

LEGISLATIVE BILL 343

Approved by the Governor March 15, 1995

Introduced by General Affairs Committee: Schellpeper, 18, Chairperson;
Cudaback, 36; Elmer, 44; Hall, 7; Hartnett, 45; Hudkins, 21;
Robinson, 16; Will, 8

AN ACT relating to gambling; to amend section 84-712.05, Reissue Revised Statutes of Nebraska, and sections 9-803, 9-804.01, 9-807, 9-823, 9-838, and 28-1101, Revised Statutes Supplement, 1994; to redefine a term; to eliminate provisions relating to the Deputy Director of the Lottery Division of the Department of Revenue; to change provisions relating to the Director of the Division on Compulsive Gambling, the audiotaping of lottery game drawings, and certain lottery division records; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 9-803, Revised Statutes Supplement, 1994, is amended to read:

9-803. For purposes of the State Lottery Act:

~~(1) Deputy director shall mean the Deputy Director of the Lottery Division;~~
~~(2) (1) Director shall mean the Director of the Lottery Division;~~
~~(3) (2) Division shall mean the Lottery Division of the Department of Revenue;~~
~~(4) (3) Lottery contractor shall mean a lottery vendor or lottery game retailer with whom the division has contracted for the purpose of providing goods or services for the state lottery;~~
~~(5) (4) Lottery game shall mean any variation of the following types of games:~~

(a) An instant-win game in which disposable tickets contain certain preprinted winners which are determined by rubbing or scraping an area or areas on the tickets to match numbers, letters, symbols, or configurations, or any combination thereof, as provided by the rules of the game. An instant-win game may also provide for preliminary and grand prize drawings conducted pursuant to the rules of the game. An instant-win game shall not include the use of any pickle card as defined in section 9-315; and

(b) An on-line lottery game in which lottery game retailer terminals are hooked up to a central computer via a telecommunications system through which (i) a player selects a specified group of numbers or symbols out of a predetermined range of numbers or symbols and purchases a ticket bearing the player-selected numbers or symbols for eligibility in a drawing regularly scheduled in accordance with game rules or (ii) a player purchases a ticket bearing randomly selected numbers for eligibility in a drawing regularly scheduled in accordance with game rules.

Lottery game shall not be construed to mean any video lottery game;

~~(6) (5) Lottery game retailer shall mean a person who contracts with or seeks to contract with the division to sell tickets in lottery games to the public;~~

~~(7) (6) Lottery vendor shall mean any person who submits a bid, proposal, or offer as part of a major procurement;~~

~~(8) (7) Major procurement shall mean any procurement or contract for the purchase or lease of goods or services unique to or used primarily for the operation of the state lottery in excess of fifteen thousand dollars, including the printing of tickets, the provision of terminals and other computer equipment, and transportation, accounting, consulting, and advertising services; and~~

~~(9) (8) Ticket or lottery ticket shall mean any tangible evidence authorized by the division to prove participation in a lottery game.~~

Sec. 2. Section 9-804.01, Revised Statutes Supplement, 1994, is amended to read:

9-804.01. There is hereby created the Division on Compulsive Gambling which shall be a division of the Department of Revenue. The Division on Compulsive Gambling shall consist of a director appointed by the Tax Commissioner and ~~such~~ other additional employees as may be necessary to provide clerical assistance to the Director of the Division on Compulsive Gambling in carrying out the duties of the Division on Compulsive Gambling. The director shall serve at the pleasure of the Tax Commissioner.

Sec. 3. Section 9-807, Revised Statutes Supplement, 1994, is

amended to read:

9-807. (1) The division shall employ a Deputy Director of the Lottery Division who shall serve as director in the director's absence. Other than the director, all employees of the division shall be classified employees under the rules and regulations of the personnel division of the Department of Administrative Services.

(2) Before entering upon the duties of the office, the director, deputy director, and each employee of the division shall be bonded under the blanket surety bond required by section 11-201.

Sec. 4. Section 9-823, Revised Statutes Supplement, 1994, is amended to read:

9-823. The Tax Commissioner shall adopt and promulgate rules and regulations necessary to carry out the State Lottery Act. The rules and regulations shall include provisions relating to the following:

(1) The lottery games to be conducted subject to the following conditions:

(a) No lottery game shall use the theme of dog racing or horseracing;

(b) In any lottery game utilizing tickets, each ticket in such game shall bear a unique number distinguishing it from every other ticket in such lottery game;

(c) No name of an elected official shall appear on the tickets of any lottery game; and

(d) In any instant-win game, the overall estimated odds of winning some prize shall be printed on each ticket and shall also be available at the office of the division at the time such lottery game is offered for sale to the public;

(2) The retail sales price for lottery tickets;

(3) The types and manner of payment of prizes to be awarded for winning tickets in lottery games;

(4) The method for determining winners, the frequency of drawings, if any, or other selection of winning tickets subject to the following conditions:

(a) No lottery game shall be based on the results of a dog race, horserace, or other sports event;

(b) If the lottery game utilizes the drawing of winning numbers, a drawing among entries, or a drawing among finalists (i) such the drawings shall be witnessed by an independent certified public accountant, (ii) any equipment used in such the drawings shall be inspected by the independent certified public accountant and an employee of the division or designated agent both before and after such the drawing, and (iii) such the drawing shall be recorded on both videotape with an audio track, and audiotape, and

(c) Drawings in an instant-win game, other than grand prize drawings or other runoff drawings, shall not be held more often than weekly. Drawings or selections in an on-line game shall not be held more often than daily;

(5) The validation and manner of payment of prizes to the holders of winning tickets subject to the following conditions:

(a) The prize shall be given to the person who presents a winning ticket, except that for awards in excess of five hundred dollars, the winner shall also provide his or her social security number or tax identification number;

(b) A prize may be given to only one person per winning ticket, except that a prize shall be divided between the holders of winning tickets if there is more than one winning ticket per prize;

(c) For the convenience of the public, the director may authorize lottery game retailers to pay winners of up to five hundred dollars after performing validation procedures on their premises appropriate to the lottery game involved;

(d) No prize shall be paid to any person under nineteen years of age, and any prize resulting from a lottery ticket held by a person under nineteen years of age shall be awarded to the parent or guardian or custodian of such the person under the Nebraska Uniform Transfers to Minors Act;

(e) No prize shall be paid for tickets that are stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received or not recorded by the division by acceptable deadlines, lacking in captions that confirm and agree with the lottery play symbols as appropriate to the lottery game involved, or not in compliance with such additional specific rules and regulations and public or confidential validation and security tests appropriate to the particular lottery game involved;

(f) No particular prize in any lottery game shall be paid more than once. In the event of a binding determination by the director that more than one claimant is entitled to a particular prize, the sole right of such

claimants shall be the award to each of them of an equal share in the prize; and

(g) After the expiration of the claim period for prizes for each lottery game, the director shall make available a detailed tabulation of the total number of tickets actually sold in the lottery game and the total number of prizes of each prize denomination that were actually claimed and paid;

(6) Requirements for eligibility for participation in grand prize drawings or other runoff drawings, including requirements for submission of evidence of eligibility;

(7) The locations at which tickets may be sold except that no ticket may be sold at a retail liquor establishment holding a license for the sale of alcoholic liquor at retail for consumption on the licensed premises unless such the establishment holds a Class C liquor license with a sampling designation as provided in subdivision (5) of section 53-124;

(8) The method to be used in selling tickets;

(9) The contracting with persons as lottery game retailers to sell tickets and the manner and amount of compensation to be paid to such retailers;

(10) The form and type of marketing of informational and educational material;

(11) Any arrangements or methods to be used in providing proper security in the storage and distribution of tickets or lottery games; and

(12) All other matters necessary or desirable for the efficient and economical operation and administration of lottery games and for the convenience of the purchasers of tickets and the holders of winning tickets.

Sec. 5. Section 9-838, Revised Statutes Supplement, 1994, is amended to read:

9-838. Upon request of the director or Tax Commissioner, the Attorney General and the Nebraska State Patrol shall furnish to the director and deputy director any information which they may have in their possession as may be necessary to ensure security, honesty, fairness, and integrity in the operation and administration of lottery games conducted pursuant to the State Lottery Act, including investigative reports and computerized information or data. For the purpose of requesting and receiving such information, the division shall be considered to be a criminal justice agency and shall be furnished such information without charge upon proper written request.

Sec. 6. Section 28-1101, Revised Statutes Supplement, 1994, is amended to read:

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 or she 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, or (c) engaging in the procurement, sale, or offering for sale within this state of any chance, share, or interest in a lottery of another state or government whether or not such chance, share, or interest is an actual lottery ticket, receipt, contingent promise to pay, order to purchase, or other record of such interest except as provided in the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or section 9-701;

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

(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, or conducts or participates in any bingo, lottery by the sale of pickle cards, lottery, raffle, gift enterprise, or other scheme not authorized or conducted in accordance with the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or section 9-701, 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 any bingo, lottery by the sale of pickle cards, lottery, raffle, or gift enterprise conducted in accordance with the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or section 9-701;

(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. Gambling device shall also include any mechanical gaming device, computer gaming device, electronic gaming device, or video gaming device which has the capability of awarding something of value, free games redeemable for something of value, instant-win tickets which also provide the possibility of participating in a subsequent drawing or event, or tickets or stubs redeemable for something of value, except as authorized in the furtherance of parimutuel wagering. Supplies, equipment, cards, tickets, stubs, and other items used in any bingo, lottery by the sale of pickle cards, other lottery, raffle, or gift enterprise conducted in accordance with the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or section 9-701 are not gambling devices within this definition;

(6) 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

(7) 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 does not depend upon the number of participants 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. 7. Section 84-712.05, Reissue Revised Statutes of Nebraska, is amended to read:

84-712.05. The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records:

(1) Personal information in records regarding a student, prospective student, or former student of any tax-supported educational institution maintaining such the records, other than routine directory information;

(2) Medical records, other than records of births and deaths and except as provided in subdivision (5) of this section, in any form concerning any person, and also records of elections filed under section 44-2821;

(3) Trade secrets, academic and scientific research work which is in progress and unpublished, and other proprietary or commercial information which if released would give advantage to business competitors and serve no public purpose;

(4) Records which represent the work product of an attorney and the public body involved which are related to preparation for litigation, labor negotiations, or claims made by or against the public body or which are confidential communications as defined in section 27-503;

(5) Records developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, when the records constitute a part of the examination, investigation, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training, except that this subdivision shall not apply to records so developed or received relating to the presence of and amount or concentration of alcohol or drugs in any body fluid of any person;

(6) Appraisals or appraisal information and negotiation records concerning the purchase or sale, by a public body, of any interest in real or personal property, prior to completion of the purchase or sale;

(7) Personal information in records regarding personnel of public bodies other than salaries and routine directory information;

(8) Information solely pertaining to protection of the physical security of public property such as guard schedules, ~~or~~ lock combinations, ~~or~~

the security standards, procedures, policies, plans, specifications, diagrams, access lists, and other security-related records of the Lottery Division of the Department of Revenue and those persons or entities with which the division has entered into contractual relationships. Nothing in this subdivision shall allow the division to withhold from the public any information relating to amounts paid persons or entities with which the division has entered into contractual relationships, amounts of prizes paid, the name of the prize winner, and the city, village, or county where the prize winner resides;

(9) With respect to public utilities and except as provided in sections 43-512.06 and 70-101, personally identified private citizen account payment information, credit information on others supplied in confidence, and customer lists;

(10) Records or portions of records kept by a publicly funded library which, when examined with or without other records, reveal the identity of any library patron using the library's materials or services;

(11) Correspondence, memoranda, and records of telephone calls related to the performance of duties by a member of the Legislature. The lawful custodian of ~~such~~ the correspondence, memoranda, and records of telephone calls, whether created prior to, on, or after April 2, 1993, upon approval of the Executive Board of the Legislative Council, shall release ~~such~~ the correspondence, memoranda, and records of telephone calls which are not designated as sensitive or confidential in nature pursuant to subsection (3) of section 81-1120.27 to the person the Executive Board of the Legislative Council has contracted with pursuant to section 50-401.04. A member's correspondence, memoranda, and records of telephone calls related to the performance of his or her legislative duties shall only be released to any other person with the explicit approval of the member;

(12) Records or portions of records kept by public bodies which would reveal the location, character, or ownership of any known archaeological, historical, or paleontological site in Nebraska when necessary to protect ~~such~~ the site from a reasonably held fear of theft, vandalism, or trespass. This section shall not apply to the release of information for the purpose of scholarly research, examination by other public bodies for the protection of the resource or by recognized tribes, the Unmarked Human Burial Sites and Skeletal Remains Protection Act, or the federal Native American Graves Protection and Repatriation Act; and

(13) Records or portions of records kept by public bodies which maintain collections of archaeological, historical, or paleontological significance which reveal the names and addresses of donors of such articles of archaeological, historical, or paleontological significance unless the donor approves disclosure, except as the records or portions thereof may be needed to carry out the purposes of the Unmarked Human Burial Sites and Skeletal Remains Protection Act or the federal Native American Graves Protection and Repatriation Act.

Sec. 8. Original section 84-712.05, Reissue Revised Statutes of Nebraska, and sections 9-803, 9-804.01, 9-807, 9-823, 9-838, and 28-1101, Revised Statutes Supplement, 1994, are repealed.