

AMENDMENTS TO LB538
(Amendments to AM1278)

Introduced by Wayne, 13.

1 1. Strike sections 1, 9, and 10 and insert the following new
2 sections:

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

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

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

9 (2) Department means the Department of Revenue;

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

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

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

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

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

26 (5) Fantasy contest operator means a person that offers a digital

1 platform for the playing of a fantasy contest, administers one or more
2 fantasy contests, and awards any prize of value;

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

5 (7) Gross fantasy contest revenue means the amount equal to the
6 total of entry fees that a fantasy contest operator collects from fantasy
7 contest players less the total of sums paid out as prizes to fantasy
8 contest players multiplied by the location percentage; and

9 (8) Location percentage means, for each fantasy contest, the
10 percentage rounded to the nearest tenth of a percent of the total of
11 entry fees collected from fantasy contest players located in Nebraska at
12 the time of entry into the fantasy contest divided by the total entry
13 fees collected from fantasy contest players in all locations in the
14 fantasy contest.

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

24 (2) On or before each annual anniversary date of the payment made
25 pursuant to subsection (1) of this section, a fantasy contest operator
26 shall pay an annual registration renewal fee of six percent of the
27 fantasy contest operator's gross fantasy contest revenue for the
28 preceding twelve months to the department. Initial and renewal
29 registration fees shall be paid in a manner prescribed by the department.
30 No refunds shall be allowed of any registration fees collected by the
31 department. Any fantasy contest operator that allows a registration to

1 lapse without requesting an extension of time to file an application for
2 renewal shall be required to resubmit an initial registration
3 application. The department may grant an extension upon receipt of a
4 written request from a fantasy contest operator.

5 (3) The department shall remit all registration and renewal fees
6 collected under this section to the State Treasurer for credit to the
7 General Fund.

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

17 Sec. 4. (1) The department shall consider each application filed
18 for registration and shall issue a valid registration to any applicant
19 who meets the criteria set forth in the Fantasy Contests Act. The
20 department shall deny registration to any applicant who does not meet
21 such criteria.

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

29 (3) The department shall issue or deny a registration application
30 within sixty days after receipt of the application. If the registration
31 is not issued, the department shall provide the fantasy contest operator

1 with the specific justification for not issuing such registration.

2 (4) Any pending application made under the Fantasy Contests Act
3 shall not be considered a public record for purposes of sections 84-712
4 to 84-712.09 until made public by the department pursuant to section 3 of
5 this act.

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

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

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

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

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

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

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

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

22 (a) Prevent a fantasy contest operator, any employee of the fantasy
23 contest operator, and any relative living in the same household as such
24 fantasy contest operator or employee from participating as a fantasy
25 contest player in any fantasy contest offered by a fantasy contest
26 operator;

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

30 (c) Prohibit the following persons from participating in a fantasy
31 contest based on the sport or competition in which the person

1 participates or with which the person is otherwise associated:

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

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

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

9 (e) Provide a fantasy contest player with access to information on
10 responsible play and access to information on seeking assistance for
11 compulsive gambling behavior;

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

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

19 (h) Allow a person to restrict himself or herself from entering a
20 fantasy contest upon request and provide reasonable steps to prevent the
21 person from entering any fantasy contest offered by the fantasy contest
22 operator;

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

26 (j) Segregate fantasy contest player funds from operational funds or
27 maintain a reserve that exceeds the amount of player funds on deposit,
28 which reserve may not be used for operational activities. The reserve
29 funds may be in the form of cash, cash equivalents, payment processor
30 reserves, payment processor receivables, an irrevocable letter of credit,
31 a bond, or any combination thereof, in the amount that must exceed the

1 total balances of the accounts of all fantasy contest players; and
2 (k) Prohibit the use of unauthorized third-party scripts on the
3 platform.

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

7 (3) A fantasy contest operator shall:

8 (a) Contract annually with a certified public accountant to conduct
9 an independent financial audit consistent with the standards accepted by
10 the American Institute of Certified Public Accountants; and

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

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

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

24 28-1101 As used in this article, unless the context otherwise
25 requires:

26 (1) A person advances gambling activity if, acting other than as a
27 player, he or she engages in conduct that materially aids any form of
28 gambling activity. Conduct of this nature includes, but shall not be
29 limited to, conduct directed toward (a) the creation or establishment of
30 the particular game, contest, scheme, device, or activity involved, (b)
31 the acquisition or maintenance of premises, paraphernalia, equipment, or

1 apparatus therefor, or (c) engaging in the procurement, sale, or offering
2 for sale within this state of any chance, share, or interest in a lottery
3 of another state or government whether or not such chance, share, or
4 interest is an actual lottery ticket, receipt, contingent promise to pay,
5 order to purchase, or other record of such interest except as provided in
6 the Fantasy Contests Act, the Nebraska County and City Lottery Act, the
7 Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act,
8 the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or
9 section 9-701;

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

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

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

28 (a) Entering into a lawful business transaction;

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

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

2 (d) Conducting or participating in any bingo, lottery by the sale of
3 pickle cards, lottery, raffle, or gift enterprise conducted in accordance
4 with the Fantasy Contests Act, the Nebraska Bingo Act, the Nebraska
5 County and City Lottery Act, the Nebraska Lottery and Raffle Act, the
6 Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle
7 Act, the State Lottery Act, or section 9-701;

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

27 (6) Something of value shall mean any money or property, any token,
28 object, or article exchangeable for money or property, or any form of
29 credit or promise directly or indirectly contemplating transfer of money
30 or property or of any interest therein, or involving extension of a
31 service or entertainment; and

1 (7) Prize contest shall mean any competition in which one or more
2 competitors are awarded something of value as a consequence of winning or
3 achieving a certain result in the competition and (a) the value of such
4 awards made to competitors participating in the contest does not depend
5 upon the number of participants in the contest or upon the amount of
6 consideration, if any, paid for the opportunity to participate in the
7 contest or upon chance and (b) the value or identity of such awards to be
8 made to competitors is published before the competition begins.

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

11 28-1105 (1) A person commits the offense of possession of gambling
12 records if, other than as a player, he or she knowingly possesses any
13 writing, paper, instrument, or article which is:

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

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

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

29 Sec. 10. Section 28-1107, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 28-1107 (1) A person commits the offense of possession of a gambling

1 device if he or she manufactures, sells, transports, places, possesses,
2 or conducts or negotiates any transaction affecting or designed to affect
3 ownership, custody, or use of any gambling device, knowing that it shall
4 be used in the advancement of unlawful gambling activity.

5 (2) The owner or operator of a retail establishment who is not a
6 manufacturer, distributor, or seller of mechanical amusement devices as
7 defined under the Mechanical Amusement Device Tax Act, shall have an
8 affirmative defense to possession of a gambling device described in
9 subsection (1) of this section if the device bears an unexpired
10 mechanical amusement device decal as required by such act. However, such
11 affirmative defense may be overcome if the owner or operator had actual
12 knowledge that operation of the device constituted unlawful gambling
13 activity at any time such device was operated on the premises of the
14 retail establishment.

15 ~~(2) This section shall not apply to any coin-operated mechanical~~
16 ~~gaming device, computer gaming device, electronic gaming device, or video~~
17 ~~gaming device which has the capability of awarding free games, which is~~
18 ~~intended to be played and is in fact played for amusement only, and which~~
19 ~~may allow the player the right to replay such gaming device at no~~
20 ~~additional cost, which right to replay shall not be considered money or~~
21 ~~property, except that such mechanical game (a) can be discharged of~~
22 ~~accumulated free replays only by reactivating the game for one additional~~
23 ~~play for each accumulated free replay and (b) makes no permanent record~~
24 ~~directly or indirectly of free replays so awarded.~~

25 (3) Notwithstanding any other provisions of this section, any
26 mechanical game or device classified by the federal government as an
27 illegal gambling device and requiring a federal Gambling Device Tax Stamp
28 as required by the Internal Revenue Service in its administration of 26
29 U.S.C. 4461 and 4462, amended July 1, 1965, by Public Law 89-44, are
30 hereby declared to be illegal and excluded from the exemption granted in
31 this section.

1 (4) ~~(3)~~ Possession of a gambling device is a Class II misdemeanor.

2 Sec. 11. Section 28-1113, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 28-1113 Nothing in this article shall be construed to:

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

8 (2) Prohibit or punish the conducting or participating in any bingo,
9 lottery by the sale of pickle cards, lottery, raffle, ~~or~~ gift enterprise,
10 or fantasy contest when conducted in accordance with the Fantasy Contests
11 Act, the Nebraska Bingo Act, the Nebraska County and City Lottery Act,
12 the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery
13 Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or
14 section 9-701.

15 Sec. 19. Sections 10, 12, 13, 14, 15, 16, 17, 18, and 21 of this
16 act become operative on January 1, 2020. The other sections of this act
17 become operative on their effective date.

18 Sec. 20. Original sections 28-1101, 28-1105, and 28-1113, Reissue
19 Revised Statutes of Nebraska, are repealed.

20 Sec. 21. Original sections 28-1107, 77-3001, 77-3006, 77-3007,
21 77-3008, 77-3010, and 77-3011, Reissue Revised Statutes of Nebraska, are
22 repealed.

23 2. Renumber the remaining sections and correct internal references
24 accordingly.