

MINUTES OF THE HOUSE FED & STATE COMMITTEE

The meeting was called to order by Chairperson Doug Mays at 1:35 p.m. on January 29, 2001 in Room 313-S of the Capitol.

All members were present except: Representative Broderick Henderson, Excused

Committee staff present: Theresa M. Kiernan, Revisor of Statutes  
Russell Mills, Legislative Research Department  
Shelia Pearman, Committee Secretary

Conferees appearing before the committee:

Glenn O. Thompson, Stand Up for Kansas Executive Director  
Steve Kearney, Petroleum Marketers and Convenience Store Association of Kansas  
Ron Hein, Kansas Soft Drink Association Legislative Counsel

Others attending: See attached list

Without objection bill will be introduced as requested by Tracey Diel regarding Tribal Gaming Oversight Act. [HB 2216]

Without objection bill will be introduced as requested by Representative Faber regarding Producer Protection Act. [HB 2287]

Minutes of January 10, January 16, January 17, and January 18 were approved by the committee.

The hearing on **HB 2109 - Video lottery machines and lottery machines** was opened.

Mr. Thompson opposes the expansion of gambling as noted in this bill. In 1998, a similar bill HB 2999 passed the House but the session ended before the Senate committee acted.

This bill would cover the following as detailed in (Attachment #1):

1. Closes loopholes in lottery statutes with regard to the prohibition of lottery machines
2. Prohibits sales of lottery tickets from vending machines
3. Prohibits sales of lottery tickets and lottery advertising on the Internet
4. Prohibits sales of lottery tickets using credit cards
5. Restores the time between Keno games from four to five minutes
6. Requires Kansas Lottery advertising to meet the advertising standards of the North American Association of State and Provincial Lotteries (NASPL)

Mr. Hein and the association does not oppose the general concept or intent of **HB 2109**. (Attachment #2) However, the present definition of lottery machines encompasses soda vending machines which periodically include promotional prizes printed in various methods in their packaging. He requested clarification of language to exclude such products.

Mr. Kearney echoed the broadness of the present language and believes it to be problematic.

Technical amendments were included in the amendment (Attachment #3) distributed to the committee and the reference to electronic media was made specific to e-mail, instead of radio or television broadcasts. Also the start of KENO games shall not be less than five minutes was readdressed.

The hearing on **HB 2109** was closed.

Representative Rehorn presented substitute motion to strike language on page 2 line 13-23.  
Representative Ruff seconded the motion. Motion failed by 11-7.

Representative Rehorn made motion to delete use of credit cards on page 3. Representative Ruff seconded the motion. The motion failed.

CONTINUATION SHEET

Representative Dahl made motion to conceptually amend line 13 after vending machine or device to be "other than soft-drink dispenser." Representative Mason seconded the motion. Motion failed.

Representative Powell moved that Committee recommend **HB 2109** as amended favorable for passage. Representative Ruff seconded the motion. Motion passed.

The Chairman requested consideration of **HB 2038**.

Representative Benlon moved that Committee conceptually amend **HB 2038** by removing sunset provision and undergo a KGOAL Audit every 5 years. Representative Cox seconded the motion.

Representative Burroughs made a substitute motion to change 2012 to 2003. Representative Rehorn seconded the motion. Motion failed on requested division of 8-12.

Representative Hutchins made a substitute motion to amend **HB 2038** to sunset in 2008. Representative Powell seconded the motion. Motion passed on requested division of 11-8.

Representative Hutchins moved that Committee recommend **HB 2038** favorable as amended. Representative Powell seconded the motion. Motion passed.

The committee meeting adjourned at 2:45 p.m. The next schedule meeting is January 30, 2001.

# HOUSE FEDERAL & STATE AFFAIRS COMMITTEE

## COMMITTEE GUEST LIST

DATE: 1/29/01

NAME	REPRESENTING
Kelly Kuntala	City of Overland Park
Cheryl Caldwell	Tupelo-Chamber of Com
Whitney Jansen	WTCO/KC, KS
Ron Hein	KS Soft Drink Ass'n
Ed Van Petton	KS Lottery
Keith Kucher	" "
TRAY DIES	SBA
Neal Whitaker	KDBIA
Roger Franze	KCC
Michael L. Whit	Kearney Law Office
Mike Hein	Hemp & Wine
JOHN C. BOTTENBAY	Woodlands
Glen Longfellow	Stand Up For K.S.





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**Testimony To House Federal and State Affairs Committee**

**on**

**House Bill 2109**

**by**

Glenn O. Thompson

Executive Director, Stand Up For Kansas

January 29, 2001

**Introduction**

Good afternoon Chairman Mays and other members of the committee. Thank you for this opportunity to speak at this public hearing. As in the past, I am speaking on behalf of grass-roots citizens across the state who oppose the expansion of gambling in Kansas. **We urge you to support HB 2109.**

In 1998, a similar bill, HB 2999, passed the House **107 to 16**, but the legislative session ended before it passed out of the Senate Federal and State Affairs Committee.

**House Bill 2109 places needed constraints on Ks. Lottery operations.** Specifically, it

- 1) Closes loopholes in lottery statutes with regard to the prohibition of lottery machines;
- 2) Prohibits sales of lottery tickets from vending machines;
- 3) Prohibits sale of lottery tickets and lottery advertising on the internet;
- 4) Prohibits sale of lottery tickets using credit cards;
- 5) Restores the time between Keno games from four to five minutes, and
- 6) Requires Ks. Lottery advertising to meet the advertising standards of the North American Association of State and Provincial Lotteries (NASPL).

Now, I would like to discuss each of these topics very briefly.

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## 1. Close loopholes in lottery statutes with regard to the prohibition of lottery machines

In 1992, the legislature amended the Kansas Lottery Act to prohibit operation of video lottery machines. Since that time, Kansas Supreme Court rulings, Attorney General opinions, court cases in other states and advanced computer technology have exposed **loopholes and ambiguities** in the statutes. To save time, I am not going to discuss these loopholes. Specific problem areas are discussed in Appendix 1 of my written testimony. At this time, I simply want to emphasize that these loopholes and ambiguities need to be eliminated **so legislators and citizens can understand the gambling policy of our state with respect to lottery machines.**

## 2. Prohibit sales of lottery tickets from vending machines

In 1998 the Kansas Lottery began installing lottery ticket vending machines in bars. The previous executive director stated that he would like to expand these locations to other retail outlets, such as restaurants, if the machines were successful in bars.

**Lottery machines are extremely addictive.** Access is easy and gratification time from bet to prize is immediate. So, it's easy to get hooked.

**Kansas statutes do not prohibit minors being in bars.** Teenagers can purchase soft drinks in bars as easily as adults can purchase alcoholic drinks. K.S.A. 41-727 states only that: "No person under 21 years of age shall possess, consume, obtain, purchase or attempt to obtain or purchase alcoholic liquor or cereal malt beverage except as authorized by law." **In fact, one out of three Kansas bars sells liquor to minors.** A 1998 legislative post audit of ABC stated: "... current noncompliance with laws prohibiting sales (of liquor) to minors is high --- as high as 48% in establishments that are known to have a history of violating the state's liquor laws, and 32% in establishments chosen at random."

**Why should tobacco vending machines be prohibited in public places open to minors but not lottery ticket vending machines?** Ks. statutes prohibit retailers to "sell cigarettes or tobacco products by means of a vending machine in any establishment, or portion of an establishment, which is open to minors..." except behind a counter or in a place where minors are prohibited by law from having access. (KSA 79-3321)

### **3. Prohibit sale of lottery tickets and lottery advertising on the internet**

Some states are considering selling lottery tickets over the Internet to increase sales. Last January, the Ohio Lottery Profits Review commission heard proposals from several internet lottery sales companies.

A federal internet gambling law being considered by Congress would specifically exempt internet lotteries while outlawing many other forms of online gambling. That would leave governing of lottery internet games up to the states.

GTECH Corp., the company that provides lottery services for the Ks. Lottery, is betting that internet gambling will eventually be legalized in the U.S. In fact, in 1998 the company launched a wholly owned subsidiary, UWin!, dedicated to developing new lottery games especially for the internet.

Legalizing lottery internet sales on home computers would increase problem gambling drastically, particularly among youth, since lottery tickets would be even easier to purchase.

### **4. Prohibit sale of lottery tickets using credit cards**

Betting with credit cards contributes to gambling addiction. Prohibiting sale of lottery tickets on credit will help reduce the number of problem gamblers in the state.

### **5. Restore the time between Keno games from four to five minutes**

Time from bet to prize is one of the most significant factors of gambling addictions. The shorter the time, the more addictive the game. During the initial years of operation, the time between Keno games was five minutes. However, in recent years, the Ks. Lottery reduced the time from five minutes to four minutes to increase sales. This bill would restore the time to five minutes.

### **6. Require Ks. Lottery advertising to meet the advertising standards of the North American Association of State and Provincial Lotteries (NASPL)**

The North American association of State and Provincial Lotteries (NASPL) approved a list of advertising standards for their members on March 19, 1999. These standards address the content and tone of lottery advertising, including the use of minors in ads, the inclusion of game

information and a clear listing of lottery revenue beneficiaries. A copy of these standards is attached.

### **Conclusion**

In conclusion, this bill closes loopholes in lottery statutes related to prohibition of lottery machines and places needed constraints on lottery operations. **We urge your support.**

## Appendix 1

### Loopholes in Ks. statutes related to lottery machines

1. The present statute **does not prohibit** lottery machines that dispense preprinted lottery tickets. In fact, the **Ks. Lottery is presently operating lottery ticket dispensers at retail facilities.**

In 1996, the Attorney General (AG) offered an opinion that a **pull-tab dispenser**, displayed in the capitol that year, is **not prohibited**. (AG opinion 96-39) You may recall that the machine looked like a slot machine, functioned like a slot machine, and in the opinion of many legislators, was a slot machine. The only difference was that the machine dispensed preprinted paper pull-tabs, printed in California, rather than metal tokens. The AG said the machine is legal since "... the vending machine does not generate the tickets, it merely dispenses them." In other words, if tickets are generated in the machine, the machine is prohibited. If the tickets are generated outside the machine the machine is legal. Why should the location of the ticket printer determine the legality of the machine?

2. The present statute **does not clearly prohibit** operation of a lottery machine **controlled from a remote computer**. The present statute appears to prohibit only machines controlled by internal computers (microprocessors). Several opinions provided by the AG seem to support this position. (AG opinions 92-125 and 96-39) Why should the location of the computer determine the legality of the machine?
3. The present statute **does not prohibit** operation of non-electronic (mechanical) slot machines. The AG thinks these machines are prohibited, but the AG's rationale is controversial. (AG opinion 92-125)
4. The present statute **needs to be more explicit in the area of "skill" versus "chance."** This is becoming an issue in several states. In fact, the South Carolina Supreme Court has agreed to hear a case on this issue. Gambling proponents contend that a video poker machine is not a lottery machine since "skill predominates over chance." According to proponents, the only activity involving chance is dealing of the cards, and all other plays are based on skill.



## NASPL ADVERTISING STANDARDS

The North American Association of State and Provincial Lotteries (NASPL) approved a list of advertising standards for their members on March 19, 1999.<sup>78</sup> These standards address the content and tone of lottery advertising, including the use of minors in ads, the inclusion of game information and a clear listing of lottery revenue beneficiaries. According to the NASPL, signatory NASPL members "will conduct their advertising and marketing practices in accordance with the provisions of these standards."<sup>79</sup> These advertising standards are outlined below:

### Content:

- Advertising should be consistent with principles of dignity, integrity, mission, and values of the industry and jurisdictions.
- Advertising should neither contain nor imply lewd or indecent language, images or actions.
- Advertising should not portray product abuse, excessive play, nor a preoccupation with gambling.
- Advertising should not imply nor portray any illegal activity.
- Advertising should not degrade the image or status of persons of any ethnic, minority, religious group nor protected class.
- Advertising by lotteries should appropriately recognize diversity in both audience and media, consistent with these standards.
- Advertising should not encourage people to play excessively nor beyond their means.
- Advertising and marketing materials should include a responsible play message when appropriate.
- Responsible play public service or purchased media messages are appropriate, especially during large jackpot periods.
- Support for compulsive gambling programs, including publications, referrals and employee training is a necessary adjunct to lottery advertising.
- Advertising should not present, directly nor indirectly, any lottery game as a potential means of relieving any person's financial or personal difficulties.
- Advertising should not exhort play as a means of recovering past gambling nor other financial losses.
- Advertising should not knowingly be placed in or adjacent to other media that dramatize or glamorize inappropriate use of the product.

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<sup>78</sup> In addition to the national standards provided by NASPL, many state lotteries have created their own guidelines for advertising. The advertising codes for 24 lottery states were forwarded to the NGISC on April 20, 1999.

<sup>79</sup> See NASPL Advertising Standards, sent to NGISC by George Anderson, April 1999.

*Tone:*

- The lottery should not be promoted in derogation of nor as an alternative to employment, nor as a financial investment, nor a way to achieve financial security.
- Lottery advertisements should not be designed so as to imply urgency, should not make false promises, and should not present winning as the probable outcome.
- Advertising should not denigrate a person who does not buy a lottery ticket nor unduly praise a person who does buy a ticket.
- Advertising should emphasize the fun and entertainment aspect of playing lottery games and not imply a promise of winning.
- Advertising should not exhort the public to wager by directly or indirectly misrepresenting a person's chance of winning a prize.
- Advertising should not imply that lottery games are games of skill.

*Minors:*

- Persons depicted as lottery players in lottery advertising should not be, nor appear to be, under the legal purchase age.
- Age restriction should, at a minimum, be posted at the point of sale.
- Advertising should not appear in media directed primarily to those under the legal age.
- Lotteries should not be advertised at venues where the audience is reasonably and primarily expected to be below the legal purchase age.
- Advertising should not contain symbols nor language that are primarily intended to appeal to minors or those under the legal purchase age.
- The use of animation should be monitored to ensure that characters are not associated with animated characters on children's programs.
- Celebrity or other testimonials should not be used that would primarily appeal to persons under the legal purchase age.

*Game information:*

- Odds of winning must be readily available to the public and be clearly stated.
- Advertising should state alternative case and annuity values where reasonable and appropriate.

*Beneficiaries:*

- Lotteries should provide information regarding the use of lottery proceeds.
- Advertising should clearly denote where lottery proceeds go, avoiding statements that could be confusing or misinterpreted.

# HEIN AND WEIR, CHARTERED

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## House Federal and State Affairs Committee

Testimony Re: HB 2109

Presented by Ronald R. Hein

on behalf of

Kansas Soft Drink Association

January 29, 2001

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Kansas Soft Drink Association (KSDA), which is the state trade association of the soft drink bottling companies operating in Kansas.

The KSDA does not have an official position on the general concept or intent of HB 2109. However, the Kansas Soft Drink Association is concerned about the definition of video lottery machine or lottery machine specifically at Sec. 1(n)(2), set out at Page 2, Lines 13-17. Based upon our reading of this language, we are concerned that any carbonated or non-carbonated drink vending machine which dispenses a product which is currently involved with any sort of promotion that utilizes a chance of winning a prize from the company making the product might fall under the definition of video lottery machine or lottery machine.

For example, if a company were to have a promotion whereby prizes were awarded to those individuals who happen to purchase that company's beverage, which is dispensed from a machine and is marked on the cap or otherwise as indicating that the purchaser wins some merchandise or cash as a part of a promotion on that product, that would appear to be illegal. As you are all probably aware, occasionally promotions such as this will be conducted with numerous products. It is highly common for bottle caps to be marked as winners or other promotions to be used which award merchandise or cash.

We do not believe it was the intent of the legislation to include such machines that are used to dispense products, but the language appears to be sufficiently broad to include not only the products marketed in vending machines by the soft drink industry, but by numerous other commercial products.

Sub-sections 2 and 4 of Sec. 1(n) (p. 2, lines 13-27) have language that would appear to include such vending machines.

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The language in sub-section 4 at Page 2, Lines 24-27 (“any noninteractive lottery machine or device in which the prize is determined only by chance...”) also appears exceedingly broad because, of course, chance is involved with commercial promotions that award prizes for particular purchasers. We would ask that that language be made a little tighter as well.

Although we would certainly offer to work with the Revisor’s office and the bill sponsors to try to tighten the language down so that it does not include carbonated and non-carbonated beverage vending machines, we hesitate to suggest specific language so as to not exclude machines that the sponsor was legitimately trying to address.

I would also call to the Committee’s attention that we have a similar concern with the definition of vending machine set out in Sec. 1 of HB 2021, which this Committee will hear tomorrow. Due to a conflict that I have, Julie Hein from our office will be presenting that testimony.

Although I have not talked to staff specifically about HB 2109 and its impact on the soft drink industry, I have talked to Legislative Research about HB 2021. I understand that they are aware that the language defining vending machine might impact our industry, and perhaps other industries. Based upon our reading, we would raise the same concerns regarding HB 2109.

Once again, we would offer to assist with crafting language that would exclude vending machines utilized in our industry if you and/or the sponsor would desire to have assistance from our industry in doing so.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.



## HOUSE BILL No. 2109

By Committee on Federal and State Affairs

1-23

9 AN ACT concerning lotteries and lottery machines; amending K.S.A. 74-  
10 8702 and 74-8722 and K.S.A. 2000 Supp. 74-8710, 74-8718, 74-9802  
11 and 79-4701 and repealing the existing sections.  
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 74-8702 is hereby amended to read as follows: 74-  
15 8702. As used in this act, unless the context otherwise requires:

16 (a) "Commission" means the Kansas lottery commission.

17 (b) "Executive director" means the executive director of the Kansas  
18 lottery.

19 (c) "Gaming equipment" means any electric, electronic or mechani-  
20 cal device or other equipment unique to the Kansas lottery used directly  
21 in the operation of any lottery and in the determination of winners pur-  
22 suant to this act.

23 (d) "Kansas lottery" means the state agency created by this act to  
24 operate a lottery or lotteries pursuant to this act.

25 (e) "Lottery retailer" means any person with whom the Kansas lottery  
26 has contracted to sell lottery tickets or shares, or both, to the public.

27 (f) "Lottery" or "state lottery" means the lottery or lotteries operated  
28 pursuant to this act.

29 (g) "Major procurement" means any gaming product or service, in-  
30 cluding but not limited to facilities, advertising and promotional services,  
31 annuity contracts, prize payment agreements, consulting services, equip-  
32 ment, tickets and other products and services unique to the Kansas lot-  
33 tery, but not including materials, supplies, equipment and services com-  
34 mon to the ordinary operations of state agencies.

35 (h) "Person" means any natural person, association, corporation or  
36 partnership.

37 (i) "Prize" means any prize paid directly by the Kansas lottery pur-  
38 suant to its rules and regulations.

39 (j) "Share" means any intangible manifestation authorized by the  
40 Kansas lottery to prove participation in a lottery game.

41 (k) "Ticket" means any tangible evidence issued by the Kansas lottery  
to prove participation in a lottery game.

(l) "Vendor" means any person who has entered into a major pro-

1 (b) (c) (1) Violation of this section is a class A nonperson misde-  
2 meanor upon conviction for a first offense; and

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

5 Sec. 4. K.S.A. 74-8722 is hereby amended to read as follows: 74-  
6 8722. (a) The Kansas lottery shall not recruit for employment or as a  
7 volunteer any person under 18 years of age for the purpose of appearing,  
8 being heard or being quoted in any advertising or promotion of any lottery  
9 in any electronic or print media.

10 (b) ~~The Kansas lottery shall not advertise or promote any lottery by~~  
11 ~~any electronic media, the internet or telephone.~~

electronic mail

12 (c) All advertising and marketing practices of the Kansas lottery shall  
13 meet or exceed the standards of the North American association of state  
14 and provincial lotteries (NASPL) which are in effect on July 1, 2001, or  
15 any later version as adopted by the commission in rules and regulations.

16 Sec. 5. K.S.A. 2000 Supp. 74-9802 is hereby amended to read as  
17 follows: 74-9802. As used in the tribal gaming oversight act:

18 (a) "Class III gaming" means all tribal gaming activities defined as  
19 class III gaming by the Indian gaming regulatory act (25 U.S.C. 2701 *et*  
20 *seq.*), as in effect on the effective date of this act.

21 (b) "Executive director" means the executive director of the state  
22 gaming agency.

23 (c) "Tribal gaming" means any class III gaming conducted pursuant  
24 to a tribal-state gaming compact. "Tribal gaming" does not include games  
25 on video lottery machines or lottery machines, as defined by K.S.A. 74-  
26 8702, and amendments thereto, that the Kansas lottery is prohibited from  
27 conducting under K.S.A. 74-8704, and amendments thereto.

28 (d) "Tribal gaming commission" means a commission created by a  
29 native American tribe in accordance with a tribal-state gaming compact.

30 (e) "Tribal gaming facility" means a facility where tribal gaming is  
31 conducted or operated.

32 (f) "Tribal-state gaming compact" means a compact entered into be-  
33 tween the state of Kansas and the Iowa Tribe of Kansas and Nebraska,  
34 the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas, the  
35 Prairie Band Potawatomi Nation in Kansas or the Sac and Fox Nation of  
36 Missouri in Kansas and Nebraska with respect to the tribe's authority to  
37 engage in class III gaming on the tribe's reservation property in the state  
38 of Kansas.

39 Sec. 6. K.S.A. 2000 Supp. 79-4701 is hereby amended to read as  
40 follows: 79-4701. As used in this act:

41 (a) "Act" means the bingo act.

42 (b) "Administrator" means the administrator of charitable gaming  
43 designated by the secretary pursuant to K.S.A. 2000 Supp. 79-4717, and

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1 if a lottery game utilizes a drawing of winning numbers, a drawing among  
 2 entries or a drawing among finalists, such drawings shall always be open  
 3 to the public and shall be recorded on both video and audio tape.

4 (3) The manner of payment of prizes to the holders of winning tickets  
 5 or shares.

6 (4) The frequency of the drawings or selections of winning tickets or  
 7 shares.

8 (5) The type or types of locations at which tickets or shares may be  
 9 sold.

10 (6) The method or methods to be used in selling tickets or shares.

11 (7) Additional qualifications for the selection of lottery retailers and  
 12 the amount of application fees to be paid by each.

13 (8) The amount and method of compensation to be paid to lottery  
 14 retailers, including special bonuses and incentives.

15 (9) Deadlines for claims for prizes by winners of each lottery game.

16 (10) Provisions for confidentiality of information submitted by ven-  
 17 dors pursuant to K.S.A. 74-8705, and amendments thereto.

18 (11) Information required to be submitted by vendors, in addition to  
 19 that required by K.S.A. 74-8705, and amendments thereto.

20 (12) The major procurement contracts or portions thereof to be  
 21 awarded to minority business enterprises pursuant to subsection (a) of  
 22 K.S.A. 74-8705, and amendments thereto, and procedures for the award  
 23 thereof.

24 *(b) The lottery shall adopt rules and regulations concerning the game*  
 25 *of keno. Such rules and regulations shall require that the amount of time*  
 26 *which elapses between games shall not be less than five minutes.*

27 ~~(b)~~ (c) No new lottery game shall commence operation after the ef-  
 28 fective date of this act unless first approved by the governor or, in the  
 29 governor's absence or disability, the lieutenant governor. *The provisions*  
 30 *of this subsection shall not be construed to authorize the approval of*  
 31 *games on video lottery machines or lottery machines.*

32 Sec. 3. K.S.A. 2000 Supp. 74-8718 is hereby amended to read as  
 33 follows: 74-8718. (a) It is unlawful for:

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

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

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

40 (4) any person to sell a lottery ticket or share by electronic mail, the  
 41 internet or telephone.

42 (b) No lottery retailer shall accept payment for a lottery ticket or  
 43 share in the form of a credit card.

the start of