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TESTIMONY

TO: The Honorable Mark Hutton, Chair
And Members of the House Commerce, Labor and Economic Development Committee

FROM: Whitney Damron
On behalf of Kansas Entertainment, LLC

RE: The Effects of Horse and Greyhound Tracks on Kansas Commerce

DATE: March 2, 2016

Good afternoon Chairman Hutton and Members of the Committee.

Kansas Entertainment, LLC appreciates the opportunity to present testimony to the Committee on the potential ramifications of expanding gaming in Kansas as proposed by Mr. Phil Ruffin and pari-mutuel interests in Kansas.

By way of information, Kansas Entertainment, LLC is a joint venture partnership of Penn Hollywood Kansas, Inc. and Kansas Speedway Development Corporation - the development group selected by the State of Kansas in 2009 to develop a destination casino for the Northeast Kansas Gaming Zone.

As committee members are aware, there are at least two bills in the legislative process that would dramatically reduce the taxes paid by a pari-mutuel slots-at-track facility, transferring a substantial portion of revenues currently earmarked for the State into the track owner's account.

In 2007, two individuals owned the three pari-mutuel tracks in Kansas and both had significant input into SB 66 and strongly supported its passage, so much so that a ceremonial signing ceremony was held at The Woodlands with Governor Kathleen Sebelius and the pari-mutuel industry later that year. Since that time, Mr. Bill Grace, the former owner of The Woodlands has passed away and it is reported that Mr. Phil Ruffin now owns all three of the state's major pari-mutuel tracks in Kansas (The Woodlands, Wichita Greyhound Park and Camptown Greyhound Park).

During our discussion of gaming bills with members of the Kansas Legislature, we have often heard the tracks must have the legislation they promote in order to open. To be clear, Mr. Ruffin has the legal authority to apply for a gaming license for two of his properties under current law at tax rates that are as good as or better than that found in other slots-at-track states.

Under SB 66, the track owner receives 25% of the slot revenue and an additional 15% for expenses, for a total of 40% of the slot revenues. There currently are several states with commercial slots-at-track facilities with broad-ranging owner's share of gaming revenues ranging from New York at 35%, 44% in DE, 45% in PA and 47.11% in WV. Mr. Ruffin's proposed revenue split with the State of Kansas would be the most generous in the country with the owner holding 78% of revenues – nearly double the owner's hold of many other racing and gaming states. Given the competitive cost of labor, lower transportation costs and availability of feed stock and veterinary services in our state, the owner's percentage in Kansas is extraordinarily fair and one that was agreed upon by the track owners.

A question we are asked is, "Why does the casino care what the tax rate is at the pari-mutuel tracks?" The answer lies in the well-thought logic behind SB 66 and the State's interest in soliciting the best, most competitive proposals for a destination casino in four market areas.

Casino developers engaged in a highly-competitive process with multiple applicants in every gaming zone. Criteria used by the Lottery Gaming Facility Review Board to evaluate proposals included:

- Size of the proposed facility;
- Geographic area in which the facility is to be located;
- Facility's location as a tourist and entertainment destination;
- Estimated number of tourists that would be attracted to the proposed facility;
- Number and type of lottery facility games to be operated at the facility; and,
- Agreements related to ancillary lottery gaming facility operations.

What are the criteria in SB 66 for licensing a slots-at-track proposal? There are none. Track owners were guaranteed their license for a slot parlor merely for owning a pari-mutuel track with no requirements for investment in infrastructure, appeal to tourists of investment in ancillary operations. Giving the pari-mutuel facilities the same tax rate as the destination casinos fails to recognize the cost of the ancillary investments the casino managers were required to make in order to win their respective licenses.

In order to insure the State received the best possible proposals from its casino management applicants, SB 66 included language to prohibit a further expansion of gaming in Kansas. The contracts with the three licensed casinos also contain provisions that limit the state's ability to expand gaming further than that allowed under SB 66. Should the state violate this provision, the remedy available to the casino operators is a return of their privilege fee with ten percent interest from the time the fee was paid.

The Kansas Division of the Budget has cited this issue in a number of fiscal notes on gaming bills introduced during the past five years. Posted below is an excerpt from the fiscal note for HB 2709 from the 2014 session:

...The Kansas Lottery indicates that the state is prohibited from designating additional areas of the estate where gaming facilities are authorized until July 1, 2032. Allowing 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 the Kansas Expanded Lottery Act. If it is determined that HB 2709 violates this provision, the state would be required to refund privilege fees from already selected gaming facility managers plus a compounded annual interest rate of 10.0 percent. Currently the state has received \$55.5 million in privilege fees from three gaming facility managers and it is estimated that interest payments would be at least \$23,650,000 presumably to be paid from the State General Fund.

Kansas Entertainment, LLC has calculated this potential penalty through December, 2015 and the total amount due to the three licensed and operating casino operators for a breach of contract under this provision would be \$98,961,605. This amount does not include other remedies available in these contracts, which could include an action for “specific performance or other equitable relief against the Kansas Lottery or the State of Kansas...” It also does not include the privilege fees recently paid by the newly awarded SE Kansas casino operator.

The contracts between the State and the casino managers specifically prohibit a contract with “more than four (4) lottery gaming facilities or similar facilities in the four gaming zones outlined in the Kansas Expanded Lottery Act with one lottery gaming facility in each gaming zone.”

Kansas Entertainment, LLC believes amending the Kansas Expanded Lottery Act to provide pari-mutuel track owners with what will be a lower tax rate as provided under the Act for the casino licensees and provides a statutory opportunity for the tracks to cease pari-mutuel racing altogether effectively place two casinos in the Northeast Gaming Zone and would be a breach of its agreement with the State of Kansas. Privilege Fee principle and interest due under a breach to Hollywood Casino as of December, 2015 would be \$45,818,522., in addition to any other remedies available under its agreement with the State. We also believe that our contract with the Unified Government is also at risk and that puts at risk an additional \$4 million we pay annually to the Unified Government, the school districts, Wyandotte County charities and other community services throughout the county.

In addition to the risks posed to the state’s revenues, locally, Wyandotte County stands to lose between 50 and 70 jobs at Hollywood Casino. This equates to \$1.4 to \$1.6 million in lost payroll wages and taxes. It also means a reduction of \$6.7 to \$7.7 million in annual reductions in direct spending and tax revenue to the Kansas economy and \$4.7 to \$5.4 million in annual reductions in state and local gaming tax revenues. Further, we estimate that we will spend more than \$630,000 less with local vendors.

Hollywood Casino’s Partnership with Kansas Speedway.

In its application for a casino management license, Kansas Speedway contracted to utilize its best efforts to attract a second NASCAR Cup Race to Kansas Speedway. When Kansas Entertainment, LLC was awarded the gaming license for the Northeast Gaming Zone, NASCAR did approve a second race for Kansas Speedway starting in 2011.

If there is a substantive change in the State’s gaming law, Kansas Speedway will reconsider its motorsports strategy in Kansas City, Kansas. Read into that what you will, but suffice to say, there are major metro markets much larger than Kansas City with NASCAR events that are very interested in another race at their facilities plus markets without NASCAR events.

Events at Kansas Speedway generate approximately \$300 million annually in economic development activity.

Promises Made; Promises Kept.

Kansas Entertainment, LLC made a \$300+ million promise to the State of Kansas and the citizens of Wyandotte County. We have lived up to those commitments by creating a first class, destination casino, the creation of more than 800 jobs and the generation of millions of dollars for the State, Wyandotte County and various charitable organizations in our state.

Kansas Entertainment, LLC continues to be a strong community partner and continues to seek ways to add to its investment in Wyandotte County. When Hollywood Casino was first constructed, our marketing indicated the area would not support a casino hotel without having a significant, detrimental impact on area lodging facilities. Kansas Entertainment, LLC evaluates the market periodically and would move forward on a hotel if feasible. Under our agreement with the Unified Government of Wyandotte County, Kansas Entertainment pays the county 1 percent of its gaming revenues in lieu of constructing a hotel on site. This equates to roughly \$1.4 million a year in additional payments to the Unified Government. Kansas Entertainment is currently working to bring additional features to their property, but these kinds of investments are dependent upon a stable regulatory and taxing framework.

Unfortunately not everyone involved with the Kansas Expanded Lottery Act has kept their promises.

As previously stated, Mr. Ruffin has the legal ability to open his pari-mutuel tracks in Kansas City, Kansas and Frontenac under the law he helped write and support. The voters of Sedgwick County decided they didn't want a slot parlor in their community and rejected the ballot initiative that would have allowed for the placement of slot machines at Wichita Greyhound Park.

Thank you for your consideration to our position on proposed changes to the Kansas Expanded Lottery Act.

WBD