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**BEFORE THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES
TESTIMONY OF KEVIN M. FOWLER IN OPPOSITION TO H.B. 2622
February 7, 2024**

Chair Landwehr, Vice Chair Eplee and Members of the Committee:

My name is Kevin Fowler and I am an attorney with the Topeka law firm of Frieden & Forbes, LLP. I represent and appear on behalf of the manager of the Kansas Crossing Casino in Pittsburg, Crawford County, Kansas (“Kansas Crossing”) and we appreciate the opportunity to express our concerns about H.B. 2622.

Kansas Crossing opened for business on March 19, 2017 as the last and most recent of four (4) state-owned and -operated casinos in this State. Kansas Crossing invested approximately \$90 million in developing and constructing the gaming enterprise, and it is one of the major employers in Pittsburg, with almost 200 employees and annual payroll, benefits and withholding taxes approaching \$10 million. According to the Kansas Lottery, since opening, the casino has also generated gaming revenue of nearly \$50 million distributed to the State of Kansas and local governments within the Southeast Kansas Gaming Zone, and approximately \$4 million to the Problem Gambling & Addictions Grant Fund.

This bill causes us significant concern because enactment would immediately place Kansas Crossing at a significant competitive disadvantage to existing casinos in our gaming market, including Missouri and Oklahoma, where smoking is permitted and cause our casino to lose significant gaming revenue.

In other jurisdictions where smoking has been banned in only some casinos but not others within a gaming market, patronage and revenues at the non-smoking casinos have declined approximately 20%. Because Kansas Crossing’s largest customer base is in the in the southwest Missouri gaming market (*i.e.*, Joplin, Missouri) and we directly compete against at least six (6) casinos in this market area that permit smoking, H.B. 2622 will cause Kansas Crossing to lose a substantial amount of business from patrons who desire to smoke while gaming. Rather than give up smoking or gaming, these customers will pursue gaming and entertainment plans at nearby casinos in Missouri and Oklahoma which permit smoking. Due Kansas Crossing’s regional gaming market and close proximity of its competitors, the 20% reduction in gaming revenues experienced after smoking bans in Illinois and Shreveport, Louisiana (which have been separately addressed by other casino manager conferees and will not be repeated here) likely

understates the significant decline in gaming revenue that we anticipate for Kansas Crossing due to H.B. 2622. This unfortunate consequence will also cost jobs, taxes and gaming revenues for the State of Kansas, local governments, and the Problem Gambling & Addictions Grant Fund.

Like all other privately developed and managed state casinos, Kansas Crossing was designed and built to meet the needs of our adult patrons, including smokers and non-smokers alike, based on the expectation that smoking on our casino floors is exempt under the Kansas Indoor Clean Air Act (K.S.A. 21-6110(d)(4)). The facility was, accordingly, constructed with a state-of-the-art, high volume air filtration system to minimize ambient tobacco smoke on the casino floor – the only location where smoking is permitted. The Kansas Crossing casino was also designed and constructed without integrating any secure, unenclosed exterior spaces for gaming as part of the casino gaming floor for tobacco users. Because the Kansas Lottery and Kansas Racing and Gaming Commission must approve the design of our casino floors and security measures, and they did so years ago, Kansas Crossing is not permitted to unilaterally change its floorplan to add an outside, unenclosed gaming floor in an attempt to avoid or minimize anticipated losses due to H.B. 2622. Moreover, following the unexpected introduction of H.B. 2622 last week, Kansas Crossing has had insufficient time to ascertain whether such a loss minimization strategy would be permissible, feasible or economically viable.

Kansas Crossing has successfully operated for nearly seven (7) years without any complaints by our employees or any general call from our patrons to prohibit smoking on our casino floor. When the Kansas Indoor Clean Air Act was passed in 2010, it was understood that smoking would be permitted on state casino floors as long as patrons did not use their pocketbooks to prohibit the activity. State casino managers have reasonably relied on this understanding in developing destination casinos that provide substantial economic and social benefits to their respective gaming regions and the State of Kansas as a whole. Since state casinos cater entirely to adult patrons seeking entertainment who are fully capable of selecting appropriate gaming destinations based on the quality of facilities, available amenities, environmental considerations and exposure to risk, Kansas Crossing respectfully submits that Kansas Crossing and its customers should be permitted to decide for themselves whether smoking should be permitted on its casino floor without interference from the Legislature.

The manager of Kansas Crossing appreciates the opportunity to share our views with you and we hope that you will join with us in opposing H.B. 2622.