions of this part, or the commission's rules, the commission may, in addition to other penalties prescribed:

- (a) suspend the license for a period of not more than 180 days if the individual is licensed by the commission;
- (b) impose a civil penalty not to exceed \$6,000 for each violation whether or not the person is licensed by the commission;
- (c) revoke the license of the individual, such license being issued by the commission;
- (d) deny renewal of the license issued by the commission on expiration thereof; or
- (e) impose a combination of any two of the penalties set forth in subsections (1) through (4).

23-5-510. Jurisdiction. Jurisdiction for all violations of this part is in the district court., provided, however, that the commission shall enforce its rules and licenses issued under this part in accordance with the Administrative Procedures Act.

23-5-511. Prior law still in effect. To the extent that they are not specifically superseded by the provisions of this part or any other gambling law, the provisions of part 1 of this chapter remain in effect.

# APPENDIX F

## Part 6 Video Gaming Machine Act