

# *Boise Weekly*

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## Betting Against the House: Has the Idaho Legislature Sanctioned State-Owned Slots?

"Look, the Idaho Lottery is established and protected by the Constitution. We're not out to stop the lottery. But we're trying to get those unconstitutional Touch Tab Machines out of the lottery. This is state-sponsored gambling on a slot machine."

By [George Prentice @georgepren](#)

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Idaho Statute 18-3810

"It shall be a misdemeanor for any person to use, possess, operate, keep, sell, or maintain for use or operation or otherwise, anywhere within the state of Idaho, any slot machine of any sort or kind whatsoever."



The Idaho Lottery Commission says this is not a slot machine, but some anti-gambling activists beg to differ.

George Prentice

Jonathan Krutz shook his head as he looked at a group of patrons at the McCleary's Pub on Orchard Avenue. The customers weren't foul-mouthed or falling-down-drunk. They weren't even sitting at the bar. They were hunched over on stools in a far corner of the bar, transfixed by a row of bright, blinking machines.

"Now, you tell me: Are those or aren't those slot machines?" asked Krutz, who teaches business communications at Boise State University and managerial communication in Boise State's Professional MBA program and serves on the board of directors for the anti-predatory gambling group Gambling With the Good Life.

The machines are Idaho Lottery Touch Tabs games, and the people sitting in front of them were playing furiously—each transaction took less than two seconds. A woman in her 20s conceded she plays three to four times a week.

"I once made as much as \$500," she said, after asking to remain anonymous.

When asked how much she had lost in a single sitting, her smile evaporated.

"About \$500," she said.

The Idaho Lottery game the McCleary's patrons were playing was simple: Feed cash into a machine and swipe a finger across the screen—no worries, an ATM was an arm's length away. Then, with no skill or decision making required, the screen indicated a loss or a win. Players won free games (occurs often) or cash (occurs much less frequently), which they redeemed by taking a receipt from the machine to the bartender.

For the record, the Idaho Lottery Commission has limited the machines—of which there are approximately 300 across the state—to establishments that require patrons to be 21 or older.

"I can appreciate that they want to keep these machines from underage gamblers, but it's curious to me that they're putting them where alcohol is served. That's definitely not a plus," said Krutz.

By any account, the Idaho Lottery is formidable. At the conclusion of Fiscal Year 2015, the lottery funneled \$45 million into public education, the permanent building fund and the Department of Education Bond Levy Equalization Fund. Since 1989, those dividends have totaled more than \$730 million.

"The lottery is certainly being promoted as economic development, but it's the exact opposite," said Krutz. "It's economic cannibalization and bad for our citizens."

Krutz spends his days examining the economy. Since 2011, he has taught business economics at the undergraduate and graduate levels in the Boise State College of Business and Economics. On March 8, Krutz stood before the Idaho House State Affairs Committee and urged lawmakers to take a serious look at the Instant Touch Tab machines, pointing to Title 18, Chapter 38 of Idaho Statute, which outlaws gambling. That includes slot machines.

"Now that the historic horse racing machines are gone, these Lottery Touch Tab machines are the second-most predatory form of gambling in the state, second only to the slot machines that you see in Native American casinos," said Krutz. "And here's the kicker: They're owned and operated by the state."

Jeff Anderson couldn't disagree more. Anderson has been director of the Idaho Lottery since 2007, and he said the machines have not only been fully vetted, but they've been given the green light by the Idaho attorney general's office.

"They are not electronic simulations of casino slot machines, and we had an opinion from the attorney general's office indicating the same," Anderson said. "The Lottery Commission examined that opinion, recommended a pilot project in 2011, notified leadership from both sides of the aisle of the Idaho Legislature and tried out about a dozen machines for approximately 120 days. ... There was adequate interest to roll them out to more locations."

Anderson even invited lawmakers to check out the machines, which isn't the first time they have been asked to look at automated games of chance. In 2013, the Legislature agreed so-called "historical horse machine" machines could be installed in or near live horse racing operations across Idaho. In a well-publicized turnabout, legislators rescinded the law when they recognized they had approved of machines that were unconstitutional.

"Now we have these Lottery Touch Tab machines where you sit down and slide your finger across the screen every few seconds to gamble," said Krutz. "Those historic horse racing machines weren't horse racing and these Lottery Touch Tab machines are certainly not a lottery. They're slot machines."

Anderson said the two issues are apples and oranges.

"For one, we have no authority over an historical horse racing machine," said Anderson. "And as much as someone would like to call an electronic Touch Tab a slot machine, it's not. There are no spinning wheels, no cherries, no max-bets or anything like that. They're quite different."

Krutz said he had no real beef with the Idaho Lottery Commission.

"Look, that commission is charged with one thing: maximizing revenue, not necessarily protecting Idaho. So, I don't fault them at all," said Krutz. "But to be clear, it is definitely the Legislature's job to uphold the Constitution of the state of Idaho."

When Krutz took the issue to the State Affairs Committee, a few lawmakers pushed back against his proposed measure, and particularly to its multiple references to the Idaho Constitution.

"Mr. Krutz, I need to ask why you continue to reference the Constitution," said State Affairs Committee Vice Chair Rep. Gayle Batt (R-Wilder). "I would think any law that the Legislature would pass would need to pass muster with the Constitution."

Krutz reminded Batt of her committee's 180-degree reversal on the constitutionality of the historic horse racing machines.

"I would point you back to your debate over the historic horse racing devices," said Krutz. "Yes, it's possible that laws are passed that the Legislature thinks are constitutional but [it] later needs to revisit the same issue when more information is revealed. In this case, it's a state agency that has, in my opinion, gone far beyond what they're allowed to do. So, that's why we're so deliberate. There is a very distinct line in the Idaho Constitution that should not be crossed and that line is a slot machine. The Constitution says we can't have them."

Rep. James Holtzclaw (R-Meridian) also pushed back, saying, "Obviously, most of us know what the Constitution says. Unfortunately, there are inconsistencies throughout the state of Idaho when it comes to the Constitution."

Krutz later said he was stunned by Holtzclaw's remarks.

"I don't know how a citizen is supposed to respond to that. The Constitution is the cornerstone of who we are as a people," said Krutz. "If a representative feels that way, I'm deeply concerned."

Grant Ipsen was seated in the House hearing room during the March 8 exchange. He said he has a vested interest in the issue. From 1992 to 2002, Ipsen sat on the other side of the microphone as state senator representing Boise's Legislative District 17.

Ipsen debated against any level of gambling in Idaho through much of his political life and, today, he serves on the board of the Idaho chapter of Stop Predatory Gambling, a national nonprofit that says gambling—and particularly lotteries—continue to push more Americans into poverty.

"I'm not a spring chicken, but I vividly recall growing up in Malad, down in Oneida County and we had a wonderful neighbor who unfortunately lost his farm by putting all of his money into the slots,"

Ipsen said. "Today, Malad is overrun by tens of thousands of people streaming in from Utah to play the Idaho Lottery. So many people were coming into this tiny area of Malad that Oneida County had to bring in porta-potties because people were peeing in the streets."

In 1992, Ipsen said he led the push to put specific language in Idaho statute to outlaw slot machines or any imitations thereof.

"Look, the Idaho Lottery is established and protected by the Constitution. We're not out to stop the lottery. But we're trying to get those unconstitutional Touch Tab Machines out of the lottery," said Ipsen. "This is state-sponsored gambling on a slot machine."

Meanwhile, Anderson said he welcomes any and all dialogue regarding the Touch Tab Machines.

"We have nothing to hide. We have a strong interest, a reputation and a track record of being totally transparent and following the law, and that's what we've been doing with these Touch Tab devices," he said. "It's a little troubling at times to have to sit and listen to people mischaracterize what we're doing and saying that we snuck these machines out in the cover of darkness, which is absolutely not true. We believe we've been operating within the law and we have an opinion from the attorney general's office that says as much. And folks enjoy them."

That said, at least a few members of the House State Affairs Committee thought the issue warranted a good, long look—maybe even a public hearing.

"I think we need a hearing on this. The Legislature needs to be consistent on this, and I definitely have some questions," said Rep. Ken Andrus (R-Lava Hot Springs).

Fellow Republican Rep. Vito Barbieri (R-Dalton Gardens) agreed the issue "probably required some discussion." But Barbieri's argument against having a hearing was that it was "so late in the session." Ultimately he voted against the effort to hold a public hearing on the Touch Tab Machine issue.

The vote was extremely close: 9–8 to kill the issue for the year. One of those voting against a public hearing was Rep. Paulette Jordan (D-Plummer), who reminded her colleagues that she is a member of the Coeur d'Alene Tribe, which boasts 100,000 square feet of gambling at its northern Idaho casino. She is also secretary of the executive board for the National Indian Gaming Association.

"I hate the fact that we couldn't even hold a public hearing this year. But the people who have some real questions about these Touch Tab Machines have no real power or revenue stream behind them," said Krutz. "I promise you that the people who want gambling have quite a bit of money to spend fighting for slot machines. In that sense, it's an unfair playing field. But I'm not intimidated by any of this."

Meanwhile Ipsen, who saw more than a few proposed pieces of legislation die on the vine during his time at the Statehouse, is patient.

"Sure, I was disappointed, especially considering the fact that this was the same committee that had to reverse itself just last year on those historical horse racing machines," he said.

Not that either are betting men, but it's a pretty sure thing Ipsen and Krutz will be in front of lawmakers this next year, asking for a reconsideration on the Touch Tab machines.

"We'll be back," he said. "It's too important. After all, we're talking about the Constitution."