

AMENDMENTS TO LB160

Introduced by Larson, 40.

1 1. Strike the original sections and insert the following new
2 sections:

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

5 9-701 (1) For purposes of this section:

6 (a) Financial institution means a bank, savings bank, building and
7 loan association, or savings and loan association, whether chartered by
8 the United States, the Department of Banking and Finance, or a foreign
9 state agency as defined in section 8-101; or any other similar
10 organization which is covered by federal deposit insurance;

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

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

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

26 (iii) The tickets utilized shall not be substantially similar to any
27 type of pickle card approved by the Department of Revenue pursuant to

1 section 9-332.01;

2 (c) Operator means any person, firm, corporation, financial
3 institution, association, governmental entity, or agent or employee
4 thereof who promotes, operates, or conducts a gift enterprise. Operator
5 does not include any nonprofit organization or any agent or employee
6 thereof, except that operator includes any credit union chartered under
7 state or federal law or any agent or employee thereof who promotes,
8 operates, or conducts a gift enterprise; and

9 (d) Savings promotion raffle means a contest conducted by a
10 financial institution or credit union chartered under state or federal
11 law or any agent or employee thereof in which a chance of winning a
12 designated prize is obtained by the deposit of a specified amount of
13 money in a savings account or other savings program if each entry has an
14 equal chance of winning.

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

17 (3) An operator shall not:

18 (a) Design, engage in, promote, or conduct a gift enterprise in
19 connection with the promotion or sale of consumer products or services in
20 which the winner may be unfairly predetermined or the game may be
21 manipulated or rigged;

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

23 (c) Fail to award prizes offered;

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

27 (e) Require an entry fee, a payment or promise of payment of any
28 valuable consideration, or any other consideration as a condition of
29 entering a gift enterprise or winning a prize from the gift enterprise,
30 except that a contest, game of chance, or business promotion may require,
31 as a condition of participation, evidence of the purchase of a product or

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

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

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

22 (b) Whenever the department has reason to believe that a gift
23 enterprise is being operated in violation of this section or the
24 department's rules and regulations, it may bring an action in the
25 district court of Lancaster County in the name of and on behalf of the
26 people of the State of Nebraska against the operator of the gift
27 enterprise to enjoin the continued operation of such gift enterprise
28 anywhere in the state.

29 (6)(a) Any person, firm, corporation, association, or agent or
30 employee thereof who engages in any unlawful acts or practices pursuant
31 to this section or violates any of the rules and regulations promulgated

1 pursuant to this section shall be guilty of a Class II misdemeanor.

2 (b) Any person, firm, corporation, association, or agent or employee
3 thereof who violates any provision of this section or any of the rules
4 and regulations promulgated pursuant to this section shall be liable to
5 pay a civil penalty of not more than one thousand dollars imposed by the
6 district court of Lancaster County for each such violation which shall be
7 remitted to the State Treasurer for distribution in accordance with
8 Article VII, section 5, of the Constitution of Nebraska. Each day of
9 continued violation shall constitute a separate offense or violation for
10 purposes of this section.

11 (7) A financial institution or credit union may limit the number of
12 chances that a participant in a savings promotion raffle may obtain for
13 making the required deposits but shall not limit the number of deposits.

14 (8) In all proceedings initiated in any court or otherwise under
15 this section, the Attorney General or appropriate county attorney shall
16 prosecute and defend all such proceedings.

17 (9) This section shall not apply to any activity authorized and
18 regulated under the Nebraska Bingo Act, the Nebraska County and City
19 Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle
20 Card Lottery Act, ~~or the Nebraska Small Lottery and Raffle Act,~~ or the
21 State Lottery Act.

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