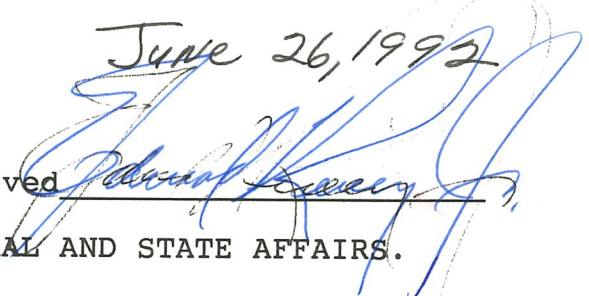


June 26, 1992

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 March 31, 1992 in Room 254-E of the Capitol.

All members were present except:
Sen. Daniels was excused

Committee staff present:

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

Conferees appearing before the committee:
See list attached

Others attending: See attached list

Sen. Reilly announced the committee will hear testimony on HB 3164 and introduced Brandon Myers, Chief Legal Counsel for the Kansas Human Rights Commission. Mr. Myers presented information on the bill (Attachment 1) and explained this bill permits conformity with federal law. He called attention to the Analysis on Page 5. Committee members questioned Mr. Myers regarding the 1991 law and complaints about it and if changes proposed in this bill would be retroactive. The chairman introduced Sharon Huffman, Kansas Commission on Disability Concerns, who testified in favor of HB 3164 (Attachment 2). Sen. Morris moved HB 3164 be passed and placed on the Consent Calendar, and it was seconded by Sen. Ward. The motion passed.

Sen. Reilly called the committees' attention to SB 695 and read the Fiscal Note (Attachment 3). Discussion centered around where video machines would be located - on fairgrounds, airports, visitor centers - throughout the state to maximize income to the state from the machines. It was pointed out the machines have to be licensed by ABC and come under their control; also discussed was the problem of minors (under 21 years of age) using the machines. Sen. Morris made a motion to remove reference in the bill to machines being located at the State Fair. Motion was seconded by Sen. Bond, and the motion passed.

Discussion continued on SB 695 and Sen. Vidricksen asked if video lottery would be permitted on a Riverboat and Sen. McClure brought up the problem of "grey machines" and the cost and manpower required for enforcement. Ralph Decker, Executive Director, Kansas Lottery, informed the committee that the operators do a good job of "policing" themselves and report "grey machines" to authorities. Sen. Webb moved that in New Section 18, Page 18, Lines 16, 17, 18, the percentages be change to 60, 20, 20. Sen. Morris seconded the motion. Discussion centered around state-owned machines vs. operator-owned machines, and Mr. Decker recalled information from other states who have experience with both.

Sen. Morris asked if there were other amendments to consider on this bill, so the committee could move it to the Senate floor for debate. Mary Torrence stated there are some technical amendments, and Sen. Reilly announced the committee will further

consider SB 695 tomorrow.

Meeting adjourned at 12:05.

ATTACH. 1

**TESTIMONY OF THE KANSAS HUMAN RIGHTS COMMISSION
BEFORE THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
HOUSE BILL NO. 3164
BRANDON L. MYERS, CHIEF LEGAL COUNSEL**

H.B. 3164 was introduced by the House Federal and State Affairs Committee at the request of the Kansas Human Rights Commission (KHRC). The Commission has prepared a Fiscal Note as to House Bill 3164 and a copy is attached hereto.

SUMMARY

This bill proposes amendments to the housing discrimination sections of the Kansas Act Against Discrimination (KAAD), which is administered by the KHRC. House Bill No. 2541, which was passed by the Legislature last session, enacted changes to the KAAD housing sections by prohibiting discrimination in housing on the basis of disability or familial status. The amendments were based upon comparable changes in federal housing discrimination law stemming from the Federal Fair Housing Amendments Act of 1988. House Bill 3164 is intended to fine tune the KAAD to place it in substantial equivalency with the Federal Fair Housing Law as amended in 1988. House Bill 3164 also makes some typographical and technical corrections to provisions adopted in House Bill 2541.

Att. 1
1

BACKGROUND

The KAAD has traditionally been patterned upon, and in substantial conformity, with the comparable Federal Fair Housing Act. Kansas has thereby aligned itself with the same basic public policy of opposition to housing discrimination as is engrained within the Federal Fair Housing Law. Because of the substantially equivalent nature of the state and federal housing discrimination laws, the KHRC (formerly the Kansas Commission on Civil Rights) has been in a position to enter into contractual work-sharing agreements with the U. S. Department of Housing and Urban Development (HUD), which administers the Federal Fair Housing Act. Under the federal law, if HUD determines that a state agency administers a comparable state law, HUD may contract to pay that agency in order to utilize the state agency's investigation of complaints which may be asserted under both state and federal law. By contractually delineating each agency's duties, those wishing to complain of housing discrimination are efficiently assisted in coordinating the filing of complaints with both agencies, and the parties are the subject of only one investigation, which is then generally accepted by the other agency. Duplicitous investigative activities are minimized and the matters tend to be handled on a more localized basis. Since the KHRC must investigate complaints filed therewith, and the state must fund the agency for that purpose, the contractual payment from HUD for doing something

otherwise required by state law is fortuitous indeed. The KHRC currently is receiving approximately \$40,000 per year from HUD for this activity. It is anticipated that these funds will double to \$80,000 per year if HUD determines that the KHRC has amended our law to conform with the 1988 federal amendments.

Similarly, the KHRC qualifies for grants from HUD due to our similar laws. The grant funds we are currently receiving are approximately \$65,000 per year and are used for educational activities, equipment, educational materials, etc. (Last year the Commission's Education Specialist made presentations in each of the 105 counties in Kansas, largely due to the HUD funding of these activities).

For the last three previous legislative sessions, the KHRC has been attempting to adopt amendments to the KAAD which would place the KAAD in substantial conformity with existing federal laws. This was first attempted in House Bill 2084 for two sessions and then in House Bill 2541 last session. The 1988 federal amendments set a date of January 13, 1992, by which states with work-sharing contracts with HUD would have to have their laws in such conformity or else HUD would no longer be authorized to maintain these contracts. After analyzing our law as amended by House Bill 2541, HUD has indicated to KHRC that certain additional statutory amendments are necessary, while

certain, less significant, gaps between the two laws can be satisfactorily remedied by adoption of administrative regulations by KHRC. KHRC submitted proposed regulations and the proposed statutory changes (which are now comprised in House Bill 3164) to HUD and was granted an extension of time through September 13, 1992, in which to enact these regulations and statutory amendments. Based upon HUD's written comparison of Kansas and federal law and their past declaration of substantial conformity between federal law and the laws of other states (e.g., Texas and North Carolina) with comparable situations, we believe the adoption of the fine tuning amendments of House Bill 3164 will finally bring substantial conformity between Kansas and federal laws as required to maintain our HUD contracts. Our proposed housing regulations are already going through the adoption process. However, failure of the Legislature to pass House Bill 3164 this session will result in the loss of all KHRC funding from HUD (as set out above, approximately \$40,000 - \$145,000 per year). HUD cannot extend the time in which to conform the laws past September 13, 1992 (the federal statute sets this date as the final extension deadline). It is therefore urgent that House Bill 3164 be adopted this session.

ANALYSIS

1. Section 1 (page 2 of bill): K.S.A. 44-1016 (h)(3)(C): Changes from July 1, 1991, to January 1, 1992 when accessibility requirements go into effect in regards to new construction and design of housing covered by the Act.

Rationale for change: H.B. 2541's change to the housing section of the KAAD did not become effective until January 1, 1992 (K.S.A. 1991 Supp. 44-1015, et. seq.). The July 1, 1991, compliance date above is clearly an error which unintentionally puts this subsection out of sync with all the other relevant sections of H.B. 2541.

2. Section 2 (page 4 of bill): K.S.A. 44-1018 (1)(2)(A): Changes from "90%" to "80%" the threshold level of occupancy by at least one person per unit of age 55 or older to qualify a housing community as "housing for older persons" exempt from the prohibition against discrimination on the basis of familial status.

Rationale: This provision was intended to mirror the comparable federal law provision contained at 42 USC 3607(2)(c)(ii) which is 80%. This merely corrects a typographical error.

3. Section 3 (page 5 of bill): K.S.A. 44-1019(b): Corrects a typographical error by changing the word "forms" to "forums".

Rationale: An aggrieved person and other parties have choices under the law with regard to federal versus state and court versus administrative hearing "forums". This is what was intended to be referred to here - not "forms".

4. Section 3 (pages 7 - 8 of bill): K.S.A. 44-1019 (h) - (k): This allows a party, after the Commission has investigated and determined that probable cause exists for crediting the allegations of a complaint, to elect to have a civil action commenced in state district court as an alternative to the KHRC public hearing process. The provision requires that the KHRC commence such civil action. If this "opt-out" to court is elected, the KHRC is required to commence such civil action. In the District Court proceeding, the KHRC legal staff would present the case in support of the complaint in the same manner as if the case were presented at a KHRC public hearing.

K.S.A. 44-1019(i) proposes that if a party does not opt-out to court and the matter proceeds to public hearing, actual damages, including those for pain, suffering and humiliation, may be awarded by the KHRC to the extent such damages are supported by the evidence. Also, this change allows the imposition of civil penalties consistent with those which may be imposed in a HUD administrative hearing under the Federal Fair Housing Act at 42 USC 3612 (g)(3). Such civil penalties would be payable to the state general fund. These penalties increase where violations of the law are proven on a recurring basis.

Rationale: The purpose of these provisions is to assure that when discrimination is proven, aggrieved persons have remedies available at the state level comparable to those existing under federal law, and to insure that such person is not, in effect, penalized for proceeding through the state administrative process rather than another option. The civil penalties are meant to help assure that violations will not reoccur. The HUD analytical memorandum to KHRC indicates that adoption of House Bill 3164's court options provisions, which are comparable to the court options available under 42 USC 3612(a) provided by HUD, are crucial to a determination of substantial equivalency of these two laws, and the administrative hearing remedy changes will make the two laws comparable.

5. Section 4 (page 9 of bill): K.S.A. 44-1021 (d)(1): This change allows the commencement of a civil action by an aggrieved person within two years of the alleged discriminatory occurrence or the termination of a discriminatory practice. The amendment provides for the tolling of this limitation period while the administrative processing of a complaint is ongoing.

Rationale: K.S.A. 44-1021 (d)(1) as passed by H.B. 2541 allows a one year period for filing such a lawsuit, but does not provide for tolling of the limitation period while the complaint is going through KHRC administrative processing. This conflicts with the one year period for filing an administrative complaint with KHRC as authorized (pursuant also to H.B. 2541 changes) at K.S.A. 44-1019(a). These changes permit a person filing a KHRC complaint at the very end of the one year filing period to exhaust his or her administrative remedies with KHRC and yet be within time to file court action. Currently, Kansas appellate case law (Van Scoyck v St. Mary's Assumption Parochial School, 224 Kan. 304 (1978)) establishes a right to file such a court action after KHRC closes a case as "no probable cause", but the limitation period for such a filing has not been precedentially established. The two year limitation period and the tolling provisions are consistent with the Federal Fair Housing Amendments. (It should be noted that the KAAD specifically prohibits this type of court action if the parties have had a KHRC public hearing on their case.)

Att. 1
8

ALYCE HAYES BROWN, Chairperson
TOPEKA

JOAN FINNEY, GOVERNOR
STATE OF KANSAS

MICHAEL J. BRUNGARDT
EXECUTIVE DIRECTOR

ROBERT G. LAY
ASSISTANT DIRECTOR

ARTHUR R. BRUCE
SUPERVISOR OF COMPLIANCE

WILLIAM V. MINNER
FIELD SUPERVISOR

LINDA L. AUWARTER
OFFICE MANAGER

FRANCIS ACRE
DODGE CITY

ROBERT WESLEY
INDEPENDENCE

CORBIN R. BENHAM
MULVANE



KANSAS HUMAN RIGHTS COMMISSION

LONDON STATE OFFICE BLDG.—8TH FLOOR
900 S.W. JACKSON ST.—SUITE 851 S.
TOPEKA, KANSAS 66612-1258
(913) 296-3206
TDD# (913) 296-0245

M E M O R A N D U M

TO: Gloria M. Timmer, Director of the Budget

FROM: Robert G. Lay, Assistant Director *RGL*

SUBJECT: Fiscal Note on House Bill No. 3164

DATE: March 4, 1992

In accordance with your request I have reviewed House Bill No. 3164. The purpose of H.B. 3164 is to amend existing Kansas law to bring it into conformity with the 1988 Federal Fair Housing amendments.

The major proposed amendments in this bill are directed toward the election of judicial alternatives and civil penalties. There are also several technical and typographical changes proposed that have no fiscal impact (An expanded analysis of these proposed changes is attached.).

If this bill is not passed there would be a significant fiscal impact on the agency, since we would lose the ability to contract with the U.S. Department of Housing and Urban Development (HUD) to process housing discrimination complaints for HUD and receive payment for such cases.

Att. 1
9

Gloria M. Timmer
March 4, 1992
Page 2

The Kansas Human Rights Commission has maintained a contractual relationship with HUD since 1981. This contractual relationship was possible because HUD had declared Kansas law, with regard to housing, to be substantially equivalent to the Federal Fair Housing law. Since the enactment of the 1988 Federal Fair Housing amendments, Kansas law is no longer considered substantially equivalent. The loss of the HUD contract would severely impact agency funding, since this contract is a major source of agency funding. For example, the 1990-91 HUD contract was for \$94,250, which included approximately \$40,000 for case investigations and a \$55,000 grant. The 1991-92 contract is for \$96,200, which includes a \$65,000 grant. It is estimated that future contracts could reach \$100,000 to \$145,000 annually. If funds are lost due to our inability to contract with HUD, the funds would likely have to be replaced by State General funds, if the agency is to continue the present level of operation. It should be understood, however, that even if the agency lost its HUD contract, we would still have essentially the same number of complaints to investigate, except we would not be paid for those services.

If you need additional information, please contact me.

RGL:la
Enc.

Att. 1
10



Kansas Department of Human Resources

Joan Finney, Governor
Joe Dick, Secretary

Commission on Disability Concerns

1430 S.W. Topeka Boulevard, Topeka, Kansas 66612-1877
913-296-1722 (Voice) -- 913-296-5044 (TDD)
913-296-4065 (Fax)

Testimony on HB 3164 by the Kansas Commission on Disability Concerns

March 31, 1992

The Kansas Commission on Disability Concerns (KCDC) appreciates the opportunity to testify in favor of House Bill 3164. HB 3164 will amend the Kansas Act Against Discrimination (KAAD) to make it comparable to the Federal Fair Housing Amendments Act (FHAA).

Currently dual investigations may be conducted by both the Department of Housing and Urban Development (HUD) and the Kansas Human Rights Commission (KHRC) on the same complaints concerning disability or familial status. By making KAAD comparable to the federal law KHRC will be able to initiate investigations into fair housing complaints for the federal government. KHRC will receive approximately \$850 for each complaint they investigate for HUD. Not only will this eliminate duplication of services, but could also generate nearly \$150,000 a year in federal funds to the State.

In light of the present budget constraints it behooves the legislature to look for savings and eliminate waste where ever possible. HB 3164 offers an opportunity to do just that and the opportunity to receive additional federal revenue for doing something which is already required by the existing state law.

KCDC urges you to act favorably on HB 3164.

Att. 2
1

STATE OF KANSAS

Attach 3
Reilly



DIVISION OF THE BUDGET

Room 152-E
State Capitol Building
Topeka, Kansas 66612-1578

(913) 296-2436
FAX (913) 296-0231

JOAN FINNEY, GOVERNOR
GLORIA M. TIMMER, Director

March 5, 1992

KBI Impact

The Honorable Edward Reilly, Chairperson
Committee on Federal and State Affairs
Senate Chamber
Third Floor, Statehouse

Dear Senator Reilly:

SUBJECT: Fiscal Note for SB 695 by Committee on Federal
and State Affairs

In accordance with KSA 75-3715a, the following fiscal note
concerning SB 695 is respectfully submitted to your committee.

SB 695 would authorize the Kansas Lottery to offer video
lottery. Video lottery machines could offer a variety of
games, including poker, blackjack, bingo, and keno. Players
would have to be at least 21 years old, and winning players
would receive free games or credits redeemable for cash. The
maximum wager would be \$2 per game, and the maximum prize would
be \$1,000 per game. The machines could be operated only at
retail liquor stores, establishments (or defined areas of)
which derive at least 30 percent of sales from beer or
alcoholic liquors for on-premise consumption, licensed
racetrack facilities, and the State Fairgrounds during the
annual fair. A drinking establishment licensed to retail video
lottery could not have more than 10 machines.

To qualify as a retailer, manufacturer, distributor, or
operator, the person would have to be at least 18 years old and
meet certain financial and criminal background standards, as
well as others. A video lottery retailer would be required to
be licensed also as a retailer of instant lottery tickets, and
an operator would be required to be a state resident. Licenses
as a retailer, manufacturer, distributor, and operator would be
mutually exclusive -- the only exception being that a person
could be licensed as both a manufacturer and a distributor.
Video lottery machines would be monitored through a central
communications system, but the system would not have to be an
on-line system.

Att. 3
1

Retailers, manufacturers, distributors, and operators could be charged an application fee not to exceed \$500. Annual fees would be charged, but could not exceed, \$500 for a retailer, \$20,000 for a manufacturer, \$5,000 for a distributor, or \$5,000 for an operator.

On average, between 85 percent and 95 percent of video lottery wagers would be paid back as prizes. Of the net video lottery income, the state would receive 40 percent, the retailer would receive 30 percent, and the operator would receive 30 percent. All fees and the state's share of net income (less operating costs) would be credited to the State General Fund.

Tampering with a licensed video lottery machine or possessing an unlicensed machine would be a Class D felony. Permitting anyone under 21 years of age to play video lottery would be a Class A misdemeanor upon the first conviction and a Class D felony upon subsequent convictions.

The Kansas Lottery estimates the state's annual share of net income to be \$73,695,899, and first-year expenditures to be \$2,414,375. Assuming 12 months of operation, the Lottery estimates transfers of \$71,281,524 to the State General Fund. Based on South Dakota's experience with video lottery, the Kansas Lottery also notes the possibility of a 25 percent decrease in sales of existing games. The *FY 1993 Governor's Budget Report* estimates instant, pull-tab, and on-line sales of \$72 million in FY 1993, 30 percent, or \$21.6 million, of which would be credited to the State Gaming Revenues Fund.

The *Governor's Message* estimated the state's share of net income from video lottery to be \$50 million annualized and \$30 million in FY 1993, assuming seven months of operation.

The Lottery's revenue estimate, detailed below, is based on a per capita ratio of the net income received by the state of South Dakota in the first year of video lottery operation. The fee estimates assume three manufacturers at \$20,000 each, three distributors at \$5,000 each, operators with 8,500 machines at \$150 each, and 1,700 retailers at \$100 each.

State Share of Net Income	\$72,175,899
Manufacturer Fees	60,000
Distributor Fees	15,000
Operator Fees	1,275,000
Retailer Fees	<u>170,000</u>
Total	\$73,695,899

The estimate of the state share of net income is further detailed below. Prior to the introduction of video lottery,

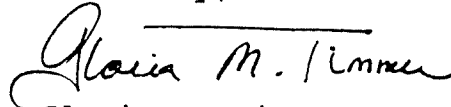
South Dakotans wagered a per capita average of \$17.65 on instant game sales, compared to a per capita average of \$12.36 for Kansans. A Kansan's propensity to wager may then be assumed to be 70 percent ($\$12.36 \div \$17.65 = .70$) of a South Dakotan's. During the first year of operation, the state of South Dakota received net income which averaged \$104 per capita. Adjusting this average by the propensity to wager results in a Kansas net income average of \$72.83 per capita ($\$104 \times .70 = \72.83). Given the 1990 Kansas population of 2,477,547, total net income would be \$180,439,748, of which 40 percent, or \$72,175,899, would be the state share.

	<u>South Dakota</u>	<u>Kansas</u>
Instant p/c Sale (FY 1991)	\$17.65	\$12.36
Relative Propensity to Wager		.70
p/c Net Income	\$104.00	\$72.83
Kansas Population		2,477,547
Total Net Income		\$180,439,748
State Share (40%)		<u>\$ 72,175,899</u>

The Lottery's expenditure estimate is detailed below. Expenditures for capital outlay and many of the background checks would not be recurring costs.

Computer/Software	\$1,500,000
Background Checks	425,000
12 FTE Positions	394,755
Other Operating Expenditures	<u>94,620</u>
Total	\$2,414,375

Sincerely,



Gloria M. Timmer
 Director of the Budget

cc: Gary Saville, Lottery