

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 557

AN ACT

To repeal sections 311.660, 311.710, 311.720, 313.004, 313.255, 572.010, and 572.100, RSMo, and to enact in lieu thereof seven new sections relating to illegal gambling, with existing penalty provisions, with an emergency clause.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

Section A. Sections 311.660, 311.710, 311.720, 313.004, 313.255, 572.010, and 572.100, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 311.660, 311.710, 311.720, 313.004, 313.255, 572.010, and 572.100, to read as follows:

311.660. The supervisor of liquor control shall have the authority to suspend or revoke for cause all such licenses; and to make the following regulations, without limiting the generality of provisions empowering the supervisor of liquor control as in this chapter set forth as to the following matters, acts and things:

(1) Fix and determine the nature, form and capacity of all packages used for containing intoxicating liquor of any kind, to be kept or sold under this law;

(2) Prescribe an official seal and label and determine the manner in which such seal or label shall be attached to every package of intoxicating liquor so sold under this law; this

includes prescribing different official seals or different labels for the different classes, varieties or brands of intoxicating liquor;

(3) Prescribe all forms, applications and licenses and such other forms as are necessary to carry out the provisions of this chapter, except that when a licensee substantially complies with all requirements for the renewal of a license by the date on which the application for renewal is due, such licensee shall be permitted at least an additional ten days from the date notice is sent that the application is deficient, in which to complete the application;

(4) Prescribe the terms and conditions of the licenses issued and granted under this law;

(5) Prescribe the nature of the proof to be furnished and conditions to be observed in the issuance of duplicate licenses, in lieu of those lost or destroyed;

(6) Establish rules and regulations for the conduct of the business carried on by each specific licensee under the license, and such rules and regulations if not obeyed by every licensee shall be grounds for the revocation or suspension of the license;

(7) The right to examine books, records and papers of each licensee and to hear and determine complaints against any licensee;

(8) To issue subpoenas and all necessary processes and require the production of papers, to administer oaths and to take testimony;

(9) Prescribe all forms of labels to be affixed to all packages containing intoxicating liquor of any kind; [and]

(10) To refer to the Missouri gaming commission any suspected illegal gambling activity punishable under chapter 572 being conducted on the premises of a location licensed under this chapter, which shall be investigated under subsection 13 of section 313.004; and

(11) To make such other rules and regulations as are necessary and feasible for carrying out the provisions of this chapter, as are not inconsistent with this law.

311.710. 1. In addition to the penalties and proceedings for suspension or revocation of licenses provided for in this chapter, and without limiting them, proceedings for the suspension or revocation of any license authorizing the sale of intoxicating liquor at retail may be brought in the circuit court of any county in this state, or in the city of St. Louis, in which the licensed premises are located and such proceedings may be brought by the sheriff or any peace officer of that county or by any eight or more persons who are taxpaying citizens of the county or city for any of the following offenses:

(1) Selling, giving or otherwise supplying intoxicating liquor to a habitual drunkard or to any person who is under or apparently under the influence of intoxicating liquor;

(2) Knowingly permitting any prostitute, degenerate, or dissolute person to frequent the licensed premises;

(3) Permitting on the licensed premises any disorderly conduct, breach of the peace, or any lewd, immoral or improper entertainment, conduct or practices;

(4) Selling, offering for sale, possessing or knowingly permitting the consumption on the licensed premises of any kind

of intoxicating liquors, the sale, possession or consumption of which is not authorized under his license;

(5) Selling, giving, or otherwise supplying intoxicating liquor to any person under the age of twenty-one years;

(6) Selling, giving or otherwise supplying intoxicating liquors between the hours of 12:00 midnight Saturday night and 12:00 midnight Sunday night;

(7) Permitting on the licensed premises any form of gambling device punishable under chapter 572.

2. Provided, that said taxpaying citizen shall submit in writing, under oath, by registered United States mail to the supervisor of liquor control a joint complaint, stating the name of the licensee, the name under which the licensee's business is conducted and the address of the licensed premises, setting out in general the character and nature of the offense or offenses charged, together with the names and addresses of the witnesses by whom proof thereof is expected to be made; and provided, that after a period of thirty days after the mailing of such complaint to the supervisor of liquor control the person therein complained of shall not have been cited by the supervisor to appear and show cause why his license should not be suspended or revoked then they shall file with the circuit clerk of the county or city in which the premises are located a copy of the complaint on file with the supervisor of liquor control.

3. If, pursuant to the receipt of such complaint by the supervisor of liquor control, the licensee appears and shows cause why his license should not be suspended or revoked at a hearing held for that purpose by the supervisor and either the

complainants or the licensee consider themselves aggrieved with the order of the supervisor then, after a request in writing by either the complainants or the licensee, the supervisor shall certify to the circuit clerk of the county or city in which the licensed premises are located a copy of the original complaint filed with him, together with a copy of the transcript of the evidence adduced at the hearing held by him. Such certification by the supervisor shall not act as a supersedeas of any order made by him.

4. Upon receipt of such complaint, whether from the complainant directly or from the supervisor of liquor control, the court shall set a date for an early hearing thereon and it shall be the duty of the circuit clerk to cause to be delivered by registered United States mail to the prosecuting attorney of the county or to the circuit attorney of the city of St. Louis and to the licensee copies of the complaint and he shall, at the same time, give notice of the time and place of the hearing. Such notice shall be delivered to the prosecuting attorney or to the circuit attorney and to the licensee at least fifteen days prior to the date of the hearing.

5. The complaint shall be heard by the court without a jury and if there has been a prior hearing thereon by the supervisor of liquor control then the case shall be heard de novo and both the complainants and the licensee may produce new and additional evidence material to the issues.

6. If the court shall find upon the hearing that the offense or offenses charged in the complaint have been established by the evidence, the court shall order the suspension

or revocation of the license but, in so doing, shall take into consideration whatever order, if any, may have been made in the premises by the supervisor of liquor control. If the court finds that to revoke the license would be unduly severe, then the court may suspend the license for such period of time as the court deems proper.

7. The judgment of the court in no event shall be superseded or stayed during pendency of any appeal therefrom.

8. It shall be the duty of the prosecuting attorney or circuit attorney to prosecute diligently and without delay any such complaints coming to him by virtue of this section.

9. The jurisdiction herein conferred upon the circuit courts to hear and determine complaints for the suspension or revocation of licenses in the manner provided in this section shall not be exclusive and any authority conferred upon the supervisor of liquor control to revoke or suspend licenses shall remain in full force and effect, and the suspension or revocation of a license as provided in this section shall be in addition to and not in lieu of any other revocation or suspension provided by this chapter.

10. Costs accruing because of such hearings in the circuit court shall be taxed in the same manner as criminal costs.

311.720. 1. Conviction in any court of any violation of this chapter, or any felony violation of chapter 195, in the course of business, shall have the effect of automatically revoking the license of the person convicted, and such revocation shall continue operative until said case is finally disposed of, and if the defendant is finally acquitted, he may apply for and

receive a license hereunder, upon paying the regular license charge therefor, in the same manner as though he had never had a license hereunder; provided, however, that the provisions of this section shall not apply to violations of section 311.070, and violations of said section shall be punished only as therein provided.

2. Conviction in any court for illegal gambling activity involving an illegal gambling device as defined in section 572.010 shall result in the automatic and permanent revocation of a license issued under this chapter.

313.004. 1. There is hereby created the "Missouri Gaming Commission" consisting of five members appointed by the governor, with the advice and consent of the senate. Each member of the Missouri gaming commission shall be a resident of this state. No member shall have pled guilty to or shall have been convicted of a felony or gambling-related offense. Not more than three members shall be affiliated with the same political party. No member of the commission shall be an elected official. The overall membership of the commission shall reflect experience in law enforcement, civil and criminal investigation and financial principles.

2. The initial members of the commission shall be appointed within thirty days of April 29, 1993. Of the members first appointed, one shall be appointed for a one-year term, two shall be appointed for a two-year term and two shall be appointed for a three-year term. Thereafter, all members appointed shall serve for a three-year term. No person shall serve as a member more than six years. The governor shall designate one of the members

as the chair. The governor may remove any member of the commission from office for malfeasance or neglect of duty in office. The governor may also replace any member of the commission, with the advice and consent of the senate, when any responsibility concerning the state lottery, pari-mutuel wagering or any other form of gaming is placed under the jurisdiction of the commission.

3. The commission shall meet at least quarterly in accordance with its rules. In addition, special meetings may be called by the chair or any two members of the commission upon twenty-four-hour written notice to each member. No action of the commission shall be binding unless taken at a meeting at which at least three of the five members are present and shall vote in favor thereof.

4. The commission shall perform all duties and have all the powers and responsibilities conferred and imposed upon it relating to excursion gambling boats and, after June 30, 1994, the lawful operation of the game of bingo under this chapter. Within the commission, there shall be established a division of gambling and after June 30, 1994, the division of bingo. Subject to appropriations, the commission may hire an executive director and any employees as it may deem necessary to carry out the commission's duties. The commission shall have authority to require investigations of any employee or applicant for employment as deemed necessary and use such information or any other information in the determination of employment. The commission shall promulgate rules and regulations establishing a code of ethics for its employees which shall include, but not be

limited to, restrictions on which employees shall be prohibited from participating in or wagering on any game or gaming operation subject to the jurisdiction of the commission. The commission shall determine if any other employees of the commission or any licensee of the commission shall participate or wager in any operation under the jurisdiction of the commission.

5. On April 29, 1993, all the authority, powers, duties, functions, records, personnel, property, matters pending and all other pertinent vestiges of the state tourism commission relating to the regulation of excursion gambling boats and, after June 30, 1994, of the department of revenue relating to the regulation of the game of bingo shall be transferred to the Missouri gaming commission.

6. The commission shall be assigned to the department of public safety as a type III division, but the director of the department of public safety has no supervision, authority or control over the actions or decisions of the commission.

7. Members of the Missouri gaming commission shall receive as compensation, the amount of one hundred dollars for every day in which the commission holds a meeting, when such meeting is subject to the recording of minutes as provided in chapter 610, and shall be reimbursed for reasonable expenses incurred in the performance of their duties. The chair shall receive as additional compensation one hundred dollars for each month such person serves on the commission in that capacity.

8. No member or employee of the commission shall be appointed or continue to be a member or employee who is licensed by the commission as an excursion gambling boat operator or

supplier and no member or employee of the commission shall be appointed or continue to be a member or employee who is related to any person within the second degree of consanguinity or affinity who is licensed by the commission as an excursion gambling boat operator or supplier. The commission shall determine by rule and regulation appropriate restrictions on the relationship of members and employees of the commission to persons holding or applying for occupational licenses from the commission or to employees of any licensee of the commission. No peace officer, as defined by section 590.010, who is designated to have direct regulator authority related to excursion gambling boats shall be employed by any excursion gambling boat or supplier licensed by the commission while employed as a peace officer. No member or employee of the commission or any employee of the state attorney general's office or the state highway patrol who has direct authority over the regulation or investigation of any applicant or licensee of the commission or any peace officer of any city or county which has approved excursion boat gambling shall accept any gift or gratuity from an applicant or licensee while serving as a member or while under such employment. Any person knowingly in violation of the provisions of this subsection is guilty of a class A misdemeanor. Any such member, officer or employee who personally or whose prohibited relative knowingly violates the provisions of this subsection, in addition to the foregoing penalty, shall, upon conviction, immediately and thereupon forfeit his office or employment.

9. The commission may enter into agreements with the

Federal Bureau of Investigation, the Federal Internal Revenue Service, the state attorney general or any state, federal or local agency the commission deems necessary to carry out the duties of the commission, including investigations relating to and the enforcement of the provisions of chapter 572 relating to illegal gambling. No state agency shall count employees used in any agreements entered into with the commission against any personnel cap authorized by any statute. Any consideration paid by the commission for the purpose of entering into, or to carry out, any agreement shall be considered an administrative expense of the commission. When such agreements are entered into for responsibilities relating to excursion gambling boats, the commission shall require excursion gambling boat licensees to pay for such services under rules and regulations of the commission. The commission may provide by rules and regulations for the offset of any prize or winnings won by any person making a wager subject to the jurisdiction of the commission, when practical, when such person has an outstanding debt owed the state of Missouri.

10. No person who has served as a member or employee of the commission, as a member of the general assembly, as an elected or appointed official of the state or of any city or county of this state in which the licensing of excursion gambling boats has been approved in either the city or county or both or any employee of the state highway patrol designated by the superintendent of the highway patrol or any employee of the state attorney general's office designated by the state attorney general to have direct regulatory authority related to excursion gambling boats shall,

while in such office or during such employment and during the first two years after termination of his office or position, obtain direct ownership interest in or be employed by any excursion gambling boat licensed by the commission or which has applied for a license to the commission or enter into a contractual relationship related to direct gaming activity. A "direct ownership interest" shall be defined as any financial interest, equitable interest, beneficial interest, or ownership control held by the public official or employee, or such person's family member related within the second degree of consanguinity or affinity, in any excursion gambling boat operation or any parent or subsidiary company which owns or operates an excursion gambling boat or as a supplier to any excursion gambling boat which has applied for or been granted a license by the commission, provided that a direct ownership interest shall not include any equity interest purchased at fair market value or equity interest received as consideration for goods and services provided at fair market value of less than one percent of the total outstanding shares of stock of any publicly traded corporation or certificates of partnership of any limited partnership which is listed on a regulated stock exchange or automated quotation system. Any person who knowingly violates the provisions of this subsection is guilty of a class E felony. Any such member, officer or employee who personally and knowingly violates the provisions of this subsection, in addition to the foregoing penalty, shall, upon conviction, immediately and thereupon forfeit his office or employment. For purposes of this subsection, "appointed official" shall mean any official of this

state or of any city or county authorized under subsection 10 of section 313.812 appointed to a position which has discretionary powers over the operations of any licensee or applicant for licensure by the commission. This shall only apply if the appointed official has a direct ownership interest in an excursion gambling boat licensed by the commission or which has applied for a license to the commission to be docked within the jurisdiction of his or her appointment. No elected or appointed official, his or her spouse or dependent child shall, while in such office or within two years after termination of his or her office or position, be employed by an applicant for an excursion gambling boat license or an excursion gambling boat licensed by the commission. Any other person related to an elected or appointed official within the second degree of consanguinity or affinity employed by an applicant for an excursion gambling boat license or excursion gambling boat licensed by the commission shall disclose this relationship to the commission. Such disclosure shall be in writing and shall include who is employing such individual, that person's relationship to the elected or appointed official, and a job description for which the person is being employed. The commission may require additional information as it may determine necessary.

11. The commission may enter into contracts with any private entity the commission deems necessary to carry out the duties of the commission, other than criminal law enforcement, provision of legal counsel before the courts and other agencies of this state, and the enforcement of liquor laws. The commission may require provisions for special auditing

requirements, investigations and restrictions on the employees of any private entity with which a contract is entered into by the commission.

12. Notwithstanding the provisions of chapter 610 to the contrary, all criminal justice records shall be available to any agency or commission responsible for licensing or investigating applicants or licensees applying to any gaming commission of this state.

13. (1) The commission shall establish a telephone contact number, which shall be prominently displayed on the commission's website, to receive reports of suspected illegal gambling activities. Upon the receipt of such report, the commission shall initiate an investigation of such suspected illegal activity. The commission shall notify the subject of such investigation within thirty days of receiving a report under this subsection.

(2) (a) If the commission finds sufficient evidence of a violation punishable under chapter 572, the commission shall refer such violations to the prosecuting or circuit attorney.

(b) Upon the request of a prosecuting or circuit attorney, the attorney general shall aid a prosecuting or circuit attorney in prosecuting violations referred by the commission.

(3) Any person or establishment licensed under chapter 313 that is convicted of or pleads guilty to a violation punishable under chapter 572, and any affiliated company of such person or establishment, shall be permanently prohibited from being licensed to participate in any way in a program implementing video lottery gaming terminals should such a program be

implemented in this state.

313.255. 1. The director shall issue, suspend, revoke, and renew licenses for lottery game retailers pursuant to rules and regulations adopted by the commission. Such rules shall specify that at least ten percent of all licenses awarded to lottery game retailers in constitutional charter cities not within a county and constitutional charter cities with a population of at least four hundred fifty thousand not located wholly within a county of the first class with a charter form of government shall be awarded to minority-owned and -controlled business enterprises. Licensing rules and regulations shall include requirements relating to the financial responsibility of the licensee, the accessibility of the licensee's place of business or activity to the public, the sufficiency of existing licenses to serve the public interest, the volume of expected sales, the security and efficient operation of the lottery, and other matters necessary to protect the public interest and trust in the lottery and to further the sales of lottery tickets or shares. Lottery game retailers shall be selected without regard to political affiliation.

2. The commission may sell lottery tickets at its office and at special events.

3. The commission shall require every retailer to post a bond, a bonding fee or a letter of credit in such amount as may be required by the commission, and upon licensure shall prominently display his license, or a copy thereof, as provided in the rules and regulations of the commission.

4. All licenses for lottery game retailers shall specify

the place such sales shall take place.

5. A lottery game retailer license shall not be assignable or transferable.

6. A license shall be revoked upon a finding that the licensee:

(1) Has knowingly provided false or misleading information to the commission or its employees;

(2) Has been convicted of any felony; or

(3) Has endangered the security of the lottery.

7. A license may be suspended, revoked, or not renewed for any of the following causes:

(1) A change of business location;

(2) An insufficient sales volume;

(3) A delinquency in remitting money owed to the lottery;

or

(4) Any violation of any rule or regulation adopted pursuant to this section by the commission.

8. A lottery game retailer license shall be permanently revoked upon a finding that the licensee has been convicted of or pleaded guilty to illegal gambling activity involving an illegal gambling device punishable under chapter 572.

572.010. As used in this chapter the following terms mean:

(1) "Advance gambling activity", a person advances gambling activity if, acting other than as a player, he or she engages in conduct that materially aids any form of gambling activity. Conduct of this nature includes but is not limited to conduct directed toward the creation or establishment of the particular game, lottery, contest, scheme, device or activity involved,

toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement or communication of any of its financial or recording phases, or toward any other phase of its operation. A person advances gambling activity if, having substantial proprietary control or other authoritative control over premises being used with his or her knowledge for purposes of gambling activity, he or she permits that activity to occur or continue or makes no effort to prevent its occurrence or continuation. The supplying, servicing and operation of a licensed excursion gambling boat under sections 313.800 to 313.840 does not constitute advancing gambling activity;

(2) "Bookmaking", advancing gambling activity by unlawfully accepting bets from members of the public as a business, rather than in a casual or personal fashion, upon the outcomes of future contingent events;

(3) "Contest of chance", any contest, game, gaming scheme or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that the skill of the contestants may also be a factor therein;

(4) "Gambling", a person engages in gambling when he or she stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his or her control or influence, upon an agreement or understanding that he or she will receive something of value in the event of a certain outcome. Gambling does not include bona fide business

transactions valid under the law of contracts, including but not limited to contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including but not limited to contracts of indemnity or guaranty and life, health or accident insurance; nor does gambling include playing an amusement device that confers only an immediate right of replay not exchangeable for something of value. Gambling does not include any licensed activity, or persons participating in such games which are covered by sections 313.800 to 313.840;

(5) "Gambling device", any device, machine, paraphernalia or equipment that is used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons or gambling by a person with a machine, regardless of whether the machine or device or system or network of devices includes a preview of the outcome or whether the outcome is known, displayed, or capable of being known or displayed to the user. However, lottery tickets, policy slips and other items used in the playing phases of lottery and policy schemes are not gambling devices within this definition;

(6) "Gambling record", any article, instrument, record, receipt, ticket, certificate, token, slip or notation used or intended to be used in connection with unlawful gambling activity;

(7) "Lottery" or "policy", an unlawful gambling scheme in which for a consideration the participants are given an opportunity to win something of value, the award of which is determined by chance;

(8) "Player", a person who engages in any form of gambling solely as a contestant or bettor, without receiving or becoming entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of the particular gambling activity. A person who gambles at a social game of chance on equal terms with the other participants therein does not otherwise render material assistance to the establishment, conduct or operation thereof by performing, without fee or remuneration, acts directed toward the arrangement or facilitation of the game, such as inviting persons to play, permitting the use of premises therefor and supplying cards or other equipment used therein. A person who engages in "bookmaking" as defined in subdivision (2) of this section is not a player;

(9) "Professional player", a player who engages in gambling for a livelihood or who has derived at least twenty percent of his or her income in any one year within the past five years from acting solely as a player;

(10) "Profit from gambling activity", a person profits from gambling activity if, other than as a player, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of gambling activity;

(11) "Slot machine", a gambling device that as a result of the insertion of a coin or other object operates, either completely automatically or with the aid of some physical act by the player, in such a manner that, depending upon elements of

chance, it may eject something of value, regardless of whether the machine or device or system or network of devices includes a preview of the outcome or whether the outcome is known, displayed, or capable of being known or displayed to the user. A device so constructed or readily adaptable or convertible to such use is no less a slot machine because it is not in working order or because some mechanical act of manipulation or repair is required to accomplish its adaptation, conversion or workability. Nor is it any less a slot machine because apart from its use or adaptability as such it may also sell or deliver something of value on a basis other than chance;

(12) "Something of value", any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge;

(13) "Unlawful", not specifically authorized by law.

572.100. The general assembly by enacting this chapter intends to preempt any other regulation of the area covered by this chapter. No governmental subdivision or agency may enact or enforce a law that regulates or makes any conduct in the area covered by this chapter an offense, or the subject of a criminal or civil penalty or sanction of any kind, except for the revocation, suspension, or denial by the Missouri lottery commission, the Missouri gaming commission, or the division of alcohol and tobacco control of a license issued under chapters 311 or 313. The term "gambling", as used in this chapter, does

not include licensed activities under sections 313.800 to 313.840.

Section B. Because of the need to eliminate illegal gambling activity in this state, section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and section A of this act shall be in full force and effect upon its passage and approval.