

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Clyde Graeber at 1:30 p.m. on January 28, 1993 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Mary Galligan, Legislative Research Department
Lynne Holt, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee: Kyle G. Smith, Assistant Attorney General,
Kansas Bureau of Investigation

Others attending: See attached list

Clyde D. Graeber, Chairman, called the meeting to order .

Kyle G. Smith, Assistant Attorney General, Kansas Bureau of Investigation, requested legislation on two bills. These are bills being introduced from last year. Both bills passed the Senate, but time ran out before they were heard in the House.

One request deals with Kansas pari-mutuel racing; relating to disclosure of certain information. The other request concerns the Kansas pari-mutuel racing act; relating to investigations of violations of such act and rules and regulations adopted thereunder; amending K.S.A. 1990 Supp. 74-8807 and repealing the existing section. (See Attachment #1)

Representative Empson moved and Representative Cornfield seconded to accept the requests as committee bills. The motion carried.

Representative Smith moved and Representative Empson seconded approval of the minutes for the January 25 and January 26. The motion carried.

The Chairman announced there would be joint Senate/House Federal and State Affairs Committee meetings on Friday, January 29 and Monday, February 1 in the Old Supreme Court Room relating to the operation of a casino gaming establishment in the city of Kansas City.

The Chairman opened the hearing on HB 2023.

Representative Lane made a motion, seconded by Representative Wilk that HB2023 as introduced by the LCC be passed out favorably.

Representative Kline offered a substitute motion and offered a draft of a substitute bill for HB 2023 for committee consideration and debate (See Attachment #2).

This substitute bill offers an 11 person committee; one being the Governor's designee, 5 Senate members and 5 House members. The Chair would be appointed by the Speaker of the House in odd years and the Senate would appoint the Chair in the even number years.

The Chairman questioned staff, since a substitute (motion) bill was now offered, could this substitute bill be amended under the rules adopted for our committee. .

Staff agreed that Representative Kline's substitute bill was a motion and could not be amended

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Statehouse, at 1:30 p.m. on January 28, 1993.

The Chairperson stated, according to the rules of the committee, we may discuss this substitute bill, but we may not amend it.

Representative Sebelius stated she felt this committee could better debate the substitute bill and discuss or propose for consideration possible amendments than on the Floor of the House.

The Chairperson stated he would like to take action on the proposal and move the bill out of committee and would allow the committee to vote to get a committee position if amendments should be allowed because amending would violate the rules established by the Chair.

Staff suggested the bill could be adopted then worked and amendments considered or adopted.

Representative Wiard stated, let's vote this substitute bill up or down as we have another substitute proposal be considered. Vote "no" and we'll be able to look at the other proposal.

Representative Kline withdrew his original motion.

Representative Kline then moved and Representative Robinette seconded a motion to propose the substitute bill as a working draft for the committee's consideration.

The Chairman asked for a vote on the motion and the motion carried.

The substitute bill was open for discussion and amendment.

Representative Wiard moved and Representative Standifer seconded to amend Page 7, Section (d) and delete (including arrest and non-conviction data) and also the sentence, upon the written request of the director, the director may receive from the district courts such information relating to juvenile proceedings as provided by any gaming compact.

After discussion, the Chairman asked the committee to signify their wishes by saying yea or nay. The ayes carried.

Representative Sebelius moved and Representative Lynch seconded that of the three member sub-committee, if House, Senate, and Governor are all of the same party, then a minority member is the Vice Chairperson. The motion carried.

Representative Sebelius moved and Representative Gilbert seconded to delete the 13 requirements every gaming compact would have as contained in Representative Kline's proposal and inserting in place Page 7 a. - j. of her substitute bill. There was a vote and the nays carried.

Representative Robinette moved and Representative Cox seconded to clarify that the commission has a full 30 days for hearings before the 45-day period for commission approval or modification begins to run; if no hearings are held, the 45-day period begins to run when the compact is submitted to the commission. If hearings are completed before 30 days, the 45-day period begins to run when the hearings are completed. The motion carried.

Representative Sebelius expressed concern over the regulatory part of the bill.

Representative Sebelius moved and Representative Smith seconded a conceptual motion to establish a new gambling commission and put all gaming under one entity; bingo, Indian gaming and pari-mutuel.

Representative Cornfield stated, this is a good concept, but should not be a part of this bill.

The Chairperson stated, the committee needs to return to the main topic which is the Indian gaming compacts, and expressed his position that the concept of a gambling commission be considered as a separate legislative proposal.

Representative Sebelius then withdrew her motion.

Representative Rock moved and Representative Cornfield seconded that the tribal law enforcement officers attend the law enforcement academy. The motion carried.

Representative Gilbert moved and Representative Rock seconded to amend the bill to make any further

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 526-S
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amendments needed to allow the Director of Indian Gaming access to KBI background check information.
The motion carried.

Representative Cornfield moved and Representative Robinette seconded to pass the substitute bill out of
committee as amended. The motion carried.

The following wished to be recorded as voting "NO" on the bill: Representatives Krehbiel, Gilbert and
Plummer.

The meeting adjourned at 3:15 PM.

The next meeting is scheduled for February 1, 1993.

Date: 1/28/93

FEDERAL and STATE AFFAIRS COMMITTEE

NAME	ORGANIZATION	ADDRESS
Luther Wahwasuck	Prairie Band Potawatomi	Mayetta, Ks.
Ralph Lecumseh	Potawatomi Tribal Council	Mayetta, Ks.
ALAN COBB	Prairie Band Potawatomi,	Topeka
KEVIN FREEDSON	BLARKE & ASSOC.	Topeka
Grace May	Kansas associated ^{Gardner} Chiefs	Topeka
Jean Taylor	^{WU.} Advocacy Intern	Topeka
Rob McKnight	The Ceres Group	Overland Park
Tip Kusini		Overland Park
John D. Prizgar	Wyandotte Tribe	Topeka
Patrick Hurley	Magill Assoc.	Topeka
Elmer Wahl	John Peterson	Lawrence
Christine Huhn	Intern for Rep. Crocker	Lawrence
Carl Anderson	Kansas Lottery	Topeka
Ralph Decker	Kansas Lottery	Topeka, KS.
Jim Giordano	Kansas Lottery	Topeka

Date: 1-28-93

FEDERAL and STATE AFFAIRS COMMITTEE

NAME	ORGANIZATION	ADDRESS
Derieth L. Sutton	Kansas Lottery	Topeka, KS
LARENE THOMAS	PB Potawatomi Tribal Council	Mayetta, KS.
Nancy Bear	Treasurer - Kickapoo Nation in Kansas	Kickapoo Res.
FRED THOMAS	Kickapoo Nation	Kickapoo Res.
Jance Burr	Attorney General Kickapoo Nation	Kickapoo Nation Res.
Ellen Eljston	St Francis Wichita,	
Allen Jones	KTB1	Topeka
Charles V. Hamm	Self-	Topeka
Brian Nauheim	Pat Hubbell Assoc.	Lawrence
Larry Mosh	Pat Hubbell Assoc.	Lawrence
Jim Conant	Ks ABC	Top.
Robert Engler	Ks ABC	Top.
Jill Meyer	KU Intern	Lawrence
Kristal Turner	ESU Intern - Rep. Ballard	Emporia
JENNIFER ANDERSON	ESU INTERN - REP. RUFF	

Date: 1/28/93

FEDERAL and STATE AFFAIRS COMMITTEE

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ROBERT B. DAVENPORT
DIRECTOR

KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL

STATE OF KANSAS

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ROBERT T. STEPHAN
ATTORNEY GENERAL

**LEGISLATION REQUESTS
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
BEFORE THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
JANUARY 28, 1993**

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to appear before you on behalf of the Kansas Bureau of Investigation (KBI) and request legislation. What we are requesting is the re-introduction of Senate Bills 366 and 367 from last year. Both bills passed the Senate, but time ran out before they were heard on the House side.

The first bill, formerly SB 366, clarifies the duties and responsibilities of the KBI while conducting investigations on or about racing facilities. This language has been suggested by our Gaming Unit after noting questions that have arisen in previous investigations. In particular, the main difference from existing law is that the KBI would also have authority to investigate violations of rules and regulations under the Kansas Racing Act. This would be co-extensive with the Racing Commission and is done primarily to facilitate investigations that might involve both criminal and administrative violations, and would also make it clear that the agents do indeed have authority to investigate all violations occurring at the tracks.

The second bill, formerly SB 367 was the outgrowth of an interim committee hearing held in 1989 where the legislature was advised that due

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to the Kansas Racing vs. Kansas Racing Commission case the background investigations provided to the Kansas Racing Commission were subject to disclosure. This decision jeopardized sources of information and based on that decision, the KBI made the determination at that time it could no longer provide backgrounds to the Racing Commission as it might result in the disclosure and endangerment of sources. The Joint Committee voted to add the language in SB 367 so that again this background information can be provided to the Commission for licensing purposes.

I believe this bill lost much of it's impetus as there have been no new tracks since 1989. However, with the efforts continuing in Pittsburgh we feel it is imperative that this language be changed so that a thorough background investigation can be conducted and that information provided to the Racing Commission.

Thank you for this opportunity. I would be happy to answer any questions.

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SENATE BILL No. 367

By Committee on Federal and State Affairs

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AN ACT concerning the Kansas parimutuel racing act; relating to disclosure of certain information; amending K.S.A. 1990 Supp. 74-8804 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1990 Supp. 74-8804 is hereby amended to read as follows: 74-8804. (a) The commission and its designated employees may observe and inspect all racetrack facilities operated by licensees, including but not limited to all machines, equipment and facilities used for parimutuel wagering, whether or not race meetings are being conducted at the time.

(b) Commission members and hearing officers designated by the commission may administer oaths and take depositions to the same extent and subject to the same limitations as would apply if the deposition was in aid of a civil action in the district court.

(c) The commission may examine, or cause to be examined by any agent or representative designated by the commission, any books, papers, records or memoranda of any licensee for the purpose of ascertaining compliance with any provision of this act or any rule and regulation adopted hereunder.

(d) The commission may issue subpoenas to compel access to or for the production of any books, papers, records or memoranda in the custody or control of any licensee or officer, member, employee or agent of any licensee, or to compel the appearance of any licensee or officer, member, employee or agent of any licensee, for the purpose of ascertaining compliance with any of the provisions of this act or any rule and regulation adopted hereunder. Subpoenas issued pursuant to this subsection may be served upon individuals and corporations in the same manner provided in K.S.A. 60-304 and amendments thereto for the service of process by any officer authorized to serve subpoenas in civil actions or by the commission or an agent or representative designated by the commission. In the case of the refusal of any person to comply with any such subpoena, the executive director may make application to the district court of any county where such books, papers, records, memoranda or person

is located for an order to comply.

(e) The commission shall allocate equitably race meeting dates, racing days and hours to all organization licensees and assign such dates and hours so as to minimize conflicting dates and hours within the same geographic market area.

(f) The commission shall have the authority, after notice and an opportunity for hearing in accordance with rules and regulations adopted by the commission, to exclude, or cause to be expelled, from any race meeting or racetrack facility, any person:

(1) Who has violated the provisions of this act or any rule and regulation or order of the commission;

(2) who has been convicted of violating the racing or gambling laws of this or any other state or of the United States; or

(3) whose presence, in the opinion of the commission, reflects adversely on the honesty and integrity of horse or greyhound racing or interferes with the orderly conduct of a race meeting.

(g) The commission shall review and approve all proposed construction and major renovations to racetrack facilities owned or leased by licensees.

(h) The commission may suspend a horse or greyhound from participation in races if such horse or greyhound has been involved in any violation of the provisions of this act or any rule and regulation or order of the commission.

(i) The commission, within 72 hours after any action taken by a steward or racing judge and upon appeal by any interested party or upon its own initiative, may overrule any decision of a steward or racing judge, other than a decision regarding disqualifications for interference during the running of a race, if the preponderance of evidence indicates that:

(1) The steward or racing judge mistakenly interpreted the law;

(2) new evidence of a convincing nature is produced; or

(3) the best interests of racing and the state may be better served.

A decision of the commission to overrule any decision of a steward or racing judge shall not change the distribution of parimutuel pools to the holders of winning tickets. A decision of the commission which would affect the distribution of purses in any race shall not result in a change in that distribution unless a written claim is submitted to the commission within 48 hours after completion of the contested race by one of the owners or trainers of a horse or greyhound which participated in such race and a preponderance of evidence clearly indicates to the commission that one or more of the grounds for protest, as provided for in rules and regulations of the commission, has been substantiated.

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(j) The commission, after notice and a hearing in accordance with rules and regulations adopted by the commission, may impose a civil fine not exceeding \$250 for each violation of any provision of this act, or any rule and regulation of the commission, for which no other penalty is provided.

(k) The commission shall adopt rules and regulations specifying and regulating:

(1) Those drugs and medications which may be administered, and possessed for administration, to a horse or greyhound within the confines of a racetrack facility; and

(2) that equipment for administering drugs or medications to horses or greyhounds which may be possessed within the confines of a racetrack facility.

(l) The commission may adopt rules and regulations providing for the testing of any licensees of the commission, and any officers, directors and employees thereof, to determine whether they are users of any controlled substances.

(m) The commission may require fingerprinting of all persons necessary to verify qualification for any license issued pursuant to this act. The commission shall submit such fingerprints to the Kansas bureau of investigation and to the federal bureau of investigation for the purposes of verifying the identity of such persons and obtaining records of criminal arrests and convictions.

(n) The commission may receive from the Kansas bureau of investigation or other criminal justice agencies such criminal history record information (including arrest and nonconviction data), criminal intelligence information and information relating to criminal and background investigations as necessary for the purpose of determining qualifications of licensees of and applicants for licensure by the commission. ~~Disclosure or use of any such information received by the commission, or of any record containing such information, for any purpose other than that provided by this subsection~~ *Such information, other than conviction data, shall be confidential and shall not be disclosed except to members and employees of the commission as necessary to determine qualifications of such licensees and applicants. Any other disclosure of such confidential information is a class A misdemeanor and shall constitute grounds for removal from office, termination of employment or denial, revocation or suspension of any license issued under this act. Nothing in this subsection shall be construed to make unlawful the disclosure of any such information by the commission in a hearing held pursuant to this act.*

(o) The commission, in accordance with K.S.A. 75-4319 and

amendments thereto, ~~may shall~~ recess for a closed or executive meeting to receive and discuss information received by the commission pursuant to subsection (n) ~~and to negotiate with licensees of or applicants for licensure by the commission regarding any such information.~~

(p) The commission shall adopt such rules and regulations as necessary to implement and enforce the provisions of this act.

Sec. 2. K.S.A. 1990 Supp. 74-8804 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the ~~statute book~~ *Kansas register*.

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SENATE BILL No. 366

By Committee on Federal and State Affairs

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AN ACT concerning the Kansas parimutuel racing act; relating to investigations of violations of such act and rules and regulations adopted thereunder; amending K.S.A. 1990 Supp. 74-8807 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1990 Supp. 74-8807 is hereby amended to read as follows: 74-8807. (a) Employees of the Kansas racing commission designated by the executive director, with the approval of the commission, are hereby vested with the power and authority of law enforcement officers in the execution of the duties imposed upon the commission by the provisions of this act.

(b) Employees designated pursuant to subsection (a) shall have the authority to:

(1) Make arrests, conduct searches and seizures and carry firearms while investigating violations of this act and during routine conduct of their duties as determined by the executive director;

(2) make arrests, conduct searches and seizures and generally enforce all criminal laws of the state as violations of such laws are encountered by such employees during the routine performance of their duties; and

(3) issue notices to appear pursuant to K.S.A. 22-2408 and amendments thereto.

(c) No employee of the commission shall be certified to carry firearms under the provisions of this section without having first successfully completed the firearms training course or courses prescribed for law enforcement officers under subsection (a) of K.S.A. 74-5604a and amendments thereto. (d) The commission may adopt rules and regulations prescribing other training required for such employees.

(d) It shall be the duty of the Kansas bureau of investigation to be the lead investigative agency in all investigations of criminal violations of this act or rules and regulations adopted hereunder. Such duty may be performed independently of or in conjunction with employees of the commission

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designated pursuant to this section. In carrying out the duty imposed by this subsection, agents of the Kansas bureau of investigation shall have the same power and authority as conferred by this section on employees of the commission designated pursuant to this section.

(d) It shall be the duty of the Kansas bureau of investigation to be an investigative agency of criminal violations of this act, and violations of the rules and regulations adopted hereunder. Such duty may be performed independently of or in conjunction with employees of the commission designated pursuant to this section. Employees of the commission shall report immediately any criminal violations of this act or other suspected criminal activity at a racetrack facility to the Kansas bureau of investigation. Employees of the Kansas bureau of investigation shall report any violations or suspected violations of the rules and regulations adopted pursuant to this act to the executive director or to employees of the commission designated pursuant to this section.

Sec. 2. K.S.A. 1990 Supp. 74-8807 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book *Kansas register*.

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PROPOSED Substitute for HOUSE BILL NO. 2023

By Committee on Federal and State Affairs

AN ACT concerning gambling; providing procedures for negotiating and entering tribal-state gaming compacts; relating to implementation of such compacts; amending K.S.A. 21-4302 and K.S.A. 1992 Supp. 21-4306 and 21-4307 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. As used in sections 1 through 6:

(a) "Class III gaming" has the meaning provided by the Indian gaming regulatory act (25 U.S.C. 2701 et seq.).

(b) "Gaming compact" means a tribal-state compact regarding class III gaming as provided by section 11 of the Indian gaming regulatory act (25 U.S.C. 2710).

(c) "Gaming operation" means an enterprise operated for the conduct of class III gaming.

(d) "Key employee" has the meaning provided by 25 CFR 502.14, as in effect on the effective date of this act.

(e) "Manager of a gaming operation" means any individual or entity managing a gaming operation under a management contract approved pursuant to the Indian gaming regulatory act (25 U.S.C. 2701 et seq.).

(f) "Primary management official" has the meaning provided by 25 CFR 502.19, as in effect on the effective date of this act.

New Sec. 2. (a) There is hereby established the gaming compacts commission. One member shall be appointed by the governor and the remaining members shall be appointed as follows:

(1) The president of the senate shall appoint three senators to be members; (2) the minority leader of the senate shall appoint two senators to be members; (3) the speaker of the house of representatives shall appoint three representatives to be

members; and (4) the minority leader of the house of representatives shall appoint two representatives to be members.

¶tf (b) Members' terms shall coincide with the terms of members of the house of representatives. If a legislator member vacates the legislator's legislative position, the legislator's position on the commission shall be vacant. Upon a vacancy in any position on the commission, the vacancy shall be filled for the unexpired term in the same manner as the original appointment.

(c) The president of the senate shall designate a senator member to be chairperson of the gaming compacts commission in even-numbered years and the vice-chairperson in odd-numbered years. The speaker of the house of representatives shall designate a representative member to be chairperson of the commission in odd-numbered years and the vice-chairperson in even-numbered years. The vice-chairperson shall exercise all of the powers of the chairperson in the absence of the chairperson.

(d) A quorum of the gaming compacts commission shall be six. All actions of the commission may be taken by a majority of those present when there is a quorum.

(e) The gaming compacts commission shall meet on the call of the chairperson or on the request of five members of the commission.

(e) Members of the gaming compacts commission attending meetings of the commission or subcommittee meetings approved by the commission shall receive compensation, subsistence allowances, mileage and other expenses as provided by K.S.A. 75-3223 and amendments thereto upon vouchers approved by the chairperson of the commission or a person designated by the chairperson.

(f) The staff of the office of the revisor of statutes, the legislative research department and the division of legislative administrative services shall provide such assistance as requested by the gaming compacts commission.

(g) The commission on gaming compacts may recommend to the

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legislature any legislation that the commission considers necessary to performance of the commission's duties.

New Sec. 3. (a) The gaming compacts commission, for a period of up to 30 days after its receipt of a tribal request to negotiate a gaming compact pursuant to the Indian gaming regulatory act (25 U.S.C. 2701 et seq.), may hold public hearings on the request to negotiate to consider public safety, criminality, financial integrity and adverse economic impacts on existing gaming activities and the costs to local subdivisions and to the state resulting from the contemplated gaming activities. If any hearings are held on the four proposed gaming compacts signed by the governor before the effective date of this act, one hearing shall be held on the reservation of the tribe that is party to the compact and all such hearings shall be completed within 30 days after the effective date of this act.

(b) The chairperson of the commission, the vice-chairperson and the member appointed by the governor shall constitute the negotiating subcommittee which is authorized to negotiate on behalf of the committee.

(c) The attorney general shall be the legal counsel for the commission and the negotiating subcommittee in negotiation of gaming compacts under this act.

(d) A gaming compact negotiated on behalf of the state under this act shall include, without limitation:

(1) A provision providing the terms under which either party, including the legislature on behalf of the state by concurrent resolution, may request a renegotiation or the negotiation of a new compact;

(2) a provision that, in the event of a request for a renegotiation or a new compact, the existing compact will remain in effect until renegotiated or replaced;

(3) an enumeration of the specific class III gaming that may be conducted under the compact;

(4) a prohibition against participation in casino gaming by

persons under 21 years of age;

(5) provisions that address security matters, including but not limited to audits, staffing, individual game security, staff training and ability for state law enforcement to also enforce and monitor security;

(6) a method for resolving disputes between the state and tribal gaming agencies;

(7) a delineation of the division of responsibilities between tribe and the state in regard to enforcement of the compact, including reasonable access to the gaming facility and its records, consistent with the provisions of section 5;

(8) a delineation of responsibilities and authority between the state and the tribe regarding criminal jurisdiction and law enforcement, including the responsibilities and authority of local units of government and the Kansas bureau of investigation, consistent with the provisions of section 5;

(9) a prohibition against hiring or contracting with felons or persons convicted of gambling offenses;

(10) a requirement that the state be reimbursed by the tribe for any and all expenses incurred in connection with enforcement and administration of the state's obligations under the compact;

(11) an outline of the duties and responsibilities of the tribal gaming agency and for tribal enforcement of internal security with respect to its gaming facility;

(12) a requirement that any gaming facility adhere to specific building, fire and safety codes; and

(13) a stipulation that the tribe will withhold or report state income tax from or report to the department of revenue the winnings of non-Indians in excess of a reasonable minimum specified in the compact.

(e) In negotiating a gaming compact on behalf of the state under this act, the gaming compacts commission shall consider including, without limitation, the following:

(1) A provision which clearly sets forth the procedure by

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which game rules shall be determined by the tribal gaming agency in consultation with the applicable state agency and providing for the transmittal of such rules and subsequent revisions thereto by the tribal gaming agency to the applicable state agency;

(2) provisions that address the display of game rules in each gaming facility and the display (or other availability to the public) in each gaming facility of the odds of winning; and

(3) a restatement of the standards and requirements for obtaining a license from or contracting with the tribe to operate, manage or conduct gaming operations under the compact, which standards and requirements shall be determined by the director of Indian gaming in consultation with the Indian tribes and shall be the same for all compacts.

(e) All requests by Indian tribes for the negotiation of a tribal-state compact for the conduct of gaming activities in the state of Kansas shall be submitted in writing to the governor. The governor shall submit all such requests to the joint committee within seven days after receipt thereof.

(f) Upon completion of the initial negotiation of a compact, the negotiating subcommittee shall present a draft of the compact to the gaming compacts commission. With respect to the four proposed gaming compacts signed by governor before the effective date of this act, the initial negotiation of such compacts shall be deemed completed and the governor shall submit such compacts to the commission for consideration within five days after the effective date of this act. Within ³⁰45 days after presentation, the commission shall either approve or recommend modifications to the compact. The commissions' failure to approve the compact or recommend modifications to the compact within the 45-day period shall automatically be deemed to constitute approval of the compact by the commission. If the commission recommends modifications to the compact, the negotiating subcommittee shall reenter negotiations with the tribe to incorporate the

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recommended modifications into the compact. When at least two of the three members of the subcommittee agree that the recommended modifications have been incorporated into the compact to the extent reasonably possible, the subcommittee shall so advise the commission and negotiations shall be deemed to be complete.

(g) Upon completion or deemed completion of the negotiation of a gaming compact, or the approval or deemed approval of a gaming compact, all as provided in subsection (f), the governor and the chairperson of the joint committee on gaming compacts shall execute the gaming compact on behalf of the state and such compact shall take effect upon such execution and the execution thereof by the duly authorized tribal representatives.

(h) Nothing in this act shall authorize the joint committee on gaming compacts to negotiate and to enter a gaming compact with any Indian tribe which was not historically located within the boundaries of the state of Kansas (e) the governing body of which was not located within the boundaries of the state of Kansas on October 17, 1988, except as otherwise specifically directed by a court of competent jurisdiction pursuant to a final, unappealable judgment.

New Sec. 4. (a) There is established, within and as a part of the department of revenue, a division of Indian gaming, the head of which shall be the director of Indian gaming. The secretary of revenue shall appoint the director of Indian gaming, subject to confirmation by the senate as provided in K.S.A. 75-4315b and amendments thereto, and the director shall serve at the pleasure of the secretary of revenue. The director of Indian gaming shall be in the unclassified service under the Kansas civil service act and shall receive an annual salary fixed by the secretary of revenue and approved by the governor.

(b) The director of Indian gaming shall:

(1) Carry out all duties imposed upon the state by any gaming compact;

(2) conduct or cause to be conducted an annual financial

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audit of each gaming operation, and provide a copy of such audit to the Kansas bureau of investigation, unless the director determines that the audit pursuant to 25 CFR 571.12, as in effect on the effective date of this act is sufficient to protect the state's interests.;

(3) certify individuals in accordance with subsection (c); and

(4) perform such other duties as provided by law.

(c) State certification shall be required before any individual is determined eligible to be: (1) An officer or director of a gaming operation or of a manager of a gaming operation; (2) an individual having an ownership interest of 3% or more in a gaming operation or in a manager of a gaming operation; or (3) each key employee and primary management official. State certification shall be required for such other individuals as provided by any gaming compact. Before certifying an individual pursuant to this subsection, the director shall require fingerprinting of the individual and shall submit the individual's fingerprints to the Kansas bureau of investigation and to the federal bureau of investigation for the purposes of verifying the identity of such individual and obtaining records of criminal arrests and convictions.

(d) The director of Indian gaming may receive from the Kansas bureau of investigation or other criminal justice agencies such criminal history record information (including arrest and nonconviction data), criminal intelligence information and information relating to criminal and background investigations as provided by any gaming compact. Upon the written request of the director, the director may receive from the district courts such information relating to juvenile proceedings as provided by any gaming compact. Disclosure or use of any information received by the director pursuant to this subsection, or of any record containing such information, for any purpose other than that provided by this subsection is a class A misdemeanor and shall

constitute grounds for removal from office, termination of employment or denial, revocation or suspension of any license issued under this act. Nothing in this subsection shall be construed to make unlawful: (1) The disclosure of any such information by the director in a hearing held pursuant to a gaming compact; (2) negotiation by the director with the subject of such information regarding such information; or (3) the disclosure of any such information by the director to a tribe in accordance with a gaming compact.

(e) The secretary of revenue shall adopt such rules and regulations as necessary for the director of Indian gaming to carry out the director's duties under this section.

New Sec. 5. (a) The Kansas bureau of investigation shall monitor class III gaming conducted pursuant to any gaming compact to ensure compliance with the provisions of the compact. The bureau of investigation shall provide to the director of Indian gaming periodic reports of the bureau's monitoring activities pursuant to this section and the results of such monitoring activities.

(b) Agents of the Kansas bureau of investigation shall have reasonable access to all areas of any place where class III gaming is conducted pursuant to a gaming compact. Such access shall be in a manner that does not interfere unnecessarily with the normal operation of such gaming.

(c) Agents of the Kansas bureau of investigation shall have access, during normal business hours, to all records of class III gaming conducted pursuant to a gaming compact. Such access shall be in a manner that does not interfere unnecessarily with the normal operation of such gaming.

New Sec. 6. (a) There is hereby created in the state treasury the Indian gaming fund.

(b) All moneys payable to the state or to any subdivision of the state pursuant to any gaming compact shall be paid to the director of Indian gaming. The director shall remit all such

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moneys to the state treasurer, who shall deposit the entire amount in the state treasury and credit it to the Indian gaming fund. All moneys credited to the fund shall be expended or transferred only for the purposes and in the manner provided by this act. Expenditures from the fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of revenue or a person designated by the secretary.

(c) Except as otherwise provided by this act, all operating expenses of the division of Indian gaming and all expenses incurred by the state in carrying out duties imposed by a gaming compact or in monitoring class III gaming activities pursuant to a gaming compact shall be paid from the Indian gaming fund. Whenever another state agency assists the division of Indian gaming in carrying out such duties or monitoring such activities and incurs costs in addition to those attributable to the operations of such agency, such additional costs shall be paid from the Indian gaming fund. The furnishing of assistance shall be a transaction between the division and the respective agency and shall be settled in accordance with K.S.A. 75-5516 and amendments thereto.

(d) On the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the Indian gaming fund, the amount of money certified by the pooled money investment board in accordance with this subsection. Prior to the 10th of each month, the pooled money investment board shall certify to the director of accounts and reports the amount of money equal to the proportionate amount of all the interest credited to the state general fund for the preceding period of time specified under this subsection, pursuant to K.S.A. 75-4210a and amendments thereto, that is attributable to money in the Indian gaming fund. Such amount of money shall be determined by the pooled money investment board based on:

(1) The average daily balance of moneys in the Indian gaming

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fund during the period of time specified under this subsection as certified to the board by the director of accounts and reports; and

(2) the average interest rate on repurchase agreements of less than 30 days' duration entered into by the pooled money investment board for that period of time. On or before the fifth day of the month for the preceding month, the director of accounts and reports shall certify to the pooled money investment board the average daily balance of moneys in the Indian gaming fund for the period of time specified under this subsection.

(e) Any appropriation or transfer of state general fund moneys for the operation of the division of Indian gaming or for any other expenses incurred by the state in carrying out duties imposed by a gaming compact or in monitoring class III gaming activities pursuant to a gaming compact shall be considered a loan and shall be repaid with interest to the state general fund in accordance with appropriation acts. Such loan shall not be considered an indebtedness or debt of the state within the meaning of section 6 of article 11 of the constitution of the state of Kansas. Such loan shall bear interest at a rate equal to the rate prescribed by K.S.A. 75-4210 and amendments thereto for inactive accounts of the state effective on the first day of the month during which the appropriation or transfer takes effect.

(f) At the time of repayment of a loan pursuant to subsection (e), the director of Indian gaming shall certify to the director of accounts and reports the amount to be repaid and any interest due thereon. Upon receipt of such certification, the director of accounts and reports shall promptly transfer the amount certified from the Indian gaming fund to the state general fund.

Sec. 7. K.S.A. 21-4302 is hereby amended to read as follows: 21-4302. (1) A "bet" is a bargain in which the parties agree that, dependent upon chance, one stands to win or lose something of value specified in the agreement. A bet does not include:

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(a) Bona fide business transactions which are valid under the law of contracts including, but not limited to, contracts for the purchase or sale at a future date of securities or other commodities, and agreements to compensation for loss caused by the happening of the chance including, but not limited to, contracts of indemnity or guaranty and life or health and accident insurance;

(b) offers of purses, prizes or premiums to the actual contestants in any bona fide contest for the determination of skill, speed, strength, or endurance or to the bona fide owners of animals or vehicles entered in such a contest;

(c) a lottery as defined in this section;

(d) any bingo game by or for participants managed, operated or conducted in accordance with the laws of the state of Kansas by an organization licensed by the state of Kansas to manage, operate or conduct games of bingo;

(e) a lottery operated by the state pursuant to the Kansas lottery act; ~~or~~

(f) any system of parimutuel wagering managed, operated and conducted in accordance with the Kansas parimutuel racing act; or

(g) Indian gaming activities.

(2) A "lottery" is an enterprise wherein for a consideration the participants are given an opportunity to win a prize, the award of which is determined by chance. As used in this subsection, a lottery does not include:

(a) A lottery operated by the state pursuant to the Kansas lottery act; or

(b) Indian gaming activities.

(3) "Consideration" means anything which is a commercial or financial advantage to the promoter or a disadvantage to any participant.

Mere registration without purchase of goods or services; personal attendance at places or events, without payment of an admission price or fee; listening to or watching radio and

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television programs; answering the telephone or making a telephone call and acts of like nature are not consideration.

As used in this subsection, consideration does not include:

(a) Sums of money paid by or for participants in any bingo game managed, operated or conducted in accordance with the laws of the state of Kansas by any bona fide nonprofit religious, charitable, fraternal, educational or veteran organization licensed to manage, operate or conduct bingo games under the laws of the state of Kansas and it shall be conclusively presumed that such sums paid by or for such participants were intended by such participants to be for the benefit of the sponsoring organizations for the use of such sponsoring organizations in furthering the purposes of such sponsoring organizations, as set forth in the appropriate paragraphs of subsection (c) or (d) of section 501 of the internal revenue code of 1986 and as set forth in K.S.A. 79-4701 and amendments thereto;

(b) sums of money paid by or for participants in any lottery operated by the state pursuant to the Kansas lottery act; ~~or~~

(c) sums of money paid by or for participants in any system of parimutuel wagering managed, operated and conducted in accordance with the Kansas parimutuel racing act; or

(d) sums of money paid by or for participants in Indian gaming activities.

(4) A "gambling device" is a contrivance which for a consideration affords the player an opportunity to obtain something of value, the award of which is determined by chance, or any token, chip, paper, receipt or other document which evidences, purports to evidence or is designed to evidence participation in a lottery or the making of a bet. The fact that the prize is not automatically paid by the device does not affect its character as a gambling device.

(5) A "gambling place" is any place, room, building, vehicle, tent or location which is used for any of the following: Making and settling bets; receiving, holding, recording or

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forwarding bets or offers to bet; conducting lotteries; or playing gambling devices. Evidence that the place has a general reputation as a gambling place or that, at or about the time in question, it was frequently visited by persons known to be commercial gamblers or known as frequenters of gambling places is admissible on the issue of whether it is a gambling place.

(6) "Indian gaming activities" means gaming activities that are conducted on Indian lands and are lawful pursuant to the Indian gaming regulatory act (25 U.S.C. 2701 et seq.).

Sec. 8. K.S.A. 1992 Supp. 21-4306 is hereby amended to read as follows: 21-4306. (1) Dealing in gambling devices is manufacturing, transferring or possessing with intent to transfer any gambling device or subassembly or essential part thereof.

(2) Proof of possession of any device designed exclusively for gambling purposes, which device is not set up for use or which is not in a gambling place, creates a presumption of possession with intent to transfer.

(3) Dealing in gambling devices is a class E felony.

(4) It shall be a defense to a prosecution under this section that the gambling device is an antique slot machine and that the antique slot machine was not operated for gambling purposes while in the owner's or the defendant's possession. A slot machine shall be deemed an antique slot machine if it was manufactured prior to the year 1950.

(5) It shall be a defense to a prosecution under this section that the gambling device or subassembly or essential part thereof is manufactured, transferred or possessed by a manufacturer registered under the federal gambling devices act of 1962 (15 U.S.C. 1171 et seq.) or a transporter under contract with such manufacturer with intent to transfer for use:

(a) By the Kansas lottery or Kansas lottery retailers as authorized by law and rules and regulations adopted by the Kansas lottery commission;

(b) by a licensee of the Kansas racing commission as

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authorized by law and rules and regulations adopted by the commission; ~~or~~

(c) in a state other than the state of Kansas; or

(d) in Indian gaming activities.

Sec. 9. K.S.A. 1992 Supp. 21-4307 is hereby amended to read as follows: 21-4307. (1) Possession of a gambling device is knowingly possessing or having custody or control, as owner, lessee, agent, employee, bailee, or otherwise, of any gambling device.

Possession of a gambling device is a class B misdemeanor.

(2) It shall be a defense to a prosecution under this section that the gambling device is an antique slot machine and that the antique slot machine was not operated for gambling purposes while in the owner's or the defendant's possession. A slot machine shall be deemed an antique slot machine if it was manufactured prior to the year 1950.

(3) It shall be a defense to a prosecution under this section that the gambling device is possessed or under custody or control of a manufacturer registered under the federal gambling devices act of 1962 (15 U.S.C. 1171 et seq.) or a transporter under contract with such manufacturer with intent to transfer for use:

(a) By the Kansas lottery or Kansas lottery retailers as authorized by law and rules and regulations adopted by the Kansas lottery commission;

(b) by a licensee of the Kansas racing commission as authorized by law and rules and regulations adopted by the commission; ~~or~~

(c) in a state other than the state of Kansas; or

(d) in Indian gaming activities.

New Sec. 10. If any part of this act is found to be unconstitutional or in violation of applicable law, whether on its face or as applied, the remaining provisions of this act shall remain in full force and effect and to such end this act is

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declared to be severable.

New Sec. 11. Nothing contained in this act or in any compact (unless otherwise expressly state therein) shall be construed as a waiver by the state of Kansas of any remedies or defenses available to it in any federal, state or tribal court or proceeding, including, without limitation, the state's defenses under the 10th and 11th amendments to the constitution of the United States, arising out of or in connection with any action under the Indian gaming regulatory act (25 U.S.C. 2701 et seq.).

Sec. 12. K.S.A. 21-4302 and K.S.A. 1992 Supp. 21-4306 and 21-4307 are hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the Kansas register.

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