

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

GAMING OVERSIGHT COMMITTEE

STATE CAPITOL
HARRISBURG, PENNSYLVANIA
G-50 IRVIS BUILDING

WEDNESDAY, OCTOBER 30, 2019
9:30 A.M.

BEFORE:

HONORABLE JIM MARSHALL, MAJORITY CHAIRMAN
HONORABLE SCOTT CONKLIN, MINORITY CHAIRMAN

MAJORITY MEMBERS PRESENT:

HONORABLE DONALD COOK
HONORABLE GARY DAY
HONORABLE RUSS DIAMOND
HONORABLE GEORGE DUNBAR
HONORABLE FRANK FARRY
HONORABLE JOSHUA KAIL
HONORABLE AARON KAUFER
HONORABLE THOMAS MEHAFFIE
HONORABLE TIM O'NEAL
HONORABLE JASON ORTITAY
HONORABLE JUSTIN WALSH
HONORABLE RYAN WARNER

MINORITY MEMBERS PRESENT:

HONORABLE DAVE DELLOSO
HONORABLE BRIAN KIRKLAND
HONORABLE ANITA KULIK

Pennsylvania House of Representatives
Commonwealth of Pennsylvania

1 (continued)

2 MINORITY MEMBERS PRESENT:

3 HONORABLE BRANDON MARKOSEK
4 HONORABLE JEANNE MCNEILL
5 HONORABLE ROBERT MERSKI
6 HONORABLE ED NEILSON

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SUBMITTED WRITTEN TESTIMONY

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P R O C E E D I N G S

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3 MAJORITY CHAIRMAN MARSHALL: (Portion of
4 recording missing) -- from Beaver and Butler
5 Counties. And if we could, starting with
6 Chairman Conklin, introduce ourselves.

7 MINORITY CHAIRMAN CONKLIN: Scott
8 Conklin, Centre County. In the words of the
9 great lyricist, all we need is love. And I think
10 that's what we can get today from the hearing.

11 REPRESENTATIVE DUNBAR: George Dunbar,
12 Westmoreland County, 56th District.

13 REPRESENTATIVE MCNEILL: Jeanne McNeill,
14 Lehigh County.

15 REPRESENTATIVE MERSKI: Bob Merski, Erie
16 County, 2nd District.

17 REPRESENTATIVE DELLOSO: Dave Dellosa,
18 Delaware County, 162nd District.

19 REPRESENTATIVE NEILSON: Ed Neilson,
20 Philadelphia County, 174th District --
21 (inaudible).

22 REPRESENTATIVE KIRKLAND: Brian Kirkland,
23 Delaware County, 159th District.

24 REPRESENTATIVE KAUFER: Aaron Kaufer,
25 Luzerne County.

1 REPRESENTATIVE WARNER: Ryan Warner,
2 Fayette and Westmoreland Counties, 52nd District.

3 REPRESENTATIVE KAIL: Josh Kail,
4 Washington and Beaver Counties, 15th Legislative
5 District.

6 REPRESENTATIVE O'NEAL: Tim O'Neal, 48th
7 District and Washington County.

8 REPRESENTATIVE ORTITAY: Jason Ortitay,
9 46th District, Allegheny and Washington Counties.

10 REPRESENTATIVE DIAMOND: Russ Diamond,
11 Lebanon County, 102nd district, the only district
12 that counts.

13 REPRESENTATIVE COOK: 49th District,
14 parts of Washington and Fayette, the Mon Valley,
15 State Rep Don Cook.

16 MS. WEINER: Jennifer Weiner, Executive
17 Director for the Republicans.

18 MINORITY CHAIRMAN CONKLIN: Now it's time
19 for our new Executive Director on the Democratic
20 side.

21 MR. BEAVER: Hank Beaver, Democratic
22 Executive Director for Gamin Oversight.

23 MAJORITY CHAIRMAN MARSHALL: Welcome,
24 Hank. It will be fun.

25 Today we are going to hear from

1 Representative Dan Moul, the prime sponsor of
2 HB 1598. We'll take some brief remarks from
3 Representative Moul, and then we'll defer
4 questions to the maker of the bill until after we
5 hear from the Gaming Control Board.

6 Representative Moul.

7 REPRESENTATIVE MOUL: Thank you. Let me
8 first begin by thanking you, Mr. Chairman and
9 Minority Chairman Conklin for addressing this
10 bill, hearing what's in it. And esteemed
11 colleagues, thank you.

12 This legislation has really been in the
13 makings for many years. It used to carry the HB
14 number 1313. Somehow this year I missed holding
15 that, putting a holder on that number, but it
16 makes several changes to the Small Games of
17 Chance Act. First, it eliminates the weekly
18 aggregate prize limit on licensed eligible
19 organizations, simplifies the license renewal
20 process for eligible organizations, permits
21 eligible organizations to operate vertical wheels
22 and other new games, allow clubs to retain more
23 small games revenue, other omnibus changes to
24 make small games more profitable, reducing
25 licensing costs, taxes and other burdens

1 preventing taverns from obtaining a tavern gaming
2 license, but this bill goes even further and
3 allows for skill game machines for those who
4 hold -- which that's a keyword right there -- who
5 hold a small games of chance license or tavern
6 license.

7 The bill allows up to five games of skill
8 to be located in each organization, club, or
9 tavern, gives authority to the Pennsylvania
10 Gaming Control Board to license manufacturers and
11 distributors and requires the Board to test
12 machines in their lab. Revenue would be
13 distributed as follows: For non-profits, 100
14 percent of the revenue from skill machines would
15 be used for charitable purposes; for clubs, 60
16 percent of the revenue would be used for
17 charitable purposes and 40 percent would be
18 retained by the club -- and I believe that's the
19 same percentages that we use on all other small
20 games of chance and private clubs; for taverns, a
21 50 percent tax and a five percent local share
22 assessment on skill machine revenue.

23 That one would be a new twist because
24 technically, right now, we don't address these
25 skill games in our small games of chance law. So

1 a big change in this bill versus HB 1313, that I
2 carried for years, is the addition of these skill
3 games, which are basically like slot machines,
4 but they are showing up everywhere and LCE does
5 not know how to address them. Even my local
6 district attorney has a big question mark as to
7 how to address these.

8 I will say that you can't make the games
9 themselves illegal. I'm going to date myself.
10 Pac-man and Donkey Kong are games of skill. What
11 we need to get under control is the payoff of
12 those, a monetary gain by those skill machines.
13 That's what needs to be brought into -- that act
14 is what needs to be brought into the Small Games
15 of Chance Act.

16 So the community is letting a lot of
17 money lay on the table, and the Commonwealth is
18 letting a ton of money, a ton of revenue, lay on
19 the table by not addressing this. And that being
20 said, I will end there and say thank you. I know
21 time is tight, so I will hang around to answer
22 questions later on and take abuse by
23 Representative Neilson.

24 MAJORITY CHAIRMAN MARSHALL: Thank you,
25 Representative Moul.

1 REPRESENTATIVE MOUL: Thank you.

2 MAJORITY CHAIRMAN MARSHALL: At this
3 time, we would like to hear from the Pennsylvania
4 Gaming Control Board. And gentlemen, if you
5 would, introduce yourselves and then begin your
6 testimony. Thank you.

7 MR. O'TOOLE: Good morning, Chairman
8 Marshall, Chairman Conklin, and members of the
9 Committee. I'm Kevin O'Toole and I serve as the
10 Executive Director for the Gaming Control Board.
11 With me this morning is our Chief Counsel, Doug
12 Sherman.

13 As you know, the Board serves as the
14 primary regulatory agency for several forms of
15 licensed gaming in the Commonwealth, which now
16 includes slot machines, table games, sports
17 wagering, and on-line gambling products. In
18 addition, the Board has oversight of fantasy
19 sports contests, which are conducted online, and
20 VGT truck stop gaming, which utilizes slot
21 machine-like devices with random number
22 generators, mandated payback percentages, and
23 connections to the Central Control Computer
24 System, which is maintained by the Department of
25 Revenue.

1 For the most part, activities regulated
2 by the Board constitute legalized gambling, which
3 by definition are games predominated by chance
4 and not skill. Games of skill do not currently
5 fit within the definition of gambling and
6 therefore generally fall outside of the Board's
7 regulatory oversight duties if not explicitly
8 provided for in statute and if not performed by a
9 casino or related licensed online operator.

10 This distinction between games of chance
11 and games of skill form a crucial line of
12 demarcation between activities that constitute
13 gambling, or not. This distinction stems from
14 the Pennsylvania Supreme Court's decisions
15 relative to what is and is not gambling. The
16 Supreme Court established the predominate factor
17 test to determine if an activity is gambling
18 because gambling is not a defined term under the
19 Crimes Code.

20 Essentially, the predominate factor test
21 measures the degree of chance and skill that
22 determines the outcome of a particular game. If
23 the outcome of a game in question is 51 percent
24 or greater chance, then the activity is gambling.
25 Correspondingly, if the outcome is based 51

1 percent or more on skill, it is not gambling.
2 And in Pennsylvania, if gambling has not been
3 authorized, such as casino gaming, the Lottery,
4 small games of chance, etc., then the activity is
5 illegal under Title 18 §5513.

6 When it comes to games of skill and the
7 Board's experience, Act 42 of 2017 inserted
8 amendatory language to the Gaming Act to add the
9 definition of skill slot machine and hybrid slot
10 machine, which can be placed in a licensed
11 facility. Some would suggest that the General
12 Assembly's inclusion of these terms in the Gaming
13 Act makes the provision of skill or hybrid slot
14 machines, by any entity other than a slot machine
15 licensee, illegal.

16 Others suggest that the insertion of that
17 language in the Gaming Act simply provides
18 further gaming opportunities for a casino to
19 provide to its patrons and does not alter the
20 legality of the machines if they do not qualify
21 as gambling under Pennsylvania law. To date,
22 this issue has not been subject to a precedential
23 Court ruling, so it remains an issue in need of
24 clarification, either by a precedential court
25 opinion or the General Assembly.

1 Meanwhile, we all have seen the
2 proliferation of so-called skill-based games
3 throughout the Commonwealth and hear anecdotally
4 of the impact on legalized casino gambling, the
5 lack of player protections, and the unregulated
6 tax-free environment in which they operate. To
7 this end, HB 1598 seeks to impose some degree of
8 regulation in terms of where the skill games can
9 be operated, the level of oversight to be
10 imposed, and a taxing structure to place those
11 games on a somewhat more level playing field with
12 the tax burdens placed on slot machines and VGTs.

13 I would like to offer a few comments on
14 HB 1598, prefaced by the following: generally,
15 the Board has taken the view that it is the
16 purview of the General Assembly to establish
17 policy. We offer guidance on what we feel is the
18 best way by which to effectively regulate and
19 leave the decision as to whether or not to expand
20 our oversight to the will of the General Assembly
21 and the Governor. Should the Commonwealth
22 provide for the regulation of skill games, and
23 accordingly provide for a role of the Board in
24 the regulation of those games, then the Board
25 would work to implement our duties.

1 First, the Board supports the removal of
2 the Bureau of Investigations and Enforcement,
3 BIE, from the tavern gaming background
4 investigation as indicated in Sections 902 and
5 903. Second, HB 1598 places the Board and the
6 BIE in the position of backgrounding and
7 licensing distributors and manufacturers of skill
8 games under the Local Option Small Games of
9 Chance Act. This creates a funding issue as the
10 Board is currently funded through payments by the
11 casino industry and the VGT industry. HB 1598
12 provides an insufficient funding mechanism to
13 support the background and licensing functions
14 required under the legislation.

15 Moreover, it would be inherently unfair
16 to require the Board to cover the costs with
17 funds from the other casino and VGT-regulated
18 entities, which in some cases have invested
19 significant amounts of money in the Commonwealth
20 and which may be detrimentally affected by the
21 expansion of skill-based games. Should the
22 General Assembly decide that the Board needs to
23 be involved in the regulation of games of skill,
24 a funding mechanism needs to be established.

25 Third, HB 1598 provides for annual

1 renewals for distributors and manufacturers. If
2 the Board is to be involved, the Board would ask
3 that this be changed to five-year renewal terms.
4 Annual renewals drive up the regulatory cost to
5 license holders, as well as to the Board due to
6 the need for additional staff to provide the
7 investigatory and oversight licensing functions.
8 This burden can be mitigated by the change to a
9 five-year renewal term as we apply that same
10 five-year term to other license holders.

11 In addition, should the renewal period be
12 changed to five years, then the Board would
13 request that distributors and manufacturers have
14 a duty to provide an update to the Board when
15 there has been a material change to the
16 information previously provided or to the
17 business ownership structures or circumstances.

18 Finally, establishing standards for
19 skill-based games as provided for in this bill
20 can be somewhat illusory. Games of chance
21 contain a random number generator and mandatory
22 payouts to protect the consumer. Those elements
23 are absent in a game of skill. The outcome of
24 games of skill are predicated on the ability or
25 lack of ability of the player with no

1 predictability, no mandatory payout and no
2 ability to test for fairness to the patron. This
3 is a concern from a player-protection standpoint
4 and a fundamental concern about the current
5 proliferation of skill-based machines throughout
6 the Commonwealth.

7 Thank you for inviting the Gaming Control
8 Board to testify. And I, along with Chief
9 Counsel Sherman, would be happy to answer any
10 questions that you may have.

11 MAJORITY CHAIRMAN MARSHALL: Thank you,
12 gentlemen. I know that you have another meeting
13 to get to, but we will take a few questions if
14 members --

15 REPRESENTATIVE NEILSON: Thank you,
16 gentleman, as always, for coming. So it's your
17 assumption that under Act 42 of 2017, these are
18 defined already, because I mean, that's -- that's
19 something that we put in there in consultation
20 with your Department to make sure that they were
21 defined properly.

22 MR. SHERMAN: Act 42 adds the definition
23 of a skill-based slot machine and a hybrid based
24 slot machine, one being all skill, the other one
25 being part chance, part skill. What's uncertain

1 as Executive Director O'Toole testified to was
2 what the intent of the General Assembly was by
3 doing that.

4 Certainly, in the licensed casino
5 setting, the casino can put hybrid based slot
6 machines or skill based machines into a casino.
7 I -- what's -- the gap in there is whether or not
8 the fact that those machines were included in the
9 Gaming Act for placement in a casino thereby
10 renders them illegal gambling machines under
11 Section 5513 of the Crimes Code.

12 REPRESENTATIVE NEILSON: Thank you.
13 Thank you, gentlemen, for coming.

14 Thank you, Mr. Chairman.

15 MAJORITY CHAIRMAN MARSHALL: Thank you,
16 Representative.

17 Chairman Conklin.

18 MINORITY CHAIRMAN CONKLIN: Just for the
19 Gaming Board real fast explain the games of
20 skill -- if I understand what you're saying,
21 because I don't play these games -- so if my
22 understanding of what your saying is that no
23 matter how good and skillful you are, your payout
24 is not determined by your skill, but by the --
25 but by a preset designation within the program

1 itself.

2 MR. SHERMAN: No. On a skill-based game,
3 the payout will be determined based upon the
4 skill or lack of skill of the player. If you're
5 just really bad, you're not going to win.

6 MINORITY CHAIRMAN CONKLIN: Okay.

7 MR. SHERMAN: If you're really good, you
8 may win a lot. And that's the differentiation
9 with a slot machine or a VGT, which the statute
10 mandates an 85 percent payout, where no matter
11 how good you are or how bad you are, over the
12 course and lifetime of that machine, it's going
13 to pay a minimum of 85 percent back. The -- we
14 can't test the skill based machine for a payback
15 percentage because there is no set payback
16 percentage.

17 MINORITY CHAIRMAN CONKLIN: That's my
18 question.

19 MR. SHERMAN: Right.

20 MINORITY CHAIRMAN CONKLIN: There's no
21 set -- it's just whatever comes up comes up.

22 MR. SHERMAN: Correct.

23 MINORITY CHAIRMAN CONKLIN: And just one
24 quick question for the maker. When -- and this
25 is just clarification for myself -- that when you

1 were talking about the -- when you were talking
2 about the licensing requirement, is -- and I may
3 be reading the bill wrong. Am I reading that
4 only the distributor has to be -- the
5 manufacturer has to be licensed or is both the
6 manufacturer and the distributor or just the
7 distributor has to be licensed in your bill?

8 REPRESENTATIVE MOUL: Just the
9 distributor.

10 MINORITY CHAIRMAN CONKLIN: So the
11 manufacturer does not have to be licensed?

12 REPRESENTATIVE MOUL: No.

13 MINORITY CHAIRMAN CONKLIN: That's a
14 little disturbing. Thank you.

15 REPRESENTATIVE MOUL: Thanks.

16 MAJORITY CHAIRMAN MARSHALL: Thank you.

17 we will have members coming in and going
18 out as they attend other meetings. And I would
19 like to note that we've been joined by
20 Representative Mehaffie, Walsh, Markosek and Day.
21 And we have a question from Representative
22 Mehaffie.

23 REPRESENTATIVE Mehaffie: Thank you, Mr.
24 Chairman. Thank you, gentlemen, for testifying
25 today. The question I have is when you go

1 through the process of locating a casino or an
2 area for gaming, you allow people to come and
3 testify, you allow them to vet this process and
4 go through the process, am I correct on that?

5 MR. SHERMAN: Yes, that's the local input
6 hearings that we're required to have, both for
7 the initial siting and upon renewals.

8 REPRESENTATIVE Mehaffie: Right. I think
9 -- and Chairman Moul, I commend you on this. I
10 think you're on the right track as far as where
11 we need to go with this and legalizing it. I'm
12 not sure that small games of chance shouldn't be
13 under you guys. Any kind of gaming should be
14 under you guys. I know you don't want to hear
15 that because of the money restraints, but at the
16 same time, if we're going to go down this road
17 and we're going to be a State of gaming and we
18 have the Gaming Control Board, then the Gaming
19 Control Board should oversee all gaming. The
20 thing that bothers me the most is right now we
21 have skill games that are out there and there's
22 no vetting process on this. They're located --
23 and I get complaints about it where they're
24 located in convenient stores right outside of
25 churches, you know, outside of schools.

1 The one thing I do know about small games
2 of chance, a majority of them are already vetted
3 because the small game of chance holders, like
4 the clubs and those bars that have it, have a
5 liquor license. So going through and having a
6 liquor license, you've got to go through the
7 process of being okayed through the Liquor
8 Control Board and liquor enforcement will
9 probably testify on that here very shortly.

10 But in that process, we have to make sure
11 that we're not putting these games -- any type of
12 gaming games as far as VGTs or whatever --
13 without having a true vetting process and making
14 sure that the public has the right to intervene
15 and express themselves through this process. So
16 thank you for that. If there's any comment, I'd
17 be willing to hear that.

18 Thank you, Mr. Chairman.

19 MAJORITY CHAIRMAN MARSHALL: Thank you,
20 Representative.

21 REPRESENTATIVE DIAMOND: Thank you,
22 Mr. Chairman.

23 For the Board, I certainly understand the
24 difficulty in establishing standards because
25 there is no random number generator and there's

1 no mandatory payout on skill games. Is there any
2 information from your counterparts in other
3 States who might have dealt with this situation,
4 or is this a very unique situation in
5 Pennsylvania.

6 MR. O'TOOLE: We have not researched the
7 matter with other jurisdictions. So our
8 knowledge is on what we see and observe and read
9 here in the Commonwealth.

10 REPRESENTATIVE DIAMOND: But have you
11 internally speculated as to what you would have
12 to do to actually establish standards on skill
13 games in order to regulate them? I mean, we're
14 not going to hold you to anything here. I mean,
15 what would you base it on? I mean, if it's not a
16 random number generator and a mandatory payout.

17 MR. O'TOOLE: Well, the testing process
18 is designed to ensure that the machine and all of
19 its components and component parts work in
20 accordance with how they're supposed to work.

21 REPRESENTATIVE DIAMOND: Okay.

22 MR. O'TOOLE: So we would require a
23 submission from the manufacturer describing how
24 this game operates, what actions the player is
25 required to take and how the machine is required

1 to respond to those actions. And then the
2 testing process would ensure that it does what it
3 is supposed to do.

4 REPRESENTATIVE DIAMOND: And that process
5 then would be similar to what you do for games of
6 chance now, correct? In that the manufacturer
7 provides the machine and you test it and you go
8 okay, it does what you say it's going to do?

9 MR. O'TOOLE: Yes, that's our first step,
10 but on the slot machines that we regulate, there
11 are a series of standards including a theoretical
12 payout percentage that, you know, that the
13 maximum odds don't exceed a certain threshold
14 amount and other components that that theoretical
15 payout percentage is not affected by whether or
16 not the machine offers a progressive payout and
17 to ensure also that each individual slot machine
18 is in what a player -- what a player's ability to
19 play that machine is independent of how the
20 machine next to it plays, that each machine is an
21 independent unit except for the fact that there
22 could be a joint progressive payout.

23 REPRESENTATIVE DIAMOND: would you
24 foresee any difficulty on a game -- on testing a
25 machine that's a game of skill because you would

1 have to have somebody with some skill in order to
2 accurately test it. Do you foresee any
3 difficulty in that, whereas right now, you can
4 just have anybody push a button on a game of
5 chance machine?

6 MR. O'TOOLE: Well, the presumption is
7 that hand and eye coordination is going to be
8 important in that skill. And if you know in
9 advance what causes the better payout in terms of
10 hand and skill coordination, our engineers and
11 our statisticians could theoretically, you know,
12 test by using their own skill. Some may be
13 better than others, you know, it's -- it would be
14 a new area for us.

15 REPRESENTATIVE DIAMOND: Okay. I
16 appreciate that. Thank you very much, Mr.
17 Chairman.

18 MAJORITY CHAIRMAN MARSHALL: Thank you,
19 Representative.

20 Representative Ortitay. No question?

21 I see we've also been joined by
22 Representative Kulik. Thank you for being here.
23 If there are no further questions, gentlemen,
24 thank you for your participation today. We
25 appreciate that.

1 MR. O'TOOLE: Thank you.

2 MAJORITY CHAIRMAN MARSHALL: Our next
3 presenter is Major Scott Miller with the
4 Pennsylvania State Police and company.

5 MAJOR MILLER: Good morning, Chairman
6 Marshall and Chairman Conklin. Thank you for
7 having us here today. I'm joined by two of our
8 Captains, and I'll allow them to introduce
9 themselves while I get organized here.

10 CAPTAIN RINEER: Captain Jeffrey Rineer,
11 Director of Administration Division.

12 CAPTAIN JONES: Captain James Jones,
13 Director of Operations Division.

14 MAJOR MILLER: Again, thank you for
15 having us here today. I'm Major Scott Miller of
16 the Pennsylvania State Police. I currently serve
17 as the Director of the Bureau of Liquor Control
18 Enforcement. I appreciate the opportunity to be
19 here today to talk about a subject that is
20 impacting the Commonwealth of Pennsylvania and
21 that is illegal gambling.

22 As you recall, we met with you in June of
23 this year to discuss a request for assistance
24 with illegal gambling devices and strengthening
25 the law and providing clarity that would not only

1 aid law enforcement, but would also aid people in
2 the industry, in the liquor industry, and
3 businesses and vendors to provide some clarity to
4 help them with their uncertainty to be in
5 voluntary compliance with the law.

6 I would like to begin with some opening
7 remarks and then I will be available for
8 questions. However, I must once again add that
9 we have several cases pending in multiple
10 different court systems, so some of my answers to
11 questions may have to be limited.

12 Illegal gambling is growing in the
13 Commonwealth, outside traditional venues of
14 clubs, restaurants, and bars to convenience
15 stores and shopping malls and storefronts. The
16 gambling devices remain unregulated and
17 unmonitored. The operation of these devices and
18 activities surrounding them are ripe for
19 corruption. There is no consumer protection via
20 a minimum payout rate or return to player or a
21 means to address problem gambling.

22 There are no safeguards to prevent minors
23 from gambling, such as within our existing
24 licensed casinos. There is no public interest
25 purpose designation of the proceeds as in the

1 Small Games of Chance Act. There is no
2 documentation of tax reporting of winners in a --
3 via a W2-G form.

4 Clearly, based upon the expansion in the
5 number of these devices and their venues, there
6 is an economic loss to legalized gambling and
7 Lottery through their existence. The
8 Pennsylvania State Police continue to investigate
9 illegal gambling in Pennsylvania. As you know,
10 Pennsylvania legalized gambling, and gambling
11 activities are specifically authorized by statute
12 in licensed gambling venues, the Pennsylvania
13 Lottery, the Small Games of Chance Act, and the
14 Bingo Law.

15 The Pennsylvania Superior Court has held
16 that the term unlawful gambling, as used in
17 Section 5513 in Title 18, the Crimes Code, refers
18 to gambling not specifically authorized by the
19 Commonwealth. This is from a 1975 case before
20 the Superior Court, Commonwealth v. Betres.

21 The Pennsylvania Race Horse Development
22 and Gaming Act provides significant safeguards in
23 background investigations of key employees,
24 suppliers, vendors, ownership, pecuniary
25 interest, etc. Games are regulated by a

1 Commonwealth agency. Funding for enforcement is
2 included in the Act. No such safeguards exist in
3 these unregulated activities.

4 We estimate electronic gambling devices,
5 often referred to as skill games, generate \$500
6 per week, per machine. This figure, multiplied
7 by even 2,000 machines, would create one million
8 dollars per week or \$52 million dollars per year.
9 We know at least one operator of these devices
10 has more than 10,000 machines currently in
11 operation in the Commonwealth. There are at
12 least five to six different manufacturers of
13 these devices in operation in Pennsylvania, and
14 we anticipate that number to continue to grow.

15 Recognizing the dollar values associated
16 in these cash transactions, we must also
17 recognize the potential attraction to illegal
18 activities surrounding the operation, placement,
19 and use of gambling equipment and its proceeds.
20 You may have heard these devices are necessary to
21 help support clubs and organizations. The small
22 Games of Chance Act currently restricts weekly
23 prize amounts, the amount of cash paid out, to
24 \$35,000 per week.

25 During the past two years, the

1 Pennsylvania State Police Bureau of Liquor
2 Control Enforcement issued citations to 13
3 licensees throughout the Commonwealth for
4 exceeding the maximum weekly prize amount. Of
5 those 13 licensees, one had 96 weeks in a row
6 where they paid out weekly prize amounts of more
7 than \$70,000. Another had 136 weeks in a row
8 where they exceeded the maximum payout.

9 And Of those 136 weeks, 135 of them
10 exceeded the payout by at least double the
11 maximum amount. And in some instances, the
12 maximum payout amount exceeded \$105,000, more
13 than triple the amount allowed by law. The Small
14 Games of Chance Act has specifically authorized
15 games, required -- required documentation, and
16 recordkeeping requirements for the purchase and
17 sale of games.

18 Public interest designation applies to
19 proceeds from these games on a 60/40 split. The
20 Legislature developed threshold amounts,
21 reporting guidelines, and recordkeeping
22 requirements to protect consumers and reduce
23 corruption of the games and their organizations.
24 These alleged skill games vary greatly in the
25 elements they describe as skill. There is no set

1 definition of a skill game.

2 I encourage you to actually Google that
3 or query that. Just type in skill game on your
4 phones. It is merely an industry term. They are
5 not small games of chance. There is and will be
6 increased adaptation of the alleged skill
7 elements to traditional gambling activities.

8 For example, we are already seeing
9 alleged skill elements put onto coin pusher
10 machines and the tweaking of software in existing
11 machines and the development of multi-player
12 games. Can a skill element be added in order to
13 receive a reward to a roulette wheel or a craps
14 table?

15 These machines meet the definition of a
16 slot machine as legislatively defined in
17 Title 4, The Gaming Act. A slot machine includes
18 a Hybrid Slot machine, both chance and skill; and
19 a Skill based slot machine, primarily skill. The
20 application of Title 4 to address these illegally
21 operated devices is currently awaiting a decision
22 by the Commonwealth Court. Oral arguments were
23 heard on this case in May of 2019. However, we
24 do not know when the court may rule on this
25 issue.

1 The term slot machine already exists in
2 Title 18, the Crimes Code. If the Legislature
3 were to consider expanding legalized gambling
4 beyond the recent expansion of licensed casinos
5 and video gambling terminals in truck stops, we
6 must consider the amount of varying types of
7 businesses: gas stations, restaurants, shopping
8 malls, convenience stores, strip malls, and
9 social clubs that would be involved, the impact
10 on municipalities opposed to gambling, and the
11 logistics of enforcement in thousands of new
12 gambling parlors throughout the Commonwealth.

13 What examination is being done of those
14 with a financial interest in the businesses, the
15 vendors, the suppliers, and technicians who
16 operate, place, and have the ability to
17 manipulate the devices?

18 Many of the concerns associated with this
19 illegal gambling: regulation and policing of
20 activities, strictly monitor and enforce control,
21 limited access, preventing unlawful activities,
22 financial monitoring, public interest for the
23 citizens of the Commonwealth, and the actual --
24 or the appearance of -- corruption from large
25 campaign contributions, etc., are already

1 expressed within statute, specifically within the
2 legislative intent of section 1102 of Title 4.

3 We anticipate continued market expansion
4 to seemingly promote the legitimacy of these
5 devices through their widespread existence and
6 operation. The Pennsylvania State Police Bureau
7 of Liquor Control Enforcement has been contacted
8 by law enforcement agencies and prosecutors from
9 across the United States. Multiple jurisdictions
10 are experiencing an impact from gambling devices
11 alleging varying degrees of skill to present some
12 form of legitimacy or avoidance from enforcement.

13 Our request to the Legislature remains
14 consistent: provide prompt clarity to the law,
15 as this will aid business owners in compliance
16 with the law and law enforcement with a more
17 efficient means to prosecute those who continue
18 to violate it. We have and are continuing to
19 prosecute persons and organizations who engage in
20 illegal activities. These prosecutions are
21 lengthy and expensive, but we will continue to
22 investigate and prosecute these crimes.

23 Before I close, sir, I would like to just
24 add an excerpt from an e-mail we received within
25 the past couple weeks as a result of some

1 enforcement we took. "Thank you for the work you
2 have done to intervene in the gambling corruption
3 that is occurring at this club. Since under new
4 management in the past year and a half, the
5 veterans are no longer the priority. Their only
6 priority is to swindle as much money as possible
7 from the members. You have done a great thing
8 for the neighborhood by putting an end to their
9 corruption and letting the people in charge know
10 they can't get away with such illegal
11 activities."

12 Again, that was an excerpt received by
13 the Pennsylvania State Police Bureau of Liquor
14 Control Enforcement after some enforcement we
15 took recently. We will now be available for any
16 questions you may have.

17 MAJORITY CHAIRMAN MARSHALL: Thank you,
18 Major Miller.

19 Questions from members?

20 Representative O'NEAL.

21 REPRESENTATIVE O'NEAL: Thank you for
22 coming. You know, so one of the things that kind
23 struck me as you presented your testimony is
24 really how adamantly you've -- the position
25 you're taking that these are illegal. And I know

1 at the end there you talked about continuing to
2 go after and prosecute, but it strikes me. And
3 my question to you is, why aren't we doing more?
4 I mean, we know -- we've had one of the
5 manufacturing -- manufacturers of these machines
6 here to testify in front of this Committee. And
7 I'm just curious as to why we continue, as a
8 Commonwealth -- if the State Police is taking the
9 position that these are illegal -- why we're
10 taking the -- why we're not shutting operations
11 like that down that are contributing to the
12 proliferation of these machines.

13 MAJOR MILLER: It's a very fair question.
14 The company that -- and I don't want to single
15 out any company, but since you asked a direct
16 question -- the company that testified before
17 this Committee on June 30th, we have a case
18 pending against, and had a case pending against,
19 on June 30th. So there are -- I mentioned that
20 there are about five to six manufacturers in the
21 Commonwealth.

22 within this past year, we've been
23 successful in forfeiture proceedings in two
24 separate counties against two of the
25 manufacturers. One of those cases is on appeal.

1 We have cases against two other manufacturers
2 that are pending, awaiting this Commonwealth
3 Court decision. Kind of in the interest of
4 judicial economy, we're kind of waiting on that.

5 If the Commonwealth Court ruling comes
6 out with a decision on Title 4, one way or the
7 other at least, that will give a statewide answer
8 on the application of Title 4 and then the
9 unknown is 5513 of the Crimes Code. I mentioned
10 that slot machine is mentioned within 5513 of the
11 Crimes Code, but there is no definition of a slot
12 machine in 5513 or in the Crimes Code at all.
13 There is a definition -- the only statutory
14 definition of a slot machine currently exists in
15 Title 4, and that includes a hybrid slot machine
16 and a skill-based slot machine.

17 REPRESENTATIVE O'NEAL: All right. Thank
18 you.

19 MAJORITY CHAIRMAN MARSHALL: Thanks,
20 Representative.

21 Representative Neilson.

22 REPRESENTATIVE NEILSON: Thank you,
23 Chairman. Thank you, gentleman, for coming.
24 It's good to see you again. O'NEAL touched on
25 it. I was wondering about the POM case, where

1 that's at in its decision because my
2 understanding is it should be coming down real
3 shortly, right?

4 There's no timeline for --

5 MAJOR MILLER: There is no timeline.
6 There is a case pending before an administrative
7 law judge, and that case has kind of been stayed
8 and put on hold, awaiting a decision from the
9 Commonwealth Court. So when the Commonwealth
10 Court will come out with their ruling on this
11 decision, I don't know.

12 REPRESENTATIVE NEILSON: And under your
13 testimony you talked about some other instances
14 where you went in. And if I did my math
15 correctly, like you talked about one case that
16 the prizes were so much money, that one
17 organization was getting over \$2 million dollars
18 a year.

19 MAJOR MILLER: Yeah. So when the Small
20 Games of Chance Act, which is a good thing --
21 listen, we're not against social clubs and
22 veteran organizations. It's a good thing, and
23 that 60/40 split is a good thing, but we have to
24 recognize, you know, it's the Small Games of
25 Chance Act. At what point is something small? I

1 mean -- I mean, not to be wise, but at some point
2 it's just going to be the holder ticket that's
3 the element in the Small Games of Chance Act.

4 So when you start to see monetary values
5 at, you know, \$100,000 a week, \$70,000 a week,
6 with not many controls, perhaps some of you have
7 been in a community where there's been a large
8 embezzlement from one of your social clubs or
9 organizations, that's devastating to a community.
10 It's just ripe for a lot of inappropriate
11 elements to become involved when you're starting
12 with those kind of monetary transactions.

13 REPRESENTATIVE NEILSON: well, thank you
14 again. Thank you, Mr. Chairman.

15 MAJORITY CHAIRMAN MARSHALL: Thank you,
16 Representative Neilson.

17 Representative Day.

18 REPRESENTATIVE DAY: Thank you,
19 Mr. Chairman. Thank you for being here and your
20 testimony. I really appreciate, you know, you
21 giving us your experience to help us establish
22 policy in the Commonwealth. You had mentioned --
23 you had mentioned -- what was the phrase that you
24 used? I thought I wrote it down. I wrote down
25 notes that say nefarious uses of the cash

1 proceeds.

2 So years ago, back gambling out in Las
3 Vegas and everything, law enforcement was always
4 concerned about a criminal element, using that to
5 launder money.

6 Is that what you were -- you didn't
7 actually come out and say that, but is that what
8 you're talking about?

9 MAJOR MILLER: So there can be a lot of
10 elements here. So one example is we've seen a
11 number of convenience stores who have built on an
12 entire room to set up a gambling operation. So a
13 lot of times what you'll see is that improvised
14 loan sharking. Hey, we'll give you the money to
15 add on this room. And instead of the 50/50
16 split, you know, I'm taking all the money. And
17 this week, well, you know, the split is not going
18 to be the same this week. We're going to take a
19 little extra.

20 Who are the people with that financial
21 interest in these businesses? We don't know. It
22 was something that was set up as part of the
23 Gambling Act, and I'm only going back there
24 because that's a point of reference for us to
25 draw from. If you read through 1102, it spells

1 out many of these issues that I'm talking about
2 today. And I'm not talking about that's a
3 perfect act, but I'm saying that's the law, and
4 our job is to enforce the law. And these
5 elements come in and say, hey, I know you need a
6 new roof on your club, so how about I put a new
7 roof on your club and I install machines in your
8 business and I'll just keep taking the money from
9 the machines until the roof is paid for and
10 beyond.

11 REPRESENTATIVE DAY: You had mentioned a
12 lot of things in your testimony, you know,
13 preventing minors -- there's no component to
14 prevent minors to use this, no aid for addictive
15 gamblers, you know, none of those safeguards in
16 place -- and those are all important things --
17 but the question I wanted to ask you is do you
18 have access to staff or attorneys that can go
19 through Pennsylvania law, you know, Section 1513
20 -- 5513, Act 4, I think 1102, and kind of codify
21 what you're thinking in your head from your
22 experience, what your team thinks we should be
23 doing and redefine or, you know, do you have
24 access to a --

25 MAJOR MILLER: Yes.

1 REPRESENTATIVE DAY: -- that can do that?

2 MAJOR MILLER: Yes.

3 REPRESENTATIVE DAY: Have you done that?

4 MAJOR MILLER: Yes, yes, and yes. We
5 have done that. And I guess the most simple
6 thing I can say is, our job is to enforce the
7 law. It's the law that's enacted by the General
8 Assembly, signed by the Governor. That's our
9 job. Okay.

10 Right now, we believe the law as it
11 exists is legalize gambling occurs in the places
12 as I mentioned. The definition of a slot machine
13 in 5513 in Title 18 of the Crimes Code left
14 undefined problematic. We already have a
15 statutory definition of a slot machine in
16 Title 4. Let's incorporate the definition of a
17 slot machine from Title 4 into Title 18. It's
18 the same Commonwealth. It's the same law. It's
19 the same legislature.

20 REPRESENTATIVE DAY: And I want to make
21 sure you understand -- I totally understand the
22 prime directive is law enforcement and you guys
23 are very kind and humble to say whatever we have
24 is law, but I think you did address it -- what
25 I'm looking for is that experience sometimes, you

1 know, if you translate it into what statement you
2 just said, that's probably one of the core
3 things, but if there's other things, make sure
4 you forward them to our Chairman so that we can
5 consider it as a Committee.

6 MAJOR MILLER: We'll be certainly glad to
7 assist in any way with legislation to provide
8 clarity. And I want to stress, not only for law
9 enforcement. I think you're going to hear from
10 some social organizations. I'll bet if you talk
11 with some vendors, a lot of people are just
12 saying, just tell us what the law is and we'll
13 abide by it. We have had many business owners
14 say to us, listen, we agree with you. We think
15 they're illegal. We don't want them in our
16 business, but I'm losing business to this
17 business down the street that has them, so I have
18 no choice but to put them in.

19 And that's a very -- it's a very, you
20 know, we're telling people it's illegal. We're
21 telling people it's illegal. We're telling
22 people if they operate these machines, they are
23 putting themselves at risk. Many of our
24 investigations are 18 months, 20 months, 24
25 months investigations.

1 REPRESENTATIVE DAY: Thank you for your
2 testimony and answer to our questions.

3 Thank you, Mr. Chairman.

4 MAJORITY CHAIRMAN MARSHALL: Thank you,
5 Representative. Great questions.

6 Chairman Conklin.

7 MINORITY CHAIRMAN CONKLIN: Thank you.
8 I'm just going to start with a story I'm sure
9 you've heard many times. Because of our jobs, we
10 get to travel the State a lot. And one of the
11 stories I tell my -- I've told the staff and some
12 other folks, one of my favorite stories is I
13 stopped to get gas at a gas station, walked in to
14 pay for it. When I walked in, it was a 6-pack
15 shop, as well. In the corner were five machines
16 with a lady with her child sitting there putting
17 the coins in, with a gentleman next to her with a
18 6-pack of beer playing a machine -- and all five
19 were full -- and it was 7:30 in the morning.

20 What law did they break? You can -- you
21 know, you can start down, but this is a more --
22 this question is more for you to explain to
23 myself and the other legislators. And this is
24 going to show my age. When the illegal slot
25 machines, when you were able to go in and be able

1 to remove them -- Major, could you just give us a
2 little overview of where they're at today and
3 what it's costing the Commonwealth because we're
4 still storing them, and any ideas that we can do
5 to make sure we don't go down that road again or
6 something we can do to make sure that the
7 taxpayers and you aren't burdened with this.

8 MAJOR MILLER: Sure. We still do see
9 traditional slot machines and we still do seize
10 them. I will say, typically, it's probably two
11 years until we can get a forfeiture and
12 destruction order. So a lot of our liquor
13 enforcement facilities, we built in extra large
14 evidence rooms to store the machines in. In the
15 Pittsburgh area, for example, we have, I think
16 it's an 80,000 square foot warehouse,
17 additionally, that we lease to store machines in.
18 And there are a lot of, still, these traditional
19 machines. What we're also seeing now is a lot of
20 co-mingling of machines. So there will be a
21 traditional machine. Cherry Master is a common
22 name of a traditional machine, and beside the
23 Cherry Master will be one of these new alleged
24 skill-based machines, in an effort to kind of
25 complicate things for law enforcement.

1 I want to stress that we have cases
2 against these alleged skill manufacturers and
3 those cases are ongoing. The position of the
4 Pennsylvania State Police is this form of
5 gambling is illegal, but I also want to stress
6 that there are many challenges in presenting the
7 case before the court.

8 You heard the Gaming Control Board
9 mention 51 percent. That's a very subjective
10 term, and we can wind up with 67 different
11 opinions from common pleas judges throughout the
12 Commonwealth. And it could just be, you know, my
13 opinion may differ from your opinion when we hear
14 the same amount of testimony. So then we get
15 that case, then it has to go through the appeal
16 process. And that's why I'm saying, I think
17 clarity in the law will be a great aid to the
18 citizens of the Commonwealth. And I do think we
19 will see a tremendous amount of voluntary
20 compliance when we get some clarity to the law.

21 MINORITY CHAIRMAN CONKLIN: Thank you.

22 Thank you, Mr. Chairman.

23 MAJORITY CHAIRMAN MARSHALL: Thank you,
24 Mr. Chairman.

25 Major Miller, thank you so much for your

1 testimony. We do have one more question, if you
2 could hold on for us.

3 Representative Mehaffie.

4 REPRESENTATIVE Mehaffie: Thank you, Mr.
5 Chairman.

6 Gentlemen, again, thank you for your
7 testimony as always. We talked about two things
8 -- well, one thing I want to talk about is if
9 they are found guilty as far as an illegal
10 machine or illegal gaming or whatever, does that
11 go against their liquor license if they are a
12 liquor license holder.

13 MAJOR MILLER: Yes. So the criminal
14 offense is a misdemeanor charge. And then during
15 the renewal process, the Pennsylvania Liquor
16 Control Board will evaluate charges and citations
17 against them. We also issue administrative
18 citations against the liquor license for
19 violating another law. So that's how there's
20 sufficient cause shown under the Liquor Code.

21 The Liquor Control Board has recently,
22 within the past several months, has issued a
23 notice to all liquor license holders that if
24 they're involved in gambling, it will be a
25 consideration before them for the renewal

1 process, the two-year renewal process on liquor
2 license.

3 REPRESENTATIVE MEHAFFIE: Okay. So if a
4 liquor license is held -- let's just take a
5 convenience store. So half of the store is
6 licensed, half of the store is not. If those
7 gaming machines are in the unlicensed area, okay,
8 and they are -- or whatever. If there's illegal
9 gaming found in the unlicensed area, does that --
10 can it go against the liquor license in the
11 licensed area.

12 MAJOR MILLER: Sure. Because of the
13 ownership of the liquor license.

14 REPRESENTATIVE MEHAFFIE: Thank you.
15 Very good. Okay. The other question I had is --
16 and you mentioned this in the last hearing is
17 mini casinos. You were concerned about a local
18 one right around here coming into play where
19 there were 30-some machines or -- I don't know
20 the exact number that you mentioned.

21 Are you seeing that across the State, and
22 have you been able to act on any of that? Or
23 what is going on with that.

24 MAJOR MILLER: We are seeing them across
25 the State. We have not went in and done a large

1 seizure at one of these mini casinos in strip
2 malls. I mean, it's openly advertised. You
3 know, it's not uncommon to see it on a sign board
4 out along the highway, you know, games of skill
5 played here. It's right in storefronts, you
6 know, house of skill, that sort of thing. So
7 there is a tremendous proliferation.

8 And those machines -- you know, there's a
9 lot of talk. One manufacturer has a larger share
10 of the market than some others, and there's a lot
11 of talk, I think, that focuses on that
12 manufacturer, but I want to -- there are multiple
13 manufacturers in the Commonwealth and we're
14 seeing them continue to add, and each of the
15 games are a little bit different.

16 Going back to my comment about -- and I
17 know I'm a little off your point, but I'm going
18 to circle back around to it. My comment about
19 could I set up a roulette wheel here? I think we
20 all agree roulette is gambling, right? So set up
21 a roulette wheel here, but then you have to play
22 a game of darts and throw it in the bull's eye to
23 get the prize. So you win 1,000, but in order to
24 get your prize, your reward, gambling is
25 consideration money in, chance/randomness of some

1 act, and a reward, a payout. In order to get
2 your reward, you've got to throw the dart in the
3 bull's eye.

4 well, if we're going to go with the
5 argument that that's now not gambling, it's a
6 skill, we can all set that up in our garage
7 tonight. I'm not encouraging you to do that,
8 okay. What we see in those mini casinos is a
9 variety of machines. They're typically not just
10 one manufacturer's machines. So we may go into a
11 machine -- and some manufacturers have different
12 versions of machines.

13 So we may go into a location like that
14 and we may wind up with 5, 10, 7, 8, 9, 15,
15 different forfeiture proceedings. Two of the
16 cases we've had -- we've paid experts -- one was
17 more than \$9,000 and one was \$12,000, just for
18 one expert. So what it becomes then is a battle
19 of the experts. Captain Jones who is here with
20 me has been declared an expert in Dauphin County
21 on these gambling cases, but it is an extremely
22 expensive and lengthy legal process.

23 And to the business owners who are, you
24 know, struggling to pay employees and make ends
25 meet, who have this attractive venue of, hey,

1 maybe \$500 extra a week, that's going to cover a
2 lot of costs from me, and they're being told,
3 hey, they're legal, put them in, they're taking
4 no action, hey, if you wind up going to court,
5 we'll defend you in court, it's very attractive
6 to them.

7 REPRESENTATIVE MEHAFFIE: Thank you.
8 Thank you very much.

9 Thank you, Mr. Chairman.

10 MAJORITY CHAIRMAN MARSHALL: Thank you.

11 Major, I just have a quick question and a
12 comment. The Representative who spoke about mini
13 casinos, in your comments with mini casinos -- is
14 different than a category 4 or mini casino
15 operated by a casino?

16 MAJOR MILLER: That's an excellent
17 question. So I happen to -- that question before
18 the Gaming Control Board, but I spoke to them.
19 There are some now established category 4
20 casinos, but these mini casinos that we're
21 talking about are not authorized at all by the
22 Gaming Control Board. They're simply a business
23 that's been created in a storefront or a location
24 and it's -- it's unregulated. It's not approved
25 by any Commonwealth agency. It's just in a

1 gaming shop and operation.

2 MAJORITY CHAIRMAN MARSHALL: Thank you.

3 I wanted to make sure we're on the same
4 page. And one quick follow-up question from
5 another member. You mentioned that there are --
6 a penalty would be a misdemeanor. I've seen
7 legislation that's been proposed that increases
8 that penalty to a felony.

9 Can you give us any opinion on whether
10 that's too far or if that's a step that's needed?

11 MAJOR MILLER: It's definitely -- in my
12 opinion, it's definitely not too far. Anything
13 we can do to strengthen deterrents is a positive
14 thing. If the goal is getting compliance with
15 the law, if you have strong deterrents, that
16 should deter people from saying, hey, it's worth
17 the risk for me. You know, that lure of easy
18 money -- to steal a line from an old Glenn Frey
19 song.

20 You know, if we can say to people that,
21 hey, you're at a great risk here, you're at a
22 great risk of a felony conviction against you or
23 your corporation, which is then probably going to
24 prevent you from getting other licensure in the
25 future, be it a liquor license or be it a

1 gambling license. So anything we can do to
2 strengthen deterrents and provide clarity in the
3 law, we would support.

4 MAJORITY CHAIRMAN MARSHALL: Thank you,
5 Major. Thank you, Troopers.

6 Our next testifier is the Executive
7 Director of the Pennsylvania Federation of
8 Fraternal and Social Organizations, Ted Mowatt.
9 Joining Mr. Mowatt is Mr. Tom Helse, Secretary
10 of the Pennsylvania Association of Nationally
11 Chartered Organizations.

12 Thank you, gentlemen. And when you're
13 ready, please begin.

14 MR. MOWATT: Good morning, Mr. Chairman.
15 Chairman Marshall and Chairman Conklin and
16 distinguished members of the House Gaming
17 Oversight Committee. I'd like to thank you for
18 the opportunity to present testimony today on the
19 bill before us today, HB 1598. By way of
20 background, the Pennsylvania Federation of
21 Fraternal and Social Organizations is a statewide
22 association of nearly 500 social clubs, veterans
23 clubs, fire companies and other non-profit
24 service organizations, most of whom hold liquor
25 licenses.

1 our clubs provide numerous charitable
2 work in the local communities funded largely by
3 law by small games of chance. Our clubs are
4 constantly struggling to find ways to attract
5 younger members who will take over the essential
6 community activities of the clubs and fire
7 companies in the future, while retaining the
8 existing membership as they age.

9 Our membership -- our members have in the
10 past supported the updating of the local option
11 Small Games of Chance Act as a way of supporting
12 club activities and have worked with this
13 Committee on many occasions and for many years to
14 that end. The Federation has worked closely with
15 the Committee and its center counterpart over the
16 last decade or longer to pass legislation
17 updating small games of chance and bingo laws,
18 based on the premise that these bills were not an
19 expansion of gambling but a mechanism for these
20 non-profit organizations to increase the amount
21 of money they can raise and contribute to other
22 local charities in their communities.

23 As we have testified before you before,
24 including earlier this year, for many clubs,
25 dues/revenues have not been able to keep pace

1 with their structural and other overhead needs of
2 aging facilities, and clubs have been forced to
3 find other ways to attract new members and to
4 keep existing members coming into the club. We
5 fully support, as we have in past sessions, the
6 authorization of additional charitable games,
7 such as the vertical wheel, poker runs,
8 aggressive games, and the skill-based contests
9 referenced in HB 19 -- 1598.

10 Clearly, some clubs and taverns, as well
11 as other small businesses, have already taken
12 advantage of the popularity of the so-called
13 skill games over the past several years, even as
14 their legality has been in question. These games
15 have far exceeded expectations from a revenue
16 standpoint and joined the recently added lottery
17 games and the overall arsenal of non-dues income
18 for bars, clubs, and first responder
19 organizations among others.

20 Our member clubs have heard for years
21 that the enforcement would be stepped up on these
22 machines, whether the -- as you just heard, the
23 PSP believed to be illegal as they searched for a
24 friendly jurisdiction to plead a case to overturn
25 the Beaver County ruling. Due primarily to the

1 lack of clear guidance outside the Beaver County
2 case, and we agree with the State Police on the
3 issue that it's unclear as to whether these
4 machines are in fact legal in the other 66
5 counties, clubs all over the state report
6 receiving mixed messages from both the PSP, you
7 know, LCE, and from the skill game manufacturers
8 and the vendors themselves.

9 We applaud Representative Moul's attempt
10 to clarify the matter and to provide a structure
11 for legal use, reporting, and revenue
12 distribution. Although Committee members have
13 likely heard from local clubs and taverns that
14 they fully support the authorization of skill
15 games among the other games added in HB 1598,
16 many of our club members remain legitimately
17 concerned that adding those machines at the VFW
18 or the Moose Lodge small games of chance ticket
19 sales that lead to their charitable giving, which
20 is a central part of the mission of most clubs.

21 Other clubs have indicated that the
22 presence of a limited number of machines have
23 actually increased strip ticket play and pull-tab
24 play as folks wait their turn to pay the skill
25 games. These clubs consider it a win-win,

1 literally. The revenue generated by the skill
2 games, which would, under this bill, join the 40
3 percent retained from small games of chance, will
4 contribute greatly to the maintenance of many
5 clubs and their charitable giving. Still,
6 reaching a consensus among club folks in this
7 diverse State on whether to support skill games,
8 like VGTS, in passion sessions has been
9 difficult. Our board met in June and again in
10 late September to discuss the issue, and the
11 general consensus is that these machines are in
12 fact made legal. Clubs would like to have the
13 right to have them in their bar areas.

14 with the inclusion of a regulatory
15 structure, which allows the games to be placed in
16 a controlled number of establishments but the
17 gaming Control Board licensing the manufacturers
18 and distributors, as well as the distributors
19 collecting and remitting the taxes, it's a
20 positive step forward, we believe.

21 As I mentioned in my previous testimony,
22 we're aware of a pending Commonwealth Court case
23 that may further inform this issue in the near
24 future, but in the interim, we would like to work
25 with the Committee and the other stakeholders,

1 including the State Police, on legislation that
2 makes sense for clubs, bars, for the Lottery,
3 casinos, and for the State coffers.

4 We fully support the stated purposes of
5 the Gaming Control Act and do not wish to
6 interfere with their revenue streams. The
7 language in Representative Moul's legislation,
8 which would put skill games under the local
9 option Small Games of Chance Act is a little bit
10 confusing since the machines are by definition
11 not games of chance. Nonetheless, we support the
12 structure that both limits the proliferation and
13 distribution of the machines and access to them
14 and welcome the additional help on both the
15 retained and charitable sides of the books on
16 these proceeds.

17 We appreciate this opportunity to comment
18 on this legislation and will certainly be
19 interested to see how things play out. Thank you
20 for this opportunity, and I would welcome any
21 questions.

22 MR. HELSEL: Good morning, Chairman
23 Marshall, Chairman Conklin, members of the House
24 Gaming Oversight Committee. My name is Tom
25 Helsel, and I'm the secretary of the Pennsylvania

1 Association of Nationally Chartered
2 Organizations, or more commonly known as PANCO.
3 PANCO is comprised of individual areas, lodges,
4 and posts from the Fraternal Order of Eagles,
5 Benevolent and Protective Order of Elks, Loyal
6 Order of Moose, American Legion, and Veterans of
7 Foreign Wars. I would like to thank you for the
8 invitation to provide testimony here on HB 1598.

9 Our members are known for providing
10 charitable works to their local communities. The
11 funds raised for these works are primarily
12 generated through avenues of small games of
13 chance, bingo, and other fundraising activities,
14 such as chicken BBQ's. We have worked over the
15 years to help bring into fruition Act 67 of 1981,
16 the Bingo Law, Act 156 of 1988, the Local Option
17 Small Games of Chance Act, as well as subsequent
18 acts amending these two cornerstones of our
19 fundraising abilities.

20 Throughout these instances, we have
21 worked with various legislators, legislative
22 committees, and other organizations to improve
23 and enhance our members' ability to provide
24 charitable funding for our local communities.
25 Representative Moul's legislation, HB 1598 -- we

1 support Representative Moul's legislation, HB
2 1598, and applaud him for his efforts in this and
3 previous endeavors.

4 We believe that there are several
5 positive initiatives in this bill that would
6 benefit to our membership, as well as all clubs
7 across Pennsylvania. First and foremost, is the
8 removal of the \$35,000 weekly limit, followed by
9 the addition of poker runs, coin auctions,
10 vertical wheel games, event games, and skill
11 machines as authorized games, changes to the
12 amounts retained, and the addition of a special
13 permit for club licensees.

14 The initial concept of a weekly limit was
15 an arbitrary number applied to the onset of small
16 games of 1988. In 2013, the Legislature
17 increased this limit to \$35,000. While many
18 clubs across the State are not impeded by this
19 limit, there is still a segment of the club
20 industry that is. Removal of the weekly limit
21 does not impact the integrity of small games. It
22 simply allows clubs with larger membership
23 resources the ability to find its limit.

24 There are still regulatory and statutory
25 limits that remain in place to maintain the

1 integrity of small games, the single prize
2 limits, and the limits applied to the wager
3 amount. The bill adds several new games to the
4 list of authorized games. In each instance, we
5 believe that these additional games compliment
6 our current arsenal of allowed games. The most
7 controversial game added is that of skill games.

8 while we have advised our members that
9 the PA Department of Revenue and the Pennsylvania
10 State Police have opined that skill games are
11 illegal, there is conflicting advice and evidence
12 that is contrary -- to the contrary. Many of our
13 members have turned to the Pennsylvania skill
14 game as an additional source of revenue, based
15 upon the reliance by vendors and the manufacturer
16 that the game is one of skill, rather than
17 chance.

18 we believe that placing skill games under
19 the Local Option Small Games of Chance Act would
20 eliminate the confusion that is currently there.
21 It would allow skill games to be utilized by only
22 licensed establishments: clubs, bars and
23 taverns, thus stopping the proliferation into
24 other retail avenues. With regard to the changes
25 in amounts retained, the bill would also allow

1 all club licensees to retain the first \$20,000 in
2 net proceeds. Currently, only those clubs which
3 report \$40,000 or less in the previous year's
4 report may retain that amount.

5 we believe this to be a fair and
6 equitable solution for those clubs which report
7 over \$40,000 that do not reach the threshold of
8 that, which corresponds to the 40 percent
9 retained, equaling \$20,000. Finally, we support
10 the addition of special permits for club
11 licensees. This would allow clubs to participate
12 in fundraising events done at events within their
13 county, such as community or county fairs.
14 Currently, a club licensee may not offer small
15 games of chance at such an event.

16 Again, I would like to thank you as the
17 Committee for this opportunity and look forward
18 to answering any questions that you may have.

19 MAJORITY CHAIRMAN MARSHALL: Thank you,
20 gentlemen. If you don't mind, we'd like to defer
21 questions until after the next group, if that's
22 all right.

23 And if we could hear from representatives
24 from the Pennsylvania American Legion and the
25 Pennsylvania VFW. And gentlemen, when you're

1 ready, if you'd like to introduce yourselves and
2 then begin your testimony. Thank you.

3 MR. GETZ: Good morning, Chairman
4 Marshall and Chairman Conklin. My name is John
5 Getz. I'm the Adjutant Quartermaster, past State
6 Commander of Veterans of Foreign Wars. I've held
7 this position for many years. I have held this
8 position for many years. I served this role and
9 I have worked closely with our VFW posts and
10 other veterans' groups and the Legislature on
11 small games of chance issues.

12 My formal comments about this bill today
13 will be brief, but first, we need to encourage
14 any legislative efforts to open video gaming
15 terminals to non-profit clubs to be separate --
16 and I will say again, separate -- from the small
17 games of chance legislation. We prefer working
18 on issues in a bill that solely addresses the
19 VGTs -- solely address the VGTs and games of
20 skill, not to attach it to legislation that
21 incorporates proposals for other changes to the
22 current small games of chance law.

23 One thing I don't have in my testimony
24 here, I just want to let you know that I
25 personally listened to the State Police. And

1 what my word is when I go out to all of my clubs
2 and all of my organizations, is that they're
3 telling me that these games of skill are illegal.
4 And that's the information that I put out to
5 them. And again, there is nothing being done
6 about it. So at that point, I do know that a lot
7 of them are putting them in. So they'll have to
8 suffer the consequences of whatever happens,
9 whether they become legal or not legal.

10 As far as the components of HB 1598,
11 specifically proposing increases in the small
12 games of chance allowances, the Pennsylvania
13 Veterans of Foreign Wars fully supports these
14 components. When you consider the tremendous
15 financial and quality of1.

16 Life impact that donations from
17 veterans' service organizations have on
18 Pennsylvanians from all walks of life, the VFW
19 sees these proposed increases as a win-win
20 situation for everybody: the non-profits, the
21 State Legislature, and citizens across the
22 Commonwealth.

23 One of the most enjoyable aspects of
24 serving as State Adjutant of the Pennsylvania
25 Veterans of Foreign Wars is witnessing the

1 amazing ways that the VFW Posts donate to their
2 community and their neighbors. Here are a few
3 examples of the donations from non-profit VFW
4 Posts as have been directed:

5 • Individuals and families battling
6 cancer and other life-altering diseases, some
7 involving babies and children;

8 • Individuals and families whose lives
9 were shattered by accidents and natural
10 disasters;

11 • Public safety units, like fire
12 companies, police departments, ambulance
13 companies, who through these donations are better
14 prepared to respond in many ways to serve and
15 rescue the citizens;

16 • Non-profit human service organizations
17 that assist the needy, but whose budgets limit in
18 the outreach and support that they can do;

19 • Youth activity groups who need
20 donations to provide the resources that they need
21 to help our kids and our teens develop skills to
22 lead enjoyable, responsible lives, who one day
23 will serve our community;

24 • Donations to food pantries and other
25 community support programs that help our seniors

1 and less fortunate persons to receive life
2 essential support.

3 The list goes on and on. The need is
4 there and continues to grow and increase. Small
5 games of chance is a great way to meet our needs.
6 Your past support of increasing the prizes and
7 income limits for small games of chance
8 operations has touched many thousands of lives,
9 while helping our non-profits like VFW Posts to
10 continue operating by using a portion of their
11 earnings.

12 We want you to fully grasp the scope of
13 the positive impact that donations made possible
14 by small games have made on those that serve you.
15 We would -- yeah, we want you to appreciate how
16 the small games of chance earnings that
17 non-profits can use to keep operating sustain
18 these community resources as a positive force in
19 their neighborhoods.

20 When you allow our VFW Posts and other
21 non-profits to increase small games of chance
22 prizes and earnings that they use, you are making
23 Pennsylvania's 67 counties better places to live.
24 And you will help grow this source of community
25 assistance without increasing government budgets

1 at a local and county or State level. You as
2 State lawmakers have made this possible. Thank
3 you. You can now help to grow the beneficial
4 aspects of small games.

5 Thank you for allowing the Veterans of
6 Foreign Wars to be a part of this hearing today.
7 I also want to thank each of you for your past
8 support of veterans' organizations and the issues
9 that we pursue to support veterans and their
10 families and to improve the communities in which
11 they live.

12 Committee members, this is the extent of
13 my formal testimony today. I will be happy to
14 respond to any questions. And thank you for your
15 service to the Commonwealth as a Pennsylvania
16 lawmaker.

17 MAJORITY CHAIRMAN MARSHALL: Thank you.

18 MR. WATSON: I'm Kit Watson. I'm the
19 Adjutant for Pennsylvania Legion. I've been in
20 that position for the last 20 years. I've seen a
21 lot of changes in the law and a lot of
22 interactions, both with my counterpart. I would
23 like to clarify something upfront.

24 The Pennsylvania American Legion, and if
25 I may, the VFW have not belonged to PANCO for

1 over 10 years. We are separate. We have
2 separate legislative issues and we have not --
3 we don't speak for them and they shouldn't speak
4 for us.

5 The history of the small games of chance
6 was last really updated in 2014, where the Act 90
7 was passed into law. It gave us a lot more
8 control in our clubs and let our -- and let some
9 of our clubs survive. Our current State
10 Commander behind us, his post -- and it was a
11 nice operation -- his post was ready to close its
12 doors because the honest truth is we do not get
13 our revenue from beer and liquor sales anymore.
14 You know, my own personal club -- and I belong
15 out in western Pennsylvania, but I live in
16 Cumberland County here for the last 20 years --
17 my own personal club sells as much soda and other
18 soft drinks as we do beer and liquor anymore.
19 It's -- you know, it's a different demographic
20 issue than we've had in the decades past.

21 Small games of chance are a vital part of
22 our organizations. I want you to picture this,
23 if you will. We all belong to a club, the same
24 club. You have an expendable income. I might
25 spend \$50 a week on gambling; you might spend

1 \$100. She might spend \$200; John here has got
2 the money, he'll spend three or \$400. That's --
3 that's a cumulative number that we can all deal
4 with in our clubs. And under the 60/40 split,
5 that money goes back into the community or stays
6 with the club for their good. That -- those same
7 gamblers -- and I'm talking about our club, all
8 right. We don't have school buses or buses
9 coming up and dropping people off to come in and
10 play bingo or play our small games of chance at
11 our bar or visit our post. We're member-based
12 organizations.

13 That same dollar is now going into these
14 skill games, and that money, at a rate of 50 to
15 60 or more percent, is going out the door and
16 never coming back to that community. The vendor
17 is reaping the benefits of that gambling dollar,
18 and there's only X amount of -- if we all belong
19 to the same club and we have that gambling
20 dollar, that's the money that we can work with
21 within our clubs. If you're taking any
22 percentage of that, 50, 60 percent out of it,
23 that's just less money you're going to have to
24 work with overall.

25 I'm not saying whether you should

1 legalize those machines or not, but I go along
2 with my counterpart in the VFW. If this is going
3 to go through, we need it as a standalone bill.
4 It's -- the small games of chance is small games
5 of chance. There's no regulation, at least thus
6 far, on these skill games or any other kind of
7 games. And I, back in the '70s, I owned a bar
8 and I had poker machines. And they were illegal.
9 And your counterparts -- the counterparts got me
10 on that on a pretty regular basis, but they were
11 popular.

12 But small games of chance was a shot in
13 the arm to keep our clubs open. In 2014, we were
14 lucky enough to be included in the -- for the
15 public good category with -- along with the fire
16 halls and the VFW and the other VSOs and we loved
17 that. We appreciate it, and we thank you for
18 that, but we want to see it not changed. You can
19 add something to it, you can put the machines in,
20 you can legalize machines however you want to
21 regulate them, which is a big problem because
22 I'll tell you what's happening -- and the State
23 -- we met with the State Police on occasions,
24 with my counterpart and I. And we told our clubs
25 unequivocally, these are illegal. And I still

1 tell them that today, they're illegal.

2 We just had a Legion College with over
3 600 attendees at it. The machines are illegal,
4 period. Until the Chief Counsel of the LCB tells
5 me they're legal, then they are illegal and you
6 suffer the consequences if you get caught with
7 them.

8 So we're asking you to keep our small
9 games of chance bill alive on its own and put
10 this gaming bill into another category because
11 it's not small games of chance. It's -- there's
12 no comparisons to the two at all. I would be
13 glad to answer any questions after this, but
14 that's our -- that's our take on it.

15 MAJORITY CHAIRMAN MARSHALL: Thank you,
16 gentlemen, for your presentation and your service
17 to our residents. And of course, we do have a
18 question for you from Representative Neilson.

19 REPRESENTATIVE NEILSON: Thank you,
20 gentlemen. Thank you for your testimony. Thank
21 you for your service to our country and all you
22 do for our community. I was very, very happy to
23 hear your testimony today because something I've
24 been hearing for 10 years, being on this
25 Committee, is how much help you need, how much

1 help you need, and to separate this into a small
2 games of chance bill is perfectly right where we
3 need to go, because like every other slot machine
4 in the Commonwealth, the Commonwealth gets 60
5 percent of that. Okay. So we will be coming
6 into -- if I have anything to do with it, I want
7 60 percent of these new slot machines or skill
8 machines you get, I want the Commonwealth to get
9 that. I like how you put it -- and keep it in
10 your neighborhood.

11 I wanted to ask everybody one general
12 question, we talk about the prize limits maxing
13 out. Do you know a percentage of your clubs that
14 max out, that goes to all four testifiers, is
15 there a percentage that we have on the record
16 that they max out? Because we want to increase
17 that portion.

18 MR. WATSON: If I may -- and I don't want
19 to complicate things, but we have clubs that are
20 -- we have 700 posts in the Commonwealth, about
21 540 of them have liquor licenses. That's just
22 for the American Legion. Out of those clubs, I
23 have clubs with 50, 60, 100 members. We also
24 have, right down in Shiloh, they've got 2400
25 regular members. That doesn't count their

1 auxiliary and sons. That's just their
2 Legionnaires in that club.

3 You're putting the threshold on all clubs
4 at \$35,000 a week. We have clubs that don't do
5 \$35,000 in three months. So there are clubs that
6 do well, but the percentage, I think, to be a
7 little more fair, it would be nice if they would
8 increase it to -- and I don't have the
9 percentage. I'll bet you the Pennsylvania State
10 Police have that better figure than I do. Our
11 clubs don't report. Our clubs are autonomous.
12 They don't report to us as long as they don't get
13 in trouble with the law, then we don't hear much
14 about it.

15 But the ratio of members to the \$35,000
16 is pretty relevant because we have clubs that
17 don't do that in three months. We have clubs
18 that do that in a week, so --

19 REPRESENTATIVE NEILSON: The State Police
20 had some alarming numbers, at \$2 million dollars
21 a year some of these clubs making.

22 MR. WATSON: I heard that.

23 MR. GETZ: Just lucky to be a post --

24 REPRESENTATIVE NEILSON: My club doesn't
25 do that. I was just wondering -- and I'm in

1 Philadelphia, so I don't know.

2 MR. WATSON: Mine doesn't either.

3 MR. GETZ: On the Veterans of Foreign
4 Wars, we only have some of the -- but larger
5 clubs, I hear they hit the \$35,000, but I hope
6 they stop. A couple of them, I heard they do
7 stop it. And the State Police can tell you, some
8 of them don't stop it.

9 REPRESENTATIVE MOUL: If I may chime in
10 here, I belong to five clubs. I live in the
11 heart of private club country.

12 REPRESENTATIVE NEILSON: Can you say your
13 name for the record, sir?

14 REPRESENTATIVE MOUL: You know what my
15 name is.

16 This gentleman is pretty much hitting the
17 nail on the head. That is -- the percentage that
18 go over \$35,000 is relative to the size of the
19 club. All five of the clubs I belong to have
20 several thousand members; one has over five.
21 They'll blow through \$35,000 a payout on Sunday
22 during football, especially if it's raining
23 outside or cold. It's just what they do, playing
24 strip tickets.

25 And I will tell you, the club that I'm

1 thinking about, which I will not name, has at
2 least five of these machines sitting side by
3 side. Since they are not in the Small Games of
4 Chance Act, they feel that they are outside of it
5 and zero amount of the money goes back to the
6 community. The strip tickets do. The punch
7 boards do.

8 REPRESENTATIVE NEILSON: Yeah, but in the
9 same sense, 60 percent of that dollar -- sixty
10 cents on that dollar that's put in, as we heard
11 testimony before, is going to the vendor. So I
12 mean, I'm just putting it into perspective,
13 Representative.

14 REPRESENTATIVE MOUL: I'm not here to
15 tell you where that money goes.

16 REPRESENTATIVE NEILSON: Okay.

17 REPRESENTATIVE MOUL: I'm just going to
18 tell you that that money is not included in the
19 money that they divide up, where 40 percent they
20 keep and 60 percent goes to the community. The
21 strip tickets and punch boards, yes. That money
22 they look at as these aren't in the Gaming Act,
23 therefore, we don't have to follow those rules
24 with those machines.

25 But what they do now, and this is

1 something that the LCE certainly knows about,
2 they just can't do anything about it, is I have
3 clubs that hit that \$35,000 dollar limit and then
4 they'll bring in other outside organizations,
5 non-profits, they'll put their license on the
6 shelf for the day and let them sell and charge
7 them a fee to be in their club selling off of
8 their license. And that's how they're doing it.

9 Nothing illegal about it, it's just a
10 little loophole to get around the law. But the
11 bottom line is, they do this to give back to its
12 own community. It's a very foolish arbitrary
13 number that somebody picked years ago to say, oh,
14 we want you to raise money for the community, but
15 we will not let you raise more than this. Why
16 would we do that?

17 MAJORITY CHAIRMAN MARSHALL: Thank you,
18 members.

19 MR. WATSON: Yeah, I don't have much to
20 add to that. We've had the same experience with
21 our members, you know, some of them are bigger
22 clubs and they run over and other ones, like was
23 referred to, don't get it for months. And again,
24 I made the statement several years ago to this
25 Committee, I think the State Police have better

1 things to do than worry about how much money
2 clubs are raising for charity. And I think that
3 that's, you know, going to become -- part of
4 getting rid of the limits is adding new games is
5 going to generate new revenue. That's the point
6 of this, and the community effect is going to be
7 greater as both of these gentlemen referred.

8 MAJORITY CHAIRMAN MARSHALL: Thank you,
9 gentlemen. Thank you, members. Also, thank you
10 and welcome again to Executive Director Hank
11 Beaver. I'm sure you'll have some interesting
12 times with the Committee.

13 At this time, this meeting is adjourned.
14 Thank you.

15 (Whereupon, the hearing concluded at
16 10:52 a.m.)
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C E R T I F I C A T E

I hereby certify that the proceedings are contained fully and accurately in the notes taken by me on the within proceedings and that this is a correct transcript of the same.

Tracy L. Markle

Tracy L. Markle, Court Reporter

Notary Public