

March 22, 2022

The Honorable John Barker, Chairperson
House Committee on Federal and State Affairs
Statehouse, Room 346-S
Topeka, Kansas 66612

Dear Representative Barker:

SUBJECT: Fiscal Note for HB 2740 by House Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2740 is respectfully submitted to your committee.

HB 2740 would allow the Kansas Lottery to enter into a contract with lottery gaming facility managers to offer sports wagering in the state on behalf of the State of Kansas through the Kansas Lottery. The bill would prohibit sports wagering for persons under 21 years of age. Lottery gaming facility managers would be allowed to offer sports wagering in-person at their facility or over the internet through websites and mobile device applications from up to three licensed interactive sports wagering platforms approved by the Kansas Lottery. The bill would allow lottery gaming facility managers to enter into marketing agreements with professional sports teams for the purpose of marketing sports wagering at the teams' primary facilities. A professional sports team is defined as an athletic team that operates at the major league level in the sport of baseball, basketball, football, ice hockey, or soccer. The marketing agreement would allow sports betting at kiosks located at the professional sports team's primary facility and could provide access to mobile device applications to allow sports wagering through the interactive sports wagering platforms at the primary facility. The marketing agreement would prohibit any owner, director, officer, employee, or agent of the professional sports team from taking any bets, paying out any prizes, or having any control or access to the interactive sports wagering platform.

The Kansas Lottery would be required to review and approve each interactive sports wagering platform that would serve the public convenience and promote sports wagering with marketing plans developed by the Kansas Lottery. Once the contract with an interactive sports wagering platform has been approved by the Kansas Lottery and background investigations approved by the Kansas Racing and Gaming Commission, then lottery gaming facility managers that have entered into a management contract for the operation and management of sports wagering

could use the interactive sports wagering platform. A lottery gaming facility manager would be able to apply to the Kansas Lottery to provide one additional graphical user interface specific to a professional sports team that they have a marketing agreement to provide sports wagering at the team's primary facility. All sports wagers, including wagers accepted on the interactive sports wagering platform, would only be accepted from individuals that are physically located in the State of Kansas. Interactive sports wagering platforms would be allowed to offer all types of sports wagering, including in-game betting.

The bill would require that any person that provide goods, services, software, or any other components necessary for the determination of the odds or the outcomes of any wager on a sporting event, directly or indirectly, to a lottery gaming facility manager apply to the Kansas Racing and Gaming Commission for a sports wagering supplier license. The Commission would establish the fee for the issuance and renewal of a sports wagering supplier license and provisional sports wagering supplier license. The provisional sports wagering supplier license would be valid for a term set by the Commission that cannot exceed one year. The sports wagering supplier license would be valid for two years from the date issued.

The bill would allow each lottery gaming facility manager to enter into marketing agreements with not more than 50 marketing entities with at least 10 agreements with nonprofit fraternal or veterans' organizations. The marketing agreement would be required to be approved by the Kansas Lottery.

The Kansas Lottery and Kansas Racing and Gaming Commission would have the authority to write rules and regulations to implement the bill. Specifically, the Kansas Lottery would be required to adopt rules and regulations regarding sports wagering advertising by January 1, 2023. The Kansas Lottery would be allowed to restrict, limit, or exclude wagering on one or more sporting event by a notice to each lottery gaming facility manager. Offering or taking wagers that are contrary to any notice or any rules and regulations would be a violation of the Kansas Expanded Lottery Act.

The lottery gaming facility manager would be required to use reasonable methods to prohibit the manager, directors, officers, owners, employees, or relatives of those individuals living in the same household from placing wagers with the manager or the interactive sports wagering platform. The bill would prohibit athletes, coaches, referees, team owners, employees of a sports governing body or its member teams, and player and referee union personnel from placing wagers on any sporting event overseen by that governing body. The bill would prohibit any person with access to nonpublic confidential information held by the manager from placing any wagers with the manager. No person would be allowed to place a wager as an agent or proxy of another person. The manager would not be allowed to accept a wager from a person convicted of any felony or misdemeanor offense involving sports wagering.

Lottery gaming facility managers would be required to cooperate with investigations by the Kansas Lottery, Kansas Racing and Gaming Commission, or law enforcement agencies by providing account-level betting information and audio or video files relating to persons placing wagers. Managers would be required to immediately report to the Kansas Lottery and the Kansas

Racing and Gaming Commission any criminal or disciplinary proceedings; abnormal wagering activity or patterns that may indicate a concern with the integrity of a sporting event or events; any potential breach of the relevant sports governing body's internal rules and codes of conduct pertaining to sports wagering; any conduct that corrupts a betting outcome of a sporting event for purposes of financial gain, including match fixing; and any suspicious or illegal wagering activity including the use of funds derived from illegal activity, using other individuals to place wagers, or the use of a false identification when placing a wager. The manager would be required to maintain the security of wagering data, customer data, and other confidential information from unauthorized access and distribution. The Legislature would be required to review the confidential information provision before it expires on July 1, 2027.

The lottery gaming facility manager could use any data source to determine the result of a sports wager as long as the source provides certified league data approved by the Executive Director of the Kansas Lottery. The manager would be required to maintain records on all sports wagering activity for at least three years after the conclusion of the sporting event. The sports wagering manager would be required to allow the inspection of sports wagering records upon request of the Kansas Lottery, the Kansas Racing and Gaming Commission, or by a court order. The bill would allow the state to have a civil case to recover damages or other equitable relief against any person who knowingly engages in, facilitates, or conceals conduct that intends to improperly influence a betting outcome of a sporting event for purposes of financial gain. The sports wagering manager would be required to prohibit an individual from placing a wager if the individual enrolls in the voluntary exclusion program.

The bill would create a class A nonperson misdemeanor if any of the following individuals place a sports wager with a lottery gaming facility manager:

1. Executive Director of the Kansas Lottery, a member of the Kansas Lottery Commission or any employee or agent of the Kansas Lottery;
2. Executive Director, a member, or any employee or agent of the Kansas Racing and Gaming Commission;
3. Lottery gaming facility manager, or any director, officer, owner or employee of such sports wagering manager, or any relative living in the same household with those persons;
4. An interactive sports wagering platform, or any director, officer, owner or employee of such platform, or any relative living in the same household with those persons;
5. Any director, officer, or employee of a sports governing body;
6. Any owner, officer, athlete, coach, or other employee of a team; or
7. Any director, officer, or employee of a player union or referee union.

The bill would create a new crime of misuse of nonpublic sports information that is punishable as severity level 5 nonperson felony. Misuse of nonpublic sports information is defined as placing, or causing to be placed, a bet or wager on a sports contest on the basis of material

nonpublic information. The bill would set the penalty for sports bribery offenses with the intent to influence a betting outcome of a sports contest in order to obtain financial gain as a severity level 5 nonperson felony. It would be a severity level 8 nonperson felony for any person knowingly to place a sports wager with access to nonpublic confidential information held by the manager; as an agent or proxy for other persons; using funds derived from illegal activity; to conceal money derived from 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. Under current law, it is a severity level 9 nonperson felony to operate an illegal gaming device not authorized by the Kansas Lottery. The bill would authorize the Attorney General and Kansas Racing and Gaming Commission to investigate and prosecute violations of this provision.

The bill would prohibit any person from serving as the Executive Director, a member of the Kansas Lottery Commission, or an employee of the Kansas Lottery while or within five years after holding a financial interest, being employed by, or acting as a consultant to any interactive sports wagering platform. It would also be illegal for these individuals to accept any compensation, gift, loan, entertainment, favor, or service from any interactive sports wagering platform, and any violation of this provision could be punishable as a class A misdemeanor.

The bill would create the Sports Wagering Receipts Fund in the State Treasury and separate accounts would be maintained for the receipt of moneys from sports wagering conducted by each lottery gaming facility manager. If a lottery gaming facility manager offers sports wagering, then the management contract would include a provision that 14.0 percent of the sports wagering revenues received from wagers placed in person at each lottery gaming facility and 20.0 percent of the sports wagering revenues received from wagers placed with the interactive sports wagering platform contracted with the lottery gaming facility manager would be distributed to the Lottery Operating Fund. Sports wagering revenues are defined as total revenues from sports wagering excluding voiding tickets and after all prize related payments are made. If a lottery gaming facility manager agrees to offer sports wagering, the Kansas Lottery would be the licensee and owner of all software programs used in offering sports wagering. All sports wagering would be under the control of the Kansas Lottery in accordance with the Kansas Expanded Lottery Act.

The bill would create the White Collar Crime Fund in the State Treasury that would be administered by the Governor. The White Collar Crime Fund would be used to investigate and prosecute criminal offenses involving 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 the Kansas Expanded Lottery Act. The fund could also be used to investigate and prosecute criminal offenses involving any financial or economic crime. Beginning on July 1, 2023, and each July 1st thereafter, the first \$750,000 credited to the Lottery Operating Fund from sports wagering revenue would be transferred to the White Collar Crime Fund. The Attorney General and the Kansas Racing and Gaming Commission would be required to make a request to the Governor before August 1st of each year for available funding

from the White Collar Crime Fund. The Governor would be authorized to transfer monies from White Collar Crime Fund to any special revenue fund of the Attorney General and the Kansas Racing and Gaming Commission to carry out the purposes of this fund.

The bill would require that if a federally recognized Indian tribe submits a request to negotiate a gaming compact regarding sports wagering, then the Governor would be required to negotiate in good faith to enter into a gaming compact that would allow sports wagering at tribal gaming facilities operated by the Iowa Tribe of Kansas and Nebraska, the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas, the Prairie Band Potawatomi Nation in Kansas, or the Sac and Fox Nation of Missouri in Kansas and Nebraska.

The bill would require the Kansas Racing and Gaming Commission to establish certification requirements and enforcement procedures for employees of a lottery gaming facility manager who are directly involved in the operation or management of sports wagering. The certification requirements and enforcement procedures would also apply to persons that have a contract with a lottery gaming facility manager for providing goods or services related to sports wagering. The certification requirements would include compliance with security, fitness, and background investigations. The Kansas Racing and Gaming Commission would be required to adopt rules and regulations providing for the suspension, revocation, or nonrenewal of a certification for certain violations.

The bill would authorize the operation of up to 1,000 historical horse race machines at a parimutuel horse racetrack located in Sedgwick County with machines approved by the Kansas Racing and Gaming Commission. The parimutuel wagers placed on historical horse race machines would not be dependent upon the type of breed that primarily races in live meets conducted or simulcast races displayed at the racetrack. Historical horse race machines could be offered during any times approved by the Commission and would not be limited to times when live or simulcast races are being conducted. Historical horse race machines would randomly select one or more races when the patron deposits a wager. The machine would not display any information that would allow the patron to identify the historical horse race on which the patron is wagering before the wager is made. The machine would display statistical racing information that would have been available on the date the horse race actually occurred. The identity of the race would only be revealed after the wager has been placed and played. Historical horse race machines would be excluded from the definition of electronic gaming machines. No historical horse race machines would be operated at any facility that conducts live greyhound races or displays simulcast greyhound races. The total amount wagered on historical horse race machines would be subject to the parimutuel tax at a rate of 3.0 percent.

Prior to the operation of any historical horse race machines, the Executive Director of the Kansas Lottery would be required to provide a written notice to the lottery gaming facility manager that has a facility located in the same gaming zone of the facility where the operation of any historical horse race machines would occur. The bill would only allow the lottery gaming facility manager in the same gaming zone to make a claim that the contract authorizing historical horse race machines violates the law. The lottery gaming facility manager would have 60 days after the notice to file a legal action at the Kansas Supreme Court to determine if the proposed contract with

the parimutuel racetrack is in violation of the Kansas Expanded Lottery Act or creates a material breach of the lottery gaming facility manager's contract with the Kansas Lottery. Monetary damages awarded could not exceed an amount equal to the privilege fee paid by the facility manager plus accrued interest.

If the final judgment of the court orders the repayment of the privilege fees and interest to a lottery gaming facility manager then the Kansas Racing and Gaming Commission would not authorize the operation of historical horse race machines unless the Kansas Lottery received the full judgment amount from the facility manager licensee for the racetrack facility. Repayment of privilege fees would be deposited into the Privilege Fee Repayment Fund and expenditures from the fund would be for repayment of the privilege fees, including accrued interest. The bill would require the Kansas Racing and Gaming Commission to reimburse the facility manager licensee for the racetrack facility no less than 50.0 percent of the amount of State Racing Fund revenue generated from the operation of historical horse race machines on monthly basis. The bill would create the Facility Manager Licensee Repayment Fund to be administered by the Kansas Racing and Gaming Commission. Expenditures from the fund would be for reimbursement to the facility manager licensee for the racetrack facility for a judgment to reimburse previously paid privilege fees plus interest to a lottery gaming facility manager. The bill includes a severability clause that if provisions allowing historical horse race machines are declared to be void, invalid, or unconstitutional, then other provisions of the bill would remain in effect.

Each horse racetrack would be required to conduct live or simulcast horse racing programs for at least 60 days each year in order to operate historical horse race machines. The bill would reduce the application fee from \$500 to \$50 for any fair association or horseman's nonprofit organization. The organization licensing fee would be reduced from \$100 to \$25 for each day of racing. The bill would eliminate some of the restrictions on simulcasting and would allow county fair associations to operate simulcasting for additional days. The bill would make other technical corrections to the Kansas Expanded Lottery Act and the Kansas Parimutuel Racing Act.

Under current law, the Kansas Lottery is prohibited from selling lottery tickets by electronic mail, the internet, or telephone. The bill would remove this restriction as long as the lottery ticket or any related online game does not allow a player to choose the denomination of a ticket during game play; offer a ticket or game at a price less than any traditional lottery ticket offered at retail; simulate the play of an electronic gaming machine; extend or arrange credit for the purchase of a ticket; allow for the redemption for payment of a lottery ticket other than at a lottery retail location or with the Kansas Lottery; allow a player to use an automatic play feature for consecutive instant games; or allow a player to use a reveal all feature that functions over a period of less than three seconds.

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. Then 85.0 percent of the rest 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 Kansas Racing and Gaming Commission indicates that HB 2740 would require at least 6.00 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 facility would first be required to obtain a parimutuel license and approved background investigation from the Kansas Racing and Gaming Commission before they could offer historical horse race machines. The Commission indicates that it would need approximately \$1.8 million and 21.00 FTE positions if a parimutuel racetrack reopens for the annual costs to regulate both the racing and historical horse race machine activities. Start-up costs of approximately \$450,000 per facility would also be needed for expenses, such as background investigations, licensing equipment, software licenses, computer equipment, furniture and supplies, and other expenses that would be associated with reopening each facility. If a facility is opened that only offers historical horse race machines, but no other parimutuel activity, then the annual expenses would be approximately \$1,330,000 and 13.00 FTE positions would be needed for regulatory purposes to regulate only historical horse race machines activity. Funding for regulating racing activities has primarily come from the transfer of parimutuel tax receipts to the State Racing Fund. The appropriations bill each year provides the authority for the Kansas Racing and Gaming Commission to bill each facility for all costs related to regulating racing activity. A reliable estimate of the parimutuel revenue that might be generated from historical horse race machines as a result of the bill cannot be made without a detailed market study, which would include an estimate as to when the facility would be operational, the location of the facility, the size of the facility, and if the new facility would impact revenues from existing gaming facilities.

The Kansas Lottery indicates that the state is prohibited from designating additional areas of the state where gaming facilities are authorized until July 1, 2032. The Kansas Lottery indicates that the other lottery gaming facility managers have signed contracts with the Kansas Lottery that expressly prohibit the state from designating additional areas of the state where operation of lottery gaming facilities or similar gaming facilities would be authorized. Authorizing historical horse race machines at parimutuel facilities may be interpreted as an expansion of gaming. Lottery gaming facility managers entered into a contract with the state to manage lottery gaming facilities under a certain set of statutory and contractual terms. To have those terms changed mid-contract may result in litigation from lottery gaming facility managers to possibly recover damages or other losses from the state. Litigation would likely be decided by the courts. The amount of monetary damages that could be awarded by the courts is unknown. It is also unknown if any possible damages would include the refunding of \$61.0 million in privilege fees that have already been collected from the four selected lottery gaming facility managers or if the damages would include any interest payments.

In the event that a lottery gaming facility manager is repaid its privilege fee and accrued interest, then the parimutuel racetrack licensee for the racetrack facility in the same gaming zone would be responsible for this payment; however, the parimutuel racetrack would be reimbursed for that payment amount to the lottery gaming facility manager out of the state's share of revenue

from the racetrack gaming facility that would be distributed to the State Racing Fund. The parimutuel racetrack would only be responsible for the refund of the privilege fees and accrued interest from the lottery gaming facility manager in the same gaming zone; however, it is unclear who would be responsible for any additional monetary damages that could be awarded by the courts from additional lawsuits.

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 2.00 additional FTE positions and \$201,802 annually for ongoing costs if it were required to regulate sports wagering at existing tribal casinos.

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 could generate additional revenues to the state of \$1.8 million in FY 2023, \$6.0 million in FY 2024, and \$10.0 million in FY 2025. The first \$750,000 generated from sports wagering would be transferred to the White Collar Crime Fund. The remaining sports wagering revenue would be transferred to the Lottery Operating Fund that would be used for sports wagering related operating expenses and any additional amount above expenses would then be transferred to the State Gaming Revenue Fund and ultimately transferred to the State General Fund at the end of the fiscal year.

To formulate these estimates, the Kansas Lottery reviewed sports wagering data from Iowa and made adjustments for changes in demographics and the effective tax rate. The Kansas Lottery indicates that industry analysts predict that the sports wagering industry will see substantial growth in future years. These estimates assume that most sports wagering would occur over the internet with an interactive sports wagering platform instead of in-person at the lottery gaming facility. It is also unknown to what extent that the tax rate would discourage currently illegal sports betting to shift to legal markets. The Kansas Lottery indicates that the bill would require it to hire up to 5.00 new FTE positions to implement a sports wagering system. There would also be significant IT and other startup costs during the sports wagering implementation phase, but it is unable to estimate specific amounts of funding necessary to implement the provisions of the bill.

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 procedures on its implementation have the potential to increase the overall ticket sales by \$75.0 million and increase the transfer to the state by an additional \$10.9 million 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 \$76.0 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. The Kansas Lottery indicates that the bill would require it to hire up to 6.00 new FTE positions to implement an iLottery system. There would also be significant IT and other startup costs during the iLottery implementation phase, but it is unable to estimate specific amounts of funding necessary to implement the provisions of the bill.

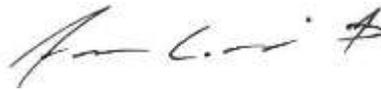
The Department for Aging and Disability Services (KDADS) indicates that allowing sports wagering activity would likely increase demand for services provided by its Problem Gambling Program. The Department indicates that the amount of additional spending would be dependent on how readily available sports wagering would be offered in the state. Research and prevalence studies can effectively guide the determination for funding, policy, and practice decisions regarding these needs. KDADS estimates an increase in expenditures of up \$1,350,000 in the first year of sports wagering to increase treatment capacity, support a statewide media campaign to promote problem gaming programs, and to conduct a prevalence study. The Department also has concerns that 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 Attorney General's Office indicates the bill would allow parimutuel wagering on historical horse race machines at locations in Sedgwick County other than the existing lottery gaming facility which could result in litigation to determine if allowing historical horse race machines violates provisions of the Kansas Expanded Lottery Act. If there are additional litigation costs as a result of the bill, the Office would likely hire outside counsel. However, the Office did not provide an estimate of any potential litigation costs or how long the estimated litigation costs would continue from enactment from the bill. The Office indicates that 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 regulations 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 from the White Collar Crime Fund; however, a specific determination on how these additional funds would be expended has not been made.

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.

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 Grant Program would review grant requests from the Attorney General's Office and the Kansas Racing and Gaming Commission that would be used to investigate and prosecute criminal offenses related to sports wagering or illegal gambling activity. The Governor's Office indicates that 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 HB 2740 is not reflected in *The FY 2023 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Proffitt", with a stylized flourish at the end.

Adam Proffitt
Director of the Budget

cc: Keith Kocher, Lottery
Vicki Jacobsen, Judiciary
Willie Prescott, Office of the Attorney General
Leigh Keck, Aging & Disability Services
Brandi White, Racing & Gaming Commission
Scott Schultz, Sentencing Commission