

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 524

Final Reading

Introduced by McGill, 26; Dubas, 34; Hadley, 37; Mello, 5;
Nordquist, 7; Schilz, 47; Pirsch, 4.

Read first time January 18, 2011

Committee: General Affairs

A BILL

- 1 FOR AN ACT relating to gift enterprises; to amend section 9-701,
- 2 Reissue Revised Statutes of Nebraska; to define and
- 3 authorize a savings promotion raffle; and to repeal the
- 4 original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 9-701, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 9-701 (1) For purposes of this section:

4 (a) Gift enterprise means a contest, game of chance,
5 savings promotion raffle, or game promotion which is conducted within
6 the state or throughout the state and other states in connection with
7 the sale of consumer or trade products or services solely as business
8 promotions and in which the elements of chance and prize are present.
9 Gift enterprise does not include any scheme using the game of bingo
10 or keno; any non-telecommunication-related, player-activated
11 electronic or electromechanical facsimile of any game of chance; or
12 any slot machine of any kind. A gift enterprise shall not utilize
13 pickle cards as defined in section 9-315. Promotional game tickets
14 may be utilized subject to the following:

15 (i) The tickets utilized shall be manufactured or
16 imprinted with the name of the operator on each ticket;

17 (ii) The tickets utilized shall not be manufactured with
18 a cost per play printed on them; and

19 (iii) The tickets utilized shall not be substantially
20 similar to any type of pickle card approved by the Department of
21 Revenue pursuant to section 9-332.01; ~~and~~

22 (b) Operator means any person, firm, corporation,
23 association, governmental entity, or agent or employee thereof who
24 promotes, operates, or conducts a gift enterprise. Operator does not
25 include any nonprofit organization or any agent or employee thereof,

1 except that operator includes any credit union chartered under state
2 or federal law or any agent or employee thereof who promotes,
3 operates, or conducts a gift enterprise; and -

4 (c) Savings promotion raffle means a contest conducted by
5 a credit union chartered under state or federal law or any agent or
6 employee thereof in which a chance of winning a designated prize is
7 obtained by the deposit of a specified amount of money in a savings
8 account or other savings program if each entry has an equal chance of
9 winning.

10 (2) Any operator may conduct a gift enterprise within
11 this state in accordance with this section.

12 (3) An operator shall not:

13 (a) Design, engage in, promote, or conduct a gift
14 enterprise in connection with the promotion or sale of consumer
15 products or services in which the winner may be unfairly
16 predetermined or the game may be manipulated or rigged;

17 (b) Arbitrarily remove, disqualify, disallow, or reject
18 any entry;

19 (c) Fail to award prizes offered;

20 (d) Print, publish, or circulate literature or
21 advertising material used in connection with such gift enterprise
22 which is false, deceptive, or misleading; or

23 (e) Require an entry fee, a payment or promise of payment
24 of any valuable consideration, or any other consideration as a
25 condition of entering a gift enterprise or winning a prize from the

1 gift enterprise, except that a contest, game of chance, or business
2 promotion may require, as a condition of participation, evidence of
3 the purchase of a product or service as long as the purchase price
4 charged for such product or service is not greater than it would have
5 been without the contest, game of chance, or business promotion. For
6 purposes of this section, consideration shall not include (i) filling
7 out an entry blank, (ii) entering by mail with the purchase of
8 postage at a cost no greater than the cost of postage for a first-
9 class letter weighing one ounce or less, ~~or~~ (iii) entering by a
10 telephone call to the operator of or for the gift enterprise at a
11 cost no greater than the cost of postage for a first-class letter
12 weighing one ounce or less. When the only method of entry is by
13 telephone, the cost to the entrant of the telephone call shall not
14 exceed the cost of postage for a first-class letter weighing one
15 ounce or less for any reason, including (A) whether any communication
16 occurred during the call which was not related to the gift enterprise
17 or (B) the fact that the cost of the call to the operator was greater
18 than the cost to the entrant allowed under this section, or (iv) the
19 deposit of money in a savings account or other savings program,
20 regardless of the interest rate earned by such account or program.

21 (4) An operator shall disclose to participants all terms
22 and conditions of a gift enterprise.

23 ~~(4)(a)~~ (5)(a) The Department of Revenue may adopt and
24 promulgate rules and regulations necessary to carry out the operation
25 of gift enterprises.

1 (b) Whenever the department has reason to believe that a
2 gift enterprise is being operated in violation of this section or the
3 department's rules and regulations, it may bring an action in the
4 district court of Lancaster County in the name of and on behalf of
5 the people of the State of Nebraska against the operator of the gift
6 enterprise to enjoin the continued operation of such gift enterprise
7 anywhere in the state.

8 ~~(5)(a)~~ (6)(a) Any person, firm, corporation, association,
9 or agent or employee thereof who engages in any unlawful acts or
10 practices pursuant to this section or violates any of the rules and
11 regulations promulgated pursuant to this section shall be guilty of a
12 Class II misdemeanor.

13 (b) Any person, firm, corporation, association, or agent
14 or employee thereof who violates any provision of this section or any
15 of the rules and regulations promulgated pursuant to this section
16 shall be liable to pay a civil penalty of not more than one thousand
17 dollars imposed by the district court of Lancaster County for each
18 such violation which shall ~~accrue to the permanent school fund.~~ be
19 remitted to the State Treasurer for distribution in accordance with
20 Article VII, section 5, of the Constitution of Nebraska. Each day of
21 continued violation shall constitute a separate offense or violation
22 for purposes of this section.

23 (7) A credit union may limit the number of chances that a
24 participant in a savings promotion raffle may obtain for making the
25 required deposits but shall not limit the number of deposits.

1 ~~(6)~~(8) In all proceedings initiated in any court or
2 otherwise under this section, the Attorney General or appropriate
3 county attorney shall prosecute and defend all such proceedings.

4 ~~(7)~~(9) This section shall not apply to any activity
5 authorized and regulated under the Nebraska Bingo Act, the Nebraska
6 County and City Lottery Act, the Nebraska Lottery and Raffle Act, the
7 Nebraska Pickle Card Lottery Act, or the Nebraska Small Lottery and
8 Raffle Act.

9 Sec. 2. Original section 9-701, Reissue Revised Statutes
10 of Nebraska, is repealed.