

SESSION OF 2015

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR HOUSE  
BILL NO. 2155**

As Amended by Senate Committee of the Whole

**Brief\***

Sub. for HB 2155 would create the Kansas Charitable Gaming Act (Act) and amend the Kansas Lottery Act. The Act would include changes to the Bingo Act and create new law concerning the regulation of charitable raffles. The bill also would make participation in fantasy sports leagues legal by including such sports leagues in the list of exceptions to the definition of what constitutes an illegal bet.

Specific changes that would be made to charitable bingo laws, as well as the purpose, regulation, licensure, taxation, and enforcement of charitable raffles as proposed by the bill and details of the changes to the Kansas Lottery Act and the definition of fantasy sports league, are discussed below.

***Bingo***

Concerning changes to the Bingo Act, the bill would do the following:

*General Requirements and Restrictions*

- Keep license fees for bingo at \$25;
- Remove restrictions regulating the way bingo premises can be divided;

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Remove restrictions prohibiting the advertising of bingo (currently, advertising is allowed only pursuant to rules and regulations);
- Remove restrictions prohibiting other games of chance or contests where prizes are awarded from being conducted on a premise where bingo is being conducted; and
- Remove language excepting payment of prizes of less than \$200 from the requirement that licensees with gross receipts of \$1,000 or more must make all payments related to the management, operation, or conduct of bingo games from a Bingo Trust Bank Account.

*Time, Location, and Number of Days Bingo Games May Be Conducted*

- Remove restrictions regulating the number of days bingo games can be conducted at a premise other than the premise listed on the license (the current limit is five days per year on a premise other than the premise listed on the license);
- Allow licensees to conduct bingo games in counties adjoining the county where the licensee is located;
- Remove restrictions limiting the number of days bingo games can be managed, operated, or conducted per week (the current limit is two days per week);
- Remove restrictions limiting the number of times a premise can be used for bingo each week (the current limit is three days per week);
- Remove restrictions limiting the number of regular, special, and progressive call bingo games that can

be conducted in one bingo session (the current limit is 25 games per session, no more than five of which can be special games);

- Remove restrictions limiting number of licensees that may conduct bingo games at a given location in any one session (the current limit is one licensee);
- Remove restrictions requiring a waiting period between bingo sessions (the current requirement is 44 hours between bingo games on a premise or within 1,000 feet of a premise where bingo has been conducted);
- Remove restrictions limiting where progressive bingo sessions can be conducted (currently, progressive bingo sessions cannot be conducted at a location other than the specified location listed on the license); and
- Allow progressive bingo games to be conducted in conjunction with a session of bingo.

*Number of Games Allowed in a Session of Bingo*

- Remove restrictions limiting the number of progressive bingo games conducted during a single session of bingo (the current limit is two games per session, with the entire progressive bingo game not exceeding 20 bingo sessions);
- Remove restrictions prohibiting limits on the number of instant bingo games that can be played in one session and the number of instant bingo tickets sold in a game of instant bingo (currently, there is no limit); and
- Remove restrictions limiting the number of mini games of bingo during a session (the current limit

is 30 games) and the time mini bingo can be conducted (currently, mini games cannot be conducted more than two hours prior to first regular or special game or one hour after last regular or special game of bingo of a session).

*Sale of Bingo Tickets and Supplies*

- Remove restrictions limiting when instant bingo tickets can be sold (currently, bingo tickets cannot be sold more than two hours prior to the start of the first regular or special game of call bingo or one hour after the termination of the last game of call bingo of a session) and how much sellers may charge for instant bingo tickets (the current limit is \$2);
- Remove restrictions prohibiting the sale or use of bingo cards except as provided by rules and regulations (currently, only bingo faces can be distributed except as provided in rules and regulations);
- Remove the requirement that boxes of instant bingo tickets must be accompanied by flare with the business name of the distributor and the license number to which the box is sold, if sold to a Kansas bingo licensee (flare with some information would still be required); and
- Allow the Administrator of Charitable Gaming (Administrator), upon receiving notice, to revoke or suspend the license of an organization not providing full payment to a distributor of call bingo or instant bingo supplies within 90 days of the delivery of supplies.

### Restrictions on Prizes

- Remove restrictions limiting the starting amount of a progressive game of bingo (the current limit is \$400);
- Remove restrictions limiting the prize amount for single games of bingo (the current limit is \$50 for regular call bingo, \$500 for special call bingo);
- Allow consolation prizes of up to a \$1,000 value (the current limit is \$400 value);
- Allow the aggregate prize for a single session of call bingo to be increased annually based on increases in the consumer price index; and
- Require monetary prizes of \$1,199 or more to be paid by a check drawn on the Bingo Trust Bank Account of the licensee (currently, this is required for monetary prizes of \$500 or more).

### Bingo Premise Rent and Leases

- Remove the requirement that lease documents be submitted to the Administrator at the Kansas Department of Revenue (KDOR) when bingo is conducted on leased premises or leased equipment is used to conduct a bingo game; and
- Remove requirements regulating the rent that can be charged for a leased premise (the current requirement is that rental costs be fair and reasonable, and rent charged must not exceed 50 percent of the net proceeds for the session or the fair and reasonable rental value determined by the Administrator, whichever is less).

### Restrictions on Personnel

- Remove restrictions limiting persons who lease premises and bingo licensees' ability to conduct drawings (currently, persons leasing bingo premises and bingo licensees are limited to participating in one drawing per session, and no more than four drawings per year);
- Remove language prohibiting a requirement that persons purchase something of value to participate in a drawing conducted by a licensee or lessor;
- Remove language allowing only a non-monetary prize worth less than \$25 to be awarded in such a drawing; and
- Allow employees of bingo licensees to assist in the conduct of games of bingo.

### **Raffles**

#### Purpose

The bill would state charitable raffles are an important method of raising money for charitable purposes and are in the public interest. The bill also would state the purpose and intent of the provisions concerning charitable raffles would be to:

- Define the scope of charitable raffles;
- Set standards for the conduct of raffles which ensure honesty and integrity;
- Provide for means of accounting for moneys generated through raffles;

- Provide penalties for violations of laws and administrative rules and regulations related to raffles;
- Prevent commercialization of raffles;
- Prevent criminal participation in raffles; and
- Prevent diversion of funds from legitimate charitable purposes.

The bill would allow raffles to be conducted by *bona fide* nonprofit religious, charitable, fraternal, educational, or veterans' organizations. The definitions of "nonprofit religious," "charitable," "fraternal," "educational," or "veterans' organizations" would be the same as those definitions used in current law for charitable bingo.

The KDOR would be required to report to both the House and Senate Federal and State Affairs Committees on the status of raffles and raffle licensees in the State by January 15th each year through 2018.

#### Licensure

Any *bona fide* nonprofit religious, charitable, fraternal, educational, or veterans' organization could apply for a license to conduct a raffle. An application for a raffle license would be required to include:

- The name and address of the organization;
- The place or location(s) or premises for which a license is sought;
- A sworn statement verifying the applying organization is a qualifying nonprofit organization, signed by the presiding officer and secretary of the organization;

- A sworn statement verifying that such organization is a *bona fide* nonprofit religious, charitable, fraternal, educational, or veterans' organization authorized to operate within the State of Kansas signed by the presiding officer and secretary of the organization;
- Other information as required by the Administrator; and
- An application fee, determined as follows:
  - Less than \$25,000 in annual gross raffle receipts – no application fee;
  - \$25,000 to \$50,000 in annual gross raffle receipts - \$25 license fee;
  - \$50,000 to \$75,000 in annual gross raffle receipts - \$50 license fee;
  - \$75,000 to \$100,000 in annual gross raffle receipts - \$75 license fee; and
  - More than \$100,000 in annual gross raffle receipts - \$100 license fee.

A license would be issued in the name of the organization licensed and would not be transferable or assignable. No license or renewal of a license would be issued to an organization if any of its officers, directors, officials, or persons employed on the premises have been convicted of, pleaded guilty to, or pleaded *nolo contendere* to a violation of state or federal gambling laws, or have forfeited bond to appear in court to answer charges for any such violation, or have been convicted of, pleaded guilty to, or pleaded *nolo contendere* to a crime which is a felony in any state. Licenses would expire on June 30 following the date of issuance.

A license also would be required for each affiliated organization of any state or national nonprofit religious, charitable, fraternal, educational, or veterans' organization.

#### *Restrictions on Licensees*

Employees of licensees would be allowed to assist in the conduct of a raffle, but no person could receive any remuneration or profit for participating in the management, conduct, or operation of a charitable raffle, unless the remuneration or profit goes to the benefit of another nonprofit group.

Licensees would be required to report the name and address of any person winning a prize with a retail value of \$1,199 or more.

Licensees would be required to keep a record of all charitable raffles managed, operated, or conducted by such licensee for three years following the date of a raffle. Because organizations raising less than \$25,000 in a calendar year would be exempt from licensure requirements, those organizations would not be licensees and also would be exempt from the records requirements.

#### *Regulation*

##### *Structure of Raffle Regulation*

The bill would specify the State would have the exclusive power to regulate, license, and tax the management, operation, and conduct of and participation in charitable raffles. The Secretary of Revenue (Secretary) would appoint the Administrator who would be an unclassified employee and receive a salary set by the Secretary and approved by the Governor. The Administrator would be responsible for administering and enforcing the law concerning bingo and raffles. The bill would require the

Secretary to adopt rules and regulations concerning the conduct of charitable raffles, including, but not limited to:

- Standards for the preparation, sale, and accountability of tickets;
- Conduct of drawings; and
- Awarding of prizes.

Licensed organizations would not be able to use electronic devices to conduct raffles or sell raffle tickets, and an organization would not be allowed to contract with a professional raffle or lottery vendor to manage, operate, or conduct a raffle.

#### *Powers of the Administrator*

To determine the receipts of licensees, the Administrator would be allowed to examine books, papers, records, or memoranda required to be included in the licensee's records. The Administrator would be allowed to require the attendance of the licensee in the county where the licensee resides, or where charitable raffles are conducted, and could require the attendance of any person having knowledge relating to such records, and could take testimony and require proof of such person(s). The Administrator also would be allowed to issue subpoenas to compel access to records to which a licensee has access or to compel the appearance of persons and could issue interrogatories, administer oaths, and take depositions to the same extent that he or she could in a civil action in district court.

The Administrator would be authorized to enjoin and have an order restraining persons without valid licenses from managing, operating, or conducting charitable raffles.

Actions by the Administrator would be subject to review under the Kansas Judicial Review Act.

### *Punitive Actions by Administrator*

The Administrator would be allowed to revoke or suspend a raffle license, after a hearing in accordance with the provisions of the Kansas Administrative Procedures Act, for the following reasons:

- Licensee obtained the license by giving false information;
- Licensee violated any Kansas laws or provisions of the Act related to raffles; or
- Licensee has become ineligible to obtain a license under the Act.

If a license was revoked, no new license could be issued to the organization or a person acting on its behalf for six months after the revocation. A license could not be revoked or suspended for more than one year if the applicant was otherwise qualified on the date the applicant made a new application for a license.

In addition to or in lieu of any civil or criminal penalty provided by law, the Administrator could impose a civil fine of not more than \$500 for each violation of the raffle provisions. No fine could be imposed without a written order from the Administrator stating the violation, the fine imposed, and the right of the licensee to appeal. Money collected from fines would be credited to the State Charitable Raffle Regulation Fund.

Upon the recommendation of the Administrator, the Secretary would be required to adopt rules and regulations to implement the license requirements for nonprofit organizations conducting raffles.

### Applicable Taxes

The bill would specify that in any raffle for which the prize is a motor vehicle, the vehicle would be subject to retailer's sales tax. All sales of charitable raffle tickets made in accordance with the Act would be exempt from sales tax.

### Raffle Funds

The bill would create the State Charitable Raffle Regulation Fund and require that all moneys the Administrator receives from license fees be remitted to this fund. All operating expenses related to the administration and enforcement of charitable raffles would be paid from the Regulation Fund. At the end of each fiscal year, money that had not been used for raffle administration or enforcement would be transferred to the State General Fund.

The bill also would create the Charitable Raffle Refund Fund, which would be maintained by the Administrator from the license and registration fees and taxes collected under the Act. The Refund Fund would have a limit of \$10,000.

### Other Changes

The bill would amend the definition of "bet" in criminal statutes to specify that charitable raffles managed, operated, and conducted in accordance with the raffle provisions would not be considered illegal bets.

The bill would contain a severability clause, stating if any provision of the Act or any application of the Act is found to be unconstitutional or invalid, the finding would not affect the other provisions of the Act.

### ***Kansas Lottery Act***

Concerning the Kansas Lottery Act, the bill would:

- Allow the Kansas Lottery to advertise at amateur athletic and sporting events where the majority of participants are not under the age of 18;
- Allow the Kansas Lottery to be a retailer and sell Lottery products; and
- Make it unlawful for anyone under the age of 18 to redeem a winning lottery ticket.

### ***Fantasy Sports Leagues***

The bill would make participation in fantasy sports leagues legal by including such sports leagues in the list of exceptions to the definition of what constitutes an illegal bet. The bill would define “fantasy sports league” to mean any fantasy or simulation sports game or contest in which no fantasy or simulation sports team is based on the current membership of an actual team that is a member of an amateur or professional sports organization and that meets the following conditions:

- All prizes and awards offered to winning participants are established and made known to participants in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid by those participants;
- All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individual athletes in multiple real-world sporting events; and
- No winning outcome is based:
  - On the score, point spread, or any performance or performances of any single

- real-world team or any combination of such teams; or
- Solely on any single performance of an individual athlete in any single real-world sporting event.

## **Background**

The Senate Federal and State Affairs Committee placed the contents of SB 262, as amended by the Senate Committee, and SB 61, as further amended by the Senate Committee, into HB 2155 and passed the bill as a Senate Substitute bill. The original contents of HB 2155 had previously been included in HB 2154. The Senate Committee of the Whole amended the bill by adding the provisions of SB 267, which relates to the legalization of fantasy sports leagues, and also adopted a technical amendment.

## **SB 262**

At the hearing in the Senate Committee on Federal and State Affairs, the Administrator of Charitable Gaming, an individual who stated he represented nine American Legion posts and one auxiliary post across the State, representatives of the Kansas Charities Cooperative and the Nonprofit Chamber of Service, and a citizen presented testimony in support of the bill. Written testimony in favor of the bill was submitted by the Kansas Children's Service League, Americans for Prosperity, and Positive Directions, Inc. Proponents stated the bill would help with the fundraising efforts of nonprofit organizations in Kansas by legalizing raffles and reducing restrictions on bingo. The proponents noted many states regulate bingo and raffles in a single section of law.

Testimony in opposition to the bill was presented by representatives for Kansans for Liberty and the Adjutant of the American Legion - Department of Kansas. The opponents

expressed support for Sub. for HB 2383, which was recommended by the House Federal and State Affairs Committee. The opponents noted, when the *Kansas Constitution* was amended to authorize the Legislature to regulate charitable raffles, the voters did not approve any changes to the existing bingo laws.

Neutral testimony was presented by a representative of the Kansas Commission on Veterans' Affairs Office. He stated that although his organization was always neutral on gaming-related issues, he hoped the committee would consider the impact of the bill on Kansas veterans and veteran service organizations.

The Senate Committee amended the bill by:

- Striking the 1.0 percent raffle tax on gross annual receipts of more than \$25,000;
- Creating a tiered license fee structure, keeping the cost of a bingo license at \$25;
- Striking a requirement that an individual who is not a member of the organization organizing the raffle must verify any raffle winner;
- Adding language requiring a license for any affiliated organization of any state or national nonprofit organization hosting a raffle;
- Adding language specifying that remuneration or profit may be received only if it goes to the benefit of another nonprofit group;
- Clarifying that the name of anyone receiving a prize of more than \$1,199 must be reported to KDOR; and
- Requiring KDOR to present a report on charitable gaming to both the Senate and House Federal and

State Affairs Committees by January 15th of each year until 2018.

The fiscal note prepared by the Division of the Budget on SB 262, as introduced, indicates that under current law, bingo taxes generate annual revenues of approximately \$357,000, of which \$108,000 is credited to the State Bingo Regulation Fund within KDOR; \$20,000 is credited to the Problem Gambling and Addictions Grant Fund within the Department for Aging and Disability Services; and the balance, or \$229,000, is remitted to the State General Fund. If SB 262 were enacted, these revenues would be directed to KDOR for the newly created State Charitable Gaming Regulation Fund.

The KDOR estimates this fund would receive a total of \$482,500, including the amounts listed above in addition to new revenue totaling \$125,500, of which \$2,500 would be from the \$25 raffle license collected from approximately 100 organizations; \$20,000 would be from the 1.0 percent raffle tax, which KDOR estimates would be assessed on gross sales of approximately \$2.0 million; and \$103,000 would be from an estimated 30 percent increase in bingo tax receipts as a result of increased limitations on the number of games allowed and prizes awarded. The KDOR estimates SB 262 would increase its expenditures by \$100,000 in FY 2016, which includes the cost to modify tax processing and registration systems; to add one staff person to administer the raffle tax; and to add one part-time attorney or tax specialist to draft rules, regulations, and notices and to respond to communication regarding the regulation of raffles. The KDOR is unable to estimate the cost of enforcement at this time, but indicates these costs would be in addition to the expenditures included in the fiscal note. Any fiscal effect associated with SB 262 is not reflected in *The FY 2016 Governor's Budget Report*.

## **SB 61**

At the hearing in the Senate Federal and State Affairs Committee, representatives from the Kansas Lottery and the Kansas Licensed Beverage Association presented testimony in favor of the bill. The representative from the Kansas Lottery indicated these changes are intended to implement industry best practices in an attempt to make the lottery operations more efficient and effective. Representatives from the Petroleum Marketers and Convenience Store Association of Kansas, QuikTrip Corporation, the Kansas Restaurant and Hospitality Association, and Johnson's General Stores, Inc. provided written testimony in support of the bill.

Representative Kahrs provided testimony in opposition to the bill. He expressed concerns about the operation of the electronic dispensers and the potential criminalization of the purchase of lottery tickets by minors. (The Senate Committee removed the provision criminalizing the purchase of lottery tickets by minors.)

The Senate Committee amended the bill by specifying the pull tab vending machines authorized by the bill include only pull tab ticket vending machines, while other types of pull tab vending machines are not allowed. The Committee also removed provisions criminalizing the purchase of lottery tickets by minors and added a provision making it unlawful for any person under the age of 18 to redeem a winning lottery ticket.

The Senate Committee further amended the bill by striking provisions that had allowed the use of lottery ticket vending machines.

The fiscal note prepared by the Division of the Budget on SB 61, as introduced, indicates the Kansas Lottery estimates the bill would increase State General Fund revenues by \$3.0 million in FY 2016 and by \$8.0 million in FY 2017. The Kansas Lottery is unable to estimate additional expenses created by the bill. The Office of Judicial

Administration indicates there could be a fiscal effect on the operations of the court system if there is increased litigation as a result of criminalizing the purchase of lottery tickets by minors, however a precise fiscal effect cannot be determined. (The Senate Committee amended the bill to remove this provision.) The Board of Regents indicates the bill would have no fiscal impact on the Board of Regents or any Kansas post-secondary institution. Any fiscal effect associated with the bill is not reflected in *The FY 2016 Governor's Budget Report*.

### **SB 267**

The bill was introduced by the Senate Committee on Federal and State Affairs.

At the hearing before the Senate Federal and State Affairs Committee, Representative Hildabrand and two representatives of the Fantasy Sports Trade Association appeared in support of the bill. They testified, based on an opinion expressed by the Kansas Racing and Gaming Commission (KRGC), fantasy sports leagues are illegal under Kansas law, but legal under federal law. The proponents stated fantasy sports leagues outcomes are based on the skill of the participants, not merely on chance, and urged that the law be clarified to reflect that definition. No neutral or opponent testimony was provided.

The fiscal note prepared by the Division of the Budget indicates KRGC, the Kansas Lottery, and the Attorney General all have indicated SB 267 would have no fiscal effect on their operations.