

Approved: Feb. 25, 1994
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 February 4, 1994 in Room 254-E of the Capitol.

All members were present

Committee staff present: Mary Galligan, Legislative Research Department
Jeanne Eudaley, Committee Secretary

Conferees appearing before the committee:
See attached list

Others attending: See attached list

Sen. Oleen opened the hearing for HB 2560 and introduced Attorney General Robert Stephan. Mr. Stephan stated this bill addresses a tremendous problem to the state. The gambling devices referred to in this bill exist in large numbers throughout the state, and he pointed out the machines exist for one purpose - gaming, and that is illegal in this state. He read from the bill, Page 2, Line 39 through Page 3, Line 3, and pointed out the bill brings Kansas law into conformity with the Federal law. Also, taxes due the state are abated, and a number of law enforcement personnel are involved trying to control the situation. This bill will assist law enforcement personnel with authority to confiscate the machines. Sen. Oleen asked if pinball machines come under the definition of an "illegal" machine and how many years the Federal law has existed. The Attorney General answered that only machines with pay-off capability in clubs and drinking establishments are illegal. Sen. Ramirez asked the Attorney General how many of these machines exist, and General Stephan answered 8,000 or more, and added these machines are making good money for their owners and are not benefitting the state. Sen. Vidricksen asked if pinball machines are included with the illegal machines since games can be cleared by unplugging them. General Stephan asked his assistant, Kyle Smith, to address that problem. Mr. Smith stated the illegal machines are equipped with a knock-off switch which clears accumulated games; that most pinball machines have to be unplugged to clear games, and that is not illegal. Sen. Jones stated he does not understand the intent of the bill, and asked if present law defines what constitutes an unlawful machine and if present law allows confiscation of them. General Stephan answered the machines are not illegal until there is a pay-off, then it is illegal; the bill would make the machines illegal and allow law enforcement agents to confiscate them. He added many of these machines are located in clubs and drinking establishments, and the machines' sole purpose is to assist in running a gambling operation. Sen. Jones stated he is concerned the bill allows "search and seizure" of property. General Stephan answered the case law has been declared proper and constitutional. Sen. Ramirez asked if a law enforcement agent could confiscate a machine on the spot, and Attorney General Stephan replied, yes, they can under this bill. Mary Galligan asked since the federal law applies, can federal agents take the machines? General Stephan replied this bill brings state law into conformity with the federal law; because of the federal law, federal agents can confiscate machines.

Sen. Oleen stated HB 2560 was studied during the interim by the House Federal and State Affairs Committee and introduced Rep. Darlene Cornfield, who gave testimony (Attachment 1) supporting the bill. Others appearing to support the bill were:

Don Bird, (Attachment 2),
Jim Conant, (Attachment 3),
Gregory Ziemak, (Attachment 4).

Written testimony (Attachment 5) was distributed to committee members from Kathy Peterson and John Bottenberg, representing Video Lottery Technologies.

Because Mr. Conant stated significant drain of resources and manpower, Sen. Oleen asked more details into the involvement of the Alcoholic Beverage Control Division and the cases they have investigated. Mr. Conant stated ABC agents work under cover to play the machines to determine if a payoff will be made, where many man hours being invested in surveillance. This is done in joint operations with federal agents under the federal law, since Kansas does not have authority under the state law. Sen. Oleen then asked who is charged if a

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 254-E
Statehouse, at 11:05 a.m. on February 4, 1994.

payoff is made, the person playing the machine or the owner of the machine? Mr. Conant answered that depends upon the prosecutor; however, the responsibility is with the owner. They also discussed if an illegal machine could be altered so that it could be played for fun only. Mr. Conant stated he is not too familiar with manufacturers of gambling devices, but he believes a machine can be altered to a legal machine.

Opponents appearing before the committee were:

Ralph Snyder, (Attachment 6)

Mr. Snyder stated the Legions' posts favor video lottery, and that they do not like the "guilty by possession" factor. He emphasized the fact that most of the machines are for recreational use and are so marked; however, some posts have machines capable of paying off. Sen. Ramirez asked Mr. Snyder if he is aware of posts being in possession of machines without the switch and if they are used and if they are legal. Mr. Snyder was uncertain, and Mr. Smith answered if the machines being played have a knock-off switch, then they are in violation of the federal law. Sen. Oleen stated her concern that the machines can be altered to conform with state law and also her concern that private citizens own machines, some of which are collectibles. Sen. Jones asked Mr. Smith if a warrant is required to confiscate a machine, and Mr. Smith stated under current law, a warrant is needed to confiscate a machine and much depends upon the reason for the machine being there - is it for recreational purposes, etc.? He stated there is probable cause if a machine is found in a public bar- one would assume it was being used for more than recreational purposes. Mr. Smith stated a knock-off switch is located under the machine and is difficult to tell whether a machine has the switch or not. He also stated the KBI has not given gray machines great attention, as they are not a priority of law enforcement. Sen. Gooch stated it is unclear to him if a machine is capable of knocking-off games, can the machine be seized automatically and what will happen to the people who own them. Sen. Parkinson stated the machines are already illegal under the federal law, and the federal government has the authority to seize them. Sen. Jones asked about the monetary units used in the machines, and Mr. Smith stated the monetary unit is not the question, but rather, how many units can be gambled at one time, i.e., 25 cents, \$1.00, \$10.00. However, the higher the monetary unit, the greater the assumption there is a higher payoff. He also stated this bill is narrower than the federal law.

Sen. Oleen introduced Rebecca Rice, who appeared as an opponent. However, due to limited time today, the chairman asked if she could return at a later time to conclude the hearing on HB 2560. Ms. Rice said she would prefer to continue on a day when more time is available for her testimony, as there are many misconceptions about the bill.

Sen. Oleen called attention to Committee Minutes for January 25th and January 27, 1994. Sen. Ramirez made a motion the Minutes for January 25 and 27 be approved, and it was seconded by Sen. Jones; the motion passed.

Sen. Praeger introduced her pages who have been assisting the committee today.

Meeting adjourned at 12:00.

GUEST LIST

COMMITTEE: Senate Federal & State AffairsDATE: Feb. 4, 1994

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Jim Conant	Top.	KS. ABC
Neal Whitaker	Topeka	KBWA
Greg Ziemak	Topeka	Kansas Lottery
Dan Hames	Topeka	
George Barbee	Topeka	IGT
Bob Engler	Topeka	ABC
Tom Burgess	Topeka	Sunflower
Libby Quaid		AP
Frances Kastner	Topeka	Ks Food Dealers Assn
Ralph Snyder	Topeka	American Legion
Tong Smith	Topeka	Automatic Merchandising
STEVE MUMERT	TOPEKA	KRC
DON BIRD	Topeka	KFLA 13
Arnold Schulte	KCK	WY Co Bar Assoc.
RP	Topeka	WYCO Priv Club Assoc.
Ken d. Hain	KC, KS	WYCO. Priv Cl. Ass.
Rep. Darlene Confield		Leg.
John Bollenberg	Topeka	VLT
Jack DUNCAN	Topeka	KWSA
John Chapman	"	Intern - Good
John L. Pitterson	"	KCC STA
Whitney Davron	Topeka	McMillan Associates
STEVE KEANEY	"	CSA
Kathy Peterson	" "	VLT

D

STATE OF KANSAS

DARLENE CORNFIELD
REPRESENTATIVE, 90TH DISTRICT
SEDGWICK COUNTY
7 WEATHERLY COURT
(316) 755-0543
VALLEY CENTER, KANSAS 67147



TOPEKA

HOUSE OF
REPRESENTATIVES

Attach. 1

COMMITTEE ASSIGNMENTS
MEMBER: FEDERAL & STATE AFFAIRS
FINANCIAL INSTITUTIONS/INSURANCE
LABOR & INDUSTRY
JOINT COMMITTEE ON PENSIONS,
INVESTMENTS AND BENEFITS
STATE CAPITOL 171-W
TOPEKA, KS 66612-1504
(913) 296-7682

February 4, 1994

Madam Chairman and members of the Federal and State Affairs Committee

It is my privilege to testify before you today in Support of HB 2560.

Last summer during the House Federal and State Affairs Interim hearings on gambling and racing issues, it was brought to the Committee's attention regarding the difficulty of confiscating illegal gambling machines in Kansas.

These machines referred to as "gray machines" are illegal in Kansas. Under the law now our KBI officers must play an individual machine until it pays off and then can only confiscate that machine. This change in the statute allows for the confiscation of all illegal machines if they are manufactured or altered for gambling purposes.

I believe this bill is a good bill. It gives our state law enforcement officers the tool they need to enforce the laws of this State. It is only right that Kansas law enforcement officers should be able to enforce the laws instead of allowing the Federal Government to intervene for the purpose of enforcing Kansas laws.

I ask you to please act favorably on this bill.

Senate Fed and State
Feb. 4, 1994
Attachment # 1

Attach. 3

STATE OF KANSAS

Robert A. Engler, Director
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200 S.E. 6th Street
Topeka, Kansas 66603-3512



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Department of Revenue
Division of Alcoholic Beverage Control

MEMORANDUM

TO: The Honorable Lana Oleen, Chairperson
Senate Committee on Federal & State Affairs

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

DATE: February 4, 1994

SUBJECT: House Bill 2560

I appreciate the opportunity to appear before the committee today in support of House Bill 2560. The proliferation of "video poker" and other similar machines used for gambling on club and drinking establishment premises has placed a growing demand on ABC field investigative resources. House Bill 2560 would provide a cost-effective means of dealing with those machines which are most often used in illegal gambling operations.

Recent experience indicates that illegal gambling is fairly common in certain on-premise liquor establishments across the state. In calendar year 1992, ABC agents initiated 20 administrative cases involving illegal gambling. In 1993, the number of gambling cases grew to 45. A review of these and several ongoing investigations finds that "video poker" and similar electronic devices are the primary means of conducting illegal gambling in clubs and drinking establishments. ABC agents are asked to document the number of these types of machines in each licensed business as a part of their routine inspections. Based on these field surveys, we estimate that there are currently over 842 video gambling machines located on the premises of approximately 409 liquor licensees. It should be noted that this tally does not include cereal malt beverage licensees or any other businesses without a club or drinking establishment license.

Our investigations of these gambling operations have determined that significant amounts of money are often involved. The list on the following page provides several examples of cases investigated by ABC in recent months.

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Attachment #3

Case #1

Liquor licensee showed 9-month receipts for 2 poker machines = \$35,598. **Projects to \$22,248 per machine per year.**

Case #2

Machine vendor payout records on 2 machines for 8-month period = \$14,132. **Projects to \$9,418 per machine per year.**

Case #3

Liquor licensee admits \$8,000 taken in from machines was used to pay off bad debts. Approximately \$18,500 seized from machines at time of investigation.

Case #4

Liquor licensee estimates that video machines brought in about \$4,000 per week for the club. **Projects to \$208,000 per machine per year.**

Case #5

Approximately \$38,000, attributable to 10 machines, seized from liquor licensee. Club officers admit that complete renovation of building was paid for with proceeds from video machines.

In order to support successful prosecution of suspected illegal gambling, ABC agents and other law enforcement officers must often engage in long, costly undercover investigations. In addition to the man-hours expended, costs for subsistence and related investigative expense can mount quickly during an in-depth gambling investigation. By identifying certain characteristics of these machines as *prima facie* evidence of a violation, many investigations could be reduced to a thorough inspection of the premises. With House Bill 2560 in place, ABC resources currently utilized for gambling investigations could be redirected toward priority violations such as sales to minors and other serious liquor and tax violations.

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

Attach. 4

TESTIMONY ON HB No. 2560
BEFORE THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

BY
GREGORY P. ZIEMAK
EXECUTIVE DIRECTOR
KANSAS LOTTERY
FEBRUARY 4, 1994

MADAM CHAIRMAN, AND MEMBERS OF THE COMMITTEE, THIS IS MY FIRST OPPORTUNITY TO APPEAR BEFORE YOU SINCE I ASSUMED MY DUTIES AS EXECUTIVE DIRECTOR OF THE KANSAS LOTTERY SEVEN WEEKS AGO. I WELCOME THE OPPORTUNITY TO ADDRESS THIS COMMITTEE IN SUPPORT OF A BILL THAT I BELIEVE WILL BE OF GREAT BENEFIT TO THE STATE OF KANSAS. IT HAS BEEN BROUGHT TO MY ATTENTION BY MY STAFF AND OTHERS THAT ILLEGAL VIDEO POKER IS A THRIVING BUSINESS IN KANSAS. PATRONS OF MANY CLUBS, BARS, TAVERNS, AND RESTAURANTS THROUGHOUT THE STATE HAVE AN OPPORTUNITY TO PLAY VIDEO POKER MACHINES, REFERRED TO AS "GRAY MACHINES," WHICH PAYOFF PLAYERS WHO HAVE ACCUMULATED CREDITS. AFTER PAYING OFF THE CREDITS IN CASH OR MERCHANDISE THESE CREDITS ARE REMOVED FROM THE MACHINE.

IN THE LOTTERY'S EFFORT TO BROADEN ITS RETAILER BASE TO INCLUDE SOCIAL ENVIRONMENT SETTINGS FOR ITS NEW "CLUB KENO" GAME IN THE FALL OF 1992, THE LOTTERY'S SALE FORCE CALLED UPON VARIOUS CLUBS, BARS, TAVERNS, AND RESTAURANTS. IN VIRTUALLY ALL OF THOSE ESTABLISHMENTS WHICH HAD VIDEO POKER GAMES WHERE CREDITS COULD BE ACCUMULATED BY PLAYERS AND PAYMENT COULD BE MADE TO THOSE PLAYERS FOR THOSE CREDITS, THERE WAS ABSOLUTELY NO INTEREST IN BECOMING A LOTTERY RETAILER. OUR STAFF, IN SOLICITING BUSINESS IN ONE SUCH LOCATION WAS ADVISED BY THE PROPRIETOR THAT HE WOULD NOT BE INTEREST-

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ED IN BEING A LOTTERY RETAILER BECAUSE HE WAS CURRENTLY MAKING OVER \$3000 A WEEK FROM THE "GRAY MACHINES". SOME OF OUR STAFF EVEN WITNESSED PAYOFFS TO PLAYERS WHO HAD ACCUMULATED CREDITS AND WATCHED AS THE PROPRIETOR REMOVED THE CREDITS FROM THE MACHINE AFTER MAKING THE PAYMENT.

CURRENTLY THERE IS NO REGULATION OF VIDEO POKER MACHINES, AND IT IS DOUBTFUL THAT THE STATE OF KANSAS IS RECEIVING TAX DOLLARS FROM REVENUES GENERATED FROM THOSE ILLEGALLY OPERATED MACHINES. I AM SATISFIED THAT PASSAGE OF THIS BILL WOULD NOT ONLY SUBSTANTIALLY BENEFIT LAW ENFORCEMENT IN CURTAILING ILLEGAL GAMBLING ACTIVITIES, BUT ALSO ALLOW THE LOTTERY TO ENLIST MANY RETAILERS FROM BUSINESSES NOT CURRENTLY INTERESTED IN CLUB KENO OR OTHER LOTTERY PRODUCTS. ALTHOUGH WE HAVE NO WAY OF KNOWING THE TOTAL NUMBER OF MACHINES IN THE STATE, WE DO UNDERSTAND THAT THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL OF THE DEPARTMENT OF REVENUE HAS FIGURES CONCERNING THE NUMBER OF MACHINES AND ESTABLISHMENTS IN WHICH THEY ARE LOCATED.

OUR RECORDS SHOW THAT SOCIAL ENVIRONMENT RETAILERS, SUCH AS THOSE CURRENTLY SELLING THE LOTTERY'S "CLUB KENO" GAME AVERAGE APPROXIMATELY \$1,000 IN SALES PER WEEK. OF THOSE SALES 30% GOES TO THE STATE OF KANSAS. IN A ONE YEAR PERIOD, BASED ON THESE AVERAGE SALES, AN INCREASE OF 200 RETAILERS WOULD GENERATE OVER \$10,000,000 IN ADDITIONAL SALES FOR THE LOTTERY AND OVER \$3,000,000 OF ADDITIONAL REVENUE TO THE STATE OF KANSAS.

IT IS MY OPINION THAT PASSAGE OF HOUSE BILL NO. 2560 WOULD BE IN THE BEST INTEREST OF THE STATE OF KANSAS.

Kathy
Peterson

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(913) 435-3390 FAX

Mercantile Bank
800 Jackson, Suite 1120

Topeka, Kansas 66612

Attach. 5

M E M O R A N D U M

TO: Chairman Lana Oleen
Senate Federal and State Affairs Committee

FROM: *KP* Kathy Peterson and John C. Bottenberg *JB*
Lobbyists - Video Lottery Technologies

DATE: February 4, 1994

RE: Support for HB 2560

Video Lottery Technologies supports HB 2560.

The passage of this bill would give law enforcement agencies a major tool in cracking down on illegal gaming activity in Kansas.

Illegal or "gray area" video gaming activity exists throughout Kansas. Law enforcement agencies faced with more urgent priorities and budget constraints are unable to allocate the resources necessary to eliminate this activity.

Passing HB 2560 would dramatically reduce the incidence of "gray area" activity in Kansas and thereby provide the legitimate video game operators with increased revenues and the state with increased tax revenues.

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Attach. 6

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
TESTIMONY BY RALPH L. SNYDER, ASSISTANT ADJUTANT
KANSAS AMERICAN LEGION
ON HOUSE BILL 2560

RE: The redefining of gambling devices.

Thank you for allowing me the opportunity to testify today in opposition to House Bill 2560. The American Legion of Kansas, at the request of the majority of our Posts, is on record as being in favor of Video Lottery and we sincerely hope a fair and equitable Video Lottery law will be approved for Kansas in the near future.

Several of our Posts have the devices and machines targeted by House Bill 2560. Most of those Posts are not currently "paying out" prizes thus breaking the law. Most of these Posts have signs posted on or near the machine which state: "For Amusement Only - No Payouts - Don't Even Ask", or words to that effect. And they mean it; the machines are there for the amusement of their members only.

The one or two machines at these Posts are a popular attraction and provide a good source of revenue for those establishments. If approved, House Bill 2560 would automatically assume an establishment is guilty of promoting gambling and the burden of proving themselves not guilty of gambling would be up to the establishment and its personnel - an impossible task even if a machine was found unplugged in a storage room under years of dust.

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An example of this is one of our Posts was cited last year when an inspector found a package of illegal pull tabs in the farthest corner shelf in a basement storage area of the Post. The cellophane wrapper was old, brittle and yellowed. None of the Post members knew they existed including the gentleman who had served as Post Adjutant for almost twenty years. Unfortunately there was no way to prove their innocence.

At issue are lines 39 through 43 on page two and continuing on page three, lines 1 through 3 of House Bill 2560 state:

"It shall be prima facie evidence that a device is designed, manufactured or altered primarily for use in connection with gambling if the device has the capacity to accept multiple coins or dollar bills for the wager of more than one credit, is equipped with or is designed to accommodate the addition of a mechanism that enables accumulated credits to be removed from the device or is equipped with or is designed to accommodate a mechanism to record the number of credits removed from the device."

Taken at face value House Bill 2560 would include almost every video machine in existence including those in video arcades which allow one or more players to play at once; the ability of a machine to accumulate credits would include many existing pinball machines, especially the older style machines popular in the 1940's, 50's and 60's which many people have in their homes as collectibles; and the ability to remove credits only makes economic sense for an establishment once a patron quits playing the machine.

The American Legion stands for strict enforcement of existing laws where everyone is presumed innocent unless proven guilty. I ask that House Bill 2560 not be approved at least until such time as Video Lottery is approved as a part of the Kansas Lottery.