

I recommend the passage of SB 282 with the following amendments:

Amendment No. 1 Page 1. Add "Sec. 2. It is the intention of the legislature that this bill shall in no way be considered an attempt or intent to liberalize or to exempt the state from the limitations imposed by 15 U.S.C. Secs. 1171 - 1178."

Amendment No. 2 Page 1. Add "Sec. 3. This Act shall not remain in existence beyond June 30, 1971."

SB 282 amended as proposed above, would set out a limitation and a closing date in order to allow this type of pinball machine to phase out, and would also express the intention of the legislature not to exempt the state from the limitations imposed by 15 U.S.C. Secs. 1171 - 1178.

The majority committee report sets out the arguments for ~~and~~ against SB 282, and correctly states the position of the proponents of SB 282. There are, however, comments I feel should be made in support of proponent's position.

Our state statute prohibiting gambling, AS 11.60.140, is exactly the same as the Oregon statute prohibiting gambling, which is not surprising since Alaska took this statute from Oregon many years ago. Under the McKee case mentioned in the majority committee report, the Supreme Court of Oregon determined that free plays are not a thing of value. This is directly contrary to the finding of our Supreme Court. If these two courts differ, there must be a decided split in the determination as to whether or not free plays are a thing of value.

In U. S. v. 2 Coin-operated Pinball Machines, also cited in the majority committee report, the court determined that although pinball machines giving free plays are authorized by Kentucky state statute, they ~~may~~ not be exempted from the provisions of the federal law making it illegal to ship

them into a state. This would be similar to our position in SB 282 passed. It should be noted that the position of the opponents of the SB 282 that it ^{will} allow shipment of pinball machines into the state is not supported by case law.

Although the suggested amendment makes the question moot as to whether SB 282 exempts the state from 15 U.S.C. Secs. 1171 - 1178, the United States Attorney for Alaska received a letter from William G. Hunley, Chief of the Organized Crime and Racketeering Section of the Department of Justice in which Mr. Hunley sets out specifically that he does not feel that the enactment of SB 282 would authorize the importation of class 2 devices or replacement parts into the state through interstate or foreign commerce.

It is therefore clear that SB 282 does not legalize gambling nor does it allow new pinball machines or parts for the existing machines to come into Alaska. It merely allows pinball machines now in Alaska, which are less than 300, to be put back into a free play status, the same as they have been for years before the 1965 decision of the Alaska Supreme Court.

Emotionalism should play no part in the determination as to whether SB 282 should be passed. However, I feel that it is proper for the legislature to consider the economic effect of the supreme court decision on people who were for years in what was a legal business by law and who were suddenly caused to lose not only anticipated income but property rights and interests to their great financial detriment. I refer not only to the distributors and operators but also to the loss to be encountered by the ^(Sawyer) locations, the maintenance people, the warehousemen who handle the storage and moving of these machines and all other individuals who have annual

earnings incidental to the operation of pinball machines.
None of these people are part of a criminal syndicate.
They are Alaskans, many of whom have been here for 20 years
or more. They do not ask that the legislature legalize
gambling. They simply want the right to use the few pinball
machines now in Alaska with free plays until these machines
are worn out but not later than June 30, 1971. This is
very little to ask of the legislature. It should be granted
to them by the passage of SB 282.

I recommend the passage of SB 282 with the following amendments:

Amendment No. 1 Page 1. Add "Sec. 2. It is the intention of the legislature that this bill shall in no way be considered an attempt or intent to liberalize or to exempt the state from the limitations imposed by 15 U.S.C. Secs. 1171 - 1178."

Amendment No. 2 Page 1. Add "Sec. 3. This Act shall not remain in existence beyond June 30, 1971."

SB 282 amended as proposed above, would set out a limitation and a closing date in order to allow this type of pinball machine to phase out, and would also express the intention of the legislature not to exempt the state from the limitations imposed by 15 U.S.C. Secs. 1171 - 1178.

The majority committee report sets out the arguments for and against SB 282 and correctly states the position of the proponents of SB 282. There are, however, comments I feel should be made in support of ^{the bill.} ~~proponent's position.~~

Our state statute prohibiting gambling, AS 11.60.140, is exactly the same as the Oregon statute prohibiting gambling, which is not surprising since Alaska took this statute from Oregon many years ago. Under the McKee case mentioned in the majority committee report, the Supreme Court of Oregon determined that free plays are not a thing of value. This is directly contrary to the finding of our Supreme Court. If these two courts differ, there must be a decided split in the determination as to whether or not free plays are a thing of value.

In U. S. v. 2 Coin-operated Pinball Machines, also cited in the majority committee report, the court determined that although pinball machines giving free plays are authorized by Kentucky state statute, they ^{are not} ~~may not~~ be exempted from the provisions of the federal law making it illegal to ship

them into a state. This would be similar to ~~our~~ position if SB 282 passed. It should be noted that the position of the opponents of the SB 282 that it will allow shipment of pinball machines into the state is not supported by case law.

Although the suggested amendment makes the question moot as to whether SB 282 exempts the state from 15 U.S.C. Secs. 1171 - 1178, the United States Attorney for Alaska received a letter from William G. Hunley, Chief of the Organized Crime and Racketeering Section of the Department of Justice in which Mr. Hunley ^{advised} sets out specifically that he does not feel that the enactment of SB 282 would authorize the importation of class 2 devices or replacement parts into the state through interstate or foreign commerce.

It is therefore clear that SB 282 does not legalize gambling nor does it allow new pinball machines or parts for the existing machines to come into Alaska. It merely allows pinball machines now in Alaska, which are ^{approximately} ~~less than~~ 300, to be put back into a free play status, the same as they have been for years before the 1965 decision of the Alaska Supreme Court.

Emotionalism should play no part in the determination as to whether SB 282 should be passed. However, I feel that it is proper for the legislature to consider the economic effect of the supreme court decision on people who were for years in what was a legal business by law and who were suddenly caused to lose not only anticipated income but property rights and interests to their great financial detriment. I refer not only to the distributors and operators but also to the loss to be encountered by the ^{business} locations, the maintenance people, the warehousemen who handle the storage and moving of these machines and all other individuals who have annual

earnings incidental to the operation of pinball machines. None of these people are part of a criminal syndicate. They are Alaskans, many of whom have been here for 20 years or more. They do not ask that the legislature legalize gambling. They simply want the right to use the few pinball machines now in Alaska with free plays until these machines are worn out but not later than June 30, 1971. This is very little to ask of the legislature. It should be granted to them by the passage of SB 282.

MAY 17

For many years, Alaska has had a law which would allow the state to seize and destroy gambling implements (AS 11.45.040), and a law taxing coin-operated devices (AS 43.35). The taxation law contains a section stating that it shall not be construed in any way to legalize gambling or the possession of any gambling device. Pinball machines have long been used and Alaska taxes paid on them under AS 43.35, which is the law amended by SB 282. AS 43.35.090(2) describes what constitutes a pinball or coin-operated device for the purposes of taxation. It states that a pinball machine, among other things, is one which awards free plays. SB 282 adds the language "but free plays shall not be construed as a thing of value".

~~Requested for this amendment arises because~~ the Alaska Supreme Court decided in State v. Pinball Machines, Sup. Ct. Op. No. 298, August 19, 1965, that pinball machines are gambling implements which are subject to seizure and destruction under the law. According to the court, the essential elements of gambling are (1) price, (2) change and (3) prize, and whenever some tangible thing is "used or mainly designed or suited for gambling" it is a gambling implement. The court concluded that free plays were a "prize" and said, "It is not the essence of gambling that the element of prize have a monetary value. If that which one seeks to attain, regardless of whether it has value in money, may be attained by chance after the payment of a price, then one is gambling." Under this case, pinball machines are gambling implements if the three essential elements are present.

The proponents of this bill feel that the ~~statement in the bill that free plays shall not be construed as a thing of value~~ will indicate ^{leave in} the legislative intent that pinball machines are not gambling implements ^{by eliminating the} since they do not give a "prize" which is one of the three essential elements of gambling.

This may or may not be so. As already stated, AS 43.35 taxes coin-operated devices and contains a section stating that it does not legalize gambling. It is established law in the United States that you ^{MAY} ~~can~~ tax things which are illegal. The law ^{reference and prohibition of} ~~on what is gambling and prohibiting it~~ is found in Title 11, Criminal Law. Therefore, SB 282 by amending AS 43.35 instead of Title 11 creates further litigation to determine whether the amendment of the taxation law changes the effect of the supreme court case which was decided on the sections found in the criminal law.

If ^{our} ~~the~~ court should find that ~~the~~ enactment of SB 282 means that pinball machines are legal in Alaska because they do not give a prize since free plays have no value, then this raises the question as to whether new pinball machines or parts for existing ones can be brought into the state. In October, 1962, the federal law in Title 15, of the United States Code, Secs. 1171 - 1178 was amended so that transportation of gambling devices or parts for them in interstate commerce is not legal. Since that time, no new machines or parts have entered Alaska.

However, under sec. 1172 of Title 15 USC, the transportation of gambling devices into a state is possible if the state has enacted a law (1) providing for the exemption of the state from the provisions of the Sec. 1172 or (2) in which the gambling device is specifically enumerated as lawful in a statute of the state. The question arises as to whether SB 282 would exempt Alaska from this federal law and allow the importation of pinball machines or their parts *into the state.*

The proponents of this bill state that the bill does not allow pinball machines or their parts to be brought into the state. Their position is as follows: McKee v. Foster, 347 P2d 585, decided by the Supreme Court of Oregon in December 1959, states that free play pinball machines are not gambling devices, and are not outlawed by any state law.

supreme court, and SB 282 would put Alaska in the same position as Oregon. Since Oregon is not exempted from the federal law previously discussed and therefore cannot import pinball machines, Alaska would not be exempted.

Another case cited in support of proponent^s position is United States v. Two Coin-Operated Pinball Machines, 241 F. Supp. 57 (United States District Court, 1965).^{In that case} it was held that pinball machines are not specifically enumerated as lawful devices in Sec. 436.230 (5) Kentucky Revised Statutes and therefore are not exempted from the application of 15 U.S.C. Secs. 1171 - 1178, Title 15 USC. The Kentucky statute, Sec. 436.230 (5) describes a pinball machine which gives free plays and says that "playing such device, shall not be considered as gambling, and subsection (1) of this section shall not apply to any person keeping, managing, operating, conducting, or owning such device which only gives a free game or games for the skill of the player playing such machine or device." Subsection (1) makes it illegal for a person to operate, conduct, etc. enumerated types of gambling.

The proponents of SB 282 point to the Nevada law as the only one which exempts a state from the provisions of 15 U.S.C. Sec. 1171 - 1178, Sec. 463.410 of the Nevada Statutes is entitled "Declaration of state's exemption from operation of provisions of 15 U.S.C. Sec. 1172"; and Sec. 463.420 is entitled "Legal shipments of gambling devices, slot machines into State of Nevada".

The opponents of SB 262 state that if it is enacted, it ^{may} ~~will~~ exempt Alaska from the federal law, and pinball machines and parts can be brought into Alaska. In a memorandum to Mr. Guess dated March 16, 1966,^{ANC 111} General Colver stated "If the courts were to take the view that SB 282 did in effect legalize the kind of pinball machine described in AS 43.35.090 (2),

federal law" ... because the federal law says "it shall not be unlawful to transport in interstate ... commerce any gambling device into any state in which the transported gambling device is specifically enumerated as lawful in a statute of that state."

The opponents of the bill feel that this bill opens the state to a form of gambling which will continue until prohibition by some future legislature. The proponents state that the bill will allow those people who have large investments in pinball machines to operate these machines with the hope that they will pay for themselves before they are worn out. The life of these machines has been stated to be about five years.

The Department of Revenue taxation records shows that taxes were paid on 614 machines in 1962, 462 in 1963, 327 in 1964 and 311 in 1965. The proponents of SB 282 state that this bill affects less than 300 machines and that some machines are being used as parts for other machines and that within five years all the machines will be worn out. The opponents of the bill feel this statement is unimportant since new machines and parts can be imported if the bill passes.

This report does not attempt to go into the pros and cons of gambling but only to recognize the legal and factual arguments for and against SB 282.

For many years, Alaska has had a law which would allow the state to seize and destroy gambling implements (AS 11.45.040), and a law taxing coin-operated devices (AS 43.35). The taxation law contains a section stating that it shall not be construed in any way to legalize gambling or the possession of any gambling device. Pinball machines have long been used and Alaska taxes paid on them under AS 43.35, which is the law amended by SB 282. AS 43.35.090(2) describes what constitutes a pinball or coin-operated device for the purposes of taxation. It states that a pinball machine, among other things, is one which awards free plays. SB 282 adds the language "but free plays shall not be construed as a thing of value".

~~The need for this amendment arises because~~ the Alaska Supreme Court decided in State v. Pinball Machines, Sup. Ct. Op. No. 298, August 19, 1965, that pinball machines are gambling implements which are subject to seizure and destruction under the law. According to the court, the essential elements of gambling are (1) price, (2) change and (3) prize, and whenever some tangible thing is "used or mainly designed or suited for gambling" it is a gambling implement. The court concluded that free plays were a "prize" and said, "It is not the essence of gambling that the element of prize have a monetary value. If that which one seeks to attain, regardless of whether it has value in money, may be attained by chance after the payment of a price, then one is gambling." Under this case, pinball machines are gambling implements if the three essential elements are present.

The proponents of this bill feel that the ~~statement in the bill~~ that free plays shall not be construed as a thing of value will indicate the legislative intent that pinball machines are not gambling implements since they do not give a "prize" which is one of the three essential elements of gambling.

taxes coin-operated devices and contains a section stating that it does not legalize gambling. It is established law in the United States that you can tax things which are illegal. The law on what is gambling and prohibiting it is found in Title 11, Criminal Law. Therefore, SB 282 by amending AS 43.35 instead of Title 11 creates further litigation to determine whether the amendment of the taxation law changes the effect of the supreme court case which was decided on the sections found in the criminal law.

If the court should find that the enactment of SB 282 means that pinball machines are legal in Alaska because they do not give a prize since free plays have no value, then this raises the question as to whether new pinball machines or parts for existing ones can be brought into the state. In October, 1962, the Federal law in Title 15, of the United States Code, Secs. 1171 - 1178 was amended so that transportation of gambling devices or parts for them in interstate commerce is not legal. Since that time, no new machines or parts have entered Alaska.

However, under sec. 1172 of Title 15 USC, the transportation of gambling devices into a state is possible if the state has enacted a law (1) providing for the exemption of the state from the provisions of the Sec. 1172 or (2) in which the gambling device is specifically enumerated as lawful in a statute of the state. The question arises as to whether SB 282 would exempt Alaska from this federal law and allow the importation of pinball machines or their parts.

The proponents of this bill state that the bill does not allow pinball machines or their parts to be brought into the state. Their position is as follows: McKee v. Foster, 347 P2d 585, decided by the Supreme Court of Oregon in December 1959, states that free play pinball machines are not gambling devices, and are not outlawed by any state law.

supreme court, and SB 282 would put Alaska in the same position as Oregon. Since Oregon is not exempted from the federal law previously discussed and therefore cannot import pinball machines, Alaska would not be exempted.

Another case cited in support of proponent's position is United States v. Two Coin-Operated Pinball Machines, 241 F. Supp. 57 (United States District Court, 1965). In that case it was held that pinball machines are not specifically enumerated as lawful devices in Sec. 436.230 (5) Kentucky Revised Statutes and therefore are not exempted from the application of 15 U.S.C. Secs. 1171 - 1178, Title 15 USC. The Kentucky statute, Sec. 436.230 (5) describes a pinball machine which gives free plays and says that "playing such device, shall not be considered as gambling, and subsection (1) of this section shall not apply to any person keeping, managing, operating, conducting, or owning such device which only gives a free game or games for the skill of the player playing such machine or device." Subsection (1) makes it illegal for a person to operate, conduct, etc. enumerated types of gambling.

The proponents of SB 282 point to the Nevada law as the only one which exempts a state from the provisions of 15 U.S.C. Sec. 1171 - 1178, Sec. 463.410 of the Nevada Statutes is entitled "Declaration of state's exemption from operation of provisions of 15 U.S.C. Sec. 1172", and Sec. 463.420 is entitled "Legal shipments of gambling devices, slot machines into State of Nevada".

The opponents of SB 262 state that if it is enacted, it ~~will~~ ^{may} exempt Alaska from the federal law, and pinball machines and parts can be brought into Alaska. In a memorandum to Mr. Guess dated March 16, 1966, ^{attorney} General Colver stated "If the courts were to take the view that SB 282 did in effect legalize the kind of pinball machine described in AS 43.35.090 (2),

federal law" ... because the federal law says "it shall not be unlawful to transport in interstate ... commerce any gambling device into any state in which the transported gambling device is specifically enumerated as lawful in a statute of that state."

The opponents of the bill feel that this bill opens the state to a form of gambling which will continue until prohibition by some future legislature. The proponents state that the bill will allow those people who have large investments in pinball machines to operate these machines with the hope that they will pay for themselves before they are worn out. The life of these machines has been stated to be about five years.

The Department of Revenue taxation records shows that taxes were paid on 614 machines in 1962, 462 in 1963, 327 in 1964 and 311 in 1965. The proponents of SB 282 state that this bill affects less than 300 machines and that some machines are being used as parts for other machines and that within five years all the machines will be worn out. The opponents of the bill feel this statement is unimportant since new machines and parts can be imported if the bill passes.

This report does not attempt to go into the pros and cons of gambling but only to recognize the legal and factual arguments for and against SB 282.