

**HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE**

BILL NUMBER: 2199

Support \_\_\_\_\_ Oppose  Neutral \_\_\_\_\_

Testimony Will Be: Oral \_\_\_\_\_ Written Only

For Meeting on 2.18.21

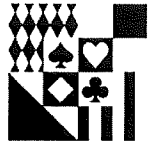
Testimony By: Jeff Morris, Penn National Gaming

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February 18, 2021



**SUBMITTED OPPOSITION TESTIMONY TO THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS  
BY JEFF MORRIS, VICE PRESIDENT, PUBLIC AFFAIRS & GOVERNMENT RELATIONS AT PENN  
NATIONAL GAMING, INC.**

**HB 2199 – SPORTS WAGERING**

Chairman Barker and Members of the Committee,

I appreciate the opportunity to submit testimony today and share our concerns with HB 2199 and draw distinctions to SB 84, which was supported by the state's four state-owned and operated casinos during hearings on the bill in the Senate last week.

As you may know, Penn National Gaming is the nation's largest regional gaming operator, with 41 casinos and racetracks throughout the United States. We have retail sportsbooks at nearly half of those casino or racino properties. In addition, we currently offer online wagering on sports in two states – Pennsylvania and Michigan -- and anticipate we'll be operational with our mobile sportsbook app in at least 10 states by the end of this year.

Here in Kansas, we are proud to operate Hollywood Casino at Kansas Speedway. Since opening in 2012, we have paid over \$465 million in taxes and fees to state and local government, and provided over \$11 million in charitable contributions.

Last year, Penn National acquired a 36% stake in Barstool Sports, which is a leading digital sports, entertainment and media platform that delivers original content across blogs, podcasts, radio, video and social channels. They have a base of approximately 54 million monthly unique visitors, or to put it in their Founder Dave Portnoy's vernacular, *an army of loyal "Stoolies."* This partnership has led to the rebranding of our Hollywood Casino retail sportsbooks to "Barstool Sportsbooks" and as I referenced earlier, we've launched our Barstool Sportsbook mobile app in Pennsylvania and Michigan to great success.

Penn National has appeared before this Committee in the past and expressed support for sports wagering legislation in the State Capitol, and 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 offering.

We believe legal sports betting has the potential to provide a meaningful shot in the arm to Kansas's gaming industry and to provide a new revenue stream to the State of Kansas. If successful, Kansas would join twenty-five other states and Washington, DC that have moved to authorize sports betting in the wake of the May 2018 U.S. Supreme Court decision striking down the Professional and Amateur Sports Protection Act, or "PASPA."

The repeal of PASPA and the subsequent passage of sports betting legislation around the country could not have come at a better time for the gaming industry. Regional casinos have been continuing to face increased competition and cannibalization from endless gaming expansion and a rampant proliferation of illegal slot machines both within our states and across the border in neighboring states. And that was before the pandemic hit, which closed our casinos for months and continues to greatly restrict our operations with 50% capacity limits and food and beverage service ending at midnight. Yet despite the endless trials and tribulations we, and most of the business owners across the country, have faced, we used this unprecedented time as an opportunity to completely re-evaluate and re-imagine our operating model and product offerings, and to supercharge the digital transformation of our Company.



An example is the implementation of a new generation of cashless, cardless and contactless technology at our casinos that will improve efficiency and guest service, while also attracting a newer, younger demographic who are accustomed to using an app on their phone to pay for everything and earn rewards. Starbucks has a 10+ year headstart on our industry in this regard. Retail and especially mobile sports wagering fits in the sweet spot of this movement towards technology and new product offerings that attract a younger demographic – and by that I mean the 25-40 year old age group. In fact, the average age of our Barstool Sportsbook customer is 29. The average age of our slot customer is north of 55 years old. And, notably, nearly 70% of all bets in those markets that allow retail and mobile sports betting are made online or through an app.

To not allow mobile wagering would severely restrict the revenue potential in Kansas, and we appreciate that both HB 2199 and SB 84 include mobile wagering. However, we do not support the model for sports betting in HB 2199, and the following will outline a few of our primary concerns in detail in comparison to similar provisions in SB 84.

### **Tax Rates**

On the subject of what an appropriate tax rate would be for sports betting, I want to emphasize that sports betting is a low margin, highly volatile business. On an average \$100 wager (or “handle”), \$95 goes back to the bettors, with the casino receiving \$5 (or “hold”). We must then pay a federal excise tax, state tax, and an array of operating expenses: betting data, data analytics, labor, marketing, etc., resulting in approximately \$1 in actual revenue.

HB 2199’s proposed tax rates of 14% for retail wagers and 20% online are well above the norm for tax rates implemented in most states, including Arkansas, Indiana, Michigan, Mississippi, Nevada, New Jersey, Oregon, Washington DC, West Virginia, and what is most likely to pass in Missouri. Notably, these rates would also place Kansas at a competitive disadvantage with the neighboring states of Iowa, where sports betting is taxed at 6.75%, and Colorado, with a tax rate of 10%. This also does not include the illegal market, which currently operates in Kansas and pays zero taxes.

SB 84 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 online, which is consistent with the aforementioned jurisdictions and surrounding states, and will allow sports betting operators in Kansas to better compete with the illegal market.

### **Sports Betting Operators**

We believe it is critical that the operation of retail and mobile sports betting be limited to existing licensed gaming operators, who have invested billions in economic development in Kansas, and our designated skin partners. By way of background, a “skin” is an online sportsbook license that is typically tethered to a casino or racing license. And while the number of skins permitted varies by state, New Jersey, Iowa, Indiana, and West Virginia allow at least three skins per licensee, ensuring a competitive market. We support the language in SB 84 that allows three skins per license in Kansas, which would result in more upfront license fees and revenues to the state. Notably, New Jersey and Indiana – even when adjusting for population -- are the leading revenue producing states.

Importantly, Kansas’s gaming industry, along with its skin partners, have in place well-established, rigorous compliance and responsible gaming protocols in place to ensure a safe wagering environment for consumers.

For example, in addition to comprehensive and stringent state gaming regulations, as licensed casino and racino operators, we are required to undergo extensive federal anti-money laundering (commonly referred to as “AML”) training programs. Since 1985, commercial casinos have been defined as “financial institutions” under the Bank Secrecy Act (BSA). As such, we have in place sophisticated customer identification procedures, which includes reporting suspicious transactions while further regulating, supervising and monitoring anti-money laundering operations.

Operating such a complex security system is expensive and extremely labor intensive. We spend millions of dollars annually on surveillance equipment, surveillance personnel, and security officers at each of our properties to maintain a safe and secure environment for our customers. Further, our online operations include similar extensive measures to ensure the integrity of the operations of our mobile and web based platforms.

Conversely, HB 2199 would allow for up to 1,200 existing lottery retailers to be licensed to provide sports wagering, making Kansas first in the nation – ahead of even Nevada – as the state with the most retail locations to gamble on sports. Notably, HB 2199 could also expose these 1,200 locations to both financial and criminal risk that they simply do not have the infrastructure to properly regulate effectively.

These locations are unlikely to have the ability to run the necessary background checks to ensure the integrity of the bettor or the legality of the cash being wagered, effectively prevent underage wagering, nor the ability to pay out numerous sizeable winnings that occur on a daily basis. Most importantly, they will likely not have the responsible gaming infrastructure in place to ensure that any bettor, let alone those making sizeable wagers, are not getting in over their head and spending money they don't necessarily have or are banned from wagering in Kansas or any other state.

### **Official League Data**

We are also concerned with the language in HB 2199 that mandates the use of "Official League Data". Most, if not all, of the leagues have sold their data to the major suppliers like Sportradar and BetGenius whom the operators are compensating for the data feeds they provide our sportsbooks. In addition, many gaming operators, including Penn National, have signed commercial deals with the Leagues for specialized, proprietary in-game data -- such as how fast a puck is traveling or who had the hardest slap shot -- to grow interest in sports wagering. This proves that these deals can be reached privately and should not be Legislatively mandated at what third parties declare to be "commercially reasonable" terms. What may be "commercially reasonable" to the leagues – who face no competition – may be inconsistent with the thin margin reality of sportsbook operators in a hyper competitive environment.

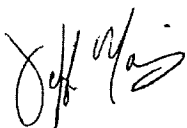
SB 84 does not include language requiring the use of Official League Data, which is in line with an overwhelming majority of existing legal sports betting jurisdictions.

### **iLottery**

HB 2199 also allows for the State to implement an "i-Lottery" program that is far-reaching and it is 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. That said, we will maintain our pledge to continue having constructive conversations with the Kansas Lottery and interested parties on the issue. Of note, SB 84 in its current form would allow the Kansas Lottery to sell Power Ball, Mega-Millions and other related draw games online, and we do not oppose this inclusion.

Thank you for allowing me to submit testimony and I look forward to continue working with you on sports betting legislation that is balanced by a strong regulatory structure and principled policy.

Sincerely,



Vice President, Public Affairs & Government Relations  
Penn National Gaming, Inc.