

LEGISLATIVE BILL 28

Approved by the Governor February 28, 1995

Introduced by Warner, 25

AN ACT relating to campaign contributions; to amend sections 9-834, 9-835, and 49-1401, Revised Statutes Supplement, 1994; to require disclosure by certain lottery vendors; to provide restrictions on contracts for major procurements; to state intent; to prohibit contributions by lottery contractors as prescribed; to provide penalties; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 9-834, Revised Statutes Supplement, 1994, is amended to read:

9-834. (1) To enable the division to review and evaluate the competence, integrity, background, character, qualifications, and nature of the ownership and control of lottery vendors for major procurements, such vendors shall disclose the following information:

(a) The lottery vendor's name, address, and type of business entity and, as applicable, the name and address of the following:

(i) If the lottery vendor is a corporation, the officers, directors, and each stockholder in the corporation, except that in the case of stockholders of publicly held equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to own or have a beneficial interest in five percent or more of such securities need to be disclosed;

(ii) If the lottery vendor is a trust, the trustee and all persons entitled to receive income or benefit from the trust;

(iii) If the lottery vendor is a subsidiary, the officers, directors, and each stockholder of the parent corporation, except that in the case of stockholders of publicly held equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to own or have a beneficial interest in five percent or more of such securities need to be disclosed;

(iv) If the lottery vendor is a limited liability company, the members and any managers;

(v) If the lottery vendor is a partnership or joint venture, the general partners, limited partners, or joint venturers;

(vi) If the parent company, general partner, limited partner, or joint venturer of the lottery vendor is itself a corporation, trust, association, subsidiary, partnership, limited liability company, or joint venture, all the information required in subdivision (a) of this subsection shall be disclosed for such other entity as if it were itself a lottery vendor so that full disclosure of ultimate ownership is achieved;

(vii) If any parent, child, brother, sister, or spouse of the lottery vendor is involved in the vendor's business in any capacity, all of the information required in subdivision (a) of this subsection shall be disclosed for such family member as if he or she was a lottery vendor; and

(viii) If the lottery vendor subcontracts any substantial portion of the work to be performed to a subcontractor, all of the information required in subdivision (a) of this subsection shall be disclosed for each subcontractor as if it were itself a lottery vendor;

(b) The place of the lottery vendor's incorporation, if any;

(c) The name, address, and telephone number of a resident agent to contact regarding matters of the lottery vendor and for service of process;

(d) The name, address, and telephone number of each attorney and law firm representing the lottery vendor in this state;

(e) The name, address, and telephone number of each of the lottery vendor's accountants;

(f) The name, address, and telephone number of each attorney, law firm, accountant, accounting firm, public relations firm, consultant, sales agent, or other person engaged by the lottery vendor or involved in aiding the vendor's efforts to obtain the contract and the procurement involved at the time of disclosure or during the prior year;

(g) The states and jurisdictions in which the lottery vendor does business or has contracts to supply goods or services related to lottery games and the nature of the business or the goods or services involved for each such state or jurisdiction;

(h) The states and jurisdictions in which the lottery vendor has applied for, sought renewal of, received, been denied, or had revoked a gaming contract or license of any kind, and the status of such application, contract, or license in each state or jurisdiction. If any gaming contract or license has been revoked or has not been renewed or if any gaming contract or license application either has been denied or is pending and has remained pending for more than six months, all of the facts and circumstances underlying the failure to receive or retain such a contract or license shall be disclosed. For purposes of this subdivision, gaming contract or license shall mean a contract or license for the conduct of or any activity related to the operation of any lottery game or other gambling scheme;

(i) The details of any conviction or judgment of any state or federal court against the lottery vendor relating to any felony and any other criminal offense other than a traffic violation;

(j) The details of any bankruptcy, insolvency, reorganization, or pending litigation involving the lottery vendor;

(k) The identity of any entity with which the lottery vendor has a joint venture or other contractual agreement to supply any state or jurisdiction with goods or services related to lottery games, including, with regard to such entity, all the information requested under subdivisions (a) through (j) of this subsection;

(l) The lottery vendor's financial statements for the three years prior to disclosure;

(m) At the director's request, the lottery vendor's federal and state income tax returns for the three years prior to disclosure. Such information shall be considered confidential in any review in conjunction with any pending major procurement and shall not be disclosed except pursuant to appropriate judicial order;

(n) The identity and nature of any interest known to the lottery vendor of any past or present director or other employee of the division who, directly or indirectly, is an officer, director, limited liability company member, agent, consultant, independent contractor, stockholder, debt holder, principal, or employee of or who has any direct or indirect financial interest in any lottery vendor. For purposes of this subdivision, financial interest shall mean ownership of any interest or involvement in any relationship from which or as a result of which a person within the five years prior to disclosure has received, is receiving at the time of disclosure, or in the future will be entitled to receive over a five-year period more than one thousand dollars or its equivalent; and

(o) The details of any contribution to or independent expenditure for a candidate for a state elective office as defined in section 49-1444 made by the lottery vendor after the effective date of this act and within three years prior to disclosure. The lottery vendor shall be considered to have made a contribution or independent expenditure if the contribution or independent expenditure was made by the lottery vendor, by an officer of the lottery vendor, by a separate segregated political fund established by the lottery vendor as provided in section 49-1469, or by a person acting on behalf of the vendor, officer, or fund; and

(p) Such additional disclosures and information as the Tax Commissioner may determine to be appropriate for the major procurement involved.

(2) The disclosures required by subsection (1) of this section may be required only once of a lottery vendor. The vendor shall file an addendum to the original filing by August 1 of each year showing any changes from the original filing or the latest addendum.

(3) No contract shall be approved by the Tax Commissioner or signed or entered into by the director unless the lottery vendor has complied with this section. Any contract entered into with a vendor who has not complied with this section shall be void.

(4) If a contract is to be entered into as a result of competitive procurement procedures, the required disclosures, if not already on file with the director, shall be made prior to or concurrent with the submission of a bid, proposal, or offer. If the contract is entered into without a competitive procurement procedure, such disclosures shall be required prior to execution of the contract.

(5) No major procurement with any lottery vendor shall be entered into if any person with a substantial interest in the lottery vendor has been convicted of a felony or misdemeanor involving gambling, moral turpitude, dishonesty, or theft. No major procurement with any lottery vendor shall be entered into if any person with a substantial interest in the lottery vendor has been convicted of any other felony within ten years preceding the date of submission of information required under this section. For purposes of this

subsection, person with a substantial interest shall mean any sole proprietor, partner in a partnership, member or manager of a limited liability company, officer of a corporation, shareholder owning in the aggregate ten percent or more of the stock in a corporation, or governing officer of an organization or other entity.

(6) This section shall be construed broadly and liberally to achieve the end of full disclosure of all information necessary to allow for a full and complete evaluation by the director of the competence, integrity, background, character, qualifications, and nature of the ownership and control of lottery vendors for major procurements.

Sec. 2. Section 9-835, Revised Statutes Supplement, 1994, is amended to read:

9-835. (1) Subject to the approval of the Tax Commissioner, the director may request proposals for or enter into major procurements for effectuating the purpose of the State Lottery Act. In awarding contracts in response to requests for proposals, the director shall award such contracts to the responsible vendor who submits the lowest and best proposal which maximizes the benefits to the state in relation to the cost in the areas of security, competence, quality of product, capability, timely performance, and maximization of net revenue to benefit the public purpose of the act. All contract awards made by the director exceeding fifteen thousand dollars shall be approved by the Tax Commissioner.

(2) The director may not award and the Tax Commissioner may not approve a contract with a person to serve as a lottery contractor for a major procurement if the person has made a contribution to a candidate for a state elective office as defined in section 49-1444 after the effective date of this act and within three years preceding the award of the contract. A person shall be considered to have made a contribution if the contribution is made by the person, by an officer of the person, by a separate segregated political fund established and administered by the person as provided in section 49-1469, or by anyone acting on behalf of the person, officer, or fund. Any contract awarded in violation of the subsection shall be void.

(3) No contract may be assigned by a lottery contractor except by a written agreement approved by the Tax Commissioner and signed by the director.

Sec. 3. Section 49-1401, Revised Statutes Supplement, 1994, is amended to read:

49-1401. Sections 49-1401 to 49-14,140 and sections 4 to 6 of this act shall be known and may be cited as the Nebraska Political Accountability and Disclosure Act. Any reference to sections 49-1401 to 49-14,138 shall be construed to include sections 49-1499.01 and 49-14,103.01 to 49-14,103.07. After August 25, 1989, any reference to sections 49-1401 to 49-14,138 shall be construed to include sections 49-14,123.01 and 49-14,140.

Sec. 4. The Legislature finds that in sponsoring a lottery, the state undertakes a unique enterprise which can succeed only if the public has confidence in the integrity of the lottery and the process by which government decisions relating to the lottery are made. The Legislature finds that there is a compelling state interest in ensuring the integrity and the appearance of integrity of elections for state elective office and of the state-sponsored lottery. The Legislature further finds that the practice of contributions being given to candidates for state elective offices by individuals or entities holding contracts with the state to supply goods or services in connection with the state-sponsored lottery for significant monetary prizes contributes to actual corruption or the appearance of corruption and diminishes public confidence in government and in the state-sponsored lottery. The Legislature finds that sections 5 and 6 of this act are consistent with these findings.

Sec. 5. A person who is awarded a contract by the Director of the Lottery Division as a lottery contractor for a major procurement as defined in section 9-803 may not make a contribution to or an independent expenditure for a candidate for a state elective office during the term of the contract or for three years following the most recent award or renewal of the contract. A person shall be considered to have made a contribution or independent expenditure if the contribution or independent expenditure is made by the person, by an officer of the person, by a separate segregated political fund established and administered by the person as provided in section 49-1469, or by anyone acting on behalf of the person, officer, or fund. A person who knowingly or intentionally violates this section shall be guilty of a Class IV felony.

Sec. 6. (1) No person, including a candidate or candidate committee, shall accept or receive any contribution prohibited by section 5 of this act. A person who knowingly or intentionally accepts any such contribution shall be guilty of a Class III misdemeanor.

(2) Any person, including a candidate or candidate committee, who receives a contribution prohibited by section 5 of this act shall, upon being notified of the violation by the commission, transfer a sum equal to the amount of such contribution to a tax-exempt charitable institution.

Sec. 7. Original sections 9-834, 9-835, and 49-1401, Revised Statutes Supplement, 1994, are repealed.

Sec. 8. Since an emergency exists, this act takes effect when passed and approved according to law.