

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 469**

Introduced by Larson, 40.

Read first time January 17, 2017

Committee: General Affairs

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.