

SESSION OF 2017

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2173

As Amended by House Committee on Federal
and State Affairs

Brief*

HB 2173 would amend the Kansas Expanded Lottery Act and the Kansas Parimutuel Racing Act concerning racetrack gaming facilities and lottery gaming facilities. Specifically, the bill would address: net electronic gaming machine income distribution; legal actions by lottery gaming facility managers; cash or surety bonds placed in escrow related to legal actions; electronic gaming machines in Sedgwick County; gaming machine requirements in Sedgwick, Crawford, and Wyandotte counties; enforceable provisions of racetrack gaming facility management contracts; the number of electronic gaming machines at racetrack facilities; changes to requirements for certain organizations; simulcasting; required checks against debtor files, debtor setoff, and withholding of prizes; and new funds created by the bill.

Net Electronic Gaming Machine Income Distribution

This section describes the net electronic gaming revenue distributions required of racetrack facilities located in the state with electronic gaming devices. This section also provides more specific information on electronic gaming machine distributions required of such facilities located in the Northeast, Southeast, and South Central Gaming Zones.

[Staff note: no electronic gaming revenue distribution provisions applicable to racetrack facilities in the Southwest

*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>

Gaming Zone are listed below. Current law does not allow electronic gaming machines to be placed at a parimutuel facility in the Southwest Gaming Zone].

Provisions Applicable to Racetrack Facilities in All Gaming Zones

Net electronic gaming revenue generated at racetrack facilities would be distributed as follows:

- 22.0 percent to the Expanded Lottery Act Revenue Fund (ELARF);
(Current law: 40.0 percent to the ELARF.)
- 10.0 percent from racetrack facilities licensed to conduct live horse races during the first two years of operation to the Live Horse Racing Purse Supplement Fund;
(Current law: 7.0 percent of total, but not more than \$3,750 per gaming machine at each location to Live Horse Racing Purse Supplement Fund. Any excess between \$3,750 per machine and 7.0 percent is split between the State and the racetrack gaming facility manager according to the management contract.)
- 14.0 percent from racetrack facilities licensed to conduct live horse races during third and subsequent years of operation to the Live Horse Racing Purse Supplement Fund;
(Current law: 7.0 percent of total but not more than \$3,750 per gaming machine at each location to Greyhound Racing Purse Supplement Fund. Any excess between \$3,750 per machine and 7.0 percent is split between the State and the racetrack gaming

facility manager according to the management contract.)

- 7.0 percent from racetrack facilities licensed to conduct greyhound races to the Greyhound Racing Purse Supplement Fund;
(Current law: 7.0 percent of all net electronic gaming machine income to the Greyhound Racing Purse Supplement Fund.)
- 0.5 percent to Problem Gambling and Addictions Grant Fund; and
(Current law: 2.0 percent to Problem Gambling and Addictions Grant Fund.)
- Remaining balance is paid to the racetrack gaming facility manager.
(Current law: 25.0 percent to the racetrack gaming facility manager, and an additional 15.0 percent to be used for gaming expenses.)

[Staff note: as stated in the fiscal note:

- *If a facility in the Northeast Gaming Zone continued to be licensed only for horse racing, the remaining balance due to the racetrack facility manager would be 64.5 percent of net electronic gaming revenue in the first and second years of operation. In third and subsequent years, the remaining balance would be 60.5 percent; and*
- *If facilities in the Southeast and South Central Gaming Zones continued to be licensed only for greyhound racing, the remaining balance of net electronic gaming revenue due to the racetrack gaming manager would be 68 percent.]*

Northeast Gaming Zone

In addition to the general distribution requirements listed above, the following distributions of net electronic gaming revenue are to be made by racing facilities located in the Northeast Gaming Zone:

- 1.0 percent to the Kansas Horse Fair Racing Benefit Fund;
(No similar provision in current law.)
- Facilities not located within a city;
 - 2.0 percent to county where racetrack facility is located;
(Current law: 3.0 percent to county where racetrack facility is located.)
- Facilities located within a city;
 - 1.0 percent to city where racetrack facility is located; and
(Current law: 1.5 percent of racetrack gaming facility revenues to city where racetrack facility is located.)
 - 1.0 percent to county where racetrack facility is located.
(Current law: 1.5 percent of racetrack gaming facility revenues to county where racetrack facility is located.)

Southeast Gaming Zone

In addition to the general distribution requirements listed above, the following distributions of net electronic gaming revenue are to be made by racing facilities located in the Southeast Gaming Zone:

- 0.4 percent To the Kansas Horse Fair Racing Benefit Fund;
(No similar provision in current law.)
- Facilities not located within a city;
 - 2.0 percent to county where racetrack facility is located;
(Current law: 2.0 percent of racetrack gaming facility revenues to county where racetrack facility is located.)
 - 1.0 percent to the other county in the zone;
(Current law: 1.0 percent of racetrack gaming facility revenues to other county in the zone.)
- Facilities located within a city;
 - 1.0 percent to city where racetrack facility is located;
(Current law: 1.0 percent of racetrack gaming facility revenues to city where racetrack facility is located.)
 - 1.0 percent to county where racetrack facility is located; and
(Current law: 1.0 percent of racetrack gaming facility revenues to county where racetrack facility is located.)
 - 1.0 percent to the other county in the zone.
(Current law: 1.0 percent of racetrack gaming facility revenues to other county in the zone.)

South Central Gaming Zone

In addition to the general distribution requirements listed above, the following distributions of net electronic gaming revenue are to be made by racing facilities located in the South Central Gaming Zone:

- 0.4 percent To the Kansas Horse Fair Racing Benefit Fund;
(No similar provision in current law.)
- Facilities not located within a city;
 - 2.0 percent to county where racetrack facility is located;
(Current law: 2.0 percent of racetrack gaming facility revenues to county where racetrack facility is located.)
 - 1.0 percent to the other county in the zone;
(Current law: 1.0 percent of racetrack gaming facility revenues to other county in the zone.)
- Facilities located within a city;
 - 1.0 percent to city where racetrack facility is located;
(Current law: 1.0 percent of racetrack gaming facility revenues to city where racetrack facility is located.)
 - 1.0 percent to county where racetrack facility is located;
(Current law: 1.0 percent of racetrack gaming facility revenues to county where racetrack facility is located.)
 - 1.0 percent to the other county in the zone; and
(Current law: 1.0 percent of racetrack gaming facility revenues to other county in the zone.)
- 0.01 percent to the Kansas Horse Council Fund.
(No similar provision in current law.)

Legal Actions by Lottery Gaming Facility Managers

The bill would require the Kansas Lottery to give notice to the lottery gaming facility manager if it enters into a racetrack gaming facility management contract for the placement of electronic gaming machines at a parimutuel facility in any of the gaming zones. This notice would be required to inform the lottery gaming facility managers that they have 60 days from the effective date of the racetrack gaming management contract to file or become a party to a lawsuit seeking a judgment that the racetrack management contract violates state law or creates a material breach of the lottery gaming facility manager's gaming facility management contract. Any such action would be required to be filed in the Shawnee County District Court.

Cash or Surety Bond Placed in Escrow Related to Legal Action

Any racetrack gaming facility management contract would be required to contain a provision stating that if a lawsuit was brought under the provisions of the bill as discussed above, the racetrack gaming facility manager would be required to place into escrow, cash or a surety bond equal to the privilege fees paid by the lottery gaming facility managers that are parties to the lawsuit plus interest on each privilege fee. In the event of such a lawsuit, a racetrack gaming facility manager's refusal to put the required funds in escrow would be considered a material breach of and cause for termination of the contract. Once the funds were placed in escrow, the racetrack gaming facility manager could proceed with construction and operation of the racetrack facility.

In addition, if such a lawsuit was filed, each lottery gaming facility manager that was a party to the suit would be required to put \$5,000,000 cash or surety bond into escrow with the Kansas Lottery.

If a court decides that the gaming facility management contract does not violate state law or creates a material breach of any lottery gaming facility management contract, the racetrack facility would receive:

- The cash or surety bond placed in escrow by the racetrack facility; and
- A portion of the cash or surety bond placed in escrow by the lottery gaming facility managers to cover court costs, attorney's fees, and other costs of litigation.

If a court decides the gaming facility management contract does violate state law or creates a material breach of any lottery gaming facility management contract, each lottery gaming facility manager would receive the sum of:

- The cash or surety bond placed in escrow by the lottery gaming facility manager; and
- The cash or surety bond placed in escrow by the racetrack facility, in an amount equal to the privilege fee paid by the lottery gaming facility manager and accrued interest.

The Kansas Lottery would be required to reimburse the racetrack gaming facility managers for the amount of any cash or surety bond placed into escrow by the racetrack gaming facility that is paid to a lottery gaming facility manager as privilege fees and interest. This reimbursement would be made monthly as a percentage of the funds received by the ELARF from net electronic gaming machine revenue. The bill would specify that the percentage could not be less than 50 percent of the funds received by the ELARF from net electronic gaming machine revenue. (The bill proposes 22 percent of net electronic gaming machine revenue be credited to the ELARF.)

Electronic Gaming Machines in Sedgwick County

The bill would allow the Sedgwick County Board of County Commissioners to submit a proposition to county voters permitting the operation of electronic gaming machines at an existing parimutuel racetrack within the county, if a petition signed by 5,000 or more qualified voters is presented to the Board of County Commissioners as detailed in the bill. The proposal to allow electronic gaming machines must be put to popular vote within 120 days after the petition is deemed valid. The bill would specify the wording of the proposition to be: "Shall the operation of electronic gaming machines at the Wichita Greyhound Park by the Kansas Lottery be permitted in Sedgwick County?" If a majority of voters approve the proposition, the Executive Director of the Kansas Lottery would be authorized to enter into a contract with the parimutuel licensee at the Wichita Greyhound Park to operate electronic gaming machines.

Gaming Machine Requirements in Sedgwick, Crawford, and Wyandotte Counties

The bill would require that the parimutuel licensee in Sedgwick County operating gaming machines conduct at least 100 live greyhound races each week for at least 50 weeks and at least 13 live races conducted each day for not less than 5 days per week. Current law requires parimutuel licensees with electronic gaming machines to conduct at least 100 live greyhound races each calendar week for the same number of weeks raced during calendar year 2003, with at least 13 live races conducted each day for not less than 5 days per week.

The parimutuel licensee in Crawford County operating gaming machines would be required to conduct at least 85 live greyhound races each week for at least 25 weeks, and at least 12 live races each day for not less than 5 days per week. Current law requires the licensee to conduct at least 85 live greyhound races each week for the same number of

weeks raced during calendar year 2003, with at least 12 live races conducted each day for not less than 5 days per week.

The bill would remove a requirement that the parimutuel licensee in Wyandotte County that operates electronic gaming machines conduct at least 100 live greyhound races each week for the same number of weeks raced during calendar year 2003, and at least 13 live races each day for not less than 5 days per week. The bill would not change the requirement in current law that the licensee conduct live horse racing programs of 10 races for at least 60 days each calendar year and make a reasonable effort to conduct at least 3 live races for quarter horses (2 for Kansas-bred horses only) and 7 live races for thoroughbreds (2 for Kansas-bred horses only) each day.

Enforceable Provisions of Racetrack Gaming Facility Management Contracts

The bill would amend language related to the enforceable provisions required to be included in racetrack gaming facility management contracts to reflect the lottery facility management contract in the Southwest Gaming Zone. The Southwest Zone would be added to the current provisions included in racetrack gaming facility management contracts, prohibiting against the State from entering management contracts for more than one lottery gaming facility or similar gaming facility in each gaming zone.

The bill would specify that the term “similar gaming facilities” does not include racetrack gaming facilities.

Number of Electronic Gaming Machines at Racetrack Facilities

The bill would reduce the minimum number of gaming machines required to be placed at each racetrack facility from 600 to 400. The bill would also specify the total number of

electronic gaming machines (2,800) allowed at racetrack facilities by removing language related to the number of machines (2,200) allowed at such facilities before management contracts were binding in all 4 gaming zones. Additionally, the bill would remove language in current law requiring privilege fee bids of at least \$2,500 for each of the 600 additional machines.

Changes to Requirements for Certain Organizations

The bill would lower the application fee from \$500 to \$50 and the license fee for each day of racing from \$100 to \$25 for fair associations, horsemen's nonprofit organizations, and the National Greyhound Association of Abilene, Kansas, if:

- Such association conducts not more than two race meetings each year;
- Such race meets are held within the boundaries of the county where the applicant is located; and
- Such race meetings are held for a total of not more than 40 days per year.

The bill would specify that rules and regulations adopted by the Kansas Racing and Gaming Commission (KRGCC) expedite the application and licensing process for these organizations. The bill would add language clarifying the required investigation of these organizations conducted by the KRGCC must include the criminal background and credit history of those executives and officers specified in statute.

Simulcasting

The bill would:

- Allow licensed organizations that conduct at least 60 days of live racing during a calendar year to apply for a simulcasting license;

(Current law: requires 150 days of live racing to apply for a license.)

- Allow fair associations that conduct fewer than 40 days of live racing during a calendar year to apply for a simulcasting license; and

(Current law: requires fewer than 22 days of live racing during a calendar year for a fair association to apply for a simulcasting license.)

- Remove restrictions limiting the number of days fair associations may conduct simulcast races.

Required Check Against State Debtor Files, Debtor Setoff, Withholding of Prizes

The bill would require any lottery gaming facility manager, racetrack gaming facility manager, or facility owner licensee to match against the state debtor files any persons winning a prize requiring completion of IRS Form W-2G before paying such prize. If the person claiming the prize is listed in the state debtor files, the prize would be required to be withheld to the extent of such person's debt as listed in the files.

Money withheld based on the state debtor files would be required to be remitted to the State Treasurer in accordance with existing law regarding the remittance of state moneys.

The State Treasurer would be required to deposit the entire amount of such money into the State Treasury and credit it to the Department of Administration's Setoff Clearing Fund.

Lottery gaming facility managers, racetrack gaming facility managers, and facility owner licensees would not be subject to civil, criminal, or administrative liability for actions taken in accordance with the bill, except in the case of

intentional, malicious, or wanton actions. The bill would specify the only legal remedy for persons claiming prizes were wrongfully withheld would be an appeal to the Department of Administration.

The bill would amend current law related to debt setoff by adding money held for or owed to lottery gaming facility managers, racetrack gaming facility managers, or facility owner licensees to the list of money that can be setoff against debts owed to the state, state agencies, municipalities, or the federal government.

New Funds Created by the Bill

The bill would create the following funds:

- The Privilege Fee Repayment Fund;
- The Escrow Account Repayment Fund;
- The Litigation Cost Reimbursement Fund; and
- The Kansas Horse Council Fund.

Background

The bill was introduced in the House Committee on Federal and State Affairs at the request of Representative Hibbard. At the hearing before the House Committee, Senator Fitzgerald and Representatives Hibbard and Lusker appeared in support of the bill. Also appearing in support of the bill were representatives from the Kansas Racing Alliance; National Greyhound Association; and Race for Kansas; and one citizen. Written-only support for the bill was submitted by an Abilene City Commissioner; the American Quarterhorse Association; two Crawford County Commissioners; the Droge Animal Health Center; the Greenwood County Fair Association; the Greyhound Management, Inc.; the Kansas Greyhound Association; the Kansas House Council; a Sedgwick County Commissioner; the Wichita Independent Business Association; the Mayor of Wichita; and one citizen.

Testimony in opposition of the bill was provided by representatives of the Hollywood Casino; Humane Society Legislative Fund of Kansas; Kansas Chamber of Commerce; Kansas Star, Boot Hill, and Kansas Crossing Casinos; Unified Government of Wyandotte County and Kansas City, Kansas; and United States Humane Society. Written-only testimony in opposition to the bill was submitted by the Barnett Law Office; Butler National Corporation; City Manager of Dodge City; Family Policy Alliance of Kansas; GREY2K USA; Helping Hands Humane Society; Kansas City, Kansas Chamber of Commerce; Lawrence Humane Society; City Manager of Pittsburg; and President of Pittsburg State University.

No neutral testimony was provided.

The House Committee adopted a technical amendment related to net electronic gaming income distribution in the Southeast and South Central Gaming Zones.

Definitions of the various gaming zones can be found in 2016 Supp. KSA 74-8702(f).

The fiscal note prepared by the Division of the Budget on the bill as introduced, indicates the bill would not require additional staffing or expenditures by the KRGC, Kansas Lottery, or any other state agency unless a contract with a racetrack gaming facility manager is approved by the Kansas Lottery and a background investigation is approved by KRGC. A racetrack would need to obtain a parimutuel license from KRGC before its officials could negotiate with the Kansas Lottery for a contract to operate electronic gaming machines.

The proposed changes to the distribution of gaming facility revenue could provide an incentive for the Woodlands Racetrack in Kansas City, Wichita Greyhound Park, and Camptown Greyhound Park in Frontenac to negotiate a contract with the Kansas Lottery in order to reopen these facilities with electronic gaming machines. A contract could

not be approved with the Wichita Greyhound Park unless the voters of Sedgwick County first approve the operation of electronic gaming machines in a special election. The expenses of conducting a special election would be the responsibility of Sedgwick County. The Sedgwick County Election Commissioner has previously indicated that the costs associated with conducting a special election would be approximately \$124,000.

The Kansas Lottery indicates that the state is prohibited from designating additional areas of the state where gaming facilities are authorized until July 1, 2032. Conducting a revote to allow Wichita Greyhound Park to reopen with electronic gaming machines may be viewed as an expansion of gaming that is prohibited under the Kansas Expanded Lottery Act. If it is determined that the bill violates this provision, the State would be required to refund privilege fees from already selected casino managers plus a compounded annual interest rate of 10.0 percent. Currently, the State has received \$61.0 million in privilege fees from four gaming facility managers and it is estimated that interest payments would be at least \$50.9 million. The bill provides a mechanism for a racetrack gaming facility manager to pay or provide a surety bond for the payment of those fees and interest. In the event the casino managers are repaid privilege fees and interest, the amount held in escrow would be used to repay the privilege fees and accrued interest; however, the racetrack gaming facility manager would be reimbursed for the payment amount to casino managers out of the State's share of revenue from the racetrack gaming facility that would be distributed to the ELARF. Furthermore, the redistribution of revenues, removal of the bidding process on 600 electronic gaming machines and perhaps other provisions of this bill may also trigger breach of contract and related claims by the existing casino managers, which would be in addition to the claims for refund of privilege fees and interest.

The Kansas Lottery indicates it would need to hire two or three new employees for each new gaming facility that

would open as a result of this bill. Without knowing the size of any proposed facility and when such facility might open, the Kansas Lottery is unable to estimate its gaming-related expenses. When the Kansas Lottery has negotiated contracts with gaming facility managers, it has required that all of its gaming-related expenses be reimbursed by the manager.

KRGC indicates it would need approximately \$1.8 million and 21.0 FTE positions for each parimutuel racetrack that reopens for 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 associated with opening 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 KRGC to bill each facility for all costs related to regulating racing activity.

The Department for Aging and Disability Services (KDADS) indicates that additional gaming facilities would likely increase demand for services provided by the Problem Gambling Program. KDADS indicates the amount of additional spending would be dependent on the number of additional facilities and would be proportional to current spending levels for problem gambling and addiction services. KDADS also has concerns that additional gaming facilities and changes to the share of gaming facility revenues that is distributed to the Problem Gambling and Addictions Grant Fund would not provide adequate funding to support the Problem Gambling Program.

An estimate of the revenue that might be generated as a result of the bill cannot be made without a detailed market study, which would include an estimate as to when a facility would be operational, the location of the gaming facility, the size of the gaming facility, and if the new gaming facility would impact revenues from existing gaming facilities.

Any fiscal effect associated with the bill is not reflected in *The FY 2018 Governor's Budget Report*.