

LEGISLATIVE BILL 1232

Approved by the Governor April 12, 1988

Introduced by Barrett, 39, Speaker, for the Governor

AN ACT relating to pickle cards and other gambling; to amend sections 9-1,101, 9-301 to 9-304, 9-309, 9-314, 9-316, 9-320, 9-322 to 9-329, 9-331, 9-333, 9-340, 9-342 to 9-344, and 9-346 to 9-349, Revised Statutes Supplement, 1986, and section 9-352, Revised Statutes Supplement, 1987; to define, redefine, and eliminate terms; to restate intent; to change provisions relating to the regulation of certain gambling statutes; to establish a Gaming Commission; to provide for the applicability of certain provisions; to change provisions relating to the issuance, denial, expiration, renewal, and suspension of certain pickle card licenses; to provide an administrative fine as prescribed; to provide for the disposition of the proceeds of such fine; to provide for the classification of licenses; to provide and change restrictions on the conduct of lotteries by the sale of pickle cards; to require the payment of certain expenses by check as prescribed; to provide fees; to require self-funding of lotteries by the sale of pickle cards as prescribed; to change the taxation of pickle card activities; to prohibit certain conflicts of interests; to change requirements of and provide for records and reports; to provide penalties; to appropriate funds; to harmonize provisions; to provide an operative date; and to repeal the original sections, and also section 9-318, Revised Statutes Supplement, 1986.

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

Section 1. That section 9-1,101, Revised Statutes Supplement, 1986, be amended to read as follows:

9-1,101. (1) The Nebraska Bingo Act, the Nebraska Pickle Card Lottery Act, the Nebraska Lottery and Raffle Act, ~~and the Nebraska Small Lottery and Raffle Act, and the Nebraska County and City Lottery Act~~ shall be administered and enforced by the Charitable

Gaming Division of the Department of Revenue, which division is hereby created. The Department of Revenue shall make quarterly reports to the Governor, Legislature, Auditor of Public Accounts, and Attorney General on all tax revenue received, expenses incurred, and other activities relating to the administration and enforcement of such acts.

(2) The Charitable Gaming Operations Fund is hereby created. Thirty percent of the taxes collected on and after July 1, 1986, pursuant to sections 9-239, 9-344, and 9-429 shall be available to the Charitable Gaming Division for administering and enforcing the Nebraska Bingo Act, the Nebraska Pickle Card Lottery Act, the Nebraska Lottery and Raffle Act, and the Nebraska Small Lottery and Raffle Act, and the Nebraska County and City Lottery Act. The remaining seventy percent, along with any portion of the thirty percent not used by the division in its administration and enforcement of such acts, shall be transferred to the General Fund.

Sec. 2. On or before January 1, 1991, there shall be established a commission to be known as the Gaming Commission. The purpose of the commission shall be to regulate all gambling activity authorized by the laws of the State of Nebraska.

Sec. 3. If any provision of the Nebraska Bingo Act, the Nebraska Pickle Card Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Small Lottery and Raffle Act, or the Nebraska County and City Lottery Act or the application of such acts to any person or circumstance is held invalid, the remainder of the acts or the application of the provision to other persons or circumstances shall not be affected.

Sec. 4. That section 9-301, Revised Statutes Supplement, 1986, be amended to read as follows:

9-301. Sections 9-301 to 9-355 and sections 8 to 10, 13, 15, 17, 19, 20, 27 to 30, 32, 33, 37 to 39, 43, 46, 49, and 51 of this act shall be known and may be cited as the Nebraska Pickle Card Lottery Act.

Sec. 5. That section 9-302, Revised Statutes Supplement, 1986, be amended to read as follows:

9-302. (1) The purpose of the Nebraska Pickle Card Lottery Act is to protect the health and welfare of the public, to protect the economic welfare and interest in pickle card sales and winnings, to insure that the profits derived from the operation of lottery by the sale of pickle cards are accurately reported in order that their revenue-raising potential be fully exposed, to insure that the profits are used for legitimate

purposes, and to prevent the purposes for which the profits of lottery by the sale of pickle cards are to be used from being subverted by improper elements. Lottery by the sale of pickle cards shall be played and conducted only by those methods permitted in the Nebraska Pickle Card Lottery Act. No other form, means of selection, or method of play shall be authorized or permitted.

(2) The purpose of the Nebraska Pickle Card Lottery Act is also to completely and fairly regulate each level of the traditional marketing scheme of pickle cards to insure fairness, quality, and compliance with the Constitution of the State of Nebraska. To accomplish such purpose, the regulation and licensure of manufacturers of pickle cards, nonprofit organizations, ~~sales agents or sellers of pickle cards;~~ distributors, ~~sales agents, pickle card operators, operators or conductors of a lottery by the sale of pickle cards;~~ and any other person involved in the marketing scheme are necessary.

Sec. 6. That section 9-303, Revised Statutes Supplement, 1986, be amended to read as follows:

9-303. For purposes of the Nebraska Pickle Card Lottery Act, unless the context otherwise requires, the definitions found in sections 9-304 to 9-321 and sections 8 to 10, 13, 15, and 17 of this act shall be used.

Sec. 7. That section 9-304, Revised Statutes Supplement, 1986, be amended to read as follows:

9-304. Allowable expenses shall mean: ~~(a)~~ (1) All costs associated with the purchasing, printing, or manufacturing of any items to be used or distributed to participants; ~~(b)~~ (2) all office expenses; ~~(c)~~ (3) all promotional expenses; ~~(d)~~ (4) all salaries of persons employed to operate the lottery by the sale of pickle cards; ~~(e)~~ (5) any rental or lease expense; ~~and~~ ~~(f)~~ (6) any fee paid to any person associated with the operation of any lottery by the sale of pickle cards including any commission paid to a sales agent and any expense for which a sales agent is reimbursed; (7) any delivery or shipping charge incurred by a licensed organization in connection with the lottery by the sale of pickle cards; and (8) any license fees paid to the department to license the organization, each designated member responsible for the proper utilization of gross proceeds, and any sales agent. Allowable expenses shall not include the unit cost or any commission paid to a pickle card operator for selling individual pickle cards on behalf of the licensed organization. Allowable

expenses shall not include the tax on gross proceeds prescribed in section 9-344.

Sec. 8. Definite profit shall mean the gross proceeds from the sale of all of the pickle cards in a pickle card unit less all of the possible prizes in the unit.

Sec. 9. Designated premises shall mean one location selected by a licensed organization at which individual pickle cards may be sold as opportunities for participation in a lottery by the sale of pickle cards. Only one of the following types of locations may be selected as a designated premises: (1) In the case of an organization holding a certificate of exemption under section 501(c)(3), (c)(4), or (c)(5) of the Internal Revenue Code or a volunteer fire company, one piece of real property which is owned, leased, or used by the organization as its principal office, which is in use by the organization primarily for purposes other than the conduct of gaming activities, and which is not used in connection with any other type of retail business activity other than an occasional sale as defined in subdivision (6) of section 77-2702; or (2) in the case of an organization holding a certificate of exemption under section 501(c)(8) or (c)(19) of the Internal Revenue Code, one piece of real property which is owned, leased, or used by the organization as its principal office and which has been in use by the organization primarily for purposes other than the conduct of gaming activities for at least one year prior to its selection as a designated premises. For purposes of this section, principal office shall mean the place where the principal affairs and business of the licensed organization are transacted, including where the officers and members assemble to discuss and transact the business of the organization, where its meetings are held, and generally where its records are kept.

Sec. 10. Gross profit shall mean the definite profit from the sale of a pickle card unit less any commission paid by a licensed organization to a pickle card operator selling individual pickle cards on behalf of the licensed organization.

Sec. 11. That section 9-309, Revised Statutes Supplement, 1986, be amended to read as follows:

9-309. (1) Lawful purpose, shall mean charitable or community betterment purposes, including, but not limited to, one or more of the following:

(a) Benefiting persons by enhancing their opportunity for religious or educational advancement; by relieving or protecting them from disease, suffering, or

distress, by contributing to their physical well-being, by assisting them in establishing themselves in life as worthy and useful citizens, or by increasing their comprehension of and devotion to the principles upon which this nation was founded;

(b) initiating, performing, or fostering worthy public works or enabling or furthering the erection or maintenance of public structures; and

(c) lessening the burdens borne by government or voluntarily supporting, augmenting, or supplementing services which government would normally render to the people.

(2) Lawful purpose shall not include any activity consisting of an attempt to influence legislation or participate in any political campaign on behalf of any elected official or person who is or has been a candidate for public office.

(3) Nothing in this section shall prohibit any veterans' organization which is nationally chartered by the Congress of the United States, or any auxiliary thereof, or any nonprofit organization holding a certificate of exemption under subsection (e), subdivision 3, 5, 7, 8, 10, or 19, of section 501 of the Internal Revenue Code from using its proceeds or profits derived from activities under the Nebraska Pickle Card Lottery Act in for a licensed organization making a donation of its net profits derived from its lottery by the sale of pickle cards solely for its own organization, shall mean donating such net profits for any activity which benefits and is conducted by the organization, including any charitable, benevolent, humane, religious, philanthropic, youth sports, recreational, social, educational, civic, or fraternal activity conducted by the organization for the benefit of its members.

(2) Lawful purpose, for a licensed organization making a donation of its net profits derived from its lottery by the sale of pickle cards outside of its organization, shall mean donating such net profits only to:

(a) The State of Nebraska or any political subdivision thereof, but only if the contribution or gift is made exclusively for public purposes;

(b) A corporation, trust, community chest, fund, or foundation;

(i) Created or organized under the laws of Nebraska which has been in existence for five consecutive years immediately preceding the date of the donation and which has its principal office located in

Nebraska:

(ii) Organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, for the prevention of cruelty to children or animals, or to foster national or international amateur sports competition;

(iii) No part of the net earnings of which inures to the benefit of any private shareholder or individual;

(iv) Which is not disqualified for tax exemption under section 501(c)(3) of the Internal Revenue Code by reason of attempting to influence legislation; and

(v) Which does not participate in any political campaign on behalf of any candidate for political office; or

(c) A post or organization of war veterans or an auxiliary unit or society of, trust for, or foundation for any such post or organization:

(i) Organized in the United States or in any territory or possession thereof; and

(ii) No part of the net earnings of which inures to the benefit of any private shareholder or individual.

(3) No donation of net profits under this section shall (a) inure to the benefit of any individual member of the licensed organization making the donation except to the extent it is in furtherance of the purposes described in this section or (b) be used for any activity which attempts to influence legislation or for any political campaign on behalf of any elected official or person who is or has been a candidate for public office.

(4) Upon dissolution of a licensed organization or upon suspension, cancellation, revocation, or expiration of a licensed organization's license, all remaining net profits derived from the conduct of a lottery by the sale of pickle cards under the Nebraska Pickle Card Lottery Act shall be utilized for a lawful purpose and shall not be distributed to any private individual or shareholder. The disbursement of such remaining net profits shall be reported to the department in the manner prescribed in section 9-349.

Sec. 12. That section 9-314, Revised Statutes Supplement, 1986, be amended to read as follows:

9-314. Member shall mean a person who has qualified for and been admitted to membership in a licensed organization pursuant to its bylaws, articles of incorporation, charter, rules, or other written

statement is recognized and acknowledged by a licensed organization as a member for purposes other than conducting activities under the Nebraska Pickle Card Lottery Act. Member shall not include social or honorary members.

Sec. 13. Net profit shall mean the gross profit from the sale of a pickle card unit less the unit cost and allowable expenses incurred by a licensed organization in connection with the sale of a pickle card unit.

Sec. 14. That section 9-316, Revised Statutes Supplement, 1986, be amended to read as follows:

9-316. Pickle card operator shall mean any sole proprietorship, partnership, or corporation which person or business who sells individual pickle cards as opportunities for participation in a lottery by the sale of pickle cards, but shall not include any member of the licensed organization who, in a voluntary capacity without compensation, sells individual pickle cards on behalf of the licensed organization.

Sec. 15. Premises shall mean a building or a distinct portion of a building and shall not include any area of land surrounding the building.

Sec. 16. That section 9-320, Revised Statutes Supplement, 1986, be amended to read as follows:

9-320. Sales agent shall mean any person who markets, or sells, or delivers any pickle card unit on behalf of a licensed organization to any licensed pickle card operator.

Sec. 17. Unit cost shall mean the total cost of a pickle card unit paid by a licensed organization to a distributor. Unit cost shall include the tax on definite profit prescribed in section 9-344 and any applicable sales tax. Unit cost shall also include any applicable federal gaming tax for which the licensed organization is liable in connection with its purchase or sale of a pickle card unit.

Sec. 18. That section 9-322, Revised Statutes Supplement, 1986, be amended to read as follows:

9-322. The department shall have the following powers, functions, and duties:

- (1) To issue licenses;
- (2) To deny any license application or renewal application for nonpayment of taxes and additions to taxes including penalties and interest or for noncompliance with any other provision of the Nebraska Pickle Card Lottery Act or any rule or regulation adopted and promulgated pursuant to the act cause. Cause for denial of an application for or renewal of a

license shall include, but not be limited to, instances in which the applicant or licensee or any person with a substantial interest therein: (a) Violated the provisions, requirements, conditions, limitations, or duties imposed by the Nebraska Bingo Act, the Nebraska Pickle Card Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Small Lottery and Raffle Act or any rules or regulations adopted and promulgated pursuant to such acts; (b) knowingly caused, aided, abetted, or conspired with another to cause any person to violate any of the provisions of the Nebraska Bingo Act, the Nebraska Pickle Card Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Small Lottery and Raffle Act or any rules or regulations adopted and promulgated pursuant to such acts; (c) obtained a license or permit pursuant to the Nebraska Bingo Act, the Nebraska Pickle Card Lottery Act, or the Nebraska Lottery and Raffle Act by fraud, misrepresentation, or concealment; (d) was convicted of, forfeited bond upon a charge of, or pleaded guilty to forgery, larceny, extortion, conspiracy to defraud, willful failure to make required payments or reports to a governmental agency at any level, filing false reports with any such agency, or any similar offense or offenses or any crime, whether a felony or misdemeanor, involving any gambling activity or moral turpitude; (e) denied the department or its authorized representatives, including authorized local law enforcement agencies, access to any place where pickle card activity required to be licensed under the Nebraska Pickle Card Lottery Act is being conducted or failed to produce for inspection or audit any book, record, document, or item required by law, rule, or regulation; (f) made a misrepresentation of or failed to disclose a material fact to the department; (g) failed to prove by clear and convincing evidence his, her, or its qualifications to be licensed in accordance with the Nebraska Pickle Card Lottery Act; (h) failed to pay any taxes and additions to taxes, including penalties and interest, required by the Nebraska Bingo Act, the Nebraska Pickle Card Lottery Act, or the Nebraska Lottery and Raffle Act or any other taxes imposed pursuant to the Nebraska Revenue Act of 1967; or (i) failed to pay an administrative fine imposed pursuant to the Nebraska Pickle Card Lottery Act;

(3) To revoke, cancel, or suspend for cause any license. Cause for revocation, ~~or~~ cancellation, or suspension of a license shall include, but not be limited to, instances in which the licensee or any person with a substantial interest therein: (a)

Violated the provisions, requirements, conditions, limitations, or duties imposed by the Nebraska Pickle Card Lottery Act or any rules or regulations adopted and promulgated pursuant to the act; (b) knowingly caused, aided, abetted, or conspired with another to cause any person to violate any of the provisions of the Nebraska Pickle Card Lottery Act or any rules or regulations adopted and promulgated pursuant to the act; (c) obtained a license pursuant to the Nebraska Pickle Card Lottery Act by fraud, misrepresentation, or concealment; (d) was convicted of, forfeited bond upon a charge of, or pleaded guilty to forgery, larceny, extortion, conspiracy to defraud, willful failure to make required payments or reports to a governmental agency at any level, filing false reports with any such agency, or any similar offense or offenses or any crime, whether a felony or misdemeanor, involving any gambling activity or moral turpitude; (e) denied the department or its authorized representatives, including authorized local law enforcement agencies, access to any place where pickle card activity required to be licensed under the Nebraska Pickle Card Lottery Act is being conducted or failed to produce for inspection or audit any book, record, document, or item required by law, rule, or regulation; (f) made a misrepresentation of or failed to disclose a material fact to the department; (g) failed to pay any taxes and additions to taxes, including penalties and interest, required by the Nebraska Pickle Card Lottery Act; or (h) failed to pay an administrative fine imposed pursuant to the Nebraska Pickle Card Lottery Act;

(4) To issue and cause to be served upon any license holder an order requiring the license holder to cease and desist from violations of the Nebraska Pickle Card Lottery Act. The order shall give reasonable notice of the rights of the license holder to request a hearing and shall state the reason for the entry of the order. A hearing shall be held not later than seven days after the request for the hearing is received by the Tax Commissioner, and within twenty days of the date of the hearing, the Tax Commissioner shall issue an order vacating the cease and desist order or making it permanent as the facts require. All hearings shall be held in accordance with the rules and regulations adopted and promulgated by the department. If the license holder to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the license holder shall be deemed in default and the proceeding may be determined against the license

holder upon consideration of the cease and desist order, the allegations of which may be deemed to be true; any noncompliance with any provision of the Nebraska Pickle Card Lottery Act or a violation of any rule or regulation adopted and promulgated pursuant to the act;

(5) To impose or levy an administrative fine of not more than one thousand dollars on a licensee for cause. For purposes of this subdivision, cause shall include instances in which the licensee violated the provisions, requirements, conditions, limitations, or duties imposed by the Nebraska Pickle Card Lottery Act. In determining whether to levy an administrative fine and the amount of the fine, if any such fine is levied, the department shall take into consideration the seriousness of the violation and the extent to which the licensee derived financial gain as a result of the violation;

(6) (4) To enter or to authorize any law enforcement officer to enter at any time upon any premises where lottery by the sale of pickle cards activity required to be licensed under the act is being conducted to determine whether any of the provisions of such act or any rules or regulations adopted and promulgated under it have been or are being violated; and at such time to examine such premises;

(7) To require periodic reports of lottery by the sale of pickle cards activity from licensed manufacturers, distributors, nonprofit organizations, sales agents, pickle card operators, and any other persons, organizations, or corporations as the department deems necessary to carry out the Nebraska Pickle Card Lottery Act;

(8) To require annual registration of coin-operated and currency-operated devices used for the dispensing of pickle cards, to issue registration decals for such devices, and to prescribe all forms necessary for the registration of such devices;

(9) (5) To examine or to cause to have examined, by any agent or representative designated by the department for such purpose, any books, papers, records, or memoranda relating to the conduct of lottery by the sale of pickle cards of any licensee, to require by administrative order or summons the production of such documents or the attendance of any person having knowledge in the premises, to take testimony under oath, and to require proof material for its information. If any such person willfully refuses to make documents available for examination by the department or its agent or representative or willfully fails to attend and

testify, the department may apply to a judge of the district court of the county in which such person resides for an order directing such person to comply with the department's request. If any documents requested by the department are in the custody of a corporation, the court order may be directed to any principal officer of the corporation. Any person who fails or refuses to obey such a court order shall be guilty of contempt of court;

(10) ~~(6)~~ Unless specifically provided otherwise, to compute, determine, assess, and collect the amounts required to be paid as taxes pursuant to section 9-344 in the same manner as provided for sales and use taxes in the Nebraska Revenue Act of 1967;

(11) ~~(7)~~ To inspect pickle cards and pickle card units as provided in section 9-339;

(12) ~~(8)~~ To confiscate and seize pickle cards or pickle card units pursuant to section 9-350;

(13) ~~(9)~~ To adopt and promulgate such rules and regulations and prescribe all forms as are necessary to carry out the Nebraska Pickle Card Lottery Act; and

(14) ~~(10)~~ To employ staff, including auditors and inspectors, as necessary to carry out the act.

Sec. 19. (1) All money collected by the department as an administrative fine shall be transmitted on a monthly basis to the State Treasurer who shall deposit such money in the Permanent School Fund.

(2) Any administrative fine imposed under section 9-322 and unpaid shall constitute a debt to the State of Nebraska which may be collected by lien foreclosure, or sued for and recovered in any proper form of action, in the name of the State of Nebraska, in the district court of the county in which the violator resides or owns property.

Sec. 20. (1) Before any application is denied pursuant to section 9-322, the department shall notify the applicant in writing of the department's intention to deny the application and the reasons for the denial. Such notice shall inform the applicant of his or her right to request an administrative hearing for the purpose of reconsideration of the intended denial of the application.

(2) A request for a hearing by the applicant shall be in writing and shall be filed with the department within thirty days after the service of notice to the applicant of the department's intended denial of the application. If a request for hearing is not filed within the thirty-day period, the application

denial shall become final at the expiration of such period.

(3) If a request for hearing is filed within the thirty-day period, the Tax Commissioner shall grant the applicant a hearing and shall, at least ten days before the hearing, serve notice upon the applicant by certified mail, return receipt requested, of the time, date, and place of the hearing. Such proceedings shall be considered contested cases pursuant to the Administrative Procedure Act.

Sec. 21. That section 9-323, Revised Statutes Supplement, 1986, be amended to read as follows:

9-323. (1) The Tax Commissioner may suspend any license issued pursuant to the Nebraska Pickle Card Lottery Act except a license issued pursuant to section 9-326, except that no order to suspend any license shall be issued ~~except upon a finding~~ by unless the department determines that the licensee is not operating in accordance with the purposes and intent of the act. The Tax Commissioner may suspend a license issued pursuant to section 9-326 after a hearing upon a finding by the department that the licensee is not operating in accordance with the purposes and intent of the act.

(2) Before any license is suspended, notice of an order to suspend a license shall be mailed to the licensee at least fifteen days before the order of suspension takes effect.

(3) The order of suspension ~~shall~~ may be withdrawn if the licensee provides the department with evidence that any prior findings or violations have been corrected and that the licensee is now in full compliance with the act, whether before or after the effective date of the order of suspension.

(4) The Tax Commissioner may issue an order of suspension pursuant to subsections (1), (2), and (3) of this section when an action for suspension, cancellation, or revocation is pending. The Tax Commissioner may also issue an order of suspension after a hearing for a limited time of up to one year without an action for cancellation or revocation pending.

(5) The hearing for suspension, cancellation, or revocation of the license shall be held within twenty days of the date the suspension takes effect. A request by the licensee to hold the hearing after the end of the twenty-day period shall extend the suspension until the hearing.

(6) The decision of the department shall be made within twenty days of the conclusion of the hearing. The suspension shall continue in effect until

the decision is issued. If the decision is that an order of suspension, revocation, or cancellation is not appropriate, the suspension shall terminate immediately by order of the Tax Commissioner. If the decision is an order for the suspension, revocation, or cancellation of the license, the suspension shall continue pending an application for rehearing or an appeal of the decision of the department.

(7) Any period of suspension prior to the issuance of an order of suspension issued by the Tax Commissioner shall count toward the total amount of time a licensee shall be suspended from gaming activities under the Nebraska Pickle Card Lottery Act. Any period of suspension prior to the issuance of an order of cancellation shall not reduce the period of the cancellation. Any period of suspension after the issuance of the order and during a rehearing or an appeal shall be counted as a part of the period of cancellation.

Sec. 22. That section 9-324, Revised Statutes Supplement, 1986, be amended to read as follows:

9-324. Before the adoption, amendment, or repeal of any rule or regulation, or the suspension, revocation, or cancellation of any license pursuant to section 9-322, or the imposition of an administrative fine pursuant to section 9-322, the department shall set the matter for hearing. Such suspension, revocation, or cancellation proceedings or proceedings to impose an administrative fine shall be contested cases pursuant to the Administrative Procedure Act.

At least ten days before the hearing, the department shall (1) in the case of suspension, revocation, or cancellation proceedings or proceedings to impose an administrative fine, serve notice upon the licensee by certified mail, return receipt requested, of the time, date, and place of any hearing or (2) in the case of adoption, amendment, or repeal of any rule or regulation, issue a public notice of the time, date, and place of such hearing.

Sec. 23. That section 9-325, Revised Statutes Supplement, 1986, be amended to read as follows:

9-325. (1) A copy of the order or decision of the department in any proceeding before it, certified under the seal of the department, shall be served upon each party of record to the proceeding before the department. Service upon any attorney of record for any such party shall be deemed to be service upon such party. Each party appearing before the department shall enter his or her appearance and indicate to the

department his or her address for the service of a copy of any order, decision, or notice. The mailing of any copy of any order or decision or of any notice in the proceeding, to such party at such address, shall be deemed to be service upon such party.

(2) At the time of making an appearance before the department, each party shall deposit in cash or furnish a sufficient security for costs in an amount the department shall deem ~~deems~~ adequate to cover all costs liable to accrue, including costs for (a) reporting the testimony to be adduced, (b) making up a complete transcript of the hearing, and (c) extending reporter's original notes in typewriting.

~~(3) Within twenty days after the service of any order or decision of the department upon any party to the proceeding, such party may apply for a rehearing in respect to any matters determined by the department. The department shall consider such application for a rehearing within twenty days from the date of receipt of the rehearing application. If such application is granted, the department shall promptly consider the matters presented by such application. No appeal shall be allowed from any decision of the department, except as is provided for in subsection (4) of this section. Only one rehearing shall be granted by the department on application of any one party.~~

~~(3) (4) Any decision of the department in any proceeding before it to revoke, cancel, or suspend or to refuse to revoke, cancel, or suspend a license may be reversed, vacated, or modified by the district court as provided in the Administrative Procedure Act.~~

Sec. 24. That section 9-326, Revised Statutes Supplement, 1986, be amended to read as follows:

9-326. (1) Any nonprofit organization holding a certificate of exemption under section 501(c)(3), (c)(4), (c)(5), (c)(8), or (c)(19) of the Internal Revenue Code or any volunteer fire company organized and operated pursuant to Chapter 35, article 1, may apply for a license to conduct a lottery by the sale of pickle cards.

(2) Prior to applying for any license, an organization shall:

(a) Be incorporated in this state as a not-for-profit corporation or organized in this state as a religious or not-for-profit organization. For purposes of this subsection, a domesticated foreign corporation shall not be considered incorporated in this state as a not-for-profit corporation;

(b) Have at least ten members in good

standing;

(b) ~~(e)~~ Conduct activities within this state in addition to the conduct of lottery by the sale of pickle cards;

(c) ~~(d)~~ Be authorized by its constitution, articles, charter, or bylaws to further in this state a lawful purpose; ~~and~~

(d) ~~(e)~~ Operate without profit to its members, and no part of the net earnings of such organization shall inure to the benefit of any private shareholder or individual; ~~and~~

(e) Be a volunteer fire department or an organization devoted solely to the operation of youth amateur athletics or have been in existence in this state for five years immediately preceding its application for a license and have had during that period a bona fide membership actively engaged in furthering a lawful purpose. A society defined in section 21-608 which is chartered in Nebraska under a state, grand, supreme, national, or other governing body may use the charter date of its parent organization to satisfy such five-year requirement.

Sec. 25. That section 9-327, Revised Statutes Supplement, 1986, be amended to read as follows:

9-327. (1) Each applicant for a license to conduct a lottery by the sale of pickle cards shall file with the department an application on a form prescribed by the department.

(2) Each application shall include:

(a) The name and address of the applicant;

(b) Sufficient facts relating to the incorporation or organization of the applicant to enable the department to determine if the applicant is eligible for a license under section 9-326;

(c) The name and address of each officer of the applicant organization;

(d) The name, address, date of birth, and years of membership of a bona fide and active member of the applicant organization who shall be responsible for supervising the conduct of the lottery by the sale of pickle cards and for the proper utilization of the gross proceeds derived from the conduct of lottery by the sale of pickle cards;

(e) A roster of members, if the department deems it necessary and proper; and

(f) Other information which the department deems necessary.

(3) The information required by this section shall be kept current. An organization shall notify the

department within thirty days if any information in the application is no longer correct and shall supply the correct information.

(4) The department may prescribe a separate application form for renewal purposes.

Sec. 26. That section 9-328, Revised Statutes Supplement, 1986, be amended to read as follows:

9-328. (1) All licenses to conduct a lottery by the sale of pickle cards and licenses issued to designated members responsible for supervising the conduct of the lottery by the sale of pickle cards and the proper utilization of gross proceeds shall expire on September 30 of each year or such other date as the department may prescribe by rule and regulation and may be renewed annually. Each annual application for a license shall be accompanied by-

(i) A sworn statement of the designated member responsible for the proper utilization of gross proceeds that all gross proceeds will be used in accordance with section 9-347 and that he or she will be responsible for compliance with the Nebraska Pickle Card Lottery Act and all rules and regulations adopted and promulgated pursuant to such act. ; and

(2) The department shall establish classes of licenses for licensed organizations based upon the manner in which the licensed organization intends to sell the pickle cards. The classes shall include:

(a) Class I licenses which shall include organizations which sell individual pickle cards only at the organization's designated premises and at the organization's licensed regularly scheduled bingo occasions pursuant to the Nebraska Bingo Act; and

(b) Class II licenses which shall include organizations which sell the pickle cards on the premises of one or more licensed pickle card operators.

A licensed organization holding a Class II license shall be required to license a sales agent.

(3) A license fee of one hundred dollars shall be charged for each Class I license, one hundred fifty dollars for each Class II license, and five dollars for a license for each designated member responsible for the proper utilization of gross proceeds.

(4) The department shall adopt and promulgate rules and regulations establishing reporting requirements for each class of license. A fifteen-dollar license fee for the organization and five dollars for a license for each designated member responsible for the proper utilization of gross proceeds-

Sec. 27. (1) Prior to applying for a license as a sales agent for a licensed organization, the applicant shall have been an active and bona fide member of the licensed organization for one year preceding the date the application is filed with the department.

(2) No person applying for a license under this section shall hold a license as a sales agent for more than one licensed organization. This subsection shall not prohibit a licensed sales agent from applying for a license to represent another licensed organization as a sales agent if he or she has ceased being a sales agent for and will not continue to market pickle card units on behalf of the organization for which he or she is currently licensed and has obtained a written release of any legal obligations he or she has to such licensed organization. Such release shall be signed by a person licensed as a member responsible for the utilization of gross proceeds and an officer of the licensed organization and shall state that the sales agent has satisfied all legal obligations he or she has to the licensed organization in connection with the lottery by the sale of pickle cards. When applicable, a copy of the written release shall accompany any application for a license to become a sales agent.

(3) Any sales agent licensed under the Nebraska Pickle Card Lottery Act shall not be connected with or interested in, directly or indirectly, any person, partnership, firm, corporation, or other party licensed as a distributor, manufacturer, or pickle card operator under section 9-330 or 9-332 or section 32 of this act and, unless such sales agent does not directly or indirectly receive payment of any commission, salary, or fee for the sale, marketing, or delivery of pickle cards on behalf of the licensed organization or any other service on behalf of the licensed organization, shall not be a director, manager, trustee, or member of any governing committee, board, or body of the licensed organization on behalf of which the sales agent sells pickle card units.

Sec. 28. A licensed organization shall conduct a lottery by the sale of pickle cards only at its designated premises, at its regularly scheduled bingo occasion conducted pursuant to the Nebraska Bingo Act, and at the premises of one or more pickle card operators.

A licensed organization may obtain an authorization from the department to sell its individual pickle cards at a festival, bazaar, picnic, carnival, limited period bingo occasion conducted pursuant to the

Nebraska Bingo Act, or similar special function conducted by the licensed organization outside of the organization's designated premises one time per license year not to exceed seven consecutive days if the special function is conducted within the county in which the licensed organization has its principal office and the pickle cards are sold only by volunteer members of the licensed organization. A licensed organization shall make written request to the department for such authorization at least ten days prior to the start of the special function.

Sec. 29. (1) Licensed organizations and pickle card operators selling individual pickle cards or punchboards shall conspicuously post the flare card for each pickle card unit in play at that location at the point at which the majority of the pickle cards is sold at such location.

(2) Licensed organizations and pickle card operators shall identify each flare card or punchboard in a manner prescribed by the department indicating the name and state identification number of each nonprofit organization on behalf of which individual pickle cards and punches from punchboards are sold at such location.

Sec. 30. Each manufacturer shall receive departmental approval prior to offering or marketing in this state any type of pickle card, pickle card unit, punchboard, or other similar card, board, or ticket included in section 9-315 whether referred to by any other name. Approval by the department shall be based upon, but not limited to, the manufacture, assembly, and packaging of pickle cards or pickle card units and any other specifications imposed by the Nebraska Pickle Card Lottery Act or any rule or regulation adopted and promulgated pursuant to the act.

Sec. 31. That section 9-329, Revised Statutes Supplement, 1986, be amended to read as follows:

9-329. (1) No sales agent shall market, or sell, or deliver any pickle card unit to any pickle card operator without first obtaining a license, and no pickle card operator shall sell any individual pickle cards as opportunities to participate in a lottery by the sale of pickle cards without first obtaining a license.

(2) Any person wishing to operate as a sales agent or pickle card operator in this state shall make file an application to with the department for a license on a form prescribed by the department. Each application for a license shall include the- (a) Name (a) the name and address of the person applying for the

license, (b) the name and license state identification number of the licensed organization for which any pickle card units or individual pickle cards being sold as opportunities to participate in a lottery are to be marketed or sold by the applicant; and (c) name, address, and license number of a person licensed pursuant to section 9-327 as a member responsible for the proper utilization of gross proceeds for the licensed organization for which the applicant will market or sell the pickle card units or individual pickle cards being sold as opportunities to participate in a lottery such other information which the department deems necessary.

A statement signed by the person licensed as a member responsible for the proper utilization of gross proceeds signifying that such licensed organization approves the applicant to act as a sales agent or pickle card operator on behalf of such organization shall accompany each sales agent's application for a license. No person licensed as a member responsible for the proper utilization of gross proceeds shall be licensed as a sales agent or pickle card operator.

A fee of fifty dollars shall be charged for each license issued pursuant to this section. The proceeds from such fee shall be deposited in the Charitable Gaming Operations Fund. Such licenses shall expire on September 30 of each year or such other date which the department may prescribe by rule and regulation and shall be renewed annually.

(3) One license issued to any person or business entity under this section as a pickle card operator shall cover the person or business entity and the employees of the licensed pickle card operator.

(4) No sales agent or pickle card operator licensed under the Nebraska Pickle Card Lottery Act shall be connected, interested, or otherwise connected, directly or indirectly, with any person, partnership, firm, corporation, or other party licensed as a distributor or manufacturer under sections 9-330 and 9-332.

(3) The information required by this section shall be kept current. A sales agent shall notify the department within thirty days if any information in the application is no longer correct and shall supply the correct information.

(4) The department may prescribe a separate application form for renewal purposes.

(5) The department may issue a temporary license pending receipt of additional information or

further inquiry.

Sec. 32. (1) Any sole proprietorship, partnership, or corporation, which holds a retailer's license for consumption on the premises or a bottle club license issued by the Nebraska Liquor Control Commission pursuant to the Nebraska Liquor Control Act or which holds a retailer's license for consumption off the premises so long as seventy-five percent of such retailer's revenue on an annual basis is received from the sale of alcoholic liquor, may apply for a pickle card operator's license to sell individual pickle cards as opportunities to participate in a lottery by the sale of pickle cards. The burden shall be on any licensee who holds an off-premises license to show that the licensee's sales revenue meets such percentage requirement.

(2) A pickle card operator licensed under the Nebraska Pickle Card Lottery Act shall not be connected with or interested in, directly or indirectly, any person, partnership, firm, or corporation or other party licensed as a distributor or manufacturer under section 9-330 or 9-332.

(3) A sole proprietor, partner in a partnership, or officer or director of a corporation licensed as a pickle card operator shall not be licensed as a sales agent.

Sec. 33. (1) A pickle card operator shall not be eligible to sell individual pickle cards as opportunities to participate in a lottery by the sale of pickle cards without first obtaining a license.

(2) Any sole proprietorship, partnership, or corporation wishing to operate as a pickle card operator in this state shall file an application with the department for a license on a form prescribed by the department. Each application for a license shall include (a) the name, address, and state identification number of the sole proprietorship, partnership, or corporation applying for the license, (b) a description of the premises on which the pickle cards will be sold or offered for sale, and (c) such other information which the department deems necessary. The information required by this subsection shall be kept current. A pickle card operator shall notify the department within thirty days if any information in the application is no longer correct and shall supply the correct information.

(3) A fee of fifty dollars shall be charged for each license issued pursuant to this section and shall be paid for by the applicant. A licensed organization shall not pay the required licensing fees

of a pickle card operator as an inducement for the pickle card operator to sell individual pickle cards on its behalf. Such licenses shall expire on September 30 of each year or such other date as the department may prescribe by rule and regulation and shall be renewed annually. The proceeds from such license fees shall be deposited in the Charitable Gaming Operations Fund.

(4) One license issued to any sole proprietorship, partnership, or corporation under this section as a pickle card operator shall cover the sole proprietorship, partnership, or corporation and the employees of the licensed pickle card operator. Any license issued pursuant to this section shall be valid only for the sole proprietorship, partnership, or corporation in the name of which it was issued and shall allow the sale of individual pickle cards only on the premises described in the pickle card operator's application for a license. A pickle card operator's license may not be transferred under any circumstances including change of ownership. For purposes of this subsection, a change of ownership of stock in a corporation which does not result in any person becoming the owner of a substantial interest in such corporation who was not the owner of a substantial interest immediately preceding the transaction shall not be deemed a change of ownership.

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

(6) A licensed pickle card operator shall not sell individual pickle cards on behalf of a licensed organization until an authorization has been obtained from the department by the licensed organization. The licensed organization shall file an application with the department for such authorization on a form prescribed by the department. Each application for an authorization shall include (a) the name, address, and state identification number of the licensed pickle card operator and (b) such other information which the department deems necessary. The application shall include a statement signed by a person licensed as a member responsible for the proper utilization of gross proceeds signifying that such licensed organization approves the pickle card operator to sell individual pickle cards on behalf of such organization.

(7) A pickle card operator may sell individual pickle cards on behalf of more than one licensed organization. Each licensed organization for which the pickle card operator desires to sell individual pickle cards shall obtain the authorization described in

subsection (6) of this section.

(8) A pickle card operator who sells individual pickle cards through a coin-operated or currency-operated dispensing device shall purchase, lease, or rent its own equipment. If such equipment is obtained from a licensed organization or distributor, it shall be purchased, leased, or rented at a rate not less than fair market value. A licensed organization or distributor shall not provide such equipment to a pickle card operator free of charge or at a rate less than fair market value as an inducement for the pickle card operator to sell its individual pickle cards.

(9) No pickle card operator shall generate revenue from the sale of individual pickle cards which exceeds the revenue generated from other retail sales on an annual basis. For purposes of this subsection, retail sales shall not include revenue generated from other charitable gaming activities authorized by Chapter 9. The department shall prescribe by rule and regulation a report to be submitted to the department by the pickle card operator which will allow the department to determine compliance with this subsection.

Sec. 34. That section 9-331, Revised Statutes Supplement, 1986, be amended to read as follows:

9-331. (1) No person, except a distributor operating pursuant to the Nebraska Pickle Card Lottery Act, shall sell or distribute any pickle card units to any licensed organization.

(2) No distributor shall hold a license to conduct a lottery by the sale of pickle cards or any other kind of gambling activity which is authorized or regulated under Chapter 9 or a license to act as a sales agent, pickle card operator, or manufacturer of pickle cards or pickle card units, except as provided in section 9-235.

(3) If a distributor delivers any pickle card unit, he or she shall deliver such unit only to a licensed designated member of the licensed organization responsible for the proper utilization of gross proceeds or a sales agent and shall not deliver any pickle card unit to any other person, whether or not such person is a pickle card operator.

(4) No distributor shall offer or agree to offer anything of value to any pickle card operator in exchange for an agreement or commitment by such pickle card operator to exclusively sell pickle cards sold by such distributor. Nothing in this section shall prohibit a pickle card operator from exclusively selling pickle cards sold by a single distributor. No pickle

card operator shall accept or agree to accept anything of value from a distributor in exchange for an agreement or commitment by such pickle card operator to exclusively sell pickle cards sold by such distributor.

(5) No distributor, or employee or spouse of any distributor, shall participate in the conduct or operation of any lottery by the sale of pickle cards or any other kind of gambling activity which is authorized or regulated under Chapter 9, except to the exclusive extent of his or her statutory duties as a licensed distributor and as provided in section 9-235. No distributor or employee or spouse of any distributor shall have a substantial interest in another distributor, a manufacturer, or a licensed organization regulated under Chapter 9. Membership in any organization shall not be deemed a violation of this section.

(6) A distributor shall purchase pickle card units only from a licensed manufacturer and shall pay for such units by check within fifteen days of delivery.

Sec. 35. That section 9-333, Revised Statutes Supplement, 1986, be amended to read as follows:

9-333. Each manufacturer shall, no later than thirty fifteen days after each quarter the last day of each calendar month, report to the department, on a form supplied in a manner prescribed by the department, the following information: (1) The total number of pickle card units sold to name and state identification number of each distributor, and (2) the purchasing pickle card units; (2) relative to each such distributor, the quantity and type of each pickle card unit sold; and (3) any other information concerning pickle card units sold which the department deems necessary.

Sec. 36. That section 9-340, Revised Statutes Supplement, 1986, be amended to read as follows:

9-340. (1) No manufacturer shall sell any pickle card units to any person in Nebraska except a licensed distributor. No distributor licensed in Nebraska shall purchase such units except from manufacturers licensed in Nebraska.

(2) No distributor shall sell any pickle card units except to an organization licensed to conduct a lottery by the sale of pickle cards pursuant to the Nebraska Pickle Card Lottery Act. No pickle cards shall be sold by a distributor except in the form of pickle card units. No distributor shall market or sell any pickle card unit for use in this state:

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

(b) Which commencing on and after October 1, 1988, has a card or play count in excess of four thousand five hundred per pickle card unit;

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

(d) Which commencing on and after October 1, 1988, contains any pickle card or punch on a punchboard, the individual purchase price of which exceeds one dollar;

(e) In which any individual pickle card awards a prize or prizes in excess of five hundred dollars;

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

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

(h) Without - No pickle card unit shall be sold by a distributor without the information required in section 9-346.

Sec. 37. Each distributor shall, in a manner prescribed by the department, provide each purchaser of a pickle card unit or punchboard with an invoice of sale. The invoice shall contain the purchaser's name and complete address and any other information the department deems necessary.

Sec. 38. (1) All pickle card units purchased by a licensed organization from a licensed distributor shall be paid for by a check drawn on the pickle card bank account of the licensed organization either in advance of or upon delivery of the pickle card units.

(2) Every licensed pickle card operator shall remit the definite profit of all pickle card units received to the sponsoring licensed organization by check either in advance of or upon delivery of the

pickle card units from the sales agent to the pickle card operator. Upon delivery of the pickle card units, the sales agent shall issue the pickle card operator a standard receipt prescribed by the department.

(3) No licensed organization conducting a lottery by the sale of pickle cards shall extend credit in any form, including, but not limited to, the extension of any credit with regard to the receipt of the definite profit of a pickle card unit from a pickle card operator upon delivery of a pickle card unit to the pickle card operator and the extension of any credit with regard to the sale or lease of any equipment or device used in connection with a lottery by the sale of pickle cards.

Sec. 39. A pickle card operator licensed under the Nebraska Pickle Card Lottery Act shall not be connected with or interested in, directly or indirectly, any person, partnership, firm, or corporation or other party licensed as a distributor or manufacturer under section 9-330 or 9-332. A sole proprietor, partner in a partnership, or officer or director of a corporation licensed as a pickle card operator shall not be a director, manager, trustee, or member of any governing committee, board, or body of the licensed organization on behalf of which the pickle card operator sells individual pickle cards.

Sec. 40. That section 9-342, Revised Statutes Supplement, 1986, be amended to read as follows:

9-342. (1) Any organization licensed to conduct a lottery by the sale of pickle cards may shall purchase units for such purposes from a distributor and shall use the net profit proceeds from the sale of the pickle cards for a lawful purpose.

(2) When any organization licensed to conduct a lottery by the sale of pickle cards purchases units from a distributor, such organization shall provide the distributor with a copy of the organization's license or other adequate identification indicating that such organization has a valid license issued pursuant to section 9-327.

(3) Only a person licensed pursuant to section 9-327 as a member responsible for the proper utilization of gross proceeds shall purchase pickle card units from a distributor on behalf of the organization. Any person authorized by any licensed organization and any person authorized to sell pickle cards for the licensed organization as its designated sales agent may purchase any pickle card unit from a distributor for such licensed organization. No pickle card operator or sales

agent shall purchase any pickle card or pickle card unit from a distributor.

Sec. 41. That section 9-343, Revised Statutes Supplement, 1986, be amended to read as follows:

9-343. A distributor shall maintain records of total sales of pickle card units and, within thirty days after the end of the calendar ~~quarter, month or by the last day of the month following each monthly period, whichever comes first,~~ shall report to the department, on a form in a manner prescribed by the department, detailed information concerning each sale, which information shall include, but not be limited to, (1) the total number of units sold by such distributor, for each quarter, the state identification (2) the serial number of each unit and the corresponding state identification stamp number assigned to each unit, (3) the aggregate price for which such cards will be sold by the purchasing organization, and (4) any other information the department deems necessary.

Sec. 42. That section 9-344, Revised Statutes Supplement, 1986, be amended to read as follows:

9-344. Accompanying the monthly quarterly reports required in section 9-343, the distributor shall pay to the department a tax equal to two percent of the pickle card gross proceeds of each pickle card unit sold by the distributor, and beginning July 1, 1986, an amount equal to three percent of such gross proceeds, computed by using the price for which all pickle cards in the unit will be sold by the purchasing organizations, twenty percent of the definite profit of each pickle card unit sold by the distributor. Such tax shall be remitted with and reported on a form prescribed by the department on a monthly basis commencing on and after October 1, 1988, and shall be due and payable within thirty days after each monthly period or by the last day of the month following each monthly period, whichever comes first. Such tax shall be credited to the Charitable Gaming Operations Fund of the state. The distributor shall include the tax due under this section in the selling price of units and shall separately state such tax on the invoice. All deficiencies of the tax prescribed in this section shall accrue interest and be subject to a penalty as provided for sales and use taxes in the Nebraska Revenue Act of 1967.

Sec. 43. (1) Commencing on and after January 1, 1989, no coin-operated or currency-operated device for the dispensing of pickle cards shall be used by any individual to obtain a pickle card unless and until a registration decal is obtained from the department and

the decal has been permanently and conspicuously affixed to the device.

(2) Registration of the device with the department shall be made by application to the department and shall be the responsibility of the licensed organization when such device is to be used in a licensed organization's designated premises or of the licensed pickle card operator when such device is to be used on the premises of the pickle card operator.

(3) Each application for registration shall include (a) the name and address of the licensed pickle card operator or licensed organization registering the device, (b) the state identification number of the licensed pickle card operator or licensed organization registering the device, (c) a detailed description of the physical appearance and operation of the coin-operated or currency-operated dispensing device, and (d) such other information which the department deems necessary.

(4) A fee of fifty dollars shall be charged for each decal issued pursuant to this section. All decals issued by the department pursuant to this section shall expire on December 31 of each year and shall be renewed annually.

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

Sec. 44. That section 9-346, Revised Statutes Supplement, 1986, be amended to read as follows:

9-346. (1) The winning cards, boards, or tickets in any lottery by the sale of pickle cards shall be determined by a comparison of those numbers, letters, symbols, or configurations, or combination thereof, which are revealed on the pickle cards, to a set of numbers, letters, symbols, or configurations, or combination thereof, which has been previously specified as a winning combination. Whenever the winning combinations do not comprise a statement of the prize won, the winning combinations shall be printed on every pickle card that is wider than one inch or longer than two and one-half inches. Pickle cards that are smaller than such dimensions shall have the winning combinations printed on a flare card that is publicly displayed at the point of sale of the pickle cards.

(2) The winning chances of any pickle card shall not be determined or otherwise known until after its purchase and only upon opening, pulling, detaching, breaking open, or otherwise removing the tab or tabs to clearly reveal or otherwise appropriately revealing the

combination. The winning chances shall be determined by and based upon an element of chance.

(3) Any person possessing a winning pickle card shall receive the appropriate prize or value previously determined and specified for that winning combination.

(4) All pickle cards shall legibly bear on the outside of each pickle card the name of the nonprofit organization conducting the lottery by the sale of pickle cards, and such organization's identification number.

Sec. 45. That section 9-347, Revised Statutes Supplement, 1986, be amended to read as follows:

9-347. (1) The gross proceeds of any lottery by the sale of pickle cards shall be used solely for lawful purposes, awarding of prizes, ~~remission of taxes imposed under section 9-344~~ payment of the unit cost, any commission paid to a pickle card operator, and allowable expenses.

(2) Not less than sixty-five percent or more than seventy-five percent of the gross proceeds of any lottery by the sale of pickle cards shall be used for the awarding of prizes, and not more than ten percent of the gross proceeds shall be used to pay the allowable expenses of operating such lottery.

(3) Not more than four percent of the definite profit of a pickle card unit shall be used by the licensed organization to pay the allowable expenses of operating a lottery by the sale of pickle cards of which not more than three percent of the definite profit may be used by the licensed organization for the payment of any commission, salary, or fee to a sales agent in connection with the marketing of a pickle card unit.

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

Sec. 46. (1) For each type of pickle card unit marketed in this state, the department shall determine the following: (a) When a licensed organization sells pickle cards through pickle card operators, the portion of the definite profit from that pickle card unit which shall go to the licensed organization, such amount to be not less than seventy-two percent of the definite profit from such pickle card unit; (b) the maximum amount of the definite

profit from the sale of a pickle card unit that a licensed organization may pay a pickle card operator as a commission, fee, or salary to sell its pickle cards, such amount not to exceed twenty-eight percent of the definite profit from such pickle card unit; (c) the portion of the definite profit from the sale of a pickle card unit which may be expended by a licensed organization for allowable expenses, such amount not to exceed four percent of the definite profit from such pickle card unit; and (d) the portion of the definite profit from the sale of a pickle card unit which may be utilized by a licensed organization for payment of a sales agent selling pickle cards on behalf of the licensed organization, such amount to be a portion of the allowable expenses and not to exceed three percent of the definite profit from such pickle card unit.

(2) The licensed organization's net profit from the sale of a pickle card unit shall be used exclusively for a lawful purpose. A licensed organization shall not donate or promise to donate its net profit or any portion of the net profit to a recipient outside of its organization as an inducement for or in exchange for (a) a payment, gift, or other thing of value from the recipient to any person, organization, or corporation, including, but not limited to, the licensed organization or any of its members, employees, or agents, or (b) a pickle card operator's agreement to sell pickle cards on behalf of the licensed organization.

Sec. 47. That section 9-348, Revised Statutes Supplement, 1986, be amended to read as follows:

9-348. (1) The gross proceeds definite profit of any lottery by the sale of pickle cards shall be segregated from other revenue of any licensed organization conducting the lottery and placed in a separate checking account. All lawful purpose donations and expenses relating to the licensed organization's lottery by the sale of pickle cards, including the allowable expenses, any commission paid to a pickle card operator, and the unit cost, but excluding the payment of prizes for winning cards, shall be paid by check from such account and shall be made payable to the ultimate use of such lawful purpose donations or expenses.

(2) Separate records shall be maintained by any licensed organization conducting a lottery by the sale of pickle cards. Each nonprofit organization conducting a lottery by the sale of pickle cards shall keep a record of all locations or persons who are paid to sell pickle cards. Records and lists required by the

Nebraska Pickle Card Lottery Act shall be preserved for at least three years. Any law enforcement agency or other agency of government shall have the authority to investigate the records relating to lotteries by the sale of pickle cards and gross proceeds from such lotteries at any time. Organizations shall, upon proper written request, deliver all such records to the department, law enforcement agency, or other agency of government for investigation.

Sec. 48. That section 9-349, Revised Statutes Supplement, 1986, be amended to read as follows:

9-349. A licensed organization conducting a lottery by the sale of pickle cards shall report annually to its membership, on a form prescribed by the department, its gross proceeds, its profits from pickle card sales, and the itemized distribution of such profits resulting from conducting any lottery by the sale of pickle cards pursuant to the Nebraska Pickle Card Lottery Act by such organization. A copy of the annual report, including a breakdown of receipts and expenses, shall be sent to the department. The annual report shall cover the organization's lottery by the sale of pickle cards activities from July 1 to June 30 of each year. The annual report shall be submitted to the department with the organization's application for license renewal or on or before August 15 of each year if license renewal is not intended. Such report shall also include a detailed analysis of all commissions or salaries paid to the pickle card operators and sales agents in the conduct of the lottery by the sale of pickle cards-

Sec. 49. (1) A lottery by the sale of pickle cards shall fund itself after its first year of existence and shall not receive money from any other source, including the operation of other charitable gaming activities, for the payment of prizes, unit cost, allowable expenses, any commission paid to a pickle card operator, lawful purpose donations, or any other expense associated with the operation of the lottery by the sale of pickle cards except as provided in subsection (2) of this section.

(2) A licensed organization establishing a lottery by the sale of pickle cards may finance such lottery with money from the general fund of the licensed organization during the first year of operation of the lottery by the sale of pickle cards. General fund money used to finance a lottery by the sale of pickle cards may be repaid from funds received by the lottery by the sale of pickle cards.

(3) A licensed organization conducting a lottery by the sale of pickle cards shall make all payments associated with the operation of the lottery by the sale of pickle cards, allowable expenses, unit cost, any commission paid to a pickle card operator, and lawful purpose donations, but excluding prizes, by a check drawn upon its pickle card bank account. A licensed organization may commingle funds received from the sale of pickle cards with any general operating funds of the licensed organization or transfer money received from the sale of pickle cards to other general operating accounts of the licensed organization, but the burden of proof shall be on the licensed organization to demonstrate that such commingled funds are not used to make any payments associated with the operation of the lottery by the sale of pickle cards and are used for a lawful purpose.

Sec. 50. That section 9-352, Revised Statutes Supplement, 1987, be amended to read as follows:

9-352. (1) Except when another penalty is specifically provided, any person, licensed organization, distributor, manufacturer, sales agent, or pickle card operator, other licensee, or employee or agent of any person or licensee, who violates any provision of the Nebraska Pickle Card Lottery Act shall be guilty of a Class I misdemeanor for the first offense and a Class IV felony for any second or subsequent violation. Any licensed organization guilty of violating any provision of the act more than once in a twelve-month period shall have its license canceled or revoked. Such matters shall also be referred to any other state licensing agencies for appropriate action.

(2) Each of the following violations of the Nebraska Pickle Card Lottery Act shall be a Class IV felony:

(a) Giving, providing, or offering to give or provide, directly or indirectly, to any public official, employee, or agent of this state, or any agencies or political subdivisions of this state, any compensation or reward or share of the money for property paid or received through gambling activities regulated under Chapter 9 in consideration for obtaining any license, authorization, permission, or privilege to participate in any gaming operations except as authorized under Chapter 9 or any rules and regulations adopted and promulgated pursuant to such chapter;

(b) Making or receiving payment of a portion of the purchase price of pickle cards by a seller of pickle cards to a buyer of pickle cards to induce the

purchase of pickle cards or to improperly influence future purchases of pickle cards;

(c) Using bogus, counterfeit, or nonopaque pickle cards, pull tabs, break opens, punchboards, jar tickets, or any other similar card, board, or ticket, or substituting or using any pickle cards, pull tabs, or jar tickets that have been marked or tampered with;

(d) Employing or possessing any device to facilitate cheating in any lottery by the sale of pickle cards or use of any fraudulent scheme or technique in connection with any lottery by the sale of pickle cards when the amount gained through the use of such items, schemes, or techniques results in a person obtaining over five hundred dollars;

(e) Causing, aiding, abetting, or conspiring with another to cause any person or organization to violate any provision of the Nebraska Pickle Card Lottery Act; or

(f) Knowingly filing a false report under the Nebraska Pickle Card Lottery Act;

(g) Knowingly falsifying or making any false entry in any books or records with respect to any transaction connected with the conduct of a lottery by the sale of pickle cards; or

(h) Knowingly selling or distributing or knowingly receiving with intent to sell or distribute, pickle cards or pickle card units without first obtaining a license in accordance with the Nebraska Pickle Card Lottery Act pursuant to section 9-329, 9-330, or 9-332 or section 32 of this act.

(3) In all proceedings initiated in any court or otherwise under the act, it shall be the duty of the Attorney General and appropriate county attorney to prosecute and defend all such proceedings.

(4) The failure to do any act required by or under the Nebraska Pickle Card Lottery Act shall be deemed an act in part in the principal office of the department. Any prosecution under such act may be conducted in any county where the defendant resides or has a place of business or in any county in which any violation occurred.

(5) In the enforcement and investigation of any offense committed under the act, the department may call to its aid any sheriff, deputy sheriff, or other peace officer in the state.

Sec. 51. (1) Except in accordance with a proper judicial order or as otherwise provided by this section or other law, it shall be a Class I misdemeanor for the Tax Commissioner or any employee or agent of the

Tax Commissioner to make known, in any manner whatsoever, the contents of any tax return or any reports or records submitted by a licensed distributor or manufacturer to the department pursuant to the Nebraska Pickle Card Lottery Act and any rules and regulations adopted and promulgated pursuant to such act.

(2) Nothing in this section shall be construed to prohibit (a) the delivery to a taxpayer, licensee, or his or her duly authorized representative or his or her successors, receivers, trustees, executors, administrators, assignees, or guarantors, if directly interested, a certified copy of any tax return or report or record, (b) the publication of statistics so classified as to prevent the identification of particular tax returns or reports or records, (c) the inspection by the Attorney General, a county attorney, or other legal representative of the state of tax returns or reports or records submitted by a licensed distributor or manufacturer when information on the tax returns or reports or records is considered by the Attorney General, county attorney, or other legal representative to be relevant to any action or proceeding instituted by the taxpayer or licensee or against whom an action or proceeding is being considered or has been commenced by any state agency or county, (d) the furnishing of any information to the United States Government or to states allowing similar privileges to the Tax Commissioner, (e) the disclosure of information and records to a collection agency contracting with the Tax Commissioner for the collection of delinquent taxes under the Nebraska Pickle Card Lottery Act, (f) the publication or disclosure of final administrative opinions and orders made by the Tax Commissioner in the adjudication of license denials, suspensions, cancellations, or revocations or the imposition of fines, (g) the release of any application filed with the department to obtain a license to conduct activities under the act, which shall be deemed a public record, or (h) the release of any report filed pursuant to section 9-349 or any other report filed by a licensed organization, sales agent, or pickle card operator pursuant to the act, which shall be deemed a public record.

(3) Nothing in this section shall prohibit the Tax Commissioner or any employee or agent of the Tax Commissioner from making known the names of persons, firms, or corporations licensed to conduct activities under the act, the locations at which such activities

are conducted by license holders, or the dates on which such licenses were issued.

(4) Notwithstanding the provisions of subsection (1) of this section, the Tax Commissioner may permit the Postal Inspector of the United States Postal Service or his or her delegates to inspect a tax return or reports or records submitted by a licensed distributor or manufacturer pursuant to the act when information on the returns or reports or records is relevant to any action or proceeding instituted or being considered by the United States Postal Service against such person for the fraudulent use of the mails to carry and deliver false and fraudulent tax returns to the Tax Commissioner with the intent to defraud the State of Nebraska or to evade the payment of Nebraska state taxes.

(5) Notwithstanding the provisions of subsection (1) of this section, the Tax Commissioner may permit other tax officials of this state to inspect a tax return or reports or records submitted pursuant to the act, but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the rules and regulations of the Tax Commissioner.

Sec. 52. There is hereby appropriated (1) \$151,348 from the Charitable Gaming Operations Fund for the period July 1, 1988, to June 30, 1989, and (2) \$88,610 from the Charitable Gaming Operations Fund for the period July 1, 1989, to June 30, 1990, to the Department of Revenue, for Program 504.

Total expenditures for permanent and temporary salaries and per diems from funds appropriated in this section shall exceed neither \$51,907 for the period July 1, 1988, to June 30, 1989, nor \$53,362 for the period July 1, 1989, to June 30, 1990.

Sec. 53. This act shall become operative on October 1, 1988.

Sec. 54. That original sections 9-1,101, 9-301 to 9-304, 9-309, 9-314, 9-316, 9-320, 9-322 to 9-329, 9-331, 9-333, 9-340, 9-342 to 9-344, and 9-346 to 9-349, Revised Statutes Supplement, 1986, and section 9-352, Revised Statutes Supplement, 1987, and also section 9-318, Revised Statutes Supplement, 1986, are repealed.