

Informational Pamphlet

Initiative Measure Nos. 428, 429, 430, 431

Appearing on the 2020 General Election Ballot



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This pamphlet is intended to provide the voters of Nebraska with additional information about the measures proposed via the initiative petition process that will appear on the November 3, 2020 General Election ballot.

Each measure contains three portions: the text of the measure, the language which will appear on the November ballot, and arguments supporting and opposing the measure. The arguments are derived from information provided to the Secretary of State from supporters and opponents of this measure.

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INITIATIVE MEASURE 428

Ballot Title and Text for Initiative Measure 428

Proposed by Initiative Petition

Initiative Measure 428

A vote "FOR" will amend Nebraska statutes to: (1) reduce the amount that delayed deposit services licensees, also known as payday lenders, can charge to a maximum annual percentage rate of thirty-six percent; (2) prohibit payday lenders from evading this rate cap; and (3) deem void and uncollectable any delayed deposit transaction made in violation of this rate cap.

A vote "AGAINST" will not cause the Nebraska statutes to be amended in such manner.

Shall Nebraska statutes be amended to: (1) reduce the amount that delayed deposit services licensees, also known as payday lenders, can charge to a maximum annual percentage rate of thirty-six percent; (2) prohibit payday lenders from evading this rate cap; and (3) deem void and uncollectable any delayed deposit transaction made in violation of this rate cap?

For

Against

Full Text of Proposed Measure 428

Object Statement

TITLE: The object of this petition is to amend Nebraska statutes to reduce the amount that delayed deposit services licensees, also known as payday lenders, can charge to a maximum annual percentage rate of thirty-six percent; to prohibit payday lenders from evading this rate cap; and to deem void and uncollectable any transaction made in violation of this rate cap.

(underscored language indicates added language, ~~strike through~~ indicates language being removed)

Proposed Text of Statutory Initiative Petition

TEXT: FOR AN ACT relating to the Delayed Deposit Services Licensing Act; to amend sections 45-918 and 45-919, Revised Statutes Cumulative Supplement, 2018; to change provisions governing licensees; and to repeal the original sections.

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

Section 1. Section 45-918, Revised Statutes Cumulative Supplement, 2018, is amended to read:

45-918. (1) ~~No licensee shall charge as a fee a total amount in excess of fifteen dollars per one hundred dollars or pro rata for any part thereof on the face amount of a check for services provided by the licensee. A licensee shall not impose an annual percentage rate greater than thirty-six percent in connection with a delayed deposit transaction. Any delayed deposit transaction made in violation of this section is void, and the licensee making such delayed deposit transaction has no right to collect, receive, or retain any principal, interest, fees, or any other charges in connection with such delayed deposit transaction.~~

(2) The fees set forth in this section shall not be charged to individuals on active duty military or their spouses or dependents in an amount that exceeds what is allowed under 10 U.S.C. 987, as such section existed on January 1, 2018.

Section 2. Section 45-919, Revised Statutes Cumulative Supplement, 2018, is amended to read:

45-919. (1) No licensee shall:

(a) At any one time hold from any one maker more than two checks;

(b) At any one time hold from any one maker a check or checks in an aggregate face amount of more than five hundred dollars;

- (c) Hold or agree to hold a check for more than thirty-four days. A check which is in the process of collection for the reason that it was not negotiable on the day agreed upon shall not be deemed as being held in excess of the thirty-four-day period;
- (d) Require the maker to receive payment by a method which causes the maker to pay additional or further fees and charges to the licensee, an affiliate of the licensee, or any other person;
- (e) Accept a check as repayment, refinancing, or any other consolidation of a check or checks held by the same licensee;
- (f) Except as provided in section 45-919.01, renew, roll over, defer, or in any way extend a delayed deposit transaction by allowing the maker to pay less than the total amount of the check and any authorized fees or charges. This subdivision shall not prevent a licensee that agreed to hold a check for less than thirty-four days from agreeing to hold the check for an additional period of time no greater than the thirty-four days it would have originally been able to hold the check if (i) the extension is at the request of the maker, (ii) no additional fees are charged for the extension, and (iii) the delayed deposit transaction is completed as required by subdivision (1)(c) of this section. The licensee shall retain written or electronic proof of compliance with this subdivision. If a licensee fails, or is unable, to provide such proof to the department upon request, there shall be a rebuttable presumption that a violation of this subdivision has occurred and the department may pursue any remedies or actions available to it under the Delayed Deposit Services Licensing Act;
- (g) Enter into another delayed deposit transaction with the same maker on the same business day as the completion of a delayed deposit transaction unless prior to entering into the transaction the maker and the licensee verify on a form prescribed by the department that completion of the prior delayed deposit transaction has occurred. The licensee shall retain written proof of compliance with this subdivision. If a licensee fails, or is unable, to provide such proof to the department upon request, there shall be a rebuttable presumption that a violation of this subdivision has occurred and the department may pursue any remedies or actions available to it under the act;
- (h) Charge, collect, or receive any finance charges, fees, interest, or similar charges for loan brokerage, insurance, or any other ancillary products;
- (i) Negotiate or present a paper check for payment unless the check is endorsed with the actual business name of the licensee;
- (j) Engage, in connection with a delayed deposit transaction, in unfair or deceptive practices or advertising under the Uniform Deceptive Trade Practices Act to engage in any act that limits or restricts the application of the Delayed Deposit Services Licensing Act, including, but not limited to, making transactions disguised as personal property, personal sales, or leaseback transactions, or disguise transaction proceeds as cash rebated for the pretextual installment sale of goods and services; ~~or~~
- (k) Evade the requirements of section 45-918, including, but not limited to, making, offering, assisting, arranging, or guaranteeing a delayed deposit transaction with a greater rate of interest,

consideration, fees, or charges than is permitted therein through any method including mail, telephone, internet or any electronic means regardless of whether the licensee has a physical location in the state; or

~~(1)~~ (1) Attempt to deposit or negotiate a check after two consecutive failed collection attempts unless the licensee has obtained a new, written payment authorization from the maker.

(2) No licensee, affiliate of a licensee, or any other person, including a person operating as a credit services organization, shall charge, collect, or receive any finance charges, fees, interest, or similar charges that would cause a maker to pay an amount in excess of or in addition to those permitted under the Delayed Deposit Services Licensing Act in connection with a delayed deposit transaction, including, but not limited to, charges for loan brokerage, insurance, or any other ancillary products.

(3) For purposes of this section, (a) completion of a delayed deposit transaction means the licensee has presented a maker's check for payment to a financial institution as defined in section 8-101.03 or the maker redeemed the check by paying the full amount of the check in cash to the licensee and (b) licensee shall include (i) a person related to the licensee by common ownership or control, (ii) a person in whom such licensee has any financial interest of ten percent or more, or (iii) any employee or agent of the licensee.

Arguments For and Against Initiative Measure 428

Supporters contend:

Payday lenders currently charge Nebraskans interest rates that average over 400% annually. This initiative would prevent payday lenders from charging interest rates higher than 36% annually. With the economic and health crises created by the pandemic, it's more important than ever to stop lenders from taking advantage of people by charging triple-digit interest rates. These payday lenders are hurting Nebraska families – especially the people impacted the most: military veterans, communities of color, seniors, and parents who are working hard to pull themselves out of poverty. That's why the Department of Defense has already imposed a 36% rate cap for active-duty military. This measure would ensure that Nebraska's 150,000 veterans and all families have that same reasonable protection.

Opponents contend:

The Delayed Deposit Services Industry, created by the Legislature, allows for regulated access to short-term credit by Nebraskans of all income levels to pay unexpected medical bills, car repair, utilities etc. These businesses do not charge interest, but rather state law requires a fee of \$15 per \$100 transaction, which is lower than overdraft fees, utility reconnection fees, and bounced check fees. Federal reporting requirements do not fit this model and a translation to interest is skewed. This measure would reduce the fee to \$1.38 per \$100, forcing licensed Nebraska businesses to close and eliminating access to regulated small dollar loans. In states where this law was passed, complaints against unregulated internet lenders soared, just as cost of credit and personal hardship increased.

INITIATIVE MEASURE 429

Ballot Title and Text for Initiative Measure 429

Proposed by Initiative Petition

Initiative Measure 429

A vote "FOR" will amend the Nebraska Constitution to state that laws may be enacted to provide for the authorization, regulation, and taxation of all forms of games of chance to be conducted by licensees within licensed racetrack enclosures in Nebraska.

A vote "AGAINST" will not cause the Nebraska Constitution to be amended in such manner.

Shall the Nebraska Constitution be amended to state that laws may be enacted to provide for the authorization, regulation, and taxation of all forms of games of chance to be conducted by licensees within licensed racetrack enclosures in Nebraska?

- For
- Against

Full Text of Proposed Measure 429

Object Statement

TITLE: The object of this petition is to amend the Nebraska Constitution to state that laws may be enacted allowing for the licensing, authorization, taxation, and regulation of all forms of games of chance to be conducted by authorized gaming operators within licensed racetrack enclosures in the state.

(underscored language indicates added language, ~~strike-through~~ indicates language being removed)

Proposed Constitutional Amendment Language

TEXT: Article III, Section 24, of the Constitution of Nebraska shall be amended as shown:

(1) Except as provided in this section, the Legislature shall not authorize any game of chance or any lottery or gift enterprise when the consideration for a chance to participate involves the payment of money for the purchase of property, services, or a chance or admission ticket or requires an expenditure of substantial effort or time.

(2) The Legislature may authorize and regulate a state lottery pursuant to subsection (3) of this section and other lotteries, raffles, and gift enterprises which are intended solely as business promotions or the proceeds of which are to be used solely for charitable or community betterment purposes without profit to the promoter of such lotteries, raffles, or gift enterprises.

(3)(a) The Legislature may establish a lottery to be operated and regulated by the State of Nebraska. The proceeds of the lottery shall be appropriated by the Legislature for the costs of establishing and maintaining the lottery and for the following purposes, as directed by the Legislature:

(i) The first five hundred thousand dollars after the payment of prizes and operating expenses shall be transferred to the Compulsive Gamblers Assistance Fund;

(ii) Forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Environmental Trust Fund to be used as provided in the Nebraska Environmental Trust Act;

(iii) Forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be used for education as the Legislature may direct;

(iv) Ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the

Nebraska State Fair Board if the most populous city within the county in which the fair is located provides matching funds equivalent to ten percent of the funds available for transfer. Such matching funds may be obtained from the city and any other private or public entity, except that no portion of such matching funds shall be provided by the state. If the Nebraska State Fair ceases operations, ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the General Fund; and

(v) One percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Compulsive Gamblers Assistance Fund.

(b) No lottery game shall be conducted as part of the lottery unless the type of game has been approved by a majority of the members of the Legislature.

(4) Nothing in this section shall be construed to prohibit (a) the enactment of laws providing for the licensing and regulation of wagering on the results of horseraces, wherever run, either within or outside of the state, by the parimutuel method, when such wagering is conducted by licensees within a licensed racetrack enclosure or (b) the enactment of laws providing for the licensing and regulation of bingo games conducted by nonprofit associations which have been in existence for a period of five years immediately preceding the application for license, except that bingo games cannot be conducted by agents or lessees of such associations on a percentage basis.

(5) This section shall not apply to any law which is enacted contemporaneously with the adoption of this subsection or at any time thereafter and which provides for the licensing, authorization, regulation, or taxation of all forms of games of chance when such games of chance are conducted by authorized gaming operators within a licensed racetrack enclosure.

Arguments For and Against Initiative Measure 429

Supporters contend:

Initiative 429 will legalize casino gaming at licensed horse racing tracks in the state. More than 70% of Nebraskans live within 60 miles of an out-of-state casino, and Nebraskans currently spend nearly \$400 million at those casinos each year. In-state gaming will provide an opportunity to keep that money in Nebraska and positively impact our economy by more than \$320 million each year. This initiative will create more than 4,600 jobs statewide, including many in rural areas to support the resulting expansion of the horse racing industry. This initiative will not automatically allow for the expansion of Indian casinos on tribal lands as those are regulated on a federal level, and an agreement would also have to be reached with the governor.

Opponents contend:

With this change to Nebraska's Constitution, casino-style gaming will not be limited to just licensed racetracks in Nebraska. This initiative, along with existing federal law, will legalize casino gambling of all types not only at racetracks but also on all tribal lands throughout Nebraska. Nebraskans and their elected officials will have no regulatory control or power of taxation over these Indian casinos. There will be no local control over this gambling. All games of chance will be legal, including online slot machines and table games from laptops and cellphones anywhere in Nebraska, 24 hours a day, with little to no regulatory oversight or safeguards. Problem gamblers and minors could have access to gambling with no safeguards.

INITIATIVE MEASURE 430

Ballot Title and Text for Initiative Measure 430

Proposed by Initiative Petition

Initiative Measure 430

A vote "FOR" will enact a statute which: (1) allows games of chance to be conducted by authorized gaming operators within licensed racetrack enclosures in Nebraska; (2) establishes a Nebraska Gaming Commission to license and regulate such gaming; and (3) amends and repeals existing sections of law to harmonize provisions consistent with the enactment of such statute.

A vote "AGAINST" will not cause such a statute to be enacted.

Shall a statute be enacted which: (1) allows games of chance to be conducted by authorized gaming operators within licensed racetrack enclosures in Nebraska; (2) establishes a Nebraska Gaming Commission to license and regulate such gaming; and (3) amends and repeals existing sections of law to harmonize provisions consistent with the enactment of such statute?

- For
- Against

Full Text of Proposed Measure 430

Object Statement

TITLE: The object of this petition is to enact a statute allowing all games of chance to be conducted by authorized gaming operators within licensed racetrack enclosures in Nebraska and establishes a Nebraska Gaming Commission to regulate such gaming in Nebraska.

(underscored language indicates added language, ~~strike-through~~ indicates language being removed)

Proposed Text of Statutory Initiative Petition

TEXT: FOR AN ACT relating to gaming; to amend sections 28-1101, 28-1105, 28-1113, 77-2704.20, and 77-3001, Reissue Revised Statutes of Nebraska, and section 2-1203.01, Revised Statutes Cumulative Supplement, 2018; to adopt the Nebraska Racetrack Gaming Act; to authorize games of chance as prescribed; to create a commission; to provide for the regulation of games of chance; to define terms; to provide duties for the State Racing Commission; to exempt the Nebraska Racetrack Gaming Act from prohibitions and penalties on gambling; to exempt purchases by the Nebraska Gaming Commission from sales and use taxes; to harmonize provisions; to provide an operative date; and to repeal the original sections.

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

Section 1. Sections 1 to 6 of this act shall be known and may be cited as the Nebraska Racetrack Gaming Act.

Sec. 2. Notwithstanding any other provision of law, and to the full extent permitted by the Constitution of Nebraska, including amendments to the Constitution of Nebraska adopted contemporaneously with the enactment of the Nebraska Racetrack Gaming Act, the operation of games of chance is permitted only by authorized gaming operators within licensed racetrack enclosures as provided in the act.

Sec. 3. For purposes of the Nebraska Racetrack Gaming Act:

- (1) Authorized gaming operator means a person or entity licensed pursuant to the act to operate games of chance within a licensed racetrack enclosure;
- (2) Authorized gaming operator license means a license to operate games of chance as an authorized gaming operator at a licensed racetrack enclosure;

(3) Game of chance means any game which has the elements of chance, prize, and consideration, including any wager on a slot machine, table game, counter game, or card game. Game of chance does not include any game the operation of which is prohibited at a casino by federal law;

(4) Gaming device means an electronic, mechanical, or other device which plays a game of chance when activated by a player using currency, a token, or other item of value;

(5) Licensed racetrack enclosure means premises at which licensed live horseracing is conducted in accordance with the Constitution of Nebraska and applicable Nebraska law;

(6) Limited gaming device means an electronic gaming device which (a) offers games of chance, (b) does not dispense currency, tokens, or other items of value, and (c) does not have a cash winnings hopper, mechanical or simulated spinning reel, or side handle; and

(7) Racing license means a license issued by the State Racing Commission.

Sec. 4. (1) The operation of games of chance at a licensed racetrack enclosure may be conducted by an authorized gaming operator who holds an authorized gaming operator license.

(2) No more than one authorized gaming operator license shall be granted for each licensed racetrack enclosure within the state; provided that, it shall not be a requirement that the person or entity applying for or to be granted such authorized gaming operator license hold a racing license or be the same person or entity who operates the licensed racetrack enclosure at which such authorized gaming operator license shall be granted.

(3) Gaming devices, limited gaming devices, and all other games of chance may be operated by authorized gaming operators at a licensed racetrack enclosure.

(4) No person younger than twenty-one years of age shall play or participate in any way in any game of chance or use any gaming device or limited gaming device at a licensed racetrack enclosure.

(5) No authorized gaming operator shall permit an individual younger than twenty-one years of age to play or participate in any game of chance or use any gaming device or limited gaming device conducted or operated pursuant to the Nebraska Racetrack Gaming Act.

Sec. 5. (1) For purposes of providing the necessary licensing and regulation of the operation of games of chance by authorized gaming operators within licensed racetrack enclosures pursuant to the Nebraska Racetrack Gaming Act, the Nebraska Gaming Commission is created.

(2) The commission shall consist of seven members. Not more than four of the seven members shall be affiliated with the same political party. No member shall have any personal financial interest in any licensed racetrack enclosure or authorized gaming operator for the duration of his or her term. The members of the commission shall elect one of the members to be chairperson.

(3) The five members of the State Racing Commission shall be *ex officio* members of the Nebraska Gaming Commission, serving terms and receiving appointment in the same manner as provided in sections 2-1201 and 2-1202.

(4) The Governor shall appoint two additional members to serve with the members of the State Racing Commission as members of the Nebraska Gaming Commission. The members appointed pursuant to this subsection shall serve five-year terms. One of such members shall have experience in the Nebraska gaming industry, and one shall be a member of the organization representing the majority of licensed owners and trainers of horses at racetracks in Nebraska.

(5) The compensation of the members of the Nebraska Gaming Commission shall be one thousand dollars per month, which may be adjusted every two years in an amount not to exceed the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the period between June 30 of the first year to June 30 of the year of adjustment.

Sec. 6. The Nebraska Gaming Commission shall:

(1) License and regulate authorized gaming operators for the operation of all games of chance authorized pursuant to the Nebraska Racetrack Gaming Act, including adopting, promulgating, and enforcing rules and regulations governing such authorized gaming operators consistent with the act;

(2) Regulate the operation of games of chance in order to prevent and eliminate corrupt practices and fraudulent behavior, and thereby promote integrity, security, and honest administration in, and accurate accounting of, the operation of games of chance which are subject to the act;

(3) Establish criteria to license applicants for authorized gaming operator licenses and all other types of gaming licenses for other positions and functions incident to the operation of games of chance, including adopting, promulgating, and enforcing rules, regulations, and eligibility standards for such authorized gaming operator licenses, gaming licenses, and positions and functions incident to the operation of games of chance;

(4) Charge fees for applications for licenses and for the issuance of authorized gaming operator licenses and all other types of gaming licenses to successful applicants which shall be payable to the Nebraska Gaming Commission;

(5) Charge fees to authorized gaming operators in an amount necessary to offset the cost of oversight and regulatory services to be provided which shall be payable to the Nebraska Gaming Commission;

(6) Impose a one-time authorized gaming operator license fee of one million dollars on each authorized gaming operator for each licensed racetrack enclosure payable to the Nebraska Gaming Commission;

(7) Grant, deny, revoke, and suspend authorized gaming operator licenses and all other types of gaming licenses based upon reasonable criteria and procedures established by the commission to facilitate the integrity, productivity, and lawful conduct of gaming within the state;

(8) Grant or deny for cause applications for authorized gaming operator licenses of not less than twenty years in duration with no more than one such authorized gaming operator license granted for any licensed racetrack enclosure within the state;

- (9) Conduct background investigations of applicants for authorized gaming operator licenses and all other types of gaming licenses;
- (10) Adopt and promulgate rules and regulations for the standards of manufacture of gaming equipment;
- (11) Inspect the operation of any authorized gaming operator conducting games of chance for the purpose of certifying the revenue thereof and receiving complaints from the public;
- (12) Issue subpoenas for the attendance of witnesses or the production of any records, books, memoranda, documents, or other papers or things at or prior to any hearing as is necessary to enable the commission to effectively discharge its duties;
- (13) Administer oaths or affirmations as necessary to carry out the act;
- (14) Have the authority to impose, subject to judicial review, administrative fines not to exceed twenty-five thousand dollars for each violation of the act or any rules and regulations adopted and promulgated pursuant to the act;
- (15) Collect and remit administrative fines collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska;
- (16) Adopt and promulgate rules and regulations for any gaming taxes assessed to authorized gaming operators;
- (17) Collect and account for any gaming taxes assessed to authorized gaming operators and remit such taxes to the State Treasurer or county treasurer as required by Nebraska law;
- (18) Promote treatment of gaming-related behavioral disorders;
- (19) Establish procedures for the governance of the commission;
- (20) Acquire necessary offices, facilities, counsel, and staff;
- (21) Establish procedures for an applicant for a staff position to disclose conflicts of interest as part of the application for employment; and
- (22) Do all things necessary and proper to carry out its powers and duties under the act, including the adoption and promulgation of rules and regulations and such other actions as permitted by the Administrative Procedure Act.

Sec. 7. Section 2-1203.01, Revised Statutes Cumulative Supplement, 2018, is amended to read:

2-1203.01. The State Racing Commission shall:

- (1) Enforce all state laws covering horseracing as required by sections 2-1201 to 2-1229 and enforce rules and regulations adopted and promulgated by the commission under the authority of section 2-1203;

- (2) License racing industry participants, race officials, mutuel employees, concessionaires, and such other persons as deemed necessary by the commission if the license applicants meet eligibility standards established by the commission;
- (3) Prescribe and enforce security provisions, including, but not limited to, the restricted access to areas within track enclosures and backstretch areas, and prohibitions against misconduct or corrupt practices;
- (4) Determine or cause to be determined by chemical testing and analysis of body fluids whether or not any prohibited substance has been administered to the winning horse of each race and any other horse selected by the board of stewards;
- (5) Verify the certification of horses registered as being Nebraska-bred under section 2-1213; ~~and~~
- (6) Collect and verify the amount of revenue received by the commission under section 2-1208; and
- (7) Serve as *ex officio* members of the Nebraska Gaming Commission, and perform the duties set forth in the Nebraska Racetrack Gaming Act.

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

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 or she 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, or (c) engaging in the procurement, sale, or offering for sale within this state of any chance, share, or interest in a lottery of another state or government whether or not such chance, share, or interest is an actual lottery ticket, receipt, contingent promise to pay, order to purchase, or other record of such interest except as provided in the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, the Nebraska Racetrack Gaming Act, or section 9-701;
- (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) A person profits from gambling activity if, other than as a player, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates or is to participate in the proceeds of gambling activity;
- (4) A person engages in gambling if he or she bets something of value upon the outcome of a future event, which outcome is determined by an element of chance, or upon the outcome of a game, contest, or election, or conducts or participates in any bingo, lottery by the sale of pickle cards,

lottery, raffle, gift enterprise, or other scheme not authorized or conducted in accordance with the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, the Nebraska Racetrack Gaming Act, or section 9-701, but a person does not engage in gambling by:

(a) Entering into a lawful business transaction;

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

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

(d) Conducting or participating in any bingo, lottery by the sale of pickle cards, lottery, raffle, game of chance, or gift enterprise conducted in accordance with the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, the Nebraska Racetrack Gaming Act, or section 9-701;

(5) Gambling device shall mean any device, machine, paraphernalia, writing, paper, instrument, article, or equipment that is used or usable for engaging in gambling, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine. Gambling device shall also include any mechanical gaming device, computer gaming device, electronic gaming device, or video gaming device which has the capability of awarding something of value, free games redeemable for something of value, instant-win tickets which also provide the possibility of participating in a subsequent drawing or event, or tickets or stubs redeemable for something of value, except as authorized in the furtherance of parimutuel wagering. Supplies, equipment, cards, tickets, stubs, and other items used in any bingo, lottery by the sale of pickle cards, other lottery, raffle, game of chance, or gift enterprise conducted in accordance with the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, the Nebraska Racetrack Gaming Act, or section 9-701 are not gambling devices within this definition;

(6) 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 or entertainment; and

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

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

28-1105.

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

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

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

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

Sec. 10. Section 28-1113, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

(2) Prohibit or punish the conducting or participating in any bingo, lottery by the sale of pickle cards, lottery, raffle, or gift enterprise when conducted in accordance with the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or section 9-701; ~~or~~

(3) Apply to or prohibit the operation of games of chance, whether using a gambling device or otherwise, by authorized gaming operators within licensed racetrack enclosures or the participation or playing of such games of chance, whether participated in or played using a gambling device or otherwise, by individuals twenty-one years of age or older within licensed racetrack enclosures as provided in the Nebraska Racetrack Gaming Act.

Sec. 11. Section 77-2704.20, Reissue Revised Statutes of Nebraska, is amended to read:

77-2704.20.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases made by licensees of the State Racing Commission- or of purchases made by licensees of the Nebraska Gaming Commission.

Sec. 12. Section 77-3001, Reissue Revised Statutes of Nebraska, is amended to read:

77-3001.

For the purposes of the Mechanical Amusement Device Tax Act, unless the context otherwise requires:

(1) Person means an individual, partnership, limited liability company, society, association, joint-stock company, corporation, estate, receiver, lessee, trustee, assignee, referee, or other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals;

(2) Mechanical amusement device means any machine which, upon insertion of a coin, currency, credit card, or substitute into the machine, operates or may be operated or used for a game, contest, or amusement of any description, such as, by way of example, but not by way of limitation, pinball games, shuffleboard, bowling games, radio-ray rifle games, baseball, football, racing, boxing games, and coin-operated pool tables. Mechanical amusement device also includes game and draw lotteries and coin-operated automatic musical devices. The term does not mean vending machines which dispense tangible personal property, devices located in private homes for private use, pickle card dispensing devices which are required to be registered with the Department of Revenue pursuant to section 9-345.03, gaming devices or limited gaming devices as defined in and operated pursuant to the Nebraska Racetrack Gaming Act, or devices which are mechanically constructed in a manner that would render their operation illegal under the laws of the State of Nebraska;

(3) Operator means any person who operates a place of business in which a machine or device owned by him or her is physically located or any person who places and who either directly or indirectly controls or manages any machine or device;

(4) Distributor means any person who sells, leases, or delivers possession or custody of a machine or mechanical device to operators thereof for a consideration either directly or indirectly received;

(5) Whenever in the act, the words machine or device are used, they refer to mechanical amusement device; and

(6) Whenever in the act, the words machine, device, person, operator, or distributor are used, the words in the singular include the plural and in the plural include the singular.

Sec. 13. This act becomes operative on January 1, 2021.

Sec. 14. Original sections 28-1101, 28-1105, 28-1113, 77-2704.20, and 77-3001, Reissue Revised Statutes of Nebraska, and section 2-1203.01, Revised Statutes Cumulative Supplement, 2018, are repealed.

Sec. 15. If any section or provision of this act is determined by a court of competent jurisdiction to be unconstitutional or otherwise void or invalid for any reason, such determination shall not affect the validity of the act as a whole or any part thereof, other than the part so determined to be unconstitutional or otherwise void or invalid.

Arguments For and Against Initiative Measure 430

Supporters contend:

Initiative 430 will create a state regulatory body to govern and license Nebraska casinos. The organization will be responsible for ensuring the fair and legal gaming practices at each location. The organization will also be responsible for ensuring reporting from each gaming facility is accurate and complies with all state laws. The initiative will also require that casinos are responsible for the funding of the regulatory expenses to prevent Nebraska taxpayers from taking on additional expense.

Opponents contend:

Initiative 430 provides for special interest legislation and bypasses the state legislature. This initiative amends existing state law to give tax breaks to racetracks that conduct gaming operations by exempting them from sales and use tax. It also amends other state laws to exempt gaming at racetracks from other forms of taxes. The state legislature should determine which and how many racetracks should be allowed to operate casinos, at what tax rate, and how that revenue should be spent not special interest groups.

INITIATIVE MEASURE 431

Ballot Title and Text for Initiative Measure 431

Proposed by Initiative Petition

Initiative Measure 431

A vote "FOR" will enact a statute which: (1) imposes a 20% annual tax on gross gaming revenue from games of chance operated at licensed racetrack locations; (2) distributes 75% of such gaming tax revenues to the State for credit of 2.5% to both the Compulsive Gamblers Assistance Fund and General Fund, and 70% to the Property Tax Credit Cash Fund; and (3) distributes 25% of such gaming tax revenues to the county where the licensed racetrack is located, or, if the racetrack is located partially within a city or village, distributes this percentage evenly between the county and city or village.

A vote "AGAINST" will not cause such a statute to be enacted.

Shall a statute be enacted which: (1) imposes a 20% annual tax on gross gaming revenue from games of chance operated at licensed racetrack locations; (2) distributes 75% of such gaming tax revenues to the State for credit of 2.5% to both the Compulsive Gamblers Assistance Fund and General Fund, and 70% to the Property Tax Credit Cash Fund; and (3) distributes 25% of such gaming tax revenues to the county where the licensed racetrack is located, or, if the racetrack is located partially within a city or village, distributes this percentage evenly between the county and city or village?

For

Against

Full Text of Proposed Measure 431

Object Statement

TITLE: The object of this petition is to enact a statute establishing an annual tax on gross gaming revenue generated by authorized gaming operators of games of chance within licensed racetrack enclosures and directs the collection, enforcement, and distribution of revenue from such gaming tax.

Proposed Text of Statutory Initiative Petition

TEXT: FOR AN ACT relating to gaming; to provide a tax on gaming as prescribed; to provide for distribution of tax proceeds; and to define terms.

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

Section 1. To the full extent permitted by the Constitution of Nebraska, including amendments to the Constitution of Nebraska adopted contemporaneously with the enactment of this act, an annual gaming tax is hereby imposed on the operation of all games of chance by authorized gaming operators within licensed racetrack enclosures.

Sec. 2. For purposes of this act:

(1) Authorized gaming operator means a person or entity licensed pursuant to the Nebraska Racetrack Gaming Act to operate games of chance within a licensed racetrack enclosure;

(2) Dollar amount collected means the total dollar amount wagered by players of games of chance less the total dollar amount returned to such players as prizes;

(3) Game of chance means any game which has the elements of chance, prize, and consideration, including any wager on a slot machine, table game, counter game, or card game. Game of chance does not include any game the operation of which is prohibited at a casino by federal law;

(4) Gaming commission means the Nebraska Gaming Commission established pursuant to the Nebraska Racetrack Gaming Act;

(5) Gross gaming revenue means the dollar amount collected by an authorized gaming operator from operation of all games of chance within a licensed racetrack enclosure as computed pursuant to applicable statutes, rules, and regulations less the total of (a) all federal taxes, other than income taxes, imposed on the operation of such games of chance and (b) the amount provided to players by an authorized gaming operator as promotional gaming credits, but only to the extent such promotional gaming credits are redeemed by players to play one or more games of chance being operated by the authorized gaming operator;

(6) Licensed racetrack enclosure means a premises at which licensed live horseracing is conducted in accordance with the Constitution of Nebraska and applicable Nebraska law; and

(7) Promotional gaming credit means a credit, token, or other item of value provided by an authorized gaming operator to a player for the purpose of enabling the player to play a game of chance.

Sec. 3. An annual gaming tax is imposed on gross gaming revenue generated by authorized gaming operators within licensed racetrack enclosures from the operation of all games of chance equal to twenty percent of such gross gaming revenue. The gaming commission shall collect the tax and shall account for and remit such tax as set forth by law.

Sec. 4. Of the tax imposed by section 3 of this act, seventy-five percent shall be remitted to the State Treasurer for credit as follows: Two and one-half percent to the Compulsive Gamblers Assistance Fund, two and one-half percent to the General Fund, and seventy percent to the Property Tax Credit Cash Fund. The remaining twenty-five percent of the tax shall be remitted to the county treasurer of the county in which the licensed racetrack enclosure is located to be distributed as follows: (1) If the licensed racetrack enclosure is located completely within an unincorporated area of a county, the remaining twenty-five percent shall be distributed to the county in which such licensed racetrack enclosure is located; or (2) if the licensed racetrack enclosure is located at least partially within the limits of a city or village in such county, one-half of the remaining twenty-five percent shall be distributed to such county and one-half of the remaining twenty-five percent to the city or village in which such licensed racetrack enclosure is at least partially located.

Sec. 5. Every authorized gaming operator subject to taxation as set forth in this act shall pay such tax and make report thereof to the gaming commission under such rules and regulations as may be prescribed by the gaming commission.

Sec. 6. If the tax provided for in this act is not paid within such time as may be prescribed for payment thereof by rules and regulations prescribed by the gaming commission, the same shall become delinquent and a penalty of ten percent shall be added thereto, together with interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, until paid.

Sec. 7. Any authorized gaming operator that willfully fails, neglects, or refuses to make any report required by this act, or by rules and regulations adopted and promulgated under this act, or that knowingly makes any false statement in any such report, is guilty of a Class IV misdemeanor.

Sec. 8. If any section or provision of this act is determined by a court of competent jurisdiction to be unconstitutional or otherwise void or invalid for any reason, such determination shall not affect the validity of the act as a whole or any part thereof, other than the part so determined to be unconstitutional or otherwise void or invalid.

Arguments For and Against Initiative Measure 431

Supporters contend:

Initiative 431 will establish a rigid tax structure for casino revenue, ensuring more than \$65 million of new tax revenue are available for Nebraskans. The initiative guarantees 70% of casino tax revenue will be reserved for property tax relief, contributing more than \$40 million dollars to the fund each year. Counties and cities home to casinos will share 20% of the tax revenue. The state's general fund will receive 2.5% of the tax revenue, as will the Compulsive Gambler's Assistance Fund. The resulting \$1.625 million dollars to the fund will more than double the Nebraska Commission on Problem Gambling's annual budget and per capita will make them the best funded organization of its type in the nation.

Opponents contend:

Initiative 431 presents itself as a way to generate tax revenue and provide property tax relief; however, it does not mention that because of existing federal law, it will legalize gambling of all types not only at racetracks but also on tribal lands throughout Nebraska. Casinos on tribal lands will not pay taxes and will take revenue away from any potential tax relief. Nebraskans and their elected officials will have no regulatory control or power of taxation over these Indian casinos. Nebraskans will not receive the economic benefits of such casinos. The legislature should determine what a fair tax is and how tax revenue is spent not special interest groups.