



TESTIMONY

Senate Committee on Federal and State Affairs

House Substitute for HB 2340

An Act concerning crimes and punishments; relating to smoking.

February 2, 2012

Chairman Brundgardt and Members of the Committee:

Good morning Chairman Brundgardt and Members of the Committee. I am Whitney Damron and I appear before you today on behalf of Kansas Entertainment, LLC, the joint venture partnership of International Speedway Corporation and Penn National Gaming – the development group selected by the State of Kansas to develop the destination casino for the Northeast Kansas Gaming Zone.

When matters of interest and concern to Kansas Entertainment have been brought before Committee in the past, Jeff Boerger, President of Kansas Speedway Development Corporation and Karen Bailey, the Director of Public Affairs for Penn National Gaming has appeared before you. Both Jeff and Karen extend their regards to the Committee and can be available at another time. However, today, they and the Hollywood Casino Team are more than a little preoccupied with events leading to the opening of the \$411 million Hollywood Casino at Speedway, which held a charitable pre-opening event on Monday of this week with a ribbon cutting ceremony scheduled for Friday, February 3, after which the facility is scheduled to be open to the general public.

Kansas Entertainment, LLC appears before you today in opposition to HB 2340, which would repeal the exemption in state law that currently allows for smoking on the gaming floor of casinos.

The statewide smoking ban has drawn both praise and criticism since its enactment by the 2010 Legislature. Some critics have argued the exemption provided for “state-owned and operated casinos” is unfair and should be repealed.

Compromise and negotiation are a part of any controversial legislation and the smoking ban bill was no different. The final work product included a number of exemptions, including exemptions for:

- Tobacco shops;
- Class A and B Clubs licensed before January 1, 2009;
- Certain outdoor-related private clubs;
- Up to 20% of hotel rooms;
- Certain licensed long-term care homes.
- The gaming floor of casinos.

The smoking ban attempted to treat all classes of businesses equal with a statewide ban that included local preemption. Bars, clubs and restaurants are treated equally under the smoking ban. While I cannot speak for the proponents of the Act, I am aware that some of the consideration for the exemption for the gaming floor of state-owned and operated casinos was the fact that the State wanted to create large, destination casino projects in the four gaming zones authorized under SB 66 in 2007 and in order to achieve this objective, the Kansas casinos had to be competitive with both in-state and out-of-state casinos that would not be impacted by the smoking ban.

Specifically, each of the Federally-recognized Indian Tribes in our state has a casino; the Wyandotte Nation owns and operates a Class II casino in Kansas City, Kansas; and, there are four casinos located within the greater Kansas City area in Missouri. All of these facilities allow smoking on their gaming floor.

If the State of Kansas repeals the smoking ban exemption for state-owned and operated casinos, it will have a devastating impact on the Hollywood Casino, estimated to result in a loss of gross gaming revenues of 20-30% and possible reduction of jobs, which stands at over 1,000 fulltime employees. These numbers are real and quantifiable, as this is the experience seen in other states that have imposed a smoking ban where competitors in the same market area, but adjacent states are not affected.

Hollywood Casino's projected annual gaming revenue is estimated at \$175 million, which would calculate to a potential revenue loss of \$35 to \$52.5 million, of which 22 percent goes to the State of Kansas (State Loss Estimates: \$7.7 to \$11.5 million), with additional losses to local units of government and problem gaming funds. Hollywood Casino anticipates making more than \$500,000 in charitable contributions annually, which would also be impacted.

Hollywood Casino has been constructed in a responsible manner that will be inviting for both smoking and non-smoking patrons, but at the same time, it has not exploited the smoking ban exemption. Only patrons aged 21 or older are allowed on the gaming floor. Furthermore, the exemption does not allow for smoking in other areas of the casino, including bars and restaurant facilities not located on the gaming floor or any offices (i.e., back end facilities). In addition, Hollywood Casino will have designated non-smoking areas in its facility.

Hollywood Casino has 40' ceiling heights and installed a \$1.7 million state-of-the-art air handling extraction system to address public health concerns. We encourage you to see how this investment works first hand when you have an opportunity to visit the casino.

In closing, we would note the smoking ban remains a matter of interest for many citizens and business owners on both sides of the debate. During consideration of the smoking ban, exemptions were suggested for private clubs, but neither side could agree on language for an exemption that would not be unduly exploited. An exemption was included in the bill for Class A and B Private Clubs licensed prior to January 1, 2009 and the subjectivity of this date is the crux of litigation presently before the Kansas Supreme Court (*Downtown Bar and Grill, LLC vs. State of Kansas*; 10C822).

Should the Legislature be interested in reviewing the smoking ban and reconsidering additional exemptions, perhaps it should consider exemptions for adult-only facilities or repeal the act in its entirety and return the decision of smoking bans to local jurisdictions. We support small business in our state and believe there is room for a compromise on this issue in the Kansas Legislature that balances public health concerns with individual rights. Both options are ones we could support, should the Legislature remain focused on revisiting this law in its second year of application.

On behalf of Kansas Entertainment, LLC, we respectfully ask this Committee not to advance legislation that would affect state-owned and operated casinos ability to allow smoking on their gaming floor.

I am pleased to stand for questions at the appropriate time.

Thank you.

WBD

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