

SESSION OF 2020

SUPPLEMENTAL NOTE ON SENATE BILL NO. 283

As Amended by Senate Committee of the Whole

Brief*

SB 283 as amended, would amend the Kansas Expanded Lottery Act (KELA) concerning the conducting of sports wagering operations by lottery gaming facilities. Specifically, the bill would make provisions for sports wagering operations; Kansas Lottery (Lottery) control of sports wagering; Lottery management contracts; wagering restrictions on certain sporting events; Interactive Sports Wagering Platforms (platforms); sporting facilities; minimum age to wager; prohibited wagering; cause of action for improper influence; crimes; unlawful use of electronic gaming machines; required records; limitations and self-exclusion; investigations and required reporting; security of sports wagering data; certification of certain persons; facility inspection and security measures; Horse Fair Racing Benefit Fund; Problem Gambling and Addictions Grant Fund; Sports Wagering Receipts Fund; White Collar Crime Fund; Combating White Collar Crimes and Information Technology Scholarship Fund; online lottery game guidelines; rule and regulation authority; tribal gaming compact; and other definitions.. The bill would add new sections to the KELA.

Sports Wagering Operations (New Section 1)

The bill would allow the Lottery to offer sports wagering:

- In accordance with the Kansas Lottery Act and KELA;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Through lottery gaming facility managers (managers) who have contracted with the Lottery under KELA to manage sports wagering on behalf of the Lottery, including, but not limited to, sports wagering through websites and mobile device applications approved by the Lottery; or
- Through an interactive sports wagering platform if, within two years of the effective date of the bill, no more than one manager had continuously offered sports wagering through a platform.

The bill would require, subject to Lottery approval, managers establish sports wagering rules that specify the amounts to be paid on winning sports wagers and the effect of changes in the scheduling of a sporting event subject to sports wagering.

The bill would define “interactive sports wagering platform” (platform) to mean sports wagering made available to persons physically located within Kansas at the time of submitting the wager through a lottery gaming facility over the Internet or wireless service, including, but not limited to, through websites and mobile device applications.

Lottery Control of Sports Wagering (Sections 17 and 23)

Current law states decisions regarding lottery gaming facility games are within the full control of the Lottery. The bill would amend that provision to also include decisions concerning sports wagering.

The bill would amend law related to oversight of lottery gaming facility operations by the Kansas Racing and Gaming Commission (KRGCC) to include auditing of sports wagering revenues.

The bill would define “sports wagering revenues” to mean the amount of revenues generated from sports

wagering equal to the amount of all wagers, less any voided wagers, federal excise taxes, any free play approved by the Lottery, and amounts paid in prizes, and would further state sports wagering revenues would not be considered lottery gaming facility revenues.

Lottery Management Contracts (Section 23)

The bill would amend law on lottery management contracts to include provisions regarding the operation of sports wagering by managers.

The bill would state any management contract approved by the Lottery Commission may include provisions for operating and managing sports wagering by the manager, in person at the lottery gaming facility and *via* the the lottery gaming facility through no more than two platforms using the odds and wagers authorized by the Lottery.

The bill would also state, if a management contract includes provisions for sports wagering, it must also state the State shall retain:

- 5.5 percent of all sports wagering revenues received from wagers placed in person at the lottery gaming facility; and
- 8.0 percent of all sports wagering revenues received by the manager from wagers placed on the platform selected by the manager and approved by the Executive Director of the Kansas Lottery (Lottery Director).

The bill would further specify, pursuant to sports wagering management contracts, the Lottery would be the licensee or owner of all software programs used in conducting sports wagering and the manager, on behalf of the State, would be required to purchase or lease, in the name of the Lottery, any equipment or property deemed

necessary by the manager for managing sports wagering at the lottery gaming facility. All sports wagering would be subject to the control of the Lottery in accordance with KELA.

Wagering Restrictions on Certain Sporting Events (New Section 5 and Section 17)

The bill would authorize the Lottery to restrict, limit, or exclude wagering on one or more sporting events by providing notice to all managers in a form determined by the Lottery Director. The bill would specify offering or taking wagers on a sporting event contrary to any notice, or rules or regulations promulgated by either the Lottery or KRGC, would be a violation of KELA.

The bill would define “sporting event” to mean any professional or collegiate sport or athletic event, motor race event, horse race, or any other special event authorized by the Lottery Director that has not been completed at the time any wager is placed on such event.

The bill would further specify the definition of “sporting event” excludes any greyhound races or any sporting or athletic events played by individuals that are at a high school level or below.

Platforms (New Section 3 and Section 23)

The bill would limit each manager to two interactive sports wagering platforms that would require approval by the Lottery Director, and wagering offered through the platform would be offered only as approved by the Lottery in accordance with KELA. In order to be approved, the bill would require platforms:

- Serve the public convenience;

- Promote sports wagering in accordance with marketing plans developed by the Lottery;
- Offer sports wagers; and
- Be made available to any lottery gaming facility manager that has entered into a management contract for sports wagering under KELA.

The bill would require requests for approval of platforms to be submitted to the Lottery in a form determined by the Lottery Director. Managers would be required to include information regarding the platform and intended use of the platform. Additionally, the bill would require all background investigation requirements required by the KRGC be completed before consideration of approval and usage of platforms. The bill would state the Lottery Director could not unreasonably withhold approval of a platform a manager requests to be approved. Managers would also not be required to use the same platforms.

The bill would allow platforms to accept wagers only from individuals physically located in Kansas at the time of submitting the wager.

Sporting Facilities (New Section 3)

The bill would allow a sporting facility to enter into a contract with a manager for the purpose of allowing the sporting facility to designate an area within the sporting facility where patrons could engage in sports wagering. Sports wagering offered in these designated areas would be limited to the use of platforms.

The bill would define “sporting facility” to mean an auto race track facility or major multi-sport athletic complex, as defined in continuing law, that is located in Wyandotte County with a minimum investment of \$50.0 million and is in operation on the effective date of the bill.

Minimum Age to Wager (New Section 2 and Section 26)

The bill would specify no person under age 21 would be permitted to place a sports wager either directly or indirectly and would not be otherwise permitted to engage in sports wagering. Managers would be required to ensure persons placing bets are of the legal minimum age, including wagers placed through the platforms.

Prohibited Wagering (New Section 6)

The bill would require managers and their respective platforms to use reasonable methods to:

- Prohibit the manager; any director, officer, owner, and employee of the manager; and any relative living in the same household as such persons from placing any wager with the manager at the manager's location or through the manager's platform;
- Prohibit the platform; any director, officer, owner, and employee of the platform; and any relative living in the same household as such persons from placing any wager at the manager's location or through the manager's platform;
- Prohibit any person with access to nonpublic confidential information held by the manager from placing any wager with the manager;
- Prohibit any owner, officer, athlete, coach, or other employee of a team and any director, officer, or employee of a player or referee union from placing wagers on any sporting event overseen by the associated sports governing body;
 - In determining which persons to exclude, the manager would be directed to use publicly available information and any list of such

persons that the sports governing body may provide to the Lottery and KRGCC;

- Prohibit persons from placing any wager as an agent or proxy for another person; and
- Prohibit from making sports wagers any person known by the manager as having been convicted of any felony or misdemeanor offense involving sports wagering, including, but not limited to:
 - The use of funds derived from illegal activity to make any wager;
 - Placing any wager to conceal money derived from illegal activity;
 - The use of other individuals to place any wager as part of any wagering scheme to circumvent any provision of federal or state law; and
 - The use of false identification to facilitate the placement of any wager or collection of any prize in violation of federal or state law.

The bill would define “sports governing body” to mean the organization that prescribes the final rules and enforces codes of conduct with respect to a sporting event and the participants in such event.

Cause of Action for Improper Influence (New Section 7)

The bill would grant the State a cause of action to seek damages or other equitable relief against persons who knowingly engage in, facilitate, or conceal conduct that intends to improperly influence a wagering outcome of a sporting event for purposes of financial gain in connection with wagering on the sporting event.

The bill would also state any such cause of action would not be a limitation on or a bar against any other claims the

State could bring against such person, or any other claim the State could bring for injuries or damages arising out of the operation of sports wagering.

Crimes

The bill would create certain crimes related to sports wagering and amend certain existing crimes to include provisions regarding sports wagering within the Kansas Criminal Code.

Misuse of Nonpublic Sports Information (New Section 11)

The bill would define the crime of misuse of nonpublic sports information to be placing, or causing to be placed, a bet or wager on a sports contest on the basis of material nonpublic sports information relating to such bet or wager, and would establish the crime as a severity level 5, nonperson felony.

The bill would define “on the basis of material nonpublic sports information” to mean the person placing the bet or wager, or causing such bet or wager to be placed, was aware of the material nonpublic information relating to such bet or wager when the person placed or caused the wager to be placed.

Sports Bribery (Section 14)

The bill raise the following sports bribery acts contained in current law from a severity level 9, to a severity level 8 nonperson felony:

- Conferring, or offering or agreeing to confer, any benefit upon a sports participant with intent to influence such participant not to give such participant’s best efforts in a sports contest; or

- Conferring, or offering or agreeing to confer, any benefit upon a sports official with intent to influence such official to perform such official's duties improperly.

[*Note:* All other actions defined as sports bribery in continuing law would remain a class A nonperson misdemeanor.]

Tampering with a Sports Contest (Section 15)

The bill would raise the penalty for tampering with a sports contest, as defined in continuing law, to a level 8, nonperson felony, from a level 9, nonperson felony.

Prior Employment—Conflict of Interest (Section 20)

The bill would amend related to an unlawful conflict of interest based upon prior employment.

The bill would add a subcontractor or agency of an interactive sports wagering platform to those who may not, while or within five years after holding either a direct or indirect financial interest or being employed by or a consultant to a platform, serve as Lottery Director, a member of the Lottery Commission, or an employee of the Lottery. In continuing law, violation is a class A misdemeanor.

The bill would add a subcontractor or agency of an interactive sports wagering platform to those for whom it is unlawful to accept any compensation, gift, loan, entertainment, favor, or service from any platform. Under continuing law, violation of the above is a class A misdemeanor.

Prohibited Wagers (Section 28)

The bill would remove a provision that makes it a class A nonperson misdemeanor for the following persons to place a wager on an electronic gaming machine at a racetrack gaming facility and would add a provision making it a class A nonperson misdemeanor for the following persons to place a sports wager:

- The Lottery Director, a member of the Lottery Commission, or any employee or agent of the Lottery;
- The Executive Director of the KRGC (KRGC Director), a member of the KRGC, or any employee or agent of the KRGC;
- A manager; any director, officer, owner, or employee of such manager; or any relative living in the same household as such persons who places any wager with the manager at the manager's location or through the manager's platform;
- A platform; any director, officer, owner, or employee of such platform; or any relative living in the same household as such persons who places any wager with the manager at the manager's location or through the manager's platform;
- Any owner, officer, athlete, coach, or other employee of a team; or
- Any director, officer, or employee of a player or referee union.

The bill would establish as a severity level 8, nonperson felony, knowingly placing a sports wager:

- As an agent or proxy for other persons;

- Using funds derived from illegal activity;
- To conceal money derived from an illegal activity;
- Through the use of other individuals to place wagers as part of any wagering scheme to circumvent any provision of federal or state law; or
- Using false identification to facilitate the placement of the wager or the collection of any prize in violation of federal or state law.

***Unlawful Use of Electronic Gaming Machines
(Section 27)***

Racetrack Gaming Facility

Current law provides it is unlawful for any racetrack gaming facility manager, or any employee or agent of the manager, to allow certain persons to play an electronic gaming machine game at a racetrack gaming facility, or share in winnings of another. The bill would remove the following from those exemptions:

- A spouse, child, stepchild, brother, stepbrother, sister, stepsister, parent, or stepparent of a person who is either:
 - The Lottery Director, a member of the Lottery Commission, or an employee of the Lottery; or
 - An officer or employee of a vendor contracting with the Lottery to supply gaming equipment or tickets to the Lottery for use in the operation of any lottery conducted pursuant to KELA; and
- A person who resides in the same household as any person who is either:

- The Lottery Director, a member of the Lottery Commission, or an employee of the Lottery; or
- An officer or employee of a vendor contracting with the Lottery to supply gaming equipment or tickets to the Lottery for use in the operation of any lottery conducted pursuant to KELA.

Lottery Gaming Facility

Current law provides it is unlawful for any manager, or any employee or agent of the manager, to allow certain persons to play an electronic gaming machine game at a lottery gaming facility, or share in winnings of another. The bill remove the following from those exemptions:

- A spouse, child, stepchild, brother, stepbrother, sister, stepsister, parent, or stepparent of a person who is either:
 - An employee or agent of the lottery gaming facility manager; or
 - An officer or employee of a vendor contracting with the Lottery to supply gaming equipment to the Lottery for use in the operation of any electronic gaming machine or Lottery facility game conducted pursuant to KELA; and
- A person who resides in the same household as a person who is either:
 - An employee or agent of the lottery gaming facility manager; or
 - An officer or employee of a vendor contracting with the Lottery to supply gaming equipment to the Lottery for use in the operation of any electronic gaming machine or Lottery facility game conducted pursuant to KELA.

Required Records (Section 18)

In the list of rules and regulations required to be adopted by the Lottery Commission at the request of the Lottery Director, the bill would add provisions creating minimum requirements for managers to keep certain records, if available by reasonable efforts, concerning persons who make wagers in an aggregate amount of \$1,200 or more within a 24-hour period.

Such rules and regulations would have to require such records be maintained for at least 60 days after the sporting event occurs and be made available for inspection upon the request of the Lottery and KRGC, or as required by a court order.

Limitations and Self-Exclusion (New Section 2)

The bill would require managers to allow individuals to restrict themselves from placing wagers with an operator, including wagering limits, and take reasonable measures to prevent such person from placing wagers. Upon the request of such an individual, the operator would be required to submit the person's name and information to the KRGC, and the KRGC Director could enter into a self-exclusion agreement with such person and disseminate such person's information to all other operators.

Investigations and Required Reporting (New Section 6 and Section 17)

The bill would require managers to cooperate with any investigation conducted by the Lottery, KRGC, or law enforcement. In addition, managers would be required to immediately report to the Lottery and KRGC any information relating to:

- Criminal or disciplinary proceedings commenced against the manager in connection with the manager's operations in any jurisdiction in which such manager operates;
- Abnormal wagering activity or patterns that may indicate a concern with the integrity of a sporting event in any jurisdiction in which such manager operates;
- Any other conduct that knowingly corrupts a betting outcome of a sporting event, including match-fixing; and
- Suspicious or illegal wagering activities, including, but not limited to:
 - Funds derived from illegal activity;
 - Wagers to conceal or launder funds derived from illegal activity;
 - Agents to place wagers; and
 - False identification when placing wagers.

The bill would define "match-fixing" to mean to arrange or determine any action that occurs during a sporting event, including, but not limited to, any action resulting in the final outcome of such sporting event for financial gain.

Security of Sports Wagering Data (Section 6)

The bill would require managers and their respective platforms to use reasonable methods to maintain the security of wagering data, customer data, and other confidential information from unauthorized access and dissemination, except the bill would not preclude the use of Internet or cloud-based hosting of such data and information or disclosure as required by court order, state or federal law, or as otherwise required by KELA.

Certification of Certain Persons (Section 24)

The bill would amend law concerning certification requirements to grant authority to the KRGC to establish, through temporary and permanent rules and regulations, a certification requirement and enforcement procedure for persons owning at least a 5.0 percent interest, rather than 0.5 percent, in a lottery gaming facility manager or racetrack gaming facility manager, and persons owning at least a 5.0 percent interest, rather than 0.5 percent, in an electronic gaming machine manufacturer, technology providers, or computer system providers who propose to contract with a lottery gaming facility manager, a racetrack gaming facility manager, or the State for the provision of goods or services, including management services, related to either such gaming facility.

The bill would also amend the certification provisions by removing language related to types of crimes that would make a person unfit for certification, a requirement that KRGC conduct checks required for certification, and provisions that would state certification is not assignable or transferable.

Certification for Employees Involved in Sports Wagering

The bill would further require the KRGC, through rules and regulations, to create a certification requirement and enforcement procedure for:

- Employees of a manager or other entity owned by the manager's parent company that are directly involved in the operation or management of sports wagering managed by such manager; and
- Those persons who propose to contract with a manager in an amount exceeding \$250,000 per year for the provision of goods or services related to

sports wagering, including any platform requested by a manager.

The bill would require this annual certification requirement to include compliance with such security, fitness, and background investigations and standards as the KRGC Director deems necessary to determine whether such person's reputation, habits, or associations pose a threat to the public interest of the state or to the reputation of, or effective regulation and control of, sports wagering conducted by the lottery gaming facility.

The bill would also require KRGC to create, through rules and regulations, provisions regarding the suspension, revocation, or non-renewal of the certification for employees involved in sports wagering upon a finding the certificate holder has:

- Knowingly provided false or misleading material information to the Lottery, the KRGC, or employees of either;
- Been convicted of a felony, gambling-related offense, or any crime of moral turpitude;
- Intentionally violated any provision of any contract between the Lottery and the certificate holder; or
- Intentionally violated any provision of KELA or any rule and regulation adopted pursuant to KELA.

The bill would state certification is not assignable or transferable.

Facility Inspection and Security Measures (Section 25)

The bill would amend law regarding inspection by the Executive Directors of the Lottery and KRGC to include sports wagering operations. The bill would add to the powers of the KRGC Director the authority to examine books, papers,

records, or memoranda of any business involved in electronic gaming machines, lottery facility games, or sports wagering operations.

The bill would also add sports wagering to provisions that require appropriate security measures approved by the KRGC Director.

Horse Fair Racing Benefit Fund (Section 19)

The bill would specify, on July 1, 2021, and each July 1, thereafter, or as soon as moneys are available, of the first \$1,550,000 credited to the Lottery Operating Fund from sports wagering revenues deposited in the fund, up to \$800,000 shall be transferred to the Horse Fair Racing Benefit Fund until the unobligated principal balance of the fund equals \$1,000,000.

Problem Gambling and Addictions Grant Fund (Sections 23 and 30)

The bill would change the name of the Problem Gambling Grant Fund to the Problem Gambling and Addictions Grant Fund (Fund) and amend law to require, on July 1 of each year or as soon as moneys are available, the first \$100,000, rather than \$80,000, credited to the State Gaming Revenues Fund to be transferred and credited to the Problem Gambling and Addictions Grant Fund.

The bill would amend provisions related to lottery gaming facility management contracts to require that any management contract approved by the Commission include a provision to require that 2.0 percent of sports wagering revenues be paid to the Fund if the management contract includes provisions for the operation and management of sports wagering.

The bill would amend a provision regarding grants for providing assistance and treatment of persons suffering from pathological gambling to specify such grants would be for research, prevention, and recovery for, rather than for research on the impact of gambling on, the residents of Kansas. Additionally, the bill would require the Secretary for Aging and Disability Services to ensure that an adequate problem gambling treatment services network is available in the State to individuals seeking treatment for a pathological gambling disorder. The bill would amend the definition of pathological gambling to specify the term had the meaning described in the most recent edition of the American Psychiatric Association's Diagnostic and Statistical Manual.

The bill would require moneys in the Fund to be used:

- To fund a helpline with text messaging and chat capabilities; and
- For the treatment, research, education, or prevention of pathological gambling.

The bill would require funds not used for the helpline or treatment, research, education, or prevention of pathological gambling to be used to treat:

- Alcoholism;
- Drug abuse;
- Other addictive behaviors; and
- Other co-occurring behavioral health disorders.

The bill would also require the Fund and any other moneys transferred to the Fund as provided in the bill and continuing law to be used for the purposes set forth in the bill and continuing law and for no other governmental purposes. The bill would state it is the intent of the Legislature that the funds and moneys deposited in the Fund remain intact and inviolate for the purposes specified in the bill and continuing law.

Sports Wagering Receipts Fund (New Section 8)

The bill would create the Sports Wagering Receipts Fund, which would contain separate accounts for receipt of sports wagering moneys from each manager, with all expenditures from the fund being made in accordance with appropriation acts upon warrants of the Director of Accounts and Reports issued pursuant to vouchers approved by the Lottery Director.

The bill would specify all sports wagering revenues should be paid electronically to the Lottery Director weekly, or as soon as reasonably possible, but not before all bets for a specific sporting event are completed and settled. The Lottery Director would be required to remit all moneys received to the State Treasurer and the State Treasurer would be directed to deposit the amount received in the State Treasury and credit such remittance to the respective account in the Sports Wagering Receipts Fund for the relevant manager.

The bill would require the Lottery Director to allow managers to carry over negative sports wagering revenues and apply such amounts to returns filed for subsequent weeks. The bill would specify returns with negative amounts would be a return showing a negative number because the winnings paid to patrons wagering on the manager's sports wagering exceeds the manager's total bets accepted from sports wagering by patrons.

Additionally, the bill would state negative amounts could not be applied to earlier weeks and moneys would not be refunded unless the manager ceased sports wagering operations and reported negative revenues on the manager's last return.

The bill would require the Lottery Director to certify weekly to the Director of Accounts and Reports the percentages or amounts to be transferred from each account to the Lottery Operating Fund. The Director of Accounts and Reports would be directed to transfer such amounts from

each account in accordance with the certification of the Lottery Director, who would be required to cause amounts from each account to be paid to the managers monthly, according to each respective contract.

White Collar Crime Fund (New Section 9)

The bill would create the White Collar Crime Fund, which would be administered by the Governor. The bill would require all moneys credited to the fund be expended only for the purpose of investigating and prosecuting:

- Criminal offenses involving or facilitated by:
 - The use of funds derived from illegal activity to make wagers;
 - Placing wagers to conceal money derived from illegal activity;
 - The use of other individuals to place wagers as part of any wagering scheme to circumvent any provision of federal or state law;
 - The use of false identification to facilitate the placement of any wager or the collection of any prize in violation of federal or state law;
 - Any other unlawful activity involving or facilitated by the placing of wagers; or
 - Any other violation of KELA; Any financial or economic crime involving any unauthorized gambling.

The bill would require all expenditures from the fund be made in accordance with appropriation acts upon warrants of the Director of Accounts and Reports issued pursuant to vouchers approved by the Governor or the Governor's designee.

The bill would require, on July 1, 2020, and each July 1 thereafter, or as soon as moneys are available, the Director of

Accounts and Reports shall transfer from the White Collar Crime Fund to:

- The Fraud and Abuse Criminal Prosecution Fund—\$300,000; and
- Any special revenue fund or funds of the KRGC—\$450,000.

The bill would further specify, upon making any such transfers, the Director of Accounts and Reports shall give notice to the Attorney General and the KRGC Director, who would be required to record the proper entries.

Combating White Collar Crimes and Information Technology Scholarship Fund (New Section 10)

The bill would create the Combating White Collar Crimes and Information Technology Scholarship Fund, which would be funded with 33 percent of the remaining funds deposited in the Lottery Operating Fund after appropriations are transferred to the White Collar Crimes Fund, Horse Fair Racing Benefit Fund, and the Problem Gambling and Addictions Grant Fund.

The bill would state, within the limits of the moneys in the fund, a scholarship could be awarded to any qualified student, with the amount of each scholarship to be determined annually by the State Board of Regents (SBOR).

The bill would state the SBOR would determine the form and manner of applications for the scholarship, and the SBOR would determine which individuals qualify for scholarships, and would require such scholarships be awarded on a priority basis to qualified applicants who are attending a college or university located within Kansas. The bill would further state any scholarships awarded would be subject to the agreement between the applicant and the SBOR and failure to complete the requirements of the

agreement could result in required repayment of the scholarship money.

The bill would require applicants who fail to satisfy the obligation created under the agreement with the SBOR to repay the amount of the scholarship, plus accrued interest that would be set at a rate equivalent to the rate for loans made under the Federal PLUS program, at the time the individual enters into the scholarship agreement, plus five percentage points.

The bill would also allow installment payments to be made in accordance with the rules and regulations of the Board of Regents, except the bill would require payments to begin six months after the date of the actions or circumstances that resulted in failure of the person to satisfy the agreement, as determined by the SBOR. The bill would direct amounts paid to the SBOR be deposited in the Combating White Collar Crimes and Information Technology Scholarship Fund.

The bill would allow the Board of Regents to adopt rules and regulations necessary to carry out the provisions of the Combating White Collar Crimes and Information Technology Scholarship Fund section of the bill.

The bill would also define “qualified student” to mean any Kansas resident enrolled in or admitted to an educational and training program for combating white collar crime or that addresses electronic security.

Online Lottery Game Guidelines (Sections 18 and 21)

Continuing law authorizes the Lottery Commission to adopt rules and regulations for online lottery games. The bill would add no online lottery ticket or game could:

- Provide or be accompanied by any music or audio sound effects, animated visual display, or any

audio or visual effects that portray, simulate, emulate, or resemble an electronic gaming machine (EGM);

- Visually or functionally operate or appear to operate as an EGM or an EGM facsimile;
- Extend or arrange credit for the purchase of a ticket;
- Allow for the redemption of a lottery ticket other than at a Lottery retail location or the Lottery office;
- Determine the winner of any game in less than four minutes from the time the ticket is purchased or acquired; or
- Allow a player to play more than one game at a time for more than any one device or any one player.

The bill would state a violation of the above provisions would be a class A misdemeanor for the first offense and a class 9, nonperson felony for the second offense.

Rule and Regulation Authority (New Section 4 and Sections 18 and 29)

The bill would amend law to grant authority to the Lottery to adopt rules and regulations governing the operation of sports wagering; ensuring the integrity of sports wagering; promoting responsible gaming; implementing, administering, and enforcing sports wagering, including, but not limited to, management contracts, permitting managers to have employees located outside of Kansas, permitting pre-established online accounts from other states to be accessed within Kansas, and allowing managers to carry over negative amounts; and to carry out the purposes of the Kansas Lottery Act and KELA; and required records of persons wagering at least \$1,200 within a 24-hour period.

The bill would also allow the KRGC to adopt temporary rules and regulations without being subject to the Rules and Regulations Filing Act, but such temporary rules would be subject to approval of the Attorney General as to the legality and would be required to be filed with the Secretary of State for publication in the *Kansas Register*.

The bill would also require the Lottery Commission, on recommendation of the Lottery Director, to adopt rules and regulations governing the establishment of sports wagering.

Advertisements

The bill would direct the KRGC to adopt rules and regulations regarding the advertisement of sports wagering by October 31, 2020. The bill would specify such rules and regulations should:

- Ensure advertisements do not target children and minors, other persons ineligible to place wagers, problem gamblers, or other vulnerable persons;
 - Include limitations on the form, content, quantity, timing, and location of advertisements;
- Require the disclosure of the identity of the manager in all advertisements;
- Require provision of the toll-free number for information and referral services for compulsive and problem gambling; and
- Prohibit false, misleading, or deceptive advertisements.

Tribal Gaming Compact (New Section 12)

The bill would state, if any federally recognized Indian tribe, as defined in continuing law, submits a request for

negotiation of a gaming compact regarding sports wagering, the Governor or the Governor's designee shall negotiate in good faith with such tribe to enter into such a gaming compact.

Other Definitions

In addition to the terms already defined, the bill would amend and add definitions as follows.

Bet

The bill would amend the definition of "bet" to exclude sports wagering on events, pursuant to KELA.

Gambling Place

The bill would amend the definition of "gambling place" by specifying the term does not apply when the place, room, building, vehicle, tent, or location is used in accordance with KELA.

Lottery Facility Games

The bill would amend the definition of "lottery facility games" to mean any electronic gaming machines and other games that are authorized to be conducted or operated at any licensed gaming facility in the United States, except that the State may also operate sports wagering as authorized by KELA.

Lottery Gaming Facility Revenues

The bill would amend the definition of "lottery gaming facility revenues" to exclude any sports wagering revenues.

Sports Wagering

The bill would define “sports wagering” to mean placing a wager on one or more sporting events, or any portion thereof, or on the individual performance statistics of athletes participating in a sporting event, or a combination of sporting events, with the betting made at or through a lottery gaming facility, including the platform of a lottery gaming facility manager (manager). Sports wagering would include, but not be limited to:

- Single-game wagers;
- Pools;
- Exchange wagers;
- In-play wagers;
- In-game wagers;
- Proposition wagers; and
- Straight wagers.

The bill would also specify sports wagering does not include parimutuel wagering or fantasy sports leagues, as defined in continuing law.

Sports Wagering Manager

The bill would define “sports wagering manager” to mean any manager that has an approved management contract that provides for management of sports wagering.

Wager

The bill would define “wager” to mean a bargain in which the parties agree that dependent upon chance, one stands to win or lose something of value specified in the agreement.

Background

The bill was introduced by Senator Longbine in the Senate Committee on Federal and State Affairs.

In the Senate Committee on Federal and State Affairs hearing, representatives of Boyd Gaming Corporation, managers of Boot Hill Casino and the Kansas Crossing Casino, Hollywood Casino and Penn National Gaming, Unified Government of Wyandotte County, and a principal of Kansas Crossing Casino testified in support of the bill. Written-only proponent testimony was provided by a representative of FanDuel.

Neutral testimony was presented by representatives of the Humane Society Legislative Fund and the League of Kansas Municipalities. Written-only neutral testimony was provided by representative of the National Council on Problem Gaming and Prairie Band Potawatomi Nation.

The Senate Committee on Federal and State Affairs amended the bill by:

- Amending the definition of “sporting event” relating to sporting events involving minors and excluding greyhound racing;
- Amending transfers to the White Collar Crime Fund and other special revenue funds;
- Creating the Combating White Collar Crimes and Information Technology Scholarship Fund;
- Amending provisions regarding prohibited wagers;
- Appropriating funds to the Horse Fair Racing Benefit Fund; and
- Requiring sports wager record-keeping.

The Senate Committee of the Whole amended the bill to add provisions related to transfer of sports wagering revenues to the Problem Gambling and Addictions Grant Fund and the uses of moneys in such fund, and to change the percentage of such revenue transferred to the State.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, under current law, the State Gaming Revenues Fund receives the first \$50.0 million of receipts from regular lottery ticket proceeds and is divided by a formula that first transfers \$80,000 to the Problem Gambling and Addictions Grant Fund at the Kansas Department for Aging and Disability Services (KDADS). Then, 85.0 percent of the remaining proceeds is transferred to the Economic Development Initiatives Fund, 10.0 percent to the Correctional Institutions Building Fund, and 5.0 percent to the Juvenile Detention Facilities Fund. The bill would increase the Problem Gambling and Addictions Grant Fund transfer by \$20,000, from \$80,000 to \$100,000, and there would also be corresponding reductions in revenue distributed to the Economic Development Initiatives Fund (\$17,000), Correctional Institutions Building Fund (\$2,000), and Juvenile Detention Facilities Fund (\$1,000).

The KRGC indicates the bill would require at least 6.0 additional FTE positions and \$456,000 annually for ongoing costs to regulate sports wagering. Actual costs would vary as the KRGC would determine the industry-specific tools necessary to regulate this industry. The bill has the potential to increase funding to investigate and prosecute criminal offenses related to sports wagering or illegal gambling activity if a grant is secured from the White Collar Crime Fund.

The bill would not require additional staffing or expenditures by the State Gaming Agency (part of the KRGC that regulates tribal gaming) unless gaming compacts are agreed to by the Governor and tribal gaming commissions and approved by the Legislature that remove the prohibition of tribal gaming facilities operating sports wagering operations. The State Gaming Agency indicates it would

require 4.0 additional FTE positions and \$383,167 annually for ongoing costs if it were required to regulate sports wagering at existing tribal casinos.

The Lottery indicates, when it has negotiated contracts with managers, it has required all of its gaming-related expenses be reimbursed by the manager. Direct gaming expenses are billed directly to the specific manager and indirect expenses are prorated to all managers. The Lottery indicates it would incur significant staff and other start-up costs during the implementation phase, but it is unable to estimate the specific amounts or positions necessary to implement the provisions of the bill. In addition, the Lottery is unable to estimate the additional expenses to implement a sports wagering system because it unknown how widespread sports wagering would be offered.

The 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 manager seeks to create equal wagering on both sides of a sporting event. A lopsided distribution of the wagers creates risk for the manager and the potential to pay out significantly more than what is taken in. Approximately 95.0 percent of the gross amounts wagered on sporting events goes back to the winning wager, which leaves 5.0 percent as the hold percentage that is used for administrative fees, taxes, and profit. The hold percentage can vary substantially, but it usually averages between 5.0 percent and 7.0 percent in the long run. The Lottery estimates sports wagering available at State-owned casinos and through mobile applications would generate between \$360.0 million and \$600.0 million in gross wagering in the state, which could generate between \$2.1 million and \$3.5 million for the State under the provisions of the bill.

The Lottery indicates industry analysts predict the sports wagering industry will see substantial growth in future years and Kansas could reach \$900.0 million in gross wagering in five years, which could generate approximately \$5.3 million

for the State. These estimates assume most sports wagering would occur over the Internet with an interactive sports wagering platform with an average hold percentage of 6.0 percent. The Lottery indicates a well-designed and well-implemented sports wagering system would generate significant revenues in future years, but it is doubtful it could be implemented to have significant effect in FY 2021.

There are two studies (Eilers-Krejciak and AGA-Oxford) on potential nationwide and state specific projections for revenues and gross wagering. The studies indicate 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 a large portion of currently illegal sports betting would shift to legal markets.

The State of Iowa began sports wagering operations on August 15, 2019, through on-site operations at most of the State’s casinos and through the Internet with mobile device applications. Reviewing actual data from Iowa for the first four-and-a-half months of operations, gross wagering at Iowa casinos totaled \$212.2 million, including 55.8 percent of wagers conducted through the Internet. Taking a more conservative approach to the estimates provided by the two studies and a review of actual results from Iowa, the bill has the potential to result in \$500.0 million in gross sports 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, approximately 5.0

percent, or \$25.0 million, would be available for administrative fees, taxes, and profit. The state share of revenues under this scenario would generate approximately \$2.25 million, with \$1.5 million to the Lottery Operating Fund and \$750,000 to the White Collar Crime Fund. This estimate assumes an effective sports wagering tax of approximately 9.0 percent because a larger share of sports wagering is estimated to occur over the Internet with an interactive sports wagering platform (taxed at 10.0 percent) than placed at the lottery gaming facility (taxed at 7.5 percent).

The Kansas indicates removing the prohibition of selling lottery tickets by electronic mail, the Internet, or telephone (also known as iLottery) and placing restrictive procedures on its implementation have the potential to increase the overall ticket sales by \$3.0 million and increase the transfer to the state by an additional \$570,000 in the first full year after implementation. With expected growth in the segment of the lottery industry, the bill has the potential to generate a total of \$3.2 million in additional transfers to the State over the course of the first five years. The Lottery indicates implementing iLottery with less restrictions has the potential to increase the overall ticket sales by \$25.7 million and increase the transfer to the State by an additional \$2.9 million in the first full year after implementation. Less restrictions have the potential to generate a total of \$18.1 million in additional transfers to the State over the course of the first five years. The Lottery indicates all costs for equipment, systems development, regulation, and administration for iLottery would be paid from the additional revenues generated from iLottery sales.

KDADS indicates allowing sports wagering activity would likely increase demand for services provided by its Problem Gambling Program. KDADS indicates the amount of additional spending would be dependent on how readily available sports wagering would be offered in the state. KDADS also has concerns the funding mechanism that provides an additional \$20,000 to the Problem Gambling and Addictions Grant Fund would be insufficient to support

additional demand for services in its Problem Gambling Program.

The Office of the Attorney General (Office) indicates it would be required to review the legality of any proposed rules and regulations from the Lottery and the KRGC related to sports wagering. The Office indicates the cost to review proposed rules and regulation would be negligible and could be absorbed within existing resources. The bill has the potential to increase funding to investigate and prosecute criminal offenses related to sports wagering or illegal gambling activity if a grant is secured from the White Collar Crime Fund.

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 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 the bill could have an effect on prison admissions and beds; however, the Commission did not provide a specific estimate.

The Office of the Governor indicates the bill would require it to manage grant funding from the new White Collar Crime Fund. The Governor's Grant Program would review grant requests from the Office of the Attorney General and the KRGC that would be used to investigate and prosecute criminal offenses related to sports wagering or illegal gambling activity. The Office of the Governor indicates the costs to review grant application and manage funds from the White Collar Crime Fund are estimated to be negligible and could be absorbed within existing resources. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2021 Governor's Budget Report*.