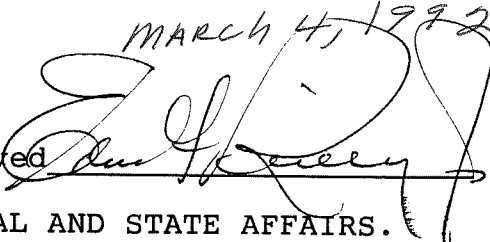


MARCH 4, 1992
Approved 

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Sen. Edward F. Reilly, Jr. at 11:00 a.m. on February 11, 1992 in Room 254-E of the Capitol.

All members were present except:
Sen. McClure was excused

Committee staff present:

Mary Galligan, Legislative Research Department
Mary Torrence, Office of Revisor of Statutes
Jeanne Eudaley, Committee Secretary

Conferees appearing before the committee:

Charles Simmons, Department of Corrections
Gene Yockers, Real Estate Commission
Dana Nelson, Racing Commission
Jim Irish, Kansas Appraisal Institute

Others attending: See attached list

Senator Reilly called the meeting to order and introduced three pages from his district. He then called attention to a proposal (Attachment 1) concerning the merger of Armed Forces Cooperative Insuring Association into Armed Forces Insurance Exchange. Senator Morris moved the committee introduce the proposal as a bill, and the motion was seconded by Senator Walker. The motion passed.

Senator Reilly introduced Charles Simmons, Department of Corrections, who explained a proposal (Attachment 2) concerning state correctional institutions, affecting name consolidations and name changes. Senator Vidricksen moved the committee introduce the proposal, and the motion was seconded by Senator Morris. The motion passed.

Charles Simmons briefly explained another proposal (Attachment 3) concerning the tort claims act. Senator Bond moved the proposal be introduced, and the motion was seconded by Senator Morris. The motion passed.

Senator Reilly introduced Dana Nelson, Executive Director of the Racing Commission, who recommended changes to the Parimutuel Racing Act (Attachment 4) made as a result of that agency's annual review. Senator Morris moved the changes discussed be introduced, and the motion was seconded by Senator Vidricksen. The motion passed.

Senator Reilly called the committee's attention to SB 513, which was introduced by Senator Moran. He commented he did not feel comfortable in calling for committee action now, and no one was present from the Lottery office nor from the Department of Revenue to discuss the bill. Senator Morris stated there are tax ramifications and maybe this bill should be referred to the Tax Committee. The chairman requested that representatives from the Lottery office and the Department of Revenue be present for

further discussions.

Senator Reilly asked Gene Yockers, Director of the Real Estate Commission, to discuss key issues of SB 514 and asked Mr. Yockers if there has been opposition to this bill. Mr. Yockers answered there has been no opposition and continued by discussing amendments to the bill (Attachment 5), including contingency contracts and responsibilities given back to the seller. Senator Vidricksen moved the committee adopt amendments to SB 514. Senator Bond stated that he intends to introduce an equalitarian amendment to the bill, and Senator Vidricksen withdrew his motion.

Senator Reilly directed the committee's attention to SB 515 and read from testimony given by Jean Duncan, Administrative Assistant, Real Estate Commission, at the February 4 committee meeting. Fees were discussed as well as the discrimination amendment, which is required under Title XI. Senator Morris questioned not having an expiration date on the wall certificate and the cost of the certificates Mr. Yockers responded that the appraiser's name and number will appear on the wall certificate. Senator Webb moved the fee "not exceed \$50.00", and the motion was seconded by Senator Bond. The motion passed.

Senator Daniels moved the expiration date be on the wall certificate and pocket card. Senator Reilly recognized Jim Irish, who suggested alternative language (Attachment 6) and suggested use of a sticker.

In further discussion, Senator Daniels moved that on Page 3, Line 18, the words, "which shall bear no expiration date" be changed to "which shall bear the expiration date". Motion was seconded by Senator Walker. The motion passed.

Senator Reilly stated in order to comply with Title XI, the act should be effective after publication in the State Register, and Mr. Yockers indicated that is true. Senator Vidricksen made a motion to publish it in the State Register, and the motion was seconded by Senator Morris. The motion passed.

The reciprocity clause was discussed. Senator Daniels moved that on Page 3, Line 8, "not exceeding \$10" be changed to "not exceeding \$25.00". Motion was seconded by Senator Morris. At that time, several questions were raised by Senator Ward regarding being in compliance with Title XI. Senator Ward moved that on Page 1, Lines 20-21, the language be reinserted. The motion was seconded by Senator Walker. Further questions were made regarding the compliance issue.

Senator Reilly announced the committee will meet tomorrow and continue discussing SB 515.

The meeting adjourned at 12:05.

GUEST LIST

COMMITTEE: Senate Federal & State Affairs

DATE: Feb. 11, 1992

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Gene Yockers	Top.	KREC
Charles Simmons	Topeka	KDOC
Neal Whitaker	Carbondale	KBWA
Denny Burgess	Topeka	Sunflower
Jim Burr	Topeka	Sunflower
DANA NELSON	TOPEKA	KRC
Rebecca Pien	Topeka	KRLDA
Jim Irish	Topeka	Greater Kansas Chapter Approval Institute
Whitney Damon	Topeka	Pete McMillan Associates
Oscar Truendo	TOP	
John Peters	Tyrone	

ATTAC.

INSURANCE

CHAPTER _____*

Senate Bill No. _____

An Act relating to insurance; concerning the merger of Armed Forces Cooperative Insuring Association into Armed Forces Insurance Exchange.

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

Section 1. Definitions as used in this act:

- (a) "Armed Forces Cooperative Insuring Association" means the association organized as an unincorporated cooperative association operating within the federal enclave of Ft. Leavenworth, Kansas;
- (b) "Armed Forces Insurance Exchange" means the unincorporated reciprocal exchange operating in Leavenworth, Kansas, under the laws of the State of Kansas;
- (c) "Armed Forces Insurance Corporation", means the Attorney-In-Fact for Armed Forces Insurance Exchange, incorporated under the laws of the State of Kansas;
- (d) "Insurance entity" means, for purposes of this act only, the Armed Forces Cooperative Insuring Association and/or Armed Forces Insurance Exchange;
- (e) "Merger" means the union of two (2) or more insurance entities into a single insurance entity which is one of the insurance entities so uniting.

Section 2. (a) Armed Forces Cooperative Insuring Association may, with the approval of the commissioner of insurance, merge with Armed Forces Insurance Exchange as hereinafter provided, the surviving insurance entity to be Armed Forces Insurance Exchange.

(b) By virtue of such merger, all in force policies of Armed Forces Cooperative Insuring Association shall be assumed by Armed Forces Insurance Exchange and may be rewritten in the name of the surviving insurance entity upon expiration.

(c) Business assumed in any state or territory of the United States where Armed Forces Insurance Exchange is not legally authorized to do business under the laws of such

ATTAC. 1

state or territory shall not violate, for the purposes of this act, the provisions of K.S.A. 40-214 provided such business is not renewed upon its expiration or the entity obtains authorization from such state or territory to transact or continue such business.

Section 3. (a) The Board of Directors of Armed Forces Cooperative Insuring Association and the Board of Directors of Armed Forces Insurance Corporation shall enter into a written agreement on behalf of their respective insurance entities for the merger of said insurance entities, prescribing the terms and conditions thereof, which shall include the method of carrying the same into effect, the name of the surviving insurance entity and such other provisions as are deemed advisable.

(b) Upon approval of such agreement by the Boards of Directors of both Armed Forces Cooperative Insuring Association and Armed Forces Insurance Corporation, at meetings called for the purpose of considering such agreement, each Board of Directors shall by resolution direct that the agreement be submitted to the commissioner of insurance of this state for approval.

Section 4. (a) No merger under this act shall occur unless, in advance of a proposed merger, the following information has been filed with the commissioner of insurance: (1) the agreement of merger; (2) a verified schedule by the actuaries of the insurance entities interested in merging showing that the legal reserves for the subscribers of each insurance entity as of December 31 of the preceding year, is of the amount that would be required of a Kansas domestic reciprocal or interinsurance exchange; (3) a pro forma financial statement showing that, upon approval of the merger by the commissioner of insurance, the surviving insurance entity will continue to satisfy the financial requirements to transact all of the line or lines of insurance in all jurisdictions where it is presently authorized to transact business; and (4) any other information which may be requested by the commissioner of insurance.

(b) After notice and a hearing in accordance with the Kansas Administrative Procedure Act, the commissioner of insurance shall approve the merger unless the commissioner of insurance determines that any one of the following (1) - (4) exist or would result from the merger, in which event the commissioner of insurance shall disapprove the merger: (1) the insurance entities proposing to merge have not complied with the provisions of this act; (2) the merger of the two insurance entities is not in the best interests of the subscribers of Armed Forces Insurance Exchange; (3) if, after the merger, Armed Forces Insurance Exchange would be in

violation of any of the laws of this state; or (4) the effect of the merger would be to substantially lessen competition in insurance in this state.

(c) The parties proposing to merge under this act shall bear all costs associated with the hearing required by this section.

Section 5. (a) Nothing contained in this act shall be construed to enlarge the powers of any insurance entity, nor to authorize any insurance entity to transact any kind of insurance business which it is not presently authorized to transact in this state or any other state or territory of the United States.

(b) This act shall be part of and supplemental to the insurance code of the State of Kansas.

(c) No merger under this act shall be subject to the provisions of K.S.A. 40-3304.

Section 6. K.S.A. 17-6704 shall be amended to include the following new subsection (g): A merger of Armed Forces Cooperative Insuring Association into Armed Forces Insurance Exchange, with Armed Forces Insurance Exchange being the survivor in such merger, shall be a valid merger under the General Corporation Code of the State of Kansas upon a filing of the merger agreement with the Secretary of State.

Section 7. This act shall take effect and be in force from and after its publication in the Kansas Register.

PROPOSED BILL NO. _____

By

AN ACT concerning certain state correctional institutions; affecting name consolidations and name changes; adjusting imprest funds; amending K.S.A. 1991 Supp. 21-4602, 75-3058 and 75-5202 and repealing the existing sections.

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

New Section 1. (a) On the effective date of this act, the El Dorado correctional work facility shall be transferred to, consolidated with and become a part of the El Dorado correctional facility. All properties, moneys, appropriations, rights and authorities now vested in the El Dorado correctional work facility shall be transferred to and be vested in the El Dorado correctional facility. Whenever the El Dorado correctional work facility, or words of like effect, is referred to or designated by any statute, contract or other document, such reference or designation shall be deemed to apply to the El Dorado correctional facility.

(b) On the effective date of this act, the Toronto correctional work facility shall be transferred to, consolidated with and become a part of the El Dorado correctional facility. All properties, moneys, appropriations, rights and authorities now vested in the Toronto correctional work facility shall be transferred to and be vested in the El Dorado correctional facility. Whenever the Toronto correctional work facility, or words of like effect, are referred to or designated by any statute, contract or other document, such reference or designation shall be deemed to apply to the El Dorado correctional facility.

(c) On the effective date of this act, the Osawatomie correctional facility shall be transferred to, consolidated with

and become a part of the Lansing correctional facility. All properties, moneys, appropriations, rights and authorities now vested in the Osawatomie correctional facility shall be transferred to and be vested in the Lansing correctional facility. Whenever the Osawatomie correctional facility, or words of like effect, is referred to or designated by any statute, contract or other document, such reference or designation shall be deemed to apply to the Lansing correctional facility.

New Sec. 2. On the effective date of this act, officers and employees who, immediately prior to such date, were engaged in the performance of powers, duties or functions of the institutions being transferred by section 1 and who, in the opinion of the secretary of corrections are necessary to perform the powers, duties and functions of the institution to which they are consolidated with, shall be transferred to, and shall become officers and employees thereof. Any such officer or employee shall retain all retirement benefits and all rights of civil service which had accrued to or vested in such officer or employee prior to the effective date of this act. The service of each such officer and employee so transferred shall be deemed to have been continuous.

Sec. 3. K.S.A. 1991 Supp. 21-4602 is hereby amended to read as follows: 21-4602. As used in K.S.A. 21-4601 through 21-4621, and amendments thereto:

(1) "Court" means any court having jurisdiction and power to sentence offenders for violations of the laws of this state.

(2) "Suspension of sentence" means a procedure under which a defendant, found guilty of a crime, upon verdict or plea, is released by the court without imposition of sentence. The release may be with or without supervision in the discretion of the court. In felony cases, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of suspension of sentence pursuant

to subsection (2)(d) of K.S.A. 21-4603 and amendments thereto.

(3) "Probation" means a procedure under which a defendant, found guilty of a crime upon verdict or plea, is released by the court after imposition of sentence, without imprisonment except as provided in felony cases, subject to conditions imposed by the court and subject to the supervision of the probation service of the court. In felony cases, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of probation pursuant to subsection (2)(c) of K.S.A. 21-4603 and amendments thereto.

(4) "Parole" means the release of a prisoner to the community by the Kansas parole board prior to the expiration of such prisoner's term, subject to conditions imposed by the board and to the secretary of correction's supervision. "Parole" also means the release by a court of competent jurisdiction of a person confined in the county jail or other local place of detention after conviction and prior to expiration of such person's term, subject to conditions imposed by the court and its supervision. Where a court or other authority has filed a warrant against the prisoner, the Kansas parole board or paroling court may release the prisoner on parole to answer the warrant of such court or authority.

(5) "Institution" means the Lansing correctional facility, Hutchinson correctional facility, Topeka correctional facility, Norton correctional facility, Ellsworth correctional facility, Winfield correctional facility, ~~Oswatomie correctional facility,~~ Larned correctional mental health facility, ~~El Dorado correctional work facility,~~ ~~Toronto correctional work facility,~~ Wichita work release facility, El Dorado correctional facility, and any other correctional institution under control of the secretary of corrections.

(6) "Community correctional services program" means a program which operates under the community corrections act and to which a defendant is assigned for supervision, confinement,

detention, care or treatment, subject to conditions imposed by the court. A defendant assigned to a community correctional services program shall be subject to the continuing jurisdiction of the court and in no event shall be considered to be in the custody of or under the supervision of the secretary of corrections.

Sec. 4. K.S.A. 1991 Supp. 75-5202 is hereby amended to read as follows: 75-5202. As used in this act, unless the context clearly requires otherwise:

(a) "Secretary" means the secretary of corrections.

(b) "Parole board" means the Kansas parole board established by K.S.A. 22-3707 and amendments thereto.

(c) "Inmate" means any person incarcerated in any correctional institution of the state of Kansas.

(d) "Correctional institution" means the Lansing correctional facility, Hutchinson correctional facility, Topeka correctional facility, Norton correctional facility, Ellsworth correctional facility, Winfield correctional facility, Osawatimie correctional facility, Larned correctional mental health facility, El Dorado correctional work facility, Perote correctional work facility, Wichita work release facility, El Dorado correctional facility, and any other correctional institution hereafter established by the state for the confinement of offenders.

(e) "Warden" means the person in charge of the operation and supervision of a correctional institution.

(f) "Corrections officer" means a full-time, salaried officer or employee under the jurisdiction of the secretary, whose duties include the receipt, custody, control, maintenance, discipline, security and apprehension of persons convicted of criminal offense in this state and sentenced to a term of imprisonment under the custody of the secretary.

(g) "Parole officer" means a full-time salaried officer or employee under the jurisdiction of the secretary whose duties

include:

(1) Investigation, supervision, arrest and control of persons on parole and the enforcement of the conditions of parole; and

(2) services which relate to probationers and parolees and are required by the uniform act for out-of-state parolee supervision.

Sec. 5. K.S.A. 1991 Supp. 75-3058 is hereby amended to read as follows: 75-3058. The following imprest funds are hereby established for institutions, other units or functions of the department of corrections:

Lansing correctional facility.....	\$40,000
Hutchinson correctional facility.....	37,000
Toronto-correctional-work-facility.....	5,000
El-Dorado-correctional-work-facility.....	4,000
Wichita work release facility.....	2,000
Winfield correctional facility.....	10,000
Topeka correctional facility.....	23,000
Ellsworth correctional facility.....	12,000
Norton correctional facility.....	16,000
Osawatomie-correctional-facility.....	4,000
El Dorado correctional facility.....	15,000
Larned correctional mental health facility ...	5,000

New Sec. 6. On the effective date of this act or as soon thereafter as the transactions can be accomplished, the director of accounts and reports, pursuant to the amendments contained in section 5, shall transfer all amounts remaining in the imprest funds which are being discontinued to the imprest funds which are being increased under section 5, if needed to carry out the intent of section 5, and if not so needed, then to the state general fund.

Sec. 7. K.S.A. 1991 Supp. 21-4602, 75-3058 and 75-5202 are hereby repealed.

Sec. 8. This act shall take effect and be in force from and

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after its publication in the Kansas register.

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PROPOSED BILL NO. _____

By

AN ACT concerning the Kansas tort claims act; amending K.S.A. 1991 Supp. 75-6102 and repealing the existing section.

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

Section 1. K.S.A. 1991 Supp. 75-6102 is hereby amended to read as follows: 75-6102. As used in K.S.A. 75-6101 through 75-6118, and amendments thereto, unless the context clearly requires otherwise:

(a) "State" means the state of Kansas and any department or branch of state government, or any agency, authority, institution or other instrumentality thereof.

(b) "Municipality" means any county, township, city, school district or other political or taxing subdivision of the state, or any agency, authority, institution or other instrumentality thereof.

(c) "Governmental entity" means state or municipality.

(d) "Employee" means any officer, employee, servant or member of a board, commission, committee, division, department, branch or council of a governmental entity, including elected or appointed officials and persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation and a charitable health care provider. Employee includes any steward or racing judge appointed pursuant to K.S.A. 1990 Supp. 74-8818 and amendments thereto, regardless of whether the services of such steward or racing judge are rendered pursuant to contract as an independent contractor, but does not otherwise include any independent contractor under contract with a governmental entity but does include a person who is an employee of a nonprofit independent contractor, other than a municipality, under contract to provide educational or

vocational training to inmates in the custody of the secretary of corrections and who is engaged in providing such service in an institution under the control of the secretary of corrections provided that such employee does not otherwise have coverage for such acts and omissions within the scope of their employment through a liability insurance contract of such independent contractor. Employee also includes former employees for acts and omissions within the scope of their employment during their former employment with the governmental entity.

(e) "Community service work" means public or community service performed by a person (1) as a result of a contract of diversion entered into by such person as authorized by law, (2) pursuant to the assignment of such person by a court to a community corrections program, (3) as a result of suspension of sentence or as a condition of probation pursuant to court order, (4) in lieu of a fine imposed by court order ~~or~~, (5) as a condition of placement ordered by a court pursuant to K.S.A. 38-1663 and amendments thereto, or (6) as a condition of parole or conditional release as ordered by the Kansas parole board.

(f) "Charitable health care provider" means a person licensed by the state board of healing arts as an exempt licensee or a health care provider as the term "health care provider" is defined under K.S.A. 65-4921, and amendments thereto, who has entered into an agreement with:

(1) The secretary of health and environment under K.S.A. ~~1990~~ 1991 Supp. 75-6120, and amendments thereto, who, pursuant to such agreement, renders professional services to a person who has provided information which would reasonably lead the health care provider to make the good faith assumption that such person meets the definition of medically indigent person as defined by this section and who renders such professional services gratuitously and who is considered an employee of the state of Kansas under K.S.A. ~~1990~~ 1991 Supp. 75-6120, and amendments thereto; or

(2) a local health department that is part of the pilot

programs established under K.S.A. 1991 Supp. 65-226 and amendments thereto who, pursuant to such agreement, renders professional service to medically indigent persons or persons receiving medical assistance from the programs operated by the department of social and rehabilitation services gratuitously or for a fee paid by the local health department.

(g) "Medically indigent person" means a person who lacks resources to pay for medically necessary health care services and who meets the eligibility criteria for qualification as a medically indigent person established by the secretary of health and environment under K.S.A. ~~1990~~ 1991 Supp. 75-6120, and amendments thereto.

Sec. 2. K.S.A. 1991 Supp. 75-6102 is hereby repealed.

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

STATE OF KANSAS

Attach



KANSAS RACING COMMISSION

3400 Van Buren
Topeka, Kansas 66611-2228
(913) 296-5800
FAX (913) 296-0900

TO: Members of the Federal and State Affairs Committee

FROM: Dana Nelson, Executive Director,
Kansas Racing Commission

SUBJECT: Introduction of Kansas Racing Commission Cleanup Bill

DATE: February 3, 1992

Every year, executive branch agencies examine the statute which authorizes them to operate. As a result of that review, certain items in the statute are frequently recommended to the legislature for change in order to facilitate the duties and responsibilities of that agency. Frequently those issues can be characterized as cleanup, while other times they have more substantive repercussions.

This year the Kansas Racing Commission staff brought to the commission several issues which it believed needed legislative consideration. Attached to this memo you will find a balloon version of the Kansas Parimutuel Racing Act, with recommended amendments and modifications to the act which allow the Kansas Racing Commission and staff to better perform its duties and provide a high quality of regulation to an industry which is one of the most highly regulated industries in the world.

Currently, under the statute, once a racetrack receives a license, it is completely and totally regulated and controlled by the Kansas Racing Commission even during periods during which no racing is being conducted. This portion of the statute contributed to some extent to the revocation of Eureka Downs' license because the commission could not guarantee the level of regulation, and consequently the liability for the state of Kansas and the Kansas Racing Commission during times when no racing was going on. The statute has effectively taken the ownership away from the racing facility and vested the control and operation in the use of the facility to the racing commission. For a seasonal racing track, such as Eureka Downs, Anthony Downs, Rooks County Free Fair, and others it is overly burdensome to continue to regulate that track during its dark time. The language proposed would allow the commission to determine the period of time that it would actually provide regulation. At all times that racing or wagering were conducted at the facility the commission would be performing its

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regulatory duties, but during the dark period of time, the facility would be at the disposal of the licensee. To accomplish this change, the language on page 2 of the balloon, and the first proposed amendment on page 3 of the balloon are necessary.

Continuing on page three you will notice the words "adjudicated or" recommended for insertion into the statute. During the course of licensing individuals, and reviewing their criminal record, we have encountered a significant number of juvenile records which have significant enough violations that it causes us concern as to whether or not those people should be at a racetrack. Had those same incidents been committed by an adult, they probably would not be licensed. However, we have been uncertain as to how to handle juvenile records, so we are seeking guidance from the legislature. We are proposing that the racing commission be allowed to consider juvenile records, in the granting or denying licenses. We have added the adjudicated language on pages 8, 9, 10, and 12 of the balloon, in order to add the reference to juvenile records throughout the statute. On page four of your balloon, there is also an amendment to address the issue of juvenile records.

On page four there are two other amendments, both of some substance. The first set of three subsections deals with the ability of the commission to assess costs for investigations and administrative actions. This language is taken from the Board of Healing Arts, language which was adopted by the Kansas Legislature a year ago. Frequently, as in the case of the Wichita Greyhound investigation, a significant amount of effort and expense is involved in researching and determining alleged violations. In that particular case, the licensee was agreeable to paying for a certain amount of that investigative effort. However, if a licensee were to resist payment of those expenses, the commission is left with the prospect of fining and/or suspending or revoking the license when the nature of violations or alleged violations may not require such severe action.

The other change of substance on page four of the balloon is language which would establish the venue for appeals of Kansas Racing Commission administrative orders to the District Court of Shawnee County. Since the commission records and attorney general's staff are housed in Topeka, it would result in significant savings of staff time and effort, as well as travel if such actions could be heard in Shawnee County. Since most of the commission meetings are conducted in Topeka, and many times the respondents to administrative actions do not have any residency in the state of Kansas, the Shawnee County court would be no more or less convenient or inconvenient for them than any other county in the state. In several recent cases the

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racing commission has taken to court, we have asked that venue be shifted to Shawnee County but without success.

On page five of the balloon we are including any person who has any ownership interest in the facility with regard to owning, training, or jockeying a horse or greyhound. That seems to be an omission in the statute, as currently only officers or directors and the employees were prohibited from owning a horse or greyhound. However, an owner could race animals if he was not an officer or director, while his employees would be restricted. We believe that is an oversight and the intent was to keep those people who owned portions of the track from owning and running animals on that track.

On page six of the balloon we would propose to add language to the section which defines who can place wagers on races. Two years ago the legislature changed this language so that the commission could promulgate rules to determine which positions could be restricted from betting based on their ability to influence the outcome of the race. A second area should also be considered, and that would be those people who work in positions where they could influence the outcome of the wagering on the race. Specifically we are talking about employees of the totalizator company, and mutuel employees. By manipulating the odds board, they could create a sense of false odds, where long shots are really the favorites and vice versa. We think this would be a positive improvement to the statute, and would address a specific set of circumstances which we investigated recently at one of our racetracks.

On page seven of the balloon we are recommending an additional subsection to deal with the registration and establishment of a fee for the registration of stable and kennel names. Frequently partnerships, corporations, or businesses take on a name which does not reveal to the public or the regulatory body who the individual owners are. With this addition to the statute, the Kansas Racing Commission would be in a position to require full disclosure of the ownership of the racing animals, ascertain whether or not those individuals are eligible for licensing, whether they have actually secured their license, and collect a fee for the registration of that entity. This is an area which is important to racing, and preserves the integrity of the parimutuel racing industry. The maximum fee for this license would be \$200, the same language authorized for individual licenses. Currently, no occupational license fee for the state of Kansas exceeds \$40.00.

The next several pages list changes to implement the use of juvenile records, but on page 11 you will see the final substantive change. Once again, because of a recent incident we have found that our laws and administrative rules were not

Memorandum
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sufficient to cover a particular situation. We believe it is imperative that totalizator companies be required to license. Currently, only those business which sell goods within the racetrack facility are required to be licensed. A totalizator company is providing a computer service for the track, and has not fallen into the general definition of concessionaire. By making this change, we will have full regulatory oversight over the people who provide one of the most integral parts of the parimutuel wagering system, the actual tabulation and calculation of the bets. Fortunately, with regard to the incident I alluded to, the company involved was cooperative and provided us all of the information and records which we requested. However, had they resisted, we were uncertain as to what authority we actually had. I would note for your information that this is a big push on the national scene, and the Kansas Racing Commission is hosting a meeting on the very topic on February 14 and 15 in Kansas City. Auditors, and regulators from throughout North America, including Canada and Jamaica will be in attendance. We hope to establish some uniform criteria for the licensing, regulation and standards for totalizator companies.

The final two pages of the balloon include language which allows us to implement the substance of the things I have discussed with you.

I respectfully request that this committee allow this bill to be introduced so that the Kansas Racing Commission can provide a level of regulation and oversight that the legislature intended for the parimutuel racing industry in Kansas. I will be pleased to answer questions, or address any concerns that the committee may have.

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MUSL to fund the difference between this amount and the actual prize liability. In addition, the companies which operate online gaming systems on behalf of the party lotteries will be required to have some level of insurance to cover such liabilities in the event one of them makes a mistake.

If MUSL incurs any liability as the result of the acts of a party contractually obligated to the member lottery, that lottery shall pursue all contractual and legal remedies available to it under the contract. Any money recovered by the lottery will be turned over to MUSL up to the amount expended by MUSL as a result of the error. A lottery's pursuit of its contractual and legal remedies against the party at fault is that lottery's only obligation to MUSL in the event of a MUSL loss.

The MUSL shall establish and then maintain a prize reserve fund solely for the purpose of indemnifying the member lotteries. The board will determine the manner in which the prize reserve fund is to be invested and interest earned on the fund will become part of the fund if the fund balance is below the ceiling amount designated by the board. Interest earned on the fund when the fund balance is not below the ceiling amount will be treated as prize money.

22. That no lottery shall be allowed to join the MUSL without the consent of 2/3 of the party lotteries voting pursuant to both methods of voting. The board will designate the terms which must be met by a lottery seeking admission, including but not limited to, setting the amount which the lottery must contribute to the MUSL prize reserve fund. This paragraph is not applicable to the lotteries listed in this first paragraph of this agreement provided that they sign this agreement by October 1, 1987.

23. That this agreement may be executed in as many counterparts, as there are party lotteries. When so executed each shall be deemed to be an original and such counterparts together shall constitute one and the same agreement.

24. That all notices required to be sent to a party lottery pursuant to this agreement shall be in writing and sent by certified mail, return receipt requested at the addresses appearing hereunder or any other address which may be given from time to time to the board.

History: L. 1988, ch. 288, § 1; Jan. 28.

74-8732. Same; state's representative. The executive director of the Kansas lottery or the executive director's designee shall represent this state on the multistate lottery board of directors.

History: L. 1988, ch. 288, § 2; Jan. 28.

Article 88.—PARIMUTUEL RACING

74-8801. Title and application of act. K.S.A. 1987 Supp. 74-8801 through 74-8834 shall be known and may be cited as the Kansas parimutuel racing act and shall apply to all horse race meetings, whether or not parimutuel wagering is used or intended to be used at such meetings, and to all greyhound race meetings at which parimutuel wagering is used or intended to be used.

History: L. 1987, ch. 112, § 1; May 28.

Attorney General's Opinions:

Racing commission; licensure; open records act; confidential information. 88-3.

Parimutuel racing act; betting in publicly owned facilities; robotic racing. 88-81.

CASE ANNOTATIONS

1. Disclosure of K.B.I. reports to racing license applicants as permissible under 74-8804 and subject to K.O.R.A. (45-215 et seq.) examined. Kansas Racing Management, Inc. v. Kansas Racing Comm'n, 244 K. 343, 353, 770 P.2d 423 (1989).

74-8802. Definitions. As used in this act unless the context otherwise requires:

(a) "Breakage" means the odd cents by which the amount payable on each dollar wagered in a parimutuel pool exceeds a multiple of \$.10.

(b) "Commission" means the Kansas racing commission created by this act.

(c) "Concessionaire licensee" means a person, partnership, corporation or association licensed by the commission to utilize a space or privilege within a racetrack facility to sell goods.

(d) "Dual racetrack facility" means a racetrack facility for the racing of both horses and greyhounds or two immediately adjacent racetrack facilities, owned by the same licensee, one for racing horses and one for racing greyhounds.

(e) "Executive director" means the executive director of the commission.

(f) "Facility manager licensee" means a person, partnership, corporation or association licensed by the commission and having a contract with an organization licensee to manage a racetrack facility.

(g) "Facility owner licensee" means a person, partnership, corporation or association, or the state of Kansas or any political subdivision thereof, licensed by the commission to construct or own a racetrack facility but does not mean an organization licensee which owns the racetrack facility in which it conducts horse or greyhound racing.

(h) "Financial interest" means an interest that could result directly or indirectly in receiving a pecuniary gain or sustaining a pecuniary loss as a result of ownership or interest in a business entity or activity or as a result of a salary, gratuity or other compensation or remuneration from any person.

(i) "Greyhound" means any greyhound breed of dog properly registered with the national greyhound association of Abilene, Kansas.

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(j) "Kansas-whelped greyhound" means a greyhound whelped and raised in Kansas for the first six months of its life.

(k) "Minus pool" means a parimutuel pool in which, after deducting the takeout, not enough money remains in the pool to pay the legally prescribed minimum return to those placing winning wagers, and in which the organization licensee would be required to pay the remaining amount due.

(l) "Nonprofit organization" means:

(1) A corporation which is incorporated in Kansas as a not-for-profit corporation pursuant to the Kansas general corporation code and the net earnings of which do not inure to the benefit of any shareholder, individual member or person; or

(2) a county fair association organized pursuant to K.S.A. 2-125 *et seq.* and amendments thereto.

(m) "Occupation licensee" means a person licensed by the commission to perform an occupation or provide services which the commission has identified as requiring a license pursuant to this act.

(n) "Organization licensee" means a non-profit organization licensed by the commission to conduct races pursuant to this act and, if the license so provides, to construct or own a racetrack facility.

(o) "Parimutuel pool" means the total money wagered by individuals on one or more horses or greyhounds in a particular horse or greyhound race to win, place or show, or combinations thereof, as established by the commission, and held by the organization licensee pursuant to the parimutuel system of wagering. There is a separate parimutuel pool for win, for place, for show and for each of the other forms of betting provided for by the rules and regulations of the commission.

(p) "Parimutuel wagering" means a form of wagering on the outcome of horse and greyhound races in which those who wager purchase tickets of various denominations on one or more horses or greyhounds and all wagers for each race are pooled and the winning ticket holders are paid prizes from such pool in amounts proportional to the total receipts in the pool.

(q) "Race meeting" means the entire period of time for which an organization licensee has been approved by the commission to hold greyhound races at which parimutuel is conducted or to hold horse races

at which parimutuel wagering is not conducted.

(r) "Racetrack facility" means a racetrack within Kansas used for the racing of horses or greyhounds, or both, including the track surface, grandstands, clubhouse, all animal housing and handling areas, other areas in which a person may enter only upon payment of an admission fee or upon presentation of authorized credentials and such additional areas as designated by the commission.

(s) "Takeout" means the total amount of money withheld from each parimutuel pool for the payment of purses, taxes and the share to be kept by the organization licensee. Takeout does not include the breakage. The balance of each pool less the breakage is distributed to the holders of winning parimutuel tickets.

History: L. 1987, ch. 112, § 2; L. 1989, ch. 246, § 1; April 18.

Attorney General's Opinions:

Parimutuel racing; county fair association personnel; wagering on or participating in horse race meetings. 88-131.

74-8803. Kansas racing commission. (a) There is hereby created the Kansas racing commission, consisting of five members who shall be appointed by the governor, subject to confirmation by the senate as provided by K.S.A. 75-4315b and amendments thereto.

(b) The members of the commission shall meet the following qualifications:

(1) Each member shall be a citizen of the United States and an actual resident of Kansas at the time of appointment and during such member's term of office with the commission;

(2) each member shall have been a resident of Kansas for a continuous period of not less than five years immediately preceding appointment to the commission; and

(3) no member shall have been convicted of a felony under the laws of any state or of the United States at any time prior to appointment or during such member's term of office with the commission.

(c) The governor shall make appointments to the commission in such a manner that:

(1) Not more than three members belong to the same political party at the time of appointment and during their terms of office with the commission; and

(2) each congressional district has at least one member residing in such district at the time of appointment.

(d) Of the members first appointed to the commission, the governor shall designate one

, including such additional time for the conduct of official business before and after the races, as designated by the commission.

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whose term shall expire June 30, 1988; two whose terms shall expire June 30, 1989; and two whose terms shall expire June 30, 1990. After the expiration of such initial terms, each member shall be appointed for a term of three years and until a successor is appointed and qualified.

(e) A vacancy on the commission shall be filled for the unexpired term by appointment by the governor.

(f) The commission shall meet at such times and places within this state as the chairperson or a majority of the commission members determines. A majority of the members shall constitute a quorum for the conduct of commission business.

(g) The members of the commission shall annually elect a chairperson, vice-chairperson and secretary from the membership of the commission. No member of the commission shall serve more than two consecutive terms as the chairperson.

(h) Members of the commission shall receive such compensation as determined by the governor, subject to the limitations of appropriations therefor, and, when attending meetings of the commission, or a subcommittee meeting thereof approved by the commission, shall be paid subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223 and amendments thereto.

History: L. 1987, ch. 112, § 3; May 28.

Attorney General's Opinions:
Parimutuel racing; effect of surrender of facility owner/manager license. 89-108.

~~74-8804. Powers and duties of commission. (a) The commission and its designated employees may observe and inspect all racetrack facilities operated by licensees, including but not limited to all machines, equipment and facilities used for parimutuel wagering, whether or not race meetings are being conducted at the time.~~

(b) Commission members and hearing officers designated by the commission may administer oaths and take depositions to the same extent and subject to the same limitations as would apply if the deposition was in aid of a civil action in the district court.

(c) The commission may examine, or cause to be examined by any agent or representative designated by the commission, any books, papers, records or memoranda of any licensee for the purpose of ascertaining compliance with

any provision of this act or any rule and regulation adopted hereunder.

(d) The commission may issue subpoenas to compel access to or for the production of any books, papers, records or memoranda in the custody or control of any licensee or officer, member, employee or agent of any licensee, or to compel the appearance of any licensee or officer, member, employee or agent of any licensee, for the purpose of ascertaining compliance with any of the provisions of this act or any rule and regulation adopted hereunder. Subpoenas issued pursuant to this subsection may be served upon individuals and corporations in the same manner provided in K.S.A. 60-304 and amendments thereto for the service of process by any officer authorized to serve subpoenas in civil actions or by the commission or an agent or representative designated by the commission. In the case of the refusal of any person to comply with any such subpoena, the executive director may make application to the district court of any county where such books, papers, records, memoranda or person is located for an order to comply.

(e) The commission shall allocate equitably race meeting dates, racing days and hours to all organization licensees and assign such dates and hours so as to minimize conflicting dates and hours within the same geographic market area.

(f) The commission shall have the authority, after notice and an opportunity for hearing in accordance with rules and regulations adopted by the commission, to exclude, or cause to be expelled, from any race meeting or racetrack facility, any person:

(1) Who has violated the provisions of this act or any rule and regulation or order of the commission;

(2) who has been convicted of violating the racing or gambling laws of this or any other state or of the United States; or

(3) whose presence, in the opinion of the commission, reflects adversely on the honesty and integrity of horse or greyhound racing or interferes with the orderly conduct of a race meeting.

(g) The commission shall review and approve all proposed construction and major renovations to racetrack facilities owned or leased by licensees.

(h) The commission may suspend a horse or greyhound from participation in races if such horse or greyhound has been involved in any

During race meetings,

adjudicated or

violation of the provisions of this act or any rule and regulation or order of the commission.

(l) The commission, within 72 hours after any action taken by a steward or racing judge and upon appeal by any interested party or upon its own initiative, may overrule any decision of a steward or racing judge, other than a decision regarding disqualifications for interference during the running of a race, if the preponderance of evidence indicates that:

(1) The steward or racing judge mistakenly interpreted the law;

(2) new evidence of a convincing nature is produced; or

(3) the best interests of racing and the state may be better served.

A decision of the commission to overrule any decision of a steward or racing judge shall not change the distribution of parimutuel pools to the holders of winning tickets. A decision of the commission which would affect the distribution of purses in any race shall not result in a change in that distribution unless a written claim is submitted to the commission within 48 hours after completion of the contested race by one of the owners or trainers of a horse or greyhound which participated in such race and a preponderance of evidence clearly indicates to the commission that one or more of the grounds for protest, as provided for in rules and regulations of the commission, has been substantiated.

(j) The commission, after notice and a hearing in accordance with rules and regulations adopted by the commission, may impose a civil fine not exceeding \$250 for each violation of any provision of this act, or any rule and regulation of the commission, for which no other penalty is provided.

(k) The commission shall adopt rules and regulations specifying and regulating:

(1) Those drugs and medications which may be administered, and possessed for administration, to a horse or greyhound within the confines of a racetrack facility; and

(2) that equipment for administering drugs or medications to horses or greyhounds which may be possessed within the confines of a racetrack facility.

(l) The commission may adopt rules and regulations providing for the testing of any licensees of the commission, and any officers, directors and employees thereof, to determine whether they are users of any controlled substances.

(m) The commission may require fingerprinting of all persons necessary to verify qualification for any license issued pursuant to this act. The commission shall submit such fingerprints to the Kansas bureau of investigation and to the federal bureau of investigation for the purposes of verifying the identity of such persons and obtaining records of criminal arrests and convictions.

(n) The commission may receive from the Kansas bureau of investigation or other criminal justice agencies such criminal history record information (including arrest and nonconviction data), criminal intelligence information and information relating to criminal and background investigations as necessary for the purpose of determining qualifications of licensees of and applicants for licensure by the commission. Disclosure or use of any such information received by the commission, or of any record containing such information, for any purpose other than that provided by this subsection is a class A misdemeanor and shall constitute grounds for removal from office, termination of employment or denial, revocation or suspension of any license issued under this act. Nothing in this subsection shall be construed to make unlawful the disclosure of any such information by the commission in a hearing held pursuant to this act.

(o) The commission, in accordance with K.S.A. 75-4319 and amendments thereto, may recess for a closed or executive meeting to receive and discuss information received by the commission pursuant to subsection (n) and to negotiate with licensees of or applicants for licensure by the commission regarding any such information.

(p) The commission shall adopt such rules and regulations as necessary to implement and enforce the provisions of this act.

History: L. 1987, ch. 112, § 4; L. 1988, ch. 315, § 3; April 14.

Attorney General's Opinions:

Organization licenses to conduct parimutuel races; facility owner license; facility manager license. 88-120.

Parimutuel racing; county fair association personnel; wagering on or participating in horse race meetings. 88-131.

Health care peer review committee reports; confidentiality and open meeting requirements. 89-42.

CASE ANNOTATIONS

1. Disclosure of K.B.I. reports to racing license applicants permitted hereunder and 45-215 et seq., subject to provisions of 45-221. Kansas Racing Management, Inc. v. Kansas Racing Comm'n, 244 K. 343, 353, 770 P.2d 423 (1989).

ADD to K.S.A. 74-8804:

() If the commission's order is adverse to the licensee or applicant, costs incurred by the commission in conducting any proceeding under the Kansas administrative procedure act may be assessed against the parties to the proceeding in such proportion as the commission may determine upon consideration of all relevant circumstances including the nature of the proceeding and the level of participation by the parties. If the commission is the unsuccessful party, the costs shall be paid by the commission.

() For purposes of this section costs incurred shall mean the presiding officer fees and expenses, costs of making any transcripts, witness fees and expenses, mileage, travel allowances and subsistence expenses of commission employees and fees and expenses of agents of the commission. Costs incurred shall not include presiding officer fees and expenses or costs of making and preparing the record unless the commission has designated or retained the services of independent contractors to perform such functions.

() The commission shall make any assessment of costs incurred as part of the final order rendered in the proceeding. Such order shall include findings and conclusions in support of the assessment of costs.

Upon the written request of the chairperson of the commission, the commission may receive from the district courts such juvenile court records and orders as necessary for the purpose of determining qualifications of licensees of and applicants for licensure by the commission.

() Appeals from the commission's administrative orders shall be filed in the district court of Shawnee county.

74-8808. Bonds. Each member, employee or appointee of the commission, including stewards and racing judges, shall furnish bond or other good and sufficient security in an amount and upon such terms as established by the state committee on surety bonds and insurance pursuant to K.S.A. 75-4101 *et seq.*, and amendments thereto. The cost of any such bonds shall be paid by the commission.

History: L. 1987, ch. 112, § 8; May 28.

74-8809. Assistant attorneys general. The attorney general shall appoint, with the approval of the commission, not more than two assistant attorneys general who shall be assigned to assist the commission in all matters, including the enforcement of this act. Such attorneys shall be in the unclassified service under the Kansas civil service act and shall receive annual salaries fixed by the attorney general, with the approval of the commission, subject to the limitations of appropriations therefor. Such salaries shall be paid from the state racing fund created by K.S.A. 1987 Supp. 74-8826, as an operating expense of the commission.

History: L. 1987, ch. 112, § 9; May 28.

CASE ANNOTATIONS

1. Allegation that relationship between K.B.I. investigations and assistant attorneys general presents "appearance of impropriety" as being meritless examined. *Kansas Racing Management, Inc. v. Kansas Racing Comm'n*, 244 K. 343, 362, 770 P.2d 423 (1989).

74-8810. Prohibited acts. (a) It is a class A misdemeanor for any person to have a financial interest, directly or indirectly, in any racetrack facility within the state of Kansas:

(1) While such person is a member of the commission or during the five years immediately following such person's term as member of the commission; or

(2) while such person is an officer, director or member of an organization licensee, other than a county fair association, or during the five years immediately following the time such person is an officer, director or member of such an organization licensee.

(b) It is a class A misdemeanor for any member, employee or appointee of the commission, including stewards and racing judges, to knowingly:

(1) Participate in the operation of or have a financial interest in any business which has been issued a concessionaire license, facility owner license or facility manager license, or

any business which sells goods or services to an organization licensee;

(2) participate directly or indirectly as an owner, owner-trainer or trainer of a horse or greyhound, or as a jockey of a horse, entered in a race meeting conducted in this state;

(3) place a wager on an entry in a horse or greyhound race conducted by an organization licensee; or

(4) accept any compensation, gift, loan, entertainment, favor or service from any licensee, except such suitable facilities and services within a racetrack facility operated by an organization licensee as may be required to facilitate the performance of the member's, employee's or appointee's official duties.

(c) It is a class A misdemeanor for any member, employee or appointee of the commission, or any spouse, parent, grandparent, brother, sister, child, grandchild, uncle, aunt, parent-in-law, brother-in-law or sister-in-law thereof, to:

(1) Hold any license issued by the commission; or

(2) enter into any business dealing, venture or contract with an owner or lessee of a racetrack facility in Kansas.

(d) It is a class A misdemeanor for any officer, director or member of an organization licensee, other than a county fair association, to:

(1) Receive, for duties performed as an officer or director of such licensee, any compensation or reimbursement or payment of expenses in excess of the amounts provided by K.S.A. 75-3223 and amendments thereto for board members' compensation, mileage and expenses; or

(2) enter into any business dealing, venture or contract with the organization licensee or, other than in the capacity of an officer or director of the organization licensee, with a facility owner licensee, facility manager licensee or concessionaire licensee.

(e) It is a class A misdemeanor for any facility owner licensee or facility manager licensee, or any officer, director or employee thereof, to participate directly or indirectly as an owner, owner-trainer or trainer of a horse or greyhound, or as a jockey of a horse, entered in a race meeting conducted in this state.

(f) It is a class A misdemeanor for any licensee of the commission, or any person who is an officer, director, member or employee of a licensee, to place a wager on an entry in a horse or greyhound race conducted at a race-

stockholder, shareholder or other ownership interest

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or the parimutuel wagering thereon.

track facility where the licensee is authorized to engage in licensed activities if the commission has by rules and regulations designated such person's position as a position which could influence the outcome of such race.

(g) It is a class B misdemeanor for any person to use any animal or fowl in the training or racing of racing greyhounds.

(h) It is a class A misdemeanor for any person to:

(1) Sell a parimutuel ticket or an interest in such a ticket to a person knowing such person to be under 18 years of age, upon conviction of the first offense;

(2) accept, transmit or deliver, from a person outside a racetrack facility, anything of value to be wagered in any parimutuel system of wagering within a racetrack facility, upon conviction of the first offense;

(3) administer or conspire to administer any drug or medication to a horse or greyhound within the confines of a racetrack facility in violation of rules and regulations of the commission, upon conviction of the first offense;

(4) possess or conspire to possess, within the confines of a racetrack facility, any drug or medication for administration to a horse or greyhound in violation of rules and regulations of the commission, upon conviction of the first offense;

(5) possess or conspire to possess, within the confines of a racetrack facility, equipment for administering drugs or medications to horses or greyhounds in violation of rules and regulations of the commission, upon conviction of the first offense;

(6) enter any horse or greyhound in any race knowing such horse or greyhound to be ineligible to compete in such race pursuant to K.S.A. 1989 Supp. 74-8812 and amendments thereto; or

(7) prepare or cause to be prepared an application for registration of a horse pursuant to K.S.A. 1989 Supp. 74-8830 and amendments thereto knowing that such application contains false information.

(i) It is a class E felony for any person to:

(1) Sell a parimutuel ticket or an interest in such a ticket to a person knowing such person to be under 18 years of age, upon conviction of the second or a subsequent offense;

(2) accept, transmit or deliver, from any person outside a racetrack facility, anything of value to be wagered in any parimutuel system of wagering within a racetrack facility, upon the second or a subsequent conviction;

(3) conduct or assist in the conduct of a horse or greyhound race where the parimutuel system of wagering is used or is intended to be used and where no license has been issued to an organization to conduct such race;

(4) enter any horse or greyhound in any race conducted by an organization licensee knowing that the class or grade in which such horse or greyhound is entered is not the true class or grade or knowing that the name under which such horse or greyhound is entered is not the name under which such horse or greyhound has been registered and has publicly performed;

(5) use or conspire to use any device, other than an ordinary whip for horses or a mechanical hare for greyhounds, for the purpose of affecting the speed of any horse or greyhound at any time during a race conducted by an organization licensee;

(6) administer or conspire to administer any drug or medication to a horse or greyhound within the confines of a racetrack facility in violation of rules and regulations of the commission, upon conviction of the second or a subsequent offense;

(7) possess or conspire to possess, within the confines of a racetrack facility, any drug or medication for administration to a horse or greyhound in violation of rules and regulations of the commission, upon conviction of the second or a subsequent offense;

(8) possess or conspire to possess, within the confines of a racetrack facility, equipment for administering drugs or medications to horses or greyhounds in violation of rules and regulations of the commission, upon conviction of the second or a subsequent offense;

(9) sponge the nostrils or windpipe of a horse for the purpose of stimulating or depressing such horse or affecting its speed at any time during a race meeting conducted by an organization licensee;

(10) alter or attempt to alter the natural outcome of any race conducted by an organization licensee;

(11) influence or attempt to influence, by the payment or promise of payment of money or other valuable consideration, any person to alter the natural outcome of any race conducted by an organization licensee;

(12) influence or attempt to influence any member, employee or appointee of the commission, by the payment or promise of payment of money or other valuable consideration,

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the performance of any official duty of that member, employee or appointee;

(13) fail to report to the commission or to one of its employees or appointees knowledge of any violation of this act by another person for the purpose of stimulating or depressing any horse or greyhound, or affecting its speed, at any time during any race conducted by an organization licensee;

(14) commit any of the following acts with respect to the prior racing record, pedigree, identity or ownership of a registered horse or greyhound in any matter related to the breeding, buying, selling or racing of the animal: (A) Falsify, conceal or cover up, by any trick, scheme or device, a material fact; (B) make any false, fictitious or fraudulent statement or representation; or (C) make or use any false writing or document knowing that it contains any false, fictitious or fraudulent statement or entry; or

(15) pass or attempt to pass, cash or attempt to cash any altered or forged parimutuel ticket knowing it to have been altered or forged.

(j) No person less than 18 years of age shall purchase a parimutuel ticket or an interest in such a ticket. Any person violating this subsection shall be subject to adjudication as a juvenile offender pursuant to the Kansas juvenile offenders code.

(k) Possession of any device described in subsection (l)(5) by anyone within the confines of a racetrack facility shall be prima facie evidence of intent to use such device.

History: L. 1987, ch. 112, § 10; L. 1990, ch. 146, § 1; May 3.

Attorney General's Opinions:

Crimes against the public morals; use of live lures. 87-150.

Kansas parimutuel racing act; nonrefundable license application fees; forfeiture of deposit. 88-64.

Parimutuel racing act; betting in publicly owned facilities; robotic racing. 88-81.

Parimutuel racing; county fair association personnel; wagering on or participating in horse race meetings. 88-131.

74-8811. Drugs and medications. The commission shall adopt rules and regulations establishing those drugs and medications, and the levels thereof, which are allowable in the blood or urine of any horse or greyhound when tested either just prior to or immediately following participation in any race conducted by an organization licensee. Animals in violation of such rules and regulations shall be disqualified from the race in which the animal is en-

tered or has participated on the day that such test was conducted.

History: L. 1987, ch. 112, § 11; May 28.

74-8812. Eligibility of horses and greyhounds. (a) Horses shall not compete in any race meeting before reaching the age of two years. A horse's age shall be determined beginning on the first day of January in the year in which the horse is foaled.

(b) Greyhounds shall not compete in any race meeting before reaching the age of 15 months.

(c) No horse shall compete in any race limited to Kansas-bred horses unless such horse is registered pursuant to K.S.A. 1987 Supp. 74-8830. The commission may prescribe such forms as necessary to determine the eligibility of horses entered in such a race.

X History: L. 1987, ch. 112, § 12; May 28.

74-8813. Organization licenses to conduct races. (a) A nonprofit organization may apply to the commission for an organization license to conduct horse races or an organization license to conduct greyhound races, or both such licenses. In addition, an organization license may authorize the licensee to construct or own a racetrack facility if so provided by the commission. The application for an organization license shall be filed with the commission at a time and place prescribed by rules and regulations of the commission. The application shall specify the days when and the exact location where it proposes to conduct such races and shall be in a form and include such information as the commission prescribes. A nonrefundable application fee in the form of a certified check or bank draft shall accompany the application. Except as provided pursuant to K.S.A. 1987 Supp. 74-8814 and amendments thereto, such fee shall be as follows: (1) For an application for an organization license to conduct horse or greyhound races with parimutuel wagering, a fee of \$5,000 for each application; and (2) for an application for an organization license to conduct horse races without parimutuel wagering, a fee of \$500 for each application. If the application fee is insufficient to pay the reasonable expenses of processing the application and investigating the applicant's qualifications for licensure, the commission shall require the applicant to pay to the commission, at such times and in such form as required by the commission, any additional amounts necessary to pay such expenses. No license shall be issued to an applicant until the

(d) No horse or greyhound owned by a stable, kennel or other entity shall compete in any race meeting unless the stable kennel or other name is registered upon forms prescribed and furnished by the commission and the appropriate fee paid. The commission shall establish the amount of registration fees, but no such fee shall exceed \$200 a year.

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applicant has paid such additional amounts in full, and such amounts shall not be refundable except to the extent that they exceed the actual expenses of processing the application and investigating the applicant's qualifications for licensure.

(b) If an applicant for an organization license is proposing to construct a racetrack facility, such applicant, at the time of submitting the application, shall deposit with the commission, in such form as prescribed by rules and regulations of the commission, the sum of (1) \$500,000, if the number of racing days applied for in a racing season is 150 days or more; (2) \$250,000, if the number of racing days applied for is less than 150 days; or (3) a lesser sum established by the commission, if the applicant meets the qualifications set forth in subsection (a)(1) or (a)(2) of K.S.A. 1987 Supp. 74-8814 and amendments thereto or if the applicant will be conducting races only on the state fairgrounds. Only one such deposit shall be required for a dual racetrack facility. The executive director shall promptly remit any deposit received pursuant to this subsection to the state treasurer. The state treasurer shall deposit the entire amount in the state treasury and credit it to the racing applicant deposit fund created by K.S.A. 1987 Supp. 74-8828 and amendments thereto. If the application is denied by the commission, the deposit, and any interest accrued thereon, shall be refunded to the applicant. If the license is granted by the commission in accordance with the terms of the application or other terms satisfactory to the applicant, the deposit, and any interest accrued thereon, shall be refunded to the licensee upon completion of the racetrack facility in accordance with the terms of the license. If the licensee fails to complete the racetrack facility in accordance with the terms of the license, the deposit, and any interest accrued thereon, shall be forfeited by the applicant.

(c) To qualify for an organization license to conduct horse or greyhound races:

(1) The applicant shall be a bona fide, nonprofit organization which, if applicable, meets the requirements of subsection (d);

(2) the applicant shall have, either by itself or through contractual relationships with other persons or businesses approved by the commission, the financial capability, manpower and technical expertise, as determined by the commission, to properly conduct horse races or greyhound races, or both, and, if applicable, to operate a parimutuel wagering system;

(3) if the applicant is proposing to construct a racetrack facility, the applicant shall submit detailed plans for the construction of such facility, including the means and source of financing such construction and operation, sufficient to convince the commission that such plans are feasible;

(4) submit for commission approval a written copy of each contract and agreement which the applicant proposes to enter into, including all those listed in subsection (n), which contracts and agreements shall conform to the restrictions placed thereon by subsections (n), (o) and (p);

(5) the applicant shall propose to conduct races within only one county, and in such county the majority of the qualified electors have approved either: (A) The constitutional amendment permitting the conduct of horse and dog races and parimutuel wagering thereon; or (B) a proposition permitting horse and dog races and parimutuel wagering thereon within the boundaries of such county;

(6) no director, officer, employee or agent of the applicant shall have been convicted of any of the following in any court of any state or of the United States: (A) Fixing of horse or greyhound races; (B) illegal gambling activity; (C) illegal sale or possession of any controlled substance; (D) operation of any illegal business; (E) repeated acts of violence; or (F) any felony; and

(7) no director or officer of the applicant shall be addicted to, and a user of, alcohol or a controlled substance.

(d) To qualify for an organization license to conduct horse or greyhound races, a nonprofit organization, other than a county fair association or a nonprofit organization conducting races only on the state fair grounds, shall:

(1) Distribute all of its net earnings from the conduct of horse and greyhound races, other than that portion of the net earnings which is necessary to satisfy the debt service obligations, not otherwise deducted from net earnings, of an organization licensee owning the racetrack facility or that portion of the net earnings which is set aside as reasonable reserves for future improvement, maintenance and repair of the racetrack facility owned by the organization licensee, only to organizations, other than itself, which: (A) Have been exempted from the payment of federal income taxes pursuant to section 501(c)(3) of the federal internal revenue code of 1986, as in effect July 1, 1987, (B) are domiciled in this state and (C)

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74-8815. Facility owner license and facility manager license. LS

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(1) \$500,000, if the number of racing days applied for by organization licensee applicants proposing to race at the facility is 150 days or more in a racing season; (2) \$250,000, if such number of racing days applied for is less than 150 days; or (3) a lesser sum established by the commission, if the applicant is the state or a political subdivision of the state. Only one such deposit shall be required for a dual racetrack facility. The executive director shall promptly remit any deposit received pursuant to this subsection to the state treasurer. The state treasurer shall deposit the entire amount in the state treasury and credit it to the racing applicant deposit fund created by K.S.A. 1987 Supp. 74-8828 and amendments thereto. If the application is denied by the commission, the deposit, and any interest accrued thereon, shall be refunded to the applicant. If the license is granted by the commission in accordance with the terms of the application or other terms satisfactory to the applicant, the deposit, and any interest accrued thereon, shall be refunded to the licensee upon completion of the racetrack facility in accordance with the terms of the license. If the licensee fails to complete the racetrack facility in accordance with the terms of the license, the deposit, and any interest accrued thereon, shall be forfeited by the applicant.

(e) A facility owner license shall be granted only to an applicant that already owns an existing racetrack facility or has submitted with its application detailed plans for the construction of such facility, including the means and source of financing such construction and operation sufficient to convince the commission that such plans are feasible ~~or has submitted detailed plans for the construction of a racetrack facility, including the means and source of financing such construction and operation, sufficient to convince the commission that such plans are feasible.~~ A facility manager license shall be granted only to an applicant that has a facility management contract with an organization licensed pursuant to K.S.A. 1987 Supp. 74-8813 and amendments thereto.

(f) An applicant for a facility owner license or facility manager license, or both, shall not be granted a license if there is substantial evidence that the applicant for the license, or any officer or director, stockholder, member or owner of or other person having a financial interest in the applicant:

(1) Has been suspended or ordered to cease operation of a parimutuel racing facility

in another jurisdiction by the appropriate authorities in that jurisdiction, has been ordered to cease association or affiliation with such a racing facility or has been banned from such a racing facility;

(2) has been convicted by a court of any state or of the United States of any criminal act involving fixing or manipulation of parimutuel races, violation of any law involving gambling or controlled substances, drug violations involving horses or greyhounds or if any employee or agent assisting the applicant in activities relating to ownership or management of a racetrack facility or to the conduct of races has been so convicted;

(3) has been convicted by a court of any state or of the United States of any felony involving dishonesty, fraud, theft, counterfeiting, alcohol violations or embezzlement or if any employee or agent assisting the applicant in activities relating to ownership or management of a racetrack facility or to the conduct of races has been so convicted;

(4) has not demonstrated financial responsibility sufficient to meet the obligations being undertaken pursuant to its contract with the organization licensee;

(5) is not in fact the person or entity authorized to or engaged in the licensed activity;

(6) is or becomes subject to a contract or option to purchase under which 10% or more of the ownership or other financial interest or membership interest are subject to purchase or transfer, unless the contract or option has been disclosed to the commission and the commission has approved the sale or transfer during the license period;

(7) has made a statement of a material fact in the application or otherwise in response to official inquiry by the commission knowing such statement to be false; or

(8) has failed to meet any monetary or tax obligation to the federal government or to any state or local government, whether or not relating to the conduct or operation of a race meet held in this state or any other jurisdiction.

(g) No person or entity shall be qualified to hold a facility manager license if such person or entity, or any director, officer, employee or agent thereof, is addicted to, and a user of, alcohol or a controlled substance.

(h) All facility owner licenses and facility manager licenses shall be reviewed annually by the commission to determine if the licensee is complying with the provisions of this act and

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Parimutuel racing act; license application fees; subject organizations. 88-77.

Parimutuel racing act; betting in publicly owned facilities; robotic racing. 88-81.

Organization licenses to conduct parimutuel races; facility owner license; facility manager license. 88-120.

Parimutuel racing; effect of surrender of facility owner/manager license. 89-108.

CASE ANNOTATIONS

1. No property interest in acquiring license; 1988 amendment requiring applicants to pay additional fees applied retroactively. Kansas Racing Management, Inc. v. Kansas Racing Comm'n, 244 K. 343, 344, 356, 362, 770 P.2d 423 (1989).

74-8810. Occupation licenses. (a) The commission shall require occupation licenses for:

(1) Any owner of a horse or greyhound participating in a race conducted by an organization licensee;

(2) any person whose work, in whole or in part, is conducted within a racetrack facility owned or leased by an organization licensee, including trainers, jockeys, agents, apprentices, grooms, exercise persons, veterinarians, valets, blacksmiths, stewards, racing judges, starters, timers, supervisors of mutuels, parimutuel tellers and clerks, guards and such other personnel designated by the commission.

(b) An occupation license shall be obtained from the commission prior to the time a person engages activities for which such license is required, regardless of whether a race meeting is being conducted.

(c) A person required to be licensed pursuant to subsection (a) shall apply for such license in a manner and upon forms prescribed and furnished by the commission. The commission may require the applicant to submit to fingerprinting. Occupation licenses shall be issued for a period established by the commission but not less than one year or more than three years. The commission shall establish the amount of application fees and license fees for different types of occupation licenses, but no such fee shall exceed \$200 a year. The application fee shall not be refundable if the applicant fails to qualify for a license and shall include the cost of processing fingerprints if they are required by the commission.

(d) The commission may require an applicant for an occupation license as a condition of licensure to consent to allow agents of the Kansas bureau of investigation or security personnel of the commission to search without warrant the licensee's person, personal property and work premises while within the racetrack facility or adjacent facilities under the

control of the organization licensee for the purpose of investigating possible criminal violations of this act or violations of rules and regulations of the commission.

(e) Denial of an occupation license by the commission shall be in accordance with the Kansas administrative procedure act. The commission may refuse to issue an occupation license to any person who:

(1) Has been convicted of a felony by a court of any state or of the United States;

(2) has been convicted of a violation of any law of any state or of the United States involving gambling or controlled substances;

(3) is not qualified to perform the duties associated with the license being applied for;

(4) fails to disclose any material fact or provides information, knowing such information to be false, when applying for the license;

(5) has been found by the commission to have violated any provision of this act or any rule and regulation of the commission;

(6) has had an occupation license suspended, revoked or denied for just cause in any other jurisdiction; or

(7) has committed two or more acts of violence within the past two years as established by a court of competent jurisdiction of any state or of the United States.

(f) The commission may suspend or revoke an occupation license for any reason which would justify refusal to issue such a license and may impose a fine not exceeding \$5,000 for each violation upon any occupation licensee found to have violated any provision of this act or any rule and regulation of the commission. Such fine may be imposed in addition to or in lieu of suspending or revoking such person's occupation license. Proceedings for the suspension or revocation of an occupation license or imposition of a fine pursuant to this section shall be conducted by the commission or its appointed hearing officer in accordance with the Kansas administrative procedure act.

(g) The commission may provide by rules and regulations for the temporary suspension of an occupation license by summary adjudicative proceedings in accordance with the Kansas administrative procedure act upon finding that there is probable cause to believe that grounds exist for a permanent suspension or revocation of such license. Such suspension shall be for a period not exceeding 30 days. Upon expiration of such suspension, the license shall be restored unless the license has been

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control of the organization licensee for the purpose of investigating possible criminal violations of this act or violations of rules and regulations of the commission.

(e) Denial of an occupation license by the commission shall be in accordance with the Kansas administrative procedure act. The commission may refuse to issue an occupation license to any person who:

(1) Has been convicted of a felony by a court of any state or of the United States;

(2) has been convicted of a violation of any law of any state or of the United States involving gambling or controlled substances;

(3) is not qualified to perform the duties associated with the license being applied for;

(4) fails to disclose any material fact or provides information, knowing such information to be false, when applying for the license;

(5) has been found by the commission to have violated any provision of this act or any rule and regulation of the commission;

(6) has had an occupation license suspended, revoked or denied for just cause in any other jurisdiction; or

(7) has committed two or more acts of violence within the past two years as established by a court of competent jurisdiction of any state or of the United States.

(f) The commission may suspend or revoke an occupation license for any reason which would justify refusal to issue such a license and may impose a fine not exceeding \$5,000 for each violation upon any occupation licensee found to have violated any provision of this act or any rule and regulation of the commission. Such fine may be imposed in addition to or in lieu of suspending or revoking such person's occupation license. Proceedings for the suspension or revocation of an occupation license or imposition of a fine pursuant to this section shall be conducted by the commission or its appointed hearing officer in accordance with the Kansas administrative procedure act.

(g) The commission may provide by rules and regulations for the temporary suspension of an occupation license by summary adjudicative proceedings in accordance with the Kansas administrative procedure act upon finding that there is probable cause to believe that grounds exist for a permanent suspension or revocation of such license. Such suspension shall be for a period not exceeding 30 days. Upon expiration of such suspension, the license shall be restored unless the license has been

suspended or revoked pursuant to subsection (f).

(h) The stewards at any horse race meeting and the racing judges at any greyhound race meeting may temporarily suspend any occupation license by emergency adjudicative proceedings in accordance with the Kansas administrative procedure act upon a finding by at least two of the stewards or racing judges that there is probable cause to believe that such occupation licensee has violated the provisions of this act or any rule or regulation of the commission.

History: L. 1987, ch. 112, § 16; L. 1988, ch. 316, § 4; April 21.

Attorney General's Opinions:

Organization licenses to conduct parimutuel races; facility owner license; facility manager license. 88-120.

74-8817. Concessionaire licenses. (a) No organization licensee or facility manager licensee shall permit any business not owned and operated by the organization licensee to sell goods within a racetrack facility where the organization licensee conducts race meetings unless such business has been issued a concessionaire license by the commission.

(b) Businesses required to be licensed pursuant to this section shall apply for concessionaire licenses in a manner and upon forms prescribed and furnished by the commission. The commission shall require disclosure of information about the owners and officers of each applicant and may require such owners and officers to submit to fingerprinting. The commission also may require disclosure of information about and fingerprinting of such employees of each applicant as the commission considers necessary. Concessionaire licenses shall be issued for a period of time established by the commission but not to exceed 10 years. The commission shall establish a schedule of application fees and license fees for concessionaire licenses based upon the type and size of business. The application fee shall not be refundable if the business fails to qualify for a license. If the application fee is insufficient to pay the reasonable expenses of processing the application and investigating the applicant's qualifications for licensure, the commission shall require the applicant to pay to the commission, at such times and in such form as required by the commission, any additional amounts necessary to pay such expenses. No license shall be issued to an applicant until the applicant has paid such additional amounts in

Totalisator businesses shall be licensed as concessionaires.

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full, and such amounts shall not be refundable except to the extent that they exceed the actual expenses of processing the application and investigating the applicant's qualifications for licensure.

(c) The commission may require applicants as a condition of licensure to consent to allow agents of the Kansas bureau of investigation or security personnel of the commission to search without warrant the licensee's premises and personal property and the persons of its owners, officers and employees while engaged in the licensee's business within the racetrack facility or adjacent facilities under the control of the organization licensee for the purpose of investigating criminal violations of this act or violations of rules and regulations of the commission.

(d) Denial of a concessionaire license by the commission shall be in accordance with the Kansas administrative procedure act. The commission may refuse to issue a concessionaire license to any business if any person having an ownership interest in such business, any person who is an officer of such business or any person employed by such business within the racetrack facility.

(1) Has been convicted of a felony in a court of any state or of the United States;

(2) has been convicted of a violation of any law of any state or of the United States involving gambling or controlled substances;

(3) fails to disclose any material fact or provides information, knowing such information to be false, in connection with the application for the license; or

(4) has been found by the commission to have violated any provision of this act or any rule and regulation of the commission.

(e) The commission may suspend or revoke the concessionaire license of any business for any reason which would justify refusal to issue such a license. Proceedings to suspend or revoke such license shall be conducted by the commission or its appointed hearing officer in accordance with the provisions of the Kansas administrative procedure act.

(f) The commission may provide by rules and regulations for the temporary suspension of a concessionaire license by summary adjudicative proceedings in accordance with the Kansas administrative procedure act upon finding that there is probable cause to believe that grounds exist for a permanent suspension or revocation of such license. Such suspension shall be for a period not exceeding 30 days.

Upon expiration of such suspension, the license shall be restored unless the license has been suspended or revoked as a result of proceedings conducted pursuant to subsection (e).

History: L. 1987, ch. 112, § 17; L. 1989, ch. 246, § 3; April 18.

74-8818. Stewards and racing judges. (a)

At each race meeting held pursuant to this act the commission shall appoint three individuals to be stewards or racing judges. One shall be designated as the chief steward or chief racing judge and the other two as associate stewards or associate racing judges. The compensation of the stewards and racing judges shall be paid by the commission. The commission may require an organization licensee to reimburse the commission for compensation paid to the stewards and racing judges for their services performed at race meetings conducted by that organization licensee. Any moneys received by the commission for that purpose shall be remitted promptly by the commission to the state treasurer, who shall deposit the entire amount in the state treasury and credit it to the racing reimbursable expense fund created by K.S.A. 1987 Supp. 74-8827. All other racing officials at a race meeting shall be approved by the commission and compensated by the organization licensee. The stewards, racing judges and other racing officials shall enforce the civil provisions of this act and any rules and regulations of the commission and shall submit written reports of the activities and conduct of the race meetings to the commission.

(b) Each steward or racing judge shall be required to obtain an occupation license from the commission pursuant to K.S.A. 1987 Supp. 74-8816 prior to performing any duties as a steward or a judge.

(c) The commission shall require applicants for a license as a steward or racing judge to pass an examination on matters relating to the duties of stewards or racing judges. Examinations shall be held at such times and places as determined by the commission. Notice of the times and places of the examinations shall be given as determined by the commission. The commission shall prepare both written and oral examinations to be taken by persons applying for licensure as stewards or racing judges, requesting and taking into consideration suggestions from representatives of horsemen and horsewomen, greyhound owners, organization licensees, stewards, racing judges

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sixth and any subsequent year when racing with parimutuel wagering is conducted at such facility; and

(3) of the total daily takeout from parimutuel pools for greyhound races held at a dual racetrack facility or at a racetrack facility owned by a licensee whose license authorizes the construction of a dual racetrack facility, a tax at the rate of: (A) 3/18 during the first seven years when racing with parimutuel wagering is conducted at such facility; (B) 4/18 during the eighth and ninth years when racing with parimutuel wagering is conducted at such facility; and (C) 5/18 during the tenth and any subsequent year when racing with parimutuel wagering is conducted at such facility.

(b) The tax imposed by this section shall be no less than 3% nor more than 6% of the total money wagered each day at a racetrack facility.

(c) The tax imposed by this section shall be remitted to the commission by each organization licensee by the next business day following the day on which the wagers took place. The commission shall promptly remit any such tax moneys received to the state treasurer, who shall deposit the entire amount in the state treasury and credit it to the state racing fund created by K.S.A. 1987 Supp. 74-8826.

(d) The commission shall audit and verify that the amount of tax received from each organization licensee hereunder is correct.

History: L. 1987, ch. 112, § 23; May 28.

74-8824. Tax on racetrack admissions.

(a) There is hereby imposed a tax on admissions to racetrack facilities at the rate of 10% of:

(1) The amount received from charges for admissions to such facilities, excluding any amount paid for retailers' sales tax thereon or for the tax imposed by subsection (b); and

(2) except as provided by subsection (c), the value of free or complimentary admissions to such facilities, computed as if regular and usual admission rates were charged therefor.

The tax imposed by this subsection shall be remitted to the commission by each organization licensee by the next business day following the day on which the admissions were paid or, if free or complimentary, were used. The commission shall promptly remit any such tax moneys received to the state treasurer, who shall deposit the entire amount in the state treasury and credit it to the state racing fund created by K.S.A. 1987 Supp. 74-8826.

(b) In addition to the tax imposed by subsection (a), there is hereby imposed on each admission to a racetrack facility which is exempt from local *ad valorem* property taxes a tax of \$.20. Except as provided by subsection (c), such tax shall apply regardless of whether the admission is paid, free or complimentary.

The tax imposed by this subsection shall be remitted to the commission by each organization licensee by the next business day following the date of the admission. The commission shall promptly remit any such tax moneys to the state treasurer, who shall deposit the entire amount in the state treasury and credit it to the local racing admissions tax fund which is hereby established in the state treasury. All moneys credited to such fund shall be allocated to the cities and counties in which racing facilities are located as follows:

(1) Each city where there is located a racing facility shall receive 1/3 the amount collected from the tax imposed pursuant to this subsection on admissions to such facility.

(2) each county where there is located a racing facility which is also located within a city shall receive 1/3 the amount collected from the tax imposed pursuant to this subsection on admissions to such facility, and

(3) each county where there is located a racing facility which is not located within any city shall receive the entire amount collected from the tax imposed pursuant to this subsection on admissions to such facility.

The state treasurer shall make distributions at least quarterly from the local racing admissions tax fund. Such distributions shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports, drawn in favor of the several county treasurers and city treasurers, pursuant to vouchers approved by the executive director or a person designated by the executive director in the amounts determined under this subsection.

(c) Organization licensees may issue to actual and necessary officials and employees of the licensee or other persons actually working at a racetrack facility passes to which the taxes imposed by this section shall not apply. The issuance of such passes is subject to rules and regulations of the commission and a list of all persons to whom such passes are issued shall be filed with the commission.

History: L. 1987, ch. 112, § 24; May 28.

race meetings

race meetings

Attach 5

Senate Federal and State Affairs Committee
February 4, 1992
Senate Bill 514

Mr. Chairman and members of the committee:

My name is Gene Yockers, and I am the Director of the Kansas Real Estate Commission. We are asking for several amendments to the "prohibited acts" section of the statute.

Lines 24-25, page 1

This past year, the commission learned that a real estate broker had collected funds to pay off the mortgage in two different transactions and had converted the funds to his own use. One case amounted to more than \$61,000 and the other to more than \$35,000. Although his license was revoked under various provisions of the statute, we had no provision that adequately reflected what he had done. The amendment to paragraph (3) will give us stronger language where licensees are guilty of more than commingling funds.

Lines 22-25, page 2

The commission is often asked what happens to listing agreements when companies close or merge. Although this is a civil matter, the license act gets involved because licensees want to know if they can solicit listings without violating the license act. The commission feels the new language is needed and that it will address at least part of the problem. The amendment provides that a licensee shall not "assign, sell or otherwise transfer a written agency agreement to another broker without the express written consent of all parties to the original listing agreement."

Lines 34-35, page 2; lines 1 and 9-10, page 3

Disclosure of agency relationships must be contained in contracts for sale or lease. The commission wants to address any confusion as to whether the disclosure is required in a lot reservation agreement by simply adding the language.

Lines 25-30, page 3

New paragraph 21 results from a case where a broker had a provision in the listing agreement that "the seller hereby nominates, constitutes and appoints (broker) seller's attorney-in-fact for and in seller's place and stead, to make, execute and deliver an agreement of sale . . ." Thereafter, it was a sad story for the owner.

The commission feels strongly that a power of attorney should not be included in an agency agreement (in either the listing agreement with the seller or an agency agreement with the buyer). This is covered in the first sentence of the new language (lines 25-28).

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Testimony - SB-514
Senate Federal and State Affairs Committee
page 2

The first part of the second sentence prohibits a licensee from committing forgery. Again, stronger language, for situations that warrant it.

We request that the committee amend the language in line 29. As written, a licensee would be prohibited from signing or initialing any document on behalf of another person in a real estate transaction unless authorized to do so by a duly executed power of attorney. In proposing the amendment, the commission did not have in mind prohibiting a licensee from approving and signing a closing statement on behalf of the principal or completing a sales validation questionnaire. Substituting "contractual agreement" for "document" would address what we want to prohibit. Please amend the last sentence to read:

"The licensee shall not commit forgery or sign or initial any contractual agreement on behalf of another person in a real estate transaction unless authorized to do so by a duly executed power of attorney."

Lines 24-32, page 4

The existing statute (paragraph 29, lines 20-23) requires a licensee to present all written offers which are received prior to the acceptance of the offer by the principal. The problem here is that a licensee may comply with this provision and still violate the fiduciary responsibility to the seller. The courts are holding that offers must be presented until closing.

The new language in paragraph 30 replaces the existing language in paragraph 29 and covers offers submitted when the licensee represents the seller. Paragraph 31 has been added to cover offers submitted when the licensee represents the buyer.

Section 2 (page 6)

All amendments in this section are to update references which were amended by Section 1 of the bill.

Section 4 (page 7)

Please amend this section to provide that the act take effect upon publication in the Kansas register.

Thank you for your consideration.

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Attach. 6

SENATE BILL No. 515

By Committee on Federal and State Affairs

1-22

8 AN ACT amending the state certified and licensed real property
9 appraisers act; amending K.S.A. 1991 Supp. 58-4104, 58-4106 and
10 58-4107 and repealing the existing sections.

11

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

13 Section 1. K.S.A. 1991 Supp. 58-4104 is hereby amended to read
14 as follows: 58-4104. (a) There is hereby established the real estate
15 appraisal board which shall be attached to the commission for pur-
16 poses of administrative functions.

17 (b) The board shall consist of seven members appointed by the
18 governor. At least one member of the board shall represent the
19 general public, at least two shall represent financial institutions and
20 at least three shall be real estate appraisers. ~~No two real estate~~
21 ~~appraiser members shall be members of the same real estate~~
22 ~~appraisal organization.~~ Upon expiration of the terms of the first
23 members appointed to the board and thereafter: (1) No real estate
24 appraiser member of the board shall be eligible to serve unless such
25 member is a state certified or licensed appraiser; and (2) at least
26 one appraiser member shall be a certified general real property
27 appraiser. Any member representing the general public shall not be
28 affiliated with any financial institution or in the practice of real estate
29 appraising.

30 (c) Members of the board shall serve for terms of three years
31 except that, of the members first appointed to the board, two shall
32 serve for terms of two years and two shall serve for terms of one
33 year, as designated by the governor. Upon expiration of a member's
34 term, the member shall continue to hold office until the appointment
35 and qualification of a successor. No person shall serve as a member
36 of the board for more than two consecutive terms.

37 (d) The governor may remove a member of the board for cause.

38 (e) The board shall hold meetings and hearings in the city of
39 Topeka or at such times and places as it designates, on call of the
40 chairperson or on request of two or more members.

41 (f) The members of the board shall select a chairperson from
42 among the members to preside at board meetings.

43 (g) A quorum of the board shall be four members.

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*Sen Reilly - see at Thursday
Please consider this
Tomorrow's meeting. Today's
for starting on this today
2
Jim Irish
913-272-264
9-11-92*

1 (h) Each member of the board shall be paid compensation, sub-
2 sistence allowances, mileage and other expenses as provided in
3 K.S.A. 75-3223 and amendments thereto for attendance at any meet-
4 ing of the board or any subcommittee meeting authorized by the
5 board.

6 (i) The provisions of the Kansas sunset law apply to the real
7 estate appraisal board established by this section, and the board is
8 subject to abolition under that law.

9 Sec. 2. K.S.A. 1991 Supp. 58-4106 is hereby amended to read
10 as follows: 58-4106. (a) The commission shall:

11 (1) Receive applications for certification and licensure and re-
12 newal of certificates and licenses;

13 (2) issue certificates and licenses after the board has approved
14 applications for certification and licensure and renewal of certificates
15 and licenses;

16 (3) maintain a registry of the names and addresses of persons
17 certified and licensed under this act and transmit the registry to the
18 appraisal subcommittee of the federal financial institutions exami-
19 nation council on an annual basis in accordance with federal law;

20 (4) maintain all records submitted to it;

21 (5) collect fees prescribed pursuant to K.S.A. 1990 1991 Supp.
22 58-4107 and amendments thereto;

23 (6) make such expenditures as are necessary to properly carry
24 out the provisions of this act; and

25 (7) submit the board's annual budget, assisted by the board, to
26 the department of administration.

27 (b) The commission may assist the board in such other manner
28 as agreed upon by the board and commission.

29 Sec. 3. K.S.A. 1991 Supp. 58-4107 is hereby amended to read
30 as follows: 58-4107. (a) The board shall adopt rules and regulations
31 prescribing the fees provided for by this act in amounts necessary
32 to administer and enforce this act, subject to the following:

33 (1) For application for certification or licensure, a fee not to
34 exceed \$50.

35 (2) For any examination required for certification or licensure, a
36 fee in an amount equal to the actual cost of the examination and
37 administration thereof.

38 (3) For ~~original certification or licensure~~, a fee not to exceed
39 \$150. *each original or renewal certification or licensure, an equal
fee not to exceed \$300.*

40 (4) For renewal of a certificate or license, a fee not to exceed
41 \$100.

42 (5) *an original or renewal license as a state licensed real property*
43 *appraiser, a fee not to exceed \$200.*

Please Amend

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1 (4) For an original or renewal certificate as a state certified
2 residential real property appraiser, a fee not to exceed \$250.

3 (5) For an original or renewal certificate as a state certified
4 general real property appraiser, a fee not to exceed \$300.

5 (6) For late renewal of a certificate or license, a late fee not to
6 exceed \$50.

7 ~~(6)~~ (7) For certification to another jurisdiction that an individual
8 is certified or licensed, an amount not exceeding \$10. *2500*

9 ~~(7)~~ (8) For approval of a course of instruction approved pursuant
10 to K.S.A. 1990 1991 Supp. 58-4105 and amendments thereto, an
11 amount not to exceed \$100.

12 ~~(8)~~ (9) For renewal of a course of instruction approved pursuant
13 to K.S.A. 1990 1991 Supp. 58-4105 and amendments thereto, an
14 amount not to exceed \$25.

15 If a certificate or license is issued or renewed for a period other
16 than one year, the fee shall be prorated to the nearest whole month.

17 (b) In addition to the certificate or license issued pursuant to
18 this act, the board may offer to provide a wall certificate, which
19 shall bear no expiration date and may charge a fee of \$10 to each
20 appraiser requesting the issuance of a wall certificate. *50.00*

21 (c) The board may prescribe a fee not to exceed \$50 for registra-
22 tion of an appraiser pursuant to subsection (b) of K.S.A. 1990
23 1991 Supp. 58-4103 and amendments thereto.

24 ~~(e)~~ (d) The board may establish different classes of courses of
25 instruction for the purpose of establishing fees pursuant to subsec-
26 tion ~~(a)(7)~~ and ~~(8)~~ subsections (a)(8) and (9) and may establish a
27 different fee for each such class.

28 ~~(d)~~ (e) In addition to the fees prescribed above, the commission
29 shall collect any registry fee required pursuant to federal law. Such
30 registry fees shall be transmitted by the commission to the appraisal
31 subcommittee of the federal financial institutions examination council
32 in accordance with federal law.

33 ~~(e)~~ (f) Except as provided in subsection ~~(f)~~ (g), the commission
34 shall collect all fees provided for by this act. No original or renewed
35 certificate or license shall be issued unless all appropriate fees, in-
36 cluding any federal registry fee, have been paid.

37 ~~(f)~~ (g) If a testing service has been designated by the board to
38 administer the examination, each applicant shall pay the examination
39 fee to the testing service.

40 ~~(g)~~ (h) The director of the commission shall remit to the state
41 treasurer at least monthly all moneys, received pursuant to this act.
42 Upon receipt thereof the state treasurer shall deposit the entire
43 amount in the state treasury. Twenty percent of each such deposit,

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1 other than amounts collected for federal registry fees or for civil
2 fines imposed pursuant to K.S.A. ~~1990~~ 1991 Supp. 58-4118 and
3 amendments thereto, shall be credited to the state general fund and
4 the balance shall be credited to the appraiser fee fund, which is
5 hereby created in the state treasury. All expenditures from such fund
6 shall be made in accordance with appropriations acts upon warrants
7 of the director of accounts and reports issued pursuant to vouchers
8 approved by the director of the commission or by a person or persons
9 designated by the director.

10 ~~(h)~~ (i) All amounts collected for federal registry fees shall be
11 credited totally to the federal registry clearing fund, which is hereby
12 created in the state treasury. All disbursements from the federal
13 registry clearing fund shall be made upon warrants of the director
14 of accounts and reports issued pursuant to vouchers approved by
15 the director of the commission or by a person or persons designated
16 by the director. Amounts credited to the federal registry clearing
17 fund under this section shall not be subject to any limitations imposed
18 by any appropriations act of the legislature.

19 Sec. 4. K.S.A. 1991 Supp. 58-4104, 58-4106 and 58-4107 are
20 hereby repealed.

21 Sec. 5. This act shall take effect and be in force from and after
22 its publication in the statute book.

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SUPPLEMENTAL NOTE ON SENATE BILL NO. 515

As Amended by Senate Committee on
Federal and State Affairs

Brief*

The bill would make amendments to the State Certified and Licensed Real Property Appraisers Act. The amendments would:

- remove the provision that prohibits two or more members of the Real Estate Appraisal Board from being members of the same real estate appraisal organization;
- clarify that the Board is to transmit its registry of licensed and certified appraisers and registry fees to the appraisal subcommittee of the federal financial institutions examination council;
- increase the maximum fee for original or renewal certification or renewal to \$300 (under existing law the maximum fee for new certification or licensure is \$150 and the maximum renewal fee is \$100);
- increase to a maximum of \$25 the fee for certification to another jurisdiction that an individual is certified or licensed in Kansas (under current law that fee is a maximum of \$10);
- authorize the Board to issue for a maximum fee of \$50, a wall certificate that would include an expiration date; and
- make the Act effective upon publication in the *Kansas Register*.

* Supplemental Notes are prepared by the Legislative Research Department and do not express legislative intent.

Background

The amendments to existing law presented in the bill as introduced were requested by the Appraisal Board. Removal of the prohibition against two or more members of the Board belonging to the same appraisal organization and the clarification regarding the state registry and registry fee were required by the federal appraisal subcommittee.

The Senate Committee on Federal and State Affairs amended the bill to increase the maximum allowable fee for new or renewal certification or licensure under the Act. In the bill as introduced, the Appraisal Board proposed different maximum fees for different classifications of appraisers. The Senate Committee amended the bill to increase the maximum fee charged for certification to another jurisdiction. The Senate Committee also amended the bill to require that the expiration date of the certificate be displayed on a wall certificate provided by the Commission and that the maximum fee for a wall certificate be \$50. The Board included in the bill as introduced a new provision that a wall certificate, without an expiration date be provided at a maximum fee of \$10, to any licensee or certificate holder who requests one. Finally, at the request of the Board, the Senate Committee amended the bill to make it effective upon publication in the *Kansas Register*.