

ONE HUNDRED SEVENTH LEGISLATURE - SECOND SESSION - 2022
COMMITTEE STATEMENT
LB876

Hearing Date: Monday January 24, 2022
Committee On: General Affairs
Introducer: Briese
One Liner: Change provisions relating to powers and duties of the State Racing and Gaming Commission and the Nebraska Racetrack Gaming Act and authorize gaming operator and racetrack licenses

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 7 Senators Arch, Brandt, Brewer, Briese, Cavanaugh, J., Jacobson, Lowe
Nay:
Absent:
Present Not Voting: 1 Senator Wayne

Oral Testimony:

Proponents:

Lance Morgan
Lynne McNally
John Dinkel
Wayne Anderson
Chris Kotulak
Tom Jackson
Zach Mader
Sean Boyd
Pat Loontjer
Ed Ziemba
Don Wesley

Representing:

Ho-Chunk/Warhorse
Horseman's Benevolent Protection Society
Self
Self
Fonner Park
Columbus Exposition and Racing
Thoroughbred Breeders Association
Global Gaming Nebraska
Gambling with the Good Lice
Nebraska Quarterhorse Racing Association
Winnebago Tribe of Nebraska

Opponents:

John Hassett
Rusty Hike
Spike Eickholt

Representing:

Aksarben Equine
Mayor of the City of Bellevue
ACLU

Neutral:

Nate Grasz
David Copple
Tom Sage

Representing:

Nebraska Family Alliance
Citizens for Better Norfolk
Nebraska Racing and Gaming Commission

Summary of purpose and/or changes:

LB 876 is a bill to change and improve provisions of the Nebraska Racetrack Gaming Act. The bill is drafted to include an

increase in the number of live racing days held at existing racetracks, increasing the one-time fee for gaming licenses to five million dollars, creating a self-exclusion list for problem gamblers, and additional requirements for new racetrack and casino applicants for licenses. The bill also increases penalties for crimes listed in this section from a Class I Misdemeanor to a Class IV Felony, and allows the Commission to assess greater administrative fines and penalties against a licensed gaming operator if necessary.

Section 1: Amends section 2-1205 to change the horseracing license to a 5 year term from its current 1 year term.

New language is added to require a minimum of 5 live racing days annually by 2026 for a license to be issued.

New racetracks that are operational after the effective date of the bill must hold at least 1 live race day annually for the first 3 years of operations, and then must hold a minimum of 5 live racing days annually thereafter, and all racetracks are subject to discipline for failing to meet this standard.

This section also requires racetracks to be located outside of a 50 mile radius of another racetrack enclosure operating games of chance (Casino), and it grandfathers in the 6 racetracks that existed on November 1, 2020, the day before the initiative vote.

Section 2: Includes new sections 5 and 6 of this act to the Nebraska Racetrack Gaming Act.

Section 3: Amends section 9-1104 to add new language requiring racetracks to hold the minimum number of meets or possibly be required to cease game of chance operations for a period of time determined by the commission.

Section 4: Amends section 9-1106 to change the casino gaming operator license fee to five million dollars from its current one million dollar requirement, and changes the term of gaming operator licenses from twenty years to five years.

This section also changes the administrative penalties the commission can impose to three times the highest daily amount of gross receipts derived from wagering on games of chance at that licensed racetrack enclosure during the previous 12 months, instead of the current static number of \$25,000.00 dollars. This language was proposed by Tom Sage.

Section 5: This is all new language that requires the Commission to create and maintain the self-exclusion list for anyone who wants to self-exclude from gaming facilities in Nebraska. This section includes the application requirements for the list, procedures for self-placement on the list, duration of the terms for self-removal from the list, procedures for providing the list to licensed gaming operators, and requirements to keep the self-excluded persons list confidential from public inspection and to not allow any marketing to persons on the list by licensed gaming operators or any of their officers and employees. This was requested by Tom Sage.

Section 6: This section is all new language where the requirements for applications for new horse racetracks and casinos is located. The applications must now include proof that the proposed racetrack location is a minimum of 50 miles from any other racetrack with a casino, a market assessment that includes a feasibility and sustainability study of both games of chance and horseracing, an analysis of the anticipated impact on infrastructure including water, electricity, natural gas, roads, and public safety including police and fire depts., zoning and initial planning approval from the city nearest the site of the proposed racetrack, a full disclosure of the applicants record as an existing racetrack and casino operator, including multi-jurisdictional experience, and evidence of how the proposed racetrack and casino will improve and give back to the community in which they are proposed to be located in a meaningful and sustained way.

Section 7: Amends 9-1107. This section is the Gaming Cash Fund, and it is amended to bring the language in harmony with the Racing Cash Fund. It also includes a small language change to allow the gaming fund to consist of all other fees the commission is permitted to assess beyond just the license and application fees.

Section 8: Amends Section 9-1110 to add new language allowing parimutuel wagers to be placed in the designated sports wagering area within the casino.

Sections 9 through 14: change penalties for crimes from Class I Misdemeanors to Class IV Felonies.

Section 15: adds language to section 9-1205 to require authorized gaming operators subject to taxation by the fifteenth of each month to the commission.

Section 16: amends section 9-1206 to add language regarding taxes and the new language requiring payment by the fifteenth of the month in the previous section.

Section 17: changes Class I Misdemeanor to Class IV Felony in section 9-1207.

Section 18: Adds a new exemption to the list of exemptions to what can be requested under the Nebraska Public Records Law in chapter 84-712.05, so security standards, procedures, policies, plans and other security related records of the Commission, or any entity that has entered into a contractual relationship with the Commission, and the names of any persons placed on the self-excluded persons list would be exempt from any public records requests. This was requested by Tom Sage at the Commission.

Explanation of amendments:

AM 2188 Replaces the original bill.

Section one of the amendment amends section 2-1201 by adding new language that makes a violation of section 2-1219 by a member of the commission cause for removal. It also changes the requirement set in the initiative for one member of the commission to be a member of the organization representing the majority of licensed owners and trainers of horses at racetracks in Nebraska to a person who has experience in the Nebraska Horseracing Industry.

Section 2 amends section 2-1202 to require the commission to meet at least eight times per year.

Section 3 amends section 2-1203 by increasing a fine from fifteen hundred dollars to five thousand dollars when the commission finds that a rule or regulation has been violated.

Section 4 amends section 2-1203.02 by adding language to indicate that only persons between the ages of 16 and 75 need to be fingerprinted for purposes of the Commission.

Section 5 amends section 2-1205 to change the horseracing license to a 5 year term from its current 1 year term. New language is added to require a minimum of 5 live racing days and fifty live horseraces annually by January 1, 2026 and increase to a minimum of fifteen live racing days and one hundred twenty live horseraces annually by January 1, 2031.

This section also contains new language which establishes a schedule for racetracks built and operational after the effective date of this act that requires them to hold a minimum of one live racing day annually for the first three years of operation, a minimum of five live racing days with fifty live horseraces annually for the fourth year through the seventh year of operation, and beginning in the eighth year of operation they must hold a minimum of fifteen live racing days and one hundred twenty live horseraces annually.

Any racetrack that fails to meet the minimum requirements set forth in this subsection is subject to discipline by the commission, up to and including a revocation of their racing license.

Subsection (3) gives permission for a racetrack in existence as of the date of this act to apply to the Commission to move their racetrack location to another county in Nebraska that does not have a racetrack. They may only do this one time, and cannot be applied for until after the initial issuance of the market analysis and socioeconomic-impact studies conducted by the Commission pursuant to section 9-1106 found in section 4 of the bill.

Section 6 of the amendment amends section 2-1208 by increasing the amount paid to the commission by the licensed racetracks, but to increase it over time. Beginning on the effective date of the act through June 30, 2023, the amount of one half of one percent of the gross sum wagered on parimutuel wagers at the licensed racetrack during the previous calendar year. From July 1, 2023 to June 30, 2024, it increases to one percent, and beginning on July 1, 2024, it increases the final time to two percent of the gross sum wagered by the parimutuel method at the licensed racetrack during the previous calendar year and remains at two percent thereafter. It also increases the amount paid by the licensee to the Commission from fifty dollars to one hundred dollars for each live racing day that the licensee serves as the host for intrastate simulcasting and fifty dollars instead of twenty-five dollars for any other live racing day.

Section 7 of the amendment changes the requirements in section 2-1211 of records that must be kept and submitted to the commission by the licensed racetracks. It first removes the requirement that tracks include the number of admissions upon free passes or complimentary tickets in their reporting. This section also changes the date the reports must be submitted from the end of each race meeting day to annually by March 30 of the previous calendar year.

Section 8 amends section 2-1213 by removing current section (1)(a) which will remove the restrictions for racing on a Sunday in Nebraska.

Section 9 makes it a felony IV to conduct any horserace in connection with the parimutuel system of wagering without a license. Currently the penalty is a class I misdemeanor.

Section 10 increases the penalty for drugging horses from a class I misdemeanor to a class IV felony as found in section 2-1218.

Section 11 amends section 2-1219 to address conflicts of interest for both members of the commission and employees of the commission. This is the section that is addressed in section 1 of the bill (above). Any violation of this section by a member of the commission shall be considered cause for removal by the Governor in accordance with section 2-1201.

Section 12 amends section 2-1220 by increasing the penalty for fraud regarding the prior racing record, pedigree, identity, or ownership of a registered animal in any matter related to breeding, buying, selling, or racing of such animal to a class III felony from the current fine and possible imprisonment listed in this section.

Section 13 amends section 2-1222 by clarifying the cash fund in this section is the Racing and Gaming Commissions racing cash fund.

Section 14 of the amendment adds sections 17 and 18 of this act to the Nebraska Racetrack Gaming Act.

Section 15 of the amendment adds a new subsection to 9-1104 which requires the authorized gaming operator to cease operating games of chance if the racetrack where they are located does not hold the minimum number of live racing days and races required each year. They may not resume operations until the Commission determines the deficiency has been corrected.

Section 16 of the amendment increases the one-time gaming operator license fee from one million dollars to five million dollars, and allows the fee to be paid over a period of five years, with one million dollars required at the issuance of the license in subsection (6) of section 9-1106.

In subsection (8) of section 9-1106, the amendment returns the term of the gaming license to twenty years and makes it subject to an annual review by the commission and an annual review fee of fifty thousand dollars.

Subsection (14) changes administrative fines and penalties that may be imposed by the Commission for violations of the act or rules and regulations by licensed gaming operators. For any licensed facility operating games of chance for one year or less, the fine is set at fifty thousand dollars per violation. For any licensed facility operating games of chance for more than one year, the fine is set at three times the highest daily amount of gross receipts derived from wagering on games of chance during the twelve months preceding the violation at the licensed facility per violation.

New language creates subsection (24) to section 9-1106. This subsection requires the Commission to have a statewide horseracing market analysis study conducted in the state as the market currently exists across the state and within the six counties that currently have licensed racetracks.

New subsection (25) requires the Commission to have a statewide comprehensive assessment and analysis of the potential casino gaming market across the state and in the six counties that currently have licensed racetracks.

New subsection (26) requires the Commission to have a statewide socio-economic impact study of horseracing and casino gaming across the state and at each county that currently has a licensed racetrack.

All three studies are to be completed as soon as practicable but no later than January 1, 2025.

New subsection (27) has language proscribing under what conditions the Commission must approve or deny an application for any new licensed racetrack enclosure based on the most recent issuance of the three market studies discussed above.

Section 17 of the amendment contains new language requiring the Commission to create a self-exclusion list for individuals to use to exclude themselves from gambling, and gives the Commission permission to adopt and promulgate rules and regulations to regulate this program.

Section 18 of the amendment contains requirements that must be included in any application for an authorized gaming operator license. They must include a market assessment that includes the feasibility and sustainability of the proposed licensed racetrack enclosure for operating games of chance in that proposed location as part of the market in Nebraska at the time of the application. This study must include the impact of the proposed facility on both horseracing and the operation of games of chance in the state, an analysis of the anticipated impact on infrastructure including water, electricity, natural gas, roads, and public safety, including police and fire departments, zoning and initial planning approval from the city nearest the site of the proposed racetrack location, a full disclosure of the applicants record as a racetrack and game of chance operator, including all multi-jurisdictional experience, evidence of how the proposed racetrack will improve and give back in a meaningful and sustained way to the community in which the applicant is proposing to build their facility, and any other information required by the commission.

This section also specifically states the commission may reject an application that does not meet the requirements of this section.

Section 19 of the amendment has small administrative changes to harmonize the Racing and Gaming Commission's racetrack gaming fund with the Commission's racing fund.

Section 20 of the amendment adds new language to section 9-1110 to allow a parimutuel wager to be placed in the designated sports wagering area within the licensed racetrack enclosure.

Section 21 of the amendment increases the penalty in section 9-1114 for any person who submits an application, book, or record required to be maintained or submitted to the commission, from a class I misdemeanor to a class IV felony for knowingly making a false or misleading statement or entry, or fails to maintain or make an entry that is required by the act or the commission.

Section 22 amends section 9-1205 to make administrative changes for the commission to better enable them in their collection of taxes.

Section 23 amends section 9-1206 to also assist the commission in their administrative capacity.

Section 24 amends section 9-1207 by increasing the penalty for any authorized gaming operator that willfully fails, neglects, or refuses to make any report required by the act or by rules and regulations to the commission a class IV felony instead of a class I misdemeanor.

Section 25 amends section 84-712.05 to create a new section in the exceptions to the public records act to exempt the security standards, procedures, policies, plans, specifications, diagrams, and access list and other security-related records of the commission, persons or entities holding a contractual relationship with the commission, and the names of any individuals on the self-exclusion list to be exempt from a public records act request.

Sections 26 and 27 are the repealer sections.

Section 28 contains an emergency clause.

Tom Briese, Chairperson