

Testimony to the  
Senate Committee on Federal and State Affairs  
in Opposition to Senate Bill No. 322  
Chris Reedy, General Counsel for BCHMC, LLC  
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Chair Thompson, Vice Chair Kloos, Ranking Member Faust-Goudeau and Members of the Federal and State Affairs Committee. thank you for allowing my testimony.

BHCMC, LLC is the manager of the Boot Hill Casino and Resort located in Dodge City, Kansas (Boot Hill). Boot Hill opposes Senate Bill No. 322 because it creates significant risks, including loss of revenue to the State, promotes expanded State-wide “off reservation” gambling in Kansas by the Indian tribes, and causes the unraveling of the fair and equal playing field that the Legislature and tribes agreed to in Senate Bill No. 84, the approved sports wagering bill last year.

**Indian Tribes are Not Entitled to More than the Level Playing Field that Tribes Agreed to in Senate Bill No. 84**

The Indian Tribes (Tribes) may currently offer interactive sports wagering Statewide under Senate Bill No. 84 enacted last year. The legislature intentionally created a “level playing field” under the Kansas Expanded Lottery Act (KELA) for Tribes to manage sports wagering through the internet or mobile applications on the same terms as all others providing the service. Without the need for any legislative action, the Tribes may also agree, by compact, to provide sports wagering at their casinos and online on their Indian lands.

Just one year ago, the Kansas Legislature authorized the Tribes to contract with the Kansas Lottery to provide sports wagering beyond the Indian lands (K.S.A.74-8794) on the same terms and conditions that the four casino managers are allowed. Legislation should not be enacted to unlevel the playing field for the benefit of the Tribes and the detriment of the State, Kansans, and Kansas businesses.

If enacted, Senate Bill No. 322 would be a significant modification that could result in new sports wagering in Kansas without bringing revenue to the State. Under KELA, the State receives a 10% tax. Compact provisions eliminate taxability, and even if a compact contains a tax, the federal government can disapprove the compact – the Tribes could have a revised compact with no tax revenue benefiting the State. This results in a loss of revenue to the State and a loss of revenue to lottery gaming facility managers that have invested millions of dollars developing sports wagering in Kansas with only a short five-year contract term to recover their investments.

The harm of Senate Bill No. 322 is at least twofold:

The Indian Gaming Regulatory Act (IGRA) was enacted by the United States Congress on October 17, 1988, to regulate the conduct of gaming on Indian Lands. IGRA establishes the National Indian Gaming Commission and the regulatory structure for Indian gaming in the United States. IGRA Prohibits State Taxing of Indian Gaming Revenue.

A financial consequence of Senate Bill No. 322 is that all sports wagers placed with an Indian Tribe would generate a loss of revenue to the State. Under IGRA, a State may only receive reimbursement for the cost of regulation and services.

The lottery gaming facility managers and interactive platforms made millions of dollars of investments based on Senate Bill No. 84 with the expectation that the law would not change during the short 5-year contract term required by the Kansas Lottery.

Senate Bill No. 322 would allow for significant change by allowing Indian sports wagering to have less regulation and no State sports wagering tax, which would impair competition and the reasonably expected return of the managers under their contracts with the State.

It is manifestly unfair to change the law now in order to create unfair competition for those who made large investments in sports wagering in reliance on the current law, especially within the first year of the five-year contract with the State.

### **IGRA Does Not Require Compacting for Off Reservation/Indian Land Gaming**

The idea that the State must reach an agreement with Tribes for "off-reservation" gambling under the threat of "good faith negotiations" is misguided. Beyond "Indian lands", the Indian Gaming Regulatory Act (IGRA) has no application to gaming. The state has NO obligation to negotiate, in good faith or otherwise, for gaming outside of the Tribes' Indian lands. This is a federal statute that has been upheld by courts. The federal government cannot legally mandate provisions allowing Tribes to gamble beyond their tribal Indian lands. Additionally, this proposal creates a potential constitutional hurdle - only the Kansas Lottery may own or operate sports wagering in Kansas.

Senate Bill No. 322 does nothing with respect to Indian lands but does allow Tribes to engage in Indian sports wagering Statewide without regulation by the Kansas Lottery or the Kansas Racing & Gaming Commission. The proposal would allow the Tribes to engage in Indian sports wagering throughout the entire State.

This would create an unfair competitive advantage the Tribes are seeking to obtain. If the gaming activity is pursuant to IGRA, the State is foreclosed from insisting upon any sharing of sports wagering revenue, which would place casino managers at a huge economic disadvantage as the tribes are allowed to keep 10% more revenue than casino managers.

Chair Thompson and members of the Committee, thank you for allowing my testimony and at the appropriate time I will stand for questions.