

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Arlen Siegfroid at 1:30 P.M. on March 9, 2007 in Room 313-S of the Capitol.

All members were present.

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department  
Dennis Hodgins, Kansas Legislative Research Department  
Mike Heim, Revisor of Statutes Office  
Carol Doel, Committee Assistant

Conferees:

Richard Van Petten, Executive Director of the Kansas Lottery  
Richard Cram, Director of Policy & Research Kansas Department of Revenue  
John McElroy, Executive Director Kansas State Gaming Agency  
Stephen Martino, Executive Director, Kansas Racing and Gaming Commission

Chairman Siegfroid opened the floor for bill introductions. There were none.

The Chair introduced Kathie Sparks of Legislative Research who presented a history of gaming in Kansas. Kathie's presentation covered the Kansas Lottery, parimutuel wagering, charitable bingo, and Indian casino gaming. Her information covered the powers and duties, conflicts of interest, prohibited acts and penalties, restrictions and suspension of license. ([Attachment 1](#))

Mr. Ed Van Petten, Executive Director of the Kansas Lottery, came before the committee with the history of gaming in Kansas. Mr. Van Petten related that gaming has been a public issue in Kansas since the state's founding. In 1859 the framers of the Kansas Constitution made it clear that they did not want gaming in Kansas. For many years, the courts interpreted the ban on lotteries broadly to prohibit nearly all forms of gaming. In 1971 the Legislature again attempted to legalize gaming without a constitutional amendment when it created, by statute, a "bingo" exception to the legal definition of gambling. In 1986 voters passed two constitutional amendments which allowed the Legislature to permit, regulate, license, and tax parimutuel wagering in horse and dog racing facilities. The second authorized the Legislature to provide for a state-owned and operated lottery. In 1987 Legislature passed legislation that established the Kansas Racing and Gaming Commission. Mr. Van Petten stated that the Kansas Lottery Act was passed during the 1987 session of the Kansas Legislature. ([Attachment 2](#))

Steve Martino, Executive Director, Kansas Racing and Gaming Commission presented information to the Committee on parimutuel wagering. The Kansas City track has both horse and dog racing while Wichita has only dog racing. Both tracks began operation in September 1989. The Kansas Racing and Gaming Commission exercises regulatory and enforcement responsibilities over licensees that conduct horse or greyhound races. ([Attachment 3](#))

John McElroy, Executive Director, Kansas State Gaming Agency appeared before the committee to describe the budget and activities of the agency. In 1995, the Iowa Tribe of Kansas and Nebraska, the Prairie Band Potawatomi Nation of Kansas, the Kickapoo Tribe, and the Sac and Fox Nation of Missouri in Kansas and Nebraska each signed a Tribal State Compact with the State of Kansas. By 1998, each had opened its own casino in Kansas. The Kansas State Gaming Agency is responsible for conducting background investigations on all employees connected with the gaming operations at each casino. ([Attachment 4](#))

Richard Cram, Director of Policy & Research, Kansas Department of Revenue, presented the history of bingo stating that in 1974 the Kansas Legislature overwhelmingly passed Senate Concurrent Resolution No. 72 authorizing a vote of the people on the issue of whether to amend the Kansas Constitution to permit bingo for charitable purposes, and it was approved. In 1975 the Legislature passed **Senate Bill 116**, which defined bingo and adopted restrictions on how, when and where bingo games could be conducted. The Legislature passed **House Bill 2013** in the 2000 session which made major changes to the bingo statutes. Mr. Cram also spoke on the revenue and the enforcement. ([Attachment 5](#))

With no other business before the committee, the Chairman adjourned the meeting.

CONTINUATION SHEET

MINUTES OF THE House Federal and State Affairs Committee at 1:30 P.M. on March 8, 2007 in Room 313-S of the Capitol.

# KANSAS LEGISLATIVE RESEARCH DEPARTMENT

545N-Statehouse, 300 SW 10<sup>th</sup> Ave.  
Topeka, Kansas 66612-1504  
(785) 296-3181 ♦ FAX (785) 296-3824

kslegres@klrd.state.ks.us

<http://www.kslegislature.org/klrd>

March 8, 2007

## A History of Gaming in Kansas

### Overview

Kansas statutes provide for the collection and allocation of revenue from three types of gambling: the Kansas Lottery, parimutuel wagering on dog and horse races, and charitable bingo. In addition, the state is reimbursed for certain expenditures made under provisions of the state-tribal gaming compacts which regulate Indian casino gaming.

### Kansas Lottery

**Lottery History.** In 1986, a constitutional amendment to provide for a state-owned lottery was approved by the voters of Kansas by a vote of 515,893 to 291,411. The 1987 Kansas Legislature approved implementing legislation which created a new state agency, the Kansas Lottery, to operate the state lottery. The legislation also established a five-member Lottery Commission to oversee the operation of the lottery; required that at least 45 percent of the money collected from ticket sales be awarded as prizes and at least 30 percent of the money collected be transferred to the State Gaming Revenues Fund (SGRF); exempted lottery tickets from the sales tax; and allowed liquor stores to sell lottery tickets.

The constitutional amendment also contained a sunset provision which would have prohibited operation of the state lottery in 1990 unless a concurrent resolution authorizing such operation was adopted by both chambers of the Kansas Legislature during the 1990 Session. 1990 SCR 1646 was adopted to continue the operation of the lottery. The lottery has been subject to sunset in 1992, 1996, and 2002. In each instance, the Kansas Legislature addressed the issue of continuing the lottery. The most recent extension occurred when the 2001 Legislature extended the lottery until 2008. The bill also required that a security audit of the Kansas Lottery be conducted at least once every three years; responsibility for these security audits was placed under the Legislative Post Audit Act. The 2001 legislation also placed the following limitations and restrictions on the operation of the Kansas Lottery:

- The Kansas Lottery cannot conduct games on lottery machines as defined in the bill;
- The amount of time between Keno games must be not less than four minutes;
- No retail sales of lottery tickets by electronic mail, telephone, or the Internet are permitted;
- The lottery may not engage in the unsolicited advertisement or promotion of any lottery by electronic mail or telephone; and
- All advertising and marketing practices of the Kansas Lottery will have to meet or exceed the standards of the North American Association of State and Provincial Lotteries.

During the 2003 Session, HB 2400 was enacted that permitted a new Kansas Lottery instant ticket game, designated as a veterans benefit game, to be conducted. Net profits from this game are dedicated for National Guard scholarship assistance and programs of the Kansas Commission on Veterans Affairs.

HB 2400 directed net profits as follows: 50 percent to the State Board of Regents to be used for Kansas National Guard Educational Assistance Act scholarship and the other 50 percent for either the Soldiers' Home or Veterans' Home as determined by the Executive Director of the Kansas Commission on Veterans Affairs, to be used for operating expenditures or capital improvements for the two homes and for the state Veterans Cemetery System. The bill limited the new game to the periods between May 1 and November 30, 2003 and 2004. During the 2004 Legislative Session, HB 2899 continued the special veterans benefits games conducted by the Kansas Lottery beyond 2004, clarified that the distribution of net profits from those games and the intended purposes for which funds may be used, subject to appropriations, and provided that the games will run only for six months in a calendar year. Prior law permitted instant ticket games, designated as a veterans benefit game, to be conducted by the Kansas Lottery. Net profits from these games are dedicated for National Guard scholarship assistance and the Kansas Commission on Veterans Affairs. The bill revised the language to direct 50 percent of the net profits to be used for Kansas National Guard Educational Assistance Act and to the extent that moneys are available, for other purposes of direct benefit to members of the National Guard and their families, subject to appropriation by the Legislature. The other 50 percent is directed for operating expenditures and capital improvements for the Kansas Veterans' Home, the Kansas Soldiers' Home and the state Veterans Cemetery System, and for other purposes as provided in appropriations acts. The bill also continued the special games beyond calendar year 2004 when they were scheduled to terminate.

**Lottery Revenue.** Receipts from the sale of lottery tickets are deposited by the Executive Director of the Kansas Lottery in the Lottery Operating Fund in the state treasury. Statutorily, money in that fund is used to support the operation of the lottery. Money may be transferred to the prize fund to pay prizes to lottery winners. Money also may be transferred to the SGRF to provide funding for problem gamblers, correctional facilities, juvenile facilities, and economic development. A minimum of 45 percent of net monthly receipts from the sale of lottery tickets must be awarded as prizes, and at least 30 percent of net monthly receipts must be credited to the SGRF. Past legislatures have frequently transferred additional amounts to the SGRF.

Lottery revenues have been used for various purposes over the years. Most notably, transfers of lottery revenue were made to support statewide reappraisal in the 1980's. For a five-year period, transfers were made from the Lottery Operating Fund to finance the Kansas Bureau of Investigation's gaming investigation unit. Some state revenue from both the State Lottery and parimutuel wagering is transferred to the SGRF. No more than \$50 million can be credited to the SGRF in any fiscal year; amounts in excess of \$50 million are transferred to the State General Fund.

The 2000 Legislature modified the transfer slightly by mandating a transfer to the new Problem Gambling Grant Fund. Beginning in FY 2001, the amounts to be transferred are as follows:

- Economic Development Initiatives Fund—\$42,432,000;
- Correctional Institutions Building Fund—\$4,992,000;
- Juvenile Detention Facilities Fund—\$2,496,000; and
- Problem Gambling Grant Fund—\$80,000.

Appropriations from gaming revenues in support of education-related programs are made from the Economic Development Initiatives Fund (EDIF) and lottery revenues. Actual for FY 2006 expenditures in support of education are summarized below:

- State Board of Regents—\$15.7 million;
- Kansas Technology Enterprise Corporation—\$6.9 million; and
- Kansas National Guard Educational Assistance Program—\$356,000 (Veterans Benefit Game).

The approved FY 2007 budget for the Kansas Lottery includes 87.0 FTE positions and expenditures of \$145.5 million, which is composed of \$22.3 million for operating the lottery and \$123.2 million for prizes and retailer commissions.

### **Lottery Powers and Duties**

#### **K.S.A. 74-8706. Executive director, duties.**

The executive director shall have the duty to:

- (a) Make and keep books and records which accurately and fairly reflect each day's transactions, including but not limited to: The distribution of tickets and shares to lottery retailers; receipt of funds, prize claims, prize disbursements made by the Kansas lottery or otherwise or prizes liable to be paid by the Kansas lottery; expenses and other financial transactions of the Kansas lottery necessary so as to permit daily accountability.
- (b) Make quarterly and annual financial reports to the commission, the governor, the state treasurer and the legislature. Such reports shall be based upon generally accepted accounting principles and include a full and complete statement of lottery revenues, prize disbursements, expenses, net revenues and other financial transactions for the reporting period.
- (c) Make available for inspection by the commission, upon request, all books, records, files and other information and documents of the Kansas lottery.
- (d) Engage, in accordance with K.S.A. 74-8705, and amendments thereto, an independent firm experienced in marketing research and analysis to conduct periodically an evaluation to determine the effectiveness of marketing, promotion and public information programs used by the Kansas lottery and make recommendations which will enhance such programs.
- (e) Prepare and submit budgets and proposals for the operation of the Kansas lottery.
- (f) Operate the Kansas lottery in such a manner that, after the initial state appropriation, it is self-sustaining and self-funded.
- (g) Make available at the point of sale of any lottery tickets or shares a list of the odds of winning such game, based upon the number of tickets or shares projected to be sold.
- (h) Make provision for the timely and efficient transfer of funds due from lottery retailers to the lottery operating fund, including the use of electronic funds transfers whenever possible.

**K.S.A. 74-8716. Conflicts of interests.**

(a) It is unlawful for the executive director, a member of the commission or any employee of the Kansas lottery, or any person residing in the household thereof to:

(1) Have, either directly or indirectly, an interest in a business knowing that such business contracts with the Kansas lottery for a major procurement, whether such interest is as a natural person, partner, member of an association, stockholder or director or officer of a corporation; or

(2) accept or agree to accept any economic opportunity, gift, loan, gratuity, special discount, favor or service, or hospitality other than food and beverages, having an aggregate value of \$ 20 or more in any calendar year from a person knowing that such person (A) contracts or seeks to contract with the state to supply gaming equipment, materials, tickets or consulting services for use in the lottery or (B) is a lottery retailer or an applicant for lottery retailer.

(b) It is unlawful for a lottery retailer, an applicant for lottery retailer or a person who contracts or seeks to contract with the state to supply gaming equipment, materials, tickets or consulting services for use in the lottery to offer, pay, give or make any economic opportunity, gift, loan, gratuity, special discount, favor or service, or hospitality other than food and beverages, having an aggregate value of \$ 20 or more in any calendar year to a person, knowing such person is the executive director, a member of the commission or an employee of the Kansas lottery, or a person residing in the household thereof.

(c) Violation of this section is a class A misdemeanor.

(d) If the executive director, a member of the commission or an employee of the Kansas lottery, or any person residing in the household thereof, is convicted of an act described by this section, such executive director, member or employee shall be removed from office or employment with the Kansas lottery.

(e) In addition to the provisions of this section, all other provisions of law relating to conflicts of interest of state employees shall apply to the members of the commission and employees of the Kansas lottery.

**K.S.A. 74-8718. Unlawful sale of lottery ticket; penalty.**

(a) It is unlawful:

(1) To sell a lottery ticket or share at a price other than that fixed by rules and regulations adopted pursuant to this act;

(2) for any person other than a lottery retailer authorized by the Kansas lottery to sell or resell any lottery ticket or share;

(3) to sell a lottery ticket or share to any person, knowing such person to be under 18 years of age; or

(4) to sell a lottery ticket at retail by electronic mail, the internet or telephone.

(b) (1) Violation of this section is a class A nonperson misdemeanor upon conviction for a first offense; and

(2) violation of this section is a severity level 9, nonperson felony upon conviction for a second or subsequent offense.

**K.S.A. 74-8719. Unlawful purchase of lottery ticket; penalty.**

(a) It is unlawful for any person to purchase a lottery ticket or share, or to share in the lottery winnings of a person, knowing that such person is:

(1) The executive director, a member of the commission or an employee of the Kansas lottery;

(2) an officer or employee of a vendor contracting with the Kansas lottery to supply gaming equipment or tickets to the Kansas lottery for use in the operation of any lottery conducted pursuant to this act;

(3) a spouse, child, stepchild, brother, stepbrother, sister, stepsister, parent or stepparent of a person described by subsection (a)(1) or (2); or

(4) a person who resides in the same household as any person described by subsection (a)(1) or (2).

(b) (1) Violation of subsection (a) is a class A nonperson misdemeanor upon conviction for a first offense.

(2) Violation of subsection (a) is a severity level 9, nonperson felony upon conviction for a second or subsequent offense.

(c) Notwithstanding subsection (a), the executive director may authorize in writing any employee of the Kansas lottery and any employee of a lottery vendor to purchase a lottery ticket for the purposes of verifying the proper operation of the state lottery with respect to security, systems operation and lottery retailer contract compliance. Any prize awarded as a result of such ticket purchase shall become the property of the Kansas lottery and be added to the prize pools of subsequent lottery games.

(d) Certain classes of persons who, because of the unique nature of the supplies or services they provide for use directly in the operation of a lottery pursuant to this act, may be prohibited, in accordance with rules and regulations adopted by the commission, from participating in any lottery in which such supplies or services are used.

(e) Nothing in this section shall prohibit lottery retailers or their employees from purchasing lottery tickets and shares or from being paid a prize of a winning ticket or share.

(f) Each person who purchases a lottery ticket or share thereby agrees to be bound by rules and regulations adopted by the commission and by the provisions of this act.

## Parimutuel Wagering

**Parimutuel Wagering History.** The voters of Kansas approved a constitutional amendment in 1986 by a vote of 483,944 to 324,123 to authorize the Legislature to permit, regulate, license, and tax the operation of horse and dog racing. The following year the Legislature enacted implementing legislation, the Kansas Parimutuel Racing Act. The Act created the Kansas Racing Commission, composed of five Kansas residents, which is authorized to license and regulate all aspects of racing and parimutuel wagering in Kansas. The Act grants the Commission broad authority to regulate the racing industry and establishes a number of prohibited acts. Under the Act, only nonprofit organizations may be licensed to conduct races and the licenses may be for an exclusive geographic area. The Act also created a rather complex formula for taxing the wagering; the formula uses as a tax base a portion of the moneys wagered, and also imposes an admission tax.

The Kansas Racing and Gaming Commission is made up of two separate entities. Racing Operations regulates parimutuel greyhound and horse racing; while the State Gaming Agency (SGA) monitors the Native American casinos operating under the tribal-state gaming compacts.

Currently, there are two parimutuel racetracks operating in Kansas: the Woodlands located in Kansas City and the Wichita Greyhound Park in Wichita. The parimutuel track located in Frontenac, Camptown Greyhound Park, has been closed since November, 2000. Parimutuel horse racing also is offered seasonally at two county fair locations: Eureka Downs in Eureka and Anthony Downs in Anthony.

The Kansas Racing and Gaming Commission (KRGC) exercises regulatory power over all locations in the state which offer parimutuel wagering. This regulation includes issuing licenses to individuals, overseeing the operation of the races, and auditing all monetary issues related to the wagering. The KRGC is funded through a tax on parimutuel wagering, fees charged for licensing, an admission tax, and fines levied by the Commission. Currently, the Commission is authorized 67.0 FTE employees, 43.0 FTE positions for racing operations and 24.0 FTE positions for gaming operations.

A 1992 amendment to the Parimutuel Racing Act provided for simulcasting of both interstate and intrastate horse and greyhound races in Kansas, and allowed parimutuel wagering on simulcast races. The term "simulcast" means a live audio-visual broadcast of an actual horse or greyhound race at the time it is run. The Commission is given broad authority to regulate simulcast racing and wagering. For calendar year 2006, the parimutuel wagering handle totaled \$79.2 million. Of this total, \$16.5 million was from live greyhound and horse racing, and the remaining \$62.7 million came from wagering on simulcast races received at the racetracks.

Tax revenues generated by parimutuel wagering have generally been in decline in recent years. In FY 1996, the parimutuel tax generated \$5,232,000; in FY 2006 this figure totaled \$2,866,815.

<u>Year</u>	<u>Tax</u>	<u>Difference</u>
2001	\$ 3,973,000	
2002	3,813,000	\$ (160,000)
2003	3,628,296	(184,704)
2004	3,393,806	(234,490)
2005	3,088,790	(305,016)
2006	2,866,815	(221,975)
Accumulated Five-Year Decline		\$ (1,106,185)



Another provision of the Act provides for the transfer of tax revenues from the State Racing Fund to the State Gaming Revenues Fund of any moneys in excess of amounts required for operating expenditures. This transfer to the State Gaming Revenues Fund reached an historical high in FY 1991 of \$7.577 million, but has declined sharply in recent years. For FY 2001, the transfer was \$426,605, and for FY 2002 had fallen to \$343,724. The transfer in FY 2003 was \$476,342. The last transfer in FY 2004 was \$265,613.

During the 2004 Legislative Session, HB 2899 authorized the KRGC to distribute "breakage" at a closed race track to charities. "Breakage" is a sum of money comprised of the odd cents by which the amount payable on each dollar wagered exceeds a multiple of \$0.10 for parimutuel race pools. Under the law, "breakage" at open tracks must be distributed in a manner that 50 percent supplement open stakes races at racetrack facilities where derived and 50 percent paid as purses to breeders of Kansas-whelped greyhounds. The amount of money to be distributed was approximately \$8,000.

In addition, the bill allowed the Commission to increase the maximum from 22.0 to 25.0 percent that may be deducted from the total amount wagered in parimutuel pools for multiple and exotic bets on live racing. Simulcast was not included. Based on every \$1.00 wagered and the maximum raised from 22.0 to 25.0 percent that may be deducted from the total amount wagered in parimutuel pools for multiple and exotic bets on live racing, the change permitted could range from an increase of \$0.01 to \$0.03 that is available as follows: 75 percent for the wagers and 25 percent divided among three recipients—the track owners, the breeders, and the state—according to statutory formula.

2004 HB 2886 eliminated the annual financial compliance audit of the Kansas Racing and Gaming Commission. The change was recommended by the Legislative Post Audit Committee. The financial compliance audit consisted of an analysis of the Commission's financial activity in the state accounting system. The compliance audit was conducted by an outside accounting firm hired by the Legislative Division of Post Audit. The fiscal note estimated savings of approximately \$7,000 (all funds) in FY 2005. The funding of the contract was equally split between the Tribal Gaming Fund and the State Racing Fund.

## **Powers and Duties of the Commission**

K.S.A. 74-8804 outlines the powers and duties of the Kansas Racing Commission (KRC) as follows:

- During race meetings, the Commission and its designated employees may observe and inspect all racetrack facilities operated by licensees and all racetracks simulcasting races to racetrack facilities in Kansas including all machines, equipment and facilities used for parimutuel wagering.
- Commission members and hearing officers may administer oaths and take depositions to the same extent and subject to the same limitations as would apply if the deposition was in aid of a civil action in the district court.
- The Commission may examine, or cause to be examined, any books, papers, records or memoranda of any licensee, or of any racetrack or business involved in simulcasting races to racetrack facilities in Kansas, for the purpose of ascertaining compliance with any provision of this Act.

- The Commission may issue subpoenas to compel access to or for the production of any books, papers, records or memoranda or to compel the appearance of any licensee or officer, member, employee or agent of any licensee, or of any racetrack or business involved in simulcasting races to racetrack facilities in this state, for the purpose of ascertaining compliance with any of the provisions of this Act.
- The Commission shall allocate equitably race meeting dates, racing days and hours to all organization licensees and assign such dates and hours so as to minimize conflicting dates and hours within the same geographic market area.
- The Commission has the authority to exclude, or cause to be expelled, from any race meeting or racetrack facility, or to prohibit a licensee from conducting business with any person:
  - Who has violated the provisions of this Act or order of the Commission;
  - Who has been convicted of a violation of the racing or gambling laws of this or any other state or of the United States or has been adjudicated of committing as a juvenile an act which, if committed by an adult, would constitute such a violation; or
  - Whose presence, in the opinion of the Commission, reflects adversely on the honesty and integrity of horse or greyhound racing or interferes with the orderly conduct of a race meeting.
- The Commission shall review and approve all proposed construction and major renovations to racetrack facilities owned or leased by licensees.
- The Commission may suspend a horse or greyhound from participation in races if such horse or greyhound has been involved in any violation of the provisions of this Act or order of the Commission.
- The Commission, within 72 hours after any action taken by a steward or racing judge and upon appeal by any interested party or upon its own initiative, may overrule any decision of a steward or racing judge, other than a decision regarding disqualifications for interference during the running of a race, if the preponderance of evidence indicates that:
  - The steward or racing judge mistakenly interpreted the law;
  - New evidence of a convincing nature is produced; or
  - The best interests of racing and the state may be better served.
- A decision of the Commission to overrule any decision of a steward or racing judge shall not change the distribution of parimutuel pools to holders of winning tickets. A decision of the Commission which would affect the distribution of purses in any race shall not result in a change in that distribution unless a written claim is submitted to the Commission within 48 hours after completion of the contested race by one of the owners or trainers of a horse or greyhound which participated in such race and a preponderance of evidence clearly indicates to the Commission that one or more of the grounds for protest has been substantiated.
- The Commission may impose a civil fine not exceeding \$5,000 for each violation of any provision of this Act, for which no other penalty is provided.

- The Commission is required to adopt rules and regulations specifying and regulating:
  - Those drugs and medications which may be administered, and possessed for administration, to a horse or greyhound within the confines of a racetrack facility; and
  - That equipment for administering drugs or medications to horses or greyhounds which may be possessed within the confines of a racetrack facility.
- The Commission may adopt rules and regulations providing for the testing of all employees, officers, or directors to determine whether they are users of any controlled substances.
- The Commission shall require fingerprinting of all persons necessary to verify qualifications for employment by the Commission, or licensure. The fingerprints are to be submitted to the Kansas Bureau of Investigation (KBI), and the Federal Bureau of Investigation (FBI).
- The Commission may receive from KBI, FBI, IRS, or other criminal justice agencies criminal history record information (including arrest and nonconviction data). In addition, the Commission can receive the district court's information relating to juvenile proceedings. With the exception of conviction data, all other information is confidential and any disclosure of such confidential information is a class A misdemeanor and constitute grounds for removal from office, termination of employment or denial, revocation or suspension of any license issued under this Act.
- The Commission may recess for a closed or executive meeting to receive and discuss confidential information.
- The Commission may enter into agreements with the FBI, the IRS, the Kansas Attorney General of any state, federal or local agency as necessary to carry out the duties of the Commission under this Act.
- The Commission shall adopt rules and regulations as necessary to implement and enforce the provisions of this Act.

### **Prohibited Acts and Penalties**

#### **K.S.A. 74-8810. Prohibited acts; penalties.**

(a) It is a class A nonperson misdemeanor for any person to have a financial interest, directly or indirectly, in any racetrack facility within the state of Kansas or in any host facility for a simulcast race displayed in this state:

(1) While such person is executive director or a member of the commission or during the five years immediately following such person's term as executive director or member of the commission; or

(2) while such person is an officer, director or member of an organization licensee, other than a fair association or horsemen's nonprofit organization, or during the five years immediately following the time such person is an officer, director or member of such an organization licensee.

(b) It is a class A nonperson misdemeanor for any member, employee or appointee of the commission, including stewards and racing judges, to knowingly:

(1) Participate in the operation of or have a financial interest in any business which has been issued a concessionaire license, racing or wagering equipment or services license, facility owner license or facility manager license, or any business which sells goods or services to an organization licensee;

(2) participate directly or indirectly as an owner, owner-trainer or trainer of a horse or greyhound, or as a jockey of a horse, entered in a race meeting conducted in this state;

(3) place a wager on an entry in a horse or greyhound race conducted by an organization licensee; or

(4) accept any compensation, gift, loan, entertainment, favor or service from any licensee, except such suitable facilities and services within a racetrack facility operated by an organization licensee as may be required to facilitate the performance of the member's, employee's or appointee's official duties.

(c) (1) Except as provided in paragraph (2), it is a class A nonperson misdemeanor for any member, employee or appointee of the commission, or any spouse, parent, grandparent, brother, sister, child, son-in-law, daughter-in-law, grandchild, uncle, aunt, parent-in-law, brother-in-law or sister-in-law thereof, to:

(A) Hold any license issued by the commission, except that a steward or racing judge shall hold an occupation license to be such a steward or judge; or

(B) enter into any business dealing, venture or contract with an owner or lessee of a racetrack facility in Kansas.

(2) This subsection shall not apply to any racing judge holding an occupation license, if such racing judge is employed at a racetrack facility and such racing judge's relative, as listed above, is a licensed owner, owner-trainer or trainer of a greyhound that races at a different racetrack facility.

(d) It is a class A nonperson misdemeanor for any officer, director or member of an organization licensee, other than a fair association or horsemen's nonprofit organization, to:

(1) Receive, for duties performed as an officer or director of such licensee, any compensation or reimbursement or payment of expenses in excess of the amounts provided by K.S.A. 75-3223 and amendments thereto for board members' compensation, mileage and expenses; or

(2) enter into any business dealing, venture or contract with the organization licensee or, other than in the capacity of an officer or director of the organization licensee, with a facility owner licensee, facility manager licensee, racing or wagering equipment or services license or concessionaire licensee, or with any host facility for a simulcast race displayed in this state.

(e) It is a class A nonperson misdemeanor for any facility owner licensee or facility manager licensee, other than a horsemen's association, or any officer, director, employee, stockholder or shareholder thereof or any person having an ownership interest therein, to participate directly or indirectly as an owner, owner-trainer or trainer of a horse or greyhound, or as a jockey of a horse, entered in a live race conducted in this state.

(f) It is a class A nonperson misdemeanor for any licensee of the commission, or any person who is an officer, director, member or employee of a licensee, to place a wager at a racetrack facility located in Kansas on an entry in a horse or greyhound race if:

(1) The commission has by rules and regulations designated such person's position as a position which could influence the outcome of such race or the parimutuel wagering thereon; and

(2) such race is conducted at or simulcast to the racetrack facility where the licensee is authorized to engage in licensed activities.

(g) It is a class B nonperson misdemeanor for any person to use any animal or fowl in the training or racing of racing greyhounds.

(h) It is a class A nonperson misdemeanor for any person to:

(1) Sell a parimutuel ticket or an interest in such a ticket to a person knowing such person to be under 18 years of age, upon conviction of the first offense;

(2) accept, transmit or deliver, from a person outside a racetrack facility, anything of value to be wagered in any parimutuel system of wagering within a racetrack facility, upon conviction of the first offense;

(3) administer or conspire to administer any drug or medication to a horse or greyhound within the confines of a racetrack facility in violation of rules and regulations of the commission, upon conviction of the first offense;

(4) possess or conspire to possess, within the confines of a racetrack facility, any drug or medication for administration to a horse or greyhound in violation of rules and regulations of the commission, upon conviction of the first offense;

(5) possess or conspire to possess, within the confines of a racetrack facility, equipment for administering drugs or medications to horses or greyhounds in violation of rules and regulations of the commission, upon conviction of the first offense;

(6) enter any horse or greyhound in any race knowing such horse or greyhound to be ineligible to compete in such race pursuant to K.S.A. 74-8812 and amendments thereto; or

(7) prepare or cause to be prepared an application for registration of a horse pursuant to K.S.A. 74-8830 and amendments thereto knowing that such application contains false information.

(i) It is a severity level 8, nonperson felony for any person to:

(1) Sell a parimutuel ticket or an interest in such a ticket to a person knowing such person to be under 18 years of age, upon conviction of the second or a subsequent offense;

(2) accept, transmit or deliver, from any person outside a racetrack facility, anything of value to be wagered in any parimutuel system of wagering within a racetrack facility, upon the second or a subsequent conviction;

- (3) conduct or assist in the conduct of a horse or greyhound race, or the display of a simulcast race, where the parimutuel system of wagering is used or is intended to be used and where no license has been issued to an organization to conduct or simulcast such race;
- (4) enter any horse or greyhound in any race conducted by an organization licensee knowing that the class or grade in which such horse or greyhound is entered is not the true class or grade or knowing that the name under which such horse or greyhound is entered is not the name under which such horse or greyhound has been registered and has publicly performed;
- (5) use or conspire to use any device, other than an ordinary whip for horses or a mechanical lure for greyhounds, for the purpose of affecting the speed of any horse or greyhound at any time during a race conducted by an organization licensee;
- (6) possess or conspire to possess, within the confines of a racetrack facility, any device, other than an ordinary whip for horses or a mechanical lure for greyhounds, designed or intended to affect the speed of a horse or greyhound;
- (7) administer or conspire to administer any drug or medication to a horse or greyhound within the confines of a racetrack facility in violation of rules and regulations of the commission, upon conviction of the second or a subsequent offense;
- (8) possess or conspire to possess, within the confines of a racetrack facility, any drug or medication for administration to a horse or greyhound in violation of rules and regulations of the commission, upon conviction of the second or a subsequent offense;
- (9) possess or conspire to possess, within the confines of a racetrack facility, equipment for administering drugs or medications to horses or greyhounds in violation of rules and regulations of the commission, upon conviction of the second or a subsequent offense;
- (10) sponge the nostrils or windpipe of a horse for the purpose of stimulating or depressing such horse or affecting its speed at any time during a race meeting conducted by an organization licensee;
- (11) alter or attempt to alter the natural outcome of any race conducted by, or any simulcast race displayed by, an organization licensee or transmit or receive an altered race or delayed broadcast race if parimutuel wagering is conducted or solicited after off time of the race;
- (12) influence or attempt to influence, by the payment or promise of payment of money or other valuable consideration, any person to alter the natural outcome of any race conducted by, or any simulcast race displayed by, an organization licensee;
- (13) influence or attempt to influence any member, employee or appointee of the commission, by the payment or promise of payment of money or other valuable consideration, in the performance of any official duty of that member, employee or appointee;
- (14) fail to report to the commission or to one of its employees or appointees knowledge of any violation of this act by another person for the purpose of stimulating or depressing any horse or greyhound, or affecting its speed, at any time during any race conducted by an organization licensee;

(15) commit any of the following acts with respect to the prior racing record, pedigree, identity or ownership of a registered horse or greyhound in any matter related to the breeding, buying, selling or racing of the animal: (A) Falsify, conceal or cover up, by any trick, scheme or device, a material fact; (B) make any false, fictitious or fraudulent statement or representation; or (C) make or use any false writing or document knowing that it contains any false, fictitious or fraudulent statement or entry; or

(16) pass or attempt to pass, cash or attempt to cash any altered or forged parimutuel ticket knowing it to have been altered or forged.

(j) No person less than 18 years of age shall purchase a parimutuel ticket or an interest in such a ticket. Any person violating this subsection shall be subject to adjudication as a juvenile offender pursuant to the Kansas juvenile justice code.

## **Charitable Bingo**

**Charitable Bingo History.** A constitutional amendment was approved by the voters of Kansas (499,701 to 210,052) in 1974 to authorize the Legislature to regulate, license, and tax the operation and conduct of games of bingo by certain nonprofit organizations. The groups must be bona fide nonprofit religious, charitable, fraternal, educational, or veterans organizations. The Legislature adopted implementing legislation the following year to regulate, license, and tax charitable bingo games. The bingo constitutional amendment was again amended in 1995 to authorize games of "instant bingo."

The general administration of the bingo statutes is vested with the Secretary of Revenue, who may adopt rules and regulations to enforce the act. The Director of Taxation is charged with specific duties related to the taxation of bingo. A 2000 amendment to the bingo statutes created the new position of Administrator of Charitable Gaming to oversee enforcement of the bingo laws.

There are three types of regulated entities in the charitable bingo industry: licensed nonprofit organizations; registered premises lessors; and registered bingo card distributors. A nonprofit organization is a group which is eligible to conduct bingo games, such as an American Legion post or a church group. A premises lessor is the owner or lessor of premises where a nonprofit organization may conduct bingo games. A bingo card distributor is a person or entity that sells instant bingo tickets and bingo cards/disposable bingo faces to nonprofit organizations.

The bingo laws provide stringent criteria in regard to what type of nonprofit organization can be awarded a license. Also, the bingo laws and associated rules and regulations cover many aspects of the operation of bingo games, including the frequency of games, limits on prizes awarded, and detailed required recordkeeping. There are both civil and criminal penalties for operating bingo games in violation of the law.

**2000 Bingo Amendments.** Substantial amendments were made by the 2000 Legislature through the enactment of Sub. for HB 2013. The bill created a new position of Administrator of Charitable Gaming, and generally phased out the use of hard cards over a three-year period. The bill also phased out the prior bingo tax of 3 percent on gross receipts, in favor of a new tax on disposable paper bingo faces at 0.2 cents per face. This tax is collected and paid by the distributor, who may retain 2 percent of the tax due as an administrative payment.

The allocation of bingo tax revenue was changed from a formula which allocated equal shares to the State General Fund, the Department of Revenue, and local units; the new formula allocates two-thirds to the State General Fund and one-third to the Bingo Regulation Fund. The bill also mandated use of \$20,000 annually from the Bingo Regulation Fund for a problem gambling program. The bill also phased out the state and local sales tax on licensees. Finally, the bill authorized several new types of bingo games and drawings for door prizes. The number of licensed organizations has dropped steadily from 634 in FY 1985 to 329 in FY 2006.

Bingo tax revenues have, in general, been declining in recent years. In FY 1997, the bingo enforcement tax generated \$1,055,000. In FY 1999, this figure had dropped to \$979,000. The bingo tax generated:

2001	\$	778,000
2002		680,000
2003		656,000
2004		671,037
2005		617,094
2006		607,021

### Restrictions on Bingo Games

#### **K.S.A.79-4706. Restrictions on bingo games and instant bingo tickets.**

Games of bingo shall be managed, operated and conducted in accordance with the bingo act and rules and regulations adopted pursuant thereto and the following restrictions:

- (a) The entire gross receipts received by any licensee from the operation or conduct of games of bingo, except that portion utilized for the payment of the cost of prizes and license fees and taxes on games of bingo imposed under the provisions of this act, shall be used exclusively for the lawful purposes of the licensee permitted to conduct that game.
- (b) Games of bingo managed, conducted or operated by a licensee, shall be managed, conducted or operated only by a bona fide member or spouse of a bona fide member of the licensee or parent organization or an auxiliary unit or society of such licensee.
- (c) No lessor, employee of such lessor or employee, officer or shareholder of a for profit corporation which is the lessor shall play any game of bingo or participate in any drawing on premises leased by any such lessor nor shall such person be responsible for or assist in the management, operation or conduct of any game of bingo or drawing on such premises.
- (d) No person may participate in the management, conduct or operation of bingo games by a licensee if such person, within five years prior to such participation, has been convicted of or pleaded guilty or nolo contendere to any felony or illegal gambling activity or purchased a tax stamp for wagering or gambling activity.
- (e) No person may receive any remuneration or profit for participating in the management, conduct or operation of any game of bingo managed, conducted or operated by a licensee.



(f) The aggregate value of all prizes including the retail value of all merchandise awarded or offered by a licensee in a single session to winners of games of regular and special call bingo shall not exceed \$ 1,200. The value of a prize awarded in a progressive or mini bingo game shall not be included when determining the limit imposed by this subsection. Any monetary prize of \$ 500 or more awarded in games of bingo shall be paid by a check drawn on the bingo trust bank account of the licensee. Any monetary prize awarded in games of bingo shall be paid by a check on the bingo trust bank account of the licensee upon the request of the winner of such award.

(g) The total number of regular, special and progressive call bingo games managed, operated or conducted by any licensee in any session shall not exceed 25 and not more than five of such games shall be special games. Not more than one licensee may conduct bingo games at a given location or registered premises in any one session.

(h) The prize awarded by a licensee in any one regular call bingo game shall not exceed \$ 50. The prize in any one special call bingo game shall not exceed \$ 500.

(i) The retail value of any merchandise received by a winner of a bingo game shall be considered as the cash value for the purposes of determining the value of the prize.

(j) The charge made by a licensee for a bingo card or equivalent number of bingo faces to play in regular bingo games in any one session shall not exceed \$ 1. Such bingo card or equivalent number of bingo faces shall be valid for all such regular bingo games conducted or operated by the licensee in any one session. The charge made by a licensee for a single bingo card or bingo face to play in any single, mini or progressive special game shall not exceed \$ 1. The charge made by a licensee for a single instant bingo ticket shall not exceed \$ 1.

(k) Games of bingo shall not be managed, operated or conducted by any licensee on more than two calendar days in any one week.

(l) All licenses issued under the provisions of this act shall be issued in the name of the organization licensed.

(m) Each licensee shall keep a record of all games of bingo managed, operated or conducted by it for a period of three years following the date the game is managed, operated or conducted.

(n) No person under the age of 18 years shall participate in the management, operation or conduct of any game of bingo managed, operated or conducted by a licensee under the provisions of this act and no licensee shall sell any instant bingo ticket to a person under the age of 18 years.

(o) A lessor of premises used for the management, operation or conduct of games of bingo or a licensee may not advertise games of bingo except to the extent and in the manner prescribed by the rules and regulations adopted pursuant to the bingo act. Any advertisement of any game of bingo by or on behalf of such lessor or licensee shall specify the organization which is managing, operating or conducting such game. The announcement of the cancellation of a game of bingo shall not be considered to be an advertisement.

(p) (1) Except as provided by paragraph (2) of this subsection, no game of chance or contest where a prize is awarded, other than games of bingo, shall be conducted on any premises where licensees are conducting games of bingo, where the intent of such game of chance or contest is to induce participation in such games of bingo.

(2) One drawing during a session may be conducted by the licensee or the lessor of the premises. Only a nonmonetary prize having a value not exceeding \$ 25 shall be awarded to the winner of such drawing. There shall be no charge for participation in such drawing. There shall be no requirement to purchase anything of value in order to participate in such drawing. No more than four of such drawings shall be conducted by each licensee or lessor during any calendar year.

(q) No licensee shall manage, operate or conduct bingo on any leased premises or with leased equipment unless all of the terms and conditions of rental or use, including the rental of chairs, bingo equipment, tables, security guards, janitor service or any other services, are set forth in a lease submitted, approved and on file with the administrator.

(r) No premises shall be used for the management, operation or conduct of games of bingo by licensees on more than three calendar days in any one week.

(s) No premises shall be subdivided to provide multiple premises where games of bingo are managed, operated or conducted by licensees, whether or not the multiple premises have different addresses.

(t) No game of bingo shall be managed, operated or conducted by licensees on leased premises if at any time during the immediately preceding 44 hours the premises, or any leased premises within 1,000 feet of them, have been used for the management, operation or conduct of a game of bingo.

(u) Every licensee who has gross receipts of \$ 1,000 or more received from participation in games, admission fees or charges and from any other source directly related to the operation or conduct of any games of bingo in any calendar month shall maintain a bingo trust bank account into which all such receipts are deposited daily and from which all payments are made relating to the management, operation or conduct of any games of bingo, except payment of prizes of less than \$ 200. Having once established such bingo trust bank account, the licensee shall continue to make deposits of all receipts therein. Every licensee shall notify the administrator of the name of the bank in which the bingo trust bank account is maintained, together with the number and name of the account. Every licensee who maintains a bingo trust bank account shall maintain a complete record of all deposits and withdrawals from such bank account and the same shall be available to the administrator to audit at any reasonable time.

The records required under this subsection are in addition to all other records required to be kept by the licensee. The records required by this subsection shall be maintained in the same place as all other records required to be kept by the licensee.

(v) No instant bingo ticket shall be sold by a licensee more than one hour prior to the start of the first regular or special game of call bingo of a session or after the termination of the last game of call bingo operated or conducted by the licensee for such session.

(w) No licensee shall purchase or obtain bingo faces or instant bingo tickets from any person or entity other than a distributor registered pursuant to K.S.A. 79-4712a, and amendments thereto.

(x) All instant bingo tickets sold or distributed to licensees shall bear on the face thereof a unique serial number which shall not be repeated on the same manufacturer's form number less than every three years. All instant bingo tickets shall be sold or distributed in boxes. Each box shall be sealed by the manufacturer with a seal which includes a warning to the purchaser that the box may have been tampered with if the box was received by the purchaser with the seal broken. Each box of instant bingo tickets shall contain tickets printed in such a manner as to insure that at least 60% of

the gross revenues generated by the ultimate sale of all tickets from such box shall be returned to the final purchasers of such tickets. No box of instant bingo tickets may be opened by a licensee unless all tickets contained in a previously opened box with the same form number have been sold.

(y) Each box of instant bingo tickets sold or distributed to licensees shall be accompanied by a flare which contains the following information: (1) The name of the game; (2) the manufacturer's name or logo; (3) the game form number; (4) the ticket count in the game; (5) the prize structure for the game, which includes the number of winning tickets by denomination and their respective winning symbol or number combinations; (6) the cost per ticket; (7) the game serial number; (8) the winning numbers or symbols for the top three winning tiers set out in such a manner that each prize may be marked off as the prize is won and awarded; (9) the business name of the distributor; and (10) if sold or distributed to a licensee under the bingo act, the Kansas bingo license number of the licensee to which the game is sold.

(z) (1) No progressive game may exceed 20 consecutive sessions conducted by a licensee prior to the awarding of the established prize.

(2) No more than two progressive bingo games may be conducted in any one session.

(3) A prize for a progressive game may start at an amount not to exceed \$ 250 and may be increased by no more than \$ 100 for each session during which the progressive game is continued. The prize awarded at the end of any progressive game shall not exceed \$ 1,000.

(4) If the progressive bingo game prize is not awarded at a bingo session, the progressive bingo game shall be continued at a future occasion until such time a winner is determined. The winning prize shall be the full amount. If there is no winner of a progressive bingo game at a session, a stated consolation prize in an amount not to exceed \$ 250 may be awarded. Any consolation prize shall be less than the value of the progressive bingo game prize amount.

(5) All progressive bingo games and rules for such games shall be described fully and posted in the house rules prior to the start of the session. Such games shall comply with requirements imposed under the bingo act and any rules and regulations adopted pursuant thereto.

(6) When a person achieves the first preannounced winning combination, the game shall be completed and the next progressive bingo game and winning combination shall be commenced with a new bingo card or face and all objects or balls in the receptacle.

(7) The rules for a progressive bingo game shall remain in effect until the game ends and the winner is determined.

(8) Progressive bingo games may not be conducted in conjunction with a session of bingo conducted at a location other than that specified in the license as authorized by subsection (c) of 79-4703, and amendments thereto.

(9) A licensee shall not cease bingo operations unless all progressive bingo games are completed and prizes are awarded, unless prior approval has been received from the secretary.

(aa) Except as specifically provided by rules and regulations adopted pursuant to the bingo act, the distribution, sale or use of bingo cards is prohibited from and after July 1, 2003, and thereafter, only bingo faces shall be distributed, sold or used in call bingo games operated and conducted by licensees.

(bb) Only three games of instant bingo in which the winner or winners of such game is determined by matching a letter, number or symbol under a tab of an instant bingo ticket with the winning letter, number or symbol in a designated call game of bingo during the same session shall be played in any one session. There shall be no limit on the number of instant bingo tickets which may be sold for participation in any such game of instant bingo.

(cc) The total number of mini games of bingo managed, operated or conducted by a licensee during a session shall not exceed 20 games. No mini bingo game shall be conducted by a licensee more than one hour prior to, or after the commencement of, the first regular or special game of call bingo operated or conducted by the licensee for such session.

### **Revocation or Suspension of License**

#### **K.S.A. 79-4707. Revocation or suspension of license or registration, hearing; procedure; injunctions.**

(a) The administrator, after a hearing in accordance with the provisions of the Kansas administrative procedure act, may revoke or suspend any license or registration certificate issued under the provisions of this act for any of the following reasons:

- (1) The licensee or registrant has obtained the license or registration certificate by giving false information in the application therefor;
- (2) the licensee or registrant has violated any of the laws of the state of Kansas or provisions of this act or any rules and regulations adopted pursuant thereto for the registration, licensing, taxing, management, conduct or operation of games of bingo; or
- (3) the licensee or registrant has become ineligible to obtain a license under this act.

(b) Any action of the administrator pursuant to subsection (a) is subject to review in accordance with the act for judicial review and civil enforcement of agency actions. In case of the revocation of the license of any licensee or the registration of any registrant, no new license or registration shall be issued to such lessor, sublessor or organization, or any person acting for or on its behalf, for a period of six months thereafter. No revocation or suspension of a license or registration certificate shall be for a period in excess of one year if the applicant otherwise is qualified on the date the applicant makes a new application therefor.

(c) The administrator is hereby authorized to enjoin any person from managing, operating or conducting any games of bingo, or from leasing any premises for such purposes, if such person does not possess a valid license or registration certificate issued pursuant to the provisions of the bingo act. The administrator shall be entitled to have an order restraining such person from managing, operating or conducting any games of bingo or for any other purpose contrary to the provisions of the bingo act or from leasing premises for any of such purposes. No bond shall be required for any such restraining order, nor for any temporary or permanent injunction issued in such proceedings.

## Indian Casino Gaming

**History of Indian Casino Gaming.** In the mid-1990's, the State of Kansas and each of the four resident tribes in Kansas entered into tribal-state gaming compacts to permit 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 in 1995 were forwarded to the Bureau of Indian Affairs and were approved. At the present time, all four resident tribes have opened and are operating a casino gaming facility. The Kickapoo Tribe was the first to open a casino (the Golden Eagle Casino) in May, 1996. The Prairie Band Potawatomi Nation opened a temporary facility in October, 1996, and then later opened a permanent facility (Harrah's Prairie Band Casino) in January, 1998. The Sac and Fox Tribe opened the Sac and Fox Casino in February, 1997. The Iowa Tribe opened a temporary facility in May, 1998, and then later opened a permanent facility (Casino White Cloud) in December, 1998. All of the facilities, except Casino White Cloud, are open 24 hours a day.

Each of the casinos varies in size and the number of games they offer to the public. The Golden Eagle Casino has approximately 700 electronic gaming devices (slot machines) and 16 table games. Harrah's Prairie Band Casino has approximately 1,000 slot machines and 35 table games. The Sac and Fox Casino has approximately 475 slot machines and six table games. Casino White Cloud has 350 slot machines and six table games. Financial information concerning the operation of the four casinos is confidential.

The State Gaming Agency (SGA) was created by executive order in August 1995, as required by the tribal-state gaming compacts. During the 1996 Legislative Session, the agency was made a part of the Kansas Racing and Gaming Commission through the passage of the Tribal Gaming Oversight Act. The SGA currently is authorized 21.0 FTE positions. The gaming compacts define the relationship between the SGA and the tribes: the actual day-to-day regulation of the gaming facilities is performed by the tribal gaming commissions. Enforcement agents of the SGA also are in the facilities on a daily basis and have free access to all areas of the gaming facility, as well as access to all records kept in the 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 State Gaming Agency 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. The assessments are made to the four tribes equally; however, the first assessment is adjusted based on the number and types of background investigations that each tribe requested during the previous fiscal year. The assessments must be paid by the tribes on or before September 21, January 1, and April 1 of each year. The letter outlining the yearly assessments are delivered to the tribes prior to July 31 of each year. Included in the letter outlining the yearly assessments are attachments detailing the agency expenses for the previous fiscal year.

2005 House Substitute for SB 153 amended legislative authority of tribal gaming compacts. The bill required the Joint Committee on State-Tribal Relations to introduce, in each house of the Legislature, a resolution on the proposed tribal gaming compact within five days after the beginning of the next regular or special legislative session following the Committee's vote to recommend approval or rejection or make no recommendation on the compact. This applies only if the Legislature is not in session when the Committee votes. The bill repealed existing law that authorizes the Legislative Coordinating Council to act on behalf of the Legislature when the Legislature is not in session.

## The State Gaming Agency Authority

K.S.A. 74-9805 outlines the powers and duties of the SGA as follows:

- Examine and inspect all tribal gaming facilities, including all machines and equipment used for tribal gaming;
- Examine or subpoena any books, papers, records, electronic records, computer records or surveillance and security tapes and logs in accordance with tribal-state gaming compacts; or compel the appearance of any officer, employee or agent of a tribal gaming facility;
- Institute the dispute resolution procedure, in accordance with a tribal-state gaming compact, to ensure compliance with all provisions of the compacts;
- Monitor, examine and inspect tribal gaming to ensure that tribal gaming is conducted in compliance with the compacts;
- Review all licensing and disciplinary actions taken by tribal gaming commissions or any party involved in the tribal gaming and assess if the action complies with the terms of the applicable tribal-state gaming compacts;
- Report to the Governor any substantial noncompliance with the compacts;
- Negotiate a resolution between any tribe conducting or operating tribal gaming and any local or county governmental entity regarding the allocation or payment of additional expenses or costs incurred by the governmental entity as a result of tribal gaming as provided in the compacts;
- Adopt background investigation and fingerprinting policies or procedures in accordance with the terms of the compacts; and require fingerprinting of all persons necessary to verify qualifications for employment by the SGA or to verify qualifications for any license issued pursuant to the compacts with the information submitted to the Kansas Bureau of Investigation (KBI) and the Federal Bureau of Investigation (FBI) to verify the identity of such persons and to obtain records of criminal arrests and convictions;
- Perform all functions and duties required to comply with and ensure tribal compliance with tribal-state gaming compacts;
- Receive from the KBI, FBI, IRS or other criminal justice agencies criminal history record information (including arrest and nonconviction data), criminal intelligence information and information relating to criminal and background investigations as necessary for determining qualifications of employment; as well as receiving from the district courts juvenile proceedings;
- Disclose information received from a tribal gaming commission as necessary for the purpose of determining qualifications of employees of or applicants for employment by such tribal gaming commission or qualifications of licensees or applicants for licensure by such tribal gaming commission;
- Disclose conviction data; however all other is to be confidential except to the executive director, employees of the SGA and members and employees of the tribal gaming commission and any other disclosure of confidential information is a class A nonperson misdemeanor and constitute

grounds for removal from office, termination of employment or denial, revocation or suspension of any license issued by the tribal gaming commission; and

- Adopt rules and regulations to implement, administer and enforce the provisions of the Tribal Gaming Oversight Act.

### **Prohibited Acts and Penalties**

K.S.A. 74-9809 outlines the prohibited acts and penalties for the SGA and the tribal gaming employees or commissioners as follows:

- For any person to have a any direct or indirect financial interest in any tribal gaming facility which has a progressive jackpot.
- For the executive director or any employee of the state gaming agency to knowingly:
  - Place a wager or bet or play an electronic game of chance at a tribal gaming facility in Kansas;
  - Participate directly or indirectly as an owner, operator, manager or consultant in tribal gaming in Kansas; or
  - Accept any compensation, gift, loan, entertainment, favor or service from any person or entity licensed pursuant to a compact, except as may be required to facilitate the performance of the member's, employee's or appointee's official duties.
- For the executive director or any employee of the SGA, or any spouse, parent, grandparent, brother, sister, child, grandchild, uncle, aunt, parent-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in law to:
  - Hold any license issued pursuant to a compact; or
  - Enter into any business dealing, venture or contract with an owner or operator of a tribal gaming facility in Kansas other than as required to complete the duties of the compact.
- For any holder of a license issued pursuant to the compact to allow any person, directly or indirectly, to place a wager or play any class III game, gaming device or electronic game of chance at a gaming facility, knowing such person to be under 21 years of age.
- For any person to win, for the person's self or another, by any trick or sleight of hand performance, or by fraud or fraudulent scheme, cards, dice or device, money or property or a representative of either, or reduce or attempt to reduce a losing wager, in connection with gaming in a value of less than \$100.

(All of the above prohibitions are class A nonperson misdemeanors.)

- For any person to use or conspire to use any device for the purpose of effecting the outcome of any class III game, gaming device or electronic game of chance at a facility.

- For any person playing or using any class III game, gaming device or electronic game of chance at a gaming facility to:
    - Knowingly use bogus or counterfeit chips or gaming billets or knowingly substitute and use in any such game cards or dice that have been marked, loaded or tampered with;
    - Knowingly use other than a lawful coin or legal tender of the United States or to use coin not of the same denomination as the coin intended to be used in an electronic game of chance; or
    - Win or attempt to win, for the person's self or another, by any trick or sleight of hand performance, or by a fraud or fraudulent scheme, cards, dice or device, money or property or a representative of either, or reduce or attempt to reduce a losing wager, in connection with gaming in a value of \$100 or greater.
  
  - For any person knowingly to possess or use, while on the premises of a gaming facility, any cheating or thieving device.
  
  - For any person to knowingly possess or use while on the premises of any gaming facility any key or device designed for the purpose of or suitable for opening or entering any electronic game of chance except for employees in the performance of their duties.
  
  - For any person or entity to possess any device, equipment or material which the person knows has been manufactured, distributed, sold, tampered with or serviced in violation of the provisions of a tribal-state gaming compact.
- (All of the above are severity level 8, nonperson felonies)
- No person less than 18 years of age shall place, directly or indirectly, any wager or play any class III game, gaming device or electronic game of chance at a gaming facility and in doing so the individual would be subject to adjudication as a juvenile offender.





## KANSAS LOTTERY

ED VAN PETTEN, EXECUTIVE DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

### Testimony Regarding the History of Gaming in Kansas

ED VAN PETTEN  
Executive Director of the Kansas Lottery

Before the HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS  
Friday, March 9, 2007

Mister Chairman and Members of the Committee:

We understand the Committee has requested an overview of the history of gaming in Kansas, and appreciate the opportunity to testify regarding that subject. The Governor's Gaming Committee issued its final report on December 18, 2003. In that report, the Committee provided a thorough review of the history of gaming. The testimony provided today is taken from the Committee's report, but we've updated the pari-mutuel and lottery revenues that have been received. We have not addressed Indian gaming in Kansas, as that topic is being addressed by Mr. John McElroy, Executive Director of the Kansas State Gaming Agency.

### HISTORY OF GAMING IN KANSAS

Gaming has been a public issue in Kansas since the state's founding. At the Wyandotte Convention in July 1859, the framers of the Kansas Constitution made clear that they did not want gaming in Kansas. In a provision codified in Article 15, section 3, of the Kansas Constitution, they declared, "Lotteries and the sale of lottery tickets are forever prohibited." Since that initial action, the people of Kansas and their government have struggled to find consensus on whether to allow gaming, and under what circumstances.

For many years, the courts interpreted the ban on lotteries broadly to prohibit nearly all forms of gaming. In 1891, for example, the Kansas Supreme Court was called upon to determine the legality of what was then referred to as "playing policy."<sup>1</sup> This involved an arrangement in which a person could invest from five cents to one dollar to purchase a "vendor's certificate" that entitled the holder to a lead pencil and the selection of three numbers. If the purchaser's three numbers were drawn, he would win a prize ranging from 45 cents to \$2,500, depending on the size of his "purchase." The Court found this to be an illegal lottery, stating, "Where a pecuniary consideration is paid, and it is determined by lot or chance, according to some scheme held out by the public, what and how much he who pays the money is to have for it, that is a lottery."

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<sup>1</sup> State ex rel. Kellogg v. Kansas Mercantile Association, 45 Kan 351 (1891).

In the decades following this decision, the Kansas Supreme Court shut down other gaming operations of various sorts based on this constitutional prohibition.<sup>2</sup> To determine whether something was an illegal lottery, the Court applied the following test: (1) there must be a prize; (2) the awarding of the prize must be based on chance; and (3) there must be consideration given. Anything that met that test would be considered unconstitutional and illegal.

The Kansas Legislature attempted to circumvent the constitutional ban on gaming on several occasions. The 1949, Legislature passed a measure that allowed pari-mutuel wagering on greyhound races in Sedgwick County for two weeks per year. In 1955, the Court struck down this provision as being in violation of the constitutional ban on lotteries.<sup>3</sup>

Then, in 1971, the Legislature again attempted to legalize gaming without a constitutional amendment when it created, by statute, a “bingo” exception to the legal definition of gambling. This was done by specifically excluding from the definition of “consideration” money paid to participate “in any bingo game or a game of chance with comparable characteristics.” Soon, that argument was advanced to the point that “a game of chance with comparable characteristics” included slot machines. In 1972, the Kansas Supreme Court struck down this provision and sent a clear message to the legislature regarding such legislation, stating: “Any attempt by the legislature to obliterate the constitution so construed by the court is unconstitutional legislation and void. Whenever the legislature enacts laws prohibited by judicially construed constitutional provisions, it is the duty of the courts to strike down such laws.”<sup>4</sup> This made clear that a constitutional amendment would be required before the Court would allow legalized gaming of any kind in Kansas.

Historically, then, there is no doubt that prior to the amendments made to the Kansas constitution in the last 30 years, gaming, in all its forms, was illegal.

The first legal gaming in Kansas arose in 1974 when the voters approved an amendment to the Kansas Constitution, codified in Article 15, section 3a. This amendment permitted bingo games to be conducted by bona fide nonprofit religious, charitable, fraternal, educational, and veterans’ organizations.

The next major change regarding gaming in Kansas came in 1986 when the voters passed two additional constitutional amendments. The first, codified in Article 15, section 3b, allowed the Legislature to permit, regulate, license, and tax pari-mutuel wagering in horse and dog racing facilities. The second, codified in Article 15, section 3c, authorized the Legislature to provide for a state-owned and operated lottery.

### Pari-mutuel Wagering

After the adoption of the constitutional amendment allowing pari-mutuel wagering in Kansas, the 1987 legislature passed legislation that established the Kansas Racing and Gaming Commission, a state agency charged with overseeing and regulating the pari-mutuel racing industry. This industry operated in five locations in Kansas. The established tracks at Anthony and Eureka conducted pari-mutuel wagering on horse races during a short racing season in the summer months. Tracks at Kansas City, Wichita, and Pittsburg were built for greyhound racing year-round. A horse racing facility at Kansas City in the same complex at the greyhound facility operated with an extended racing season.

It was soon apparent that, based solely on wagers, the pari-mutuel industry in Kansas could not thrive. To raise revenues, then, the Legislature soon permitted simulcasting at the Kansas facilities. With the development of riverboat casinos in Missouri and casinos on the Indian lands, however, the pari-mutuel industry has continued to struggle. Today, the Pittsburg greyhound facility has closed. Pari-mutuel facilities in Kansas City and Wichita are still in operation, but their attendance figures and handles are a great deal lower than when they opened. A review of statistics from the Kansas Racing and Gaming Commission shows that in 1992, the total handle for both tracks was \$239,705,143 and the total attendance was 1,977,923. By 2002, those

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<sup>2</sup> See, e.g., *In re Smith*, 54 Kan 702 (1895) (holding that operating a “lottery” is “unlawful calling” under crimes act); *State ex rel. Beck v. Fox Kansas Theater Co.*, 144 Kan. 687 (holding that theater bank night was scheme in nature of a lottery).

<sup>3</sup> *State ex rel. Moore v. Bissing*, 178 Kan. 111 (1955).

<sup>4</sup> *State v. Nelson*, 210 Kan. 439 (1972).

figures had dropped to a total handle of \$110,206,894 and attendance of 576,712.<sup>5</sup> In 2006, the total handle was \$79,730,844 and attendance was 488,447.

### The Kansas Lottery

The Kansas Lottery Act was also passed during the 1987 session of the Kansas Legislature. The first lottery tickets went on sale in Kansas on November 12, 1987. Although the first games were solely scratch tickets, since that time the Kansas lottery has offered many "online" games and pull tabs in addition to scratch tickets. Price points for scratch games range from \$1.00 to \$20.00 for a single wager. All "online" games, with the exception of Pick 3 and Kansas Hold 'Em, sell for \$1.00 per wager. Pick 3 has a \$.50 play in addition to the \$1.00 ticket. Kansas Hold 'Em sells for \$2 per wager.

In the late 1990s and the first two years of this decade, competition in various forms depressed lottery sales in Kansas with sales in FY 2001 totaling \$182 million. The last few years, however, have seen increased sales. In FY 2006, sales totaled \$236 million, resulting in \$67.1 million being transferred to the State. All funds over \$50 million transferred go to the general fund, with the first \$50 million divided with \$80,000 going to the Problem Gambling Grand Fund, and the remainder goes 85% for economic development, 10% for prison maintenance and construction and 5% for juvenile facilities.

I appreciate this opportunity to testify this morning. I would be happy to answer any questions.

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<sup>5</sup> 2002 attendance figures are approximate, due to the fact that admission was not charged at the Wichita track, and no official record is maintained.

**Background on Racing and Pari-mutuel Operations in Kansas  
Testimony before House Federal and State Affairs Committee  
By Stephen Martino, Executive Director, Kansas Racing and Gaming Commission  
March 9, 2007**

The State of Kansas currently has two year-round operating racetracks with pari-mutuel wagering – the Woodlands in Kansas City and Wichita Greyhound Park. The Kansas City track has both horse and dog racing while the Wichita track has only dog racing. Both tracks began operations in September 1989.

A three-day harness meet in Rooks County in August 1988 was the first pari-mutuel races in Kansas. Eureka Downs in Greenwood County ran a 19-day meet September through November 1988. Anthony Downs, which celebrated 100 years of racing in 2004, ran its first pari-mutuel meet in 1994. A third year-round greyhound race track, Camptown, in Frontenac opened in May 1995 and closed that same November because of financing issues. The track re-opened briefly in May 2000 but closed again in November 2000; it has not operated since then.

Each track operation comprises a not-for-profit organization licensed to operate racing and pari-mutuel wagering, and a facility owner/manager licensed to own and operate the track facility itself. The not-for-profit organization collects wagers, and from those moneys it pays winning bettors, contributes to race purses, pays management fees to the facility owner/manager, pays applicable taxes to the Racing Commission, pays its own operating expenses, and distributes all remaining moneys to charitable organizations as specified by statutory requirements. In addition to receiving management fees, the facility owner/manager collects admission, parking, and concession revenues. From those moneys, it pays its own operating expenses and any taxes and fees due to the Commission and distributes a portion of its profits to stockholders either to pay income taxes due, or as a return on the stockholders' investment.

The Kansas Racing and Gaming Commission exercises regulatory and enforcement responsibilities over licensees that conduct horse or greyhound races. The Commission is composed of five members appointed by the Governor for four-year terms and confirmed by the Senate. Statutory authority granted the Racing and Gaming Commission includes more direct policy-making authority than is provided the Lottery Commission (compare 74-8804 to K.S.A. 74-8709(d)).

The Racing and Gaming Commission is required to adopt rules and regulations, as necessary, to implement and enforce the pari-mutuel laws (K.S.A. 74-8804(r)). The Racing and Gaming Commission assigns much of its procedure for implementation of those laws to rules and regulations.

Unlike the Lottery, the Racing and Gaming Commission has a licensing function. Only nonprofit organizations (not-for-profit corporations or county fair associations) may conduct races with pari-mutuel wagering (*Kansas Constitution*, Art. 15 §3b and K.S.A. 74-8802(v) and 74-8813). These organizations must be licensed by the Commission. Prescribed in statute are the qualifications for licensure of not-for-profit corporations as well as application procedures and conditions upon which a decision may be made to grant a license to an organization (K.S.A. 74-8813). Application and licensure procedures

FEDERAL AND STATE AFFAIRS

Date 3-9-07

Attachment 3

for fair associations and horsemen's nonprofit organizations are set forth in K.S.A. 74-8814. The Commission is required to review organization licenses at least once a year to determine compliance with the law and must approve all contracts and agreements (including modifications) of licensees that involve prospective licensee employees, suppliers of goods and services, facility leases, and the operation of any concessions within or adjacent to racetrack facilities (K.S.A. 74-8813(n)).

In addition to nonprofit organizations, facility owners and managers must be licensed by the Commission (K.S.A. 74-8815). A facility owner may be a person, partnership, corporation, association, or governmental unit licensed to construct or own a racetrack facility. A facility manager may be any person, partnership, corporation, or association licensed to manage a racetrack facility. Conditions a facility owner or manager must satisfy in order to be granted a license are enumerated in statute as are application requirements. (K.S.A. 74-8815) As with organization licenses, facility owner and manager licenses must be reviewed at least once a year for compliance with the law.

The Commission is also responsible for granting occupation licenses and concessionaire licenses. Any owner of horses or greyhounds and any person who works at a racetrack must have an occupation license (K.S.A. 74-8816). Any business not owned and operated by the organization licensee that sells goods at the racetrack must have a concessionaire license (K.S.A. 74-8817). Commission regulations are very expansive on, and specific with respect to, qualifications and responsibilities of certain occupation licensees (jockey, apprentice jockey, jockey agent, program trainer, starter, paddock judges, patrol judges, placing judges and timers, clerk of scales, racing secretary, identifier, kennel master, director of racing, lure operator, and racing secretary, mutuel manager, and animal health officers).

The Commission's regulatory oversight includes employment and oversight of stewards (horse racing) and racing judges (greyhound racing) who must have occupation licenses and who must pass examinations prepared by the Commission. For each race the Commission is required to appoint three individuals to serve in that capacity. Such individuals are unclassified employees of the Commission.

A simulcasting license must be obtained from the Commission in order to display simulcast horse and greyhound races. The Commission also must review and approve proposed construction and major renovation to racetrack facilities and all contracts with racetracks or businesses involved in simulcasting races to racetrack facilities in Kansas.

Moreover, the Commission must allocate race dates, approve facilities used for races (K.S.A. 74-8804(e), K.S.A. 74-8819(a)), the form of wagering (K.S.A. 74-8819(b)), and the minimum purse to be paid out in stakes races during each race meeting (K.S.A. 74-8820(a)).

Conflict of interest provisions prohibit officers, directors, or members of an organization licensee (other than a fair association or horseman's association) from having a direct or indirect financial interest in a racetrack facility or a host facility for a simulcast race during or five years after that person's term expires (K.S.A. 74-8810(a)).

Licensees of the Racing Commission also are prohibited from recruiting persons under 18 years old to promote pari-mutuel wagering (K.S.A. 74-8839).

Amounts credited to the Greyhound Tourism Fund are earmarked for greyhound-related tourism. However, expenditures from that fund are made by the Secretary of Commerce or the Secretary's designee (K.S.A. 74-8831).

K.S.A. 74-8838 requires that one-third of taxes paid on the takeout from pari-mutuel pools for simulcast races be credited to the Horse Fair Racing Benefit fund. That revenue is to be used to defray a variety of race-related and licensure expenses of the Commission and county fair associations.

### **Enforcement**

Like the Lottery, the Racing and Gaming Commission has certain statutory enforcement powers. The commission may require fingerprinting of all persons necessary to verify qualification for any license. (K.S.A. 74-8804(n)). Moreover, the commission is statutorily required to submit fingerprints to the KBI or FBI for purposes of verifying the identity of such persons and obtaining criminal records. The Commission is authorized to receive from the Commission security personnel, the KBI, and other criminal justice agencies any information related to criminal and background investigations, as needed, to determine licensee and applicant qualifications.

The Commission also is authorized to examine, or to have examined, books, papers, records, or memoranda of licensees for the purpose of ascertaining compliance with the Act. The Racing and Gaming Commission may issue subpoenas to gain access to such materials (K.S.A. 74-8804(c) and (d)).

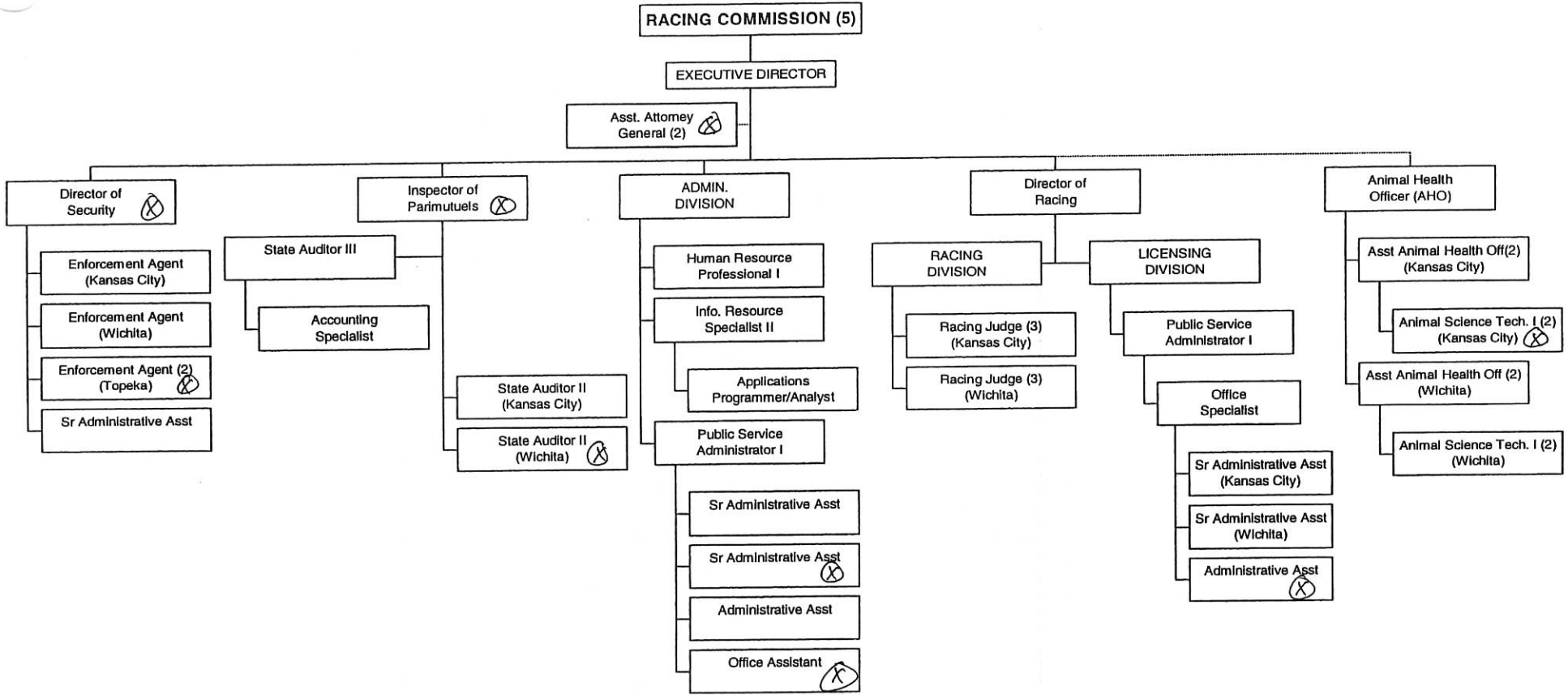
The Commission is allowed to impose sanctions for violations of the Act. These sanctions may include prohibiting a licensee from participation in a race meeting or presence at a racetrack facility or from conducting business with any person under certain circumstances specified in law (K.S.A. 74-8804(f)). Other sanctions include suspension of a horse or greyhound involved in violations (K.S.A. 74-8804(i)); and suspension or revocation of a license or imposition of a civil fine for certain violations. The Commission also is authorized to impose civil fines for any violations, for which no specific penalty is provided (K.S.A. 74-8804(k)).

The Executive Director of the Racing and Gaming Commission has authority to designate certain employees to enforce the law (K.S.A. 74-8807). The Commission's security personnel or the KBI are authorized to search without warrant any occupation licensee's person, personal property, or work area and any concessionaire licensee's work area or personal property for purposes of investigating possible criminal violations of the Kansas Parimutuel Racing Act (K.S.A. 74-8816(d)).

The Attorney General may appoint a maximum of two assistant attorneys general to assist the Commission in all aspects of implementation of the act, including enforcement (K.S.A. 74-8809).

Certain restrictions govern participation in races and associated pari-mutuel wagering. Persons under 18 years of age may not participate in pari-mutuel wagering (K.S.A. 74-8810). Conflict of interest provisions prohibit commissioners from having direct or indirect financial interest in a racetrack facility or a host facility for a simulcast race during or five years after that person's term expires (K.S.A. 74-8810(a)(1)). Other conflict of interest provisions apply to all members, appointees, and employees of the Commission with respect to horse or greyhound races (K.S.A. 74-8810(b) through (f)).

KANSAS RACING AND GAMING COMMISSION



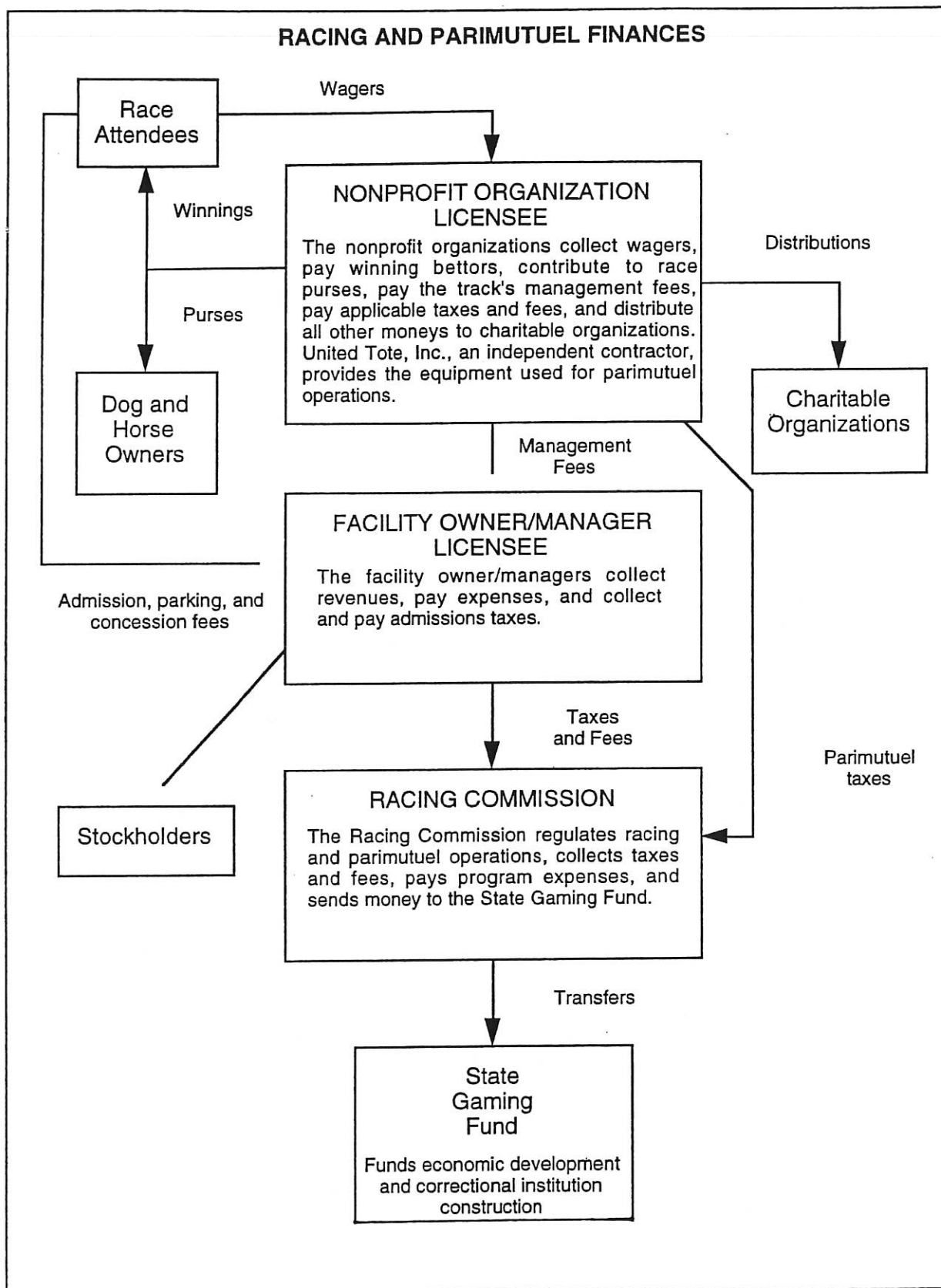
\* The Assistant Attorney General positions report to the Attorney General's Office but are counted in the Racing Commission's FTE allotment. The Executive Director supervises the day-to-day legal operation duties.

\*\* The Animal Health Officers are under the direction of the Racing Commission and supervised by the Executive Director.

Note: Camptown Greyhound Park in Frontenac, Kansas, ceased operations in November 2000.



## RACING AND PARIMUTUEL FINANCES

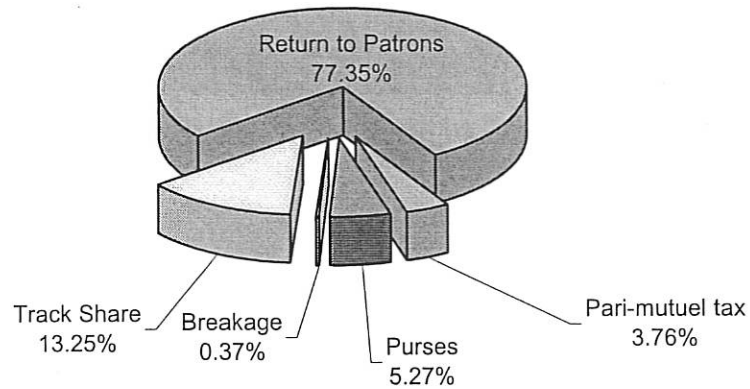




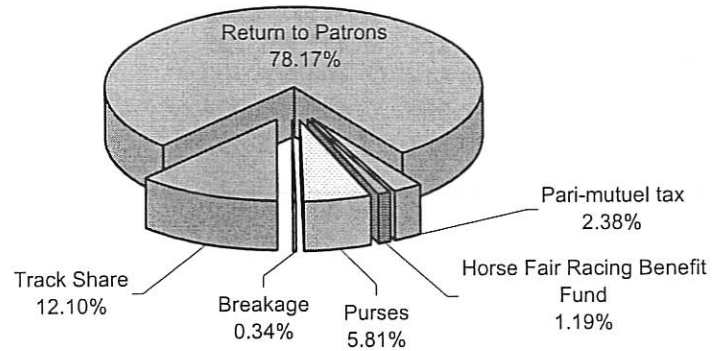
# The Wagering Dollar



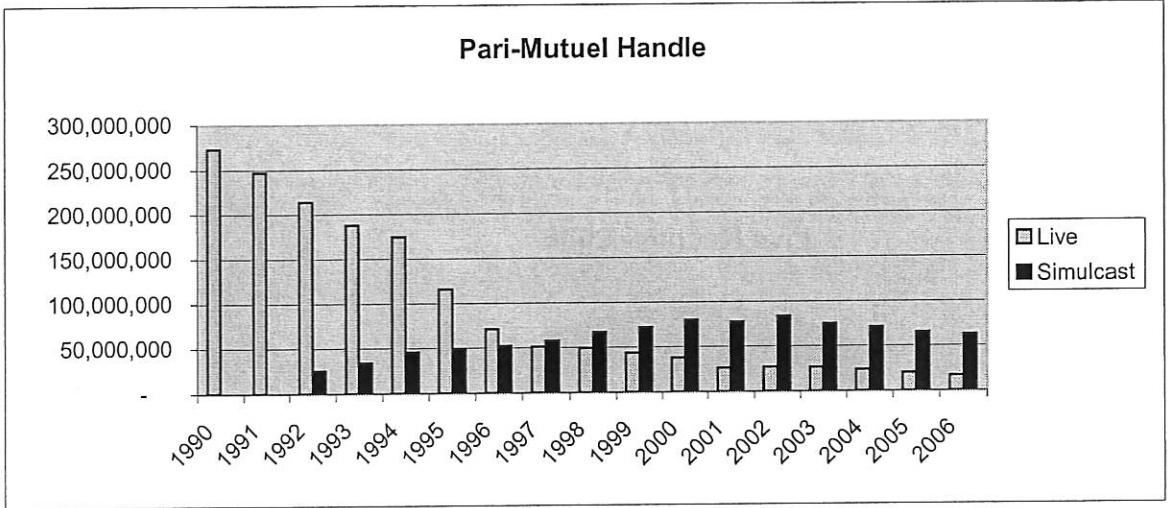
## Live Racing - 2006



## Simulcast Racing - 2006

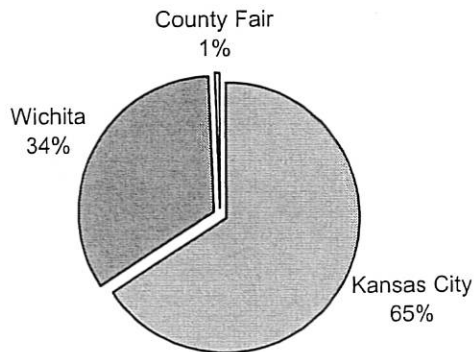


**Kansas Racing and Gaming Commission  
Parimutuel Handle  
Calendar Years 1990-2006**



Calendar Year	Live	Simulcast	Total	% Change
1990	273,355,638	-	273,355,638	
1991	246,971,572	-	246,971,572	-9.65%
1992	214,235,214	25,469,929	239,705,143	-2.94%
1993	187,974,813	34,362,423	222,337,236	-7.25%
1994	174,344,451	45,944,187	220,288,638	-0.92%
1995	115,686,926	49,348,652	165,035,578	-25.08%
1996	70,859,045	52,315,297	123,174,342	-25.36%
1997	51,241,024	57,849,781	109,090,805	-11.43%
1998	49,521,893	66,918,833	116,440,726	6.74%
1999	43,743,621	72,112,135	115,855,756	-0.50%
2000	37,698,365	80,089,374	117,787,739	1.67%
2001	26,440,891	77,568,818	104,009,709	-11.70%
2002	27,151,949	83,680,054	110,832,003	6.56%
2003	26,654,689	75,020,803	101,675,492	-8.26%
2004	23,809,254	71,077,462	94,886,716	-6.68%
2005	20,305,725	65,272,302	85,578,027	-9.81%
2006	16,880,717	62,850,127	79,730,844	-6.83%

**2006 Handle By Location**

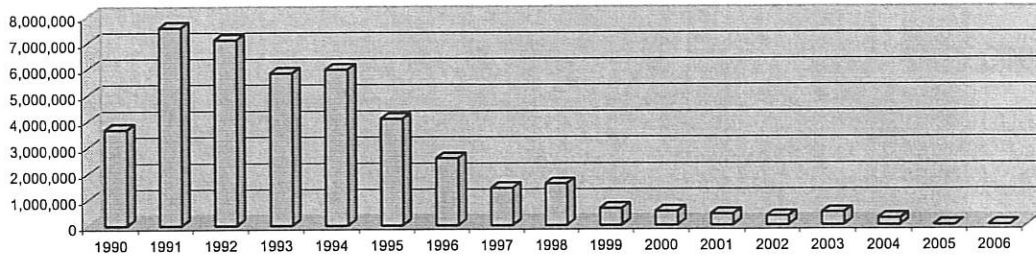




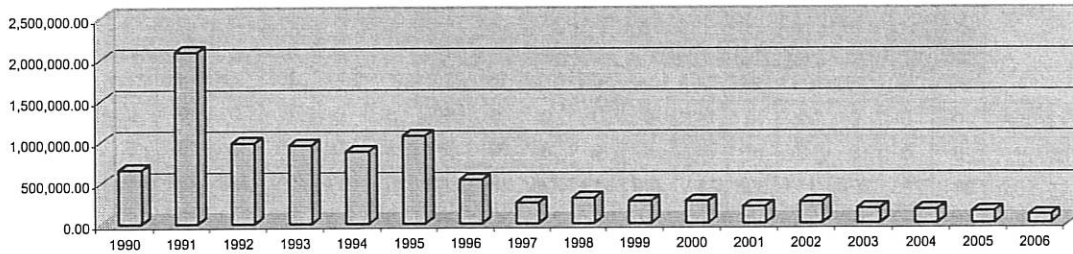
# Benefits of Parimutuel Racing



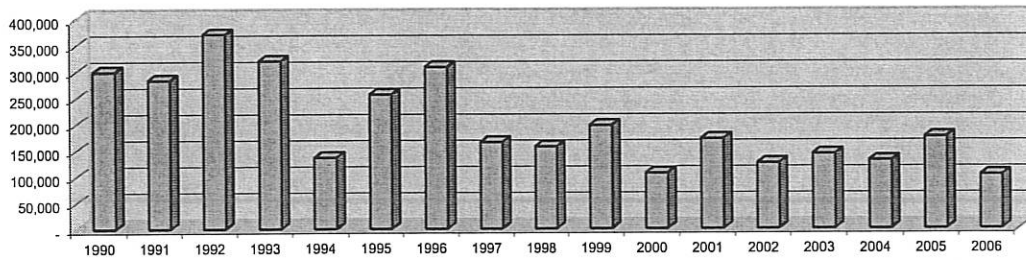
### Transfers to State Gaming Revenue Fund



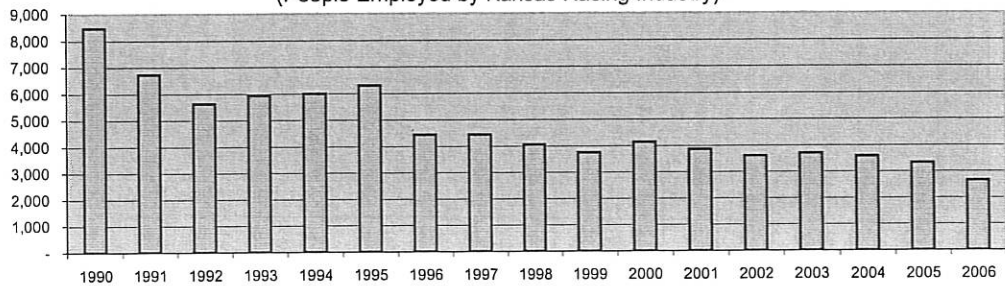
### Charitable Contributions



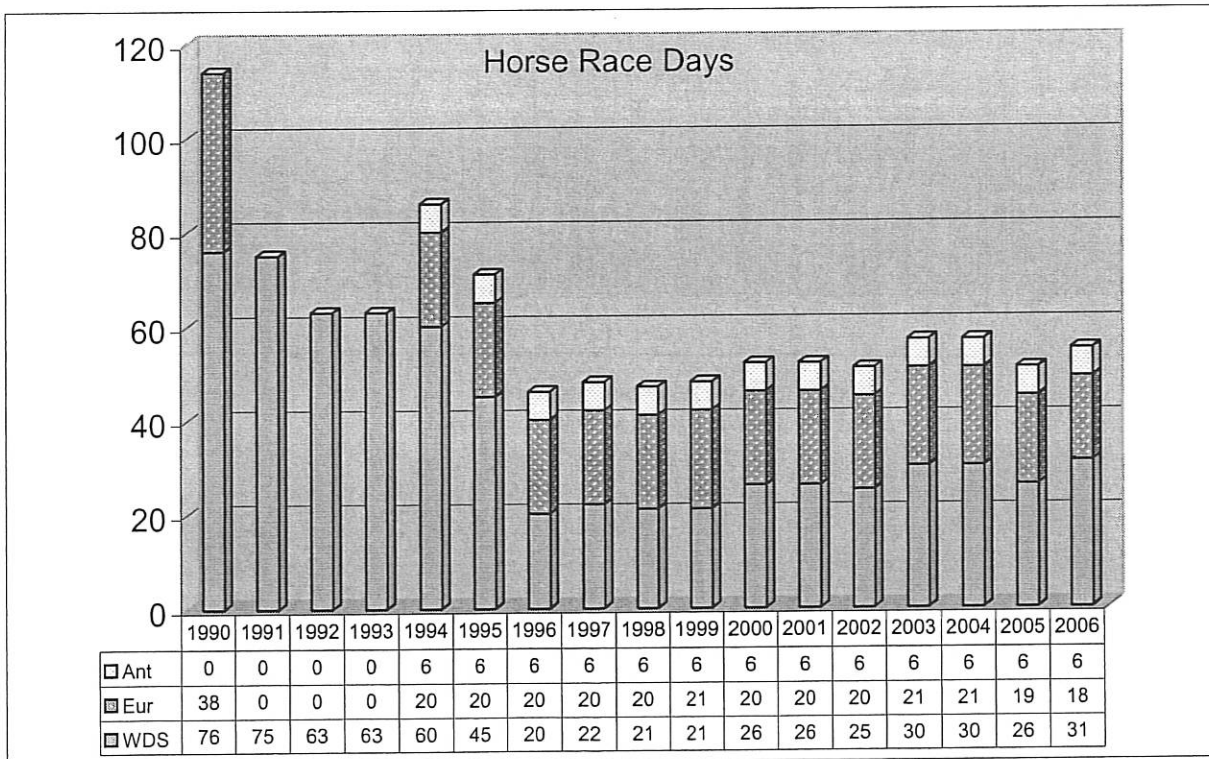
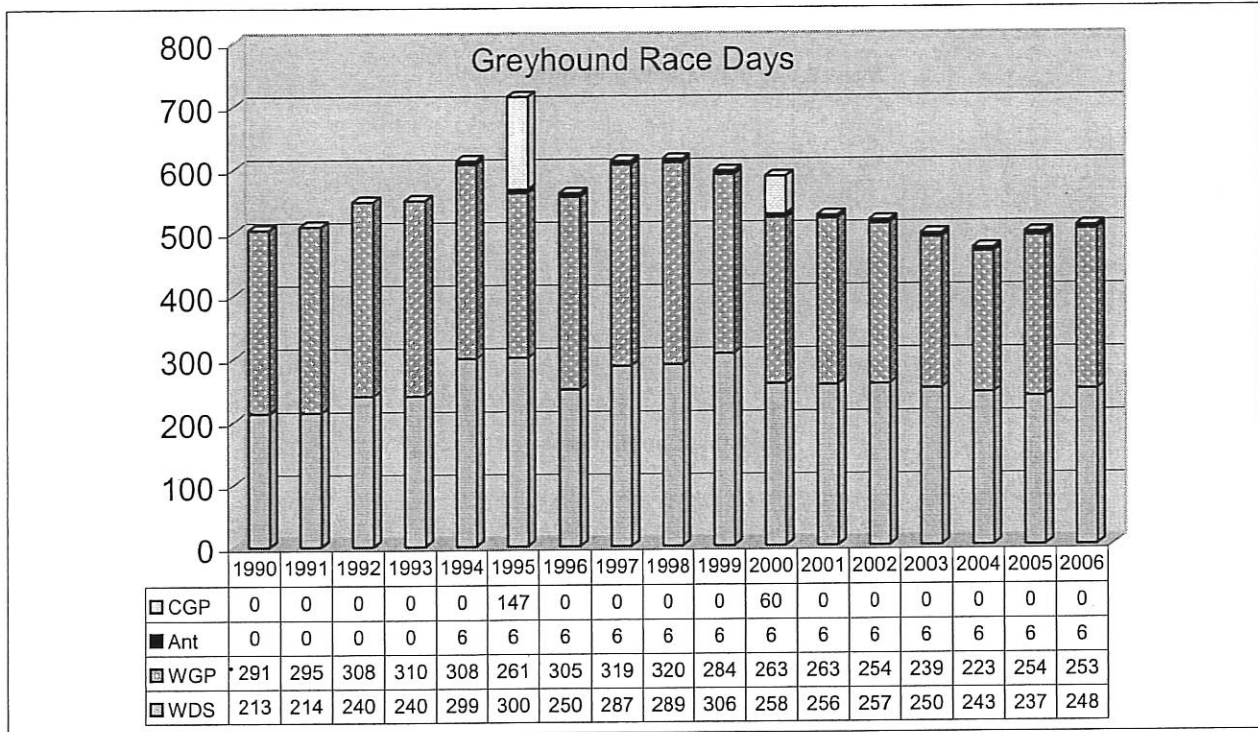
### Research Grants Funded



### Occupational Licenses Issued (People Employed by Kansas Racing Industry)



## Kansas Racing and Gaming Commission Race Days 1990 - 2006





# KANSAS

KANSAS STATE GAMING AGENCY  
JOHN McELROY, EXECUTIVE DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

## **Testimony Before the House Federal and State Affairs Committee Of John E. McElroy, Executive Director Kansas State Gaming Agency March 9, 2007**

It is my pleasure to appear before this committee today to describe the budget and activities of the Kansas State Gaming Agency.

In 1995, the Iowa Tribe of Kansas and Nebraska, the Prairie Band Potawatomi Nation of Kansas, the Kickapoo Tribe, and the Sac and Fox Nation of Missouri in Kansas and Nebraska each signed a Tribal State Compact with the State of Kansas. By 1998, each had opened its own casino in Kansas. Each of the casinos continues to operate today. Each is regulated by a Tribal Gaming Commission. The gaming activities of each are monitored by the Kansas State Gaming Agency. According to KSA 74-9805, the Agency has jurisdiction over gaming activities conducted pursuant to a Tribal State Compact. The Agency has jurisdiction over no other types of gambling, legal or illegal.

The Kansas State Gaming Agency is responsible for conducting background investigations on all employees connected with the gaming operations at each casino. The Agency is also responsible for conducting background investigations on all vendors who sell more than \$10,000 per year in gaming equipment to a casino in Kansas. The Agency does original background investigations as well as addenda, upgrades and renewals of investigations which have been done in the past. In FY 2006, the tribes submitted 710 employee background investigation requests to the Agency. In addition, KSGA performed 13 vendor or manufacturer background investigations in FY 2006. Currently, employee background investigations of all types are being completed in an average time of about 34 days, a decrease from 41 days in FY 2004.

Licensing of gaming employees and vendors is done entirely by the Tribal Gaming Commissions. The Agency can and does occasionally object to particular applicants.

Key employee investigations, vendor, and tribal gaming inspector investigations are completed by enforcement agents. Frequently these investigations involve travel out of state. Vendors typically pay the expenses of the Agency for their background investigations. All other gaming employee (dealers, security, hard and soft count, cage, slot techs) investigations are completed by special investigators who are not sworn law enforcement officers. The four casinos and commissions currently have about 1196 casino gaming employees and tribal gaming inspectors. The Agency contributes varying amounts of background information on each, depending on whether they are key employees or not.

Nine enforcement agents, sworn law enforcement officers, conduct inspections and monitor gaming activity at the four casinos. Currently there are 2781 electronic gaming devices (slot machines), up from 2683 in FY 2004. During FY 2006, 966 electronic gaming devices were inspected. There were approximately 2100 electronic gaming devices in Kansas in FY 1999. There are currently 65 table games (blackjack, poker, craps and roulette) at the four casinos in Kansas. In FY 1999, there were 76 table games. There were 16 miscellaneous inspections done by the agency in FY 2006

For the past several years, the Agency shared an executive director with the Kansas Racing Commission. Since April, 2003, I have been the full time executive director. My background includes being a lawyer and a certified fraud examiner with 27 years in law enforcement, 18 of which was as a special agent with the Kansas Bureau of Investigation working white collar crime and public corruption cases.

KSGA is currently investigating several cases of counterfeit checks which have been passed at Kansas casinos. These include traveler's checks, cashier's checks, payroll checks and personal checks.

Late in FY 2003, the Agency upgraded its computer system to a server based network connected to high speed internet access with backup capabilities. Each employee now has access to the internet as well as access to email. Email is now regularly used to transmit information to and from employees. This purchase has greatly increased the efficiency of the Agency. A second server located off site ensures system backups every 24 hours.

In late FY 2004, KSGA purchased a document imaging system from a Topeka based company. The system uses high speed scanners and hard discs on the server to store electronic images of documents. In addition, the software provides statistical data for evaluating agency performance as well as individual employee performance. The system will mean that KSGA will reduce the amount of floor space devoted to storing documents in the future as well as providing quick access to past case files. This system will permit tribes to transmit disclosure forms and attached documents to KSGA electronically if they have compatible systems.

During calendar year 2006, each agency employee received several days of training on different parts of Microsoft Office software.

The operating budget for the Agency in FY 1999 was \$1,366,000. Eight years later, in FY 2007, the operating budget proposal for the Agency is \$1,732,499, an increase of \$366,499, which is less than 27% over eight years. Salaries compose about 73% of the Agency's budget. After the FY 2007 assessment letter was sent out, KSGA conducted a detailed examination of the budget and made adjustments to several budget categories to more accurately reflect the actual expense history of the Agency. That examination resulted in a budget proposal for FY 2007 of \$1,732,499, an increase of \$13,649 or 0.8% from FY 2006. The increase is from benefit and employee payroll increases.

In FY 1999, there were 20 employees in the Agency. In FY 2007, there are 22 employees plus two vacant positions. One enforcement agent position has been added in the past five years. The Agency has approval for and may hire a full time lawyer in the future. There are an increasing number of issues that will require considerable complex legal work in the future. The agency recently hired an accountant as its Compliance Officer.

The Agency's budget is funded entirely by contributions from the tribes. Under the Tribal State Compacts, the tribes are not required to make any other contributions to the State of Kansas. The only exception to the tribes funding the costs of the Agency occurs if the Agency is ordered to pay any expenses of arbitration. In FY 2003 arbitration expenses amounted to \$2900. There were no arbitration expenses in FY 2004. In FY 2005, an arbitration was settled and the Agency paid \$5355 in agreed arbitration expenses. There were no arbitration expenses in FY 2006 and none are expected in FY 2007.

On July 1 of each year, KSGA borrows \$450,000 from the State General Fund to cover expenses until tribal contributions are made. Unspent tribal contributions from the previous year are returned to the tribes in the form of a credit against the next fiscal year's assessment. Essentially the Agency has no carryover and starts from zero each year. The entire amount borrowed is repaid during the course of the fiscal year following receipt of tribal assessment payments. The legislature made an exception to this practice only for FY 2007. To date all assessments are paid in full and no balance is owed to the State General Fund.

Each year at the end of July, the Agency determines its budget, subtracts any funds unspent from the previous fiscal year, and then sends a letter of assessment to each tribe. Along with the assessment letter, the Agency includes a copy of each tribe's account and a list of each and every voucher used to pay Agency expenses during the past fiscal year. This list includes an explanation of each expense. The tribes have a period to object to their assessments. Assessments are due September 21, January 1, and April 1 of each year.

There was one objection to the FY 2006 assessment. That tribe sent a copy of their letter of objection to the members of the Joint Committee on State Tribal Relations. A letter of explanation was sent to the tribe and copied to members of the committee and to the governor's office. It should be noted each tribe's average assessment actually decreased by \$2446.60 for FY 2006 from FY 2005. The total assessment for each tribe for FY 2007 was \$5491.50 over individual tribal assessments for FY 2006. No objections to the FY 2007 budget were received.



Previously, the tribes were each assessed three equal payments over the year. As a result of an arbitration that was completed during FY 2003, the first assessment due in September is now adjusted. The payment is adjusted to reflect the cost of conducting background investigations for each tribe. The casinos vary widely in size and in numbers of employees. Consequently, the numbers of background investigations also vary widely per tribe. This disparity is now accounted for in the first assessment of the fiscal year. The other two assessment amounts are equal among the tribes.

There were two arbitrations active in FY 2005. Both concerned the right of the Agency to inspect electronic gaming machines at one casino. Those arbitrations were settled through negotiation in FY 2005. There have been no arbitrations in FY 2006 or FY 2007.

In FY 2005, KSGA moved to new office space in the Eisenhower Office Building. This increased KSGA office space from about 4500 square feet to about 6500 square feet. The new office space includes a conference room capable of seating 23 comfortably. With the addition of this new space, KSGA began a new program in which tribal gaming employees and gaming inspectors are invited to attend agent training that is sponsored by our Agency. During calendar year 2006, the Agency presented 29 training classes on such topics as slot machine technology, fraud, identity theft, interviewing skills and report writing. The classes were attended by KSGA agents and employees from all four tribes. The classes had a total of 732 tribal employee students.

The increased space also permitted room for KSGA to have gaming equipment for agents to train on.

I am unable to share with the members of this committee any specific information about the activities of any particular casino. Such information is not public record and is considered confidential according to the terms of the State Tribal Compacts.

There are proposals for expanded gaming still active in the legislature though none currently involve tribal gaming. It is unknown what the final outcome will be and what effect, if any, that may have on this Agency.

I am available for information at 785-368-6202 or at [john.mcelroy@ksgaming.org](mailto:john.mcelroy@ksgaming.org).

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**Presentation on Bingo to the House Federal & State Affairs Committee**

**Presented by Richard Cram, Director of Policy & Research**

**Prepared by Patsy Congrove, Administrator of Charitable Gaming**

**March 9, 2007, Room 313-S**

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**I. History of Bingo**

Until 1974, the Kansas constitution (Section 3 of Article 15) prohibited all lotteries, of which bingo is one type. Recognizing the existing practice of many churches and other charitable organizations of raising money through the conduct of bingo games, the 1974 Kansas Legislature overwhelmingly passed Senate Concurrent Resolution No. 72 authorizing a vote of the people on the issue of whether to amend the Kansas Constitution to permit bingo for charitable purposes. It was approved.

The 1975 Legislature Session passed Senate Bill 116, which defined bingo and adopted restrictions on how, when and where bingo games could be conducted. Regulation of bingo games and collection of the bingo enforcement tax was delegated to the Director of Taxation, Kansas Department of Revenue.

Since 1975: The Kansas Legislature fine-tuned the regulation of bingo with amendments passed in 1977, 1980, 1982, 1984, 1989 and 1993. In 1995, the Legislature passed Senate concurrent Resolution no. 1602 authorizing a vote of the people on the issue of whether to amend Section 3a of Article 15 of the Kansas Constitution to legalize the sale of "instant bingo" or pull tabs by bingo licensees. The people approved the amendment and the Legislature subsequently passed amendments to the bingo statutes defining instant bingo and the related regulatory provisions.

The Legislature passed House Bill 2013 in the 2000 session. This made major changes to the bingo statutes effective July 1, 2000 including the following:

- addition of progressive and mini ("early bird") call bingo games
- permitting a limited number of free raffles  
(4 per year)
- phase-out of the sales tax on bingo
- a new taxing mechanism for collecting the enforcement tax on call bingo  
(distributors collect it and send it to the department once a month)
- creation of the position of Administrator of Charitable Gaming with KDOR

If you **pay** to play bingo you are playing with a licensed bingo organization. All bingo licensed organizations must be a non-profit with a tax exempt ruling from the Internal

Revenue Service. Organizations must have been in existence in Kansas for 18 months with none of the officers or officials of the organization or employees convicted of a felony or gambling violation, and membership open to any person of any race or physical handicap.

In 2000 there were 450 licensees, compared to 347 licensed organizations today. Currently there are 28 licensed parlors and 12 distributors. In 2006 six educational workshops were conducted across the state for the organizations. In 2005 a workshop was conducted for parlor owners & distributors. The same year all bingo forms were placed on the department's website. Listed now are the distributors, parlors and those organizations who were interested in being posted. Licensees and other interested parties can find answers to their questions and download forms, related statutes and regulations plus the Bingo handbook-which is their bible to successful operation.

## II. Revenue

K.S.A. 79-4704 sets forth the tax rates applicable to bingo. Revenues from the sale of disposable faces and instant bingo were \$697,589 in 2003; \$671,037 in 2004; \$616,894 in 2005 and \$607,021 in 2006. There is bingo enforcement or excise taxes on each of the two types of bingo. The tax on traditional or call bingo is \$.002 per face sold by distributors to licensed organizations (revenues shown in the "faces" column). (K.S.A. 79-4704 (b))

Fiscal Year	Total	Instant	Hard Cards	Faces	Fees, fines, bonds	Licensed Organizations
2003	\$ 697,589	\$ 159,560	\$ 8,329	\$ 507,125	\$ 22,575	
2004	\$ 671,037	\$ 150,274	\$ 1,767	\$ 498,913	\$ 20,083	365
2005	\$ 616,894	\$ 129,640	\$ 1,609	\$ 453,262	\$ 32,384	363
2006	\$ 607,021	\$ 136,441	\$ 13,938	\$ 432,543	\$ 24,100	329

Each licensed organization pays a gross receipts tax of 3% (revenues shown in the "hard cards" column) on charges for call bingo games and admission charges, as well as a bingo enforcement tax of 1% of the retail sales price of all instant bingo tickets (revenues shown in the "pull-tabs" column). Both of these taxes are computed by the distributor and paid by the licensed organization to the distributor at the same time the licensed organization pays the distributor for the disposable paper faces and instant pull-tabs. Licensees pay an annual \$25 license application fee, pursuant to K.S.A. 79-4703(c).

K.S.A. 79-4710 sets forth the disposition of bingo registration fees and tax revenues. Two-thirds of the revenue from the taxes goes into the state general fund. From the other one-third, \$20,000 per year goes to the State Problem Gambling fund and the rest to the state bingo regulation fund for appropriation for operating expenses of the administrator and compliance staff for the administration and enforcement of bingo. Registration fees, fines, etc. go into the state bingo regulation fund.

Fiscal Year	Total	State General Fund	Bingo Regulation Fund	Problem Gambling Fund
2003	\$697,589	\$450,132	\$227,457	\$20,000
2004	\$671,038	\$433,991	\$217,047	\$20,000
2005	\$616,895	\$389,693	\$207,202	\$20,000
2006	\$607,022	\$388,633	\$198,389	\$20,000

The administrator's operational expenses include:

- salary of administrator of charitable gaming
- salary for two full time compliance agents
- operating expenses such as travel, mailings, office items, etc.

### III. Enforcement:

The administrator of charitable gaming, who is designated and supervised by the secretary of revenue pursuant to K.S.A. 79-4717, along with compliance staff, administers and enforces the provisions of the bingo laws and regulation. In 2006 the self-audit was introduced and given to organizations meeting certain criteria. (103 mailed)

Criteria: revenues below a certain level and only if the organization received a perfect review by a compliance agent in the previous audit.

In 2006 there were 221 audits completed by compliance agents.

Results: 21 warnings  
15 violations

Overall there were 37 violations issued in 2006.

The most common incident was late reports.

All complaints received in the office of Charitable Gaming are reviewed and investigated. Generally that requires sending a compliance agent to interview leaders from the organization receiving the complaint and other related individuals who are involved in the incident.