

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 70

FINAL READING

Introduced by Schumacher, 22.

Read first time January 08, 2015

Committee: Revenue

1 A BILL FOR AN ACT relating to mechanical amusement devices; to amend
2 sections 77-3001, 77-3004, 77-3005, 77-3006, 77-3007, 77-3008,
3 77-3009, 77-3010, and 77-3011, Reissue Revised States of Nebraska,
4 and section 9-1006, Revised Statutes Cumulative Supplement, 2014; to
5 provide revenue for the Compulsive Gamblers Assistance Fund; to
6 change provisions of the Mechanical Amusement Device Tax Act; to
7 define and redefine terms; to require an additional occupation tax
8 on certain mechanical amusement devices; to provide procedures and
9 requirements for and provide for the distribution of additional
10 occupation taxes as prescribed; to eliminate obsolete provisions; to
11 harmonize provisions; to repeal the original sections; and to
12 declare an emergency.

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

1 Section 1. Section 9-1006, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 9-1006 The Compulsive Gamblers Assistance Fund is created. The fund
4 shall include revenue transferred from the State Lottery Operation Trust
5 Fund under section 9-812 and the Charitable Gaming Operations Fund under
6 section 9-1,101, revenue credited under section 4 of this act, and any
7 other revenue received by the division or commission for credit to the
8 fund from any other public or private source, including, but not limited
9 to, appropriations, grants, donations, gifts, devises, bequests, fees, or
10 reimbursements. The commission shall administer the fund for the
11 operation of the Gamblers Assistance Program. The Director of
12 Administrative Services shall draw warrants upon the Compulsive Gamblers
13 Assistance Fund upon the presentation of proper vouchers by the
14 commission. Money from the Compulsive Gamblers Assistance Fund shall be
15 used exclusively for the purpose of providing assistance to agencies,
16 groups, organizations, and individuals that provide education,
17 assistance, and counseling to individuals and families experiencing
18 difficulty as a result of problem gambling, to promote the awareness of
19 problem gamblers assistance programs, and to pay the costs and expenses
20 of the Gamblers Assistance Program, including travel. Any money in the
21 fund available for investment shall be invested by the state investment
22 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska
23 State Funds Investment Act.

24 Sec. 2. Section 77-3001, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 77-3001 For purposes of the Mechanical Amusement Device Tax Act,
27 unless the context otherwise requires:

28 (1) Person means an individual, partnership, limited liability
29 company, society, association, joint-stock company, corporation, estate,
30 receiver, lessee, trustee, assignee, referee, or other person acting in a
31 fiduciary or representative capacity, whether appointed by a court or

1 otherwise, and any combination of individuals;

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

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

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

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

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

28 Sec. 3. Section 77-3004, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 77-3004 (1) An occupation tax is hereby imposed and levied, in the
31 amount and in accordance with the terms and conditions hereafter stated,

1 upon the business of operating mechanical amusement devices within the
2 State of Nebraska for profit or gain either directly or indirectly
3 received. Every person who now or hereafter engages in the business of
4 operating such devices in the State of Nebraska shall pay such tax in the
5 amount and manner specified in this section.

6 (2) Any operator of a mechanical amusement device within the State
7 of Nebraska shall pay an occupation tax for each machine or device which
8 he or she operates during all of the taxable year. The tax shall be due
9 and payable on January 1 of each year on each machine or device in
10 operation on that date, except that it shall be unlawful to pay any such
11 occupation tax unless the sales or use tax has been paid on such
12 mechanical amusement devices. For every machine or device put into
13 operation on a date subsequent to January 1, and which has not been
14 included in computing the tax imposed and levied by this section the
15 ~~Mechanical Amusement Device Tax Act~~, the tax shall be due and payable
16 therefor prior to the time the machine or device is placed in operation.
17 All taxes collected pursuant to this section ~~the act~~ shall be remitted to
18 the State Treasurer for credit to the General Fund.

19 ~~(3) The amount of the occupation tax shall be fifty dollars for each~~
20 ~~machine or device for the period from July 1, 1998, through December 31,~~
21 ~~1999, except that for machines placed in operation after April 1, 1999,~~
22 ~~and before January 1, 2000, the occupation tax shall be twenty-five~~
23 ~~dollars for each machine or device.~~

24 ~~(3 4) The amount of the occupation tax shall be thirty-five dollars~~
25 ~~for each machine or device for any period beginning on or after January~~
26 ~~1, 2000, except that for machines placed in operation after July 1, and~~
27 ~~before January 1 of each year, the occupation tax shall be twenty dollars~~
28 ~~for each machine or device.~~

29 Sec. 4. (1) Beginning January 1, 2016, in addition to the
30 occupation tax imposed pursuant to section 77-3004, an additional
31 occupation tax shall be levied upon the business of operating a

1 mechanical amusement device that:

2 (a) Accepts currency, coins, tokens, or other value in exchange for
3 play;

4 (b) Awards a monetary prize or anything redeemable for a monetary
5 prize;

6 (c) Is played by a player using a touch screen, computer mouse,
7 touch pad, light pen, laser, or device of similar function by which the
8 player competes against software running the device; and

9 (d) Has not been adjudicated by a court of competent jurisdiction
10 within the State of Nebraska to not constitute a gambling device as
11 defined in subdivision (5) of section 28-1101. Any such adjudication
12 shall be by way of a final order in which the Tax Commissioner has been
13 made a party to the action and written notice has been provided to the
14 Attorney General at the commencement of the action.

15 (2) Any operator of such mechanical amusement device shall pay the
16 occupation tax. The amount of the occupation tax shall be equal to ten
17 percent of the gross revenue derived from the operation of any mechanical
18 amusement device described in subsection (1) of this section. The Tax
19 Commissioner shall collect such occupation tax concurrently with the
20 collection of the state sales tax in the same manner as the state sales
21 tax is collected. All taxes collected pursuant to this section shall be
22 remitted to the State Treasurer, and the State Treasurer shall credit
23 ninety-seven percent of such taxes to the General Fund and the remaining
24 three percent of such taxes to the Compulsive Gamblers Assistance Fund.

25 (3) The occupation tax imposed in this section shall not apply to:

26 (a) Any device that is specifically authorized by the laws of this
27 state; or

28 (b) Any device not within the definition of a gambling device as
29 defined in subdivision (5) of section 28-1101.

30 (4) To receive the exemption provided in subsection (3) of this
31 section, an operator must:

1 (a) Apply to the Tax Commissioner for a determination that such
2 exemption applies. The application shall contain such information
3 regarding the device's location, software, Internet connectivity, and
4 configuration as may be required by the Tax Commissioner; and

5 (b) Prove by a preponderance of the evidence to the Tax
6 Commissioner, at the operator's expense, that the device, in all its
7 operating configurations, is:

8 (i) A device that is specifically authorized by the laws of this
9 state; or

10 (ii) A device not within the definition of a gambling device as
11 defined in subdivision (5) of section 28-1101.

12 (5) The proof required by subdivision (4)(b)(ii) of this section may
13 be made by:

14 (a) A showing that the software running the game remains constant
15 with the nature of a game that had its software at issue in a judicial
16 case, not overturned by appeal, in which the State of Nebraska was a
17 party, the issue was litigated, and the final order found that the
18 particular game was more controlled by the player than not, and thus was
19 predominantly a game of skill; or

20 (b) Providing the results of an examination of the relevant
21 software, an analysis of the software's performance conducted by a gaming
22 laboratory approved by the Tax Commissioner, the results of human
23 performance tests that weigh the skill component against the chance
24 component of the play, and such other information as may be required by
25 the Tax Commissioner to demonstrate to the satisfaction of the Tax
26 Commissioner that all games playable on the device are more controlled by
27 the player than not, and thus are predominantly games of skill.

28 (6) Except as provided in subsection (7) of this section, the Tax
29 Commissioner shall make an initial review of an application for exemption
30 under this section and any supporting materials within a reasonable time
31 after the application and supporting materials are submitted. If upon

1 such review the Tax Commissioner determines that the device qualifies for
2 exemption, the Tax Commissioner shall submit notice of such determination
3 to the Attorney General for review. If the Attorney General does not
4 object within thirty days after receiving such notification, the Tax
5 Commissioner shall grant the exemption for the device as configured. If
6 the Attorney General objects or the Tax Commissioner determines that the
7 device does not qualify for exemption, the operator shall have the
8 opportunity for an administrative hearing before the Tax Commissioner at
9 which evidence may be presented on the issue of whether the device
10 qualifies for the exemption. After such hearing, the Tax Commissioner
11 shall enter a final decision approving or denying the exemption. The Tax
12 Commissioner's final decision may be appealed, and the appeal shall be in
13 accordance with the Administrative Procedure Act.

14 (7) For any device in operation on the effective date of this act,
15 the operator of such device may apply to the Tax Commissioner, in a
16 manner prescribed by the Tax Commissioner, within fifteen days after the
17 effective date of this act for an exemption under this section. The Tax
18 Commissioner shall make an initial review of such an application and any
19 supporting materials within seventy-five days after the application and
20 supporting materials are submitted. If upon such review the Tax
21 Commissioner determines that the device qualifies for exemption, the Tax
22 Commissioner shall submit notice of such determination to the Attorney
23 General for review. If the Attorney General does not object within thirty
24 days after receiving such notification, the Tax Commissioner shall grant
25 the exemption for the device as configured. If the Attorney General
26 objects or the Tax Commissioner determines that the device does not
27 qualify for exemption, the operator shall have the opportunity for an
28 administrative hearing before the Tax Commissioner at which evidence may
29 be presented on the issue of whether the device qualifies for the
30 exemption. After such hearing, the Tax Commissioner shall enter a final
31 decision approving or denying the exemption. The Tax Commissioner's final

1 decision may be appealed, and the appeal shall be in accordance with the
2 Administrative Procedure Act. Any such appeal shall be advanced on the
3 court docket and heard and decided by the court as quickly as possible.

4 (8) For purposes of this section, gross revenue means the total
5 aggregate receipts received from the operation of any mechanical
6 amusement device described in subsection (1) of this section without any
7 reduction for prizes, discounts, taxes, or expenses and includes receipts
8 from admission costs, any consideration necessary for participation, and
9 the value of any free tickets, games, or plays used.

10 (9) For purposes of this section, the fact that the device is played
11 or connected via league or tournament play shall play no factor in
12 determining whether the occupation tax imposed by this section is due.

13 Sec. 5. Section 77-3005, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 77-3005 The occupation ~~taxes~~ tax levied and imposed under section
16 77-3004 and section 4 of this act by the Mechanical Amusement Device Tax
17 Act shall be in addition to any and all taxes or fees, of any form
18 whatsoever, now imposed by the State of Nebraska or any of its
19 subdivisions, upon the business of operating or distributing mechanical
20 amusement devices as defined in section 77-3001, or otherwise defined by
21 the subdivisions and municipalities of the State of Nebraska, except that
22 payment of the tax imposed under section 77-3004 and license fees due and
23 owing on or before the licensing date of each year and payment of any tax
24 due and owing under section 4 of this act shall exempt any such
25 mechanical amusement device from the application of the sales tax which
26 would or could otherwise be imposed under the Nebraska Revenue Act of
27 1967. Nonpayment of the tax imposed under section 77-3004 and license
28 taxes or fees due and owing on or before the licensing date of each year
29 or nonpayment of any tax due and owing under section 4 of this act shall
30 render the exemption provided by this section inapplicable and the
31 particular machines or devices shall then be subject to all the

1 provisions of the Nebraska Revenue Act of 1967, including the penalty
2 provisions pertaining to the owner or operator of such machines or
3 devices.

4 Sec. 6. Section 77-3006, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 77-3006 The administration of the Mechanical Amusement Device Tax
7 Act ~~provisions of sections 77-3001 to 77-3011~~ is hereby vested in the Tax
8 Commissioner of the State of Nebraska subject to other provisions of law
9 relating to the Tax Commissioner. The Tax Commissioner may prescribe,
10 adopt, and enforce rules and regulations relating to the administration
11 and enforcement of the act ~~provisions of sections 77-3001 to 77-3011~~, and
12 may delegate authority to his or her representatives to conduct hearings,
13 or perform any other duties imposed under the act ~~provisions of sections~~
14 ~~77-3001 to 77-3011~~.

15 Sec. 7. Section 77-3007, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 77-3007 (1) The payment of the tax imposed under section 77-3004 ~~by~~
18 ~~the provisions of sections 77-3001 to 77-3011~~ shall be evidenced by a
19 separate decal for each device signifying payment of such ~~the~~ tax, in a
20 form prescribed by the Tax Commissioner.

21 (2) Every operator shall place such decal in a conspicuous place on
22 each device to denote payment of such ~~the~~ tax for each device for the
23 current year.

24 Sec. 8. Section 77-3008, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 77-3008 Nothing in the Mechanical Amusement Device Tax Act ~~sections~~
27 ~~77-3001 to 77-3011~~ shall be construed to limit, usurp, or repeal any
28 power to tax granted to the subdivisions and municipalities of the State
29 of Nebraska by the laws and Constitution of the State of Nebraska.

30 Sec. 9. Section 77-3009, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 77-3009 (1) Any person who places a mechanical amusement device in
2 operation in the State of Nebraska without the necessary decal being
3 placed conspicuously upon it, ~~or~~ without having obtained the necessary
4 license, or without having paid any occupation tax due under section 4 of
5 this act shall be subject to an administrative penalty of seventy-five
6 dollars for each violation.

7 (2) If a Any mechanical amusement device ~~which~~ does not have the
8 necessary decal conspicuously displayed upon it or if an occupation tax
9 under section 4 of this act has been imposed on a mechanical amusement
10 device and such tax has not been paid, the mechanical amusement device in
11 question shall be subject to being sealed by the Tax Commissioner or his
12 or her delegate. If such seal is broken prior to payment of all the
13 occupation taxes owed on tax upon such device, the device shall be
14 subject to forfeiture and sale by the Tax Commissioner.

15 (3) Any person violating the Mechanical Amusement Device Tax Act
16 shall be guilty of a Class II misdemeanor. Each day on which any person
17 engages in or conducts the business of operating or distributing the
18 machines or devices subject to the Mechanical Amusement Device Tax Act,
19 without having paid the taxes required by section 77-3004 and section 4
20 of this act tax or without having obtained the required license as
21 provided, shall constitute a separate offense.

22 Sec. 10. Section 77-3010, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 77-3010 Prosecutions for any violations of the Mechanical Amusement
25 Device Tax Act sections 77-3001 to 77-3011 shall be brought by the
26 Attorney General or county attorney in the county in which the violation
27 occurs. Any such prosecution ~~for the violation of any of the provisions~~
28 ~~of sections 77-3001 to 77-3011~~ shall be instituted within three years
29 after the commission of the offense.

30 Sec. 11. Section 77-3011, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 77-3011 Sections 77-3001 to 77-3011 and section 4 of this act shall
2 be known and may be cited as the Mechanical Amusement Device Tax Act.

3 Sec. 12. Original sections 77-3001, 77-3004, 77-3005, 77-3006,
4 77-3007, 77-3008, 77-3009, 77-3010, and 77-3011, Reissue Revised Statutes
5 of Nebraska, and section 9-1006, Revised Statutes Cumulative Supplement,
6 2014, are repealed.

7 Sec. 13. Since an emergency exists, this act takes effect when
8 passed and approved according to law.