

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 160

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 has the same meaning as in section 8-101;

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

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

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

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

23 (c ~~h~~) Operator means any person, firm, corporation, association,
24 governmental entity, or agent or employee thereof who promotes, operates,
25 or conducts a gift enterprise. Operator does not include any nonprofit
26 organization or any agent or employee thereof, except that operator
27 includes any financial institution that ~~credit union chartered under~~
28 ~~state or federal law or any agent or employee thereof who~~ promotes,
29 operates, or conducts a gift enterprise; and

30 (d ~~e~~) Savings promotion raffle means a contest conducted by a
31 financial institution ~~credit union chartered under state or federal law~~

1 or any agent or employee thereof in which a chance of winning a
2 designated prize is obtained by the deposit of a specified amount of
3 money in a savings account or other savings program if each entry has an
4 equal chance of winning.

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

7 (3) An operator shall not:

8 (a) Design, engage in, promote, or conduct a gift enterprise in
9 connection with the promotion or sale of consumer products or services in
10 which the winner may be unfairly predetermined or the game may be
11 manipulated or rigged;

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

13 (c) Fail to award prizes offered;

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

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

1 exceed the cost of postage for a first-class letter weighing one ounce or
2 less for any reason, including (A) whether any communication occurred
3 during the call which was not related to the gift enterprise or (B) the
4 fact that the cost of the call to the operator was greater than the cost
5 to the entrant allowed under this section, or (iv) the deposit of money
6 in a savings account or other savings program, regardless of the interest
7 rate earned by such account or program.

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

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

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

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

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

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

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

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

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