

Approved Ginger Barr
April 7, 1990 Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Representative Ginger Barr at
Chairperson

2:08 ~~xxx~~/p.m. on March 27, 1990 in room 526-S of the Capitol.

All members were present except:

Representatives Aylward - Excused	Representatives Long - Excused
Blumenthal	Peterson
Douville	Wagnon - Excused

Committee staff present:

Mary Galligan, Kansas Department of Legislative Research
Lynne Holt, Kansas Department of Legislative Research
Mary Torrence, Revisor of Statutes Office
Juel Bennewitz, Secretary to the Committee

Conferees appearing before the committee:

Jim Conant, Alcoholic Beverage Control (ABC)
Kyle Smith, Assistant Attorney General, Kansas Bureau of Investigation (KBI)

SB 516

Jim Conant presented a brief explanation of 12 statutes identified by the Department of Revenue as obsolete or unenforceable, Attachment No. 1. Attachment No. 1A is a complete description of the statutes considered obsolete.

Committee discussion:

K.S.A. 41-411 set up the 120 day law after the franchise laws went into effect during which a distributor had to clear the product from warehouse storage. Kansas is not unique in its franchising law.

There were no opponents to the bill.

SB 430

Kyle Smith was a proponent of the bill as it ensures the ability of the KBI to release intelligence information gathered during investigations of license applicants only to the the Kansas Racing Commission (KRC), Attachment No. 2. Attachment No. 2A is the testimony of former KBI director, David Johnson, at the special committee on Federal and State Affairs/Governmental Organization, November, 1989, explaining the necessity of holding intelligence data in confidence.

Attachment No. 3 is a written statement of support for the bill from Harriet Lange, Executive Director, Kansas Association of Broadcasters.

Committee discussion:

1. There are several kinds of intelligence information. Under current law, there are restrictions on when conviction data can be released but the structure of SB 430 would permit the KBI to release conviction data for prior offenses. **Conviction data may** be released to anyone who files a non-disclosure form with the KBI, however, intelligence data would be restricted from release.
2. Compilation of conviction date for public record has both state and federal restrictions.

Chairman Barr explained the bill is a result of one of the proposals of the majority report from the interim committee.

There were no opponents to the bill.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Federal and State Affairs,

room 526-S, Statehouse, at 2:08 ~~xxx~~/p.m. on March 27, 1990

SB 516

Representative Sebelius moved to report the bill favorably, seconded by Representative Eckert. The motion was adopted.

Subcommittee report - Sub. SB 286

Representative Long, chairman of the subcommittee, presented its report, Attachment No. 4 in which recommended changes were presented. Attachment No. 4A is a bill draft reflecting those changes.

Representative Long moved to introduce substitute for Sub. SB 286, seconded by Representative Jenkins.

Committee discussion:

1. There are two aspects to the bill:
 - a. The employee may petition the court for testing in cases where certain types of employees (law enforcement, SRS, emergency personnel, etc.) involved in situations where there may have been exposure to the specified diseases and
 - b. If the person has been convicted, he would not have to submit for testing. In cases of arrest, where a person indicated being infected with the HIV virus, the court may order that person to submit to testing.
2. There is a test for meningococcal virus with a 48 hour waiting period.
3. Jack Pearson, Kansas Association, Chiefs of Police, explained counseling, mentioned in sub. (d) could assume various forms, e.g. limited to the employee or even marital counseling. Worker's compensation paid for counseling and medical testing for an officer infected with hepatitis B and AIDS because they were contracted during an arrest situation.

The motion carried.

Representative Long made a motion to recommend Sub.Sub. SB 286 favorably, seconded by Representative Jenkins. The motion carried.

The meeting adjourned at 2:39 p.m. The next meeting of the committee is scheduled for March 28, 1990, 1:00 p.m. in Room 526-S.

MEMORANDUM

TO: The Honorable Ginger Barr, Chairman
House Committee on Federal and State Affairs

FROM: Jim Conant, Revenue Manager
Dept. of Revenue, ABC Division

DATE: March 27, 1990

SUBJECT: Senate Bill 516

I appreciate the opportunity to appear before you today in support of legislation proposed by the Department of Revenue. Senate Bill 516 would repeal 12 statutes which have been identified by the Department as obsolete. Following is a brief description of the affected statutes, including an explanation why each is no longer effective.

K.S.A. 1989 Supp. 41-307a

This statute authorized the director to establish administrative procedures to convert distributors to the new three-license system (spirits, wine, beer). Procedures were established and all licensees converted effective Jan. 1, 1988. The statute has no further use or effect.

K.S.A. 41-411

This statute provided a grace period during the implementation of the franchise laws in 1979 during which a distributor was allowed to sell out stocks of alcoholic liquor on hand for which they were not obtaining the required franchise rights. The statute has no further use or effect.

K.S.A. 41-504, 41-505, 1989 Supp. 41-506

These statutes provide for the sale or redemption for credit of tax stamps and crowns used to identify containers on which the gallonage tax has been paid. Since all gallonage tax is collected only from the Kansas licensee (distributor, farm winery or microbrewery) which first manufactures or receives the product, these procedures are no longer in use. Generic tax stamps (decals) are applied to the original package by the manufacturer or supplier prior to shipping to Kansas distributors. Although there are procedures in place to allow for refunds to distributors on broken or unfit merchandise, there is no longer any need for redemption of unused stamps or crowns.

K.S.A. 41-1103, 41-1104, 41-1106

All three of these statutes were used in implementing the Liquor Control Act in 1949 and have no further use or effect.

K.S.A. 41-2714, 41-2715, 41-2716, 41-2717

These statutes provided for the licensing and regulation of cereal malt beverage wholesalers. With the restructuring of the distributor licensing system to include authority to sell cereal malt beverages under the rights of a beer distributor, these statutes have no further use or effect.

The complete text of all statutes affected by this bill is attached. I would be happy to answer any questions you may have.



KANSAS DEPARTMENT OF REVENUE
Division of Alcoholic Beverage Control
Topeka, Kansas 66612-1584

Liquor Control Act
Obsolete statutes

K.S.A. 1989 Supp. 41-307a

41-307a. Conversion of distributors; licenses. (a) The director shall provide procedures whereby a beer distributor's license or cereal malt beverage distributor's or wholesaler's license, or both, issued prior to January 1, 1988, shall be converted to a beer distributor's license or wine distributor's license, or both, on January 1, 1988, if all requirements of this act are met and the licensee pays that portion of the additional license fee or fees attributable to the remaining unexpired license term.

(b) The director shall provide procedures whereby an alcoholic liquor distributor's license, issued prior to January 1, 1988, shall be converted to a spirits distributor's license or wine distributor's license, or both, on January 1, 1988, if all requirements of this act are met and the licensee pays that portion of the additional license fee or fees attributable to the remaining unexpired license term.

(c) This section shall be part of and supplemental to the Kansas liquor control act.

History: L. 1987, ch. 182 §184; April 30.

K.S.A. 41-411

41-411. Same: sale of liquor on hand at time franchise law takes effect.

(1) Notwithstanding any contrary provision of this act, for a period of one hundred twenty (120) days after this act takes effect a licensed distributor may sell any alcoholic liquor which such distributor may have on hand at the time this act takes effect in the same manner and to the same purchasers as such distributor was authorized to sell the same prior to the effective date of this act.

(2) This section shall be part of and supplemental to the Kansas liquor control act.

History: L. 1979, ch. 153 § 11; May 10.

K.S.A. 41-504, 41-505, 1989 Supp. 41-506

41-504. Sale of tax stamps; cancellation. The director may keep at his office in Topeka, Kan., and at any other place he may designate, a supply of stamps to be sold to any manufacturer or distributor or to a sheriff to be placed on the original packages of confiscated alcoholic liquor which has been authorized by a court to sell. The stamps shall be sold for the face amount thereof. All stamps sold by the director may, if so determined by the director, be canceled by him at the time of delivery to the purchaser. The cancellation may be effected by a stamp or other device, adopted by the director for that purpose, which shall show thereon that it is a cancellation stamp.

History: L. 1949, ch. 242, § 56; March 9.

41-505. Same; tax crowns to collect tax on beer; manufacturer's bond. The director shall prescribe that the taxes imposed by this act on beer may be collected by means of tax crowns for retail containers of such distinctive designs as the director shall prescribe, and under such rules and regulations as shall be adopted pursuant to K.S.A. 41-210 and amendments thereto. The secretary of revenue shall devise and enforce, by rules and regulations adopted pursuant to K.S.A. 41-210 and amendments thereto, means whereby the manufacturer of crowns shall file a bond with corporate surety authorized to do business in this state, with the director in favor of the state of Kansas in an amount approved by the secretary of revenue, conditioned on the manufacturer's not selling or delivering crowns to any person except on written approval of

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Liquor Control Act - Obsolete statutes

the director, and on the manufacturer's faithfully safeguarding the handling and distribution of crowns so that the tax revenues of the state may be fully protected.

History: L. 1949, ch. 242, § 57; L. 1985, ch. 170, § 12; July 1.

41-506. Redemption of unused tax stamps or crowns. The director shall redeem any unused crowns or stamps that any purchaser thereof presents for redemption within six months after the sale thereof by the director, at the face value thereof. The director shall prepare a voucher showing the net amount of such refund due, and the director of accounts and reports shall draw a warrant on the state treasurer for the same and against the alcoholic liquor tax refund fund created by K.S.A. 41-507 and amendments thereto. The secretary of revenue may adopt, in accordance with K.S.A. 41-210 and amendments thereto, rules and regulations prescribing the manner of making proof of such claims and providing for refunds of the face value of crowns or stamps affixed to any alcoholic liquor taxed herein which has become unfit for use and consumption or unsalable where such alcoholic liquor is returned for any of such reasons to the distributor who affixed the crowns or stamps thereto and crowns that may be unfit for use by reason of size, sanitary condition or other reasons. Where the director finds such refund proper, the refund may be made by the issuance of tax credit memoranda to such distributor which shall be accepted as credit on subsequent remittances for the purchase of crowns or stamps.

History: L. 1949, ch. 242, § 58; L. 1985, ch. 170, § 13; L. 1987, ch. 182, § 42; April 30.

K.S.A. 41-1103, 41-1104, 41-1106

41-1103. Legal possession and transportation after March 9, 1949; penalty. Upon the taking effect of this act, the possession and transportation of alcoholic liquor for personal use only shall be legal: *Provided*, That until such time as the governor shall issue a proclamation declaring that the tax and licensing provisions of this act are in full operation and being administered by the director which proclamation shall be issued by the governor on or before July 1, 1949, it shall be unlawful for any person to transport more than one case (three wine gallons) of alcoholic liquor or any one time for any use or purpose whatsoever: *Provided further*, That nothing contained in this section shall be construed as making it unlawful for any person licensed under this act or common carrier to transport, prior to the issuance of such proclamation, more than one case, (three wine gallons) of alcoholic liquor at any one time for any purpose if such alcoholic liquor is transported in full compliance with all of the applicable provisions of the other sections of this act and consigned to a person authorized to receive the same under the other sections of this act. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollar (\$100) or more than five hundred dollars (\$500) and by imprisonment for not more than one year.

History: L. 1949, ch. 242, § 112; March 9.

41-1104. Cereal malt beverage laws not repealed. Nothing contained in this act shall be construed as repealing any of the existing laws of this state relating to cereal malt beverages and malt products.

History: L. 1949, ch. 242, § 113; March 9.

41-1106. Repeals; effect on existing rights, liabilities and prior offenses. Sections 21-2101 to 21-2103, both sections inclusive, 21-2107, 21-2108, 21-2110 to 21-2138, both sections inclusive, 21-2140 to 21-2167, both sections inclusive, of the General Statutes of 1935, and sections 21-2109, 21-2109a, 21-2139, 21-2177 and 21-2190 and 21-2195, both sections inclusive, of the General Statutes Supplement of 1947 are hereby repealed: *Provided*, that this repeal shall in no wise affect any contract, right, claim, interest, title, action or liability which may have accrued, or in any order, judgement, decree, sale, recognizance, instrument or proceeding made, entered or had under any of the provisions of the sections repealed, nor shall this repeal in anywise affect any criminal prosecution heretofore commenced, or any fine, penalty, forfeiture or punishment for any felony, misdemeanor or offenses committed before the taking effect of this act, prosecution for which shall be carried on and continued in the manner

Liquor Control Act - Obsolete statutes

provided by law, the same as if this repeal had not been made: *Provided further*, That any alcoholic liquor which have ben confiscated by any court in this state prior to the effective date of this act or shall be thereafter confiscated under any of the laws repealed by this act, may be sold by order of such court in manner prescribed in K.S.A. 41-1007 and 41-1009.

History: L. 1949, ch. 242, § 115; March 9.

K.S.A. 41-2714, 41-2715, 41-2716, 41-2717

41-2714. Same; term; nature of; transfer, limitation. The license of a wholesaler or distributor shall be purely a personal privilege, good for not to exceed one year after issuance unless sooner suspended or revoked, and shall not constitute property, nor shall it be subject to attachment, garnishment or execution, nor shall it be alienable or transferable, voluntarily or unvoluntarily, or subject to being encumbered or hypothecated. Such license shall not descend by the laws of testate or intestate devolution, but it shall cease and expire upon the death of the licensee, except that executors, administrators or representatives of the estate of any deceased licensee and the trustee of any insolvent or bankrupt licensee, when such estate consists in part of cereal malt beverage or wine under order of the appropriate court, and may exercise the privilege of the deceased or insolvent or bankrupt licensee after the death of such decedent, or after such insolvency or bankruptcy, until the expiration of such license but not longer than one year after the death, bankruptcy or insolvency of such licensee.

History: L. 1953, ch. 451, § 3; L. 1985, ch. 168, § 9; July 1.

41-2715. Wholesaler's and distributor's license fees; disposition; refunds. (a) The director shall remit to the state treasurer all license fees collected for wholesaler's or distributor's licenses, and the state treasurer shall credit the same to the state general fund, except that the director may provide for the deposit in the cereal malt beverage tax refund fund of such amounts as necessary for the refund of such license fees.

(b) The director may refund to a licensee or applicant the unused portion of the license fee for any of the following reasons:

(1) The death of the individual license;

(2) the death of a partner;

(3) the dissolution of the licensed business;

(4) the license fee has been tendered to the director and no license has been issued; or

(5) discontinuance of the licensed business for any reason except revocation.

(c) No refund shall be made in any case in which a license is revoked or a licensee is barred by a court of competent jurisdiction from continuing to exercise the privilege granted by his or her license.

(d) Refunds of any license fees shall be made from the cereal malt beverage tax refund fund upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the director of alcoholic beverage control.

History: L. 1978, ch. 189, § 5; July 1.

41-2716. Unlawful acts. It shall be unlawful for:

(a) Any wholesaler or distributor to sell, deliver or otherwise dispose of any cereal malt beverage or wine to any person other than a wholesaler, distributor or retailer who is licensed to sell such beverage or wine in accordance with the laws of this state.

(b) Any person to use fraud or deception to circumvent the provisions of this act.

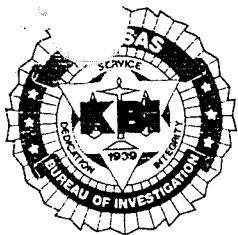
(c) Any person to prevent the director or any officer or agent authorized by laws from making a full inspection of any place of business for the purposes of this act.

History: L. 1978, ch. 189, § 6; L. 1985, ch. 168, § 10; July 1.

41-2717. Rules and regulations; administration of act. (a) The secretary of revenue shall adopt such rules and regulations as necessary for the administration of this act.

(b) The director shall administer the provisions of K.S.A. 41-2713, 41-2714, 41-2715 and 41-2716 and K.S.A. 41-2723 and 41-2724, and amendments thereto, as prescribed and directed by the secretary of revenue.

History: L. 1978, ch. 189, § 7; L. 1985, ch. 168, § 11; July 1.



JAMES G. MALSON
DIRECTOR

KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL

STATE OF KANSAS

1620 TYLER

TOPEKA, KANSAS 66612-1837

(913) 232-6000



ROBERT T. STEPHAN
ATTORNEY GENERAL

TESTIMONY

KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
BEFORE THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
MARCH 27, 1990
SENATE BILL 430

Madam Chairperson and Members of the Committee:

I am appearing today on behalf of the Kansas Bureau of Investigation (KBI) and it's Director Jim Malson in support of Senate Bill 430.

Senate Bill 430 is the most recent and hopefully the final modification or resolution to a difficult problem. Attached to my testimony today is a copy of former Director David Johnson's testimony before the Special Committee on Federal and State Affair and Governmental Organizations hearing this summer. That testimony expounds upon the dilemma involved with intelligence information and background investigations, and I will not repeat that explanation. However, I feel a brief history of this problem would be useful.

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. As the committee is aware, if you cannot maintain the confidentiality of your sources, you will soon not have sources. Attorney

HOUSE FEDERAL & STATE AFFAIRS
Attachment No. 2
March 27, 1990

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. The legislature then during the 1988 session amended K.S.A. 74-8804, the same statute we are dealing with here today, with the intent to make it clear that such reports were not to be disclosed. In fact, making it a class A misdemeanor to release confidential information obtained in a background investigation. 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

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had already been granted and hopefully this has not worked to the detriment of the racing industry in Kansas.

Last summer and fall hearings were held by the special interim Committee on Federal and State Affairs and Governmental Organizations, to some degree directly on this point Senate Bill 430 was the result. As I read Senate Bill 430, this should make it clear to courts, racing commissions 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.

Given the social ills that racing and gambling are subject to, I believe this legislation is necessary to assure to the greatest extent possible the integrity of racing in Kansas.

Thank you.

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DAVID E. JOHNSON
DIRECTOR

KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL
STATE OF KANSAS
1620 TYLER
TOPEKA, KANSAS 66612-1837
(913) 232-6000



ROBERT T. STEPHAN
ATTORNEY GENERAL

STATEMENT

DAVID E. JOHNSON, DIRECTOR

KANSAS BUREAU OF INVESTIGATION

BEFORE THE JOINT INTERIM COMMITTEE FEDERAL AND
STATE AFFAIRS AND GOVERNMENTAL ORGANIZATIONS

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to address this committee and, to the best of my ability, some of the concerns expressed by both the committee and the previous conferees. I appreciate those concerns expressed by the committee, applicants and members of the public regarding recent background investigations conducted by the Kansas Bureau of Investigation (KBI). However, I do believe there are no easy answers to the competing and conflicting public policies that have created such concerns. It is not our intent to be secretive or combative to the positions of unsuccessful applicants, the news media or this committee. But, it must be recognized that disclosure of thorough background investigations, including what we refer to as intelligence information, results in the ability to conduct such investigations being seriously compromised.

You undoubtedly know better than I the legislative intent involved in the passage of the Kansas Racing Act. Everyone recognizes the "social ills" that racing and gambling are

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subject to. The exchange of large amounts of cash and the potential for affecting the outcome of a race have traditionally led to strict control under the state's police power of gambling operations. This very concern has led to the two conflicting public policies that have created so much of this turmoil. First is the need for public scrutiny of all activities involved with racing. The second is the need for thorough and complete investigations of the major individuals involved in the racing operation: thus assuring, to the greatest extent possible, the integrity of racing and legalized gambling in Kansas.

Conflict arises when there is a need for non-public information and disclosure of such information jeopardizes the ability to obtain such information. This non-public information has at least two forms. The first being legally restricted information such as income tax returns, non-conviction criminal records and social security numbers. Because various statutes, both federal and state, limit or prohibit such disclosures, this type of information must remain confidential. The second kind of non-public information is what we generally refer to as intelligence information. This is information that connects an individual to criminal activity or questionable behavior, but is not contained in any public record. Examples would be interviews with employers,

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neighbors, friends, and the intelligence files of various law enforcement agencies which also contain investigative leads, interviews and informant data.

Until now 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. For example, we may have had a friend or business associate admit that he ran or placed bets for the applicant with illegal bookies. We then follow-up on that information with local law enforcement agencies, organizations, friends or spouse, whatever avenues are available, and confirm, if possible, the gambling. Understandably, that business associates' information is less likely to be given to us if we have to tell him that his giving us information may be disclosed to his business partner and friend. Even if the source is never disclosed by name the applicant may conclude that he was betrayed and future cooperation will be nil.

Similarly, 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

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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, it can jeopardize or destroy the cooperation of an informant, an agency, or even endanger the life of an undercover agent. If the source of the information can only be one person then the subject of the investigation can determine where that information came from.

The KBI is proud that it has built a reputation for protecting it's sources of information and we must maintain that reputation if we are to be an effective law enforcement agency.

A comparison can be drawn to reporters and the media who have on occasion gone to jail rather than reveal their sources. They know that to allow disclosure would not only destroy that source of information, but discredit their reliability in the future. Frankly, if an agent from another law enforcement agency, be it the FBI or another state's racing commission, contacted and requested our cooperation and access to our intelligence files but couldn't assure us that the information would remain confidential, the KBI would not open it's intelligence files to that agency.

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The Kansas Racing Commission was given specific authority by the legislature to receive and consider intelligence information, K.S.A. 1988 supp. 74-8804(n). Further, in the granting of the highest level of licenses, organization licenses under K.S.A. 74-8813 and facility owner and facility manager licenses under K.S.A. 74-8815, the granting or denial of such licenses was specifically removed from the Kansas Administrative Procedures Act and rests solely with the commission to use their discretion in determining what is in the best interest of horse and Greyhound racing in the state.

The second level of licenses, occupational licenses, under K.S.A. 74-8816, and concessionaire licenses under K.S.A. 74-8817, dealing with the jockey, stewards, grooms, etc., were placed under the Kansas Administrative Procedures Act and specific criteria were set out for what can be considered in granting or denying a license. The second level licensees still has a potential for corruption, but it is obviously on a lesser scale, and so the legislature apparently struck a balance: the granting of the most important licenses rests solely with the commission and allows that they consider all the information available, but the second level licenses require the finding of unfitness by the commission and denial is regulated by the Kansas Administrative Procedures Act.

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At this time I would like to review the relationship between the Kansas Bureau of Investigation and the Racing Commission. It was agreed early on that the KBI would conduct any background investigation requested by the commission and the depth of the investigation would relate to the applicant's position. In other words, for facility owner licenses, facility manager licenses and organization licenses, all would have an indepth background. The other backgrounds will be of a lesser degree as provided in the Kansas Racing Act.

The Kansas Racing Commmission interpreted the Act to preclude release of the information contained in our investigations. In it's Kansas Racing Management decision the Kansas Supreme Court interpreted the Racing Act as well as the Kansas Open Records Act to permit investigations to be released by the Kansas Racing Commission in executive session to the applicants or in an open hearing if certain statutory criteria are met (see Exhibit A).

This interpretation, along with the pending mandamus action, places the KBI in a difficult situation in regard to our racing backgrounds. The KBI can no longer control the dissemination of information given to us. We cannot provide other law enforcement agencies and sources with assurances of non-disclosure. In practical terms this will drastically

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decrease the kind of information that is most needed in background investigations.

Public information is almost routine in backgrounds of this kind. If the person is a known criminal with convictions for racketeering, then he or she wouldn't be considered for licensure or appointment. What is most useful are the private, hidden facts. Be it cocaine addiction or racketeering friends, it is always a closely guarded secret.

Because of the risks of disclosure the KBI's only responsible position is to advise individuals and law enforcement agencies of that risk. If we didn't so advise, the first time disclosure occurred our credibility would be severely damaged and future cooperation, whether with informants or law enforcement agencies, would be destroyed. This would seriously affect not just our background investigations, but our primary duty of criminal investigations. I cannot let that happen. Unfortunately, this warning will result in less information being available to the commission.

In wrestling with these conflicting needs, I have had my agents contact fourteen states which have parimutuel racing which we have had previous dealings with. A brief summation of their resolutions to this dilemma are contained in Exhibit B. I should point out the KBI will do whatever is authorized by

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the legislature; these are policy decisions that are for you to decide.

One resolution of the conflict would be for the state agency to conduct perfunctory investigations based only on public records, which could then be made public. This is done in Alabama and Wyoming.

Another option utilized by some states, for example Illinois, Minnesota and Louisiana, is for investigations to be complete, but the reports to the commission contain only public information. This option concerns me as it places the KBI in the position of editing out intelligence information and denying the commissioners the information that can be most useful and was legislatively authorized for them to have. However, if we do conduct a full investigation but only provide non-intelligence information to the commission, we would at least still have the intelligence information in our files and available for criminal investigations when and if an offense should occur.

Another resolution utilized by states such as Iowa and Arizona is to avoid application of open records or sunshine laws by providing no written reports to the commissioners.

A final possibility would be legislative action to clarify the protection given to background investigations under the Racing Act and Kansas Open Records Act.

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Most of the first level investigations, the most thorough, have already been completed and the Supreme Court affirmed the Racing Commission's decision that disclosure was not required. Current level investigations would contain considerably less intelligence information and are of somewhat less concern. However, the problem still remains that due to the interpretation of the Supreme Court and pending lawsuits, the KBI can no longer assure agencies and individuals that information provided will remain confidential. Without such assurances it will be impossible for the KBI to conduct as thorough investigations in the future. The KBI will continue to serve the State of Kansas to the best of our ability, but the scope of background investigations needs to be defined by the legislature.

In response to statements made during the hearing on August 3, 1989, before this committee, a statement was made that it would cost \$3,000 for each individual background for the fair board at Anthony, Kansas. Reference was made concerning the cost of conducting background investigations for the Rooks County Track. Twenty-six individuals were investigated for the Rooks County Track for a total cost of \$10,374.99 or an average of \$399.03 each.

There has been a number of comments that the KBI Director is an appointee of the Attorney General and that a conflict

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could exist relative to background investigations. I would like to set the record straight that the Attorney General has never seen or reviewed any background investigation the KBI has conducted for the Lottery Commission or the Racing Commission and he has never asked to review them, although he was interviewed during the course of one of the investigations as were a number of other people. Thank you.

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 Kansas Racing Management, Inc. v. Kansas Racing Comm'n

Nos. 62,681
62,682

KANSAS RACING MANAGEMENT, INC., and WYANDOTTE COUNTY ECONOMIC DEVELOPMENT COMMISSION, INC., *Appellants*, v. KANSAS RACING COMMISSION; SUNFLOWER RACING, INC.; THE RACING ASSOCIATION OF KANSAS EAST, INC.; KANSAS GREYHOUND RACING, INC.; GREYHOUND RACING CHARITIES OF KANSAS, INC.; ALABAMA/KANSAS, INC.; and KANSAS RACING CHARITIES, INC., *Appellees*.

SYLLABUS BY THE COURT

1. STATUTES—*Construction—Special Statute Controls over General Statute—Legislative Intent.* It is the duty of the court to reconcile different statutory provisions so as to make them consistent, harmonious, and sensible. General and special statutes should be read together and harmonized whenever possible, but to the extent a conflict between them exists, the special statute will prevail, unless it appears the legislature intended to make the general statute controlling.
2. OPEN RECORDS ACT—*General Act Allowing for Disclosure of Public Agency's Criminal Investigative Reports—Kansas Parimutuel Racing Act—Specific Act Allowing for Disclosure of Criminal Investigative Reports.* The Kansas Open Records Act, K.S.A. 45-215 *et seq.*, is a general act that allows the courts to order disclosure of a public agency's criminal investigation reports, with certain stated exceptions. The Kansas Parimutuel Racing Act, K.S.A. 1988 Supp. 74-8801 *et seq.*, is a specific act that allows the Kansas Racing Commission to disclose the substance of a criminal investigation report it has received for use in determining the qualifications of applicants for licenses.
3. SAME—*Disclosure of KBI Investigative Reports to Parimutuel Racing License Applicants.* Subject to specified restrictions, disclosure of Kansas Bureau of Investigation investigative reports to racing license applicants is permitted both under K.S.A. 1988 Supp. 74-8804(n) and (o) and under the Kansas Open Records Act, K.S.A. 45-215 *et seq.* The Kansas Racing Commission may disclose any information contained in the law enforcement agency's report that it determines is in the public interest, if disclosure of that information does not violate the provisions of K.S.A. 1988 Supp. 45-221(a)(10)(A)-(E) by (1) interfering with prospective law enforcement action; (2) exposing the identity of a confidential source or undercover agent; (3) revealing a confidential investigative technique or procedure not known by the applicant; or (4) endangering the life or safety of a person.

SIX STATES HAVE COMPLETE PRIVACY OF INFORMATION

FSA
2A12
3-27-60

	Full Written Report (Complete Info.)	Full Oral Report (Complete Info.)	Limited Written Report Public Info.	Limited Oral Report Public Info.	Pass Or Fail Letter	Limited Back-Ground/Criminal History
Alabama						
Arizona		•				o *
California		• +	o *			
Colorado		•	o *			
Illinois						
Iowa		•			•	
Kentucky	•					
Louisiana			o *			
Michigan		•	o *			
Minnesota			o *			
New Mexico			• +			
South Dakota	•					
Texas			o +			
Wyoming						o *

Survey data of procedures used in reporting parimutuel background information to racing commissions.

- Legend:
- Closed Session
 - o Open Session
 - * Public Disclosure
 - + Press Release (Limited)

ALABAMA - Alabama State Police
Bob Clark
PS# 205/ 261-4629

Alabama has no state racing commission. Racing Commissions are by county, and they complete their own background checks as they see fit. Generally, each racing commission completes a name and fingerprint check only on each licensee.

ARIZONA - Arizona Department of Racing
Jim Alander
PS# 602/ 542-5151

A complete background investigation is done with the help of DPS. That report is confidential. A verbal report is made to the Racing Commission. They do not release background information to the press.

CALIFORNIA - Attorney General council for California
State Horse Racing Board
Bob Mokai
PS# 916/ 324-5470

The Horse Racing Board has their own investigators who perform background investigations. A report is prepared on the information found. The report is generally available to the press. Information acquired from other agencies is subject to the confidentiality guidelines of the contributing agency. Other information not subject to the California Public Records Act is not disclosed. Those guidelines are very specific.

COLORADO - Colorado Racing Commission
Andrea Smith
PS# 303/ 866-2294

A complete background investigation is completed by the racing commission investigators, generally limited to public record information. If they have confidential information it is presented to the commission in a closed session. Any information used in making a decision, must be made available in public records, open session, contained within the applicant's hearing file.

KENTUCKY - State Racing Commission
Donna Dickson
PS# 502/ 564-5859

The reports are done by "in-house" investigators and TRPB. They are submitted triple sealed to the locked file. That file can only be opened by the Executive Secretary who provided pertinent information only to the licensing committee. That sub-committee is confidential. No information is released.

FSA
2AB
3-27-90

Exhibit B

ILLINOIS - Illinois State Police, DCI
Steve Miller
PS# 312/ 530-3601

A complete background investigation is done by DCI and a confidential report remains in a locked file. From that report a letter is drafted containing pertinent information. That letter is given to the Racing Commission. It generally contains derogatory and criminal information not for public disclosure.

DCI has not conducted a major racing background investigation for many years. Track ownership and management has been stable for quite some time.

IOWA - Iowa Department of Criminal Investigation
Gary Marker
PS# 515/ 567-1210

A complete background investigation is done by the DCI Gaming Unit. The background is considered an investigative report and remains confidential and in the control of Iowa DCI. An oral presentation is given in closed session to the Racing Commission. If an applicant is denied a license, he may appeal, the appeal process may "open" parts of the investigation that were the basis for the license denial.

LOUISIANA - Louisiana State Police
Sgt. Jerry May
PS# 504/ 568-5828

A complete background is done by the Louisiana State Police Racing Unit. A limited report is presented to the racing commission in open session, available for publication. If derogatory or intelligence information is developed, they may or may not tell one of the commissioners "off the record", with the idea of making the right contacts for license denial. They have used NCIC-Triple I information in open hearings, against NCIC regulations. The racing commission is very political and not always the best source to provide confidential information to.

MICHIGAN - Michigan Racing Commission
Jim Wright
PS# 313/ 462-2400

A complete background investigation is done by the racing commission investigator. Derogatory information is reported to the racing commission in an oral presentation. A limited report is then provided in open session, available for press publication, to the racing commission.

ESA
2A-14
3-27-90

MINNESOTA -

Minnesota State Police
Gary Doll
PS# 612/ 642-0660

A full report is done and kept in file. A "generic" report containing only public access information is sent to the Racing Commission. That report is subject to release to the press. The release of that information is "very rare" but possible.

NEW MEXICO -

New Mexico State Racing Commission
Wayne Conwell
PS# 505/ 841-4644

A full report is made by DPS or racing commission investigators. That is submitted to the Attorney General's Office who generate a report to the commission. That report is confidential. If an application is rejected based on that report the reason is disclosed without details.

SOUTH DAKOTA -

Department of Commerce - State of South Dakota
Gaming Division
Don Gromer
PS# 605/ 773-3178

A confidential background investigation is performed by DCI. A report is prepared to be submitted to the racing/gaming commission from that investigation. All information is confidential except that the applicant has a right to view the report.

TEXAS -

Texas Department of Public Safety
Commander Joe Murphy
PS# 512/ 465-2200

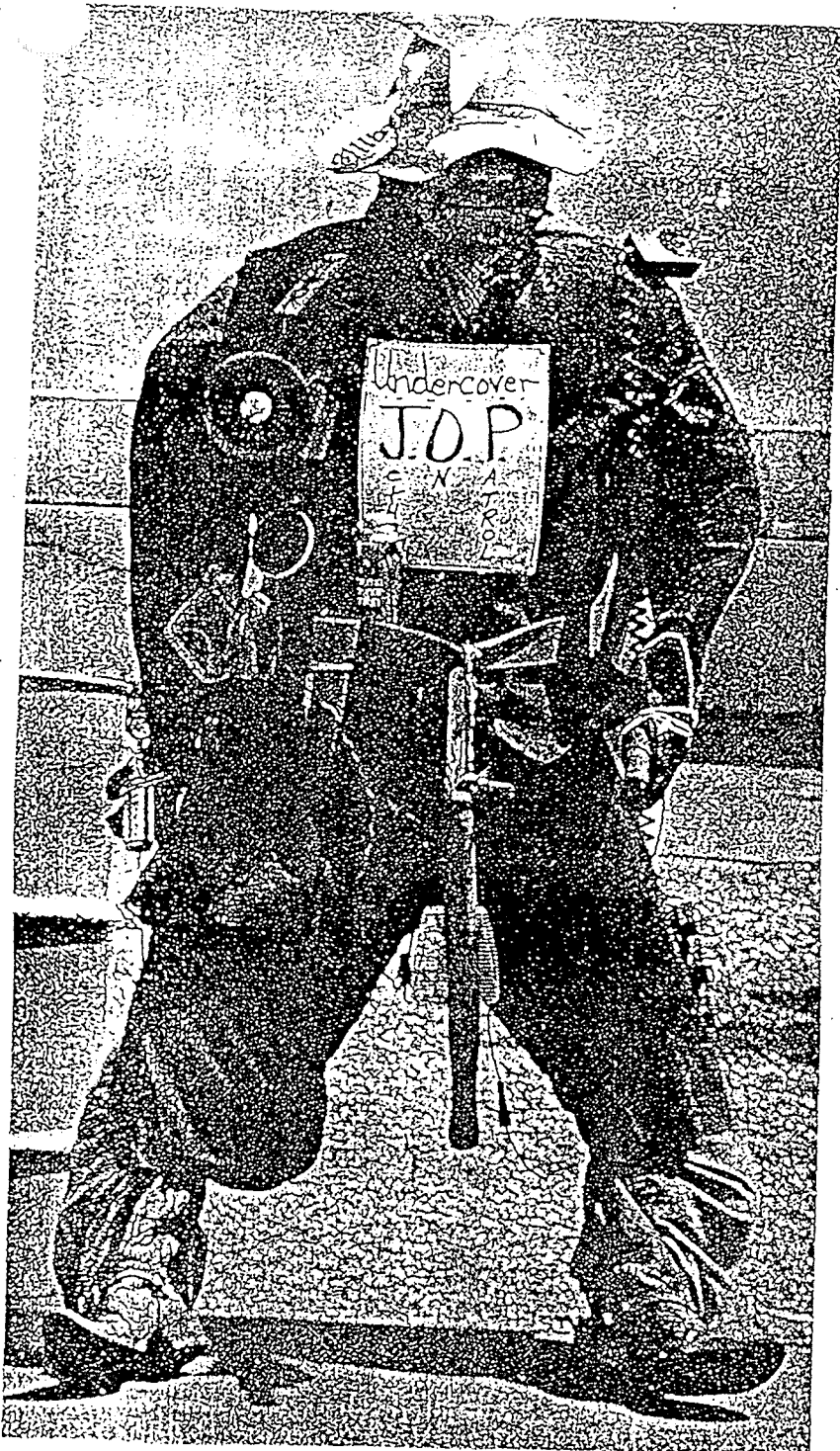
A complete background investigation is done by the Texas DPS. A written report is prepared. After the DPS administration makes corrections, a limited report is given to the racing commission, who in turn, provided a copy to the attorney representing the applicant. After their review, they can discuss the discrepancies with the commission. A final draft is prepared, copies are given to the commission and applicant, where a public hearing is held, with attorney's representing each side.

WYOMING -

Wyoming Department of Criminal Investigation
Jim Giffen
PS# 307/ 777-6614

Wyoming has one investigator for the state assigned to parimutuel. he conducts limited background checks, generally, a phone call and name check along with fingerprint checks. Wyoming does not prohibit a convicted felon from being licensed. If they falsified the application by not reporting any convictions, they can be charged with a misdemeanor. Generally, no information is provided to the racing commission.

FSA
2A-15
3-27-90



THIS "UNDERCOVER J.O.P (Jethro on Patrol)," placed at Anthony Downs by the "C.U.P.s — citizens under punishment," protested the presence of KBI officers at this year's races. See related story and photos on Page 1.

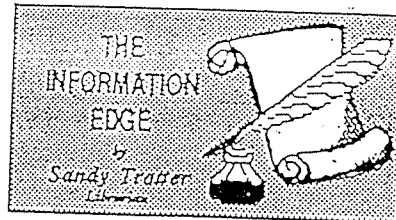
(Photo by Craig Hacker)

Idaho Vacation For Local Family

Mr. and Mrs. Larry Thomas and Kara returned home last week from a two week visit with her mother, Nellie Parsons; and her sister, Mr. and Mrs. Jim

pleased to see the park looking good after the fire of a year ago. They also visited with Mark and Doris Puls and Jan Puls, who are working in the park this summer.

In Goodland, Kans. they visited Larry's uncle, Mr. and Mrs. Jim Moore before continuing their journey home.



Hide Away In Aruba

Have you ever wanted to leave everything behind and travel to a quiet peaceful island and laze away a week maybe two? I've been reading about the perfect island to do just that called Aruba. It's a small island, about 70 square miles found at the southern part of the Caribbean islands. Unlike the other Caribbean islands, this island has a dry climate. Perpetual summer. The temperatures at night and daytime, winter and summer never vary more than four degrees. Dutch is the national language of the island, it being a separate entity of the Netherlands.

The first known inhabitants of Aruba were the peace-loving Arawak Indians who lived in the cool caves high above the sea. They painted hieroglyphics on the walls and ceilings of their homes, the meanings of which are still a puzzle to archaeologists and scholars. The present day Arubans have mixed ancestry of mainly Arawak, Dutch and Spanish.

Some of the main attractions on the island would be Fort Zoutman, Willem III Tower (Aruba's historical museum,) gold mill ruins, the Indian Hieroglyphics, natural bridges, unusual rock formations, Frenchman's pass, and miles of palm fringed white beaches and a crystal clear blue-green sea with a visibility in some areas to a depth of 100 feet.

The island has seen its share of pirates and buccaneers. The Spaniard Alonso de Ojeda discovered Aruba in 1499. The Dutch took possession at the end of the 80 year war between Holland and Spain. The English took control for a short period of 11 years during the Napoleonic Wars but the Dutch returned in 1816.

The travel booklet for Aruba

information center regulations.

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Schnelle, Lyndi...
Jelinek, Tyler...
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to visit and att...





a chat with
the editor

THE Anthony Republican, Vol. 113—No. 33
The Anthony Bulletin, Vol. 93—No. 33

ANTHONY REPUBLICAN

and THE ANTHONY BULLETIN (USPS 026-920)

Wednesday

Anthony, Home of Don Headberg

The 85th horse and dog races at Anthony Downs is another event for the history books. Local race officials hope the 86th year will be the start of pari-mutuel.

Mother nature cooperated with cool temperatures in the 80s and fans apparently observed the "no gambling" wishes of officials — both local and state.

Security (mostly with a watchful eye for gamblers) was plentiful with no reports of any arrests.

We're told one situation developed that looked suspicious.

Two guys apparently appeared to be indulging in betting among themselves. One officer from the sheriff's department watched the two walk toward the "men's room" and followed. He apparently thought that was where the money exchange would occur. In a second, or two, the officer walked out empty handed — no money and nobody in cuffs.

Apparently the two gentlemen had other intentions for dropping out of site.

The Kansas Bureau Of Investigation was down all five days to check on possible gambling activities. The three men did not come in undercover garb. They were nicely dressed and "stuck out" as KBI agents.

The agents got a little bit of a "cold" treatment when they were asked to pay admission and a couple of other local racing fans disguised themselves as members of "CUP" — Citizens Under Punishment.

Were there any real serious gambling? We believe not.

Were there any mom, dad and relation doing any of the old card drawings and dimes-in-the-cup stuff? We don't know. If so, could be the KBI guys were nice enough to leave it be.

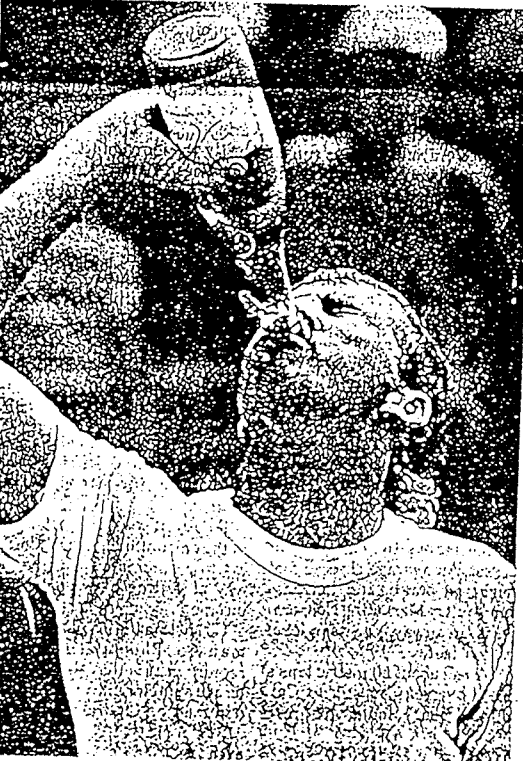
One comment passed along to us though, criticized the state for sending the agents:

"You'd think the KBI would send ever available person to catch two murderers running loose in the state rather than send them to Anthony to nab grandma and grandpa gambling with nickles and dimes."

Curb, Gutter Work Discussed

Anthony's City Commission used a little old-fashioned philosophy at Monday's weekly meeting.

The commission gave permission to city clerk Don Heidrick to seek a low-interest loan for a curb and gutter project on N. Lawrence Ave. near the CELCO



TOP: HEADING FOR the home stretch Sunday in the 40th running of the Thoroughbred Futurity is Tri David (far right) pursued closely by Scrib's Day, Marciblatze and the remainder of the field. LEFT: VICTORY NEVER tasted sweeter to jockey "Dink" Sutton of Woodward, Okla. Sutton rode Tri David to a win in the \$10,000 feature race. (Photos by Craig Hacker)

480 Acres Sold at Auction

Two tracts of farm ground near Kiowa were sold at public auction Saturday by the Ott Auctioneer/Real Estate Broker agency. A 320-acre site one mile west of Kiowa brought \$255,000 by Max Schooley and Haines Miller, both of Kiowa. Another 160 acres, on the east edge of Kiowa, was purchased by Robert Schrock of Kiowa for \$157,000. The properties were owned by Kay Klausmeier, Larry Shiner and Carol Wilson. (heirs).

Attica Rodeo Starts Thursday

The 41st annual Attica Saddle Club Rodeo is scheduled for Thursday through Saturday. Events include bareback bronc riding, calf roping, saddle bronc riding, team roping, bulldogging, barrel racing and bull riding and will begin at eight nightly.

Other activities open to the public include free meals, a parade, crowning of rodeo queen, antique tractor pull and a street dance. Each day's pre-rodeo activities start at 9 a.m.

'Shorter' Golf Course Opened

Anthony's Golf Course has reopened, but it's more like a Reader's Digest "condensed" version. Golfers wishing to test the course will find the holes considerably shorter as it has been converted to a par-three format until the new grass takes hold on the fairways.

Course hours and fees have remained the same. Club president Dale Reeves said regular events such as Men's Nights and Scotch Double will be held.

FSA
2A-17
327-90

3-12-89

PAGE NUMBER

10A

Rooks County harness races under way

STOCKTON (AP) — The Rooks County Free Fair Association, the first group to hold legal pari-mutuel horse races in the state, began four days of harness races Friday in this small northwest Kansas town.

The harness races, scheduled to continue today, Monday and Tuesday, are part of the association's annual fair. Stockton is about 40 miles north of Hays and has about 1,800 residents.

"Everything is proceeding along," said Jonathan Small, an attorney for the association.

The fair association operated three days of pari-mutuel harness races in August 1988 at an estimated loss of \$18,000. Small attributed the loss to start-up costs, such as background investigations by the Kansas Bureau of Investigation.

The 1988 races drew a total of about 6,700 spectators. It marked the first time Kansas could bet legally on horse or dog races, after voters approved a constitutional amendment allowing pari-mutuel wagering in November 1986.

CASE NUMBER _____

FSA
2A18
3-27-90



818 Merchants National Bank, Topeka, KS 66612

913/235-1307 FAX 913/233-3052

March 27, 1990

TO: House Committee on Federal and State Affairs

FROM: Harriet J. Lange
Executive Director

RE: SB 430

The Kansas Association of Broadcasters supports passage of SB 430, which would allow public disclosure of conviction data relating to licensees and applicants for licenses under consideration by the Kansas Racing Commission.

A prohibition on such disclosure tends to undermine the credibility of a public body whose mission is to ensure that parimutuel wagering in Kansas is conducted free of any criminal element.

We urge your favorable consideration of SB 430.

The KAB represents a membership of 120 radio stations and 21 television stations in Kansas.

PRESIDENT
Stuart Melchert
KSCB AM/FM
Liberal

PRESIDENT-ELECT
Lyle Butler
KGNO/KDCK
Dodge City

**SECRETARY/
TREASURER**
Don Hicks
KOAM TV
Pittsburg

PAST PRESIDENT
Don Neer
Great Empire
Broadcasting, Inc.
Wichita

**EXECUTIVE
DIRECTOR**
Harriet Lange, CAE
Topeka

DIRECTORS

Allan Buch
KSNW TV
Wichita

Michael Cutchall
KRZ/KNSS
Wichita

George Donley
KVGB AM/FM
Great Bend

Jim Gustafson
KZSN AM/FM
Wichita

Ed Klimek
KQLA FM
Manhattan

Marty Mella
KLOE AM
Goodland

Bob Newton
KLWN/KLZR
Lawrence

Gary Shorman
Beach/Schmidt
Communications
Hays

HOUSE FEDERAL & STATE AFFAIRS
Attachment No. 3
March 27, 1990

STATE OF KANSAS

J. C. LONG
HOUSE OF REPRESENTATIVES
ONE HUNDREDTH DISTRICT
Harper, Barber,
Kingman and Sumner Counties



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE CHAIRMAN: PENSIONS INVESTMENTS AND
BENEFITS
MEMBER: COMMERCIAL AND FINANCIAL INSTITUTIONS
FEDERAL AND STATE AFFAIRS
TAXATION
NATIONAL CONFERENCE OF STATE
LEGISLATURES COMMITTEE ON
GOVERNMENT OPERATIONS
AMERICAN LEGISLATIVE EXCHANGE COUNCIL
MEMBER: STATE STEERING COMMITTEE

SUBCOMMITTEE REPORT ON SUBSTITUTE FOR S.B. 286

Representative Ginger Barr
Chairperson
House Committee on Federal
and State Affairs
Room 115-S, Statehouse

Dear Representative Barr:

The Subcommittee on Sub. for S.B. 286 was composed of Representative Sherman Jones, Representative Martha Jenkins, and myself. We met on Wednesday, March 21 and made several recommendations, explained below.

We concur, with one notable exception, with the amendments to Sub. for S.B. 286 proposed by Mr. Tom Sloan who represented the Kansas Department of Corrections. It was our understanding that Mr. Sloan's amendments involved a cooperative effort of several interested parties which included the Department of Corrections, the Kansas Department of Social and Rehabilitation Services, the Kansas Department of Health and Environment, the League of Kansas Municipalities, law enforcement personnel, firefighters, members of the medical profession, and other emergency services personnel.

As received by the Committee, Sub. for S.B. 286 would amend K.S.A. 22-2913 to require the court to order an AIDS test for any person who is arrested and charged with a crime if such person has informed a law enforcement officer that he or she has AIDS or is infected with HIV virus. If a test is ordered, the court would have to disclose the test results to the law enforcement officer who has made the arrest and to other persons determined by the court to have a legitimate need to know the results.

The Subcommittee recommends that the Senate amendments to K.S.A. 22-2913, K.S.A. 65-6001, and K.S.A. 65-6004 in Sub. for S.B. 286 be retained, with the exception that references to AIDS in Sub. for S.B. 286 be replaced with references to infectious diseases.

The major difference between our recommendation and Sub. for S.B. 286 is that the bill only addresses the scenario in which testing is required for an arrested person who indicates that he or she has AIDS or an HIV virus. We concur with Mr. Sloan's proposal to include other circumstances under which testing could be required by the court. The court would be required to order testing if there is probable cause that not only law enforcement officers, but also employees who are contracted by the

Department of Corrections or the Department of Social and Rehabilitation Services and volunteers employed by either of those agencies, a law enforcement agency, or a fire department or emergency response medical team have come into contact with or have been exposed to an infectious disease. The individual who is assumed to have infected the employee, contract employee, or volunteer would not necessarily have been arrested. Moreover, the infectious disease is not restricted to AIDS, as in Sub. for S.B. 286, but, in addition, includes Hepatitis B and meningococcal meningitis.

Mr. Sloan's proposal, with which we concur, requires an individual to be tested six months from the date the first test was administered if the results of the first test were negative. The results of any infectious disease test shall be disclosed to the court which ordered the test, the employee, contract employee, or volunteer, and the person tested.

If the test results in a positive reaction, the results would be reported to the director of the agency and appropriate counseling would be provided to the affected employee, contract employee, or volunteer.

Finally, we endorse the provision in Mr. Sloan's proposal which would require a person to pay restitution to the victim for the cost of counseling and the test if that person has been tested and is subsequently convicted of a crime which involves or was likely to have involved transmission of bodily fluids.

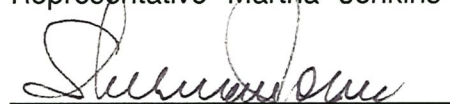
We are of the opinion that the amendments proposed by Mr. Sloan and others would both provide sufficient notification to those individuals who have been exposed to or come into contact with bodily fluids. In addition, we believe that those amendments set forth a procedure which would afford the individual who may have been infected with some legal protection.



Representative J. C. Long
Subcommittee Chairperson



Representative Martha Jenkins



Representative Sherman Jones

PROPOSED HOUSE Substitute for Substitute for SENATE BILL NO. 286
 By Committee on Federal and State Affairs

AN ACT concerning certain infectious diseases; authorizing a court to order tests for such diseases in certain circumstances and authorizing disclosure of certain information; amending K.S.A. 1989 Supp. 65-6001 and 65-6004 and repealing the existing sections; also repealing K.S.A. 22-2913.

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

Section 1. K.S.A. 1989 Supp. 65-6001 is hereby amended to read as follows: 65-6001. As used in K.S.A. ~~1988~~ 1989 Supp. 65-6001 ~~to--65-6007--inclusive~~ through 65-6007 and sections 3, 4 and 5, and amendments thereto, unless the context clearly requires otherwise:

(a) "AIDS" means the disease acquired immune deficiency syndrome.

(b) "Correctional employee" means any employee of the department of corrections, or any employee of a person or entity engaged in providing services under contract with the department of corrections, who is either permanently or temporarily assigned to a correctional facility or institution, or is engaged in administration or operation of such facility or institution, including but not limited to personnel engaged in academic education, vocational-technical training and instruction, medical services and mental health treatment or counseling.

(c) "Emergency services employee" means an attendant or first responder, as defined by K.S.A. 1989 Supp. 65-6112 and amendments thereto, or a firefighter.

(d) "Employing agency or entity" means the agency or entity:

(1) Employing, or contracting with the employer of, a correctional, emergency services, law enforcement or SRS

employee; or

(2) accepting the goods or services of a volunteer.

(e) "HIV" means the human immunodeficiency virus or any other identified causative agent of AIDS.

(f) "Infectious disease" means AIDS, hepatitis B or meningococcal meningitis.

(g) "Infectious diseases tests" means tests approved by the secretary for detection of infectious diseases.

(h) "Law enforcement employee" means:

(1) Any law enforcement officer, as defined by K.S.A. 74-5602 and amendments thereto; or

(2) any employee of a city, county or community correctional services program, or any employee of a person or entity engaged in providing services under contract with a city, county or community correctional services program, who is either permanently or temporarily assigned to a local jail or other local correctional facility, or is engaged in administration or operation of such jail or facility, including but not limited to personnel engaged in academic education, vocational-technical training and instruction, medical services and mental health treatment or counseling.

(e) (i) "Positive reaction to an AIDS test" means a positive test, approved by the secretary, to detect antibodies to the probable causative agent for AIDS, with a positive confirmatory test as specified by the secretary.

(d) (j) "Secretary" means the secretary of health and environment.

(k) "SRS employee" means any employee of the department of social and rehabilitation services, or any employee of a person or entity engaged in providing services under contract with the department of social and rehabilitation services, who is either permanently or temporarily assigned to a juvenile detention facility of the department of social and rehabilitation services or is engaged in administration or operation of such facility, including but not limited to personnel engaged in academic

education, vocational-technical training and instruction, medical services or counseling.

(e) (1) "Physician" means any person licensed to practice medicine and surgery.

(m) "Volunteer" means any person, including a person receiving training as a volunteer, who voluntarily, without material or monetary gain, provides goods or services to:

(1) One or more correctional facilities or institutions of the department of corrections;

(2) an emergency medical service, as defined by K.S.A. 1989 Supp. 65-6112 and amendments thereto, or a fire department;

(3) law enforcement agency;

(4) one or more juvenile detention facilities of the department of social and rehabilitation services.

Sec. 2. K.S.A. 1989 Supp. 65-6004 is hereby amended to read as follows: 65-6004. (a) Notwithstanding any other law to the contrary, a physician performing medical or surgical procedures on a patient who the physician knows has AIDS an infectious disease or has had a positive reaction to an AIDS an infectious disease test may disclose such information to other health care providers who or emergency personnel who have been or will be placed in contact with bodily fluids of such patient during--such procedures. The information shall be confidential and shall not be disclosed by such health care providers or emergency personnel except as may be necessary in providing treatment for such patient.

(b) Any physician who discloses information in accordance with the provisions of this section in good faith and without malice shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed in an action resulting from such disclosure. Any such physician shall have the same immunity with respect to participation in any judicial proceeding resulting from such disclosure.

New Sec. 3. (a) If a correctional, emergency services, law enforcement or SRS employee, or a volunteer, comes in contact

with or is otherwise exposed to transmission of bodily fluids from one or more other persons while performing duties within the scope of such employee's or volunteer's duties as an employee or volunteer, the head of the employing agency or entity may make application to a court of competent jurisdiction for an order requiring such other person or persons to submit to infectious disease tests.

Such application must include an allegation that the person or persons sought to be tested have been requested to voluntarily submit to infectious disease tests and have refused the tests. When any such application is received, the court shall hold a hearing forthwith and shall issue its order thereon immediately if the court finds that: (1) There is probable cause to believe that the employee or volunteer involved has come in contact with or otherwise been exposed to transmission of the bodily fluids of the person or persons sought to be tested; and (2) the person or persons sought to be tested have been requested to submit to the tests and have refused, unless the court makes a further finding that exigent circumstances exist which would, in the court's judgment, excuse the applicant from making such a request.

(b) If an infectious disease test ordered pursuant to this section results in a negative reaction, the court shall, upon proper application, order the person tested to submit to another infectious disease test six months from 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 which ordered the test, the employee or volunteer involved and the person tested. If an infectious disease test ordered pursuant to this section results in a positive reaction, the results shall be reported to the head of the employing entity or agency and appropriate counseling shall be provided to the employee or volunteer involved.

(d) The costs of any counseling provided under subsection (c) shall be paid by the employing agency or entity. If the

person tested is subsequently convicted of a crime arising from the circumstances which were the basis of the order requiring the tests and the court determines from the facts of the case that the crime involved or was likely to have involved transmission of bodily fluids from one person to another, restitution to the employing agency or entity for the payment of the costs of counseling provided under this section and for payment of the costs of any test ordered under this section shall be included by the court in any order requiring the convicted person to pay restitution.

New Sec. 4. (a) At the time of an appearance before a magistrate under K.S.A. 22-2901 and amendments thereto, the magistrate shall inform any person arrested and charged with a crime 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 of the availability of infectious disease tests and counseling and shall cause the alleged victim of such a crime, if any, to be notified that infectious disease tests and counseling are available. If the person arrested and charged with a crime stated to the law enforcement officer making such arrest that the person arrested and charged with the crime has an infectious disease or is infected with an infectious disease or, or used words of like effect, the court shall order the arrested person to submit to infectious disease tests.

(b) Upon conviction of a person for any crime 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, the court: (1) May order the convicted person to submit to infectious disease tests; or (2) shall order the convicted person to submit to infectious disease tests if the victim of the crime or the parent or legal guardian of the victim, if the victim is a minor, requests the court to issue such order. If infectious disease tests are ordered under this subsection, the victim of the crime, if any, who is not a minor shall designate a health care provider or counselor to receive

FSB
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such information on behalf of the victim. If the victim is a minor, the parent or legal guardian of the victim shall designate the health care provider or counselor to receive such information.

(c) The results of any infectious disease test ordered under subsection (a) shall be disclosed to the law enforcement officer making such arrest, the person arrested and such other persons as the court determines have a legitimate need to know the test result in order to provide for their protection. The results of any infectious disease test ordered under subsection (b) shall be disclosed to the court which ordered the test, the convicted person and to the person designated under subsection (b) by the victim or victims of the crime or by the parent or legal guardian of a victim if the victim is a minor. If an infectious disease test ordered under this section results in a positive reaction, the results shall be reported to the secretary of health and environment and to the secretary of corrections, and such counseling as directed by the secretary of health and environment shall be provided to the victim or victims.

(d) The costs of any counseling provided under subsection (c) by the secretary of health and environment shall be paid from amounts appropriated for such purpose to the department of health and environment. Restitution to the state for payment of the costs of any counseling provided under this section and for payment of the costs of any test ordered under this section shall be included by the court in any order requiring the arrested or convicted person to pay restitution.

New Sec. 5. (a) When a court orders a person to submit to infectious disease tests under this act, 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 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.

(b) The results of tests or reports, or information therein, obtained under this act shall be confidential and shall not be divulged to any person not authorized by this act to receive the same. Any violation of this subsection is a class C misdemeanor.

Sec. 6. K.S.A. 22-2913 and K.S.A. 1989 Supp. 65-6001 and 65-6004 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

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