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MEMORANDUM

To: Chairman Olson
Members of the Senate Committee on Federal and State Affairs

From: The Office of Revisor of Statutes

Date: February 16, 2022

Subject: SB 404 – Authorizing a vote on slot machines in Sedgwick County and authorizing the operation of historical horse race machines by parimutuel licensees.

Senate Bill No. 404 (SB 404) creates new law and makes various amendments concerning horse and greyhound racing in Kansas and the operation of slot machines by the Kansas Lottery (Lottery) at horse and greyhound racetracks. It also authorizes the operation of historical horse race machines at such racetracks.

First, SB 404 authorizes an election in Sedgwick County on the question of whether the Lottery may operate slot machines at a racetrack gaming facility, which would be the facility commonly known as Wichita Greyhound Park. This authorization is in Section 9 where SB 404 amends K.S.A. 74-8743. An election on this question was conducted after enactment of the KELA and resulted in a majority of the voters rejecting the question. Under SB 404, in any county where there is an existing or former licensed parimutuel racetrack, the board of county commissioners on its own initiative or after submission of a petition requesting such an election signed by at least 5,000 voters would submit the question at an election to be held within 150 days after adoption of a resolution to submit the question or after the petition is deemed valid. If the election is held in Sedgwick County, then upon approval by a majority of the votes cast, the Lottery is required to enter into a contract for the management of a racetrack gaming facility at the Wichita Greyhound Park in accordance with the KELA. If the question fails, then such question may be resubmitted to the voters in accordance with K.S.A. 74-8743 at any time, however, if the question is approved then the question cannot be resubmitted at any future election. Additionally, Wyandotte and Crawford Counties are deemed to have satisfied the local

election requirement for authorization for the Lottery to operate slot machines at racetrack gaming facilities in those counties. Both counties approved such authorization after enactment of the KELA.

The potential for a new election on this question in Sedgwick County and for a racetrack gaming facility to be opened in Sedgwick County has led to the issue of whether such action would create a violation of state law or a breach of the management contracts that the Lottery has with existing casino managers. Section 1 of SB 404 addresses this potential issue.

Under Section 1, prior to entering into any racetrack gaming facility management contract, the Executive Director of the Lottery (Executive Director) must provide notice of their intention to do so to the casino manager managing the casino located in the same gaming zone as the proposed racetrack facility. The casino manager then has 60 days to file an action alleging a statutory violation or breach of contract. Such lawsuit must be filed with the Kansas Supreme Court (Court), which is granted original jurisdiction over such lawsuits by SB 404. Such lawsuit cannot seek injunctive relief but can only claim monetary damages. Such monetary damages are limited to the privilege fee paid by the lottery gaming facility manager plus interest accrued from the date when the lawsuit could first be filed. Additionally, only the lottery gaming facility manager operating in the same gaming zone as the racetrack gaming facility that is the subject of the lawsuit may file such an action.

Upon issuance of a final order by the Court, the Executive Director cannot execute the proposed racetrack gaming facility management contract unless there are no damages awarded to the casino manager, or until the proposed racetrack gaming facility manager has paid the certified amount of damages to the Lottery. The payment by the racetrack gaming facility manager is to be deposited in the privilege fee repayment fund for payment to the casino manager in accordance with the Court's order.

Under Section 1, the Lottery would then be required to repay the racetrack gaming facility manager in the form of monthly payments that will be not less than 50% of the revenue the Lottery receives from the racetrack gaming facility under the KELA.

In conjunction with section 1, SB 404 also amends various sections of the KELA. K.S.A. 74-8734 is amended to change subsection (h)(19) so that "similar gaming facilities" does not include "racetrack gaming facilities." K.S.A. 74-8741 is amended to clarify the number of racetrack gaming facilities that may be operated in the state. K.S.A. 74-8747 is amended with respect to the distribution of the slot machine income produced at a racetrack gaming facility.

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Below is a chart comparing the distribution under current law with the distribution under SB 404:

Current Law	SB 262
40% credited to the expanded lottery act revenues fund	22% credited to the expanded lottery act revenues fund
25% to the racetrack gaming facility manager	Remaining balance to the racetrack gaming facility manager
7% to the live horse racing purse supplement fund, with a per machine limit	Stricken
7% to the live greyhound racing purse supplement fund, with a per machine limit	Stricken
3% to the county in the NE gaming zone, or 1.5% to each the county and the city in the NE gaming zone if facility is in a city	2% to the county in the NE gaming zone, or 1% to the county and 1% to the city in the NE gaming zone if facility is in a city
2% to the host county and 1% to the other county in the SE or SC gaming zones, or 1% to each the host county, other county, and the city in the SE or SC gaming zones if facility is in a city	2% to the county in the SC gaming zone, or 1% to the county and 1% to the city in the SC gaming zone if facility is in a city; 2% to the county and 1% to the other county in the SE gaming zone, or 1% to each county and 1% to the city in the SE gaming zone if facility is in a city
2% to the problem gambling and addictions grant fund	0.5% to the problem gambling and addictions grant fund
1% to the horse fair racing benefit fund	Stricken
Not included	0.1% of income from the facility in the SC gaming zone to the horse council fund
15% for gaming expenses	Stricken

The remaining sections of SB 404 pertain to the Kansas Parimutuel Racing Act (KPRRA). Section 2 requires the official breed registering agencies for horses and greyhounds to make recommendations to the Kansas Racing and Gaming Commission on programs to benefit economic development in rural Kansas. Section 3 creates the Kansas Horse Council Fund to be used to develop, promote, and represent the equine industry in Kansas.

Section 4 authorizes licensees under the KPRRA to operate one or more historical horse race machines. Such machines are defined by SB 404 in Section 12 as a machine that accepts wagers on a simulated running of an historical horse race. Under Section 4 licensees may conduct parimutuel wagering on historical horse race machines as approved by the KRGCC. A patron would deposit a wagered amount and the machine would then randomly select an historical horse race. While the patron would be provided true and accurate information as to the

odds of each horse in the race, but no information will be provided that would allow the patron to identify the historical race prior to finalizing the wager. Once the patron has finalized the wager, then the machine will display a portion of or the finish of the race and the reveal the identity of the race.

Similar to the concerns raised by the authorization of a vote in Sedgwick County, Section 5 addresses litigation requirements if an action is brought claiming that the authorization of historical horse race machines is a violation of state law or an existing casino management contract. The requirements for filing such an action, the damages available, and the provision for payment of damages by the racetrack facility licensee with repayment by the State are the same as set forth in Section 1, with the exception that repayment by the State will come from the tax on the wagers placed on historical horse race machines.

Sections 13-16 make amendments to the KPRA. These amendments include:

- Requiring the KRGC to review and approve historical horse race machines, adopt regulations for such machines, and inspect such operations.
- Reducing the fair association application and license fees from \$500 to \$50 and \$100 to \$25, respectively.
- Allowing for a simulcasting license to be issued without the requirement of conducting live racing.

If enacted, SB 404 would be effective on July 1, 2022.