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March 12, 2018

The Honorable John Barker, Chairperson
House Committee on Federal and State Affairs
Statehouse, Room 285-N
Topeka, Kansas 66612

Dear Representative Barker:

SUBJECT: Fiscal Note for HB 2752 by House Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2752 is respectfully submitted to your committee.

HB 2752 would create the Kansas Sports Wagering Act. The Kansas Lottery would be authorized to offer sports wagering in-person at a facility operated by the Kansas Lottery, over the internet, or through a licensed interactive sports wagering platform. The Executive Director of the Kansas Lottery would be allowed to enter into contracts with lottery gaming facility managers or racetrack gaming facility managers for conducting, operating, and managing sports wagering by themselves or through the licensed interactive sports wagering platform that has been contracted with the Kansas Lottery to offer sports wagering. The Kansas Racing and Gaming Commission would be required to license interactive sports wagering platforms with an initial license fee of \$10,000 that could be renewed annually at a rate of \$5,000. The bill would allow confidential licensee information to be exempt from the Kansas Open Records Act and would include a sunset provision of July 1, 2023.

The Kansas Racing and Gaming Commission would be allowed to suspend or revoke an interactive sports wagering license and could impose a civil fine of up to \$10,000 per violation of the Kansas Sports Wagering Act. The bill would prohibit sports wagering to persons under 21 years of age and requires to sports wagering operators to verify that any person placing a wager is of legal minimum age, including wagers placed through internet websites or mobile device applications. The Kansas Racing and Gaming Commission would be required to adopt rules and regulations on the sports wagering advertising by January 1, 2019.

Sports wagering operators would be required to use reasonable methods to prohibit the operator, directors, officers, owners, employees of the operator, or relatives of those individuals living in the same household from placing wagers with the operator. 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 operator from placing wagers with the operator. The sports wagering operator would be required to maintain the security of wagering data, customer data, and other confidential information from unauthorized access and distribution. A sports governing board would be allowed to notify the Kansas Racing and Gaming Commission that it desires to restrict, limit, or exclude wagering on its sporting events and the Commission would notify the sports wagering operators of the restriction. Sports wagering operators would be required to cooperate with investigations by the Kansas Racing and Gaming Commission, sports governing bodies, or law enforcement agencies by providing account-level betting information and audio or video files relating to persons placing wagers. Sports wagering operators would be required to immediately report to 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 sports governing body's internal rules and codes of conduct pertaining to sports wagering; any other conduct that corrupts a betting outcome of a sporting event for purposes of financial gain; and suspicious or illegal wagering activities, including use of funds derived from illegal activity, wagers to conceal or launder funds derived from illegal activity, using agents to place wagers, and giving false identification. The bill would allow a sports governing body 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 bill would require that each sports wagering operator remit a sport betting right and integrity fee to each sports governing body with authority over a sporting event that bets were placed in the preceding calendar quarter. The fee would be 1.0 percent of the aggregate amount wagered on those sporting events during the previous quarter and would be paid to the relevant sports governing body on July 1, October 1, January 1, and April 1 of each year.

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 the Kansas Lottery, each lottery gaming facility manager, and each racetrack gaming facility manager. All revenues from sports wagering conducted by the Kansas lottery would be deposited in the Lottery Operating Fund. If a lottery gaming facility manager and racetrack gaming facility manager offer sports wagering, then the management contract would include a provision that no less than 6.75 percent of the sports wagering revenues would be distributed to the Expanded Lottery Revenues Fund. If the lottery gaming facility manager or racetrack 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 ultimate control of the Kansas Lottery. Counties would not be allowed to be exempt from or effect changes in the Kansas Lottery Act, Kansas Expanded Lottery Act, or the Kansas Sports Wagering Act.

The bill would create two new crimes that are punishable as severity level 5 nonperson felonies. The first crime of 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 second crime adds a crime classification for sports bribery, that is committed with the intent to influence a betting outcome of a sports contest in order to obtain financial gain.

The bill includes definitions of interactive sports wagering platform, sports governing body, sports wagering, sports wagering operator, and wager or bet. The Kansas Lottery would have the authority to write rules and regulations on sports wagering conducted by the Kansas Lottery; management contracts for sports wagering conducted by lottery gaming facility managers and racetrack gaming facility managers; provisions for the confidentiality of information submitted by interactive sports wagering platform licensees and sports wagering operators; and provisions ensuring the integrity of sports wagering conducted in this state.

The bill would prohibit any person to serve 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 a consultant to any interactive sports wagering platform, subcontractor, or agent of a platform or any business that sells goods or services to a 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 require the Kansas Racing and Gaming Commission to establish certification requirements and enforcement procedures for employees of a lottery gaming facility manager or racetrack gaming facility manager who are directly involved in the conduct, operation, or management of sports wagering. The certification requirements and enforcement procedures would also apply to persons involved in interactive sports wagering platforms and other technology and computer systems providers that have a contract with a lottery gaming facility manager, racetrack gaming facility manager, or the Kansas Lottery for provided goods or services related to sports wagering, including management services. The certification requirements would include compliance with security, fitness, and background investigations.

The bill would become effective no earlier than July 1, 2018, and only after a certification from the Executive Director of the Kansas Racing and Gaming Commission that federal law does not prohibit the state from authorizing and conducting sports wagering is published in the *Kansas Register*.

HB 2752 would not require additional staffing or expenditures by the Kansas Racing and Gaming Commission, the Kansas Lottery, or any other state agency unless federal law removes the current prohibition on states from authorizing and conducting sports wagering.

The Attorney General's Office indicates the bill has the potential to increase litigation costs starting in FY 2019. However, the Office did not provide an estimate of the additional litigation costs or how long the estimated litigation costs would continue from enactment from the bill, or if the bill would require the hiring of outside counsel.

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 Kansas Racing and Gaming Commission indicates that the bill would require at least 3.00 additional FTE positions and \$265,000 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. Sports wagering at parimutuel racetracks would require the racetrack to reopen, likely with electronic gaming machines. Racetracks gaming facility managers would first be required to obtain a parimutuel license from the Kansas Racing and Gaming Commission before they could negotiate with the Kansas Lottery for a contract to offer sports wagering or electronic gaming machines. To operate electronic gaming machines, a contract with a racetrack gaming facility manager would have to be approved by the Kansas Lottery and a background investigation would have to be approved by the Kansas Racing and Gaming Commission. The Commission indicates that it would need approximately \$1.8 million and 21.00 FTE positions for each parimutuel racetrack that reopens for the annual costs to regulate both the racing and gaming 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. 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.

The Kansas Lottery indicates that it would need to hire between two and three new employees for each parimutuel gaming facility that could open as a result of this bill. However, without knowing the size of the proposed facility and when the facility would open, the Kansas Lottery is unable to make an estimate of its gaming related expenses. The Kansas Lottery indicates that when it has negotiated contracts with 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. However, there is no such mechanism in the bill for reimbursement of expenses specific to sports wagering. 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 and the most cost-efficient and secure method to deliver that system.

The Kansas Lottery indicates that the bill would create a new sports wagering model that is not currently used in any sports wagering jurisdiction. The model would guarantee each sports governing board a 1.0 percent royalty (sports betting right and integrity fee) from the gross amount wagered. 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 operator seeks to create equal wagering on both sides of a sporting event. A lopsided distribution of the wagers creates risk for the operators and the potential to pay out significantly more than what is taken in. Approximately 95.0 of the gross amounts wagered on

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sporting events goes back to the winning wager, which leaves 5.0 percent for administrative costs, taxes, and profit. The 1.0 percent royalty to each sports governing board would be equal to approximately 20.0 percent of the net profits from sports wagering activities and would likely leave only 4.0 percent for administrative costs, taxes, and profit from sports wagering in Kansas. The bill does not define any requirements or responsibilities for a sports governing board to receive the 1.0 percent sport betting right and integrity fee. Additionally, the provision of the bill that allows lottery gaming facility managers and racetrack gaming facility managers to offer sports wagering that requires 6.75 percent of the sports wagering revenues to be distributed to the Expanded Lottery Revenues Fund might be cost prohibitive to competitively offer sports wagering.

The Kansas Lottery is unable to provide an estimate of additional revenues from offering sports wagering in-person at a facility operated by the Kansas Lottery, over the internet, or through a licensed interactive sports wagering platform without a detailed market study. 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 2019. The bill would allow lottery gaming facility managers, racetrack gaming facility managers, and possible other entities to operate their own sports wagering platforms, which may be viewed as violation of the constitution that requires that the Kansas Lottery has the ownership and operation of gaming in the state. The Kansas Lottery indicates that this is the requirement expressly mandated by the Kansas Supreme Court for gaming to occur within the state. Allowing third-party “licensed interactive sports wagering platform” to enter into agreements directly with lottery gaming facilities and racetrack gaming facilities to offer sports wagering on their behalf might be viewed by the courts as unconstitutional. Any fiscal effect associated with HB 2752 is not reflected in *The FY 2019 Governor’s Budget Report*.

Sincerely,



Larry L. Campbell
Chief Budget Officer

cc: Stephen Durrell, Lottery
Brandi White, Racing & Gaming Commission
Willie Prescott, Office of the Attorney General
Ashley Michaelis, Judiciary
Scott Schultz, Sentencing Commission
Chardae Caine, League of Municipalities
Melissa Wangemann, Association of Counties