

February 9, 2021

The Honorable Larry Alley, Chairperson
Senate Committee on Federal and State Affairs
Statehouse, Room 136-E
Topeka, Kansas 66612

Dear Senator Alley:

SUBJECT: Fiscal Note for SB 84 by Senate Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning SB 84 is respectfully submitted to your committee.

SB 84 would allow the Kansas Lottery to enter into a contract with lottery gaming facility managers for managing sports wagering in-person at their facility or over the internet through websites and mobile device applications approved by the Kansas Lottery. Each lottery gaming facility manager would be allowed to contract with up to two interactive sports wagering platforms (one provision of the bill allows for up to three platforms). Once an interactive sports wagering platform contract has been approved by the Kansas Lottery and background investigations approved by the Kansas Racing and Gaming Commission, then other lottery gaming facility managers would be able to contract with the same interactive sports wagering platform. However, each lottery gaming facility manager is not required to use the same interactive sports wagering platforms. The Kansas Lottery would be able to contract directly with an interactive sports wagering platform if no more than one lottery gaming facility manager has continuously offered sports wagering on an interactive sports wagering platform within two years of the effective date. The bill would allow the Kansas Speedway and Children's Mercy Park (Sporting Kansas City) to enter into a contract with a lottery gaming facility manager to offer sports wagering at a designated location at the racetrack or stadium through an interactive sports wagering platform. If the lottery 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 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 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 prohibit sports wagering for persons under 21 years of age. The interactive sports wagering platform would only be able to accept sports wagering bets by individuals that are physically located in the state. The Kansas Lottery would be allowed to restrict, limit, or exclude sports wagering on one or more sporting event by providing a notice to all sports wagering managers. Offering or taking wagers that do not adhere to that notice would be a violation of the Kansas Expanded Lottery Act.

The sports wagering manager and their interactive sports wagering platform 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 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 and their interactive sports wagering platform would not be allowed to accept a wager from a person known by the manager to have been convicted of any felony or misdemeanor offense involving sports wagering. 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 sports wagering manager would be required to receive approval from the Kansas Lottery on the establishment of rules that specify the amounts to be paid on winning sports wagers and the effect of changes in the scheduling of an authorized sporting event. Sports wagering managers would be required to cooperate with any investigation conducted by the Kansas Lottery, Kansas Racing and Gaming Commission, or law enforcement agencies. 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 conduct that corrupts a betting outcome of a sporting event for purposes of financial gain, including match fixing; and any wagering activity that the operator knows or suspects violates federal or state laws 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 records for all persons that make wagers that total \$10,000 or more in any 24-hour period. The records would be required to be maintained for 30 days following the conclusion of the sporting event or up to three years if requested by either the Kansas Lottery or Kansas Racing and Gaming Commission. The bill would allow the state 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 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 lottery gaming facility manager. If a lottery gaming facility manager offers sports wagering, then the management contract would include a provision that 7.5 percent of the sports wagering revenues received from wagers placed in person at each lottery gaming facility and 10.0 percent of the sports wagering revenues received from wagers placed with the interactive sports wagering platform contracted with the lottery gaming facility manager would be distributed to the Lottery Operating Fund. Sports wagering revenues are defined as total revenues from sports wagering after applicable fees, federal excise taxes, free play, and all prize related payments are made. Lottery gaming facility revenue does not include any sports wagering revenue.

The bill would create the White Collar Crime Fund in the State Treasury that would be administered by the Governor. 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 involving any unauthorized gambling. 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 Attorney General and the Kansas Racing and Gaming Commission are required to make a request to the Governor before August 1st of each year for available funding from the White Collar Crime Fund. The Governor is authorized to transfer monies from White Collar Crime Fund to any special revenue fund of the Attorney General and the Kansas Racing and Gaming Commission to carry out the purposes of this fund.

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 increase the severity level for sports bribery offences from severity level 9 nonperson felony to severity level 8 nonperson felony.

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 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 for providing more than \$250,000 per year in 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 allowed to suspend, revoke, 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 the Kansas Racing and Gaming Commission would have the authority to write rules and regulations to implement the bill. Specifically, the Kansas Racing and Gaming Commission would be required to adopt rules and regulations regarding sports wagering advertising by October 31, 2021. The bill includes definitions of “interactive sports wagering platform,” “match-fixing,” “sporting event,” “sports wagering,” “sports wagering manager,” “sports wagering revenue,” 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 is not accompanied by any music or sound effects, animated visual display, or visual effects that simulate an electronic gaming machine. The online lottery ticket cannot allow an extension of credit for purchase of the ticket, cannot be redeemed at any place other than a Lottery retailer or the Lottery office, and cannot determine the winner of any game in less than four minutes from the time the ticket is purchased or acquired. A player of an online lottery ticket would not be allowed to play more than one game at a time.

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 which 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 SB 84 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. The bill has the potential to increase funding to investigate and prosecute criminal offenses related to sports wagering or illegal gambling activity if a grant is secured from the White Collar Crime Fund.

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 when it has negotiated contracts with lottery 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 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.

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 sports wagering available at state-owned casinos and through mobile applications would generate between \$360.0 million and \$600.0 million in gross wagering in the state, which could generate between \$2.1 million and \$3.5 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 and Kansas could reach \$900.0 million in gross wagering in five years, which could generate approximately \$5.3 million for the state. 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 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 \$2,250,000, with \$1.5 million to the Lottery Operating Fund and \$750,000 to the White Collar Crime Fund. This estimate assumes an effective sports wagering tax of approximately 9.0 percent because a larger share of sports wagering is estimated to occur over the internet with an interactive sports wagering platform (taxed at 10.0 percent) than placed at the lottery gaming facility (taxed at 7.5 percent).

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 restrictive procedures on its implementation have the potential to increase the overall ticket sales by \$3.0 million and increase the transfer to the state by an additional \$570,000 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 \$3.2 million in additional transfers to the state over the course of the first five years. The Kansas Lottery indicates that implementing iLottery with less restrictions has 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. Less restrictions have 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.

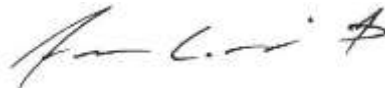
The Department for Aging and Disability Services indicates that allowing sports wagering activity would likely increase demand for services provided by its Problem Gambling Program. The Department indicates that the amount of additional spending would be dependent on how readily available sports wagering would be offered in the state. The Department also has concerns that the funding mechanism that provides additional monies 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 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 indicates 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 to investigate and prosecute criminal offenses related to sports wagering or illegal gambling activity if a grant is secured from the White Collar Crime Fund.

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 Governor's Office indicates that the bill would require it to manage grant funding from the new White Collar Crime Fund. The Governor's Office indicates that the costs to manage funds from the White Collar Crime Fund are estimated to be negligible and could be absorbed within existing resources. Any fiscal effect associated with SB 84 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
Ryan Wright, Office of the Governor
Scott Schultz, Sentencing Commission
Debbie Thomas, Judiciary
Connie Hubbell, Aging & Disability Services