

Approved: 1-13-94  
Date

## MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Vice-Chairperson Benlon at 1:30 p.m. on January 11, 1994 in Room 526-S of the Capitol.

All members were present except: Representative Clyde D. Graeber, Chairperson, Excused  
Representative Bob Krehbiel, Ranking Minority Member, Excused  
Representative Don Myers, Excused  
Representative Carolyn Weinhold, Excused

Committee staff present:  
Lynne Holt, Legislative Research Department  
Mary Ann Torrence, Revisor of Statutes  
June Evans, Committee Secretary

Conferees appearing before the committee: Kyle Smith, Assistant Attorney General, Kansas Bureau of Investigation  
Jim Conant, Chief Administrative Officer, Alcoholic Beverage Control Division  
Gregory P. Ziemak, Executive Director, Kansas Lottery  
Douglas E. Smith, Kansas Automatic Merchandising Assn.

Others attending: See attached list

The Vice-Chairperson announced there would be a hearing and possible final action on HB 2560 and asked Mary Torrence, Legislative Revisor's Office, to give a background briefing on the bill.

Mary Torrence stated the bill was prefiled at the request of the committee during the interim and the changes are on pages 2 and 3 which relates to gambling devices. These are the machines which are found in 3-2 bars or drinking establishments, patrons put money in and accumulates and the bar tender pays off the credits.

Kyle Smith, Assistant Attorney General, Kansas Bureau of Investigation, testified in support of HB 2560, a bill designed to make the statutory definition of a gambling device consistent with the definition used under federal law.

Mr. Smith requested HB 2560 be amended on page 2 lines 29 and 30 to strike "the application of an element of" and on lines 31 and 32 to strike "the application of an element of". (See Attachment #1)

Jim Conant, Chief Administrative Officer, Alcoholic Beverage Control Division, testified in support of HB 2560, stating it would provide a cost-effective means of dealing with those machines which are most often used in illegal gambling operations. (See Attachment #2)

Gregory P. Ziemak, Executive Director, Kansas Lottery, testified in support of HB 2560, stating passage of this bill would not only substantially benefit law enforcement in curtailing illegal gambling activities, but would allow the lottery to make retailers out of a number of businesses not currently interested in club keno or other lottery products. (See Attachment #3)

Douglas E. Smith, representing Kansas Automatic Merchandising Association (KAMA), testified in support of HB 2560. (See Attachment #4)

John C. Bottenberg, Lobbyist-Video Lottery Technologies, provided testimony that supports HB 2560. (See Attachment #5)

Chairperson Benlon closed the hearing and asked the committee if they wished to take any action on HB 2560.

Representative Cornfield moved that HB 2560 be passed out favorably.

Representative Sebelius stated that the Kansas Bureau of Investigation asked the bill be amended, and asked, did the motion include the amendment?

Representative Cornfield moved and Representative Robinette seconded that HB 2560 be moved out as amended. The motion carried.

The meeting adjourned at 2:15 PM

The next meeting will be January 12, 1994.

Date: 1/11/94

FEDERAL and STATE AFFAIRS COMMITTEE

NAME	ORGANIZATION	ADDRESS
Jim & Sonia Yount	K.O.H.R.A.	Valley Falls, Ks 66088
Robert Engle	KPOR-ABC	
Doug Smith	KAMA	Topeka
Kyle Smith	KBI/AG	Topeka
Allen Jones	KBI	Topeka
Ted Clark	KBI	Topeka
Larry Johnson	Roaming Comm	Topeka
Tom Bruno	Alumni Assoc	Topeka
James Clance	KCVAA	Topeka
Jim Allen	Camp Town	Topeka
Don Bird	KFLAIB	Topeka
Tom Conant		
Greg Ziemack	K & Lottery	Topeka



ROBERT B. DAVENPORT  
DIRECTOR

# KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL

STATE OF KANSAS

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ROBERT T. STEPHAN  
ATTORNEY GENERAL

**TESTIMONY**  
**KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL**  
**KANSAS BUREAU OF INVESTIGATION**  
**BEFORE THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE**  
**IN SUPPORT OF HOUSE BILL 2560**  
**January 11, 1994**

Mr. Chairman and Members of the Committee:

I am here today on behalf of Attorney General Robert T. Stephan and the Kansas Bureau of Investigation (KBI) in support of HB 2560, a bill designed to make the statutory definition of a gambling device consistent with the definition used under federal law. Besides standardization, the principle benefit of this change would be to ease the investigation and prosecution of these illegal gambling machines.

As this committee will remember from hearings this summer and fall, the problem of lack of enforcement on these illegal gambling machines was discussed. The low priority given to these "grey" machines by law enforcement agencies was primarily due to two things. First, which this bill won't change, is the need to direct resources to higher profile crimes such as murder, drugs and burglaries. Second, was a narrow interpretation given the term "gambling device" by the Kansas Supreme Court in Games Management, Inc. v. Owens, 233 Kan. 444 (1983). In that decision it was held that a "gambling device" only applies to one which could be proved beyond a reasonable doubt to have been used in illegal gambling.

FvSA  
1-11-94  
Atch #1

01/11/94

Page 2

The federal statute, however, allows prosecution if the machine has been designed or built for illegal gambling. Usually this means a "knock-off switch," which allows a bar owner to clear or remove the accumulated games when they pay the gambler. HB 2650 adopts this interpretation.

HB 2650 will not make any video machines illegal in Kansas that are not already illegal in Kansas. The bill just adds state jurisdiction and the resulting hundreds of law enforcement officers and prosecutors are then available to work these cases, without requiring the intensive investigation to actually catch the gambler in the act.

After review of the proposed bill, the Attorney General recommends the following clarification:

Page 2 beginning on line 29, strike "the application of an element of". Also, beginning on line 30, strike "the application of an element of". The Attorney General believes this clarification will still allow for the bill's intention to make enforcement of illegal machines easier for law enforcement.

Thank you for your support. I would be happy to answer any questions.

#121

1-2



STATE OF KANSAS



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Department of Revenue  
*Division of Alcoholic Beverage Control*

MEMORANDUM

**TO:** The Honorable Clyde Graeber, Chairman  
House Committee on Federal & State Affairs

**FROM:** Jim Conant, Chief Administrative Officer  
Alcoholic Beverage Control Division

**DATE:** January 11, 1994

**SUBJECT:** House Bill 2560

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I appreciate the opportunity to appear before the committee today in support of House Bill 2560. The proliferation of "video poker" and other similar machines used for gambling on club and drinking establishment premises has placed a growing demand on ABC field investigative resources. House Bill 2560 would provide a cost-effective means of dealing with those machines which are most often used in illegal gambling operations.

Recent experience indicates that illegal gambling is fairly common in certain on-premise liquor establishments across the state. In calendar year 1992, ABC agents initiated 20 administrative cases involving illegal gambling. In 1993, the number of gambling cases grew to 45. A review of these and several ongoing investigations finds that "video poker" and similar electronic devices are the primary means of conducting illegal gambling in clubs and drinking establishments. ABC agents are asked to document the number of these types of machines in each licensed business as a part of their routine inspections. Based on these field surveys, we estimate that there are currently over 842 video gambling machines located on the premises of approximately 409 liquor licensees. It should be noted that this tally does not include cereal malt beverage licensees or any other businesses without a club or drinking establishment license.

Our investigations of these gambling operations have determined that significant amounts of money are often involved. The list on the following page provides several examples of cases investigated by ABC in recent months.

F+SA  
1-11-94  
Atch #2

Case #1

Liquor licensee showed 9-month receipts for 2 poker machines = \$35,598. **Projects to \$22,248 per machine per year.**

Case #2

Machine vendor payout records on 2 machines for 8-month period = \$14,132. **Projects to \$9,418 per machine per year.**

Case #3

Liquor licensee admits \$8,000 taken in from machines was used to pay off bad debts. Approximately \$18,500 seized from machines at time of investigation.

Case #4

Liquor licensee estimates that video machines brought in about \$4,000 per week for the club. **Projects to \$208,000 per machine per year.**

Case #5

Approximately \$38,000, attributable to 10 machines, seized from liquor licensee. Club officers admit that complete renovation of building was paid for with proceeds from video machines.

In order to support successful prosecution of suspected illegal gambling, ABC agents and other law enforcement officers must often engage in long, costly undercover investigations. In addition to the man-hours expended, costs for subsistence and related investigative expense can mount quickly during an in-depth gambling investigation. By identifying certain characteristics of these machines as *prima facie* evidence of a violation, many investigations could be reduced to a thorough inspection of the premises. With House Bill 2560 in place, ABC resources currently utilized for gambling investigations could be redirected toward priority violations such as sales to minors and other serious liquor and tax violations.

I would be happy to answer any questions the committee may have.

TESTEMONY ON HB No. 2560

BY

GREGORY P. ZIEMAK

EXECUTIVE DIRECTOR

KANSAS LOTTERY

JANUARY 11, 1994

MR. CHAIRMAN, AND MEMBERS OF THE COMMITTEE, THIS IS MY FIRST OPPORTUNITY TO APPEAR BEFORE YOU SINCE I JUST ASSUMED MY DUTIES AS EXECUTIVE DIRECTOR OF THE KANSAS LOTTERY FOUR WEEKS AGO. I WELCOME THE OPPORTUNITY TO ADDRESS THIS COMMITTEE IN SUPPORT OF A BILL THAT WILL BE OF GREAT BENEFIT TO THE STATE OF KANSAS AND THE KANSAS LOTTERY. IT HAS BEEN BROUGHT TO MY ATTENTION BY MY STAFF AND OTHERS THAT VIDEO POKER IS A THRIVING BUSINESS IN KANSAS. PATRONS OF MANY CLUBS, BARS, TAVERNS, AND RESTAURANTS THROUGHOUT THE STATE HAVE AN OPPORTUNITY TO PLAY VIDEO POKER MACHINES, REFERRED TO AS "GRAY MACHINES," WHICH PAYOFF PLAYERS WHO HAVE ACCUMULATED CREDITS. AFTER PAYING OFF THE CREDITS IN CASH OR MERCHANDISE THESE CREDITS ARE REMOVED FROM THE MACHINE.

IN THE LOTTERY'S EFFORT TO BROADEN ITS RETAILER BASE TO INCLUDE SOCIAL ENVIRONMENT SETTINGS FOR ITS NEW "CLUB KENO" GAME IN THE FALL OF 1992, THE LOTTERY'S SALE FORCE CALLED UPON CLUBS, BARS, TAVERNS, AND CERTAIN RESTAURANTS IN AN EFFORT TO GET THEM TO BECOME NEW LOTTERY RETAILERS WITH A FOCUS ON "CLUB KENO", WHICH KICKED OFF ON OCTOBER 29, 1992. IN VIRTUALLY ALL THOSE ESTABLISHMENTS WHICH HAD VIDEO POKER GAMES WHERE CREDITS COULD BE ACCUMULATED BY PLAYERS AND PAYMENT COULD BE MADE TO THOSE PLAYERS FOR THOSE CREDITS, THERE WAS ABSOLUTELY NO INTEREST IN BECOMING A LOTTERY RETAILER. LOTTERY RETAILERS MAKE 5% FROM THE SALES OF LOTTERY PRODUCTS

FUSA  
1-11-94

Atch #3



WHEREAS INCOME GENERATED FROM VIDEO POKER MACHINES IS SUBSTANTIALLY HIGHER. OUR STAFF, IN SOLICITING BUSINESS IN ONE SUCH LOCATION WAS ADVISED BY THE PROPRIETOR THAT HE WOULD NOT BE INTERESTED IN BEING A LOTTERY RETAILER BECAUSE HE WAS CURRENTLY MAKING OVER \$3000 A WEEK FROM THE "GRAY MACHINES". SOME OF OUR STAFF EVEN WITNESSED PAYOFFS TO PLAYERS WHO HAD ACCUMULATED CREDITS AND WATCHED AS THE PROPRIETOR REMOVED THE CREDITS FROM THE MACHINE AFTER MAKING THE PAYMENT.

CURRENTLY THERE IS NO REGULATION OF VIDEO POKER MACHINES, AND IT IS DOUBTFUL THAT THE STATE OF KANSAS IS RECEIVING TAX DOLLARS FROM REVENUES GENERATED FROM THOSE ILLEGALLY OPERATED MACHINES. I AM SATISFIED THAT PASSAGE OF THIS BILL WOULD NOT ONLY SUBSTANTIALLY BENEFIT LAW ENFORCEMENT IN CURTAILING ILLEGAL GAMBLING ACTIVITIES, BUT WOULD ALLOW THE LOTTERY TO MAKE RETAILERS OUT OF A NUMBER OF BUSINESSES NOT CURRENTLY INTERESTED IN CLUB KENO OR OTHER LOTTERY PRODUCTS. ALTHOUGH WE HAVE NO WAY OF KNOWING THE TOTAL NUMBER OF MACHINES IN THE STATE, WE DO UNDERSTAND THAT THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL OF THE DEPARTMENT OF REVENUE HAS SOME FIGURES CONCERNING THE NUMBER OF MACHINES AND ESTABLISHMENTS IN WHICH THEY ARE LOCATED. OUR RECORDS REFLECT THAT SOCIAL ENVIRONMENT RETAILERS, SUCH AS THOSE CURRENTLY SELLING THE LOTTERY'S "CLUB KENO" GAME AVERAGE \$980 IN SALES PER WEEK. OF THOSE SALES 30% GOES TO THE STATE OF KANSAS. BASED ON THESE AVERAGE SALES AN INCREASE OF 200 RETAILERS WOULD GENERATE OVER \$10,000,000 IN ADDITIONAL SALES FOR THE LOTTERY AND OVER \$3,000,000 OF ADDITIONAL REVENUE TO THE STATE OF KANSAS IN A ONE YEAR PERIOD.

IT IS THE OPINION OF MYSELF AND MY STAFF THAT PASSAGE OF HOUSE BILL NO. 2560 WOULD BE IN THE BEST INTEREST OF THE STATE OF KANSAS.



"The voice of the Kansas coin-operated machine industry."

KANSAS AUTOMATIC MERCHANDISING ASSOCIATION, INC.

5332 NW 25th Street

Topeka, KS 66618

(913) 232-1050 or (913) 234-3686

STATEMENT OF  
JACK STEVENS, PRESIDENT  
KANSAS AUTOMATIC MERCHANDISING ASSOCIATION

JANUARY 11, 1994

To the Honorable members of the House Federal and State Affairs  
Committee.

Mister Chairman and members of the Committee:

My name is Douglas E. Smith of Pinegar, Smith and Associates. Our firm represents the Kansas Automatic Merchandising Association (KAMA). I am pleased to provide this testimony today in behalf of House Bill No. 2560. Mr. Jack Stevens the President of KAMA is unable to appear in person today and requested that I present this testimony in his behalf. My remarks will be brief.

KAMA is a state-wide organization of Kansas businesses having a vital interest in the automatic amusement and game industry. Our members are from all geographic regions of the state.

The Kansas Automatic Merchandising Association does not and will not allow membership in its organization to any person, business, or other entity that possesses and places in operation any grey area machine permitted to be operated illegally in the State of Kansas.

Any member of the Kansas Automatic Merchandising Association that is found to be placing in operation any grey area machine permitted to be operated illegally will have his, her or its membership in Kansas Automatic Merchandising Association terminated immediately.

F&SA  
1-11-94  
Atch #4

Our membership strongly supports the efforts of Attorney General Stephan to put more teeth in state law in order to eliminate "grey area machines". We support House Bill No. 2560 with the proposed amendments of the Attorney General.

Thank you for allowing me to present this testimony.

(A copy of Resolution 1991-12-3 is attached for your information. The resolution was passed by the membership of Kansas Automatic Merchandising Association on December 3, 1991.

**KANSAS AUTOMATIC MERCHANDISING ASSOCIATION**

**RESOLUTION 1991-12-3**

**WHEREAS**, the Kansas Automatic Merchandising Association is a state-wide organization of Kansas businesses having a vital interest in the automatic amusement and games industry;

**WHEREAS**, Kansas presently is served by numerous video poker machines commonly referred to as "gray area machines". These gray area machines are legal under the laws of Kansas if played for amusement only. Redeeming credits for cash is strictly prohibited by law.

**NOW, THEREFORE, BE IT RESOLVED THAT:**


The Kansas Automatic Merchandising Association does not and will not allow membership in this organization to any person, business, or other entity that possesses and places in operation any grey area machine permitted to be operated illegally in the State of Kansas.

Furthermore any member of Kansas Automatic Merchandising Association that is found to be placing in operation any grey area machine permitted to be operated illegally will have his, her or its membership in Kansas Automatic Merchandising Association terminated immediately.


The Kansas Automatic Merchandising Association strongly supports the proposition that in the event Kansas law authorizes video lottery to be played as a part of Kansas' lottery program, any such law should unqualifiedly prohibit "grey area" machines from being operated anywhere in the state of Kansas prior to the date video lottery becomes authorized.

DATED this 3rd day of December, 1991.

KANSAS AUTOMATIC MERCHANDISING  
ASSOCIATION

  
\_\_\_\_\_  
Jack Stevens, Chairman  
Board of Directors

ATTEST:

  
\_\_\_\_\_  
Doyle Pepper, Secretary  
Board of Directors


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# BOTTENBERG & ASSOCIATES

JOHN C. BOTTENBERG

## MEMORANDUM

TO: Chairman Clyde Graeber  
House Federal and State Affairs Committee

FROM:  John C. Bottenberg  
Lobbyist-Video Lottery Technologies

DATE: January 11, 1994

RE: Support for HB 2560

Video Lottery Technologies supports HB 2560.

The passage of this bill would give law enforcement agencies a major tool in cracking down on illegal gaming activity in Kansas.

Illegal or "gray area" video gaming activity exists throughout Kansas. Law enforcement agencies faced with more urgent priorities and budget constraints are unable to allocate the resources necessary to eliminate this activity.

Passing HB 2560 would dramatically reduce the incidence of "gray area" activity in Kansas and thereby provide the legitimate video game operators with increased revenues and the state with increased tax revenues.