

John C. Frieden\*  
Randall J. Forbes\*  
Kevin M. Fowler

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# FRIEDEN & FORBES

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LLP

Brenda L. Head  
Matthew R. Bergmann  
Timothy D. Resner

ATTORNEYS AT LAW

1414 S.W. Ashworth Place, Suite 201, Topeka, Kansas 66604  
• [www.fuflaw.com](http://www.fuflaw.com) • Tel: 785-354-1100 • Fax: 785-354-1113

\*Also admitted in Missouri

[kfowler@fflawllp.com](mailto:kfowler@fflawllp.com)

**TESTIMONY OF KEVIN M. FOWLER IN OPPOSITION TO H.B. 2068**  
**HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS**  
**JANUARY 30, 2019**

Dear Chairman Barker and Members of the Committee:

My name is Kevin Fowler and I am an attorney with the Topeka law firm of Frieden & Forbes, LLP. I represent and appear on behalf of the managers of the Kansas Star Casino, Mulvane, Kansas (“Kansas Star”), and the Kansas Crossing Casino, Pittsburg, Kansas (“Kansas Crossing”). Kansas Star and Kansas Crossing (collectively “casinos”), each of which is a state-owned and -operated casino under the Kansas Expanded Lottery Act, K.S.A. 74-8733 *et seq.* (KELA), appreciate the opportunity to share our views in opposition to HB 2068.

Kansas Star and Kansas Crossing strongly support sports wagering in Kansas but believe that HB 2068 does not provide the right enabling framework. Although sports wagering is a natural fit with other forms of traditional gaming at casinos under KELA, this bill is substantially and unnecessarily more expansive than the time-tested gaming framework currently in place. When KELA was enacted in 2007, the Legislature authorized the Kansas lottery to contract with private businesses to construct and manage casinos offering traditional casino games in facilities that would be owned and operated by the State. At that time, however, a federal law known as the Professional and Amateur Sports Protection Act of 1992 (“PASPA”) prohibited the State of Kansas from owning, operating or offering any form of sports wagering under KELA. Since the United States Supreme Court determined last year that PASPA is unconstitutional, this State is no longer prohibited by federal law from authorizing sports wagering at our state-owned and -operated casinos under the established and successful KELA framework.

Any sports wagering framework should logically build upon the success of KELA by promoting rather than undermining the ability of existing casino managers to conduct and manage sports wagering on behalf of the State. To date, existing casino managers have made capital investments in Kansas of nearly \$1 billion and they have an established record of delivering economic development and revenues for our State. The most recently available data reflects that, since the commencement of casino operations under KELA, the casinos generate more than \$33 million in economic activity per month, and the State and affected communities directly receive approximately \$100 million in gaming revenues per year. Because our existing casino managers

have a time-tested record of success in maintaining the integrity of lottery facility games, enforcing prohibitions against gaming by underage persons, promoting responsible gaming through self-exclusion lists, fostering substantial economic activity and generating significant gaming revenue for the State of Kansas and local governments, no proposed legislation should impose any conditions that would unnecessarily threaten their ability to conduct and manage economically viable sports wagering activities on behalf of this State.

In particular, we oppose any authorization for the Kansas lottery and its lottery retailers to conduct sports wagering throughout Kansas (*see* New Section 1(b) at page 1); any requirement that casinos pay any “sports betting right and integrity fee” to any sports league or its governing body (*see* New Section 6(a) at pages 4-5); and any requirement to use “only official league data for determining the result of all tier two sports wagers” (*see* New Section 3(f) at page 4).

As written, HB 2068 authorizes the establishment of “sports books” at every lottery retail outlet (*e.g.*, grocery stores, gas stations, convenience stores, etc.) in the State and it contains unprecedented authority for the Kansas lottery to directly offer sports wagering over the internet through websites, interactive sports wagering platforms and mobile applications. (*See* New Section 1(b), p. 1). There are currently more than 1,700 lottery retailers throughout Kansas that sell lottery tickets as a small part of their primary retail business. If lottery retailers were authorized to offer sports wagering, we anticipate potential problems in issuing credentials to thousands of lottery retail outlet employees, enforcing the prohibitions against underage gambling and promoting responsible gaming. Apart from high turnover in clerical employment at lottery ticket outlets, retail clerks have multi-tasking responsibilities with customers buying other items (*e.g.*, money orders, gasoline, snacks, traditional lottery tickets) that increase the likelihood of inadvertent failures to enforce necessary sports wagering requirements. Because lottery retailers routinely limit the amount of cash on hand due to security risks, lottery winners of \$600 or more must also currently go to the Lottery office to get paid. By contrast, existing casinos have enhanced security procedures and pay winnings as soon as bets are won, which provides a more customer-friendly framework that will minimize the risk of sports betting by underage persons and problem gamblers while simultaneously encouraging Kansans to refrain from illegal betting through off-shore gaming sites.

The KELA gaming framework represents a public policy choice which recognizes that the State should not operate casino games except through the private business entities which have been selected to conduct and manage such activities. If PASPA had been invalidated in 2006, KELA would likely have included sports wagering from its inception in 2007 and the casino managers alone would be offering sports wagering on behalf of the State. In furtherance of this established public policy to restrict expansive forms of casino-style gaming to regulated casinos managed by private business enterprises, we also do not believe that the Kansas lottery should be authorized or encouraged to directly compete with such private companies.

Sports wagering is a very low margin endeavor where for each \$100 wagered on sports betting, an average of \$95 is paid out in winnings to bettors. This means that the remaining \$5 received must be sufficient to cover all operational expenses – including taxes – associated with sports

wagering. Sports wagering is also a subject to volatility due to the unpredictable nature of sporting events. Sometimes this unpredictability means that the customers end up even better off than the house overall. For instance, the sports book at the Greenbrier in West Virginia paid out more in winning sports wagers in October 2018 than it received in bets since certain odds were defied as they are from time to time. The situation at the Greenbrier, while infrequent, is not unusual. Bookmakers in Las Vegas, Mississippi and elsewhere also reported lower win percentages than normal in October 2018. That is why it is important that the take from sports betting operations by Kansas from our casino managers be on par with the 6.75% tax paid by Nevada's sports books on their revenue. If the tax rate and other requirements are too high, this margin becomes so thin that authorized sports wagering may become economically infeasible and competing with the illegal market may become untenable.

Onerous provisions sought by the professional sports leagues in HB 2068 are not reasonably justified and would undermine the ability of our casinos to offer and manage economically viable sports wagering activities and to effectively compete with the illegal market. The most egregious demands by the leagues include the requirements to pay each league's governing body a "sports betting right and integrity fee" in an amount equal to 0.25% of the aggregate amounts wagered (i.e., "the handle") on sporting events in the preceding quarter (*see* New Section 6(a) at pages 4-5) and to determine the outcome of tier two bets based on "official league data" which must be purchased from the leagues (New Section 3(f) at page 4). None of the states that have legalized sports betting, including Nevada, West Virginia, Mississippi, Pennsylvania, Rhode Island, New Mexico, New Jersey and Delaware require the payment of betting right and integrity fees to any sports governing authorities or require sports wagering operators to use official league data in determining the result of any sports bets. Indeed, the fact that sports wagering has been successfully conducted in the State of Nevada for several decades without any such fees, costs or restrictions is powerful evidence that such statutory mandates are unnecessary. In addition, the fact that gaming companies and professional sports leagues and teams have been entering into mutually beneficial sponsorship agreements reflects that the free market is working and that State intrusion into these private business relationships is completely unnecessary. In the final analysis, there is no legitimate basis for this State to impose any statutory requirement for the payment of any "sports betting right and integrity fee" or the use of "official league data" (which must be purchased) to determine the result of any sports wager.

Since the principal proponents of this bill (*e.g.*, the major professional sports leagues: MLB, NBA and NHL) do not have any discernible presence in Kansas and have not made any significant investments in our economy, it is difficult to identify any reasonable justification for this mandatory exaction by statute. The right to engage in otherwise lawful sports wagering in this State does not depend on permission from such out-of-state special interests and all other states which authorize sports wagering have refused to impose any such fees. It appears to be an unwarranted giveaway to out-of-state major professional sports leagues and should be stricken from the bill.

The bill also inexplicably and unjustifiably cedes to the governing body of each league exclusive authority to control and charge for the use of "official league data" which is, in fact, public

information about public sporting events which is presently available and accessible for free. In December of 2018, the leagues' conferee was unable to furnish the Special Committee on Federal and State Affairs with any estimate of the cost to any sports wagering manager in Kansas of using such publicly available information. Because "official league data" is currently available in the public domain and derives no value from its secrecy, it is not confidential, proprietary or otherwise protected as property under Kansas law. Consequently, the leagues have no legal justification to exact any charge by legislative fiat for the use of such public information in determining the outcome of any tier two sports wager. These aspects of the bill are apparently solely intended to generate additional revenue for each sports governing body in addition to the mandatory "sports betting right and integrity fee."

Typically, sports books have profit margins of 2% to 5%. The 0.25% "sports betting right and integrity fee" on the total amount wagered amounts to approximately 5 to 6% of net sports wagering revenue, thus making that already thin margin even thinner. The failure of the leagues to disclose the cost in Kansas of using "official league data" to determine the results of all tier two bets is inherently suspect and may speak volumes. Since the Nielsen organization has recently estimated that the leagues are expected to make billions of dollars as a result of sports wagering, this State should not sanction any "sports betting right and integrity fee" or any charge for the use of "official league data" based on information generated during public sporting events which is already freely and readily available in the public domain.

I will be happy to stand for questions.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Kevin M. Fowler", with a long horizontal flourish extending to the right.

Kevin M. Fowler

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