

Report of the Special Committee on Federal and State Affairs to the 2019 Kansas Legislature

CHAIRPERSON: Senator Bud Estes

VICE-CHAIRPERSON: Representative John Barker

OTHER MEMBERS: Senators Anthony Hensley and Robert Olson; and Representatives John Carmichael (substituting for Gail Finney), Ron Highland, and Sean Tarwater

STUDY TOPIC

The Committee is to evaluate the impact of the U.S. Supreme Court decision in *Murphy v. NCAA*, which overturned federal sports betting restrictions, on Kansas Law. As part of this study, the Committee could consider recent legislation introduced by the Kansas Legislature and other states.

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Special Committee on Federal and State Affairs

REPORT

Conclusions and Recommendations

The Committee generally agreed the interested parties should attempt to resolve any issues or conflicts identified during the meeting before proposing legislation during the 2019 Session.

Proposed Legislation: None

BACKGROUND

The Legislative Coordinating Council (LCC) directed the Committee to evaluate the impact of the U.S. Supreme Court decision in *Murphy v. NCAA*, which overturned federal sports betting restrictions, on Kansas Law. As part of this study, the Committee was advised to consider recent legislation introduced by the Kansas Legislature and other states.

The Committee was granted two meeting days by the LCC and met on December 4, 2018, at the Statehouse.

COMMITTEE ACTIVITIES

The Committee held an all-day meeting on December 4, 2018. During the meeting, the Committee heard testimony from a variety of interested parties and asked questions of conferees concerning the topic of sports betting. Major topics from that testimony are described below.

Current Legal Barriers in Kansas

Staff provided an overview of current Kansas law, stating existing law prohibits sports wagering. Specifically, the *Kansas Constitution* prohibits gaming with four exceptions: bingo conducted by non-profit organizations; parimutuel horse and dog racing conducted by non-profit organizations; the State-owned and -operated lottery, which includes the Kansas Expanded Lottery Act (KELA) and four State-owned casinos; and raffles conducted

by charitable organizations. [See Kan. Const. Art. 15 §3.] Sports betting is also specifically prohibited in statute. KSA 2018 Supp. 21-6404 provides it is a Class B misdemeanor to bet on sporting events.

Staff stated several steps must be taken to legalize sports wagering in Kansas. To comply with constitutional requirements, an amendment authorizing sports wagering would need to be made or, alternatively, the State would need to own and control sports wagering. The criminal provision would also need to be repealed or amended.

Additionally, federal law prohibited most states from conducting sports wagering through the Professional and Amateur Sports Protection Act (PASPA) before the U.S. Supreme Court struck down its provisions in 2018. See below for more information on that decision.

2018 Supreme Court Decision

In *Murphy v. NCAA*, 138 S.Ct. 1461 (2018), the U.S. Supreme Court struck down a 1992 law prohibiting states from allowing betting on sporting events.

The federal law, known as PASPA (28 USC §§ 3701-3704), had prohibited all sports lotteries with a few very narrow exceptions. Several states had some form of sports wagering exempted from the federal law; however, Nevada was the only one of those states conducting sports wagering in a meaningful way between 1992 and 2018.

In 2011, New Jersey passed a law authorizing sports betting. This law was struck down by the courts as a violation of PASPA as part of a challenge brought by five professional sports leagues. New Jersey later repealed the state law expressly authorizing sports wagering, but did not replace it with language expressly prohibiting sports betting. Again, the sports leagues sued New Jersey, claiming by not expressly prohibiting sports wagering, the state law effectively authorized sports gambling by implication. In 2018, the U.S. Supreme Court issued a ruling striking down PASPA on the grounds the federal law prohibited the modification or repeal of state law prohibitions and unlawfully regulated the actions of state legislatures.

Since the Supreme Court struck down PASPA, several states and the District of Columbia have passed laws authorizing sports wagering.

2018 Kansas Sports Betting Legislation

Staff provided an overview of relevant legislation from the 2018 Legislative Session, during which the Kansas Legislature considered a number of measures related to the legalization of sports wagering: SB 455, HB 2533, HB 2792, and HB 2793. All four of these bills died in Committee at the end of the 2018 Session. Hearings were held on two of the bills (SB 455 and HB 2792) and an informational-only hearing was held on one bill (HB 2792).

SB 455 and HB 2792

SB 455 and HB 2792 would have created the Kansas Sports Wagering Act (Act). Among other things, the Act would have authorized the Kansas Lottery to offer sports wagering:

- In-person at a facility operated by the Kansas Lottery;
- Through lottery retailers contracting with the Kansas Lottery;
- Over the Internet, including websites and mobile device applications; and
- Through a licensed interactive sports wagering platform.

All sports wagering would have been under the ultimate control of the Kansas Lottery. Counties would not have been allowed to be exempt from or effect changes in the Act.

The bills would have created two new crimes (severity level 5 nonperson felonies): misuse of nonpublic sports information and sports bribery.

The Act would have prohibited sports wagering for:

- Persons under 21 years old;
- Operators, as well as their directors, officers, owners, employees, or relatives of those individuals living in the same household;
- Athletes, coaches, referees, team owners, employees of a sports governing body or its member teams, and player and referee union personnel, who could not place wagers on any sporting event overseen by that governing body; and
- Any person with access to nonpublic confidential information held by the operator from placing wagers with the operator.

A sports governing body would have been allowed to:

- Notify the Kansas Racing and Gaming Commission (KRGCC) it desires to restrict, limit, or exclude wagering on its sporting event; and
- Bring a civil case to recover damages or other equitable relief against any person who knowingly engages in, facilitates, or conceals conduct related to sports bribery.

Sports wagering operators would have been required to:

- Cooperate with investigations by the KRGCC, sports governing bodies, or law enforcement agencies, including:

- Immediately reporting to the KRGC any criminal or disciplinary proceedings, such as:
 - Abnormal wagering activity;
 - Potential breaches of the sports governing body’s rules and codes of conduct; or
 - Any other conduct that corrupts a betting outcome of a sporting event and suspicious or illegal wagering activities; and
- Remitting a sports betting right and integrity fee to each sports governing body overseeing events wagers that were placed during the preceding quarter.

Under the Act, no less than 6.75 percent of the sports wagering revenues would have been distributed to the Expanded Lottery Act Revenues Fund.

HB 2793

HB 2793 contained many of the same provisions as SB 455 and HB 2792, but amended the existing KELA, rather than creating a separate sports wagering act.

This bill did not include a sports betting right and integrity fee.

HB 2533

HB 2533 would have required any sports betting in Kansas to be conducted solely on the premises of a racetrack gaming facility and be managed and operated by one or more racetrack gaming facility managers.

Potential Considerations for Future Legislation

Other States

An Ohio senator and President of the National Council of Legislators from Gaming States (NCLGS) appeared before the Committee and spoke about Ohio’s experiences with sports betting as well as some considerations Kansas legislators may consider if they decide to proceed with sports betting legislation.

The Senator stated legalizing sports betting could provide revenue for the State to put towards preventing illegal sports betting and suggested states legalizing sports betting consider the following:

- Consumer protection, including equal access to information and ensuring winners are paid;
- Anti-money laundering, by ensuring there is a system in place that prevents individuals from using sports wagering as a way to cover up illegal activities;
- Preventing match fixing, by protecting athletes, sport officials, team owners, and all those involved in sport contests from harm, threats, and improper influence;
- Addressing problem gambling early; and
- Tax policy, to ensure individuals do not simply continue using the illegal sports betting channels previously available to avoid taxes.

The Senator also urged the Committee to consider:

- Who would be authorized to accept sports bets, specifically mentioning casinos, parimutuel racing sites, resort facilities, and bars and taverns;
- What types of sports bets would be allowed; for example, allowing wagering only on professional sports or including amateur sports and whether to allow “in-play” or parlay wagers;
- Where sports betting would be allowed to occur and whether mobile sports betting would be authorized;
- When sports betting would be implemented and whether it would become effective all at once or in phases; and

- How sports betting would be managed, considering the use of a central portal for all sports wagering information and multi-state compacts to allow sharing of the information collected in the central portal among states. The Senator suggested this approach would address many of the concerns associated with consumer protection, money laundering, match fixing, problem gambling, and tax collection.

The Senator concluded his remarks by stressing the importance of carefully crafting any legislation related to legalizing sports betting in Kansas.

The Senator and the President and Chief Executive Officer (CEO) of Spectrum Gaming Capital, responding to questions from the Committee, stated the American Gaming Association estimates \$150.0 billion is currently being illegally wagered nationwide. Based on Kansas' population and this figure, legalizing sports wagering could mean \$60.0 million or more would be subject to any state taxes imposed on sports wagering. Mobile sports wagering increases the estimates. An accurate estimate would require a deeper and more specific analysis of the State's goals and regulations concerning sports wagering.

The Senator and the CEO stated sports books are a small percentage of all wagers made and will likely not negatively impact other casinos or gaming facilities. The Senator informed the Committee because of sports betting's small margin, tax rates can quickly make this type of gaming unprofitable. He stated the tax rates vary from state to state and the industry believes the maximum tax rate to effectively compete against illegal gaming is 10.0 percent or below.

The CEO urged the Committee to look to other states when crafting sports betting legislation. He stated Delaware, Mississippi, Nevada, New Jersey, New Mexico, New York, Pennsylvania, Rhode Island, and West Virginia have all legalized sports betting, while 18 other states have proposed legislation. The Senator stated Delaware requires the State to "own" sports betting conducted in the state.

Kansas Entities

Lottery

The Chief Counsel for the Kansas Lottery presented information on what models would be workable to establish sports wagering under Kansas law. He emphasized the need for intentional action concerning any attempt to legalize sports wagering to ensure flexibility in the implementation of any new law to ensure the State's interests and needs are prioritized. The Chief Counsel also stated, while the State may receive some revenue if sports wagering was legalized, any estimates must be reasonable in light of the fact sports betting is a small margin business. He also expressed concerns related to integrity fees and requiring only official data from the leagues be used in conducting sports wagering. The Chief Counsel informed the Committee the Kansas Lottery included a future option for sports wagering in their recent request for proposal to replace the Kansas Lottery's central computer system.

Looking at Kansas specifically, the Chief Counsel noted, while the *Kansas Constitution* would require sports wagering to be State-owned and -operated, the specifics of implementing such a program could be determined by the Legislature. He stated the State would likely need ultimate control of what types of bets were authorized, what sporting events wagers were allowed to be placed on, setting the wagering line, and the ability to cancel wagers or stop betting completely.

The Chief Counsel provided four suggestions for a successful sports wagering platform in Kansas:

- Be mindful of the interested parties:
 - Sports wagering players—incentivize players away from illegal markets, consider how mobile betting would work to ensure compliance with the law;
 - Four State-owned casinos—provide each the opportunity to be involved, even if they choose not to participate, without requiring casinos be the only authorized locations of placing sports wagers; and

- Kansas Lottery retailers—most will not want to participate in sports wagering, but could potentially look at sports wagering kiosks, much like the recently authorized lottery ticket vending machines;
- Ensure sports wagering is safe and secure:
 - Ensure players are in Kansas and over 21 years old; and
 - The Sports Wagering Integrity Monitoring Association (SWIMA) is a new, voluntary organization that will help ensure integrity of sports matches by sharing sports betting data across operators and states;
- Address problem gambling:
 - Problem Gambling and Addictions Grant Fund; and
 - Voluntary self-exclusion program; and
- Address illegal wagering:
 - Law enforcement resources, including:
 - Creating statutory language specifying sports wagering outside of State-owned and -operated platforms is illegal;
 - Increasing criminal penalties; and
 - Creating education programs and allowing anonymous reporting of attempted improper influencing of outcomes or players.

State-owned casinos

A representative of Kansas Entertainment, LLC, spoke about the need to legalize sports betting to protect consumers and create benefits for the State now that the federal ban has been lifted. He expressed the opinion that to achieve these goals, licensing and regulation of sports wagering should be within the oversight of the Kansas State Lottery Commission. He also stated the opinion that the best approach to sports wagering would be to allow the Kansas Lottery to contract with the entities currently authorized to conduct gaming under state law: the state casinos and parimutuel racetracks. The representative informed the Committee Kansas Entertainment supported the use of in-person and geo-fenced mobile wagering through these previously

licensed, highly regulated facilities because it would:

- Ensure persons seeking to place wagers met the legal qualifications to do so; and
- Maximize economic benefits to the State and local communities by growing traditional gaming, which would increase the tax revenue to the State and local economies.

The representative advised against the State paying royalty fees to the professional sports leagues, stating it would be a bad policy and should be dealt with in private contracts rather than statutes. He concluded his remarks by urging the Committee to consider legislation passed by West Virginia, which included regulation by the state's Lottery Commission and allowed the state's casinos to offer sports betting in person and apply for a license to operate an interactive sports wagering platform that includes mobile betting run through the casinos. The West Virginia legislation did not include an integrity fee.

Association of Community Mental Health Centers

The Association of Community Mental Health Centers provided written testimony stating any legislation authorizing sports betting should contain additional funding for addiction treatment.

Sports Organizations

A representative of Major League Baseball, the National Basketball Association, and the PGA Tour appeared before the Committee. The principles he identified as necessary for a sports betting market in Kansas are as follows:

- Integrity provisions:
 - Require operators to provide real time betting data to regulators and leagues for monitoring purposes;
- Reasonable wagering restrictions:

- Prohibition on bets with high risk of manipulation or corruption (*i.e.*, a bet based solely on individual conduct);
- Require operators use official league data:
 - Decrease risk of inaccurate or conflicting results;
- Mobile betting:
 - Increase competitiveness with illegal sports betting market in attempt to shut it down and capture more revenue for the State; and
- League compensation:
 - Royalty fee of 0.25 percent on the amount bet on contests to be paid to the sports leagues;
 - Precedent from U.S. horse racing and international sports betting; and
 - Compensates sports leagues for their significant investment, incentive for the sports leagues to grow sports betting market.

A representative of Kansas Star Casino, Boot Hill Casino, and Kansas Crossing Casino appeared before the Committee and expressed support for legalizing sports wagering conducted through the State-owned and -operated casinos and regulated by the Kansas Lottery and the KRGC.

He suggested any taxes on these Kansas Lottery Gaming facilities conducting sports betting match the 6.75 percent established in Nevada, so the legal sports betting market could compete against the illegal market. He also stated certain provisions requested by the sports leagues would make it difficult for casinos to manage sports wagering and compete with the illegal market, including 1.0 percent integrity fees, requiring the use of only league-provided data, and including a provision in law allowing only the leagues to determine which bets can be made.

The representative explained the casinos agreed with the leagues on the need for a mobile sports wagering marketplace to compete with the existing illegal websites. He cautioned these mobile apps should be subject to the oversight of the KRGC and Kansas Lottery like all other gaming is under existing law. Procedures put in place to verify customers' identity and legally place a sports wager could include: cross checks against credit history, banking information, driver's licenses and government-issued identification, and a self-exclusion list when creating a wagering account.

He concluded his remarks by stating sports wagering apps could help the casinos grow their businesses, which would ultimately increase revenues for the State.

DraftKings

Written testimony from a representative of DraftKings urged the Committee to consider low taxes, low fees, the use of mobile apps, and allowing multiple operators to provide sports wagering services to Kansas.

Kansas City Royals

Written testimony from the Kansas City Royals presented the following suggestions for legalizing sports betting in Kansas: the ability for the leagues to opt-out of problematic forms of betting; real-time recordkeeping; the use of official league data; combating false or deceptive advertising; age verification of bettors; mandated cooperation with Major League Baseball investigations; barring athletes, coaches, and officials from betting on their own games; real-time data sharing; and requiring casinos share costs associated with integrity monitoring.

CONCLUSIONS AND RECOMMENDATIONS

The Committee generally agreed the interested parties should attempt to resolve any issues or conflicts identified during the meeting before proposing legislation during the 2019 Session.