

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 160**

FINAL READING

Introduced by Larson, 40.

Read first time January 12, 2015

Committee: General Affairs

- 1 A BILL FOR AN ACT relating to financial institutions; to amend section
- 2 9-701, Reissue Revised Statutes of Nebraska; to change provisions
- 3 relating to gift enterprises; and to repeal the original section.
- 4 Be it enacted by the people of the State of Nebraska,

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

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

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

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

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

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

24 (iii) The tickets utilized shall not be substantially similar to any  
25 type of pickle card approved by the Department of Revenue pursuant to  
26 section 9-332.01;

27 (c b) Operator means any person, firm, corporation, financial  
28 institution, association, governmental entity, or agent or employee  
29 thereof who promotes, operates, or conducts a gift enterprise. Operator  
30 does not include any nonprofit organization or any agent or employee  
31 thereof, except that operator includes any credit union chartered under

1 state or federal law or any agent or employee thereof who promotes,  
2 operates, or conducts a gift enterprise; and

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

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

11 (3) An operator shall not:

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

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

17 (c) Fail to award prizes offered;

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

21 (e) Require an entry fee, a payment or promise of payment of any  
22 valuable consideration, or any other consideration as a condition of  
23 entering a gift enterprise or winning a prize from the gift enterprise,  
24 except that a contest, game of chance, or business promotion may require,  
25 as a condition of participation, evidence of the purchase of a product or  
26 service as long as the purchase price charged for such product or service  
27 is not greater than it would have been without the contest, game of  
28 chance, or business promotion. For purposes of this section,  
29 consideration shall not include (i) filling out an entry blank, (ii)  
30 entering by mail with the purchase of postage at a cost no greater than  
31 the cost of postage for a first-class letter weighing one ounce or less,

1 (iii) entering by a telephone call to the operator of or for the gift  
2 enterprise at a cost no greater than the cost of postage for a first-  
3 class letter weighing one ounce or less. When the only method of entry is  
4 by telephone, the cost to the entrant of the telephone call shall not  
5 exceed the cost of postage for a first-class letter weighing one ounce or  
6 less for any reason, including (A) whether any communication occurred  
7 during the call which was not related to the gift enterprise or (B) the  
8 fact that the cost of the call to the operator was greater than the cost  
9 to the entrant allowed under this section, or (iv) the deposit of money  
10 in a savings account or other savings program, regardless of the interest  
11 rate earned by such account or program.

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

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

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

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

27 (b) Any person, firm, corporation, association, or agent or employee  
28 thereof who violates any provision of this section or any of the rules  
29 and regulations promulgated pursuant to this section shall be liable to  
30 pay a civil penalty of not more than one thousand dollars imposed by the  
31 district court of Lancaster County for each such violation which shall be

1 remitted to the State Treasurer for distribution in accordance with  
2 Article VII, section 5, of the Constitution of Nebraska. Each day of  
3 continued violation shall constitute a separate offense or violation for  
4 purposes of this section.

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

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

11 (9) This section shall not apply to any activity authorized and  
12 regulated under the Nebraska Bingo Act, the Nebraska County and City  
13 Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle  
14 Card Lottery Act, ~~or~~ the Nebraska Small Lottery and Raffle Act, or the  
15 State Lottery Act.

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