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MEMORANDUM

To: Chairman Waymaster and members of the House Appropriations Committee
From: Jason Long, Senior Assistant Revisor
Date: March 22, 2017
Subject: **HB 2173 – Amendments regarding racing and gaming, as amended by House Committee**

House Bill No. 2173 (HB 2173) creates new law and makes various amendments concerning horse and greyhound racing in Kansas and Kansas lottery gaming conducted at horse and greyhound racetracks.

Sections 1, 4, and 5 of the HB 2173 pertain to the authorization of a racetrack gaming facility located in Sedgwick County. Section 4 authorizes a vote by the electorate of Sedgwick County on whether the Kansas Lottery should be permitted to place slot machines at the Wichita Greyhound Park. If a petition requesting such an election is signed by at least 5,000 Sedgwick County voters and submitted to the Board of County Commissioners, then the Board is required to submit the question at an election to be held within 120 days after the petition is deemed valid. Upon approval by a majority of the votes cast, the Kansas Lottery may enter into a contract for the management of a racetrack gaming facility at the Wichita Greyhound Park under the Kansas Expanded Lottery Act (KELA).

A vote on the question of whether slot machines would be permitted at a racetrack facility in Sedgwick County was held around the time the Kansas Expanded Lottery Act was enacted, and the question was not approved by the voters. The potential for a new election on this issue and for a racetrack gaming facility to be opened in Sedgwick County has led to the issue of whether such action would create a violation of state law or the management contracts that the Kansas Lottery has already executed with existing lottery gaming facility managers. Section 5 of the HB 2173 addresses this potential issue.

Under Section 5, if a racetrack gaming facility management contract is executed, then each lottery gaming facility manager will be notified that they have 60 days to file or join an

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action seeking a judgment that the racetrack gaming facility management contract violates state law or constitutes a breach of an existing lottery gaming facility management contract. If an action is properly filed under this section, then the racetrack gaming facility manager is to place into escrow an amount equal to the privilege fees paid by each of the lottery gaming facility managers who are a party to the action plus 10% interest. Upon putting such funds into escrow, the racetrack gaming facility manager may proceed with construction and operation of the racetrack gaming facility and any injunction to prohibit such conduct is barred under Section 5.

In turn, each lottery gaming facility manager is to place \$5,000,000 into escrow. If a court determines in a final, non-appealable decision that the racetrack gaming facility management contract does violate state law or is a breach of existing lottery gaming facility management contracts, then the money placed into escrow by the racetrack gaming facility manager is to be released to the Kansas Lottery for payment of damages awarded in the lawsuit. If, however, a court determines in a final, non-appealable decision that the racetrack gaming facility management contract does not violate state law or is a breach of existing lottery gaming facility management contracts, then the money placed into escrow by the lottery gaming facility managers is to be released to the Kansas Lottery for payment to the racetrack gaming facility manager as reimbursement for costs of the litigation.

If the Kansas Lottery is ordered to return the privilege fees plus interest to the lottery gaming facility managers, and such funds are paid from the amount placed in escrow by the racetrack gaming facility manager, then the Kansas Lottery is required to repay the racetrack gaming facility manager in the form of monthly payments that will be not less than 50% of the revenue the Kansas Lottery receives from the racetrack gaming facility under the KELA.

Section 1 simply provides the appropriation for the funds created to manage the moneys placed into escrow under Section 5. This gives the Kansas Lottery authority to expend the funds placed in escrow in accordance with Section 5.

In conjunction with section 1, 4, and 5, HB 2173 also amends various sections of the KELA. First, subsection (q) is added to K.S.A. 74-8734 to clarify that racetrack gaming facilities are not similar to lottery gaming facilities for the purposes of the prohibition on the State against authorizing additional similar gaming facilities. This provision is also amended into K.S.A. 74-8741 with the same intent. Second, K.S.A. 74-8744 is amended to reduce the minimum number of slot machines at each racetrack gaming facility from 600 to 400. Also, HB 2173 strikes language regarding allocation of slot machines that is contingent on management contracts being in effect in all four gaming zones.

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Finally, K.S.A. 74-8747 is amended to with respect to the distribution of the slot machine income produced at a racetrack gaming facility. Below is a chart comparing the distribution under current law with the distribution under HB 2173, as amended:

Current Law	HB 2173, as am.
40% credited to the expanded lottery act revenues fund	22% credited to the expanded lottery act revenues fund
25% to the racetrack gaming facility manager	Remaining balance to the racetrack gaming facility manager
7% to the live horse racing purse supplement fund, with a per machine limit	10% the first two years and 14% thereafter of income from facilities licensed to conduct live horse races to the live horse racing purse supplement fund
7% to the live greyhound racing purse supplement fund, with a per machine limit	7% of income from facilities licensed to conduct live greyhound races to the live greyhound racing purse supplement fund
3% to the county in the NE gaming zone, or 1.5% to each the county and the city in the NE gaming zone if facility is in a city	2% to the county in the NE gaming zone, or 1% to each the county and the city in the NE gaming zone if facility is in a city
2% to the host county and 1% to the other county in the SE or SC gaming zones, or 1% to each the host county, other county, and the city in the SE or SC gaming zones if facility is in a city	2% to the county in the SC gaming zone, or 1% to each the county and the city in the SE or SC gaming zone if facility is in a city <i>House Committee Am:</i> 2% to the host county and 1% to the other county in the SE gaming zone, or 1% to each the host county, other county, and the city in the SE gaming zone if facility is in a city (back to current law)
2% to the problem gambling and addictions grant fund	0.5% to the problem gambling and addictions grant fund
1% to the horse fair racing benefit fund	1% of income from the facility in the NE gaming zone and 0.4% of income from facilities in the SE or SC gaming zone to the horse fair racing benefit fund
Not included	0.1% of income from the facility in the SC gaming zone to the horse council fund
15% for gaming expenses	Not included

Section 3 of HB 2173 requires that if any person wins a prize at a lottery gaming facility or racetrack gaming facility that would require the completion of IRS Form W-2G, then prior to payment of the prize amount such person is to be matched against the state debtor files under the state debtor setoff statutes. Section 15 amends K.S.A. 75-6204 to conform with the provisions of Section 3.

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The remaining sections of HB 2173 pertain to horse and greyhound racing. Section 2 requires the official breed registering agencies for horses and greyhounds to make recommendations to the Kansas Racing and Gaming Commission on programs to benefit economic development in rural Kansas. Section 6 creates the Kansas horse council fund to be used to develop, promote, and represent the equine industry in Kansas.

Sections 13 and 14 makes amendments regarding fair association racing licenses and simulcast licenses. This includes the reductions in the fair association application and license fees from \$500 to \$50 and \$100 to \$25, respectively. Also, there is a change in the required number of days of live racing to apply for a simulcast license.

If enacted, HB 2173 would be effective on July 1, 2017.