

Approved: 5-1-93  
Date

## MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Chairman Lana Oleen at 11:05 a.m. on March 11, 1993 in Room 254-E of the Capitol.

All members were present

Committee staff present: Mary Galligan, Legislative Research Department

Mary Ann Torrence, Revisor of Statutes

Jeanne Eudaley, Committee Secretary

Conferees appearing before the committee:

Kyle Smith, Asst. Attorney General, Kansas Bureau of Investigation

Ross Boelling, Chief, Fire Prevention Division, State Fire Marshal Department

Others attending: See attached list

Sen. Oleen announced a hearing for HB 2426, amending the Kansas Parimutuel Racing Act, disclosure of certain information. She introduced Kyle Smith, who gave testimony supporting the bill (Attachment 1). In answering questions, Mr. Smith emphasized confidentiality and the fact that the courts recognize stricter controls for the gambling industry. Sen. Vidricksen recalled investigations prior to legalized parimutuel gambling in the state, and the fact that another state (Iowa) refused to give information because of the Kansas law. Mr. Smith stated that it is important for the state to be reciprocal with other states, and investigations being initiated because of the new Pittsburg track. He stated there is not a lot of turnover at the existing tracks.

Sen. Oleen recognized Kyle Smith, who gave testimony (Attachment 2) supporting HB 2427, amending the Kansas parimutuel racing act, relating to investigations of certain violations. Sen. Gooch raised the question of whistle blowing by employees, and Mr. Smith indicated it was not considered a crime under this provision. Sen. Vidricksen asked Mr. Smith if the Racing Commission was consulted regarding provisions of this bill and stated he is concerned about the broad powers given to the KBI. He also questioned Mr. Smith as to how many agents would be stationed at each track. Mr. Smith stated they had consulted with the Racing Commission regarding investigations at the tracks and stated they want to cooperate with the Commission. Sen. Vidricksen also questioned if there was a Memo of Understanding with the Racing Commission, and Mr. Smith responded copies of the draft are with the Director of the KBI and Executive Director of the Racing Commission. Sen. Vidricksen stated he thought the committee needed to study the Memo of Understanding before taking action on the bill. Sen. Oleen recognized Nancy Anderson from the Racing Commission, but she was unable to give additional information. She did state the Commission has no objections to HB 2426. Sen. Jones recalled studying a similar provision in the House, possibly an Interim Committee, and stated a concern voiced at that time was fear of harassment at the race tracks. He stated the committee should look at the Memo of Understanding between the two agencies. Sen. Hensley point out that on Page 2 of the bill, there is a provision which requires the KBI to report investigations back to the Racing Commission. Mary Galligan asked Mr. Smith to explain the KBI statutory authority relating to the Racing Commission and if this bill broadens that authority, or is new authority. Mr. Smith responded the KBI feels there is a need for clarification because of possible regulation violations and criminal law violations. He stated the Attorney General has not issued an Opinion regarding these provisions.

The Chairman, Sen. Oleen, directed the committees' attention to HB 2426 and action on the bill. Sen. Ramirez made a motion the committee report it favorably, and it was seconded by Sen. Parkinson; the motion passed.

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 254-E  
Statehouse, at 11:05 a.m. on March 11, 1993.

Sen. Oleen called the committees' attention to HB 2124, regarding violations of the fire prevention code, which the committee heard earlier in the week. The Chairman referred to an amendment (Attachment 3), and Mary Torrence explained it provides that the State Fire Marshal make a written request to the state licensing agency to take appropriate action for compliance before imposing a penalty. Ross Boelling voiced support for the amendment and explained the Fire Marshal's Office would work with the licensing agency to correct violations, and it would also eliminate duplication of inspections. Sen. Parkinson made a motion the committee adopt the amendment, and it was seconded by Sen. Papay; the motion passed. Sen. Vidricksen made a motion the bill, as amend, be passed favorably, and it was seconded by Sen. Jones; the motion passed.

Sen. Oleen referred to HB 2152, requiring court ordered testing for certain infectious diseases, which the committee heard yesterday. Sen. Jones explained a proposed amendment (Attachment 4), requested by Sen. Wisdom, which has been referred to as "Good Samaritan" legislation. Sen. Vidricksen asked Sen. Parkinson if this legislation is unconstitutional, and Sen. Parkinson replied there is a problem with this type of legislation as it relates to criminals and also to private citizens. He stated that we are setting new policy when requiring private citizens to submit to testing. Sen. Vidricksen stated this amendment should be a separate bill. Sen. Praeger cautioned the committee of the hysterical responses to the AIDS virus and suggested the subject needs a good, thorough study before passing legislation. She stated the Public Health and Welfare Committee, which she chairs, has several bills dealing with AIDS and other infectious diseases and offered to share additional information with the committee. Sen. Walker stated he agreed and thought the committee should recommend further study on the subject. Sen. Tillotson stated she felt the prison guard gave compelling testimony and that the prison population is unique and needs to be protected. Sen. Papay agreed and stated that prisons come under different rules and that we need to pass legislation to afford protection to the prison guards. Sen. Praeger stated we need to put our energies into prevention and agreed that the prison population is a different issue. She also stated that the prisons are not in compliance with OSHA guidelines, which govern infectious diseases, and that they should be brought into compliance with those guidelines. Sen. Hensley reminded the committee of the discussion regarding tuberculous and stated there is a known case of tuberculous in the Topeka Correctional facility and that he will meet with prison guards to discuss that subject. He recalled Gary Stotts, Secretary of DOC, said tuberculous testing has been completed on the prison population and that Mr. Stotts is to share those results with the committee. Sen. Oleen stated the committee will consider HB 2152, without amendments, next week when more information is available. She will also ask Emalene Correll for information on a similar bill on AIDS legislation.

Sen. Oleen announced there will be no meeting tomorrow, and that at the requests of sponsors, hearings will be held next Wednesday and Thursday on SB 202. Sen. Parkinson, referring to the doctor who was shot last night outside an abortion clinic in Florida, by a pro-life activist, asked if there are proposals to beef up security measures and if our laws are as strict as they could be regarding abortions and violence. Sen. Jones stated he has been bothered in previous hearings with people standing behind the committee and requested that no one be allowed to stand behind the committee. Sen. Papay recalled incidence of violence at clinics and wherever the subject is discussed. Sen. Oleen announced the committee will hear both proponents and opponents on both days and stated the people who participate need to hear both sides of the issue. She stated the committee will have security protection for these hearings, and requested that Ms. Eudaley work with security police to enforce security measures for the committee.

Meeting adjourned at 12:00.

## GUEST LIST

COMMITTEE: Senate Federal & State Affairs

DATE: MARCH 11, 1993

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SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

AGENDA

March 11, 1993

House Bill 2426

Proponent:

Kyle Smith, Asst. Attorney General, KBI

House Bill 2427

Proponent:

Kyle Smith, Asst. Attorney General, KBI



ROBERT B. DAVENPORT  
DIRECTOR

# KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL

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ROBERT T. STEPHAN  
ATTORNEY GENERAL

## TESTIMONY

KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL  
KANSAS BUREAU OF INVESTIGATION  
BEFORE THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE  
REGARDING HOUSE BILL 2426  
MARCH 11, 1993

Mr. Chairman and Members of the Committee:

I am appearing today on behalf of the Kansas Bureau of Investigation (KBI) and it's Director Robert Davenport in support of House Bill 2426. Director Davenport regrets that he is unable to attend personally, but I hope I can answer your questions.

House Bill 2426 will hopefully resolve the difficult problem we have faced in the preparation and presentation of background investigations for the Kansas Racing Commission.

In the early stages of the application and licensing period, the Kansas Racing Commission determined it needed access to criminal intelligence and background information to make knowledgeable decisions on who would be granted the original licenses. However, the Kansas Racing Commission was concerned that any information obtained would be subject to the Open Records Act and in January, 1988, requested an Attorney General Opinion as to whether they could maintain the confidentiality of such reports. Attorney General Opinion 88-3 issued on January 9, 1988, stated that the Kansas Open Records Act would apply to any such reports that were obtained and therefore would be subject to public disclosure. During the 1988 session the legislature amended K.S.A. 74-8804, the same statute we are dealing with here today, with the intent to make it clear that such

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reports were not to be disclosed. Based upon that language, the Kansas Racing Commission felt that it was statutorily prohibited from releasing background information and proceeded with the licensing process.

This position was challenged in the Kansas Racing Management v. Kansas Racing Commission case, which opinion was filed February, 1989. In that case the Kansas Supreme Court interpreted the statutory language to make disclosure of confidential information discretionary with the Kansas Racing Commission. In other words, if certain criteria were met, the Racing Commission had the discretion to release confidential information.

At that point, the KBI was placed in a difficult position wherein we could no longer assure individual sources and other agencies that the intelligence information they provided us would not be disclosed. Without assurances of confidentiality, the decision was made not to provide the Racing Commission with additional intelligence information on background investigations. Fortunately, at that point, most of the major licenses had already been granted. Now, with a track at Pittsburgh on the horizon, the problem has again come to the forefront.

House Bill 2426 should make it clear to the courts, the racing commission and law enforcement, that the intelligence information and background information provided will not be disclosed, thus enabling us to provide it once again to the Racing Commission.

The KBI has been able to access for the Racing Commission, not only our own intelligence files, but those of other law enforcement agencies, and gain the cooperation of individuals close to the applicants, largely because the KBI was able to provide assurances that the information would not be made public and get back to the individual under investigation.

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Our investigations, both criminal and background, are enhanced by our working relations with federal agencies such as the FBI, DEA, other state law enforcement agencies, racing commissions and local law enforcement agencies. They allow us access to their intelligence information and we reciprocate because there is an agreement that such information will not be disclosed. If the information is disclosed, even what seems like innocuous and trivial information can jeopardize or destroy the cooperation of an informant, an agency, or endanger the life of an undercover agent.

The scope of disclosure for background investigations needs to be defined by the legislature.

We believe that in the balance of the public's right to know versus the need for complete and thorough background investigations, this bill will assure the integrity of racing in Kansas.

#099



Attach. 2



ROBERT B. DAVENPORT  
DIRECTOR

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## TESTIMONY

KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL  
KANSAS BUREAU OF INVESTIGATION  
BEFORE THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE  
REGARDING HOUSE BILL 2427  
MARCH 11, 1993

Mr. Chairman and Members of the Committee:

On behalf of the Kansas Bureau of Investigation (KBI) and it's Director Robert Davenport, I am here today to testify in favor of passage of House Bill 2427.

This bill arises out of the experiences of the Gaming Unit at the KBI in dealing with investigations at the paramutuel racing facilities. Frequently an incident will lead to an investigation which may be in violation of both Kansas Racing Commission (KRC) regulations as well as criminal statutes, or what starts out as a criminal investigation turns out to be only a regulatory violation.

This bill seeks to clarify that the KBI agents can pursue such an investigation in all it's aspects. This could simplify investigations wherein an investigation eventually reveals that the violation is regulatory rather than criminal in nature. Rather than the KBI having to stop the investigation to locate Racing Commission security personnel under the provisions of this bill the KBI's Racing Division agents could go ahead and complete the investigation.

We currently have excellent working relations with KRC and it is my understanding they have no objection to HB 2427. I would be happy to answer any questions.

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*Sen. F. & S.A.*  
*3-11-93*  
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ATTACH. 3

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 1993

## HOUSE BILL No. 2124

By Committee on Federal and State Affairs

1-26

AN ACT concerning the Kansas fire prevention code; relating to violations thereof; providing for certain penalties.

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

Section 1. (a) In addition to any other penalty provided by law, the fire marshal, upon finding that any person has violated the provisions of this act the Kansas fire prevention code, may impose a penalty not to exceed \$2,500 \$1,000, which shall constitute an actual and substantial economic deterrent to the violation for which the penalty is assessed. ~~In the ease of continuing violation, every day such violation continues shall be deemed a separate violation.~~

(b) No penalty shall be imposed pursuant to this section except upon the written order of the fire marshal to the person who committed the violation. The order shall state the violation, the penalty imposed and the right to appeal to the state fire marshal. Any such person, within 30 days after service of such order, may make written request to the fire marshal for a hearing thereon. The fire marshal shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act within 30 days after receipt of such request.

(c) Any person aggrieved by any order issued pursuant to this section may appeal such order in accordance with the provisions of the act for judicial review and civil enforcement of agency actions.

(d) All moneys received from penalties imposed pursuant to this section shall be remitted to the state treasurer who shall deposit the entire amount in the state treasury to the credit of the state general fund.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

(e) If a fire safety inspection is required to meet licensing requirements of a state agency, the state fire marshal, before imposing a penalty pursuant to this section, shall make written request to the state licensing agency to take appropriate action to require compliance with the Kansas fire prevention code. If the state licensing agency fails to take such action within 60 days after receipt of the state fire marshal's notice, the state fire marshal may impose a penalty as provided by section.

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7-18-94  
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From - Sen. Wislamm  
By - Sen. Jones  
CRH2152k1

Attach. 4

PROPOSED AMENDMENTS TO HOUSE BILL NO. 2152

(As Amended by House Committee of the Whole)

Be amended:

On page 2, following line 25, by inserting the following subsection to read as follows:

"(p) "Volunteer" means an individual who renders, without compensation, emergency care or assistance at the scene of an emergency or accident.";

Also on page 2, in line 33, after the comma, by inserting "volunteers,"; in line 39, before "corrections" by inserting "volunteers,";

On page 4, after line 22, by inserting the following section to read as follows:

"New Sec. 4. (a) If a volunteer has been placed in contact with body fluid from an individual who received emergency care or assistance at the scene of an emergency or accident from the volunteer, the volunteer may make application to the district court of the county in which the accident occurred for an order requiring such individual to submit to infectious disease tests. Such application shall include an allegation that the individual sought to be tested has been requested to voluntarily submit to infectious disease tests and has refused the tests. When such an application is received, the court shall hold a hearing forthwith and shall issue its order thereon immediately if the court finds

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that:

(1) There is probable cause to believe that the volunteer involved has been placed in contact with body fluid of the individual sought to be tested while rendering emergency care or assistance to such individual at the scene of an emergency or accident;

(2) the individual sought to be tested has been requested to submit to the test and has refused, unless the court makes a further finding that circumstances exist that would, in the court's judgment, excuse the applicant from making such a request. Expenses of the testing shall be assessed as a cost of the proceeding.

(b) If the infectious disease tests ordered pursuant to this section results in a negative reaction, the court, upon proper application, shall order the individual tested to submit to another infectious disease test six months after the date the first test was administered.

(c) The results of any infectious disease test ordered pursuant to this section shall be disclosed to the court that ordered the test, the volunteer and the person tested.

(d) When a court orders an individual to submit to infectious disease tests under this section, the withdrawal of the blood may be performed only by:

(1) A person licensed to practice medicine in surgery or person acting under the supervision of such licensed person;

(2) a licensed professional nurse or a licensed practical

nurse; or

(3) a qualified medical technician.

No person assisting in the performance of the infectious disease tests nor any medical care facility where blood is withdrawn or tested that has been ordered by the court to withdraw or test blood shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to generally accepted medical practices.

(e) The results of the test or report, or information therein, obtained under this section shall be confidential and shall not be divulged to any person not authorized by this act to receive such results, reports or information. Any violation of this subsection is a class C misdemeanor.";

And by renumbering sections accordingly;