

House Gaming Oversight

House Gaming Oversight Committee

9/29/15, 9:00 a.m., Room G-50, Irvis Office Building

By Mike Howells

Committee(s):

House Gaming Oversight Committee

Meeting type:

Public Hearing

Subject:

Illegal Gambling Devices

Bills discussed:(N/A)

Keyword(s):gambling, bars, taverns

Testimony:Maj. Thomas Butler, Director, Bureau of Liquor Control Enforcement, Pennsylvania State Police

Maj. Marshall Martin, Legislative Affairs Office, Pennsylvania State Police

Members Present: Chairman John Payne (R-Dauphin), Minority Chairman Nick Kotik (D-Allegheny), and Representatives Russ Diamond (R-Lebanon), George Dunbar (R-Westmoreland), Marcia Hahn (R-Northampton), Aaron Kaufer (R-Luzerne), Tedd Nesbit (R-Mercer), Paul Schemel (R-Franklin), Dom Costa (D-Allegheny), Bill Kortz (D-Allegheny), David Parker (R-Monroe), Ryan Mackenzie (R-Lehigh), Ed Neilson (D-Philadelphia), Sid Kavulich (D-Lackawanna), Rosemary Brown (R-Monroe), Jerry Knowles (R-Schuylkill), Steven Mentzer (R-Lancaster), and Ryan Warner (R-Fayette).

The committee held a public hearing on the seizure of illegal gambling devices. Chairman John Payne (R-Dauphin) advised that gaming as an issue in Pennsylvania is "alive and well," with an aggressive agenda for committee hearings in the autumn. He said there will be follow-up hearings on issues tackled in the spring, followed by looks at other new issues afterward. He noted fantasy sports will be a particular area of scrutiny.

Maj. Thomas Butler, director of the Bureau of Liquor Control Enforcement (BLCE) for the Pennsylvania State Police (PSP), along with Maj. Marshall Martin, director of the PSP's Legislative Affairs Office, offered an overview of the state of illegal gambling machines in the commonwealth. Butler said PSP estimates there are at least 15,000 illegal video gambling machines currently operating in the state, generally consisting of two kinds: video poker or video slots. He reported their prevalence is regional, with most being found in the southwest, southeast and northeast, inside liquor license establishments. Butler told members most of the illegal machines are owned by vending machine companies. He said PSP estimates each machine generates \$500 a week, and thus a bar with multiple machines can make thousands of dollars a week in untaxed revenue.

Discussing the investigation process of illegal gambling machines, Butler said they are often initiated through a gambling complaint to a local BLCE office, though it is not uncommon for a machine to be discovered during the course of an unrelated investigation. He reported that in 2014, BLCE initiated 26 criminal prosecutions, issued 270 administrative citations and seized 694 illegal machines. He said BLCE is currently in possession of 1,815 machines either being stored as evidence or awaiting destruction.

Citing two recent forfeiture cases, which concluded both machines in question "were designed in a manner that the skill of the player was the predominant factor in determining the outcome of the game" and thus were legal, Butler told members that BLCE is now seeing an expansion of devices in licensed establishments designed to mirror the two designs deemed legal. "This is more complicated for the BLCE from the perspective that each new device we encounter during an investigation now requires a more careful evaluation of the device's specific characteristics as well as discussion with our experts and attorneys before a seizure or charges can be initiated," he said.

Rep. Russ Diamond (R-Lebanon) asked about the court cases referenced in Butler's testimony and whether new legislation is needed regarding games of skill versus games of chance. Butler said the court decided the machines in question were predominantly games of skill, and as such BLCE will not bring actions against them. To do so, he said, would require a change in law.

Rep. Kill Kortz (D-Allegheny) noted six years ago the PSP commissioner testified there were 40-60,000 machines whereas Butler estimated the number at 15,000. Butler could not speak to the previous number, but acknowledged it was "very difficult" to come up with the 15,000 estimate and remarked "it certainly could be more," but not less. He explained to the committee his methodology in arriving at the estimated number, and said the concentration of machines is highly regionalized. Asked whether there are enough troopers assigned to the work, Butler said BLCE does "a very good job" of balancing enforcement of illegal gambling machines with their other responsibilities. Rep Kortz asked if there is a looming "mass exodus" of retirees. Butler said BLCE officers are not enlisted and so the issue is not the same as with the larger PSP complement.

Rep. Marcia Hahn (R-Northampton) said she has already seen amusement-only machines in non-licensed establishments and asked if PSP monitors those. Butler said that falls to local police and the relevant district attorney, or local State Police in areas where there are no local police. He indicated there is little enforcement going on beyond that done by BLCE.

Rep. Sid Kavulich (D-Lackawanna) asked if legalized machines create a bigger burden on BLCE. Marshall said it would reduce the burden if the machines are legal.

Rep. Dom Costa (D-Allegheny) said a lot of machines he saw as a police officer in Pittsburgh were in pizza shops and similar venues. He opined that the state should look at such places meeting the same standards as casinos. Butler clarified the court has ruled a very narrow band of machines have been are legal, and BLCE goes after those that remain illegal.

Chairman Payne said the committee will be looking at legislation distinguishing between skill and chance. He emphasized the need for enforcement of any new machines that are legalized. He asked out of the 694 confiscated in 2014, how many establishments they came from. Butler said he would return that information to the committee. Chairman Payne questioned what amount of money the state is not collecting as a result of the problem. Butler could not say but remarked the latest cash seizure from a vendor was significant. Expanding on the issue of skill versus luck games, Butler said the judge ruled that a player with good coordination could get visual cues from certain games to win more often than someone else. Another case involved a more traditional video slot machines and a game similar to tic tac toe that was also ruled a skill game.

Rep. Jerry Knowles (R-Schuylkill) asked whether the agencies that enforce liquor laws can enforce any Pennsylvania law. Butler clarified they can only enforce a specific band of laws, and could not pull someone over for a DUI for example. Rep. Knowles questioned whether illegal machines at non-liquor establishments can be enforced by liquor officers. Butler said there are a select group of troopers signed to liquor enforcement who can do so, but the BLCE in the normal course of duties does not investigate such places.

Chairman Payne expressed his preference to have BLCE officers with "total police powers." Rep. Kaufer asked if BLCE partners with the Department of Health in the course of its reviews. Butler said they partner very well with the Department of Health with smoking enforcement and health permits, but said he is not sure what their personnel resources would be with respect to a capacity to work on gaming issues. He suggested local jurisdictions may be better situated to collaborate.