

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE SUBSTITUTE FOR SUBSTITUTE FOR SENATE BILL NO. 84**

As Agreed to April 1, 2022.

Brief*

House Sub. for Sub. for SB 84 would amend the Kansas Expanded Lottery Act (KELA) concerning the conducting of sports wagering operations by lottery gaming facilities. The bill would add new sections to KELA and would be a part of and supplemental to the Kansas Lottery Act (KLA). The bill would also amend the Kansas Parimutuel Racing Act and authorize operation of historical horse race machines.

Lottery Control of Sports Wagering

Current law states decisions regarding lottery gaming facility games are within the full control of the Kansas Lottery (Lottery). The bill would amend that provision to also include decisions concerning sports wagering.

The bill would amend law related to oversight of lottery gaming facility operations by the Kansas Racing and Gaming Commission (KRGC) to include auditing of sports wagering revenues and to require appropriate security measures where sports wagering is located or managed.

Sports Wagering Operations

The bill would authorize the Lottery to offer sports wagering:

- In accordance with the KLA and KELA; and
- Through one or more lottery gaming facility managers (managers) who have contracted with the Lottery under KELA to manage sports wagering on behalf of the Lottery, including, but not limited to, sports wagering through an interactive sports wagering platform and the use of any such licensed interactive sports wagering platforms (platform) at the primary facility of a professional sports team pursuant to a marketing agreement entered into between the gaming manager and the professional sports team; and

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- Through one or more platforms including the use of any such platform at the primary facility of a sporting facility pursuant to a marketing agreement entered into between the Lottery and the facility.

Platforms, Compulsive Gambling

The bill would limit each sports wagering manager to three interactive sports wagering platforms that would require approval by the executive director of the Lottery (Lottery Director), and wagering offered through a platform would be offered only as approved by the Lottery in accordance with KELA. In order to be approved, the bill would require platforms:

- Serve the public convenience;
- Promote sports wagering in accordance with marketing plans developed by the Lottery; and
- Offer sports wagers.

The bill would require requests for approval of platforms to be submitted to the Lottery in a form determined by the Lottery Director. Sports wagering managers would be required to include information regarding the platform and intended use of the platform. Additionally, the bill would require all background investigation requirements required by the KRGC to be completed before consideration of approval and usage of platforms.

The bill would require the Lottery Director to issue a final decision regarding approval of a platform within 30 days after the request was submitted. The bill would also provide that the Lottery Director could not unreasonably withhold approval of a platform a manager requests to be approved. Managers would also not be required to use the same platforms.

The bill would require the Lottery Director to prescribe a submission process for requests for approval of platforms and to notify gaming facility managers of the process on or before September 1, 2022. The bill would also require the KRGC Director to prescribe a background investigation process for platforms on or before August 1, 2022, and to notify gaming facility managers of the process. The KRGC would be required to commence background investigations of platforms on or before August 15, 2022.

Managers would also be allowed to apply to the Lottery for approval of one additional graphical user interface (also known as a “skin”) for a platform that is specific to a professional sports team that has a marketing agreement with such manager.

The bill would allow a sports wagering manager to accept wagers placed through an interactive sports wagering platform only from individuals physically located in Kansas at the time of submitting the wager.

Compulsive Gambling

The bill would prohibit a lottery gaming facility manager from providing a line of credit to any person engaged in sports wagering.

The bill would require lottery gaming facility managers to include information and tools to assist players in making responsible decisions. The bill would require, at a minimum, the provision of:

- Prominently displayed tools to set limits on the time and money spent by a person on any interactive sport wagering platform;
- Prominently displayed information regarding compulsive gambling and ways to seek treatment and support; and
- The ability for a person to exclude the use of certain electronic payment methods if desired by the person.

Sports Wagering Suppliers

The bill would require licensure of any person who provides goods, services, software, or any other components necessary for the determination of odds or outcomes of any wager on a sporting event, either directly or indirectly, to a manager, including data feeds and odds services.

The bill would require the KRGC to issue such license to a person who is qualified under the bill's provisions and any rules and regulations adopted by the agency.

Supplier License Application

The bill would require applications to be submitted in the form and manner prescribed by the KRGC and to also include:

- The identity of:
 - Each person who directly owns at least a 10 percent interest in the applicant;
 - Each holding, intermediary, or parent company that owns at least a 15 percent ownership interest in the applicant; and
 - The chief executive officer and chief financial officer of the applicant or the individual holding an equivalent office with respect to the applicant, as determined by the KRGC; and
- Such other information as required by the KRGC.

The bill would specify that disclosure of any of the following direct or indirect shareholders of the applicant would be waived:

- Any government-created entity, including, but not limited to, any statutorily authorized pension investment board, or crown corporation of Canada; and
- Any investment funds or entities registered with the Securities and Exchange Commission (SEC), including any investment advisor, or entities under the management of an entity registered with the SEC.

Supplier License Term; Fee

The bill would allow the KRGC to issue a provisional supplier license if the applicant has submitted a complete application and paid the required fee. Such provisional license would have a term specified on the license of up to one year, and the holder would be required to surrender such provisional license upon issuance of a supplier license.

The bill would direct the KRGC to establish a license fee for issuance and renewal of supplier and provisional supplier licenses.

Under the bill, a supplier license would be valid for a period of two years from issuance and could be renewed by the licensee prior to expiration upon application and payment of the required fee.

Marketing Agreement—Professional Sports Team, Sporting Facility

The bill would allow a professional sports team or other marketing entity to enter into a marketing agreement with a manager for the purpose of marketing sports wagering at the primary facility of such team or marketing entity.

The bill would specify that such sports wagering would be managed by the manager. Additionally, the bill would require that no owner, director, officer, employee, or agent of the team or marketing entity would have any duties directly related to the operation or management of sports wagering except as expressly provided in the marketing agreement.

Marketing Agreement Requirements

The bill would require a marketing agreement to provide that the professional sports team or marketing entity would promote and advertise sports wagering on behalf of the other contracting party at the primary facility of the professional sports team or marketing facility. The bill would allow the promotion and advertising to include, but not be limited to:

- Advertising through signage and other media, including electronic media;
- Allowing devices such as kiosks to be located within the primary facility of the professional sports team to allow patrons to engage in sports wagering; and
- Providing access to mobile device applications that allow patrons to access the platforms utilized by the contracting party operating and managing sports wagering at the primary facility or other premises.

The bill would require any marketing agreement to prohibit the professional sports team or other marketing entity and any owner, director, officer, employee, or agent of the team or entity from taking any bets, paying out any prizes, or otherwise having any control or access to the platform or any other system used by the manager to manage sports wagering.

The bill would require, if the primary facility or other premises specified in the agreement is located outside a gaming zone, all sports wagering at such location to be conducted through a platform.

Sporting Facility

The bill would allow a sporting facility to enter into a contract with a manager for the purpose of allowing the sporting facility to designate an area within the sporting facility where patrons could engage in sports wagering. Sports wagering offered in these designated areas would be limited to the use of platforms.

The bill would define “sporting facility” to mean an auto race track facility or major multi-sport athletic complex, as defined in continuing law, that is located in Wyandotte County with a minimum investment of \$50.0 million and is in operation on the effective date of the bill.

Maximum Number of Agreements

The bill would specify any manager could not enter into a marketing agreement with more than 50 marketing entities, at least 20 percent of which must be nonprofit fraternal or veterans organizations.

Marketing Agreement Approval

The bill would require any gaming manager or racetrack manager seeking to enter into a marketing agreement to submit the agreement to the Lottery for approval, and such agreement would not become effective until approved by the Lottery Director.

The bill would require an agreement that satisfies all requirements of the KLA and KELA to be approved. However, if the Lottery Director does not approve of the agreement, the bill would require the parties to be notified of the denial and provided the reasons for the denial.

Advertisements

The bill would direct the Lottery to adopt rules and regulations regarding the advertisement of sports wagering by January 1, 2023. The bill would specify such rules and regulations should include, but not be limited to:

- Ensuring advertisements do not target children and minors, other persons ineligible to place wagers, problem gamblers, or other vulnerable persons;
- Limiting the form, content, quantity, timing, and location of advertisements;
- Requiring the disclosure in all such advertisements of the identity of the manager;
- Requiring provision of the toll-free number for information and referral services for compulsive and problem gambling; and
- Prohibiting false, misleading, or deceptive advertisements.

Wagering Restrictions on Certain Sporting Events

The bill would authorize the Lottery to restrict, limit, or exclude wagering on one or more sporting events by providing notice to all managers in a form determined by the Lottery Director. The bill would specify offering or taking wagers on a sporting event contrary to any notice, or rules or regulations promulgated by either the Lottery or KRGC, would be a violation of KELA.

Prohibited Wagering, Investigations, Records

The bill would require sports wagering managers to use reasonable methods to:

- Prohibit the manager; any director, officer, owner, and employee of the manager; and any relative living in the same household as such persons from placing any wager with the manager at the manager's location or through the manager's platform;
- Prohibit athletes, coaches, referees, team owners, employees of a sports governing body or its member teams, and player and referee union personnel from placing wagers on any sporting event overseen by such sports governing body (using publicly available information that may be provided to the Lottery and KRGC by sports governing bodies);
- Prohibit any person with access to nonpublic confidential information held by the manager from placing any wager with the manager;
- Prohibit persons from placing any wager as an agent or proxy for another person;
- Prohibit from placing wagers any person known by the manager as having been convicted of any felony or misdemeanor offense involving sports wagering, including, but not limited to:
 - The use of funds derived from illegal activity to make any wager;
 - Placing any wager to conceal money derived from illegal activity;
 - The use of other individuals to place any wager as part of any wagering scheme to circumvent any provision of federal or state law; and
 - The use of false identification to facilitate the placement of any wager or collection of any prize in violation of federal or state law; and
- Maintain the security of wagering data, customer data, and other confidential information from unauthorized access and dissemination.

The bill would not preclude the use of internet or cloud-based hosting of such data and information or disclosure as required by court order, state, or federal law.

Investigations

The bill would require managers to cooperate with any investigation conducted by the Lottery, KRGC, or law enforcement, including but not limited to providing or facilitating the provision of account-level betting information and audio or video files relating to persons placing wagers.

In addition, managers would be required to promptly report to the Lottery and KRGC any information relating to:

- Criminal or disciplinary proceedings commenced against the manager in connection with the manager's operations in any jurisdiction in which such manager manages sports wagering activity;
- Abnormal wagering activity or patterns that may indicate a concern with the integrity of a sporting event in any jurisdiction in which such manager manages sports wagering activity;
- Any potential breach of the relevant sports governing body's internal rules and codes of conduct pertaining to sports wagering;
- Any other conduct that knowingly corrupts a betting outcome of a sporting event, including match-fixing; and
- Suspicious or illegal wagering activities, including, but not limited to:
 - Funds derived from illegal activity;
 - Wagers to conceal or launder funds derived from illegal activity;
 - Agents to place wagers; and
 - False identification when placing wagers.

The bill would specify that information provided by a sports governing body to a lottery gaming facility manager must be kept confidential and not be subject to the Kansas Open Records Act. The lottery gaming facility manager would be prohibited from disclosing such information unless otherwise required by the bill, the KRGC, or state or federal law or court order. The bill would specify that these provisions would expire on July 1, 2027, unless the Legislature reenacts such provisions.

League Data, Personally Identifiable Information

The bill would authorize gaming facility managers to use data from any source that provides certified league data approved by the Lottery Director.

The bill would require any interactive sports wagering platform used by a manager to allow an individual to elect to not have their personally identifiable information collected for any purpose other than recording the placing of wagers, payment of prizes, and as otherwise permitted in the bill. The election by an individual would be maintained by the platform and manager until the individual cancels such election.

Required Records

Sports wagering managers would be required to maintain records of:

- All wagers placed, including personally identifiable information of the person placing the wager;

- The amount and type of the wager;
- The time the wager was placed;
- The location of the wager, including the IP address if applicable;
- The outcome of the wager;
- Any records of abnormal betting activity; and
- Video camera recordings, in the case of in-person wagers.

The bill would require video recordings to be maintained for 30 days after the wager is placed and all other required records to be maintained for at least 2 years after the sporting event occurs. Sports wagering managers would be required to make such records available for inspection upon request of the Lottery or KRGC, or as required by court order.

Payment and Reimbursement

The bill would create an exception to the general prohibition on employees, contractors, or others with legal affiliations with a lottery gaming facility manager from loaning money or extending credit to patrons. The bill would allow a patron of a lottery gaming facility to fund an account held by a sports wagering manager for the payment of sports wagers and pay for sports wagers using:

- Cash and cash equivalents;
- Electronic bank transfers of money, including transfers through third parties;
- Bank and wire transfers of money;
- Debit and credit cards;
- Online and mobile application payment systems that support online money transfers;
- Promotional funds provided by a lottery gaming facility manager; and
- Any other payment method approved by the Lottery.

The bill would specify that a sports wagering manager would be able to obtain insurance or check guarantee services to protect against any loss as a result of a returned check, or a check that is not honored due to a stop payment order or nonsufficient funds.

Cause of Action for Improper Influence

The bill would grant the State a cause of action to seek damages or other equitable relief against persons who knowingly engage in, facilitate, or conceal conduct that intends to improperly influence a wagering outcome of a sporting event for purposes of financial gain in connection with wagering on the sporting event.

The bill would also state any such cause of action would not be a limitation on or a bar against any other claims the State could bring against such person, or any other claim the State could bring for injuries or damages arising out of the operation of sports wagering.

Self-restriction List

The bill would require a lottery gaming facility manager, upon request by an individual, to restrict such individual from placing sports wagers with such manager and take reasonable measures to prevent the individual from placing sports wagers. The lottery gaming facility manager would be required to submit the restricting individual's name and information to the KRGC for the sole purpose of having such information disseminated to other lottery gaming facility managers. A manager in receipt of such information would be required to restrict an individual from placing sports wagers.

The winnings of an individual who has requested to be restricted would be forfeited, and such winnings would be credited to the Problem Gambling Grant Fund.

Sports Wagering Receipts Fund

The bill would create the Sports Wagering Receipts Fund, which would contain separate accounts for receipt of sports wagering moneys from each manager, with all expenditures from the fund being made in accordance with appropriation acts upon warrants of the Director of Accounts and Reports issued pursuant to vouchers approved by the Lottery Director.

The bill would specify all sports wagering revenues should be paid electronically to the Lottery Director weekly, or as soon as reasonably possible, but not before all bets for a specific sporting event are completed and settled. The Lottery Director would be required to remit all moneys received to the State Treasurer and the State Treasurer would be directed to deposit the amount received in the State Treasury and credit such remittance to the respective account in the Sports Wagering Receipts Fund for the relevant manager.

The bill would require the Lottery Director to allow managers to carry over negative sports wagering revenues and apply such amounts to returns filed for subsequent weeks. The bill would specify a return with a negative amount would be a return showing a negative number because the sum of winnings paid to patrons wagering on the manager's sports wagering plus all voided wagers and excise taxes on sports wagering paid pursuant to federal law, exceeds the manager's total bets accepted from sports wagering by patrons.

Additionally, the bill would state negative amounts could not be applied to earlier weeks, and moneys would not be refunded unless the manager ceased to manage sports wagering and reported negative revenues on the manager's last return.

The bill would require the Lottery Director to certify monthly to the Director of Accounts and Reports the percentages or amounts to be transferred from each account to the Lottery Operating Fund. The Director of Accounts and Reports would be directed to transfer such amounts from each account in accordance with the certification of the Lottery Director, who would be required to cause amounts from each account to be paid to the managers monthly, according to each respective contract.

Attracting Professional Sports to Kansas Fund

The bill would create the Attracting Professional Sports to Kansas Fund (Sports Fund), which would be administered by the State Finance Council. The bill would require all moneys credited to the fund be expended in accordance with appropriation acts upon warrants of the Director of Accounts and Reports issued pursuant to vouchers approved by the Chairperson of the State Finance Council, or designee, for the purpose specified in the bill.

The State Finance Council would be authorized to pledge all or a portion of the funds held in the Sports Fund or sports wagering revenues credited to, or to be credited to, the fund for the benefit of any professional sports team and payment of the principal or interest on any bond issued by the State or any municipality, including but not limited to sales tax and revenue (STAR) bonds, special obligation bonds, full faith and credit bonds, Tax Increment Financing (TIF) bonds, and revenue bonds. The bill would also provide financing structured as pay-as-you-go if it was issued to fund the construction, rehabilitation, revitalization, or expansion of a professional sports team's primary facility or any other ancillary development to such primary facility.

The bill would require the State Finance Council to certify monthly to the Director of Accounts and Reports the amount of moneys held in the fund that are in excess of the amount necessary for the purposes of the Sports Fund. Upon receipt of each such certification, the certified amount would be required to be transferred to the Lottery Operating Fund.

On July 1, 2023, and each July 1 thereafter, or as soon as moneys are available, after the transfer required to the White Collar Crime Fund has been made, 80 percent of the remaining moneys credited to the Lottery Operating Fund from the sports wagering revenues deposited in the Lottery Operating Fund would be required to be transferred to the Sports Fund.

White Collar Crime Fund

The bill would create the White Collar Crime Fund, which would be administered by the Governor. The bill would require all moneys credited to the fund be expended only for the purpose of investigating and prosecuting:

- Criminal offenses involving or facilitated by:
 - The use of funds derived from illegal activity to make wagers;
 - Placing wagers to conceal money derived from illegal activity;
 - The use of other individuals to place wagers as part of any wagering scheme to circumvent any provision of federal or state law;
 - The use of false identification to facilitate the placement of any wager or the collection of any prize in violation of federal or state law;
 - Any other unlawful activity involving or facilitated by the placing of wagers; or
 - Any other violation of KELA; or
- Any financial or economic crime involving any unauthorized gambling.

The bill would require all expenditures from the fund to be made in accordance with appropriation acts upon warrants of the Director of Accounts and Reports issued pursuant to vouchers approved by the Governor or the Governor's designee.

The bill would require the Attorney General and the Director of KRGC to submit requests to the Governor for the moneys they consider necessary to carry out the purposes of the White Collar Crime Fund. The Governor could certify to the Director of Accounts and Reports amounts to be transferred from the White Collar Crime Fund to any special revenue fund(s) of the Attorney General and KRGC, as deemed appropriate by the Governor. Upon receipt of such certification, the Director of Accounts and Reports would be required to transfer amounts from the White Collar Crime Fund to the special revenue fund(s) of the Attorney General and KRGC in accordance with such certification.

The bill would require, on July 1, 2023, and each July 1 thereafter, or as soon as moneys are available, the Director of Accounts and Reports to transfer the first \$750,000 credited to the Lottery Operating Fund to the White Collar Crime Fund.

Tribal Gaming Compact

The bill would require, if any federally recognized Indian tribe submits a request for negotiation of a new or existing gaming compact regarding sports wagering, the Governor or the Governor's designee to negotiate in good faith, and the Governor would be required to submit notice of such request to the Lottery Director.

The Lottery Director would be required to enter into an agreement, on behalf of the State, with the tribe that made the request for the operation and management of sports wagering by such tribe or any corporation, limited liability company, or other business entity wholly owned by such tribe.

The bill would require the agreement to authorize the Lottery to offer sports wagering through a platform to be managed by the tribe or business entity, under the substantially same terms and conditions as any contract with a manager.

Historical Horse Race Machines

The bill would authorize wagering on one or more historical horse races, which may be conducted in accordance with the provisions of the Kansas Parimutuel Racing Act.

The bill would add a definition of "historical horse racing machine" to mean any electronic, electromechanical, video, or computerized device authorized by the KRGC that, upon insertion of cash, tokens, electronic cards, or any consideration is available to accept wagers on and simulate the running of historical horse races, and that may deliver or entitle the patron to receive cash, tokens, merchandise, or credits that may be redeemed for cash. Historical horse races would be required to use historically accurate information of the horse race, and no random number generator or algorithm could be used for determining the results of the historical horse race. Historical horse races would be required to be directly linked to a central computer at a location determined by the KRGC for purposes of security, monitoring, and auditing.

The bill would require such wagering only be conducted by an organization licensee at a facility located in Sedgwick County and only through historical horse race machines approved by the KRGC. Such wagering would be restricted to a designated area on the licensed premises of the organization licensee. The licensee would be required to obtain approval from the KRGC for any types of wagers to be conducted on historical horse races, prior to conducting such wagering. The bill would prohibit such machines from being operated at any facility that conducts either live or displays simulcast greyhound races.

Additionally, the bill would permit an organization licensee to conduct parimutuel wagering on historical horse races of any horse breed regardless of the type of breed that primarily races in live meets conducted or simulcast races displayed by the licensee. Such wagering could be conducted only on days and hours approved by the KRGC and would not be limited to times when the licensee is conducting a live horse race meeting or displaying simulcast races.

Operation of Historical Horse Race Machines

The bill would specify requirements for the operation of historical horse race machines.

A patron could only wager on races through a machine approved by the KRGC. Once a patron deposits the wagered amount in the machine, one or more races would be chosen at random.

Prior to the patron making a wager selection, the bill would prohibit the machine from displaying or otherwise making any information available that would allow the patron to identify a race on which the patron is wagering, including:

- The location of the race;
- The date on which the race was run;
- The names of the horses in the race; or
- The names of the jockeys who rode horses in the race.

The bill would require the machine to make the true and accurate past performance information on a historical horse race available for viewing by a patron prior to making a wager selection. Such information would be required to be current as of the day the race was run and could be provided in data or graphical form.

After a patron finalizes their selections and plays such selections, the machine would be required to make a video replay of a portion of the race or the finish of the race available for viewing by the patron, and provide the official results of the race. The identity of the race could only be revealed to the patron after a wager is placed and played.

Machine Limit

The bill would specify that not more than 1,000 historical horse race machines would be placed and operated at a racetrack facility and that no wagering on such races could be conducted over the internet or a digital cellular network, including through any website or mobile device application.

Tax Rate

The bill would specify a tax rate of three percent of the total amount wagered on historical horse races.

Rules and Regulations

The bill would require the KRGC to adopt rules and regulations to implement and enforce the historical horse race machine provisions on or before January 1, 2023.

Actions Against the State

Prior to the operation of any historical horse race machines, the bill would require the Lottery Director to provide written notice to any lottery gaming facility manager located in the same gaming zone as a racetrack facility where historical horse race machines are to be operated. The notice would state the KRGC's intent to authorize the operation of historical horse racing machines at such racetrack facility.

The bill would prohibit action against the State or any other person or party for specific performance, anticipatory breach, or breach of contract based upon the premise authorization of historical horse racing violates current gaming law or the management contracts of the lottery gaming facility manager, until the lottery gaming facility manager receives the written notice specified above. Any such action would be commenced within 60 days after receipt of such written notice and would be filed as an original action in the Kansas Supreme Court. The Kansas Supreme Court would have original jurisdiction for determination of any claims made and damages.

The bill would prohibit any claim for equitable relief, including injunctive relief, from being brought in any action filed under the bill. No claim would be brought in any action filed pursuant to the bill except by the lottery gaming facility manager for the lottery gaming facility located in the same gaming zone as the racetrack facility where historical horse racing machines are to be operated.

The bill would prohibit monetary damages awarded in any action brought under this section from exceeding an amount equal to the privilege fee paid by the lottery gaming facility manager filing such action, plus any interest from the date such action accrued.

If no action is filed as specified in this section, the KRGC could authorize the operation of historical horse racing machines at the racetrack facility.

If an action is properly filed, KRGC would not authorize the operation of historical horse racing machines until the Kansas Supreme Court issues a final order and such order would not prohibit the KRGC from authorizing the operation of such machines.

Privilege Fee Repayment Fund

If the final judgment of the court orders repayment of privilege fees paid by the lottery gaming facility manager, the Lottery Director would determine the total amount due for such repayment and certify such repayment amount to the facility manager licensee for the racetrack facility. The KRGC would be prohibited from authorizing the operation of any historical horse race machines at a racetrack facility until the Lottery Director has received such certified amount. The funds would be remitted to the State Treasurer and deposited to the credit of the Privilege Fee Repayment Fund.

The bill would establish the Privilege Fee Repayment Fund in the State Treasury to be administered by the Lottery. The Privilege Fee Repayment Fund would consist of those moneys as specified above. All expenditures from the Privilege Fee Repayment Fund would be used for the repayment of privilege fees and interest.

Facility Manager Licensee Repayment Fund

The bill would establish the Facility Manager Licensee Repayment Fund in the State Treasury to be administered by the KRGC. The Facility Manager Licensee Repayment Fund would consist of moneys due to a facility manager for repayment in accordance with appropriation acts upon warrants of the Director of Accounts and Reports issued pursuant to vouchers approved by the Lottery Director or designee.

Severability

The bill would specify that provisions related to historical horse racing are severable and, if such provisions are declared void or unconstitutional, the remaining provisions of the bill would continue in full force and effect.

Misuse of Nonpublic Sports Information

The bill would define the crime of misuse of nonpublic sports information to be placing, or causing to be placed, a bet or wager on a sports contest on the basis of material nonpublic sports information relating to such bet or wager, and would establish the crime as a severity level 5 nonperson felony.

The bill would define “on the basis of material nonpublic sports information” to mean the person placing the bet or wager, or causing such bet or wager to be placed, was aware of the material nonpublic information relating to such bet or wager when the person placed or caused the wager to be placed.

The bill would add these provisions to the Kansas Criminal Code.

Sports Bribery and Tampering with a Sports Contest

The bill would add match fixing as a sports bribery offense, which would be classified as a severity level 5 nonperson felony.

The bill would amend current law concerning the crime of tampering with a sports contest to raise the classification of the crime to a severity level 8 nonperson felony. [Note: The crime is currently classified as a severity level 9 nonperson felony.]

Other Definitions

In addition to the terms already defined, the bill would amend and add definitions as follows.

Bet

The bill would amend the definition of “bet” to exclude sports wagering on events, pursuant to KELA.

Electronic Gaming Machine

The bill would specify that “electronic gaming machine” does not mean a historical horse racing machine.

Gambling Place

The bill would amend the definition of “gambling place” by specifying the term does not apply when the place, room, building, vehicle, tent, or location is used in accordance with KELA.

Interactive Sports Wagering Platform

The bill would define “interactive sports wagering platform” (platform) to mean an integrated system of hardware, software, and applications, including mobile applications and servers, through which sports wagering may be made available to persons physically located within Kansas at the time of submitting the wager to a sports wagering manager over the internet or wireless service, including, but not limited to, through websites and mobile device applications.

Lottery Facility Games

The bill would amend the definition of “lottery facility games” to mean any electronic gaming machines and other games that are authorized to be conducted or operated at any licensed gaming facility in the United States, but excluding sports wagering and historical race machines, as defined by the bill.

Lottery Gaming Facility Revenues

The bill would amend the definition of “lottery gaming facility revenues” to exclude any sports wagering revenues.

Match Fixing

The bill would define “match-fixing” to mean to arrange or determine any action that occurs during a sporting event, including, but not limited to, any action resulting in the final outcome of such sporting event for financial gain.

Marketing Agreement

The bill would define “marketing agreement” to mean an agreement entered into between a professional sports team and the Lottery, a gaming manager, or a racetrack gaming manager for the purpose of marketing sports wagering at the primary facility of the sports team.

Primary Facility

The bill would define “primary facility” to mean the stadium or arena where a professional sports team hosts competitive games in accordance with such team’s league rules.

Professional Sports Team

The bill would define “professional sports team” to mean an athletic team, whose primary facility is located in Kansas, that operates at the major league level in the sports of baseball, basketball, football, ice hockey, or soccer.

Sporting Event

The bill would define “sporting event” to mean any amateur, professional, or collegiate sport or athletic event, motor race event, horse race, or any other event involving individual or team competition authorized by the KRGC that has not been completed at the time wagers are placed on such event.

The bill would exclude from the definition of “sporting event” any parimutuel horse races, greyhound races, or any sporting or athletic event where a majority of the participants are under age 18.

Sports Wagering

The bill would define “sports wagering” to mean placing a wager on one or more sporting events, or any portion thereof, or on the individual performance statistics of athletes participating in a sporting event, or a combination of sporting events, with the wagering made at or through a sports wagering manager, including any platform of a sports wagering manager (manager) approved by the Kansas Lottery. Sports wagering would include, but not be limited to:

- Single-game wagers;
- Teaser wagers;
- Parlays;
- Over-under wagers;
- Moneyline wagers;
- Pools;
- Exchange wagers;
- In-play wagers;
- In-game wagers;
- Proposition wagers;
- Straight wagers; and
- Such other wagers approved by the Kansas Lottery Commission.

The bill would also specify sports wagering does not include parimutuel wagering or fantasy sports leagues, as defined in continuing law.

Sports Wagering Revenues

The bill would define “sports wagering revenues” to mean wagering revenue generated from sports wagering that is an amount equal to the total wagers less any voided wagers, federal excise taxes, free plays or other promotional credits, and any amounts paid as prizes.

Wager

The bill would define “wager” or “bet” to mean a bargain in which the parties agree that, dependent upon chance, one stands to win or lose something of value specified in the agreement.

Lottery Rule and Regulation Authority

The bill would amend law to require the Lottery to adopt rules and regulations governing the operation of sports wagering. The bill would require the regulations to include, but not be limited to:

- Management contracts for sports wagering conducted by managers;
- Integrity of sports wagering operations;
- Permitting sports wagering managers and platforms to have employees located outside of Kansas;
- Permitting the establishment of online sports wagering accounts and the access to pre-established online accounts established in other states; and
- Allowing the carry-over of negative sports wagering revenues by managers.

KRGC Rule and Regulation Authority

The bill would require the KRGC to adopt permanent rules and regulations concerning KELA and sports wagering by January 1, 2023.

Problem Gambling and Addictions Grant Fund

The bill would require, on July 1, 2023, and each July 1 thereafter, or as soon as moneys are available, the Director of Accounts and Reports to transfer the 2 percent of the remaining moneys credited to the Lottery Operating Fund from sports wagering revenues to the Problem Gambling and Addictions Grant Fund after the initial credit to the White Collar Crime Fund.

The bill would amend law related to the Problem Gambling and Addictions Grant Fund to specify that funds shall be used:

- To fund a helpline with text messaging and chat capabilities;
- For the treatment, research, education, or prevention of pathological gambling; and
- Treatment for alcoholism, drug abuse, and other addictive or co-occurring behavioral health disorders.

The bill would amend law to require funds in the Problem Gambling and Addictions Grant Fund to be used for the purposes specified above before being used to treat alcoholism, drug abuse, other addictive behaviors, and other co-occurring behavioral health disorders.

The bill would further increase the annual transfer of funds from the State Gaming Revenues Fund to the Problem Gambling and Addictions Grant Fund from \$80,000 to \$100,000.

Conflict of Interest

The bill would amend law to make it a class A misdemeanor to serve as Lottery Director, a member of the KRGC, or an employee of the Lottery while or within five years after holding, either directly or indirectly, a financial interest or being employed by a manufacturer or vendor of an interactive sports wagering platform.

The bill would further amend law to make it a class A misdemeanor for the Lottery Director, a member of the KRGC, or an employee of the Lottery to accept any compensation, gift, loan, entertainment, favor, or service from any manufacturer or vendor of an interactive sports wagering platform.

Lottery Management Contracts

The bill would amend law on lottery management contracts to include provisions regarding the operation of sports wagering by managers.

The bill would state any management contract approved by the Lottery Commission may include provisions for operating and managing sports wagering by the manager, in person at the lottery gaming facility and via the lottery gaming facility through no more than three platforms using the odds and wagers authorized by the Lottery.

The bill would also state, if a management contract includes provisions for sports wagering, it must also state the State shall retain:

- 10 percent of all sports wagering revenues received from wagers placed in person at the lottery gaming facility; and
- 10 percent of all sports wagering revenues received by the manager from wagers placed on the platform selected by the manager and approved by the Lottery Director.

The bill would further specify, pursuant to sports wagering management contracts, the Lottery would be the licensee or owner of all software programs used in conducting sports wagering and the manager, on behalf of the State, would be required to purchase or lease in the name of the Lottery, any equipment or property deemed necessary by the manager for managing sports wagering. All sports wagering would be subject to the control of the Lottery in accordance with KELA.

Certification of Certain Persons; Rules and Regulations

The bill would amend law concerning certification requirements to grant authority to the KRGC to establish, through temporary and permanent rules and regulations, a certification requirement and enforcement procedure for persons owning at least a 5.0 percent interest, rather than 0.5 percent, in a lottery gaming facility manager or racetrack gaming facility manager, and persons owning at least a 5.0 percent interest, rather than 0.5 percent, in an electronic gaming machine manufacturer, technology provider, or computer system provider who proposes to contract with a lottery gaming facility manager, a racetrack gaming facility manager, or the State for the provision of goods or services, including management services, related to either such gaming facility.

The bill would also amend the certification provisions by removing language related to types of crimes that would make a person unfit for certification, a requirement that KRGC conduct checks required for certification, and provisions that would state certification is not assignable or transferable.

Certification for Employees Involved in Sports Wagering

The bill would further require the KRGC, through rules and regulations, to create an annual certification requirement and enforcement procedure for:

- Employees of a manager or other entity owned by the manager's parent company that are directly involved in the operation or management of sports wagering managed by such manager; and
- Those persons who propose to contract with a manager for the provision of goods or services related to sports wagering, including any platform requested by a manager.

The bill would require this annual certification requirement to include compliance with such security, fitness, and background investigations and standards as the KRGC Director deems necessary to determine whether such person's reputation, habits, or associations pose a threat to the public interest of the state or to the reputation of, or effective regulation and control of, sports wagering conducted by the lottery gaming facility.

The bill would also require KRGC to create, through rules and regulations, provisions regarding the suspension, revocation, or non-renewal of the certification for employees involved in sports wagering upon a finding the certificate holder has:

- Knowingly provided false or misleading material information to the Lottery, the KRGC, or employees of either;
- Been convicted of a felony, gambling-related offense, or any crime of moral turpitude;
- Intentionally violated any provision of any contract between the Lottery and the certificate holder; or
- Intentionally violated any provision of KELA or any rule and regulation adopted pursuant to KELA.

The bill would state certification is not assignable or transferable.

Facility Inspection and Security Measures

The bill would amend law regarding inspection by the executive directors of the Lottery and KRGC to include sports wagering operations. The bill would add to the powers of the KRGC Director the authority to examine books, papers, records, or memoranda of any business involved in electronic gaming machines, lottery facility games, or sports wagering operations.

The bill would also add sports wagering to provisions that require appropriate security measures approved by the KRGC Director.

Minimum Age

The bill would amend law to specify that no person under 21 could directly or indirectly wager on a sports betting event.

Prohibited Wagers

The bill would remove a provision that makes it a class A nonperson misdemeanor for the following persons to place a wager on an electronic gaming machine at a racetrack gaming facility and would add a provision making it a class A nonperson misdemeanor for the following persons to place a sports wager in the state:

- The Lottery Director, a member of the Lottery Commission, or any employee or agent of the Lottery;
- The Executive Director of the KRGC (KRGC Director), a member of the KRGC, or any employee or agent of the KRGC;
- A manager; any director, officer, owner, or employee of such manager; or any relative living in the same household as such persons;
- A platform; any director, officer, owner, or employee of such platform; or any relative living in the same household as such persons;
- Any owner, officer, athlete, coach, or other employee of a team; or
- Any director, officer, or employee of a player or referee union.

The bill would establish as a severity level 8 nonperson felony, knowingly placing a sports wager:

- As an agent or proxy for other persons;
- Using funds derived from illegal activity;
- To conceal money derived from an illegal activity;
- Through the use of other individuals to place wagers as part of any wagering scheme to circumvent any provision of federal or state law; or
- Using false identification to facilitate the placement of the wager or the collection of any prize in violation of federal or state law.

Prohibition from Gambling at a Lottery Gaming Facility or Racetrack Gaming Facility

Current law provides it is unlawful for any manager, or any employee or agent of the manager, to allow certain persons to play an electronic gaming machine game at a lottery gaming facility or racetrack gaming facility, or share in winnings of another. The bill would remove the following from those exemptions:

- A spouse, child, stepchild, brother, stepbrother, sister, stepsister, parent, or stepparent of a person who is either:
 - An employee or agent of the lottery gaming facility manager; or
 - An officer or employee of a vendor contracting with the Lottery to supply gaming equipment to the Lottery for use in the operation of any electronic gaming machine or Lottery facility game conducted pursuant to KELA; and
- A person who resides in the same household as a person who is either:
 - An employee or agent of the lottery gaming facility manager; or
 - An officer or employee of a vendor contracting with the Lottery to supply gaming equipment to the Lottery for use in the operation of any electronic gaming machine or Lottery facility game conducted pursuant to KELA.

Gray Machines

The bill would amend law on crimes concerning gray machines to provide that it is the duty of the Attorney General and KRGC to enforce such criminal provisions in statute and rules and regulations and that both would have original jurisdiction to investigate and prosecute such violations.

Organizational Licenses

The bill would amend law to establish a \$50 fee for an organizational license and a \$25 licensee fee for each day of racing approved by the KRGC.

Greyhound Racing Restrictions

The bill would amend law related to simulcast racing to prohibit the licensing for and displaying of simulcast greyhound races.

The bill would further amend simulcast law to specify that any organization licensee that schedules to conduct at least 150 days of live greyhound racing or 60 days of live or simulcast horse racing in a calendar year, or a fair association that conducts fewer than 22 days of live greyhound racing or 40 days of live horse racing in a calendar year, may apply to the KRGC for a simulcasting license to display simulcast horse races and conduct intertrack parimutuel wagering.

The bill would amend simulcast law to remove provisions related to certain requirements of simulcast licenses granted to fair associations.

Conference Committee Action

The Conference Committee agreed to modify the contents of House Sub. for Sub. for SB 84 in the following ways:

- Amended the definition of “platform”;
- Redefined the term “lottery facility games”;
- Amended the definition of “sports wagering revenues”;
- Amended the tax rate for both in-person and mobile wagering revenue;
- Inserted provisions concerning the funding of sports wagering patron accounts;
- Inserted provisions on restricted wagers at racetracks and casinos by certain persons;
- Amended requirements for records retention;
- Amended provisions concerning the transfer of revenues between gaming facility managers and the Lottery;
- Amended provisions concerning required rules and regulations;
- Raised the penalty for tampering with a sports contest;
- Amended the purpose of the Problem Gambling and Addictions Grant Fund;
- Inserted provisions to create the Attracting Professional Sports to Kansas Fund; and
- Made additional technical and conforming amendments.

Background

House Sub. for Sub. for SB 84

The House Committee of the Whole removed the contents of House Sub. for Sub. for SB 84, as previously amended by the House Committee of the Whole, inserted the contents of HB 2470, and further amended the bill.

House Sub. for Sub. for SB 84, as amended by the House Committee of the Whole, would have amended and created law relating to sports wagering.

[*Note:* The provisions of House Sub. for Sub. for SB 84 were not retained in the House bill.]

Background information on House Sub. for Sub. for SB 84, as amended by the House Committee of the Whole is contained in the supplemental note for that bill.

HB 2740 (Sports Wagering)

HB 2740 was introduced by the House Committee on Federal and State Affairs at the request of Representative Barker.

House Committee on Federal and State Affairs

In the House Committee hearing on March 22, 2022, **proponent** testimony was provided by representatives of Fuel True Independent Energy and Convenience, Kansas Entertainment, Ruffin Properties, and Sporting Kansas City. The proponents generally expressed support for authorizing Lottery retailers to conduct sports wagering, and the authorization of historical horse racing. The proponents further discussed how sports wagering would enhance support for professional sports in Kansas. Written-only proponent testimony was provided by representatives of Boot Hill Casino, Kansans for Fair Play, Kansas Crossing Casino, and Prairie Band Potawatomi Nation.

Neutral testimony was provided by representatives of the Kansas Association of Addiction Professionals, National Council of Addiction Professionals, Leavenworth County Humane Society, and Stray Dog Policy. Written-only neutral testimony was provided by representatives of the Humane Society, Kansas Department for Aging and Disability Services (KDADS), National Football League, and Southeast Kansas Humane Society .

Two representatives of the Kansas Greyhound Association provided **opponent** testimony, expressing their concern with the prohibitions on greyhound racing in the bill.

House Committee of the Whole

The House Committee of the Whole on March 30, 2022, amended the bill to:

- Remove the provisions of House Sub. for Sub. for SB 84, as amended by the House Committee of the Whole on March 30, 2021;
- Insert the provisions of HB 2740, as introduced;
- Add requirements for lottery gaming facility managers regarding lines of credit and compulsive gambling; and
- Increase transfer amounts to the Problem Gambling and Addictions Grant Fund.

[*Note:* The Conference Committee retained these amendments.]

Fiscal Information

Information from the fiscal note prepared by the Division of the Budget on HB 2740, as introduced, is below.

Any fiscal effect associated with enactment of HB 2740 as introduced is not reflected in *The FY 2023 Governor's Budget Report*.

Kansas Racing and Gaming Commission

The KRGC indicates enactment of HB 2740 would require at least 6.00 additional FTE positions and \$456,000 annually for ongoing costs to regulate sports wagering. Actual costs

would vary, as the Commission would determine the industry-specific tools necessary to regulate this industry. The Commission indicates it would need approximately \$1.8 million and 21.00 FTE positions if a parimutuel racetrack reopens for the annual costs to regulate both the racing and historical horse race machine 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 that would be associated with reopening each facility. If a facility is opened that only offers historical horse race machines, but no other parimutuel activity, then the annual expenses would be approximately \$1,330,000, and 13.00 FTE positions would be needed for regulatory purposes to regulate only historical horse race machines activity. 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 the Kansas Racing and Gaming Commission to bill each facility for all costs related to regulating racing activity. A reliable estimate of the parimutuel revenue that might be generated from historical horse race machines as a result of the bill cannot be made without a detailed market study.

Kansas Lottery

The Kansas Lottery indicates the State is prohibited from designating additional areas of the state where gaming facilities are authorized until July 1, 2032. The Kansas Lottery indicates the other lottery gaming facility managers have signed contracts with the Kansas Lottery that expressly prohibit the State from designating additional areas of the state where operation of lottery gaming facilities or similar gaming facilities would be authorized. Authorizing historical horse race machines at parimutuel facilities may be interpreted as an expansion of gaming. Lottery gaming facility managers entered into a contract with the State to manage lottery gaming facilities under a certain set of statutory and contractual terms. To have those terms changed mid-contract may result in litigation from lottery gaming facility managers to possibly recover damages or other losses from the State. Litigation would likely be decided by the courts. The amount of monetary damages that could be awarded by the courts is unknown. It is also unknown whether any possible damages would include the refunding of \$61.0 million in privilege fees that have already been collected from the four selected lottery gaming facility managers or whether the damages would include any interest payments.

The Kansas Lottery estimates sports wagering could generate additional revenues to the State of \$1.8 million in FY 2023, \$6.0 million in FY 2024, and \$10.0 million in FY 2025. The first \$750,000 generated from sports wagering would be transferred to the White Collar Crime Fund. The remaining sports wagering revenue would be transferred to the Lottery Operating Fund that would be used for sports-wagering- related operating expenses and any additional amount above expenses would then be transferred to the State Gaming Revenue Fund and ultimately transferred to the State General Fund at the end of the fiscal year. To formulate these estimates, the Kansas Lottery reviewed sports wagering data from Iowa and made adjustments for changes in demographics and the effective tax rate. The Kansas Lottery indicates that industry analysts predict that the sports wagering industry will see substantial growth in future years. These estimates assume that most sports wagering would occur over the internet with an interactive sports wagering platform instead of in-person at the lottery gaming facility. It is also unknown to what extent the tax rate would discourage currently illegal sports betting to shift to legal markets. The Kansas Lottery indicates the bill would require it to hire up to 5.00 new FTE positions to implement a sports wagering system. There would also be significant information technology and other startup costs during the sports wagering implementation phase, but the

agency is unable to estimate specific amounts of funding necessary to implement the provisions of the bill.

The Kansas Lottery indicates removing the prohibition of selling lottery tickets by electronic mail, the internet, or telephone (also known as iLottery) and placing procedures on its implementation have the potential to increase the overall ticket sales by \$75.0 million and increase the transfer to the State by an additional \$10.9 million in the first full year after implementation. With expected growth in the segment of the lottery industry, the bill has the potential to generate a total of \$76.0 million in additional transfers to the State over the course of the first five years.

The Kansas Lottery indicates all costs for equipment, systems development, regulation, and administration for iLottery would be paid from the additional revenues generated from iLottery sales. The Kansas Lottery indicates the bill would require it to hire up to 6.00 new FTE positions to implement an iLottery system. There would also be significant IT and other startup costs during the iLottery implementation phase, but it is unable to estimate specific amounts of funding necessary to implement the provisions of the bill.

[Note: iLottery provisions were not retained in the bill.]

Privilege Fee Repayment

If a lottery gaming facility manager is repaid its privilege fee and accrued interest, the parimutuel racetrack licensee for the racetrack facility in the same gaming zone would be responsible for this payment; however, the parimutuel racetrack would be reimbursed for that payment amount to the lottery gaming facility manager out of the state's share of revenue from the racetrack gaming facility that would be distributed to the State Racing Fund. The parimutuel racetrack would be responsible only for the refund of the privilege fees and accrued interest from the lottery gaming facility manager in the same gaming zone; however, it is unclear who would be responsible for any additional monetary damages that could be awarded by the courts from additional lawsuits.

State Gaming Agency

The bill would not require additional staffing or expenditures by the State Gaming Agency (part of the KRGC that regulates tribal gaming) unless gaming compacts are agreed to by the Governor and tribal gaming commissions and approved by the Legislature that remove the prohibition of tribal gaming facilities operating sports wagering operations. The State Gaming Agency indicates it would require 2.00 additional FTE positions and \$201,802 annually for ongoing costs if it were required to regulate sports wagering at existing tribal casinos.

KDADS

KDADS indicates that allowing sports wagering activity would likely increase demand for services provided by its Problem Gambling Program. The agency indicates the amount of additional spending would be dependent on how readily available sports wagering would be offered in the state. Research and prevalence studies can effectively guide the determination for funding, policy, and practice decisions regarding these needs. KDADS estimates an increase in

expenditures of up to \$1,350,000 in the first year of sports wagering to increase treatment capacity, support a statewide media campaign to promote problem gaming programs, and conduct a prevalence study. The Department also has concerns that the funding mechanism that provides an additional \$20,000 to the Problem Gambling and Addictions Grant Fund would be insufficient to support additional demand for services in its Problem Gambling Program.

Office of the Attorney General

The Office of the Attorney General indicates the bill would allow parimutuel wagering on historical horse race machines at locations in Sedgwick County other than the existing lottery gaming facility which could result in litigation to determine if allowing historical horse race machines violates provisions of the KELA. If there are additional litigation costs as a result of the bill, the Office would likely hire outside counsel. However, the Office did not provide an estimate of any potential litigation costs or how long the estimated litigation costs would continue from enactment from the bill. The Office indicates it would be required to review the legality of any proposed rules and regulations from the Kansas Lottery and the KRGC related to sports wagering. The Office indicates the cost to review proposed rules and regulations would be negligible and could be absorbed within existing resources. The bill has the potential to increase funding to investigate and prosecute criminal offenses related to sports wagering or illegal gambling activity from the White Collar Crime Fund; however, a specific determination on how these additional funds would be expended has not been made.

Office of Judicial Administration

The bill has the potential for increasing litigation in the courts because of the new crimes created by the bill. If it does, the Office of Judicial Administration indicates that there would be a fiscal effect on the operations of the court system. However, it is not possible to estimate the number of additional court cases that would arise or how complex and time-consuming the cases would be. The fiscal effect would most likely be negligible and could be accommodated within the existing budget resources. The Kansas Sentencing Commission indicates that the bill could have an effect on prison admissions and beds; however, the Commission did not provide a specific estimate.

Governor's Office

The Governor's Office indicates the bill would require it to manage grant funding from the new White Collar Crime Fund. The Governor's Grant Program would review grant requests from the Office of the Attorney General and the KRGC that would be used to investigate and prosecute criminal offenses related to sports wagering or illegal gambling activity. The Governor's Office indicates the costs to review grant application and manage funds from the White Collar Crime Fund are estimated to be negligible and could be absorbed within existing resources.

Sports; gambling; electronic gaming machines; betting; wagering; racetracks; lottery; lottery retailer; Kansas Lottery Act; Kansas Expanded Lottery Act; Problem Gambling and Addictions Grant Fund; White Collar Crime Fund; historical horse racing; Attracting Professional Sports to Kansas Fund