

John C. Frieden*
Randall J. Forbes*
Kevin M. Fowler

FRIEDEN & FORBES

LLP

ATTORNEYS AT LAW

Brenda L. Head
Matthew R. Bergmann
Timothy D. Resner

Of Counsel
Paul T. Davis

1414 S.W. Ashworth Place, Suite 201, Topeka, Kansas 66604

• www.fflawllp.com • Tel: 785-354-1100 • Fax: 785-354-1113

*Also admitted in Missouri

kfowler@fflawllp.com

BEFORE THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS
TESTIMONY OF KEVIN M. FOWLER IN OPPOSITION TO H.B. 2199
FEBRUARY 18, 2021

Dear Chairman Barker and Members of the Committee:

My name is Kevin Fowler and I am an attorney with the Topeka law firm of Frieden & Forbes, LLP. I represent and appear on behalf of the managers of the Boot Hill Casino & Resort, Dodge City, Kansas (“Boot Hill”), and the Kansas Crossing Casino & Hotel, Pittsburg, Kansas (“Kansas Crossing”). Boot Hill and Kansas Crossing are two of the four state-owned and -operated casinos that have been authorized since the Kansas Expanded Lottery Act, K.S.A. 74-8733 *et seq.* (“KELA”) was enacted in 2007. We appreciate the opportunity to share our views in opposition to HB 2199.

Boot Hill and Kansas Crossing strongly support legalized sports wagering in Kansas but believe that HB 2199 does not provide the right enabling framework. The KELA framework was upheld by the Kansas Supreme Court in 2008 and has a proven record of success for more than a decade.

Although sports wagering is a natural fit with other forms of traditional gaming at casinos under KELA, HB 2199 is substantially and unnecessarily more expansive than the time-tested gaming framework currently in place. When KELA was enacted in 2007, the Legislature authorized the Kansas lottery to contract with private businesses to construct and manage four casinos that would offer traditional casino games to be owned and operated by the State. At that time, however, a federal law known as the Professional and Amateur Sports Protection Act of 1992 (“PASPA”) prohibited the State of Kansas from owning, operating or offering any form of sports wagering under KELA. Since the United States Supreme Court decided in 2018 that PASPA is unconstitutional, the State of Kansas is no longer prohibited by federal law from authorizing sports wagering at our state-owned and -operated casinos under the established and successful KELA framework.

Any sports wagering framework should logically build upon the success of KELA by promoting rather than undermining the ability of existing casino managers to manage sports wagering on behalf of the State. To date, existing casino managers have made capital investments in Kansas of approximately \$1 billion and they have an established record of delivering economic

TESTIMONY OF KEVIN M. FOWLER IN OPPOSITION TO HB 2199

February 18, 2021

Page 2 of 3

development and revenues for our State. In FY 2019, prior to the COVID-19 pandemic, the casinos generated more than \$34 million in economic activity per month, and the State and affected communities directly received nearly \$100 million in gaming revenues per year.¹ Our existing casino managers also have a proven record of success in maintaining the integrity of lottery facility games, enforcing prohibitions against gaming by underage persons and promoting responsible gaming.

Unfortunately, HB 2199 abandons KELA's restricted gaming framework through four state casinos and grants the Kansas Lottery unprecedented authority to offer sports wagering in every corner of Kansas through mobile applications. HB 2199 also permits the Kansas Lottery to offer online instant lottery games (also known as "iLottery") that will look and play like the electronic gaming machines available on every mobile device, including phones, in Kansas.

Existing casinos have enhanced security procedures that minimize the risk of sports betting by underage persons and problem gamblers at retail locations while simultaneously encouraging Kansans to refrain from illegal betting through off-shore gaming sites.

The KELA gaming framework represents a successful and time-tested public policy choice that this State should not operate casino games except through private business entities that have been carefully selected to conduct and manage such activities in a highly regulated gaming environment.

Sports wagering is a very low margin endeavor where each \$100 in wagers results in an average of \$95 being paid out as winnings to bettors. This means that if the remaining \$5 fails to cover all operational expenses – including taxes – associated with sports wagering, this gaming activity will produce losses rather than profits. Sports wagering is also a subject to volatility due to the unpredictable nature of sporting events and this volatility means that the house sometimes loses, paying out more in winnings than received in wagers. Such volatility is an acceptable risk for casino managers as long as the State's "take" from sports betting operations is reasonable.

Under HB 2199, the State's share of sports wagering revenue is set too high for casinos at 14% from in-person wagers and 20% from internet or mobile wagers. Based on the experience of Nevada and several midwestern states, however, we believe that the State's share of sports wagering revenue should fall in a range between 6.75% and 10%. For example, Nevada has permitted regulated sports wagering through its casinos for more than 40 years and sports books pay a 6.75% tax on sports wagering revenue. Under more recent sports wagering legislation in the Midwest, the State of Iowa imposes an effective tax of 7.5% on sports wagering revenue from its casinos and the State of Colorado imposes a 10% tax. If the tax rate and other requirements are too high, however, sports wagering in Kansas may become economically infeasible and our ability to compete with the illegal market may become untenable.

¹ Despite the pandemic, Lottery financial data for FY 2021 indicates that the state casinos have generated approximately \$51 million for the State and affected local governments through January 31, 2021, and may be expected to generate approximately \$87.4 million for the year.

TESTIMONY OF KEVIN M. FOWLER IN OPPOSITION TO HB 2199

February 18, 2021

Page 3 of 3

HB 2199 also unjustifiably cedes to the governing body of each sports league exclusive, monopoly authority to control and charge for the use of “official league data” which is, in fact, public information about public sporting events that is presently available and accessible for free. Because “official league data” is currently available in the public domain and derives no value from its secrecy, it is not confidential or proprietary information entitled to protection as property under Kansas law. Sports wagering through Nevada casinos for more than 40 years without any mandate to use “official league data” in determining the outcome of any sports bet is compelling evidence that the requirement is unnecessary. Moreover, the fact that gaming companies and professional sports leagues and teams have been entering into mutually beneficial partnership and sponsorship arrangements indicates that the free market is working and that State intrusion into these private business relationships is unwarranted. Consequently, there is no reasonable justification for requiring any sports wagering manager to purchase and use “official league data” in determining the outcome of any tier two sports wager.

Boot Hill and Kansas Crossing thank you for the opportunity to appear in opposition to HB 2199. I will be happy to stand for questions.