

Approved: 3/22/93
Date

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 March 18, 1993 in Room 526-S of the Capitol.

All members were present except: Representative Blaise R. Plummer, Excused
Representative L. Candy Ruff, Excused

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: Senator Lana Oleen
Jim Conant, Alcoholic Beverage Control Division
Ronald R. Hein, Coalition for Instant Bingo
Charles M. Yunker, The Kansas American Legion
Joe Berger, President, Kansas Sunflower Club Association
Thomas Frenn, Kansas Charities Cooperative
Paul Lenherr, Knights of Columbus
Mary B. Magnuson, National Association of Fund Raising
Ticket Manufacturers
David Wetzler, Assistant Attorney General
Rogers L. Brazier, Jr., Department of Administration,
Legal Section

Others attending: See attached list

The Chairperson called on Representative Benlon, Chairperson of the sub-committee on HB 2262. Chairperson Benlon asked that their recommendation be used as a substitute for HB 2262. (See Attachment #1)

Representative Benlon moved and Representative Lahti seconded to accept the sub-committee's draft as a substitute HB 2262. The motion carried.

The Chairperson opened the hearing on SB 181, a bill relating to instant bingo.

Senator Lana Oleen testified in support of SB 181, stating the bill authorizes organizations licensed to play bingo, a new bingo-type game called "instant bingo." (See Attachment #2)

Senator Oleen further stated she felt the fiscal note she requested was in error. (See Attachment #3)

The Chairperson stated he would request a new fiscal note on SB 181.

Jim Conant, Chief Administrative Officer, Alcoholic Beverage Control Division, stated the Department of Revenue has maintained a neutral position on the issue of incorporating "instant bingo" into the bingo laws. However, the proposed method of taxing instant bingo games is of particular merit and should be considered as an alternative for collection of all bingo taxes, regardless of whether instant bingo is approved. (See Attachment #4)

Ronald R. Hein, on behalf of the Coalition for Instant Bingo, testified in support of SB 181, stating the coalition is comprised of the American Legion, the Eagles, the Elks, the Knights of Columbus, the Moose, the Veterans of Foreign Wars, the Sunflower Club Association, Kansas Charities Cooperative, and numerous individual bingo licensees not a member of any of the above.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 526-S
Statehouse, at 1:30 p.m. on March 18, 1993.

Since bingo sales are subject to both state and local sales tax, and since this bill provides for a 1% enforcement tax, the Coalition estimates that SB 181 will raise \$500,000 - \$1,000,000 for the State in tax revenue based upon our projections of the number of licensees who will play this popular game. (See Attachment #5)

Charles M. Yunker, Department Adjutant, The Kansas American Legion, testified in support of SB 181, stating instant bingo will provide additional revenue for the state of Kansas and for those non-profit organizations who conduct bingo games in both owned and leased premises. Revenue for the State and local taxing bodies will be generated through sales taxes at the rate of 4.9% (plus and local sales taxes) and a 1% enforcement tax for a combined state tax of 5.9% of gross receipts. (See Attachment #6)

Joe Berger, President, Kansas Sunflower Club Association, testified in support of SB 181, stating bingo revenue helps organizations to carry out charitable programs. (See Attachment #7)

Thomas Frenn, Kansas Charities Cooperative, testified in support of SB 181, stating Kansas Charities Cooperative is an organization of bingo hall owners and non-profit organizations in these halls that have bingo games. This bill would allow organizations to sell instant win tickets only at and during their bingo games. It is estimated these tickets will generate from one-half to \$1M additional revenue for Kansas. (See Attachments #8 and 8A)

Paul Lenherr, Public Relations Chairman for the Kansas State Council of the Knights of Columbus, testified in support of SB 181, stating it is an extension of the current bingo laws and an opportunity to generate more revenue for the Knights of Columbus and for the State's General Fund. (See Attachment #9)

Mary B. Magnuson, National Association of Fundraising Ticket Manufacturers, testified in support of SB 181, stating that instant bingo is a popular form of fundraising for non-profit organizations throughout the United States and Canada. Instant bingo can generate additional revenue for charities and for the state. These bingo games are played once or twice a week. (See Attachment # 10 & 10A)

The Chairperson closed the hearing on SB 181 and stated possibly final action would be taken next week

The Chairperson opened the hearing on SB 382, which would amend the Charitable Organizations and Solicitations Act to require that financial reports filed by charitable organizations that are required to register with the Secretary of State include certain specific fiscal information.

David C. Wetzler, Assistant Attorney General, testified in support of SB 382, stating this bill would merely require by statute that specific information be reported to the Secretary of State. Also, this bill would allow the Secretary of State to accept executed copies of federal Internal Revenue returns and reports in lieu of a financial statement. The bill would require organizations that raise more than \$100,000 during its most recent fiscal year to file with the Secretary of State an audited financial statement and the opinion of an independent certified public accountant on the financial statement. The bill would amend K.S.A. 1992 Supp. 17-1767 to mirror the subpoena powers afforded the Attorney General in the Kansas Consumer Protection Act. (See Attachment #11)

The Chairperson closed the hearing on SB 382.

The Chairperson stated there were some questions regarding SB 275 and a balloon is being offered to change the language to be the same as that in the adult bill. (See Attachment #12)

Rogers L. Brazier, Jr., Staff Attorney, Department of Administration, Legal Section, supported the balloon with the exception of striking "and", the first word of the balloon on Page 4, line 24. (See Attachment #13)

Representative Kline moved and Representative Cornfield seconded to accept the balloon on SB 275. The motion carried.

Representative Cox moved and Representative Robinett seconded to move SB 275 out of committee as amended. The motion carried.

The meeting adjourned at 3:20 PM.

The next meeting is scheduled for March 22, 1993.

Date:

FEDERAL and STATE AFFAIRS COMMITTEE

[illegible]

~~PROPOSED SENATE~~ SUBSTITUTE FOR HOUSE BILL NO. 2115 ²²⁶²

By Committee on Federal and State Affairs

AN ACT supplementing the Kansas consumer protection act; relating to health clubs; declaring certain acts or practices to be unfair and deceptive and providing remedies therefor.

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

Section 1. As used in this act:

(a) "Contract for health club services" or "contract" means a term agreement by which a supplier agrees to provide a consumer with the right to use the facilities of a health club and provide the consumer with health and fitness services for a specified time duration greater than one month.

(b) (1) "Health club" means any person engaged in: (A) A program of physical exercise which includes the use of exercise equipment or facilities, such as a sauna, whirlpool, weight lifting room, massage, steam room, exercising machine or device or exercise room; or (B) the sale of the right or privilege of using exercise equipment or facilities, such as a sauna, whirlpool, weight lifting room, massage, steam room, exercising machine or device or exercise room.

(2) Health club does not include: (A) Any private club owned and operated by its members; (B) any organization solely operated for the purpose of teaching a particular form of self defense such as judo or karate; (C) any facility owned or operated by the United States or the state of Kansas, or any agency or political subdivision thereof; (D) any nonprofit public or private elementary or secondary school or postsecondary school or institution; or (E) any nonprofit organization exempt from federal income tax pursuant to section 501(c) of the internal revenue code of 1986, as in effect on the effective date of this act.

(c) "Health club services" means those programs, rights and privileges described in subsection (b)(1).

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(d) "Monthly dues contract" means a contract providing for the payment of an equal fee each month (excluding usage fees) with the consumer having the right to cancel at any time upon not more than 45 days' notice.

(e) "Term agreement" means a contract by which a consumer agrees to enter into a contract for health club services for a specified time period greater than one month.

(f) "Unopened facility" means a health club that is not fully constructed, open and available for use when the supplier enters into a contract for health club services with a consumer.

(g) "Usage fees" means the fees charged by a health club, exclusive of a membership or initiation fee, for the use of services or products not covered by the contract, including but not limited to locker rentals, massage, tanning, lessons or equipment rentals.

Sec. 2. (a) In connection with the opening or operation of any health club, it constitutes an unfair and deceptive act or practice within the meaning of K.S.A. 50-626 and amendments thereto for any supplier to fail to file with the secretary of state a registration statement in compliance with this section.

(b) No health club shall enter into a health club services contract with a consumer unless a current registration statement is on file with the secretary of state.

(c) Each separate location where health club services are offered shall be considered a separate health club and shall file a separate registration even though the separate locations are owned and operated by the same owner.

(d) The registration statement shall contain the following:

- (1) The name and address of the health club;
- (2) the names and addresses of all officers, directors and majority stockholders of the health club and the parent company, if any;
- (3) the approximate size of the facility;
- (4) the type of available facilities;
- (5) the type of membership plans offered and their cost;

(6) a copy of the contract for health club services;

(7) a full and complete disclosure of any pending or completed litigation against the health club and any of its officers or directors within the last three years or a notarized statement which states there has been no litigation filed within the past three years;

(8) the name and address of any financial institution where an escrow account required under this act is located; and

(9) the name and address of any surety company or financial institution issuing a bond or letter of credit required under the provisions of subsection (d)(1) of section 5.

(e) The registration statement must be updated at least annually. A health club or nonprofit organization which changes any of its locations or ceases to do business must, within 10 days thereafter, provide written notice of changes to the secretary of state.

(f) A copy of the registration statement shall be kept at each facility location and be available for inspection by all current members and prospective members on request.

(g) The secretary of state may charge each health club that files a registration statement a reasonable fee to cover the cost of filing, but not to exceed \$50.

Sec. 3. (a) A health club shall not enter into a contract for health club services with a consumer more than six months prior to the scheduled opening of the health club facility. If the scheduled opening is delayed through no fault of the health club, the contract may be extended, at the option of the consumer, for a period of time equal to the delay.

(b) All payments received by a health club pursuant to a contract for health club services involving an unopened facility shall be placed in an interest-bearing escrow account. The escrow account shall be for the exclusive benefit of the consumers. The escrow account shall be established in a financial institution doing business in the state. A separate escrow account shall be required for each facility.

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(c) The funds deposited in the escrow account shall remain the property of the consumers whose funds have been deposited and shall be subject to full refund, plus interest earned, to those consumers who submit a written request for a refund at any time until 15 operating days following notice that the facility is open and available for inspection and use. The supplier shall not encumber the corpus of the escrow account and may not use the corpus of the escrow account or the interest from the corpus of the escrow account for any purpose except to make refunds to consumers until 15 operating days after notice is sent to the consumer as required in subsection (d). Upon the expiration of the 15-day period, the supplier may deposit the remaining escrow funds into the supplier's operating account.

(d) When the construction of the health club facility is substantially completed and it is open and available for use by consumers, the supplier shall mail or personally deliver to each consumer a written notice that informs the consumer that:

(1) The facility is available for inspection and use;

(2) the consumer has 10 operating days after the date of the mailing or personal delivery of the notice in which to inspect the facility and determine whether it substantially conforms with the written contract, all written materials provided by the supplier and all advertisement by the supplier;

(3) if the facility does not substantially conform with the written contract, any written material provided by the supplier or any advertisement by the supplier, the consumer may cancel the contract and receive a full refund of all amounts paid, including interest earned thereon; and

(4) the procedure for canceling the contract, as described in subsection (a) of section 4.

(e) If a consumer notifies the supplier of the intent to cancel the membership contract, the supplier, according to the procedures described in subsection (a) of section 4, shall make an appropriate refund to the consumer within 15 business days after the health club receives written notice of the consumer's

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cancellation.

Sec. 4. (a) The consumer at an open health club facility shall have the right to cancel a contract for health club services as provided below:

(1) A consumer may cancel the contract for any reason until midnight of the third business day after a membership contract is signed and delivered to the consumer.

(2) A consumer may cancel the contract if the health club moves to a new location more than five miles from the previous site or substantially changes operation of the health club facility so that the change materially impairs the consumer's use and enjoyment of the health club.

(3) To cancel a contract, a consumer must give not less than 45 days' written notice of the cancellation to the supplier at the address specified in the contract. The notice shall state the basis for the cancellation and must be accompanied by the contract forms, membership cards and any and all other documents and evidence of membership previously delivered to the consumer. If the consumer fails to provide all documentation, the supplier may cancel the contract or give the consumer 30 days to provide the documentation. Such notice must be delivered in person or by certified mail, return receipt requested. The burden of proving that the consumer has canceled the contract is on the consumer. If a consumer cancels a contract according to subsection (a)(1), the supplier shall refund all sums paid by the consumer. If a consumer cancels a contract according to subsection (a)(2), the supplier shall refund on a prorated basis membership fees only. All refunds under this subsection (a)(3) shall be paid to the consumer within 15 business days after the supplier's receipt of the cancellation notice.

(b) If the ownership of a health club is transferred from one person to another, the contracts for health club services made by the original owner will be binding on the owner's successor without regard to any agreement between the consumer and supplier to the contrary. If there are substantial changes in

the facilities or services offered as a result of the transfer, the consumer may cancel the consumer's contract for health club services in accordance with subsection (a)(3).

Sec. 5. (a) All contracts for health club services shall be in writing signed by both parties and shall constitute the entire agreement between the supplier and the consumer.

(b) No health club shall accept or receive any payment from a consumer for health club services unless the consumer has signed a fully executed copy of the contract and such contract has been delivered to the consumer. If the consumer is a minor, the contract must be signed by a parent or legal guardian to be effective.

(c) Term contracts for health club services may be for a period of time not to exceed 36 months. The contract may not contain an automatic renewal clause. Renewal contracts shall be governed by the limitations set forth in this section. It shall not be considered a renewal when the contract contains a provision that at the end of the term of the contract, the consumer will continue as a monthly member.

(d) No health club may require or accept more than three months' payments from any consumer in advance of the time of the use of the facilities unless the supplier:

(1) Files and maintains with the secretary of state, in a form reasonably approved by the secretary of state, a bond with corporate surety from a company authorized to transact business in the state of Kansas or an irrevocable letter of credit from a federally insured financial institution in the sum of \$25,000 for each location where health club services are offered, even though separate locations may be owned or operated by the same owner; or

(2) provides the consumer with a statement to be signed by the consumer informing the consumer that under Kansas law the supplier cannot require more than three months' payments in advance of the use of the facilities. Such notice statements, to be effective, shall contain substantially the following language:

NOTICE TO CONSUMER

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KANSAS LAW DOES NOT ALLOW THIS SUPPLIER TO REQUIRE YOU TO PAY MORE THAN THREE MONTHS' PAYMENTS IN ADVANCE OF THE TIME OF ACTUAL USE OF THE FACILITY. HOWEVER, THE CONSUMER MAY ELECT FOR FINANCIAL OR OTHER REASONS TO ENTER INTO AN AGREEMENT CALLING FOR PAYMENTS OF MORE THAN THREE MONTHS SHOULD THEY SO DESIRE.

(NAME OF CONSUMER)

(e) Any bond or letter of credit required under subsection (d)(1) shall be in favor of the state of Kansas for the benefit of the state or any consumer claim under this act where:

(1) The consumer paid money for health club services in a facility which failed to open;

(2) the consumer paid money for health club services in a facility which goes out of business prior to the expiration of the consumer's health club contract; or

(3) the supplier is found in violation of any provisions of this act.

(f) The aggregate liability of the bond or letter of credit to all consumers for all breaches of the conditions of the bond or letter of credit shall in no event exceed the amount of the bond or letter of credit. The bond or letter of credit shall not be canceled or terminated except with the prior written consent of the secretary of state.

(g) Any change in ownership shall not release, cancel or terminate liability under any bond or letter of credit previously filed unless the secretary of state agrees in writing to such release, cancellation or termination because the new owner has filed a new bond or letter of credit for the benefit of consumers who might have a claim against the previous owner or because the previous owner has refunded all unearned payments as required by this act. Every change in ownership shall be reported in writing to the secretary of state at least 10 days prior to the effective date of the change in ownership.

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(h) A contract which does not comply with any material provision of this act shall be voidable at the option of the consumer.

(i) Any contract entered into by the consumer within 30 days before the closing of a health club shall be voidable at the option of the consumer.

Sec. 6. In connection with a contract for health club services, it shall constitute an unfair and deceptive act or practice, within the meaning of K.S.A. 50-626 and amendments thereto, for any health club to:

(a) Fail to set forth in a term agreement for health club services:

(1) The name, business address and telephone number of the supplier and the name and residence or business address of the consumer;

(2) the entire agreement of the parties with respect to cost and terms of payment for the services; and

(3) the date the contract was delivered to the consumer.

(b) Fail to set forth in a term agreement for health club services the following written notice in at least 10-point bold type in capital letters:

CONSUMER'S RIGHT TO CANCELLATION

YOU MAY CANCEL THIS CONTRACT WITHIN THREE BUSINESS DAYS AFTER THE DATE OF THIS CONTRACT, OR THE DATE OF YOUR RECEIPT, WITHOUT PENALTY OR FURTHER OBLIGATION, BY GIVING, EITHER BY HAND DELIVERY OR CERTIFIED OR REGISTERED MAIL, WRITTEN NOTICE TO THE SUPPLIER. IF YOU CANCEL DURING THIS PERIOD, YOU WILL RECEIVE A FULL REFUND (INCLUDING ANY INITIATION OR MEMBERSHIP FEE) WITHIN 15 BUSINESS DAYS AFTER THE CLUB RECEIVES YOUR NOTICE OF CANCELLATION. TO BE EFFECTIVE, YOUR CANCELLATION MUST BE POSTMARKED BY MIDNIGHT, OR HAND DELIVERED BY MIDNIGHT ON _____, 19____, AND MUST INCLUDE ALL CONTRACT FORMS, MEMBERSHIP CARDS AND

ALL OTHER DOCUMENTS AND EVIDENCE OF MEMBERSHIP PREVIOUSLY DELIVERED TO YOU.

(c) Fail to set forth in a term agreement for health club services the following notice captioned in at least 10-point type:

ADDITIONAL RIGHTS TO CANCELLATION

You may cancel this contract if the health club services provided under this contract are not available because the health club moves more than five miles from its current site or substantially changes the facilities, provided that the changes materially impair the consumer's use and enjoyment of the facility.

(d) Fail to set forth in a term agreement for health club services involving an unopened facility the following statement in at least 10-point type:

All funds received by us on your account, while the facility is unopened, will be held in an interest-bearing escrow account at (name, in-state address and telephone number of the financial institution designated to receive and hold all amounts paid to the seller).

You may cancel this contract if the facility fails to open and become fully operational, unless the delay is through no fault of the supplier, by _____ (date listed may not be more than six months from the first date contracts were sold). If you cancel the contract, your money held in escrow will be returned to you, along with the interest earned.

Once the facility is opened and available for use, we will mail or personally deliver to you an invitation to inspect the facility. You will have 10 operating days after the mailing or delivery to inspect the facility to determine if it

substantially conforms with our written contract, all written materials we have provided and all of our advertisements. If the facility does not substantially conform, you have the right to cancel this contract during this 10-day period.

(e) Fail or refuse to honor any valid notice of cancellation and provide a refund to the consumer in the manner and within the time provided by this act.

Sec. 7. It shall constitute an unfair and deceptive act or practice (whether or not any person has in fact been misled) within the meaning of K.S.A. 50-626 and amendments thereto, for any supplier to misrepresent, whether in its advertising, promotional materials or in any other manner:

(1) The size, location, available facilities or equipment of the supplier's health club or health clubs or the location or locations at which the supplier's services, facilities or equipment will be offered;

(2) the nature of the supplier's courses, membership programs, training devices or methods, services, pricing structure, price discounts, sales or offers; or

(3) the nature, extent or availability of any services, guidance, instruction, counseling or assistance which the health club will provide to consumers.

Sec. 8. Nothing in this act shall be construed to nullify or impair any right or rights which a consumer may have against a supplier at common law, by statute or otherwise. The provisions of this act are not exclusive and do not relieve the supplier or the supplier's assignees or contracts from compliance with all other applicable provisions of law.

Sec. 9. This act shall be a part of and supplemental to the Kansas consumer protection act.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.

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STATE OF KANSAS

LANA OLEEN
SENATOR, 22ND DISTRICT
RILEY AND GEARY COUNTIES



TOPEKA

SENATE CHAMBER

LEGISLATIVE HOTLINE
1-800-432-3924

COMMITTEE ASSIGNMENTS

CHAIRMAN: GOVERNMENTAL ORGANIZATION
LEGISLATIVE EDUCATIONAL PLANNING
VICE-CHAIRMAN: CONFIRMATIONS
LABOR, INDUSTRY, SMALL BUS.
MEMBER: ASSESSMENT AND TAXATION
ECONOMIC DEVELOPMENT
JUDICIARY
ARTS/CULTURAL RESOURCES
COMMISSIONS: KANSAS SENTENCING
WASTE REDUCTION AND RECYCLING
DACOWITS—U.S. DEPT. OF DEFENSE

Chairman Graeber and Members of the Committee:

SB 181 authorizes organizations licensed to play bingo a new bingo-type game called "instant bingo."

SB 181 had bi-partisan sponsorship of 14 Senators, had Committee hearings, passed the Senate Federal & State Affairs Committee unanimously, then passed the Senate 38-2 last week.

Thirty-one states allow this type of game, including neighboring states of Missouri, Oklahoma, Colorado and Nebraska. The game is called pull-tabs, charity game tickets, and other names in other states.

SB 181 was amended in my Committee to include the provisions of SB 81 which had been requested by the Department of Revenue, and to add language to tighten the enforcement controls. The bill as originally introduced also contains numerous amendments requested by the Department of Revenue to insure strong enforcement of both instant bingo as well as existing bingo games.

No conferees appeared to oppose the bill in the Senate. I have a letter from the Department of Revenue of their support for the bill, and a letter from the Lottery that instant bingo would have minimal impact on them.

We did not receive the fiscal note until after hearings and action on SB 181. The Division of Budget's fiscal note, in my opinion, is not supportable by what has happened with pull-tabs in other states. These games are very popular with bingo licensees, and generate millions of tax dollars for public coffers.

SB 181 provides for a 1% bingo enforcement tax, and instant bingo sales are also subject to the 4.9% state sales tax, as well as local sales taxes. The 5.9% combined tax should generate significant dollars for the state if this bill is approved. I would urge you to examine the fiscal note carefully, and seriously question the assumptions on the number of organizations that will play instant bingo before you accept the Budget fiscal note.

Thank you for the opportunity to appear in support of SB 181. I would be pleased to respond to any questions you might have following the proponents' testimony.

1631 FAIRCHILD AVE.
MANHATTAN, KANSAS 66502
(913) 537-7718

Senator Lana Oleen

March 18, 1993

STATE OFFICE
KANSAS CAPITOL, ROOM 143N
TOPEKA, KANSAS 66612
(913) 296-7360 [JAN.-APRIL]

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STATE OF KANSAS



DIVISION OF THE BUDGET

Room 152-E
State Capitol Building
Topeka, Kansas 66612-1504
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FAX (913) 296-0231

Joan Finney
Governor

Gloria M. Timmer
Director

March 15, 1993

The Honorable Lana Oleen, Chairperson
Committee on Federal and State Affairs
Statehouse, Room 136-N
Topeka, Kansas 66612

Dear Senator Oleen:

SUBJECT: Fiscal Note for SB 181 by Senators Oleen, et al.

In accordance with KSA 75-3715a, the following fiscal note concerning SB 181 is respectfully submitted to your committee.

SB 181 would authorize the use of "instant" bingo games by licensees authorized to conduct bingo games under current law. As noted in the bill, instant games refer to the sale of disposable cards having a removable cover, which, when removed, reveals a set of numbers, letters, symbols, or configurations for the purpose of winning prizes. The bill limits the cost of a single instant bingo card to \$1 and requires that at least 60 percent of gross revenues generated by the sale of tickets be returned to the final purchaser.

This bill creates a tax of 1.0 percent of the retail value of all tickets in a box of instant bingo tickets. Revenues generated by the tax on instant bingo cards would be deposited in the state treasury, with one-third of the amount being credited each to the State General Fund, the County and City Bingo Tax Fund, and the Bingo Regulation Fund. The bill provides for the registration of bingo card distributors by the Secretary of Revenue after the payment of a \$500 registration fee, with these fees being remitted to the Bingo Regulation Fund. All other license and registration fees would also be deposited into the Bingo Regulation Fund, rather than to the State General Fund. The State General Fund is where the fees are currently deposited. The bill would take effect after its publication in the statute book.

Reduced revenues to the State Gaming Revenues Fund and increased revenues to the State General Fund, the State Bingo Regulation Fund and the County and City Bingo Tax Fund would be

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The Honorable Lana Oleen, Chairperson
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anticipated upon passage of this bill. The extent to which receipts to these funds would be affected would depend upon the number of bingo cards sold as a result of this bill and the number of bingo cards and instant cards which would not be sold by the Kansas Lottery.

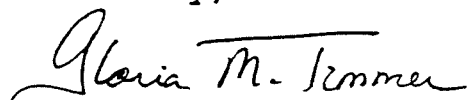
Sales by the Kansas Lottery of pull tab cards and instant game tickets by lottery retailers, which are also bingo licensees, totaled \$799,000 in calendar year 1992. Of this amount, 30 percent, or approximately \$240,000, was transferred to the State Gaming Revenues Fund. The Kansas Lottery assumes a total loss of its sales by bingo licensees, as this bill requires prize percentages for privately distributed games of 60 percent. That is generally higher than the level the Lottery is able to offer. Thus, the bill would reduce receipts to the State Gaming Revenues Fund by an estimated \$240,000.

If it is assumed that an equal number of tickets would be sold by private distributors, as was sold by the Lottery in 1992, the 1.0 percent tax on retail sales would produce receipts of \$7,990. The revenues from this tax would then be divided equally between the Bingo Regulation Fund, the County and City Bingo Tax Fund, and the State General Fund. Also, additional revenues to the Bingo Regulation Fund would be anticipated from registration fees of \$500 per distributor, although few distributors are expected to request registration, and anticipated revenues would be minimal.

By shifting the deposit of licenses and registration fees from the State General Fund to the Bingo Regulation Fund, the bill would cause a shift of an estimated \$16,750 in annual receipts from the former to the latter. The total changes anticipated from SB 181 are summarized below.

	<u>Amount</u>	<u>Fund</u>
Lost Lottery Sales	\$(240,000)	State Gaming Revenues Fund
1.0 Percent Tax	7,990	State General Fund Bingo Regulation Fund County & City Bingo Tax Fund
License &	(16,750)	State General Fund
Registration Fee	<u>16,750</u>	Bingo Regulation Fund
Total	<u>\$(232,010)</u>	

Sincerely,


Gloria M. Timmer
Director of the Budget

cc: Steve Stotts, Revenue

181.fn

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STATE OF KANSAS



Robert A. Engler, Director
512 S.W. 6th, 2nd Fl.
Topeka, Kansas 66603-3150

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Department of Revenue
Division of Alcoholic Beverage Control

MEMORANDUM

TO: The Honorable Clyde Graeber, Chairman
House Committee on Federal & State Affairs

FROM: Jim Conant, Chief Administrative Officer
Alcoholic Beverage Control Division

DATE: March 18, 1993

SUBJECT: Senate Bill 181

Thank you for the opportunity to appear before the committee today regarding Senate Bill 181. The Department of Revenue has maintained a neutral position on the issue of incorporating "instant bingo" into the bingo laws. We do, however, support that portion of the bill (New Section 8) which provides for an administrative fine structure to be used in dealing with violations. This section was originally introduced as Senate Bill 81 at the request of the ABC Division. The Senate Committee on Federal & State Affairs subsequently amended Senate Bill 81 into the bill before you today.

In requesting authority to impose fines, we are seeking an additional tool for use in encouraging all persons involved in bingo operations to comply with the law. The use of fines as an administrative penalty would be focused primarily on lower-level, repeat violations. These violations include such things as failure to properly display numbers, improper handling of cards, insufficient recordkeeping, etc. Violations of this type are generally dealt with by sending written warnings to licensees. The effectiveness of this approach is at best questionable and, as licensees see only continued warnings for repeat violations, provides very little incentive to come into compliance with the law. Unfortunately, under current law, the only punitive option available to the Department is suspension or revocation of the Bingo license. This bill addresses the need for a level of intermediate action for first-time and lower level violations which do not warrant the more extreme measures of suspension or revocation. The Department respectfully requests that minor technical amendments be made in New Section 8 to include lessors of premises where bingo is played. A balloon outlining these amendments is attached.

As stated earlier, the Department does not have a position on the broader issue of adopting instant bingo. However, the proposed method of taxing instant bingo games is of particular merit and should be considered as an alternative for collection of all bingo taxes, regardless of whether instant bingo is approved. The bingo tax is currently collected on sales made and reported by licensees. Audits can generally only determine that a licensee is correctly calculating the amount of tax due based on their record of sales. Short of assigning an inspector to each and every game, there is no accurate method of determining that licensees are actually reporting and paying taxes on ALL sales. Application of the tax at the wholesale level would vastly decrease the number of taxpayers and impose a paper trail which should eliminate nearly all accidental or deliberate under-reporting of the bingo tax.

I would be happy to answer any questions the committee may have.

F & SA
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Atch #4

1 of any county. all taxes collected therefrom shall be remitted to the
 2 county treasurer of such county and credited to the county general
 3 fund. Moneys distributed to cities and counties under this section
 4 shall be used to assist in the enforcement of the bingo laws of this
 5 state.

6 Sec. 7. K.S.A. 79-4711 is hereby amended to read as follows:
 7 79-4711. There is hereby created the bingo refund fund in the state
 8 treasury. The bingo refund fund shall be a refund clearing fund and
 9 refunds of the fees imposed under K.S.A. 79-4703 *and amendments*
 10 *thereto* and of the tax levied under K.S.A. 79-4704 *and amendments*
 11 *thereto* shall be made from this fund. The bingo refund fund shall
 12 be maintained by the secretary of revenue from the ~~fees received~~
 13 ~~under K.S.A. 79-4703 and license and registration fees received~~
 14 *under this act and from the tax collected under K.S.A. 79-4704 and*
 15 *amendments thereto* in an amount sufficient for such refunds ~~of~~ not
 16 to exceed ~~ten thousand dollars (\$10,000)~~ \$10,000.

17 New Sec. 8. (a) *In addition to or in lieu of any other civil or*
 18 *criminal penalty provided by law, the secretary of revenue or the*
 19 *secretary's designee, upon a finding that a licensee/under K.S.A. 79-* or lessor
 20 *4703 and amendments thereto has violated any provision of K.S.A.*
 21 *79-4701 through 79-4705, 79-4705a, 79-4706, 79-4707, 79-4708, 79-*
 22 *4710, 79-4711 or section 5, and amendments thereto, or any provision*
 23 *of any rule and regulation of the secretary of revenue for the reg-*
 24 *istration, licensing, taxing, management, conduct or operation of* or lessor
 25 *bingo, may impose on such licensee/a civil fine not exceeding \$500*
 26 *for each violation.*

27 (b) *No fine shall be imposed pursuant to this section except upon*
 28 *the written order of the secretary of revenue or the secretary's*
 29 *designee to the licensee who committed the violation. Such order*
 30 *shall state the violation, the fine to be imposed and the right of the* or lessor
 31 *licensee/to appeal the order. Such order shall be subject to appeal*
 32 *and review in the manner provided by the Kansas administrative*
 33 *procedures act.*

34 (c) *Any fine collected pursuant to this section shall be paid to*
 35 *the state treasurer, who shall deposit the entire amount in the state*
 36 *treasury and credit it to the state bingo regulation fund.*

37 New Sec. § 9. If any provision of this act or the application
 38 thereof to any person or circumstances is held unconstitutional or
 39 otherwise invalid, such unconstitutionality or invalidity shall not af-
 40 fect other provisions or applications of the act which can be given
 41 effect without the unconstitutional or invalid provision or application,
 42 and, to this end, the provisions of this act are severable.

43 Sec. § 10. K.S.A. 79-4701, 79-4704, 79-4705, 79-4706, 79-4710

HEIN, EBERT AND ROSEN, CHTD.

ATTORNEYS AT LAW

5845 SW 29th Street, Topeka, Kansas 66614

Telefax: (913) 273-9243

(913) 273-1441

*Ronald R. Hein
William F. Ebert
Eric S. Rosen
Stephen P. Weir*

**HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
TESTIMONY RE: SB 181 INSTANT BINGO
Presented by Ronald R. Hein
on behalf of the Coalition for Instant Bingo
March 18, 1993**

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Coalition for Instant Bingo. The Coalition is comprised of the American Legion, the Eagles, the Elks, the Knights of Columbus, the Moose, the Veterans of Foreign Wars, the Sunflower Club Association, Kansas Charities Cooperative, and numerous individual bingo licensees not a member of the any of the above organization.

SB 181 amends the bingo laws to provide for a bingo game called instant bingo. Instant bingo is a commonly played bingo game, oftentimes referred to as Charity Game Tickets or pull-tabs.

Currently 31 states permit Charity Game Tickets to be sold. Instant bingo is a popular game which is supported by the vast majority, if not all, of the bingo licensees in the state.

SB 181 provides that only constitutionally recognized bingo licensees can operate instant bingo games, and only during such times as the organization is operating a regular call bingo game.

At the request of the Department of Revenue, the Coalition for Instant Bingo agreed to additional amendments to the bill that would insure strict regulation and enforcement of instant bingo. In addition, the Department requested additional authority for regulating bingo, which amendments have been agreed to by the Coalition.

An amendment proposed by the National Association of Fundraising Ticket Manufacturers which strengthens the enforcement provisions of the bill was added in the Senate committee. The Senate committee also added the provisions of SB 81 to SB 181. SB 81 was requested by Department of Revenue to permit the agency to levy fines on bingo licensees violating the law. The members of the Coalition supported SB 81.

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Since bingo sales are subject to both state and local sales tax, and since this bill provides for a 1% enforcement tax, the Coalition estimates that SB 181 will raise \$500,000-1,000,000 for the State in tax revenue based upon our projections of the number of licensees who will play this popular game.

I have attached a copy of page 9 of the National Association of Fundraising Ticket Manufacturer's 1991 Report on Charity Gaming in North America. To calculate what tax might be generated in Kansas, you would multiply the Gross Handle column by 5.9%. You can quickly see the revenue raising possibilities of this legislation.

However, the primary reason for the legislation is to permit the charitable, fraternal, religious, and veterans organizations to maximize their fund-raising potential in a legal, entertaining manner for their members. The potential additional state and local revenue is an additional benefit.

Thank you very much for permitting me to testify today, and I now would like to have the representatives of the member organizations of the Coalition give their testimony. When they are done, if the Chairman desires, we would be happy to yield to any questions.

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CHARITY GAME TICKETS

<i>State</i>	<i>Gross Handle</i>	<i>Per Capita*</i>	<i>% Payout</i>	<i># Games Sold</i>
MN	\$1,122,641,000	\$256.60	82%	610,000 ¹
WA ²	442,749,962	90.60	67%	1,279,945
OH ³	290,087,956	26.74	75%	N/A
LA	182,355,796	43.21	78%	N/A
TX	172,414,636	10.15	68%	N/A
AK ⁴	157,172,556	285.77	N/A	N/A
CO	156,827,390	47.61	N/A	82,908
NE	134,167,471	85.02	74%	76,341
ND	122,398,405	191.55	80%	96,000
IL	75,778,900	6.63	N/A	N/A
MO	58,936,084	11.52	N/A	N/A
MA	58,700,000	9.76	60%	93,663
NH ⁴	43,969,464	39.65	72%	65,000
NM	31,317,000	20.67	73%	N/A
MI	25,578,700	2.75	72%	18,740
CT	10,650,000	3.24	64%	7,413
DC	512,607	.84	71%	N/A

TOTAL: \$3,086,257,927

<i>Province</i>	<i>Gross Handle</i>	<i>% Payout</i>
SASK	\$ 94,945,256	74%
BC	75,000,000	65%
MAN	44,500,000	68%
NEWF	27,556,962	73%
NWT	8,421,602	75%
NEWB	1,088,003	70%

TOTAL: \$251,511.823

Total U.S.

& Canada: \$3,337,769.750

** Based on 1990 Census Bureau statistics*

¹Estimate by state official

²Includes commercial activity; \$99,619,335 is non-profit amount

³NAFTM estimate assuming a 75% payout

⁴Estimate by state official

AMERICAN LEGION STATEMENT ON
SENATE BILL 181
by CHARLES M. YUNKER
DEPARTMENT ADJUTANT

On behalf of the more than 61,000 members of The Kansas American Legion, thank you for allowing me this opportunity to address you today and to urge your support of Senate Bill 181 which will redefine Bingo games under state law to include "Instant Bingo" and to implement enforcement procedures previously unavailable to Bingo Enforcement Agents.

Instant Bingo as defined in Senate Bill 181 has been endorsed by the Department Executive Committee of the Kansas American Legion which is the governing body of The American Legion between State Conventions. The Executive Committee's membership includes representatives from all areas of the State of Kansas. Their endorsement of Instant Bingo was announced during our 1992 and 1993 Mid-Winter Forums and in our State newspaper. To date we have heard from many of our members voicing their support of Instant Bingo while only one person has voiced his non-support.

Instant Bingo will provide additional revenue for the state of Kansas and for those non profit organizations who conduct Bingo games in both owned and leased premises. Revenue for the State and local taxing bodies will be generated through sales taxes at the rate of 4.9% (plus any local sales taxes) and a 1% Enforcement tax for a combined state tax of 5.9% on Gross receipts.

For years the Bingo Parlors in Kansas and those Bingo license holders who own their own buildings have waged a battle during each session of the legislature. That battle has been over a disagreement

regarding the number of days Bingo may be played per week at a given location and the maximum total prize value which can be awarded to Bingo players.

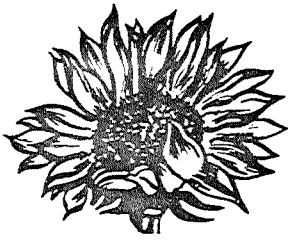
Year after year Department of Revenue statistics indicate a relatively stable number of people play Bingo and a relatively level amount of money is spent on Bingo. Therefore to increase the number of days a licensee can conduct Bingo, or an increase in prize money would only spread the Bingo pie thinner. The only way to satisfy both owned and leased Bingo operations would be to place a new revenue generating item on the "menu."

Instant Bingo as defined by Senate Bill 181 is that new item and it has been endorsed by both The American Legion and Kansas Charities Cooperative. Kansas Charities Cooperative, which is a large organization of Bingo Parlors, has agreed not to promote any future legislation which is not beneficial to both owned and leased license holders. We are all in agreement that Instant Bingo is the best compromise possible and will be of great benefit to all Bingo license holders, the State of Kansas and those local governments with a sales tax.

SB 181 will also allow for the levying of fines in contrast with the present enforcement system which, in my mind, requires an Enforcement Agent to be "Judge and Jury" should they find a violation of Bingo Laws and Regulations. Current law only allows for the revocation of a Bingo Operator's license even in the case of an honest mistake. My suspicion is an agent, should they discover a minor violation, warns the operator and turns a blind eye to the law because that agent knows both the operator and the State would lose revenue if the license is revoked as the law prescribes.

SB 181 will help make certain all operators conduct Bingo on a level playing field, each adhering to the same rules and each will suffer the same consequences should they violate the law.

Thank you again for this opportunity to urge your support of SB 181 which will provide increased revenue for Bingo licensees and the State of Kansas.



Kansas Sunflower Club Association

1314 Topeka Ave. Topeka, Kansas 66612

March 18, 1993

Joe Berger, President
Moose

Don Herbert, Vice President
Elks

Chuck Yunker, Sec./Tres.
American Legion

Directors:

Keven Carroll
County and Town Clubs

Alfred Skeet
Eagles

Clarence Malone
Knights of Columbus

Forrest Lindsey
Shrine

Darrell Bencken
Veterans of Foreign Wars

Dear Federal & State Affairs Committee Member:

I am Joe Berger, President of the Kansas Sunflower Club Association. Our Association members are the non-profit Fraternal and Veterans organizations, (Moose, Eagles, and Elk Lodges; Knights of Columbus; V.F.W. and American Legion Posts and some of the Shrine organizations) 80% of our organizations conduct Bingo games and depend on the Bingo revenue to carry out their charitable programs.

The past 5 years in our organizations the number of Bingo players and the Bingo income has remained about the same. We are limited by the Bingo Law as to the amount we can charge for a Bingo card. In the same 5 years all of our expenses have increased. We need a new item on the Bingo Menu and S.B. 181 is that new item. We need additional income so we can continue our activities and carry out our charitable programs. Instant Bingo games are played in 31 States including Colorado, Nebraska, Missouri, Oklahoma and by the Indians in Kansas.

We ask you to support S.B.181, The Instant Bingo Bill.

Thank You

Sincerely

Joe Berger
Joe Berger

FxSA
3-18-93

Atch #7



Kansas Charities Cooperative

"Uniting To Serve Kansas"

3/18/93

1250 MEDFORD AVE
TOPEKA, KS 66604

To: Representative Clyde Graeber, Chairman, and Members
of the House Federal and State Affairs Committee

Date: March 18, 1993

Re: SB 181 (Instant Bingo Tickets)

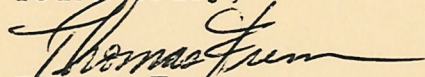
Kansas Charities Cooperative is an organization of bingo hall owners and the non profit organizations in these halls that have bingo games. We are members of the Coalition for Instant Bingo that includes the American Legion, the VFW, Knights of Columbus, and the Kansas Sunflower Club Association. WE ALL SUPPORT SB 181.

This bill will only allow bingo licensed non-profit organizations the opportunity to sell instant win tickets only at and during their bingo games. The tickets range in price from 25 cents to \$1 each. Great care has been taken to safeguard the integrity of these games by strict regulations.

According to the Dept. of Revenue, bingo sales have been flat for the past five years. These tickets will be a great help to bingo licensees. We estimate these tickets will generate from 1/2 to \$1 million additional revenue for Kansas.

By voting yes, you will be helping the fraternal organizations in your district that use bingo raise additional funds.

Yours truly,


Thomas Frenn

F & SA
3-18-93

Atch #8



Coalition for Instant Bingo

Don Herbert, Elks Club Chuck Yunker, American Legion
Joe Berger, Moose Clubs, Kansas Sunflower Clubs
Alfred Skeet, Eagles Club Darrell Benken, VFW
Thomas Frenn, Kansas Charities Cooperative
Paul Lenherr, Knights of Columbus

WE BINGO LICENSED NON-PROFIT ORGANIZATIONS SUPPORT SB 181

	NAME	CITY
1	FOE AERIE 2934 AUXILIARY	ABILENE
2	AMERICAN LEGION POST 357	AGRA
3	AMERICAN LEGION POST 233	ALDEN
4	AMERICAN LEGION POST 266	ALMENA
5	AMERICAN LEGION ED CARLSON POST 71	ALTA VISTA
6	AMERICAN LEGION POST 406	ANDOVER
7	AMERICAN LEGION POST 18	ARKANSAS CITY
8	MOOSE LODGE 1586	ARKANSAS CITY
9	VFW POST 1254	ARKANSAS CITY
10	FOE Aerie 2014	ARMA
11	BPO ELKS 647	ATCHINSON
12	AMERICAN LEGION POST 6	ATCHISON
13	VFW POST 1175	ATCHISON
14	KNIGHTS OF COLUMBUS	ATWOOD
15	LIONS CLUB AUBURN	AUBURN
16	BPO ELKS LODGE 1462	AUGUSTA
17	KNIGHTS OF COLUMBUS, ST JAMES	AUGUSTA
18	KNIGHTS OF COLUMBUS 2114	AURORA
19	AMERICAN LEGION POST 214	AXTELL
20	AMERICAN LEGION POST 211	BELLE PLAINE
21	FRATERNAL ORDER OF EAGLES 3281	BELLEVILLE
22	AMERICAN LEGION POST 133	BELLEVILLE
23	FOE AERIE 3281 AUXILIARY	BELLEVILLE
24	KNIGHTS OF COLUMBUS BELOIT	BELOIT
25	FOE AERIE 3507	BELOIT
26	VFW POST 6242	BELOTT
27	AMERICAN LEGION POST 352	BIRD CITY
28	AMERICAN LEGION POST 352 AUXILIARY	BIRD CITY
29	FOE AERIE 3191	BONNER SPRINGS
30	FOE AERIE 3577	BURLINGTON
31	CAMBRIDGE COMMUNITY CLUB	CAMBRIDGE
32	AMERICAN LEGION POST 192	CANTON
33	SENIOR CENTER INC	CAWKER CITY
34	AMERICAN LEGION POST 216	CENTRALIA
35	KNIGHTS OF COLUMBUS 1046	CHANUTE
36	VFW POST 1654	CHANUTE
37	AMERICAN LEGION POST 170	CHANUTE
38	AMERICAN LEGION POST 240	CHAPMAN
39	AMERICAN LEGION POST 101	CLAY CENTER
40	FRATERNAL ORDER OF EAGLES 3650	CLAY CENTER
41	FRATERNAL ORDER OF EAGLES AUX 3650	CLAY CENTER
42	AMERICAN LEGION POST 101 AUXILIARY	CLAY CENTER
43	BPOE LODGE 2253	CLAY CENTER

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Coalition for Instant Bingo

	NAME	CITY
44	AMERICAN LEGION POST 227 AUXILIARY	CLIFTON
45	VFW POST 7515	CLYDE
46	Knights of Columbus 991	COFFEEVILLE
47	FRATERNAL ORDER OF EAGLES AUX 2459	COFFEYVILLE
48	AMERICAN LEGION POST 363	COLBY
49	VFW POST 6882	COLBY
50	MOOSE LODGE OF CONCORDIA	CONCORDIA
51	AMERICAN LEGION POST 76	CONCORDIA
52	AMERICAN LEGION POST 76 AUXILIARY	CONCORDIA
53	BPOE LODGE 586	CONCORDIA
54	MOOSE LODGE 1278 WOMEN OF THE MOOSE	CONCORDIA
55	VFW POST 588	CONCORDIA
56	AMERICAN LEGION POST 37	CORNING
57	AMERICAN LEGION POST 121	COUNCIL GROVE
58	VFW POST 1363	COUNCIL GROVE
59	AMERICAN LEGION POST 345	CUBA
60	AMERICAN LEGION POST 114	CUNNINGHAM
61	KNIGHTS OF COLUMBUS 2365	DAMAR
62	LIONS CLUB DERBY	DERBY
63	VFW Post 7253	DERBY
64	AMERICAN LEGION POST 190	DIGHTON
65	VFW POST 6438	DIGHTON
66	MOOSE LODGE 1187	DODGE CITY
67	KNIGHTS OF COLUMBUS 2955	DODGE CITY
68	VFW POST 1714	DODGE CITY
69	DOUGLAS CHAMBER OF COMMERCE	DOUGLASS
70	AMERICAN LEGION POST 202	DOUGLASS
71	FOE AERIE 3966	DOWNNS
72	VFW POST 1366	DOWNNS
73	AMERICAN LEGION CAPT. EDGAR DALE 81	EL DORADO
74	BPOE ELKS 1407	EL DORADO
75	VFW POST 1174	EL DORADO
76	MOOSE LODGE 1698	EL DORADO
77	VFW POST 3162	ELKHART
78	AMERICAN LEGION POST 320 AUXILIARY	ELLINWOOD
79	KNIGHTS OF COLUMBUS 1187	ELLINWOOD
80	KNIGHTS OF COLUMBUS 2133	ELLIS
81	VFW POST 9139	ELLIS
82	AMERICAN LEGION POST 174	ELLSWORTH
83	VFW POST 6485	ELLSWORTH
84	PARENTS WITHOUT PARTNERS 1284	EMPORIA
85	AMERICAN LEGION POST 5	EMPORIA
86	FOE AERIE 2587	EMPORIA
87	VFW POST 1980	EMPORIA
88	AMERICAN LEGION POST 102	ERIE
89	VFW POST 2712	EUREKA
90	AMERICAN LEGION POST 50	EUREKA
91	AMERICAN LEGION POST 322	FAIRVIEW
92	AMERICAN LEGION POST 8	FREDONIA
93	FOE AERIE 3592	FREDONIA
94	AMERICAN LEGION POST 43	FRONTENAC
95	BPO ELKS GALENA 677	GALENA
96	FRATERNAL ORDER OF EAGLES 3124	GARDEN CITY

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Coalition for Instant Bingo

	NAME	CITY
97	KNIGHTS OF COLUMBUS	GARDEN CITY
98	AMERICAN LEGION POST 9	GARDEN CITY
99	BPOE LODGE 1404	GARDEN CITY
100	MOOSE LODGE 893	GARDEN CITY
101	VFW POST 2279	GARDEN CITY
102	VFW POST 2279 AUXILIARY	GARDEN CITY
103	BPO ELKS 1528	GOODLAND
104	KNIGHTS OF COLUMBUS	GOODLAND
105	MOOSE LODGE 2225	GOODLAND
106	VFW POST 1133	GOODLAND
107	AMERICAN LEGION POST 301	GRAINFIELD
108	ARGONNE REBELS INC	GREAT BEND
109	BPO ELKS 1127	GREAT BEND
110	GEMINI-MOTHERS OF TWINS	GREAT BEND
111	GREAT BEND COUNCIL OF CAMP FIRE, INC.	GREAT BEND
112	GREAT BEND KIDS WRESTLING CLUB	GREAT BEND
113	KNIGHTS OF COLUMBUS GREAT BEND	GREAT BEND
114	AMERICAN LEGION POST 180	GREAT BEND
115	VFW POST 3111	GREAT BEND
116	AMERICAN LEGION POST 235	GREENLEAF
117	AMERICAN LEGION POST 103	GREENSBURG
118	VFW POST 2864 AUXILIARY	GRINNELL
119	HADDAM COMMUNITY CLUB, INC	HADDAM
120	AMERICAN LEGION POST 306	HANOVER
121	AMERICAN LEGION POST 104	HARPER
122	AMERICAN LEGION POST 173	HAYS
123	FRATERNAL ORDER OF EAGLES 3061	HAYS
124	ST JOSEPH CATHOLIC SCHOOL BINGO	HAYS
125	ST NICHOLAS OF MARY	HAYS
126	BPOE LODGE 2149	HAYS
127	FOE AERIE 3061 AUXILIARY	HAYS
128	KNIGHTS OF COLUMBUS 1325	HAYS
129	KNIGHTS OF COLUMBUS 4166	HAYS
130	VFW POST 9076	HAYS
131	AMERICAN LEGION POST 12	HERINGTON
132	KNIGHTS OF COLUMBUS 1845	HERNDON
133	BPOE LODGE 1741	HIAWATHA
134	BPO ELKS 1995	HILL CITY
135	KNIGHTS OF COLUMBUS 5631	HILL CITY
136	AMERICAN LEGION POST 366	HILLSBORO
137	VFW POST 7428	HOISINGTON
138	AMERICAN LEGION POST 286	HOISINGTON
139	AMERICAN LEGION POST 44	HOLTON
140	VFW POST 1367	HOLTON
141	AMERICAN LEGION POST 365	HOPE
142	ST LEO'S CHURCH BINGO	HORTON
143	CHAMBER OF COMMERCE, HOXIE AREA	HOXIE
144	VFW POST 5391	HUGOTON
145	BPOE HUTCHINSON ELKS 453	HUTCHINSON
146	FRATERNAL ORDER OF EAGLES 2550	HUTCHINSON
147	AMERICAN LEGION POST 68	HUTCHINSON
148	FOE AERIE 2550 LADIES AUXILLARY	HUTCHINSON
149	MOOSE LODGE 982	HUTCHINSON

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Coalition for Instant Bingo

	NAME	CITY
150	VFW POST 1361 AUX	HUTCHINSON
151	VFW Post 1186	INDEPENDENCE
152	ALLEN CO. VOITURE 335	IOLA
153	AMERICAN LEGION POST 15	IOLA
154	AMERICAN LEGION POST 98	ISABEL
155	HODGEMAN CO PRIDE	JETMORE
156	AMERICAN LEGION POST 45	JUNCTION CITY
157	BPOE LODGE 1037	JUNCTION CITY
158	FOE AERIE 830	JUNCTION CITY
159	FOE AERIE 830 AUXILIARY	JUNCTION CITY
160	KNIGHTS OF COLUMBUS 1029	JUNCTION CITY
161	VFW POST 1549	JUNCTION CITY
162	VFW POST 1594 AUXILIARY	JUNCTION CITY
163	KANSAS SUNFLOWER CIVIC CLUB	KANOPOLIS
164	KANORADO SENIOR CITIZENS CENTER	KANORADO
165	BLESSED SACRAMENT PARISH	KANSAS CITY
166	HOLY NAME FAITH COMMUNITY	KANSAS CITY
167	MOOSE LODGE 1999 KANSAS CITY	KANSAS CITY
168	ROSEDALE OPT CLUB INC.	KANSAS CITY
169	SACRED HEART SENIORS	KANSAS CITY
170	VFW POST 5851	KANSAS CITY
171	VFW POST 869	KANSAS CITY
172	VFW POST 869, LADIES AUX	KANSAS CITY
173	American Legion Post 188	KANSAS CITY
174	American Legion Post 217	KANSAS CITY
175	FOE Aerie 87	KANSAS CITY
176	Knights of Columbus 3020	KANSAS CITY
177	Knights of Columbus 3768	KANSAS CITY
178	Moose Lodge 1999	KANSAS CITY
179	VFW Post 111	KANSAS CITY
180	VFW Post 6994	KANSAS CITY
181	FRED MAIRAN POST 166	KENSINGTON
182	ST NICHOLAS SCHOOL	KINSLEY
183	KNIGHTS OF COLUMBUS 7373	KIOWA
184	VFW POST LA HARPE MEMORIAL 6324	LA HARPE
185	VFW POST 7271	LARNED
186	VFW ALFORD-CLARK POST 852	LAWRENCE
187	AMERICAN LEGION POST 14	LAWRENCE
188	BPOE LODGE 595	LAWRENCE
189	FOE AERIE 309	LAWRENCE
190	AMERICAN LEGION 23 SALON 447 8 & 40	LEAVENWORTH
191	AMERICAN LEGION POST 23 AUX	LEAVENWORTH
192	BPOE LODGE 661	LEAVENWORTH
193	FOE AERIE 55	LEAVENWORTH
194	KNIGHTS OF COLUMBUS 900	LEAVENWORTH
195	VFW POST 56	LEAVENWORTH
196	VFW POST 56 AUXILLIARY	LEAVENWORTH
197	AMERICAN LEGION POST 323 AUXILIARY	LEBO
198	LEOTI CHAMBER OF COMMERCE	LEOTI
199	BPO ELKS LIBERAL	LIBERAL
200	ST ANTHONY CATHOLIC SCHOOL BINGO	LIBERAL
201	KNIGHTS OF COLUMBUS 3381	LIBERAL
202	VFW POST 3166	LIBERAL

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Coalition for Instant Bingo

	NAME	CITY
203	VFW POST 7928	LINCOLN
204	AMERICAN LEGION POST 140	LINDSBORG
205	AMERICAN LEGION JOHN P HAND POST 250	LOUISBURG
206	AMERICAN LEGION POST 267	LUCAS
207	AMERICAN LEGION POST 309	LURAY
208	AMERICAN LEGION POST 125	LYNDON
209	AMERICAN LEGION POST 129	LYONS
210	VFW Post 4664	MAIZE
211	VFW LEE PIERSON POST 1786	MANHATTAN
212	AMERICAN LEGION POST 17	MANHATTAN
213	AMERICAN LEGION POST 17 AUXILIARY	MANHATTAN
214	BPOE LODGE 1185	MANHATTAN
215	FOE AERIE 2468	MANHATTAN
216	FOE AERIE 2468 AUXILIARY	MANHATTAN
217	KNIGHTS OF COLUMBUS 1832	MANHATTAN
218	VFW POST 1786 AUXILIARY	MANHATTAN
219	VFW POST 6958	MARION
220	MOOSE LODGE MARYSVILLE 1403	MARYSVILLE
221	ST GREGORY'S ALTAR SOCIETY	MARYSVILLE
222	AMERICAN LEGION POST 163	MARYSVILLE
223	FOE AERIE 3277	MARYSVILLE
224	AMERICAN LEGION	MCPHERSON
225	ST JOSEPHS CHURCH / MCPHERSON	MCPHERSON
226	VFW POST 2715	MCPHERSON
227	BPOE LODGE 502	MCPHERSON
228	VFW MERIDEN MEMORIAL POST 10815	MERIDEN
229	VFW POST 3201	MINNEAPOLIS
230	VFW POST 6373	MOLINE
231	AMERICAN LEGION POST 385	MORAN
232	American Legion Post 247	MOUNT HOPE
233	American Legion Post 136	MULVANE
234	KNIGHTS OF COLUMBUS 7486	MULVANE
235	AMERICAN LEGION SEWARD-AYARY POST 16	NEODESHA
236	VFW POST 5962	NEODESHA
237	AMERICAN LEGION POST 152	NESS CITY
238	AMERICAN LEGION POST 2	NEWTON
239	VFW POST 971	NEWTON
240	AMERICAN LEGION POST 63	NORTON
241	FOE AERIE 3288	NORTON
242	FOE AERIE 3288 AUXILIARY	NORTON
243	KNIGHTS OF COLUMBUS 1510	NORTON
244	FRATERNAL ORDER OF EAGLES 4041	OAKLEY
245	AMERICAN LEGION POST 70	OBERLIN
246	HOLY ROSARY CHURCH	OFFERLE
247	AMERICAN LEGION POST 207	OGDEN
248	AMERICAN LEGION POST 153	OLATHE
249	KNIGHTS OF COLUMBUS 1913	OLATHE
250	VFW POST 2993 AUX	OLATHE
251	VFW POST 2993	OLATHE
252	ST JOSEPH'S CHURCH/SCHOOL	OLPE
253	VFW POST 7772	ONAGA
254	FRATERNAL ORDER OF EAGLES	OSAGE CITY
255	AMERICAN LEGION POST 198	OSAGE CITY

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Coalition for Instant Bingo

	NAME	CITY
256	VFW HANLIN KELLY POST 2258	OSAWATOMIC
257	AMERICAN LEGION POST 204	OSAWATOMIE
258	AMERICAN LEGION POST 49	OSBORNE
259	FRATERNAL ORDER OF EAGLES 4015	OSKALOOSA
260	AMERICAN LEGION POST 36	OSKALOOSA
261	FOE AERIE 4015	OSKALOOSA
262	FOE AERIE 2700	OTTAWA
263	VFW POST 5901	OTTAWA
264	AMERICAN LEGION POST 239	OVERBROOK
265	AMERICAN LEGION POST 239 AUXILIARY	OVERBROOK
266	ABDALLAH SHRINE TEMPLE	OVERLAND PARK
267	AMERICAN LEGION DWIGHT COWLES	OVERLAND PARK
268	VFW POST 846	OVERLAND PARK
269	AMERICAN LEGION POST 225	OZAWKIE
270	AMERICAN LEGION POST 156	PAOLA
271	KNIGHTS OF COLUMBUS COUNCIL 1149	PAOLA
272	FOE AERIE 2673	PAOLA
273	BPO ELKS PARSONS LODGE 527	PARSONS
274	FRATERNAL ORDER OF EAGLES	PARSONS
275	AMERICAN LEGION POST 1721	PARSONS
276	KNIGHTS OF COLUMBUS 643	PARSONS
277	VFW POST 704	PARSONS
278	AMERICAN LEGION POST 142	PERRY
279	VFW POST 1360	PHILLIPSBURG
280	BPO ELKS 412, INC.	PITTSBURG
281	American Legion Post 64	PITTSBURG
282	Knights of Columbus 883	PITTSBURG
283	VFW POST 862	PLEASANTON
284	AMERICAN LEGION POST 373	POWHATTAN
285	CONGREGATION OHEV SHOLOM	PRAIRIE VILLAGE
286	BPOE LODGE 1451	PRATT
287	KNIGHTS OF COLUMBUS 3058	PRATT
288	VFW POST 1362	PRATT
289	RICHMOND COMMUNITY BUILDING	RICHMOND
290	American Legion Post 31	ROSSVILLE
291	AMERICAN LEGION POST 99	RUSSELL
292	VFW POST 6240	RUSSELL
293	AMERICAN BUSINESS WOMEN	SALINA
294	BPO ELKS LODGE 718	SALINA
295	FRATERNAL ORDER OF EAGLES	SALINA
296	FRATERNAL ORDER OF EAGLES AUX 765	SALINA
297	LIONS CLUB SALINA DOWNTOWN	SALINA
298	ODAT	SALINA
299	RECOVERY COVE	SALINA
300	RED BARRON AMBUCKS	SALINA
301	SALINA CRIPPLED CHILDREN	SALINA
302	AMERICAN LEGION POST 62	SALINA
303	AMERICAN LEGION POST 62 AUXILIARY	SALINA
304	KNIGHTS OF COLUMBUS 601	SALINA
305	MOOSE LODGE 721	SALINA
306	VFW POST 1432	SALINA
307	VFW POST 1432 AUXILIARY	SALINA
308	ST BRIDGETS CHURCH	SCAMMON

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Coalition for Instant Bingo

	NAME	CITY
309	AMERICAN LEGION POST 193	SCANDIA
310	VFW POST 7773	SCOTT CITY
311	KNIGHTS OF COLUMBUS 5212	SCOTT CITY
312	ST PATRICK CATHOLIC CHURCH	SCRANTON
313	VFW EDWARD TED ROWE POST 2709	SCRANTON
314	KNIGHTS OF COLUMBUS 5459	SELDEN
315	AMERICAN LEGION SENECA	SENECA
316	KNIGHTS OF COLUMBUS 1769	SENECA
317	AMERICAN LEGION POST 315	SHARON
318	KNIGHTS OF COLUMBUS 2224	SHARON
319	VFW POST 6844	SHARON SPRINGS
320	AMERICAN LEGION POST 327	SHAWNEE
321	COMMUNITY CENTER OF SHAWNEE, INC	SHAWNEE
322	VFW POST 1141	SMITH CENTER
323	VFW POST 5984	SPEARVILLE
324	AMERICAN LEGION COLE-SMITH POST 350	SPRING HILL
325	VETS BUILDING INC	ST FRANCIS
326	AMERICAL LEGION POST 260	ST GEORGE
327	AMERICAN LEGION POST 260 AUX	ST GEORGE
328	KNIGHTS OF COLUMBUS 657	ST MARYS
329	KANSAS FOR LIFE	ST PAUL
330	AMERICAN LEGION POST 131	STAFFORD
331	VFW POST 1235	STAFFORD
332	AMERICAN LEGION POST 128	STERLING
333	AMERICAN LEGION POST 27 AUXILIARY	SYRACUSE
334	AMERICAN LEGION TOPEKA NORTH POST 400	TOPEKA
335	EAST TOPEKA COUNCIL ON AGING	TOPEKA
336	EXODUSTERS AWARENESS INC.	TOPEKA
337	FRATERNAL ORDER OF EAGLES 58	TOPEKA
338	HOLY NAME CHURCH	TOPEKA
339	MOOSE LODGE 555	TOPEKA
340	MOOSE, WOMEN OF THE	TOPEKA
341	OPTIMIST CLUB WASHBURN RURAL	TOPEKA
342	PARENTS WITHOUT PARTNERS 41	TOPEKA
343	VFW PHILLIP BILLARD POST 1650	TOPEKA
344	American Legion Post 1	TOPEKA
345	American Legion Post 319	TOPEKA
346	BPOE Lodge 204	TOPEKA
347	FOE Aerie 58 Auxiliary	TOPEKA
348	Knights of Columbus 534	TOPEKA
349	VFW Post 7209	TOPEKA
350	VFW POST 7521	TRIBUNE
351	AMERICAN LEGION POST 79	ULYSSES
352	VFW POST 3084	VALLEY FALLS
353	VFW POST 1751	VICTORIA
354	FRATERNAL ORDER OF EAGLES 3774	WAKEENEY
355	FRATERNAL ORDER OF EAGLES AUXILIARY	WAKEENEY
356	VFW POST 3449	WAKEENEY
357	VFW POST 7774	WAKEFIELD
358	VFW POST 7437 WASHINGTON MEMORIAL	WASHINGTON
359	VFW POST 5531	WATHENA
360	AMERICAN LEGION POST 90	WELLINGTON
361	BPOE LODGE 1167	WELLINGTON

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Coalition for Instant Bingo

	NAME	CITY
362	VFW POST 881	WELLINGTON
363	NATIONAL KIDNEY FOUNDATION ON KANSAS	WESTWOOD
364	AMERICAN LEGION POST 282	WETMORE
365	AMERICAN LEGION POST 299	WHITE CITY
366	AIR CAPITAL SOCCER ASSOCIATION	WICHITA
367	ALL SAINTS ALTAR SOCIETY	WICHITA
368	AMERICAN LEGION POST 256	WICHITA
369	ARTHRITIS WATER EXERCIST CLUB	WICHITA
370	BLESSED SACRAMENT MENS CLUB	WICHITA
371	CHISHOLM TRAIL AUX 3251	WICHITA
372	CHRIST THE KING PARISH	WICHITA
373	COLEMAN EMPLOYEE'S CLUB	WICHITA
374	ELIPEPSY-KANSAS, INC.	WICHITA
375	FRATERNAL ORDER OF EAGLES 3251	WICHITA
376	KNIGHTS OF COLUMBUS 691	WICHITA
377	MID KANSAS BANDITS	WICHITA
378	MOOSE LODGE 138	WICHITA
379	N E DRUG/ALCOHOL REFERRA STATION, INC	WICHITA
380	OMEGA PSI PHI FRATERNITY	WICHITA
381	OPTIMIST CLUB NORTH	WICHITA
382	OPTIMIST CLUB OF WICHITA	WICHITA
383	OPTIMIST CLUB SOUTHEAST	WICHITA
384	TEAMSTERS RETIREE CLUB	WICHITA
385	VFW POST 3371 ARK VALLEY	WICHITA
386	WICHITA FELLOWSHIP CLUB	WICHITA
387	WICHITA SWIM CLUB	WICHITA
388	American Legion Post 273	WICHITA
389	American Legion Post 4	WICHITA
390	BPOE Lodge 427	WICHITA
391	FOE Aerie 132	WICHITA
392	FOE AERIE 132 AUX	WICHITA
393	FOE Aerie 3251 Auxiliary	WICHITA
394	Knights of Columbus 3114	WICHITA
395	Knights of Columbus 691	WICHITA
396	VFW Post 112	WICHITA
397	AMERICAN LEGION POST 10	WINDFIELD
398	BPOE LODGE 732	WINDFIELD
399	KNIGHTS OF COLUMBUS 4713	WINDFIELD

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8A8

My name is Paul Lenherr from St. Marys, Kansas, and I am the Public Relations Chairman for the Kansas State Council of the Knights of Columbus. Throughout the State we have 224 local councils in communities both large and small. I am uncertain of the number of councils licensed to play bingo, but many of our councils are licensed. Our council in St. Marys is licensed and we have conducted bingo in that community on a weekly basis since about 1975. I am here today to testify on behalf of the Kansas Knights of Columbus in support of Senate Bill #181. My testimony is based solely on my observation of bingo as played in St. Marys.

Personally, I do not play bingo, but I do help work bingo once every five weeks. My observation is that bingo, though a form of gambling, is more of a social game. It does not attract the high stakes gambler because the pace is too slow and the stakes are too low. Consequently, despite how much you advertise or vary the jackpot, you still only attract certain people. As a result your revenue remains basically constant. Instant bingo as being proposed in Senate Bill #181 could change this.

There are those who will argue that it is yet another form of gambling and people will be hurt because of it. I view it as an extension of the current bingo laws and an opportunity to generate more revenue for our councils and likewise for the State's General Fund. The addition of instant bingo will require very little additional administrative costs, and it is something that the majority of the regular bingo players do want. I have no feel for what the additional revenue may amount to.

From my experience with bingo, those who play the game are conservative in nature. This is their social life and what they are spending to entertain themselves by playing bingo is not a cause of financial ruin in their households. I do not feel that passage of this bill will change that situation, nor do I feel

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Atch #9

that passage of Senate Bill #181 will have any dramatic effect on other legalized forms of gambling in the State of Kansas.

I ask your utmost consideration in passage of Senate Bill #181, and I thank you for the opportunity to address you this morning on this matter.



Paul L. Lenherr
Public Relations Chairman
Kansas State Council
Knights of Columbus

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TESTIMONY OF THE NATIONAL ASSOCIATION OF FUNDRAISING TICKET MANUFACTURERS

PRESENTED BY MARY B. MAGNUSON

I. WHAT IS INSTANT BINGO?

Instant bingo is a popular form of fundraising for nonprofit organizations throughout the United States and Canada. Instant bingo is legal in 31 states and 6 Canadian provinces. Instant bingo has, in some states, surpassed bingo as the most successful form of charity gaming.

Instant bingo consists of several individual paper tickets, packaged in groups of perhaps 2000-3000 tickets, with some of the tickets randomly designed as winners. Each game of instant bingo tickets is played separately and each game has a specific set of winning tickets in it. All instant bingo games are accompanied by a game sheet, called a flare, which reveals the winning symbols, the prizes to be awarded and other game rules. The flare is generally posted at the point of sale of the tickets to inform the player about the specific rules of a particular game.

II. INSTANT BINGO CAN GENERATE ADDITIONAL REVENUE FOR KANSAS CHARITIES AND FOR THE STATE.

The attached fiscal projection suggests that instant bingo gross sales could be slightly more than \$31 million per year in Kansas. This is a conservative estimate based largely on the level of sales of instant bingo tickets in neighboring Missouri. Of the \$31 million, approximately 75% will be returned to the players in the form of prizes. Based on a combined tax rate of 5.9%, the State of Kansas could receive additional revenue in the amount of \$1.6 million.

The remaining \$6 million would be available for Kansas charities to cover the expenses of running the games and to fund a myriad of worthwhile charitable and community programs.

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II. INSTANT BINGO WILL BE ADEQUATELY REGULATED BY THIS BILL.

The North American Gaming Regulators Association, an organization of about 35 governmental regulatory agencies from the United States and Canada, has developed a set of standards for the regulation of instant bingo. Many of those standards are included in this bill, making the Kansas regulatory scheme comparable to that in other states.

The bill provides for the licensing of organizations and distributors and includes, because of an amendment adopted by the Senate, provisions to enable the Kansas A.B.C. to track the instant bingo tickets sold into the state. Each instant bingo game has a unique serial number and that serial number is included on each individual ticket in a game. The serial number allows regulators to trace the product from the point of manufacturing through to the organization playing the game. The Kansas A.B.C. had input into this bill and supported the amendment in the Senate.

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REVENUE PROJECTIONS FOR INSTANT BINGO

ASSUMPTIONS:

- (1) Of the 578 current bingo licensees, at least 500 will sell instant bingo tickets.
- (2) The tickets will have an average price of \$.50 and the games will have an average ticket count of 2400 (Missouri averages for bingo games).
- (3) Bingo will be played on the average of one day per week rather than the full two days allowed by law.
- (4) One game of instant bingo tickets will be sold each week (in Missouri, the average is 1.7; in Minnesota, 3.5; in North Dakota, 3.7; and in Washington, nearly 5).

PROJECTIONS:

<u>Gross receipts per game:</u>	\$1200
<u>Number of games played per year:</u>	52
<u>Gross receipts per site:</u>	\$62,400 (annual)
<u>Gross receipts for all sites:</u>	\$31,200,000 (annual)
<u>Tax at 4.9%:</u>	\$1,528,800 (annual)
<u>Tax at 1%:</u>	\$312,000 (annual)

REVENUE TO GENERAL FUND: \$1,622,400

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EFFECTS OF CHARITY GAME TICKET SALES ON LOTTERY SALES

October 31, 1988

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3-18-93

Atch #10A

EFFECTS OF CHARITY GAME TICKET SALES ON LOTTERY SALES

A. Purpose

The purpose of this study was to determine if the sale of charity game tickets (breakopens, pull-tabs, jar tickets, etc.) has any effect upon the sale of lottery tickets, and vice versa. The purpose was further defined to gauge the effect of charity game ticket sales on lottery sales in total and instant lottery ticket sales in particular.

B. Scope

The subjects of the study were those states which have a state-operated lottery as well as sales of charity game tickets by nonprofit organizations. Those states, and the years in which sales of lottery tickets and charity game tickets (CGTs) were legalized, are as follows:

<u>STATE</u>	<u>CGTs LEGAL</u>	<u>LOTTERY LEGAL</u>
California	1975	1986
Colorado	1978	1983
Connecticut	1987	1976
Illinois	1986	1976
Maine	1978	1975
Maryland	Local	1976
Massachusetts	1971	1973
Michigan	1981	1976
Missouri	1981	1986
New Hampshire	1983	1975
Ohio	1980	1977
Rhode Island	1983	1976
South Dakota	1984	1987
Vermont	1973	1978
Washington	1973	1983
District of Columbia	1981	1982

C. Limitations

The lottery industry is quite well-organized with several trade magazines published which provide statistical data on lottery sales on a continuing basis. Therefore historical sales data for all states but Rhode Island was easily compiled. (1)

Charity game tickets are sold by nonprofit groups around the nation under a variety of state regulations. Regulation is usually assigned to an existing state agency, and compilation of historical data becomes the responsibility of that state agency. In some states, regulation of charity game tickets is an organized effort. In most states, however, this regulation is a very small part of the state agency's responsibility and sales data is sketchy, at best. There was, at the time of this study, no known organization or association which compiled historical data for those states where charity game tickets are legal.

After review of the starting dates for lottery sales and charity game tickets sales, and the quality and quantity of historical sales data available for charity game ticket sales, it became apparent that a study of any interaction between the two types of games would be limited to those states which provide reliable data for both. Thus, the subject field was narrowed to the following states:

Colorado
Maine

Massachusetts
Michigan

New Hampshire
Washington

For the six states mentioned above, charity game ticket sales figures and lottery ticket sales figures were plotted on the same axes to get a visual representation of the interaction of these two game types. Instant lottery ticket sales were plotted separately and in total with all lottery sales. The comparison of charity game ticket sales to instant lottery ticket sales is deemed to be more significant than comparisons to other lottery games since charity game tickets and instant lottery tickets assume generally the same form and both pay out instantly.

The graphs representing these relationships are attached. (See Exhibit A.)

D. Findings

In each of the six states, charity game ticket sales have shown a steady increase. This increase can be attributed to a number of factors, some of which are:

- Increased enabling legislation which has expanded the use of charity game tickets over time
- Increased awareness by nonprofit groups of charity game tickets as a viable fundraising method

- Increased public awareness of the game
- Increased regulation which assures a more honest, therefore a more popular, game

In Maine, Massachusetts and Michigan, total lottery sales, of which instant lottery sales are a small part, have increased every year since their implementation. Indeed, in recent years sales have seen tremendous growth.

In New Hampshire, total lottery sales have increased in every year except 1985. Since 1985, New Hampshire's total lottery sales have shown the same unprecedented growth as Maine, Massachusetts, and Michigan.

Washington's total lottery sales suffered a sizable decrease in 1985 from the initial start-up sales of 1983 and 1984; however, Washington has revamped both instant and on-line lottery programs and sales, as evidenced by 1986 sales figures, are showing rapid growth. The drop in sales could not be tied to any changes in charity game ticket sales, which have continued to grow steadily since their legalization thirteen years go.

Colorado maintains an instant lottery ticket program only.

So, it is apparent from historical sales figures that the legalization of charity game tickets has had no significant effect on the steady growth of on-line lottery sales. Charity game ticket sales figures are only a fraction of total lottery sales. Could, however, the sale of charity game tickets have an effect on the states' sales of instant lottery tickets?

In Maine and Massachusetts, instant ticket sales experienced an initial period of growth followed by periods of levelled sales and/or decreased sales, then began to increase steadily. This pattern is a sign of well-managed instant ticket program. With extensive qualitative and quantitative research into player attitudes and expectations, advertising and promotion, and the adoption of tailored marketing strategies, the Massachusetts and Maine Lotteries' instant game sales have continued to grow. (2)
(3)

In 1984, an analysis of the impact of charity game tickets sales upon instant lottery ticket sales was done in the state of Massachusetts by Dr. William E. Perrault, then Director of Gaming Development for Scientific Games. (4) He noted that in any one week, there were over 200,000 Beano players attending games conducted by Massachusetts' licensed religious, fraternal

veteran's, volunteer firemen and ambulance service, and other nonprofit, organizations. During 1984 there were 225,577,728 charity game tickets sold to beano players.

He states in his memorandum to Robert Mote, Executive Vice President and Chief Legal Officer of Scientific Games:

"(T)he sale of Charity Game tickets has not impacted the sale of Instant Game tickets. On the contrary, the Instant Game ticket sales have increased relative to the sales of Charity Game tickets. At the present time, the 1985 annual per capita sales for the Instant Game in Massachusetts is \$24.96; this is the second highest annual per capita sales of all 12 United States lotteries currently offering instant games."

Instant lottery tickets were introduced in New Hampshire in 1975. Since their introduction, sales have continued to see-saw, with marked decreases in sales in 1977, 1979, and 1981.

Charity game tickets were legalized in 1983, and from 1983 to 1984 instant lottery sales showed the greatest increase since 1976, just after their introduction. Given the volatile nature of instant lottery ticket sales in past years, it is unlikely that charity game ticket sales were the cause of the decrease in instant sales in 1985. The more likely cause of the drop in sales was the start-up of Tri-State Lotto game in 1985, in cooperation with Maine and Vermont.

Michigan Lottery's instant ticket sales have experienced several ups and downs during its 10-year history. However, the general trend has been down, down, down. Sales have fallen drastically from a high of \$182,500,000 in 1976 to \$113,000,000 in 1986. It is interesting to note that the greatest period of growth in instant sales since their introduction took place in 1982, just when charity game tickets were coming into use. Charity game ticket sales have remained fairly constant at a level just shy of \$6,000,000 - a mere fraction of instant ticket sales.

Washington's and Colorado's instant ticket sales have been on the decrease since their introduction. Did the pre-existence of charity game tickets in these states hasten this downward trend? Probably not. It is generally accepted in the lottery industry that instant ticket sales will level off or decrease following their initially high sales volume. (See Exhibit B graphs.) In most states, it is during this period of levelled sales that on-line games are implemented. However, in Colorado, lawmakers

turned down the request for funding for a lotto game when instant ticket sales declined. Colorado Lottery Director Owen Hickey, in an article for Public Gaming Magazine conceded:

"(T)his (the instant lottery ticket) isn't a product that can create increasing revenue for the state if it stands alone." (5)

And in Washington, lottery officials continue to search for new ways to bring their instant ticket program out of the "inevitable instant product sales decline." (6)

The relationship between charity game tickets and instant lottery tickets has perhaps been best stated by Guy Simonis, president of the British Columbia lottery, in an interview with Gaming and Wagering Business Magazine concerning the Manitoba Lotteries Foundation, the first Canadian lottery organization to move into charity game tickets when it took over the licensing, distribution and control of breakopens in 1984.

The article read as follows:

"Despite the proliferation of break open tickets the Manitoba Lottery's instant ticket sales have continued to grow. The secret to success apparently lies in segregating the two products, suggests British Columbia lottery president Guy Simonis. 'The two shall never mix. You buy instant games and take them home. Break open tickets you play at a bar, and buy everyone a round of drinks when you win', he said." (7)

This lack of dependence has also been demonstrated in the States. In New Hampshire, instant lottery ticket sales points have been set up in some bingo halls, and instant lottery tickets are sold directly beside jars of charity game tickets. According to Peter Olkkola, Bingo Supervisor for the Department of Safety for the state of New Hampshire, sales of both are flourishing. He maintains that neither has had an effect on the other.

More insight into this subject can be gleaned from a study (8) conducted by Dr. John R. Koza, then chief executive officer of Scientific Games. His study focused on comparing participation of various demographic groups in 32 different activities including breakopens, instant lottery tickets, Pick 3, Pick 4, and Pick 6 (lotto) lottery tickets. A public opinion survey was conducted by mail among persons 18 or older living in New Jersey during November and December of 1982. Questionnaires were

completed by 1,876 adults. Dr. Koza stated, "We believe this survey was the most detailed and extensive single survey and database of this type ever collected in the public gaming field."

At the time of the study, New Jersey was the only state to have both casino gaming and a state lottery, with a population that participated in most other forms of gaming, including charity gaming. New Jersey had also successfully operated all of the major types of lottery games for significant periods of time. New Jersey is reasonably similar to many of the other large states where state operated lotteries are conducted. In the survey, detailed information about the frequency of participation of each respondent in each of the 32 various gaming, amusement, and promotional activities was obtained.

Seven groups of participants were studied:

1. Those 18 - 34 years of age
2. Those with one or more years of higher education
3. Men
4. Blacks and Hispanics
5. White collar workers
6. Those with annual household income of \$7500 or less
7. Those with annual household income of \$35,000 or more

Index numbers were computed in each of these groups for each of the game types studied. The index number was computed as the percentage of participants in the group who participate in the selected game type, divided by the population of the group as a whole, multiplied by 100. These index numbers reveal which groups "underparticipate" or "overparticipate" in a game type, or restated, which groups participate in a given activity to a degree lesser or greater than their presence in the adult population as a whole.

In comparing the index numbers computed for those engaging in the games charity game tickets (breakopens) and the various lottery games, the following was observed:

1. 18 to 34-year-olds overparticipate in breakopens by 17%, yet underparticipate in lottery games by 11% to 24%.
2. Those with some higher education underparticipate in in breakopens by only 4% but in lottery games by 31% to 47%
3. Men overparticipate in lottery games by 12% to 18%, but underparticipate in breakopens by 5%.

4. Blacks and Hispanics overparticipate in lottery games by 99% (dailys) to 5% (instant), yet underparticipate in breakopens by 15%.
5. White collar workers overparticipate in breakopens by 6%, but underparticipate in lottery games by 9% to 17%.
6. Low income players underparticipate in breakopens and all lottery games except Pick 3 by a range of 6% to 31%. This group overparticipates in Pick 3 by 1%.
7. High income players overparticipate in breakopens by 22%, but underparticipate in lottery games by 12% to 36%.

Dr. Koza took this demographic study a step further in determining the overlap in participation in the various gaming activities by the population as a whole. Here's what he found:

1. Of all breakopen players, 26% also play lotto, 18% - 19% play the daily games, and 27% play instant games.
2. Of all on-line lottery game players, only 13% - 15% play breakopens; of all instant lottery game players only 17% play breakopens.

E. Conclusions

A study of historical sales data from those states which have legal sales of both charity game tickets and lottery tickets, and maintain such data for both, as depicted on the attached graphs, (Exhibit A) reveals the following:

In Colorado, Massachusetts, and Washington the lottery was implemented after the legalization of charity game tickets. In each of these three states, charity game ticket sales have continued in a steady pattern of growth with no apparent effect from implementation of instant lottery tickets or the on-line programs.

In Michigan and New Hampshire, lottery sales patterns were well established before the legalization of charity game tickets. These established sales patterns have continued without change since charity game tickets have been legalized. Indeed, New Hampshire's lottery sales have experienced tremendous growth as have sales of charity game tickets.

In Maine, lottery sales have experienced an overall growth, as have charity game tickets. Neither has had an effect on the other.

The business of gaming is a changeable, and oftentimes fickle, industry. Innumerable factors are simultaneously at work affecting sales; therefore it is virtually impossible to determine the impact of one specific factor on sales. Since each state markets lottery tickets differently, and each regulates charity game tickets differently, definitive conclusions cannot be drawn by relating one state's experience to that of another. However, in analyzing the data available, one conclusion is irrefutable:

Lottery ticket and charity game ticket sales can, and do, continue to grow without detriment to each other.

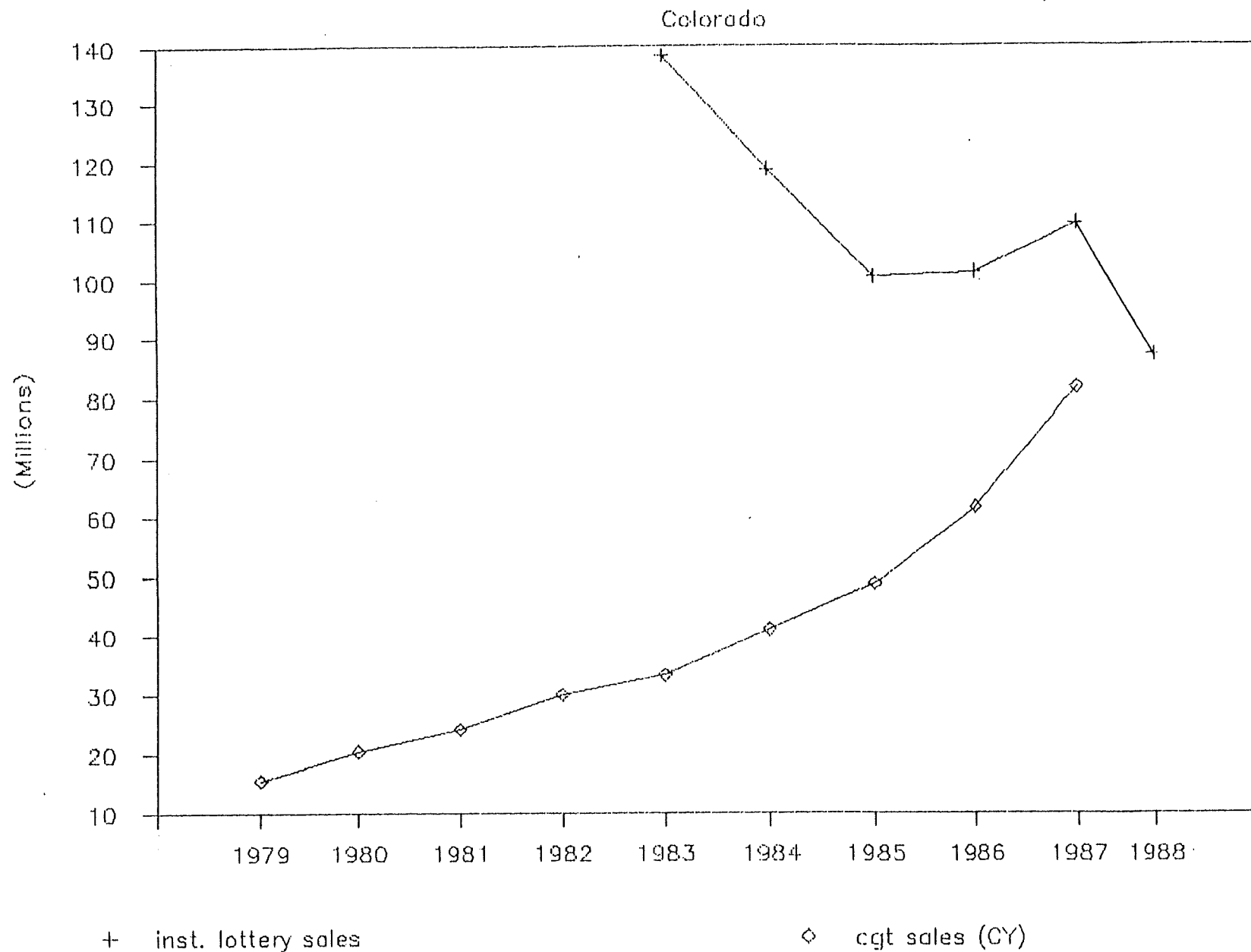
REFERENCES:

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- (2) Public Gaming, "The Massachusetts State Lottery, A Blueprint for Success" and "Instant Games: Another Successful Experiment for Massachusetts", Volume 13, No. 10, October 1985.
- (3) Public Gaming, "Special Report: The Maine State Lottery", Volume 14, No. 12, December 1986.
- (4) Memorandum to Robert Mote, "Pickle Card Industry Vs. Lottery", from William E Perrault, October 1, 1984.
- (5) Public Gaming, "Colorado Lottery Adds New Sparkle to Only Game in Town", Volume 12, No. 10, October 1984.
- (6) Public Gaming, "Instant Stub Games 'Reinvent the Deal' and Increase Sales", by Earl Sedlik and Rolf Rautenberg, Washington State Lottery, Volume 14, No. 6, June 1986.
- (7) Gaming & Wagering Business, "Canadian Lotteries: Breaking Open New Profits, Volume 8, No. 4, May 15, 1987.
- (8) Public Gaming, "Who is Playing What: A Demographic Study", Part I: Volume 12, No. 3, March 1984 and Part II: Volume 12, No. 4, April 1984.

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10A-11

LOTTERY VS. CGT SALES



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LOTTERY VS. CGT SALES

Maine

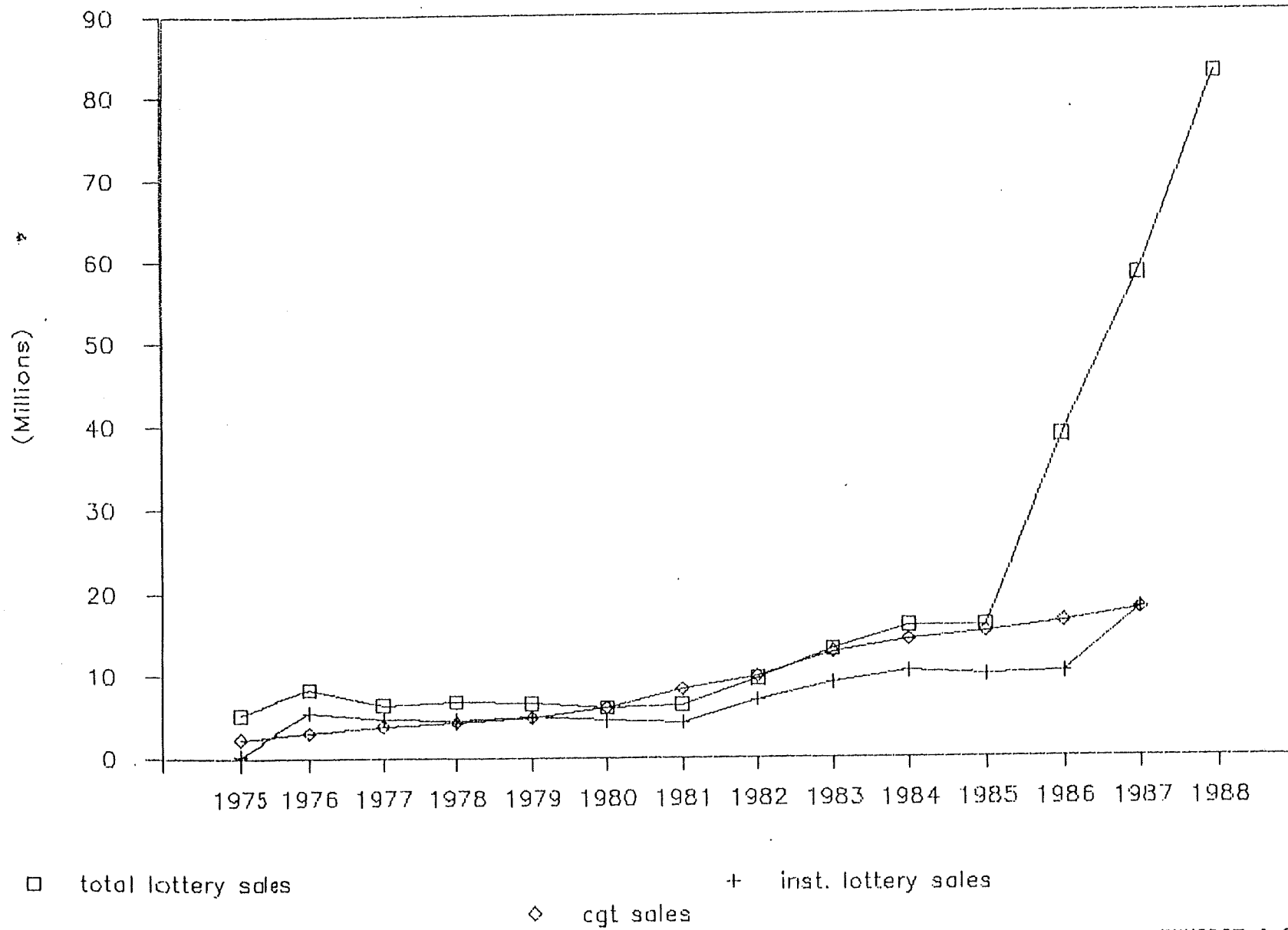


EXHIBIT A-2

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LOTTERY VS. CGT SALES

Massachusetts

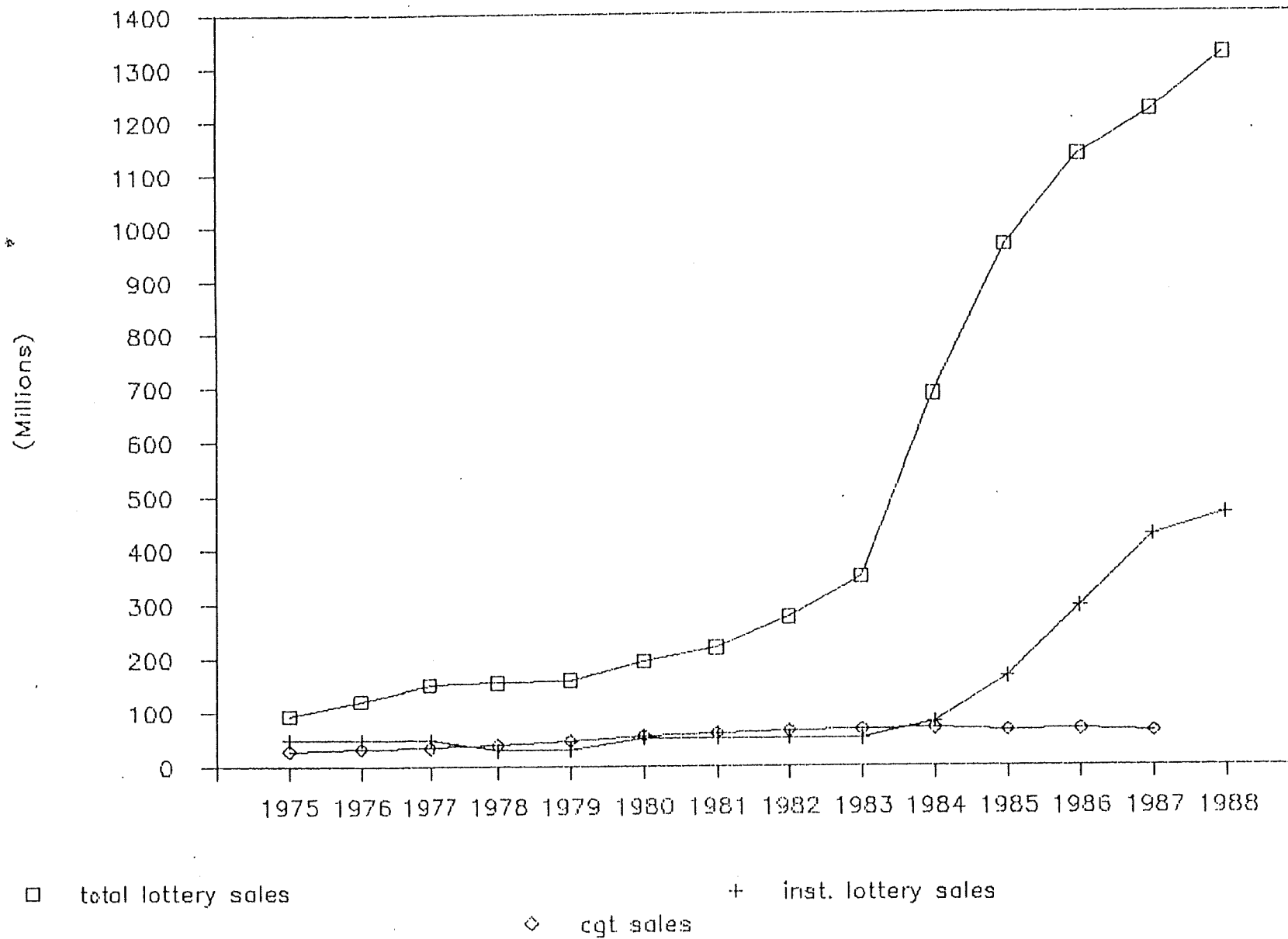


EXHIBIT A-3

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LOTTERY VS. CGT SALES

Michigan

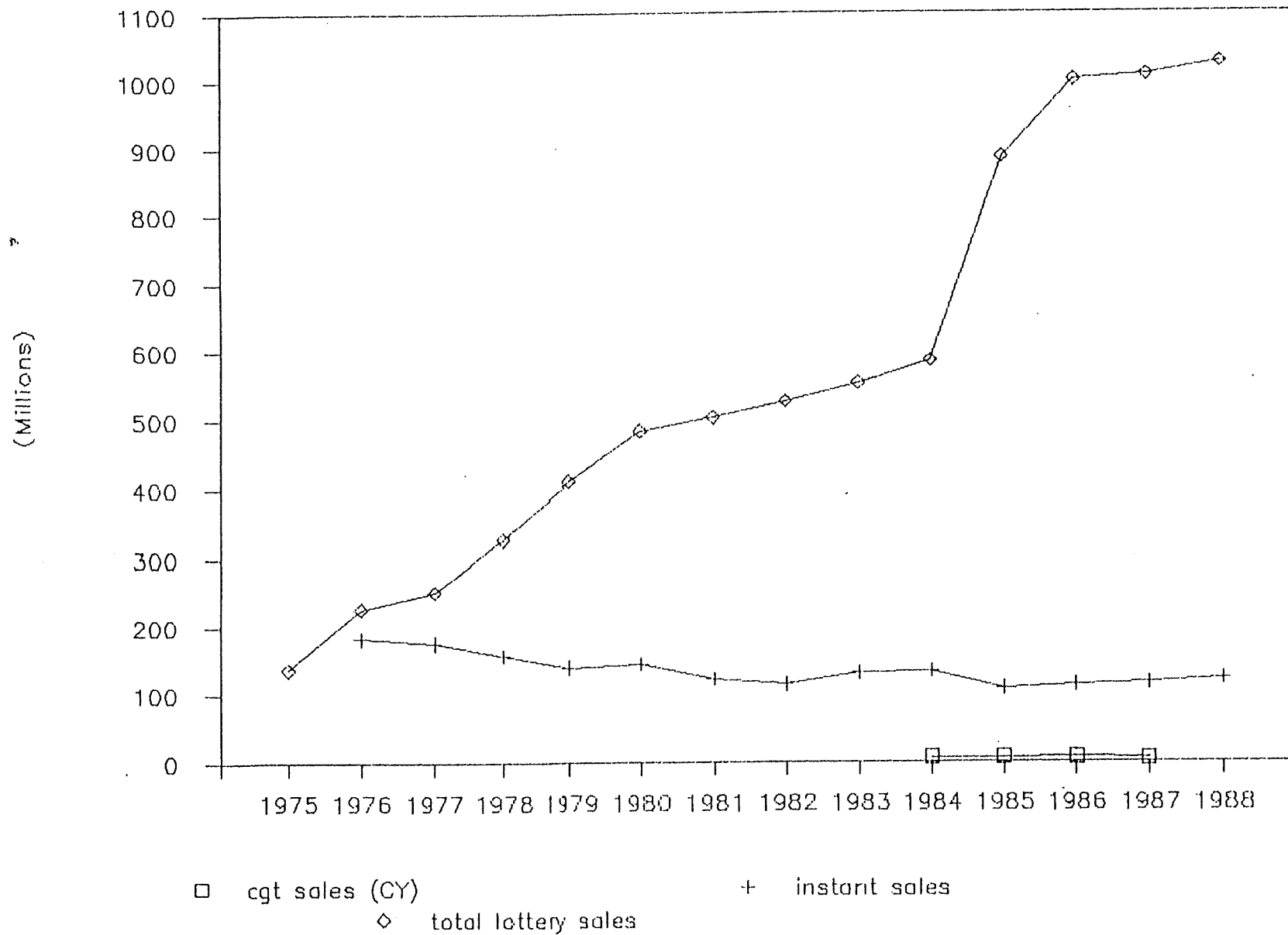
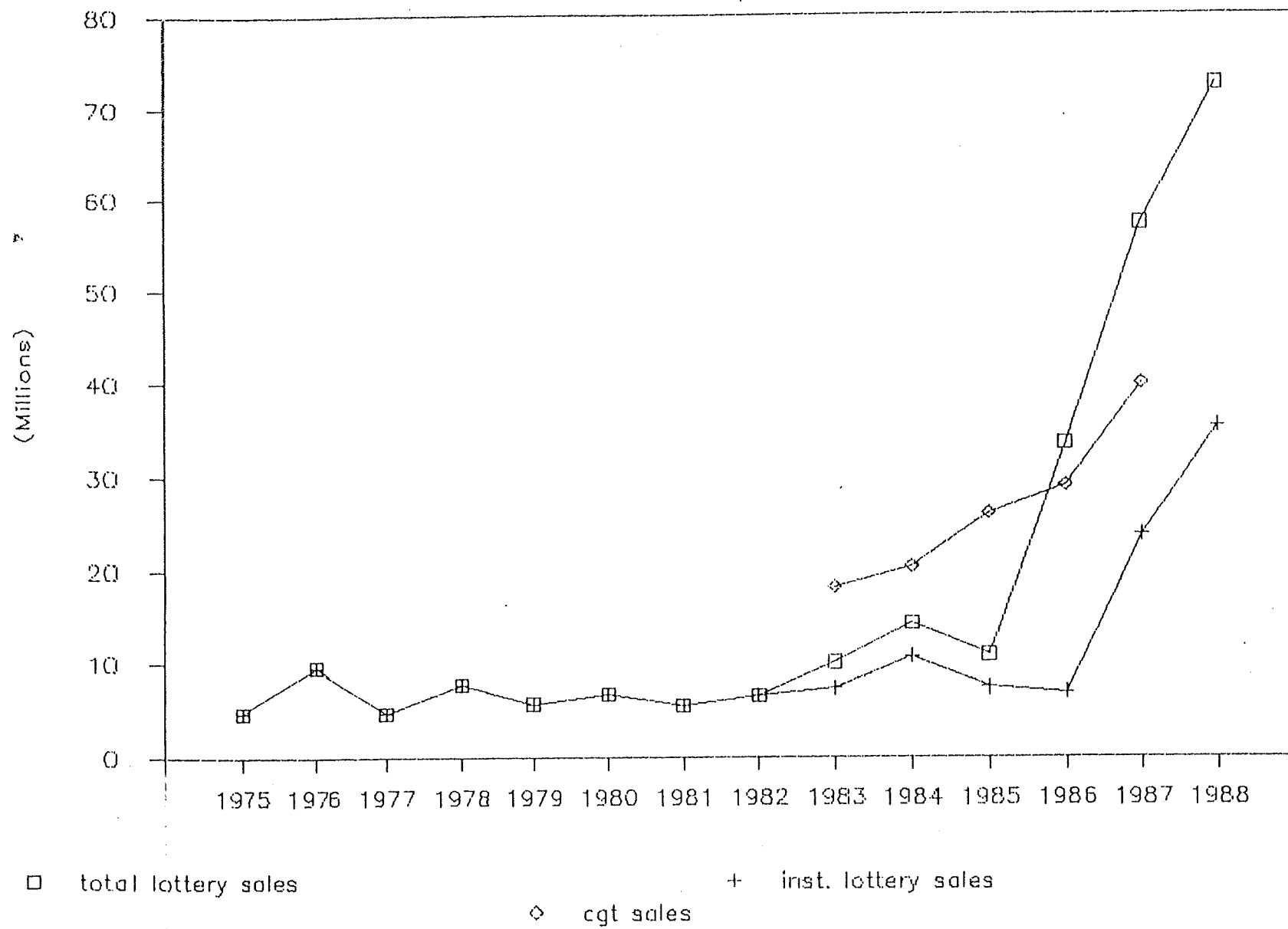


EXHIBIT A-4

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LOTTERY VS. CGT SALES

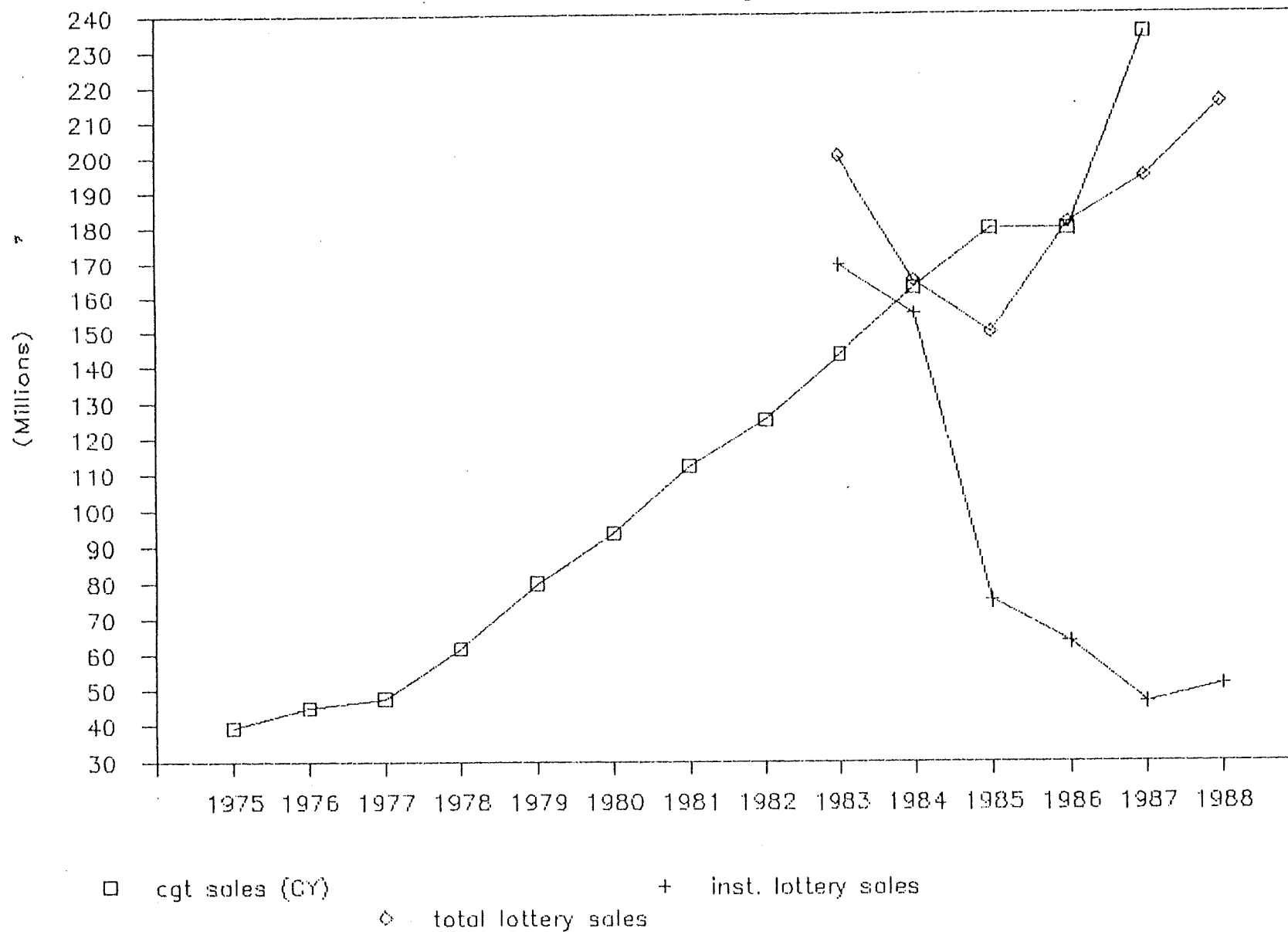
New Hampshire



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LOTTERY VS. CGT SALES

Washington



INSTANT LOTTERY SALES

Arizona

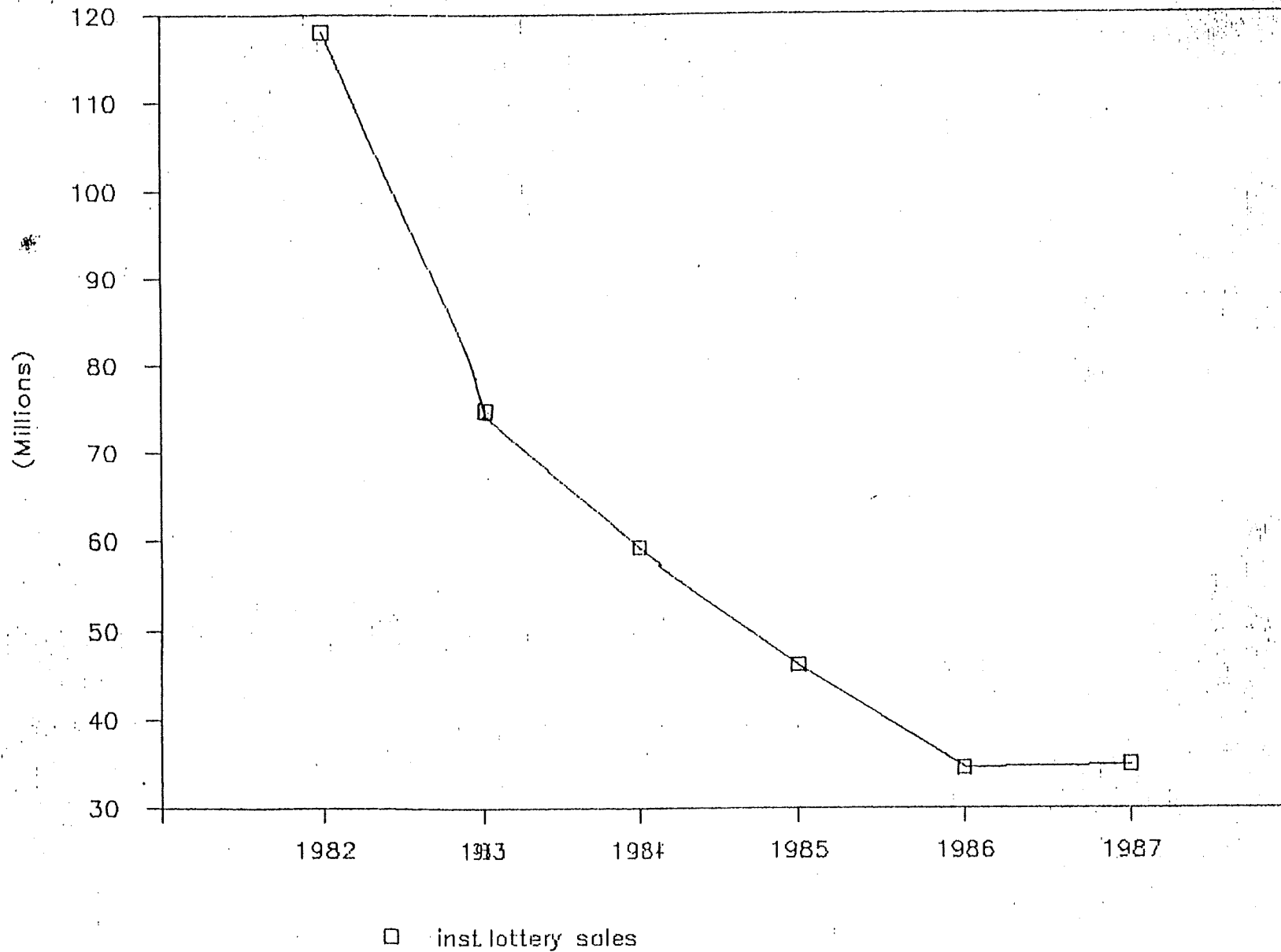


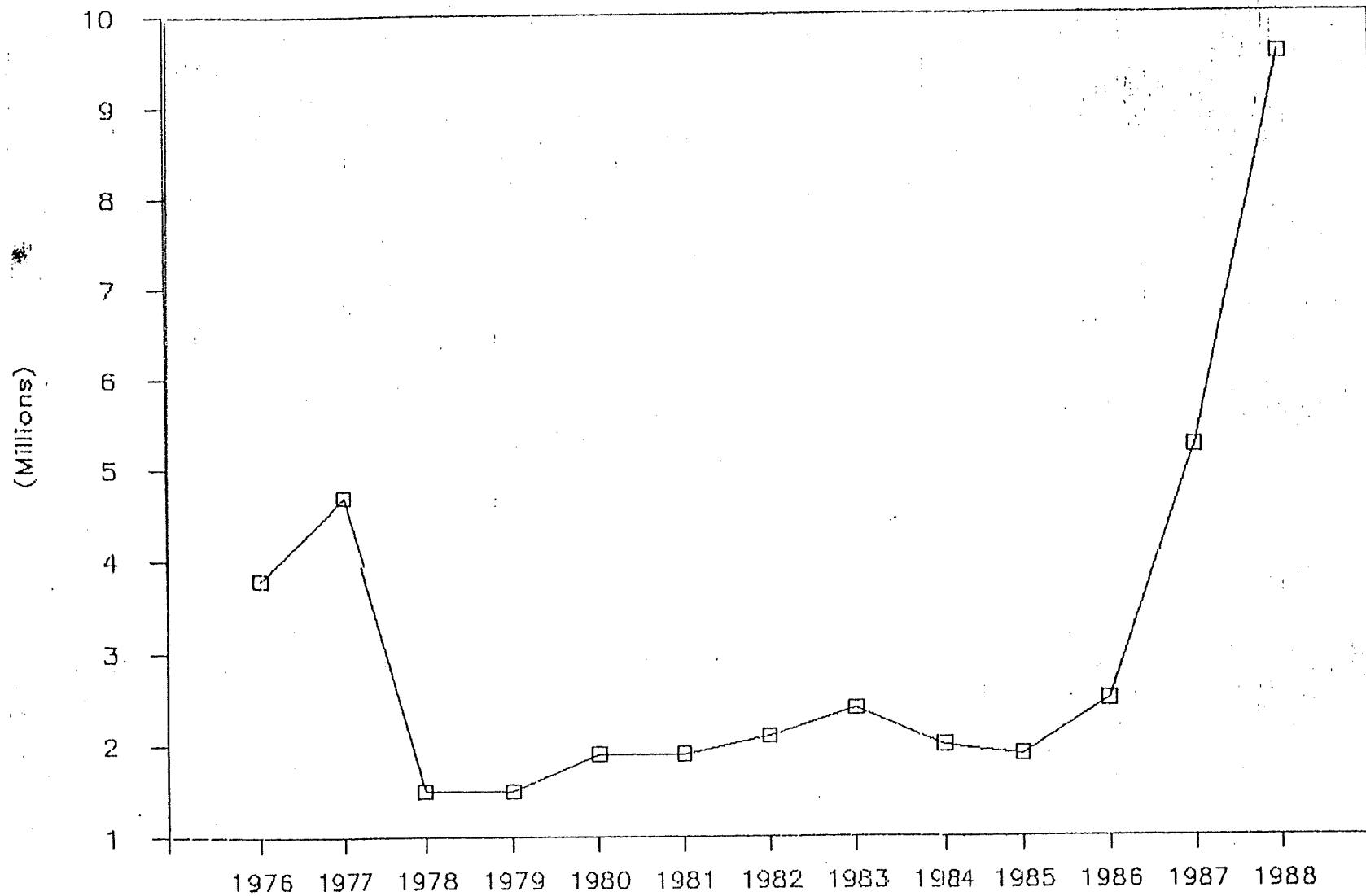
EXHIBIT B-1

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INSTANT LOTTERY SALES

Delaware



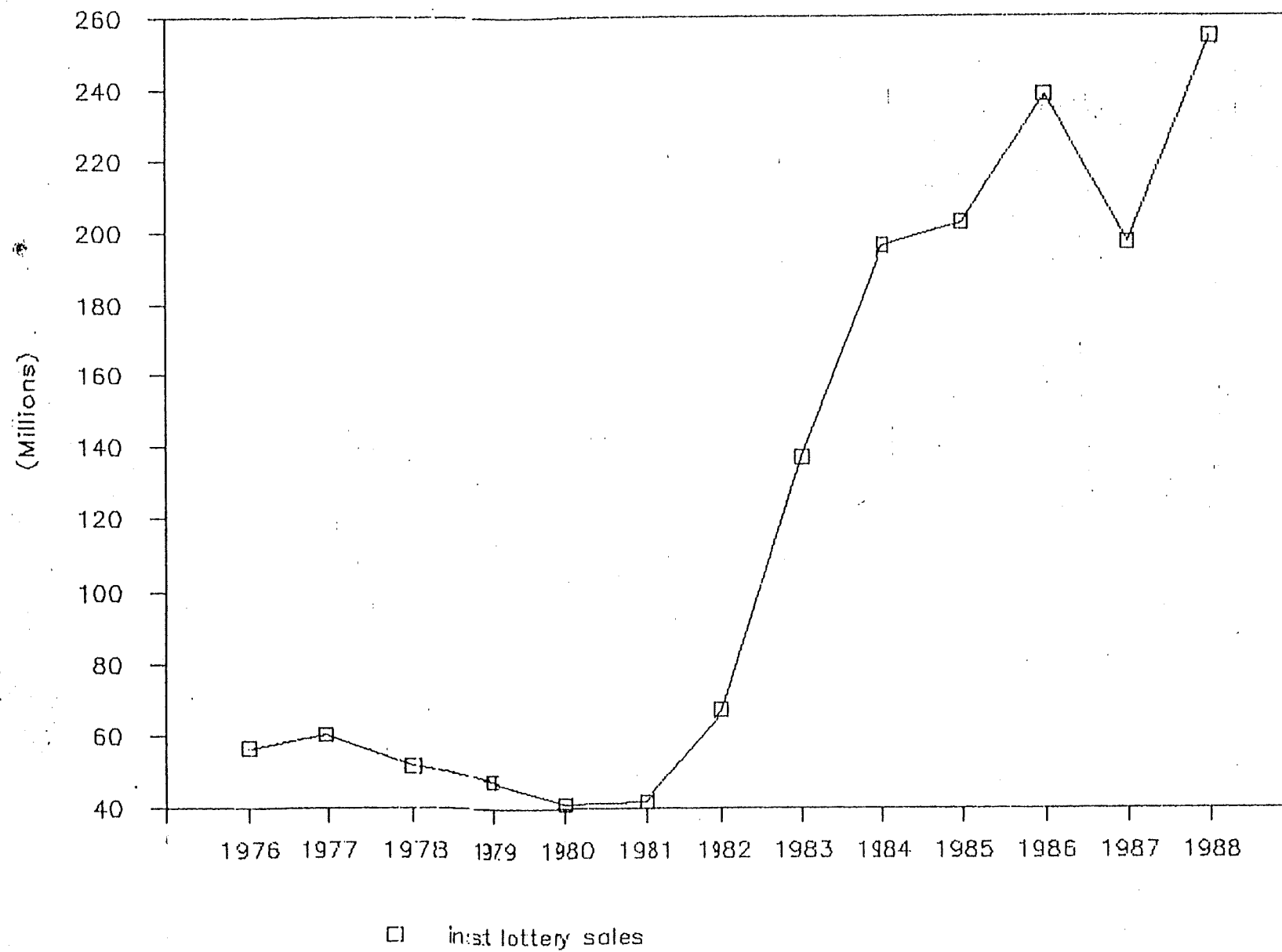
□ instant lott. sales

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LOTTERY VS. CGT SALES

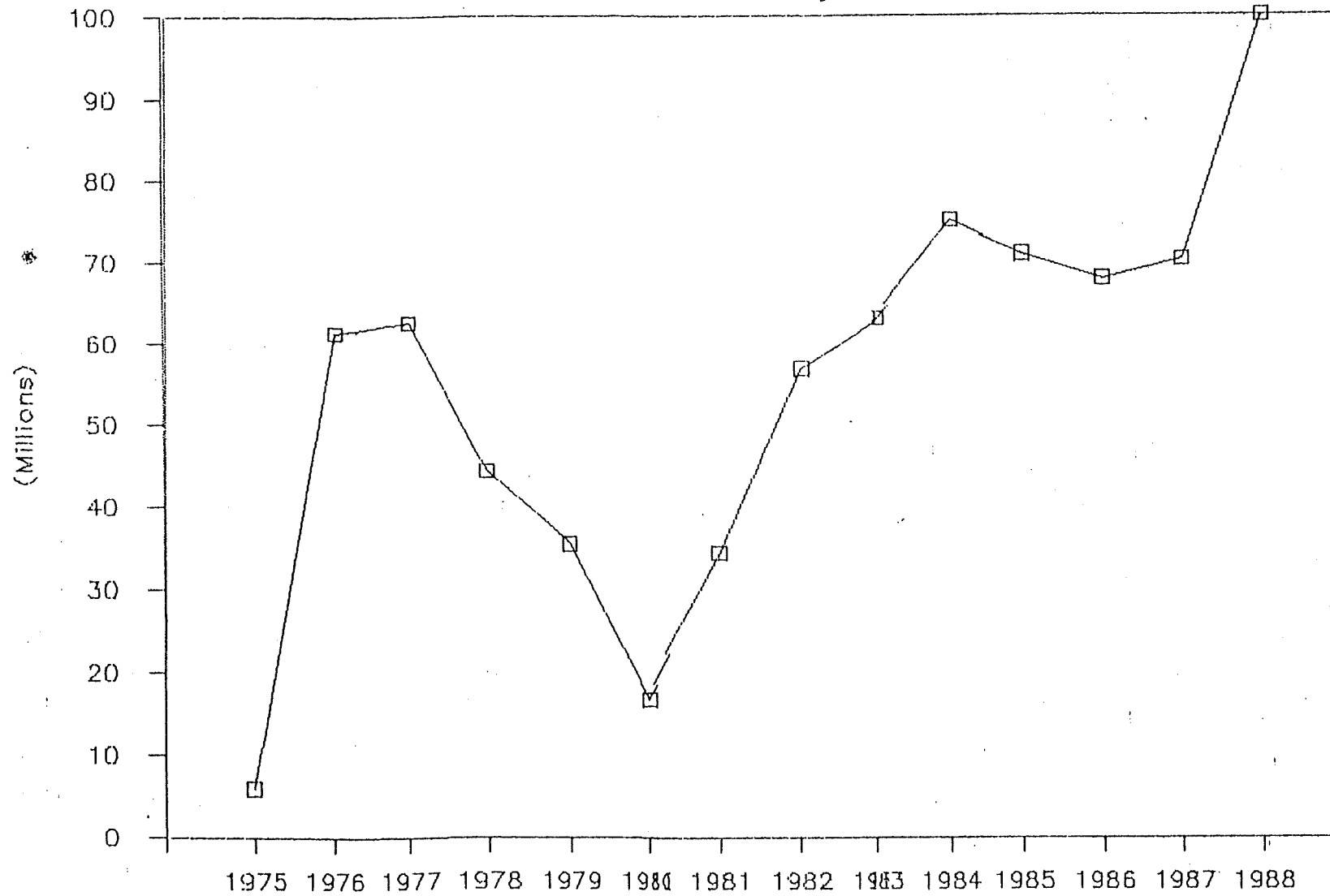
Illinois



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INSTANT LOTTERY SALES

New Jersey

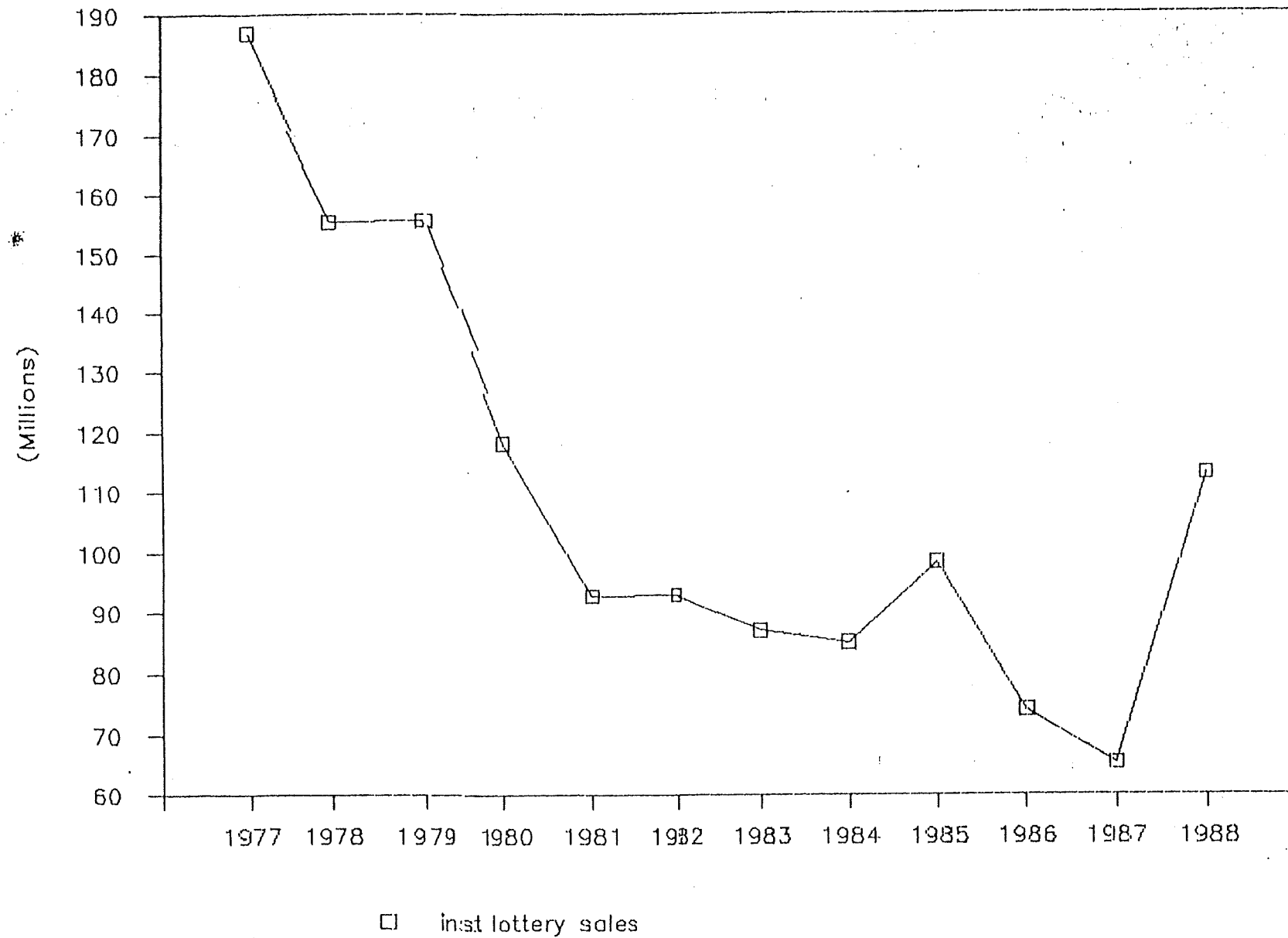


□ instant lott. sales

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LOTTERY VS. CGT SALES

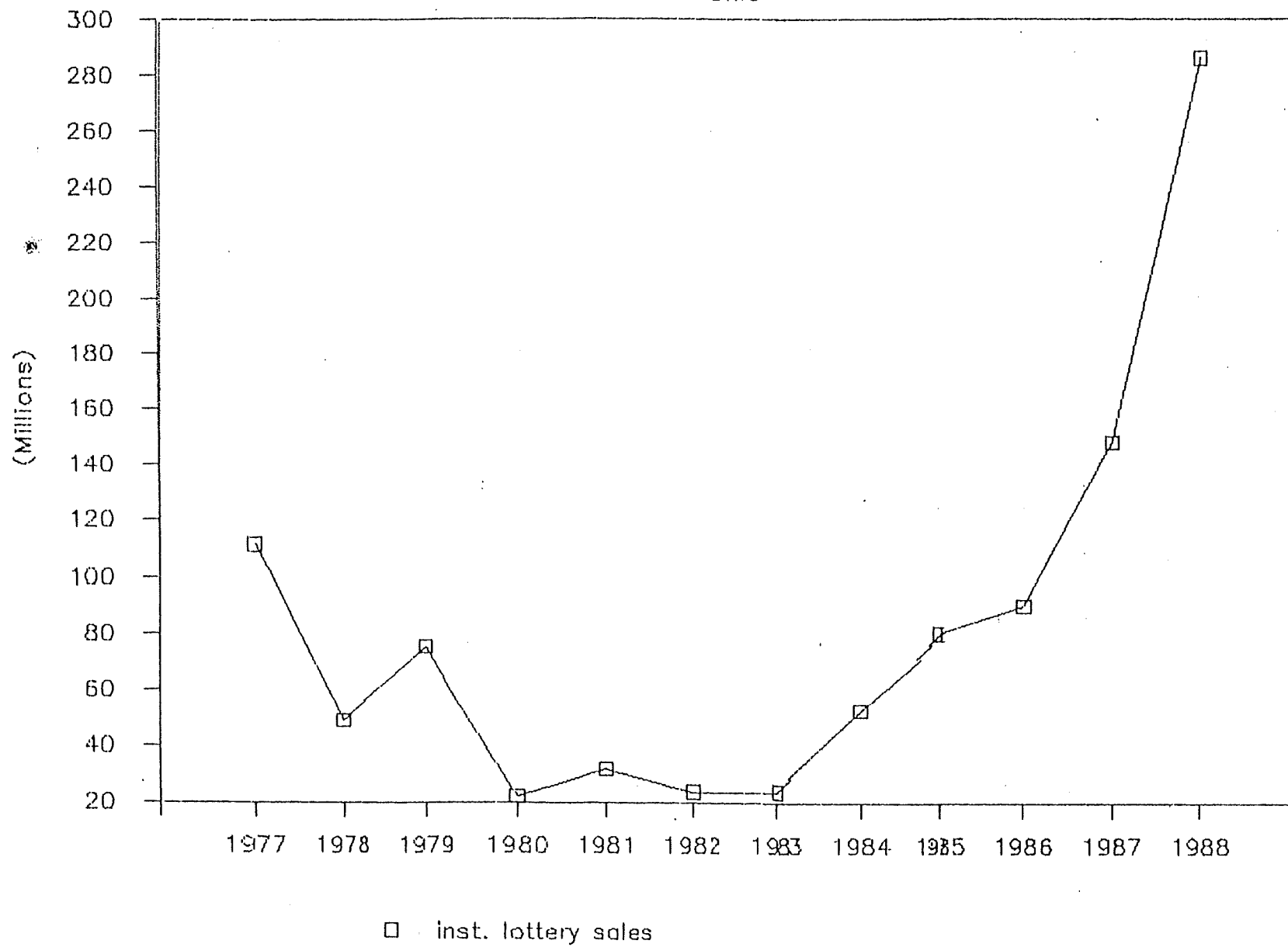
New York



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INSTANT LOTTERY SALES

Ohio



INSTANT LOTTERY SALES

Pennsylvania

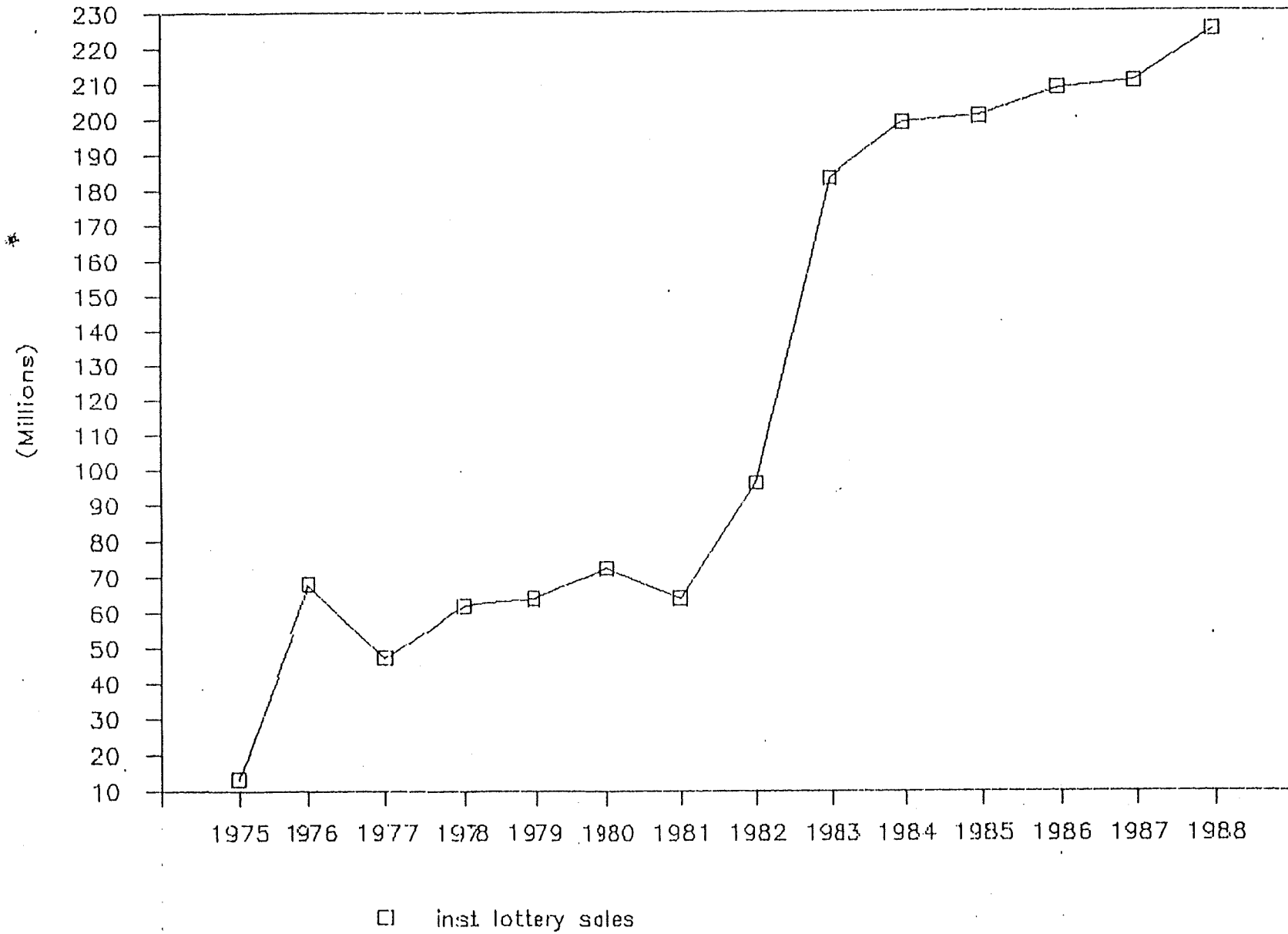


EXHIBIT B-7

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INSTANT LOTTERY SALES

Vermont

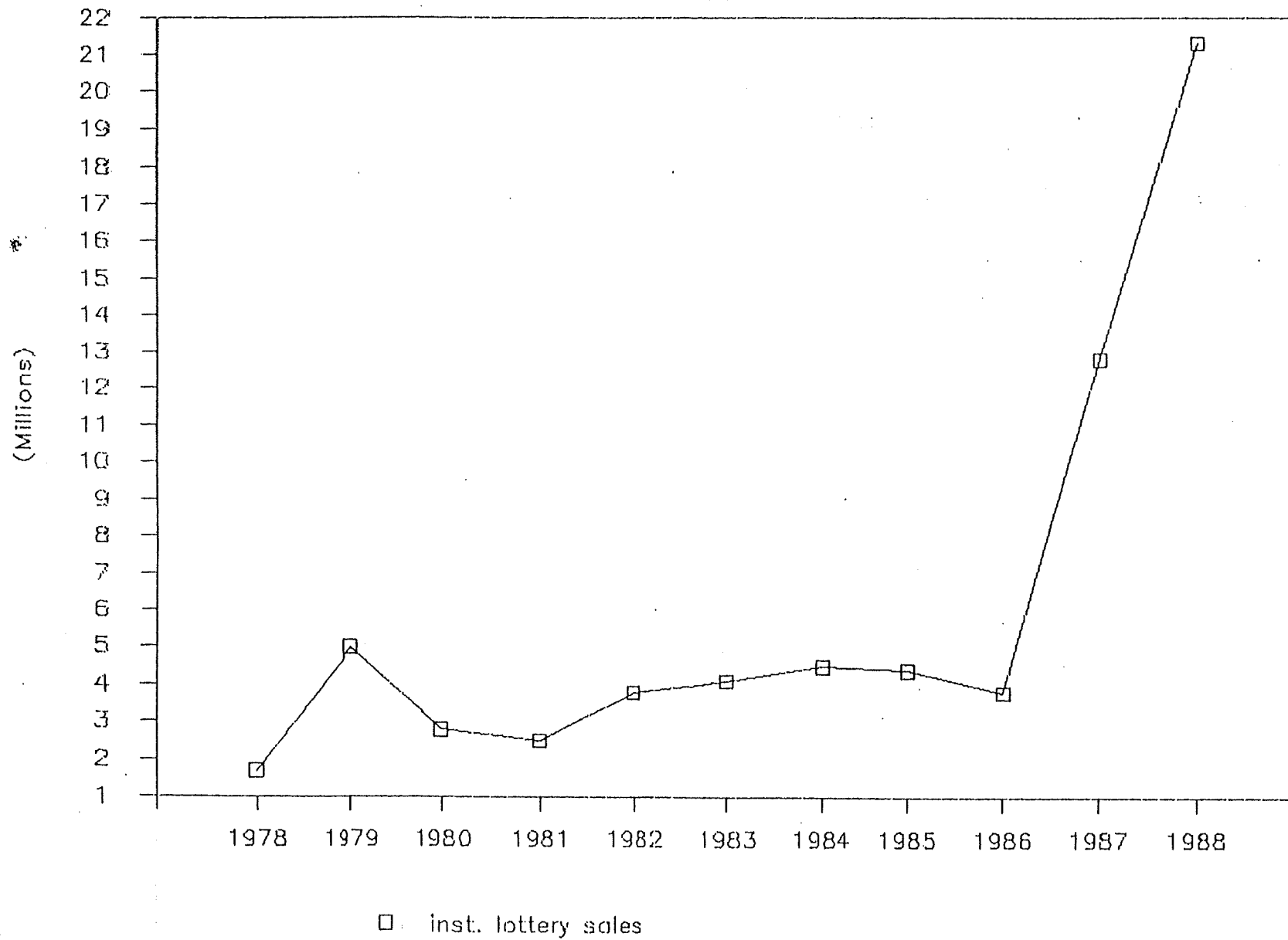


EXHIBIT B-8



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

Testimony of
Assistant Attorney General David C. Wetzler
On Behalf of Attorney General Robert T. Stephan
Before the House Committee on Federal and State Affairs
RE: 1993 Senate Bill No. 382
March 18, 1993

Mr. Chairmen and Members of the Committee:

Thank you for the opportunity to appear before this committee on behalf of Attorney General Bob Stephan. I appear before this committee to offer testimony in support of Senate Bill 382 which proposes to amend the Kansas Charitable Organizations and Solicitations Act.

The Attorney General is proposing four basic changes to the Charitable Organizations and Solicitations Act. First, the Attorney General would amend K.S.A. 17-1763 to require organizations to report specific fiscal information in their financial statements filed with the Secretary of State. Some of the information outlined in lines 32 through 43 of this bill is currently being reported on forms issued by the Secretary of State. This bill would merely require by statute that specific information be reported to the Secretary of State.

Second, this bill would allow the Secretary of State to accept executed copies of federal Internal Revenue returns and reports in lieu of a financial statement. The federal forms provide extensive and useful information regarding charitable organizations' fiscal operations. Many of the larger charitable organizations currently file their federal return with the Secretary of State in addition to the financial statement required by the Act.

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Third, in addition to the statement required by subsection (b), Senate Bill 382 would require organizations that raise more than \$100,000.00 during its most recent fiscal year to file with the Secretary of State an audited financial statement and the opinion of an independent certified public accountant on the financial statement.

Finally, we are proposing to amend K.S.A. 1992 Supp. 17-1767 to mirror the subpoena powers afforded the Attorney General in the Kansas Consumer Protection Act. Most importantly, the Act would be amended to allow the Attorney General to serve subpoenas by certified mail. Under the present statute, the Attorney General can only serve subpoenas by personal service. This restriction hinders our ability to investigate nonresident charitable organizations and persons.

The Attorney General believes Senate Bill 382 will enhance his ability to investigate violators of the Charitable Organizations and Solicitations Act. More importantly, however, Attorney General Stephan believes this bill will make charitable organizations' fiscal information more available to consumers. Such information should assist consumers in making informed and educated decisions when they are solicited by charities for a donation.

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SENATE BILL No. 275

By Committee on Federal and State Affairs

2-9

AN ACT concerning certain crimes and offenses; authorizing court-ordered tests for HIV infection under certain circumstances; amending K.S.A. 22-2913 and repealing the existing section.

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

New Section 1. (a) As used in this section:

(1) "Adjudicated person" means a person adjudged to be a juvenile offender or a juvenile felon *or a person not adjudicated because of insanity.*

(2) "Laboratory confirmation of HIV infection" means positive test results from a confirmation test approved by the secretary of health and environment.

(3) "Sexual act" means contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva or the mouth and the anus. For purposes of this definition contact involving the penis occurs upon penetration, however slight.

(4) "Test for HIV infection" means a test approved by the secretary of health and environment to detect the etiologic agent for the disease acquired immune deficiency syndrome.

(5) "*Body fluids*" means *blood, semen or vaginal secretions or any body fluid visibly contaminated with blood.*

(b) At the time of the first appearance before the court of a person charged with an offense involving a sexual act committed while the person was a juvenile, *or in which it appears from the nature of the charge that the transmission of body fluids from one person to another may have been involved,* the judge shall inform the person or the parent or legal guardian of the person of the availability of testing for HIV infection and counseling and shall cause each alleged victim of the offense, if any, to be notified that testing for HIV infection and counseling is available.

(c) ~~Upon the adjudication of a person to be a juvenile offender or juvenile felon for For any offense involving a sexual act committed while the person was a juvenile by an adjudicated person, or in which it appears from the nature of the charge that the transmission of body fluids from one person to another may~~

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~~have been involved~~ the court: (1) May order the adjudicated person to submit to a test for HIV infection; or (2) shall order the adjudicated person to submit to a test for HIV infection if a victim of the offense, or the parent or legal guardian of the victim if the victim is a minor, requests the court to make such order. If a test for HIV infection is ordered under this subsection, a victim who is an adult shall designate a health care provider or counselor to receive the information on behalf of the victim. If a victim is a minor, the parent or legal guardian of the victim shall designate the health care provider or counselor to receive the information. If the test results in a negative reaction, the court shall order the adjudicated person to submit to another test for HIV infection six months after the first test was administered.

(d) The results of any test for HIV infection ordered under this section shall be disclosed to the court which ordered the test, to the adjudicated person, or the parent or legal guardian of the adjudicated person, and to each person designated under subsection (c) by a victim or by the parent or legal guardian of a victim. If a test for HIV infection ordered under this section results in a laboratory confirmation of HIV infection, the results shall be reported to the secretary of health and environment, ~~to the secretary of social and rehabilitation services and, in the case of a juvenile felon, to the secretary of corrections, and the~~ The secretary of health and environment shall provide to each victim of the *crime or sexual act, at the option of such victim*, counseling regarding the human immunodeficiency virus, testing for HIV infection in accordance with K.S.A. 65-6001 *et seq.* and amendments thereto and referral for appropriate health care and services.

(e) The costs of any counseling and testing provided under subsection (d) by the secretary of health and environment shall be paid from amounts appropriated to the department of health and environment for that purpose. The court shall order the adjudicated person to pay restitution to the department of health and environment for the costs of any counseling provided under this section and the costs of any test ordered or otherwise performed under this section.

(f) When a court orders an adjudicated person to submit to a test for HIV infection under this section, the withdrawal of the blood may be performed only by: (1) A person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person; (2) a licensed professional nurse or a licensed practical nurse; or (3) a qualified medical technician. No person authorized by this subsection to withdraw blood, no person assisting in

For any offense by an adjudicated person which the court determines, from the facts of the case, involved or was likely to have involved the transmission of body fluids from one person to another or involved a sex act

and to: (1) The secretary of social and rehabilitation services, in the case of a juvenile offender or a person not adjudicated because of insanity, for inclusion in such offender's or person's medical file; or (2) the secretary of corrections, in the case of a juvenile felon, for inclusion in such juvenile felon's medical file

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1 the performance of the test for HIV infection nor any medical care
2 facility where blood is withdrawn or tested that has been ordered
3 by the court to withdraw or test blood shall be liable in any civil
4 or criminal action when the test is performed in a reasonable manner
5 according to generally accepted medical practices.

6 (g) The results of tests or reports, or information therein, ob-
7 tained under this section shall be confidential and shall not be di-
8 vulged to any person not authorized by this section to receive the
9 results or information. Any violation of this section is a Class C
10 misdemeanor.

11 Sec. 2. K.S.A. 22-2913 is hereby amended to read as follows:
12 22-2913. (a) As used in this section:

13 (1) "Conviction" means a judgment of guilt entered upon a find-
14 ing of guilty or upon a plea of guilty or no contest and a verdict
15 of not guilty because of insanity.

16 (2) "Laboratory confirmation of HIV infection" means positive
17 test results from a confirmation test approved by the secretary of
18 health and environment.

19 (3) "Sexual act" means contact between the penis and the vulva,
20 the penis and the anus, the mouth and the penis, the mouth and
21 the vulva or the mouth and the anus. For purposes of this definition
22 contact involving the penis occurs upon penetration, however slight.

23 (1) "AIDS test" (4) "Test for HIV infection" means a test ap-
24 proved by the secretary of health and environment to detect anti-
25 bodies to the probable causative the etiologic agent for the disease
26 acquired immune deficiency syndrome.

27 (5) "Body fluids" means blood, semen or vaginal secretions or
28 any body fluid visibly contaminated with blood.

29 (2) "A positive reaction" means a positive AIDS test with
30 a positive confirmatory test as specified by the secretary of
31 health and environment.

32 (b) At the time of an appearance before a magistrate the court
33 under K.S.A. 22-2901 and amendments thereto, the magistrate
34 court shall inform every person arrested and charged with a crime
35 in which it appears from the nature of the charge that the trans-
36 mission of body fluids from one person to another may have been
37 involved or a sexual act may have been involved of the availability
38 of AIDS testing for HIV infection and counseling and shall cause
39 the each alleged victim of such a the crime, if any, to be notified
40 that AIDS testing for HIV infection and counseling is available.

41 (c) Upon conviction of a person for any crime which the court
42 determines, from the facts of the case, involved or was likely to have
43 involved the transmission of body fluids from one person to another

1 *or involved a sexual act*, the court: (a) (1) May order the convicted
2 person to submit to ~~an AIDS test~~ *a test for HIV infection*; or (b)
3 (2) shall order the convicted person to submit to ~~an AIDS test~~ if
4 ~~the a test for HIV infection~~ if a victim of the crime, or the parent
5 or legal guardian of the victim, if the victim is a minor, requests
6 the court to make such order. If ~~an AIDS test~~ *a test for HIV*
7 *infection* is ordered under this subsection (c), ~~the victim of the~~
8 ~~crime, if any, who is not a minor, a victim who is an adult~~ shall
9 designate a health care provider or counselor to receive ~~such the~~
10 information on behalf of the victim. If ~~the a~~ victim is a minor, the
11 parent or legal guardian of the victim shall designate the health care
12 provider or counselor to receive ~~such the~~ information. If the test
13 results in a negative reaction, the court shall order the convicted
14 person to submit to another ~~AIDS test~~ *test for HIV infection* six months
15 after the first test was administered.

16 (d) The results of any ~~AIDS test~~ *test for HIV infection* ordered under
17 this section shall be disclosed to the court which ordered the test,
18 to the convicted person and to ~~the each~~ person designated under
19 subsection (c) by ~~the victim or victims of the crime a victim or~~
20 by the parent or legal guardian of a victim if ~~the victim is a minor.~~
21 ~~If an AIDS test. If a test for HIV infection~~ ordered under this
22 section results in a ~~positive reaction~~ *laboratory confirmation of*
23 *HIV infection*, the results shall be reported to the secretary of health
24 and environment and to the secretary of corrections, ~~and such coun-~~
25 ~~seling as directed by the~~ secretary of health and environment shall
26 ~~be provided to the victim or victims provide to each victim of~~
27 ~~the crime or sexual act, at the option of such victim, counseling~~
28 ~~regarding the human immunodeficiency virus, testing for HIV in-~~
29 ~~fection in accordance with K.S.A. 65-6001 et seq. and amendments~~
30 ~~thereto and referral for appropriate health care and services.~~

31 (e) The costs of any counseling ~~and testing~~ provided under sub-
32 section (d) by the secretary of health and environment shall be paid
33 from amounts appropriated ~~for such purpose~~ to the department of
34 health and environment: ~~for that purpose. The court shall order the~~
35 ~~convicted person to pay~~ restitution to the state for payment of
36 ~~department of health and environment for the costs of any counseling~~
37 provided under this section and for payment of the costs of any
38 test ordered ~~or otherwise performed~~ under this section ~~shall be~~
39 ~~included by the court in any order requiring the convicted~~
40 ~~person to pay restitution.~~

41 (f) When a court orders a convicted person to submit to ~~an AIDS~~
42 ~~test a test for HIV infection~~ under this section, the withdrawal of
43 the blood may be performed only by: (1) A person licensed to practice

and for inclusion in the convicted person's
medical file. The

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1 medicine and surgery or a person acting under the supervision of
2 any such licensed person; (2) a licensed professional nurse or a
3 licensed practical nurse; or (3) a qualified medical technician. No
4 person authorized by this subsection to withdraw blood, no person
5 assisting in the performance of the AIDS test *for HIV infection* nor
6 any medical care facility where blood is withdrawn or tested that
7 has been ordered by the court to withdraw or test blood shall be
8 liable in any civil or criminal action when the *aet test* is performed
9 in a reasonable manner according to generally accepted medical
10 practices.

11 (g) The results of tests or reports, or information therein, ob-
12 tained under this section shall be confidential and shall not be di-
13 vulged to any person not authorized by this section to receive the
14 *same results or information*. Any violation of this section is a Class
15 C misdemeanor.

16 Sec. 3. K.S.A. 22-2913 is hereby repealed.

17 Sec. 4. This act shall take effect and be in force from and after
18 its publication in the statute book.

STATE OF KANSAS



Joan Finney, Governor

DEPARTMENT OF ADMINISTRATION

LEGAL SECTION

107 Landon State Office Building

900 Jackson

Topeka, Kansas 66612-1214

(913) 296-6000

FAX #(913) 296-0043

TESTIMONY OF ROGERS L. BRAZIER, JR., STAFF ATTORNEY
DEPARTMENT OF ADMINISTRATION, LEGAL SECTION

SB 275 - Relating to testing for HIV infection under certain circumstances.

House Federal and State Affairs Committee

Senate Bill 275 is a bill relating to the testing for HIV infection of individuals (juveniles and adults) adjudicated or convicted of offenses involving sexual acts or the likely transmission of body fluids, as well as for the victims of those crimes. Under the bill HIV testing may not be required unless there is first an adjudication (juvenile) or conviction (adult) by the court. In addition to HIV testing the bill provides for notification to the victim of the results of court ordered testing for the HIV infection, and for the availability of counseling to the victim. The bill provides for KDHE to pay for the HIV testing and counseling of victims. In such case the court must order restitution to KDHE from the convicted person to offset such expense.

The purpose of the bill is to ensure compliance by the State of Kansas with §1804 of the Crime Control Act of 1990, 42 U.S.C. §3756(f), in order that the State of Kansas may continue to receive full funding under the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program. A failure to pass legislation in substantially the same form as proposed in SB 275 may result in the state losing \$461,300 from 1994 federal fiscal year funding.

I would appreciate your favorable consideration of SB 275.

RLB:jb
6380L

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Atch #B



Office of Justice Programs
Bureau of Justice Assistance

Washington, D.C. 20531

April 17, 1992

Mr. Brent Bengston
Governor's Office of Drug Abuse Programs
112 Landon State Office Building
900 Jackson
Topeka, Kansas 66612-1214

Dear Mr. Bengston:

As you know, the Crime Control Act of 1990 included provision for a ten percent (10%) decrease in formula grant awards beginning in FY 1994 for states which do not have in place laws related to HIV testing of certain convicted offenders. Specifically, the Act requires each state to have in place a statute(s) requiring, at the request of the crime victim, testing for the presence of the human immunodeficiency virus (HIV) in persons convicted under state law of a "sexual act" as that term is defined in 18 U.S.C. Sec. 2245 (2).

The State and Local Assistance Division (SLAD) has been working with the Office of Justice Programs' Office of General Counsel (OGC) for some time to arrive at legal and feasible means to assure all states are apprised of what is necessary to be in compliance with this requirement. During the course of this consultation, we have become aware of the complexity of this requirement and the necessity for each state to determine on their own if they are in compliance, prior to any BJA or OGC review.

Thus, while we had expected a simple review and approval process for the laws and pending bills submitted by states, we now find it necessary to ask you to consult your legal advisors and first determine if your laws and related regulations meet the several elements noted in the Act. To assist you in this, OGC has prepared the enclosed Guidance document and worksheet.

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Please review this document closely and call your SIAD Branch Chief or staff contact if you have questions. We appreciate your concern about this matter and will try to assist your agency during this process in any way possible.

Sincerely,

BUTCH

C.H. Straub II, Director
State and Local Assistance Division

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13-3

Evidence concerning conduct upon which aggravated sexual abuse and attempted rape charges were based was insufficient to warrant lesser included offense instruction on criminal sexual contact; defendant entered victim's room without his pants, with a knife in his hand, climbed on top of victim, and ordered her to remove her underwear, victim felt defendant's erection and was told to tell her inquiring friend that she loved defendant, while defendant was continually using knife to cut on victim's throat. *U.S. v. Dennison*, C.A.10 (N.M.) 1991, 937 F.2d 559.

Abusive sexual contact was not lesser-included offense of attempted sexual abuse and attempted aggravated sexual abuse, as abusive sexual contact requires specific intent to abuse, humiliate, harass, degrade, or arouse or gratify sexual desire of any person, while such specific intent is not required for attempted sexual abuse and attempted aggravated sexual abuse. *U.S. v. Sneezer*, C.A.9 (Ariz.) 1990, 900 F.2d 177.

Abusive sexual contact is lesser included offense of both aggravated sexual abuse and sexual abuse of minor. *U.S. v. Demarries*, C.A.8 (S.D.) 1989, 876 F.2d 674.

2. Force, use of

Statute prohibiting abusive sexual conduct in a federal facility requires only use of "force," not significantly violent action or threats. *U.S. v. Lauck*, C.A.2 (N.Y.) 1990, 905 F.2d 15.

§ 2245. Definitions for chapter

As used in this chapter—

- (1) the term "prison" means a correctional, detention, or penal facility;
- (2) the term "sexual act" means—

(A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however, slight;

(B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or

(C) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; and

(3) the term "sexual contact" means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

(4) the term "serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty;

(5) the term "official detention" means—

(A) detention by a Federal officer or employee, or under the direction of a Federal officer or employee, following arrest for an offense; following surrender in lieu of arrest for an offense; following a charge or conviction of an offense, or an allegation or finding of juvenile delinquency; following commitment as a material witness; following civil commitment in lieu of criminal proceedings or pending resumption of criminal proceedings that are being held in abeyance, or pending extradition, deportation, or exclusion; or

(B) custody by a Federal officer or employee, or under the direction of a Federal officer or employee, for purposes incident to any detention de-

3. Attempt

Attempted sexual abuse is specific intent crime, and thus defendant was entitled to instruction on his defense of voluntary intoxication. *U.S. v. Sneezer*, C.A.9 (Ariz.) 1990, 900 F.2d 177.

4. Defense

Crime of sexual abuse is not specific intent crime, and thus voluntary intoxication is not a defense. *U.S. v. Sneezer*, C.A.9 (Ariz.) 1990, 900 F.2d 177.

5. Weight and sufficiency of evidence

Evidence concerning defendant's encounter with victim was sufficient to establish that defendant used "force" against her, as required to support conviction for abusive sexual conduct in federal facility; defendant walked alongside victim, put his arm around her and held her so that she could not continue walking, then backed her into corner and held her there for three to four minutes so that she could not get away from him. *U.S. v. Lauck*, C.A.2 (N.Y.) 1990, 905 F.2d 15.

6. Admissibility of evidence

Claimed pattern of sodomy and sexual molestation of witness by defendant, which ceased ten years prior to acts for which defendant was charged with aggravated sexual abuse and abusive sexual contact, was not too remote to be admissible as prior bad act evidence. *U.S. v. Hadley*, C.A.9 (Ariz.) 1990, 918 F.2d 848.

scribed in subparagraph (A) of this paragraph, including transportation, medical diagnosis or treatment, court appearance, work, and recreation; but does not include supervision or other control (other than custody during specified hours or days) after release on bail, probation, or parole, or after release following a finding of juvenile delinquency.

(Added Pub.L. 99-646, § 87(b), Nov. 10, 1986, 100 Stat. 3622.)

HISTORICAL AND STATUTORY NOTES

Codification

Identical provision was enacted by Pub.L. 99-654, § 2, Nov. 14, 1986, 100 Stat. 3662.

Effective Date

Section effective 30 days after Nov. 10, 1986, see section 87(c) of Pub.L. 99-646, set out as a note under section 2241 of this title.

Legislative History

For legislative history and purpose of Pub.L. 99-646, see 1986 U.S. Code Cong. and Adm. News, p. 6139.

LIBRARY REFERENCES

Rape § 1, 2.

C.J.S. Rape § 1 et seq.

CHAPTER 110—SEXUAL EXPLOITATION AND OTHER ABUSE OF CHILDREN

Sec.

2251. Sexual exploitation of children.

2251A. Selling or buying of children.

2252. Certain activities relating to material involving the sexual exploitation of minors.

Sec.

2253. Criminal forfeiture.

2254. Civil forfeiture.

2255. Civil remedy for personal injuries

2256. Definitions for chapter.

2257. Record keeping requirements.

2258. Failure to report child abuse.

HISTORICAL AND STATUTORY NOTES

1990 Amendment

Chapter Heading. Pub.L. 101-647, Title II, § 226(g)(2)(A), Nov. 29, 1990, 104 Stat. 4808, inserted "and Other Abuse" after "Exploitation".

Section Analysis. Pub.L. 101-647, Title II, § 226(g)(2)(B), Nov. 29, 1990, 104 Stat. 4808, added item 2258.

1988 Amendment

Pub.L. 100-690, Title VII, § 7512(c), Nov. 18, 1988, 102 Stat. 4487, added item 2251A.

Pub.L. 100-690, Title VII, § 7513(b), Nov. 18, 1988, 102 Stat. 4488, added item 2257.

1986 Amendment

Pub.L. 99-500, Title I, § 101(b) [Title VII, § 703(b)], Oct. 18, 1986, 100 Stat. (3) and Pub.L. 99-591, Title I, § 101(b) [Title VII, § 703(b)], Oct. 30, 1986, 100 Stat. 3341-75, added item 2255 and redesignated former item 2255 as 2256.

§ 2251. Sexual exploitation of children

(a) Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor in interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (d), if such person knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce or mailed, or if such visual depiction has actually been transported in interstate or foreign commerce or mailed.

(b) Any parent, legal guardian, or person having custody or control of a minor who knowingly permits such minor to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of producing any visual depiction of such conduct shall be punished as provided under subsection (d) of this section, if such parent, legal guardian, or person knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce or mailed or if such visual depiction has actually been transported in interstate or foreign commerce or mailed.

2 USCS § 3753

PUBLIC HEALTH AND WELFARE

State will provide the Service with the certified record of such a conviction within 30 days of the date of a request by the Service for such record.

Other provisions:

Application of Act Nov. 29, 1990 amendments. Act Nov. 29, 1990, P. L. 101-649, Title V, Subtitle A, § 507(b), 104 Stat. 3051, provides: "The amendment made by subsection (a) [adding subsec. (a)(1) to this section] shall apply to grants for fiscal years beginning with fiscal year 1991."

3754. Grant limitations

(1) [Introductory matter unchanged]

(2) for any subsequent fiscal year appropriations be expended for more than 75 per centum; and (3) for any subsequent fiscal year appropriations be expended for more than 75 per centum; [including matter unchanged]

(c) [Unchanged]

Except for grants awarded to State and local governments for the purpose of participating multijurisdictional drug task forces, no funds may be awarded under this subpart to a grant recipient for a program or project for which funds have been awarded under this title [42 USCS 3711 et seq.] for 4 years (in the aggregate), including any period occurring before the effective date of this subsection.

As amended Nov. 21, 1989, P. L. 101-162, Title II, § 211, 103 Stat. 1006; Nov. 5, 1990, P. L. 101-515, Title II, § 207, 104 Stat. 2119; Nov. 29, 1990, P. L. 101-647, Title VI, Subtitle A, § 501(a), 104 Stat. 4823; Oct. 28, 1991, P. L. 102-140, Title I, §§ 108, 109, 103 Stat. 794.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1989, Act Nov. 21, 1989, in subsec. (a)(1), substituted "1990" for "1989".
1990, Act Nov. 5, 1990, in subsec. (a)(1), substituted "1991" for "1990".
Act Nov. 29, 1990, in subsec. (a)(1), purported to make the same amendment as that made by Act Nov. 5, 1990, but such amendment was already executed.
1991, Act Oct. 28, 1991, in subsec. (a)(2), substituted "75 per centum" for "50 per centum"; and in subsec. (f), substituted "Except for grants awarded to State and local governments for the purpose of participating in multijurisdictional drug task forces, no" for "No".

756. Allocation and distribution of funds under formula grants

Of the total amount appropriated for this part [42 USCS §§ 3750 et seq.] in any fiscal year, amount remaining after setting aside the amount required to be reserved to carry out section 1 of this title [42 USCS § 3761] shall be set aside for section 502 [42 USCS § 3752] and allocated to States as follows:

(1) \$500,000 or 0.25 percent, whichever is greater, shall be allocated to each of the participating States; and

(2) of the total funds remaining after the allocation under paragraph (1), there shall be allocated to each State an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the population of such State bears to the population of all the States.

(c) [Unchanged]

(1) For any fiscal year beginning more than 2 years after the effective date of this subsection—

(A) 90 percent of the funds allocated under subsection (a), taking into consideration subsection (c) but without regard to this subsection, to a State described in paragraph (2) shall be distributed by the Director to such State; and

(B) 10 percent of such amount shall be allocated equally among States that are not affected by the operation of subparagraph (A).

(2) Paragraph (1)(A) refers to a State that does not have in effect, and does not enforce, in such fiscal year, a law that requires the State at the request of the victim of a sexual act—

(A) to administer, to the defendant convicted under State law of such sexual act, a test to detect in such defendant the presence of the etiologic agent for acquired immunodeficiency syndrome;

(B) to disclose the results of such test to such defendant and to the victim of such sexual act; and

(C) to provide to the victim of such sexual act counseling regarding HIV disease, HIV testing, in accordance with applicable law, and referral for appropriate health care and support services.

(3) For purposes of this subsection—

(A) the term "convicted" includes adjudicated under juvenile proceedings; and

JUSTICE SYSTEM IMPROVEMENT

42 USCS § 3759

(B) the term "sexual act" has the meaning given such term in subparagraph (A) or (B) of section 2245(1) of title 18, United States Code.

(As amended Nov. 21, 1989, P. L. 101-162, Title II, § 212, 103 Stat. 998, 1006; May 25, 1990, P. L. 101-302, Title III, § 320(c)(1), 104 Stat. 248; Nov. 29, 1990, P. L. 101-647, Title XVIII, § 1804, 104 Stat. 4851.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

The effective date of this subsection, referred to in subsec. (f), is probably a reference to the date of enactment of such subsec., that is Nov. 29, 1990.

Amendments:

1989, Act Nov. 21, 1989, in subsec. (a)(1), inserted "or 0.25 percent, whichever is greater,". Section 212 of such Act further substituted subsec. (a) for one which read:

"(a) Of the total amount appropriated for this part in any fiscal year, the amount remaining after setting aside the amount required to be reserved to carry out section 511 of this title shall be set aside for section 502 and allocated to States as follows:

"(1) \$500,000 or 0.25 percent, whichever is greater, shall be allocated to each of the participating States; and

"(2) of the total funds remaining after the allocation under paragraph (1), there shall be allocated to each State an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the population of such State bears to the population of all the States".

1990, Act May 25, 1990, in subsec. (a), in the introductory matter, inserted "required", and, in para. (1), substituted "\$500,000 or 0.25 percent, whichever is greater," for "0.4 percent".

Act Nov. 29, 1990 purported to amend subsec. (a)(1) by substituting "subsections (c) and (f)" for "subsection (c)" and by redesignating subsec. (f) as subsec. (g); however, such amendments could not be executed. Additionally, subsec. (f) was added.

§ 3759. Improvement of criminal justice records

(a) Subject to subsection (d), each State which receives funds under section 506 [42 USCS § 3756] in a fiscal year shall allocate not less than 5 percent of such funds to the improvement of criminal justice records.

(b) The improvement referred to in subsection (a) shall include—

(1) the completion of criminal histories to include the final dispositions of all arrests for felony offenses;

(2) the full automation of all criminal justice histories and fingerprint records; and

(3) the frequency and quality of criminal history reports to the Federal Bureau of Investigation.

(c) The Director, in consultation with the Director of the Bureau of Justice Statistics, shall establish guidelines for the fulfillment of the requirements specified in subsections (a) and (b) of this section.

(d) In accordance with such guidelines as the Director shall issue and on the request of a State, the Director may—

(1) waive compliance with subsection (a) by such State; or

(2) authorize such State to reduce the minimum amount such State is required to allocate under subsection (a);

if the Director, in the discretion of the Director, finds that the quality of the State's criminal justice records does not warrant expending the amount allocated under subsection (a).

(June 19, 1968, P. L. 90-351, Title I, Part F, Subpart 1, § 509, as added Nov. 29, 1990, P. L. 101-647, Title XVIII, § 1803(a), 104 Stat. 4850.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

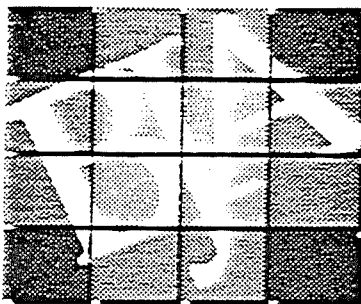
Explanatory notes:

A prior § 3759 (Act June 19, 1968, P. L. 90-351, Title I, Part F [E], § 511, 82 Stat. 206; Aug. 6, 1973, P. L. 93-83, § 2, 87 Stat. 212) was omitted in the general revision of this chapter by Act Dec. 27, 1979, P. L. 96-157, 93 Stat. 1167. Such section provided for judicial review.

A prior § 509 of Act June 19, 1968, P. L. 90-351, Title I, Part F [E], 82 Stat. 206, as amended, was omitted in the general revision of this chapter by Act Dec. 27, 1979, P. L. 96-157, 93 Stat. 1167. Such § 509 appeared as 42 USCS § 3757 and provided for withholding of payments for noncompliance with certain requirements and for notice and hearing on such withholding.

Other provisions:

Application of section, Act Nov. 29, 1990, P. L. 101-647, Title XVIII, § 1803(c), 104 Stat. 4851, provides: "The amendments made by this section [adding this section] shall not apply with respect to any fiscal year beginning before the date of the enactment of this Act."



Bureau of Justice Assistance

Testing Certain Offenders for Human Immunodeficiency Virus

Guidance for States on Section 1804 Requirements

April 1992

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Testing Certain Offenders for Human Immunodeficiency Virus:

Guidance for the States on Section 1804 Requirements

I. Introduction

This information is compiled and distributed by the Bureau of Justice Assistance (BJA), Office of Justice Programs, in order to provide guidance to the States, Territories, and other jurisdictional units (all hereafter referred to as States) in meeting their obligations to require testing programs for detecting the human immunodeficiency virus (HIV) in certain sex offenders. Under a provision enacted by the 101st Congress, State statutes must be enacted and enforced providing for such testing if States are to continue to receive full Federal funding under the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program in Fiscal Year 1994.

The Federal statute decreasing the amount of the formula grant for those States not observing a statutory HIV testing requirement is meant to set a minimum standard. Obviously, States may have broader requirements than set out in the Federal statute shown below, without jeopardizing their continued full funding. However, States will want to be certain that their statutes at least meet all the required elements of the Federal legislation, particularly those States whose testing acts antedate the Federal provision.

II. Background

With the frightening spread of acquired immune deficiency syndrome (AIDS) and its HIV precursor, transmitted as they are by sexual contact, another often terrifying concern has been introduced into the lives of victims of the crimes of sexual abuse or rape.

In an effort to eliminate at least part of the traumatic aftermath of such a crime upon its victims, a number of State legislatures in recent years have enacted statutes which generally require that persons convicted of sexual abuse offenses (as rape is now often denominated) must undergo HIV testing in order that their victims can at least know that they have not been exposed to the deadly virus, or if, tragically, they have been so exposed, they can seek medical treatment and take steps to protect others from the further spread of the epidemic.

By the end of 1990, about one-third of the States had enacted such statutes. Individual provisions, however, varied in form and detail. For example in some cases, the testing process was mandatory for all persons convicted of sexual abuse. In others, it was triggered only at the request of a victim. In some States, only the person convicted and the victim were entitled to the test results, while in others spouses of the victim and the convicted defendant, if any, also received the findings.

In 1990, Congress decided that the States without this legislation should be persuaded to adopt mandatory HIV testing in instances of criminal sexual abuse. In the words of the House sponsor of the measure, Congresswoman Martin of Illinois, the provision was offered "because rape victims should not have to live in fear about exposure to the AIDS virus. . . . [A]ll States should make it possible for rape victims to find out if they have been placed at risk. They have the right to know. . . . We can. . . demonstrate our compassion by preventing further traumatization of these victims who also face the possibility of exposure to the AIDS virus."

III. The Statute

Accordingly, in Sec. 1804 of the Crime Control Act of 1990 (hereafter referred to as Section 1804), Congress amended Sec. 506 of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, hereafter referred to as the Act, by adding a subsection (f), as follows:

(f)(1) For any fiscal year beginning more than 2 years after the effective date of this subsection-

(A) 90 percent of the funds allocated under subsection (a)^[1], taking into consideration subsection (e)^[2] but without regard to this subsection, to a State described in paragraph (2) shall be distributed by the Director to such State; and

(B) 10 percent of such amount shall be allocated equally among States that are not affected by the operation of subparagraph (A).

(2) Paragraph (1)(A) refers to a State that does not have in effect, and does not enforce, in such fiscal year, a law that requires the State at the request of the victim of a sexual act-

(A) to administer, to the defendant convicted under State law of such sexual act, a test to detect in such defendant the presence of the etiologic agent for acquired immune deficiency syndrome;

¹Sec 506(a) of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3756(a), sets out the formula for determining the sums to be distributed to the States under the formula grant provisions of the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs.

²Section 506(e) of Title I of the Act, 42 U.S.C. § 3756(e), refers to funds allocated to the States, but not distributed to them, which thus become available for the discretionary grant program as provided in Sec. 510 - 518 of the Act, 42 U.S.C. § 3760-3764.

(B) to disclose the results of such test to such defendant and to the victim of such sexual act; and

(C) to provide to the victim of such sexual act counseling regarding HIV disease, HIV testing, in accordance with applicable law, and referral for appropriate health care and support services.

(3) For purposes of this subsection-

(A) the term "convicted" includes adjudicated under juvenile proceedings; and

(B) the term "sexual act" has the meaning given such term in subparagraph (A) or (B) of section 2245(1) [sic] of title 18, United States Code.

Section 1804 was codified as 42 U.S.C. § 3756(f).

IV. Effective Date

Section 1804 became effective on November 29, 1990, with the enactment of the Crime Control Act of 1990. Thus, in order for a State to receive its full formula amount for the fiscal year beginning two years after passage of the 1990 Act, its HIV testing statute incorporating the Section 1804 standards must be in place for Fiscal Year 1994⁴, which begins October 1, 1993.

V. The Financial Effect of Sec. 1804

Section 1804 thus requires that 10% of a State's formula grant be withheld and transferred elsewhere if that State by the Fiscal Year 1994 deadline has failed to place in effect, as well as actually enforce, the elements of the HIV testing standards created by Section 1804.

There is no waiver procedure incorporated within the statute. Consequently, BJA will be unable to waive or postpone to a later year the 10% reduction in funds for any State which should fail to comply.

Any Federal funds which must be withheld from the States because of noncompliance with the Section 1804 mandate must be allocated equally among States which have complied. Thus in addition to qualifying for continued full formula grant funding under the Act, States which enact and enforce their own statute meeting the Section 1804 standards, become eligible to share equally with other complying States in the accumulated monies withheld from States which have failed to comply.³

³See the comment in Paragraph 7 of Division VI, "Definition of the Term 'Sexual Act.' "

⁴Fiscal Year 1994 is the first full "fiscal year beginning more than two years after the effective date of" Section 1804. See §506(f)(1) of title I of the Act, 42 U.S.C. § 3756(f)(1).

VI. The Section 1804 Standards

As set out above, the State statutes now in place or to be adopted must meet the minimum standards required by Section 1804. Of course, the States may enact and enforce broader requirements or standards.

However, States should regard each element of the Section 1804 standards as being required for inclusion in their State statute in order to maintain their full funding. These elements are:

1. *Victim Request.*

The State statute must require that the State make mandatory the testing process at the request of any victim of a sexual act (as defined below) for which the person to be tested was convicted in State court.

If the State statute requires all persons so convicted to be tested *without exception* (regardless of the absence of a victim request), then this element may be regarded as being met, since it is broader, or more inclusive in nature than Section 1804 requires. However, the requirement would not be met if the State statute would allow the person otherwise to be tested to avoid the testing process, even though the victim requested it.

2. *Administration of the Test.*

The State statute must provide for an agency of the State to direct the test to be administered, although the actual physical testing may be delegated to another, such as a physician, laboratory, etc. Typically, the State statute would provide for the sentencing judge to order the testing either before sentencing (perhaps as part of the order for a pre-sentence investigation) or as part of the sentencing order itself.

The State statute must direct that the procedure itself specifically test for the presence of the etiologic agent for AIDS, or HIV.

3. *The Person to be Tested.*

Congress required in Section 1804 that the State statute must provide that any person "convicted under State law" of a sexual act is obliged to be tested for AIDS or its HIV precursor at the victim's request. This includes persons entering pleas of guilty to a criminal sexual act (as hereafter defined), as well as those being found guilty following a jury trial or a trial to the court. It also includes juveniles thus adjudicated (see paragraph 6 below).

4. Disclosure of the Test Results.

The State statute must provide for the disclosure, at the request of the victim, of the test results to both the victim and the person convicted. Some States have chosen to provide the test results to others as well, such as the spouses, if any, of the victim and the defendant.

5. Victim Services.

Congress required in Section 1804 that the State statutes include a provision for making certain services available to the victims of these sexual acts at their request. These services are:

1. counseling regarding HIV disease;
2. HIV testing in accordance with applicable law; and
3. referral for appropriate health care and support services.

If the language of a State statute does not incorporate the specific language of Section 1804, it must at least be so broad as to make it clear that these victims are entitled as a matter of right to request and receive the counseling, testing, and referral services specified by Congress.

Section 1804 implies that these services are to be provided at the expense of State or local governments, rather than at the victim's expense. State offices administering the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program should be prepared to inform BJA as to the sources of the funds to pay for these services and the authority therefore.

6. Definition of the Term "Convicted" as Including Juveniles.

In paragraph (3)(A) of Section 1804, Congress provided that "the term 'convicted' includes adjudicated under juvenile proceedings".

Thus, in order to be in compliance with Section 1804, State HIV testing statutes must provide that not only adult defendants convicted of defined sexual acts are required to be tested by the State at the request of the victim, but that juveniles similarly adjudicated are also required to be so tested.

7. Definition of the Term "Sexual Act."

In paragraph (3)(B) of Section 1804, Congress defined the term "sexual act" as the meaning given such term in 18 U.S.C. § 2245(1)(A) or (B). Clearly Congress intended to define "sexual act" as that meaning given the term in 18 U.S.C. § 2245(2)(A) or (B), which provides:

(2) the term "sexual act" means-

(A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however, [sic] slight;

(B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus:

The language of the State HIV testing statute should, where possible, incorporate these definitions. However, since Section 1804 requires that the person tested must be "convicted under State law", if State statutory criminal law defines the term "sexual act" in a less inclusive manner, we do not believe this fact would automatically mean that a State is in non-compliance, because it does not appear from the language of Section 1804 or its statutory history, that Congress intended to require States to change their definitions of substantive criminal acts in order to receive their full formula grant.

VII. State Determination of Compliance with Section 1804

All State Offices should promptly review their State's statutory provisions regarding required HIV testing for sex offenders together with any other pertinent State statutory and case law. These materials should be compared with Section 1804 as set out in Division III above and as explained in Division VI immediately above. BJA suggests that this review be conducted by those providing legal advice to the State Office.

It is the responsibility of each State Office to conduct this review and comparison and to make a determination that State statutory law either is now in compliance or is not yet in compliance with the Section 1804 standards.

For those States whose legislatures have not yet enacted a mandatory HIV testing statute for sex offenders, State Office legal advisors will no doubt wish to review any bills which may be pending, making the same comparisons. Should it appear that a proposed bill does not include all elements of the Section 1804 standards, the State Office will want to make that fact known to the appropriate State legislative committees or individual legislators.

Finally, for those States without any existing or proposed legislation complying with Section 1804, BJA suggests that the State Offices make the appropriate legislative committees and/or legislators aware of the Section 1804 requirements promptly.

To assist the States in assessing the degree of their Section 1804 compliance, a worksheet is included as an Appendix to these materials. BJA believes that the worksheet will serve as a useful tool in that endeavor and suggests that each State Office make use of it in arriving at its own determination as to Section 1804 compliance.

If, after conducting its own review, a State Office still has a question as to whether State law is in compliance with the Section 1804 standards, it may request BJA to review

its enacted statutory materials. However, a State should not request a BJA review u. after conducting its own study based on the information contained in these materials. Nor should a State request a BJA review if it is apparent from a completed worksheet that it does not yet comply with all of the elements of the Section 1804 standards.

Appendix

Worksheet

For Fiscal Year 1994, States and other Jurisdictions (for convenience hereafter referred to as States) must be in compliance with the HIV mandatory testing standards for certain offenders established by Sec. 1804 of the Crime Control Act of 1990, 42 U.S.C. § 3756(f) (hereafter referred to as Section 1804) in order to receive continued full funding under the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program.

The purpose of this worksheet is to assist the States in providing a self-assessment of their compliance with Section 1804. It need not be returned.

1. Victim Request.

Does the State statute require an HIV testing procedure at the request of any victim of a sexual act for which the person to be tested was convicted in State court (or make such a test mandatory for *all* persons thus convicted regardless of victim request)?

____ Yes ____ No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

2. Administration of the Test.

Does the State statute require an agency of the State (such as a court, health department, correctional authority, etc.) to direct that a test be administered in such cases?

____ Yes ____ No

Does the State statute specifically require testing in these cases for the presence of acquired immune deficiency syndrome (AIDS) or its precursor, human immunodeficiency virus (HIV).

____ Yes ____ No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

3. The Person to be Tested.

Does the State statute require persons to be tested who have been convicted under State law of a defined sexual act?

☐ Yes, in all cases ☐ Yes, but only at the request of a victim ☐ No

Does this either specifically or by definitional inclusion encompass persons found guilty of the offense by a jury or court, as well as those entering a pleas of guilty? (*Note: Because Question 6 below concerns the definition of juveniles as persons "convicted," please disregard that issue for Question 3).*

☐ Yes ☐ No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

4. Disclosure of the Test Results.

Does the State statute provide for disclosure of the test results to the both the victim and the person tested?

☐ Yes ☐ No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

5. Victim Services.

Does the State statute provide for making the following services available to the victims of these sexual acts at their request:

1. Counseling regarding HIV disease?

☐ Yes ☐ No

2. HIV testing in accordance with applicable law?

☐ Yes ☐ No

3. Referral for appropriate health care and support services?

☐ Yes ☐ No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

What are the sources of the funds to pay for these services?

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

6. Definition of the term "convicted" as including Juveniles.

Does the State statute require HIV testing for juveniles who have been adjudicated under State law of committing sexual acts as it does with adults?

☐ Yes ☐ No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

7. Definition of the term "Sexual Act."

Does the State statute define "sexual act" as having the meaning (either literal or approximate) as that given the term in 18 U.S.C. § 2245(2)(A) or (B)? (See Division 7 of the "Guide for the States").

☐ Yes ☐ No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

Worksheet

For Fiscal Year 1994, States and other Jurisdictions (for convenience hereafter referred to as States) must be in compliance with the HIV mandatory testing standards for certain offenders established by Sec. 1804 of the Crime Control Act of 1990, 42 U.S.C. § 3756(f) (hereafter referred to as Section 1804) in order to receive continued full funding under the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program.

The purpose of this worksheet is to assist the States in providing a self-assessment of their compliance with Section 1804. It need not be returned.

1. Victim Request.

Does the State statute require an HIV testing procedure at the request of any victim of a sexual act for which the person to be tested was convicted in State court (or make such a test mandatory for *all* persons thus convicted regardless of victim request)?

☒ Yes ☐ No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority? Pursuant to Senate Bill No. 275, §§ 1 and 2 the above question may be answered in the affirmative. SB275 is attached.

2. Administration of the Test.

Does the State statute require an agency of the State (such as a court, health department, correctional authority, etc.) to direct that a test be administered in such cases?

☒ Yes ☐ No

Does the State statute specifically require testing in these cases for the presence of acquired immune deficiency syndrome (AIDS) or its precursor, human immunodeficiency virus (HIV).

☒ Yes ☐ No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

Qa: SB 275, §§ 1(d) (victims of juvenile offenders or felons) and 2(d) (victims of convicted adults)

Qb: SB 275, §§ 1(a) (4) (definitions) and 2(a) (4) (definitions)

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3. The Person to be Tested.

Does the State statute require persons to be tested who have been convicted under State law of a defined sexual act?

☐ Yes, in all cases ☒ Yes, but only at the request of a victim ☐ No

Does this either specifically or by definitional inclusion encompass persons found guilty of the offense by a jury or court, as well as those entering a pleas of guilty? (*Note: Because Question 6 below concerns the definition of juveniles as persons "convicted," please disregard that issue for Question 3).*

☒ Yes ☐ No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

Qa: SB275, §2(c)

Qb: SB275, §2(a)(1)

4. Disclosure of the Test Results.

Does the State statute provide for disclosure of the test results to the both the victim and the person tested?

☒ Yes ☐ No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority? SB275, §§ 1(d) and 2(d)

5. Victim Services.

Does the State statute provide for making the following services available to the victims of these sexual acts at their request:

1. Counseling regarding HIV disease?

☒ Yes ☐ No

2. HIV testing in accordance with applicable law?

☒ Yes ☐ No

3. Referral for appropriate health care and support services?

☒ Yes ☐ No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

SB275, §§ 1(d) and 2(d)

What are the sources of the funds to pay for these services?

State funds appropriated to the Kansas Department of Health and Environment.

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority? SB 275, §§ 1(e) and 2(e)

6. Definition of the term "convicted" as including Juveniles.

Does the State statute require HIV testing for juveniles who have been adjudicated under State law of committing sexual acts as it does with adults?

☒ Yes ☐ No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority? SB 275, §1

7. Definition of the term "Sexual Act."

Does the State statute define "sexual act" as having the meaning (either literal or approximate) as that given the term in 18 U.S.C. § 2245(2)(A) or (B)? (See Division 7 of the "Guide for the States").

☒ Yes ☐ No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority? SB 275, §§ 1(a)(3) and 2(a)(3)