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To: Chairman Barker and Members of the Committee:

Re: HB2173

I am legal counsel for Greater Kansas Racing Alliance. I appreciate and am honored to have the opportunity to speak to the Committee today to offer comments and to answer any questions regarding the proposed legislative changes included in HB2173.

First and foremost, please allow me to correct what I believe is a less than accurate description of this Legislation by its opponents. The changes that are proposed to the existing Expanded Racing Act are **NOT CHANGES WHICH CONSTITUTE THE EXPANSION OF GAMING IN KANSAS**. The existing gaming law addresses "lottery gaming facility locations" and separately addresses allowable "parimutuel gaming facility locations". A parimutuel gaming facility is contemplated under existing law in the northeast, southeast and south central gaming zones.

As this Committee is well aware, there have been prior changes to the initial Expanded Lottery Act (SB66) which increased the number of allowed lottery gaming facilities from the original "three" to the expanded and now permitted, "four". HB2173 proposes no expansion of the number of lottery gaming facilities, and, for that matter, no expansion of the allowed number of racetrack gaming facilities.

HB2073 includes no language which would allow additional lottery gaming facilities or, for that matter, additional electronic gaming machines at the parimutuel licensee locations. That number was and is statutorily limited to 2,800 "aggregate" machines at all of the licensee locations. A parimutuel gaming facility licensee in any of the 3 designated gaming zones is not an expansion of gaming under the law, so long as the total number of machines throughout all parimutuel licensee locations remains at 2,800 or less.

Opposition to this legislation is not from any true concern over a potential "repayment" of privilege fee by the State or any other claim of damage risk. Those are scare tactics. As noted in the independent economic study by Dr. Hall, a reopening of racing brings a great economic boost not only to the immediate communities where racetrack gaming facilities will be located but to the entire State of Kansas, in the form of the direct and indirect associated agricultural industries. Moreover, it belies common

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sense for one entertainment venue to suggest that a wholly different (statutorily defined) entertainment venue located within a reasonably close vicinity would not attract additional consumers and customers to both of those businesses. The fact is that both are destination entertainment opportunities and together, they are a brighter and stronger draw to the consuming public.

In addition to the insulating protections afforded the State by this bill, the legislation also serves to level the playing field in the form of equalization of the percentage paid to the State from the operation of identical gaming machines located at either a lottery gaming facility or a racetrack gaming facility. Opponents urge that the percentage changes are not needed, that the racetrack gaming facilities need no legislative changes to have slots and that the facilities could simply reopen and start racing. **Really?** I would hope we could all agree that no one opens a business or reopens a business that they know would be doomed to financial failure. Isn't the real "proof in that pudding" as to the viability of racing under current legislation readily apparent by simply looking around the State to see how many parimutuel racetracks are running under those formulas? As we all know, that number is none. What "may" have been someone's projections a decade ago in 2005 or 2007 or at any other prior time is simply irrelevant to the current issue.

As all legislators know, the vast majority of all legislative changes are modifications to existing legislation. During the 2016 legislative session, and to make the operation of race track gaming facilities financially viable, KELA modifications were proposed that were aimed at leveling the playing field with respect to the state's percentage share received from electronic machines located at lottery gaming facilities at the four existing lottery gaming facilities and at the racetrack gaming facilities contemplated (but not currently operating) in three of the gaming zones (northeast, south central, and southeast). At the hearings on that 2016 proposed legislation, opponents made allegations that the passage of the bill and subsequent establishment of a racetrack gaming facility in the South central zone (Wichita/Sedgwick County) would trigger statutory and contract provisions requiring the repayment of \$100 million in lottery gaming facility privilege fees plus accrued interest. Advocates of the bill disagreed and argued that nothing in the proposed changes would trigger repayment obligations but in the end, the reality of a \$346 million budget deficit in the state, together with the opponent's "claim" of potential exposure to an additional \$100 million in repayment obligations, created a factor of "reimbursement fear" that proponents of the bill were unable to overcome.

QUESTION: Does the proposed bill address the concerns of last legislative session that the state is at risk for having to pay back privilege fees and accrued interest from the state's treasury?

ANSWER: YES

- This bill is specifically formulated to “insulate” the state from any risk of refund potential. Proponents of this bill continue to believe the refund risk is not a reality for the state but to fully address any such concern, the bill contains requirements for protection of the state from the alleged financial exposure of repayment.
- New Section 5 – provides that if the KS Lottery enters into a contract with a racetrack gaming facility in any one of the approved geographic zones, the executive director shall notify all of the existing Lottery gaming facility licensees in all zones and they will have 60 days from the date of the racetrack gaming facility management contract to file suit in Shawnee Co. District court to challenge the legal validity of the racetrack gaming facility management contract and to seek repayment of the previously paid privilege fees plus accrued interest.
- Should a timely action be filed and the required liquidated damage escrow payment made, the racetrack gaming facility manager which is party to the new racetrack gaming facility must then within 60 days of the suit filing, place into escrow with the lottery a surety bond in an amount sufficient to cover the principal of all privilege fees paid by the lottery gaming facility licensees who elect to be parties to the suit, plus accrued interest at 10% through the date of the new contract. The bill mandates inclusion of a provision in the racetrack gaming facility management contract which automatically terminates that management contract if the required surety bond is not timely placed.
- Should the suit be adjudicated via a final non-appealable order in favor of any lottery gaming facility, thus requiring a refund of privilege fees and interest, the lottery executive director will make demand upon the racetrack gaming facility surety bond covering that amount, and the director will then make the required refunds.
- If a timely action is filed, each lottery gaming facility which is a party must contemporaneously place into escrow with the lottery, as liquidated damages, the sum of \$5,000,000 in cash or surety. This escrow payment is to ensure that fees and costs of the state and the racetrack gaming facility manager are covered should the suit be unsuccessful.
- Conversely, should the final non-appealable order be in favor of the racetrack gaming facility licensee, then the privilege fee and accrued interest bond shall

be remitted back to the racetrack gaming facility licensee. The liquidated damage amounts in escrow would then be distributed to the racetrack gaming facility licensee to cover fees and costs and all of the remainder of such escrow paid over to the state.

- In the event the refund of privilege fees and accrued interest is made to the lottery gaming facility licensees, the same amount of such privilege fees and interest shall be repaid to the racetrack gaming facility licensee by the lottery. The funds for repayment will come ONLY from amounts received by the lottery from net electronic gaming machine revenue from the operations of the racetrack gaming facility to which the subject management contract applies. The repayment will be monthly and be not less than 50% of the funds from the fund for that racetrack gaming facility location.
- In sum – the state has zero exposure to the claimed right to privilege fee refunds or the interest accrued thereon. The state is fully insulated by the placement of the surety bond.

QUESTION: Is it fundamentally fair that lottery gaming facilities who wish to challenge the legality of a racetrack gaming facility contract have to put up a liquidated damages escrow when they have already put up the required privilege fees?

ANSWER: YES

- The proponents of this legislation believe that that a racetrack gaming facility in each of the NE, SE and South Central gaming zones is already contemplated in the existing statute. Those who raised the repayment issue during the last legislative session believe that adding a racetrack gaming facility in the south central zone would constitute an expansion of gaming that would trigger the privilege fee reimbursement under statute and arguably under the lottery gaming facility management contracts. Should a suit be filed to challenge the legality of a racetrack gaming facility contract, the proposed legislation requires both the racetrack gaming facility and the challenging lottery gaming facility or facilities to place cash or surety bonds.

QUESTION: Must Wichita/Sedgwick County still have an affirmative public vote to allow the operation of electronic gaming machines?

ANSWER: YES

- New Section 4 of the bill sets forth the protocol for a vote to approve the operation of electronic gaming machines at Wichita Greyhound Park. The

language clarifies that one or more votes to approve may occur if valid petitions are submitted and the voting protocols followed.

QUESTION: Does the State have to repay the racetrack gaming facility licensees for the amount of the surety bond proceeds used to reimburse privilege fees and interest if the racetrack gaming facility is not generating new revenues sufficient to cover such repayment amounts?

ANSWER: NO

- The KS lottery will be receiving its share of gaming machine revenue from the operation of electronic gaming machines at the racetrack gaming facility. But, the source of the funds for the repayment obligation is ONLY from revenues received by the state from the operation of electronic gaming machines at that specific racetrack gaming facility. If there is no revenue received by the state from that racetrack gaming facility, there is no reimbursement owed. The bill simply calls for reimbursement out of the state's revenue share from that specific gaming location until the reimbursement of the privilege and interest refund has been completed. Under no circumstances does the state have exposure to reimbursement of any amount, except as with respect to amounts of net gaming revenues it receives from that location only. None of the other gaming revenue accounts for any other gaming location are subject to the reimbursement provision.

QUESTION: Would the amount the state currently receives as its share from existing gaming facilities be reduced by virtue of a potential repayment obligation of the bond amount used to reimburse privilege fees and interest?

ANSWER: NO

- Again, the source of the funds for the repayment obligation is ONLY from revenues received by the state from the operation of electronic gaming machines at that specific racetrack gaming facility. If there is no revenue received from that racetrack gaming facility, there is no reimbursement owed.
- Under no circumstances does the state have exposure to reimbursement of any amount, except as with respect to amounts of net gaming revenues it receives from that location only. None of the other gaming revenue accounts for any other gaming location are subject to the reimbursement provision.

QUESTION: Does the bill "level the playing field" between lottery gaming facilities and racetrack gaming facilities with respect to the share paid to the state from the operation of electronic gaming machines?

ANSWER: YES

- New Section 11 adjusts the distribution percentages for net electronic gaming machine income at a racetrack gaming facility. The adjustments include the "leveling" of the percentage applicable to electronic gaming machines at both lottery gaming facilities and racetrack gaming facilities. The percentage is now 22% for both, whereas it previously was 22% at lottery gaming facilities and 40% at racetrack gaming facilities for the operation of the very same machine.

QUESTION: Does the proposed bill require live racing schedules to be approved by the Racing and Gaming Commission in order to operate electronic gaming machines at a racetrack gaming facility?

ANSWER: YES

- New Section 10 contains the minimum number of live race dates and minimum number of races to be scheduled to be conducted at each of the considered facilities in Sedgwick, Wyandotte and Crawford counties, respectively, in order for the operation of electronic gaming machines.

I very much appreciate the opportunity to make comments to the committee and I will stand for any questions.

Very truly yours,

LATHROP & GAGE LLP

By:

R. Scott Beeler

RSB/jm