

## MINUTES

### 2018 SPECIAL COMMITTEE ON FEDERAL AND STATE AFFAIRS

December 4, 2018  
Room 548-S—Statehouse

#### Members Present

Senator Bud Estes, Chairperson  
Representative John Barker, Vice-chairperson  
Senator Anthony Hensley  
Senator Robert Olson  
Representative John Carmichael (substitute)  
Representative Ron Highland  
Representative Sean Tarwater

#### Members Absent

Representative Gail Finney – Excused

#### Staff Present

Joanna Dolan, Kansas Legislative Research Department  
Jordan Milholland, Kansas Legislative Research Department  
Heather O'Hara, Kansas Legislative Research Department  
Dylan Dear, Kansas Legislative Research Department  
Jason Long, Office of Revisor of Statutes  
Matt Sterling, Office of Revisor of Statutes  
Mike Heim, Office of Revisor of Statutes  
Chris Waggoner, Office of Revisor of Statutes  
Connie Burns, Kansas Legislative Committee Assistant

#### Conferees

Senator William Coley, Ohio Legislature, President of the National Council of Legislators  
from Gaming States  
Robert Heller, President/CEO Spectrum Gaming Capital  
Stephen Durrell, Assistant Attorney General and Chief Counsel to the Kansas Lottery  
Whitney Damron, P.A., Kansas Entertainment, LLC (Hollywood Casino)  
Troy Stremming, Kansas Entertainment, LLC (Hollywood Casino)  
Scott Ward, Orrick, Herrington & Sutcliffe  
Kevin Fowler, Frieden & Forbes, LLP

#### Others Attending

See [Attached List](#).

Tuesday, December 4  
Morning Session  
Room 548-S—Statehouse

## **Welcome**

Chairperson Estes called the meeting to order at 9:05 a.m. and welcomed members and staff. The Chairperson explained the Committee could finish its business this meeting day and may not return on Thursday.

## **Overview of the Committee Charge**

Jason Long, Office of Revisor of Statutes, stated the charge of the 2018 Special Committee on Federal and State Affairs is to study and report to the Legislature on the issue of sports betting and how it can be conducted by the State.

## **Comments on Sports Betting**

Senator William Coley, Ohio Legislature, President of the National Council of Legislators from Gaming States (NCLGS), provided comments on sports betting ([Attachment 1](#)). Senator Coley stated, before a recent Supreme Court decision legalizing sports wagering, the only method states had to combat illegal sports gambling was through law enforcement, which meant diverting resources from prosecuting other crimes. By passing legislation allowing certain sports betting, states can use some of the funds generated by sports betting to counter illegal sports wagering.

In order to fight illegal sports betting by legalizing sports betting in Kansas, the State needs to address the following questions related to who, what, when, and how:

- Who will be authorized to accept sports bets? Will sports betting be restricted to land-based casinos, or will the authority to accept wagers be extended to local bars and lottery outlets, for example.
- What sports bets is Kansas going to allow? Will sports wagering be restricted to professional sports or will the State allow bets placed on amateur sporting events? What types of wagers will be allowed on authorized sports—single-game bets, teaser bets, parlays, over-under bets, moneyline, pools, exchange wagering, in-game wagering, in-play bets, proposition bets, straight bets?
- Where will the State allow sports betting to occur? Will an individual placing a bet have to be physically present at a casino, racetrack, resort hotel, or lottery retailer? Will the State allow mobile betting, which is currently available through illegal operators?
- When will sports betting be available in Kansas? Will the State release the whole sports betting program at once or will it be phased in over time?

- How will information concerning sports wagering be collected and monitored? By requiring information on every bet placed be funneled through a central portal, the State would have a database to use in addressing and avoiding criminal activity or abuses of the sports wagering system. In addition, a multi-state compact would permit states to share information to fight crime by detecting those who structure illegal activities across state lines to avoid apprehension.

Senator Coley recommended that if Kansas decides to move forward with sports betting legislation, legislators carefully consider and address the following issues in such legislation: consumer protection, money laundering, match fixing, problem gaming, and tax policy.

**Consumer protection.** All persons participating in sports wagering must have equal access to information, problems with signal delays must be addressed, and sufficient bond must be in place to ensure winners are paid. A central portal for information on sports wagers could promote consumer protection, because knowing the timing and circumstances surrounding each bet would help maintain fairness and knowing which entity has accepted which bets would ensure adequate bonds could be in place so all winners are paid.

**Money laundering.** Any legislation enacted must establish a system to detect and apprehend those who try to use sports betting to disguise nefarious activities. Use of a central repository of information on bets placed could help law enforcement detect this type of activity.

**Match fixing.** Sports fans deserve to know that athletes are using their best efforts to win contests, and that athletes, sport officials, team owners, and everyone else involved in sports contests is protected from harm, threats, and improper influence. Again, a central source of information on bets placed could be useful to detect and prevent match fixing and other improper influence.

**Problem gaming.** A system by which problem gaming professionals reach out and offer assistance to sports wagering participants before they accumulate significant debt must be part of any proposed sports betting legislation.

**Tax policy.** When setting any tax policies related to sports wagering, legislators should consider illegal sports betting operators keep about 3.0 percent of the moneys bet and pay out about 97.0 percent in prizes to those placing bets. Legal operators will need also need to keep about 3.0 percent to fund their operations, but setting tax rates too much higher will simply make players turn to illegal outlets where they are able to keep more of their winnings.

Senator Coley stated the Winter Meeting for the National Council of Legislators from Gaming States would be held January 4-6, 2019, in New Orleans, and there would be scholarships available.

Senator Coley addressed questions from the Committee concerning: legislation from other states, if sports betting will be allowed in taverns and bars, if the sports betting will be like the European market, and if it be better to have one national sports betting system or have 50 different ones.

Robert Heller, President/CEO, Spectrum Gaming Capital, addressed questions from the Committee regarding the amount of money spent on sports betting. Mr. Heller stated, according to the American Gaming Association, there is \$150 billion being wagered illegally. Eight states have legalized sports betting, and another 18 states have considered legislation dealing with

sports betting. Responding to questions about what would happen to the existing gambling industry if Kansas passed legislation allowing sports betting and what tax rates other states have used, Mr. Heller stated impact and tax rates vary from state to state.

The Committee took a ten-minute break and reconvened at 10:30 a.m.

## **Legal Barriers to Sports Wagering in Kansas**

Jason Long, Senior Assistant Revisor, Office of Revisor of Statutes, reviewed the state and federal legal barriers to conducting Sports Wagering in Kansas ([Attachment 2](#)). Federal law has prohibited most states from conducting sports wagering since 1992 when The Professional and Amateur Sports Protection Act (PASPA) was passed. Since the Court struck down the PASPA, several states have enacted laws authoring sports wagering.

Although the U.S. Supreme Court removed the federal barrier to sports wagering in Kansas when it struck down PASPA, the State may still only authorize sports wagering in accordance with the *Kansas Constitution*. Absent a state constitutional amendment expressly authorizing such gaming, the State would need to own and control sports wagering, as it does other types of gaming in the state. The Legislature would also need to repeal or amend current state criminal laws to allow sports wagering.

## **Overview of 2018 Kansas Sports Betting Legislation**

Mr. Long reviewed 2018 HB 2792, which would have created the Kansas Sports Wagering Act (Act) ([Attachment 3](#)). The Act would have been part of and supplemental to the Kansas Lottery Act in much the same manner as the Kansas Expanded Lottery Act (KELA) currently operates. Because all forms of lotteries must be owned and operated by the State, many of the provisions of the Kansas Lottery Act and KELA would be applicable to sports wagering under HB 2792. It is currently unlawful in Kansas for any individual to bet on or take bets on sports events. Due to federal law at the time it was drafted, HB 2792 would not be effective until such time as the Executive Director of the Racing and Gaming Commission (KRGCC) has certified federal law does not prohibit states from conducting or authorizing sports wagering.

Mr. Long also reviewed 2018 HB 2793, which would have authorized the Kansas Lottery (Lottery) to contract with casino and racetrack facility managers for the operation of sports wagering ([Attachment 4](#)). Because all forms of lotteries must be owned and operated by the State, the bill would have required the Lottery to own and control sports wagering in Kansas, but, as with class III gaming, the Lottery may contract with facility managers for the management of sports wagering. The bill would also have amended KELA to put sports wagering under the regulatory authority of the KRGCC.

Mr. Long addressed questions from the Committee concerning how the funds would be distributed and which fund the dollars go into. He indicated one of the bills included a sports league compensation fee of 0.25 percent of the total amount wagered on events governed by that particular body.

## Public Comment

Stephen Durrell, Assistant Attorney General, Kansas Lottery, discussed what model Kansas would have to adopt regarding sports betting to ensure it complies with existing Kansas law and constitutional provisions ([Attachment 5](#)). Mr. Durrell stated that his testimony is not representative of the opinions of the Attorney General, the current gubernatorial administration, or the next administration. He informed the Committee that as legal counsel to the Lottery, he was at this Committee meeting to discuss the *Kansas Constitution*, current statutes, and what models would be workable to establish sports wagering under Kansas law.

Mr. Durrell provided suggested considerations for future sports wagering legislation. He stated Kansas has four State-owned casinos that have expressed interest in being authorized to conduct sports wagering. The State also has 1,700 Lottery retailers that could be considered in sports wagering legislation. He urged the Committee, no matter what the State decides to do, it needs to be a safe and secure product and geo-located within the state.

Concerning the integrity of sports wagering programs, Mr. Durrell stated the gaming industry has united to form a sports integrity association aimed at upholding the sincerity of the U.S. sports betting market. The new body is called the Sports Wagering Integrity Monitoring Association (SWIMA), and its founding members include bookmakers like MGM, but also stakeholders from across the gaming industry. Mr. Durrell also discussed funding for problem gaming services. The central computer system can be expanded to include sports wagering. The State could also potentially aid law enforcement by specifically enumerating in statute that wagering on sports in Kansas is only permitted *via* State-owned and -operated platforms, with all other sports wagering presumed illegal.

Mr. Durrell addressed questions from the Committee concerning players clubs, mobile applications, the types of sports included, and if casinos could use team and league logos.

## Lunch

The meeting was recessed at 11:55 a.m. for lunch.

Tuesday, December 4  
Afternoon Session  
Room 548-S—Statehouse

Chairperson Estes reconvened the meeting at 1:35 p.m.

## Public Comment (continued)

Whitney Damron, on behalf of Kansas Entertainment, LLC, introduced Troy Stremming, on behalf of Kansas Entertainment, LLC, who provided testimony on potential Kansas sports betting legislation ([Attachment 6](#)). Kansas Entertainment strongly supports sports betting activity being conducted solely on interactive sports wagering platforms, geo-fenced inside the state, and operated through the “brick and mortar” gaming facilities. This will provide more control over the qualification of a person who seeks to place a wager by running the platform through a previously licensed and highly regulated business enterprise located in Kansas. The geo-fenced

technology for mobile devices being used to place a wager will ensure sports wagering is taking place within the borders of the state. Mr. Stremming stated it is critically important to ensure the tax rate on these modest revenues does not undermine the regulated sports betting operators' ability to compete against illegal offshore alternatives, and proposed matching Nevada's tax rate of 6.25 percent of gross sports wagering revenues.

Mr. Stremming expressed his opinion that allowing for "integrity" or "royalty" fees to be paid to professional sports leagues would set a bad state policy and would undercut the economic viability of legalized sports betting. None of the states that have passed laws legalizing sports wagering have allowed for "integrity" or "royalty" fees.

Mr. Stremming would recommend seeking guidance on model legislation from the State of West Virginia, which recently approved a sports wagering framework under the oversight of the West Virginia Lottery Commission.

The Committee was provided with a copy of the West Virginia legislation, 2018 SB 415 ([Attachment 7](#)).

Scott Ward, Orrick, Herrington & Sutcliffe, on behalf of Major League Baseball, the National Basketball Association, and PGA TOUR, provided testimony on potential sports betting legislation ([Attachment 8](#)). Legislation introduced in Kansas during the 2018 Legislative Session, HB 2792, included many of the safeguards sought by the sports leagues to help protect their games. He stated the leagues look forward to working with the Legislature to adopt sensible sports betting legislation in 2019. Mr. Ward encouraged the legislators to consider the following five principles in any future sports betting legislation: include integrity provisions, include reasonable wagering restrictions, require use of official league data, allow a robust mobile betting option in the state, and provide a 0.25 percent royalty to the leagues based on the amount bet on their contests.

Mr. Ward addressed concerns from the Committee regarding the integrity fees and whether the fees would be used to keep sports betting clean or to address increased costs associated with sports betting, what fees are considered commercially reasonable, and if bets on amateur leagues should be authorized.

Kevin Fowler, attorney with the Topeka law firm of Frieden & Forbes, LLP, representing Kansas Star Casino, Mulvane; the Boot Hill Casino & Resort, Dodge City; and the Kansas Crossing Casino, Pittsburg (collectively "casinos") testified before the Committee ([Attachment 9](#)). He stated the casinos represented strongly support sports wagering in Kansas, but believe it should be regulated by the Kansas Lottery and the Kansas Racing and Gaming Commission. Unlike other states, the *Kansas Constitution* requires that any gambling activity in Kansas, including sports wagering, be owned and operated by the State, so any regulatory framework for sports wagering should mirror KELA, which has already been ruled constitutional. The four State-owned and -operated casinos are working together to draft legislation that all casinos fully support, and they hope to propose a bill for consideration during the 2019 Legislative Session.

The casinos support requirements that all sports wagering activity in Kansas be conducted through the four State-owned and -operated casinos, which would provide adequate protection against unauthorized betting and prevent the establishment of "sports books" at every Kansas Lottery retail outlet, including grocery stores, gas stations, convenience stores, and others, throughout the state. The casinos strongly object to the State providing any integrity or royalty fees to the leagues because the leagues are already expected to make billions of dollars as a result of sports wagering ([Attachment 10](#)). None of the states that have adopted sports

betting legislation to date have included any of the league-sponsored mandates in their statutes or regulations. The casinos also strongly support the use of apps and mobile wagering as part of sports betting in Kansas. Mr. Fowler stated the importance of mobile wagering in sports betting is evident based upon recent data in New Jersey, which allows sports wagering through brick and mortar casinos and digital applications.

Mr. Fowler addressed questions on mobile betting, integrity fees, and problem gaming.

The Committee requested a complete copy of the Nielsen study on American Gaming Association — League Revenue in a Legalize U.S. Sports Betting Market ([Attachment 10](#)).

Written-only testimony was provided by:

- Griffin Finan, Head of Government Affairs at DraftKings, a sports entertainment company ([Attachment 11](#));
- Kyle Kessler, Executive Director for the Association of Community Mental Health Center of Kansas, Inc. ([Attachment 12](#)); and
- Kevin Uhlich, Vice President, Business, Kansas City Royals ([Attachment 13](#)).

### **Committee Discussion**

The Chairperson stated the Committee received several views from different parties and felt there should be enough information to move forward. There will be a report generated from this informational meeting and forwarded on to the Legislature. The Chairperson urged interested parties to meet and work out any issues identified during the meeting before proposing legislation during the 2019 Legislative Session.

The Chairperson adjourned the meeting at 3:20 p.m.

Prepared by Connie Burns

Edited by Joanna Dolan

Approved by the Committee on:

March 6, 2019

(Date)