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PROPONENT, APPEARING IN PERSON

**TESTIMONY BEFORE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS
SB 322**

Dear Chairman Thompson and Members of the Committee:

My name is Russell Brien and I am outside counsel to Prairie Band Potawatomi Nation (the “Nation”), which owns and, through a subsidiary tribal enterprise, operates Prairie Band Casino & Resort (“PBCR”). PBCR offers Class III Gaming to its patrons pursuant to the Nation’s laws, the federal Indian Gaming Regulatory Act, as amended (“IGRA”), and the Tribal State Gaming Compact between the Nation and the State of Kansas. PBCR, which employs several hundred Kansas citizens, has long been a significant contributor to the economy of Northeast Kansas.

As part of compact negotiations between the Nation and the State of Kansas, the topic of statewide remote sports wagering is under discussion. Statewide remote sports wagering is an appropriate topic for gaming compact negotiations because it is a gaming activity “located in a State that permits such gaming for any purpose by any person, organization or entity.” 25 U.S.C. 2710(d)(1)(B). The United States Department of Interior has consistently taken the position that statewide remote sports wagering, with wagers received on a server located on Indian lands, is an appropriate subject for gaming compacts. Refusal to negotiate over inclusion of statewide remote sports wagering in a compact violates the State’s obligation to negotiate in good faith pursuant to applicable federal and Kansas law. 25 U.S.C. 2710(d)(3)(A); K.S.A. 46-2305(a).

The Governor’s office raises a concern over K.S.A. 46-2305(b). Specifically, they worry that, as a matter of Kansas law, this statutory provision prohibits a compact for remote sports wagering where wagers are received on the Nation’s reservation at its gaming facility. The Nation points out that this interpretation violates the duty to negotiate in good faith described above. Accordingly, this application of the statute would be preempted by IGRA. While the State may legislate to accommodate permitted topics of compact negotiation, it may not permit a gaming activity in one form and selectively legislate against a form which would otherwise be a permitted topic for compact negotiation. The only option for Kansas to legislate against

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statewide remote sports wagering in a state-tribal gaming compact consistent with IGRA is to completely outlaw all forms of remote sports wagering.

The Nation believes the appropriate interpretation of K.S.A. 46-2305(b), consistent with federal law, is that the provision merely prevents compacts from including remote wagers placed and received *entirely* outside of the Nation's Indian lands. At the same time, a proper reading permits compact provisions contemplating remote wagers accepted by the Nation on a server on the Nation's Indian lands, even where those wagers are initiated outside of the Nation's Indian lands but within the State of Kansas.

Regardless, to prevent any further concerns over this statutory provision, the Nation supports passage of SB 322 to remove the problematic provision.

Please feel free to contact me (913.205.7513) or Brad Smoot (785.233.0016), the Nation's Legislative Counsel, with any additional questions.

Respectfully submitted,

BRIEN LAW, LLC

/s/ Russell A. Brien