

SESSION OF 2021

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR SENATE
BILL NO. 84**

As Recommended by Senate Committee on
Federal and State Affairs

Brief*

Sub. for SB 84 would amend the Kansas Expanded Lottery Act (KELA) concerning the conducting of sports wagering operations by lottery gaming facilities. The bill would add new sections to KELA and would be a part of and supplemental to the Kansas Lottery Act.

***Sports Wagering Operations (New Section 1 and
Sections 17-18)***

The bill would allow the Lottery to offer sports wagering:

- In accordance with the Kansas Lottery Act and KELA; and
- 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 an interactive sports wagering platform or over the Internet or wireless services through websites and mobile device applications as approved by the Lottery.

*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>

Rules—Payment of Wagers and Scheduling Changes

The bill would require, subject to Lottery approval, managers and platforms 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.

Interactive Sports Wagering Platform—Definition

The bill would define “interactive sports wagering platform” (platform) to mean an integrated system of hardware, software, and applications, including mobile applications and servers, through which sports wagering may be made available to persons physically located within Kansas at the time of submitting the wager to a sports wagering manager over the Internet or wireless service, including, but not limited to, through websites and mobile device applications.

Lottery Control of Sports Wagering (Sections 17, 18, 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 (KRGC) 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 three 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 amateur, professional, or collegiate sport or athletic event, motor race event, horse race, or any other event involving individual or team competition 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 sports wagering manager to three interactive sports wagering platforms that would require approval by the Lottery Director, and wagering offered through a 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; and
- Offer sports wagers.

Requests for Approval of Platforms; Acceptance of Wagers

The bill would require requests for approval of platforms to be submitted to the Lottery in a form determined by the Lottery Director. Sports wagering 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 a sports wagering manager to accept wagers placed through an interactive sports wagering platform 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 Place a Wager (New Section 2 and Section 26)

The bill would specify no person under 21 years of age 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 sports wagering managers and their respective platforms to use commercially 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 an interactive platform platform; any director, officer, owner, and employee of such platform; and any relative living in the same household as such persons from placing any wager through such platform or at the manager's location or through the manager's platform, except that nothing in this paragraph shall be construed to prohibit any such person from placing any wager through a sports wagering manager or interactive sports wagering platform with which such person has no affiliation;
- Prohibit any person with access to nonpublic confidential information held by the manager from placing any wager with the manager;

- Prohibit persons from placing any wager as an agent or proxy for another person; and
- Prohibit any person from making placing wagers 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.

Cause of Action for Improper Influence (New Section 8)

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 would 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 severity level 8 nonperson felony, from a severity 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 of the provisions 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 in the state:

- 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 through such platform or at the manager's location, except that nothing in the paragraph shall be construed to prohibit any such person from placing any wager through a sports wagering manager or interactive sports wagering platform which such person has no affiliation;
- Any owner, officer, athlete, coach, or other employee of a team, or any person participating as an individual in any sporting event; 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:
 - 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; or

- An employee or agent of the racetrack gaming facility manager; and
- A person who resides in the same household as any person who is either:
 - 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; or
 - An employee or agent of the racetrack gaming facility manager.

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 (New Section 7)

Sports wagering managers and such manager's respective interactive sports wagering platforms, if available by commercially reasonable efforts, would be required to maintain the following information for all persons making wagers in an aggregate amount of \$10,000 or more within any 24-hour period of time:

- The name of the person placing the bet;
- The amount and type of the bet;
- The time the bet was placed;
- The location of the bet, including the IP address if applicable;
- The outcome of the bet; and
- Any records of abnormal betting activity.

The bill would require such records be maintained for at least 30 days after the sporting even occurs, unless the KRGC or Lottery contacts the sports wagering manager and has reason to believe irregularities may have occurred in regard to one or more particular wagering events, then such records shall be maintained for at least three years after the event occurs.

Sports wagering managers would be required to make such records available for inspection upon request of the Lottery, KRGC, or as required by court order.

Payment and Reimbursement

The bill would create an exception to the general prohibition on employees, contractors, or others with legal affiliations with a lottery gaming facility manager loaning money or extending credit to patrons. The bill would allow a patron of a lottery gaming facility to fund an account held by a sports wagering manager for the payment of sports wagers and pay for sports wagers using:

- Cash and cash equivalents;
- Electronic bank transfers of money, including transfers through third parties;
- Bank and wire transfers of money;
- Debit and credit cards;
- Online and mobile application payment systems that support online money transfers;
- Promotional funds provided by a lottery gaming facility manager; and
- Any other payment method approved by the Lottery.

The bill would specify that a sports wagering manager would be able to obtain insurance or check guarantee services to protect against any loss as a result of a returned check, or a check that is not honored due to a stop payment order or nonsufficient funds.

Limitations and Self-Exclusion (New Section 2)

The bill would require managers to allow individuals to restrict themselves from placing wagers, including wagering limits, and take commercially reasonable measures to prevent such person from placing wagers. Upon the request

of such an individual, the sports wagering manager 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 sports wagering managers.

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 promptly 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 commercially 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; Rules and Regulations (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 an annual 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.

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

The bill would require that on July 1 of each year or as soon as sufficient moneys are available, \$100,000 must be credited to the Problem Gambling and Addictions Grant Fund (Fund) from the State Gaming Revenues 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 of 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 9)

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 sum of winnings paid to patrons wagering on the manager's sports wagering plus all voided wagers and excise taxes on sports wagering paid pursuant to federal law, 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 to manage sports wagering 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 10 and Section 19)

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; or
- 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 the Attorney General and the Director of KRGC to submit requests to the Governor for the amount of such sums that they consider necessary to carry out the purposes of the White Collar Crime Fund. The Governor could certify to the Director of Accounts and Reports amounts to be transferred from the White Collar Crime Fund to any special revenue fund(s) of the Attorney General and KRGC, as deemed appropriate by the Governor. Upon receipt of such certification, the Director of Accounts and Reports would be required to transfer amounts from the White Collar Crime Fund to the special revenue fund in accordance with such certification.

The bill would require, on July 1, 2022, and each July 1 thereafter, or as soon as moneys are available, the Director of Accounts and Reports shall transfer the first \$750,000.00 credited to the Lottery Operating Fund to the White Collar Crime Fund.

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 provisions stating that 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; or
- Determine the winner of any game in less than four minutes from the time the ticket is purchased or acquired.

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

Rule and Regulation Authority (New Section 4 and Sections 18, 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.

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, 2021. 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 in all such advertisements of the identity of the manager and any interactive sports wagering platform involved in the subject matter of such advertisement, including allowing the use of the company name, trade name, and brand name of the sports wagering manager or interactive sports wagering platform in such disclosure, in the sole discretion of such sports wagering manager or interactive sports wagering platform;
- 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.

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 wagering made at or through a sports wagering manager, including any platform of a sports wagering manager (manager) approved by the Kansas Lottery. 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 the Senate Committee on Federal and State Affairs at the request of Senator Longbine.

Senate Committee on Federal and State Affairs

In the Senate Committee hearing, a representative of Penn National Gaming, Inc. provided **proponent** testimony. The conferee stated Penn National operates the Hollywood Casino at Kansas Speedway, and believes legal sports wagering could boost the Kansas gaming industry and provide a new revenue stream to the State of Kansas. The conferee further described sports betting as a low margin, highly volatile business, and thought the tax rates in the bill represented a balanced approach. A representative of Boyd Gaming Corporation, a representative of FanDuel and DraftKings, a representative of the Kansas Association of Broadcasters, and a representative of Kansas Crossing Casino & Hotel and Boot Hill Casino & Resort provided written-only proponent testimony. Written-only **proponents** generally indicated the economic benefits, reasonable tax rates, and ability to provide a regulated legal gambling market as benefits of the bill.

Representatives of the Kansas Association of Addiction Professionals and the League of Kansas Municipalities provided neutral testimony, requesting provisions be added for local governments and the Problem Gambling and Addictions Fund to receive a portion of revenue generated from legalized sports betting. A representative of the Prairie Band Potawatomi Nation provided written-only neutral testimony, indicating support for language in the bill authorizing any federally recognized Indian tribe to request and negotiate a gaming compact regarding sports wagering.

A representative of Fuel True Independent Energy and Convenience provided **opponent** testimony, stating that any game offered through the Kansas Lottery should be available

to contracted qualified retailers, but the bill does not authorize sports wagering for retailers. A representative of the Humane Society of the United States and Stray Dog Policy also provided opponent testimony, stating the bill only excludes sports betting on certain greyhound races and should be amended to exclude greyhound races anywhere. A representative of the Ruffin Companies and Kansans for Fair Play also provided opponent testimony, stating the bill allows lottery gaming facility managers to offer sports wagering, but not racetrack gaming facility managers.

The Senate Committee adopted amendments relating to:

- The number of allowed sports wagering platforms;
- Limiting the conduct of sports wagering to lottery gaming facility managers;
- Credit and reimbursement;
- Requiring sports wagering managers to use commercially reasonable measures;
- Advertisements;
- Sports wagers placed by certain persons;
- Negative sports wagering revenue;
- Online sports wagering accounts;
- Sports wagering on amateur sports;
- Prohibiting sports wagering on any greyhound race;

- Prohibiting sports wagering on athletic events at the high school level or below, regardless of the average participant age of the event;
- Use of funds transferred to the Problem Gambling and Addictions Grant Fund; and
- Other clarifying and technical conforming amendments.

The Senate Committee recommended a substitute bill.

Fiscal Information

A fiscal note on the substitute bill was not immediately available. Information from the fiscal note on the bill as introduced is provided below, for reference.

Kansas Racing and Gaming Commission

The Kansas Racing and Gaming Commission indicates enactment of the bill, as introduced, 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 Commission 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.

State Gaming Agency

The bill would not require additional staffing or expenditures by the State Gaming Agency (part of the Kansas Racing and Gaming Commission 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 that it would require 2.0 additional FTE positions and \$201,802 annually for ongoing costs if it were required to regulate sports wagering at existing tribal casinos.

Kansas Lottery

The Kansas Lottery indicates that when it has negotiated contracts with lottery 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. 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 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 Kansas Lottery estimates that 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

Kansas Lottery indicates that industry analysts predict that 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 that most sports wagering would occur over the Internet with an interactive sports wagering platform with an average hold percentage of 6.0 percent. 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 2022.

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.

The State of Iowa began sports wagering operations on August 15, 2019, through onsite 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 half months of operations that occurred prepandemic, 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, then 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 \$1.50 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 Lottery indicates that 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 Kansas Lottery indicates that 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 Kansas Lottery indicates that all costs for equipment, systems development, regulation, and administration for iLottery would be paid from the additional revenues generated from iLottery sales.

Kansas Department for Aging and Disability Services

The Department for Aging and Disability Services indicates that allowing sports wagering activity would likely increase demand for services provided by its Problem Gambling Program. The Department indicates that the amount of additional spending would be dependent on how readily available sports wagering would be offered in the state. The Department also has concerns that the funding mechanism that provides additional monies 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

The Office of the Attorney General indicates it would be required to review the legality of any proposed rules and regulations from the Kansas Lottery and the Kansas Racing and Gaming Commission 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 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.

Kansas Governor's Office

The Governor's Office indicates that the bill would require it to manage grant funding from the new White Collar Crime Fund. The Governor's Office indicates that the costs to 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 the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Sports; gambling; betting; wagering; racetracks; lottery; Kansas Lottery Act; Kansas Expanded Lottery Act; Problem Gambling and Addictions Grant Fund; White Collar Crime Fund