

John C. Frieden*
Michael J. Unrein
Randall J. Forbes*
Kevin M. Fowler



Brenda L. Head
Matthew R. Bergmann
Timothy D. Resner

1414 SW Ashworth Place, Suite 201 • Topeka, Kansas 66604 • www.fuflaw.com
Tel: 785-354-1100 • Toll Free: 888-293-4916 • Fax: 785-354-1113

*Also admitted in Missouri
kfowler@fuflaw.com

**TESTIMONY OF KEVIN M. FOWLER IN OPPOSITION TO HB 2792
HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS
MARCH 28, 2018**

Dear Chair Barker and Members of the Committee:

My name is Kevin Fowler and I am an attorney with the Topeka law firm of Frieden, Unrein & Forbes, LLP. I represent and appear on behalf of the managers of the Kansas Star Casino, Mulvane, Kansas (Kansas Star), the Boot Hill Casino & Resort, Dodge City, Kansas (Boot Hill), and the Kansas Crossing Casino, Pittsburg, Kansas (Kansas Crossing) (collectively “casinos”) in opposition to HB 2792.

If current federal prohibitions against sports wagering are overturned by judicial or legislative action, my clients would welcome the opportunity to assist the Kansas Lottery in making state-owned and –operated sports wagering activities available to the gaming public under an appropriate regulatory framework modeled after the legislation recently enacted by the State of West Virginia. The casinos, however, are strongly opposed to HB 2792.

As anyone who has filled out an NCAA basketball tournament bracket well knows, the outcome of sporting events involve elements of chance. Consequently, the Kansas Constitution prohibits any wagering on such sporting events within our borders (*see* KAN. CONST., art. 15, § 3) unless the activity is owned and operated by the State (*see id.*, art. 15, Article 15, § 3c). Although we have had inadequate time to fully evaluate HB 2792 in its entirety, it is not clear that the bill contains “substantial indicia of ownership by the state and concomitant operation” required to survive constitutional scrutiny under *State ex rel. Six v. Kansas Lottery*, 286 Kan. 557, 570-571, 186 P.3d 183 (2008). While we have serious misgivings about the constitutionality of HB 2792, we would harbor no such concerns if the Kansas Lottery was authorized to own and operate sports wagering activities through Kansas lottery gaming facilities and racetrack gaming facilities under a regulatory framework similar to West Virginia.

HB 2792 authorizes the Kansas Lottery to offer sports wagering through every lottery retailer in this State which signs an agreement to do so. Such authorization virtually guarantees that sports wagering will be available in every corner of the State that lottery

tickets are sold, including convenience stores, grocery stores and similar retail locations (*See, e.g.*, New Section 1(b)(2)).

New Section 6 of the bill requires each sports wagering operator to remit, as a so-called “sport betting right and integrity fee,” an amount equal to .25% of all amounts wagered to each sports governing body with authority over a sporting event on which bets were placed in the preceding quarter. Since the principal proponents of this bill (i.e., the major professional sports leagues: MLB, NFL, NBA) do not have any discernible presence in Kansas and have not made any significant investments in our economy, it is difficult to identify any reasonable justification for this mandatory exaction. The right to engage in otherwise lawful sports wagering in this State does not depend on permission from such out-of-state special interests and other states, such as Nevada and West Virginia, have refused to impose any such fees. It appears to be an unwarranted giveaway to out-of-state major professional sports leagues and should be stricken from the bill.

The bill inexplicably and unjustifiably cedes each sports governing body with authority to control and dictate the use of readily available information and data about public sporting events. Because this information and data is readily available in the public domain and derives no value from its secrecy, it is not confidential or proprietary under Kansas law and it should not be placed under the exclusive control of any sports governing body. These aspects of the bill appear solely to generate additional revenue for each sports governing body in addition to the mandatory integrity fee.

This bill is ill-considered and the measure should not be favorably considered as written. Absent substantial amendments that would authorized sports wagering in Kansas through existing casinos and racetrack gaming facilities under a regulatory scheme modeled after West Virginia, this bill should not be passed favorably out of this Committee or enacted into Kansas law.

I will be happy to stand for questions.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Kevin M. Fowler", with a long horizontal flourish extending to the right.

Kevin M. Fowler
FRIEDEN, UNREIN & FORBES LLP