

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 524

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

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, or (iv) the deposit of money in a savings
13 account or other savings program, regardless of the interest rate
14 earned by such account or program. When the only method of entry is
15 by telephone, the cost to the entrant of the telephone call shall not
16 exceed the cost of postage for a first-class letter weighing one
17 ounce or less for any reason, including (A) whether any communication
18 occurred during the call which was not related to the gift enterprise
19 or (B) the fact that the cost of the call to the operator was greater
20 than the cost to the entrant allowed under this section.

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

24 (b) Whenever the department has reason to believe that a
25 gift enterprise is being operated in violation of this section or the

1 department's rules and regulations, it may bring an action in the
2 district court of Lancaster County in the name of and on behalf of
3 the people of the State of Nebraska against the operator of the gift
4 enterprise to enjoin the continued operation of such gift enterprise
5 anywhere in the state.

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

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

21 (6) In all proceedings initiated in any court or
22 otherwise under this section, the Attorney General or appropriate
23 county attorney shall prosecute and defend all such proceedings.

24 (7) This section shall not apply to any activity
25 authorized and regulated under the Nebraska Bingo Act, the Nebraska

1 County and City Lottery Act, the Nebraska Lottery and Raffle Act, the
2 Nebraska Pickle Card Lottery Act, or the Nebraska Small Lottery and
3 Raffle Act.

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