

SESSION OF 2017

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR
HOUSE BILL NO. 2386**

As Recommended by Senate Committee on
Federal and State Affairs

Brief*

Senate Sub. for HB 2386 would amend the Kansas Expanded Lottery Act (KELA) and the Kansas Parimutuel Racing Act concerning racetrack gaming facilities and lottery gaming facilities. Specifically, the bill would address: findings on horse and dog racing; required checks against the state debtor files, debtor setoff, and withholding of prizes; legal actions in *quo warranto*; claims for specific performance, anticipatory breach, breach of contract, and equitable relief; cash or surety bonds placed in escrow; distribution of cash or surety bonds in escrow; new funds created; racetrack gaming facility managers; recommendations for economic development; enforceable provisions of racetrack gaming facility management contracts; placement of electronic gaming machines at racetrack facilities; number of electronic gaming machines at racetrack facilities; and net electronic gaming machine income distribution.

Findings on Horse and Dog Racing

The bill would make several findings related to horse and dog racing, its history in the State of Kansas, and its potential impact on the Kansas economy.

*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>

**Required Check Against State Debtor Files, Debtor
Setoff, Withholding of Prizes (New Sec. 1 and Sec. 13)**

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.

Legal Actions in *Quo Warranto* (New Sec. 2(a))

The Attorney General would be able to file an action in *quo warranto*, questioning the authority of a public official to

act in accordance with KSA 2016 Supp. 74-8743, which relates to county elections to place electronic gaming machines at parimutuel racing facilities. Such actions would need to be filed within 90 days of the effective date of the bill, could only be filed in the Kansas Supreme Court, and could only be brought by the Attorney General.

Claims for Specific Performance, Anticipatory Breach, Breach of Contract, Equitable Relief (New Sec. 2(b)-(c))

The bill would limit actions for specific performance, anticipatory breach, or breach of contract based on violation of the statutorily required enforceable provisions for management contracts at lottery gaming facilities and racetrack facilities or material breach of a lottery gaming facility management contract. Such actions would be deemed not to accrue until the Kansas Lottery enters into a racetrack gaming facility management contract for the placement of electronic gaming machines at a parimutuel licensee location or a final order is issued in any *quo warranto* action brought by the Attorney General.

No claim for equitable relief, including injunctive relief, could be brought in any such action except by the Attorney General in a *quo warranto* action.

Cash or Surety Bonds Placed in Escrow (New Sec. 2(d))

Within 60 days of filing a claim for specific performance, anticipatory breach, or breach of contract, the racetrack gaming facility manager would be required to place in escrow cash or a surety bond totaling the amount of the privilege fees paid by the lottery gaming facility managers that are parties to the action plus 10.0 percent interest compounded annually from the time the privilege fees were filed to the effective date of the racetrack gaming facility management agreement. Every six months afterward, the racetrack gaming facility

manager would be required to place in escrow additional cash or a surety bond equal to the interest continuing to accrue on the privilege fees. This requirement would be included in each racetrack gaming facility management contract and failure of the racetrack gaming facility manager to place cash or surety bond in escrow would be considered a material breach of such contract and would terminate the contract.

Cash or surety bonds placed in escrow would be held by an escrow agent designated by the Executive Director of the Kansas Lottery (Executive Director) pursuant to an agreement executed by the Executive Director. The Executive Director would be required to verify the total amount placed in escrow and any surety bond placed in escrow would have to be executed in favor of the Kansas Lottery.

Distribution of Cash or Surety Bonds in Escrow (New Sec. 2(e)-(f))

If a court decides the gaming facility management contract does not violate state law or creates a material breach of any lottery gaming facility management contract, the Executive Director would be required to release and discharge back to the racetrack facility the cash or surety bond placed in escrow by the facility.

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, the Executive Director would be required to remit all cash and proceeds of any surety bonds held in escrow to the State Treasurer, to be deposited in the Privilege Fee Repayment Fund. The total amount of such cash and proceeds of surety bonds would be distributed to the lottery gaming facility managers that were a party to the action to enable the repayment of privilege fees and accrued interest to the lottery gaming facility managers.

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 Expanded Lottery Act Revenue Fund (ELARF) from net electronic gaming machine revenue. The bill would specify that the percentage could not be less than 50.0 percent of the funds received by the ELARF from net electronic gaming machine revenue. (The bill proposes 22.0 percent of net electronic gaming machine revenue be credited to the ELARF.) The Executive Director would be required to certify the amount to be paid to the racetrack facility managers and transfer that amount from the ELARF to the Escrow Account Repayment Fund.

New Funds Created by the Bill (New Sec. 2(g) and New Sec. 4)

The bill would create the following funds:

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

Racetrack Gaming Facility Managers (New Sec. 2(h))

The bill would specify that for the purposes of the KELA and the Kansas Parimutuel Racing Act, a racetrack gaming facility manager could also be a facility owner licensee. Both terms are defined in current law.

Recommendations to Maximize Economic Development (New Sec. 3)

The bill would require the official breed registering agencies for horse and greyhound breeds to make recommendations to the Kansas Racing and Gaming Commission for implementation of programs that would maximize benefit to economic development in rural Kansas. The recommendations would be required by December 1, 2017, and every December 1 thereafter.

Enforceable Provisions of Racetrack Gaming Facility Management Contracts (Sec. 5)

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 Gaming Zone would be added to the current provisions included in racetrack gaming facility management contracts, prohibiting the State from entering into management contracts for more than one lottery gaming facility or similar gaming facility in each gaming zone.

Placement of Electronic Gaming Machines at Racetrack Facilities (Sec. 6)

The bill would allow the board of county commissioners of each county with a parimutuel facility to submit a proposition to voters to permit the placement of electronic gaming machines at such facilities in the county:

- By resolution; or
- Upon presentation of a valid petition signed by at least 5,000 qualified voters of the county.

The bill would require the proposition to be submitted to voters at special election called by the board of county

commissioners no later than 120 days after a petition was deemed valid.

Existing law requires the board of county commissioners to submit such a proposition to voters and requires the board of county commissioners to call a special election not more than 180 days after the effective date of the original act in 2007 and does not specifically allow such an proposition to be presented to voters upon presentation of a petition.

The bill also would amend language related to the wording of the proposition to be placed on the ballot after such a resolution or petition. Existing law states "*Shall the Kansas Lottery be authorized to place electronic gaming machines in _____ County?*" The bill would change the required proposition language to say "*Shall the operation of electronic gaming machines by the Kansas Lottery be authorized at Wichita Greyhound Park in Sedgwick County?*"

The bill would remove current law pertaining to the Kansas Lottery Commission's ability to waive the requirement that an election be held if the Commission determines before the effective date of the Act that the county has held an election of qualified voters pursuant to the county's home rule authority.

Number of Electronic Gaming Machines at Racetrack Facilities (Sec. 7 and Sec. 8)

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 and the bill would remove the prohibition of the operation of electronic gaming machines starting more than 90 days prior to the start of live racing at the facility.

The bill would require 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.

Net Electronic Gaming Machine Income Distribution (Sec. 9)

This section describes the net electronic gaming revenue distributions required of racetrack facilities located in Kansas 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 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 ELARF;
(Current law: 40.0 percent to 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 notes for SB 207 and HB 2173:

- 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 68.0 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 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.)
- 0.1 percent to the Kansas Horse Council 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.)

Facilities located within a city;

- 1.0 percent to city where racetrack facility is located; and

(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.)

Changes to Requirements for Certain Organizations (Sec. 11)

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 (KRG) expedite the application and licensing process for these organizations. The bill would add language clarifying that the required investigation of these organizations conducted by the KRG must include the criminal background and credit history of those executives and officers specified in statute.

Simulcasting (Sec. 12)

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.

Background

The Senate Committee on Federal and State Affairs removed the contents of HB 2386, as passed by the House, which dealt with port authorities. [The language dealing with port authorities was subsequently added to HB 2132 and passed by the Senate Committee.] The Senate Committee then added portions of SB 207 to HB 2386, along with new language, and passed the bill as a Senate substitute bill. The background for SB 207 follows below.

SB 207

SB 207 was introduced by the Senate Committee on Federal and State Affairs.

At the Senate Committee hearing on March 23, 2017, proponents included Senator Olson, Senator Fitzgerald, representatives of the Greater Kansas Racing Alliance and National Greyhound Association, and a member of the public. Written-only testimony in favor of the bill was submitted by

Representative Hibbard, the Mayor of the City of Wichita, representatives of the Greater Kansas Racing Alliance; National Greyhound Association; Kansas Greyhound Association; American Quarter Horse Association; and the Kansas Horse Council.

Opponents to the bill that appeared before the Senate Committee included representatives of the Humane Society Legislative Fund of Kansas; the Humane Society of the United States; Kansas Entertainment, LLC; Frieden, Unrein & Forbes, LLP; Family Policy Alliance of Kansas; and the Wyandotte County Unified Government. The following opponents submitted written-only testimony: the Superintendent of USD 204; representatives of the Kansas Animal Control Association; Kansas City, Kansas Chamber of Commerce; Lawrence Humane Society; and the Kansas Chamber; and a member of the public.

No neutral testimony was provided.

The fiscal note prepared by the Division of the Budget on SB 207, as introduced, would not require additional staffing or expenditures by the Kansas Racing and Gaming Commission, the 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 the Kansas Racing and Gaming Commission. Racetracks would first be required to obtain a parimutuel license from the Kansas Racing and Gaming Commission before they 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 KELA. If it is determined that SB 207 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 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 that it would need to hire between two and three new employees for each new gaming facility that would open as a result of this bill. However, without knowing the size of the proposed facility and when the facility would open, the Kansas Lottery is unable to make an estimate of its gaming related expenses. The Kansas

Lottery indicates that when it has negotiated contracts with gaming facility managers, it has required that all of its gaming related expenses be reimbursed by the manager. Direct gaming expenses are billed directly to the specific gaming facility manager and indirect expenses are prorated to all managers.

The Kansas Racing and Gaming Commission indicates it would need approximately \$1.8 million and 21.0 FTE positions for each parimutuel racetrack that reopens for the 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 that would be associated with reopening 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 the Kansas Racing and Gaming Commission to bill each facility for all costs related to regulating racing activity. The requirements of the debt-setoff program would require additional staff time to modify regulations, facility operator internal controls, and audit programs. However, it is estimated that the costs associated with these activities would be negligible and, under KELA, would be reimbursed by gaming facility operators.

The Department for Aging and Disability Services indicates that additional gaming facilities would likely increase demand for services provided by its Problem Gambling Program. The Department indicates that the amount of additional spending would be dependent on the number of additional gaming facilities and would be proportional to current spending levels for problem gambling and addiction services. The Department 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 its Problem Gambling Program.

The Department of Administration indicates that expanding the debt-setoff program would require computer programming to make sure that prizes or winnings at state-owned casinos would be subject to the debt-setoff program. The Department of Administration indicates that the costs associated with programming existing software to implement the debt-setoff requirements of the bill would be negligible and could be absorbed within existing resources.

Based on data from similar legislation passed in the State of Colorado, the Department for Children and Families (DCF) anticipates that the bill would increase child support collections from the expansion of the debt-setoff program. DCF estimates that Kansas would intercept approximately 110 gaming intercepts per year with the value of each intercept averaging approximately \$1,200. DCF indicates that nearly all of the total amount that would be collected under the bill would be distributed to Kansas families. The only expense DCF would expect to incur is the recovery assistance fee imposed by the Department of Administration which would be \$10 for each intercept or approximately \$1,100 per year which could be absorbed within existing DCF resources.

A reliable estimate of the gaming facility revenue that might be generated as a result of SB 207 cannot be made without a detailed market study, which would include an estimate as to when the gaming 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 SB 207 is not reflected in *The FY 2018 Governor's Budget Report*.