

2006

LEGISLATIVE BILL SUMMARIES
GENERAL AFFAIRS COMMITTEE

NEBRASKA LEGISLATURE

NINETY-NINTH LEGISLATURE
SECOND SESSION

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**General Affairs Committee 2005/2006
99th Legislature**

Legislative Bills in Numerical Order

*Before Adjournment Sine Die

Hearing	Bill	Introducer	One-Liner	Status*
2-28-05	107	<i>Friend</i>	Change provisions relating to retail liquor license suspensions for second and subsequent violations.	GF w/AM
2-28-05	108	<i>Friend</i>	Change provisions relating to possession of alcohol by a minor.	IPP
2-14-05	201	<i>Cudaback</i>	Adopt the 2005 National Electric Code.	Enacted
1-31-05	209	<i>Gen. Affrs.</i>	Change and eliminate certain gaming license and fee provisions as prescribed.	GF
1-31-05	210	<i>Gen. Affrs.</i>	Change time periods for use of proceeds under the Nebraska County and City Lottery Act.	IPP
1-24-05	211	<i>Janssen</i>	Create the Statewide Cemetery Registry.	Enacted
1-24-05	262	<i>Stuhr</i>	Authorize certain cities and villages to purchase land for cemetery purposes.	Enacted
1-24-05	287	<i>McDonald</i>	Require a cemetery study and report by the General Affairs Committee. Bill was shelved because of an agreement to hold an interim study instead.	Enacted - original content deleted and used for funeral picketing bill
1-24-05	355	<i>Janssen</i>	Provide for transfer of cemetery ownership from cemetery associations to cities and villages.	Enacted

2-7-05	388	<i>Mines</i>	Provide for removal of unsealed wine bottles from restaurants and farm wineries as prescribed.	FR - Passed as an AM to LB 562
1-31-05	405	<i>Schimek</i>	Change provisions relating to negotiation and adoption of a tribal-state gaming compact.	IPP
2-28-05	430	<i>Cornett</i>	Change permissible hours of retail sales of alcoholic liquor.	Held
2-7-05	530	<i>Gen. Affrs.</i>	Change retail liquor license issuance considerations and eliminate certain oath requirements.	IPP
2-7-05	562	<i>Janssen</i>	Redefine alcohol to include the gaseous form.	Enacted - committee priority
2-7-05	563	<i>Janssen</i>	Redefine beer to include flavored malt beverages.	SF
2-14-05	573	<i>Dw. Pedersen</i>	Change provisions relating to horseracing.	Enacted
2-14-05	599	<i>Louden</i>	Provide for cities of the second class and villages to establish and maintain libraries.	IPP
2-28-05	668	<i>Johnson</i>	Direct the Department of Health and Human Services to convey land to the University of Nebraska at Kearney.	Enacted
2-28-05	702	<i>Synowiecki</i>	Define and provide for use of cash or cash equivalent by a retail liquor licensee. No longer necessary due to enacted rules and regulations that accomplish the same thing.	Held
1-31-05	733	<i>Bourne</i>	Provide for electronic pickle card devices.	IPP
2-14-05	745	<i>Synowiecki</i>	Authorize the State Racing Commission to regulate pari-mutuel wagering on historic races.	GF w/AM - Stuthman priority

1-23-06	785	<i>Mines</i>	Change liquor shipping license fees.	IPP
1-23-06	845	<i>Landis</i>	Change considerations for retail liquor license issuance. Includes portions of LB 1160.	Enacted - Kruse priority
1-23-06	889	<i>Janssen</i>	Change provisions relating to liquor tax reports. The same provision has been added to Revenue bill LB 1003, which passed. Keg Registration program portion, eliminating the report requirement, was amended into LB 562.	GF
1-23-06	948	<i>Cunningham</i>	Eliminate restrictions on adding alcohol to beer.	IPP
1-30-06	978	<i>Heidemann</i>	Provide for bed and breakfast liquor licenses.	Held
1-30-06	1004	<i>Hudkins</i>	Provide for sale or shipment of alcoholic liquor by the Department of Agriculture and change farm winery license options. Committee amendment takes out the Dept. of Ag. provisions.	GF - Passed as an AM to LB 562 (the CA version)
2-13-06	1039	<i>McDonald</i>	Provide for and establish limits on expenditure of state lottery revenue. Committee amendment eliminates the 3½ % cap on advertising, promotions, incentives, public relations, marketing and contracts, and eliminates the proposed new definition of "expenses." The committee amendment also reduces the percentage amount, from 10 to 5, of the advertising budget that the lottery division must spend on problem gambling prevention, education and awareness messages.	Enacted - Speaker Priority
2-6-06	1048	<i>Bourne</i>	Provide for electronic pickle card devices.	IPP

2-6-06	1110	<i>Janssen</i>	Provide for electronic keno lottery. Introduced to provide notice that the keno operators are going to try to put the issue on the ballot.	Held
2-6-06	1111	<i>Janssen</i>	Change provisions relating to appointments to the State Racing Commission.	Enacted - Committee priority
1-30-06	1160	<i>Kruse</i>	Provide for a beverage server training program. Amendment to LB 845 includes committee amendment and other changes.	GF w/AM - Amended into LB 845
2-13-06	259CA	<i>McDonald</i>	Constitutional amendment to change distribution of state lottery funds.	Enacted - McDonald Priority Bill

BILL INDEX

2006 GENERAL AFFAIRS COMMITTEE BILLS

- LB 785 (Mines) Change liquor shipping license fees. *IPP by Committee* (p. 13)
- LB 845 (Landis) Change considerations for retail liquor license issuance. *Signed by Governor 4/13* (p. 9)
- LB 889 (Janssen) Change provisions relating to liquor tax reports. *GF – IPP at Session's End* (p. 25)
- LB 948 (Cunningham) Eliminate restrictions on adding alcohol to beer. *IPP by Committee* (p. 14)
- LB 978 (Heidemann) Provide for bed and breakfast liquor licenses. *Held in Committee – IPP at Session's End* (p. 20)
- LB 1004 (Hudkins) Provide for sale or shipment of alcoholic liquor by the Department of Agriculture and change farm winery license options. *GF – IPP at Session's End* (p. 25)
- LB 1039 (McDonald) Provide for and establish limits on expenditure of state lottery revenue. *Signed by Governor 4/13* (p. 10)
- LB 1048 (Bourne) Provide for electronic pickle card devices. *IPP by Committee* (p. 14)
- LB 1110 (Janssen) Provide for electronic keno lottery. *Held in Committee – IPP at Session's End* (p. 20)
- LB 1111 (Janssen) Change provisions relating to appointments to the State Racing Commission. *Signed by Governor 3/6* (p. 11)
- LB 1160 (Kruse) Provide for a beverage server training program. *GF – IPP at Session's End* (p. 26)
- LR 259CA (McDonald) Constitutional amendment to change distribution of state lottery funds. *Presented to Secretary of State 4/6* (p. 12)

2005 CARRYOVER BILLS

- LB 107 (Friend) Change provisions relating to retail liquor license suspensions for second and subsequent violations. *General File-IPP at Session's End* (p. 18)
- LB 209 (General Affairs Committee) Change and eliminate certain gaming license and fee provisions as prescribed. *General File-IPP at Session's End* (p. 22)
- LB 287 (Mc Donald) Require a cemetery study and report by the General Affairs Committee. *Signed by Governor 4/4* (p. 7)
- LB 388 (Mines) Provide for removal of unsealed wine bottles from restaurants as prescribed. *General File-IPP at Session's End* (p. 23)
- LB 430 (Cornett) Change permissible hours of retail sales of alcoholic liquor. *Held in Committee-IPP at Session's End* (p. 18)
- LB 562 (Janssen) Redefine alcohol to include the gaseous form. *Signed by Governor 4/6* (p. 8)
- LB 563 (Janssen) Redefine beer to include flavored malt beverages. *Select File-IPP at Session's End* (p. 24)
- LB 702 (Synowiecki) Define and provide for use of cash or cash equivalent by a retail liquor licensee. *Held in Committee-IPP at Session's End* (p. 19)
- LB 745 (Synowiecki) Authorize the State Racing Commission to regulate pari-mutuel wagering on historic races. *General File-IPP at Session's End* (p. 24)

SUMMARIES OF ENACTED BILLS

LB 287

Bill Description

LB 287 called for the General Affairs Committee to study Nebraska's laws governing cemeteries, hold public hearings, and report recommendations to the Legislature.

This bill was introduced to address Sen. McDonald's belief that Nebraska's statutes governing cemeteries are sparse and unclear. During the interim, Sen. McDonald assisted a constituent with cemetery property issues, and found that there is little regulatory guidance on the management of cemeteries for municipalities and counties, and no regulatory entity from which to receive direction. The bill stalled on Select File in the 2005 session because several members of the legislature felt that such a provision would not be appropriate to put into statute. Further, the subject matter of the bill was comprehensively covered through an interim study and hearing the General Affairs Committee held over the interim. The General Affairs Committee issued a report on its findings, which contains a recommendation to continue review of the cemetery law with the intent of restructuring the necessary cemetery statutes.

This session, Sen. Friend used LB 287 as a vehicle for LB 773, which did not receive a priority designation. LB 773, in committee amendment form, called for the enactment of a funeral protest as a criminal offense in Nebraska. It further described such protest activity as that which is within 300 feet of a cemetery, funeral home, church or other place of worship within one hour prior to the commencement of a funeral ceremony or memorial service and for two hours after the commencement of the service. LB 773 makes it a class III misdemeanor to picket within 100 feet of the premises of any location where a funeral is being held. The offense of funeral picketing would be defined as a class III misdemeanor, meaning penalties of 0-3 months and/or a \$500 fine.

LB 773, as AM2700, was adopted and replaced the original contents of LB 287. The bill was approved by the Governor on April 4th.

Details

Section 1 creates new language stating Legislative findings on the rights and interests of families regarding funerals, and states Legislative intent to balance the rights of funeral participants and the constitutional right to free speech.

Section 2 creates new language that defines funeral and picketing of a funeral.

Section 3 creates new language stating that a person commits unlawful picketing of a funeral if such person pickets from one hour prior to through two hours following a funeral. Declares unlawful picketing of a funeral a Class III misdemeanor.

Section 4 adds the new language to the Nebraska Criminal Code.

Remaining sections repeal the original sections and declare an emergency.

LB 562

Bill Description

LB 562 adds the gaseous form of alcohol to the state's definition of alcohol under the Liquor Control Act.

This bill was introduced in response to news that a machine called AWOL was ready to be marketed in the United States. AWOL stands for Alcohol With Out Liquid. The machine will be promoted as a new low-calorie, low-carbohydrate way for adults to consume alcohol. It consists of 2 components: an oxygen generator and a hand-held vaporizer. Tubes from the generator attach to the vaporizer. The user chooses an 80-proof spirit, which is poured into the vaporizer. Oxygen mixes with the alcohol producing a mist which is inhaled through the mouth. Alcohol enters the bloodstream through the lungs rather than the stomach, making it low-calorie and low-carb. Once the alcohol enters the bloodstream, it affects the body in the same way as drinking alcohol. The machine manufacturers say that the alcohol leaves the body in the same manner as if it had been consumed by drinking, so it will register on the breathalyzer test.

By adding the gaseous form of alcohol to the definition of alcohol under the Liquor Control Act, there is assurance that alcohol without liquid products are subject to the Liquor Control Commission's power to regulate alcoholic liquor.

Portions of other bills were amended into LB 562. The part of LB 889 that called for the repeal of section 53-167.04 from the statutes was adopted as AM 2380. That section is part of the Nebraska Keg Registration Act that requires the Liquor Control Commission to issue an annual report on how the Act is working. When the Keg Registration Act passed in 1993, this provision was put in so that the commission could monitor whether the new Act was working or not. Now, the Liquor Control Commission believes it has been well established that the program is working and doesn't need to be revised.

AM 2379 represents a portion of a bill that Sen. Hudkins brought to the General Affairs Committee. The committee advanced LB 1004 after adopting a committee amendment to strike certain portions of the bill. Sen. Hudkins' amendment was drafted as LB 1004 as amended by the committee amendment. It calls for farm wineries to be eligible for special designated and catering liquor licenses.

AM 2447 represents a revised version of LB 388, Sen. Mines' bill to allow partially consumed bottles of wine to be taken out of a restaurant where a meal has been consumed provided the bottle is re-corked and sealed in a tamper-evident bag, and placed in a vehicle where the driver and passengers would be unable to reach it.

The bill was signed by the Governor on April 6th.

Details

Section 1 amends §53-103, which provides definitions for the Nebraska Liquor Control Act, by adding to the definition of "alcohol," alcohol that is processed or sold in a gaseous form.

Section 2 amends §53-123.04, relating to retail licensees, by adding that a restaurant holding such license may permit a customer to remove one unsealed bottle of wine for consumption off the premises, provided a full-course meal has been purchased with which a portion of the wine was consumed, the bottle is securely resealed and placed in a tamper-evident bag, to which a dated receipt is attached. The bottle of wine is to be placed in the trunk or behind the last upright seat of a motor vehicle if the area is not normally occupied and there is no trunk. Defines full-course meal.

Section 3 amends §53-123.11, relating to farm winery licenses, by adding that an unsealed bottle of wine may be removed from the premises of the farm winery, if the bottle is resealed and placed in a tamper-evident bag, to which a dated receipt is attached. The bottle of wine is to be placed in the trunk or behind the last upright seat of a motor vehicle if the area is not normally occupied and there is no trunk.

Further allows a farm winery licensee to obtain special designated and annual catering licenses.

Section 4 amends §53-124.11, relating to special designated licenses, by adding reference to farm wineries.

Section 5 amends §53-124.12, relating to annual catering licenses, by adding reference to farm wineries.

Section 6 amends §60-6,211.08, relating to the open alcoholic beverage container law, by adopting the new provisions in section 2 as an exception to the open container law.

Sections 7 and 8 repeal original sections.

LB 845

Bill Description

LB 845 changes retail liquor license issuance considerations. It contains one of the Nebraska Liquor Control Commission's recommendations for liquor law changes that were presented to the Governor as required by §53-117(9). The Commission must, under that statute, investigate the administration of laws in relation to liquor and write legislative recommendations for the Governor.

The Liquor Control Commissioners stated the need for the ability to take license density into account when issuing retail liquor licenses. From the Commission's and the cities' viewpoint, it is very easy for a liquor license applicant to be granted a license; much easier than it is for the Commission or local government to try to deny a license. Over the past 20 years, there have been numerous (and successful) challenges to the use of the statutes and to new legislation that had been passed in an effort to create balance between the rights of licensees and local government.

According to the Commission, the fallout has been an over-saturation of liquor licenses, and increased liquor law violations in these areas of over-saturation. The suggested revision to §53-132 would change the directory language into discretionary language and update the criteria used by the Commission and local governing bodies in consideration of new licenses.

This bill does not affect current licensees, applies only to new licensees, and opens the door for the over-saturation argument.

A version of Sen. Kruse's LB 1160 was amended into LB 845, and outlines provisions for a beverage server training program.

The Governor signed the bill on April 13th.

Details

Section 1 amends §53-101, which cites the Nebraska Liquor Control Act, by adding reference to the new section.

Section 2 amends §53-132, relating to licensing procedures for retail, bottle club, or craft brewery licenses, by deleting the word "shall" and replacing it with "may," so that the commission may grant a license if certain conditions are met, rather than being directed to issue a license.

Further amends the section by adding language stating that the Liquor Control Commission shall, when determining whether a license should be granted, consider whether, as evidenced by substantive, corroborative documentation, new licenses would create an undue concentration of licenses with similar privileges and require the use of additional law enforcement.

Section 3 creates new language calling on the Nebraska Liquor Control Commission to adopt rules and regulations governing a liquor server and manager training program. Further states what standards are to be included in the rules and regulations, allows the Commission to create a server/manager training program, and provides for certification for completing such a program.

Section 4 repeals the original sections.

LB 1039

Bill Description

LB 1039 originally proposed capping the State Lottery advertising budget at 3 ½ % of a fiscal year's ticket sale revenue and requiring that at least 10% of the advertising budget be used for advertising on problem gambling prevention, education and awareness.

The adopted committee amendment deleted the proposed cap on advertising and provided that 5%, instead of 10%, of the Lottery's advertising budget is to be used for problem gambling prevention, education and awareness advertising.

This bill stemmed from discussions on the status of Nebraska's spending on advertising for the lottery during debate on LB 332 last session. That bill allowed the one-time transfer of \$500,000 from the Nebraska Health Care Cash Fund to compulsive gamblers assistance programs. An amendment to the bill would have required the Department of Revenue to transfer \$500,000 to compulsive gambler programs directly from the lottery advertising budget, a plan that would not be constitutional, according to the Attorney General.

The State Lottery's current advertising budget is 3% of sales. It also has a promotions budget of 1% of sales. The promotions budget is used to add value to games through promotions and contests. There is currently no requirement that any of the advertising budget be used for problem gambling advertising.

The Governor signed the bill on April 13th.

Details

Section 1 amends §9-801, which cites the State Lottery Act, by making a reference to the new sections.

Section 2 creates new language stating that the Lottery Division is to spend no less than 5% of its advertising budget on problem gambling prevention, education and awareness messages. Provides procedures for this advertising and provides a description of what is to be included in the Lottery's advertising budget.

Section 3 repeals original section §9-801.

LB 1111

Bill Description

LB 1111 requires those appointed to the State Racing Commission to be confirmed by the Legislature.

There seems to be no rhyme or reason as to why some board and commission entities require legislative confirmation of appointees, and some do not. This is inconsistent further even among boards and commissions that have significant and substantive duties. Since the General Affairs Committee has responsibility for the issues that come before the State Racing Commission, Sen. Janssen thought it appropriate to put that Commission on the same confirmation level as the Liquor Control Commission.

The Governor signed the bill on March 6th.

Details

Section 1 amends §2-1201, relating to the creation of the State Racing Commission, by adding language stating that the three members of the commission who are appointed by the Governor are subject to confirmation by a majority of the members of the Legislature.

Section 2 repeals the original section.

LR 259CA

Bill Description

LR 259CA would amend the Nebraska State Constitution to give the Compulsive Gamblers Assistance Fund the first \$1 million, instead of \$500,000, of lottery proceeds after payment of prizes and operating expenses.

A constitutional revision is necessary for this increase because a statutory change to the Lottery's revenue distribution would not be constitutional, according to an Attorney General's Opinion issued on May 18, 2005. The Nebraska Constitution in Article III, §24, as amended by LR 209CA in 2004 (the "state fair bill"), requires a specific distribution mechanism for how the Lottery's revenue is to be allocated after the payment of prizes and operating expenses. The Attorney General concluded that an attempt to transfer more funds than what is already constitutionally allowed from the lottery operations fund for compulsive gamblers assistance programs, would violate Art. III, §24.

The resolution was presented to the Secretary of State on April 6th.

Details

Section 1 proposes the following change to the Nebraska Constitution, Article III, Section 24, to be submitted to the public in the November 2006 general election:

Change the amount from \$500,000 to \$1 million of lottery proceeds, after prizes and expenses, that is to be transferred to the Compulsive Gamblers Assistance Fund.

Section 2 states that the ballot language must state that the proposed amendment is, "A constitutional amendment to increase the amount of state lottery proceeds to be distributed to the Compulsive Gamblers Assistance Fund."

BILLS INDEFINITELY POSTPONED BY COMMITTEE

LB 785

Bill Description

LB 785 would have changed the alcoholic liquor direct shipping license fee from \$500 to \$300.

After reviewing the wine direct ship case, *Granholm*, (see below) and the status of our direct shipping law, the committee determined that a license fee change was not required at this time in light of the ruling. The committee thought it would be prudent to see how the law in other states plays out and then take a comprehensive look at our wine and licensing statutes to establish whether and which provisions need to be changed.

Wine Direct Ship Case

In May, 2005, the United States Supreme Court, in a 5-4 decision, ruled that states that allow their residents to buy wine directly from in-state producers cannot prohibit them from buying wine directly from out-of-state sellers.¹ The ruling was made on the basis of the Commerce Clause, which gives Congress the power to regulate interstate commerce. A violation of the Commerce Clause in this case means that a state is depriving its citizens of the right to access other state's markets on equal terms. In other words, states may not discourage competition by discriminating against other states through its laws. At the time of the ruling, 24 states banned direct shipments from out-of-state wineries.² Another 13 had reciprocal agreements, and 13 continue to allow direct shipment of wine from another state. Some of those states impose additional requirements, such as Nebraska, which allows direct shipments from other states, but requires the purchase of a permit to sell and ship.

Critics of the court ruling say that the effect is the erosion of states' authority to regulate alcohol granted in the 21st Amendment, and a threat to the 3-tier system of alcohol distribution used by states that is intended to protect against price-fixing and monopolization. Producers distribute to wholesalers who distribute to retailers. Wholesalers now fear being cut out of the system, and activists fear easier access to alcohol by underage drinkers.

The May, 2005, ruling does not leave the matter settled, as the states that have banned out-of-state shipments are debating whether to level the playing field for local and out-of-state wineries, or to eliminate direct shipment altogether. Also, logistical shipping questions have to be addressed. According to industry publications, it will take some time for the states affected by the ruling to get into compliance. Since Nebraska is currently in compliance with the law, it seems logical to wait until it becomes clearer what needs to be done.

¹ The cases are *Granholm v. Heald*, 03-1116; *Michigan Beer & Wine Wholesalers Association v. Heald*, 03-1120; *Swedenburg et al. v. Kelly, Chairman, New York Division of Alcoholic Beverage Control, State Liquor Authority et al.*, 03-1274.

² Alabama, Arizona, Arkansas, Connecticut, Delaware, Florida, Indiana, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Montana, Ohio, Oklahoma, Pennsylvania, New Jersey, New York, South Dakota, Tennessee, Utah and Vermont.

Details

Section 1 amends §53-124, relating to liquor license fees, by deleting the shipping license fee in subsection (11) of \$500 and replacing it with a \$300 fee.

Section 2 repeals the original section.

LB 948

Bill Description

LB 948 would have eliminated the state statute that prohibits the selling of beer mixed with alcohol and prohibits allowing a person to mix beer with alcohol while they are on the premises of such licensee.

Nebraska statute, in §53-174, prohibits the selling or the offer for sale of beer to which alcohol has been added. It is also unlawful for a licensee to let others add alcohol to beer on the licensee's premises. In other words, a bartender cannot sell beer and alcohol products to a customer so that they may mix their own drinks.

Details

Section 1 amends §53-172, relating to labeling and sealing alcoholic liquor packages, by deleting a reference to §53-174, the statute that makes it unlawful to sell or offer for sale 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.

Section 2 repeals the original §53-172.

Section 3 repeals outright §53-174.

LB 1048

Bill Description

LB 1048 would have authorized the use of electronic pickle card devices under the Pickle Card Lottery Act.

Some form of this bill has been before the committee in recent years. In 2003, LB 309 was introduced, which advanced to General File in 2004, but died at the end of that session. Last session it was LB 733, which the committee killed.

Concerns that the devices are unconstitutional have continually been raised. The Department of Revenue believes such devices to be constitutionally suspect due to several Attorney General Opinions written on the topic. According to AGO #00014, issued February 28, 2000, the tickets issued by electronic pickle card devices are not pickle card tickets for purposes of playing the game, but rather receipts for payment. The Attorney General also said that play was not based on the ticket, but rather on the device. The argument is that there must be a distinction between games of chance (games with the elements of chance, prize and consideration) and lotteries in order to pass constitutional muster. This is because

the Nebraska Constitution provides for a general prohibition against games of chance with an exception for lotteries for charitable purposes. (Pickle cards are lotteries established by the Legislature.) The Attorney General has taken the position that lotteries are limited to “schemes in which tickets or tokens are distributed or sold and prize winners are either secretly predetermined or ultimately selected by some form of random drawing.”

Details

Section 1 creates new language authorizing the use of a coin-operated or currency-operated electronic pickle card device. Describes the type of electronic devices that may be used; describes the information that must be provided on the pickle card dispensed; prohibits device from dispensing coins, currency or tokens, accumulating credits; does not authorize chance or random generation, a light on top of the device, a handle on the side, or spinning reels. Limits licensed organizations to no more than 2 electronic pickle card devices per pickle card lottery location, and limits number of devices per location to 2. Provides that the devices are to be purchased and owned by a licensed organization. Allows the Department of Revenue to promulgate rules and regulations.

Section 2 defines an electronic pickle card device as a device authorized under section 1.

Section 3 amends §9-301, which cites the Nebraska Pickle Card Lottery Act, by adding a reference to sections 1 and 2.

Section 4 amends §9-303, containing definitions, by adding a reference to section 2.

Section 5 amends §9-304, relating to allowable expenses under the act, by adding the repair or maintenance of a pickle card dispensing or electronic device to the list of allowed expenses.

Section 6 amends §9-307, which defines “distributor”, by adding references to electronic pickle card devices.

Section 7 amends §9-313, which defines “manufacturer”, by adding reference to electronic pickle card devices.

Section 8 amends §9-315, which defines “pickle card”, by adding that the definition includes electronically dispensed pickle cards that are opened by use of the device by moving a finger over the face of the displayed pickle card; deletes reference to *disposable* cards, and renumbers sections.

Section 9 amends §9-317, which defines pickle card unit, by adding a reference to electronic pickle card unit files and adds that the described unit is *purchased or otherwise obtained* in addition to being sold by a distributor.

Section 10 amends §9-322, relating to Department of Revenue powers, functions and duties, by adding electronic pickle card devices to the list of devices which the Department may require annual registration compliance. Adds electronic pickle card devices to the list of what may be confiscated, seized, or sealed by the Department.

Section 11 amends §9-329.02, relating to pickle card operator licenses, by adding that an electronic pickle card device may not be purchased by an operator who sells individual cards by an electronic device, and that such devices are to be obtained from a licensed organization and rented or leased for at least \$75 per month per device. States that the department may require verification of an electronic pickle card device purchase and of its lease or rental.

Section 12 amends §9-331, relating to distribution, by adding reference to electronic pickle card devices; clarifies that licensed organizations shall not accept anything of value from a distributor in exchange for a commitment or agreement to exclusively sell the distributor's electronic pickle card devices; includes language clean-up.

Section 13 amends §9-332, relating to manufacturers licenses, by adding reference to electronic pickle card devices and clarifies that nothing in the act prohibits a manufacturer from marketing or selling pickle cards or pickle card units or electronic pickle card devices to federally recognized Indian tribes for use in Class II or Class III gaming authorized by the Indian Gaming Regulatory Act.

Section 14 amends §9-332.01, relating to pre-selling activities by manufacturers, by adding references to electronic pickle card devices.

Section 15 amends §9-333, relating to manufacturers' records, by adding reference to pickle card units dispensed through electronic pickle card devices.

Section 16 amends §9-334, relating to nonresident manufacturers, by cleaning up the language, making the reference to pickle cards more inclusive.

Section 17 amends §9-336, relating to pickle card serial numbers, by cleaning up the language, making the reference to pickle cards more inclusive.

Section 18 amends §9-337, relating to pickle card construction standards, by requiring electronic displays, allows the Department to authorize use of pickle cards from electronic pickle card devices or which are encrypted with a bar code and are to be sold and played through an electronic pickle card device, includes other clarifying language.

Section 19 amends §9-338, relating to restrictions on manufacturers, by adding reference to electronic pickle card devices, allows manufacturers to encrypt a pickle card with a bar code so it can be sold and played through an electronic pickle card device, includes other clarifying language.

Section 20 amends §9-340, relating to the sale of pickle cards and pickle card units, by adding reference to electronic pickle card devices, adds reference to Class III gaming, requires Department approval for the sale of electronic pickle card devices to anyone other than entities authorized under the Act or to a federally recognized Indian tribe. Requires Department approval of electronic pickle card devices to be sold. Further allows the Department to require payment by manufacturer for costs incurred in examining or testing the electronic pickle card device.

Section 21 amends §9-340.02, relating to pickle card units, by adding reference to electronic pickle card devices. Requires an organization to pay for an electronic pickle

card device by check drawn on their checking account. Allows a manufacturer to use a distributor for sales to licensed organizations.

Section 22 amends §9-342, relating to licensed organizations, by adding reference to electronic pickle card devices.

Section 23 amends §9-343, relating to distributor records, by requiring the maintenance of certain records of the sale, lease, or rental of the electronic pickle card device.

Section 24 amends §9-345.01, relating to conduct of lottery, by clarifying that a licensed organization may conduct a lottery using electronic pickle card devices, but only at its designated premises, its regularly scheduled bingo occasions, and its limited period bingo conducted under the Bingo Act, and at the premises of one or more pickle card operators.

Section 25 amends §9-345.02, relating to flare card posting, by requiring flare cards for each electronic pickle card unit to be conspicuously displayed.

Section 26 amends §9-345.03, relating to device registration, by adding reference to electronic pickle card devices.

Section 27 amends §9-346, relating to determination of winners, by adding reference to electronic pickle card devices, and adding that if a conflict exists between the prize displayed by an electronic device and the actual ticket issued by the device, the actual ticket prevails.

Sections 28 through 34 amending §9-347, relating to use of proceeds; §9-348, relating to definite profit; §9-349, relating to reporting; §9-350, relating to tax commissioner powers; §9-351, relating to unauthorized sale or possession of pickle cards; §9-352, relating to penalties; and §28-1101, relating to gambling offenses, by adding reference to electronic pickle card devices.

Section 35 amends §77-3001, relating to the Mechanical Amusement Device Tax Act, by clarifying that the electronic pickle card device is not a mechanical amusement device under the Mechanical Amusement Device Tax Act.

Section 36 contains a severability clause.

Section 37 repeals the original sections.

Bills Held in Committee, Indefinitely Postponed at Session's End

LB 107

Bill Description

LB 107 would have extended the period from 4 years to 10 years that the Liquor Control Commission may consider in second or subsequent violations of certain sections of the Liquor Control Act by a licensee.

Details

Section 1 amends §53-1,104, relating to liquor license suspensions, by allowing the Commission to review of a licensee's violation record for a period of 10 years, instead of 4, after the date of the first suspension when the licensee is before the Commission because of a violation leading to a second, third, and subsequent suspensions under §53-180 or 180.02 (relating to sales to minors.)

Further allows the Commission to review a licensee's suspension record for 10 years, instead of four, after the date of the first suspension, when the licensee is before the Commission because of a possession of a gambling device conviction.

If a licensee has no violations for 10 consecutive years, any suspension is to be treated as a new, first suspension. Directs the commission to remit funds collected for penalties to the State Treasurer for distribution in accordance with Article VII section 5, of the Nebraska Constitution.

Section 2 amends §53-1,106, relating to charging for violations of the Liquor Control Act, by changing from 4 to 10 years the period of time in which the licensee's record of filed indictments, complaints, affidavits or records of former convictions may be considered when prosecuting for a violation of the Liquor Control Act.

Section 3 repeals the original sections.

LB 430

Bill Description

LB 430 would have expanded the hours allowed for the sale of alcoholic liquor.

AM0011, filed and printed in the journal on January 25th, would have replaced the bill. AM0011 would have created a new license classification, Class CC, that would cost \$2,500 and be issued only if the local governing body or county board authorized issuance. It would have also authorized a 3:00 a.m. close, and specified that Class CC licensees may not sell alcoholic liquor between 3:00 a.m. and 6:00 a.m. The amendment was introduced because there was a miscommunication on the drafting of the original bill.

Details

Section 1 amends §9-647, relating to permissible times for lottery (currently, between the hours of 1:00 a.m. and 6:00 a.m.), by providing an exception based on the new language in this bill.

Section 2 amends §53-179, relating to the hours allowed for the sale of alcoholic liquor, by prohibiting the sale of alcoholic liquor between the hours of 3:00 a.m. and 6:00 a.m. Further adjusts the time that a person is allowed to possess an open container of alcohol to 15 minutes after the applicable closing time.

Other new language would allow licensed keno conducted on a premises that is in compliance with the County and City Lottery Act and the Liquor Control Act to continue until the closing hour applicable to the licensed premises.

Section 3 repeals the original sections.

LB 702

Bill Description

LB 702 would have allowed retailers to pay for liquor purchased from a wholesaler with a credit card.

This bill would have added a definition of “cash or cash equivalent” to the definitions section and included several other means of payment. Those other means are already allowed for payment under the rules and regulations of the Liquor Control Commission – the use of credit cards was not.

The Liquor Control Commission adopted rules and regulations allowing the use of credit cards for payment to wholesalers, thus eliminating the need for the bill.

Details

Section 1 amends §53-103, relating to Nebraska Liquor Control Act definitions, by adding a definition of “cash or cash equivalent” as meaning coins, currency or 1) a debit or credit card showing the name of the licensed business; 2) a licensee’s business check, cashier’s check, certified check, traveler’s check, or bank money order remitted by the licensee or the licensee’s authorized agent.

Section 2 amends §53-168, relating to allowable payment for beer, by adding a subsection stating that it is not a violation of this section for a wholesaler to accept cash or cash equivalent from a retailer for the purchase of alcoholic liquor.

Section 3 repeals the original sections.

LB 978

Bill Description

LB 978 would have provided for a bed and breakfast license under the Nebraska Liquor Control Act. Sen. Heidemann introduced this bill to help promote Nebraska wine.

Details

Section 1 amends §53-101, relating to the citation of the Nebraska Liquor Control Act, by adding a reference to the new section.

Section 2 amends §53-123, relating to types of licenses the Liquor Control Commission issues, by adding a bed and breakfast license to the list.

Section 3 amends §53-124, relating to the annual fees charged for liquor licenses, by creating a new license, a Class J, for the sale of Nebraska wines in original packages only, and for which the license fee will be \$45.

Section 4 creates new language stating that: (1) anyone desiring a bed and breakfast license shall file with the Commission, on a triplicate original form, and shall prove membership in a bed and breakfast association and pay the \$45 fee; (2) the Commission is to notify the corresponding city clerk or county clerk of the licensee application, and is to provide such local entity a copy of the application. The parties are to move forward on the application using the same procedure used for consideration of retail, bottle club or craft brewery licenses; (3) allows the local governing body to cancel for cause a license within its jurisdiction for the remainder of the license period, a decision which the licensee may appeal to the Commission; (4) provides definitions for local governing body; and (5) allows the local governing body with jurisdiction over the licensee, to charge an occupation tax on the bed and breakfast not to exceed double the license fee paid under §53-124.

Section 5 repeals the original sections.

LB 1110

Bill Description

LB 1110 would have authorized the use of electronic keno.

Sen. Janssen introduced this bill for discussion only. The purpose behind the bill's introduction was to provide an opportunity for a public hearing and to provide notice that the keno operators are planning on conducting an initiative petition drive to put electronic keno on the general election ballot.

Details

Section 1 amends §9-607, relating to the manner of lottery (keno) play, by adding a new subsection authorizing the use of electronic keno. A player would play the electronic game in the same manner as on paper tickets. Electronic keno would be conducted only at licensed locations and *may* be conducted concurrent with regular keno. The

machines would only accept cash, and winning plays would be shown as credits on the screen, available for replay or to be printed on a ticket redeemable for the prize. Winning play is to be solely by chance.

Section 2 amends §9-625, relating to local elections to establish a lottery (keno), by excepting electronic keno as described from the requirements. Creates new language stating that a county, city or village authorized to conduct lottery as of January 1, 2006 may conduct electronic keno. Allows the local government to take the electronic keno question to the voters. Requires local government not already authorized to conduct keno as of January 1, 2006, to submit the question of electronic keno to the voters prior to conducting electronic keno.

Section 3 repeals original sections.

BILLS ADVANCED, INDEFINITELY POSTPONED AT SESSION'S END

LB 209

Bill Description

LB 209 would have deleted obsolete charitable gaming statutes regarding licensing and adjusted language to reflect the current law.

The bill would have cleaned up language in the charitable gaming statutes dealing with licensing requirements that are now obsolete due to a legislative change that has been fully implemented. LB 1086, enacted in 2000, authorized biennial licensing for charitable gaming activities. Implementation was staggered over several years, but is now complete. The changes were sought because all charitable gaming licenses are now issued on a biennial basis and the annual licensing references in the bingo, pickle card, and lottery/raffle statutes could cause confusion.

LB 209 died on General File.

Details

Section 1 amends §9-232.01, relating to bingo licensing, by adjusting the license fee for each utilization-of-funds member from \$20 to \$40. Adjusts the license fee for gaming managers from \$50 to \$100.

Section 2 amends §9-232.02, relating to bingo license renewals, by deleting an annual expiration date of September 30th and adding new language allowing biennial renewals. Includes language clean-up.

Section 3 amends §9-233, relating to bingo license classes and fees, by revising the fee for Class I (\$15 to \$30) and Class II (\$50 to \$100) licenses. Further deletes obsolete provisions for licenses issued to nonprofit organizations.

Section 4 amends §9-239, relating to bingo taxation, by deleting obsolete language providing rates and procedures for tax collection.

Section 5 amends §9-255.06, relating to commercial bingo licensing, by adjusting the license fee, clarifying that the fee is *biennial*, and deleting obsolete license language.

Section 6 amends §9-328, relating to pickle card licenses, by deleting obsolete annual license provisions, clarifying that licenses are issued biennially, and adjusting language to reflect the correct fees. Includes language clean-up.

Section 7 amends §9-329, relating to pickle card sales agent licenses, by deleting obsolete language and providing for the updated biennial fees (\$100 for sales agent licenses).

Section 8 amends §9-329.02, relating to pickle card operator licenses, by deleting obsolete language and providing for the updated biennial fees (\$100 for pickle card operators) and renewals.

Section 9 amends §9-424, relating to lottery and raffle licenses, by adjusting the language to reflect the correct fees for organizations and utilization-of-funds members.

Section 10 amends §9-425, relating to lottery and raffle license renewals, by deleting obsolete renewal language and clarifying that licenses are issued biennially.

Section 11 repeals the original sections.

LB 388

Bill Description

LB 388 would have allowed the removal of opened, but resealed and placed in a tamper-evident bag, bottles of wine that had been purchased at a restaurant with a meal. Portions of this bill were amended into LB 562, which was enacted.

LB 388 died on General File.

Details

Section 1 amends §53-101, which cites the Nebraska Liquor Control Act, by adding a reference to the provisions of this bill.

Section 2 creates new language stating that certain licensed restaurants may permit a customer to remove one unsealed bottle of wine for consumption off the premises if the customer has purchased a full-course meal and has consumed a portion of the bottle of such wine along with the meal. The restaurant is required to: (1) securely reseal the bottle and put in a bag from which it is visibly apparent that the resealed bottle has not been tampered with; and (2) provide the customer with a dated receipt for the resealed bottle of wine and meal.

Further states that such resealed bottle is not an open container under §60-6,211.08, Nebraska's Rules of the Road statute on open alcoholic beverage container prohibitions; and defines full-course meal as, "a diversified selection of food which is ordinarily consumed with the use of tableware and cannot conveniently be consumed while standing or walking."

Section 3 amends §60-6,211.08, relating to the prohibition of open alcoholic containers in certain motor vehicles, by adding a reference to the provisions of this bill.

Section 4 repeals the original sections.

LB 563

Bill Description

LB 563 would have added “flavored malt beverage” to Nebraska’s definition of beer.

Sen. Janssen introduced LB 563 to recognize a federal rule change in Nebraska statutes. The bill placed the federal definition of flavored malt beverage into Nebraska’s definition of beer.

LB 563 died on Select File.

Details

Section 1 amends §53-103, which provides definitions for the Nebraska Liquor Control Act, by adding to the definition of “beer,” flavored malt beverages. Further creates a new definition of flavored malt beverage as “a beer that derives not more than 49% of its total alcohol content from flavors or flavorings containing alcohol obtained by distillation.”

Section 2 repeals the original section.

LB 745

Bill Description

LB 745 would have allowed the State Racing Commission to license and regulate pari-mutuel wagering on previous horse races.

How it would have worked: there is a pool of more than 20,000 past horse races that are shown to bettors on instant racing terminals. The races, tracks, and horses are not revealed, and the order of races are selected and run randomly. Only certain statistics about past performances, track conditions, etc., are provided to the bettor.

LB 745 died on General File.

Details

Section 1 amends §2-1203.01, relating to the State Racing Commission’s duties, by adding a new subsection directing the Commission to be authorized to license and regulate pari-mutuel wagering on historic horse races.

Section 2 repeals the original section.

LB 889

Bill Description

LB 889 would have eliminated certain oath requirements for the filing of state excise taxes and eliminated the report requirement of the keg registration program.

This bill was introduced at the request of the Nebraska Liquor Control Commission. It contained two of the Commission's recommendations for liquor law changes that were presented to the Governor as required by §53-117(9). The purposes of the bill were to, first, eliminate the requirement that state excise tax reports and schedules be submitted under oath or affirmation (in other words, notarized) which was deemed necessary for the efficient submission of these documents electronically; and second, the Keg Registration report is no longer needed, according to the Commission. Under §53-167.04, the Commission submits a report to the Legislature on the effectiveness of the Keg Registration statutes. Annual reports have been submitted for over 10 years now, and the program has been deemed successful. Therefore, the Commission did not see a need to continue issuing this report.

Each portion of this bill was amended to other enacted bills. LB 889 died on General File.

Details

Section 1 amends §53-164.01, relating to taxes on liquor, by deleting language requiring certain reports to be submitted "under oath or affirmation."

Section 2 amends §53-165, relating to reports by alcoholic liquor manufacturers and wholesalers, by deleting language requiring monthly reports of sales and manufacturing to be returned to the commission "under oath."

Section 3 repeals the original sections.

Section 4 repeals outright §53-167.04, relating to keg registration program annual reports.

LB 1004

Bill Description

LB 1004 would have exempted the Department of Agriculture from certain sale and shipment provisions of the Liquor Control Act and allowed farm winery licensees to obtain special designated and annual catering licenses.

The farm winery licensee portions of this bill were amended into and adopted through LB 562. LB 1004 died on General File.

Details

Section 1 amends §53-101, relating to the citation of the Nebraska Liquor Control Act, by adding reference to the new sections of this bill.

Section 2 creates new language stating that the sale and shipment provisions of the Liquor Control Act do not apply to the Department of Agriculture if the sale or shipment: (1) is to a mentally competent person who is at least 21 years of age, (2) is done at a department public auction for the purpose of promoting Nebraska grown or produced agricultural products, and (3) is limited monthly to no more than 12 bottles or containers, each containing no more than 25 ounces of liquor.

Section 3 creates new language requiring the Department of Agriculture to report to the Liquor Control Commission, in writing, within 72 hours of sale or shipment: (1) date and location of the public auction, (2) the number and contents of the bottles or containers sold or shipped, and (3) the name, address and date of birth of the one to whom sale or shipment was made.

Section 4 amends §53-123.11, relating to rights of farm winery licensees, by adding that such licensee may obtain both special designated licenses and annual catering licenses, pursuant to state statutes.

Section 5 amends §53-124.11, relating to special designated licenses, by adding reference to farm winery licensees to the list of those eligible to receive a special designated license for sale or consumption at a designated location. Also makes other provisions of the section applicable to farm winery licensees.

Section 6 amends §53-124.12, relating to catering licenses, by adding that holders of farm winery licenses are eligible to obtain a catering license as prescribed.

Section 7 repeals the original sections.

LB 1160

Bill Description

LB 1160 would have required the Liquor Control Commission to create an alcoholic liquor server training and certification program. The concept of this bill was adopted and advanced through LB 845. LB 1160 died on General File.

Details

Section 1 amends §53-101, relating to the citation of the Nebraska Liquor Control Act, by adding reference to the new section.

Section 2 creates new language requiring the Liquor Control Commission to create a beverage server training and certification program by January 1, 2007, to train those employed in the sale and service of liquor. The program, which may be provided through any means of appropriate communication, is to focus on liquor sales to minors and visibly inebriated purchasers. The fee the commission may charge for the program is not to exceed \$30.

Section 3 repeals the original section 53-101.

INTERIM STUDY RESOLUTIONS

- LR 344 Interim study to examine matters relating to the licensing and regulating of electric systems technicians
- LR 349 Interim study to examine issues relating to the governance of municipal libraries especially those in cities of the second class and villages
- LR 352 Interim study to examine issues relevant to the Nebraska Liquor Control Act and whether additional license categories, such as a bed and breakfast category, are needed
- LR 353 Interim study of cemetery statutes
- LR 354 Interim study of the process of micro-distillation and to determine the necessity for legislation
- LR 371 Interim study of issues relating to winemaking and promoting the grape industry
- LR 382 Interim study to evaluate implementation of a new rule regarding acceptable forms of payment between retail licensees and wholesale licensees for purchases of alcoholic beverages