

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2407

2001 SENATE POLITICAL SUBDIVISIONS

SB 2407

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2407

Senate Political Subdivisions Committee

Conference Committee

Hearing Date February 9, 2001

Tape Number	Side A	Side B	Meter #
1	x		21.8-53.1
Feb.15, 2001	x		11.9-25.4
Feb.16, 2001	x		11.1-17.3

Committee Clerk Signature

Mary Jo Wocken

Minutes:

The hearing was opened on SB2407, relating to manufacturers and distributors of gaming equipment.

SENATOR TOMAC: Introduced and sponsor of SB2407. What this bill does is provide that manufactures have to sell to all qualified distributors in the state. This has to do with pull tabs and those gaming devices that are used in tip jars, bingo cards, and those types of things. I wasn't aware of the problem until a constituent of mine approached me and said that she had a problem getting manufacturers to sell to her. At first I thought, well, does this really go on but it did kind of open what I would consider somewhat of a shady side of the gaming industry. In my own investigation, I find that its in the most part true, that they do limit who they sell to. Their motivation I think can questioned, but I think what Jeri might suggest to you is that the reason is because the other distributors in the state bring pressure upon the manufacturers and suggest that if you sell to so and so, were going to drop our business, and because they have an established business. Its not a good system, at least for anybody that believes in free enterprise and open

competition, with that in mind we introduced this. Then, on further investigation at first to be real frank, Jeri, when she approached me, it almost seemed like one of those things that you really couldn't believe. But on further investigation we find that other states have been forced to adopt similar legislation to overcome a similar problem. As prime sponsor and I think the Attorney General office is here to testify in a neutral position, as they normally do and to supply information about what they found and how they perceive the problem. It's my understanding that the attorney general is not in favor or in opposition to the bill, they do believe they did help craft the bill, and we did make an addition to the bill at their suggestion. JERI KURLE: See

written testimony. SENATOR COOK: Do you have to have access to the products from all seven of these manufacturers in order to have a full line to service a customer? JERI KURLE:

No, I would not need to have access to all seven, but I do need a more than one, because the one that sells to me does not carry bingo paper. SENATOR COOK: Jeri, so you can buy right now everything but bingo paper, but...JERI KURLE: I can't buy bingo paper or daubers. I can't make exclusive games with the other manufacturers. And most of the manufactures will not even sell me their shelf game which are not exclusive. SENATOR COOK: Do distributors who are

allowed Jeri, to buy from manufacturers, do they sign some sort of agreement that they can?

JERI KURLE: The only agreement I know of that they sign is when they have an exclusive.

SENATOR FLAKOLL: To further explain, Section 1 A, relates to a specific deal for pull tabs, if sold on an exclusive basis. Can you give me an example of that? Would that be like a specialty item? Something made for the Elks Club across the United States, is that something that would be made for. JERI KURLE: Not in particular. Its when you draw up your own games, you draw up the artwork, the payout, and you have your own idea of the game you want. It becomes your

game, your own exclusive and they make it only for you. This bill would not, still allow them to

sell me another distributors exclusive which still protects the other distributors. SENATOR FLAKOLL: With respect to the little game they are playing with you and basically sitting on your application forms, will this directly address it you think? JERI KURLE: I think so, because if this bill would pass, then, like it says if they do sell to other distributors in North Dakota, they would have to sell items that are not an inclusive to everyone. SENATOR LEE: This seems so odd! Is there a common owner for some of these distributors as well as gaming sites, managers, in other words, are these people not selling to you, businesses not selling to you because they own or have an ownership interest in some of these others as well? And so are they trying to monopolize that part? I just don't understand why any business person wouldn't want to sell to everybody that is interested in buying the product? So help me here. JERI KURLE: I believe its because these other distributors have been in business longer than I have and because of when one manufacturer confided in me, that two of the distributors from North Dakota had called them and put pressure on them to not to sell to me or they would pull there business away. And there thinking if they do what every the amount is for year, the amounts are different, for instance a \$100,000 business per year, and I'm only starting and if they pull their \$100,000 business away because I'm only starting and they don't know how much business I am going to do, they are kind of staying where they are because its safe. SENATOR WATNE: This says they may not do so, whatever. It gives no penalty, no fine, no enforcement's. What happens to them if they still refuse? JERI KURLE: I would have to ask the Attorney Generals office to answer that question. CHUCK KELLER: Spoke neutral on SB2407. Chief auditor of the Gaming Division of the Attorney General. The purpose of my testimony is to provide some background information of the gaming industry and the relationship between the manufacturers and the distributors. The problem that Senator Tomac and Jeri alluded to is a common problem in the gaming industry. It

seems that every newly licensed distributor ends up in his office, fighting the same complaint.

Presently there are ten manufacturers of gaming equipment, however, only seven of those ten sell bingo cards or pull tabs. Of those seven, all seven sell pull tabs, but only three of the seven sell paper bingo cards. There are eleven licensed distributors. The distributors do pay a \$1500 per year license fee and the manufacturers pay a annual license fee of \$4000. This bill is patterned after the language adopted by the state of Minnesota. Language is almost identical except for the last particular provision. There are there states that require manufacturers to sell to all the distributors licensed in those states. The states are Washington, Missouri and Minnesota.

Washington, goes the farthest. They prohibits any manufacturer from discriminating to any distributor in terms of selling but also requiring the manufacturer sell to distributors at exactly the same price including discounted products and sale prices. The credit terms also have to exactly the same. The only thing that can differ with the state of Washington, is the cost per shipping since a distributors location maybe be farther from the manufacturers facility than another distributors. The state of Missouri, prohibits any exclusive agreement expressed or implied that would prohibit or restrict the manufacturer from selling to any distributor. The particular provision of the bill that the office of the Attorney General asked to be added is to insure that the distributor is credit worthy for that manufacturer. Subdivision B of this proposed subsection which would read " the distributor has not provide the manufacturer with proof of satisfactory credit, or is delinquent on any payment owed to the manufacturer". We contacted some of the manufacturers from other states to ask how they felt about it. According to the manufacturers there position is that the states of Missouri, Minnesota and Washington adopted their language to avoid discrimination between the manufacturers and the distributors and the concerns expressed by the manufacturers was that they did not want to issue credit to unworthy

distributors. Nor do the manufacturers want to sell to those distributors that cherry picked their product line. According to the manufacturers, the distributors would oppose the distributors that did oppose, these proposed provisions in the other three states oppose them, because of the buying leverage that the distributors have with the manufacturers, an effort to keep competition out. This is an old issue and our office is neutral and we do respect the positions of the distributors and of the manufacturers. SENATOR LYSON: How long period, would you allow a manufacturer to determine the credibility of the distributor before you took action? CHUCK KELLER: Should this bill pass, the Gaming Commission, which is responsible for adopting the administrative rules would probably address that particular issue as well as other issues.

Naturally, if a distributor has provided evidence to a manufacturer that the distributor has sufficient credit, cashiers check or money order for sufficient credit, I think the manufacturers would establish their own internal policy as to what constitutes credit. As long as its not unreasonable, I think it would be acceptable. SENATOR LYSON: If we would pass this your organization would be able to set rules beyond what we have here, such as I just mentioned. So we wouldn't have to get into those things. Because we wouldn't have to have them back in two years saying 'well there still looking at my credit rating. You would be able to set that time limit?

CHUCK KELLER: Yes. The State Gaming Commission. SENATOR LYSON: That's what I guess, that would be the answer. SENATOR COOK: I own a business, should I not have the

right as a business owner to determine who I am going to establish credit to, and who I am not?

CHUCK KELLER: Mr. Chairman, that certainly would be a prerogative of the business owner.

SENATOR COOK: Mr. Keller, do we have some manufacturers that they do not want to give a distributor credit, that they are willing to sell from COD? CHUCK KELLER: Mr. Chairman, I

don't believe that is the issue here. I understand in discussing the issue with Jeri, that she is very

willing to provide the manufacturers with cashiers check or even COD. But the manufacturers are still declining to ship her product. SENATOR COOK: Well, Mr. Keller, then that would tell me that the issuing of credit, is not the issue, I mean, even if your willing to pay cash the problem is deeper than that. CHUCK KELLER: Mr. Chairman, that is correct. The provision that the office of attorney general added to the draft bill was simply to protect the manufacturers. It was not designed to be a filtration system for the manufacturers and selecting which distributors they should or should not sell. SENATOR WATNE: The Gaming Commission also be setting up rules for enforcement. CHUCK KELLER: If your referring to the other question that I believe you posed, about what actions the office the attorney general would take, that is pretty well spilled out in statute. That any violation of the gaming law or the rules is subject to administrative complaint. And the gaming law presently provides for, a person has a provision, to enable our office to access monetary fines against manufacturers as well as suspension of licenses or revocation of licenses. SENATOR COOK: Mr. Keller, Does federal government have any laws that deal with restraint of trade in any area, and if so, how do they compare with what we have here in front of us. CHUCK KELLER: Mr. Chairman. In regards to federal law, if there was federal law, there would already be three states that would be in violation of it. I don't know of any state law that would prohibit the language proposed in this particular bill. If there is I will find out for you. SENATOR COOK: I guess more specifically Chuck, my question is, what the sponsor and what the people are trying to do with this legislation, is that protection already there in the federal laws? Are we overlapping, what are we doing? CHUCK KELLER: Mr. Chairman, I don't know the answer to that question. SENATOR COOK: Maybe we could find out the answer to that question. CHUCK KELLER: I can find out for you. SENATOR FLAKOLL: I was feverishly writing your numbers down here, so I think I may have missed, the one that you gave

it. The number of licensed distributors in the state of North Dakota. CHUCK KELLER: There are eleven distributors. SENATOR FLAKOLL: The manufacturers, I got the number of manufacturers that can go through those. Are those from the state or not? CHUCK KELLER: All the manufacturers that sell pull tabs and bingo cards are from out of state. We have no manufacturing plants in North Dakota. And none of the, and according to North Dakota law, no license manufacturer can own any North Dakota license distributor. There has to be autonomy between the two organizations. SENATOR FLAKOLL: We don't have a jurisdictional problem enforcing it because, basically, the hammer were dropping is on businesses that are out of state. Because we can basically prohibit them from doing business in the state, that's our recourse. CHUCK KELLER: That's one of several recourses. That would be achieved if we suspended that manufacturers license or revoked it. SENATOR COOK: I am trying to understand. Don't read anything into the question. I mentioned that I have a business. I sell for manufacturers, not manufacturers of pull tabs, but other industrial equipment. The one thing that I seek the most from a manufacturer is an exclusive territory to sell their product. Most of what I sell, I either have under an exclusive territory or that manufacturer, will not give me a exclusive territory which means he'll sell to anybody who wants to buy the product and they must sell it to him at the same price, that can't discriminate on price, they can put some of us on COD. How does these other manufacturers that manufacturer things other than pull tabs, how do we differentiate the way we treat these manufacturers? I would not even think of passing a law that would force some of the manufacturers that I buy from to sell to my competitors. Forget that we are trying to justify, that in this pull tab business, and I am trying to find out is the pull tab business a family business, does it create some unique situations where we can actually justify this? CHUCK KELLER: Mr. Chairman, that is a difficult question to answer. SENATOR COOK: It's the one I

am looking for in my head as I try to deliberate on what is the right way to go on this. CHUCK KELLER: From the perspective of newly licensed distributors, they are looking at it as an environment of unfairness. From the perspective of existing distributors, they are looking at it, as trying to keep the competition out because they may have favorable agreements with certain manufacturers of paper bingo cards or pull tabs, which they do. SENATOR COOK: Mr. Keller, again I am thinking out loud here forgive me. Could maybe this be because we have legislation that a distributor or laws that a distributor, cannot be a manufacturer? Again, I am a distributor, but I also could become a manufacturer of this product. Is that what maybe separates the two, I don't know. CHUCK KELLER: Possibly, the reason why we record separation is to ensure that manufacturers can't exert undo influence, but also to ensure that the information that we receive from the distributor, is accurate information. There have been problems with other states. Let me back up Mr. Chairman. There are many states that adopted the same concept that North Dakota has with manufacturers selling to distributors who sell to licensed organizations. In some states the manufacturer sells directly to the state. The state sells directly to the licensed game organizations and the distributors are omitted from the channel of distribution. SENATOR COOK: Chuck, do we have any states that allow the manufacturer to sell directly to the gaming, to be a distributor also? CHUCK KELLER: Mr. Chairman, I am not aware of any. I can find out for you. SENATOR COOK: That would be interesting also. SENATOR WATNE: These people are paying \$1500 for the license to be a distributor. Is there a limit of how many distributors are allowed in the state? CHUCK KELLER: There is no limit. The number of distributors has remained quite constant for the last 5-8 years or so, if not declining slowly. CHUCK KELLER: I'll provide you with the answers to your questions. SENATOR COOK: Senator Tomac, Your opposed now? SENATOR TOMAC: I didn't see any opposition Mr. Chairman. In the question

that you raise is an excellent one and though we had Chuck here in the committee hear. The question, I, with response to your distributorship. The question I have is, it seems to me that many of the manufacturers do award a territorial because you need to travel a certain amount so they give it a territorial exclusive for lack of a better term. And so I guess the question that I have is, Chuck is, are the manufacturers giving territorial exclusives or are they just selling to just one or two distributors and its undefined and they are reluctant to open that up and put their sales in jeopardy. I think that is what you were getting at, Senator Cook, is there a reason, a definable reason why there limiting there distributors or what is the real reason here. I don't if I've uncovered that in my investigation in the bill either. Am I correct in that? SENATOR COOK:

Senator Tomac, I think so that we understand my rationale, there is no doubt in my mind that Jeri has a problem. We've got to find a solution for her problem, and a solution that doesn't create a lot of other problems and that's some of my biggest concerns. SENATOR TOMAC: I think that its a fair question. SENATOR COOK: In regards to my own distributors, do you want to know the quickest way to get me canceled. And I have no recourse if I am canceled. Most contracts I signed, they got to give me a 90 day notice or something.. SENATOR TOMAC: or one way.

SENATOR COOK: But if I start cherry picking their product lines they will go with someone else, they will find a distributor who will sell their entire product line, and I will get canceled. And that is the leverage, its a relationship that we have and I am trying in my mind to rationalize this same relationship. I thank you. SENATOR WATNE: If I may just make a comment. The difference between that and what you are doing and this is, is the state has sold'a license for them to do it. SENATOR COOK: Senator Watne, I agree and I asked earlier in the question the relationship that a manufacturer cannot become a distributor. I think maybe, it opens up.

Closed Hearing on SB2407.

February 15, 2001 (Tape 1, Side A, Meter # 11.9-25.4)

CHUCK KELLER: Chief auditor of the Gaming Division of the Office of the Attorney General.

When I testified before you last week you posed three questions to me that I was asked to get the answers for and I do have a memo that I would like to provide to you. See written testimony.

CHUCK KELLER: You had asked whether this particular bill violates any commerce law or anti trust law. The office of attorney general, the attorneys in the office of the attorney general are not expert in federal law so the position that our office took, is that we relied, we placed a burden on the manufacturers back. We also contacted other states, in fact several representatives that are not referenced in this paper bill and no person that we contacted is aware of any federal law that would prohibit the application of the provisions of SB2407. But what was very interesting in our communications with the manufacturers is that the manufacturers as a whole except for one manufacturer, does not oppose this bill. They believe, the manufacturers believe that it is a distributor problem, a distributor issue in our state. The distributors are putting the pressure on the manufacturers not to sell to their competition. Especially to newly licensed distributors. I would like to answer a question that Senator Cook proposed to him last week. You asked me what I thought was the difference between the charitable gaming industry, and private enterprise. I believe there is a difference. The difference is that the charitable gaming industry is a very highly regulated industry. Its an industry that is being endorsed, its the citizens own industry, and that through high regulation we embody standards of fairness and equity within the industry. Wish includes fair pricing, in our responsibility to both protect and control a vital growing industry. The licensing and requirements we placed on the distributors and manufacturers intentionally keep out manufacturers and distributors that are unsuitable to operate within our state. We have only 7 manufacturers of pull tabs and paper bingo cards in our state. Of those 7,

all seven sell pull tabs, but only two sell paper bingo cards. A very limited source of product in our state. And North Dakota is not, is a large state in terms of charitable gaming but its not the largest. The two largest states include Minnesota and Washington in which provisions similar to this bill have been adopted. In Washington, those provisions were adopted in 1973, many years ago. I believe the state should in all of its evaluations, the legislature should endorse the utilitarian theory, and that theory holds that the state must do what it must that is in the best interest of its citizens. Despite the fact that what it does may be objected to by a select few, or those feel that perhaps cannot exercise discipline and self control to refrain from doing certain things. The purpose of regulations is to protect the organization. Its to insure that there is adequate competition, that organizations and distributors receive fair pricing and it is not to restrict source of product from those select few vendors that choose to operate and pay the licensing fee for North Dakota. SENATOR LEE: What would happen if we removed the requirements that all of these had to be sold through the distributor, since your letter says that there are states that are the case. Since it is a distributor issue, why would we allow this to just be monopolized by the distributors and not allowed direct sales? CHUCK KELLER: That was the position taken by the legislature in 1977, when gaming was first adopted. There are certain benefits to having vertical integration between manufacturers, distributors and organizations. The disadvantage though is the pricing, the pricing structure, that the middle will take. But the middle man, namely the distributors in our case do serve an important function. And that function is to keep the manufacturers honest. It is much easier for us to access distributors and regulate distributors than it is for us to regulate manufacturers based out of state. SENATOR LEE: All the thought to keeping the distributors honest, this just seems to be the problem here, is that some of them are restricting sales. CHUCK KELLER: The distributors certainly are trying to keep out the

competition, they always, I mean, as far back as I can remember, they have. It seems that all the newly licensed distributors end up in my office, with the same complaint. The complaint that this bill is trying to address. If you are considering opening the North Dakota market, to the manufacturers that could be done but I do feel that would warrant, that I would like to at least study that area to look at the impact, the positives and negatives that the other states are experiencing. There is a reason why the majority of the state are bypassing distributors. I would like to find out why and the impact on those states. Things have changed and since the early 70's when price fixing was a major consideration by manufacturers. SENATOR COOK: Do we not have price fixing here? I mean are the prices not controlled? Can one distributor buy it cheaper than another distributor. Is it tied to volume? Is pricing tied to volume? CHUCK KELLER: Pricing is tiered. It is tiered based on volume of product bought in a year, it may be based on whether a distributor orders a certain quantity like 50,000 tickets, for example, receives one pricing tier versus another pricing tier. I don't know whether one distributor receives more favored pricing than another distributor based on equal volume purchases. I don't have...SENATOR COOK: That would be illegal would it not, if a manufacturer has a published price and even if its tiered would that not be illegal if somebody was not allowed to, once you publish a price you got to live by it, do you not? CHUCK KELLER: I don't know whether that would be illegal or not. There are many sales discounts within the industry. One of the manufactures believes that the language adopted by the state of Washington is the fairest language because Washington's language goes way beyond the provisions of our bill, in that even sales, or products sold at a sales discount must be offered at that sales discount, to every licensed distributor. SENATOR FLAKOLL: With the tiered effect, couldn't they still pretty much, couldn't the manufacture still put the screws to the distributor by saying, okay were going,

they know what there numbers are say if you buy under 100,000 of these, its twice as much as the guy who, he wants to or needs to try and do business with maybe. Is there anything to prevent them from really having a large, overtly large gap in the price in the tier, thinking at the lowest level? CHUCK KELLER: I've considered that, but, I think that it would be okay for a manufacturer to have a wide gap in a pricing structure only if that was the manufacturers policy in every state, not just North Dakota. SENATOR FLAKOLL: Could they also, if they are looking to try to play favorites with big customers in some respects, I know you could do it for a reason, but could you in affect sell authorized dealerships, that you would have to spend so much money to be able to sell these pull tabs in the state. I mean can they do that, kind of on the side? The manufacturers require the dealer, the distributors to pay up so much money to be allowed to buy there product for a distributorship SENATOR FLAKOLL: There can be no financial interest, in the ownership between the manufacturer and the distributor. There has to be an autonomous relationship. I am not sure if I am understanding your question. A manufacturer cannot dictate to a distributor pricing terms or sources of product. SENATOR WATNE: How many distributors do we have licensed in the state of North Dakota? CHUCK KELLER: We have eleven distributors. SENATOR LEE: Would there be any interest on the part of the committee in adding a section which would add a study to this, to be considered during the Interim? I don't know if the Legislative Council would end up tuning it, but it seems as if it maybe time to reexamine the gambling laws and see where the manufacturers and the distributor relationship should be changed based on what other states experiences have been. I was just wondering if there is any support for that before I would amend it, or make a motion, to make an amendment concerning the additional section? SENATOR MATHERN: My comments on that is if that study was

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dealing with doing away with distributors and going directly to the manufacturers, I would mind that we have no jurisdiction over the manufacturers as far as I know. SENATOR LEE: Oh, no. SENATOR MATHERN: I hesitate on that. SENATOR WATNE: We have a Gaming Commission, we have a Advisory Commission, we have a strong Attorney General Office overseeing this, I am not sure that we need another study. I think they have a lot of people looking at it.

Committee closed discussion on SB2407.

February 16, 2001 (Tape 2, Side A, Meter #11.1-17.3)

Senator Cook called the Political Subdivisions Committee for discussion on SB2407.

Senator Watne moved the corrected amendments prepared by the Office of the Attorney General

Senator Lyson 2nd.

Roll call vote: 8 Yeas, 0 No 0 Abs

Senator Watne moved a Do Pass as Amended

Senator Mathern 2nd

Roll call votes: 8 Yeas, 0 No 0 Abs.

Carrier: Senator Watne

February 15, 2001

PROPOSED AMENDMENTS TO SENATE BILL NO. 2407

Page 1, line 11, remove the second "or"

Page 1, line 13, ^{after "manufactures" insert} replace the period with "; or ^{and.}

Page 1, after line 13, insert:--

- ^ge. The distributor has not met the manufacturer's minimum order quantity and freight terms."

Renumber accordingly

REPORT OF STANDING COMMITTEE (410)
February 16, 2001 1:57 p.m.

Module No: SR-29-3701
Carrier: Watne
Insert LC: 10756.0201 Title: .0300

REPORT OF STANDING COMMITTEE

SB 2407: Political Subdivisions Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2407 was placed on the Sixth order on the calendar.

Page 1, line 11, remove the second "or"

Page 1, line 13, after "manufacturer" insert "; or"

- e. The distributor has not met the manufacturer's minimum order quantity and freight terms"

Renumber accordingly

2001 HOUSE POLITICAL SUBDIVISIONS

SB 2407

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2407

House Political Subdivisions Committee

Conference Committee

Hearing Date 3-16-01

Tape Number	Side A	Side B	Meter #
1	xx		815--end
1		xx	1--1370
Committee Clerk Signature <i>Ron Deane</i>			

Minutes: Chair Froseth opened the hearing on SB2407 relating to manufacturers and distributors of gaming equipment.

Sen. Steve Tomac, Dist 31 : prime sponsor and support SB2407. A constituent asked me to help with this. Please listen to her story. This bill attempts to provide some legislation so that manufacturers can't refuse to sell to distributors. I did some investigation and found out that three other states have passed similar legislation. Item E was amended by the senate. At that time it had my blessing. Upon further investigation and speaking with distributors, this amendment negates the bill, and then why have it at all. Chuck from the Attorney's Office will testify on this bill, also.

Rep. Disrud : (1255) Do you know the three other states?

Sen. Tomac : No, but I think Chuck from AG's Office does.

Rep. Ekstrom : I'm most concerned with the problems that the amendment has created. With many things you buy there are minimum quantity orders, that are required. That's a distributors right to say no.

Sen. Tomac : I agree. That's way we agreed to the amendment on the senate side. Do you have to police this, was our thought. We are worried about the possible inconsistency with minimum orders between some distributors and manufacturers. It's hard getting into this business as Mrs. Kurle will testify, but there should be a fair playing field, I feel.

Chair Froseth : (1460) There is no penalty clause. What recourse do they have if manufacturers don't comply.

Sen. Tomac : Good question. I believe this section is part of a larger section in the gaming law and there are penalties.

Rep. Delmore (1790) We see lots of bills that seem to effect a small group. How wide spread is this problem that this bill deals with and how do you see this bill changing anything?

Sen. Tomac : Not a lot of people entering this business of gaming distribution. I haven't gotten a lot of calls. At first I thought there might be civil remedies. After visiting with AG's Office I changed my mind and decided this is a unique problem that should be addressed. This bill would make the manufactures sell that product she needs. Without a certain line of product, she can't make her business grow.

Jeri Kurle, Central Gaming Inc. : (2130) testified in support of SB2407 **(SEE ATTACHED)**

Chair Froseth : I have a question about volume discounts. Do these manufacturers have a straight line pricing schedule or so they offer distributors discounts in the volumes they buy?

Jeri : Some do offer discounts. I'd have to buy such a huge amount, I would never qualify.

Chair Froseth : Are the wholesale prices regulated at all?

Jeri : No, they can each charge what they want.

Rep. Ekstrom : There are 7 licensed manufacturer in the state. How many distributors are there in ND?

Jeri : The manufacturers are all out-of-state. There are 10 or 11 distributors. The gaming industry does not have territories in the state of ND. We are licensed for the whole state. In this bill the manufacturer is granted exclusive right to a particular product.

Rep. Herbel : Do you think there should be some kind of minimum order that is required?

Jeri : Right now, there is a minimum order as far as making an exclusive with a company for a game of your own. It's pretty general and every one is treated alike. As far as bingo paper, there are no minimum orders. What if they say I have to buy a semi-load of bingo paper. If you leave the amendment in, they can do that.

Rep. Delmore : (3036) Is there a lot of competition? Is there a limited market as far as selling?

Jeri : I have some customers. The one manufacturer does sell to me. I have had to go to other distributors to get product.

Rep. Disrud : Can you give me a reason why a distributor would not want another distributor to profit?

Jeri : Competition. If I go out of business, they can pick up my customers.

Chair Froseth : As a distributor, do you offer discounts to your customers?

Jeri : Each distributor decides what they will sell their product. No, so far I haven't.

Vice-Chair Severson : (3450) In your testimony you state the manufacturers are all out of state. Do they pay a fee for licensing?

Jeri : I think it's \$4,000.00 per year.

Rep. Disrud : (3577) Does the amendment affect all distributors not just you?

Jeri : Yes. Right now, some of the manufacturers have favorite distributors, and that's a problem. That's why they are listening to some of the distributors that are telling them not to sell me product of they'll pull their business.

Rep. Delmore : If one is selling to you, why is there a problem?

Jeri : That one doesn't offer all the lines. They don't sell bingo paper and don't sell daubers. They can only print so many tickets per quarter and it takes a long time. They can't make enough to keep me going. There are different kind of pull-tabs. Each new game takes a very long time to print. These manufacturers sell all over the United States.

Rep. Grosz : (3925) This bill doesn't address the current distributors who say they will hold their business from the manufacturer. This manufacturer could go out of business, right?

Jeri : They will not do that. The people who are threatening to do that never would pull their business away. They couldn't afford to do that. It is an empty threat. They would be in the same predicament as I am in. They can't afford to do that.

Vice-Chair Severson : You are the only one to come forward. Do you have other distributors with this problem?

Jeri : I am the new kid. I came aboard a year ago. All the rest have been here awhile. Another distributor did tell me that when he started 6 years ago, he had the same problem.

Rep. Maragos : (4145) Is that one of the people you buy second hand from?

Jeri : No.

Rep. Maragos : I don't see a problem with amendment. I don't see how you can force a manufacturer to run a business. If they set a minimum and it's not standard, then that's discrimination. That can be handled civilly. They can't treat one distributor different from another.

Rep. Niemeier : Have you considered some civil action for discrimination?

Jeri : No. I thought it was better to come here.

Chuck Keller, Gaming Division-Attorney General : neutral testimony on SB2407. (SEE ATTACHED)

Rep. Delmore : (5840) It bothers me that there are only 7 manufacturers. Have you studied that?

Chuck : That is just 7 that are licensed in ND. There are more than that in the US. Not all sell in ND. Maybe they think the fee is too high. Nationwide, the gaming industry is declining.

Rep. Grosz : (6090-6175) gave an e.g. about widgets. (end Tape 1, side A)

Vice-Chair Severson : (42) Are there people coming forward wanting information about becoming a gaming distributor?

Chuck : Not recently. Most distributors that have come to our office and complained, have had the same complaint.

Rep. Maragos : (138) How many distributors have there been? How many did we start with?

Chuck : Jeri, is number 63 and she is the last. The numbers are in order and we have 10. Guessing 50 some have given up their licenses.

Rep. Kretschmar : (365 A distributor licensed in ND can only purchase products from a licensed manufacturer, correct? How about a charity?

Chuck : From a licensed manufacturer or from another licensed distributor. Charities can buy used equipment from a group, but all tabs and new product must be from licensed, also. Bingo daubers you can buy elsewhere, like Office Depot. We need the licensing process for control and managing.

Todd Kranda, Charitable Gaming Assoc. : (800) I am here on a neutral position. I need to address a few things. We are the ones who receive the product from the distributors. We use

them for charitable game operations. With this bill's implementation or an administrative rule coming forth, we are afraid there may be an additional cost passed on to us. We would be opposed to this bill if we will be charged additional fees. Our industry is declining dramatically. We think competition is healthy. There is a period of time that it takes to get going in this market. We are concerned about the writing of the rules.

Rep. Delmore : (1066) Are there adequate numbers of distributors? I think it's interesting there is not territory. It's it difficult because there isn't a big market?

Todd : The market is small and is a reason why we don't have lots of distributors. It's supply and demand.

Rep. Maragos : You are here on behalf of charitable gaming. Is it your opinion that charitable gaming would be served better by restriction of the competition or expansion of competition?

Todd : We were neutral in the senate without any voice. The reason I speak today, is because of our concern with more rules or limits and possible increase in cost at our end. We love competition. If there were more gaming entities, that helps the state and the charities. We know there are limited resources.

Chair Froseth : Any further testimony? Hearing none, SB2407 is closed.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2407 b

House Political Subdivisions Committee

Conference Committee

Hearing Date 3-22-01

Tape Number	Side A	Side B	Meter #
2		xx	1000--1500
Committee Clerk Signature <i>Pam Dever</i>			

Minutes: Chair Froseth : Let's look at SB2407.

Rep. Maragos : I have amendments to pass out that basically hog house this bill. I visited with Sen. Tomac and he said O.K. Amendment 10756.0301 is rather generic.

Rep. Maragos : **I move this amendment.**

Rep. Delmore : **I second.**

VOICE VOTE: ALL YES with 1 NO. PASSED.

Vice-Chair Severson : **I move a DO PASS AS AMENDED.**

Rep. Maragos : **I second**

VOTE: 13 YES and 1 NO with 2 absent. PASSED. Rep. Tieman will carry the bill.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2407 e

House Political Subdivisions Committee

Conference Committee

Hearing Date 3-23-01

Tape Number	Side A	Side B	Meter #
1	xx		1000--1865
Committee Clerk Signature <i>Pam Deven</i>			

Minutes: Chair Froseth : We need to reconsider SB2407. Attorney general's office said the amendment won't work.

Rep. N. Johnson : I move to reconsider SB2407.

Vice-Chair Severson : I second.

Chair Froseth : I guess the amendment needs to be more specific.

Rep. Maragos : I move to remove the amendment.

Rep. Eckre : I second.

VOICE VOTE: ALL YES. PASSED.

Rep. Maragos : I move a **DO PASS.**

Rep. Herbel : I second.

VOTE: 11 YES and 3 NO with 1 absent. PASSED. Rep. Tieman will carry the bill.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2407

Page 1, replace lines 6 through 15 with:

"A licensed manufacturer may not refuse to sell any of the manufacturer's products to a licensed distributor. A licensed manufacturer may not discriminate among the licensed distributors in the state in the price of the manufacturer's products sold to the distributors or in price promotions."

Renumber accordingly

Date: 3-22-01
Roll Call Vote #: /

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2407

House POLITICAL SUBDIVISIONS Committee

- Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Vice-Chair Severson Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froseth	✓		Rep. Wayne W. Tieman	✓	
Vice-Chair Dale C. Severson	✓				
Rep. Lois Delmore	✓				
Rep. Rachael Disrud	✓				
Rep. Bruce Eckre	✓				
Rep. Mary Ekstrom	✓				
Rep. April Fairfield	AB				
Rep. Michael Grosz		✓			
Rep. Jane Gunter	✓				
Rep. Gil Herbel	✓				
Rep. Nancy Johnson	✓				
Rep. William E. Kretschmar	✓				
Rep. Carol A. Niemeier	✓				
Rep. Andrew G. Maragos	✓				

Total (Yes) 13 No 1

Absent 2 ab-

Floor Assignment Rep. Tieman

If the vote is on an amendment, briefly indicate intent:

Date: 3-23-01
 Roll Call Vote #: 2

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2407

House POLITICAL SUBDIVISIONS Committee

- Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Maragos Seconded By Rep. Herbel

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froseth	✓		Rep. Wayne W. Tieman	✓	
Vice-Chair Dale C. Severson	✓				
Rep. Lois Delmore	✓				
Rep. Rachael Disrud	✓				
Rep. Bruce Eckre		✓			
Rep. Mary Ekstrom	✓				
Rep. April Fairfield	AB				
Rep. Michael Grosz		✓			
Rep. Jane Gunter	✓				
Rep. Gil Herbel	✓				
Rep. Nancy Johnson	✓				
Rep. William E. Kretschmar	✓				
Rep. Carol A. Niemeier		✓			
Rep. Andrew G. Maragos	✓				

Total (Yes) 11 No 3

Absent 1 ab

Floor Assignment Rep. Tieman

If the vote is on an amendment, briefly indicate intent:

Reconsidered after
 3-22 vote to take
 amend. off. Passed as Enq. 2407.

REPORT OF STANDING COMMITTEE (410)
March 23, 2001 10:22 a.m.

Module No: HR-51-6512
Carrier: Tieman
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2407, as engrossed: Political Subdivisions Committee (Rep. Froseth, Chairman)
recommends **DO PASS** (11 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING).
Engrossed SB 2407 was placed on the Fourteenth order on the calendar.

2001 TESTIMONY

SB 2407

TESTIMONY ON SB 2407
Representative Dwight Wrangham

I am presenting this testimony as a Gaming Distributor and businessman. About 6 years ago I bought a small gaming distributorship, Aaction Amusement. I renamed it Dakota Gaming Supply and began to add lines and products. Even though I was not starting from scratch, I had bought out an existing distributorship, it took time and hard work to decure more lines and products.

Anyone who has started a new business in any industry has experienced these same frustrations. There is an old saying, "If it were easy everyone would be doing it." I have started and been involved in several small businesses over the past 35 years. Breaking into the gaming supply business offered no special or different hurtles than any of the other businesses.

More regulation, more government more interference in private business by the government is not needed. Let the free market and entrepreneurship work. Please vote do not pass on SB2407

THANK YOU MR. CHAIRMAN AND COMMITTEE
MEMBERS.

Dwight Wrangham

TESTIMONY ON SENATE BILL NO. 2407

By Jeri Kurle
Central Gaming Inc.

My name is Jeri Kurle. I am the owner of Central Gaming, Inc. located in Mandan, North Dakota. I am a licensed gaming distributor and support Senate Bill 2407.

To give you some background on the purpose of this bill, I will try to explain the problem that exists. I started my business of distributing gaming supplies April 1, 2000. I have an excellent credit rating. At the time I purchased a license for \$1,500 to get into business, I was not aware that the manufacturers of pull-tabs and bingo paper could or would deny me the right to purchase their products. There are seven licensed manufacturers in North Dakota. When I contacted the manufacturers of these items, they sent me credit applications, which I completed and returned to them. One of the companies had a sales representative come out to meet with me, and upon completion of the meeting, I thought I was going to be able to do business with them. However, as time passed, and I was in dire need of products to sell, I phoned the sales representative and asked why I had not received the flyers and catalogs that he had promised to send me. He stated that they had decided not to sell me any products because they had enough representation

in North Dakota. I am experiencing the same predicament with most of the other manufacturers. I talked to one of the seven manufacturers last October when I attended a World Gaming Show in Las Vegas. This person assured me that he would send another credit application and if I would send it in he would get it approved and they would sell me bingo paper and daubers and things that were not exclusively designed for other distributors. I was really excited. However, it is now February, the credit application has been back in their hands since November and I still cannot purchase the products I need to keep a business in operation. I have called him to find out where I stand and his reply is that they are working on it.

A representative of one manufacturer confided in me that one or more of the distributors in North Dakota are putting pressure on that manufacturer not to sell to me. I feel that this is unfair and discriminatory.

I am only able to buy unrestricted product from one manufacturer.

Because I cannot get products on my own from most manufacturers, I have had to go to other distributors and buy some products from them to try to survive. I appreciate the fact that two other distributors sell to me.

However, I have to pay them 20 to 25% above the cost of the product. At that rate, I cannot make any money.

I have seen many advertisements on the promotion of new businesses in North Dakota. That is why I plead with you to pass this Senate Bill. I cannot keep my business growing or possibly even going when I cannot get the products to stay in business. My \$1500 distributor's license fee is up for renewal April 1, 2001 and under these circumstances I wonder if there is any point in renewing it.

I feel competition is good and helps keep the prices down for the charitable gaming organizations. Most of the charitable gaming organizations that do business with me know the dilemma that I face and understand why I do not have the variety that other distributors do. That is why a few of them signed the sheet attached to my testimony, so that you could understand they agree that we really need to pass Senate Bill No. 2407.

We urge a Do Pass Recommendation out of committee and a YES Vote on the floor on SB 2407.

Name	Address	Phone #
Municipal area Devlop Corp Katharine Schuler	Box 93 munic ND 58352	701-682-5302
VFW Club Loren Tico	P.O. Box 721 Devils Lake, ND 58301	(701)-662-4117
VFW Eileen Zeman	211 2nd st Cummings ND	701-655-2830
Steel Amateurs Club Michael Kuntz	4040-22nd ave. S.E. Dissell, N.D. 58532	701-475-2866
W Club APRIL HALUZAK	Box 762 1326 E. BROADWAY BISMARCK, N.D. 58502	701-222-1525
No Dak Sportsman Cynthia West	Main Bar + Package main st Bismarck, ND 58501	701-223-2284
Brandt Jenner Eagles club	931 Hwy 57 Harvey	701-324-210
Bismarck Mass Club #302 Bonda Monroe	312 N th 20 th St. Bismarck N.D. 58501	701-224-8326
Bismarck Eagles Terry Wolfer	313 N 26 th Bismarck ND	701-223-2045

MEMO

TO: Senate Political Subdivisions Committee

FROM: Chuck Keller, Chief Auditor, Gaming Division ^{CK}

RE: Senate Bill No. 2407

DATE: February 15, 2001

During my February 9, 2001 testimony on Senate Bill No. 2407, you asked: 1) whether Senate Bill No. 2407 would violate Federal or North Dakota law; 2) whether there are written agreements between manufacturers and distributors; and 3) how many states allow manufacturers of pull tabs and paper bingo cards to sell directly to gaming organizations.

In regard to whether Senate Bill No. 2407 violates Federal or North Dakota law and whether there are written agreements between manufacturers and distributors, I contacted representatives of the seven manufacturers that sell pull tabs, paper bingo cards, or both, in North Dakota and representatives of the three states that adopted a law or rule similar to this bill. Their responses are:

1. The manufacturers are not aware of any Federal or North Dakota law that would be violated by the provisions of this bill;
2. When the State of Washington considered a proposed rule similar to this bill in 1973, a representative of one manufacturer alleged that the rule may violate Federal anti-trust law, but the manufacturer did not pursue the issue. The State of Washington's rule prohibits manufacturers from discriminating against distributors on products, services, price, including sales discounts, and credit terms. The manufacturers did not cite any Federal or state law as an objection when Minnesota and Missouri considered a proposed law or rule similar to this bill;
3. Except for written agreements on the sale and purchase of "exclusive" pull tab games, the manufacturers do not have written agreements with distributors that restrict manufacturers from selling gaming equipment to other distributors or restrict distributors from buying gaming equipment from other manufacturers. However, the manufacturers are adamant about retaining their agreements on exclusive games. A provision of the bill would allow manufacturers to continue to sell exclusive games on a restricted basis;

4. Except for one manufacturer, the manufacturers are neutral or support the bill provided that the provisions of the bill or adopted rules protect manufacturers from distributors with poor credit. Several manufacturers recommended that all distributors be subject to the same credit terms so distributors do not exploit manufacturers by incurring substantial debt with two or more manufacturers. One manufacturer preferred the provisions of the State of Washington's rule that goes far beyond the bill. The representative of the manufacturer that opposes the bill stated that the bill is unnecessary, the manufacturer should have the right to decide which distributors it can sell to, distributors should have to pay for gaming equipment within thirty days, and recommended that the bill be amended to include an additional provision that states: "e. The distributor meets the manufacturer's minimum order quantity and freight terms;"

If the Senate Political Subdivisions Committee desires to amend Senate Bill No. 2407 to accommodate the above recommendation, the proposed amendment is attached.

5. The manufacturers do not consider the bill to be restraint of trade. Several representatives of manufacturers stated that the bill would expand trade and promote sales; and
6. Several representatives of manufacturers asserted that the bill is a distributor issue, not a manufacturer issue, as distributors want to minimize competition. They expressed that distributors threaten to stop doing business with manufacturers if the manufacturers sell to other or new distributors. The representatives indicated that they realize these are idle threats but pacify the distributors to preserve the harmony of their business relationships.

Eighteen regulated states allow manufacturers of pull tabs and paper bingo cards to sell directly to gaming organizations and bypass distributors. Ten regulated states, including North Dakota, require manufacturers to sell through distributors. About eighteen other states that allow bingo or pull tabs, or both, do not regulate sales of pull tabs or paper bingo cards between manufacturer, distributor, and organization.

The Office of Attorney General is neutral on Senate Bill No. 2407.

If you have a question or desire more information, please call me at 8-4482.

Attachment

PROPOSED AMENDMENTS TO SENATE BILL NO. 2407

Page 1, line 11, remove the second "or"

Page 1, line 13, replace the period with ";" and insert immediately thereafter "or"

Page 1, line 1, after line 13 insert:

- e. The distributor meets the manufacturer's minimum order quantity and freight terms.

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2407

Page 1, line 11, remove the second "or"

Page 1, line 13, replace the period with ";" and insert immediately thereafter "or"

Page 1, after line 13 insert:

- e. The distributor has not met the manufacturer's minimum order quantity and freight terms.

Renumber accordingly

TESTIMONY ON SENATE BILL NO. 2407

By Jeri Kurle
Central Gaming Inc.

My name is Jeri Kurle. I am the owner of Central Gaming, Inc. located in Mandan, North Dakota. I am a licensed gaming distributor and support Senate Bill 2407.

To give you some background on the purpose of this bill, I will try to explain the problem that exists. I started my business of distributing gaming supplies April 1, 2000. I have an excellent credit rating. At the time I purchased a license for \$1,500 to get into business, I was not aware that the manufacturers of pull-tabs and bingo paper could or would deny me the right to purchase their products. There are seven licensed manufacturers in North Dakota. When I contacted the manufacturers of these items, they sent me credit applications, which I completed and returned to them. One of the companies had a sales representative come out to meet with me, and upon completion of the meeting, I thought I was going to be able to do business with them. However, as time passed, and I was in dire need of products to sell, I phoned the sales representative and asked why I had not received the flyers and catalogs that he had promised to send me. He stated that they had decided not to sell me any products because they had enough representation

in North Dakota. I am experiencing the same predicament with most of the other manufacturers. I talked to one of the seven manufacturers last October when I attended a World Gaming Show in Las Vegas. This person assured me that he would send another credit application and if I would send it in he would get it approved and they would sell me bingo paper and daubers and things that were not exclusively designed for other distributors. I was really excited. However, it is now February, the credit application has been back in their hands since November and I still cannot purchase the products I need to keep a business in operation. I have called him to find out where I stand and his reply is that they are working on it.

A representative of one manufacturer confided in me that one or more of the distributors in North Dakota are putting pressure on that manufacturer not to sell to me. I feel that this is unfair and discriminatory.

I am only able to buy unrestricted product from one manufacturer.

Because I cannot get products on my own from most manufacturers, I have had to go to other distributors and buy some products from them to try to survive. I appreciate the fact that two other distributors sell to me.

However, I have to pay them 20 to 25% above the cost of the product. At that rate, I cannot make any money.

I have seen many advertisements on the promotion of new businesses in North Dakota. That is why I plead with you to pass this Senate Bill. I cannot keep my business growing or possibly even going when I cannot get the products to stay in business. My \$1500 distributor's license fee is up for renewal April 1, 2001 and under these circumstances I wonder if there is any point in renewing it.

I feel competition is good and helps keep the prices down for the charitable gaming organizations. Most of the charitable gaming organizations that do business with me know the dilemma that I face and understand why I do not have the variety that other distributors do. That is why a few of them signed the sheet attached to my testimony, so that you could understand they agree that we really need to pass Senate Bill No. 2407.

However, the Senate amended the original bill and added subsection e. I am not in support of the amendment. I feel that it creates a loop hole for the Manufacturers to be able to set the quantities at an extreme amount that I

could not afford to purchase at one time. I talked to one of the Manufacturers about the amendment, and told him of my concern on the quantity under subsection e. and he agreed that it definitely created a loop hole so that they would be able to set the limit so high that I would not be able to order the amount under those terms, and therefore they would not have to sell to me.

I asked Mr. Keller and Mr. Lauer how the Attorney General's Office would enforce subsection e. if the Manufacturers decided to set the quantity limits at an amount that was unreasonable. The response was that they would impose a fine on a Manufacturer that did not offer the same terms to all licensed distributors. I proceeded to ask how anyone would prove that the terms were not the same for all licensed distributors. EXAMPLE: If I was told that I had to buy 100 cases of Bingo Paper to meet quantity terms, and I know that other distributors in the past have been able to buy 30 cases at a time, how would anyone prove that the quantity terms are not the same to all distributors. The Manufacturer certainly wouldn't admit it, knowing they could get fined for not following the law, the other distributors wouldn't admit it, knowing they would get their limits raised. So, who and how would anyone prove the fact that the quantity terms are not the same? Also,

if they can get around selling to all licensed distributors because you can't meet an extreme quantity term, then this bill will not have solved any problems.

I ask you to please give SENATE BILL NO. 2407 a DO PASS recommendation out of your committee without subsection e.

Thank you.

We urge a Do Pass Recommendation out of committee and a YES Vote on the floor on SB 2407.

Name	Address	Phone #
Municipal Area Dev. Camp Katharine Schuler	Box 83 Municipal ND 58352	701-682-5300
VFW Club Loren - Tro	P.O. Box 721 Devils Lake, ND 58801	(701)-662-4117
VFW Eileen Zeeman	211 2nd St Clemington, ND	701 655-2850
Steele Amateurs Club Michael Keintz	4040 - 22nd ave. S.E. Dunsmuir, N.D. 58532	701-475-2866
VFW Club APRIL HALUZAK	Box 762 1326 E. BROADWAY BISMARCK, N.D. 58502	701-222 1525
No Dak Sportsman Cynthia Hubert	Main Bar + Package main st Bismarck, ND 58501	701-223-2284
Brandt Jonnar Baglos club	931 Hwy 57 Harvey	701-324 215
Bismarck Max Club #302 Linda Monroe	312 N th 20 th St. Bismarck N.D. 58501	701-224 8326
Bismarck Eagles Terry Wolfer	313 N 26 th Bismarck ND	701-223-2045

Urge a Do Pass Recommendation out of committee and a YES Vote on the floor on SB 2407.

Name	Address	Phone #
Robert H. Klein	1148 N. L. Ave.	W (701) 253-1227
Robert H. Klein	Fallport 1320	W (701) 253-1227
Shere Dene UAW Dist - Bismarck	8113 28th St SE Mandan, ND	H (701) 663-0971
Lythia Mbalwei Tire Co Exhibitor	P.O. Box 277	Wichuk, ND W (701) 452-2312
Janice Foster NFL Napoleon, ND	Box 139 Napoleon,	+1 701-332-6166

TESTIMONY ON ENGROSSED SENATE BILL NO. 2407

By Chuck Keller, Gaming Division, Office of Attorney General

House Political Subdivisions Committee
March 16, 2001

My name is Chuck Keller. I am the chief auditor of the Gaming Division of the Office of Attorney General. The office is neutral on this bill. I will provide information on several issues that were discussed by the Senate Political Subdivisions Committee.

The bill would require seven licensed manufacturers (located outside North Dakota) of pull tabs or paper bingo cards, or both, to sell to ten licensed distributors (located in North Dakota) under certain conditions. The issue is a common problem for all new distributors. Presently, three states, Minnesota, Missouri, and Washington, require manufacturers to sell to distributors. The Attorney General's Office contacted the seven manufacturers and three states for information.

On the issue of the product distribution method in other states, eighteen states allow manufacturers to sell directly or indirectly (state is the supplier of pull tabs) to organizations and bypass distributors. Ten states, including North Dakota, require manufacturers to sell through distributors, to organizations. About eighteen other states do not regulate sales between manufacturers, distributors, and organizations.

On the issue of whether the bill violates Federal or North Dakota law, representatives of the seven manufacturers and three states expressed that they are not aware of any Federal or North Dakota law that this bill would violate. The rule adopted by the State of Washington goes far beyond this bill by prohibiting manufacturers from discriminating against distributors on products, services, price, including sales discounts, and credit terms.

On the issue of whether there are restrictive agreements between manufacturers and distributors that the bill would obstruct, representatives of the seven manufacturers expressed that, except for the sale and purchase of "exclusive" games of pull tabs, there are no agreements that would restrict manufacturers from selling product to other distributors or restrict distributors from buying product from other manufacturers. Exclusive games are games designed jointly by a manufacturer and distributor. The bill protects manufacturers and distributors on exclusive games.

On the issue of the manufacturers' position on the bill, except for one manufacturer, the manufacturers are neutral or support the bill provided the bill or adopted rules protect manufacturers from distributors with poor credit. Representatives of several manufacturers recommended that all distributors be subject to the same credit terms so distributors do not exploit manufacturers by incurring substantial debt with more than one manufacturer. The representative of the manufacturer that opposed the bill suggested that the bill be amended to require a distributor to meet the manufacturer's minimum order quantity and freight terms. The bill was engrossed with the amendment.

On the issue of whether the bill is restraint of trade, representatives of several manufacturers stated that the bill would not restraint trade, but would expand trade.

On the bill, representatives of several manufacturers expressed that the bill is a distributor, not a manufacturer issue, since the distributors pressure manufacturers not to sell their products to new distributors to minimize competition.

I would be happy to answer any questions.