

Pennsylvania State Police Testimony
Electronic Gambling Devices
Senate Community, Economic & Recreational Development Committee
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Presented by:
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Good morning, Chairman Yudichak, Chairwoman Cappelletti, and members of the Senate Community, Economic & Recreational Development Committee. I am Captain Jeffrey Rineer of the Pennsylvania State Police (PSP), and I currently serve as the Director of Operations for the Bureau of Liquor Control Enforcement (BLCE). On behalf of our Bureau's Director, Major Judith Burroughs, thank you for the opportunity to appear before you today to discuss enforcement involving illegal electronic gambling devices, and to take part in the conversation about issues stemming from illegal, unregulated gambling.

I would like to begin with some opening remarks and then I will be available for questions; however, I must note, we continue to have cases pending in multiple courts, so some of my responses may be limited.

If a game or activity, not specifically authorized by statute, involves consideration (money) to play or participate, a result determined predominately by chance, and a reward, it is unlawful gambling. The Commonwealth has legalized certain forms of gambling and gambling activities by statute, including the Gaming Act, the State Lottery Law, the Local Option Small Games of Chance Act, and the Bingo Law. The Pennsylvania State Police investigates all forms of unlawful gambling in Pennsylvania. The Pennsylvania Superior Court has held that the term "unlawful gambling," as used in Section 5513 of the Crimes Code, refers to "gambling not specifically authorized by the Commonwealth." *Commonwealth v. Betres*, 237 Pa. Super 361, 368 (1975).

As mentioned in previous testimony before the General Assembly, illegal gambling is growing in the Commonwealth, outside traditional venues of clubs, restaurants, and bars to conveniences stores, shopping malls, and store fronts, almost exclusively through unlawful gambling devices. These illegal devices include so-called "skill games," in which the

element of chance outweighs any element of “skill” that the manufacturer programs into the machine’s software. These are NOT arcade or amusement devices – they are programmed to accept currency (not coins) in denominations of up to \$100, offering the player a chance to win more money than he or she wagered. They are illegal gambling devices, regardless of what nomenclature the manufacturers or vendors of these devices choose to call them.

These so-called “skill games” vary greatly in the elements they describe as “skill.” There is no set definition of what is being called a “skill game”, it is merely an industry term designed to market these devices as something other than a slot machine. There has been, and will continue to be, increased adaptation of alleged “skill” elements to traditional gambling activities. For example, we have already seen alleged “skill” elements put onto coin pusher machines, the “tweaking of software” in existing devices, and in the development of multi-player games. These machines attempt to mask illegal gambling by incorporating a required interaction and/or a difficult, laborious and low- reward secondary game. However, these machines are gambling devices and are illegal in Pennsylvania. The legal test is whether the element of “skill” predominates the element of chance in determining the outcome for the player. Otherwise, one could simply add a such a required interaction or secondary game in order to receive a payout from a roulette wheel or a craps table to avoid prosecution for unlawful gambling, which simply defies logic and would undermine the legislative intent.

Further, we have seen a trend among various manufacturers in that they are duplicating the characteristics, aesthetics, and features of a certain manufacturer’s devices to exploit the perceived legality of those devices, perhaps to convince businesses that the games are standardized and, therefore, legitimate to place within their establishments.

Regardless, the PA State Police has been consistent in its position that such devices are, in fact, unlawful gambling devices.

These gambling devices remain unregulated and unmonitored. The operation of these devices and the activities surrounding them are ripe for corruption. There is no consumer protection, via a minimum payout rate, or "return to player," as you mandated through the Gaming Act for slot machines, skill slot machines, and hybrid slot machines at casinos, or video gaming terminals at truck stops. In addition, neither vendors nor operators of these devices are obligated to provide funding to address compulsive and problem gambling, as you required casinos to do under the Gaming Act. Moreover, there are no active safeguards to prevent minors from gambling, unlike the safeguards instituted within licensed casinos.

PSP, along with other law enforcement agencies throughout the Commonwealth, continue to see increased criminal activity associated with the use and operation of these devices. Realizing that these devices contain large amounts of cash and that, unlike licensed casinos, police are not stationed at these businesses, perpetrators have brazenly broken into such devices to steal money. Patrons receiving large pay outs from the devices are easy targets for such perpetrators. Further, we have seen with greater frequency situations in which the businesses will refuse to pay out patrons who may have been awarded a winning combination by the device. Again, the lack of player protection and safety is a significant concern.

The Gaming Act provides significant safeguards in the background investigations of key employees, suppliers, vendors, ownership interests, pecuniary interests, etc. No such safeguards exist for the devices at issue. While devices at casinos are inspected and

certified by the PA Gaming Control Board, there is no regulatory oversight over the illegal devices that have proliferated throughout the Commonwealth. Further, there is no funding mechanism for enforcement, as you established under the Gaming Act.

Unlike licensed casinos and operators of lawful video gambling terminals, operators of these so-called “skill games” do not pay a specifically enacted tax on proceeds derived from them. As a result, profit margins for operating these illegal devices are extremely attractive to their manufacturers, distributors, and to the licensees and businesses that house them and allow patrons to play them. It should also be noted that the “payouts” on these devices are frequently structured in such a way that no individual payout exceeds the amount that would require the business to provide a completed W-2G form to the winner. Based on evidence obtained from various illegal devices, payouts on devices have exceeded \$10,000 on a single play. Therefore, neither the businesses operating these devices nor the customers playing them are paying appropriate taxes on the proceeds or winnings as they would if playing various forms of legalized gambling.

If the General Assembly is considering expanding legalized gambling, beyond the recent expansion of licensed casinos and video gambling terminals in truck stops, we would respectfully ask that you consider the number of varying types of businesses that would be involved (e.g., restaurants, bars, social clubs, gas stations, convenience stores, strip malls, shopping malls, etc.), the impact on municipalities which may oppose an expansion of gambling within their jurisdictions, and the logistics of enforcement in thousands of new gambling parlors throughout the Commonwealth. Further, consideration should be given regarding background checks and a careful examination of the businesses and individuals who may have a financial interest in the operation of the devices – the manufacturers,

suppliers, vendors, and technicians who produce, program, operate, place, and have the ability to manipulate the devices.

Many of the concerns associated with this type of illegal gambling – regulating and policing of activities, strict monitoring and enforced control, limiting access, preventing unlawful activities, financial monitoring, safeguarding the public interest, and guarding against the actual or appearance of corruption from large campaign contributions, etc. – you have already considered and codified in Section 1102 of the Gaming Act, related to legislative intent.

We anticipate continued market expansion of these unlawful gambling devices, to seemingly promote their legitimacy through their widespread existence and operation. Clearly, based upon the expansion in the number of these devices and the diversity of the venues in which they are placed, there is a growing economic loss to the Commonwealth. Not only is the Commonwealth missing out on substantial tax revenue on the proceeds and payouts of these devices, given that consumers only have a finite amount of money to spend on gambling purposes, the operation of these devices are impacting upon the revenue produced by lawful forms of gambling, including the PA Lottery, gambling authorized at casinos, and through approved video gambling terminals.

The Pennsylvania State Police, Bureau of Liquor Control Enforcement has been contacted by law enforcement agencies and prosecutors from across the United States. Multiple jurisdictions are experiencing an impact from gambling devices alleging varying degrees of “skill” to present some form of legitimacy or avoidance from enforcement.

Our request to the General Assembly remains consistent. We respectfully ask for prompt clarity in the law regarding these types of devices, as this will facilitate compliance

by business owners and licensees and provide law enforcement with a more efficient means to prosecute those who continue to violate the law. We have and are continuing to prosecute persons and organizations who engage in illegal activities. These prosecutions are lengthy, and expensive, but we will continue to investigate and prosecute these crimes.

Thank you and I would be happy to answer any questions you may have.