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OPPOSITION TESTIMONY

House Commerce, Labor & Economic Development

HB 2280

**An Act concerning the Kansas expanded lottery act; relating to racetrack gaming facilities;
Relating to pari-mutuel racing of horses.**

**Whitney Damron
On behalf of the
Kansas Entrainment, LLC**

February 21, 2019

Chairman Tarwater and Members of the Committee:

Kansas Entertainment, LLC appreciates the opportunity to present testimony to the Committee in opposition to HB 2280 and share with you what we see as potential ramifications impact of this legislation on Kansas Entertainment and the State of Kansas.

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

Once again, Kansas Entertainment finds itself forced to appear before a legislative committee and inform the Legislature on the risks of making substantive amendments to SB 66, the Kansas Expanded Lottery Act passed in 2007, as you will not hear such comments from the proponents of this legislation.

Some of the members of this Committee have heard testimony in opposition to slots-at-track bills over the past decade, but others may not be familiar with the issue, so a little history is appropriate.

In 2007 the Kansas Legislature passed SB 66, the Kansas Expanded Lottery Act, clearing the way for the licensure of four state-owned and operated destination casinos, one each in four designated gaming zones. The bill also allowed for the placement of slot machines at three pari-mutuel tracks: The Woodlands in Kansas City, Wichita Greyhound Park and Camptown Greyhound Park in Frontenac. The counties where the casinos were to be located and where the pari-mutuel tracks were located had to approve gaming by a county vote. The vote failed in Sedgwick County, so Wichita Greyhound Park could not offer slots.

The owner of the track, Phil Ruffin, convinced the owner of The Woodlands to not open under SB 66 and instead return to the Kansas Legislature and seek a greater share of state revenues that allowed under the enabling legislation. He did this even though the pari-mutuel industry, Phil Ruffin and the owner of The Woodlands all supported SB 66 as written.

The casinos were given a greater share of gaming revenues because they were required to invest a minimum of \$225 million in the major markets, plus a \$25 million privilege fee (Wyandotte County, Sedgwick/Sumner County and Crawford/Cherokee Counties, with Ford County investment set at \$50 million + \$5.5 million privilege fee; SE KS later changed to reflect SW Gaming Zone Investment).

There was no minimum investment required for the pari-mutuel tracks.

The Legislature in SB 66 wanted to insure the State received the best possible proposals for destination casinos and included language in KELA to provide for a penalty if the State amended state law or abrogated contracts with the casinos by authorizing more gaming than what was approved under the original act. The penalty provisions call for repayment of all privilege fees paid (\$61 million) with 10% interest applied from the date of payment. Although at this writing I have not seen a fiscal note, last year that number was approximately \$120 million and would approach \$135 million today with a back of the envelope calculation.

Kansas Entertainment, LLC believes changing the tax rate for The Woodlands would be a breach of contract and would seek redress in the courts for such. We believe other casinos could and would do the same.

New Section 5 of the bill found on page 7 alters the division of gaming revenues for a pari-mutuel track - The Woodlands - to provide for the same as paid by Hollywood Casino at Kansas Speedway.

Proponents have long suggested they should be treated the same as the casinos in regard to their share of gaming revenues. However, as the saying goes, "if it looks like a duck, acts like a duck and quacks like a duck... it is a duck." The Woodlands is not a duck... not even close.

The Woodlands has not run a single pari-mutuel race in more than ten years. They would not be required to invest a minimum of \$225 million into their facility, nor have they paid a \$25 million privilege fee. They could obtain a license to run horses and dogs today under the law they helped pass but refuse to do so. They were granted this right merely by being a pari-mutuel track. They did not have to compete against other applicants for a license and have their proposal judged on state revenues, attraction to tourists, charitable support, total investment and a whole host of other criteria that Hollywood Casino at Kansas Speedway successfully competed for and won.

Mr. Ruffin, the owner of all three shuttered pari-mutuel tracks turned his back on the horse and dog industry in our state by refusing to live up to promises made during consideration of SB 66. He has long claimed he cannot make money doing so.

That position is contrary to the facts.

Hollywood Casino at Kansas Speedway's 50% partner, Penn National Gaming successfully operates several pari-mutuel facilities in the U.S. with tax rates might higher than those imposed under SB 66:

Under SB 66, the track owner receives 25% of the revenue and an additional 15% for expenses. The state's share is 40% with the remainder divided by the breed groups, city and county share, problem gaming and horse racing support for fairs. These percentages were negotiated and agreed-upon by Mr. Ruffin.

Two examples worth considering:

In West Virginia at Hollywood Casino at Charles Town Races, Penn successfully operates a pari-mutuel facility with slots where the state imposes an effective tax rate of 57.9%. Penn has made an approximate \$450 million investment in that property. Penn receives approximately 41.5% share of the revenues.

In Plainville, Massachusetts at Plainridge Park Casino, Penn successfully operates a pari-mutuel facility with slots where the state imposes an effective tax rate of 53%. Penn has made an approximate \$250 million investment in that property. Penn receives approximately 45.7% of the revenues.

In both of these states, expenses for operating a pari-mutuel track are significantly higher than in Kansas due to costs of labor, real property, taxes and related expenses, plus larger distributions of revenue to host jurisdictions, the horse racing industry, and for regulatory oversight.

Kansas Entertainment asks the Committee to again reject this legislation as harmful to existing businesses licensed under Kansas law who have kept their promises to the State of Kansas.

Should the Legislature choose to consider this legislation or something similar, it is time for Mr. Ruffin to appear personally and explain why a billionaire cannot keep the promises he made to the State and pari-mutuel industry and at least give the law he helped write a chance to succeed.

Thank you for your consideration of our comments.

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