

SESSION OF 2018

**CONFERENCE COMMITTEE REPORT BRIEF
SUBSTITUTE FOR HOUSE BILL NO. 2194**

As Agreed to May 2, 2018

Brief*

Sub. for HB 2194 would amend the Kansas Lottery Act (Act) to allow the use of lottery ticket vending machines and the use of instant bingo vending machines, amend law concerning underage purchasing of lottery tickets, extend the sunset provision for the Kansas Lottery (Lottery) in current law, amend law directing transfers from the Lottery Operating Fund, and amend law concerning the State Debt Setoff Program.

Lottery Machines; Definition Changes

The bill would amend the definition of “lottery machine” by removing the term “lottery ticket vending machine” from the definition of “lottery machine.” The bill would further amend the definition of “lottery machine” to specify lottery ticket vending machines and instant bingo vending machines are not considered lottery machines. Games on lottery machines are prohibited under law, which would remain unchanged by the bill (KSA 2017 Supp. 74-8710).

Lottery Ticket Vending Machines

The bill would allow the Lottery to use lottery ticket vending machines to sell lottery tickets.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

The bill would also create a definition for “lottery ticket vending machine,” which would be defined as a machine or similar electronic device owned or leased by the Lottery, the sole purposes of which are to:

- Dispense a printed physical ticket, such as a lottery ticket, a keno ticket, a pull tab ticket, or a coupon, which must be redeemed through something other than a lottery ticket vending machine, after a purchaser inserts cash or other form of consideration into the machine;
- Allow purchasers to manually check the winning status of a Lottery ticket; and
- Display advertising, promotions, and other information pertaining to the Lottery.

The bill would state a lottery ticket vending machine shall not:

- Provide a visual or audio representation of an electronic gaming machine;
- Visually or functionally have the same characteristics of an electronic gaming machine;
- Automatically determine or display the winning status of any dispensed ticket;
- Extend or arrange credit for the purchase of a ticket;
- Dispense any winnings;
- Dispense any prize or dispense any evidence of a prize other than the lottery ticket, keno ticket, pull tab ticket, or any free Lottery ticket received as a result of the purchase of another Lottery ticket;

- Provide free games or any other item that can be redeemed for cash; or
- Dispense any other form of a prize to a purchaser.

The bill would also allow lottery ticket vending machines to dispense only the printed physical lottery ticket, keno ticket, or pull tab ticket, including any free Lottery ticket received as a result of the purchase of another Lottery ticket, and change from a purchase to the purchaser. The bill would specify any winnings from a lottery ticket vending machine could be redeemed only for cash or check by a lottery retailer or by cash, check, or other prize from the office of the Lottery.

The bill would specify no more than two lottery ticket vending machines could be located at each Lottery retailer selling location.

Instant Bingo; Vending Machines

The bill would remove language in the definition of “instant bingo” prohibiting bingo games utilizing electronically generated or computer-generated tickets from an instant bingo vending machine. The definition would also be amended to specify instant bingo games could be dispensed by an instant bingo vending machine.

The bill would also create a definition for “instant bingo vending machine,” which would be defined as a machine or electronic device that is purchased or leased by a licensee, as defined by KSA 2017 Supp. 75-5173, from a distributor who has been issued a distributor registration certificate pursuant to KSA 2017 Supp. 75-5184, or leased from the Lottery in fulfillment of the Lottery’s obligations under an agreement between the Lottery and a licensee entered into pursuant to the provisions of the bill. As specified in the definition, the sole purpose of an instant bingo vending machine would be to:

- Dispense a printed instant bingo ticket after a purchaser inserts cash or other form of consideration into the machine; and
- Allow purchasers to manually check the winning status of an instant bingo ticket.

The bill would state an instant bingo vending machine shall not:

- Provide a visual or audio representation of a bingo card or an electronic gaming machine;
- Visually or functionally have the same characteristics as a bingo card or an electronic gaming machine;
- Automatically determine or display the winning status of any dispensed instant bingo ticket;
- Extend or arrange credit for the purchase of an instant bingo ticket;
- Dispense any winnings;
- Dispense any prize;
- Dispense any evidence of a prize other than the instant bingo ticket;
- Provide free instant bingo tickets or any other item that can be redeemed for cash; or
- Dispense any other form of a prize to a purchaser.

The bill would also require all physical instant bingo tickets dispensed by an instant bingo vending machine to be purchased by a licensee from a registered distributor. No more than two instant bingo vending machines could be located on the premises of each licensee location.

Agreements Between Lottery and Nonprofit Organizations; Vending Machine Sales

The bill would authorize the Executive Director of the Kansas Lottery (Executive Director) to enter into agreements with licensed nonprofit organizations for the operation of instant bingo vending machines on the premises of nonprofit organizations. No more than two instant bingo vending machines could be located on the premises of the nonprofit organization.

These agreements would be required to provide for the remittance of gross receipts of instant bingo tickets in the vending machines to the nonprofit organization. All sales of instant bingo tickets in the vending machines would be considered sales by the nonprofit organization and proceeds from such sales would be remitted to the nonprofit organization.

Underage Purchasing of Lottery Tickets

The bill would provide any lottery ticket or share of a ticket purchased by an individual under the age of 18 would be null and void and could not be redeemed for a prize.

The bill would also allow officers having authority to enforce the provisions of the Act, or authorized representatives of the Attorney General, county attorney, or district attorney, to develop a program or system that determines and encourages compliance with the provisions of the Act. Such officers could engage or direct a person to violate the provisions of the Act, which prohibits sales of lottery tickets to persons under age 18 by lottery ticket vending machines.

Lottery retailers or such retailer's designee could also engage or direct a person under 18 to violate provisions of the Act pursuant to a self-compliance program designed to increase compliance with the provisions of the Act, and approved by the Executive Director.

Lottery Sunset Provision

The bill would extend the existing sunset provision for the Lottery to July 1, 2037. Under current law, the Lottery will be abolished on July 1, 2022.

Transfers from the Lottery Operating Fund

The bill would authorize moneys in the Lottery Operating Fund be used for transfers to the Community Crisis Stabilization Centers Fund and Clubhouse Model Program Fund of the Kansas Department for Aging and Disability Services (KDADS).

The bill would specify, commencing in FY 2019, on or before the tenth day of each month, the Executive Director would be required to certify the net profits from the sale of lottery tickets and shares in lottery ticket vending machines. Of that certified amount, moneys would be distributed from the Lottery Operating Fund, as follows:

- 75.0 percent would be transferred to the Community Crisis Stabilization Centers Fund (created by the bill); and
- 25.0 percent would be transferred to the Clubhouse Model Program Fund (created by the bill).

Such transfers could not exceed \$4.0 million in the aggregate for FY 2019 or \$8.0 million in the aggregate for FY 2020, and each fiscal year thereafter.

State Debt Setoff Program

The bill would amend the State Debt Setoff Program (Program) in several ways.

Current law allows the Director of Accounts and Reports (Director) of the Department of Administration to enter into an agreement with a municipality for participation in the Program for the purpose of assisting in the collection of a debt. Such municipalities would be required to certify that the municipality has made at least three attempts to collect a debt prior to submitting such debt to setoff. The bill would amend the definition of "municipality" to include community mental health centers and licensed mental health clinics.

The bill would require the Director to enter into agreements with lottery gaming facility managers, racetrack gaming facility managers, and facility owner licensees for participation in the Program for the purpose of collecting debts. Each such contract would be required to include a provision agreeing to defend, indemnify, and hold harmless the manager or licensee for all claims, demands, suits, actions, damages, judgments, costs, charges, and expenses brought or asserted against the manager or licensee arising from the manager or licensee's performance of an agreement to facilitate the collection of debts.

The bill would specify lottery gaming facility managers, racetrack gaming facility managers, and facility owner licensees would be required to check the state debtor files before paying moneys on behalf of the State for any gambling winnings requiring completion of a federal tax form. If the person winning the prize is listed in the state debtor files, the prize would be withheld by the manager or licensee to the extent of such debt. Withheld moneys would be transmitted to the State Treasurer and deposited in the Setoff Clearing Fund.

Lottery gaming facility managers, racetrack gaming facility managers, and facility owner licensees would not be subject to civil, criminal, or administrative liability for actions taken under the bill, unless such actions were intentional, malicious, or wanton. The State would be required to indemnify the manager or licensee for expenses, losses, damages, and attorney fees arising from the performance of

activities under the bill, and the the manager or licensee would have all the protection of the State under the Kansas Tort Claims Act. The sole remedy at law for persons claiming wrongful withholding of prizes would be an appeal to the Department of Administration.

Debts for child support enforced by the Kansas Department for Children and Families (DCF) under federal law would have the cost of collection paid by DCF. Collection costs would not be added to such debts.

Debt setoff provisions would not apply to Native American tribal gaming facilities.

Effective Date

The bill would be in effect upon publication in the *Kansas Register*.

Conference Committee Action

The Conference Committee removed the contents of Sub. for HB 2194, as amended by the Senate Committee of the Whole, and inserted the contents of HB 2517, as amended by the House Committee on Federal and State Affairs, with the following changes:

- Require the Director of Accounts and Reports to enter into agreements with lottery gaming facility managers, racetrack gaming facility managers, and facility owner licensees regarding participation in the Program;
- Require the State to indemnify lottery gaming facility managers, racetrack gaming facility managers, and facility owner licensees for all expenses, losses, damages, and attorney fees arising from participation in the Program;

- Include the lottery gaming facility managers, racetrack gaming facility managers, and facility owner licensees under the protections of the Kansas Tort Claims Act for purposes of debt collection under the Program;
- Move certain definitions from a new section in the bill to KSA 75-6202 (current Program-related statute);
- Change the definition of an instant bingo vending machine from a machine or electronic device owned or leased by the Lottery to a machine or electronic device that is purchased or leased by a licensee from a certified distributor or leased from the Lottery;
- Require all physical instant bingo tickets dispensed by an instant bingo vending machine to be purchased by a licensee from a registered distributor;
- Limit the number of instant bingo vending machines located on the premises of each licensee location to two;
- Remove instant bingo tickets from the types of physical tickets that lottery vending machines are permitted to dispense; and
- Adopt a technical amendment.

Background

Sub. for HB 2194, as introduced, previously pertained to Class M driver's license testing for those who successfully complete specified motorcycle training. The provisions of Sub. for HB 2194, as introduced, were further modified and enacted in HB 2606.

HB 2517 (Lottery Ticket and Instant Bingo Vending Machines)

HB 2517 was introduced in the House Committee on Appropriations at the request of Representative Landwehr. On January 24, 2018, the bill was withdrawn from the House Committee on Appropriations and referred to the House Committee on Federal and State Affairs.

In the House Committee on Federal and State Affairs hearing, proponent testimony was presented by Representative Landwehr, the Executive Director of the Kansas Lottery, and representatives of the Association of Community Mental Health Centers and the Breakthrough Club. Written-only proponent testimony was provided by Boyd Gaming, DCF, and the Petroleum Marketers and Convenience Store Association of Kansas.

Opponent testimony was presented by a private citizen. Written-only neutral testimony was provided by the Kansas Mental Health Coalition. No other testimony was provided.

The House Committee amended the bill by creating provisions for enforcement of underage purchasing of tickets from lottery vending machines. The House Committee also amended the definition of "municipality," amended disbursements made to community mental health centers, and amended provisions related to the debt setoff program. [Note: The Conference Committee retained these amendments.]

Fiscal Note

According to the fiscal note prepared by the Division of the Budget on HB 2517, as introduced, the Lottery indicates it plans to deploy between 300 and 400 lottery ticket vending machines among its current 1,735 lottery retailers. The Lottery indicates allowing lottery ticket vending machines is

estimated to increase the Lottery's year-end transfer to the State General Fund (SGF).

Once fully implemented, the Lottery estimates the lottery ticket vending machines would increase sales by at least \$25.0 million and the year-end transfer amount by at least \$8.0 million. The Lottery indicates it is implementing a new central gaming system that would be operational on July 1, 2018, and it would be seven to ten months after that date for procurement, implementation, and a phased roll out of lottery ticket vending machines under the provisions of the bill.

The Lottery indicates there would be little significant net revenue from the lottery ticket vending machines in FY 2019, and the most significant related revenue gains would be projected for FY 2020 and in future fiscal years. The Lottery is unable to estimate the additional expenses for the program because it has not determined the most cost-efficient method to acquire lottery ticket vending machines and to place them at lottery retailer locations.

The Lottery indicates it is unknown how many lottery tickets would be voided due to purchasers being under age 18; however, it is estimated to be negligible. The Lottery indicates extending the sunset provision would have no fiscal effect unless the sunset provision takes effect on July 1, 2022. The sunset date for the operation of the Lottery was created by the 1992 Legislature to occur on July 1, 1996 and was extended by the 1995 Legislature (until July 1, 2002), the 2001 Legislature (until July 1, 2008), and the 2007 Legislature (until July 1, 2022). The Lottery indicates, if the Lottery was to be abolished on July 1, 2022, sales of online lottery games would end July 1, 2021, and instant lottery ticket sales would end January 1, 2022, to allow the required time for lottery players to redeem winning tickets.

Proceeds from lottery ticket sales support economic development initiatives, prison construction and maintenance projects, local juvenile detention facilities, treatment of problem gambling and other addictions, veterans programs,

and the SGF. On behalf of the State, the Lottery is also the owner of gaming operations at the four State-owned casinos, and contractual obligations with expanded lottery gaming facility managers extend past the current sunset date. Proceeds from State-owned gaming operations are used to reduce state debt, reduce Kansas Public Employees Retirement System actuarial liability, increase the number of engineering graduates from the state's universities, and treat problem gambling and other addictions.

The Lottery also indicates, by eliminating the sunset date, the bill has the potential to reduce costs by allowing it to negotiate longer-term contracts with vendors. The Lottery states its vendors make significant financial investments to provide services and products to the Lottery. The sunset date may occur prior to expiration of the contract between the Lottery and its vendors or before the vendor has recovered initial upfront investments, which creates uncertainty in the contract negotiating process. Eliminating the sunset date would eliminate this uncertainty.

The Lottery also indicates it is unable to determine the administrative costs related to the requirement to enter into contracts with licensees under the Charitable Gaming Act to sell instant bingo tickets from instant bingo vending machines. These organizations are licensed and regulated by the Department of Revenue. The bill requires that the Lottery own or lease instant bingo vending machines, which may create additional capital outlay expenses and could reduce the year-end transfer to the SGF. The Lottery is unable to determine how many nonprofit organizations may seek to place these vending machines at their location. If 200 organizations opt to use them, the Lottery estimates additional capital outlay costs of \$2.0 million are possible (200 licensees with up to 2 machines each at up to \$5,000 per machine). The net profits from the tickets dispensed by those machines would be paid to the licensee and would not have a fiscal effect on state revenues. The Lottery indicates it would be required to charge the users of these machines to recover all related costs.

The Department of Revenue indicates the bill has the potential to reduce the amount of revenue collected for charitable gaming. However, a precise estimate was not estimated by the Department of Revenue. According to the Department of Revenue, the bill would require \$5,460 from the SGF in FY 2019 to implement the bill, revise publications, and make computer system changes.

KDADS indicates the bill would provide up to \$4.0 million in FY 2019 and up to \$8.0 million in FY 2020, FY 2021, FY 2022, and FY 2023 to fund community mental health programs. However, the Lottery indicates transfers would not likely total the \$4.0 million in FY 2019.

The Department of Administration indicates expanding the debt setoff program would require computer programming to ensure prizes or winnings at State-owned gaming facilities would be subject to the debt setoff program. The debt setoff program intercepts debts owed to state agencies, municipalities, district courts, and state agencies in other states. Debts include, but are not limited to, child support, taxes, educational expenses, fines, services provided to the debtor, and court-ordered restitution. The Department of Administration indicates the costs associated with programming existing software to implement the debt setoff requirements of the bill would be negligible and could be absorbed within existing resources. The Department of Administration indicates the bill could increase debt setoff revenue annually by up to \$100,000 starting in FY 2019. The bill would allow the Department of Administration to receive up to \$17,000 in collection assistance fees, which would be used to help run the debt setoff program.

The Kansas Racing and Gaming Commission indicates implementation of the debt setoff program would likely require gaming facility managers to make changes to their internal controls. The Kansas Racing and Gaming Commission indicates the costs to review internal controls and audit requirements of gaming facility operators related to the debt setoff program are estimated to be negligible and could be

absorbed within existing resources. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2019 Governor's Budget Report*.

Kansas Lottery Act; lottery; lottery ticket vending machine; lottery machine; lottery ticket; Lottery Operating Fund; State Debt Setoff Program; debt setoff; Community Crisis Stabilization Centers Fund; Clubhouse Model Program Fund; Kansas Department for Aging and Disability Services

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