

MINUTES OF THE SENATE JUDICIARY.

The meeting was called to order by Chairman John Vratil at 9:30 a.m. on February 5, 2003 in Room 123-S of the Capitol.

All members were present.

Committee staff present: Mike Heim, Kansas Legislative Research Department
Lisa Montgomery, Office of the Revisor of Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Kris Crane, Coffeyville
Darrel Harbaugh, Coffeyville
Darci Eveleigh, Coffeyville High School student
Mary Hayes, Coffeyville
Karole Bradford, Inter-Faith Ministries, Wichita
Representative Jim Miller (written testimony)
F. William Cullins, Montgomery County Attorney (written testimony)
Senator Jay Emler
Sandy Jacquot, League of Kansas Municipalities
Roger Kroh, Director of Planning & Development, City of Lenexa
Phil Journey, Attorney, Kansas State Rifle Association and Kansas Second Amendment Society, Wichita
Ken Corbet, Owner of Ravenwood Lodge

Others attending: see attached list

Chairman Vratil called for bill introductions. Jeremy Anderson, Director of Government Affairs, Office of the Governor, asked that a bill be introduced at the request of Governor Sebelius and Attorney General Kline which will strengthen the penalties for crimes committed by sexual predators, criminals who target law-enforcement officers, and those who commit crimes against children. Senator O'Connor moved to have the bill introduced, seconded by Senator Donovan, and the motion carried. (Attachment 1)

Senator Gilstrap asked for introduction of a bill concerning lotteries; authorizing electronic gaming machines at certain locations. Senator Gilstrap made a motion to introduce such a bill, seconded by Senator Haley, and the motion carried. (Attachment 2)

SB 54 - creating the crime of negligent homicide

The Chair opened the hearing on **SB 54**. Kris Crane testified in support of this bill as it was her 13 year old son, C. J. Crane, that was killed due to the negligence of an adult. She shared with the Committee how her son was killed on February 19, 2001. She stated that it was because of an individual's lack of responsibility in leaving a loaded rifle lying on top of the television in the living room of his home that compels her to ask for creation of a criminal negligence law in Kansas. Mrs. Crane said the owner of the rifle should have been held accountable for his indifference to the dangerous situation he created with children in his home. (Attachment 3) Mrs. Crane also submitted supporting written testimony for F. William Cullins, Montgomery County Attorney. (Attachment 4)

Conferee Harbaugh spoke in favor of **SB 54**, and supported a law holding citizens accountable for negligence that results in the injury or death of another human being. (Attachment 5)

Conferee Eveleigh testified as a proponent for **SB 54**, and urged the Committee to make this proposed bill a law which creates a crime of criminal negligence. (Attachment 6)

Conferee Hayes spoke in support of **SB 54** as it was her grandson that was killed in 2001 by the negligence of an adult. She asked that when the bill becomes a law that it be named after her grandson and called "C.J.'s Law". (Attachment 7)

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE on February 5, 2003 in Room 123-S of the Capitol.

Conferee Bradford testified in support of this proposed legislation for Inter-Faith Ministries and Safe State Kansas. She said this bill would help ensure that adults take the steps necessary to prevent harm caused by access to firearms. (Attachment 8)

Representative Jim Miller submitted written testimony in support of **SB 54**. (Attachment 9)

After brief Committee discussion, Chairman Vratil requested staff to do a comparison of this proposed legislation with the current statute on criminal involuntary manslaughter, what the elements of the crimes are, how they differ, and what other states do under similar circumstances. Senator Pugh asked if Gordon Self, the original drafter of this proposed bill could come and explain to the Committee what he modeled the draft after or where the language came from. He also requested that the Committee hear from someone in criminal law and procedure, possibly a law professor. Senator Haley requested from staff two or three hypothetical situations where this law might be applied. The Chair asked Senator Pugh to contact Washburn University or the University of Kansas Law Schools and see if there is a criminal law professor or someone else that could possibly come and address the Committee briefly on this subject on Tuesday, February 11.

Senator Allen stated that she would like to request that a bill be drafted on trigger locks or other devices intended to prevent accidental discharge of a firearm stored within the confines of a residence. Senator Allen made a motion to have such a bill drafted, seconded by Senator Oleen, and the motion carried.

Chairman Vratil closed the hearing on **SB 54**.

SB 25 - sport shooting ranges; local regulation

The Chair opened the hearing on **SB 25**. Senator Emler testified in support of **SB 25**, which he asked to be introduced in order to clarify what he believed was the intent of the Senate amendment to HB 2599 in the 2001 legislative session. He explained that HB 2599 was amended to afford protection to sport shooting ranges around which communities were built, and were not to be grandfathered if they were out of compliance with local regulations *ab initio*. Senator Emler stated that the effect of HB 2599 was to legitimize sport shooting ranges that were not in compliance from their inception. He submitted a balloon amendment which addressed the concerns of the range owners/operators and the National Rifle Association. (Attachment 10)

Conferee Jacquot testified in support of **SB 25**, and clarified that the proposed bill would improve the law and give local governments some measure of control over shooting ranges that constitute nonconforming uses. Ms. Jacquot explained that part of the problem for cities was that the current law allows shooting ranges to legally expand or increase the size and scope of the facilities and activities which may further increase the hazard to the general public. (Attachment 11)

Conferee Kroh, representing the City of Lenexa, testified in support of **SB 25**, in that it specifically acknowledges the ability of a community to amortize lawful nonconforming uses. He expressed a concern regarding the provision within the proposed bill requiring mandatory compensation, and asked that it be amended to be consistent with existing law which provides for the gradual elimination of lawful nonconforming uses. (Attachment 12)

After Committee questions and discussion, the Chair called upon the first opponent to **SB 25**. Conferee Journey testified in opposition to the proposed legislation on behalf of the Kansas Second Amendment Society and the Kansas State Rifle Association. He said that **SB 25** should effectively allow the elimination of any or all sports shooting ranges in the State of Kansas by the enactment of a patchwork quilt of noise ordinances by municipalities or counties across the state. Mr. Journey stated that if a range was being operated outside the guidelines established by the Kansas Department of Wildlife and Parks then administrative or other action can be taken. (Attachment 13)

Chairman Vratil announced that due to time constraints, the hearing on **SB 25** would be continued at the next meeting.

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE on February 5, 2003 in Room 123-S of the Capitol.

The minutes of the January 30 meeting were approved on a motion by Senator Donovan, seconded by Senator O'Connor, and the motion carried.

The meeting adjourned at 10:36 a.m. The next scheduled meeting is February 6, 2003.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb. 5, 2003

NAME	REPRESENTING
Mary Hayes	Self
Yvonne Brockford	Inter-Faith Ministries
Kris Crane	Self
Darci Eveleigh	Self
Charlene Spivey	Self
Phil Young	KSAS-KSRA-ACGCinc
Ken Cobbit	Kansas Sport Hunting Assn.
Steve Ethier	Kans Second Amend Soc
St. Rita	
Carolyn McManis	Intern for Sen. Amen
Janice Ryan	City of Lawrence
Roger Koch	"
Bob Jones	KSP
Kyle Kesler	DOB
Mark Gleeson	Judicial Branch
Chris Tymeson	KDWP
Jeff Bottenberg	KS Peace Officers
Trista Curzydlo	KS Bar Assn.
Danielle Roe	Johnson County



KANSAS

OFFICE OF THE GOVERNOR

KATHLEEN SEBELIUS, GOVERNOR

GOVERNOR SEBELIUS AND ATTORNEY GENERAL KLINE INTRODUCE PUBLIC SAFETY INITIATIVES

Governor Kathleen Sebelius and Attorney General Phill Kline announced today the introduction of legislation designed to significantly impact public safety in our state. The legislative initiatives, which will be introduced in the Senate Judiciary and House Corrections and Juvenile Justice committees, are the first of several planned initiatives to strengthen the penalties for crimes committed by sexual predators, criminals who target law-enforcement officers, and those who commit crimes against children.

The legislation will focus on:

Sexual Predators:

- Require a mandatory 40-year prison sentence for criminal predators convicted twice of committing rape.
- Correct the jurisdictional problem associated with the 60-day time frame for convicted sexually violent predators.

Children:

- Increase the penalty for those who promote prostitution of a minor under age 16. This legislation would change that from a level 6 to a level 5 felony allowing for probation after conviction.

Meth Labs:

- Intentionally exposing a child to the sale, distribution, or manufacture of meth would be added as a violation of the Endangering a Child statute K.S.A. 21-3608.

Law Enforcement:

- Close the loophole that allows a criminal predator to seek out, locate, and batter an off-duty law enforcement officer which is currently a level 6 felony as opposed to a level 3 felony if on-duty. The bill will make it a Level 3 felony to seek out, locate and batter an off-duty officer.

By

AN ACT concerning lotteries; authorizing electronic gaming machines at certain n locations; amending K.S.A. 2001 Supp. 19-101a, 74-8702, 74-8710 and 74-8711 and repealing the existing sections.

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

Section 1. K.S.A. 2001 Supp. 74-8702 is hereby amended to read as follows: 74-8702. As used in the Kansas lottery act, unless the context otherwise requires:

- (a) "Commission" means the Kansas lottery commission.
- (b) "Executive director" means the executive director of the Kansas lottery.
- (c) "Gaming equipment" means any electric, electronic, computerized or electromechanical machine, mechanism, supply or device, or any other equipment, which is: (1) Unique to the Kansas lottery and used pursuant to the Kansas lottery act; (2) integral to the operation of an electronic gaming machine; or (3) affects the results of an electronic gaming machine by determining win or loss.
- (d) "Kansas lottery" means the state agency created by this act to operate a lottery or lotteries pursuant to this act.
- (e) "Lottery retailer" means any person with whom the Kansas lottery has contracted to sell lottery tickets or shares, or both, to the public.
- (f) "Lottery" or "state lottery" means the lottery or lotteries operated pursuant to this act.
- (g) "Major procurement" means any gaming product or service, including but not limited to facilities, advertising and promotional services, annuity contracts, prize payment agreements, consulting services, equipment, tickets and other products and services unique to the Kansas lottery, but not including materials, supplies, equipment and services common to the ordinary operations of state agencies.
- (h) "Person" means any natural person, association, limited liability company, corporation or partnership.
- (i) "Prize" means any prize paid directly by the Kansas lottery pursuant to its rules and regulations.
- (j) "Share" means any intangible manifestation authorized by the Kansas lottery to prove participation in a lottery game.
- (k) "Ticket" means any tangible evidence issued by the Kansas lottery to prove participation in a lottery game.
- (l) "Vendor" means any person who has entered into a major procurement contract with the Kansas lottery.
- (m) "Returned ticket" means any ticket which was transferred to a lottery retailer, which was not sold by the lottery retailer and which was returned to the Kansas lottery for refund by issuance of a credit or otherwise.
- (n) "Video lottery machine" means any electronic video game machine that, upon insertion of cash, is available to play or simulate the play of a video game authorized by

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Attachment 2-1

the commission, including but not limited to bingo, poker, black jack and keno, and which uses a video display and microprocessors and in which, by chance, the player may receive free games or credits that can be redeemed for cash.

(o) (1) "lottery machine" means any machine or device that allows a player to insert cash or other form of consideration and may deliver as the result of an element of chance, regardless of the skill required by the player, a prize or evidence of a prize, including, but not limited to:

(A) Any machine or device in which the prize or evidence of a prize is determined by both chance and the player's or players' skill, including, but not limited to, any machine or device on which a lottery game or lottery games, such as poker or blackjack, are played;

(B) any machine or device in which the prize or evidence of a prize is determined only by chance, including, but not limited to, any slot machine or bingo machine; or

(C) any lottery ticket vending machine, such as a keno ticket vending machine, pull-tab vending machine or an instant-bingo vending machine.

(2) "Lottery machine" shall not mean:

(A) Any food vending machine defined by K.S.A. 36-501, and amendments thereto;

(B) any nonprescription drug machine authorized under K.S.A. 65-650, and amendments thereto;

(C) any machine which dispenses only bottled or canned soft drinks, chewing gum, nuts or candies; or

(D) any electronic gaming machine operated in accordance with the provisions of the Kansas gaming act; or

(E) any machine excluded from the definition of gambling devices under subsection (d) of K.S.A. 21-4302, and amendments thereto.

(p) "Electronic gaming machine" means any electronic, electromechanical, video or computerized device, contrivance or machine authorized by the Kansas lottery which, upon insertion of cash, tokens, electronic cards or any consideration, is available to play, operate or simulate the play of a game authorized by the Kansas lottery at a pari-mutuel licensee location, including, but not limited to, bingo, poker, blackjack, keno and slot machines, and which may deliver or entitle the player operating the machine to receive cash, tokens, merchandise or credits that may be redeemed for cash. Electronic gaming machines may use bill validators and may be single-position reel-type, single or multi-game video and single-position multi-game video electronic game, including but not limited to, poker, blackjack and slot machines. Electronic gaming machines shall be linked to a central computer at a location determined by the executive director for purposes of security, monitoring and auditing.

(q) "Facility owner licensee," "facility manager licensee" and "organization licensee" have the meanings provided by K.S.A. 74-8802, and amendments thereto.

(r) "key gaming employee" means any natural person 21 years of age or older employed by or under contract with a lottery gaming machine operator or employed by or under contract with a person providing on or off-site management or employee-related services to the lottery gaming machine operator, including, but not limited to: (1) Gaming machine operator manager and assistant manager; (2) facilities operator manger; (3) electronic games manager; (4) accounting department personnel; (5) count room

employees; (6) cage department employees, including cashiers and main bank employees; (7) vault department employees; (8) approvers of credit; (9) surveillance department employees; (10) security department employees; (11) floor managers; (12) electronic gaming machine technicians; (13) custodians of electronic gambling machines, including persons with access to cash and accounting records within such machines; (14) collection personnel; (15) internal auditors or the lottery gaming machine operator; and (16) any employee whose total cash compensation is in excess of \$50,000 per year.

(s) "Lottery gaming machine operator" means any pari-mutuel licensee with which the executive director has contracted for the placement of an electronic gaming machine pursuant to this act;

(t) "Net machine income" means the total of all cash and the face value of all tokens or electronic cards placed in an electronic gaming machine, less cash, merchandise or credits that may be redeemed for cash paid to players as winnings.

(u) "Pari-mutuel licensee" means a facility owner licensee or a facility manger licensee.

(v) "Pari-mutuel licensee location" means: (1) A racetrack facility, as defined by K.S.A. 74-8802, and amendments thereto, where live horse racing or live greyhound racing has been authorized or for which an application for authorization to conduct live horse racing or live greyhound racing pursuant to the Kansas pari-mutuel racing act is pending prior to February 1, 2000; (2) a facility located on real estate where such racetrack facility is located; or (3) a racetrack facility located at, on or immediately adjacent to the real estate of Eureka Downs or Anthony Downs. A pari-mutuel licensee location may include any existing structure at a racetrack facility described in this subsection or any structure that may be constructed on real estate where such racetrack facility is locate.

(w) "Progressive electronic game" means a game played on an electronic gaming machine for which the payoff increases uniformly as the game is played and for which the jackpot, determined by application of a formula to the income of independent, local or interlinked electronic gaming machines, may be won.

(x) "Technology provider" means any person or entity other than a lottery gaming machine operator that designs, manufactures, installs, operates, distributes, supplies or replaces an electronic gaming machine for sale, lease or use in accordance with this act.

(y) "Token" means a metal or other representative of value, which is not legal tender, redeemable for cash only by the issuing lottery gaming machine operator at its pari-mutuel licensee location and issued and sold by a lottery gaming machine operator for the sole purpose of playing an electronic gaming machine.

New Sec. 2. (a) Sections 2 through 25, and amendments thereto, shall be known as the Kansas gaming act and shall be part of and supplemental to the Kansas lottery act.

(b) If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect any other provision or application of the act which can be given effect without the invalid provision or application.

New Sec. 3. (a) The executive director may contract with pari-mutuel licensees for the operation and management, by the state of Kansas, of electronic gaming machines at pari-mutuel licensee locations in counties where a proposition submitted pursuant to section 5, and amendments thereto, has been approved by the voters of such county. Such contracts shall be subject to the provisions of this act and rules and regulations adopted under this act but shall not be subject to the provisions of K.S.A. 74-3738 through 75-3744, and amendments thereto.

(b) The executive director shall select as lottery gaming machine operators such pari-mutuel licensees as the executive director deems best able to serve the public convenience and promote marketing plans developed by the Kansas lottery. In the selection of lottery gaming machine operators, the executive director shall consider factors such as financial responsibility, security of the licensee location, integrity, reputation, volume of expected sales and such other factors as the executive director may deem appropriate.

(c) The executive director may charge an administrative application fee reasonably related to the costs of processing the application, to pari-mutuel licensees applying to become lottery gaming machine operators.

(d) A contract shall not constitute property, nor shall it be subject to attachment, garnishment or execution, nor shall it be alienable or transferable except upon approval of the executive director, voluntarily or involuntarily, or subject to being encumbered or hypothecated. No interest in the contract shall descend by the laws of testate or intestate devolution but any interest shall cease and expire upon the death of the pari-mutuel licensee or interest holders in the pari-mutuel license except that executor, administrators or representatives of the estate of any deceased licensee and the trustee of any insolvent or bankrupt licensee may continue to operate pursuant to the contract under order of the appropriate court for no longer than one year after the death, bankruptcy or insolvency of such licensee.

(e) Each lottery gaming machine operator shall be issued a lottery gaming machine operator certificate which shall be conspicuously displayed at the place where the lottery gaming machine operator is authorized to operate and manage electronic gaming machines.

(f) To be selected as a lottery gaming machine operator, a pari-mutuel licensee must;

(1) Have sufficient financial resources to support the activities required under this act;

(2) be current in payment of all taxes, interest and penalties owed to any taxing subdivision where the pari-mutuel licensee is located; and

(3) be current in filing all applicable tax returns and in payment of all taxes, interest and penalties owed to the state of Kansas, excluding items under formal appeal pursuant to applicable statutes.

(g) The lottery gaming machine operator, at its own expense, shall purchase for the Kansas lottery a license for all software programs used by such lottery gaming machine operator to operate electronic gaming machines. The Kansas lottery shall be the licensee and owner of all such software programs to each lottery gaming machine operator. A pari-mutuel licensee may own or lease, on behalf of the Kansas lottery and at the licensee's own expense, electronic gaming machines for placement at the pari-mutuel

licensee location or the Kansas lottery with the consent of the pari-mutuel licensee may lease such machines for placement at the pari-mutuel licensee location, subject to reimbursement of the Kansas lottery by the pari-mutuel licensee for all expenses related to leasing, installing, operating and managing such machines. Electronic gaming machines purchased or leased by the lottery gaming machine operator, at its own expense, may be installed, operated or managed, owned or leased by a lottery gaming machine operator or by a technology provider under contract with the lottery gaming machine operator as provided by this act. All electronic gaming machines under this act shall be subject to the ultimate control of the Kansas lottery in accordance with the act. Each specific type of electronic gaming machine shall be approved by the Kansas lottery in accordance with K.S.A. 74-8710, and amendments thereto. The use of progressive electronic gaming machines is expressly permitted.

(h) Each contract between the Kansas Lottery and a lottery gaming machine operator shall provide that the Kansas lottery shall receive all of the net machine income derived from the operation of electronic gaming machines at the pari-mutuel licensee location.

(i) Contracts authorized by this section may include provisions relating to:

(1) Accounting procedures to determine the net machine income, unclaimed merchandise and credits.

(2) The location and operation of electronic gaming machines at the pari-mutuel licensee location. Except as provided by this act, the days and hours of operation and the number of such electronic gaming machines shall not be restricted.

(3) Minimum requirements for an electronic gaming machine operator to provide qualified oversight, security and supervision of the operation of electronic gaming machines at the pari-mutuel licensee location, including the use of qualified personnel with experience in applicable technology.

(4) The eligibility requirements for employees of a lottery gaming machine operator who will have responsibility for the handling of cash or tokens. Such requirements may include a background investigation performed by the Kansas racing and gaming commission and that any key gaming employee shall be licensed as provided in sections 17(f) and 19, and amendments thereto.

(5) Provision for termination of the contract by either party for cause, including but not limited to, failure of the lottery gaming machine operator to maintain a pari-mutuel license in accordance with K.S.A. 74-8801 et seq., and amendments thereto, failure of the lottery gaming machine operator to collect and remit net machine income pursuant to section 8, and amendments thereto.

(6) Any other provision deemed necessary by the parties pursuant to this section.

(k) The initial term of a contract pursuant to this section shall be not less than the remaining term of the Kansas lottery. Such contract may be renewed with each extension of the Kansas lottery as provided in K.S.A. 74-8723, and amendments thereto.

(l) (1) The Kansas lottery shall examine prototypes of electronic gaming machines and shall notify the Kansas racing and gaming commission which such types of electronic gaming machines are in compliance with the requirements of this act.

(2) No electronic gaming machine shall be operated at a pari-mutuel licensee location pursuant to this act unless the executive director of the Kansas racing and

gaming commission first issues a certificate for such machine authorizing its use at a specified pari-mutuel licensee location pursuant to this act.

(3) Each electronic gaming machine shall have the certificate prominently displayed thereon. Any machine which does not display the certificate required by this section is contraband and a public nuisance subject to confiscation by any law enforcement officer.

(4) The executive director shall require any manufacturer, supplier, provider, lottery gaming machine operator or other person seeking the examination and certification of electronic gaming machines to pay the anticipated actual costs of the examination in advance. After the completion of the examination, the executive director shall refund any over-payment or charge and collect amounts sufficient to reimburse the executive director for any underpayment of actual costs. The executive director may contract for the examination of electronic gaming machines as required by this subsection, and may rely upon testing done by or for other states regulating electronic gaming machines, if the executive director deems such testing to be reliable and in the best interest of the state of Kansas.

(m) Electronic gaming machines operated pursuant to this act shall:

(1) Pay out an average of not less than 87% of the amount wagered during the expected lifetime of the game;

(2) be directly linked to a central lottery communications system to provide auditing and other program information as approved by the Kansas lottery. The communications systems certified by the Kansas lottery shall not limit participation to only one electronic gaming machine manufacturer, distributor, supplier or provider; and

(3) be on-line and in constant communication with a central computer located at a location determined by the executive director. The lottery gaming machine operator shall lease or purchase at its own expense for the Kansas lottery all gaming equipment necessary to implement such central communications and auditing functions.

(n) No employee, contractor or other person in any way affiliated with an electronic gaming machine operator shall loan money to or otherwise extend credit to patrons of a pari-mutuel licensee location.

New Sec. 4. In addition to the powers granted pursuant to K.S.A. 74-8704 and section 3, and amendments thereto, the executive director shall have the power to:

(a) Enter into contracts with pari-mutuel licensee for placement and replacement of electronic gaming machines at pari-mutuel licensee locations. Such contracts shall be subject to rules and regulations adopted pursuant to this act but shall not be subject to the provisions of K.S.A. 75-3738 through 75-3744, and amendments thereto.

(b) Examine or cause to be examined by any agent or representative designated by the executive director any books, papers, records or memoranda of any lottery gaming machine operator for the purpose of ascertaining compliance with the provisions of the Kansas lottery act or rules and regulations adopted thereunder.

(c) Issue subpoenas to compel access to or for the production of any books, papers, records or memoranda in the custody or control of any lottery gaming machine operator, or to compel the appearance of any lottery gaming machine operator for the purpose of ascertaining compliance with the provisions of this act or rules and regulations adopted hereunder. Subpoenas issued under the provisions of this subsection may be

served upon natural persons and corporations in the 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 executive director or an agent or representative designated by the executive director. 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 country where such books, papers, records, memoranda or person is located for an order to comply.

(d) Inspect and view the operation of all machines, systems or facilities where electronic gaming machines controlled and operated by the Kansas lottery are located.

(e) Inspect and approve, prior to publication or distribution, all advertising by a lottery gaming machine operator which includes any reference to the Kansas lottery.

New Sec. 5. (a) Electronic gaming machines shall be operated pursuant to this act only in counties where, in accordance with this section, the qualified voters of the county have voted to permit operation of electronic gaming machines at pari-mutuel licensee locations within the county.

(b) The board of county commissioners of any county where there is a pari-mutuel licensee location may submit by resolution, and shall submit upon presentation of a petition filed in accordance with subsection (c), to the qualified voters of the county a proposition to permit the operation of electronic gaming machines at pari-mutuel licensee locations within the county. The proposition shall be submitted to the voters either in a countywide special election called by the board of county commissioners for that purpose and held not less than 90 days after the resolution is adopted or the petition is filed or at the next general election, as shall be specified by the board of county commissioners or in the petition, as the case may be.

(c) A petition to submit a proposition to the qualified voters of a county pursuant to this section shall be filed with the election officer. The petition shall be signed by qualified voters of the county equal in number to not less than 10% of the voters of the county who voted for the office of secretary of state at the last preceding general election at which such office was elected. The following shall appear on the petition: "We request an election to determine whether the operation of electronic gaming machines by the Kansas lottery shall be permitted in _____ county at pari-mutuel licensee locations;

(d) Upon the adoption of a resolution or the submission of a valid petition calling for an election pursuant to this section, the county election officer shall cause the following proposition to be placed on the ballot at the election called for that purpose: "Shall the operation of electronic gaming machines by the Kansas lottery be permitted in _____ county at pari-mutuel licensee locations;

(e) If a majority of the votes cast and counted at such election is in favor of permitting the operation of pari-mutuel licensed locations, the executive director may enter into a contract with such licensees to operate such games at pari-mutuel licensee locations in the county. If a majority of the votes cast and counted at an election under this section is against permitting the operation of electronic gaming machines at pari-mutuel licensee locations in the county the Kansas lottery shall not operate such games in the county. The county election officer shall transmit a copy of the certification of the

results of the election to the executive director and to the Kansas racing and gaming commission.

(f) The election provided for by this section shall be conducted, and the votes counted and canvassed, in the manner provided by law for question submitted at elections of the court.

(g) If in any election provided for by this section a majority of the votes cast and counted is against permitting the operation of electronic gaming machines in the county, another election submitting the issue of the operation of electronic gaming machines in the county shall not be held for at least two years from the date of such election.

New Sec. 6. (a) All purse supplements paid pursuant to this act shall be according to the point schedule in effect on January 1, 2002, at the pari-mutuel licensee location in Sedgwick county. All purse supplements paid pursuant to this section shall be in addition to purses and supplements paid under K.S.A. 74-8801 et seq., and amendments thereto.

(b) Except as provided in subsection (e), no electronic gaming machine shall be operated pursuant to this act at a pari-mutuel licensee location unless the facility where the electronic gaming machine is operated displays live and simulcast pari-mutuel races pursuant to an order issued by the Kansas Racing and Gaming Commission on video terminals and has installed pari-mutuel windows for wagering on pari-mutuel races.

(c) Except as provided in subsection (d):

(1) No electronic gaming machine shall be operated pursuant to this act at a pari-mutuel licensee location in Sedgwick county unless, during the first full calendar year and each thereafter in which electronic gaming machines are operated at such location, the pari-mutuel licensee shall conduct at such location at least 8 live racing programs each calendar week for 49 weeks, with at least 13 live races conducted each program.

(2) No electronic gaming machine shall be operated pursuant to this act at a pari-mutuel licensee location in Wyandotte county unless, during the first full calendar year and each year thereafter in which electronic gaming machines are operated at such location, the pari-mutuel licensee shall conduct at such location at least five live horse racing programs each calendar week for at least 60 days, with at least ten live races conducted each program; with a minimum of seven live thoroughbred and three live quarterhorse races per day and at least eight live dog racing programs each calendar week for at least 49 weeks, with at least 13 live races conducted each program.

(3) No electronic gaming machine shall be operated pursuant to this act at a pari-mutuel licensee location in Crawford county unless, during the first full calendar year and each year thereafter in which electronic gaming machines are operated at such location, the pari-mutuel licensee shall conduct at such location live racing the number of days agreed upon by the organization licensee and the pari-mutuel licensee but not less than 150 days, comprised of at least seven live racing programs each calendar week, with at least 13 live races conducted each program.

(d) The Kansas racing and gaming commission may provide exceptions to the requirements of subsection (c) for a pari-mutuel licensee conducting live racing when events beyond the control of the licensee may render racing impossible or impractical. Such events shall include any natural or man-made disaster, shortage or qualified racing animals due to kennel sickness or otherwise or state imposed limitations on operations.

(e) The Kansas racing and gaming commission may allow the operation of electronic gaming machines at the racetrack facility at Eureka Downs and the racetrack facility at Anthony Downs on days when simulcast pari-mutuel races are displayed at such facility without requiring live horse racing or live greyhound racing at such facility. The Kansas racing and gaming commission shall not authorize the operation of such machines at such racetrack facility unless the qualified voters of the county where such racetrack facility is located have voted pursuant to section 5, and amendments thereto, to permit operation of such machines within the county.

New Sec. 7. (a) There is hereby established in the state treasury the live horse racing purse supplement fund. Moneys available in such fund shall be paid to pari-mutuel licensees for distribution as purse supplements in accordance with rules and regulations of the Kansas racing and gaming commission. Such moneys shall be distributed from the separate horse purse supplement accounts maintained pursuant to this section, in accordance with rules and regulations of the Kansas racing and gaming commission, provided that pari-mutuel licensees shall continue to pay purses from the live and simulcast purse fund established by law.

(b) There is hereby established in the state treasury the live dog racing purse supplement fund. Moneys available in such fund shall be paid to pari-mutuel licensees for distribution as purse supplements in accordance with rules and regulations of the Kansas racing and gaming commission.

(c) There is hereby established in the state treasury the electronic gaming machine operation and regulatory fund. Moneys in such fund shall be used to pay for all expenses of the Kansas lottery and the Kansas racing and gaming commission attributable to the operation and regulation of electronic gaming machines. Moneys in such fund may be expended only pursuant to appropriation and moneys in excess of those appropriated to the Kansas lottery and the Kansas racing and gaming commission may be transferred to the state general fund and expended as provided by appropriation.

(d) There is hereby established in the state treasury the electronic gaming machine fund.

New Sec. 8. (a) The executive director shall collect and remit to the state treasurer in accordance with K.S.A. 75-4215, and amendments thereto, all net machine income received from lottery gaming machine operators. Upon receipt of the remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the electronic gaming machine fund, established pursuant to section 7, and amendments thereto. Separate accounts shall be maintained in the electronic gaming machine fund for receipt of moneys from each lottery gaming machine operator.

(b) Subject to the limitations of subsection (c) (5), not less than once each week the state treasurer shall transfer from each account in the electronic gaming machine fund to the electronic gaming machine operation and regulatory fund the amount certified by the executive director as the amount required for the purposes described in subsection (c) of section 7, and amendments thereto, and shall distribute the balance of the amount credited to each account in the electronic gaming machine fund as provided by subsections (c) and (d).

(c) Not less than once each week, the state treasurer shall transfer the following percentages of the balance remaining, after transfer of moneys pursuant to subsection (b), in each account in the electronic gaming machine fund for receipt of moneys from lottery gaming machine operators which are pari-mutuel licensees:

(1) To the problem gambling grant fund established pursuant to K.S.A. 2001 Supp. 79-4805, and amendments thereto, 0.5%, but the total amount credited to such fund shall not exceed 3,000,000 in any fiscal year;

(2) to the state general fund, 20%;

(3) to the nonprofit organization licensed by the Kansas racing and gaming commission to conduct races at the pari-mutuel licensee location, 1%, pursuant to the management contract and

(4) to the electronic gaming machine operation and regulatory fund, 1%;

(5) to the city where the pari-mutuel location is located, 1.5%;

(6) to the county where the pari-mutuel location is located, 1.5%;

(7) to the live dog racing purse supplement fund, 3.5%;

(8) to the live horse racing purse supplement fund 3.5%.

For purposes of this subsection, the unified government of Wyandotte county shall be deemed both a city and a county. Payments to the City and County shall only be made during the time period that pari-mutuel Licensees are the only operator of Class III gaming in such City and County.

(d) After distribution of moneys pursuant to subsection (c), the state treasurer, not less than once each week, shall remit the balance in the account for each lottery gaming machine operator to such lottery gaming machine operator.

New Sec. 9. (a) Except as when authorized in accordance with subsection (c), it is unlawful for any pari-mutuel licensee to allow any person to play electronic gaming machines or share in winnings of a person knowing such person to be:

(1) Under 21 years of age;

(2) the executive director, a member of the commission or an employee of the Kansas lottery;

(3) an officer or employee of a vendor contracting with the Kansas lottery to supply gaming equipment or tickets to the Kansas lottery for use in the operation of any lottery conducted pursuant to this act;

(4) a spouse, child, stepchild, brother, stepbrother, sister, stepsister, parent or stepparent or a person described by subsection (a) (2) or (3).

(b) Violation of subsection (a) is a class A nonperson misdemeanor upon conviction for a first offense. Violation of subsection (a) is a severity level 9, nonperson felony upon conviction for a second or subsequent offense.

(c) The executive director may authorize in writing any employee of the Kansas lottery and any employee of a lottery vendor to play an electronic gaming machine to verify the proper operation thereof with respect to security and contract compliance. Any prize awarded as a result of such ticket purchase shall become the property of the Kansas lottery and be added to the prize pools of subsequent lottery games. No money or merchandise shall be awarded to any employee playing an electronic gaming machine pursuant to this subsection.

New Sec. 10. No person shall operate an electronic gaming machine while intoxicated. The Kansas racing and gaming commission shall adopt rules and regulations governing identification of persons who are intoxicated and procedures for removal of such persons from premises where electronic gaming machines are operated. Such rules and regulations may include requirements the employees of a pari-mutuel licensee be trained in controlling intoxicated persons within a pari-mutuel licensee location.

New Sec. 11. Each lottery gaming machine operator shall post one or more signs at the operator's pari-mutuel licensee location to inform patrons of the toll-free number available to provide information and referral services regarding compulsive or problem gambling. The text shall be determined by the secretary of the department of social and rehabilitation services. Failure by a lottery gaming machine operator to post and maintain such signs shall be cause for the imposition of a fine not to exceed \$500 per day.

New Sec. 12. Each lottery gaming machine operator shall provide access for the executive director, the executive director's designee or the commission to all its records and the physical premises where the electronic gaming machine activities occur for the purpose of monitoring or inspecting the electronic gaming machines and gaming equipment. None of the information disclosed pursuant to this subsection shall be subject to disclosure under the Kansas open records act, K.S.A. 45-216 et seq., and amendments thereto.

New Sec. 13. (a) Wagers shall be received only from a person at a pari-mutuel licensee location. No person present at a pari-mutuel licensee location shall place or attempt to place a wager on behalf of another person who is not present at the pari-mutuel licensee location.

(b) Violation of this section is a class A nonperson misdemeanor upon a conviction for a first offense. Violation of this section is a severity level 9, nonperson felony upon conviction for a second or subsequent offense.

New Sec. 14. Each lottery gaming machine operator may employ a person at least 18 years of age as an employee of the pari-mutuel licensee. No employee under age 21 shall be permitted to make a wager on an electronic gaming machine.

New Sec. 15. Pursuant to section 2 of the federal act entitled "An Act to Prohibit Transportation of Gambling Devices in Interstate and Foreign Commerce," 15 U.S.C. 1171 through 1777, the state of Kansas, acting by and through the duly elected and qualified members of the legislature, does hereby in this section, and in accordance with and in compliance with the provisions of section 2 of such federal act, declare and proclaim that it is exempt from the provision of section 2 of such federal act to the extent that such gambling devices are being transported to or from the Kansas lottery or to or from a lottery gaming machine operator at a pari-mutuel licensee location within the state of Kansas.

New Sec. 16. Except for persons acting in accordance with rules and regulations of the Kansas lottery and rules and regulations of the Kansas racing and gaming

commission in performing installation, maintenance and repair services, any person who, with the intent to manipulate the outcome, pay-off or operation of an electronic gaming machine, manipulates the outcome, pay-off or operation of an electronic gaming machine by physical, electrical or mechanical means shall be guilty of a severity level 8, nonperson felony.

New Sec. 17. (a) The Kansas racing and gaming commission and its designated employees may observe and inspect all electronic gaming machines and facilities operated by pari-mutuel licensees.

(b) The Kansas racing and gaming commission may examine, or cause to be examined by any agent or representative designated by such commission, any books, papers, records or memoranda of any pari-mutuel licensee, or of any business involved in electronic gaming, for the purpose of ascertaining compliance with any provision of this act or any rules and regulations adopted hereunder.

(c) The Kansas racing and gaming commission may adopt rules and regulations with respect to security, safety and honest conduct at all pari-mutuel licensee locations.

(d) The Kansas racing and gaming commission shall have the power to investigate alleged violations of this act and alleged violations of any rules and regulations, orders and final decisions of such commission.

(e) Appropriate security measures shall be required in any and all areas where electronic gaming machines are located. The Kansas racing and gaming commission shall approve all such security measures.

(f) The Kansas racing and gaming commission may provide by rules and regulations for the licensure of key gaming employees and technology providers. Such rules and regulations may specify employment application forms, fees and procedures for suspension or revocation of any key gaming employee license.

(g) The Kansas racing and gaming commission shall have the power to take any other action as may be reasonable or appropriate to enforce the provisions of this act and any rules and regulations, orders and final decisions of such commission.

(h) The Kansas racing and gaming commission shall require an annual audit of the electronic gaming machine operations of each lottery gaming machine operator contracting with the Kansas lottery. Such audit shall be conducted by a licensed accounting firm approved by the Kansas racing and gaming commission. Such audit shall be conducted at the expense of the lottery gaming machine operator to which such audit applies.

New Sec. 18. (a) It is a class A nonperson misdemeanor for the executive director, any member of the lottery commission, any employee of the Kansas lottery or any member, employee or appointee of the Kansas racing and gaming commission, including stewards and racing judges, knowingly to:

(1) Participate in the operation of or have a financial interest in any business which has been issued a concessionaire license, racing or wagering or electronic gaming machine equipment or services 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, operator, manager or consultant in electronic gaming in Kansas;

(3) place a wager on or bet or play an electronic gaming machine in Kansas;

(4) accept any compensation, gift, loan, entertainment, favor or service from any pari-mutuel 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 executive director's, member's, employee's or appointee's official duties;

(5) enter into any business dealing, venture or contract with an owner or lessee of a pari-mutuel licensee location in Kansas; or

(6) engage in any activity described in subsection (a) (1), (2), (4) or (5) within two years from the last day of service as such executive director, member, employee or appointee.

(b) It is a severity level 8, nonperson felony for any person playing or using any electronic gaming machine at a pari-mutuel licensee location in Kansas knowingly to:

(1) Use other than a lawful coin or legal tender of the United States of America, or to use coin not of the same denomination as the coin intended to be used in an electronic gaming machine, except that in the playing of any electronic gaming machine or similar gaming device, it shall be lawful for any person to use gaming billets, tokens or similar objects therein which are approved by the Kansas lottery;

(2) possess or use, while on the premises of a pari-mutuel licensee location any cheating or thieving device, including but not limited to, tools, wires, drills, coins attached to strings or wires or electronic or magnetic devices to facilitate removing from any electronic gaming machine any money or contents thereof, except that a duly authorized agent or employee of the Kansas lottery, the Kansas racing and gaming commission or a pari-mutuel licensee may possess and use any of the foregoing only in furtherance of the agent's or employee's employment at the pari-mutuel licensee location; or

(3) possess or use while on the premises of any pari-mutuel licensee location any key or device designed for the purpose of or suitable for opening or entering any electronic gaming machine or similar gaming device or drop box, except that a duly authorized agent or employee of the Kansas lottery, the Kansas racing and gaming commission or a pari-mutuel licensee may possess and use any of the foregoing only in furtherance of the agent's or employee's employment at the pari-mutuel licensee location.

(4) wager prior to obtaining the age of 21 years.

New Sec. 19. (a) No organization licensee or facility manager licensee shall permit any business not owned and operated by the organization licensee to provide electronic gaming machine equipment or services, as designated by rules and regulations of the commission, to an organization licensee unless such business has been issued an electronic gaming machine equipment or services license by the executive director. Such equipment and services shall include, but are not limited to, surveillance, electronic computer components, random number generator or cabinet thereof and token redemption equipment or services.

(b) Business required to be licensed pursuant to this section shall apply for electronic gaming machine equipment or services licenses in a manner and upon forms prescribed and furnished by the Kansas racing and gaming commission. The Kansas racing and gaming 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 Kansas racing and gaming commission also may require disclosure of information about and fingerprinting of such employees of each applicant as the commission considers necessary. Electronic gaming machine equipment or services licenses shall be issued for a period of time established by the executive director but not to exceed 10 years. The Kansas racing and gaming commission, by rules and regulations, shall establish a schedule of application fees and license fees for electronic gaming machine equipment or services 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 Kansas racing and gaming commission shall require the applicant to pay to the Kansas racing and gaming commission, at such times and in such form as required by the executive director, 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 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 Kansas racing and gaming commission shall require applicants as a condition of licensure to consent to allow agents of the Kansas bureau of investigation or security personnel of the Kansas lottery and the Kansas racing and gaming 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 premises of 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) the Kansas racing and gaming commission may refuse to issue an electronic gaming machine equipment or services license to any business if any person having an interest ownership 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; has been adjudicated in the last 10 years, in any such court of committing as a juvenile an act which, if committed by an adult, would constitute a felony or has been convicted of a crime in any other state or country which would constitute a felony if committed under the same circumstances pursuant to Kansas law;

(2) has been convicted of a felony violation of any law of any state or of the United States involving gambling or controlled substances or has been adjudicated in the last 10 years in any such court or committing as a juvenile an act which, if committed by an adult, would constitute such a felony violation;

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

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

(5) has failed to meet any monetary or tax obligation to the federal government or to any state or local government.

(e) The executive director may suspend or revoke the electronic gaming machine equipment or services license of any business for any reason which would justify refusal to issue such a license.

(f) The commission may provide by rules and regulations for the temporary suspension of an electronic gaming machine equipment or services 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).

New Sec. 20. No taxes, fees, charges, transfers or distributions, other than those provided for in this act, shall be made or levied from or against the net machine income of the Kansas lottery by any city, county or other municipality.

New Sec. 21. All sales of electronic gaming machine games shall be exempt from sales taxes imposed pursuant to K.S.A. 12-187 et seq., and 79-3601 et seq., and amendments thereto.

New Sec. 22. Each lottery gaming machine operator shall hold the executive director of the Kansas lottery, the Kansas lottery commission, the executive director of the Kansas racing and gaming commission, the Kansas racing and gaming commission and the state harmless from and defend and pay for the defense of any and all claims which may be asserted against the executive director, the commission, the executive director of the Kansas racing and gaming commission and the state, or the agents or employees thereof, arising from the operation of electronic gaming machines located at pari-mutuel licensee location of such lottery gaming machine operator. The provisions of this section shall not apply to any claims arising from the negligence or willful misconduct of the executive director, the commission, the executive director of the Kansas racing and gaming commission, the Kansas racing and gaming commission and the state, or the agents or employees thereof.

New Sec. 23. If a disagreement arises between the executive director and the Kansas racing and gaming commission with regard to their respective duties or responsibilities in carrying out the purposes of the Kansas gaming act, such disagreement shall be resolved by the governor in a manner not inconsistent with the provisions of this act.

New Sec. 24. As a condition precedent to contracting for the privilege of being a lottery gaming machine contractor, pari-mutuel licensees shall file with the secretary of state of this state written consent, irrevocable, that any action or garnishment proceeding may be commenced against such licensees in the proper court of any county in this state in which the case of action shall arise or in which the plaintiff may reside by the service of process on a resident agent, and stipulating and agreeing that such service shall be taken and held in all courts to be as valid and binding as if due service had been made upon the licensee. The written consent shall state that the courts of this state have jurisdiction over the person of such licensee and are the proper and convenient forum for such action and shall waive the right to request a change of jurisdiction or venue to a

court outside that state and that all actions arising under this act and commenced by the licensee shall be brought in this state's court as the proper and convenient forum. Such consent shall be executed by the licensee and if a corporation, by the president and secretary of the corporate licensee, and shall be accompanied by a duly certified copy of the order or resolution of the board of directors, trustees or managers authorizing the president and secretary to execute the same.

Sec. 25. K.S.A. 2001 Supp. 74-8710 is hereby amended to read as follows: 74-8710. (a) The commission, upon the recommendation of the executive director, shall adopt rules and regulations governing the establishment and operation of a state lottery as necessary to carry out the purposes of this act. Temporary rules and regulations may be adopted by the commission without being subject to the provisions and requirements of K.S.A. 77-415 through 77-438, and amendments thereto, but shall be subject to approval by the attorney general as to legality and shall be filed with the secretary of state and published in the Kansas register. Upon adoption of temporary rules and compliance with Section 5, and notwithstanding any other requirement contained herein pari-mutuel facilities may install and operate electronic gaming devices in existing facilities while processing applications, plans and other required documents for permanent facilities. Temporary and permanent rules and regulations may include but shall not be limited to:

(1) Subject to the provisions of subsection (c), the types of lottery games to be conducted, including but not limited to instant lottery, on-line and traditional games, but not including games on lottery machines or video lottery machines.

(2) The manner of selecting the winning tickets or shares, except that, if a lottery game utilizes a drawing of winning numbers, a drawing among entries or a drawing among finalists, such drawings shall always be open to the public and shall be recorded on both video and audio tape.

(3) The manner of payment of prizes to the holders of winning tickets or shares.

(4) The frequency of the drawings or selections of winning tickets or shares.

(5) The type or types of locations at which tickets or shares may be sold.

(6) The method or methods to be used in selling tickets or shares.

(7) Additional qualifications for the selection of lottery retailers and the amount of application fees to be paid by each.

(8) The amount and method of compensation to be paid to lottery retailers, including special bonuses and incentives.

(9) Deadlines for claims for prizes by winners of each lottery game.

(10) Provisions for confidentiality of information submitted by vendors pursuant to K.S.A. 74-8705, and amendments thereto.

(11) Information required to be submitted by vendors, in addition to that required by K.S.A. 74-8705, and amendments thereto.

(12) The major procurement contracts or portions thereof to be awarded to minority business enterprises pursuant to subsection (a) of K.S.A. 74-8705, and amendments thereto, and procedures for the award thereof.

(13) Rules and regulations to implement, administer and enforce the provisions of the Kansas gaming act.

(14) The types of electronic gaming machines to be operated at pari-mutuel licensee locations pursuant to the Kansas gaming act.

(b) No new lottery game shall commence operation after the effective date of this act unless first approved by the governor or, in the governor's absence or disability, the lieutenant governor. This subsection shall not be construed to require approval of games played on an electronic gaming machine.

(c) The lottery shall adopt rules and regulations concerning the game of keno. Such rules and regulations shall require that the amount of time which elapses between the start of games shall not be less than four minutes.

Sec. 26. K.S.A. 2001 Supp. 74-8711 is hereby amended to read as follows: 74-8711. (a) There is hereby established in the state treasury the lottery operating fund.

(b) Except as otherwise provided by the Kansas gaming act, the executive director shall remit all moneys collected from the sale of lottery tickets and shares and any other moneys received by or on behalf of the Kansas lottery to the state treasurer in accordance with the provisions of K.S.A. 74-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the lottery operating fund. Moneys credited to the fund shall be expended or transferred only as provided by this act. Expenditures from such fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the executive director or by a person designated by the executive director.

(c) Moneys in the lottery operating fund shall be used for:

(1) the payment of expenses of the lottery, which shall include all costs incurred in the operation and administration of the Kansas lottery, other than expenses incurred pursuant to the Kansas gaming act; all costs resulting from contracts entered into for the purchase or lease of goods and services needed for operation of the lottery, including but not limited to supplies, materials, tickets, independent studies and surveys, data transmission, advertising, printing, promotion, incentives, public relations, communications and distribution of tickets and shares; and reimbursement of costs of facilities and services provided by other state agencies;

(2) the payment of compensation to lottery retailers;

(3) transfers of moneys to the lottery prize payment fund pursuant to K.S.A. 74-8712, and amendments thereto;

(4) transfers to the state general fund pursuant to K.S.A. 74-8713, and amendments thereto;

(5) transfers to the state gaming revenues fund pursuant to subsection (d) of this section and as otherwise provided by law; and

(6) transfers to the county reappraisal fund as prescribed by law.

(d) The director of accounts and reports shall transfer moneys in the lottery operating fund to the state gaming revenues fund created by K.S.A. 79-4801, and amendments thereto, on or before the 15th day of each month in an amount certified monthly by the executive director and determined as follows, whichever is greater:

(1) An amount equal to the moneys in the lottery operating fund in excess of those needed for the purposes described in subsections (c) (1) through (c) (4); or

(2) except for pull-tab lottery tickets and shares, an amount equal to not less than 30% or total monthly revenues from the sales of lottery tickets and shares less estimated returned tickets. In the case of pull-tab lottery tickets and shares, an amount equal to not

less than 20% of the total monthly revenues from the sales of pull-tab lottery tickets and shares less estimated returned tickets.

Sec. 27. K.S.A. 2001 Supp. 19-101a is hereby amended to read as follows: 19-101a. (a) The board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate, subject only to the following limitations, restrictions or prohibitions:

(1) counties shall be subject to all acts of the legislature which apply uniformly to all counties.

(2) Counties may not consolidate or alter county boundaries.

(3) Counties may not affect the courts located therein.

(4) Counties shall be subject to acts of the legislature prescribing limits of indebtedness.

(5) In the exercise of powers of local legislation and administration authorized under provisions of this section, the home rule power conferred on cities to determine their local affairs and government shall not be superseded or impaired without the consent of the governing body of each city within a county which may be affected.

(6) Counties may not legislate on social welfare administered under state law enacted pursuant to or in conformity with public law No. 271—74th congress, or amendments thereof.

(7) Counties shall be subject to all acts of the legislature concerning elections, election commissioners and officers and their duties as such officers and the election of county officers.

(8) Counties shall be subject to the limitations and prohibitions imposed under K.S.A. 12-187 to 12-195, inclusive, and amendments thereto, prescribing limitations upon the levy of retailers' sales taxes by counties.

(9) Counties may not exempt from or effect changes in statutes made nonuniform in application solely by reason of authorizing exceptions for counties having adopted a charter for county government.

(10) No county may levy ad valorem taxes under the authority of this section upon real property located within any redevelopment project area established under the authority of K.S.A. 12-1772, and amendments thereto, unless the resolution authorizing the same specifically authorized a portion of the proceeds of such levy to be used to pay the principal of the interest upon bonds issued by a city under the authority of K.S.A. 12-1774, and amendments thereto.

(11) Counties shall have not power under this section to exempt from any statute authorizing or requiring the levy of taxes and providing substitute and additional provisions on the same subject, unless the resolution authorizing the same specifically provides for a portion of the proceeds of such levy to be used to pay a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto.

(12) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-4601 through 19-4625, and amendments thereto.

(13) Except as otherwise specifically authorized by K.S.A. 12-1,101 through 12-1,109, and amendments thereto, counties may not levy and collect taxes on incomes from whatever source derived.

(14) Counties may not exempt from or effect changes in K.S.A. 19-430, and amendments thereto.

(15) Counties may not exempt from or effect changes in K.S.A. 19-302, 19-502b, 19-503, 19-805 or 19-1202, and amendments thereto.

(16) (A) Counties may not exempt from or effect changes in K.S.A. 13-13a26, and amendments thereto.

(B) This provision shall expire on June 30, 2003.

(17) (A) Counties may not exempt from or effect changes in K.S.A. 2001 Supp. 71-301a, and amendments thereto.

(B) This provision shall expire on June 30, 2003.

(18) Counties may not exempt from or effect changes in K.S.A. 19-15,139, 19-15,140 and 19-15,141, and amendments thereto.

(19) Counties may not exempt from or effect changes in the provision of K.S.A. 12-1223, 12-1225, 12-1225a, 12-1225b, 12-1225c and 12-1226, and amendments thereto, or the provision of K.S.A. 12-1260 through 12-1270 and 12-1276, and amendments thereto.

(20) Counties may not exempt from or effect changes in the provision of K.S.A. 19-211, and amendments thereto.

(21) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-4001 through 19-4015, and amendments thereto.

(22) Counties may not regulate the production or drilling of any oil or gas well in any manner which would result in duplication of regulation by the state corporation commission and the Kansas department of health and environment pursuant to chapter 55 and chapter 65 of the Kansas Statutes Annotated and any rules and regulations adopted pursuant thereto. Counties may not require any license or permit for the drilling or production of oil and gas wells. Counties may not impose any fee or charge for the drilling or production of any oil or gas well.

(23) Counties may not exempt from or effect changes in K.S.A. 79-41a04, and amendments thereto.

(24) Counties may not exempt from or effect changes in K.S.A. 79-1611, and amendments thereto.

(25) Counties may not exempt from or effect changes in K.S.A. 79-1494, and - amendments thereto.

(26) Counties may not exempt from or effect changes in subsection (b) of K.S.A. 19-202, and amendments thereof.

(27) Counties may not exempt from or effect changes in subsection (b) of K.S.A. 19-204, and amendments thereto.

(28) Counties may not levy or impose an excise, severance or any other tax in the nature of an excise tax upon the physical severance and production of any mineral or other material from the earth or water.

(29) Counties may not exempt from or effect changes in K.S.A. 79-2017 or 79-2101, and amendments thereto.

(30) Counties may not exempt from or effect changes in K.S.A. 5-3302, 2-3305, 2-3307, 2-3318, 17-5904, 17-5908, 47-1219 or 65-171d or K.S.A. 2001 Supp. 17-5909 or 65-1,178 through 65-1,199, and amendments thereto.

(31) Counties may not exempt from or effect changes in K.S.A. 2001 Supp. 80-121, and amendments thereto.

(32) Counties may not exempt from or effect changes in K.S.A. 2001 Supp. 19-228, and amendments thereto.

(33) Counties may not exempt from or effect changes in the Kansas lottery act.

(34) Counties may not exempt from or effect changes in the Kansas gaming act.

(b) Counties shall apply the powers of local legislation granted in subsection (a) by resolution of the board of county commissioners. If no statutory authority exists for such local legislation other than that set forth in subsection (a) and the local legislation proposed under the authority of such subsection is not contrary to any act of the legislature, such local legislation shall become effective upon passage of a resolution of the board and publication in the official county newspaper. If the legislation proposed by the board under authority of subsection (a) is contrary to an act of the legislature which is applicable to the particular county but not uniformly applicable to all counties, such legislation shall become effective by passage of a charter resolution in the manner provided in K.S.A. 19-101b, and amendments thereto.

(c) Any resolution adopted by a county which conflicts with the restrictions in subsection (a) is null and void.

Sec. 28. All licensees are subject to all income taxes, sales taxes, earnings taxes, use taxes, property taxes or any other tax or fee now or hereafter lawfully levied by any political subdivision; however, no other license tax, permit tax, occupation tax, operation or machine tax or taxes or fees shall be imposed, levied, or assessed exclusively upon gaming by a political subdivision.

Sec. 29. No tax credit, tax abatement, enterprise zone or T.I.F. financing shall be available to any lottery gaming machine operator licensed pursuant to this act, nor shall any governmental entity or sub-division transfer or make available any real or personal property to a lottery gaming machine operator at less than fair market value.

Sec. 30. K.S.A. 79-4805 is hereby amended to read as follows: 79-4805. (a) There is hereby established in the state treasury the problem gambling grant fund. All moneys credited to such fund shall be used only for the awarding of grants under this section. Such fund shall be administered in accordance with this section and the provisions of appropriation acts.

(b) All expenditures from the problem gambling grant fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved in the manner prescribed by law.

(c) There is hereby established a state grant program to provide assistance for the direct treatment of persons diagnosed as suffering from pathological gambling, the continued training of addiction professionals, the marketing of programs funded pursuant to this section, and to provide funding for research regarding the impact of gambling on residents of Kansas. Research grants awarded under this section may include, but need not be limited to, grants for determining the effectiveness of education, treatment and prevention efforts on the prevalence of pathological gambling in Kansas. All grants shall be made after open solicitation of proposals and evaluation of proposals against criteria

established in rules and regulations adopted by the secretary of the department of social and rehabilitation services. Both public and private entities shall be eligible to apply for and receive grants under the provisions of this section.

(d) The secretary of the department of social and rehabilitation services is hereby authorized to receive moneys from any grants, gifts, contributions or bequests made for the purpose of funding grants under this section and to expend such moneys for the purpose for which received.

(e) All grants made in accordance with this section shall be made from the problem gambling grant fund. The secretary shall administer the provisions of this section and shall adopt rules and regulations establishing criteria for qualification to receive grants and such other matters deemed necessary by the secretary for the administration of this section. Such rules and regulations shall include, but need not be limited to, a requirement that each recipient of a grant to provide treatment for pathological gamblers report at least annually to the secretary the grantee's measurable achievement of specific outcome goals.

(f) For the purpose of this section "pathological gambling" means the disorder by that name described in the most recent edition of the diagnostic and statistical manual.

Sec. 31. K.S.A. 2001 Supp. 19-101a, 74-8702, 74-8710 and 74-8711 are hereby repealed.

Sec. 32. This act shall take effect and be in force from and after its publication in the Kansas register.

I would like to thank the Senate Judiciary Committee for this opportunity to speak to you on behalf of Senate Bill No. 54.

My name is Kris Crane. I am here today as a parent who has lost a child due to the negligence of someone else. On February 19, 2001 my son, C.J. was senselessly killed due to the negligence of another adult. C.J. had been at a friend's house and while inside the house, another boy picked up a loaded .22 rifle and shot him accidentally. I know that the other boy did not mean to hurt C.J.; I know that he is suffering from the guilt he feels and from the loss of his friend. He will have to live with this for the rest of his life. I also know that if the owner of the rifle hadn't left it loaded and lying on top of the T.V. in the living room, this wouldn't have happened. Because of this individual's lack of responsibility, my husband and I no longer have our precious child. Because of this unnecessary accident, my son will not have the future he deserved. My husband and I will not have the pleasure of watching him grow to an adult and making his own plans. My daughter Katey will not have a brother. It has been said that when a person loses a parent, they lose part of their past. When they lose a spouse, they lose part of their present. When they lose a child, they lose their future. This is such a true statement. To have to sit and watch your child die before your eyes is horrible enough, but to know that their death was due to negligence and was totally unnecessary is worse. My family is doing the best that we can—we have good days and bad days. We still get angry and ask ourselves why. I don't have the answers. However, I do know that C.J.'s death was needless. This DID NOT have to happen.

There are no criminal negligence laws in the state of Kansas at this time. This means that my only recourse would be to file a civil suit in order to obtain some type of

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justice for my son's death. It is my feeling that the owner of the rifle should have been held accountable for his indifference to the dangerous situation he created. I believe that this bill, if voted into a law, would compel more people to take responsibility for their acts, or as in this case, their failure to act. It is a sad fact, but true, that there are people who will only do what is proper because they might get into trouble, not because it is the right and sensible thing to do. I believe this bill will give people the "push" they need to become more accountable for their actions.

We need to protect our future, our children in the best possible way. This bill is a step in that direction.

Thank you again for giving me this opportunity to speak.

Montgomery County Attorney

JUDICIAL CENTER 300 EAST MAIN
INDEPENDENCE, KANSAS 67301
PHONE (620) 330-1020 • FAX (620) 331-7230

February 4, 2003

Attention:
Chris Crane

Re: Senate Bill No. 54

Chris,

Per your request, I wanted to let you know my office supports your efforts to pass Senate Bill No. 54. In reviewing the proposed language of Senate Bill No. 54, it would allow a prosecutor to charge an individual for committing a crime under circumstances like your son's death.

At the time of your son's death, my office considered charging the individual gun owner with Involuntary Manslaughter. However, the facts as presented did not rise to the level of reckless behavior. In comparison, if Senate Bill No. 54 had been in effect at that time, it is likely his actions created an unjustifiable risk to others. The gun owner's act of allowing children to be in a house where firearms were not secured is not the act of a reasonable person.

Sincerely,



F. William Cullins
Montgomery County Attorney

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Before I begin, I want to thank the Senate Committee on Judiciary for giving me the opportunity to testify this morning on Senate Bill #54.

My name is Darrel Harbaugh. I am a teacher at Field Kindley High School in Coffeyville. I am married and have had the pleasure of raising two children of my own. My daughter and son are now both in their twenties and are living their own lives.

As a teacher, I have spent my professional life caring for the children of others hoping that I could do my part to prepare each and every child for whatever the future might offer them. As a parent, along with my wife, Annette, I have spent my life caring and nurturing my own two children hoping that they would find their path in this world, and that nothing would prevent them from having a full, productive, and joyful life. Whether as a parent, a teacher, or a legislator, we all anguish over our own children's safety and hope that when they are not in our immediate care, that other responsible adults will care for them. As a matter of fact, we should not only be concerned for the safety of our own children, but for the safety and protection of all children.

We can only imagine what it is like to lose a young child. The loss of a child is every parent's worst nightmare. On February 19, 2001, Charlie and Kris Crane lived that nightmare. To some extent they are still living that nightmare. Their son CJ was the victim of a senseless accident. CJ was at a friend's house and due to the negligence of one man, CJ lost his life when a loaded 22 rifle was not properly stored. CJ died at the age of thirteen. His death had no meaning and has not only left his parents and sister, Katey, devastated, but has also profoundly affected those of us who knew CJ personally.

I'm here today because I was CJ's friend. CJ and his family lived next door to me for most of his life. My wife, daughter, son, and I watched him grow up. When CJ was killed my family felt the loss as if CJ had been our own.

I could spend my time telling you story after story about this vibrant young person who had the world before him only to have his life needlessly cut short, but this hearing, although in part precipitated by the events surrounding the death of CJ, is not about CJ. This bill will not change the events of February 19, 2001. This bill will not bring CJ back to his parents and family. This bill cannot change the past.

It is my hope, however, that this bill can and will change the future. When over eighteen months ago Kris Crane and I approached then Representative Jim Garner, and later Senators Derek Schmidt and Duane Umbarger, as well as anyone else who would listen, we had no idea as to what we wanted, other than to prevent the needless deaths of any more children.

We were amazed, no shocked, to find out that there were no laws in Kansas holding citizens accountable for negligence that results in the injury or death of another human being. I realize that this bill will not prevent every senseless death due to someone's negligence. Moreover, I realize that this law will have its opposition. However, the state of Kansas should protect those who cannot protect themselves. Kansas should hold its

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citizens accountable for their actions. Kansas should raise the standard for taking care of its innocent children.

Our first concern should be the absolute safety of our children. We espouse this tenant in schools, throughout communities, through the halls of the State Capitol Building. We need to convince every citizen, every adult, that it is time we all began to be accountable for others and not just ourselves. It is time for all Kansans to be responsible. Let us send a message that if you own a gun, you should store it properly and keep it away from children, or you will be held accountable. If you are "criminally negligent", you will be held accountable.

As I said at the beginning, I am a teacher. Educators are being held more accountable today than ever in the history of public education. Accountability is the operative word. I ask you to hold people accountable who contribute to the injury or death of another human being through sheer negligence. I hope you will give Senate Bill #54 serious consideration.

I thank you again for your time.

Please excuse my nervousness, I'm not accustomed to speaking in front of a large group people, and this is a difficult subject for me.

My name is Darci Eveleigh. I am a junior at Field Kindley High School in Coffeyville. On February 19, 2001 I lost a very good friend, C.J. Crane. I feel that the man that owned the rifle that killed C.J. should have been punished for his lack of responsibility, but Kansas doesn't have any laws for criminal negligence. Maybe if there was this type of law, the owner of the rifle would have been more responsible and kept it safely stored and out of the reach of minors.

Because of this one man's lack of responsibility, I'm not going to have the privilege of going through high school with C.J., his sister Katey won't grow up with her brother, his family and other friends won't get to enjoy his smile, his humor or his friendship.

This is something I feel very strongly about and I hope that this committee can take this bill to the next step in making it a law.

Thank you for your time.

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My name is Mary Hayes and I'm here to speak on behalf of Senate Bill 54 and also because I am C.J. Crane's grandmother. You've heard what happened to our family on February 19, 2001. The impact has been indescribable, and still is.

There is no way to tell you how important C.J. was to me and to our family. He was not just smart and handsome, he was full of fun, very loving and considerate, thoughtful, generous, caring—so many qualities that 13 year old boys don't always exhibit every day. Everyone should have someone who loves them unconditionally, and that is what C.J. and I had. To lose him and all his potential is devastating. To lose him in such a senseless and stupid way makes it all the more so.

Because someone was too lazy and irresponsible to bother to put away a loaded gun, we have lost more than I could ever tell you. The feelings of helplessness and hopelessness have overwhelmed us some days, and on our best days there is so much sadness. We have lost a huge part of our future and we miss him beyond words.

I am here because we need to know that C.J.'s death means something. He is too important—and I believe that other children are too important—for our family and for our state NOT to speak up, speak out, and do something that could save other families (even ONE family) from going through what ours has. It is our right as Americans to own a gun, but our duty as human beings to be responsible and concerned enough to do the right thing.

Nothing will change what has happened to us, but C.J. would be so proud and honored to know that he is a big part of something that will make a big difference.

Senate Bill 54 is a valid and valiant effort to protect our children and their families.

Please give this bill the support that is due. I also have one personal request, I would ask

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that when this bill becomes a law, it be named after my grandson and be called "C.J.'s
Law".

Thank you for your time and attention.



Inter-Faith Ministries

829 North Market • Wichita, Kansas • 67214-3519
(316) 264-9303 • Fax (316) 264-2233
www.ifmnet.org

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Mother to Mother

Operation Holiday

Restorative Justice/Family
Group Conferencing

Safe State Kansas

Wichita Area Inter-Faith
Disaster Response (WAIDR)

Permanent Housing
Inter-Faith Villa

Testimony for the Senate Judiciary Committee February 5, 2003 Regarding Senate Bill 54

Inter-Faith Ministries and Safe State Kansas (a program of Inter-Faith Ministries) support this bill because it will help ensure that adults take the steps necessary to prevent harm caused by access to firearms.

Studies show that:

- 34% of children live in homes with at least one firearm¹;
- Firearms are used in 64% of teen suicides and
- 70% of teen homicides²; and
- 55% of all unintentional shootings are committed by a child or teenager³.

It is a priority of Inter-Faith Ministries and Safe State Kansas to promote safe and proper storage of firearms, especially in homes with children and youth. While we work to educate gun owners and parents about proper storage, we recognize that education alone does not always bring about behavioral change.

As with many other public health issues, people often need multiple motivations, i.e, both a "carrot" and a "stick". For example, it is common for states to mandate child immunizations, child passenger safety restraints, speed limits, and other public health concerns.

Inter-Faith Ministries and Safe State Kansas believe that it is in the best interests of Kansas' families to criminalize obviously irresponsible behavior which has a reasonable expectation of resulting in death. We ask that the members of this committee pass Senate Bill 54 as written.

¹ American Journal of Public Health
² American Academy of Pediatrics, 1998
³ Center to Prevent Handgun Violence

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JAMES F. (JIM) MILLER
 REPRESENTATIVE, 11TH DISTRICT
 MONTGOMERY COUNTY



HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS

MEMBER: AGRICULTURE
 TAXATION
 TRANSPORTATION
 ENVIRONMENT

Testimony in Support of
SB 54
 Senate Committee on Judiciary
 5 February 2003

Chairman Vratil and Members of the Committee:

I apologize for not being able to join you in person today, but other commitments prevent me from attending the hearing on Senate Bill 54.

Senate Bill 54 would create a designation for the crime of negligent homicide and would prescribe penalties for this new designation. Under this legislation, the new crime of negligent homicide would be classified as a severity level 7, person felony.

You will be hearing today from a constituent of mine who lost her son in an accidental shooting that occurred while he was visiting a friend's home. I am sure you are all familiar with similar stories from your own communities.

Unfortunately in many cases, existing laws do not adequately address this issue and the standards that they require often hamper prosecution. In many cases, prosecutors have limited ground in pursuing criminal charges and the families of the victims are left to wonder how their particular circumstance somehow falls through the cracks of existing law.

Senate Bill 54, by relying on a reasonable person standard, would allow additional ground for potential prosecution to proceed in many of these cases.

This legislation will simply hold people responsible when their actions, or in some cases, inaction, carelessly causes or contributes to the death of another. I urge the members of this committee to encourage responsibility and to provide a means of recourse for the families of victims of negligent actions.

Thank you for your consideration of this issue.

Senate Judiciary

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9-1

**Testimony Before the
Senate Judiciary Committee**

February 5, 2003
Senate Bill 25

Presented by
Jay Scott Emler
Senator, District 35

Chairman Vratil, members of the committee, thank you for allowing me to testify this morning on Senate Bill 25 (SB25).

I requested introduction of SB 25 to clarify what I believe was the intent of the Senate amendment to House Bill 2599 (HB 2599) in the 2001 legislative session.

HB 2599 was amended to afford protection to sport shooting ranges around which communities were built. When the amendment was offered, I inquired whether a shooting range that was not in compliance with local ordinances and/or resolutions when it commenced operation would be "legalized" by the amendment. Perhaps I phrased the question poorly, or perhaps I misunderstood the answer, but it was my understanding that a sport shooting range that was out of compliance with local regulations *ab initio*, would not be grandfathered by the amendment.

I believe a reading of New Section 6 of HB 2599 supports my interpretation of the answer to my question. Paragraph (a) states in part

...even if the operation of the sport shooting range at a later date does not conform to the **new** ordinance or resolution or amendment to an existing ordinance or resolution. (Emphasis added)

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I have spoken with the original proponents of the amendment, gun safety instructors and the lobbyist for the National Rifle Association. I believe we are all in agreement that we want sport shooting ranges to be operated safely. Unfortunately, the effect of HB 2599 was to legitimize sport shooting ranges that were not in compliance from their very inception.

In working with the original sponsor of the amendment, I have had the attached balloon prepared. We believe it addresses the concerns of the range owners/operators and the National Rifle Association.

I will be pleased to stand for questions.

SENATE BILL No. 25

By Senator Emler

1-16

9 AN ACT concerning sport shooting ranges; relating to the regulation
10 thereof; amending K.S.A. 2002 Supp. 58-3222, 58-3223 and 58-3224
11 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 2002 Supp. 58-3222 is hereby amended to read as
15 follows: 58-3222. (a) ~~Notwithstanding any other provisions of law, and in~~
16 ~~addition to other protections provided in this act,~~ A person who owns,
17 operates, manages or uses a sport shooting range that conforms to gen-
18 erally accepted operation practices in the state is not subject to civil lia-
19 bility or criminal prosecution in any matter relating to noise or noise
20 pollution resulting from the operation or use of the range if the range is
21 in compliance with any noise control laws or ordinances or resolutions
22 that applied to the range and its operation at the time of construction and
23 initial operation of the range.

24 (b) ~~In addition to any civil protection provided by the act,~~ A person
25 who owns, operates, manages or uses a sport shooting range that conforms
26 to generally accepted operation practices is not subject to an action for
27 nuisance, and a court of the state shall not enjoin or restrain the use or
28 operation of a range on the basis of noise or noise pollution, if the range
29 is in compliance with any noise control laws or ordinances or resolutions
30 that applied to the range and its operation at the time of construction or
31 initial operation of the range.

32 (c) Rules or regulations adopted by any state department or agency
33 for limiting levels of noise in terms of decibel level which may occur in
34 the outdoor atmosphere do not apply to a sport shooting range immune
35 from liability under this act. ~~However,~~ This subsection ~~does not constrict~~
36 *shall not be construed to restrict* the application of any provision of gen-
37 erally accepted operation practices.

38 (d) A person who acquires title to real property adversely affected by
39 the use of property with a permanently located and improved sport shoot-
40 ing range constructed and initially operated prior to the time the person
41 acquires title shall not maintain a nuisance action on the basis of noise or
42 noise pollution or based upon known or inherent dangers against the
43 person who owns, operates or uses the range to restrain, enjoin, or impede

Senator Emler's
Balloon Amendment

10-3

10-4

1 the use of the range. This section does not prohibit actions for negligence
 2 or recklessness in the operation of the range.

3 Sec. 2. K.S.A. 2002 Supp. 58-3223 is hereby amended to read as
 4 follows: 58-3223. (a) A sport shooting range that is *constructed and* oper-
 5 ~~ated and is not in violation of in compliance with~~ state law at the time
 6 of the enactment of an ordinance or resolution shall be permitted to
 7 continue in operation even if the *construction and* operation of the sport
 8 shooting range ~~at a later date does not conform to the new ordinance or~~
 9 ~~resolution or amendment to an existing ordinance or resolution does not~~
 10 ~~comply with an ordinance or resolution which is enacted or amended after~~
 11 ~~the date on which construction or operation of the range commenced.~~

12 (b) If a sport shooting range ~~that is was~~ in existence ~~as of the effective~~
 13 ~~date of this act and operates and operating on July 1, 2001, and if such~~
 14 ~~range is~~ in compliance with generally accepted operation practices, ~~even~~
 15 ~~if not in compliance with an and any~~ ordinance or resolution of a local
 16 unit of government, ~~in effect at the time of construction or initial operation~~
 17 ~~of the range, such range~~ shall be permitted to do all of the following within
 18 its preexisting geographic boundaries if in compliance with generally ac-
 19 cepted operation practices:

was in compliance with

20 (1) Repair, remodel or reinforce any improvement or facilities or
 21 building or structure as may be necessary in the interest of public safety
 22 or to secure the continued use of the building or improvement;

23 (2) reconstruct, repair, rebuild or resume the use of a facility or build-
 24 ing damaged by fire, collapse, explosion, act of God or act of war occurring
 25 after the effective date of this act. The reconstruction, repair or restora-
 26 tion shall be completed within one year following the date of the damage
 27 or settlement of any property damage claim. If reconstruction, repair or
 28 restoration is not completed within one year as provided in this subsec-
 29 tion, such reconstruction, repair or restoration may be terminated in the
 30 discretion of the local unit of government; or

31 (3) do anything authorized under generally accepted operation prac-
 32 tices, including, but not limited to:

33 (A) Expand or enhance its membership or opportunities for public
 34 participation; and

35 (B) reasonably expand or increase facilities or activities.

36 Sec. 3. K.S.A. 2002 Supp. 58-3224 is hereby amended to read as
 37 follows: 58-3224. (a) Except as otherwise provided, the provisions of this
 38 act shall not prohibit a local unit of government from regulating the lo-
 39 cation and construction of a sport shooting range.

40 (b) No person or governmental entity may take title to property which
 41 has a permanently located and improved sport shooting range, by con-
 42 demnation, eminent domain or similar process when the proposed use of
 43 ~~said~~ the property would be for shooting related activities or recreational

1 activities or for private or commercial development. However, this provision does not limit governmental exercise of eminent domain or easement necessary for infrastructure additions or improvements, such as highways, waterways or utilities.

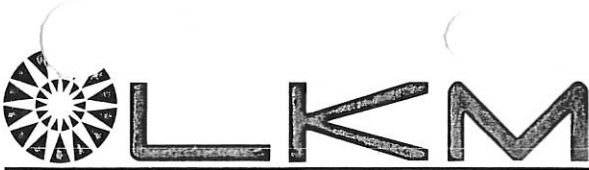
5 (c) *The governing body of any local unit of government may enact and enforce an ordinance or resolution which provides for the gradual elimination of sport shooting ranges which constitute nonconforming uses.*

8 *If a sport shooting range is closed or eliminated pursuant to this subsection, the owner of such range shall be paid compensation for the value of the real estate on which the range is located, any improvements located on such range and for any economic loss resulting from the closing or elimination thereof.*

13 Sec. 4. K.S.A. 2002 Supp. 58-3222, 58-3223 and 58-3224 are hereby repealed.

15 Sec. 5. This act shall take effect and be in force from and after its publication in the Kansas register.

elimination of a sport shooting range which does not comply with the provisions of section 2, and amendments thereto



League of Kansas Municipalities

TO: Senate Judiciary Committee

FROM: Sandra Jacquot, Director of Law/Legal Counsel

DATE: January 29, 2003

RE: SB 25

Thank you for allowing the League this opportunity to testify in favor of SB 25. The League opposed the original shooting range bill because of its preemptive nature and the fact that it contradicts typical nuisance and zoning law that has been in place in Kansas since statehood. The current bill, however, would improve the law and give local governments some measure of control over shooting ranges that constitute nonconforming uses. Nonconforming uses are allowed to continue when zoning is placed on a property or the use existed prior to the modification of a zoning ordinance.

Part of the problem for cities is that the current law allows shooting ranges to legally expand or increase the size and scope of the facilities and activities which may further increase the hazard to the general public. SB 25 would allow for the gradual elimination of shooting ranges that constitute nonconforming uses. This is currently allowed for all other nonconforming uses. It would also require local governments to compensate the owner for the value of the real estate, value of the improvement and the economic loss for closing the business. While the League supports this bill as to shooting ranges, we would not be supportive of extending the requirement for payment to all owners of nonconforming use properties that are gradually eliminated by a city. The League does have one question with respect to the bill and that is to whom ownership vests after payment. As the bill stands, it appears that the municipality would pay for the property, but the owner would maintain title.

The League respectfully requests that this Committee report this bill out favorably. Thank you again for the opportunity to testify.

Support

**TESTIMONY BEFORE THE KANSAS SENATE
JUDICIARY COMMITTEE
SB 25**

Presented by Roger Kroh
Director of Planning and Development
City of Lenexa

Senator Vratil and Committee Members:

The City of Lenexa supports SB 25 in that it specifically acknowledges the ability of a community to amortize lawful nonconforming uses. This is a seldom used but necessary tool for local governments to protect the health, safety and welfare of those in the community while permitting owners of lawful nonconforming uses ample time to realize a return on their investment.

We are concerned, however, with the provision in SB 25 requiring mandatory compensation. We believe this provision creates the potential for significant conflicts and should be amended to be consistent with existing law, which provides in K.S.A. 12-771 for the gradual elimination of lawful nonconforming uses. The determination of what is an adequate amortization period should be determined on a case-by-case basis as is historically done when a city or county utilizes amortization. We ask you to consider making this change in SB 25.

Senate Judiciary

02-05-03

Attachment 12-1

Testimony for the Kansas State Senate Judiciary Committee

Presented February 5, 2003 in opposition to Senate Bill #25, revised

On behalf of the Kansas Second Amendment Society, PAC; Kansas State Rifle Association; and Air Capitol Gun Club, Inc.; it is a privilege and an honor to have the opportunity to address the Senate Judiciary Committee and to offer our comments in opposition to Senate Bill #25. Sponsored by Senator Emler and intended to amend K.S.A. 58-3222, 58-3223, and 58-3224.

Shooting ranges are important both to the Kansas economy and shooting sports in the State of Kansas. Kansans and out-of-state hunters who come here spend over half a billion dollars each year in our state. According to the Congressional Sportsman Foundation, this consumer spending translates into 14,500 Kansas jobs, \$255 Million paid in wages, \$32 Million in state revenue, and \$1.1 Billion in total economic activity in the State of Kansas. In 2001, there were over 437,000 Kansas sportsmen and women, which is more than the combined population of the cities of Wichita and of Topeka. Senate Bill #25 would effectively allow the elimination of any or all sports shooting ranges in the State of Kansas by the enactment of a patchwork quilt of noise ordinances by municipalities or counties across the state.

Over 30 states have enacted laws similar to the laws seeking to be amended by Senate Bill #25. More than half of all Kansans own firearms. They need safe places to shoot. Leaving the Kansas Law as it is would protect this valuable component of our rural economy.

Many shooting ranges in Kansas have been around for more than 2 decades, some are in the process of being surrounded by suburban development. At times in other states, subsequent property owners adjacent to shooting ranges have attempted to increase their property values by eliminating these facilities through legal or political action.

Shooting ranges provide recreational and educational opportunities to their members and the general public. Thousands of Kansans each year complete Hunter Education Courses. Many of which are held on private shooting ranges. Shooting ranges are also needed for organized competitions. Tens of thousands of Kansans compete in the various shooting disciplines each year. Thousands of competitors from out-of-state come to Kansas to participate in the shooting sports.

Law Enforcement and the United States Military use private shooting facilities in Kansas for training and are generally provided at no cost by these private clubs. If these ranges are shut down Kansas tax payers must provide new shooting ranges for training and qualifying purposes for Kansas Law Enforcement at a time when local government cannot afford the enormous expense of acquiring land and developing these ranges in accord with the Kansas Department of Wildlife and Parks Regulations.

In 2001, House Bill #2599 passed both bodies of the Kansas Legislature with large bipartisan majorities, and Governor Bill Graves wholeheartedly signed this enacting the Bill into Law. Kansas shooting ranges provide support for a significant portion of the States economy. They provide recreational and educational opportunities for Kansas youth, support for Kansas Law Enforcement and the Armed Forces of the United States and the State of Kansas. They deserve our protection.

This bill appears to be one in which there must be a problem in search of a solution. Surely, if a range is being operated outside the guidelines established by the Kansas Department of Wildlife and Parks administrative or other action can be taken. The Kansas State Senate should not let one bad apple, if they exist, to spoil the whole barrel.

Respectfully, submitted.

Phillip B. Journey
Spokesman Air Capitol Gun Club
President Kansas Second Amendment Society, PAC
Vice-President Kansas State Rif
Chair of the Legislative Committ Senate Judiciary

02-05-03
Attachment 13-1