

January 28, 2019

The Honorable Bud Estes, Chairperson
Senate Committee on Federal and State Affairs
Statehouse, Room 136-E
Topeka, Kansas 66612

Dear Senator Estes:

SUBJECT: Fiscal Note for SB 23 by Senate Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning SB 23 is respectfully submitted to your committee.

SB 23 would create the Kansas Sports Wagering Act. The Kansas Lottery would be authorized to offer sports wagering in-person at a facility operated by the Kansas Lottery; through lottery retailers who have contracted with the Kansas Lottery to conduct sports wagering on behalf of the Kansas Lottery; over the internet, including but not limited to, through websites and mobile device applications; and through a licensed interactive sports wagering platform. The Executive Director of the Kansas Lottery would be allowed to enter into contracts with lottery gaming facility managers or racetrack gaming facility managers for conducting, operating, and managing sports wagering on behalf of the Kansas Lottery or through the licensed interactive sports wagering platform that has contracted with the Kansas Lottery to offer sports wagering.

The bill would prohibit sports wagering for persons under 21 years of age and would require sports wagering operators to verify that any person placing a wager is of legal minimum age, including wagers placed through internet websites or mobile device applications. The Kansas Racing and Gaming Commission would be required to adopt rules and regulations regarding sports wagering advertising by January 1, 2020.

Sports wagering operators would be required to use reasonable methods to prohibit the operator and interactive sports wagering platform from placing wagers with the operator, which would also prohibit any directors, officers, owners, employees, or relatives of those individuals living in the same household from placing wagers with the operator. The bill would prohibit athletes, coaches, referees, team owners, employees of a sports governing body or its member teams, and player and referee union personnel from placing wagers on any sporting event overseen by that governing body. The bill would prohibit any person with access to nonpublic confidential information held by the operator from placing wagers with the operator. The sports wagering operator would be required to maintain the security of wagering data, customer data, and other confidential information from unauthorized access and distribution. Sports wagering operators could use whatever data source to determine the result of a sports wager that is determined by the final score or final outcome of a sports event for a wager placed before the start of a sports event.

For all other sports wagering, the sports wagering operator would be required to purchase official league data from the relevant sports governing body to determine the outcome of that wager.

A sports governing board would be allowed to notify the Kansas Racing and Gaming Commission that it desires to restrict, limit, or exclude wagering on its sporting events and the Commission would review the request and determine if the sports wagering should be restricted. Sports wagering operators would be required to cooperate with investigations by the Kansas Racing and Gaming Commission, sports governing bodies, or law enforcement agencies by providing account-level betting information and audio or video files relating to persons placing wagers.

Sports wagering operators would be required to immediately report to the Kansas Racing and Gaming Commission any criminal or disciplinary proceedings; abnormal wagering activity or patterns that may indicate a concern with the integrity of a sporting event or events; any potential breach of the sports governing body's internal rules and codes of conduct pertaining to sports wagering; any other conduct that corrupts a betting outcome of a sporting event for purposes of financial gain; and suspicious or illegal wagering activities, including use of funds derived from illegal activity, wagers to conceal or launder funds derived from illegal activity, using agents to place wagers, and giving false identification. The bill would allow a sports governing body to have a civil case to recover damages or other equitable relief against any person who knowingly engages in, facilitates, or conceals conduct that intends to improperly influence a betting outcome of a sporting event for purposes of financial gain.

The bill would require that each sports wagering operator remit a sport betting right and integrity fee to each sports governing body with authority over a sporting event that bets were placed in the preceding calendar quarter. The fee would be 0.25 percent of the aggregate amount wagered on those sporting events during the previous quarter and would be paid to the relevant sports governing body on July 1, October 1, January 1, and April 1 of each year. The sports betting right and integrity fee could not exceed 5.0 percent of the aggregate gross revenue, which is defined as the total amount of revenue wagered on a sports event minus the payout to the winners of the sports wager.

The bill would create the Sports Wagering Receipts Fund in the State Treasury and separate accounts would be maintained for the receipt of moneys from sports wagering conducted by the Kansas Lottery, each lottery gaming facility manager, and each racetrack gaming facility manager. All revenues from sports wagering conducted by the Kansas Lottery would be deposited in the Lottery Operating Fund. The Kansas Lottery would be allowed to contract with multiple interactive sports wagering platforms without limitations. If a lottery gaming facility manager and racetrack gaming facility manager offer sports wagering, then the management contract would include a provision that no less than 6.75 percent of the sports wagering revenues (total revenues from sports wagering at a gaming facility after all prize related payments are made) would be distributed to the Expanded Lottery Revenues Fund (ELARF). If the lottery gaming facility manager or racetrack gaming facility manager agrees to offer sports wagering, the Kansas Lottery would be the licensee and owner of all software programs used in offering sports wagering. Each lottery gaming facility manager or racetrack gaming facility manager would be allowed to contract with up to three interactive sports wagering platforms. All sports wagering would be under the ultimate control of the Kansas Lottery. Counties would not be allowed to be exempt from or effect changes in the Kansas Sports Wagering Act.

The bill would create two new crimes that are punishable as severity level 5 nonperson felonies. The first crime of misuse of nonpublic sports information is defined as placing, or causing to be placed, a bet or wager on a sports contest on the basis of material nonpublic information. The second crime adds a crime classification for sports bribery, that is committed with the intent to influence a betting outcome of a sports contest in order to obtain financial gain.

The bill includes definitions of interactive sports wagering platform, official league data, sports governing body, sports wagering, sports wagering operator, sports wagering revenue, tier one and tier two sports wager, and wager or bet. The Kansas Lottery would have the authority to write rules and regulations for implementation of the Kansas Sports Wagering Act including sports wagering conducted by the Kansas Lottery; management contracts for sports wagering conducted by lottery gaming facility managers and racetrack gaming facility managers; provisions for the confidentiality of information submitted by interactive sports wagering platform licensees and sports wagering operators; and provisions ensuring the integrity of sports wagering conducted in this state.

The bill would prohibit any person from serving as the Executive Director, a member of the Kansas Lottery Commission, or an employee of the Kansas Lottery while or within five years after holding a financial interest, being employed by, or acting as a consultant to any interactive sports wagering platform, subcontractor, or agent of a platform or any business that sells goods or services to a platform. It would also be illegal for these individuals to accept any compensation, gift, loan, entertainment, favor, or service from any interactive sports wagering platform, and any violation of this provision could be punishable as a class A misdemeanor.

The bill would require the Kansas Racing and Gaming Commission to establish certification requirements and enforcement procedures for employees of a lottery retailer, lottery gaming facility manager, or racetrack gaming facility manager who are directly involved in the conduct, operation, or management of sports wagering. The certification requirements and enforcement procedures would also apply to persons involved in interactive sports wagering platforms and other technology and computer systems providers that have a contract with a lottery gaming facility manager, racetrack gaming facility manager, or the Kansas Lottery for providing goods or services related to sports wagering, including management services. The certification requirements would include compliance with security, fitness, and background investigations.

The Kansas Racing and Gaming Commission indicates that SB 23 would require at least 3.00 additional FTE positions and \$265,000 annually for ongoing costs to regulate sports wagering. Actual costs would vary as the Commission would determine the industry specific tools necessary to regulate this industry. Sports wagering at parimutuel racetracks would require the racetrack to reopen, likely with electronic gaming machines. Racetrack gaming facility managers would first be required to obtain a parimutuel license from the Kansas Racing and Gaming Commission before they could negotiate with the Kansas Lottery for a contract to offer sports wagering or electronic gaming machines. To operate electronic gaming machines, a contract with a racetrack gaming facility manager would have to be approved by the Kansas Lottery and a background investigation would have to be approved by the Kansas Racing and Gaming Commission. The Commission indicates that it would need approximately \$1.8 million and 21.00 FTE positions for each parimutuel racetrack that reopens for the annual costs to regulate both the racing and gaming activities. Start-up costs of approximately \$450,000 per facility would also be needed for expenses, such as background investigations, licensing equipment, software licenses,

computer equipment, furniture and supplies, and other expenses that would be associated with reopening each facility. Funding for regulating racing activities has primarily come from the transfer of parimutuel tax receipts to the State Racing Fund. The appropriations bill each year provides the authority for the Kansas Racing and Gaming Commission to bill each facility for all costs related to regulating racing activity.

The Kansas Lottery indicates that it would need to hire between two and three new employees for each parimutuel gaming facility that could open as a result of this bill. However, without knowing the size of the proposed facility and when the facility would open, the Kansas Lottery is unable to make an estimate of its gaming related expenses. The Kansas Lottery indicates that when it has negotiated contracts with gaming facility managers, it has required that all of its gaming related expenses be reimbursed by the manager. Direct gaming expenses are billed directly to the specific gaming facility manager and indirect expenses are prorated to all managers. The Kansas Lottery indicates that it would incur significant staff and other startup costs during the implementation phase, but it is unable to estimate specific amounts or positions necessary to implement the provisions of the bill. In addition, the Kansas Lottery is unable to estimate the additional expenses to implement a sports wagering system because it unknown how widespread sports wagering would be offered and the most cost-efficient and secure method to deliver that system.

The Kansas Lottery indicates that the bill would create a new sports wagering model that is not currently used in any sports wagering jurisdiction. The model would guarantee each sports governing board a 0.25 percent royalty (sports betting right and integrity fee) from the total amount wagered. The Kansas Lottery indicates the sports wagering industry operates significantly different from the existing casino gaming. To achieve the maximum desired return on all bets placed, a sports wagering operator seeks to create equal wagering on both sides of a sporting event. A lopsided distribution of the wagers creates risk for the operators and the potential to pay out significantly more than what is taken in. Approximately 95.0 of the gross amounts wagered on sporting events goes back to the winning wager, which leaves 5.0 percent for administrative costs, taxes, and profit. The 0.25 percent royalty to each sports governing board would be equal to approximately 5.0 percent of the net profits from sports wagering activities. The bill does not define any requirements or responsibilities for a sports governing board to receive the 0.25 percent sport betting right and integrity fee.

The Kansas Lottery is unable to provide an estimate of additional revenues from offering sports wagering in-person at a facility operated by the Kansas Lottery; through lottery retailers who have contracted with the Kansas Lottery to conduct sports wagering on behalf on the Kansas Lottery; over the internet; or through a licensed interactive sports wagering platform without a detailed market study. The Kansas Lottery indicates that a well-designed and well-implemented sports wagering system would generate significant revenues in future years, but it is doubtful that it could be implemented to have significant effect in FY 2020.

There are two studies (Eilers-Krejciak and AGA-Oxford) on potential nationwide and state-specific projections for revenues and gross wagering. The studies indicate that gross wagers placed in Kansas could reach nearly \$1.0 billion with limited availability of sports wagering (sportsbooks only available at casinos) or more than \$2.0 billion with convenient availability of sports wagering (sportsbooks at casinos, retail locations, and online) that is fully implemented. The proposed bill would implement a sports wagering system that could be characterized as “convenient

availability.” The studies use a number of variables to estimate the impact of sports wagering in Kansas, including comparing certain demographics in Kansas to Nevada where sports wagering is legal, the number of existing gambling outlets, and the level of spend in those outlets to help determine the perceived competitiveness of the market. The studies also suggest that a large portion of currently illegal sports betting would shift to legal markets. Taking a more conservative approach to the estimates, the bill would likely allow \$1.0 billion in gross wagers placed in Kansas. Under this scenario, and after approximately 95.0 percent of the gross amount sports wagers are paid to the winning wagers, then approximately 5.0 percent or \$50.0 million would be available for administrative costs, fees, and profit. However, this amount would be reduced by approximately \$2.5 million for the amount transferred to the sports governing bodies from the sports betting right and integrity fee. The state share of revenues could be reduced further, if a portion of the wagers take place at a state-owned gaming facility, because the state (ELARF) would only receive 6.75 percent of the net sports wagering revenue generated at a lottery gaming facility or a racetrack gaming facility.

The Attorney General’s Office indicates that litigation involving the Kansas Sports Wagering Act would be unlikely since the U.S. Supreme Court overturned the federal law prohibiting states from authorizing and conducting sports wagering in May 2018. If there are additional litigation costs as a result of the bill, the Office would likely hire outside counsel. However, the Office did not provide an estimate of the any potential litigation costs or how long the estimated litigation costs would continue from enactment from the bill.

The bill has the potential for increasing litigation in the courts because of the new crimes created by the bill. If it does, the Office of Judicial Administration indicates that there would be a fiscal effect on the operations of the court system. However, it is not possible to estimate the number of additional court cases that would arise or how complex and time-consuming the cases would be. The fiscal effect would most likely be negligible and could be accommodated within the existing budget resources. The Kansas Sentencing Commission indicates that the bill could have an effect on prison admissions and beds; however, the Commission did not provide a specific estimate. Any fiscal effect associated with SB 23 is not reflected in *The FY 2020 Governor’s Budget Report*.

Sincerely,



Larry L. Campbell
Director of the Budget

cc: Brandi White, Racing & Gaming Commission
Stephen Durrell, Lottery
Willie Prescott, Office of the Attorney General
Jay Hall, Association of Counties
Janie Harris, Judiciary
Scott Schultz, Sentencing Commission