

## HOUSE BILL NO. 757

INTRODUCED BY WITT, CYR, DEVLIN, GALLUS, GEBHARDT, HARRINGTON, HEDGES, KEANE, LAKE, LAMBERT, LASLOVICH, LINDEEN, MAEDJE, MAHLUM, MCCARTHY, NEWMAN, A. OLSON, PETERSON, ROSS, B. RYAN, SHEA, SPRAGUE, TASH, TESTER, WILSON, MCNUTT, RIPLEY

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING LOCAL GOVERNMENTS TO CREATE MUSIC AND ENTERTAINMENT DISTRICTS UPON PROPER APPLICATION AND PAYMENT OF FEES; AUTHORIZING EXPANDED GAMBLING WITHIN A DISTRICT AND PROVIDING CONDITIONS FOR THAT GAMBLING; PROVIDING CRITERIA FOR AN AREA TO QUALIFY AS A DISTRICT; REQUIRING PAYMENT OF AN IMPACT FEE AND PROVIDING FOR ITS DISTRIBUTION; ESTABLISHING AN ENTERTAINMENT TICKET TAX FOR LIVE PERFORMANCES AND PROVIDING FOR DISTRIBUTION OF THE PROCEEDS; IMPOSING AN ACCOMMODATIONS TAX ON LODGING LOCATED IN OR NEAR THE DISTRICT AND PROVIDING FOR THE DISTRIBUTION OF THE PROCEEDS; REQUIRING A GAMBLING PERMIT; IMPOSING A GAMING TAX ON PROCEEDS IN A DISTRICT AND PROVIDING FOR THE DISTRIBUTION OF THE PROCEEDS; REQUIRING PERMITS FOR MACHINES, CASINOS, GAMES, AND TABLES IN A DISTRICT; REQUIRING LICENSURE OF GAMING EMPLOYEES; PROVIDING FOR MONITORING OF GAMBLING IN A DISTRICT; ALLOWING INDIAN TRIBES TO ESTABLISH, UNDER CERTAIN CONDITIONS, A CASINO WITHIN A MUSIC AND ENTERTAINMENT DISTRICT; PROVIDING RULEMAKING AUTHORITY TO THE DEPARTMENT OF REVENUE AND THE DEPARTMENT OF JUSTICE; PROVIDING STATUTORY APPROPRIATIONS; AMENDING SECTIONS 15-65-101, 15-65-111, 15-65-121, 16-3-304, 16-4-401, 17-7-502, 23-5-110, 23-5-111, 23-5-112, 23-5-113, 23-5-114, 23-5-115, 23-5-116, 23-5-117, 23-5-118, 23-5-119, 23-5-123, 23-5-136, 23-5-138, 23-5-161, 23-5-162, 23-5-172, 23-5-177, 23-5-306, 23-5-610, AND 23-5-612, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY PROVISIONS, AND A CONTINGENT TERMINATION DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 7] may be cited as the "Music and Entertainment District Act".

NEW SECTION. **Section 2. Purpose.** The purpose of [sections 1 through 7] is to provide for the creation of music and entertainment districts that will promote the state's economic development and job growth

by creating major tourism destination points and that will provide ongoing revenue for state government needs from taxes and fees imposed upon music and entertainment district activity.

**NEW SECTION. Section 3. Definitions.** Unless the context requires otherwise, for the purposes of [sections 1 through 7], the following definitions apply:

- (1) "Department" means the department of justice.
- (2) "District" means a music and entertainment district created as provided in [section 4].
- (3) (a) "Entertainment theater" means an indoor or outdoor theater or auditorium:
  - (i) located within a district where performances before a live audience occur; or
  - (ii) located outside of a district but within 25 miles of the district if the venue is not owned or leased by a public entity.
- (b) The term does not mean a movie theater or a venue at which a sporting event is held.
- (4) "Local government" means a municipality, county, or consolidated city-county government.
- (5) "Planned unit development" has the meaning provided in 76-3-103.

**NEW SECTION. Section 4. Creation of music and entertainment district authorized -- criteria.** (1) Upon the application of a developer or prospective developer of a planned unit development, a local government may, by resolution, create a music and entertainment district.

(2) The following criteria must be met before a local government may create a music and entertainment district:

- (a) all land within the proposed district must be part of a national historic landmark district designated by the United States secretary of the interior as provided in 16 U.S.C. 470a;
- (b) the proposed district must consist of at least 75 acres but not more than 320 acres;
- (c) all land within the proposed district must be part of an urban renewal area within the meaning provided in 7-15-4206;
- (d) all land within the proposed district must be within a planned unit development that has previously been approved by the local government or is under review by the local government and that includes plans for at least 20 entertainment theaters;
- (e) all land within the proposed district must have been or must currently be a national priority list site under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9603;

(f) the developer of the planned unit development shall demonstrate that the total cost of the planned unit development and the ancillary facilities, including but not limited to hotels, motels, athletic training facilities, recreational and commercial facilities, golf courses, stadiums, and the supporting infrastructure for those facilities, will not be less than \$1 billion;

(g) the developer of the planned unit development shall demonstrate that:

(i) at least 85% of the marketing costs of the businesses within the planned unit development will be targeted to attract out-of-state customers;

(ii) PROMOTION OF THE MUSIC AND ENTERTAINMENT DISTRICT IS NOT INTENDED TO ATTRACT RESIDENTS OF MONTANA TO DISTRICT CASINOS; AND

(iii) THE DEVELOPER DOES NOT INTEND TO COMPETE WITH OTHER GAMING AUTHORIZED IN MONTANA OUTSIDE THE MUSIC AND ENTERTAINMENT DISTRICT;

(h) the developer of the planned unit development shall demonstrate that the businesses within the district will promote Montana products and Montana agricultural products;

(i) the developer of the planned unit development shall demonstrate that the project will take no longer than 5 years to complete;

(j) the developer of the planned unit development shall provide a description of any ancillary facilities, as listed in subsection (2)(f), to be constructed by the developer within 25 miles of the boundaries of the proposed district;

(k) the developer of the planned unit development shall provide a financial commitment that ensures funding for the proposed construction within the planned unit development as well as the construction of any ancillary facilities to be constructed by the developer. The financial commitment may include reasonable contingencies, including the creation of the district by the local government, approval of the planned unit development by the local government, and the receipt of all necessary approvals, licenses, and permits.

(l) no other music and entertainment district has been established within 50 miles of the proposed district; and

(m) the application fee provided for in [section 6] has been paid and at least 6 months have passed since the payment has been made, unless the department has waived part or all of the 6-month waiting period.

NEW SECTION. **Section 5. Application for creation of music and entertainment district.** (1) After filing a notice of intent as provided in [section 6], the developer of a planned unit development may apply to a local government for the creation of a music and entertainment district.

(2) The application must demonstrate that the proposed district and the developer meet the criteria provided in [section 4].

(3) The applicant shall provide any additional information that the local government requests to assist the local government in deciding whether to approve creation of a district.

**NEW SECTION. Section 6. Notice of intent -- payment of fee required -- review of notice and adoption of rules.** (1) Prior to applying to a local government for the creation of a music and entertainment district, the applicant shall file with the department a notice of intent to apply to the local government.

(2) The notice of intent must identify the local government to which the applicant will apply for the creation of the music and entertainment district and include information that the department requires to fulfill its obligation to determine the suitability of the applicant and sources of financing. The department may request additional information with the notice of intent, but provision of the additional information may not alter the requirements of subsection (5).

(3) A nonrefundable fee of \$150,000 must accompany the notice of intent, must be deposited in the account in the state special revenue fund provided for in 23-5-612, and must be used for the purposes of administering [sections 1 through 7]. The nonrefundable fee is statutorily appropriated to the department as provided in 17-7-502.

(4) Upon receipt of the fee, the department shall review the notice of intent and review any preliminary applications submitted by prospective operators of casinos within the music and entertainment district. THE DEPARTMENT SHALL ALSO DETERMINE THE SUITABILITY OF ANY DEVELOPER OF OR OTHER PERSON WITH A FINANCIAL INTEREST IN A MUSIC AND ENTERTAINMENT DISTRICT. The department shall adopt rules that it determines are necessary to regulate gambling in a music and entertainment district.

(5) (a) The review of the notice of intent and the adoption of rules required in subsection (4) must be completed within 6 months of the payment of the fee required in subsection (3). Upon completion of the review of the notice and adoption of rules, the department shall send the applicant and the local government to which the applicant has applied for the creation of a district a notice of completion of review and adoption of rules. The notice of completion is a waiver of the balance of the 6-month period for the purposes of [section 4(2)(m)].

(b) The department's review of a preliminary application submitted by a prospective operator of a casino within the district is not subject to the 6-month requirement provided in subsection (5)(a).

**NEW SECTION. Section 7. Payment and distribution of impact fee.** (1) (a) Following the approval

of the planned unit development, the music and entertainment district, and the building permits from the local government but prior to the issuance of the building permits, the developer of the planned unit development shall pay to the county treasurer an impact fee that is equal to 2.5% of the projected construction cost to develop the planned unit development, as shown on the building permits, plus any ancillary facilities, including but not limited to hotels, motels, athletic training facilities, recreational and commercial facilities, golf courses, stadiums, and the supporting infrastructure for those facilities, to be constructed by the developer within 25 miles of the boundaries of the district.

(b) The county treasurer shall distribute 80% of each impact fee to the department of revenue and 20% to the local government that created the district.

(2) Upon receipt of the impact fee, the department of revenue shall deposit \$2 million into an account in the state special revenue fund provided for in 23-5-612 to be used by the department to recruit, hire, and train employees that the department determines are necessary to carry out the department's responsibility to regulate gambling within the district. The fee deposited in the state special revenue fund is statutorily appropriated to the department as provided in 17-7-502. The department of revenue shall deposit the remainder of the impact fee received in the state general fund.

**NEW SECTION. Section 8. Definitions.** Unless the context requires otherwise, for the purposes of [sections 8 through 14], the following definitions apply:

- (1) "District" means a music and entertainment district created as provided in [section 4].
- (2) (a) "Entertainment theater" means an indoor or outdoor theater or auditorium:
  - (i) located within a district where performances before a live audience occur; or
  - (ii) located outside of a district but within 25 miles of the district if the venue is not owned or leased by a public entity.
- (b) The term does not mean a movie theater or a venue at which a sporting event is held.
- (3) "Entertainment ticket" means a ticket that allows a person the privilege of being admitted into an entertainment theater for the purpose of watching a live performance.

**NEW SECTION. Section 9. Entertainment ticket tax.** There is imposed on the owner or operator of an entertainment theater an entertainment ticket tax of \$3 on each entertainment ticket sold or given away at no cost. For entertainment tickets given away at no cost, the tax is imposed only if the ticket is used to gain admittance to a live performance.

**NEW SECTION. Section 10. Collection and reporting.** At the end of each calendar quarter, the owner or operator of an entertainment theater shall report to the department the number of entertainment tickets sold, the number given away at no cost, and, of the number given away at no cost, the number actually used to gain admittance to a live performance. The report is due on or before the last day of the month following the end of the calendar quarter and must be accompanied by a payment in an amount equal to the tax imposed by [section 9].

**NEW SECTION. Section 11. Audits -- records.** (1) The department may audit the books and records of any owner, operator, or vendor who sells entertainment tickets to ensure that the proper amount of tax imposed by [section 9] has been collected. An audit may be conducted on the premises of the owner, operator, or vendor or at any other convenient location.

(2) The department may request the owner, operator, or vendor to provide the department with books, ledgers, registers, or other documents necessary to verify the correct amount of tax.

(3) The owner, operator, or vendor shall maintain and have available for inspection by the department books, ledgers, registers, or other documents showing the number of tickets sold or given away at no cost as well as the number of tickets used to gain admission to the entertainment theater for the preceding 3 years.

(4) Except in the case of a person who, with intent to evade the tax, purposely or knowingly files a false or fraudulent report violating the provisions of [sections 8 through 14], the amount of tax due under any report must be determined by the department within 3 years after the report is made. After the 3-year period, the department may not revise a report or recompute the tax due and a proceeding in court for the collection of the tax may not be instituted unless notice of any additional tax is provided within the 3-year period based on the results of an audit.

(5) An application for revision may be filed with the department by an owner or operator within 3 years from the original due date of the report.

**NEW SECTION. Section 12. Failure to pay or file -- penalty -- review -- interest.** (1) An owner or operator of an entertainment theater who fails to file the report as required by [section 10] must be assessed a penalty as provided in 15-1-216. The department may waive any penalty as provided in 15-1-206.

(2) An owner or operator of an entertainment theater who fails to make payment or fails to report and make payment as required by [section 10] must be assessed a penalty and interest as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206.

(3) (a) If an owner or operator of an entertainment theater fails to file the report required in [section 10] or if the department determines that the report understates the amount of tax due, the department may determine the amount of tax due and assess that amount against the owner or operator. The provisions of 15-1-211 apply to any assessment by the department, and the taxpayer may seek review of the assessment pursuant to 15-1-211.

(b) When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the owner or operator. The tax is due and payable at the expiration of 30 days after the notice and demand were mailed. Interest on any deficiency assessment must be computed as provided in 15-1-216.

NEW SECTION. **Section 13. Rulemaking authority.** The department shall adopt any rules necessary to implement and administer [sections 8 through 14].

NEW SECTION. **Section 14. Distribution of entertainment ticket tax.** (1) The department shall collect the entertainment ticket tax imposed under [section 9].

(2) Five-sixths of the tax collected must be distributed as follows:

~~—— (a) 20% must be [distributed to the K-12 public school districts of Montana based upon the ratio that each district's average number belonging (ANB) bears to the statewide ANB. The distribution must be deposited in the school flexibility fund provided for in 20-9-543];~~

~~—— (b) 20% must be deposited in the unrestricted subfund provided for in 17-2-102(4)(a)(i) to be used for the support, maintenance, and improvement of the Montana university system and to contribute to keeping tuition at levels that protect access and affordability for Montana residents;~~

~~—— (c) 20% must be allocated to the department of public health and human services to be used for programs, such as the children's health insurance program provided for in Title 53, chapter 4, part 10, and programs that focus on treatment of addictive disorders related to gambling;~~

~~(d)~~(A) 10% must be distributed to each incorporated municipality and county as follows:

(i) to each incorporated municipality in the proportion that the percentage of the population residing in the incorporated limits of the municipality bears to the total statewide population; and

(ii) to each county in the proportion that the percentage of the population of the county residing outside of the limits of an incorporated municipality bears to the total statewide population; and

~~(e)~~(B) ~~30%~~ 90% must be deposited in the state general fund.

(3) For the purposes of calculating the populations as provided in subsection ~~(2)(d)~~ (2)(A), the latest decennial census must be used.

(4) The remaining one-sixth of the tax collected must be disbursed directly to the municipality if the entertainment theater is located in a municipality, to the county in which the entertainment theater is located if the entertainment theater is located outside of a municipality, or to the consolidated city-county government if the entertainment theater is located in a consolidated city-county government. The disbursement in this subsection is statutorily appropriated as provided in 17-7-502.

**Section 15.** Section 15-65-101, MCA, is amended to read:

**"15-65-101. Definitions.** For purposes of this part, the following definitions apply:

(1) "Accommodation charge" means the fee charged by the owner or operator of a facility for use of the facility for lodging, including bath house facilities, but excluding charges for meals, transportation, entertainment, or any other similar charges.

(2) (a) "Campground" means a place, publicly or privately owned, used for public camping where persons may camp, secure tents, or park individual recreational vehicles for camping and sleeping purposes.

(b) The term does not include that portion of a trailer court, trailer park, or mobile home park intended for occupancy by trailers or mobile homes for resident dwelling purposes for periods of 30 consecutive days or more.

(3) "Council" means the tourism advisory council established in 2-15-1816.

(4) (a) "Facility" means a building containing individual sleeping rooms or suites, providing overnight lodging facilities for periods of less than 30 days to the general public for compensation. The term includes a facility represented to the public as a hotel, motel, campground, resort, dormitory, condominium inn, dude ranch, guest ranch, hostel, public lodginghouse, or bed and breakfast facility.

(b) The term does not include any health care facility, as defined in 50-5-101, any facility owned by a corporation organized under Title 35, chapter 2 or 3, that is used primarily by persons under the age of 18 years for camping purposes, any hotel, motel, hostel, public lodginghouse, or bed and breakfast facility whose average daily accommodation charge for single occupancy does not exceed 60% of the amount authorized under 2-18-501 for the actual cost of lodging for travel within the state of Montana, or any other facility that is rented solely on a monthly basis or for a period of 30 days or more.

(5) "Music and entertainment district" means an area established pursuant to [section 4].

~~(5)(6)~~ "Nonprofit convention and visitors bureau" means a nonprofit corporation organized under



Montana law and recognized by a majority of the governing body in the city, consolidated city-county, resort area, or resort area district in which the bureau is located.

~~(6)~~(7) "Regional nonprofit tourism corporation" means a nonprofit corporation organized under Montana law and recognized by the council as the entity for promoting tourism within one of several regions established by executive order of the governor.

~~(7)~~(8) "Resort area" means an area established pursuant to 7-6-1508.

~~(8)~~(9) "Resort area district" has the meaning provided in 7-6-1531."

**Section 16.** Section 15-65-111, MCA, is amended to read:

**"15-65-111. Tax rate.** (1) There is imposed on the user of a facility a tax at a rate equal to 4% of the accommodation charge collected by the facility.

(2) In addition to the tax imposed in subsection (1), there is imposed on the user of a facility located in a music and entertainment district or within 25 miles of a music and entertainment district a tax at a rate of 2% of the accommodation charge collected by the facility.

~~(2)~~(3) Accommodation charges do not include charges for rooms used for purposes other than lodging."

**Section 17.** Section 15-65-121, MCA, is amended to read:

**"15-65-121. (Temporary) Distribution of tax proceeds.** (1) The proceeds of the tax imposed by 15-65-111~~(1)~~ must, in accordance with the provisions of 15-1-501, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 15-1-501 and as provided in subsections (1)(a) through (1)(e) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies. The amount of \$400,000 each year must be deposited in the Montana heritage preservation and development account provided for in 22-3-1004. For the fiscal year ending June 30, 2003, the amount of \$1.7 million must be deposited in the state general fund. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation, deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies, or deposited in the heritage preservation and development account is statutorily appropriated, as

provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(d) 67.5% to be used directly by the department of commerce, except as provided in section 1, Chapter 11, Special Laws of August 2002; and

(e) (i) except as provided in subsection (1)(e)(ii), 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city, consolidated city-county, resort area, or resort area district exceeds \$35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city, consolidated city-county, resort area, or resort area district is located, to be distributed to the nonprofit convention and visitors bureau in that city, consolidated city-county, resort area, or resort area district.

(2) If a city, consolidated city-county, resort area, or resort area district qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city, consolidated city-county, resort area, or resort area district is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials.

(4) The proceeds of the tax imposed by 15-65-111(2) must be distributed as follows:

(a) ~~one-half~~ 40% must be distributed in the same manner as provided for in [section 14(2)]; and

(B) 10% MUST BE DISTRIBUTED TO THE BOARD OF HORSERACING FOR THE PROMOTION OF THE HORSERACING INDUSTRY, FOR PAYMENT OF BREEDERS' INCENTIVES, AND FOR LIVE HORSERACING PURSE DISTRIBUTIONS; AND

(b)(c) one-half 50% must be disbursed directly to the municipality if the facility is located in a municipality, to the county in which the facility is located if the facility is located outside of a municipality, or to the consolidated city-county government if the facility is located in a consolidated city-county government. The disbursement in this subsection ~~(4)(b)~~ (4)(C) is statutorily appropriated as provided in 17-7-502. (Terminates July 1, 2007--sec. 3, Ch. 469, L. 2001.)

**15-65-121. (Effective July 1, 2007) Distribution of tax proceeds.** (1) The proceeds of the tax imposed by 15-65-111(1) must, in accordance with the provisions of 15-1-501, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 15-1-501 and as provided in subsections (1)(a) through (1)(e) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation or deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(d) 67.5% to be used directly by the department of commerce; and

(e) (i) except as provided in subsection (1)(e)(ii), 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds

collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city, consolidated city-county, resort area, or resort area district exceeds \$35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city, consolidated city-county, resort area, or resort area district is located, to be distributed to the nonprofit convention and visitors bureau in that city, consolidated city-county, resort area, or resort area district.

(2) If a city, consolidated city-county, resort area, or resort area district qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city, consolidated city-county, resort area, or resort area district is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials.

(4) The proceeds of the tax imposed by 15-65-111(2) must be distributed as follows:

(a) ~~one-half~~ 40% must be distributed in the same manner as provided for in [section 14(2)]; and

(B) 10% MUST BE DISTRIBUTED TO THE BOARD OF HORSERACING FOR THE PROMOTION OF THE HORSERACING INDUSTRY, FOR PAYMENT OF BREEDERS' INCENTIVES AND FOR LIVE HORSERACING PURSE DISTRIBUTIONS; AND

(b)(c) ~~one-half~~ 50% must be disbursed directly to the municipality if the facility is located in a municipality, to the county in which the facility is located if the facility is located outside of a municipality, or to the consolidated city-county government if the facility is located in a consolidated city-county government. The disbursement in this subsection ~~(4)(b)~~ (4)(C) is statutorily appropriated as provided in 17-7-502."

**NEW SECTION. Section 18. Gambling allowed in music and entertainment district.** (1) The following types of gambling and gambling activities are authorized in a music and entertainment district casino for which a casino permit has been issued by the department pursuant to [section 19] and that is operated under a license issued by the department pursuant to 23-5-177:

(a) roulette, keno, bingo, fan-tan, twenty-one, blackjack, craps, poker, baccarat, and variations of those games as authorized by the department in the rules adopted pursuant to [section 27]; and

(b) slot machines, keno machines, bingo machines, poker machines, twenty-one machines, and

variations of those machines as authorized by the department in the rules adopted pursuant to [section 27].

(2) Betting or wagering on sporting events is not permitted within a music and entertainment district except as otherwise authorized in this chapter.

**NEW SECTION. Section 19. Music and entertainment district casino permit -- quota -- annual fee.**

(1) The department ~~shall~~ MAY issue 10 music and entertainment district casino permits within a music and entertainment district created pursuant to [section 4] if at least 10 qualified applicants apply for a permit. No more than 10 permits may be issued for casinos within a district.

(2) The department shall, by rule, establish an annual fee for a casino permit. The fee may not be less than \$100,000 or more than \$250,000, and the amount must be based on the amount that the department anticipates it will need for carrying out its responsibility to regulate gambling in a music and entertainment district. The annual fee must be deposited in the account in the state special revenue fund provided for in 23-5-612 and must be used for the purposes of regulating gambling within a music and entertainment district. The fee is statutorily appropriated to the department as provided in 17-7-502.

(3) For each music and entertainment district casino permit issued pursuant to subsection (1), the department is authorized to issue a music and entertainment district casino operator's license in the same manner that a license is issued under 23-5-176 and 23-5-177.

**NEW SECTION. Section 20. Music and entertainment district gaming tax -- reporting requirement -- distribution.** (1) An operator who has received a music and entertainment district casino operator's license shall:

(a) pay to the department ~~of revenue~~ a tax equal to ~~3.5% of the casino's gross proceeds;~~

(i) 15% OF THE GROSS INCOME FROM EACH VIDEO GAMBLING MACHINE FOR WHICH A PERMIT HAS BEEN ISSUED PURSUANT TO [SECTION 24] THAT WOULD BE LEGAL UNDER TITLE 23, CHAPTER 5, PART 6, IF LOCATED OUTSIDE A MUSIC AND ENTERTAINMENT DISTRICT CASINO. FOR PURPOSES OF THIS TAX, THE LIMITATIONS ON THE NUMBER OF MACHINES PROVIDED FOR IN 23-5-611 AND THE LIMITATIONS ON MONEY PLAYED AND THE VALUE OF PRIZES PROVIDED FOR IN 23-5-608 MAY NOT BE CONSIDERED WHEN DETERMINING WHETHER A VIDEO GAMBLING MACHINE IS A LEGAL MACHINE UNDER TITLE 23, CHAPTER 5, PART 6.

(ii) 7% OF THE GROSS INCOME FOR ALL OTHER MACHINES OR TABLES ISSUED A PERMIT UNDER [SECTION 24];

and

(b) within 15 days after the end of each quarter and in the manner prescribed by the department ~~of~~

revenue, complete and deliver to the department of revenue a report showing the casino's total gross proceeds, together with the total amount of tax due. The report must contain any other relevant information that the department of revenue requires.

(2) (a) ~~Six-sevenths of the tax collected pursuant to this section must be distributed as provided in [section 14(2)].~~

~~(b) The remaining one-seventh of the tax must be disbursed to the local government that created the music and entertainment district. THE DEPARTMENT SHALL, IN ACCORDANCE WITH THE PROVISIONS OF 15-1-501, DEPOSIT THE TAX COLLECTED PURSUANT TO SUBSECTION (1)(A)(I) OF THIS SECTION IN THE STATE GENERAL FUND.~~

(B) THE DEPARTMENT SHALL DISTRIBUTE 89.3% OF THE TAX COLLECTED PURSUANT TO SUBSECTION (1)(A)(II) IN ACCORDANCE WITH THE DISTRIBUTION PROVIDED FOR IN [SECTION 14(2)].

(C) THE DEPARTMENT SHALL DISTRIBUTE 10.7% OF THE TAX COLLECTED PURSUANT TO SUBSECTION (1)(A)(II) TO THE LOCAL GOVERNMENT THAT CREATED THE MUSIC AND ENTERTAINMENT DISTRICT. The disbursement in this subsection ~~(2)(b)~~ (2)(c) is statutorily appropriated as provided in 17-7-502.

(3) An operator who fails to file the report or pay the tax as required by subsection (1) or who fails to pay the full amount of the tax due must be assessed a penalty and shall pay interest equal to the penalty and interest provided for in 15-1-216 23-5-136. ~~The department of revenue may, in its discretion and for reasonable cause, waive a penalty.~~

NEW SECTION. Section 21. No restriction on hours of play in casino. A music and entertainment district casino that has been issued a permit pursuant to [section 19] may be open 24 hours a day. There are no restrictions on the hours that gambling may be open to the public in a music and entertainment district casino that has been issued a casino permit pursuant to [section 19].

NEW SECTION. Section 22. No restriction on bet or prize. There is no restriction on the amount of a wager or bet within a music and entertainment district casino that has been issued a casino permit pursuant to [section 19], and there is no limit on a prize or payout. The payout for slot machines and other gambling machines may be in cash or tokens directly from the machine.

NEW SECTION. Section 23. No limit on machines or tables. There is no limit on the number of gambling machines or live game tables within the designated gaming area within a music and entertainment district casino that has been issued a permit pursuant to [section 19], SUBJECT TO THE AREA LIMITATION CONTAINED

IN 23-5-117(4).

**NEW SECTION. Section 24. Annual permit for each machine or table -- fee.** (1) A permit must be obtained from the department for each slot machine, keno machine, bingo machine, poker machine, twenty-one machine, live game table, live keno game, and live bingo game in a music and entertainment district casino that has been issued a casino permit pursuant to [section 19].

(2) There is an annual permit fee of \$220 for each live game table and each machine and an annual permit fee of \$500 for each live keno game and live bingo game. The permit expires on June 30. The permit fee must be prorated on a quarterly basis, and the department may not grant a refund if the machine ceases operation before the permit expires.

(3) The permit fee must be deposited in the account in the state special revenue fund provided for in 23-5-612. The fee is statutorily appropriated to the department as provided in 17-7-502.

**NEW SECTION. Section 25. Licensure of gaming employees -- rulemaking authority.** (1) All gaming employees EMPLOYED WITHIN A MUSIC AND ENTERTAINMENT DISTRICT CASINO shall obtain an annual license from the department.

(2) An applicant for a license as a gaming employee shall provide the department with information that the department requests to enable the department to determine whether the applicant poses a threat to the public interest of the state or a threat to the effective regulation and control of gambling.

(3) The department may conduct an independent investigation of the applicant.

(4) The department may, by rule, adopt more than one type of gaming employee license and may adopt a different fee for each type of license.

(5) The fee must be deposited in the account in the state special revenue fund provided for in 23-5-612 to be used to pay the administrative costs of reviewing applications, conducting investigations, and making the determination to issue or renew gaming employee licenses. The fee is statutorily appropriated to the department as provided in 17-7-502.

**NEW SECTION. Section 26. License required to sell alcohol for on-premises consumption.** In order to sell alcoholic beverages for on-premises consumption in a music and entertainment district casino for which a permit has been issued by the department pursuant to [section 19], an appropriate license must be obtained from the department of revenue in accordance with Title 16, chapter 4. The licensee of an alcohol

beverage license and the licensee of a music and entertainment district casino operator's license issued pursuant to [section 19] need not be the same person.

**NEW SECTION. Section 27. Electronic central monitoring -- rulemaking authority.** (1) A music and entertainment district casino must have an electronic central monitoring and accounting system consistent with rules adopted by the department and approved by the department.

(2) The electronic central monitoring and accounting system used by a music and entertainment district casino must be designed to assist the department in carrying out its obligation to regulate gambling and to assist the department in carrying out its obligation to collect the fees, permits, and taxes related to gambling within a music and entertainment district. The system used by the casino must have the ability to communicate with a central system operated by the department. ~~All video gambling machines must be connected to the central monitoring system.~~

**NEW SECTION. Section 28. Compensation agreements between owner, operator, and licensee.** (1) The following individuals may enter into agreements that allow a set amount, a percentage of the gross proceeds, or a combination of a set amount and a percentage of the gross proceeds to be apportioned among the parties for reporting and taxation purposes:

- (a) owners ~~or secured parties~~ of a facility containing a music and entertainment district casino;
- (b) an operator of a music and entertainment district casino; and
- (c) a licensee, including a licensee of a license issued under Title 16.

(2) The parties shall provide a copy of any agreement or lease allocating income and expenses to the department for determining the identity of any person with an interest in a music and entertainment district casino operation FOR THE PURPOSE OF DETERMINING SUITABILITY FOR LICENSING AND THE ANNUAL RENEWAL OF THE LICENSE.

- (3) An agreement may also allocate business expenses.

**Section 29.** Section 16-3-304, MCA, is amended to read:

**"16-3-304. Closing hours for licensed retail establishments -- exception.** (1) Except as provided in 16-3-305 or subsection (2) of this section, all licensed establishments ~~wherein in which~~ alcoholic beverages are sold, offered for sale, or given away at retail ~~shall must~~ be closed each day between 2 a.m. and 8 a.m.; ~~provided, however, that~~ In addition, when any ~~municipal incorporation~~ incorporated municipality has by ordinance further restricted the hours of sale of alcoholic beverages, then the sale of alcoholic beverages is prohibited within the



limits of ~~any such city or town~~ the municipality during the time ~~such the~~ sale is prohibited by this ~~code and in addition thereto~~ section and during the hours that it is prohibited by ~~such the~~ ordinance. During ~~such the~~ hours that the sale of alcoholic beverages is prohibited, all persons except the alcoholic beverage licensee and employees of ~~such the~~ licensed establishment ~~shall~~ must be excluded from the licensed premises.

(2) The restrictions on the sale or consumption of alcohol between 2 a.m. and 8 a.m. do not apply to a licensed establishment located in a music and entertainment district casino operating under a casino permit issued pursuant to [section 19]."

**Section 30.** Section 16-4-401, MCA, is amended to read:

**"16-4-401. License as privilege -- criteria for decision on application.** (1) A license under this code is a privilege that the state may grant to an applicant and is not a right to which any applicant is entitled.

(2) Except as provided in ~~subsection~~ subsections (6) and (7), in the case of a license that permits on-premises consumption, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant will not possess an ownership interest in more than one establishment licensed under this chapter for all-beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant or any member of the applicant's immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

(iv) the applicant is a resident of the state and is qualified to vote in a state election;

(v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

(vi) the applicant is not under 19 years of age; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (2)(a)(iv);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a);

(iii) each individual who has control over the operation of the license meets the requirements for an individual applicant listed in subsection (2)(a);

(iv) each person who shares in the profits or liabilities of a license meets the requirements for an individual applicant listed in subsection (2)(a). This subsection (2)(b)(iv) does not apply to a shareholder of a corporation who owns less than 10% of the outstanding stock in that corporation.

(v) the corporation is authorized to do business in Montana; and

(vi) in the case of a corporation not listed on a national stock exchange, each owner of stock meets the requirements of subsections (2)(a)(i) and (2)(a)(ii); and

(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (2)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (2)(b).

(3) In the case of a license that permits only off-premises consumption, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant will not possess an ownership interest in more than one establishment licensed under this chapter for all-beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant or any member of the applicant's immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

(iv) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, the applicant's rights have been restored;

(v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

(vi) the applicant is not under 19 years of age; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (3)(a)(iv);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (3)(a); and

(iii) the corporation is authorized to do business in Montana; and

(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (3)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (3)(b).

(4) In the case of a license that permits the manufacture, importing, or wholesaling of an alcoholic beverage, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant has no ownership interest in any establishment licensed under this chapter for retail alcoholic beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, rights have been restored;

(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments;

(v) the applicant is not under 19 years of age; and

(vi) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is owned or controlled by a manufacturer of an alcoholic beverage; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (4)(a)(iii);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (4)(a);

(iii) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is owned or controlled by a manufacturer of an alcoholic beverage; and

(iv) the corporation is authorized to do business in Montana; and

(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (4)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection

(4)(b).

(5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), and (4)(b) apply separately to each class of stock.

(6) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant to 16-4-302.

(7) The provisions of subsection (2) regarding residency AND THE OWNERSHIP INTEREST IN MORE THAN ONE LICENSED ESTABLISHMENT do not apply to a license for on-premises consumption when the premises is located within a music and entertainment district casino for which a casino permit has been issued pursuant to [section 19]. If the license is moved to a premises other than one in a music and entertainment district casino, then the residency provisions AND THE PROVISIONS RELATED TO OWNERSHIP INTEREST IN MORE THAN ONE LICENSED ESTABLISHMENT apply."

**Section 31.** Section 17-7-502, MCA, is amended to read:

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

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

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

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

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; [section 6]; [section 7]; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; [section 14]; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; [section 19]; [section 20]; [section 24]; [section 25]; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,

paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December 31, 2006; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)"

**Section 32.** Section 23-5-110, MCA, is amended to read:

**"23-5-110. Public policy of state concerning gambling.** (1) The legislature finds that for the purpose of ensuring the proper gambling environment in this state it is necessary and desirable to adopt a public policy regarding public gambling activities in Montana. The legislature therefore declares it is necessary to:

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

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

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

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

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

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

(2) The legislature adopts the policy that an applicant for a license or permit or other department approval under parts 1 through 8 of this chapter and [sections 18 through 28] does not have a right to the issuance of a

license or permit or the granting of the approval sought. The issuance of a license or permit issued or other department approval granted pursuant to the provisions of parts 1 through 8 of this chapter and [sections 18 through 28] is a privilege revocable only for good cause. A holder does not acquire a vested right in the license or permit issued or other department approval granted. A license or permit issued under parts 1 through 8 of this chapter and [sections 18 through 28] may not be sold, assigned, leased, or transferred.

(3) Revenue to fund the expense of administration and control of gambling as regulated by parts 1 through 8 of this chapter and [sections 18 through 28] must be derived solely from fees, taxes, and penalties on gambling activities, except the gambling activities of the Montana state lottery and the parimutuel industry."

**Section 33.** Section 23-5-111, MCA, is amended to read:

**"23-5-111. Construction and application.** In view of Article III, section 9, of the Montana constitution, parts 1 through 8 of this chapter and [sections 18 through 28] must be strictly construed by the department and the courts to allow only those types of gambling and gambling activity that are specifically and clearly allowed by those parts."

**Section 34.** Section 23-5-112, MCA, is amended to read:

**"23-5-112. Definitions.** Unless the context requires otherwise, the following definitions apply to parts 1 through 8 of this chapter and [sections 18 through 28]:

(1) "Applicant" means a person who has applied for a license or permit issued by the department pursuant to parts 1 through 8 of this chapter and [sections 18 through 28].

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

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

(b) With respect to live games, including roulette, fan-tan, twenty-one, blackjack, craps, poker, and baccarat, the term means equipment authorized by administrative rule for use in the game.

(4) "Bingo" means a gambling activity played for prizes with a card bearing a printed design of 5 columns of 5 squares each, 25 squares in all. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns. More than 75 numbers may not be used. One number must appear in each square, except for the center square, which may be considered a free play. Numbers are randomly drawn using authorized equipment until the game is won by the person or persons who first cover one or more previously designated

arrangements of numbers on the bingo card.

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

(6) "Blackjack" means a card game also known as "21" played by a maximum of seven players in which each player bets against the dealer. The object is to draw cards whose value will equal or approach 21 without exceeding that amount, with the winnings payable by the dealer if the player holds cards more valuable than the dealer's cards.

~~(6)~~(7) "Card game table" or "table" means a live card game table:

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

(b) operated by a senior citizen center.

~~(7)~~(8) "Card game tournament" means a gambling activity for which a permit has been issued involving participants who pay valuable consideration for the opportunity to compete against each other in a series of live card games conducted over a designated period of time.

~~(8)~~(9) "Dealer" means a person with a dealer's license issued under part 3 of this chapter or [sections 18 through 28].

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

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

(a) purchases or obtains from a licensed manufacturer, distributor, or route operator equipment of any kind for use in gambling activities; and

(b) sells the equipment to a licensed distributor, route operator, or operator.

~~(11)~~(12) (a) "Gambling" or "gambling activity" means risking money, credit, deposit, check, property, or any other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise.

(b) The term does not mean conducting or participating in a promotional game of chance and does not include amusement games regulated by Title 23, chapter 6, part 1.

~~(12)~~(13) "Gambling device" means a mechanical, electromechanical, or electronic device, machine, slot machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling activity.

~~(13)~~(14) "Gambling enterprise" means an activity, scheme, or agreement or an attempted activity, scheme, or agreement to provide gambling or a gambling device to the public.

(15)(a) "Gaming area" means the area or areas within a music and entertainment district casino in which the public may engage in gambling activity. A gaming area includes the area adjacent to any gambling devices or live game tables where a gaming employee or the participant in a gambling activity might reasonably be found.

(b) A gaming area does not include areas:

(i) of a casino that are not open to the public such as private gaming rooms;

(ii) adjacent to a casino that are used by the public, casino customers, and casino employees in which gambling is not offered, including hotel lobbies, areas where tickets for shows are sold, bars and lounges where gambling is not available, and retail spaces; or

(iii) where poker or card game tournaments are held on an irregular basis.

(16) "Gaming employee" means a person employed by the holder of a gambling license to work directly with the gambling portion of the licensee's business. The term includes but is not limited to dealers, change and count room personnel, cashiers, employees who work the floor of a casino, cage personnel, gambling machine mechanics, persons who repair gambling machines, security personnel, shift or pit bosses, and any other type of employee that the department determines by rule to be a gaming employee.

~~(14)~~(17) "Gift enterprise" means a gambling activity in which persons have qualified to obtain property to be awarded by purchasing or agreeing to purchase goods or services. The term does not mean:

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

(b) a promotional game of chance; or

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

~~(15)~~(18) "Gross proceeds", except with respect to games of poker, means gross revenue received less prizes paid out. With respect to games of poker, the term means the amount taken by the operator.

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

(a) a ticket or card, by whatever name known, containing concealed numbers or symbols that may match numbers or symbols designated in advance as prize winners, including a pull tab, punchboard, push card, tip board, pickle ticket, break-open, or jar game, except for one used under chapter 7 of this title or under part 5 of this chapter, or in a promotional game of chance approved by the department, or as authorized under [section 18]; and

(b) an apparatus, implement, or device, by whatever name known, specifically designed to be used in conducting an illegal gambling enterprise, including a faro box, faro layout, roulette wheel, roulette table, or craps



table or a slot machine, except as provided in 23-5-153 or in [sections 18 through 28].

~~(17)~~(20) "Illegal gambling enterprise" means a gambling enterprise that violates or is not specifically authorized by a statute or a rule of the department. The term includes:

(a) a card game, by whatever name known, involving any bank or fund from which a participant may win money or other consideration and that receives money or other consideration lost by the participant and includes the card games of blackjack, twenty-one, jacks or better, baccarat, or chemin de fer, except as authorized by [sections 18 through 28];

(b) a dice game, by whatever name known, in which a participant wagers on the outcome of the roll of one or more dice, including craps, hazard, or chuck-a-luck, but not including activities authorized by 23-5-160 or [sections 18 through 28];

(c) sports betting, by whatever name known, in which a person places a wager on the outcome of an athletic event, including bookmaking, parlay bets, or sultan sports cards, but not including those activities authorized in chapter 4 of this title and parts 2, 5, and 8 of this chapter; and

(d) credit gambling.

~~(18)~~(21) "Keno" means a game of chance in which prizes are awarded using a card with 8 horizontal rows and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at random at least 20 numbers out of numbers between 1 and 80, inclusive.

~~(19)~~(22) "Keno caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live keno.

~~(20)~~(23) "License" means a license for an operator, dealer, card room contractor, gaming employee, manufacturer of devices not legal in Montana, sports tab game seller, manufacturer of electronic live bingo or keno equipment, other manufacturer, distributor, or route operator that is issued to a person by the department.

~~(21)~~(24) "Licensee" means a person who has received a license from the department.

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

(26) "Live game" means a game played between persons or between persons and a gaming employee on the premises of a licensed gambling operator.

~~(23)~~(27) (a) "Lottery" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have paid or promised to pay valuable consideration for the chance of obtaining the property or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance.

~~(b)~~ The term does not mean lotteries authorized under chapter 7 of this title.

~~(24)~~~~(28)~~ "Manufacturer" means a person who assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind to be used as a gambling device and who sells the equipment directly to a licensed distributor, route operator, or operator.

~~(25)~~~~(29)~~ "Nonprofit organization" means a nonprofit corporation or nonprofit charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, senior citizens', or service organization established for purposes other than to conduct a gambling activity.

~~(26)~~~~(30)~~ "Operator" means a person who purchases, receives, or acquires, by lease or otherwise, and operates or controls for use in public, a gambling device or gambling enterprise authorized under parts 1 through 8 of this chapter or [sections 18 through 28].

~~(27)~~~~(31)~~ "Permit" means approval from the department to make available for public play a gambling device or gambling enterprise approved by the department pursuant to parts 1 through 8 of this chapter or [sections 18 through 28].

~~(28)~~~~(32)~~ "Person" or "persons" means both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

~~(29)~~~~(33)~~ "Premises" means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator's license application and approved by the department.

~~(30)~~~~(34)~~ "Promotional game of chance" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have not paid or are not expected to pay any valuable consideration or who have not purchased or are not expected to purchase any goods or services for a chance to obtain the property, a portion of it, or a share in it. The property is disposed of or distributed by simulating a gambling enterprise authorized by parts 1 through 8 of this chapter or by operating a device or enterprise approved by the department that was manufactured or intended for use for purposes other than gambling.

~~(31)~~~~(35)~~ "Public gambling" means gambling conducted in:

(a) a place, building, or conveyance to which the public has access or may be permitted to have access;  
(b) a place of public resort, including but not limited to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization; or

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

~~(32)~~~~(36)~~ "Raffle" means a form of lottery in which each participant pays valuable consideration for a ticket

to become eligible to win a prize. Winners must be determined by a random selection process approved by department rule.

~~(33)~~(37) "Route operator" means a person who:

(a) purchases from a licensed manufacturer, route operator, or distributor equipment of any kind for use in a gambling activity;

(b) leases the equipment to a licensed operator for use by the public; and

(c) may sell to a licensed operator equipment that had previously been authorized to be operated on a premises.

~~(34)~~(38) "Senior citizen center" means a facility operated by a nonprofit or governmental organization that provides services to senior citizens in the form of daytime or evening educational or recreational activities and does not provide living accommodations to senior citizens. Services qualifying under this definition must be recognized in the state plan on aging adopted by the department of public health and human services.

~~(35)~~(39) (a) "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance, or machine that, upon insertion of a coin, currency, token, credit card, or similar object or upon payment of any valuable consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner.

(b) This definition does not apply to video gambling machines authorized under part 6 of this chapter.

~~(36)~~(40) "Video gambling machine" is a gambling device specifically authorized by [section 18] or part 6 of this chapter and the rules of the department."

**Section 35.** Section 23-5-113, MCA, is amended to read:

**"23-5-113. Department as criminal justice agency -- seized property.** (1) The department is a criminal justice agency. Designated agents of the department are granted peace officer status, with the power of search, seizure, and arrest, to investigate gambling activities in this state regulated by parts 1 through 8 of this chapter, [sections 18 through 28], and the rules of the department and to report violations to the county attorney of the county in which they occur.

(2) Upon conviction for any violation of parts 1 through 8 of this chapter or [sections 18 through 28], the court may order any property seized by a department or local law enforcement agent during a lawful search to be forfeited to the department, sold, if necessary, and disposed of under 23-5-123."

**Section 36.** Section 23-5-114, MCA, is amended to read:

**"23-5-114. Department employees -- activities prohibited.** (1) An employee of the department directly involved with the prosecution, investigation, regulation, or licensing of gambling, as designated by the attorney general, may not:

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

(b) be employed by a licensed operator in any capacity that requires assisting in conducting a gambling activity regulated under parts 1 through 6 of this chapter or [sections 18 through 28] or maintaining records for the gambling activity;

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

(d) participate in a gambling activity governed by parts 1 through 6 of this chapter or [sections 18 through 28], except in performing assigned employment duties. An employee may participate in a gambling activity governed by chapter 4 or 7 of this title.

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

**Section 37.** Section 23-5-115, MCA, is amended to read:

**"23-5-115. Powers and duties of department -- licensing.** (1) The department shall administer the provisions of parts 1 through 8 of this chapter and [sections 18 through 28].

(2) The department shall adopt rules to administer and implement parts 1 through 8 of this chapter [and sections 18 through 28].

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

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

(5) The department may suspend, revoke, deny, or place a condition on a license issued under parts

1 through 8 of this chapter and [sections 18 through 28].

(6) The department may not make public or otherwise disclose confidential criminal justice information, as defined in 44-5-103, information obtained in the tax reporting processes, personal information protected by an individual privacy interest, or trade secrets, as defined in 30-14-402, specifically identified and for which there are reasonable grounds of privilege asserted by the party claiming the privilege.

(7) The department shall assess, collect, and disburse any fees, taxes, or charges authorized under parts 1 through 8 of this chapter and [sections 18 through 28]."

**Section 38.** Section 23-5-116, MCA, is amended to read:

**"23-5-116. Disclosure of information.** (1) The department shall, upon request, disclose information concerning a current or former gambling license applicant or gambling licensee or any other person engaged in gambling or a gambling activity governed by parts 1 through 8 of this chapter and [sections 18 through 28], except:

- (a) confidential criminal justice information, as defined in 44-5-103;
- (b) personal information protected by an individual privacy interest;
- (c) trade secrets, as defined in 30-14-402, specifically identified and for which there are reasonable grounds of privilege asserted by the party claiming the privilege; and
- (d) information obtained in the tax reporting processes.

(2) Notwithstanding the limitations set forth in subsection (1), the department may disclose any information obtained in the application or tax reporting process or as a result of other department operations to:

- (a) a federal, state, city, county, or tribal criminal justice agency;
- (b) the department of revenue and the federal internal revenue service; and
- (c) a gambling regulatory agency of another state, a local government unit of another state, a tribal government, or a foreign nation, provided that the disclosure of the information complies with the law of that jurisdiction and that the receiving entity has been approved for receipt by the Montana attorney general.

(3) In the event of a tax delinquency or at the request of a video gambling machine permitholder, the department shall inform the permitholder of the status of a licensed machine owner's tax payments for a video gambling machine located at the permitholder's place of business."

**Section 39.** Section 23-5-117, MCA, is amended to read:

**"23-5-117. Premises approval.** (1) Except as provided in subsection ~~(4)~~ (5), the department may

approve a premises for issuance of an operator's license if the premises meets the requirements contained in subsections (2) ~~and (3)~~ through (4).

(2) The premises must:

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

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

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

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

(4) If the license to be issued to an operator is for a music and entertainment district casino for which the department issues a casino permit pursuant to [section 19], the premises must have at least 30,000 square feet of gaming area. The total area of all the gaming areas in casinos that have been issued casino permits pursuant to [section 19] within the district may not exceed 500,000 square feet.

~~(4)~~(5) A second operator's license may be issued or renewed until June 30, 2001, for a person operating a gambling activity on a premises that did not meet the requirements of subsections (2) and (3) if:

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

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

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

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

**Section 40.** Section 23-5-118, MCA, is amended to read:

**"23-5-118. Transfer of ownership interest.** (1) In this section, "licensed gambling operation" means a business for which a license was obtained under parts 1 through 8 of this chapter or [sections 18 through 28].

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

(3) This section does not apply to the transfer of a security interest in a licensed gambling operation or

to the transfer of less than 5% of the interest in a publicly traded corporation."

**Section 41.** Section 23-5-119, MCA, is amended to read:

**"23-5-119. Appropriate alcoholic beverage license for certain gambling activities.** (1) Except as provided in ~~subsection~~ subsections (3) and (4), to be eligible to offer gambling under Title 23, chapter 5, part 3, 5, or 6, or [sections 18 through 28], an applicant shall own in the applicant's name:

(a) a retail all-beverages license issued under 16-4-201;

(b) except as provided in subsection (1)(c), a license issued prior to October 1, 1997, under 16-4-105, authorizing the sale of beer and wine for consumption on the licensed premises;

(c) a beer and wine license issued in an area outside of an incorporated city or town as provided in 16-4-105(1)(e). The owner of the license whose premises are situated outside of an incorporated city or town may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5, part 3, 5, or 6, or [sections 18 through 28];

(d) a retail beer and wine license issued under 16-4-109;

(e) a retail all-beverages license issued under 16-4-202; or

(f) a retail all-beverages license issued under 16-4-208.

(2) For purposes of subsection (1)(b), a license issued under 16-4-105 prior to October 1, 1997, may be transferred to a new owner or to a new location or transferred to a new owner and location by the department of revenue pursuant to the applicable provisions of Title 16. The owner of the license that has been transferred may offer gambling if the owner and the premises qualify under Title 23, chapter 5, part 3, 5, or 6.

(3) Lessees of retail all-beverages licenses issued under 16-4-208 or beer and wine licenses issued under 16-4-109 who have applied for and been granted a gambling operator's license under 23-5-177 are eligible to offer and may be granted permits for gambling authorized under Title 23, chapter 5, part 3, 5, or 6.

(4) The name of the licensee on an alcoholic beverage license need not be the same as the name on the music and entertainment district casino operator's license authorized by [section 19] and issued pursuant to 23-5-177 when the alcoholic beverage license is used in a casino for which the department has issued a casino permit pursuant to [section 19]."

**Section 42.** Section 23-5-123, MCA, is amended to read:

**"23-5-123. Disposal of money confiscated by reason of violation of gambling laws.** All fines, penalties, forfeitures, and confiscated money collected by criminal, civil, or administrative process for a violation

of a provision of parts 1 through 8 of this chapter, [sections 18 through 28], or a rule of the department must be deposited in the state general fund."

**Section 43.** Section 23-5-136, MCA, is amended to read:

**"23-5-136. Injunction and other remedies.** (1) If a person has engaged or is engaging in an act or practice constituting a violation of a provision of parts 1 through 8 of this chapter, [sections 18 through 28], or a rule or order of the department, the department may:

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

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

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

(ii) place a licensee on probation;

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

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

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

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

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

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

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

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

(2) The department may issue a warrant for distraint against an operator who fails to pay a civil penalty imposed under subsection (1) or a tax imposed under 23-5-409 or 23-5-610. The department may issue the warrant for the amount of the unpaid penalty or for the amount of the unpaid tax, plus penalty and accumulated interest on the tax, and shall follow the procedures provided in 15-1-701 through 15-1-708.

(3) (a) A civil penalty imposed under this section must be collected by the department and distributed



as provided in 23-5-123.

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

**Section 44.** Section 23-5-138, MCA, is amended to read:

**"23-5-138. Evidence in administrative proceedings.** When conducting an administrative proceeding under parts 1 through 8 of this chapter or [sections 18 through 28], the department may consider hearsay evidence approved by the hearing examiner in a prehearing conference at which a determination is made that the evidence possesses sufficient guaranties of trustworthiness and does not involve a question of the credibility of a witness or of the credibility of a witness's subjective observations or analysis."

**Section 45.** Section 23-5-161, MCA, is amended to read:

**"23-5-161. Criminal liabilities -- misdemeanor.** A person who purposely or knowingly violates a provision of parts 1 through 8 of this chapter or [sections 18 through 28], the punishment of which is for a misdemeanor, shall upon conviction of a first offense be fined not more than \$500. Upon a second conviction within 5 years of a first conviction, a person shall be fined not more than \$1,000 or imprisoned in the county jail for not more than 6 months, or both. Upon a third conviction within 5 years of a second conviction, a person shall be fined not more than \$10,000 or imprisoned in the county jail for not more than 1 year, or both. Upon a fourth conviction within 5 years of a third conviction, a person shall be fined not more than \$10,000 or imprisoned in the county jail for not more than 1 year, or both, and the department shall revoke all licenses and permits the person holds under parts 1 through 8 of this chapter or [sections 18 through 28] and the person is forever barred from receipt of any license or permit under this chapter. When 5 years have passed following a conviction, the record of that conviction may be made available only to criminal justice agencies or upon court order."

**Section 46.** Section 23-5-162, MCA, is amended to read:

**"23-5-162. Criminal liabilities -- felony.** (1) A person who purposely or knowingly violates a provision of parts 1 through 8 of this chapter or [sections 18 through 28], the punishment for which is a felony, may upon conviction be fined not more than \$50,000 or imprisoned for not more than 10 years, or both, for each violation.

(2) In addition to any penalty imposed under subsection (1), the department shall revoke all licenses or permits issued to the person under parts 1 through 8 of this chapter or [sections 18 through 28] and may not issue the person another license or permit under parts 1 through 8 of this chapter or [sections 18 through 28]."

**Section 47.** Section 23-5-172, MCA, is amended to read:

**"23-5-172. Prosecution.** The county attorney of the county in which a violation of a provision of parts 1 through 8 of this chapter or [sections 18 through 28] occurs shall prosecute all gambling actions within the jurisdiction of the department. However, if the county attorney declines prosecution or fails to commence an action within a reasonable time, the attorney general may initiate and conduct the prosecution on behalf of the state."

**Section 48.** Section 23-5-177, MCA, is amended to read:

**"23-5-177. Operator of gambling establishment -- license -- fee.** (1) It is a misdemeanor for a person who is not licensed by the department as an operator to make available to the public for play a gambling device or gambling enterprise for which a permit must be obtained from the department.

(2) To obtain an operator's license, a person shall submit to the department:

- (a) a completed operator's license application on a form prescribed and furnished by the department;
- (b) any other relevant information requested by the department; and
- (c) a license application processing fee, as required in subsection (8).

(3) Before issuing an operator's license, the department shall approve, in accordance with 23-5-117, the premises in which the gambling activity is to be conducted.

(4) Except as provided in 23-5-117, regardless of the number of on-premises alcoholic beverage licenses issued for a premises, the department may issue only one operator's license for the premises.

(5) An operator's license must 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 gambling device, live game, or card game table for which a permit has been issued to the operator by the department for play upon the premises, including the type of game and permit number for each game; and

- (d) any other relevant information determined necessary by the department.

(6) The operator's license must be issued annually along with all other permits for gambling devices or games issued to the operator.

(7) The operator's license must be updated each time a video gambling machine, slot machine, roulette wheel, craps table, bingo, keno, or card game table permit is newly issued or the machine or game is removed from the premises.

(8) The department shall charge an applicant who has submitted an operator's license application on or after July 1, 1991, a one-time license application processing fee to cover the actual cost incurred by the department in determining whether the applicant qualifies for licensure under 23-5-176. After making its determination, the department shall refund any overpayment or charge and collect amounts sufficient to reimburse the department for any underpayment of actual costs.

(9) The operator's license must be prominently displayed upon the premises for which it is issued."

**Section 49.** Section 23-5-306, MCA, is amended to read:

**"23-5-306. Live card game table -- permit -- fees -- disposition of fees.** (1) (a) A person who has been granted an operator's license under 23-5-177 and who holds an appropriate license to sell alcoholic beverages for consumption on the premises, as provided in 23-5-119, may be granted an annual permit for the placement of live card game tables.

(b) The department may issue an annual permit for the placement of live card game tables to a person operating a premises not licensed to sell alcoholic beverages for consumption on the premises if:

(i) one or more live card game tables were legally operated on the premises on January 15, 1989;

(ii) the premises were licensed on January 15, 1989, to sell food, cigarettes, or any other consumable product;

(iii) the person has been granted an operator's license under 23-5-177; and

(iv) at the time of application for the permit:

(A) the person has continuously operated a live card game table on the premises since January 15, 1989; and

(B) the natural person or persons who own the business operated on the premises are the same as on January 15, 1989.

(2) The annual permit fee in lieu of taxes for each live card game table operated in a licensed operator's premises may not be prorated and must be:

(a) \$250 for the first table; and

(b) \$500 for each additional table.

(3) The department shall retain for administrative purposes \$100 of the fee collected under this part for each live card game table.

(4) The department shall forward on a quarterly basis 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 live card game table is located for deposit to the county or municipal treasury. A county is not entitled to proceeds from fees assessed on live card game tables located in incorporated cities and towns within the county. The local government portion of this fee is statutorily appropriated to the department, as provided in 17-7-502, for deposit to the county or municipal treasury.

(5) This section does not apply to a live game table that is subject to a permit under [section 24]."

**Section 50.** Section 23-5-610, MCA, is amended to read:

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

(2) (a) A licensed machine owner is entitled to a tax credit for each video gambling machine for which a permit has been issued under this part if:

(i) the permit was active for the video gambling machine during the 12-month period ending December 31, 2001;

(ii) the department determines that the video gambling machine is incapable, in the form in which it was approved by the department, of communicating with the automated accounting and reporting system authorized by 23-5-637; and

(iii) the licensed machine owner participates in the automated accounting and reporting system and incurs actual hardware or software costs prior to January 1, 2005, for conversion of the video gambling machine to make it compatible with the automated system.

(b) The amount of the tax credit allowed under subsection (2)(a) is \$250 for each video gambling machine or the actual hardware and software cost necessary for conversion of the video gambling machine to the automated accounting and reporting system, whichever is less.

(3) If a tax credit is claimed under subsection (2)(a), the credit is deducted from the tax due for the quarter or quarters that begin after the video gambling machine for which the tax credit is claimed is connected to the automated accounting and reporting system authorized by 23-5-637.

(4) A licensed machine owner shall keep a record of the gross income from each video gambling

machine issued a permit under this part in the form the department requires. The records must at all times during the business hours of the licensee be subject to inspection by the department.

(5) (a) For each video gambling machine issued a permit under this part but not connected to the department's automated accounting and reporting system, a licensed machine owner shall, within 15 days after the end of each quarter and in the manner prescribed by the department, complete and deliver to the department a statement showing the total gross income, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information that the department requires.

(b) For each video gambling machine issued a permit under this part that is connected to the department's automated accounting and reporting system, the department shall, within 5 working days after the end of each quarter, complete and deliver to the licensed machine owner (with a copy sent to the licensed operator, if different from the licensed machine owner, on whose premises the machine is placed) a statement showing the total gross income from the video gambling machine, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The licensed machine owner shall remit the total amount due the state under this subsection within 25 days after the end of each quarter.

(6) Except as provided in subsection (7), the department shall, in accordance with the provisions of 15-1-501, forward the tax collected under subsection (5) to the general fund.

(7) Receipts from the taxes collected under this section are pledged and dedicated to guarantee repayment of loans participated in under 23-5-638 in an amount sufficient to meet the prepayment obligation for the fiscal year during which the loans are made. The amount of taxes pledged by this subsection is the dollar amount of loan participation under 23-5-638 and must be allocated to a separate account in the short-term investment pool. The board of investments is not entitled to use the proceeds from taxes collected under this section to repay a loan made under 23-5-638 unless the board certifies that all other commercially available means of collection on the loan have been exhausted.

(8) This section does not apply to entities subject to taxation under [section 20]. (Terminates December 31, 2005--sec. 10, Ch. 424, L. 1999.)

**23-5-610. (Effective January 1, 2006) Video gambling machine gross income tax -- credit -- records -- distribution -- quarterly statement and payment.** (1) A licensed machine owner shall pay to the department a video gambling machine tax of 15% of the gross income from each video gambling machine issued a permit under this part. A licensed machine owner may deduct from the gross income amounts equal to amounts stolen from machines if the amounts stolen are not repaid by insurance or under a court order, if a law enforcement

agency investigated the theft, and if the theft is the result of either unauthorized entry and physical removal of the money from the machines or of machine tampering and the amounts stolen are documented.

(2) (a) A licensed machine owner is entitled to a tax credit for each video gambling machine for which a permit has been issued under this part if:

(i) the permit was active for the video gambling machine during the 12-month period ending December 31, 2001;

(ii) the department determines that the video gambling machine is incapable, in the form in which it was approved by the department, of communicating with the automated accounting and reporting system authorized by 23-5-637; and

(iii) the licensed machine owner participates in the automated accounting and reporting system and incurs actual hardware or software costs prior to January 1, 2005, for conversion of the video gambling machine to make it compatible with the automated system.

(b) The amount of the tax credit allowed under subsection (2)(a) is \$250 for each video gambling machine or the actual hardware and software cost necessary for conversion of the video gambling machine to the automated accounting and reporting system, whichever is less.

(3) If a tax credit is claimed under subsection (2)(a), the credit is deducted from the tax due for the quarter or quarters that begin after the video gambling machine for which the tax credit is claimed is connected to the automated accounting and reporting system authorized by 23-5-637.

(4) A licensed machine owner shall keep a record of the gross income from each video gambling machine issued a permit under this part in the form the department requires. The records must at all times during the business hours of the licensee be subject to inspection by the department.

(5) (a) For each video gambling machine issued a permit under this part but not connected to the department's automated accounting and reporting system, a licensed machine owner shall, within 15 days after the end of each quarter and in the manner prescribed by the department, complete and deliver to the department a statement showing the total gross income, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information that the department requires.

(b) For each video gambling machine issued a permit under this part that is connected to the department's automated accounting and reporting system, the department shall, within 5 working days after the end of each quarter, complete and deliver to the licensed machine owner (with a copy sent to the licensed operator, if different from the licensed machine owner, on whose premises the machine is placed) a statement

showing the total gross income from the video gambling machine, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The licensed machine owner shall remit the total amount due the state under this subsection within 25 days after the end of each quarter.

(6) The department shall, in accordance with the provisions of 15-1-501, forward the tax collected under subsection (5) to the general fund.

(7) This section does not apply to entities subject to taxation under [section 20]."

**Section 51.** Section 23-5-612, MCA, is amended to read:

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

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

(b) If the person holding the gambling operator's license for the premises in which the machine is located changes during the first quarter of the permit year and the new operator has received an operator's license and if a machine transfer processing fee of \$25 per machine is paid to the department, the permit remains valid for the remainder of the permit year.

(3) The department shall deposit 50% of the total permit fee collected under subsection (2)(a) and 100% of the machine transfer processing fee collected under subsection (2)(b) in the state special revenue fund for purposes of administering this part and for other purposes provided by law. The balance of the fee collected under subsection (2)(a) must be returned on a quarterly basis to the local government jurisdiction in which the gambling machine is located. The local government portion of the fee is statutorily appropriated to the department, as provided in 17-7-502, for deposit in the local government treasury.

(4) This section does not apply to a machine that is subject to a permit under [section 24]."

**NEW SECTION. SECTION 52. MUSIC AND ENTERTAINMENT DISTRICT CASINO PERMIT -- TRIBAL AGREEMENT -- NOTIFICATION.** (1) THE NUMBER OF CASINOS AUTHORIZED BY [SECTION 19] MAY INCREASE FROM 10 CASINOS TO 11 CASINOS AND THE TOTAL GAMING AREA AUTHORIZED BY 23-5-117(4) MAY INCREASE FROM 500,000 SQUARE FEET TO 550,000 SQUARE FEET IF:

(A) THE DEVELOPER OF THE MUSIC AND ENTERTAINMENT DISTRICT AND THE TRIBAL GOVERNMENTS ON THE SEVEN INDIAN RESERVATIONS LOCATED IN MONTANA AND THE LITTLE SHELL BAND OF CHIPPEWA ENTER INTO AN AGREEMENT CONCERNING THE OWNERSHIP AND OPERATION OF THE ADDITIONAL CASINO; AND

(B) THE TRIBAL GOVERNMENTS ON THE SEVEN INDIAN RESERVATIONS IN MONTANA AND THE LITTLE SHELL BAND OF CHIPPEWA ENTER INTO A STATE-TRIBAL COMPACT IN WHICH THE TRIBES AND THE LITTLE SHELL BAND OF CHIPPEWA AGREE TO LIMIT GAMING ON TRIBAL LANDS TO THE TYPE OF GAMING AUTHORIZED BY TITLE 23, CHAPTER 5, PART 6, OUTSIDE THE MUSIC AND ENTERTAINMENT DISTRICT.

(2) THE ATTORNEY GENERAL SHALL NOTIFY THE CODE COMMISSIONER AND THE SECRETARY OF STATE IF THE CONDITIONS OF SUBSECTIONS (1)(A) AND (1)(B) HAVE BEEN MET.

NEW SECTION. Section 53. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

NEW SECTION. Section 54. Codification instruction. (1) [Sections 1 through 7] are intended to be codified as an integral part of Title 7, chapter 16, and the provisions of Title 7, chapter 16, apply to [sections 1 through 7].

(2) [Sections 8 through 14] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 8 through 14].

(3) [Sections 18 through 28] are intended to be codified as an integral part of Title 23, chapter 5, and the provisions of Title 23, chapter 5, apply to [sections 18 through 28].

~~NEW SECTION. Section 54. Coordination instruction. If House Bill No. 193 is passed and approved, then the bracketed language in [section 14(2)(a)] is void and is replaced by the following language: "used for per-educator entitlements as provided in [section 1 of House Bill No. 193]."~~

NEW SECTION. Section 55. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 56. Effective dates. (1) Except as provided in subsection (2), [this act] is



effective July 1, 2003.

(2) [Sections 18, 19, 21, 22, and 23] are effective July 1, 2006.

**NEW SECTION. Section 57. Applicability.** (1) The accommodation tax imposed by 15-65-111(2) applies to accommodation charges within 25 miles of a music and entertainment district beginning the second calendar quarter following the quarter that the combined collection from the entertainment ticket tax and the music and entertainment district gaming tax from the music and entertainment district exceeds \$15 million.

(2) If the combined collection of the entertainment ticket tax and the music and entertainment district gaming tax exceeds \$15 million in a calendar quarter, the department of revenue shall notify the owners and operators of any facility within 25 miles of the music and entertainment district. The notice must include the date the tax imposed by 15-65-111(2) is applicable.

**NEW SECTION. Section 58. Contingent termination.** (1) [This act] terminates on December 31, 2005, if there are no applications filed for the creation of a music and entertainment district and an impact fee required in [section 7] has not been paid to a qualifying local government.

(2) If the contingency in subsection (1) occurs, the department of justice shall certify the occurrence and send a copy of the certification to the governor and the code commissioner.

- END -

