

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 469

Introduced by Larson, 40.

Read first time January 17, 2017

Committee:

1 A BILL FOR AN ACT relating to gambling; to amend sections 28-1101,
2 28-1105, and 28-1113, Reissue Revised Statutes of Nebraska; to adopt
3 the Fantasy Contests Act; to redefine terms; to provide a gambling
4 exception for conducting or participating in fantasy contests; to
5 change a provision relating to the possession of gambling records;
6 to harmonize provisions; and to repeal the original sections.

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

1 Section 1. Sections 1 to 7 of this act shall be known and may be
2 cited as the Fantasy Contests Act.

3 Sec. 2. For purposes of the Fantasy Contests Act:

4 (1) Confidential information means information related to the play
5 of a fantasy contest obtained by a fantasy contest operator or by an
6 employee of such operator;

7 (2) Department means the Department of Revenue;

8 (3) Entry fee means cash or cash equivalent required to be paid by a
9 fantasy contest player to a fantasy contest operator in order to
10 participate in a fantasy contest;

11 (4) Fantasy contest means any online fantasy or simulated game or
12 contest with an entry fee required for participation and in which:

13 (a) The value of all prizes and awards offered to winning fantasy
14 contest players is established and made known to the fantasy contest
15 players in advance of the fantasy contest;

16 (b) All winning outcomes reflect the relative knowledge and skill of
17 the fantasy contest players and such outcomes are determined by
18 accumulated statistical results of the performance of individuals,
19 including athletes in the case of sports events; and

20 (c) No winning outcome is based on the score, point spread, or
21 performance of any single actual team or combination of teams or solely
22 on any single performance of an individual athlete or player in any
23 single actual event;

24 (5) Fantasy contest operator means a person that offers a digital
25 platform for the playing of a fantasy contest, administers one or more
26 fantasy contests, and awards any prize of value;

27 (6) Fantasy contest player means a person who pays an entry fee to
28 participate in a fantasy contest offered by a fantasy contest operator;

29 (7) Gross fantasy contest revenue means the amount equal to the
30 total of entry fees that a fantasy contest operator collects from fantasy
31 contest players less the total of sums paid out as prizes to fantasy

1 contest players multiplied by the location percentage; and

2 (8) Location percentage means, for each fantasy contest, the
3 percentage rounded to the nearest tenth of a percent of the total of
4 entry fees collected from fantasy contest players located in Nebraska at
5 the time of entry into the fantasy contest divided by the total entry
6 fees collected from fantasy contest players in all locations in the
7 fantasy contest.

8 Sec. 3. (1) No fantasy contest operator shall offer any fantasy
9 contest in Nebraska without first registering with the department, except
10 that a fantasy contest operator may offer a fantasy contest in Nebraska
11 during the period that the application for registration is pending before
12 the department. An application for registration shall be on an electronic
13 or paper form prescribed by the department. To be eligible to obtain a
14 registration to offer a fantasy contest in Nebraska, a fantasy contest
15 operator shall (a) be authorized to transact business in Nebraska and (b)
16 pay a registration fee of ten thousand dollars to the department.

17 (2) On or before each annual anniversary date of the payment made
18 pursuant to subsection (1) of this section, a fantasy contest operator
19 shall pay an annual registration renewal fee of six percent of the
20 fantasy contest operator's gross fantasy contest revenue for the
21 preceding twelve months, not to exceed ten thousand dollars, to the
22 department. Initial and renewal registration fees shall be paid in a
23 manner prescribed by the department. No refunds shall be allowed of any
24 registration fees collected by the department. Any fantasy contest
25 operator that allows a registration to lapse without requesting an
26 extension of time to file an application for renewal shall be required to
27 resubmit an initial registration application. The department may grant an
28 extension upon receipt of a written request from a fantasy contest
29 operator.

30 (3) The department shall remit all registration and renewal fees
31 collected under this section to the State Treasurer for credit to the

1 General Fund.

2 (4) Any fantasy contest operator offering a fantasy contest to
3 residents of Nebraska prior to the effective date of this act may
4 continue to offer such fantasy contest until sixty days after an
5 application for registration is made available to the public by the
6 department. Except as provided in section 4 of this act, a fantasy
7 contest operator who has applied for registration during such sixty-day
8 period may continue to operate while the registration is pending. A
9 fantasy contest operator who has not registered shall cease operations
10 within Nebraska by the expiration of the sixty-day period.

11 Sec. 4. (1) The department shall consider each application filed
12 for registration and shall issue a valid registration to any applicant
13 who meets the criteria set forth in the Fantasy Contests Act. The
14 department shall deny registration to any applicant who does not meet
15 such criteria.

16 (2) Any fantasy contest operator applying for initial registration
17 or renewal of a registration may operate during the period pending
18 application approval unless the department has reasonable cause to
19 believe that such operator is or may be in violation of the Fantasy
20 Contests Act and the department requires such operator to suspend
21 operation of any fantasy contest until an application for initial
22 registration or renewal is approved.

23 (3) The department shall issue or deny a registration application
24 within sixty days after receipt of the application. If the registration
25 is not issued, the department shall provide the fantasy contest operator
26 with the specific justification for not issuing such registration.

27 (4) Any application made under the Fantasy Contests Act shall not be
28 considered a public record for purposes of sections 84-712 to 84-712.09.

29 Sec. 5. (1) The department shall adopt and promulgate rules and
30 regulations to implement and administer the Fantasy Contests Act,
31 including, but not limited to, rules and regulations:

1 (a) To provide for the prevention of practices detrimental to the
2 public interest and to safeguard the integrity of fantasy contests; and

3 (b) To establish the necessary scope of review of registration
4 applications filed by fantasy contest operators.

5 (2) The department shall not adopt and promulgate rules and
6 regulations limiting or regulating:

7 (a) Game rules governing the play of individual fantasy contests;

8 (b) The statistical components of a fantasy contest; or

9 (c) The digital platform of a fantasy contest operator.

10 Sec. 6. (1) As a condition of registration, a fantasy contest
11 operator shall submit evidence satisfactory to the department that the
12 operator has established and implemented or has the ability to implement
13 commercially reasonable procedures for fantasy contests that:

14 (a) Prevent a fantasy contest operator, any employee of the fantasy
15 contest operator, and any relative living in the same household as such
16 fantasy contest operator or employee from participating as a fantasy
17 contest player in any fantasy contest offered by a fantasy contest
18 operator;

19 (b) Prevent the sharing of confidential information with third
20 parties that could affect fantasy contest play until the information is
21 made publicly available;

22 (c) Prohibit the following persons from participating in a fantasy
23 contest based on the sport or competition in which the person
24 participates or with which the person is otherwise associated:

25 (i) An athlete, referee, umpire, coach, or other individual who
26 participates or officiates in a game or competition that is the subject
27 of a fantasy contest; or

28 (ii) Any sports agent, team employee, or league official associated
29 with a sport or athletic event that is the subject of a fantasy contest;

30 (d) Verify that a fantasy contest player in a fantasy contest is
31 nineteen years of age or older;

1 (e) Provide a fantasy contest player with access to information on
2 responsible play and access to information on seeking assistance for
3 compulsive gambling behavior;

4 (f) Provide a fantasy contest player with information regarding the
5 fantasy contest player's play history and account details;

6 (g) Ensure that a person who is a player in a real-world game or
7 sporting event is restricted from participating in a fantasy contest that
8 is determined, in whole or in part, on the accumulated statistical
9 results of that player, the player's real-world team, or the sport or
10 competition in which he or she is a player;

11 (h) Allow a person to restrict himself or herself from entering a
12 fantasy contest upon request and provide reasonable steps to prevent the
13 person from entering any fantasy contest offered by the fantasy contest
14 operator;

15 (i) Disclose the number of entries that a fantasy contest player may
16 submit to each fantasy contest and provide reasonable steps to prevent a
17 fantasy contest player from submitting more than the allowable number;

18 (j) Segregate fantasy contest player funds from operational funds or
19 maintain a reserve that exceeds the amount of player funds on deposit,
20 which reserve may not be used for operational activities. The reserve
21 funds may be in the form of cash, cash equivalents, payment processor
22 reserves, payment processor receivables, an irrevocable letter of credit,
23 a bond, or any combination thereof, in the amount that must exceed the
24 total balances of the accounts of all fantasy contest players; and

25 (k) Prohibit the use of unauthorized third-party scripts on the
26 platform.

27 (2) A fantasy contest operator shall not offer a fantasy contest
28 based on the performance of a participant in a collegiate, high school,
29 or youth athletic event.

30 (3) A fantasy contest operator shall:

31 (a) Contract annually with a certified public accountant to conduct

1 an independent financial audit consistent with the standards accepted by
2 the American Institute of Certified Public Accountants; and

3 (b) Submit a copy of the audit report prepared pursuant to
4 subdivision (3)(a) of this section to the department.

5 Sec. 7. Any person who knowingly violates any provision of the
6 Fantasy Contests Act shall be liable for a civil penalty of not more than
7 one thousand dollars for each violation, not to exceed five thousand
8 dollars for violations arising out of the same transaction or occurrence,
9 which shall accrue to the state, and which may be recovered in a civil
10 action brought by the department. All money collected by the department
11 pursuant to this section shall be remitted to the State Treasurer for
12 distribution in accordance with Article VII, section 5, of the
13 Constitution of Nebraska.

14 Sec. 8. Section 28-1101, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 28-1101 As used in this article, unless the context otherwise
17 requires:

18 (1) A person advances gambling activity if, acting other than as a
19 player, he or she engages in conduct that materially aids any form of
20 gambling activity. Conduct of this nature includes, but shall not be
21 limited to, conduct directed toward (a) the creation or establishment of
22 the particular game, contest, scheme, device, or activity involved, (b)
23 the acquisition or maintenance of premises, paraphernalia, equipment, or
24 apparatus therefor, or (c) engaging in the procurement, sale, or offering
25 for sale within this state of any chance, share, or interest in a lottery
26 of another state or government whether or not such chance, share, or
27 interest is an actual lottery ticket, receipt, contingent promise to pay,
28 order to purchase, or other record of such interest except as provided in
29 the Fantasy Contests Act, the Nebraska County and City Lottery Act, the
30 Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act,
31 the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or

1 section 9-701;

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

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

9 (4) A person engages in gambling if he or she bets something of
10 value upon the outcome of a future event, which outcome is determined by
11 an element of chance, or upon the outcome of a game, contest, or
12 election, or conducts or participates in any bingo, lottery by the sale
13 of pickle cards, lottery, raffle, gift enterprise, fantasy contest, or
14 other scheme not authorized or conducted in accordance with the Fantasy
15 Contests Act, the Nebraska Bingo Act, the Nebraska County and City
16 Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle
17 Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State
18 Lottery Act, or section 9-701, but a person does not engage in gambling
19 by:

20 (a) Entering into a lawful business transaction;

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

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

25 (d) Conducting or participating in any bingo, lottery by the sale of
26 pickle cards, lottery, raffle, or gift enterprise conducted in accordance
27 with the Fantasy Contests Act, the Nebraska Bingo Act, the Nebraska
28 County and City Lottery Act, the Nebraska Lottery and Raffle Act, the
29 Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle
30 Act, the State Lottery Act, or section 9-701;

31 (5) Gambling device means ~~shall mean~~ any device, machine,

1 paraphernalia, writing, paper, instrument, article, or equipment that is
2 used or usable for engaging in gambling, whether that activity consists
3 of gambling between persons or gambling by a person involving the playing
4 of a machine. Gambling device also includes ~~shall also include~~ any
5 mechanical gaming device, computer gaming device, electronic gaming
6 device, or video gaming device which has the capability of awarding
7 something of value, free games redeemable for something of value,
8 instant-win tickets which also provide the possibility of participating
9 in a subsequent drawing or event, or tickets or stubs redeemable for
10 something of value, except as authorized in the furtherance of parimutuel
11 wagering. Supplies, equipment, cards, tickets, stubs, and other items
12 used in any bingo, lottery by the sale of pickle cards, other lottery,
13 raffle, ~~or~~ gift enterprise, or fantasy contest conducted in accordance
14 with the Fantasy Contests Act, the Nebraska Bingo Act, the Nebraska
15 County and City Lottery Act, the Nebraska Lottery and Raffle Act, the
16 Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle
17 Act, the State Lottery Act, or section 9-701 are not gambling devices
18 within this definition;

19 (6) Something of value shall mean any money or property, any token,
20 object, or article exchangeable for money or property, or any form of
21 credit or promise directly or indirectly contemplating transfer of money
22 or property or of any interest therein, or involving extension of a
23 service or entertainment; and

24 (7) Prize contest shall mean any competition in which one or more
25 competitors are awarded something of value as a consequence of winning or
26 achieving a certain result in the competition and (a) the value of such
27 awards made to competitors participating in the contest does not depend
28 upon the number of participants in the contest or upon the amount of
29 consideration, if any, paid for the opportunity to participate in the
30 contest or upon chance and (b) the value or identity of such awards to be
31 made to competitors is published before the competition begins.

1 Sec. 9. Section 28-1105, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 28-1105 (1) A person commits the offense of possession of gambling
4 records if, other than as a player, he or she knowingly possesses any
5 writing, paper, instrument, or article which is:

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

10 (b) Of a kind commonly used in the operation, promotion, or playing
11 of a lottery or mutuel scheme or enterprise or other scheme not conducted
12 pursuant to the Fantasy Contests Act, the Nebraska Bingo Act, the
13 Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle
14 Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and
15 Raffle Act, the State Lottery Act, or section 9-701 and such writing,
16 paper, instrument, or article has been used for the purpose of recording,
17 memorializing, or registering any bet, wager, or other gambling
18 information not permitted by such acts or section.

19 (2) Possession of gambling records in the first degree is a Class II
20 misdemeanor.

21 Sec. 10. Section 28-1113, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 28-1113 Nothing in this article shall be construed to:

24 (1) Apply to or prohibit wagering on the results of horseraces by
25 the parimutuel or certificate method when conducted by licensees within
26 the racetrack enclosure at licensed horserace meetings; or

27 (2) Prohibit or punish the conducting or participating in any bingo,
28 lottery by the sale of pickle cards, lottery, raffle, ~~or~~ gift enterprise,
29 or fantasy contest when conducted in accordance with the Fantasy Contests
30 Act, the Nebraska Bingo Act, the Nebraska County and City Lottery Act,
31 the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery

1 Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or
2 section 9-701.

3 Sec. 11. Original sections 28-1101, 28-1105, and 28-1113, Reissue
4 Revised Statutes of Nebraska, are repealed.