

SESSION OF 2018

SUPPLEMENTAL NOTE ON SENATE BILL NO. 427

As Amended by Senate Committee on Federal
and State Affairs

Brief*

SB 427, as amended, 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 required checks against debtor files, debtor setoff, and withholding of prizes; electronic gaming machines proposition; declaratory judgment, damages; indemnification of liability; enforceable provisions of racetrack gaming facility management contracts; the number of electronic gaming machines at racetrack facilities; gaming machine requirements in Sedgwick, Crawford, and Wyandotte counties; net electronic gaming machine income distribution; changes to requirements for certain organizations; simulcasting; rural economic development; and the creation of new funds.

Declarations

The bill would adopt several declarations regarding horse and dog racing in Kansas, on topics including the Kansas economy, tourism, the greyhound and horse industry, economic and agribusiness benefits, Wichita Greyhound Park in Sedgwick County, economic benefits, current lottery gaming facility management contract, and the current tax structure for racetracks.

*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 Section 1]***

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 bill would require the prize to be withheld to the extent of such person's debt as listed in the files.

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 require money withheld based on the state debtor files to be remitted to the State Treasurer in accordance with continuing 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.

The bill would also amend 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 moneys that may be set off against debts owed to the State, state agencies, municipalities, or the federal government. [Section 14]

Legal Actions [New Section 2]

Declaratory Judgment, Damages

The bill would allow the Attorney General to file an action in the Kansas Supreme Court within 90 days of the effective date of the bill, seeking a declaratory judgment on the question of whether a Sedgwick County ballot question authorizing the operation of electronic gaming machines at the Wichita Greyhound Park, and the subsequent operation of such machines, would create a violation of state law or a breach of the management contracts between the Kansas Lottery (Lottery) and lottery gaming facility managers.

After a final order is issued in the above action, or after a racetrack gaming facility management contract is entered into between a racetrack gaming facility manager and the Lottery, whichever is later, an action could be filed within 60 days in Shawnee County District Court. Such cause of action would be deemed to have accrued from either the date such contract is entered into, or the final order issued.

Such cause of action could not request injunctive relief, and any claims could be brought only by a lottery gaming facility manager located in the same zone as a racetrack gaming facility, which has entered into a management contract. In addition, no claim could be brought by the lottery gaming facility manager in the South Central Zone.

Monetary damages would be limited to the amount of the privilege fee paid by the facility manager, plus accrued interest from the date of accrual described above.

Letter of Credit

If a lottery gaming facility manager commences an action in relation to either a racetrack facility contract or a final order from the Kansas Supreme Court, then, within 60 days, the bill would require the racetrack gaming facility

manager that is party to the racetrack gaming facility management contract to submit a letter of credit in the total amount equal to the monetary damages that could be awarded in the action as determined by the Executive Director of the Lottery. This requirement would be included in each racetrack gaming facility management contract, and failure to submit a timely letter of credit would constitute a material breach of the contract and would be cause for termination of the contract. The Lottery would be named as the beneficiary of the letter of credit.

Determination of Contract Violation or Breach

If a final court order determines the racetrack gaming facility management contract does not violate or create a material breach of a lottery gaming facility management contract, the bill would require the Executive Director to provide a letter to the racetrack gaming facility canceling the letter of credit.

If a final court order determines the racetrack gaming facility management contract does violate or create a material breach of a lottery gaming facility management contract, the Executive Director would present the letter of credit for payment for monetary damages to a lottery gaming facility manager in whose favor final judgment has been determined. The Executive Director would remit all moneys from this payment to the State Treasurer, who would deposit the amount in the Privilege Fee Repayment Fund, which would be created by the bill.

Repayment of a Letter of Credit

If the Executive Director of the Lottery presents the letter of credit for payment in accordance with a final court order, the bill would require the Lottery to reimburse the same amount to the racetrack gaming facility manager. The reimbursement payments would be paid monthly from the

Racetrack Gaming Facility Manager Fund, which would be created by the bill.

The amount of each monthly reimbursement payment would be a percentage of the funds in the Expanded Lottery Act Receipts Fund that would be received by the Lottery, pursuant to current law. The percentage would be agreed to by the Executive Director and the racetrack gaming facility manager in each racetrack gaming facility management contract, except the percentage could not be less than 50.0 percent of the funds in the Expanded Lottery Act Receipts Fund.

Transfers from the Expanded Lottery Act Receipts Fund would be made only from those funds that were received by the Lottery as net electronic gaming machine income from the racetrack gaming facility to which the racetrack gaming facility management contract applies.

The bill would also allow a racetrack gaming facility manager to be a facility owner licensee for purposes of New Section 2 of the bill.

Rural Economic Development [New Section 3-4]

The bill would require that the official breed registering agencies for both horse and greyhound breeds, as designated by the Kansas Racing and Gaming Commission (KRGC), make recommendations to the KRGC for implementation of programs to maximize the benefit to economic development in rural Kansas. The bill would require such recommendations to be made on or before December 1, 2018, and each December 1 thereafter.

The bill would also create the Kansas Horse Council Fund, which would be administered by the KRGC. Moneys expended from this fund would be used for the development, promotion, and representation of the equine industry in

Kansas and would be distributed to the Kansas Horse Council by contract with the KRGC for these purposes.

Enforceable Provisions of Racetrack Gaming Facility Management Contracts [Section 5-6]

The bill would specify that the term “similar gaming facilities” does not include facilities authorized to operate, manage, and maintain only electronic gaming machines.

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 that must be provisions included in racetrack gaming facility management contracts, prohibiting against the State from entering management contracts for more than one lottery gaming facility or similar gaming facility in each gaming zone.

Electronic Gaming Machines Proposition [Section 7]

Current law allows the board of county commissioners of each county where there is an parimutuel licensee location to submit a proposition to the electorate of such county to permit the placement of electronic gaming machines at such location.

The bill would specify that counties with current or former licensee locations could submit the question by resolution. Or, the bill would provide that, upon presentation of a petition, signed by 5,000 or more qualified voters, the proposition must be submitted to the electorate.

The bill would require the proposition to be submitted to voters at the next primary or general election, or at a special election called by the board of commissioners for that

purpose, and could not be held any later than 120 days after the petition (if any) is determined to be valid.

Sedgwick County Proposition

If the election is to be held in Sedgwick County, the bill would specify the wording of the proposition to be: "Shall the operation of electronic gaming machines by the Kansas Lottery be authorized at Wichita Greyhound Park in Sedgwick County?"

If a majority of voters approve the proposition, the bill would authorize the Executive Director of the Kansas Lottery to enter into a contract with the parimutuel licensee at the Wichita Greyhound Park to operate electronic gaming machines.

Other County Proposition

If the election is to be held in a county other than Sedgwick County, the bill would specify the wording of the proposition to be: "Shall the Kansas Lottery be authorized to place electronic gaming machines in _____ County?" If a majority of voters approve the proposition, the Executive Director of the Kansas Lottery would be authorized to enter into a contract with a parimutuel licensee location in the county.

Number of Electronic Gaming Machines at Racetrack Facilities [Section 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.

Gaming Machine Requirements in Sedgwick, Crawford, and Wyandotte Counties; Exceptions [Section 9]

The parimutuel licensee in Sedgwick County operating gaming machines would be required to 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 as 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 as 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 as 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). However, the bill would reduce the number of

live races for thoroughbreds from 7 races per day to 5 races (2 for Kansas-bred horses only) each day.

The bill would repeal law regarding exemptions from a parimutuel licensee conducting live racing. Current law provides the KRGC may not grant exceptions to the requirements for a parimutuel licensee conducting live racing unless there are agreements between the parimutuel licensee and affected recognized greyhound or recognized horsemen's group, there is approval by the appropriate official breed registering agencies, and the agreement is submitted to and approved by the KRGC.

Net Electronic Gaming Machine Income Distribution
[Section 10]

Section 10 of the bill describes the net electronic gaming revenue distributions required of racetrack facilities located in the state 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.

[*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 the Expanded Lottery Act Revenue Fund (ELARF).
(Current law: 40.0 percent to the 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 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);

- 7.0 percent from racetrack facilities licensed to conduct greyhound races to the Greyhound 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);

- 0.5 percent to Problem Gambling and Addictions Grant Fund.

(Current law: 2.0 percent to Problem Gambling and Addictions Grant Fund); and

- 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).

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:

- 2.0 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 the county where the racetrack facility is located (current law: 3.0 percent to the county where the racetrack facility is located); and
- Facilities located within a city:
 - 1.0 percent to the city where the racetrack facility is located (current law: 1.5 percent of racetrack gaming facility revenues to the city where the racetrack facility is located); and
 - 1.0 percent to the county where the racetrack facility is located (current law: 1.5 percent of racetrack gaming facility revenues to the county where the racetrack facility is located).

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:

- 0.1 percent to the Kansas Horse Council Fund (no similar provision in current law);
- Facilities not located within a city: 2.0 percent to the county where the racetrack facility is located (current law: 2.0 percent of racetrack gaming facility revenues to the county where the racetrack facility is located); and
- Facilities located within a city:
 - 1.0 percent to the city where the racetrack facility is located (current law: 1.0 percent of racetrack gaming facility revenues to the city where the racetrack facility is located); and
 - 1.0 percent to the county where the racetrack facility is located (current law: 1.0 percent of racetrack gaming facility revenues to the county where the 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 the county where the racetrack facility is located (current law: 2.0 percent of racetrack gaming facility revenues to the county where the racetrack facility is located); and

- 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); and
- Facilities located within a city:
 - 1.0 percent to the city where the racetrack facility is located (current law: 1.0 percent of racetrack gaming facility revenues to the city where the racetrack facility is located);
 - 1.0 percent to the county where the racetrack facility is located (current law: 1.0 percent of racetrack gaming facility revenues to the county where the racetrack facility is located); and
 - 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).

***Changes to Requirements for Certain Organizations
[Section 12]***

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 meetings 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 KRGC expedite the application and licensing process for these organizations. The bill would add language clarifying

the required investigation of these organizations conducted by the KRGC must include the criminal background and credit history of those executives and officers specified in statute.

Simulcasting [Section 13]

The bill would:

- Allow any licensed organization that conducts 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 any fair association that conducts fewer than 40 days of live racing during a calendar year to apply for a simulcasting license (current law: requires fewer than 22 days of live racing during a calendar year for a fair association to apply for a simulcasting license); and
- Remove restrictions limiting the number of days fair associations may conduct simulcast races.

Background

The bill was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Olson.

Senate Action

In the Senate Committee hearing, proponent testimony was provided by Representative Barker, Representative Hibbard, and representatives of the Better Horses Radio, the Greater Kansas Racing Alliance, and the Kansas Horse Council.

Proponent written-only testimony was provided by representatives of Eureka Downs Training Center, Greater Kansas Racing Alliance, National Greyhound Association, and Kansas Greyhound Association, and by three members of the public.

Opponent testimony was provided by representatives of Beauties and Beasts, Inc.; Boot Hill Casino & Resort; Hollywood Casino at Kansas Speedway; Humane Society Legislative Fund of Kansas; Kansas Star Casino; and The Humane Society of the United States.

Opponent written-only testimony was provided by representatives of Beauties and Beasts, Inc.; City of Dodge City; City of Mulvane; Heart of Jackson Humane Society; Kansas Chamber; Southeast Kansas Humane Society; Sumner County Board of County Commissioners; Sumner County Economic Development; and 18 private citizens.

Neutral written-only testimony was provided by the Kansas Attorney General. No other testimony was provided.

The Senate Committee amended the bill by repealing law that provides an exception to a parimutuel licensee conducting live racing.

Fiscal Note

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the bill would not require additional staffing or expenditures by the KRGC, Lottery, or any other state agency unless a contract with a racetrack gaming facility manager is approved by the Lottery and a background investigation is approved by KRGC. A racetrack would need to obtain a parimutuel license from KRGC before its officials could negotiate with the 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 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 at least \$200,000.

The Lottery indicates 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 the bill 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. The bill provides a mechanism for a racetrack gaming facility manager to provide a letter of credit for the payment of privilege fees and accrued 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 the ELARF. Furthermore, the redistribution of revenues, removal of the bidding process on 400 electronic gaming machines and perhaps other provisions of this bill may also trigger breach of contract and related claims by the current casino managers, which would

be in addition to the claims for refund of privilege fees and interest.

The letter of credit from a racetrack gaming facility manager would cover only the refund of the privilege fees and accrued interest from the casino manager in the same gaming zone, but would not cover the possible refund of the privilege fees and accrued interest from casino managers from other gaming zones or any additional monetary damages that could be awarded by the courts.

The Office of the Attorney General indicates the bill has the potential to significantly increase litigation cost starting in FY 2019. However, the Office of the Attorney General did not provide an estimate of the additional litigation costs or how long the estimated litigation costs would continue from enactment of the bill, or if the bill would require the hiring of outside counsel.

The Lottery indicates it would need to hire two or three new employees for each new gaming facility that would open as a result of this bill. Without knowing the size of any proposed facility and when such facility might open, the Lottery is unable to estimate its gaming-related expenses. The 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 KRGC indicates it would need approximately \$1.8 million and 21.0 FTE positions for each parimutuel racetrack that reopens for 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 associated with opening each facility. Funding for regulating racing activities has come primarily

from the transfer of parimutuel tax receipts to the State Racing Fund. The appropriations bill each year provides the authority for the KRGC 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 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 (KDADS) indicates additional gaming facilities would likely increase demand for services provided by the Problem Gambling Program. KDADS indicates the amount of additional spending would be dependent on the number of additional facilities and would be proportional to current spending levels for problem gambling and addiction services. KDADS 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 the Problem Gambling Program.

The Department of Administration (Department) indicates expanding the debt setoff program would require computer programming to make sure that prizes or winnings at State-owned gaming facilities would be subject to the debt setoff program. The Department 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. The Department indicates the bill could increase debt setoff revenue annually by up to \$100,000 beginning in FY 2019. The bill would allow the Department to receive up to \$17,000 in collection assistance fees that would be used to help run the debt setoff program.

An estimate of the revenue that might be generated as a result of the bill cannot be made without a detailed market study, which would include an estimate as to when a facility

would be operational, the location of the gaming facility, the size of the gaming facility, and whether the new gaming facility would impact revenues from existing gaming facilities. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2019 Governor's Budget Report*.