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### Federal and State Affairs

#### E-4 Lottery, State-owned Casinos, Parimutuel Wagering, and Tribal Casinos

Article 15, Section 3 of the *Kansas Constitution* prohibits lotteries and the sale of lottery tickets forever. The prohibition was adopted by convention, approved by voters in 1859, and approved by the Legislature in 1861. Exceptions to the prohibitions were added in 1974 to allow for bingo and bingo games, and in 1986 to allow for the Kansas Lottery (including State-owned casinos, since 2007) and parimutuel wagering on dog and horse races.

**Revenue.** Kansas laws provide for the allocation of Lottery revenues to the State Gaming Revenues Fund (SGRF), State General Fund (SGF), Expanded Lottery Act Revenues Fund (ELARF), and Problem Gambling and Addictions Grant Fund. In fiscal year (FY) 2019, these funds received a total of \$173.6 million.

#### Kansas Regular Lottery

In 1986, Kansas voters approved a constitutional amendment to provide for:

- A State-owned lottery; and
- A sunset provision prohibiting the operation of the State Lottery unless a concurrent resolution authorizing such operation was adopted by the Kansas Legislature. The 2007 Legislature extended the Lottery until 2022 and required a security audit of the Kansas Lottery be completed at least once every three years.

The 1987 Kansas Legislature approved implementing legislation that:

- Created the Kansas Lottery to operate the State Lottery;
- Established a five-member Lottery Commission to oversee operations;
- Required at least 45.0 percent of the money collected from ticket sales to be awarded as prizes and at least 30.0 percent of the money collected to be transferred to the SGRF;

- Exempted lottery tickets from sales tax; and
- Allowed liquor stores, along with other licensed entities, to sell lottery tickets.

Lottery games receipts from the sale of tickets and online games are deposited by the Executive Director of the Kansas Lottery into the Lottery Operating Fund in the State Treasury. Moneys in that fund are used to:

- Support the operation of the Lottery;
- Pay prizes to lottery winners by transfers to the Lottery Prize Payment Fund;
- Provide funding for veterans and individuals suffering from problem gambling, alcoholism, drug abuse, and other addictive behaviors; and
- Provide funding for correctional facilities, juvenile facilities, economic development, and the SGF *via* transfers.

**Vending machines.** The 2018 Legislature passed Sub. for HB 2194, which authorizes the Kansas Lottery to use lottery ticket vending machines (LTVM) to sell lottery tickets and instant bingo vending machines to sell instant bingo tickets.

The bill further provided that the first \$4.0 million in revenue in FY 2019 and \$8.0 million in FY 2020 and each fiscal year thereafter from the sale of lottery tickets through LTVM be used for transfers to the Community Crisis Stabilization Centers Fund and the Clubhouse Model Program Fund of the Kansas Department for Aging and Disability Services. Due to delays in implementation of LTVM, the revenue for FY 2019 was derived from other sources.

The Lottery purchased 544 LTVM in 2 groups of 272 machines. The first group of machines began testing in July 2019. The Lottery was directed to pay for the LTVM from existing Lottery proceeds, thereby reducing the transfer to the SGF from Lottery proceeds by roughly \$5.0 million per year for FY 2019 and FY 2020.

**Veterans Benefit Lottery Game.** The 2003 Legislature passed HB 2400, authorizing the Kansas Lottery to sell an instant ticket game, year-

round, benefiting veterans' programs. Pursuant to KSA 74-8724, net profits are distributed accordingly:

- 40.0 percent for Kansas National Guard educational scholarships and for other purposes directly benefiting members of the Kansas Army and Air National Guard and their families;
- 30.0 percent for the use and benefit of the Kansas Veterans' Home, Kansas Soldiers' Home, and Veterans Cemetery System; and
- 30.0 percent for the Veterans Enhanced Service Delivery Program.

Starting in FY 2019, the Veterans Benefit Lottery was converted from a net profit distribution to a fixed distribution starting at \$1.2 million and increasing by 5.0 percent per year.

### State-owned Casinos

The 2007 Legislature passed SB 66, commonly referred to as the Kansas Expanded Lottery Act (KELA), authorizing a State-owned and operated lottery involving electronic gaming and racetrack gaming facilities. A proviso in KELA stated any action challenging the constitutionality of KELA shall be brought in Shawnee County District Court.

In *State ex rel. Morrison v. Kansas Lottery* 07C-001312, the Shawnee County District Court ruled KELA was constitutional because the State's selection of casino managers and electronic games, monitoring of managers' daily activities, ownership of gaming software, and control over revenue distribution demonstrate ownership and operation of a lottery involving electronic gaming. In *State ex rel. Six v. Kansas Lottery*, 186 P.3d 183 (Kan. 2008), the Kansas Supreme Court upheld the district court's ruling on the constitutionality of KELA.

**Revenue.** In FY 2019, revenue from the Kansas Regular Lottery was transferred from the SGRF in the following manner:

Veterans' Programs	\$ 1,200,000
Economic Development Initiatives Fund	42,364,000
Juvenile Detention Fund	2,496,000
Correctional Institutions Building Fund	4,932,000
Problem Gambling Grant Fund	80,000
State General Fund	23,837,328 <sup>1</sup>
<b>Total</b>	<b>\$ 74,909,328</b>

<sup>1</sup> Kansas statute allows no more than \$50.0 million from online games, ticket sales, and parimutuel wagering revenues can be transferred to the SGRF in any fiscal year. Amounts in excess of \$50.0 million are credited to the SGF, except when otherwise provided by law.

**Where Can State Casinos Be Located in Kansas?**

KELA created gaming zones for expanded gaming.

One casino may be built in each zone:

- Wyandotte County (Northeast Kansas Gaming Zone);
- Crawford and Cherokee counties (Southeast Kansas Gaming Zone);
- Sedgwick and Sumner counties (South Central Kansas Gaming Zone); and
- Ford County (Southwest Kansas Gaming Zone).

**Who Owns and Operates the Casinos?**

The Kansas Lottery Commission has ownership and operational control lottery gaming facilities.

In addition, the Lottery is authorized to enter into contracts with the gaming managers for gaming at the exclusive and nonexclusive (parimutuel locations) gaming zones.

**Who Is Responsible for Regulation?**

The Kansas Racing and Gaming Commission (KRGC) is responsible for oversight and regulation of lottery gaming facility operations.

**What Are the Required Provisions of Any Lottery Gaming Facilities Contract?**

KSA 74-8734 details the requirements of gaming facility contracts. Among other things, the contracts must include an endorsement from local governments in the area of the proposed facility and provisos that place ownership and operational control of the gaming facility with the Kansas Lottery, allow the KRGC complete oversight of operations, and distribute revenues pursuant to statute. The contracts also must include provisions for the payment of a privilege fee and investment in infrastructure. The 2014 Legislature passed HB 2272, which lowered the privilege fee in the Southeast Gaming Zone from \$25.0 million to \$5.5 million and lowered the investment in infrastructure in the Southeast Gaming Zone from \$225.0 million to \$50.0 million.

The Lottery solicits proposals, approves gaming zone contracts, and submits the contracts to the Lottery Gaming Facility Review Board for consideration and determination of the contract for each zone. The Board is responsible for determining which lottery gaming facility management contract best maximizes revenue, encourages tourism, and serves the best interests of Kansas. The KRGC provides administrative support to the Board.

**Revenue.** Pursuant to KSA 74-8768, expanded gaming revenues deposited into the ELARF may only be used for state infrastructure improvements, the University Engineering Initiative Act, and reductions of state debt, the local *ad valorem* tax, and the unfunded actuarial liability of the Kansas Public Employees Retirement System (KPERs). In FY 2019, expenditures and transfers from the ELARF included:

KPERs Bonds Debt Service	\$ 35,701,595
Public Broadcasting Council Bonds	437,375
KPERs School Employer Contributions	40,084,000
Kan-Grow Engineering Fund	10,500,000
State General Fund Transfer	3,743,144
<b>Total</b>	<b>\$ 90,466,114</b>

In addition to funds deposited in the ELARF, \$8.2 million was transferred to the Problem Gambling and Addictions Grant Fund and \$12.3 million was transferred to local cities and counties from expanded gaming in FY 2019.

**Parimutuel Wagering**

In 1986, voters approved a constitutional amendment authorizing the Legislature to permit, regulate, license, and tax the operation of horse and dog racing by bona fide non-profit organizations and to conduct parimutuel wagering. The following year, the Kansas Parimutuel Racing Act was passed:

- Creating the Kansas Racing Commission, later renamed the KRGC, which is authorized to license and regulate all aspects of racing and parimutuel wagering;
- Permitting only non-profit organizations to be licensed and allowing the licenses to be for an exclusive geographic area;

- Creating a formula for taxing the wagering;
- Providing for simulcasting of both interstate and intrastate horse and greyhound races in Kansas and allowing parimutuel wagering on simulcast races in 1992; and
- Providing for the transfer from the State Racing Fund to the SGRF of any moneys in excess of amounts required for operating expenditures.

There are currently no year-round parimutuel racetracks operating in Kansas; therefore, there was no revenue transfer to the SGRF from parimutuel racing.

**Racetrack Gaming Facilities**

***Who Decides Who Receives the Racetrack Gaming Facility Management Contract?***

The Kansas Lottery is responsible for considering and approving proposed racetrack gaming facility management contracts with one or more prospective racetrack gaming facility managers.

The prospective managers must have sufficient financial resources and be current in filing taxes to the state and local governments. The Lottery is required to submit proposed contracts to KRGC for approval or disapproval.

***What Are the Required Provisions of Any Racetrack Gaming Facilities Contract?***

A person who is the manager of a lottery gaming facility is ineligible to be a manager of a racetrack facility in the same gaming zone. KSA 74-8741 details the requirements of racetrack gaming facility contracts. Among other things, the contract must include language that allows the KRGC complete oversight of operations and the distribution of revenue pursuant to statute.

### **What Racetrack Facilities Are Permitted to Have Slot Machines?**

The passage of 2007 SB 66 created gaming zones for casinos and parimutuel racetracks housing electronic gaming machines. Currently, there are no racetrack facilities operating in Kansas. In the future, the Kansas Lottery can negotiate a racetrack gaming facility management contract to place electronic gaming machines at one parimutuel license location in each of the gaming zones, except for the Southwest Gaming Zone and Sedgwick County in the South Central Gaming Zone (voters in these gaming zones did not approve the placement of electronic gaming machines at parimutuel locations).

### **Tribal-State Gaming**

In 1995, the State of Kansas and each of the four resident tribes in Kansas entered into tribal state gaming compacts to allow Class III (casino) gaming at tribal casinos.

In accordance with the federal Indian Gaming Regulatory Act (IGRA), all four of the compacts approved by the Kansas Legislature were forwarded to the Bureau of Indian Affairs and were approved. At the present time, all four resident tribes have opened and are operating casino gaming facilities:

- Kickapoo Tribe opened the Golden Eagle Casino in May 1996;
- Prairie Band Potawatomi Nation opened a temporary facility in October 1996 and then Harrah's Prairie Band Casino in January 1998 (in 2007, Harrah's relinquished operation of the casino to the Prairie Band Potawatomi Nation);
- Sac and Fox Tribe opened the Sac and Fox Casino in February 1997; and
- Iowa Tribe opened a temporary facility in May 1998 and then Casino White Cloud in December 1998.

**Revenue.** Financial information concerning the operation of the four casinos is confidential. Under the existing compacts, the State does not receive revenue from the casinos, except for its oversight activities.

**State Gaming Agency.** The State Gaming Agency (SGA) was created by executive order in August 1995, as required by the tribal-state gaming compacts. Passage of the Tribal Gaming Oversight Act during the 1996 Legislative Session attached the SGA to the KRGC for budget purposes. All management functions of the SGA are administered by the Executive Director of SGA.

The gaming compacts define the relationship between the SGA and the tribes; regulation of the gaming facilities is performed by the tribal gaming commission, but enforcement agents of the SGA also work in the facilities on a daily basis and have free access to all areas of the gaming facility. The compacts also require the SGA to conduct background investigations on all gaming employees, manufacturers of gaming supplies and equipment, and gaming management companies and consultants. The SGA is funded through an assessment process, established by the compacts, to reimburse the State of Kansas for the costs it incurs for regulation of the casinos.

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