

February 16, 2021

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

Dear Representative Barker:

SUBJECT: Fiscal Note for HB 2199 by House Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2199 is respectfully submitted to your committee.

HB 2199 would allow the Kansas Lottery to enter into a contract with sports wagering retailers, lottery gaming facility managers, racetrack gaming facility managers, or licensed interactive sports wagering platforms 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 and racetrack 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 a licensed interactive sports wagering platform approved by the Kansas Lottery. The bill would allow the Kansas Lottery, lottery gaming facility managers, or racetrack gaming facility managers to enter in to marketing agreements with professional sports teams for the purpose of marketing sports wagering at their 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 platform at the primary facility. The marketing agreement would prohibit any owner, director, officer, employee, or agent of the professional sport 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 not be able to contract with more than 1,200 sports wagering retailers. The Kansas Lottery would be able to charge an application fee for sports wagering retailers and licenses would be required to be renewed annually. Sports wagering retailers would only be able to offer sports wagering that is determined solely by the final score or outcome of a sporting event and the bet must be place before the sporting event has begun. The bill includes qualifications for sports wagering retailers, including being at least 21 years of age, having sufficient resources to conduct sports wagering, being current on state and local taxes, and not

being engaged exclusively in conducting sports wagering. Sports wagering retailers could not be convicted of a felony in the last ten years; convicted of crime involving illegal gambling activity, fraud, dishonesty or deceit, or financial crime; a vendor doing business with the Kansas Lottery; residing in the same household of an employee of the Kansas Lottery or a member of the Lottery Commission; or providing false statements to the Kansas Lottery. The bill also allows partnerships, corporations, or unincorporated associations to be a sports wagering retailer under certain conditions. The Executive Director of the Kansas Lottery would be allowed to terminate a contract with a sports wagering retailer if they fail to meet any of the applicable qualifying standards or violate provisions of the contract. The bill would require sports wagering retailers to participate in the debt setoff program.

The Kansas Lottery would be allowed to select an interactive sports wagering platform that would be best able to 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 or racetrack gaming facility managers that have entered into a management contract for the operation and management of sport wagering could use the interactive sports wagering platform. Lottery gaming facility managers or racetrack gaming facility managers would be able to apply to the Kansas Lottery to provide one additional graphical user interface specific to that facility that would be used to access the interactive sports wagering platform provided by the Kansas Lottery. Each lottery gaming facility manager or racetrack gaming facility manager would be allowed to contract with one additional interactive sports wagering platform. 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.

A sports governing board would be allowed to notify the Kansas Lottery that it desires to restrict, limit, or exclude wagering on its sporting events and the Kansas Lottery would review the request and determine if the sports wagering should be restricted. The sports wagering 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 sports wagering manager would not be allowed to accept a wager from a person convicted of any felony or misdemeanor offense involving sports wagering.

Sports wagering managers would be required to cooperate with investigations by the Kansas Lottery, 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 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 sports wagering 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, 2026.

The sports wagering manager could use any data source to determine the result of a sports wager that is determined by the final score or final outcome of a sports event for a wager placed before the start of a sports event. For all other sports wagering, the sports wagering operator would be required to purchase official league data to determine the outcome of that wager. The sports wagering 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 sports governing body would be able to receive certain real-time sports wagering information if they notify the Kansas Racing and Gaming Commission, except they would not be able to receive any personally identifiable information unless the sports governing body has entered into a data sharing agreement with the Kansas Lottery. The bill would allow the state or 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 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 sports wagering retailer, lottery gaming facility manager, or racetrack 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. Sports wagering 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 sports wagering 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.

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 sports wagering retailer, lottery gaming facility manager, or racetrack gaming facility manager. The contract with the sports wagering retailer would determine the amount of sports wagering revenues that would be distributed to the Lottery Operating Fund. 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 or racetrack 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 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 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 Attorney General. 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. The Attorney General is authorized to transfer monies from White Collar Crime Fund to any special revenue fund of the Kansas Bureau of Investigation to carry out the purposes of this fund. Beginning on July 1, 2022, 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 bill would allow the Attorney General to file a legal action with the Kansas Supreme Court within 90 days of the effective date of the bill to determine if allowing sports wagering violates the Kansas Expanded Lottery Act provision that prohibits the state from designating other

areas of the state where the operation of gaming facilities or similar gaming facilities until July 1, 2032. If the state violates this provision, it would be required to repay the privilege fee, with interest, to each lottery gaming facility manager and racetrack gaming facility manager.

Mirroring state and federal law, 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 is 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 or racetrack 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 or a racetrack 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 an interactive sports wagering license for certain violations.

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 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, 2022. The bill includes definitions of “interactive sports wagering platform,” “marketing agreement,” “match-fixing,” “official league data,” “primary facility,” “professional sports team,” “sports governing body,” “sporting event,” “sports wagering,” “sports wagering manager,” “sports wagering retailer,” “sports wagering revenue,” “tier one sports wager,” “tier two sports wager,” and “wager.” Sports wagering would not include parimutuel wagering or fantasy sports leagues.

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 functionally operate as an electronic gaming machine, allow the redemption of a prize exceeding \$599 other than at the Kansas Lottery office, or extend credit or arrange for credit for the purchase of a lottery ticket.

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.

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 2199 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. Sports wagering at parimutuel racetracks would require the racetrack to reopen, likely with electronic gaming machines. Racetrack 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 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 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. The Kansas Lottery indicates that it would incur significant staff, IT, and other startup costs during the

sports wagering 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 is unknown how widespread sports wagering would be offered.

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 bill could generate between \$1.0 million and \$8.0 million for the state under the provisions of the bill. 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 with an average hold percentage of 6.0 percent. 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 a significant effect in FY 2022.

There are two studies (Eilers-Krejciak and AGA-Oxford) on potential nationwide and state-specific projections for revenues and gross wagering. The studies indicate that gross wagers placed in Kansas could reach nearly \$1.0 billion with limited availability of sports wagering (sportsbooks only available at casinos) or more than \$2.0 billion with convenient availability of sports wagering (sportsbooks at casinos, retail locations, and online) that is fully implemented. The proposed bill would implement a sports wagering system that could be characterized as “convenient availability.” The studies use a number of variables to estimate the impact of sports wagering in Kansas, including comparing certain demographics in Kansas to Nevada where sports wagering is legal, the number of existing gambling outlets, and the level of spend in those outlets to help determine the perceived competitiveness of the market. The studies also suggest that a large portion of currently illegal sports betting would shift to legal markets.

The State of Iowa began sports wagering operations on August 15, 2019, through onsite operations at most of the state’s casinos and through the internet with mobile device applications. Reviewing actual data from Iowa for the first four and half months of operations that occurred pre-pandemic, gross wagering at Iowa casinos totaled \$212.2 million, including 55.8 percent of wagers conducted through the internet. Taking a more conservative approach to the estimates provided by the two studies and a review of actual results from Iowa, the bill has the potential to result in \$500.0 million in gross sports wagers placed in Kansas. Under this scenario, and after approximately 95.0 percent of the gross amount sports wagers are paid to the winning wagers, then approximately 5.0 percent or \$25.0 million would be available for administrative fees, taxes, and profit. The state share of revenues, under this scenario would generate approximately \$4.5 million, with \$3,750,000 to the Lottery Operating Fund and \$750,000 to the White Collar Crime Fund. The Kansas Lottery indicates that the \$3,750,000 transferred to the Lottery Operating Fund would be used for sports wagering related operating expenses with 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.

This estimate assumes an effective sports wagering tax of approximately 18.0 percent because a larger share of sports wagering is estimated to occur over the internet with an interactive sports wagering platform (taxed at 20.0 percent) than placed at the lottery gaming facility (taxed at 14.0 percent). The estimate does not take into account wagers through sports wagering retailers because it is unknown how prolific sports wagering would be at retail locations or what the effective sports wagering tax rate would be at retail locations. 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 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 \$25.7 million and increase the transfer to the state by an additional \$2.9 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 \$18.1 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.

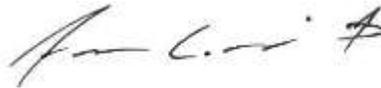
The Department for Aging and Disability Services indicates that allowing sports wagering activity would likely increase demand for services provided by its Problem Gambling Program. The Department indicates that the amount of additional spending would be dependent on how readily available sports wagering would be offered in the state. 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 would be authorized to file a legal action with the Kansas Supreme Court within 90 days of the effective date of the bill to determine if allowing sports wagering 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 indicate the cost to review proposed rules and regulation would be negligible and could be absorbed within existing resources. The bill has the potential to increase funding by up to \$750,000 per year to investigate and prosecute criminal offenses related to sports wagering or illegal gambling activity from the White Collar Crime Fund. The Attorney General's Office would likely hire additional positions to investigate and prosecute white collar crimes; however, a specific determination on how these additional funds would be expended has not been made. The White Collar Crime Fund would also be allowed to be transferred to Kansas Bureau of Investigation to investigate financial and economic crimes. However, the amount of the transfer, if any, would be determined by the Attorney General's Office.

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 Department of Administration indicates that the costs associated with adding sports wagering retailers to the debt setoff program would be negligible and could be absorbed within existing resources. 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. However, the Department is unable to make an estimate of the amount of additional debts setoffs that will be intercepted as a result of the bill. Any fiscal effect associated with HB 2199 is not reflected in *The FY 2022 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: Brandi White, Racing & Gaming Commission
Keith Kocher, Lottery
Willie Prescott, Office of the Attorney General
Scott Schultz, Sentencing Commission
Debbie Thomas, Judiciary
Jeff Scannell, Department of Administration