

April 9, 2012

Mr. President, Mr. Speaker, and
Members of the Legislature
State Capitol
Lincoln, Nebraska 68509

Dear Mr. President and Members of the Legislature:

I am returning LB 806 & LB 806A without my signature and with my objections.

The legislation proposes to create a new form of gambling by authorizing, for the first time in Nebraska's history, wagering on historic horse races. The bill defines a historic horse race as a form of racing that creates a parimutuel pool from wagers placed on races that have previously been held. In other words, there is no live horse race involved in this form of new betting. Rather, players wager on previously-run races on electronic gaming machines. The replay of an entire race does not even need to be completed in order to constitute a horse race under the bill.

LB 806 is problematic in several respects. First, it is not at all clear whether this form of wagering is permissible under Article III, Section 24 of the Nebraska Constitution which permits betting on the results of horse races, wherever run, either in or out of Nebraska, by the parimutuel method when conducted in a licensed racetrack enclosure.

This provision is authorized by Nebraska voters as an exception to the general prohibition against gambling in our state; however, this exception has always been construed to apply to live horse racing, not to slot-machine betting on past races. Effectively, LB 806 reads meaning into the Constitution by allowing betting on horse races not only wherever they occur but also "whenever" they were run.

Another concern with the bill is the improper delegation of legislative authority. Section 1 of the bill terminates all historic horse racing licenses after four years unless the State Racing Commission determines that a racetrack enclosure has been constructed in Lancaster County AND that racetrack enclosures have a specified increase in either the number of days of live horse racing or an increase in the purse at the racetrack enclosure compared to its 2011 purse. Under these provisions, the Legislature is authorizing historic horse racing but making the future of this form of gambling contingent upon a determination of an executive branch agency's interpretation of specified events.

Finally, the provision of LB 806 that attempts to allow the law to remain in

effect for one year after a court of competent jurisdiction finds that the bill constitutes Class III gaming under the federal Indian Gaming Regulatory Act is improper. If a court rules that LB 806 constitutes Class III gaming, which is not allowed under our Constitution, then the bill would be immediately invalid. I am concerned about this bill's attempt to have the historic horse racing provisions extend for one year beyond the court's order.

This legislation contradicts the spirit of the live horse racing provisions enacted by the voters in the Nebraska Constitution and expands gambling beyond what has currently been authorized.

For these reasons, I respectfully urge you to sustain my vetoes of LB 806 & LB 806A.

Sincerely,
(Signed) Dave Heineman
Governor