

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 631

Introduced by Larson, 40.

Read first time January 18, 2017

Committee: General Affairs

1 A BILL FOR AN ACT relating to gambling; to amend sections 9-329.02,
2 9-340, 9-340.02, 9-344, 9-345.03, 9-347, 9-347.01, 9-348, and 9-829,
3 Reissue Revised Statutes of Nebraska; to provide for authorization
4 of methods of payment for participation in certain gaming activities
5 as prescribed; to change and eliminate restrictions on rental or
6 purchase and registration of pickle card equipment, pickle card
7 units, payment requirements, taxes, and limitations on definite
8 profit and the use of gross proceeds for awarding prizes for pickle
9 card lotteries; to harmonize provisions; to provide an operative
10 date; and to repeal the original sections.

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

1 Section 1. A participant may use United States currency or any
2 method of payment representing United States currency in order to
3 participate in any activity authorized under the Nebraska Bingo Act, the
4 Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act,
5 the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or
6 section 9-701.

7 Sec. 2. Section 9-329.02, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 9-329.02 (1) A pickle card operator shall not be eligible to sell
10 individual pickle cards as opportunities to participate in a lottery by
11 the sale of pickle cards without first obtaining a license.

12 (2) Any sole proprietorship, partnership, limited liability company,
13 or corporation wishing to operate as a pickle card operator in this state
14 shall file an application with the department for a license on a form
15 prescribed by the department. Each application for a license shall
16 include (a) the name, address, and state identification number of the
17 sole proprietorship, partnership, limited liability company, or
18 corporation applying for the license, (b) a description of the premises
19 on which the pickle cards will be sold or offered for sale, (c) if the
20 applicant is an individual, the applicant's social security number, and
21 (d) such other information which the department deems necessary. The
22 information required by this subsection shall be kept current. A pickle
23 card operator shall notify the department within thirty days if any
24 information in the application is no longer correct and shall supply the
25 correct information.

26 (3) A biennial fee of one hundred dollars shall be charged for each
27 license issued pursuant to this section and shall be paid for by the
28 applicant. A licensed organization shall not pay the required licensing
29 fees of a pickle card operator as an inducement for the pickle card
30 operator to sell individual pickle cards on its behalf. Such licenses
31 shall expire on September 30 of each odd-numbered year or on such other

1 date as the department may prescribe by rule and regulation and may be
2 renewed biennially. The department shall remit the proceeds from such
3 license fees to the State Treasurer for credit to the Charitable Gaming
4 Operations Fund. An application for license renewal shall be submitted to
5 the department at least sixty days prior to the expiration date of the
6 license.

7 (4) One license issued to any sole proprietorship, partnership,
8 limited liability company, or corporation under this section as a pickle
9 card operator shall cover the sole proprietorship, partnership, limited
10 liability company, or corporation and the employees of the licensed
11 pickle card operator. Any license issued pursuant to this section shall
12 be valid only for the sole proprietorship, partnership, limited liability
13 company, or corporation in the name of which it was issued and shall
14 allow the sale of individual pickle cards only on the premises described
15 in the pickle card operator's application for a license. A pickle card
16 operator's license may not be transferred under any circumstances
17 including change of ownership.

18 (5) The department may prescribe a separate application form for
19 renewal purposes.

20 (6) A licensed pickle card operator shall not sell individual pickle
21 cards on behalf of a licensed organization until an authorization has
22 been obtained from the department by the licensed organization. The
23 licensed organization shall file an application with the department for
24 such authorization on a form prescribed by the department. Each
25 application for an authorization shall include (a) the name, address, and
26 state identification number of the licensed pickle card operator and (b)
27 such other information which the department deems necessary. The
28 application shall include a statement signed by a person licensed as a
29 utilization-of-funds member signifying that such licensed organization
30 approves the pickle card operator to sell individual pickle cards on
31 behalf of such organization.

1 (7) A pickle card operator may sell individual pickle cards on
2 behalf of more than one licensed organization. Each licensed organization
3 for which the pickle card operator desires to sell individual pickle
4 cards shall obtain the authorization described in subsection (6) of this
5 section.

6 (8) A pickle card operator who sells individual pickle cards through
7 a coin-operated or currency-operated dispensing device shall purchase,
8 lease, or rent its own equipment. If such equipment is obtained from a
9 licensed organization or distributor, it shall be purchased, leased, or
10 rented at not less than cost plus ten percent plus maintenance costs. A
11 licensed organization or distributor shall not provide such equipment to
12 a pickle card operator free of charge or at less than cost plus ten
13 percent plus maintenance costs as an inducement for the pickle card
14 operator to sell a licensed organization's individual pickle cards. The
15 department may require a licensed organization, distributor, or pickle
16 card operator to provide such documentation as the department deems
17 necessary to verify that a pickle card operator has purchased, leased, or
18 rented the equipment for not less than cost plus ten percent plus
19 maintenance costs ~~A pickle card operator who sells individual pickle~~
20 ~~cards through a coin-operated or currency-operated dispensing device~~
21 ~~shall purchase, lease, or rent its own equipment. If such equipment is~~
22 ~~obtained from a licensed organization or distributor, it shall be~~
23 ~~purchased, leased, or rented at a rate not less than fair market value. A~~
24 ~~licensed organization or distributor shall not provide such equipment to~~
25 ~~a pickle card operator free of charge or at a rate less than fair market~~
26 ~~value as an inducement for the pickle card operator to sell a licensed~~
27 ~~organization's individual pickle cards. The department may require a~~
28 ~~licensed organization, distributor, or pickle card operator to provide~~
29 ~~such documentation as the department deems necessary to verify that a~~
30 ~~pickle card operator has purchased, leased, or rented the equipment for a~~
31 ~~rate not less than fair market value.~~

1 (9) No pickle card operator shall generate revenue from the sale of
2 individual pickle cards which exceeds the revenue generated from other
3 retail sales on an annual basis. For purposes of this subsection, retail
4 sales shall not include revenue generated from other charitable gaming
5 activities authorized by Chapter 9.

6 Sec. 3. Section 9-340, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 9-340 (1) No manufacturer shall sell or otherwise provide any pickle
9 cards or pickle card units to any person in Nebraska except a licensed
10 distributor or a federally recognized Indian tribe for use in a Class II
11 gaming activity authorized by the federal Indian Gaming Regulatory Act.
12 No distributor licensed in Nebraska shall purchase or otherwise obtain
13 any pickle cards or pickle card units except from manufacturers licensed
14 in Nebraska.

15 (2) No distributor shall sell or otherwise provide any pickle card
16 units except to an organization licensed to conduct a lottery by the sale
17 of pickle cards pursuant to the Nebraska Pickle Card Lottery Act or to a
18 federally recognized Indian tribe for use in a Class II gaming activity
19 authorized by the federal Indian Gaming Regulatory Act. No pickle cards
20 shall be sold by a distributor except in the form of pickle card units.
21 No distributor shall market or sell any pickle card unit for use in this
22 state:

23 (a) Which has not been approved and authorized by the department;

24 (b) Which has a card or play count in excess of six thousand per
25 pickle card unit;

26 (c) Which offers less than sixty-five percent or more than eighty-
27 five ~~eighty~~ percent of the gross proceeds to be paid out in prizes;

28 (d) Which contains any pickle card or punch on a punchboard, the
29 individual purchase price of which exceeds one dollar;

30 (e) In which any individual pickle card awards a prize or prizes in
31 excess of one thousand dollars;

1 (f) Which may be used for any gift enterprise as defined in section
2 9-701;

3 (g) Unless and until a stamp obtained from the department containing
4 an identifying number has been permanently and conspicuously affixed upon
5 the flare card supplied by the manufacturer for identification purposes.
6 Once placed, such stamp shall not be removed or tampered with by any
7 person. The state identification stamp shall be placed on each punchboard
8 such that the complete number, together with the symbol appearing
9 thereon, is plainly visible. State identification stamps shall be
10 obtained only from the department and only by a licensed distributor for
11 ten cents each. Such stamps shall be placed by the licensed distributor
12 only on items sold or furnished to licensed organizations in this state.
13 Such stamps shall not be transferred or furnished to any other person
14 unless already placed upon a punchboard or pickle card unit; or

15 (h) Without the information required in section 9-346.

16 (3) The department may require a manufacturer seeking approval of
17 any pickle card unit to pay the actual costs incurred by the department
18 in examining the unit. If required, the anticipated costs shall be paid
19 in advance by the manufacturer. After completion of the examination, the
20 department shall refund overpayments or charge and collect amounts
21 sufficient to reimburse the department for underpayment of actual costs.

22 Sec. 4. Section 9-340.02, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 9-340.02 (1) All pickle card units purchased by a licensed
25 organization from a licensed distributor shall be paid for by a check
26 drawn on the pickle card bank account of the licensed organization either
27 in advance of or upon delivery of the pickle card units.

28 (2) A licensed pickle card operator shall remit the definite profit,
29 less not more than thirty-five ~~thirty~~ percent of the definite profit as
30 allowed by subsection (4) of section 9-347, of all pickle card units
31 received to the sponsoring licensed organization by check either in

1 advance of or upon delivery of the pickle card units from the sales agent
2 to the pickle card operator. Upon delivery of the pickle card units, the
3 sales agent shall issue the pickle card operator a standard receipt
4 prescribed by the department.

5 (3) Unless otherwise authorized by the department, pickle card units
6 shall be delivered to a pickle card operator only by a sales agent's
7 personal delivery or by delivery arranged by a sales agent through the
8 mail or by a common carrier.

9 ~~(4) No licensed organization conducting a lottery by the sale of~~
10 ~~pickle cards shall extend credit in any form, including, but not limited~~
11 ~~to, the extension of any credit with regard to the receipt of the~~
12 ~~definite profit, less not more than thirty percent of the definite profit~~
13 ~~as allowed by subsection (4) of section 9-347, of a pickle card unit from~~
14 ~~a pickle card operator upon delivery of a pickle card unit to the pickle~~
15 ~~card operator and the extension of any credit with regard to the sale or~~
16 ~~lease of any equipment or coin-operated or currency-operated pickle card~~
17 ~~dispensing device used in connection with a lottery by the sale of pickle~~
18 ~~cards.~~

19 (4) ~~(5)~~ All payments for the purchase, lease, or rental of a coin-
20 operated or currency-operated pickle card dispensing device by a licensed
21 organization shall be made by a check drawn on the organization's pickle
22 card checking account.

23 ~~(6) All payments for the purchase, lease, or rental of a coin-~~
24 ~~operated or currency-operated pickle card dispensing device by a licensed~~
25 ~~pickle card operator from a licensed organization shall be made by a~~
26 ~~check drawn on the business checking account of the pickle card operator~~
27 ~~or a personal checking account of an owner, partner, or officer of the~~
28 ~~pickle card operator, either at the time of or before placement of the~~
29 ~~device or on or before the first day of the period of the lease,~~
30 ~~whichever comes first.~~

31 ~~(7) All lease or rental agreements between a licensed organization~~

1 ~~and a licensed pickle card operator for coin-operated or currency-~~
2 ~~operated pickle card dispensing devices shall be subject to approval by~~
3 ~~the department.~~

4 Sec. 5. Section 9-344, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 9-344 (1) Accompanying the monthly reports required in section
7 9-343, the distributor shall remit to the department a tax equal to five
8 ~~ten~~ percent of the definite profit of each pickle card unit sold by the
9 distributor. Such tax shall be remitted with and reported on a form
10 prescribed by the department on a monthly basis and shall be due and
11 payable within thirty days after each monthly period or by the last day
12 of the month following each monthly period, whichever comes first. The
13 department shall remit the tax to the State Treasurer for credit to the
14 Charitable Gaming Operations Fund. The distributor shall include the tax
15 due under this section in the selling price of units and shall separately
16 state such tax on the invoice. All deficiencies of the tax prescribed in
17 this section shall accrue interest and be subject to a penalty as
18 provided for sales and use taxes in the Nebraska Revenue Act of 1967.

19 (2) Unless otherwise provided in the Nebraska Pickle Card Lottery
20 Act, no occupation tax on any proceeds derived from the conduct of a
21 lottery by the sale of pickle cards shall be levied, assessed, or
22 collected from any licensee under the act by any county, township,
23 district, city, village, or other governmental subdivision or body having
24 power to levy, assess, or collect such tax.

25 (3) For purposes of proper administration of the tax imposed by this
26 section and to prevent evasion of the tax, it shall be presumed that each
27 pickle card unit sold by a distributor or obtained from a manufacturer
28 and not accounted for by a distributor is subject to the tax until the
29 contrary is established. The burden of proving the contrary shall be upon
30 the distributor.

31 Sec. 6. Section 9-345.03, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 9-345.03 (1) Any person who places a coin-operated or currency-
3 operated pickle card dispensing device in operation in this state without
4 a current registration decal affixed permanently and conspicuously to the
5 device shall be subject to an administrative penalty of thirty dollars
6 for each violation. The department shall remit the proceeds from such
7 penalties to the State Treasurer for credit to the Charitable Gaming
8 Operations Fund.

9 (2) Registration of the device with the department shall be made by
10 application to the department and shall be the responsibility of the
11 licensed organization ~~when such device is to be used in a licensed~~
12 ~~organization's designated premises or at the location of its regularly~~
13 ~~scheduled bingo occasion or of the licensed pickle card operator when~~
14 ~~such device is to be used on the premises of the pickle card operator.~~

15 (3) Each application for registration shall include (a) the name and
16 address of the ~~licensed pickle card operator or~~ licensed organization
17 registering the device, (b) the state identification number of the
18 ~~licensed pickle card operator or~~ licensed organization registering the
19 device, (c) a detailed description of the physical appearance and
20 operation of the device, and (d) such other information which the
21 department deems necessary.

22 (4) A fee of fifty dollars shall be charged for each decal issued
23 pursuant to this section. The department shall remit the proceeds from
24 the fee to the State Treasurer for credit to the Charitable Gaming
25 Operations Fund. All decals issued by the department pursuant to this
26 section shall expire on December 31 of each year or such other date as
27 the department may prescribe by rule and regulation and shall be renewed
28 annually.

29 (5) The registration decal issued by the department pursuant to this
30 section shall not be transferable.

31 (6) Upon request by the Tax Commissioner or his or her agents or

1 employees, the licensed organization or pickle card operator ~~responsible~~
2 ~~for registering the device~~ shall provide the requesting individual
3 immediate access to any pickle cards contained within such device.

4 (7) Any person violating any provision of this section shall be
5 deemed guilty of a Class II misdemeanor. Each day on which any person
6 engages in or conducts the business of operating any device subject to
7 this section without having paid the penalty or the registration as
8 provided constitutes a separate offense.

9 Sec. 7. Section 9-347, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 9-347 (1) The gross proceeds of any lottery by the sale of pickle
12 cards shall be used solely for lawful purposes, awarding of prizes,
13 payment of the unit cost, any commission paid to a pickle card operator,
14 allowable expenses, and allocations for bingo expenses as provided by
15 subsection (5) of this section.

16 (2) Not less than sixty-five percent or more than ~~eighty-five~~ eighty
17 percent of the gross proceeds of any lottery by the sale of pickle cards
18 shall be used for the awarding of prizes.

19 (3) Not more than twelve percent of the definite profit of a pickle
20 card unit shall be used by the licensed organization to pay the allowable
21 expenses of operating a lottery by the sale of pickle cards, except that
22 license fees paid to the department to license the organization, each
23 utilization-of-funds member, and any sales agent and pickle card
24 dispensing device registration fees shall not be included in determining
25 the twelve-percent limitation on expenses and no portion of such twelve
26 percent shall be used to pay any expenses associated with the sale of
27 pickle cards at a bingo occasion conducted pursuant to the Nebraska Bingo
28 Act, and of such twelve percent not more than six percent of the definite
29 profit may be used by the licensed organization for the payment of any
30 commission, salary, or fee to a sales agent in connection with the
31 marketing, sale, and delivery of a pickle card unit. When determining the

1 twelve percent of definite profit that is permitted to pay the allowable
2 expenses of operating a lottery by the sale of pickle cards, the definite
3 profit from the sale of pickle cards at the organization's bingo
4 occasions shall not be included.

5 (4) Not more than thirty-five ~~thirty~~ percent of the definite profit
6 of a pickle card unit shall be used by a licensed organization to pay a
7 pickle card operator a commission, fee, or salary for selling individual
8 pickle cards as opportunities for participation in a lottery by the sale
9 of pickle cards on behalf of the licensed organization.

10 (5) An organization licensed to conduct bingo pursuant to the
11 Nebraska Bingo Act may allocate a portion of the expenses associated with
12 the conduct of its bingo occasions to its lottery by the sale of pickle
13 cards conducted at such bingo occasions. Such allocation shall be based
14 upon the percentage that pickle card gross proceeds derived from the sale
15 of pickle cards at the bingo occasions represents to the total of bingo
16 gross receipts and pickle card gross proceeds derived from such bingo
17 occasions for the previous annual reporting period. An organization
18 licensed to conduct bingo that has not been previously licensed shall
19 determine such allocation based upon the percentage that pickle card
20 gross proceeds derived from the sale of pickle cards at the bingo
21 occasions represents to the total of bingo gross receipts and pickle card
22 gross proceeds derived from such bingo occasions for the initial three
23 consecutive calendar months of operation. The total amount of expenses
24 that may be allocated to the organization's lottery by the sale of pickle
25 cards shall be subject to the limitations on bingo expenses as provided
26 for in the Nebraska Bingo Act with respect to the fourteen-percent
27 expense limitation and the fair-market-value limitation on the purchase,
28 rental, or lease of bingo equipment and the rental or lease of personal
29 property or of a premises for the conduct of bingo. No expenses
30 associated with the conduct of bingo may be paid directly from the pickle
31 card checking account. A licensed organization which needs to allocate a

1 portion of the expenses associated with the conduct of its bingo
2 occasions to its lottery by the sale of pickle cards conducted at such
3 bingo occasions to pay bingo expenses as provided by this section shall
4 transfer funds from the pickle card checking account to the bingo
5 checking account by a check drawn on the pickle card checking account or
6 by electronic funds transfer.

7 Sec. 8. Section 9-347.01, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 9-347.01 (1) For each type of pickle card unit marketed in this
10 state, the department shall determine the following: (a) When a licensed
11 organization sells pickle cards through pickle card operators, the
12 portion of the definite profit from that pickle card unit which shall go
13 to the licensed organization, such amount to be not less than sixty-five
14 ~~seventy~~ percent of the definite profit from such pickle card unit; (b)
15 the maximum amount of the definite profit from the sale of a pickle card
16 unit that a licensed organization may pay a pickle card operator as a
17 commission, fee, or salary to sell its pickle cards, such amount not to
18 exceed thirty-five ~~thirty~~ percent of the definite profit from such pickle
19 card unit; (c) the portion of the definite profit from the sale of a
20 pickle card unit which may be expended by a licensed organization for
21 allowable expenses, such amount not to exceed twelve percent of the
22 definite profit from such pickle card unit; and (d) the portion of the
23 definite profit from the sale of a pickle card unit which may be utilized
24 by a licensed organization for payment of the organization's sales agent,
25 such amount to be a portion of the allowable expenses and not to exceed
26 six percent of the definite profit from such pickle card unit.

27 (2) The licensed organization's net profit from the sale of a pickle
28 card unit shall be used exclusively for a lawful purpose. A licensed
29 organization shall not donate or promise to donate its net profit or any
30 portion of the net profit to a recipient outside of its organization as
31 an inducement for or in exchange for (a) a payment, gift, or other thing

1 of value from the recipient to any person, organization, or corporation,
2 including, but not limited to, the licensed organization or any of its
3 members, employees, or agents, or (b) a pickle card operator's agreement
4 to sell pickle cards on behalf of the licensed organization.

5 Sec. 9. Section 9-348, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 9-348 (1) The definite profit, less not more than thirty-five ~~thirty~~
8 percent of the definite profit as allowed by subsection (4) of section
9 9-347, of any lottery by the sale of pickle cards and all amounts
10 received by any licensed organization from the sale, lease, or rental of
11 coin-operated or currency-operated pickle card dispensing devices shall
12 be segregated from other revenue of any licensed organization conducting
13 the lottery and placed in a separate checking account. All lawful purpose
14 donations and expenses relating to the licensed organization's lottery by
15 the sale of pickle cards, including the allowable expenses, any license
16 fees paid to the department to license the organization, each
17 utilization-of-funds member, and any sales agent, coin-operated or
18 currency-operated pickle card dispensing device registration fees, and
19 the unit cost but excluding the payment of prizes for winning pickle
20 cards, shall be paid by check from such account and shall be made payable
21 to the ultimate use of such lawful purpose donations or expenses.

22 (2) Separate records shall be maintained by any licensed
23 organization conducting a lottery by the sale of pickle cards. Each
24 nonprofit organization conducting a lottery by the sale of pickle cards
25 shall keep a record of all locations or persons who are paid to sell
26 pickle cards. Records and lists required by the Nebraska Pickle Card
27 Lottery Act shall be preserved for at least three years. Any law
28 enforcement agency or other agency of government shall have the authority
29 to investigate the records relating to lotteries by the sale of pickle
30 cards and gross proceeds from such lotteries at any time. Organizations
31 shall, upon proper written request, deliver all such records to the

1 department, law enforcement agency, or other agency of government for
2 investigation.

3 Sec. 10. Section 9-829, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 9-829 A lottery game retailer shall sell tickets only on the
6 premises stated in the contract. No ticket shall be sold over a telephone
7 or through the mail. No credit shall be extended by the lottery game
8 retailer for the purchase of a ticket except as authorized under section
9 1 of this act. No lottery tickets shall be sold through a vending or
10 dispensing device.

11 Sec. 11. This act becomes operative on January 1, 2018.

12 Sec. 12. Original sections 9-329.02, 9-340, 9-340.02, 9-344,
13 9-345.03, 9-347, 9-347.01, 9-348, and 9-829, Reissue Revised Statutes of
14 Nebraska, are repealed.