

## LEGISLATIVE BILL 152

Approved by the Governor May 23, 1979

Introduced by DeCamp, 40

AN ACT to amend sections 28-1101 to 28-1105, 28-1107 to 28-1109, and 28-1115, Revised Statutes Supplement, 1978, relating to crimes and punishments; to define terms; to change certain crimes and penalties as prescribed; to provide a new crime; to change provisions relating to procedures and evidence; to limit gift enterprises as prescribed; to repeal the original sections, and also section 28-1106, Revised Statutes Supplement, 1978.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 28-1101, Revised Statutes Supplement, 1978, be amended to read as follows:

28-1101. As used in this article, unless the context otherwise requires:

(1) A person advances gambling activity if, acting other than as a player, he engages in conduct that materially aids any form of gambling activity. Conduct of this nature includes but shall not be limited to conduct directed toward (a) the creation or establishment of the particular game, contest, scheme, device, or activity involved, or (b) the acquisition or maintenance of premises, paraphernalia, equipment, or apparatus ~~therefor; therefore, the solicitation or inducement of persons to participate therein, (i) the actual conduct of the playing phases thereof, (e) the arrangement of any of its financial or recording phases, or (f) any other phase of its operation. A person advances gambling activity if, having substantial proprietary control or other authoritative control over premises being used with his knowledge for purposes of gambling activity, he permits that activity to occur or continue or makes no effort to prevent its occurrence or continuation;~~

(2) Bookmaking shall mean advancing gambling activity by unlawfully accepting bets from members of the public as a business, upon the outcome of future contingent events;

~~(3) Contest of chance shall mean any contest, game, gaming scheme, or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein;~~

(4) A person engages in gambling if he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he or someone else will receive something of value in the event of a certain outcome but does not include:

(a) A lawful business transaction; or

(b) ---Playing---an---amusement---device---or---a coin-operated---mechanical---game---that---confers---only---an immediate---and---unrecorded---right---of---replay---not---exchangeable for value;

(5) Gambling device shall mean any device, machine, paraphernalia, or equipment that is used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine, lottery tickets and other items used in the playing phases of lottery schemes are not gambling devices within this definition;

(6) Lottery shall mean a gambling scheme in which (a) the players pay or agree to pay something of value for chances represented and differentiated by numbers or by combinations of numbers or by some other medium, one or more of which chances are to be designated the winning ones; (b) the winning chances are to be determined by a drawing or by some other method based on an element of chance; and (c) the holders of the winning chances are to receive something of value;

(7) Mutuel shall mean a form of lottery in which the winning chances or plays are not determined upon the basis of a drawing or other act on the part of persons conducting or connected with the scheme, but upon the basis of the outcome of future contingent events otherwise unrelated to the particular scheme;

(8) Player shall mean a person over the age of majority who engages in gambling solely as a contestant or bettor. A person who engages in bookmaking as defined in subdivision (2) of this section is not a player;

(9) Private place shall mean a place to which the public does not have access;

(10) (3) A person profits from gambling activity if, other than as a player, he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of gambling activity;

and

~~(11) Something of value shall mean any money or property, any token, object, or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment, or a privilege of playing at a game or scheme without charge.~~

(4) A person engages in gambling if he or she bets something of value upon the outcome of a future event, which outcome is determined by an element of chance, or upon the outcome of a game, contest, or election, but a person does not engage in gambling by:

(a) Entering into a lawful business transaction;

(b) Playing an amusement device or a coin-operated mechanical game which confers as a prize an immediate, unrecorded right of replay not exchangeable for something of value;

(c) Conducting or participating in a prize contest; or

(d) Conducting or participating in a contest, lottery, raffle, or gift enterprise conducted in accordance with the provisions of sections 28-1113 to 28-1116, Revised Statutes Supplement, 1978;

(5) Gambling device shall mean any device, machine, paraphernalia, writing, paper, instrument, article, or equipment that is used or usable for engaging in gambling, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine. Lottery tickets and other items used in the playing phases of schemes defined in sections 28-1113 to 28-1116, Revised Statutes Supplement, 1978, are not gambling devices within this definition;

(6) Lottery shall mean a gambling scheme in which (a) the players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other medium, one or more of which chances are to be designated the winning ones, (b) the winning chances are to be determined by a drawing or by some other method based on an element of chance, and (c) the holders of the winning chances are to receive something of value;

(7) Something of value shall mean any money or property, any token, object, or article exchangeable for

money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein, or involving extension of a service or entertainment; and

(8) Prize contest shall mean any competition in which one or more competitors are awarded something of value as a consequence of winning or achieving a certain result in the competition, and (a) the value of such awards made to competitors participating in the contest or upon the amount of consideration, if any, paid for the opportunity to participate in the contest or upon chance and (b) the value or identity of such awards to be made to competitors is published before the competition begins.

Sec. 2. That section 28-1102, Revised Statutes Supplement, 1978, be amended to read as follows:

28-1102. (1) A person commits the offense of promoting gambling in the first degree if he or she knowingly advances or profits from unlawful gambling activity by:

(a) Engaging in bookmaking to the extent that he or she receives or accepts in any one day more than five bets totaling more than five hundred dollars one or more bets totaling one thousand dollars or more; or

~~(b) Receiving, in connection with a lottery or mutuel scheme or enterprise, money or written records from a person other than a player whose chances or plays are represented by such money or records; or~~

~~(c) (b) Receiving, in connection with a lottery, mutuel, or any other unlawful gambling scheme or enterprise, more than five hundred one thousand dollars of money played in the scheme or enterprise in any one day.~~

(2) Promoting gambling in the first degree is, for the first offense, a Class I misdemeanor, for the second offense, a Class IV felony, and for the third and all subsequent offenses, a Class III felony. No person shall be charged with a second or subsequent offense under this section unless the prior offense or offenses occurred after the effective date of this act. a--class iii--felony;

Sec. 3. That section 28-1103, Revised Statutes Supplement, 1978, be amended to read as follows:

23-1103. (1) A person commits the offense of promoting gambling in the second degree if he or she knowingly advances or profits from any unlawful gambling activity by:

(a) Engaging in bookmaking to the extent that he or she receives or accepts in any one day one or more bets totaling less than one thousand dollars;

(b) Receiving, in connection with any unlawful gambling scheme or enterprise, less than one thousand dollars of money played in the scheme or enterprise in any one day; or

(c) Betting something of value in an amount of three hundred dollars or more with one or more persons in one day.

(2) Promoting gambling in the second degree is a Class II misdemeanor.

Sec. 4. That section 28-1104, Revised Statutes Supplement, 1978, be amended to read as follows:

28-1104. (1) A person commits the offense of promoting gambling in the third degree if he or she knowingly participates in unlawful gambling as a player by betting less than three hundred dollars in any one day.

(2) Promoting gambling in the third degree is a Class IV misdemeanor.

Sec. 5. That section 28-1105, Revised Statutes Supplement, 1978, be amended to read as follows:

28-1105. (1) A person commits the offense of possession of gambling records ~~in the first degree~~ if, other than as a player, he or she knowingly possesses any writing, paper, instrument, or article which is ~~constitutes, reflects, or represents more than five bets totaling more than five hundred dollars, and which is:~~

(a) Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise and such writing, paper, instrument, or article has been used for the purpose of recording, memorializing, or registering any bet, wager, or other gambling information; or

(b) Of a kind commonly used in the operation, promotion, or playing of a lottery or mutual scheme or enterprise and such writing, paper, instrument, or article has been used for the purpose of recording,

memorializing, or registering any bet, wager, or other gambling information.

(2) Possession of gambling records in the first degree is a Class IV ~~felony~~ II misdemeanor.

Sec. 6. (1) A person commits the offense of gambling debt collection if he or she employs any force or intimidation or threatens force or intimidation in order to collect any debt which results from gambling as defined by this act.

(2) Gambling debt collection is a Class III felony.

Sec. 7. That section 28-1107, Revised Statutes Supplement, 1973, be amended to read as follows:

28-1107. (1) A person commits the offense of possession of a gambling device if he or she manufactures, sells, transports, places, possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody, or use of any gambling device, knowing that it shall be used in the advancement of unlawful gambling activity.

(2) This section shall not apply to any coin-operated mechanical game designed and manufactured to be played for amusement only and which may allow the player the right to replay such mechanical game at no additional cost, which right to replay shall not be considered money or property, except that such mechanical game (a) can accumulate no more than fifteen free replays at one time, (b) can be discharged of accumulated free replays only by reactivating the game for one additional play for each accumulated free replay, and (c) makes no permanent record directly or indirectly of free replays so awarded. Notwithstanding any other provisions of this section, any mechanical game or device classified by the federal government as an illegal gambling device and requiring a federal Gambling Device Tax Stamp as required by the Internal Revenue Service in its administration of sections 4461 and 4462 of Title 26, United States Code, amended July 1, 1965, by Public Law 39-44, are hereby declared to be illegal and excluded from the exemption granted in this section.

(3) Possession of a gambling device is a Class I II misdemeanor.

Sec. 8. That section 28-1108, Revised Statutes Supplement, 1973, be amended to read as follows:

28-1103. In any prosecution under section 28-1105 ~~or 28-1106~~ this article, it shall be an affirmative defense that the writing, paper, instrument, or article possessed by the defendant was neither used nor intended to be used in the advancement of an unlawful gambling activity.

Sec. 9. That section 28-1109, Revised Statutes Supplement, 1978, be amended to read as follows:

28-1109. (1) Proof of possession of ~~any gambling record specified in sections 28-1105 and 28-1106~~ or of any gambling device shall be prima facie evidence of possession thereof with knowledge of its contents and character.

(2) ~~In any prosecution under this article in which it is necessary to prove the occurrence of a sporting event, a published report of its occurrence in any daily newspaper, magazine, or other periodically printed publication of general circulation shall be admissible in evidence and shall constitute prima facie evidence of the occurrence of the event.~~

Sec. 10. That section 28-1115, Revised Statutes Supplement, 1978, be amended to read as follows:

28-1115. ~~Any bona fide nonprofit organization whose primary activities are conducted for charitable and community betterment purposes may conduct lotteries, raffles, and gift enterprises when the proceeds of such activities are used solely for charitable or community betterment purposes and the awarding of prizes to participants. No expense shall be incurred or amounts paid in connection with the conduct of a lottery except those reasonably expended for lottery supplies and equipment, prizes, license fees, rent, and taxes related to such lottery. Any nonprofit organization holding a certificate of exemption under the Internal Revenue Code, Section 501, of whose major activities, exclusive of conducting lotteries, raffles, or gift enterprises, are conducted for charitable and community betterment purposes, may conduct lotteries, raffles, and gift enterprises. The gross proceeds of such activities may be used solely for charitable or community betterment purposes, awarding of prizes to participants, and operating such lottery, raffle, or gift enterprise. Not less than sixty-five per cent of the gross proceeds shall be used for the awarding of prizes and not more than twenty-five per cent of that amount remaining after the awarding of prizes shall be used to pay the expenses of operating such scheme. For the purpose of this section, the expenses of operating a lottery shall include (1) all~~

costs associated with printing or manufacturing any items to be used or distributed to participants such as tickets or other paraphernalia, (2) all office expenses, (3) all promotional expenses, (4) all salaries of persons employed to operate the scheme, (5) any rental or lease expense, and (6) any fee paid to any person associated with the operation of a lottery, raffle, or gift enterprise, except that prizes awarded to participants shall not be included within the twenty-five per cent limitation contained in this section. Each nonprofit organization conducting a lottery shall have its name clearly printed on each lottery ticket used in such lottery. No such ticket shall be sold unless such name is so printed thereon. Each nonprofit organization conducting a lottery shall keep a record of all locations where its lottery tickets are sold. All tickets must bear a number, which numbers must be in sequence.

Sec. 11. In any prosecution under this article in which it is necessary to prove the occurrence of a sporting event, a published report of its occurrence in any daily newspaper, magazine, or other periodically printed publication of general circulation shall be admissible in evidence and shall constitute prima facie evidence of the occurrence of the event.

Sec. 12. That original sections 28-1101 to 28-1105, 28-1107 to 28-1109, and 28-1115, Revised Statutes Supplement, 1978, and also section 28-1106, Revised Statutes Supplement, 1978, are repealed.