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OPPOSITION TESTIMONY

HB 2671 - Sports Wagering

**House Federal and State Affairs
March 12, 2020**

Chairman Barker and Members of the Committee:

On behalf of Kansas Entertainment, LLC, the owner of Hollywood Casino at Kansas Speedway, I appreciate the opportunity to appear today and share our concerns with HB 2671 and draw distinctions to SB 283, which is in this Committee and was supported by the state's four state-owned and operated casinos during hearings in the Senate.

Kansas Entertainment has appeared before this Committee in the past and expressed support for a sports wagering bill and expressed what we believe are critical components that should be included in any bill given serious consideration if the State is to be successful with a sports wagering platform.

Specifically:

- State owned/limited to existing gaming licensees;
- Reasonable tax rates;
- Mobile wagering; and,
- Most important: A safe and secure sports wagering platform operated in compliance with all Federal, state and local laws.

Sports Wagering Provisioned through Existing Gaming Licensees.

HB 2671 would allow the Kansas Lottery to act as the owner, operator, regulator and provider/competitor for sports wagering in our state. Kansas Entertainment believes this kind of a regulatory approach has risk for the State due to inherent conflicts with this model for a number of reasons, including handicapping the State's potential success as compared to a casino model; unfair competition between the State and private entities; the State being positioned as the marketer for sports wagering; higher tax rates; and the inherent challenges of being positioned as both the regulator and operator/contractor. All of which will reduce the incentive for those gaming illegally to transition to legal sports wagering in Kansas, which is one of the primary goals of this legislation.

Secondly, the bill would allow for “up to 1,200 existing lottery retailers to be licensed to provide sports wagering.” First of all, we have no idea what role or authority to provision sports wagering would be granted to lottery licensees, much less how the State would intend to conduct appropriate background checks and implement a regulatory framework to prevent underage wagering, money laundering or other illegal activities that could affect sports wagering in our state. The state’s four casinos already have comprehensive programs to address these and other regulatory risks associated with gaming that are applicable to sports wagering.

HB 2671 would have the Kansas Lottery create a single Interactive Sports Wagering Platform through generally undefined standards (e.g., “best able to serve the public convenience and promote sports wagering...”) and then allow a gaming facility manager to also seek approval of an additional platform (but not guaranteed to be selected), thus placing the casino in direct competition with its owner/regulator for the provision of sports wagering should they even be allowed to offer sports wagering under the bill.

Games of the Kansas Lottery can be played by those 18-years of age and older, while HB 2671 and SB 283 require those placing wagers to be 21-years of age and older. We do not believe the legislation before you adequately takes into consideration the conflict between the ages of those allowed to play Kansas Lottery games and the experience and expertise of the casinos, where participation is limited to those 21-years of age and older.

As a side note, we do not believe the State should or needs to enter into agreements with third-party retailers under a sports wagering platform. These entities – restaurants, bars and grills specifically will benefit from added customer traffic and entertainment options with customers utilizing apps on their phones in conjunction with audio/visual enhancements placed in these facilities by the owners and operators. Further, local establishments will be able to form their own partnerships with online operators in the state on their own commercial terms for things like driving signups to the apps, showing odds within the establishment, etc. Buffalo Wild Wings and Roar (MGM) partnership is prime example.

We also believe language in the bill allowing certain professional sports teams to provision sports wagering is vague, undefined and overly broad (baseball, basketball, football, ice hockey or soccer). There are any number of professional teams operating in Kansas and this language is a significant loophole to proliferation of gaming sites. SB 283 specifically allows for certain agreements between two sports teams and any of the four casinos by definition, subject to approval by the Kansas Racing and Gaming Commission (Sporting KC and Kansas Speedway).

Tax Rates.

HB 2671 proposes a tax rate of 14% on the hold for wagers placed at a brick & mortar facility and 20% on the hold for wagers placed through a mobile app. These tax rates are well beyond the norm for tax rates implemented in most states, including Nevada, Colorado, Iowa, and most likely to pass in Missouri. In addition, tax rates in Kansas should be competitive for the operators if the State is to entice those placing wagers in other states or illegally through various means to wager in Kansas.

SB 283 has a tax rate of 7.5% of the hold for brick-and-mortar facilities (e.g., wagers placed at the casino) and a 10% tax on wagers placed through a mobile app. We believe this tax rate is comparable with our surrounding states/competition:

- Iowa 6.75%
- Colorado 10.00%
- Nevada 6.75%

Tax proposals in Missouri legislation are also comparable with the rates in SB 283, Nevada and Iowa. If tax rates are too high, players will stick with illegal markets or game in other states.

Mobile Wagering.

We are pleased to see HB 2671 would allow for mobile wagering.

Other Concerns with HB 2671.

The Leagues have again injected themselves into a sports wagering bill that is inconsistent with sports wagering legislation passed in almost every other state.

- New Section 6 allows the Leagues to dictate what games can and cannot be wagered on and grants the Leagues undefined authority to arbitrarily withhold or otherwise seek to prevent wagering on an event, series or even an entire sport. What if the NFL informed the State of Kansas they would not allow Kansans to wager on the Super Bowl due to some special consideration that could only be overcome by the State agreeing to only allow the use of NFL-approved data for the big game? The risk to the state's sports wagering program is undefined.
- New Section 7 requires sports wagering managers (e.g., casinos) to report any suspicious activity involving sports wagering to the sports governing body and essentially give full access for any information and data to the governing body. Kansas Entertainment finds this language highly objectionable for a number of reasons. First of all, in any such instance, Kansas Entertainment would immediately contact the appropriate regulatory and law enforcement agencies. Without a thorough investigation by the proper authorities, how can the sports wagering manager know who is and who is not potentially culpable? This language could allow the sports governing body compromise an investigation (e.g., Houston Astros, steroids, cases of player domestic abuse, etc.). This provision would allow a sports governing body and/or parties complicit to cheating or illegal activity to hide or destroy evidence. We would respectfully suggest the provisions in this section relating to the Leagues should be removed from any bill and give full authority to the appropriate law enforcement agencies to decide who should provide information and cooperate in an investigation and to what extent.

- New Section 7 also includes provisions mandating the use of “official league data” for Tier Two Sports Wagers (e.g., in-game wagers). This is a total overreach hardly any state has agreed to accept. First of all, data for sports wagers are cleared through a data provider, such as Sportradar (www.sportradar.com), Genius Sports (www.geniussports.com) etc.. Check out their websites and you will see a list of “exclusive data partnerships” with the NFL, NBA, NHL, ITF, ESL and MLB. Are we to believe the Leagues partner with companies like Sportradar and Genius Sports for which they are paid significant sums and they also need to mandate additional fees be paid by a sports wagering manager in Kansas who will also be contracting with an entity such as Sportradar? This is nothing but a financial money grab. At this writing, only Michigan and Tennessee mandate official league data. It is worth noting that Michigan has four major league teams (football, hockey, baseball and basketball) and Tennessee has three professional sports teams (Football, basketball and hockey) Given the influence and money of the Leagues, it is no surprise they have had some degree of lobbying success in those two states. More important, though, none of the other 18 states with sports wagering have required “official league data.”
- New Section 8 mandates information relating to ALL wagers be kept for a period of three years. We object to this as unduly burdensome and would call the Committee’s attention to language found in SB 283 that requires the retention of records “of at least all persons making sports wagers in an aggregate amount of \$1,200 or more within a 24-hour period for a minimum of 60 days and make such records available for inspection upon request with the Kansas Lottery, Kansas Racing and Gaming Commission or as required by court order.” We believe this language gives sufficient latitude to the Racing and Gaming Commission to promulgate rules and regulations with greater specificity extent if they determined to be appropriate.
- Section 21 allows for the State to implement an “i-Lottery” program that is far-reaching and very likely the language of the bill conflicts with both the state prohibition against allowing expanded gaming beyond the four state-owned and operated casinos and the contracts the State has entered in with the casinos, which include severe penalty provisions. The casinos negotiated with the Kansas Lottery language for a restricted i-Lottery program during consideration of SB 283 in the Senate. My client has agreed to support legislative consideration of that language and believe the other three casinos have expressed neutrality, although they were involved with crafting the language. Anything beyond what was negotiated between the casinos and the Kansas Lottery is unacceptable to my client and we would respectfully request a proposal as broad as that found in this legislation be required to be considered on its own merits. SB 283, in its current form would allow the Kanas Lottery to sell Power Ball, Mega-Millions and related draw games online.

- Lack of Local Revenue Share. Sports wagering is particularly sensitive to tax rates. We are opposed to any addition of a local tax component as found in the Kansas Expanded Lottery Act and support its absence in HB 2671 and rejection of attempts to amend such language into SB 283. Local units of government and the State of Kansas will benefit from increased patronage at the land-based casinos offering sports wagering, through increased casino games' wagering and increased food & beverage sales, all of which will increase revenues to all affected governmental entities. For example, since sports wagering has opened at other Penn National Gaming operated properties, there has been an average incremental increase of 10% in food & beverage offerings and as much as a 15% increase in table games and an inflow of new customers visiting the property for the first time. We believe a well-crafted sports wagering bill can help enhance the brick-and-mortar state-owned gaming facilities, which is beneficial for both the State and casinos and also, perhaps more importantly, if properly adopted, transition those already participating in illegal sports wagering in Kansas into legal wagering in a safe, regulated gaming platform.

Sports wagering is a low margin, highly volatile business. As discussed in this committee before, approximately 95% of the wager is returned to the bettor with the State and sports wagering manager dividing the remainder (the "hold"). Out of the hold, after state and federal taxes are paid, it is the sports wagering manager – the casino in SB 283 – that takes the risk for the win or loss, pays for all expenses related to provisioning the game and then receives the remainder. Since sports wagering was allowed under the U.S. Supreme Court decision in 2018, the House (e.g., the State or the casino/sports wagering manager) has not always won. HB 2671 has the same inherent risk for the State of Kansas and is not a guaranteed money generator like a lottery game where the House always wins.

Some examples in closing: The casinos in Iowa produced more than \$113 million in slot revenue in December 2019, while their sports book generated \$59 million in handle (bets wagered). The casinos betting revenue from these wagers was only \$2.9 million or a 4.8% hold. In fact, three of the state's casinos actually lost money on their sports book in that month. Furthermore, during the Super Bowl, Iowa saw significant wagering on the Kansas City Chiefs, which resulted in some casinos losing "a significant amount of money from their hold." That fact may be evidenced in the February 2020 numbers contained in the Iowa Sports Wagering Revenue Report noting eight of eighteen casinos in that state lost money on sports wagering in February.

The Oregon Lottery initially projected a \$6.3 million windfall at the time their sports wagering program launched; they are facing a \$5.3 million loss in their first year.

The citizens of our state interested in sports wagering are ready for the State to move a sound and credible bill forward, as is Kansas Entertainment. 22 States have adopted sports wagering legislation and both Michigan and Illinois go live this week. Kansas should join with them. For the reasons enumerated in this testimony, we do not believe HB 2671 meets that objective and cannot support it. We would encourage this Committee and the House to consider SB 283 as a responsible approach to sports wagering that is consistent with legislation adopted in other states both in close proximity to Kansas and around the country.

On behalf of Kansas Entertainment, I would be pleased to stand for questions.

Thank you.

WBD

Kansas Entertainment, LLC is a joint-venture partnership of Penn Hollywood Kansas, Inc., and Kansas Speedway Development Corporation, and was selected by the State of Kansas in 2009 to develop a destination casino for the Northeast Kansas Gaming Zone. Since opening in 2012, Hollywood Casino and Kansas Speedway has paid over \$430 million in taxes and fees to the State and local government, provided over \$10 million in charitable contributions and currently employs more than 600 local team members.

Attachments: Summary of SB 283.

Kansas Sports Wagering Bill Summary

- Statewide mobile wagering is allowed
- You can register for sportsbook apps online and from anywhere
- You must be located in the state and be 21 years of age in order to wager
- In order to offer sports betting, you must either be an existing land-based casino (lottery gaming facility manager) or Kansas Speedway and the owners of Sporting KC's complex may partner with one to offer at their facility
- There is no additional license fee to offer sports wagering
- Each lottery gaming facility manager receives two online offerings
- The Kansas Lottery may directly offer sports wagering **only** if fewer than two (2) lottery gaming facility managers offer sports wagering via the internet within two years of the effective date of the act. Should that occur, the Executive Director of the Lottery may choose up to two internet platforms to run the sports wagering on the Lottery's behalf
- For lottery gaming facility managers, the tax rate is 7.5% for retail sports wagering revenue and 10% for online sports wagering revenue
- There are no limits on in-play betting and/or restrictions on data sources
- Excluded sporting events include: greyhound races, events where a majority of the participants are under the age of 18, and events that are at the high school level or below
- Owners, officers, employees of teams, referees, player's union, etc., prohibited from wagering
- Wager types include: single game wagers, teasers, parlays, over/unders, moneylines, props, in-game, pools, and exchange wagering
- Maintain wagering info on wins within 24 hours of \$1,200 for 60 days or more on request
- iLottery (Power Ball/Mega-Millions)
- White-collar crime scholarship program added in committee
- \$800,000 per year to support horse racing benefit fund (capped at \$1 million)
- Provision for Sporting KC and Kansas Speedway sports wagering through a casino
- KS Racing and Gaming Commission has oversight for adopting rules

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