

Approved 3/14/88
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by SENATOR EDWARD F. REILLY, JR. at
Chairperson

11:00 a.m./p.m. on MARCH 4, 1988 in room 254-E of the Capitol.

All members were present ~~except~~

Committee staff present:

Mary Galligan, Legislative Research
Emalene Correll, Legislative Research
Mary Torrence, Assistant Revisor of Statutes
June Windscheffel, Committee Secretary

Conferees appearing before the committee:

Mr. Jimmie Grenz, Executive Director, Kansas Racing Commission
Mr. David Tolle, President, Kansas Quarter Horse Racing Assoc.
Mr. Richard Teichgraber, Kansas Quarter Horse Racing Assoc.

The Minutes of February 23, and February 24, 1988, were approved by a motion of Senator Arasmith, seconded by Senator Morris. Motion carried.

The Chairman called to the attention of the Committee a proposal, 7 RS 2653 (Attachment #1), concerning an act relating to cigarette taxation, exempting certain sales made to Indians. This was at the request of Senator Paul "Bud" Burke. Senator Martin moved to introduce the bill. The motion was seconded by Senator Vidricksen. The motion carried.

Another handout was before the Committee: a request for the introduction of a bill that would set a four-year term for precinct committee people. This was at the request of Senator Ross Doyen, and signed by other Members of the Senate. (Attachment #2) Senator Vidricksen moved that such a bill be introduced. The motion was seconded by Senator Strick. The motion carried.

The Chairman then announced the request for introduction of proposal 7 RS 2649 (Attachment #3), an act establishing the crime victim's rights act. The attachment includes a letter from Senator Michael L. Johnston, requesting the introduction, and a copy of a letter to him from Mr. Dennis W. Moore, District Attorney from Johnson County, pertaining to the matter. Senator Bond explained that he had given copies of this legislative draft (Att #3A) to the task force appointed by the Attorney General, Robert Stephan, concerning the victim's rights matters. He said he does not believe it wise to piece-meal a question that is going to be under broad and intense scrutiny as this will be in the study of the task force. He said he opposes the introduction of the bill. There was Committee discussion, and it was the consensus that a letter be drafted to Mr. Moore, explaining the thought of the Committee.

The Chairman introduced Mr. Jimmie Grenz, Executive Director of the Kansas Racing Commission, to speak to HB2772, concerning authorization for the Racing Commission to contract with laboratory facilities outside Kansas. Mr. Grenz' statement explains the request for the bill, and the reasons for the Kansas Racing Commission requesting it. (Attachment #4) The Chairman said this would also provide for the Committee to ask questions. There were questions from the Committee concerning the penalty provision, the laboratories and other matters, including reasonable cause. The Chairman said he would be happy to have staff visit further concerning the laboratory at K.S.U., and have them report back Monday.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS,

room 254-E, Statehouse, at 11:00 a.m./p.m. on MARCH 4, 1988

Mr. David Tolle was welcomed as the next conferee. His statement is part of these Minutes. (Attachment #5) He was asked by the Chairman if he brought these proposals to the House in its consideration of the bill. He said that he did not, because he was out of town.

The next conferee was Mr. Dick Teichgraeber (Attachment #6). He said he felt that Kansans voted to get horseracing in the metropolitan areas. He said we need to emphasize that the facility is built. He thinks the horses will support themselves. The penalty will make it clear to the developer that if he puts in for a dual facility he should build a dual facility. He said they want them to know right up front if they put in for a dual facility, and they get the contract, that is what they are going to do.

Mr. Teichgraeber said he would like to see a support laboratory at KSU. That would be a good thing to do. When you take a sample at the track, they split the sample. If it is declared bad by the laboratory it is sent to, then the horseman or the stewards have the right to send that to another laboratory to make sure that is a valid claim. That is the reason you might need an outside laboratory. The Chairman thanked the conferees for appearing.

One member said there seems to be concern that the Commission is being so cautious they are not moving with enough speed to assist the people in the Kansas City area.

The Chairman said the said the Committee had come to the time it must conclude today's meeting. He said that the hearings on SB2773, HB2774, and HB2776, will have to be held later.

The meeting was adjourned at noon.

SENATE BILL NO. _____

By

Burke

AN ACT relating to cigarette taxation; exempting certain sales made to Indians; amending K.S.A. 1987 Supp. 79-3310 and repealing the existing section.

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

Section 1. K.S.A. 1987 Supp. 79-3310 is hereby amended to read as follows: 79-3310. There is imposed a tax upon all cigarettes sold, distributed or given away within the state of Kansas. The rate of such tax shall be \$.24 on each 20 cigarettes or fractional part thereof or \$.30 on each 25 cigarettes, as the case requires. Such tax shall be collected and paid to the director as provided in this act. Such tax shall be paid only once and shall be paid by the wholesale dealer first receiving the cigarettes as herein provided.

The taxes imposed by this act are hereby levied upon all sales of cigarettes made to any department, institution or agency of the state of Kansas, and to the political subdivisions thereof and their departments, institutions and agencies. The taxes imposed by this act shall not be levied upon sales of cigarettes made to an Indian tribe or to a retailer approved by the tribe if the sales of cigarettes made by such tribe or its approved retailer take place upon land owned by such tribe or by the United States government in trust for such tribe and such sales are made solely to members of such tribe.

Sec. 2. K.S.A. 1987 Supp. 79-3310 is hereby repealed.

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

Register

*Senate FSA
3/4/88
Attachment #1*

We, the undersigned, request the introduction of a bill that would set a four-year term for precinct committee people.

Ross Doyen

Gene Doyen

Edward J. Keefe

Neil Arasmith

Merrill Werts

Benjamin

Don Hansen

Walt Whit

Ray M. Ehrlich

Walt Litz

Eric Hat

Francis Gordon

Don Ken

Richard Bond

Don Montgomery

Jim Allen

Joe Harder

Watters

Bud Burke

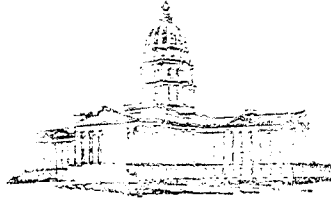
Audrey Langworthy

Senate FSA
3/4/88
Attachment #2

State of Kansas

Senate Chamber

MICHAEL L. JOHNSTON
SENATE MINORITY LEADER
SENATOR, FOURTEENTH DISTRICT
LABETTE COUNTY AND PARTS OF
CRAWFORD, MONTGOMERY AND
NEOSHO COUNTIES
P.O. BOX A
PARSONS, KANSAS 67357-0040



Office of Minority Leader

STATE CAPITOL
TOPEKA, KANSAS 66612-1565
913-296-3245

3/4/88
3-4-88
COMMITTEE ASSIGNMENTS
MEMBER: ELECTIONS
GOVERNMENTAL ORGANIZATION
INTERSTATE COOPERATION
LEGISLATIVE BUDGET
LEGISLATIVE AND CONGRESSIONAL
APPORTIONMENT
LEGISLATIVE COORDINATING COUNCIL
WAYS AND MEANS

March 3, 1988

The Honorable Edward F. Reilly, Jr.
State Senator, Third District
State Capitol, Room 255-E
Topeka, Kansas 66612

Dear Ed:

Enclosed is a bill draft establishing the crime victim's rights act. Also, I am enclosing a copy of a letter from District Attorney, Dennis Moore, which is self-explanatory.

Would it be possible to introduce this as a Federal and State Affairs Committee bill for consideration yet this session? I appreciate your consideration and assistance.

Sincerely,

Michael L. Johnston
Senate Democratic Leader

MLJ:je
Enclosure

cc: Dennis Moore

3/4/88
Attachment # 3

STATE OF KANSAS
Tenth Judicial District

OFFICE OF DISTRICT ATTORNEY

DENNIS W. MOORE
DISTRICT ATTORNEY

JOHNSON COUNTY COURTHOUSE
P.O. Box 728, 6TH FLOOR TOWER
OLATHE, KANSAS 66061
913-782-5000, EXT. 333

February 23, 1988

Senator Mike Johnston
Capitol Building
Topeka, Kansas 66612

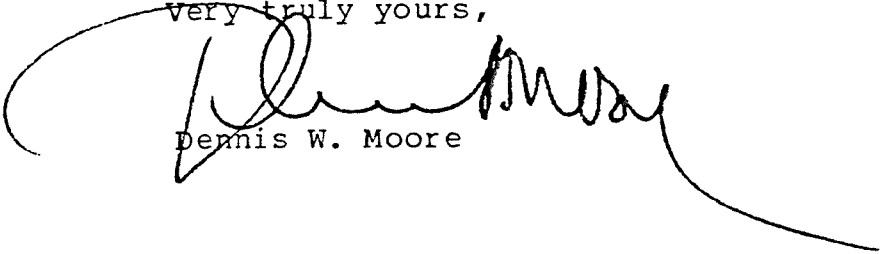
Dear Mike:

Please find enclosed a legislative draft proposing a Victim Bill of Rights for Kansas. As of 1986, forty-four states have enacted similar legislation establishing "rights" for victims of crime. Kansas is one of the six states that has not recognized in law the rights of crime victims.

Senator Richard Bond requested this bill be drafted but will not be introducing it in 1988. Attorney General Robert Stephan has appointed a task force to study victims rights with final recommendations due in December of 1988. While I believe that the task force is worthwhile and I am hopeful they will come up with recommendations in addition to what is in this legislative proposal, I hope we will not wait another year to give some recognition and assistance to the victims of crime in our state. I believe that Attorney General Stephan's task force would support the great majority of these recommendations.

I hope you will consider introducing this legislation. I would be happy to discuss this matter with you, if you wish. Thank you for your consideration.

very truly yours,



Dennis W. Moore

DWM:JH
enclosure

BILL NO. _____

AN ACT establishing the crime victim's rights act; providing certain duties and procedures; prohibiting certain conduct of employers toward victims.

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

Section 1. This act shall be known and may be cited as the crime victim's rights act.

Sec. 2. (1) As used in this act:

(a) "Crime" means a violation of the Kansas criminal code for which the offender, upon conviction, may be punished by imprisonment for more than one year, or an offense expressly designated by law to be a felony;

(b) "defendant" means a person charged with or convicted of having committed a crime against a victim;

(c) "final disposition" means the ultimate termination of the criminal prosecution of a defendant including, but not limited to, dismissal, acquittal or imposition of sentence by the court;

(d) "prisoner" means a person who has been convicted and sentenced to imprisonment for having committed a crime against a victim;

(e) "victim" means any of the following:

(i) An individual who suffers direct or threatened physical, financial or emotional harm as a result of the commission of a crime, except as provided in subsection (ii) or (iii);

(ii) the following relations of a deceased victim if the relation is not the defendant:

(A) The spouse;

(B) an adult child if subsection (A) does not apply;

(C) a parent if subsections (A) and (B) do not apply;

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Attachment #3

(D) a sibling if subsections (A), (B) and (C) do not apply;

(E) a grandparent if subsections (A), (B), (C) and (D) do not apply;

(iii) a parent or guardian of a victim who is a minor or legally incapacitated person;

(2) if a victim as defined in subsection (1)(e)(i) is physically unable to exercise the privileges and rights under this act, the victim may designate by written instrument such victim's spouse or an adult child, parent, sibling or grandparent of the victim to act in place of the victim during the duration of the physical disability. During the physical disability, notices to be provided under this act to the victim shall continue to be sent only to the victim.

Sec. 3. Within 24 hours after the initial contact between the victim of a reported crime and the law enforcement agency having the responsibility for investigating that crime, that agency shall give to the victim the following information:

(a) The availability of emergency and medical services, if applicable;

(b) the availability of victim's compensation benefits and the address of the crime victims' reparations board;

(c) the address and phone number of the prosecuting attorney whom the victim should contact to obtain information about victim's rights;

(d) the following statement:

"If within six months, you are not notified of an arrest in your case, you may call [the law enforcement agency's telephone number] for the status of the case."

Sec. 4. (1) The law enforcement agency having responsibility for investigating a reported crime shall promptly return to the victim property belonging to that victim which is taken in the course of the investigation, except as provided in subsections (2), (3) and (4).

(2) The agency shall not return property which is contraband.

(3) The agency shall not return property if the ownership of the property is disputed until the dispute is resolved.

(4) The agency shall retain as evidence any weapon used in the commission of the crime and any other evidence if the prosecuting attorney certifies that there is a need to retain that evidence in lieu of a photograph or other means of memorializing its possession by the agency.

Sec. 5. (1) Not later than 24 hours after the arraignment of the defendant for a crime, the law enforcement agency having responsibility for investigating the crime shall give to the victim the phone number of the sheriff and notice that the victim may contact the sheriff to determine whether the defendant has been released from custody.

(2) Based upon the victim's affidavit asserting acts or threats of physical violence or intimidation by the defendant or at the defendant's direction against the victim or the victim's immediate family, the prosecuting attorney may move that the bond or personal recognizance of a defendant be revoked.

Sec. 6. (1) Not later than seven days after the first appearance of the defendant for a crime, but not less than 24 hours before a preliminary examination, the prosecuting attorney shall give to each victim a written notice of each of the following:

(a) A brief statement in plain English of the procedural steps in the processing of a criminal case;

(b) the rights and procedures under this act;

(c) suggested procedures if the victim is subjected to threats or intimidations; and

(d) the person to contact for further information.

(2) If requested by the victim, the prosecuting attorney shall give to the victim notice of any scheduled court proceedings and notice of any changes in that schedule.

(3) The prosecuting attorney shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the views of the victim about the disposition of a crime,

including the victim's views about dismissal, plea or sentence negotiations and pretrial diversion programs.

(4) A victim who receives a notice under subsection (1) and who chooses to receive any other notice or notices under this act shall keep the following persons informed of the victim's current address and phone number:

(a) The prosecuting attorney, until sentence has been imposed or the case is disposed of, whichever occurs earlier; and

(b) the department of corrections or the sheriff as directed by the prosecuting attorney if the defendant is imprisoned.

Sec. 7. The court shall provide a waiting area for the victim separate from the defendant, defendant's relatives and defense witnesses if such an area is available and the use of the area is practical. If a separate waiting area is not available or practical, the court shall provide other safeguards to minimize the victim's contact with defendant, defendant's relatives and defense witnesses during court proceedings.

Sec. 8. (1) Based upon the victim's reasonable apprehension of acts or threats of physical violence or intimidation by the defendant or at defendant's direction against the victim or the victim's immediate family, the prosecutor may move that the victim or any other witness not be compelled to testify at pretrial proceedings or at trial for purposes of identifying the victim as to the victim's address, place of employment or other personal identification without the victim's consent. A hearing on the motion shall be in camera.

(2) The address of the victim shall not be in the court file or ordinary court documents unless contained in a transcript of the trial or it is used to identify the place of the crime. The phone number of the victim shall not be in the court file or ordinary court documents except as contained in a transcript of the trial.

Sec. 9. (1) As provided in subsection (2), a speedy trial may be scheduled for any case in which the victim is averred by the prosecuting attorney to be either of the following:

(a) A victim of child abuse, including sexual abuse or any other assaultive crime;

(b) a victim of sexual assault or of an assault with intent to commit criminal sexual assault involving penetration.

(2) The judge, upon motion of the prosecuting attorney for a speedy trial for a case described in subsection (1), shall set a hearing date within 10 days of the date of the motion. Notice shall be made pursuant to court rules. If the motion is granted, the trial shall not be scheduled earlier than 20 days from the date of the hearing.

Sec. 10. Upon request of the victim, the prosecuting attorney shall confer with the victim prior to the selection of the jury and prior to the trial of the defendant.

Sec. 11. The victim has the right to be present throughout the entire trial of the defendant, unless the victim is going to be called as a witness. If the victim is going to be called as a witness, the court, for good cause shown, may order the victim to be sequestered.

Sec. 12. An employer or the employer's agent, who threatens to discharge or discipline or who discharges, disciplines, or causes to be discharged from employment or to be disciplined a victim because that victim is subpoenaed or requested by the prosecuting attorney to attend court for the purpose of giving testimony, is guilty of a misdemeanor and may be punished for contempt of court.

Sec. 13. (1) The prosecuting attorney, upon and in accordance with the request of the victim, shall give to the victim notice of the following:

(a) The defendant's conviction;

(b) the crimes for which the defendant was convicted;

(c) the victim's right to make a written or oral impact statement for use in the preparation of a presentence investigation report concerning the defendant;

(d) the address and telephone number of the probation officer who is to prepare the presentence investigation report;

(e) that a presentence investigation report and any statement of the victim included in the report will be made available to the defendant unless exempted from disclosure by the court;

(f) the victim's right to make an impact statement at sentencing;

(g) the time and place of the sentencing proceeding;

(2) the notice given by the prosecuting attorney to the victim must be given by any means reasonably calculated to give prompt actual notice;

(3) a notice given under subsection (1) shall inform the victim that such victim's impact statement may include, but shall not be limited to, the following:

(a) An explanation of the nature and extent of any physical, psychological or emotional harm or trauma suffered by the victim;

(b) an explanation of the extent of any economic loss or property damage suffered by the victim;

(c) an opinion of the need for and extent of restitution and whether the victim has applied for or received compensation for loss or damage; and

(d) the victim's recommendation as to sentence.

Sec. 14. The victim has the right to submit or make a written or oral impact statement to the probation officer for use by that officer in preparing a presentence investigation report concerning the defendant. A victim's written statement, upon the victim's request, shall be included in the presentence investigation report.

Sec. 15. The victim shall have the right to appear and make an oral impact statement at the sentencing of the defendant.

Sec. 16. (1) Upon the written request of a victim of a crime, the sheriff or the department of corrections shall mail to the victim the following, as applicable, about a prisoner who has been sentenced to imprisonment under the jurisdiction of the sheriff or the department for commission of that crime.

(a) Within 30 days after the request, notice of the

sheriff's calculation of the earliest release date of the prisoner, or the department's calculation of the earliest parole eligibility date of the prisoner, with all potential good time or disciplinary credits considered if the sentence of imprisonment exceeds 90 days. The victim may request only one notice of the calculation described in this subsection;

(b) notice of the transfer or pending transfer of the prisoner to a minimum security facility and the address of that facility;

(c) notice of the release or pending release of the prisoner in a community residential program, under extended furlough, or any other transfer of a prisoner to community status;

(d) notice of any reduction in the minimum sentence resulting under the prison overcrowding emergency;

(e) notice of the escape of the person accused, convicted or imprisoned for committing a crime against the victim, as provided in section 17;

(f) notice of the victim's right to address or submit a written statement for consideration by a parole board member or a member of any other panel having authority over the prisoner's release on parole, as provided in section 18;

(g) notice of the decision of the parole board, or any other panel having authority over the prisoner's release on parole, after a parole review, as provided in subsection (3) of section 21;

(h) notice of the release of a prisoner 90 days before the date of the prisoner's discharge from prison where practical, unless the notice has been otherwise provided under this act;

(i) notice of a public hearing regarding a reprieve, commutation or pardon of the prisoner's sentence by the governor;

(2) a victim's address and telephone number maintained by a sheriff or the department of corrections pursuant to a request for notice under subsection (1) shall be exempt from disclosure under the open records act.

Sec. 17. (1) As provided in subsection (2) or (3), a victim

who requests notice of the escape and the prosecuting attorney who is prosecuting or has prosecuted the crime for which the person is detained or under sentence shall be given immediate notice of the escape of the person accused, convicted or imprisoned for committing a crime against the victim. The notice shall be given by any means reasonably calculated to give prompt actual notice.

(2) If the escape occurs before the sentence is executed or before the defendant is delivered to the department of corrections, the chief law enforcement officer of the agency in charge of the person's detention shall give notice of the escape to the prosecuting attorney, who shall then give notice of the escape to a victim who requested notice.

(3) If the defendant is confined pursuant to a sentence, the notice shall be given by the chief administrator of the place in which the prisoner is confined.

Sec. 18. (1) A victim shall have the right to address or submit a written statement for consideration by a parole board member or a member of any other panel having authority over the prisoner's release on parole.

(2) Not less than 30 days before a review of the prisoner's release, a victim who has requested notice under subsection (1)(f) of section 16 shall be given written notice by the department of corrections informing the victim of the pending review and of victim's rights under this section. The victim, at such victim's own expense, may be represented by counsel at the review.

(3) A victim shall receive notice of the decision of the board or panel and, if applicable, notice of the date of the prisoner's release on parole. Notice shall be mailed within a reasonable time after the board or panel reaches its decision but not later than 14 days after the board or panel has reached its decision.

Sec. 19. Upon the request of a victim, the prosecuting attorney, within 30 days of the final disposition of the case,

shall notify the victim, in writing, of the final disposition of the case.

Sec. 20. Nothing in this act shall be construed as creating a cause of action for money damages against the state, a county, a municipality or any of their agencies, instrumentalities or employees.

Sec. 21. The failure to provide a right, privilege or notice to a victim under this act shall not be grounds for the defendant to seek to have the conviction or sentence set aside.

Sec. 22. This act shall apply only to crimes committed on or after the effective date of this act.

Sec. 23. This act shall take effect and be in force from and after its publication in the statute book.

BEFORE THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
The Honorable Edward Reilly, Chairman
Friday, March 4, 1988

Jimmy D. Grenz
Executive Director

TESTIMONY

H.B. 2772 was introduced at the request of the racing commission. This bill would authorize the Kansas Racing Commission to contract with laboratory facilities outside Kansas for analysis necessary to determine whether racing animals are in compliance with drug and medication regulations of the commission. The bill would however require preference to be given to laboratories located within the state. This amendment is deemed necessary for several reasons. Among them are the following:

There are apparently no laboratory facilities in the state of Kansas at the present time that could conduct the necessary testing. While the Kansas State University school of veterinary medicine has expressed interest in becoming the laboratory facility for the Racing Commission. As recently as Friday, February 26, 1988. We were informed by members of their staff that they do not at the present time have the necessary equipment and facilities to conduct this testing. We have received inquiry from a private laboratory facility but their laboratory is not actually located in the state of Kansas although their company headquarters is. In addition to these very real concerns is the fact that there would need to be quality control testing and even if we can find a singular lab in the state of Kansas which would have the necessary manpower and equipment to conduct these

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tests it is not likely that we would find two such laboratories that would be available by the time that we will need them.

This provision would also allow the commission to seek contractual arrangements outside the state of Kansas should the costs of those services within the state be exorbitant.

An additional provision of this bill would be that the commission would be required to conduct an annual review of the facility owner and the facility manager licensees to determine their compliance with the parimutuel racing act. In the present legislation only the organizational licensee is required to undergo an annual review. This request is intended to bring about equal treatment of all three licensees. As it presently stands it would appear that a higher degree of compliance is being required of the non-profit organization licensee than that required of the for-profit facility owner and facility manager licensees. The commission through its regulations has provided for this annual review to take place. This provision in the statutes however would back the regulatory provision.

A final provision of this bill would provide for the pay back to the state general fund of those costs associated with start-up of the racing commission. At such time that the racing commission becomes solvent and able to operate on its own through monies generated by the conduct of parimutuel racing in the state of Kansas. Transfers of the revenue from the state racing fund to the state general fund would be as authorized through appropriations acts if this amendment is adopted.

Kansas Horsemen's Association

STATEMENT OF TESTIMONY
DAVID E. TOLLE
PRESIDENT - KANSAS QUARTER HORSE RACING ASSOC.
VICE PRESIDENT - KANSAS HORSEMEN'S ASSOCIATION
ON
HOUSE BILL NO. 2772
BEFORE
SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

My name is David E. Tolle. I am President of The Kansas Quarter Racing Association and Vice President of The Kansas Horsemen's Association. I also served in prior years as Executive Director and Secretary/Treasurer of Kansans For Pari-Mutuel, an organization with which I am sure you are all familiar. I live in Northwest Shawnee County where my wife and I breed and race both thoroughbred and quarter horses. We have been active in the business for more than fifteen years.

The organizations and people I represent are committed to the success of horse racing in Kansas under the system of pari-mutuel wagering. Through Kansans For Pari-Mutuel, we promised the voters of this state that pari-mutuel would bring substantial economic development to the state through increased tourism, new jobs and the chance for Kansas to have a major league sporting attraction.

For this to happen in Kansas, the greyhound and horse racing industries must be given the opportunity to flourish side by side. The Kansas Quarter Horse Racing Association and The Kansas Horsemen's Association are dedicated to that end result.

I am here today to express our concern over the provisions of law which provide for a penalty to be imposed on a potential organization licensee who applies for a dual racetrack facility with the intent to construct a racetrack to accommodate both greyhound and horse racing in our state.

Specifically, our concern appears in House Bill No. 2772 in Section No. 2, Part (s), Item (1), Lines 0415 through 0421, and in Section No. 3, Part (k), Item (1), Lines 0586 through 0592 wherein the Pari-Mutuel Racing Act imposes a civil fine



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upon an organization licensee who proposes to develop a dual racetrack facility equal to 2% of the total pari-mutuel pools for all races held at the facility on and after the date that racing is first conducted and until such date that construction of the dual racetrack facility is completed and horse racing has begun.

We feel it is clear that these sections of the Act were intended to assure that any organization licensee who proposes to construct a dual track facility has every intention of completing the facility for the benefit of both greyhound and horse racing. While the organizations I represent certainly support the concept which is intended, it must be pointed out there is no such penalty in the law.

An organization licensee who submits an application to The Kansas Racing Commission for a greyhound only racing facility is required by law to pay a tax rate equal to 3% of the pari-mutuel handle during the first four years of operation; a tax rate of 4% during the fifth year of operation; and a tax rate of 5% during the sixth year and any subsequent years of operation.

An organization licensee who submits an application to The Kansas Racing Commission for a dual racetrack facility is required by law to pay a tax rate equal to 3% of the pari-mutuel handle during the first seven years of operation; a tax rate of 4% during the eighth and ninth years of operation; and a tax rate of 5% during the tenth and any subsequent years of operation. These tax rates, of course, only apply to the pari-mutuel pools for greyhound races.

The tax rate for horse only facilities or for the horse racing interests in a dual racetrack facility are 3% from the first day of racing.

If a potential developer were to submit an application for a dual racetrack facility, our organizations feel that the commission will be cognizant of the fact that such application presents the opportunity for Kansas to explore the utmost economic benefit from the pari-mutuel racing industry. We want to be certain that any deviation from the original proposal would generate a severe penalty provision to make it impossible for the applicant to consider abandoning their plans to complete the dual racetrack facility. A 2% penalty simply is not sufficient to accomplish the intended result.

It is therefore our recommendation that the Senate Federal and State Affairs Committee strongly consider increasing this penalty to 10% of the total pari-mutuel pool. A developer who is sincere about constructing a dual racetrack facility will not be injured by such change. The facility will be completed and both industries will have equal chance for success.

Anything less may result in a situation where horse racing does not flourish in the state of Kansas. The voters mandated that their vote was cast in support of the concept of horse and greyhound racing becoming successful in Kansas. For this to happen, the penalty provision must be increased. In its present state, there is more than a strong possibility that developers will advocate the construction of a dual facility and pay the penalty for not completing the facility from "day one".


In addition, we would also suggest the this Committee strongly consider amending Section No. 2, Part (s), Item (2), Lines 0422 through 0423, and Section No. 3, Part (k), Item (2), Lines 0593 through 0594, House Bill No. 2772, to read:

"revoke the licensee's license unless the completion of the facility is accomplished within 90 days from the date specified by the licensee's application".

We would also recommend that the Committee amend Section No. 2, Part (t), Lines 0428 through 0431, to read:

"If an organization licensee fails to comply with such condition, the commission shall revoke the organization licensee's license" and eliminate the words "unless the licensee demonstrates reasonable justification for the failure to complete the facility".

Kansas voters want both greyhound and horse racing. The horse racing industry offers the majority of the economic opportunities that are available through pari-mutuel wagering. These changes will insure that both industries flourish.



David E. Tolle

Bill #2772:

It has come to the attention of the Quarter Horse Association that this Bill, as amended, does some things that are excellent in clarifying different aspects of the law. There is one part of it that we would disagree with on page 11, at line 0415. We would recommend that the civil fine be equal to 10% and that out of that 10%, 8% should go to the injured party whether it be the horsemen's association or the greyhound association, whichever licensee has failed to comply with the building of their facility. It is a given fact that an applicant who would submit a dual racing application should have a decided advantage with the Commission in the granting of a license, to address the needs of the State giving both horses and dogs an equal opportunity to run and not compete against each other. This decided advantage for the applicant cannot be abused. If it is abused, then this penalty will compensate the abused party.

And on page 12 at line 0422, the Bill should be reworded to revoke the licensee's license if conditions are not corrected within three months' time. We think that "reasonable cause" gives them a chance to get out of their obligation.

RA Deubyn

*Senate FSA
3/4/88
Attachment #6*