

2010

LEGISLATIVE BILL SUMMARIES

GENERAL AFFAIRS COMMITTEE

NEBRASKA LEGISLATURE

ONE HUNDRED FIRST LEGISLATURE
SECOND SESSION

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LB 404	(Cornett) Adopt the Reduced Cigarette Ignition Propensity Act.....	19
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LB 443 (Christensen) Provide for the regulation of adult and sexually oriented businesses21
Indefinitely Postponed.

SUMMARIES OF BILLS

PASSED THE LEGISLATURE – GOVERNOR SIGNED

LB 137 (Avery) Redefine the term “campus” for purposes of the Nebraska Liquor Control Act.

LB 137 amends Section 53-103(32) of the Nebraska Liquor Control Act. This section defines the boundaries of the University of Nebraska – Lincoln campus. Specifically, LB 137 establishes the western boundary of the main campus as “the east right-of-way line of Tenth Street from R Street to Holdrege Street (Salt Creek Roadway).”

Currently, Section 53-177(2) prohibits the sale of alcoholic liquor within 300 feet of campus. If the University of Nebraska - Lincoln were to hold classes in the Haymarket, the current statute would jeopardize the ability of restaurants and bars within 300 feet of this classroom to sell alcoholic liquor.

LB 189 (Pankonin) Change terminology relating to problem gambling services.

LB 189 harmonizes the terminology relating to addiction services in accordance with LB 1058 (2008). In 2008, LB 1058 changed the name and redefined the responsibilities of the State Committee on Problem Gambling. Prior to the passage of LB 1058, the Committee was known as the State Advisory Committee on Problem Gambling and Addiction Services. When the words “addiction services” were eliminated from the Committee’s name, other references to addiction services should have been stricken in Sections 71-816 and 71-817. LB 189 would eliminate this language.

LB 189 would also replace “compulsive” with “problem” when the word is used to define gambling. The term “problem” is now preferred by most research and treatment professionals. It has a broader meaning, because it applies to a range of gambling behavior that includes but is not limited to compulsive or pathological gambling.

LB 198 (Stuthman) Adopt the Reduced Cigarette Ignition Propensity Act.

LB 198 creates the Reduced Cigarette Ignition Propensity Act. The Act establishes standards for testing, reporting, and certifying the ignition strength of cigarettes. LB 198 includes civil penalties for violating this Act and authorizes the State Fire Marshal and Attorney General to enforce the provisions of the Act.

Details:

Section 1 - This section names the Act the Reduced Cigarette Ignition Propensity Act.

Section 2 - Defines the following terms: (1) Agent, (2) Cigarette, (3) Consumer Testing, (4) Manufacturer, (5) Quality Control and Quality Assurance Program, (6) Repeatability, (7) Retail Dealer, (8) Sale, (9) Sell, and (10) Wholesale Dealer.

Section 3 - Requires cigarettes to be tested to determine whether they meet the performance standard with a written certification filed by the manufacturer with the State Fire Marshal. Section (1) Subsections (a), (b), (c), (d), (e), (f), (g), and (h) specify the testing requirements. Subsection (8) states that this Act shall follow the New York Safety Standards for Cigarettes, as such standards existed on the operative date of this Act.

Section 4 - Requires that cigarettes to be sold or offered for sale in Nebraska be tested and certified. Each manufacturer shall submit to the State Fire Marshal a

written certification. Subsection (4) requires that each cigarette listed in the brand family of cigarettes shall be recertified every five years. Subsection (5) requires that the manufacturer pay the State Fire Marshal a fee of \$1,000 for each brand family of cigarettes identified in the certification. Subsection (6) establishes the Reduced Cigarette Ignition Propensity Fund, which will consist of all certification fees and any other funds made available for such purposes. Any funds available for investment will be invested by the State Investment Officer. Subsection (7) requires that if there are any changes to cigarettes that may cause that cigarette to no longer comply with this Act, then those cigarettes are not to be sold until the cigarettes have been retested.

Section 5 - This section deals with how the cigarettes are to be marked so as to indicate that they have been certified in accordance with Section 4 of this Act.

Section 6 - Subsection (1) specifies the civil penalties for a manufacturer, wholesale dealer, agent, or any other person or entity that knowingly sells or offers to sell cigarettes in violation of Section 3 of this Act. 1st offense penalty is not to exceed \$1,000 per sale. Subsequent offense penalty is not to exceed \$10,000 per sale. The subsequent offense penalty is capped at \$50,000 during any 30-day period. Subsection (2) specifies the civil penalties for a retail dealer who knowingly sells cigarettes in violation of Section 3 of this Act. 1st offense penalty is not to exceed \$250. Subsequent offense penalty is not to exceed \$500 per sale or offer for sale of cigarettes. This penalty against any retail dealer is not to exceed \$25,000 during any 30-day period. Subsection (3) sets the civil penalties for any corporation, partnership, sole proprietor, limited partnership, or association making the cigarettes that knowingly falsify certification pursuant to Section 4 of this Act to not exceed \$75,000. Subsection (4) states that any person violating any other section of this Act is liable to a civil penalty not to exceed \$1,000 for a 1st offense and \$5,000 for a subsequent offense. Subsection (5) requires the seizure and forfeiture of all cigarettes that have been sold or offered for sale that do not comply with the performance standards required by Section 3 of this Act. The holder of the trademark rights has the right to inspect the cigarettes before they are destroyed. In Subsection (6), the State Fire Marshal or the Attorney General may petition for injunctive relief or to recover any costs or damages suffered by the state because of a violation of the Act. This includes enforcement costs and attorney's fees. Each violation of the Act or of rules or regulations related to the Act constitutes a separate civil violation for which the State Fire Marshal or Attorney General may obtain relief.

Section 7 - Authorizes the State Fire Marshal to adopt and promulgate rules and regulations necessary to carry out the Act. The Tax Commissioner is authorized to inspect cigarettes to ensure that they have the proper markings and requires the Tax Commissioner to notify the State Fire Marshal if marking requirements are not met.

Section 8 - Authorizes the Attorney General and the State Fire Marshal to examine the records of any person in possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale, as well as the stock of cigarettes on the premises.

Section 9 - This Act does not prohibit cigarettes that do not meet the standards of this Act if reasonable steps were taken to ensure that the cigarettes were not sold or offered for sale in Nebraska or if the cigarettes were only used for consumer testing.

Section 10 - Any federal reduced cigarette ignition propensity standard that preempts this Act would cause this Act to become void. This Act preempts any local laws, ordinances, or regulations that conflict with this Act.

Section 11 - Specifies the date that this bill becomes operative as July 1, 2011.

On General File LB 198 was amended by AM 679. AM 679 includes elements of Sen. Cornett's LB 404 and compromises between the two bills, which include the following changes:

1. Referring to the standards as they existed on January 1, 2009.
2. Cigarettes must be recertified every 4 years (LB 404 required recertification every 3 years and LB 198 required recertification every 5 years).
3. AM 679 does not incorporate LB 404's provision allowing the State Fire Marshal to annually adjust fees.
4. AM 679 incorporates LB 404's fee structure for manufacturers, wholesale dealers, agents, or other persons or entities who knowingly sells or offers to sell cigarettes in violation of Section 3: \$10,000 per each sale for a first offense not to exceed \$25,000 for any subsequent offenses not to exceed \$100,000 during any 30-day period.
5. AM 679 incorporates LB 404's fee structure for retail dealers who knowingly sell cigarettes in violation of Section 3: The penalty is not to exceed \$500 for a first offense not to exceed \$2,000 for any subsequent offenses of fewer than 1,000 cigarettes. The penalty is not to exceed \$1,000 for a first offense not to exceed \$5,000 for any subsequent offenses per each sale or offer of sale of 1,000 cigarettes or more.
6. AM 679 incorporates LB 404's fee structure for any corporation, partnership, sole proprietor, limited partnership, limited liability company, limited liability partnership, or association engaged in the manufacture of cigarettes that knowingly make a false certification is liable for subsequent offenses a civil penalty not to exceed \$250,000 for each such false certification.
7. AM 679 states that this Act is terminated if a federal reduced cigarette ignition propensity standard that preempts this Act is adopted and becomes effective.
8. AM 679 states that Sections 1-10 of this Act become operative July 1, 2010 and the other sections become operative on their effective date.
9. AM 679 had additional changes to LB 198 for clarification purposes, which include:
 - A. Changing the definition of cigarette to make it consistent with federal law (AM 679 p. 1, lines 11-18).
 - B. Changing the definition of manufacturer to make it consistent with other states' RCIP Acts to include regulating manufacturers that intend to sell cigarettes in Nebraska (AM 679 p. 1, line 23 - p. 2, line 5).
 - C. Changing the definition of wholesale dealer to avoid any confusion and clarify that the definition does not include a manufacturer (p. 3, lines 4 - 9).
 - D. Clarifying that state officials do not approve markings (p. 6, line 22).
 - E. Eliminating any potential confusion about the entity responsible for making certifications available to other state officials. (p. 6, line 27 - p. 7, line 3)
 - F. Clarifying that manufacturers must submit a certification for each cigarette, and not just for each brand family (p. 7, lines 4 - 5).

G. Clarifying the state officials' enforcement powers without diminishing them (p. 10, line 19 - p. 11, line 1 and p. 11, lines 6 - 11).

H. Requiring notification of wholesale dealers and agents when cigarettes have been found to violate the requirements of this Act so that tax stamps or cigarette tax meter impressions are not affixed to such cigarettes (p. 11, lines 17 - 21).

On Select File, LB 198 was amended by Sen. Stuthman's AM 1179. AM 1179 restored the definition of "cigarette" as it originally appeared in LB 198. AM 1179 also restored the original subsections (3) and (5) as they appeared in LB 198 as introduced. AM 1179 also clarified that the tax commissioner along with the fire marshal could discover violators of the Act and that the fire marshal was removed from the responsibility for filing an action in court, obtaining relief, and to provide all wholesale dealers and agents who sell cigarettes a copy of the judgment for violations of the Act. Finally, AM 1179 changed the operative date for the Act from July 1, 2010 to January 1, 2010.

LB 232 (Nordquist) Permit sales of alcoholic liquor by community college culinary programs.

LB 232 amends the Nebraska Liquor Control Act by allowing community colleges that offer a culinary education program to apply for and receive a Class I liquor license. If the community college receives a Class I liquor license, then it may also obtain a catering license. The community college is limited in its use of its liquor and catering licenses to on-campus events held by the culinary education program or at off-campus events required by the culinary education program.

LB 232 also allows the sale of alcoholic liquor by the community college culinary education program pursuant to Section 53-177(2). Currently, Section 53-177(2), prohibits the sale of alcoholic liquor within 300 feet of campus.

LB 286 (General Affairs) Change distribution of lottery funds.

LB 286 eliminates a sunset date in a provision of the State Lottery Act governing how funds are to be distributed to Lottery beneficiaries. LB 286 also requires that the dollar amount transferred to beneficiary funds shall equal the greater of (a) the dollar amount transferred to the funds in fiscal year 2002-03, which amounts to approximately \$20.2 million, or (b) any amount which constitutes at least twenty-two percent and no more than twenty-five percent of the dollar amount of the lottery tickets which have been sold on an annualized basis. To the extent that funds are available, the Tax Commissioner and Lottery Director may authorize a transfer exceeding twenty-five percent of the dollar amount of the lottery tickets sold on an annualized basis.

LB 286 was amended on General File to contain LB 287 with its Committee Amendment, which authorizes licensed organizations to increase from eight percent to twelve percent of the definite profit of a pickle card to pay for allowable expenses. Currently, only eight percent of the definite profit can be used for allowable expenses. LB 287 with Committee Amendment also increased the sales agents' commissions from four percent to six percent.

In 1988, the sales agent's commission was established at three percent. In 1989, the allowable expense limitation was increased from four percent to six percent and the sales agent's commission was increased from three percent to four percent. In 1995, the allowable expense limitation was increased from six percent to eight percent, but the sales agent's

commission remained unchanged. Therefore it has been 14 years since the allowable expense limitation was increased and 20 years since the sales agent's commission was increased.

LB 355 (Lautenbaugh) Authorize cigar bars under the Nebraska Liquor Control Act and provide duties for owners of cigar bars.

LB 355 amends Section 53-103 of the Nebraska Liquor Control Act by including a definition for cigar bars under subdivision (42) and adding a new Section 4 that excludes cigar bars from the Nebraska Clean Indoor Air Act or any similar city ordinances. This provision would become operable on June 1, 2009 and contains an emergency clause.

On General File, the General Affairs Committee Amendment AM 445 was adopted. AM 445 replaces the previous Section 4 contained in LB 355 with a new Section 4 that prohibits counties from passing resolutions or cities from passing ordinances that prohibit smoking in cigar bars. Second, the amendment adds cigar bars to the list of exemptions to the Nebraska Clean Indoor Air Act. Third, to qualify as a cigar bar, the establishment must demonstrate a gross profit from tobacco sales of 15 percent. The amendment changes this measurement of tobacco sales from gross profit to gross revenue. The gross revenue measurement is preferred by the Liquor Control Commission because it is easier to calculate and is less susceptible to manipulation. Finally, the amendment requires that proof of gross revenue be sent to the Nebraska Liquor Control Commission. This requirement makes it easier for the Liquor Control Commission to monitor compliance.

On General File, Sen. Wightman's AM 827 was adopted. AM 827 prohibits the sale of food in the cigar bar. AM 827 requires the cigar bar to have a walk-in humidor and have 10 percent of its gross revenues from cigars and other tobacco products and tobacco-related products, excluding cigarettes.

On Select File, Sen. Avery's AM 965 was adopted, which prohibited the smoking of cigarettes in cigar bars. Also on Select File, Sen. Lautenbaugh's AM 981 was adopted. AM 981 prohibited the sale of discounted liquor in combination with cigars or other tobacco products and tobacco-related products. AM 981 also requires a \$1,000 non-refundable application fee for a cigar bar liquor license.

LB 411 (Giese) Update the references to the National Electrical Code in the State Electrical Act.

The State Electrical Act contains references to the National Electrical Code. The Legislature periodically updates the State Electrical Act to reflect the most recent National Electrical Code. LB 411 would update the Nebraska State Electrical Act to reflect changes in the National Electrical Code. The State Electrical Act has not been updated since the 2005 changes. LB 411 would update Nebraska's current minimum standards for electrical wiring from the previous 2005 standards to the most recent 2008 standards.

LB 498 (Fulton) Add trustees to the Board of Wyuka Cemetery.

The Wyuka State Cemetery Board currently has three members. LB 498 increases the Board membership from 3 members to 5 members. LB 498 also contains an emergency clause. On Select File, Sen. Coash's AM 1131 was adopted. AM 1131 consists of a conflict of interest provision including a requirement that a board member abstain from participating or voting if such a conflict of interest exists.

LB 500 (Karpisek) Authorize certain cities and villages to use funds for the general care of cemeteries.

LB 500 makes changes regarding perpetual funds in municipal cemeteries. The bill makes it clear that the mayor and city council or the board of trustees may set aside the proceeds of the sale of lots, donations, and bequests as a perpetual fund. It provides that the income from the fund may be used for the general care, management, maintenance, improvement, beautifying, and welfare of the cemetery or as the donor designates.

LB 500 provides that the principal of the perpetual fund may be used for the general care, management, maintenance, improvement, beautifying, and welfare of the cemetery as long as no more than twenty percent of the principal is so used in any fiscal year and no more than forty percent of the principal is so used in any period of ten consecutive fiscal years.

LB 788 (Karpisek) Change provisions relating to managers under the Nebraska Liquor Control Act.

LB 788 Amends section 53-125 and section 53-103 by clarifying that a manager of a corporation with a liquor license shall be a citizen and resident. Currently, there are two references to “manager” in the Liquor Control Act that seem to contradict whether a manager is required to be a citizen and a resident.

LB 861 (Committee) Transfer, reorganize, and remove unconstitutional provisions of the Nebraska Liquor Control Act.

LB 861 is a General Affairs Committee cleanup bill that consists of bill drafters’ recommendations to the Liquor Control Act. The four changes in this bill are as follows:

1. Divide the definitions in section 53-103 into separate sections and place them in alphabetical order, found in sections 5 to 47. Sections 2, 3, 4, 50, 61, 65, 66, 67, 68, and 69 correct references to the new sections where the definitions are found.

2. Create a table in a new section for fees found in section 53-124 and leave section 53-124 as the section that provides procedures for fees. See sections 52 and 53 found on pages 32-38. Sections 1, 4, 48, 49, 51, 54, 55, 56, 57, 58, 59, and 62 correct references to the fees and subdivision of section 53-124 as changed.

3. Change the distribution language for the license fees to the common school fund according to direction from the office of the State Treasurer. See sections 60 and 64 on pages 49-50 and 55-57.

4. Reverse the changes made to section 53-169.01 by Laws 2007, LB578, Section 3. See section 63 on pages 54-55. The court declared the section as amended was unconstitutional in *Southern Wine & Spirits of America, Inc. v. Heineman*, 534 F.Supp.2d 1001 (D.Neb.2008). Case No. 4:07CV3244 (D. Neb.) (2/14/08). All the changes are reversed in this bill.

The following bills were amended into LB 861: LB 786, LB 869, LB 870, LB 883, LB 906, LB 1000, and LB 1012. The bill was also amended on Select File by AM 2163, which allowed local municipalities to extend bar closing times to as late as 2 a.m. with a 60 percent vote. Senator Christensen’s FA (Floor Amendment) 73 changed the voting threshold to two-thirds approval.

VETO OVERRIDDEN

LB 867 (Karpisek) Change shipping license fees for alcohol

LB 867 amends section 53-124 by increasing the shipping license from \$200 to \$1,000. AM 1671 to LB 867 clarifies the Legislature's intent to direct the shippers license fees to the general fund.

SELECT FILE

None

GENERAL FILE

None

INDEFINITELY POSTPONED

LB 262 (Rogert) Change times relating to alcoholic liquor sales and lottery sales as prescribed.

LB 262 amends Section 53-179 of the Nebraska Liquor Control Act. LB 262 extends the time period when lottery may be conducted (Section 1) and alcoholic liquor may be sold (Section 2) to 2 a.m. LB 262 permits establishments licensed to sell alcoholic liquor to allow consumption of alcoholic liquor until 2:15 a.m. However, the local governing body may require closing prior to 2 a.m. If the local governing body has established a closing time prior to 2 a.m., then consumption shall end 15 minutes after that earlier time.

The sale of alcoholic beverages in neighboring states is as follows:

South Dakota – 2 a.m.

Iowa – 2 a.m.

Missouri – 3 a.m. in St. Louis and Kansas City, 1:30 a.m. elsewhere in the state.

Kansas – 2 a.m.

Colorado – 2 a.m.

Wyoming – 2 a.m.

LB 266 (Karpisek) Adopt the Racetrack Gaming Act and change provisions relating to horseracing.

LB 266 establishes the Racetrack Gaming Act (Act) subject to the passage of LR 6CA, which is a constitutional amendment that would allow slot machines at horseracing facilities. The Racetrack Gaming Act is the enabling legislation for LR 6CA. The Act grants the State Racing Commission the power and authority to oversee racetrack gaming. The Act also establishes the State Racing Commission's responsibilities for licensing, regulating, and administering racetrack gaming and outlines the application process. The local political subdivision must approve the license before the State Racing Commission can issue the license. The Act requires an independent audit be conducted.

LB 287 (General Affairs) Change provisions relating to the definite profit of pickle cards.

LB 287 authorizes licensed organizations to use up to ten percent of the definite profit of a pickle card to pay for allowable expenses. Currently, only eight percent of the definite profit can be used for allowable expenses. In 1988, the allowable expenses limitation was initially set at four percent. In 1989, the allowable expenses limitation was increased from four percent to six percent. In 1995, the allowable expense limitation was increased from six percent to eight percent.

LB 287 was amended into LB 286 along with a Committee Amendment. See LB 286.

LB 404 (Cornett) Adopt the Reduced Cigarette Ignition Propensity Act.

LB 404 creates the Reduced Cigarette Ignition Propensity Act. The Act establishes standards for testing, reporting, and certifying the ignition strength of cigarettes. LB 404 includes civil penalties for violating this Act and authorizes the State Fire Marshal and Attorney General to enforce the provisions of this Act. LB 404 is similar to LB 198 introduced by Senator Stuthman.

Details:

Section 1 - This section names the Act the Reduced Cigarette Ignition Propensity Act.

Section 2 - Defines the following terms: (1) Agent, (2) Cigarette, (3) Consumer Testing, (4) Manufacturer, (5) Quality Control and Quality Assurance Program, (6) Repeatability, (7) Retail Dealer, (8) Sale, (9) Sell, and (10) Wholesale Dealer.

Section 3 - Requires cigarettes to be tested to determine whether they meet the performance standard with a written certification filed by the manufacturer with the State Fire Marshal. Section (1) Subsections (a), (b), (c), (d), (e), (f), (g), and (h) specify the testing requirements. Subsection (8) states that this Act shall follow the New York Safety Standards for Cigarettes, as such standards existed on the operative date of this Act.

Section 4 - Requires that cigarettes to be sold or offered for sale in Nebraska be tested and certified. Each manufacturer shall submit to the State Fire Marshal a written certification. Subsection (4) requires that each cigarette listed in the brand family of cigarettes shall be recertified every three years. Subsection (5) requires that the manufacturer pay the State Fire Marshal a fee of \$1,000 for each brand family of cigarettes identified in the certification. The State Fire Marshal may annually adjust the fee to help cover costs. Subsection (6) establishes the Reduced Cigarette Ignition Propensity Fund, which will consist of all certification fees and any other funds made available for such purposes. Any funds available for investment will be invested by the State Investment Officer. Subsection (7) requires that if there are any changes to cigarettes that may cause that cigarette to no longer comply with this Act, then those cigarettes are not to be sold until the cigarettes have been retested.

Section 5 - This section deals with how the cigarettes are to be marked so as to indicate that they have been certified in accordance with Section 4 of this Act.

Section 6 - Subsection (1) specifies the civil penalties for a manufacturer, wholesale dealer, agent, or any other person or entity that knowingly sells or offers to sell cigarettes in violation of Section 3 of this Act. 1st offense penalty is not to exceed \$10,000 per sale. Subsequent offense penalty is not to exceed \$25,000 per sale. The subsequent offense penalty is capped at \$100,000 during any 30-day period. Subsection (2) specifies the civil penalties for a retail dealer who knowingly sells

cigarettes in violation of Section 3 of this Act. 1st offense penalty is not to exceed \$550. Subsequent offense penalty is not to exceed \$2,000 per sale or offer for sale no more than 1,000 cigarettes. If the total number of cigarettes sold or offered for sale exceeds 1,000, then the 1st offense penalty is not to exceed \$1,000 and any subsequent offense is not to exceed \$5,000 for each sale. This penalty against any retail dealer is not to exceed \$25,000 during any 30-day period. Subsection (3) sets the civil penalties for any corporation, partnership, sole proprietor, limited partnership, limited liability company, limited liability partnership, or association making the cigarettes that knowingly falsify certification pursuant to Section 4 of this Act. A 1st offense penalty shall be at least \$75,000 and any subsequent offense penalty is not to exceed \$250,000 for each false certification. Subsection (4) states that any person violating any other section of this Act is liable to a civil penalty not to exceed \$1,000 for a 1st offense and \$5,000 for a subsequent offense. Subsection (5) requires the seizure and forfeiture of all cigarettes that have been sold or offered for sale that do not comply with the performance standards required by Section 3 of this Act. The holder of the trademark rights has the right to inspect the cigarettes before they are destroyed. In Subsection (6), the State Fire Marshal or the Attorney General may petition for injunctive relief or to recover any costs or damages suffered by the state because of a violation of the Act. This includes enforcement costs and attorney's fees. Each violation of the Act or of rules or regulations related to the Act constitutes a separate civil violation for which the State Fire Marshal or Attorney General may obtain relief.

Section 7 - Authorizes the State Fire Marshal to adopt and promulgate rules and regulations necessary to carry out the Act. The Tax Commissioner is authorized to inspect cigarettes to ensure that they have the proper markings and requires the Tax Commissioner to notify the State Fire Marshal if marking requirements are not met.

Section 8 - Authorizes the Attorney General and the State Fire Marshal to examine the records of any person in possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale, as well as the stock of cigarettes on the premises.

Section 9 - This Act does not prohibit cigarettes that do not meet the standards of this Act if reasonable steps were taken to ensure that the cigarettes were not sold or offered for sale in Nebraska or if the cigarettes were only used for consumer testing.

Section 10 - Any federal reduced cigarette ignition propensity standard that preempts this Act would cause this Act to become void. This Act preempts any local laws, ordinances, or regulations that conflict with this Act.

Section 11 - Specifies the date that this bill becomes operative as July 1, 2010.

LB 415 (Christensen) Prohibit tobacco sales from self-service displays.

LB 415 prohibits self-service displays that sell cigarettes or other tobacco products except when a vending machine is located in a tobacco specialty store or in an area, office, business, plant, or factory which is not open to the general public. The prohibition also does not apply to vending machines on the licensed premises of any establishment having a license issued under the Nebraska Liquor Control Act for the sale of alcoholic liquor for consumption on the premises when such machine or device is located in the same room in which the alcoholic liquor is dispensed.

A first offense is a Class III misdemeanor. A second offense results in a six-month suspension of tobacco license. A third offense results in the permanent revocation of tobacco license. "Self-service displays" are defined as being located in an area accessible to consumers at retail without the assistance of the owner or operator, or agent or employee of owner or operator. "Tobacco specialty store" is defined as a retail establishment that derives at least 75% of its revenue from the sale of cigarettes and other tobacco products. This Act becomes operative January 1, 2010.

LB 443 (Christensen) Provide for the regulation of adult and sexually oriented businesses.

Section 1 – Policy statement outlining the health reasons for this Act including the primary and secondary effect of adult businesses and sexually oriented businesses.

Section 2 – Definitions for the following: Adult business; Employee; Operate; Operator; Patron; Premises; Seminudity; Sexually Explicit Nudity; Sexually Oriented Business; Sexually oriented entertainment Activity; Sexually Oriented Material; Specified Anatomical Areas; and Specified Sexual Activity.

Section 3 - Limits the hours that an adult business or sexually oriented business can be open by prohibiting operation between the hours of 11 pm and 8 am. Such a business that has a liquor license may remain open according to the hours specified in the liquor license as long as the business does not conduct, offer, or allow sexually oriented entertainment activity between the hours of 11 pm and 8 am.

(2) (a) Employees of adult businesses and sexually oriented businesses while in a state of sexually explicit nudity or while seminude must remain at least 6 feet from all patrons and on a stage at least two feet above the floor. Such employees shall not touch a patron or the patron's clothing or touch another person who is in a state of sexually explicit nudity or while seminude while in the view of a patron. (b) No person shall knowingly touch an employee while that employee is in a state of sexually explicit nudity or while seminude or touch the clothing or costume of an employee while that employee is in a state of sexually explicit nudity or while seminude. (c) Prohibits an employee of an adult business or a sexually oriented business who regularly appears in a state of sexually explicit nudity or while seminude on the premises of that adult business or sexually oriented business shall not knowingly be or remain within 6 feet of a patron.

(3) A person who violates subsection (1) is guilty of a Class I misdemeanor.

(4) A person who violates subsection (2) is guilty of a Class IV misdemeanor.

Section 4 – This section establishes where adult businesses or sexually oriented businesses established after the effective date of this Act shall be located. This Section prohibits such businesses from being located within ¼ mile of a child care facility, a private or public school, a public playground, a public recreational facility, a residence, or a place of worship.

The distance between such a business and a location specified in this section is measured in a straight line in all directions without regard for intervening structures or objects, from the nearest point on the property line of a parcel containing such a business to the nearest point on the property line of a location specified in this section.

There is no violation of the distance requirement if one of the businesses specified in this section opens up within the ¼ mile of an adult business or sexually oriented business after such a business has conformed to this requirement. A person violating

this section is guilty of a Class I misdemeanor. Each day of the violation constitutes a separate offense.

Section 5 – This section states that if any section of this Act or any part of any section of this Act is declared invalid or unconstitutional, then such a declaration would not invalidate or make the rest of the Act unconstitutional.

LB 478 (Rogert) Provide for alcoholic liquor sale and consumption on Game and Parks Commission property.

LB 478 amends Section 53-186(2) to authorize the Liquor Control Commission to issue licenses for the sale of alcoholic liquor at retail on lands owned by the Game and Parks Commission. LB 478 also clarifies that nothing in this section of the Nebraska Liquor Control Act shall be construed to prohibit consumption of alcoholic liquor on lands owned or operated by the Game and Parks Commission.

LB 576 (Rogert) Provide for licenses for sales of liquor and for consumption of liquor in state parks.

LB 576 amends Section 53-186 to allow the consumption of alcoholic liquor on lands within the state park system subject to reasonable rules and regulations of the Game and Parks Commission. The Nebraska Liquor Control Commission may issue licenses for the retail sale of alcoholic liquor and for special events within the state park system.

LB 600 (Karpisek) Authorize pool halls under the Nebraska Liquor Control Act and provide duties for owners of pool halls.

LB 600 amends Section 53-103 of the Nebraska Liquor Control Act by including a definition for pool halls under subdivision (42). LB 600 also excludes pool halls from the Nebraska Clean Indoor Air Act or any similar city ordinances. This provision would become operable on June 1, 2009 and contains an emergency clause.

LB 605 (Howard) Change liquor license provisions.

LB 605 amends the Nebraska Liquor Control Act to require that an application for a new liquor license includes “certified copies of documents demonstrating that the applicant is current on all obligations relating to federal, state, and local taxes and all contributions required under the Nebraska Workers’ Compensation Act and the Employment Security Law.”

In the Liquor Control Commission’s determination of whether to issue a retail license, craft brewery license, or a microdistillery license, LB 605 requires that the Commission consider “[T]he opposition or support of residents or businesses within five hundred feet of the proposed licensed premises or of registered neighborhood associations within one hundred feet of the proposed licensed premises. The commission may deny the application based solely upon the opposition of such residents, businesses, or neighborhood associations pursuant to this subdivision.”

LB 605 also terminates a liquor license upon the sale of the licensed premises. “The purchaser shall not manufacture, store, or sell alcoholic liquor on the purchased premises until the purchaser has obtained a license in the purchaser’s own name.” LB 605 adds a new Section 6 which reads, “No retail business shall store alcoholic liquor on its premises unless such business holds a license issued under the Nebraska Liquor Control Act.”

LB 664 (Janssen) Change provisions relating to sale and consumption of alcoholic liquor on public property.

LB 664 amends Section 53-186(2)(b) to remove the consent requirement of the local governing body for determining whether a retail liquor license should be issued. Instead, the license approval process described in Section 53-134 would apply, meaning that the local governing body would make a recommendation to the Liquor Control Commission regarding the issuance of a retail liquor license within its jurisdiction.

LB 744 (Giese) Provide for adoption of the National Electrical Code by the State Electrical Board.

LB 744 would provide the State Electrical Board with the authority to update references to the National Electrical Code through the rules and regulations process instead of changing state statute. Under the bill, the State Electrical Board would be required to adopt the most recent version of the National Electrical Code and any amendments to the code before January 1 of the year following the issuance and adoption of the code by the National Fire Protection Association.

LB 783 (Karpisek) Change restrictions on sales of alcohol near a college or university.

LB 783 amends sections 53-103 and 53-177 of the Liquor Control Act. Subsection (2) states that, “No alcoholic liquor, other than beer, shall be sold for consumption on the premises within three hundred feet from the campus of any college or university in the state . . .” LB 783 would strike “within 300 feet from the campus.” Since “campus” was struck from this section of the Liquor Control Act, the definition of “campus” in 53-103(32) was also stricken.

LB 786 (Karpisek) Eliminate the prohibition on adding alcohol to beer.

LB 786 repeals section 53-174 of the Liquor Control Act. Section 53-174 states that, “It shall be unlawful for any person or for any licensee to sell or offer for sale in this state any beer to which has been added any alcohol or to permit any person to add any alcohol to any beer on the premises of such person or licensee.” LB 786 was amended into LB 861, which was passed by the Legislature and signed by the Governor.

LB 825 (Karpisek) Provide for parimutuel wagering on horseraces at satellite wagering facilities.

LB 825 is the enabling legislation for LR 277CA. LB 825 allows horseracing racetracks to establish satellite facilities, with the local community’s approval. The additional revenue that would be generated by satellite facilities would be placed with the Racing Commission to enhance purses, provide breeder awards, and allow for racetrack construction and maintenance.

Of the 30 states that allow horseracing, 24 of them allow wagering from locations other than the racetrack. The Racing Commission will have the responsibilities along with the local authorities to oversee a satellite facility. LB 825 requires a feasibility study be submitted to the Racing Commission prior to a license being issued by the Racing Commission.

LB 834 (Howard) Change provisions and penalties relating to liquor licenses.

LB 834 requires that the burden of proof as to whether a liquor license applicant is fit, willing and able to conform to the provisions of the Nebraska Liquor Control Act be on

the applicant. LB 834 requires any licensee who has been found guilty or pleaded guilty to any violation of the Nebraska Liquor Control Act or has been found guilty of any misdemeanor or felony during the previous license year shall be required to make a formal application for license renewal. The licensee would be required to appear before a formal hearing on the license renewal before the local governing body and the Nebraska Liquor Control Commission.

LB 834 increases the fines paid in lieu of suspension from the current \$50/\$100 per day to:

- 1) \$250 per day for first offense/ \$300 per day for subsequent suspension.
- 2) \$500 per day for second offense occurring within four years of first suspension.

Licensee shall not be allowed to pay a fine in lieu of suspension and shall suspend sales for full period of suspension for third offense and subsequent offenses within 10 years of first suspension.

LB 854 (Howard) Change requirements for licensure under the Nebraska Liquor Control Act.

LB 854 would require all applicants for liquor licenses in Nebraska to certify to the Nebraska Liquor Control Commission that all federal, state and local taxes and all contributions required under the Workmen's Compensation Act and the Employment Security Law are current at the time of the application.

LB 869 (Karpisek) Provide for and change fees relating to licensure under the Nebraska Liquor Control Act.

LB 869 amends section 53-123 of the Liquor Control Act by increasing the application fee for a liquor license from \$45 to \$500. LB 869 was amended to change the fee to \$400. The liquor license fee would also become non-refundable. LB 869 was amended into LB 861, which was passed by the Legislature and signed by the Governor.

LB 870 (Karpisek) Provide for a temporary operating permit under the Nebraska Liquor Control Act.

LB 870 amends section 53-149 of the Liquor Control Act by creating a temporary operator's permit. Under current law, a business owner with a liquor license may sell an establishment to a buyer who may then operate the establishment under the seller's liquor license until the buyer's application has been processed and the buyer qualifies for a regular liquor license. Any Liquor Control Act violations committed by the buyer then go on the seller's liquor license.

Under this bill, once an establishment is sold, the seller's liquor license is immediately terminated and the buyer may apply for a temporary operator's permit to continue to operate the establishment until the buyer's application for a new license is processed. Any violations of the Liquor Control Act committed by the buyer would now go on the buyer's record and could impact the buyer's ability to qualify for a regular liquor license.

AM 1938 requires the purchaser to provide the Liquor Control Commission with documentation that the seller is current on all accounts with any wholesaler. A seller who provides false information regarding such accounts is guilty of a Class VI misdemeanor for each offense. Also, if the application is withdrawn by the applicant or is denied by the Liquor Control Commission, the previous license may be reinstated at the discretion of the Liquor Control Commission upon request by the previous licensee. LB 870 was amended into LB 861, which was passed by the Legislature and signed by the Governor.

LB 883 (Coash) Provide for offsite storage facilities and change reporting and payment requirements for farm wineries.

LB 883 would allow farm wineries to store and warehouse products at an offsite facility. The Liquor Control Commission must be notified of the location and the farm winery must maintain at the offsite facility a separate perpetual inventory of the product stored there. Consumption of alcoholic liquor at the facility is strictly prohibited. LB 883 would also change the reporting requirement and tax payment for farm wineries from a monthly requirement to an annual requirement.

AM 1684 to LB 883 harmonizes the bill with federal law regarding reporting and tax payment schedules. AM 1684 states that farm wineries that pay less than \$1,000 in excise taxes are to report the total amount of wine produced and pay their taxes on an annual basis. Farm wineries that pay \$1,000 or more in excise taxes are to report the total amount of wine produced and pay their taxes on a monthly basis. Farm wineries that were reporting and paying on an annual basis that become liable for \$1,000 or more in excise taxes are to pay their taxes immediately. LB 883 was amended into LB 861, which was passed by the Legislature and signed by the Governor.

LB 887 (Stuthman) Change provisions for interstate simulcast facility licenses.

Currently, in order for a horseracing racetrack to conduct interstate simulcasts, it must conduct live racing 70 percent of the days assigned in 1988. LB 887 reduces this requirement to 55 percent.

LB 900 (Karpisek) Change retail license fees for sales of alcohol.

LB 900 amends section 53-124 of the Liquor Control Act by creating a different annual liquor license fee based on whether the establishment is located in a city of the metropolitan class, a city of the primary class, or any other location in Nebraska.

For a Class A liquor license, the fee would be \$300 in a city of the metropolitan class, \$200 in a city of the primary class, and \$100 in any other location in Nebraska. For a Class B liquor license, the fee would be \$300 in a city of the metropolitan class, \$200 in a city of the primary class, and \$100 in any other location in Nebraska. For a Class C liquor license, the fee would be \$1,000 in a city of the metropolitan class, \$500 in a city of the primary class, and \$300 in any other location in Nebraska. For a Class D liquor license, the fee would be \$750 in a city of the metropolitan class, \$500 in a city of the primary class, and \$250 in any other location in Nebraska. For a Class I liquor license, the fee would be \$750 in a city of the metropolitan class, \$500 in a city of the primary class, and \$250 in any other location in Nebraska.

LB 906 (Karpisek) Eliminate restrictions on sales of alcohol near certain places.

LB 906 amends section 53-177(1) of the Liquor Control Act by eliminating the prohibition of liquor licenses for the sale at retail of any alcoholic liquor within one hundred and fifty feet of any church, hospital, or home for aged or indigent persons or for veterans, their wives or children. LB 906 leaves in the prohibition of liquor licenses for the sale at retail of any alcoholic liquor within one hundred and fifty feet of any school.

AM 2056 to LB 906 would allow the Liquor Control Commission to grant a liquor license for an establishment located within 150 feet of a church. Under current law, no liquor license shall be issued for an establishment located within 150 feet of a church. AM 2056 would require that a hearing be held and notice provided to the affected church. The

contents of AM 2056 were amended into LB 861, which was passed by the Legislature and signed by the Governor.

LB 942 (Gay) Provide for a special shipping permit of alcohol manufacturers.

LB 942 would authorize the Liquor Control Commission to issue a “special shipping permit,” which would allow the holder of the permit to ship wine, beer or spirits into the state for the limited purpose of tastings and festivals. A holder of a “special shipping permit” would make the shipment directly to a person holding a “special designated license.” The holder of the “special shipping permit” would be liable for all excise taxes. A “special shipping permit” shall not be issued to a manufacturer that already holds another license in the state of Nebraska. The “special shipping permit” shall be valid only for the time period designated for the special event as specified on the “special designated license” and shall not exceed \$50.

LB 985 (Karpisek) Adopt the Nebraska Charitable Poker Act.

LB 985 creates the Nebraska Charitable Poker Act, which is the enabling legislation for LR 296CA. LB 985 would allow a licensed organization, such as a nonprofit organization or volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad to host a charitable poker event or to hire a poker event operator to run the event on the licensed organization’s behalf.

The Department of Revenue would regulate the activities under the Nebraska Charitable Poker Act. The Department would license the organizations and poker event operators. A licensed organization is required to pay a \$25 fee for each charitable poker event, is limited to 4 events a year, and is required to pay a tax of 10% of the definite profit. A licensed charitable poker event operator is required to pay a biennial fee of \$500. A participant must be 21 years of age or older to play or participate in a charitable poker event. A charitable poker event tournament may last 72 hours and a charitable poker event cash game may last 24 hours. A participant of a charitable poker event is limited to losses not to exceed \$1,000.

LB 1000 (Karpisek) Change eligibility for licensure for managers and limited liability companies under the Nebraska Liquor Control Act.

LB 1000 amends sections 53-125 and 53-103 of the Liquor Control Act. LB 1000 requires that any officer or director of the LLC or any member with an ownership interest of more than 25% would have to meet the qualifications for a liquor license, which is the current requirement for corporations. LB 1000 also requires that a manager for an LLC would need to be a citizen and a resident of Nebraska. This is consistent with LB 788 (2010), which would also require that a manager for a corporation be a citizen and resident of Nebraska. It is the current interpretation of the Liquor Control Commission that managers be citizens and residents of Nebraska. LB 1000 was amended into LB 861, which was passed by the Legislature and signed by the Governor.

LB 1012 (Rogert) Change State Racing Commission membership provisions.

LB 1012 increases the membership of the State Racing Commission from three to five members. One member shall be appointed from each of the three congressional districts and two shall be appointed at large. The term for each member shall be four years. Not more than three members of the Commission shall be from the same political party and no more than two members of the Commission shall reside in the same congressional district.

Currently, no member or employee of the commission shall have an interest in a horse that is racing under the jurisdiction of the committee, shall have a pecuniary interest or engage in any private employment in a profession or business which is regulated by or interferes or conflicts with the performance or proper discharge of the duties of the commission, shall wager or cause a wager to be placed on the outcome of any race under the jurisdiction and supervision of the commission, or shall have a pecuniary interest or engage in any private employment in a business which does business with any racing association licensed by the commission or in any business issued a concession operator license by the commission. LB 1012 would allow a member of the commission to engage in these activities, but not an employee of the commission.

AM 2162 to LB 1012 allows up to two members of the Racing Commission to be from the same county. Currently, no more than one member of the Racing Commission can be from the same county. AM 2162 also requires Racing Commissioners to file a conflict of interest statement and recuse themselves from voting on matters in which there is a conflict of interest. LB 1012 was amended into LB 861, which was passed by the Legislature and signed by the Governor.

LB 1013 (Rogert) Provide the extended closing time for alcoholic liquor retail licenses as prescribed.

LB 1013 would allow a Class C or Class I liquor license holder to extend their hours of operation for the sale of lottery and alcohol to 2:00 am on Saturdays and Sundays, and 1:00 am Mondays through Fridays. For a Class C liquor license holder to be granted an Extended Closing Time Designation to operate until 2:00 am would require a \$300 application fee. For a Class I liquor license holder to be granted an Extended Closing Time Designation would require a \$200 application fee. This extended hours of operation designation is only available to liquor license holders within a county which encompasses a metropolitan class city and the local governing body may establish an earlier closing time. Currently, Omaha is the only metropolitan class city and Douglas County is the only county which encompasses a metropolitan class city.

AM 1996 to LB 1013 allows local governing bodies or county boards by a 60 percent vote to allow alcohol to be sold until 2 am. Alcoholic liquor may remain in open containers until 15 minutes after the closing hour as determined by the local governing body or county board.

LB 1023 (Price) Change provisions relating to keno.

LB 1023 proposes to allow keno players to obtain a ticket from an automated keno terminal. The bill would also make the paper ticket optional and permit the use of an electronic ticket as a substitute for or in addition to the paper ticket. It is not the intent of LB 1023 to authorize video keno or allow the player to initiate the random selection of numbers which are used to determine winning tickets.

LR 6CA (Karpisek) Constitutional amendment to authorize and regulate racetrack gaming.

LR 6CA places on the 2010 general election ballot a constitutional amendment to Article III, Section 24 allowing slot machines at racetracks. LR 6CA limits the number of slot machines to 3,500 at a total of 7 racetracks. There is a local opt-in provision that requires “prior approval or rejection by the governing body of the political subdivision within which the racetrack is located.”

The State Racing Commission is responsible for “the licensing, administration, regulation, and financial monitoring of racetrack facilities conducting racetrack gaming and the allocation of gaming devices among racetracks conducting racetrack gaming.” LB 266 is the enabling legislation for LR 6CA.

The estimated revenues for Nebraska for 3,025 machines are \$221,000,000. The slot machine gaming revenues would be allocated in the following manner:

- 40% is allocated to the Highway Trust Fund.
- 39% is shared among the racetrack gaming licensees to cover operating costs.
- 10% is allocated to enhance prize purses for thoroughbred racing.
- 4% is allocated to the local governing political subdivisions.
- 2% is allocated to the development and improvement of the thoroughbred breeding industry in Nebraska.
- 2% is allocated to the development and improvement of the quarterhorse industry, large animal veterinary medicine, and equine therapy.
- 2% is allocated for the administrative expenses incurred by the State Racing Commission.
- 1% is allocated to the Compulsive Gamblers Assistance Fund.

LR 277 CA (Karpisek) Constitutional amendment to authorize and regulate racetrack gaming.

Places on the November 2010 general election ballot a Constitutional Amendment that amends Article III, section 24 of the Constitution to allow satellite wagering facilities if approved by the appropriate county, city or village.

LR 296CA (Karpisek) Constitutional amendment to permit the Legislature to authorize and regulate charitable poker.

LR 296CA would place on the 2010 General Election ballot a Constitutional Amendment that would give the Legislature the ability to authorize and regulate charitable poker. LB 985 is the enabling legislation that would need to be passed next year to authorize and regulate charitable poker if the Constitutional Amendment were to be successfully passed by the Nebraskans.

2010 INTERIM STUDY RESOLUTIONS
In Order of Priority

<u>Resolution</u>	<u>One-Liner</u>
528	Interim study to examine issues regarding area restrictions in the Nebraska Liquor Control Act
527	Interim study to examine issues under the jurisdiction of the General Affairs Committee