

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 <i>Mary Jo Wocken</i>			

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

ii. 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

