

**Report of the
House of Representatives
Special Interim Committee on
Gaming**

December 01, 2019

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Elijah Haahr, Speaker
House of Representatives
State Capitol Building
Jefferson City, MO 65101

Dear Mister Speaker:

The House of Representatives Special Interim Committee on Gaming has met, taken testimony, deliberated and concluded its review of issues including sports betting and illegal gaming machines that you mentioned in the formation letter. The below listed committee members are pleased to submit the attached report:

Chairman Dan Shaul

Representative LaKeySha Bosley

Ranking Minority Member

Representative Wes Rogers

Representative Robert Ross

Vice Chairman Dan Houx

Representative Dirk Deaton

Representative Jeff Shawan

Sincerely,

Representative Dan Shaul
Committee Chair

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Introduction

In response to recent U.S. Supreme Court precedents and concerns over unregulated gaming machines, Speaker Elijah Haahr appointed the Special Interim Committee on Gaming. The committee was charged with gathering information on the current status of gaming in Missouri and the feasibility of legalized sports betting.

The members of the committee included Representatives Dan Shaul (Chair), Dan Houx (Vice-Chair), LaKeySha Bosley, Dirk Deaton, Wes Rogers, Jeff Shawan, and Robert Ross.

The committee held five public hearings in the House of Representatives hearing rooms at the Capitol building.

Summary of Public Testimony

I. August 22nd, 2019

At the August 22nd, 2019, hearing, the committee heard invited testimony from the Missouri Gaming Commission.

The Missouri Gaming Commission provided a “State of the Industry” report and additional written testimony by David M. Grothaus, Executive Director, entitled “Testimony before the Special Interim Committee on Gaming”. Most financial reports and other materials for the commission may be found at: <https://www.mgc.dps.mo.gov/>

The Missouri Gaming Commission was founded in 1993 to regulate riverboat gambling. Its budget falls under the Missouri Department of Public Safety. The commission currently has oversight of bingo and fantasy sports operations licensed under the 2016 Missouri Fantasy Sports Consumer Protection Act. As of the fiscal year 2018 report, the commission reported adjusted gross revenue from all casinos in excess of \$1.7 billion. Casinos in Missouri currently employ over 6,000 individuals.

Missouri has a general prohibition on “games of chance” which include most traditional casino games and any games or contests involving prizes or winnings that have an element of uncertainty. Riverboat casinos, bingo, horseracing, and the state lottery are specifically allowed by constitutional provisions and further regulated by statute and rule. Horseracing is currently dormant in Missouri.

The commission described its enforcement and regulation of bingo games which are authorized under Mo. Const. Art. III, Section 39(a) and Chapter 313. The report and testimony also included statistics on fantasy sports and a comparison of sports betting practices among the states legalizing sports betting subsequent to the United States Supreme Court ruling in *Murphy v. National Collegiate Athletic Association*, 584 U.S. _____ (2018).

The commission is training staff with regard to sports betting as eighteen states will have such programs in place by 2020. The commission believes that sports betting can be properly regulated and that it would likely provide significant revenue to the state. The commission would require two FTE and approximately \$700,000 per year for regulatory purposes if sports betting were legalized in Missouri.

With regard to the “grey machine” issue involving unregulated gaming machines at

many establishments in Missouri, it is the opinion of the commission that all such machines so far examined are illegal under section 572.030. The commission works in conjunction with prosecutors and the Missouri Office of Prosecuting Services Conference to provide assistance in ongoing legal cases and disputes over such machines. The commission believes that all such machines should be regulated to ensure consumer protection and prevent the loss of revenue to legal gaming operators and the state.

II. September 05, 2019

At the September 05, 2019, hearing, the committee heard invited testimony from the

Missouri Lottery Commission. Paul Kinkaid, Chair of the Missouri Lottery Commission, provided a packet entitled “Missouri House Special Interim Committee on Gaming” and a “Missouri Lottery 2019 Fact Book”. An annual financial report was also provided for fiscal years 2017 and 2018.

The Missouri Lottery was created by constitutional amendment in 1984 with over 70% support. About 80% of the general population has played the lottery. Its overarching goal is to transfer funding to education and has provided approximately \$6 billion over the last 33 years. The lottery is currently the sixth largest source of state income and has very low operating expenses. An audit report by the Missouri State Auditor’s Office has rated the lottery “excellent”.

Missouri currently has a problem with “grey machines” which claim to be in compliance with gaming laws, but constitute illegal gambling in the opinion of the commission. These machines are found in numerous locations such as convenience stores and have been increasing in number over a ten year period. We currently estimate that almost 14,000 machines may be in operation throughout Missouri. It is unknown whether or not these machines have a better payout than lottery programs or, indeed, whether they operate in a fair manner.

If caselaw eventually establishes that such machines are illegal, then the Missouri Lottery could revoke licenses in order to force the removal of some machines. Reductions in the advertising budget for the Missouri Lottery do make it more difficult to compete with these machines. If the General Assembly were to regulate these machines, then their payout could be adjusted, the machines could be examined for accuracy and fairness, and the funds from such machines could be diverted to education in a manner similar to current gaming proceeds.

With regard to sports betting, the commission estimates that its legalization could result in upwards of \$100 million in revenue. The commission is capable of instituting parley wagering on sports and this system would likely result in significant proceeds for education.

III. October 10, 2019

At the October 10, 2019, hearing, the committee heard invited testimony from the Missouri Prosecutor’s Association, Missouri State Highway Patrol, and Spectrum Gaming. Public testimony was also taken.

The Missouri Prosecutors Association provided a handout describing legal cases on gaming and gambling machines. Under Missouri law, gaming has 3 elements which are (1) Consideration, (2) Chance, and (3) Prize. The possession of a gambling device is a class A misdemeanor under section 572.070, the promotion of gambling is a class E felony under section 572.030, and the definitions of terms such as “slot machine” are found under section 572.010.

The most recent Missouri case published on appeal is *Thole v. Westfall*, 682 S.W.2d 33 (Mo. App. E.D. 1984), which is best interpreted to indicate that any type of video poker or slot machine that awards replays or points that may be exchanged for prizes meets the definition of a gambling device. Most cases from other jurisdictions indicate that the “grey machines” currently populating many Missouri convenience stores and other locations are gaming machines.

The Prosecutors Association explained that these “grey machines” function using a “pre-reveal feature” so that the player is aware of the next result in the game, but must continue to pay money in order to discover subsequent results and possible payoffs. The outcome of playing is still based upon chance. There is currently a case at the trial level in Platte County, Missouri, which is set for trial, but it is reasonably estimated that this case could take until late 2021 for final judicial resolution by the appellate courts or the Missouri Supreme Court.

The Missouri Highway Patrol testified that it received 39 complaints of illegal gaming in 2018 and has received 145 so far in 2019. Most complaints are filed by other state agencies and involve “grey machines”. Two officers are assigned to enforce and investigate these complaints. The patrol concurs in the assessment that most or all “grey machines” are illegal and its investigators play the games in order to determine illegality. So far in 2019, they have provided 34 probable cause affidavits to prosecutors, but most prosecutors are demurring based on their desire for final judicial resolution of the “grey machine” case in Platte County. Enforcement of illegal gaming laws subsequent to a ruling in that case would require substantial additional resources and the hiring of new investigators by the patrol.

Mr. Matthew Roob of Spectrum Gaming provided the committee with information on gaming regulation in other jurisdictions and volunteered to answer questions involving gaming regulation.

The Missouri Petroleum Marketers and Convenience Store Association testified that they support 2 major policy goals related to the potential regulation of VLT machines. They prefer that any legislation apply equally to all types of businesses and convenience stores and that minors should be restricted from gambling by requiring the placement of machines in separate, secure locations. Allowing municipalities to exercise local control over the machines is also permissible. It is likely that legalization of the machines would provide additional tax dollars to the state.

The Missouri Elks Association and VFW, represented by Mr. Jim Hahn, testified that fraternal organizations were often pressured to use “grey machines”. The Missouri Gaming Commission is currently authorized to regulate bingo games and works closely with organizations that implement bingo. Bingo licenses may be withheld or withdrawn if an organization mistakenly implements illegal “grey machines”, but this enforcement action is not available for use against any non-fraternal or charity based organization that does not have bingo. Since the “grey machines” are not subject to regulation or enforcement, they cost lawful organizations and the state money. It would be better to enforce a level playing field so that organizations with bingo licenses do not suffer additional harm.

Mr. Bob Purdy of the Missouri Historical Society testified that making “grey machines” illegal would reduce competition and free market choice. He would approve of licensing such machines in order to prevent minors from gambling and to direct tax funds to education in a manner similar to the current use of Missouri Lottery funds. One option would be to place enforcement of the machines under the Missouri State Lottery Commission.

IV. October 24, 2019

At the October 24, 2019, hearing, the committee heard testimony from a variety of groups involved with sports betting and fantasy sports issues.

Fanduel provided the committee with an outline describing its fantasy sports operation in the state of New Jersey.

Penn National Gaming provided a written handout to the committee. They explained the benefits of sports betting in generating state revenue and creating employment and were able to provide statistics on their operations in six states. They recommend an overall tax rate of 6.75 to 7.5% as reasonable considering the generally tight margins for profit in the sports betting industry. Penn also recommends limiting sports betting to existing casinos, which have experience in regulating live action table games and slot machines, rather than other entities such as the state lottery. Mobile device gaming is also useful in order to prevent a larger blackmarket from developing using offshore internet sites. Many estimates conclude that illegal internet sports gambling is rampant in most states that do not have a legal avenue for regulated gaming. Penn opposes a mandated royalty fee for the use of official league data and any legal mandate that requires operators to pay for official league data from the league. Penn mentions that most data is paid for and sold to data suppliers so that an additional fee is unnecessary. Payment for official data is reasonable, however, and should be allowed via negotiation in the free market.

Draftkings also provided information on fantasy sports operations and the benefits of mobile gaming. Statistics on revenue in other states is available.

Arnold & Associates provided a comprehensive handout on the history of gaming regulation in Missouri. Constitutional and statutory authority for casino gaming, bingo, raffles and sweepstakes conducted by charities and fraternal organizations, and the Missouri Lottery are covered. Recent issues involving electronic raffles were discussed.

Mr. Chris Krafcik of Eilers & Krejcik Gaming estimated that legalized sports gaming could generate \$95 million if conducted at casinos and up to \$289 million if mobile gaming were allowed. Recommendations for regulation include the promotion of competitive pricing, inclusion of numerous types of games, variety in betting options, widespread availability, and comprehensive consumer education. Specific details are provided in a handout.

Mr. Mark Balestra, Esq., representing Segev LLP, testified that regarding the comparison and contrast among the current states with legalized sports betting. He provided the committee with a letter emphasizing the types of regulation and questions which need to be addressed in order to establish an efficient regulatory regime for sports betting.

Ms. Sue Schneider provided the committee with a copy of her remarks which emphasize the advantage of legalized sports betting as compared to the current blackmarket using offshore sites. Proper legislation should mandate geolocation technology, age verification procedures, ID checks, and responsible gaming options designed to assist problem gamblers.

Mr. Bob Priddy testified that sports betting may not differ from other forms of gambling in significant ways so that the committee should consider whether or not it needs its own regulatory structure and tax rate. He also provided a handout with statistics and

information regarding casino attendance, game odds, and revenue estimates. Most casino games have low house advantages and they are still taxed at approximately 21%. The legislature may wish to consider implementing electronic, mobile gaming through the casinos while retaining admission fees and other fees designed to help locations where gaming boats are currently located. It would be possible to tax different games at different rates and apportion the revenue to public projects in a manner deemed feasible by the legislature.

V. November 07, 2019

At the November 07, 2019, hearing, the committee heard invited testimony from Major League Baseball, the National Basketball Association, and the Professional Golfers Association as well as other major league sports organizations under the organizational title "One Team". Public testimony was also taken.

The MLB, NBA, and PGA provided the committee with a handout which described a five point plan for the effective regulation of sports betting. They believe that legalized sports betting should allow an "opt-out" provisions for certain events, that integrity provisions and conflict-of-interest rules should be mandated, that official league data

should be used for purposes of sports betting, that mobility should be allowed and that sports betting should not be restricted to casinos, and that a royalty should be paid by the operators of sports betting facilities in the amount of .25% of the total amount bet or approximately 4% of the total gaming revenue received. The royalty fee would be in addition to a legal mandate that official sports data be purchased from the professional associations or leagues.

Sports betting revenue, if legalized in Missouri, could approximate revenues of \$376 million to sports betting operators, \$37.6 million to the state of Missouri, and \$3.4 million in royalty fees to professional sports organizations provided that the suggested royalty was implemented.

Joe Briggs, Esq., provided a handout for the organization “One Team” which described the possible impact of legalized sports betting on players. Regulations should seek to ensure the safety of players, allow players a safe and secure method to report prohibited contacts or requests to alter the outcome of sporting events, provide procedures and resources for investigations of illegal activities related to sports gambling, and protect the use of personal data (including biometric data) on individual players.

Mr. Michael Bolserac of Aristotle Integrity provided testimony and demonstrations on how computer technology can be used for age verification purposes so that minors are effectively prevented from engaging in online gambling. His firm has developed a variety of age verification processes including, quizzes, the use of identification documents, visual verification via skype or video, and facial recognition. It is certainly possible to effectively prevent minors from gambling with currently technology that is inexpensive and efficient.

Ms. Lindsay Slader of the firm GeoComply provided testimony and demonstrations of how “geofencing” can be used to restrict the location of online gambling to appropriate jurisdictions. The use of this technology is necessary for compliance with federal laws such as the Wire Act and the Unlawful Internet Gambling Enforcement Act. There are sophisticated systems currently in use in many states that can defeat attempts at providing false location data.

Mr. James Greer of MFA Oil testified that the 74 Break Time Convenience stores in Missouri take underage gambling seriously and are competent at selling all types of age restricted products such as alcohol and tobacco. If “grey machines” were legalized, it is possible that about 15/74 stores would utilize them. Some stores might not be able to have a proper separate location, but MFA has no objection to such a requirement.

Mr. Chris Marshall of Llywelyn’s Pub testified that legalizing “grey machines” might provide an additional source of entertainment and income for local bars which face a very competitive environment.

Mr. Jay Hahn of the Missouri Coin Operators Association testified that members of his

organization currently provide vending machines, games, pool tables, and similar equipment to restaurants and bars and many members are third and fourth generation owners of such routes.

Findings and Recommendations

I Sports Betting

A. Findings

The committee views the legalization of sports betting as a legitimate opportunity to increase state revenues and to direct such revenues in a manner similar to the Missouri Lottery and casino gaming so that the bulk will help to fund education. By 2020, 18 states will have implemented such gaming and Missouri would likely lose revenue if it does not remain competitive with the other states. The state should have as its main goal the preservation and growth of both the lottery and casino gaming in order to increase revenue for education.

It appears that technological developments such as geofencing and the identification of individuals by age are feasible and should be mandated in order to ensure compliance with federal and state law. Age restrictions are important and should be used to prevent minors from gambling. Conflict of interest and ethics regulations are also important and must be implemented in order to ensure customers a fair gaming experience.

The committee is cognizant of the issues posed by sports betting to both professional sports organizations and players and believes such concerns should be addressed in any legislative action. The committee is interested in mobile gaming and creating a level playing field insofar as that is possible. It is unknown which regulatory regime would be most beneficial from an economic standpoint at this time. Regulation by the Missouri Lottery, the Gaming Commission, or by a new agency are all valid options for consideration, but the main goal should be to avoid unnecessary competition among state agencies and provide revenue for education.

The committee views current fantasy sports regulation and operation as a promising start and would be open to additional legislation in this area if it is deemed necessary to facilitate the growth of that particular industry.

II “Grey Machine” Issue

A. Findings

The growth of “grey machines” in Missouri has accelerated in recent years and it is likely that over 14,000 currently exist in the state. These machines are in competition with both the Missouri Lottery and casino gaming and likely result in a loss of revenue to the state.

Judicial resolution of the “grey machine” issue is unlikely prior to late 2021 and it may be desirable to act to regulate such machines immediately to resolve uncertainty and prevent further loss of revenue that could be used for educational purposes. It is unlikely that prosecutors or authorities currently have the resources to act against such machines given the legal uncertainty

and lack of funding for enforcement actions.

The problem of illegal gaming is not likely to resolve itself. A lack of regulation means that customers may be exposed to unfair and illegitimate gaming and that revenues from such gaming will not be taxed appropriately. Age restrictions may also be problematic to enforce given that the “grey machine” operators believe that they do not constitute illegal gambling. Regulating existing machines would allow authorities to examine them and ensure that their payoff settings and win probabilities are correct and proper under state law.

The Missouri Lottery and Gaming Commission have offered to provide assistance with regulation, enforcement, and the drafting of legislation to address this issue. It may be possible to regulate existing machines by subjecting them to prospective licensing requirements and rulemaking by state agencies or commissions. This option could be modified to limit the number and type of machines in operation without involving authorities in a massive operation to seize existing machines and incur legal expenses for the state. It is possible that an option of local control could be implemented as well in order to allow municipalities to decide whether or not such machines should remain active within their boundaries.

In any case, if the General Assembly chooses to legalize and regulate existing machines, the revenue stream should be allocated in a manner similar to the Missouri Lottery and the Gaming Commission’s regulation of casinos so that there is a level playing field for different types of gaming in Missouri and so that revenue is directed for educational purposes.