



SB 455

An Act concerning gaming; relating to the Kansas Expanded Lottery Act

Senate Committee on Federal and State Affairs

April 4, 2018

OPPOSITION TESTIMONY

Good morning Chairman Estes and Members of the House Federal and State Affairs Committee:

Kansas Entertainment, LLC appreciates the opportunity to express our concerns with SB 455.

By way of information, Kansas Entertainment, LLC is a joint-venture partnership of Penn Hollywood Kansas, Inc., and Kansas Speedway Development Corporation, and was selected by the State of Kansas in 2009 to develop a destination casino for the Northeast Kansas Gaming Zone.

Kansas Entertainment supports sports wagering in Kansas in the event the current federal ban¹ is eliminated through judicial or legislative action as we testified at the informational hearing on our concerns to SB 455. We find SB 455 to be even more egregious for a variety of reasons that I will enumerate.

First, the proponents have maintained their support for a so-called “integrity fee” to be paid to major league sports associations (e.g., the NBA, MLB, etc.). Although reduced from the 1% fee found in SB 455 to .25%, the idea remains just as unsound regardless of the price. No other jurisdiction currently offering sports wagering has adopted a fee like this and no state considering legislation in advance of the U.S. Supreme Court decision on sports wagering prohibitions has done so, either.

¹ Enacted 25 years ago, the Professional and Amateur Sports Protection Act of 1992 (28 U.S.C. ch. 178 § 3701 *et seq.*) prohibits states from legalizing sports betting. PASPA granted immunity to four states which had previously allowed sports betting inside their borders. Those states are Nevada, Delaware, Oregon, and Montana. New Jersey has challenged the PASPA. A decision in *Christie v. NCAA, et al.*, No. 16-476 is pending before the United States Supreme Court.

In our comments to this committee several weeks ago, we supported a bricks and mortar approach to sports wagering that allowed the Kansas Lottery to contract with the state-owned and operated casinos and the pari-mutuel tracks, should they choose to reopen under current law. SB 455 takes a much different approach and would allow the Kansas Lottery to contract with the casino/pari-mutuel licensees as well as any other lottery vendor and more. This regulatory scheme is contrary to Nevada and other jurisdictions considering sports wagering legislation this year and would create a regulatory nightmare for the State of Kansas with so many gaming licensees. The bill also allows for sports wagering through internet sites and mobile device applications. We would suggest such a broad expansion of gaming in Kansas – all lottery licensees and internet/mobile gaming would create a sports wagering system in Kansas very difficult to regulate.

Kansas Entertainment believes all sports betting activity should be conducted solely through interactive sports wagering platforms of the brick and mortar lottery gaming facilities to maximize economic benefits for the State of Kansas, local communities and management companies with lottery contracts. Moreover, this provides more control of the qualification of a person who seeks to play, the model adopted by Nevada, among other states with legislation pending.

Sports governing bodies are given almost unfettered control over the state's ability to allow for sports wagering on their respective games. This kind of a regulatory framework puts the sports governing bodies in charge of Kansas sports wagering and would allow for unimaginable control over Kansas games and the Kansas Lottery. SB 455 grants the professional sports leagues extraordinary regulatory powers by granting control over wagering and real-time access to confidential consumer information and locations. Those powers are best left to established state regulators and law enforcement officials who are experienced in overseeing gaming operations and whose only interest is in promoting and protecting the public and the consumer.

We also object to the provision that sports book operators only utilize data and associated video provided by the leagues, when such data and video signals are widely available to the public through multiple commercial sources. This is another effort by the leagues to control information and data to their benefit in hopes of creating a new revenue stream.

In current form, SB 455 would not reduce illegal sports betting with unregulated and/or offshore internet sites that do not pay taxes nor are subject to regulatory oversight. One of the leading reasons for the expansion of sports wagering across the country has been that legislation would reduce illegal wagering in the U.S.

We noted in earlier testimony that several of the sports leagues have invested heavily in fantasy sports companies, who are jockeying for position in the sports wagering market (MLB/Draft Kings and NBA/FanDuel). Granting the Leagues such unfettered access and power in a sport wagering regulatory scheme would undoubtedly give them tremendous market power working in cooperation with their gaming partners and lead to discrimination for their competitors.

The tax rate suggested in the bill is “not less than 6.75%”. We noted during the informational hearing that we see sports wagering as an amenity some of our clients would like to see offered. However, the state’s possible revenues and those of the casino/pari-mutuel track would likely be very modest. We would like to see the tax rate simply set at 6.75%, not as described in the bill.

Provisions of this legislation are likely to violate contracts with the four state-owned and operated casinos regarding an expansion of gaming. Any legislation should be compared to those agreements with comments from the Kansas Lottery, Kansas Attorney General and representatives of the four casinos.

For guidance on model legislation, one can look to West Virginia which has just recently approved a sports wagering framework for a regulated industry under the oversight of the Lottery Commission. The West Virginia model allows the state’s five gambling establishments to apply for a license to operate sports betting. Bettors who are at least 21 years old and located in West Virginia would be permitted to wager on collegiate and professional events. Those wagers can be placed either in person or via mobile/internet betting platforms through the state’s five gambling operators. The West Virginia model does not include an “integrity fee”.

Finally, Kansas Entertainment takes strong issue with the fiscal note for SB 455. The State reviewed two studies and came up with a potential revenue number for the State of Kansas of \$75 million annually. Kansas Entertainment would direct the State to the AGA-Oxford Economics study, which the fiscal note cites (Economic Impact of Legalized Sports Betting, May 2017) and see where the potential revenue for Kansas is estimated at \$7.5 million for limited availability up to \$23.4 million for convenient availability. And Penn National Gaming, with all their experience in gaming throughout the United States believes these numbers are high.

We see no need for the State of Kansas to get out front on this issue and believe we can wait until 2019 before crafting a bill; one that considers any U.S. Supreme Court decision and takes into consideration legislation passed in other states that would serve as a model for Kansas. Sports league-led legislation such as SB 455 and its predecessor, SB 455 and their counterparts in the Kansas Senate are not good models for Kansas for the reasons stated in our remarks and should be rejected.

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