

Approved: April 5, 2000
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Representative Tony Powell at 1:30 p.m. on March 28, 2000 in Room 313-S of the Capitol.

All members were present except: Representative Henderson, excused
Representative Vickrey, excused

Committee staff present: Theresa Kiernan, Revisor of Statutes
Russell Mills, Legislative Research
Mary Galligan, Legislative Research
Winnie Crapson, Secretary

Conferees appearing before the committee:
HB 3030
Senator Goodwin
Representative Edmonds
Steven Rarick, Office of Attorney General
Donna Homan, Winfield
Gary Simmons, Great Bend
SB 492
Tracy Diehl, State Gaming Agency

Others attending: See attached list.

Hearing opened on

HB 3030, Use of locality name by fictitious business in advertisement

Representative Edmonds testified he requested the bill after the problem was brought to his attention by constituents (Attachment #1). Advertising is being placed in local telephone books with local phone numbers and addresses by out-of-state florists. When you call the local number to place an order, unknown to you the call is being answered by an overtaker in Bernardsville NJ. No one objects to competition, but they do object to the failure to disclose to the consumer that it is not a local business. This affects not only customer service, but local sales tax collection. The problem is nationwide. Eleven states have already enacted statutes similar to **HB 3030**. The bill requires that if you use the name of the locality in your business name either you are actually located in that locality or you disclose where your business is located.

Senator Goodwin testified (Attachment #2) that when informed of this problem she did some research and discovered national telemarketers masquerade as local businesses generally targeting the florist industry. **HB 3030** is drafted from model legislation used in Connecticut. She provided a transcript received from NBC Dateline. Senator Goodwin described her experience in calling some of these phone

Steve Rarrick, Deputy Attorney General, presented testimony in support (Attachment #3). In addition to florists, in other states heating and airconditioning businesses are being targeted. Companies that misrepresent their location impact both consumers and local businesses. In the florist industry consumers will call listings for a local florist with the intent of using a local business that will process their order carefully to maintain their reputation in the community.

Donna Homan, Winfield, presented testimony with a listing of 33 towns in Kansas where this is occurring (Attachment #4). She explained in detail how the deception is carried out.

Gary Simmons, owner of Great Bend Floral, presented testimony (Attachment #5). He described

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instances where customers assuming they had placed their orders with Great Bend Flowers, complained of not receiving their flowers. He testified the impact has been building over the last four years.

The vendors are not paying taxes in Kansas and it is unclear if they are paid in New Jersey.

Hearing closed on **HB 3030**

Representative Edmonds moved HB 3030 be recommended favorable for passage. Representative Benlon seconded. Motion carried.

Hearing opened on

SB 492, State Gaming Agency, powers and duties.

Tracy Diehl, Executive Director, State Gaming Agency testified in support of the bill (Attachment #6). He explained that at the time the Tribal Gaming Oversight Act was passed in 1996 there was only one native American Indian casino about to begin operating in the State of Kansas. The State Gaming Agency had been created through an Executive Order in 1995. Since that time there have been four casinos opened in Kansas.

SB 492 proposes to amend K.S.A. 74-9803 which made the State Gaming Agency a part of the Kansas Racing and Gaming Commission. The Tribal Gaming Oversight Act provided that other than budgeting, personnel expansion and arbitration authorization as provided by the Tribal-State Compacts, all other management functions would be handled by the Agency. Individuals who work for the State Gaming Agency fall under the definition of employees in K.S.A. 74-8810 and are prohibited from gambling at racetracks although they are not involved in any regulatory decisions concerning the racetracks. Employees of the racetracks are not prohibited from gaming at casinos.

SB 492 would also amend K.S.A. 74-9804 to permit the State Gaming Agency to perform background investigations on enforcement agents employed by the Agency. Originally it was envisioned that the KBI would perform these investigations but in response to a need to address timeliness of investigations, the Agency has taken over the investigations. [See Legislative Post Audit Report **Compliance and Fiscal Year 1999 Audit Report of Kansas Racing and Gaming Commission.**] The KBI does not oppose this change in the law.

Two proposed changes to K.S.A.74-9805 are requested. The first would allow the State Gaming Agency to receive individual and corporate taxpayer information from the Department of Revenue on gaming license applicants in conducting background investigations. The second requested change is to allow the Agency to communicate information on gaming license applicants with gambling regulatory agencies in other states.

Amendment is requested to K.S.A.74-9808 which calls for any funds provided the Agency from the state general fund to be viewed as a loan and interest be paid by the tribes who have Tribal-State Compacts. Any monetary resources are used solely by the Agency allowing the Agency to function during the period of time at the beginning of the fiscal year when no funds are being received from the tribes. Once assessment payments are received from the tribes, the amount used to capitalize the agency is reimbursed to the State. The tribes are required to pay for the reasonable and necessary costs of regulation and each year the Agency assesses the four tribes the cost of the agency. The Tribal-State Compact does not provide for the payment of any interest or penalties by the tribes. This proposed amendment would bring the statute in line with Section 25 of the Compacts.

In response to questions about altering the payment structure, Mr. Diehl said it would require that the Compact to be re-negotiated. Specific dates are set under the Compact and it requires the fiscal year to close June 30.

Chairman Powell said that while he could understand the point about disparity in prohibiting Agency employees from gambling at racetracks but allowing parimutuel employees to gamble at casinos, his

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choice would be to have the law changed so parimutuel employees could not gamble at casinos.

In response to questions about the purpose of access to Department of Revenue records, Mr. Diehl said it would be used in investigations by looking at sources of income. Together with credit history it can help determine if the individual is someone we need to look very seriously at to allow them access to cash. At the present time the Agency can go to the IRS but cannot find out if they have filed a Kansas tax return. Information in the report would indicate whether or not the individual has filed taxes and if they are behind paying taxes. The Agency makes them pay those back taxes because someone who fails to follow tax rules will not follow other regulations.

Mr. Diehl said the Compact provides that copies of tribal records obtained "shall be the property of the tribe and shall be considered closed information" and that release of such information violates the privacy of the tribe.

Mr. Diehl said of the 21 positions in the Agency 17 are filled. There are four casinos with 2200-2400 employees of which 1500-1600 are gaming employees. He was unsure how many were Tribal members but there is a hiring preference for them.

The growth of number of employees in the Agency was due to assuming responsibility for background checks. In July 1998 it was taking in many instances nine months to complete and people could go to work after 90 days if investigation had not been completed. An arbitration was lost and it was necessary to do something to meet the obligations under the Compact. It was determined to do the investigations internally so the system could be managed. Mr. Diehl said the Tribes are the licensing entities under the Compact. The Agency does the background check, delivers it to the Tribes and they make the decision. If the Tribe disagrees, it moves into arbitration.

Natalie Haag, Chief Counsel to Governor Graves, presented a proposed amendment to **SB 492** (Attachment #7). She testified the State is currently involved in litigation with the Prairie Band Potawatomi Tribe concerning issuance of license tags. The Judge has determined the State is not negotiating in good faith. Passage of this amendment would demonstrate to the Judge that we have made a good faith effort to resolve issues he is concerned about. This legislation allows the issuance of specialty plates for Tribal entities. The Tribes would like to issue license plates as a means of generating revenue and for them a more important issue, their pride in their heritage and background. It is a sovereignty issue for them.

The State's concern is that the vehicles will travel in the state of Kansas and are not in the system so that when stopping a vehicle with the Tribal tag cannot be run. This proposed legislation indicates the State is willing in good faith to resolve this issue. It requires they be a resident of Kansas. Application is made to the Tribe for approval. They could charge a fee to generate revenue. The tag would be designed by the Tribe so they could display their heritage, subject to the approval of the Director of Vehicles so there is a means of tracking vehicles. Issuance would put the tag in the State system and allow our law enforcement officials to safely approach a vehicle.

The fiscal impact requires them to purchase 500 tags at \$27.50 to guarantee covering costs of issuing the specialty tags. The legislation could be changed so that the Tribe would be billed only the cost involved. She does not believe in a good faith settlement offer the State should generate revenue.

When asked why the proposal was attached to **SB 492**, Ms. Haag said it could be a stand-alone bill but it was important to find a way it could be worked quickly.

Representative Mays questioned the nexus with the **SB 492**.

Representative Hutchins asked about the terms specialty and distinctive in relation to tags.

Revisor Kiernan said there is a provision in current law on distinctive plates that there must be a guarantee

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of 500 to be issued.

Hearing on **SB 492** was closed.

Committee considered matters heard.

Represented Ruff moved, Representative Klein seconded, that **SCR 1639, Establishing legal assistants day**, be recommended favorably for passage.

Representative Freeborn moved, Representative Benlon seconded, a substitute motion to table **SCR 1639**. Motion failed 5-6.

Motion to recommend **SCR 1639** favorably for passage carried.

Representative Rehorn moved, Representative Ruff seconded that **HB 2970, Creating the Kansas Civil Rights History Task Force** be recommended favorably for passage. Motion carried.

Meeting adjourned. Next scheduled meeting is March 30.