

HOUSE BILL REPORT

ESSB 5558

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to regulating house-banked social card games.

Brief Description: Regulating house-banked social card games.

Sponsors: Senate Committee on Labor, Commerce, Research & Development (originally sponsored by Senators Prentice, Honeyford, Kohl-Welles, Delvin, Franklin, Pflug, Keiser, Marr, Fairley and Clements).

Brief History:

Committee Activity:

Commerce & Labor: 3/23/07, 3/29/07 [DPA].

Brief Summary of Engrossed Substitute Bill (As Amended by House Committee)

- Limits house-banked social card games to those in existence or with a completed application as of March 31, 2007.
- Allows local jurisdictions to ban card games, allow card games throughout the jurisdiction, or determine zones, as further defined, within which card games may be relocated.
- Allows relocation of card games to jurisdictions allowing card games.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended. Signed by 8 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Crouse, Green, Moeller and Williams.

Staff: Joan Elgee (786-7106).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Washington State Gambling Act (Act) grants the Gambling Commission (Commission) exclusive authority to license and regulate gambling activities. The Commission may issue licenses to conduct social card games, including house-banked card games (card games), as a commercial stimulant. The Commission may not deny a license to an otherwise qualified applicant in an effort to limit the number of licenses.

A local jurisdiction's authority is limited to absolutely prohibiting a gambling activity and imposing restrictions such as parking requirements that apply to other commercial activities.

An ordinance adopted in 2000 by the City of Edmonds banned certain new gambling facilities but allowed existing ones to continue to operate for five years. The ordinance was partially invalidated by the State Court of Appeals in June 2003. The court ruled that the "phasing-out" provision amounted to a regulation of gambling activity and was pre-empted by the Act.

In December 2004, the same division of the State Court of Appeals upheld a Pierce County ordinance adopted in 1999 that prohibited all house-banked card games after a specified date. The court also ruled that the ban was not an unconstitutional taking, and thus did not require compensation to the licensee.

The Commission identifies about 20 jurisdictions that have zoning ordinances, partial bans, or moratoria relating to card games. About 88 card rooms currently operate in the state.

Summary of Amended Bill:

The number of card game licenses issued by the Commission is limited. A person may be licensed only if: (1) as of March 31, 2007, the person was operating under a valid card game license or had submitted a completed application for a license; or (2) the person purchases a substantial interest in or substantially all of the assets of a card game and the application is for a license to continue card games at the location in the previous license.

If a local jurisdiction decides to take action with respect to card rooms, it may absolutely prohibit card games or adopt a relocation zoning ordinance. Until July 1, 2010, an absolute prohibition adopted by a city or town is subject to referendum. A relocation zoning ordinance may allow card games throughout the jurisdiction or may zone only part of the jurisdiction for card games. If a jurisdiction chooses the latter option, it must designate a zone or zones that are at least one-third of the land use zone or zones designated for eating and drinking establishments licensed by the Liquor Control Board. A jurisdiction may also prohibit relocation within 500 feet of churches, schools, residences, or public buildings. To adopt a relocation zoning ordinance, a jurisdiction must identify its policy regarding gambling in its comprehensive land use plan. A repeal of a prohibition or a land use zone may not take effect for three years after its adoption.

A card room may relocate to a jurisdiction that has a relocation zoning ordinance. A card room in a jurisdiction that adopts a one-third zone is not required to, but may, move into a zone.

Notwithstanding any prior legislative act, a local jurisdiction may not prohibit a card game unless the jurisdiction adopts an absolute ban or annexes territory with a card room. To prohibit a card room in annexed territory, the jurisdiction must prohibit card rooms in the annexed territory and this legislation may not take effect for 18 months after the legislative act. An action prohibiting card rooms in an annexed territory is not subject to referendum.

The Commission is absolutely immune from any legal action relating to a decision to issue or renew a license under the provisions, or that is based on the Commission's interpretation of the provisions or a local ordinance, resolution, or other legislative act.

Amended Bill Compared to Engrossed Substitute Bill:

The amendment changes the date for a card game applicant to be in operation or have submitted a completed application from March 1, 2007, to March 31, 2007. It also clarifies that the local jurisdiction actions to prohibit card games that are subject to referendum do not include actions to prohibit card games in annexed territory.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) We support this bill because it allows cities to continue to ban, gives cities limited zoning authority, and most important, lets the 17 cities with partial bans keep what they have and not allow any more card rooms. It is only a matter of time before these partial bans are challenged. The courts have been very clear that you can have card rooms or ban, but nothing in between. The bill protects existing card rooms regardless of the validity of the ordinance.

We've been working on this issue since 1999. The stakeholders met over the interim and have continued to work on this bill during the session. The threat is that a city will have to close everyone down if a new licensee comes in.

We all have pieces we are uncomfortable with. We would like to continue to work on this bill and to do so with the prime sponsor.

This bill gives cities and their citizens total control over card room issues and is the most fair way to continue Kenmore Lanes as it currently exists. In 1999, the city passed the first moratorium. In a 2004 advisory vote, the citizens voted to keep Kenmore Lanes even though there were rumors of another card room. In December 2005, the city felt they had no choice but to ban card rooms. Kenmore Lanes was supposed to close at the end of 2005. The card room is open now but only because of court order. The city council can choose to ban. In return we get the right to ask the citizens if they want the card room, the highest form of local control.

This bill allows Auburn to keep the one card room we have under a partial ban.

Shoreline's five card rooms contribute about 7 percent of our general fund. Shoreline has a moratorium that prohibits new card rooms. We were surprised at the City of Edmonds case that said the owner of a card room did not have an investment expectation and we have been concerned about a challenge to a nonconforming use. Shoreline is comfortable that the bill achieves the result we want with respect to nonconforming uses.

(With concerns) Kirkland plans to annex an area with a card room in Kingsgate. Arguably, it would be subject to referendum. Ideally, we don't want the 18-month moratorium, but if the moratorium needs to remain, we don't want a referendum vote on an annexation. We are concerned with how divisive and costly a referendum vote could be and are not sure how the process would work in an annexation situation -- who votes and who pays. It was not intended for the referendum to apply to an annexation and we would like the bill amended to make this clear.

(Neutral with concerns) The Commission took a position against prior bills. The immunity and 601 exemption concerns we had with this year's bills have been addressed in this bill and in budget proposals. There are some policy considerations. The value of a license may increase because the bill will limit the number available. Also, current law is clear and has been confirmed by court decision; if the law is changed, this usually means there will be more litigation. Finally, and this is delicate, the bill changes the foundation of what cities and counties can do with respect to gambling. The Act was passed because of local government scandal and this is why the Commission can't limit the number of card rooms and why local jurisdictions can't zone and pick and choose.

(Opposed) The Legislature is about to impose a great injustice on Kenmore by voiding Kenmore's ordinance. The Legislature has given citizens the right to prohibit gambling and Kenmore has followed the rules and done so. Don't take away a city's ability to govern itself. Kenmore was sued over a moratorium in 2003. We had no choice in 2005, but to ban all because of another potential card room coming in. Kenmore already had a referendum. This is a very divisive issue. This bill repeals all the current bans. Kenmore is the only city affected by sections 2 and 3 because we banned card rooms, but we have an operating card room only because of court order. These sections are designed solely to make it hard for Kenmore to ban card rooms and make Kenmore vote three times to ban gambling. It is not fair to tell people, after a bitter election, that results would be thrown out.

The card room made the advisory vote about the bowling alley, not the card room. The card room spent \$80,000 on the vote. The slot machine initiative and recent city council election more accurately reflect the views of Kenmore citizens.

Renton is the only other city on Lake Washington with lower property values and it allows gambling. We want to attract quality, family-friendly businesses and high wage jobs and want to be able to shape our own future and not have a future of gambling up and down Highway 522. Card rooms do not fit in our vision for the city and we don't want a predatory card room. High school students can gamble and become addicted.

A retroactive licensing moratorium is unfair when people have already invested in a facility but have not applied for a license. We have a new casino tenant that is working with the Commission to get a license. If they can't get a license, my father would have no choice but bankruptcy. Our future livelihood depends on your vote against this bill. We won't increase the number of casinos because the space was previously a casino. We would provide jobs and the state would collect taxes. March 1 is too sudden and makes it unfair; consider implementing this bill a few months later or even next year. Delay the date to March 31 or later.

Persons Testifying: (In support) Jim Justin, Association of Washington Cities; Dolores Chiechi, Recreational Gaming Association; Joann Evans, Kenmore Lanes; Carolyn Robertson, City of Auburn; and Ian Sievers, City of Shoreline.

(With concerns) Bill Evans, City of Kirkland.

(Neutral with concerns) Amy Hunter, Washington State Gambling Commission.

(Opposed) David Baker, City of Kenmore; Doug Nugent; Kent Sturgis; Cham Joe Ro and Young C. Joe; Bill Ralph; Ruth and William Roetcisoender.

Persons Signed In To Testify But Not Testifying: Doug Levy.