

**SENATE BILL No. 516**

By Committee on Federal and State Affairs

2-24

1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to unlawful gambling; exempting certain devices and contests from the  
3 crime of unlawful gambling; amending K.S.A. 21-6403 and 21-6404  
4 and repealing the existing sections.

5  
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 21-6403 is hereby amended to read as follows: 21-  
8 6403. As used in K.S.A. 21-6403 through 21-6409, and amendments  
9 thereto:

10 (a) (1) *"Amusement machine" means a machine or device that:*

11 (A) *Requires the direct or indirect payment of consideration,*  
12 *including, but not limited to, the insertion of any form of currency or a*  
13 *ticket, token or similar object or the depositing of funds into such machine*  
14 *or device or with the operator or owner of such machine or device;*

15 (B) *does not contain any material element of chance; and*

16 (C) *automatically, by or through some mechanical operation, affords*  
17 *music or amusement of some character with or without vending any*  
18 *merchandise.*

19 (2) *In addition to vending merchandise, an "amusement machine"*  
20 *may entitle the person playing such machine or device to a noncash,*  
21 *merchandise prize or a voucher, billet, ticket, token or electronic credit*  
22 *redeemable only for a noncash, merchandise prize that satisfies the*  
23 *following:*

24 (A) *The wholesale value of a noncash, merchandise prize awarded as*  
25 *a result of the single play of such machine or device, either directly or as a*  
26 *result of redemption of a redeemable voucher does not exceed \$25;*

27 (B) *redeemable vouchers are not redeemable for any noncash,*  
28 *merchandise prize that has a wholesale value equal to more than \$25*  
29 *multiplied by the fewest number of single plays necessary to accrue the*  
30 *redeemable voucher required to obtain such noncash, merchandise prize;*  
31 *and*

32 (C) *any redeemable voucher or noncash, merchandise prize is*  
33 *distributed at the site of the machine or device at the time of play.*

34 (3) *A noncash, merchandise prize shall not be:*

35 (A) *An alcoholic beverage, including alcoholic liquor as defined in*  
36 *K.S.A. 41-102, and amendments thereto, and cereal malt beverage as*

1 defined in K.S.A. 41-2701, and amendments thereto;

2 (B) eligible for purchase or repurchase; or

3 (C) exchangeable for any cash, cash equivalents or something of  
4 value.

5 (4) An "amusement machine" shall not deliver or entitle the person  
6 playing or operating such machine or device to receive cash, cash  
7 equivalents, gift cards or vouchers, billets, tickets, tokens, electronic  
8 credits or any other item that can be exchanged for cash, cash equivalents,  
9 gift cards, merchandise or something of value, unless the wholesale value  
10 of such item is not more than \$25.

11 (b) "Bet" means a bargain in which the parties agree that, dependent  
12 upon chance, one stands to win or lose something of value specified in the  
13 agreement. ~~A bet~~ "Bet" does not include:

14 (1) Bona fide business transactions that are valid under the law of  
15 contracts including, but not limited to, contracts for the purchase or sale at  
16 a future date of securities or other commodities, and agreements to  
17 compensation for loss caused by the happening of the chance including,  
18 but not limited to, contracts of indemnity or guaranty and life or health and  
19 accident insurance;

20 (2) offers of purses, prizes or premiums to the actual contestants in  
21 any bona fide live contest *that does not require any electronic device and*  
22 *is for the determination of skill, speed, strength or endurance* or to the  
23 bona fide owners of animals or vehicles entered in such a contest;

24 (3) a lottery as defined in this section;

25 (4) any bingo game by or for participants managed, operated or  
26 conducted in accordance with the laws of the state of Kansas by an  
27 organization licensed by the state of Kansas to manage, operate or conduct  
28 games of bingo;

29 (5) a lottery operated by the state pursuant to the Kansas lottery act;

30 (6) any system of parimutuel wagering managed, operated and  
31 conducted in accordance with the Kansas parimutuel racing act;

32 (7) tribal gaming;

33 (8) charitable raffles as defined by K.S.A. 75-5173, and amendments  
34 thereto;

35 (9) a fantasy sports league as defined in this section; ~~or~~

36 (10) sports wagering; as defined in K.S.A. 74-8702, and amendments  
37 thereto;

38 ~~(b) "lottery" means an enterprise wherein for a consideration the~~  
39 ~~participants are given an opportunity to win a prize, the award of which is~~  
40 ~~determined by chance. A lottery does not include:~~

41 ~~(1) A lottery operated by the state pursuant to the Kansas lottery act;~~  
42 ~~or~~

43 ~~(2) tribal gaming;~~

1       (11) *esports competition as defined in this section; or*

2       (12) *skill-based contests as defined in this section.*

3       (c) "Consideration" means anything that is a commercial or financial  
4 advantage to the promoter or a disadvantage to any participant.  
5 "*Consideration*" does not include mere registration without purchase of  
6 goods or services; personal attendance at places or events, without  
7 payment of an admission price or fee; listening to or watching radio and  
8 television programs; or answering the telephone or making a telephone  
9 call and acts of like nature ~~are not consideration~~. "Consideration" ~~shall~~  
10 does not include sums of money paid by or for:

11       (1) Participants in any bingo game managed, operated or conducted  
12 in accordance with the laws of the state of Kansas by any bona fide  
13 nonprofit religious, charitable, fraternal, educational or veteran  
14 organization licensed to manage, operate or conduct bingo games under  
15 the laws of the state of Kansas and it shall be conclusively presumed that  
16 such sums paid by or for such participants were intended by such  
17 participants to be for the benefit of the sponsoring organizations for the use  
18 of such sponsoring organizations in furthering the purposes of such  
19 sponsoring organizations, as set forth in the appropriate paragraphs of  
20 section 501(c) or (d) of the internal revenue code of 1986 and as set forth  
21 in K.S.A. 79-4701, and amendments thereto;

22       (2) participants in any lottery operated by the state pursuant to the  
23 Kansas lottery act;

24       (3) participants in any system of parimutuel wagering managed,  
25 operated and conducted in accordance with the Kansas parimutuel racing  
26 act; or

27       (4) a person to participate in tribal gaming;

28       (d) (1) "*Esports competition*" means a league, competitive circuit,  
29 tournament or similar competition in which:

30       (A) *Two or more participants or teams of participants compete*  
31 *directly against each other for entertainment and prizes in the same video*  
32 *game at the same time and at the same location in view of spectators;*

33       (B) *results are determined solely on the basis of the skill of the*  
34 *players;*

35       (C) *the number of participants is fixed before the beginning of the*  
36 *competition;*

37       (D) *any fee collected to participate in such competition shall be*  
38 *collected from all participants before the competition begins;*

39       (E) *at least one participant shall receive something of value based on*  
40 *the results of the competition; and*

41       (F) *the value of any prize shall be predetermined before the*  
42 *competition begins.*

43       (2) "*Esports competition*" does not include traditional casino games,

1 *including, but not limited to, poker, roulette, craps or blackjack.*

2 (e) "Fantasy sports league" means any fantasy or simulation sports  
3 game or contest in which no fantasy or simulation sports team is based on  
4 the current membership of an actual team that is a member of an amateur  
5 or professional sports organization and that meets the following  
6 conditions:

7 (1) All prizes and awards offered to winning participants are  
8 established and made known to the participants in advance of the game or  
9 contest and their value is not determined by the number of participants or  
10 the amount of any fees paid by those participants;

11 (2) all winning outcomes reflect the relative knowledge and skill of  
12 the participants and are determined predominantly by accumulated  
13 statistical results of the performance of individual athletes in real-world  
14 sporting events; and

15 (3) no winning outcome is based:

16 (A) On the score, point spread or any performance or performances  
17 of any single real-world team or any combination of such teams; or

18 (B) solely on any single performance of an individual athlete in any  
19 single real-world sporting event.

20 (e)(f) (1) "Gambling device" means any:

21 (A) So-called "slot machine" or any other machine, mechanical  
22 device, electronic device or other contrivance ~~an essential part of which is~~  
23 ~~a drum or reel with insignia thereon, and:~~

24 (i) That when operated may deliver, as the result of *any element of*  
25 chance, any money or property; or

26 (ii) by the operation of which a person may become entitled to  
27 receive, as the result of *any element of* chance, any money or property;

28 (B) other machine, mechanical device, electronic device or other  
29 contrivance including, but not limited to, roulette wheels and similar  
30 devices, that are equipped with or designed to accommodate the addition  
31 of a mechanism that enables accumulated credits to be removed, is  
32 equipped with or designed to accommodate a mechanism to record the  
33 number of credits removed or is otherwise designed, manufactured or  
34 altered primarily for use in connection with gambling, and:

35 (i) That when operated may deliver, as the result of *any element of*  
36 chance, any money or property; or

37 (ii) by the operation of which a person may become entitled to  
38 receive, as the result of *any element of* chance, any money or property;

39 (C) subassembly or essential part intended to be used in connection  
40 with any such machine, mechanical device, electronic device or other  
41 contrivance *described in subparagraph (A) or (B)*, but that is not attached  
42 to any such machine, mechanical device, electronic device or other  
43 contrivance as a constituent part:

1 (i) That when operated may deliver, as a result of any element of  
2 chance, any money or property; or

3 (ii) by the operation of which a person may become entitled to  
4 receive, as a result of any element of chance, any money or property; ~~or~~

5 (D) any token, chip, paper, receipt or other document that evidences,  
6 purports to evidence or is designed to evidence participation in a lottery or  
7 the making of a bet;

8 (E) any mechanical or electronic device that is offered or made  
9 available to a person to play or participate in an actual or simulated  
10 gambling program in return for direct or indirect consideration; or

11 (F) an electronic, computerized or mechanical contrivance, terminal,  
12 machine or other device that:

13 (i) Requires the direct or indirect payment of consideration that may  
14 include, but not be limited to, inserting a coin, currency, ticket, token or  
15 similar object or by depositing funds into such device or with the operator  
16 or owner of such device to operate, play or activate a game; and

17 (ii) offers games in which the outcomes are determined by any  
18 element of skill of the player and may deliver or entitle the person playing  
19 or operating the device to receive cash, cash equivalents or gift cards or  
20 vouchers, billets, tickets, tokens or electronic credits to be exchanged for  
21 cash or to receive merchandise or something of value, whether the payoff  
22 is made automatically from the device or manually.

23 The fact that the prize is not automatically paid by the device does not  
24 affect its character as a gambling device.

25 (2) "Gambling device" ~~shall~~ does not include:

26 (A) Any machine, mechanical device, electronic device or other  
27 contrivance used or for use by a licensee of the Kansas racing and gaming  
28 commission as authorized by law and rules and regulations adopted by the  
29 commission or by the Kansas lottery or Kansas lottery retailers as  
30 authorized by law and rules and regulations adopted by the Kansas lottery  
31 commission;

32 (B) any machine, mechanical device, electronic device or other  
33 contrivance, such as a coin-operated bowling alley, shuffleboard, marble  
34 machine, a so-called pinball machine; or mechanical gun, that is not  
35 designed and manufactured primarily for use in connection with gambling,  
36 and:

37 (i) That when operated does not deliver, as a result of any element of  
38 chance regardless of whether such result is partially or predominantly  
39 based on skill, any money, prize or something of value; or

40 (ii) by the operation of which a person may not become entitled to  
41 receive, as the result of the application of ~~an~~ any element of chance, any  
42 money, prize or something of value;

43 (C) any so-called claw, crane or digger machine and similar devices

1 that are designed and manufactured primarily for use at carnivals or county  
2 or state fairs;~~or~~

3 (D) any machine, mechanical device, electronic device or other  
4 contrivance used in tribal gaming;

5 (E) *any amusement machine;*

6 (F) *any device used by competitors in any esports competition; or*

7 (G) *any machine, mechanical, electronic or other device that does*  
8 *not deliver any money or entitlement to receive any money or property*  
9 *when such machine or device is used for esports competition.*

10 ~~(f)~~(g) "Gambling place" means any place, room, building, vehicle,  
11 tent or location that is used for any of the following: Making and settling  
12 bets; receiving, holding, recording or forwarding bets or offers to bet;  
13 conducting lotteries; or playing gambling devices. Evidence that the place  
14 has a general reputation as a gambling place or that, at or about the time in  
15 question, it was frequently visited by persons known to be commercial  
16 gamblers or known as frequenters of gambling places is admissible on the  
17 issue of whether it is a gambling place;.

18 ~~(g)~~(h) "Lottery" means an enterprise wherein, for a consideration,  
19 the participants are given an opportunity to win a prize that is determined  
20 by chance. "Lottery" does not include:

21 (1) *A lottery operated by the state pursuant to the Kansas lottery act;*  
22 *or*

23 (2) *tribal gaming.*

24 (i) *"Skill" means the knowledge, dexterity or any other ability or*  
25 *expertise of a natural person.*

26 (j) *"Skill-based contest" means a live, in-person competitive event*  
27 *among two or more individuals or teams of individuals in which the*  
28 *ultimate winner is determined by skill, and the competitive event does not*  
29 *utilize a gambling device.*

30 (k) (1) *"Something of value" means any:*

31 (A) *Money or property;*

32 (B) *token, object or article that is exchangeable for money or*  
33 *property;*

34 (C) *form of credit or promise, provided directly or indirectly, that*  
35 *contemplates the transfer of money or property or any interest therein; or*

36 (D) *extension of a service, entertainment or a privilege of playing a*  
37 *game or scheme without charge.*

38 (2) *"Something of value" does not include the award of a free,*  
39 *extended or continuous play that is awarded as a prize for playing a game*  
40 *or scheme for a charge.*

41 (l) "Tribal gaming" means the same as defined in K.S.A. 74-9802,  
42 and amendments thereto;~~and~~

43 ~~(h)~~(m) "Tribal gaming commission" means the same as defined in

1 K.S.A. 74-9802, and amendments thereto.

2 Sec. 2. K.S.A. 21-6404 is hereby amended to read as follows: 21-  
3 6404. (a) Gambling is:

4 (1) Making a bet;~~or~~

5 (2) *playing or offering for play any game, contest or competition*  
6 *utilizing a gambling device; or*

7 (3) entering or remaining in a gambling place with intent to make a  
8 bet, to participate in a lottery or to play a gambling device.

9 (b) Gambling is a class B nonperson misdemeanor.

10 Sec. 3. K.S.A. 21-6403 and 21-6404 are hereby repealed.

11 Sec. 4. This act shall take effect and be in force from and after its  
12 publication in the statute book.