

## LEGISLATIVE BILL 900

Approved by the Governor April 20, 1978

Introduced by DeCamp, 40

AN ACT to amend sections 28-1101 and 28-1107, Revised Statutes Supplement, 1977, relating to crimes and punishments; to redefine a term; to provide an exclusion for possession of a device; to repeal the original sections; to provide an operative date; and to declare an emergency.

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

Section 1. That section 28-1101, Revised Statutes Supplement, 1977, be amended to read as follows:

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

(1) A person advances gambling activity if, acting other than as a player, he engages in conduct that materially aids any form of gambling activity. Conduct of this nature includes but shall not be limited to conduct directed toward (a) the creation or establishment of the particular game, contest, scheme, device, or activity involved, (b) the acquisition or maintenance of premises, paraphernalia, equipment, or apparatus therefor, (c) the solicitation or inducement of persons to participate therein, (d) the actual conduct of the playing phases thereof, (e) the arrangement of any of its financial or recording phases, or (f) any other phase of its operation. A person advances gambling activity if, having substantial proprietary control or other authoritative control over premises being used with his knowledge for purposes of gambling activity, he permits that activity to occur or continue or makes no effort to prevent its occurrence or continuation;

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

(3) Contest of chance shall mean any contest, game, gaming scheme, or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein;

(4) A person engages in gambling if he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he or someone else will receive something of value in the event of a certain outcome, but does not include:

(a) A lawful business transaction; or

(b) Playing an amusement device or a coin-operated mechanical game that confers only an immediate and unrecorded right of replay not exchangeable for value;

(5) Gambling device shall mean any device, machine, paraphernalia, or equipment that is used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine. Lottery tickets and other items used in the playing phases of lottery schemes are not gambling devices within this definition;

(6) Lottery shall mean a gambling scheme in which (a) the players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other medium, one or more of which chances are to be designated the winning ones, (b) the winning chances are to be determined by a drawing or by some other method based on an element of chance, and (c) the holders of the winning chances are to receive something of value;

(7) Mutuel shall mean a form of lottery in which the winning chances or plays are not determined upon the basis of a drawing or other act on the part of persons conducting or connected with the scheme, but upon the basis of the outcome of future contingent events otherwise unrelated to the particular scheme;

(8) Player shall mean a person over the age of majority who engages in gambling solely as a contestant or bettor. A person who engages in bookmaking as defined in subdivision (2) of this section is not a player;

(9) Private place shall mean a place to which the public does not have access;

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

(11) Something of value shall mean any money or property, any token, object, or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment, or a privilege of playing at a game or scheme without charge.

Sec. 2. That section 28-1107, Revised Statutes Supplement, 1977, be amended to read as follows:

28-1107. (1) A person commits the offense of possession of a gambling device if he manufactures, sells, transports, places, possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody, or use of any gambling device, knowing that it shall be used in the advancement of unlawful gambling activity.

(2) This section shall not apply to any coin-operated mechanical game designed and manufactured to be played for amusement only and which may allow the player the right to replay such mechanical game at no additional cost, which right to replay shall not be considered money or property, except that such mechanical game (a) can accumulate no more than fifteen free replays at one time, (b) can be discharged of accumulated free replays only by reactivating the game for one additional play for each accumulated free replay, and (c) makes no permanent record directly or indirectly of free replays so awarded. Notwithstanding any other provisions of this section, any mechanical game or device classified by the federal government as an illegal gambling device and requiring a federal Gambling Device Tax Stamp as required by the Internal Revenue Service in its administration of sections 4461 and 4462 of Title 26, United States Code, amended July 1, 1965, by Public Law 89-44, are hereby declared to be illegal and excluded from the exemption granted in this section.

~~(2)~~ (3) Possession of a gambling device is a Class I misdemeanor.

Sec. 3. This act shall become operative on January 1, 1979.

Sec. 4. That original sections 28-1101 and 28-1107, Revised Statutes Supplement, 1977, are repealed.

Sec. 5. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.