

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Representative Kathleen Sebelius at
Chairperson

1:30 ~~am~~ p.m. on Monday, March 16, 1992 in room 526-S of the Capitol.

All members were present except:

Representative Dick Edlund - Excused Representative Joan Wagnon - Excused
Representative Jim Cates - Excused

Committee staff present:

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

Conferees appearing before the committee:

Representative Don Rezac
Jim Fair, Fields of Fair Winery, Paxico, Kansas
Lee Beadles, President of the Kansas Grape Growers and Wine Makers
Ron Hein, Coalition For Instant Bingo, Kansas
Thomas Frenn, Kansas Charities Cooperative
Phil Wilkes, Staff Attorney, Bingo Enforcement Unit, Department of Revenue, Kansas
Charles Yunker, Department Adjutant, American Legion, Kansas
Lynn Hall, State Judge Advocate, Veterans of Foreign Wars, Kansas

Chair Sebelius opened the meeting.

HB 2719

Chairman Sebelius introduced Representative Don Rezac, the key sponsor of the bill and the first conferee to testify in support of it, Attachment #1.

Proponent Jim Fair, Fields of Fair Winery, was the second conferee to testify in support of HB 2719, Attachment #2.

Lee Beadles, President, Kansas Grape Growers and Wine Makers Association, was the final proponent and conferee to testify in support of HB 2719.

Chair Sebelius announced Reverend Richard Taylor asked to be noted as an opponent of the bill, but was not present and did not submit written testimony.

Questions from Committee members are as follows:

- Will this legislation enable them to manufacture wine at the extra outlets?
- Will this allow you to taste & sell the wine at someplace like Picadilly's Farmers' Market in Wichita?
- What was the reason for not doing this from the start?

HB 3114

Ron Hein, Coalition for Instant Bingo, testified in support of HB 3114, Attachment #3.

Thomas Frenn, Kansas Charities Cooperative, testified in favor of HB 3114, Attachment #4.

Chuck Yunker, American Legion, appeared before the Committee as a proponent, Attachment #5.

Lynn Hall, Veterans of Foreign Wars, testified as a proponent of the bill, Attachment #6.

Committee questions were directed to and answered by all the proponents. The questions were as follows:

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

room 526-S, Statehouse, at 1:30 ~~a.m.~~/p.m. on Monday, March 16, 1992.

- How does Instant Bingo differ from the Lottery?
- Why is the Instant Bingo a "social" game like regular bingo?
- How will the integrity of the game be protected?
- How much of the net gross from Instant Bingo will the state receive?

A Committee member questioned how the sale price of the Instant Bingo tickets would be divided. Mr. Frenn replied that 60-80% would go to the players, 5% to state and local taxes, approximately \$40-50 per box of tickets (costs), and the remainder would be profit.

The Committee also questioned whether certain groups in the Kansas Charities Cooperative still opposed an increase in the number of playing days. Mr. Frenn replied that some of the groups still did; however this bill was their compromise and all wanted the Instant Bingo. Mr. Hein declined a friendly amendment to expand the number of days.

Mr. Frenn responded to a Committee question about the Constitutionality of HB 3114. He felt that the Kansas Supreme Court would rule favorably if there was a challenge because a California law similar to the proposed bill was upheld and there are no other similar laws that have been challenged.

There was Committee concern as to whether the local posts of the American Legion and the Veterans of Foreign Wars were in fact supportive of the bill, or if the state legions were the ones voicing support.

The only opponent to HB 3114 was Rev. Richard Taylor who did not testify or submit written testimony.

The final person to speak on was Phil Wilkes of the Department of Revenue. Mr. Wilkes stated that the Department had no official position on the bill but was concerned. He stated that first, the constitutionality of the bill is questionable; second, Instant Bingo could detrimentally effect the Lottery; and third, the enforcement of such legislation would be difficult because the tickets would be legal at some times and places and illegal at other times and places. He also commented that the tax stamp would be per box; however, once the Instant Bingo games were removed from the box there would be no way of knowing whether the tax had been paid.

In addition, Mr. Wilkes made two proposals in the event that HB 3114 passes. First, the tax should be \$50 per box of Instant Bingo games, and secondly, the Department of Revenue should be given the power to regulate, supervise, and register all Instant Bingo distributors, and page 7, line 37 of the bill should be amended to this effect.

A Committee member asked Mr. Wilkes why the Department of Revenue had no official position on the bill, especially when it felt that the enactment of HB 3114 could pose a financial threat to the Kansas Lottery.

Chairman Sebelius requested that Mr. Wilkes submit a written copy of his testimony to the Committee, Attachment #7.

Chairman Sebelius adjourned the meeting.

GUEST LIST

DATE Monday, March 16, 1992

(PLEASE PRINT)

NAME	ADDRESS	WHO YOU REPRESENT
<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>
Chuck Yunkers	1314 TOPEKA AVE TOPEKA 66602	Ks Am. Legion
Roy Hein	Topoka	Coalition for Instant Bingo Kansas Charities Cooperative
Glean Moon	Topoka	FAGLES
Rich Ferguson	Overland Park	KRLSA
Jim Conant	Topoka	ABC
Denieth L. Sutton	Topoka	Kansas Lottery
Nick Rosen	Topoka	I.G.T.
JOTTIE FAIR	MANHATTAN	Fields of FAIR
Jim FAIR	"	"
Stephen Jennings	Salina	Ks. Grapegrowers & Winemakers Assn
LEE BEADLES	WICHITA	" " "
Jim DORSEY	TOPEKA	Famous Branch Distributors
Tom Furr	Topoka	Kans. Charities Cooperative
Jim Karsick	Topoka	ABC
Richard Long	Emporia	American Legion
Lee Staffus	Emporia	" "
Jim RATHKE	EMPORIA	" "
<i>[Signature]</i>	TOPEKA	Ks. Veterans of Foreign Wars
Lyman Hall	Russell	Ks " " "
John Miller	K.C. K	Epilaps / Prague
James Swenson	Junction City	Ks American Legion
Tom Hewelley	-	-
Verle Hillman	Topoka	American Legion 400
Bob Couch	TOPEKA	AMERICAN LEGION Post 400
George Hummer	Topoka	American Legion Post 400



TOPEKA

COMMITTEE ASSIGNMENTS

CHAIRMAN: PENSIONS, INVESTMENTS AND BENEFITS
CHAIRMAN: KANSAS PUBLIC EMPLOYEE
RETIREMENT STUDY COMMISSION
VICE CHAIRMAN: AGRICULTURE
MEMBER: ENERGY AND NATURAL RESOURCES
TRANSPORTATION

DON M. REZAC
REPRESENTATIVE, SIXTY-FIRST DISTRICT
PARTS OF POTTAWATOMIE,
WABAUNSEE, MARSHALL & LYON COUNTIES
(913) 535-2961

HOUSE OF
REPRESENTATIVES
TESTIMONY ON HB 2719
FEDERAL AND STATE AFFAIRS COMMITTEE
March 16, 1992

Thank you, Madame Chairman and members of the Committee.
My name is Don Rezac and I am here today in support of
HB 2719.

HB 2719 deals with farm wineries. It allows farm
wineries to have three outlets. Currently wine can only
be sold and tasted where it is made. This bill allows for
two additional outlets for the tasting and selling of the
farm winery wine. I view this bill as a promotional bill
for Kansas farm winery wine.

The main intent of this bill is that people can taste
this wine in at least two more locations in the state and
then when you return home you will ask for this wine in
your local liquor store.

Jim Fair of Fields of Fair is here to testify, and
he will explain more about the business and the needs for
this legislation. I think in Kansas we just as well be
drinking Kansas wine as wine imported from other states.

I'll be happy to answer any questions.

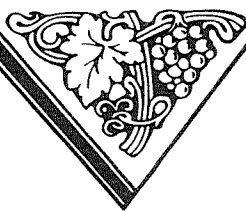
DON REZAC
State Representative
District #61

*House Federal & State Affairs
March 16, 1992
Attachment #1*

FIELDS OF FAIR

Box 19 Route 1
Paxico, KS 66526
Exit 333 I-70

913-636-5460
913-636-5560
Fax 913-537-2491



WINERY

To Whom It May Concern:

In House Bill 2719, we are asking you to give a new/old agricultural industry the right to market their product in a more modern way by allowing us to be able to sell our wines at locations other than at our winery.

Kansas used 1,864,873 gallons of light wine in 1991. We sold less than one-half of one percent of that amount. We employed ten people and numerous extra help.

An acre of land produces approximately five tons of grapes with an value of about \$500.00 per ton. With ten acres the value of the fifty tons grapes would be \$25,000.00. If wine is made from the fifty tons of grapes, it would produce approximately 175 gallons per ton or 43,750 .750 milliliter bottles as there are five .750 milliliter bottles per gallon. We would apply a .90 loss factor, so we would end up with approximate 39,375 bottles, which would sell for \$5.00 per bottle, or \$196,875.00 worth of the product. This wine is worthless, however, if we cannot get it sold.

This proposed law will help keep the money in Kansas rather than Italy, France or even California.

Sincerely,

FIELDS OF FAIR


BY: JAMES W. FAIR

House Federal & State Affairs

March 16, 1992

Attachment #2

HEIN, EBERT AND ROSEN, CHTD.
ATTORNEYS AT LAW
5845 SW 29th Street, Topeka, Kansas 66614
Telefax: (913) 273-9243
(913) 273-1441

Ronald R. Hein
William F. Ebert
Eric S. Rosen

HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
TESTIMONY RE: HB 3114 INSTANT BINGO
Presented by Ronald R. Hein
on behalf of the Coalition for Instant Bingo
March 16, 1992

Madame Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Coalition for Instant Bingo. The Coalition is comprised of the American Legion, the Eagles, the Elks, the Knights of Columbus, the Moose, the Veterans of Foreign Wars, the Sunflower Club, Kansas Charities Cooperative, and numerous individual bingo licensees not a member of the any of the above organization.

HB 3114 amends the bingo laws to provide for instant bingo. Instant bingo is a bingo game that involves a card purchased by a participant which accords such participant an opportunity to win a prize pursuant to a pre-determined system for designating the winning cards.

Instant bingo is a popular game which is supported by the vast majority, if not all, of the bingo licensees in the state.

The Kansas constitution provides an exception from the lottery prohibition for the playing of bingo by bona fide religious, charitable, educational, fraternal, or veterans organizations. The constitution provides authority to regulate "games of "bingo", as defined by law".

When the Kansas Legislature first defined bingo, the game was defined by describing how the card looks, that being a card with five rows, five columns, and a free in the middle. However, that description does not encompass all the games of bingo which exist, or that existed at that time.

In Europe, games of bingo are played on cards that are eight columns and four rows. The European game utilizes no free in the middle. Numerous states include instant bingo in the definition of bingo.

Legally and constitutionally, the legislature has the authority to define bingo. The Kansas Constitution is quite clear that the games of bingo which are permitted shall be defined "by law". The Kansas Legislature has the authority to define by law the games of bingo.

House Federal & State Affairs
March 16, 1992
Attachment # 3

In 1987 the Attorney General ruled that "pull tabs" were not permitted to be added legislatively to "the bingo act". In that opinion, a copy of which is attached to my testimony, the Attorney General cites only two cases from the Kansas Supreme Court Reports. The first case was ruled upon in 1970, and the second in 1972. Both cases preceded the passage of the bingo constitutional amendment.

Neither case cited by the Attorney General is on point with the factual issues raised with legislation such as provided in HB 3114.

In fact, when State v. Nelson, 210 Kansas 439 (1972) was ruled upon, there were no exceptions to the outright lottery prohibition set out in Kansas Constitution Art. 15, Sec. 3. Therefore, there was a completely different method of constitutional construction applicable at that time.

Kansas Attorney General Opinion 87-101, discusses the fact that there is a complete change in statutory and constitutional construction whenever an exception is drawn to a prohibitory type statute. Once the Kansas Constitution lottery prohibition was amended to allow for exceptions such as bingo, parimutuel wagering, and a state owned and operated lottery, the standard of review of statutes enacted by the legislature was changed.

This is because, under state constitutional law, when an outright prohibition has exceptions, it ceases to be criminal/prohibitory in nature, and commences being civil/regulatory in nature. In short, the statutory construction flip flops from a liberal construction of a criminal/prohibitory constitutional provision to a strict construction of a civil/regulatory constitutional provision.

Without getting into some intricate legal arguments, the bottom line is quite clear.

HB 3114 is constitutional, and the only case on point that we have discovered in our exhaustive research is a 1983 California case, People vs. 8,000 Punchboard Card Devices. (copy attached)

That case upholds the Constitutionality of legislation similar to HB 3114, utilizing a Constitutional provision very close to Kansas'. The Kansas Constitution is even more clear, that the legislature has the authority to define "bingo".

No reference to the California case ruled upon four years earlier was made in the 1987 Attorney General's opinion. To the best of my knowledge, no Supreme Court case on point supports the Attorney General's position on this issue.

It should be noted that the Attorney General of California had ruled, similar to Attorney General Stephan, that the California statute was unconstitutional, prior to the Supreme Court ruling that the legislation was constitutional.

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The Coalition was originally going to seek a declaratory judgement on this issue, and informed the Attorney General's office. The Attorney General immediately raised the issue of "ripeness", which for the layman, means that they would argue that the Coalition could not get a ruling by the court.

Since the legislature has not passed a bill, the court has no statute to interpret. I was advised by an Assistant Attorney General that they could defeat a declaratory judgement since the legislature had not enacted a statute.

If the Coalition sought legislation, the AG would argue it is unconstitutional. It was a Catch 22. The AG could testify that the legislation is unconstitutional, but oppose a court ruling because the legislature had not enacted the legislation. The Coalition decided to seek legislation, knowing full well that the AG might try to stop us by arguing that it is unconstitutional.

We would urge you to vote up or down on this bill on the merits of the issue, and to leave the determination of constitutionality to the courts. We strongly believe that this bill is constitutional. I have prepared a lengthy brief which makes the legal arguments necessary, and it is available for any member of the Committee who desires to review it.

If HB 3114 is successful, and the Attorney General challenges the matter in court, the Coalition will argue the constitutionality at that point. We believe that the constitutionality issue should be left to the courts. The legislature should not be threatened simply because the Attorney General has rendered an opinion which, while not citing any cases on point, attempts to conclude that the legislature cannot define bingo in this manner.

Although I have not exhausted a search of all the states, Alaska, California, Colorado, Delaware, Illinois, Minnesota, Missouri, Nebraska, Pennsylvania, and South Dakota allow instant bingo type games to be played by their licensees. Other states may also permit instant bingo to be played, but I have not had an opportunity to research all the statutes in the other states as of this date. Research is difficult because different states use different terminology and definitions for the same type games.

Thank you very much for permitting me to testify today, and I would be happy to yield to any questions.

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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

December 1, 1987

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 87-171

The Honorable Jeanne Hoferer
State Senator, Eighteenth District
1916 S.W. Oakley
Topeka, KS 66604-3255

Re: Crimes and Punishments--Code; Crimes Against the
Public Morals--Pull-tab Games at Bingo Games

Synopsis: Pull tab games are a form of lottery which may be used in the state owned and operated lottery. Such games may be legalized for others to operate only by passing a constitutional amendment which would be subject to a public referendum. Cited herein: K.S.A. 1986 Supp. 21-4302; Kan. Const., Art. 15, §3a; Kan. Const., Art. 15, §§3b, 3c (1986).

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Dear Senator Hoferer:

You ask whether K.S.A. 79-4701 et seq., "the bingo act," can effectively be amended legislatively to include pull tab games, thus circumventing the requirements of constitutional amendment and public referendum.

There are three essential elements of a lottery: (1) consideration, (2) prize and (3) chance. K.S.A. 1986 Supp. 21-4302. See also, State, ex rel. v. Highwood Services, Inc., 205 Kan. 821, 825 (1970). In Attorney General Opinion No. 87-16 this office indicated that:

"the game of pull tabs would fall within the scope of the Kansas Constitutional


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Lottery Amendment [t]he amendment is an unrestricted provision that would include any game that meets the three essential elements of (1) consideration, (2) prize and (3) chance."

In State v. Nelson, 210 Kan. 439 (1972), the Kansas Supreme Court concluded that since the Kansas Constitution prohibited lotteries, the legislature could not legalize bingo (which was, by definition, a lottery) by simply changing the definition of consideration to exclude bingo games. Id. at 445. It was necessary to amend the constitution to permit bingo. Kan. Const., Art. 15, §3a. Following the State v. Nelson rationale, two additional amendments to the constitution were passed to allow for parimutuel wagering at dog and horse races and for a state owned and operated lottery. Kan. Const., Art. 15, §§3b, 3c (1986).

In that pull tab games are but another form of lottery, the State could utilize pull tab games within the state-owned and operated lottery. However, such games may not be legalized for others to operate simply by passing legislation. It would require both a constitutional amendment and a public referendum to legalize such games under those circumstances. To allow otherwise would circumvent both the intent of the constitution and the people of Kansas.

Very truly yours,


Robert T. Stephan
Attorney General of Kansas


Brenda L. Braden
Deputy Attorney General

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lege to comment on matters of public importance and to communicate its views to its affiliates precludes imposing liability for the consequences of the speech.

Thus considering the various factors in *J'Aire Corp. v. Gregory*, supra, 24 Cal.3d at page 804, 157 Cal.Rptr. 407, 598 P.2d 60, defendant owed no duty of care to plaintiff because defendant's conduct was not intended to harm plaintiff, defendant's conduct was not morally blameworthy, no specific public policies would be served by imposing liability and several countervailing public policies preclude recovery.

The judgment is affirmed.

FEINERMAN, P.J., and STEPHENS, J., concur.



142 Cal.App.3d 618

1618 . 1The PEOPLE, Plaintiff and Appellant, v.

8,000 PUNCHBOARD CARD DEVICES, Defendant,

BOYS' CLUB OF HAYWARD, Real Party in Interest and Respondent.

A016429.

Court of Appeal, First District, Division 4.

May 3, 1983.

The People appealed from a judgment of the Superior Court, Alameda County, Raymond Marsh, J., in favor of boys' club upon complaint for declaratory relief by which district attorney sought authorization to destroy punchboard card devices seized from boys' club. The Court of Appeal, Caldecott, P.J., held that statutory amendment, adding to statutory definition of charitable "bingo" game cards having numbers or symbols which are concealed and preprinted

in a manner providing for distribution of prizes, was not unreasonable or clearly inconsistent with Constitution, and therefore punchboard bingo was constitutionally authorized.

Affirmed.

1. Constitutional Law ⇌ 20

When word in California Constitution has doubtful or obscure meaning or is capable of several interpretations, a statutory construction of that word is to be afforded substantial deference.

2. Constitutional Law ⇌ 50

Any constitutional limitation on legislative power is to be narrowly construed.

3. Constitutional Law ⇌ 20

Legislature's efforts to interpret a word in State Constitution are to be upheld unless they are disclosed to be unreasonable or clearly inconsistent with express language or clear import of Constitution.

4. Constitutional Law ⇌ 14, 18

Indicators of intended meaning of constitutional amendment include ballot arguments favoring amendment, common meaning of words used, unless it appears they were used in a technical sense, and any statutory definitions existing at time of amendment.

5. Gaming ⇌ 6

Statutory amendment, adding to statutory definition of charitable "bingo" game cards having numbers or symbols which are concealed and preprinted in a manner providing for distribution of prizes, was not unreasonable or clearly inconsistent with the Constitution, and therefore punchboard bingo was constitutionally authorized. West's Ann.Cal.Const.Art. 4, § 19(c); West's Ann.Cal.Penal Code § 326.5(o).

George Deukmejian, Atty. Gen., Robert H. Philibosian, Chief Asst. Atty. Gen., Crim. Div., William D. Stein, Asst. Atty. Gen., Herbert F. Wilkinson, Dane R. Gillette, Deputy Attys. Gen., San Francisco, for plaintiff and appellant.

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James D. Hollister, Hayward, for real party in interest and respondent.

1619 CALDECOTT, Presiding Justice.

The People appeal from a judgment in favor of the Boys' Club of Hayward upon a complaint for declaratory relief filed by the Alameda County District Attorney. The District Attorney had sought authorization to destroy 8,000 punchboard card devices seized from the Boys' Club of Hayward on July 14, 1981. The cards contained winning numbers or symbols concealed by opaque coverings and were being sold for 50 cents each as bingo games for charity.

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In 1976 the electorate approved the addition of article IV, section 19, subdivision (c), to the California Constitution. The new subdivision provides that "the Legislature by statute may authorize cities and counties to provide for bingo games, but only for charitable purposes."

Enabling legislation had already been enacted in 1975 to authorize bingo games if the constitutional amendment was approved. The legislation added section 326.5 to the Penal Code and defined "bingo" as "a game of chance in which prizes are awarded on the basis of designated numbers or symbols on a card which conform to numbers or symbols selected at random." (Former Pen. Code, § 326.5, subd. (n).) Not included in this definition of bingo were punchboards, which since 1953 have been declared by Penal Code section 330c to be illegal slot machines. A punchboard is defined in Penal Code section 330a as "any card, board or other device which may be played or operated by pulling, pressing, punching out or otherwise removing any slip, tab, paper or other substance therefrom to disclose any concealed number, name or symbol."

In 1979 the Legislature amended the statutory definition of charitable "bingo" games to add, "Notwithstanding Section 330c, as used in this section, the game of bingo shall include cards having numbers or symbols which are concealed and preprinted

1. In 1981 former Penal Code section 326.5, subdivision (n), was numbered as Penal Code sec-

191 Cal.Rptr.—5

in a manner providing for distribution of prizes." (Former Pen.Code, § 326.5, subd. (n).)¹ The parties agree that the punchboard card devices in the present case are within this statutory definition. Appellant contends, however, that the amended statutory definition is unconstitutional, because the electorate intended the term "bingo" in the constitutional amendment to be defined as it was in the original enabling legislation. (See 63 Ops.Cal.Atty.Gen. 524, 531 (1980) [stating opinion that punchboard bingo is not constitutionally authorized].)

[1-4] [When a word in the California Constitution has a doubtful or obscure meaning or is capable of several interpretations, a statutory construction of that word is to be afforded substantial deference. (*California Housing Finance Agency v. Patitucci* (1978) 22 Cal.3d 171, 175, 148 Cal.Rptr. 875, 583 P.2d 729.) This rule of deference arises from the fact that the state Constitution, unlike the federal Constitution, is a limitation on the power of the Legislature rather than a grant of power to it. Any constitutional limitation on legislative power is to be narrowly construed, and a strong presumption of constitutionality supports the Legislature's acts. (*Id.*) The Legislature's efforts to interpret a word in the state Constitution are to be upheld "unless they are disclosed to be unreasonable or clearly inconsistent with the express language or clear import of the Constitution." (*Id.*, at p. 177, 148 Cal.Rptr. 875, 583 P.2d 729.) Indicators of the intended meaning of a constitutional amendment include the ballot arguments favoring the amendment (*id.*), the common meaning of the words used, unless it appears they were used in a technical sense (*Flood v. Riggs* (1978) 80 Cal.App.3d 138, 152, 145 Cal.Rptr. 573; *Regents of University of California v. State Bd. of Equalization* (1977) 73 Cal.App.3d 660, 665, 140 Cal.Rptr. 857), and any statutory definitions existing at the time of the amendment (*County of Fresno v. Malmstrom* (1979) 94 Cal.App.3d 974, 979, 156 Cal.Rptr. 777).

tion 326.5, subdivision (o).

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Washington Law Library

None of these indicators demonstrates any "clear import" of the constitutional amendment at issue here. Nothing in the ballot arguments favoring the measure (see 63 Ops.Cal.Atty.Gen., *supra*, at pp. 532-536) sheds light on the intended meaning of the word bingo. Appellant argues that the original enabling legislation was brought to the attention of the electorate in the voters' pamphlet (see 63 Ops.Cal.Atty.Gen., *supra*, at pp. 532, 535), but the pamphlet did not describe the statutory definition therein. The Attorney General has himself previously asserted that the electorate was "not generally aware of the broad definition the Legislature had given the term 'bingo' in the statute which had not become operative law" when the constitutional amendment was passed. (63 Ops.Cal.Atty.Gen., *supra*, at p. 529.)

[Appellant argues that the "traditionally understood" definition of bingo is that of a game that involves "drawing numbers at random and covering spaces on a card." Various sources indicate, however, that the term "bingo" may include any number of different but related games. One source identifies bingo as "[a] game of the same general class as 'Tango' or 'Tango games.'" Tango games are said to include a number of similar games (including "Beano," "Bingo," "Bonanza," "Horse Racer," "Keno," "Monaco," "Plaza B," "Plaza 7," "Ritz," "Skill Ball," and "Wheel O") in which the winner covers a required number of figures in a row on a card, with the figures to be covered determined in a variety of ways. (38 C.J.S., Gaming, § 1, pp. 38, 43.) Another source states that the term "bingo" has previously been used to describe raffles run by motion picture houses (in which moviegoers were given a numbered slip of paper, and a duplicate was placed in a paper bag and subject to a drawing or a wheel was spun to determine the winning number), as well as a 19th century game played with dominoes. (Scarne, *Scarne's New Complete Guide to Gambling* (1974) p. 209.) In 1951 the California Attorney General determined a number of games to be "variations of the

game commonly called Bingo," including "Canast-O," "Black-Out," "Vogue," "Jade," "Cameo," and "Shamrock" (in which numbers on a card are filled as determined by players' tosses of balls into numbered cups), and "Skill Quiz Lecture," "Skill Quiz Game," and "Klu Quiz Game" (in which players are required to fill a row of numbers on a card and then answer a quiz question correctly). (17 Ops.Cal.Atty.Gen. 63, 64 (1951); see also *People v. Shira* (1976) 62 Cal.App.3d 442, 464, 133 Cal.Rptr. 94 [declaring game of "Ringo" to be an illegal lottery].) The Attorney General suggested that these games were created in an attempt to evade the prohibition against bingo "by slightly varying the activity with the claim that something different and legal has resulted." (17 Ops.Cal.Atty.Gen., *supra*, at p. 68.) No common meaning of the term bingo emerges.]

[5] Neither the express language of article IV, section 19, subdivision (c), nor any clear import to be divined from the constitutional amendment, demonstrate that the statutory definition of bingo as amended in 1979 is unreasonable or clearly inconsistent with the Constitution. We therefore cannot accept the Attorney General's view that punchboard bingo is not constitutionally authorized (63 Ops.Cal.Atty.Gen., *supra*, at p. 531), and uphold the amended statutory definition. (Cf. *California Housing Finance Agency v. Patitucci*, *supra*, 22 Cal.3d at pp. 177-179, 148 Cal.Rptr. 875, 583 P.2d 729 [upholding legislation defining words in constitutional amendment on low rent housing projects].)

The judgment is affirmed.

RATTIGAN and CHRISTIAN, JJ., concur.



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Kansas Charities Cooperative

"Uniting To Serve Kansas"

1250 MEDFORD AVE
TOPEKA, KS 66604

Thank you Madam Chairman and members of the Committee:

My name is Thomas Frenn, and I'm speaking on behalf of Kansas Charities Cooperative, an unincorporated association of bingo licensees who do not own their own halls.

Bingo sales have been flat for the past five to six years, while expenses keep rising. Instant bingo permits bingo licensees to improve and offer the bingo playing public another bingo-type game.

The Coalition for Instant Bingo represents hundreds of bingo licensees, including the ones listed on the attachment to my testimony. These licensees have already endorsed HB 3114, or are associated with state-wide organizations that have endorsed HB 3114.

Instant bingo is needed for several reasons:

1. Operating expenses are rising, but sales of call bingo have stayed flat for the past five years.
2. Competition from surrounding states that allow instant bingo hurts Kansas bingo licensees, especially in border areas such as Wyandotte and Johnson county.
3. Instant bingo will help alleviate the impact of property taxes on the fraternal, benevolent, and veterans organizations.
4. Small and large organizations will benefit equally, with no group obtaining a competitive advantage as might occur with other changes in the bingo laws.
5. The continuing battle between the parlors and the lodges over the number of days to play bingo will be avoided, as all licensees are able to agree with the compromise on instant bingo.
6. Instant bingo will increase state revenues. There are 500 active bingo licensees in Kansas. Based on instant bingo sales in surrounding states, Kansas will generate close to \$1 million in additional bingo taxes.

The efforts of the Coalition for Instant Bingo are endorsed by the Moose, the Elks, the Eagles, the Knights of Columbus, the American Legion, the Veterans of Foreign Wars, the Kansas Charities Cooperative (representing the parlors), and the Sunflower Club Association (representing the lodges.)

Sincerely,

Thomas Frenn
Kansas Charities Cooperative

*House Federal & State Affairs
March 16, 1992
Attachment # 4*

GROUP

CITY

FOE AERIE 2934 AUXILIARY	ABILENE
AMERICAN LEGION POST 357	AGRA
AMERICAN LEGION POST 233	ALDEN
AMERICAN LEGION POST 266	ALMENA
AMERICAN LEGION ED CARLSON POST 71	ALTA VISTA
AMERICAN LEGION POST 406	ANDOVER
AMERICAN LEGION POST 18	ARKANSAS CITY
VFW POST 1254	ARKANSAS CITY
MOOSE LODGE 1586	ARKANSAS CITY
FOE Aerie 2014	ARMA
AMERICAN LEGION POST 6	ATCHISON
BPOE LODGE 647	ATCHISON
VFW POST 1175	ATCHISON
KNIGHTS OF COLUMBUS	ATWOOD
LIONS CLUB AUBURN	AUBURN
BPOE LODGE 1462	AUGUSTA
KNIGHTS OF COLUMBUS, ST JAMES	AUGUSTA
KNIGHTS OF COLUMBUS 2114	AURORA
AMERICAN LEGION POST 214	AXTELL
AMERICAN LEGION POST 211	BELLE PLAINE
AMERICAN LEGION POST 133	BELLEVILLE
FOE AERIE 3281 AUXILIARY	BELLEVILLE
FRATERNAL ORDER OF EAGLES 3281	BELLEVILLE
FOE AERIE 3507	BELOIT
KNIGHTS OF COLUMBUS 921	BELOIT
VFW POST 6242	BELOIT
KNIGHTS OF COLUMBUS BELOIT	BELOIT
AMERICAN LEGION POST 352	BIRD CITY
AMERICAN LEGION POST 352 AUXILIARY	BIRD CITY
FOE AERIE 3191	BONNER SPRINGS
FOE AERIE 3577	BURLINGTON
CAMBRIDGE COMMUNITY CLUB	CAMBRIDGE
AMERICAN LEGION POST 192	CANTON
SENIOR CENTER INC	CAWKER CITY
AMERICAN LEGION POST 216	CENTRALIA
AMERICAN LEGION POST 170	CHANUTE
KNIGHTS OF COLUMBUS 1046	CHANUTE
VFW POST 1654	CHANUTE
AMERICAN LEGION POST 240	CHAPMAN
AMERICAN LEGION POST 101	CLAY CENTER
AMERICAN LEGION POST 101 AUXILIARY	CLAY CENTER
BPOE LODGE 2253	CLAY CENTER
FRATERNAL ORDER OF EAGLES 3650	CLAY CENTER
FRATERNAL ORDER OF EAGLES AUX 3650	CLAY CENTER
AMERICAN LEGION POST 227 AUXILIARY	CLAY CENTER
VFW POST 7515	CLIFTON
FOE AERIE 2459	CLYDE
Knights of Columbus 991	COFFEEVILLE
FRATERNAL ORDER OF EAGLES AUX 2459	COFFEEVILLE
AMERICAN LEGION POST 363	COFFEYVILLE
VFW POST 6882	COLBY
AMERICAN LEGION POST 76	COLBY
	CONCORDIA

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AMERICAN LEGION POST 76 AUXILIARY
BPOE LODGE 586
MOOSE LODGE 1278 WOMEN OF THE MOOSE
MOOSE LODGE 1428
VFW POST 588
AMERICAN LEGION POST 37
VFW POST 1363
AMERICAN LEGION POST 121
AMERICAN LEGION POST 345
AMERICAN LEGION POST 114
KNIGHTS OF COLUMBUS 2365
VFW Post 7253
LIONS CLUB DERBY
VFW POST 6438
AMERICAN LEGION POST 190
KNIGHTS OF COLUMBUS 2955
VFW POST 1714
MOOSE LODGE 1187
CHAMBER OF COMMERCE DOUGLASS
AMERICAN LEGION POST 202
FOE AERIE 3966
VFW POST 1366
BPOE LODGE 1407
MOOSE LODGE 1698
VFW POST 1174
AMERICAN LEGION CAPT. EDGAR DALE 81
VFW POST 3162
AMERICAN LEGION POST 320 AUXILIARY
KNIGHTS OF COLUMBUS 1187
KNIGHTS OF COLUMBUS 2133
VFW POST 9139
AMERICAN LEGION POST 174
VFW POST 6485
AMERICAN LEGION POST 5
FOE AERIE 2587
VFW POST 1980
PARENTS WITHOUT PARTNERS 1284
AMERICAN LEGION POST 102
AMERICAN LEGION POST 50
VFW POST 2712
AMERICAN LEGION POST 322
FOE AERIE 3592
AMERICAN LEGION POST 8
AMERICAN LEGION POST 43
BPOE LODGE 677
AMERICAN LEGION POST 9
BPOE LODGE 1404
FOE AERIE 3124
KNIGHTS OF COLUMBUS 2795
MOOSE LODGE 893
VFW POST 2279
VFW POST 2279 AUXILIARY
BPOE LODGE 1528
KNIGHTS OF COLUMBUS 1993

CONCORDIA
CONCORDIA
CONCORDIA
CONCORDIA
CONCORDIA
CORNING
COUNCIL GROVE
COUNCIL GROVE
CUBA
CUNNINGHAM
DAMAR
DERBY
DERBY
DIGHTON
DIGHTON
DODGE CITY
DODGE CITY
DODGE CITY
DOUGLASS
DOUGLASS
DOWNS
DOWNS
EL DORADO
EL DORADO
EL DORADO
EL DORADO
ELKHART
ELLINWOOD
ELLINWOOD
ELLIS
ELLIS
ELLSWORTH
ELLSWORTH
EMPORIA
EMPORIA
EMPORIA
EMPORIA
ERIE
EUREKA
EUREKA
FAIRVIEW
FREDONIA
FREDONIA
FRONTENAC
GALENA
GARDEN CITY
GARDEN CITY
GARDEN CITY
GARDEN CITY
GARDEN CITY
GARDEN CITY
GARDEN CITY
GOODLAND
GOODLAND

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MOOSE LODGE 2225
VFW POST 1133
AMERICAN LEGION POST 301
AMERICAN LEGION POST 180
BPOE LODGE 1127
VFW POST 3111
ARGONNE REBELS INC
GEMINI-MOTHERS OF TWINS
GREAT BEND COUNCIL OF CAMP FIRE, INC.
GREAT BEND KIDS WRESTLING CLUB
KNIGHTS OF COLUMBUS GREAT BEND
AMERICAN LEGION POST 235
AMERICAN LEGION POST 103
VFW POST 2864 AUXILIARY
HADDAM COMMUNITY CLUB, INC
AMERICAN LEGION POST 306
AMERICAN LEGION POST 104
BPOE LODGE 2149
FOE AERIE 3061
FOE AERIE 3061 AUXILIARY
KNIGHTS OF COLUMBUS 1325
KNIGHTS OF COLUMBUS 4166
VFW POST 9076
AMERICAN LEGION POST 173
ST JOSEPH CATHOLIC SCHOOL BINGO
ST NICHOLAS OF MARY
AMERICAN LEGION POST 12
KNIGHTS OF COLUMBUS 1845
BPOE LODGE 1741
BPOE LODGE 1995
KNIGHTS OF COLUMBUS 5631
AMERICAN LEGION POST 366
AMERICAN LEGION POST 286
VFW POST 7428
AMERICAN LEGION POST 44
VFW POST 1367
AMERICAN LEGION POST 365
ST LEO'S CHURCH BINGO
CHAMBER OF COMMERCE, HOXIE AREA
VFW POST 5391
AMERICAN LEGION POST 68
BPOE LODGE 453
FOE AERIE 2550
FOE AERIE 2550 LADIES AUXILLARY
MOOSE LODGE 982
VFW POST 1361 AUX
VFW Post 1186
AMERICAN LEGION POST 15
ALLEN CO. VOITURE 335
AMERICAN LEGION POST 98
HODGEMAN CO PRIDE
AMERICAN LEGION POST 45
BPOE LODGE 1037
FOE AERIE 830

GOODLAND
GOODLAND
GRAINFIELD
GREAT BEND
GREAT BEND
GREAT BEND
GREAT BEND
GREAT BEND
GREAT BEND
GREAT BEND
GREAT BEND
GREENLEAF
GREENSBURG
GRINNELL
HADDAM
HANOVER
HARPER
HAYS
HAYS
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HAYS
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HAYS
HAYS
HAYS
HAYS
HERINGTON
HERNDON
HIAWATHA
HILL CITY
HILL CITY
HILLSBORO
HOISINGTON
HOISINGTON
HOLTON
HOLTON
HOPE
HORTON
HOXIE
HUGOTON
HUTCHINSON
HUTCHINSON
HUTCHINSON
HUTCHINSON
HUTCHINSON
HUTCHINSON
INDEPENDENCE
IOLA
IOLA
ISABEL
JETMORE
JUNCTION CITY
JUNCTION CITY
JUNCTION CITY

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BPOE LODGE 1185
FOE AERIE 2468
FOE AERIE 2468 AUXILIARY
KNIGHTS OF COLUMBUS 1832
VFW POST 1786 AUXILIARY
VFW LEE PIERSON POST 1786
VFW POST 6958
AMERICAN LEGION POST 163
FOE AERIE 3277
MOOSE LODGE 1403
ST GREGORY'S ALTAR SOCIETY
AMERICAN LEGION POST 24
BPOE LODGE 502
VFW POST 2715
ST JOSEPHS CHURCH / MCPHERSON
VFW POST 10815 MERIDEN MEMORIAL
VFW POST 3201
VFW POST 6373
AMERICAN LEGION POST 385
American Legion Post 247
American Legion Post 136
KNIGHTS OF COLUMBUS 7486
AMERICAN LEGION POST 16
VFW POST 5962
AMERICAN LEGION POST 152
VFW POST 971
AMERICAN LEGION POST 2
AMERICAN LEGION POST 63
FOE AERIE 3288
FOE AERIE 3288 AUXILIARY
KNIGHTS OF COLUMBUS 1510
FRATERNAL ORDER OF EAGLES 4041
AMERICAN LEGION POST 70
HOLY ROSARY CHURCH
AMERICAN LEGION POST 207
AMERICAN LEGION POST 153
KNIGHTS OF COLUMBUS 1913
VFW POST 2993
VFW POST 2993 AUX
ST JOSEPH'S CHURCH/SCHOOL
VFW POST 7772
AMERICAN LEGION POST 198
FOE AERIE 3890
AMERICAN LEGION POST 204
VFW POST 2258
AMERICAN LEGION POST 49
AMERICAN LEGION POST 36
FRATERNAL ORDER OF EAGLES 4015
FOE AERIE 2700
VFW POST 5901
AMERICAN LEGION POST 239 AUXILIARY
AMERICAN LEGION POST 239
VFW POST 846
ABDALLAH SHRINE TEMPLE

MANHATTAN
MANHATTAN
MANHATTAN
MANHATTAN
MANHATTAN
MANHATTAN
MARION
MARYSVILLE
MARYSVILLE
MARYSVILLE
MARYSVILLE
MCPHERSON
MCPHERSON
MCPHERSON
MCPHERSON
MERIDEN
MINNEAPOLIS
MOLINE
MORAN
MOUNT HOPE
MULVANE
MULVANE
NEODESHA
NEODESHA
NESS CITY
NEWTON
NEWTON
NORTON
NORTON
NORTON
NORTON
OAKLEY
OBERLIN
OFFERLE
OGDEN
OLATHE
OLATHE
OLATHE
OLATHE
OLPE
ONAGA
OSAGE CITY
OSAGE CITY
OSAWATOMIE
OSAWATOMIE
OSBORNE
OSKALOOSA
OSKALOOSA
OTTAWA
OTTAWA
OVERBROOK
OVERBROOK
OVERLAND PARK
OVERLAND PARK

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Moose Lodge 138	WICHITA
VFW Post 112	WICHITA
AIR CAPITAL SOCCER ASSOCIATION	WICHITA
ALL SAINTS ALTAR SOCIETY	WICHITA
ARTHRITIS WATER EXERCIST CLUB	WICHITA
BLESSED SACRAMENT MENS CLUB	WICHITA
CHRIST THE KING PARISH	WICHITA
COLEMAN EMPLOYEE'S CLUB	WICHITA
ELIPEPSY-KANSAS, INC.	WICHITA
MID KANSAS BANDITS	WICHITA
N E DRUG/ALCOHOL REFERRA STATION, INC	WICHITA
OMEGA PSI PHI FRATERNITY	WICHITA
OPTIMIST CLUB NORTH	WICHITA
OPTIMIST CLUB OF WICHITA	WICHITA
OPTIMIST CLUB SOUTHEAST	WICHITA
TEAMSTERS RETIREE CLUB	WICHITA
VFW POST 3371 ARK VALLEY	WICHITA
WICHITA FELLOWSHIP CLUB	WICHITA
WICHITA SWIM CLUB	WICHITA
AMERICAN LEGION POST 10	WINDFIELD
BPOE LODGE 732	WINDFIELD
KNIGHTS OF COLUMBUS 4713	WINDFIELD

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SER. NO.

BINGO

BINGO ON RED	\$100
4 TIMES	
BINGO ON GRAY	\$25
4 TIMES	
BINGO ON BLUE	\$10
4 TIMES	
BINGO ON GOLD	\$5
12 TIMES	
BINGO ON GREEN	\$1
200 TIMES	

50¢ 780 IN ANY ROTATION © 1985 NORBRO CO. 50¢

BINGO 786

Takes in 2160 @ 25¢\$540.00

Pays Out

4 B-I-N-G-O on Red @	\$50.00	\$200.00
4 B-I-N-G-O on Gray @	10.00	40.00
4 B-I-N-G-O on Blue @	5.00	20.00
12 B-I-N-G-O on Gold @	1.00	12.00
200 B-I-N-G-O on Green @	.50	100.00
224 Total Winner Payout		\$372.00

GROSS PROFIT \$168

31% Profit - 69% Payout - 4 Pack

CAT. NO. J0786 per Deal \$42.95
4 Deals per Case \$155.95

BINGO 795

Takes in 1728 @ 25¢\$432.00

Pays Out

4 B-I-N-G-O on Red @	\$25.00	\$100.00
4 B-I-N-G-O on Gray @	10.00	40.00
4 B-I-N-G-O on Blue @	5.00	20.00
12 B-I-N-G-O on Gold @	2.00	24.00
200 B-I-N-G-O on Green @	.50	100.00
224 Total Winner Payout		\$272.00

GROSS PROFIT \$148

34% Profit - 66% Payout - 5 Pack

CAT. NO. J0795 per Deal \$34.95
5 Deals per Case \$155.95

BINGO 786E

2160 COUNT

Takes in 1760 @ 25¢\$440.00

Pays Out

4 B-I-N-G-O on Red @	\$50.00	\$200.00
4 B-I-N-G-O on Gray @	10.00	40.00
4 B-I-N-G-O on Blue @	5.00	20.00
12 B-I-N-G-O on Gold @	1.00	12.00
200 B-I-N-G-O on Green @	Two free Cards
224 Total Winner Payout		\$272.00

GROSS PROFIT \$168

38% Profit - 62% Payout - 4 Pack

CAT. NO. J0786E per Deal \$42.95
4 Deals per Case \$155.95

BINGO 780

Takes in 2160 @ 50¢\$1080.00

Pays Out

4 B-I-N-G-O on Red @	\$100.00	\$400.00
4 B-I-N-G-O on Gray @	25.00	100.00
4 B-I-N-G-O on Blue @	10.00	40.00
12 B-I-N-G-O on Gold @	5.00	60.00
200 B-I-N-G-O on Green @	1.00	200.00
224 Total Winner Payout		\$800.00

GROSS PROFIT \$280

26% Profit - 74% Payout - 4 Pack

CAT. NO. J0780 per Deal \$42.95
4 Deals per Case \$155.95

25¢ 782 WINNERS

LUCKY CHARM

CRISS CROSS

SER. NO.

BAR BAR	\$50
4 WINNERS	
BAR BAR	\$25
4 WINNERS	
BAR BAR	\$10
4 WINNERS	
BAR BAR	\$3
10 WINNERS	
BAR BAR	50¢
300 WINNERS	
LUCKY CHARM BONUS	
BAR BAR	\$3
20 WINNERS	
BAR BAR	\$1
40 WINNERS	
ANY THREE OF SAME CHARMS IN A ROW	
	25¢
400 WINNERS	

FOLLOW THE RED ARROWS
ANY CARD MAY CONTAIN MULTI-WINNERS
FORM LC25 ©1985 NORBRO CO.

LUCKY CHARM LC 25

Takes in 3600 @ 25¢\$900.00

Pays Out

4 Winners @	\$50.00	\$200.00
4 Winners @	25.00	100.00
4 Winners @	10.00	40.00
10 Winners @	3.00	30.00
300 Winners @	.50	150.00
Bonus Prizes Pays Out		
20 Winners @	\$3.00	\$60.00
40 Winners @	1.00	40.00
400 Winners @	.25	100.00
782 Total Winner Payout		\$720.00

GROSS PROFIT \$180

20% Profit - 80% Payout - 2 Pack

CAT. NO. J0LC25 per Deal 71.95
2 Deals per Case \$129.95

LUCKY CHARM LC 50

Takes in 3600 @ 50¢\$1800.00

Pays Out

4 Winners @	\$100.00	\$400.00
4 Winners @	50.00	200.00
4 Winners @	25.00	100.00
10 Winners @	5.00	50.00
300 Winners @	1.00	300.00
Bonus Prizes Pays Out		
20 Winners @	\$5.00	\$100.00
40 Winners @	2.00	80.00
400 Winners @	.50	200.00
782 Total Winner Payout		\$1430.00

GROSS PROFIT \$370

21% Profit - 79% Payout - 2 Pack

CAT. NO. J0LC50 per Deal 71.95
2 Deals per Case \$129.95

ORDER 5 CASES
OR MORE AT A TIME...
DEDUCT 10%

YOU MAY
ASSORT YOUR ORDER

HTFSA
3/16/92
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AMERICAN LEGION
STATEMENT ON
HOUSE BILL 3114

An Act concerning Bingo; relating to instant bingo; levying certain taxes; amending certain taxes; amending K.S.A. 79-4701, 79-4706, 79-4710 and 79-4711 and repealing the existing sections.

Thank you for the opportunity to testify in favor of House Bill 3114. The American Legion, Department of Kansas respectfully requests and urges your support of House Bill 3114 which will redefine Bingo games under state law to include "Instant Bingo." Instant Bingo as defined in House Bill 3114 has been endorsed by the Department Executive Committee of The Kansas American Legion which is the governing body of The American Legion between State Conventions. The Executive Committee's membership includes representatives from all areas of the State of Kansas. Their endorsement of Instant Bingo was announced during our annual Mid-Winter Conference on February 2, 1992 and in our State newspaper. To date we have heard from many of our members voicing their support of Instant Bingo and only one person has voiced his non-support.

Instant Bingo will provide additional revenue for the state of Kansas and for those non profit organizations who conduct Bingo games in both owned and leased premises. Revenue for the State and local taxing bodies will be generated through sales taxes and a fifteen dollar (\$15) per box State stamp tax for each carton of Instant Bingo cards purchased by a Bingo license holder.

For years the Bingo Parlors in Kansas and those Bingo license holders who own their own buildings have waged a battle during each session of the legislature. That battle has been over a disagreement regarding the number of days Bingo may be played per week at a given location and the maximum total prize value which can be awarded to Bingo players.

*House Journal, State Affairs
March 16, 1992
Attachment #5*

The American Legion's stand has always been that Department of Revenue statistics indicate a relatively level number of people play Bingo and a relatively level amount of money is spent on Bingo each year. Therefore to increase the number of days a licensee can conduct Bingo, or an increase in prize money would only spread the Bingo pie thinner. The only way to satisfy both sides would be to put a new revenue generating item on the "menu."

Instant Bingo as defined by House Bill 3114 is that new item and it has been endorsed by both The American Legion and Kansas Charities Cooperative. In fact Kansas Charities Cooperative, which is a large organization of Bingo Parlors, has agreed not to introduce any future legislation which is not beneficial to both owned and leased license holders. We are all in agreement that Instant Bingo is the best compromise possible and will be of great benefit to all Bingo license holders, the State of Kansas and those local governments with a sales tax. HB 3114 will also help offset increased property taxes currently being paid by fraternal organizations.

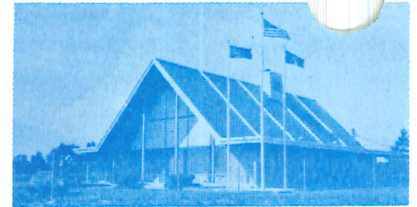
Again, The American Legion urges your support of House Bill 3114 and I appreciate the opportunity to testify in favor of it today.

Charles M. Yunker
Department Adjutant

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3-16-92
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VETERANS OF FOREIGN WARS OF THE UNITED STATES



March 16, 1992

DEPARTMENT OF KANSAS

TESTIMONY IN SUPPORT OF INSTANT BINGO (HB3114)

THE REASONS FOR THE KANSAS VFW SUPPORT OF THE PASSAGE OF THE "INSTANT BINGO BILL" ARE BASICALLY TWO-FOLD:

1. REVENUE FOR OUR POSTS: The majority of our 204 VFW Posts in Kansas are small Posts in small communities and the current economic crunch has had a devastating affect on their mere existence. Bingo, in many cases, has been the basis for the continuance of the operation of many of them. The addition of "INSTANT BINGO" has the potential for additional revenue for these Posts within the perimeters of their existing Bingo License. Current Bingo laws require veterans organizations to use Bingo proceeds for "the lawful purpose of the organization". In the case of Veterans Organizations, that means Community Service. The revenue raised by Bingo goes back into the local Community for such projects as Youth Safety Programs, Youth Baseball, Scouting, Anti-Drug Programs, Americanism Programs, Scholarships, and other VFW sponsored Community Activities.

2. ENTERTAINMENT FOR SENIOR CITIZENS: Many of our senior citizens rely on Bingo as their "night-out" and is their main source of entertainment outside their homes, especially in our small western Kansas communities. If you ever attended Bingo in one of these small VFW Posts, you will see that it is quite a weekly social event, and if one of the regulars do not attend, their absence is missed. These loyal attendees would welcome the addition of "INSTANT BINGO" on their evenings program of entertainment.

I realize that this Committee must consider much broader aspects for the approval of "INSTANT BINGO" than the entertainment value or the survival of our smaller VFWs', and; I am confident that you will hear testimony on the fiscal and legal impact of the approval of HB3114. I just wanted to invite your attention to the personal benefits of the approval of "INSTANT BINGO" for our rank-and-file citizens. Your favorable consideration of HB3114 will be greatly appreciated by the over 75,000 members of the Kansas Veterans of Foreign Wars and it's Ladies Auxiliary and their friends that play Bingo.

Respectfully submitted,

Lynn Hall

LYNN HALL
State Judge Advocate
Department Headquarters

JAY RITCHIE
State Commander
1005 W. 4th St.
Coffeyville, Kansas 67337

CHARLIE STEPHENS
State Sr. Vice Commander
2316 S. Ohio
Salina, Kansas 67401



CHARLEY SHOEMAKER
State Jr. Vice Commander
P.O. Box 1794
Leavenworth, Kansas 66048

DARRELL BENCKEN
State Adjutant Quartermaster
P.O. Box 1008
Topeka, Kansas 66601

House Federal & State Affairs
March 16, 1992
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STATE OF KANSAS

Robert A. Engler, Director
512 S.W. 6th, 2nd Fl.
Topeka, Kansas 66603-3150



(913) 296-3946
FAX (913) 296-0922

Department of Revenue
Division of Alcoholic Beverage Control

To: Rep. Kathleen Sebelius, Chairperson, and Members of the House
Committee on Federal and State Affairs

From: D. Philip Wilkes, Staff Attorney, Bingo Enforcement Unit

Date: March 18, 1992

Re: House Bill 3114 (Instant Bingo Tickets)

At your request, I am providing the following summary of my concerns about HB 3114 as partially expressed at the committee hearing conducted on March 16.

(1) Constitutionality issue

- * Pull-tabs are a different form of gambling than bingo and therefore to attempt to legalize them under the bingo exception to the Kansas Constitution is unconstitutional. See Attorney General's Opinion 87-171.
- * One supporting California case doesn't necessarily indicate what the Kansas Supreme Court will do. For example, the California Supreme Court found that there was no evidence presented as to legislative intent or wording in the constitutional amendment presented to the people on the ballot. This may not be the case in Kansas. In addition, there were other forms of bingo being played in California, therefore the California legislature and public were not necessarily thinking just of the traditional form of bingo when they approved their Constitutional amendment. This is not the case in Kansas. The Kansas statute in effect since legalization in 1975 gives a much more concise description of bingo than the California statute does, and indicates legislative intent to limit bingo to its traditional form.
- * Proponents of "instant bingo" have attempted to show that it is similar enough to traditional bingo that it can be included as a game of bingo under the Constitutional exception. I do not agree. Bingo is a form of gambling described broadly as a "lottery," which is generally defined as any contest where the winner is selected by chance. Pull-tabs tickets are also a form of lottery. However, the major characteristic of bingo which make it different from all other types of lottery games is that the player wins by being the first person to cover the particular squares on a card of

House Federal & State Affairs
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squares, which squares constitute the pre-announced winning pattern or patterns. There are frequently several patterns that can win, such as a horizontal line, vertical line, and diagonal lines. Variety is introduced by using different patterns for successive games. Other patterns frequently include large picture frame, small picture frame, diamond, and blackout. The key to winning is being the first player to obtain one of the winning pattern of squares announced for that particular game.

- * The attempt to characterize pull-tab lottery tickets as a bingo game reminds me of that old saying, "A rose by any other name"

(2) "Instant bingo" (pull-tabs) is not a social game

- * Proponents of "instant bingo" have stated that "instant bingo" is similar to traditional bingo in that it is also a "social game." This is a gross distortion of reality.
- * By its very nature, traditional bingo requires a group of people to play the game together. The suspense builds as the numbers are called and various members of the group get closer and closer to having the required pattern of squares to win. This is why bingo has been a popular children's game. It is still played occasionally at public grade schools as a form of recreation during inclement weather and at other times as a "treat." It is almost always included as one of the games at annual grade school carnivals around the state. Some bingo licensees still conduct bingo games as a fun, family-oriented activity. Children and adults alike enjoy the visual and audio effects and the challenge and suspense of the game (balls whirling around inside the bingo blower, numbers being called out, covering or marking the correct squares on the cards, players jumping up and yelling "bingo").
- * "Instant bingo" (pull-tab tickets) is not a social game. It does not take a group of people to be together to play. Each box of tickets actually constitute a "game." The tickets are sold just like any other commodity at a store. Although HB 3114 provides that the "instant bingo" tickets would be sold only during bingo games, the tickets from a single box (game) may be sold over the course of several bingo sessions spanning many days or even weeks, depending upon the size of the box and the number of people attending the bingo sessions. Participation in the "instant bingo" game does not create any direct social interaction among the players. There is no challenge involved in opening the ticket windows to see if you've won. There is no building of suspense over a period of many minutes as one number after another is selected and called and the players in the group get closer and closer to the winning pattern. The period of suspense with pull-tabs lasts only a few seconds, from the moment the person buys the ticket until he or she pulls open the five flaps to see if they have won.

(3) "Instant bingo" will compete with Kansas Lottery tickets

- * In calendar year 1991, the Kansas Lottery sold \$565,000 in instant (pull-tab) tickets and \$203,000 in regular (scratch-off) tickets. These sales generated approximately \$230,000 in revenue for the State Gaming

Revenue Fund. This revenue would be lost. See attached letter to the Division of the Budget from the Executive Director of the Kansas Lottery.

- * I believe that there would be some significant additional revenue lost from the sale of Kansas Lottery regular (scratch-off), because at least some bingo players will buy instant bingo cards (pull-tabs) at bingo games instead of buying the Kansas Lottery regular (scratch-off) tickets at their local grocery or convenience store. It is impossible to know how much, however.

(4) Enforcement Problems

- * Currently, possession of any pull-tab is illegal in Kansas except those marketed by the Kansas Lottery. We have had some problems with licensees selling illegal pull-tabs during bingo games. A few have been prosecuted, but it is a very unpopular thing for local law enforcement people and county attorneys to do. We recently got a conviction against the Eagles in Fredonia.
- * Once pull-tabs can legally be sold by the members of over 500 organizations throughout the state, there will undoubtedly be some organizations that will fail to establish sufficient safeguards against members selling them at times and places other than during regular bingo games. We have only five field investigators to monitor all bingo licensees in the state. That means that we are able to visit some bingo games only once or twice a year. We know from past experience that we can not rely on the local law enforcement officers to assist with this type of enforcement. For example, they currently look the other way when non-profit organizations conduct illegal raffles.

(5) Tax Rate too low

- * HB3114 now provides for a tax of \$15 per box, which can hold up to 3800 cards which sell for a maximum of \$1.00 each. The current enforcement tax on the sale of traditional bingo cards is 3% of the sale price, which can be as high as \$1.00 per card. One-third of this tax revenue is returned to the counties and cities. Depending upon the sale price per card and the number of cards per box, the tax rate would be substantially less than the current 3% as follows:

\$1.00/card and 3800 cards/box = 0.4% tax rate
\$1.00/card and 2000 cards/box = 0.75% tax rate

\$0.50/card and 3800 cards/box = 0.8% tax rate
\$0.50/card and 2000 cards/box = 1.5% tax rate

\$0.25/card and 3800 cards/box = 1.6% tax rate
\$0.25/card and 2000 cards/box = 0.3% tax rate

- * I recommend that if "instant bingo" is approved, then the tax should be \$50 per box. Again, depending upon the sale price per card and the

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number of cards per box, the tax rate would average closer to the current 3% as follows:

\$1.00/card and 3800 cards/box = 1.3% tax rate

\$1.00/card and 2000 cards/box = 2.5% tax rate

\$0.50/card and 3800 cards/box = 2.6% tax rate

\$0.50/card and 2000 cards/box = 5.0% tax rate

\$0.25/card and 3800 cards/box = 5.3% tax rate

\$0.25/card and 2000 cards/box = 10.0% tax rate

(6) Collection of the Bingo Enforcement Tax

- * The tax stamps would be affixed to the boxes of instant bingo tickets (pull-tabs). Once the tickets are out of their box, how can we tell if the tax has been paid on them? Some safeguards are available, such as printing serial numbers on each ticket. However, there is no way to assure that the printer is not selling untaxed boxes with identical serial numbers? We don't currently have the personnel to monitor what the distributors are doing, especially those located out-of-state. The Kansas Lottery is able to avoid these problems by physically controlling the distribution of its tickets. We could do the same with regard to the instant bingo tickets, but this would require additional state personnel and storage facilities which would duplicate what the Kansas Lottery is already doing.

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