

AMENDMENTS TO LB685

Introduced by Lowe, 37.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Section 77-3001, Revised Statutes Cumulative Supplement,
4 2022, is amended to read:

5 77-3001 For purposes of the Mechanical Amusement Device Tax Act,
6 unless the context otherwise requires:

7 (1) Cash device means any mechanical amusement device capable of
8 awarding (a) cash, (b) anything redeemable for cash, (c) gift cards,
9 credit, or other instruments which have a value denominated by reference
10 to an amount of currency, or (d) anything redeemable for anything
11 described in subdivision (c) of this subdivision;

12 (2) Department means the Department of Revenue;

13 (3) Distributor means any person who sells, leases, or delivers
14 possession or custody of a ~~machine~~ or mechanical amusement device to
15 operators thereof for a consideration either directly or indirectly
16 received;

17 (4) Manufacturer means an individual, partnership, corporation, or
18 limited liability company that manufactures, builds, rebuilds,
19 fabricates, assembles, produces, programs, designs, or otherwise makes
20 modifications to cash devices or associated equipment for use or play of
21 cash devices;

22 (5)(a) ~~(4)~~ Mechanical amusement device means any machine which, upon
23 insertion of a coin, currency, credit card, or substitute into the
24 machine, operates or may be operated or used for a game, contest, or
25 amusement of any description, such as, by way of example, but not by way
26 of limitation, pinball games, shuffleboard, bowling games, radio-ray
27 rifle games, baseball, football, racing, boxing games, electronic video

1 games of skill, and coin-operated pool tables. Mechanical amusement
2 device also includes game and draw lotteries and coin-operated automatic
3 musical devices.

4 (b) Mechanical amusement device does not mean vending machines which
5 dispense tangible personal property, devices located in private homes for
6 private use, pickle card dispensing devices which are required to be
7 registered with the department pursuant to section 9-345.03, gaming
8 devices or limited gaming devices as defined in and operated pursuant to
9 the Nebraska Racetrack Gaming Act, or devices which are mechanically
10 constructed in a manner that would render their operation illegal under
11 the laws of the State of Nebraska;

12 (6) Net operating revenue means the dollar amount collected by an
13 owner or operator of any cash device as computed pursuant to applicable
14 statutes, rules, and regulations less the total of cash awards paid out
15 to players as described in subdivision (1) of this section;

16 (7) ~~(5)~~ Operator means any person who operates a place of business
17 in which a mechanical amusement machine ~~or~~ device owned by him or her is
18 physically located or any person who places and who either directly or
19 indirectly controls or manages any mechanical amusement machine ~~or~~
20 device;

21 (8) ~~(6)~~ Person means an individual, partnership, limited liability
22 company, society, association, joint-stock company, corporation, estate,
23 receiver, lessee, trustee, assignee, referee, or other person acting in a
24 fiduciary or representative capacity, whether appointed by a court or
25 otherwise, and any combination of individuals; and

26 ~~(7) Whenever in the act, the words machine or device are used, they~~
27 ~~refer to mechanical amusement device;~~

28 (9) ~~(8)~~ Whenever in the act, the words electronic video games of
29 skill, games of skill, or skill-based devices are used, they refer to
30 mechanical amusement devices which produce an outcome predominantly
31 caused by skill and not chance. ~~and~~

1 ~~(9) Whenever in the act, the words machine, device, person,~~
2 ~~operator, or distributor are used, the words in the singular include the~~
3 ~~plural and in the plural include the singular.~~

4 Sec. 2. Section 77-3002, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 77-3002 (1) Any operator shall be required to procure an annual
7 license from the Tax Commissioner permitting him or her to operate
8 mechanical amusement machines ~~or devices~~ within the State of Nebraska.
9 The Tax Commissioner, upon the application of any person, may issue a
10 license, except that if the applicant (a) is not of good character and
11 reputation in the community in which he or she resides, (b) has been
12 convicted of or has pleaded guilty to a felony under the laws of the
13 State of Nebraska, any other state, or of the United States, or (c) has
14 been convicted of or has pleaded guilty to being the proprietor of a
15 gambling house, or of any other crime or misdemeanor opposed to decency
16 and morality, no license shall be issued. If the applicant is a
17 corporation whose majority stockholders could not obtain a license, then
18 such corporation shall not be issued a license. If the applicant is an
19 individual, the application shall include the applicant's social security
20 number. Procuring a license shall constitute sufficient contact with this
21 state for the exercise of personal jurisdiction over such person in any
22 action arising out of the operation of mechanical amusement machines ~~or~~
23 ~~devices~~ in this state.

24 (2)(a) Each license application for an operator of a cash device
25 shall be subject to a full background check by the department prior to
26 the issuance of a license. An applicant shall pay the costs associated
27 with the background check along with any required fees as determined by
28 the department.

29 (b) The Tax Commissioner has the authority to deny any application
30 for a license to operate a cash device for cause. Cause for denial of a
31 license application includes instances in which the applicant

1 individually, or in the case of a business entity, any officer, director,
2 employee, or limited liability company member of the applicant or
3 licensee other than an employee whose duties are purely ministerial in
4 nature:

5 (i) Violated the provisions, requirements, conditions, limitations,
6 or duties imposed by the Mechanical Amusement Device Tax Act or any rules
7 or regulations adopted and promulgated pursuant to the act;

8 (ii) Knowingly caused, aided, abetted, or conspired with another to
9 cause any person to violate any of the provisions of the act or any rules
10 or regulations adopted and promulgated pursuant to the act;

11 (iii) Obtained a license or permit under the act by fraud,
12 misrepresentation, or concealment;

13 (iv) Has been convicted of, forfeited bond upon a charge of, or
14 pleaded guilty or nolo contendere to any offense or crime, whether a
15 felony or a misdemeanor, involving any gambling activity or fraud, theft,
16 willful failure to make required payments or reports, or filing false
17 reports with a governmental agency at any level;

18 (v) Denied the department or its authorized representatives,
19 including authorized law enforcement agencies, access to any place where
20 activity required to be licensed under the act is being conducted or
21 failed to produce for inspection or audit any book, record, document, or
22 item required by law, rule, or regulation;

23 (vi) Made a misrepresentation of or failed to disclose a material
24 fact to the department;

25 (vii) Failed to prove by clear and convincing evidence such
26 applicant's qualifications to be licensed in accordance with the act;

27 (viii) Failed to pay any taxes and additions to taxes, including
28 penalties and interest required by the act or any other taxes imposed
29 pursuant to the Nebraska Revenue Act of 1967;

30 (ix) Failed to demonstrate good character, honesty, and integrity;
31 or

1 (x) Has been cited for a violation of the Nebraska Liquor Control
2 Act and had a liquor license suspended, canceled, or revoked by the
3 Nebraska Liquor Control Commission, on or about the premises licensed by
4 the commission pursuant to the Nebraska Liquor Control Act or the rules
5 and regulations adopted and promulgated pursuant to such act.

6 (c) No renewal of a license issued pursuant to this section shall be
7 issued when the applicant for renewal would not be eligible for a license
8 upon a first application.

9 (3) Beginning January 1, 2025, the application to operate a cash
10 device shall be accompanied by a fee of two hundred fifty dollars.

11 (4) The Tax Commissioner shall have the authority to suspend or
12 revoke the license of any operator that is in violation of the Mechanical
13 Amusement Device Tax Act.

14 ~~(2)(a) For the period beginning July 1, 1998, through December 31,~~
15 ~~1999, if the applicant operates ten or more machines, the application~~
16 ~~shall be accompanied by a fee of two hundred fifty dollars, and such~~
17 ~~license will remain in effect until December 31, 1999. If the applicant~~
18 ~~operates fewer than ten machines, no fee is due. Any licensee that places~~
19 ~~additional machines into operation during this period which results in a~~
20 ~~total of ten or more machines in operation becomes subject to the two-~~
21 ~~hundred-fifty-dollar fee.~~

22 ~~(b) Beginning January 1, 2000, the application shall be filed on or~~
23 ~~before January 1 of each year, and no license fee will be required.~~

24 Sec. 3. Section 77-3003, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 77-3003 (1) Any distributor shall be required to procure an annual
27 license from the Tax Commissioner permitting him or her to sell, lease,
28 or deliver possession or custody of a mechanical amusement machine or
29 device within the State of Nebraska. The Tax Commissioner, upon the
30 application of any person, may issue a license, subject to the same
31 limitations as an operator's license under section 77-3002. If the

1 applicant is an individual, the application shall include the applicant's
2 social security number. ~~For applications filed for the period beginning~~
3 ~~July 1, 1998, through December 31, 1999, such application shall be~~
4 ~~accompanied by a fee of two hundred fifty dollars, and the license shall~~
5 ~~remain in effect until December 31, 1999. Beginning January 1, 2000, the~~
6 ~~application shall be filed on or before January 1 of each year, and no~~
7 ~~license fee will be required.~~

8 (2)(a) Each license application for a distributor of a cash device
9 shall be subject to a full background check by the department prior to
10 issuance of the license. An applicant shall pay the costs associated with
11 the background check along with any required fees as determined by the
12 department.

13 (b) The Tax Commissioner has the authority to deny any application
14 for a license to distribute a cash device for cause. Cause for denial of
15 a license application includes instances in which the applicant
16 individually, or in the case of a business entity, any officer, director,
17 employee, or limited liability company member of the applicant or
18 licensee other than an employee whose duties are purely ministerial in
19 nature:

20 (i) Violated the provisions, requirements, conditions, limitations,
21 or duties imposed by the Mechanical Amusement Device Tax Act or any rules
22 or regulations adopted and promulgated pursuant to the act;

23 (ii) Knowingly caused, aided, abetted, or conspired with another to
24 cause any person to violate any of the provisions of the act or any rules
25 or regulations adopted and promulgated pursuant to the act;

26 (iii) Obtained a license or permit under the act by fraud,
27 misrepresentation, or concealment;

28 (iv) Has been convicted of, forfeited bond upon a charge of, or
29 pleaded guilty or nolo contendere to any offense or crime, whether a
30 felony or a misdemeanor, involving any gambling activity or fraud, theft,
31 willful failure to make required payments or reports, or filing false

1 reports with a governmental agency at any level;

2 (v) Denied the department or its authorized representatives,
3 including authorized law enforcement agencies, access to any place where
4 activity required to be licensed under the act is being conducted or
5 failed to produce for inspection or audit any book, record, document, or
6 item required by law, rule, or regulation;

7 (vi) Made a misrepresentation of or failed to disclose a material
8 fact to the department;

9 (vii) Failed to prove by clear and convincing evidence such
10 applicant's qualifications to be licensed in accordance with the act;

11 (viii) Failed to pay any taxes and additions to taxes, including
12 penalties and interest required by the act or any other taxes imposed
13 pursuant to the Nebraska Revenue Act of 1967;

14 (ix) Failed to demonstrate good character, honesty, and integrity;
15 or

16 (x) Has been cited for a violation of the Nebraska Liquor Control
17 Act and had a liquor license suspended, canceled, or revoked by the
18 Nebraska Liquor Control Commission, on or about the premises licensed by
19 the commission pursuant to the Nebraska Liquor Control Act or the rules
20 and regulations adopted and promulgated pursuant to such act.

21 (c) No renewal of a license issued pursuant to this section shall be
22 issued when the applicant for renewal would not be eligible for a license
23 upon a first application.

24 (3) Beginning January 1, 2025, the annual license for a distributor
25 of a cash device shall be accompanied by a fee of five thousand dollars.

26 (4) The Tax Commissioner shall have the authority to suspend or
27 revoke the license of any distributor that is in violation of the
28 Mechanical Amusement Device Tax Act.

29 Sec. 4. (1) A manufacturer of a cash device shall be required to
30 procure an annual license from the Tax Commissioner permitting such
31 manufacturer to place any cash devices in the State of Nebraska for sale,

1 lease, or distribution through a third party. The Tax Commissioner, upon
2 the application of any person, may issue a license, subject to the same
3 limitations as an operator's license under section 77-3002. If the
4 applicant is an individual, the application shall include the applicant's
5 social security number. The license fee for a manufacturer of a cash
6 device shall be five thousand dollars.

7 (2)(a) Each license application from a manufacturer of a cash device
8 shall be subject to a full background check by the department prior to
9 the issuance of a license. An applicant shall pay the costs associated
10 with the background check and any required fees as determined by the
11 department.

12 (b) The Tax Commissioner has the authority to deny a license for a
13 manufacturer of a cash device for cause. Cause for denial of a license
14 application includes instances in which the applicant individually, or in
15 the case of a business entity, any officer, director, employee, or
16 limited liability company member of the applicant or licensee other than
17 an employee whose duties are purely ministerial in nature:

18 (i) Violated the provisions, requirements, conditions, limitations,
19 or duties imposed by the Mechanical Amusement Device Tax Act or any rules
20 or regulations adopted and promulgated pursuant to the act;

21 (ii) Knowingly caused, aided, abetted, or conspired with another to
22 cause any person to violate any of the provisions of the act or any rules
23 or regulations adopted and promulgated pursuant to the act;

24 (iii) Obtained a license or permit under the act by fraud,
25 misrepresentation, or concealment;

26 (iv) Has been convicted of, forfeited bond upon a charge of, or
27 pleaded guilty or nolo contendere to any offense or crime, whether a
28 felony or a misdemeanor, involving any gambling activity or fraud, theft,
29 willful failure to make required payments or reports, or filing false
30 reports with a governmental agency at any level;

31 (v) Denied the department or its authorized representatives,

1 including authorized law enforcement agencies, access to any place where
2 activity required to be licensed under the act is being conducted or
3 failed to produce for inspection or audit any book, record, document, or
4 item required by law, rule, or regulation;

5 (vi) Made a misrepresentation of or failed to disclose a material
6 fact to the department;

7 (vii) Failed to prove by clear and convincing evidence such
8 applicant's qualifications to be licensed in accordance with the act;

9 (viii) Failed to pay any taxes and additions to taxes, including
10 penalties and interest required by the act or any other taxes imposed
11 pursuant to the Nebraska Revenue Act of 1967;

12 (ix) Failed to demonstrate good character, honesty, and integrity;
13 or

14 (x) Has been cited for a violation of the Nebraska Liquor Control
15 Act and had a liquor license suspended, canceled, or revoked by the
16 Nebraska Liquor Control Commission, on or about the premises licensed by
17 the commission pursuant to the Nebraska Liquor Control Act or the rules
18 and regulations adopted and promulgated pursuant to such act.

19 (c) No renewal of a license pursuant to this section shall be issued
20 when the applicant for renewal would not be eligible for a license upon a
21 first application.

22 (3) The Tax Commissioner has the authority to suspend or revoke the
23 license of any manufacturer of a cash device that is in violation of the
24 Mechanical Amusement Device Tax Act.

25 Sec. 5. Section 77-3003.01, Revised Statutes Cumulative Supplement,
26 2022, is amended to read:

27 77-3003.01 (1)(a) The Tax Commissioner or his or her agents or
28 employees, at the direction of the Tax Commissioner, or any peace officer
29 of this state may seize, without a warrant, any mechanical amusement
30 device if there is cause to believe such mechanical amusement device is
31 not in compliance with the Mechanical Amusement Device Tax Act or any

1 rules and regulations adopted and promulgated under the act or if the
2 department determines the response to a request for information is
3 materially deficient without good cause. In addition to seizure, any
4 person placing in service or operating a cash device constituting an
5 illegal a game of chance or unlicensed cash device of any kind within
6 this state shall be subject to a penalty of up to one thousand dollars
7 for each day of such operation. The Tax Commissioner shall have the
8 authority to suspend or revoke the license of any operator, manufacturer,
9 or distributor of a cash device that is in violation of this section.

10 (b) For purposes of this subsection, a mechanical amusement device
11 is subject to seizure and penalties as if it were a game of chance if:

12 (i) The mechanical amusement device is a cash device; and

13 (ii) The mechanical amusement device does not bear an unexpired
14 decal as required under the Mechanical Amusement Device Tax Act.

15 (c) This section does not apply to any device (i) used in any bingo,
16 lottery by the sale of pickle cards, or other lottery, raffle, or gift
17 enterprise conducted in accordance with the Nebraska Bingo Act, Nebraska
18 County and City Lottery Act, Nebraska Lottery and Raffle Act, Nebraska
19 Pickle Card Lottery Act, Nebraska Small Lottery and Raffle Act, State
20 Lottery Act, or section 9-701, (ii) used for a prize contest as defined
21 in section 28-1101, ~~or~~ (iii) specifically authorized by the laws of this
22 state, or (iv) regulated under the jurisdiction of the Nebraska Racetrack
23 Gaming Act.

24 (2) To receive a determination from the department that a cash
25 device is in compliance with the Mechanical Amusement Device Tax Act and
26 any rules and regulations adopted and promulgated under the act, a
27 manufacturer or distributor of the device shall:

28 (a) Submit an application to the Tax Commissioner containing
29 information regarding the device's location, software, Internet
30 connectivity, and configuration as may be required by the Tax
31 Commissioner;

1 (b) Submit an application fee of five hundred dollars;

2 (c) Provide a specimen of the proposed cash device;

3 (d) Provide all supporting evidence, including a report by an
4 independent testing authority certified ~~preapproved~~ by the Tax
5 Commissioner, to the Tax Commissioner indicating that, under all
6 configurations, settings, and modes of operation, operation of the cash
7 device constitutes a game of skill and not a game of chance and the use,
8 operation, sale, or manufacture of the cash device would not constitute a
9 violation of section 28-1107; and

10 (e) Provide an affidavit from the distributor affirming that no
11 functional changes in hardware or software will be made to the approved
12 cash device without further approval from the Tax Commissioner.

13 (3) The Tax Commissioner shall issue a response in writing to the
14 applicant within forty-five days after the applicant has completed and
15 submitted all application requirements. The Tax Commissioner's response
16 shall state the reason for any denial or the reasons a determination
17 cannot be made.

18 (4)(a) A cash device shall not be considered a game of skill if one
19 or more of the following apply:

20 (i) The ability of any player to succeed at the game played on the
21 cash device is impacted by the number or ratio of prior wins to prior
22 losses of players playing such cash device;

23 (ii) The ability of the player to succeed at the game played on the
24 cash device is impacted by the ability of any person to set a specified
25 win-loss ratio for the cash device or by the cash device having a
26 predetermined win-loss percentage;

27 (iii) The outcome of the game played on the cash device can be
28 controlled by a source other than any player playing the device;

29 (iv) The success of any player is or may be determined by a chance
30 event which cannot be altered by player action;

31 (v) There is no possibility for the player to win every game played

1 on the cash device or there are unwinnable games or game modes on the
2 cash device;

3 (vi) The ability of any player to succeed at the game played on the
4 cash device requires the exercise of skill that no reasonable player
5 could exercise; or

6 (vii) The primary determination of the prize amount is determined by
7 the presentation or generation of a particular puzzle or group of symbols
8 dealt to the player and the player does not have control over the puzzle
9 or group of symbols presented.

10 (b) For purposes of this subsection, reasonable player means a
11 player with an average level of intelligence, physical and mental skills,
12 reaction time, and dexterity.

13 (5) The department or any court considering whether a gambling
14 device is a game of skill may consider:

15 (a) The results of an analysis by the any independent testing
16 laboratory certified authority ~~preapproved~~ by the Tax Commissioner to
17 evaluate the reaction time required for a player of a particular game on
18 such cash device to perform the tasks required by the game to win; or

19 (b) The results of an analysis by the any independent testing
20 laboratory certified authority ~~preapproved~~ by the Tax Commissioner to
21 evaluate factors set forth by the Tax Commissioner, other than reaction
22 time, required for the player of a particular game on such cash device to
23 perform the tasks required by the game to win.

24 (6) Factors which are not sufficient indications of a skill-based
25 game include, but are not limited to:

26 (a) Whether a comprehensive list of prizes or outcomes is offered to
27 the player or whether all outcomes are drawn from a finite pool of
28 predetermined outcomes or starting positions;

29 (b) Whether a player can increase his or her chance of winning based
30 on knowledge of probabilities in general or the probabilities of any
31 particular prize or outcome in a game or on a cash device;

1 (c) Whether a player can simply choose not to play before committing
2 money or credits; or

3 (d) A game task consisting solely of moving a symbol up or down,
4 replacing one symbol with another, or any similar action, with or without
5 a timer.

6 (7) Upon approval of an application based on a determination that
7 the mechanical amusement device is a game of skill and not a game of
8 chance, the Tax Commissioner shall issue a mechanical amusement device
9 decal for the device as configured and as provided in subsection (8) of
10 this section. No mechanical amusement device decal shall be issued for
11 any cash device unless the department has determined that such cash
12 device is a game of skill and not a game of chance and that the
13 manufacture, sale, transport, placement, possession, or operation of such
14 cash device does not constitute a violation of section 28-1107. If the
15 Tax Commissioner does not approve the application for the cash device,
16 the application shall be denied and the operator shall have the
17 opportunity for an administrative hearing before the Tax Commissioner at
18 which evidence may be presented on the issue of whether the cash device
19 is specifically authorized by law and is not a gambling device as defined
20 in section 28-1101. After such hearing, the Tax Commissioner shall enter
21 a final decision approving or denying the application. The Tax
22 Commissioner's final decision may be appealed, and the appeal shall be in
23 accordance with the Administrative Procedure Act.

24 (8)(a) Upon approval of a specimen of a cash ~~mechanical amusement~~
25 device as a game of skill under this section, the department may issue a
26 mechanical amusement device decal for each such cash device:

27 (i) If certified by the manufacturer to be functionally identical in
28 both hardware and software configurations to the specimen provided to the
29 department; and

30 (ii) If the application fee described in subdivision (2)(b) of this
31 section and the annual decal fee described in subdivision (c) of this

1 subsection have been paid.

2 (b)(i) Except as provided in subdivision (b)(ii) of this
3 subdivision, an (b)–An owner or operator of a retail establishment shall
4 operate no more than four cash devices, except that an establishment with
5 over four thousand square feet may have one cash device for each one
6 thousand square feet, up to a maximum of fifteen cash devices.

7 (ii) In order to be eligible to operate cash devices, an owner or
8 operator shall generate at least sixty percent of the gross operating
9 revenue of the retail establishment from sources other than the total
10 gross operating revenue of any cash devices located within the retail
11 establishment. The number of cash devices permitted at any retail
12 establishment shall not exceed the number of cash devices it takes to
13 generate forty percent of the gross operating revenue of the retail
14 establishment or the number of cash devices allowed pursuant to
15 subdivision (b)(i) of this subsection, whichever is less.

16 (c) The owner or operator of a cash device shall pay an annual decal
17 fee of two hundred fifty dollars to the department for each cash device
18 in operation in Nebraska. The decal issued under this section shall be
19 distinct from other decals issued by the department for mechanical
20 amusement devices that are not required to be evaluated under this
21 section. Regardless of the issuance of a decal by the department, no cash
22 device shall be considered in compliance if it does not bear an unexpired
23 decal in a conspicuous place.

24 (9) The application process described in this section shall not be
25 construed to limit further investigation by the department or the
26 issuance of further regulations to promote compliance after the
27 application process is completed. At any point after a determination of
28 skill by the department, the department may request from the
29 manufacturer, distributor, or operator information about any cash device
30 in operation in this state, including, but not limited to, information
31 regarding currently operable source code, changes to software or

1 hardware, and communications from or to the device over the Internet. A
2 manufacturer, distributor, or operator that receives a request shall
3 respond with all responsive information in its possession or control
4 within fifteen business days.

5 ~~(10)(a) Before any rules and regulations adopted and promulgated to~~
6 ~~carry out this section become effective, any manufacturer, distributor,~~
7 ~~or owner may continue to manufacture, sell, transport, place, possess, or~~
8 ~~enter into a transaction involving (i) cash devices already in operation~~
9 ~~at an establishment as of May 1, 2019, or (ii) other cash devices that~~
10 ~~are functionally identical to those already in operation at an~~
11 ~~establishment as of May 1, 2019.~~

12 ~~(b) After any rules and regulations adopted and promulgated to carry~~
13 ~~out this section become effective, until any determination of compliance~~
14 ~~or noncompliance by the department, any manufacturer, distributor, or~~
15 ~~owner may continue to manufacture, sell, transport, place, possess, or~~
16 ~~enter into a transaction involving cash devices described in subdivision~~
17 ~~(10)(a) of this section if, within ninety days after the date when any~~
18 ~~such rules and regulations become effective, the manufacturer or~~
19 ~~distributor files an application with the department for such a~~
20 ~~determination.~~

21 (10) ~~(c)~~ If a manufacturer or distributor receives a determination
22 from the department that a cash device described in subdivision ~~(10)(a)~~
23 ~~of this section~~ is not in compliance with the Mechanical Amusement Device
24 Tax Act, such manufacturer or distributor shall have thirty days after
25 the issuance of that determination to remove any such cash device from
26 operation in Nebraska.

27 (11) Application fees collected under subsection (2) of this section
28 and annual decal fees collected under subsection (8) of this section
29 shall be remitted to the State Treasurer for credit to the Department of
30 Revenue Enforcement Fund.

31 Sec. 6. Section 77-3003.02, Revised Statutes Cumulative Supplement,

1 2022, is amended to read:

2 77-3003.02 (1) No cash device shall be operated using a credit
3 card, charge card, or debit card. No person under twenty-one ~~nineteen~~
4 years of age shall play or participate in any way in the operation of a
5 cash device. No operator or employee or agent of any operator shall
6 knowingly permit any individual under twenty-one ~~nineteen~~ years of age to
7 play or participate in any way in the operation of a cash device.

8 (2) Every operator in the State of Nebraska is required to verify
9 the age of any individual requesting to play a cash device.

10 (3) No operator shall charge a fee or require a gratuity in return
11 for the payment of any prize money won by a player of a cash device.

12 (4) The Tax Commissioner shall have the authority to suspend or
13 revoke the license of any operator of a cash device for a violation of
14 this section.

15 (5) The department shall adopt and promulgate rules and regulations
16 for the implementation and enforcement of this section as long as such
17 rules and regulations do not seek to restrict how a cash device
18 manufacturer, distributor, or operator markets or advertises the
19 existence of a cash device, unless the advertiser or marketer of a cash
20 device is willfully conflating the cash device play with casino-style
21 gambling or slot machine wagering.

22 Sec. 7. Section 77-3004, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 77-3004 (1) An occupation tax is hereby imposed and levied, in the
25 amount and in accordance with the terms and conditions hereafter stated,
26 upon the business of operating mechanical amusement devices within the
27 State of Nebraska for profit or gain either directly or indirectly
28 received. Every person who now or hereafter engages in the business of
29 operating such mechanical amusement devices in the State of Nebraska
30 shall pay such occupation tax in the amount and manner specified in this
31 section.

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

16 ~~(3) The amount of the occupation tax shall be fifty dollars for each~~
17 ~~machine or device for the period from July 1, 1998, through December 31,~~
18 ~~1999, except that for machines placed in operation after April 1, 1999,~~
19 ~~and before January 1, 2000, the occupation tax shall be twenty-five~~
20 ~~dollars for each machine or device.~~

21 (3) (4) The amount of the occupation tax shall be thirty-five
22 dollars for each mechanical amusement ~~machine or~~ device for any period
23 beginning on or after January 1, 2000, except that for mechanical
24 amusement devices ~~machines~~ placed in operation after July 1, and before
25 January 1 of each year, the occupation tax shall be twenty dollars for
26 each mechanical amusement ~~machine or~~ device.

27 Sec. 8. Section 77-3005, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 77-3005 (1) The occupation tax levied and imposed by the Mechanical
30 Amusement Device Tax Act shall be in addition to any and all taxes or
31 fees, of any form whatsoever, now imposed by the State of Nebraska ~~or any~~

1 ~~of its subdivisions,~~ upon the business of operating or distributing
2 mechanical amusement devices as ~~defined in section 77-3001,~~ or otherwise
3 ~~defined by the subdivisions and municipalities of the State of Nebraska,~~
4 except that payment of the tax and license fees due and owing on or
5 before the licensing date of each year shall exempt any such mechanical
6 amusement device from the application of the sales tax which would or
7 could otherwise be imposed under the Nebraska Revenue Act of 1967.
8 Nonpayment of the taxes or fees due and owing on or before the licensing
9 date of each year shall render the exemption provided by this section
10 inapplicable and the particular machines or devices shall then be subject
11 to all the provisions of the Nebraska Revenue Act of 1967, including the
12 penalty provisions pertaining to the owner or operator of such machines
13 or devices.

14 (2) No political subdivision of the State of Nebraska shall levy or
15 impose any tax on mechanical amusement devices in addition to the taxes
16 imposed by the Mechanical Amusement Device Tax Act.

17 Sec. 9. Section 77-3006, Revised Statutes Cumulative Supplement,
18 2022, is amended to read:

19 77-3006 (1) The administration of the Mechanical Amusement Device
20 Tax Act is hereby vested in the Tax Commissioner subject to other
21 provisions of law relating to the Tax Commissioner. The Tax Commissioner
22 may prescribe, adopt and promulgate, and enforce rules and regulations
23 relating to the administration and enforcement of the act and may
24 delegate authority to his or her representatives to conduct hearings or
25 perform any other duties imposed under the act. The Tax Commissioner may
26 adopt and promulgate rules and regulations necessary to carry out section
27 77-3003.01.

28 (2) The department shall have the authority to review all documents
29 between a distributor, manufacturer, and operator regarding a cash
30 device. Such documents shall include, but not be limited to, a contract,
31 agreement, lease, profit-sharing document, annual report, tax filing, or

1 bill of sale.

2 (3) The department shall have the authority to approve all cash
3 device locations across the state. No cash device shall be moved from
4 such cash device's approved location without the prior approval of the
5 department.

6 (4) The department shall establish retail establishment location
7 standards required for the placement of any cash device in this state.
8 Each retail establishment location is required to generate at least sixty
9 percent of such establishment's gross operating revenue from other
10 sources that do not include the revenue generated from any cash device.

11 (5) The following factors shall be considered for the issuance of a
12 license to operate a cash device at a particular retail establishment
13 location:

14 (a) Physical walls separating a retail establishment operating a
15 cash device from other businesses located in the same building;

16 (b) Dedicated entrances and exits to the retail establishment;

17 (c) Whether a separate sales tax permit has been obtained by the
18 retail establishment;

19 (d) Separate points of sale;

20 (e) Separate points of ticket redemption;

21 (f) Diversity of merchandise for sale in the retail establishment;

22 (g) Whether the retail establishment issues a receipt for sales;

23 (h) The number of dedicated employees on duty at a time at the
24 retail establishment;

25 (i) The level of business activity being conducted in the space;

26 (j) Whether the physical space for the retail establishment within
27 the building is contiguous to other businesses; and

28 (k) Whether there are distinct owners or officers of the retail
29 establishment within the shared building.

30 (6) The department shall adopt and promulgate rules and regulations
31 to carry out the Mechanical Amusement Device Tax Act.

1 Sec. 10. Section 77-3007, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 77-3007 (1) The payment of the occupation tax imposed by the
4 Mechanical Amusement Device Tax Act shall be evidenced by a separate
5 decal for each mechanical amusement device signifying payment of the tax,
6 in a form prescribed by the Tax Commissioner.

7 (2) Every operator shall place such decal in a conspicuous place on
8 each device to denote payment of the tax for each device for the current
9 year.

10 Sec. 11. Section 77-3008, Revised Statutes Cumulative Supplement,
11 2022, is amended to read:

12 77-3008 (1) Each distributor of a cash device shall pay taxes owed
13 quarterly to be filed January 1, April 1, June 1, and October 1 of each
14 calendar year. Such taxes required to be paid shall include income tax,
15 occupation tax, and net gaming revenue tax.

16 (2) Each operator of a cash device shall pay income taxes generated
17 by any cash devices quarterly to be filed January 1, April 1, June 1, and
18 October 1 of each calendar year.

19 (3) Each operator of a cash device shall provide an Internal Revenue
20 Service Form 1099 to each player that wins a prize in excess of one
21 thousand one hundred ninety-nine dollars from a cash device in such
22 operator's retail establishment. The department shall make this form
23 available to all operators on the department's website.

24 (4) A distributor or manufacturer located outside the State of
25 Nebraska shall pay income taxes in Nebraska on all income earned in
26 Nebraska.

27 ~~Nothing in the Mechanical Amusement Device Tax Act shall be~~
28 ~~construed to limit, usurp, or repeal any power to tax granted to the~~
29 ~~political subdivisions and municipalities of the State of Nebraska by the~~
30 ~~laws and Constitution of Nebraska.~~

31 Sec. 12. Section 77-3009, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 77-3009 (1) Any person who places a cash ~~mechanical amusement~~ device
3 in operation in the State of Nebraska without the necessary decal being
4 placed conspicuously upon it or without having obtained the necessary
5 license shall be subject to an administrative penalty of up to one
6 thousand seventy-five dollars per day for each unlicensed cash device
7 violation.

8 (2) Any cash ~~mechanical amusement~~ device which does not have the
9 necessary decal conspicuously displayed upon it shall be subject to being
10 sealed by the Tax Commissioner or his or her delegate. If such seal is
11 broken prior to payment of the occupation tax upon such cash device, the
12 cash device shall be subject to forfeiture and sale by the Tax
13 Commissioner.

14 (3) Any person violating the Mechanical Amusement Device Tax Act
15 shall be guilty of a Class II misdemeanor. Each day on which any person
16 engages in or conducts the business of operating or distributing the
17 mechanical amusement machines ~~or~~ devices subject to the Mechanical
18 Amusement Device Tax Act, without having paid the tax or obtained the
19 required license as provided, shall constitute a separate offense.

20 (4) The department shall have the authority to levy an
21 administrative penalty of up to one thousand dollars per day for any
22 other violation of the act.

23 Sec. 13. (1) The Tax Commissioner shall establish a central server
24 for the purposes of receiving data and accurate revenue and income
25 reporting from cash devices across the State of Nebraska. Such central
26 server shall be in place and operational within one year after the
27 effective date of this act.

28 (2) Once the central server is operational, each cash device in the
29 State of Nebraska shall be connected at all times to the central server
30 operated by the department. Such central server shall report data
31 including sales, transactions, prizes won and paid, duration of play or

1 transactions, hours of operation, and any other requirements established
2 by the department through adoption and promulgation of rules and
3 regulations to enforce and implement this section.

4 Sec. 14. (1) A tax is hereby imposed and levied, in the amount and
5 in accordance with this section, upon the net operating revenue of all
6 cash devices operating within the State of Nebraska for profit or gain
7 either directly or indirectly received. Every operator of such cash
8 devices in the State of Nebraska shall pay such tax in the amount and
9 manner specified in this section.

10 (2) Beginning on and after July 1, 2025, any operator of a cash
11 device within the State of Nebraska shall pay a tax for each cash device
12 operated each calendar quarter during the taxable year. The tax shall be
13 collected by the commission and due and payable on January 1, April 1,
14 July 1, and October 1 of each year on each cash device in operation
15 during the preceding calendar quarter. For every cash device put into
16 operation on a date subsequent to a quarterly due date that has not been
17 included in computing the tax imposed and levied by the Mechanical
18 Amusement Device Tax Act, the tax shall be due and payable on the
19 immediately succeeding quarterly due date.

20 (3) The amount of the tax imposed and levied under this section
21 shall be five percent of the net operating revenue for each cash device.
22 The operator shall submit the quarterly tax on a form prescribed by the
23 Tax Commissioner documenting the total gross and net operating revenue
24 for that quarter.

25 (4) The Tax Commissioner shall remit the taxes imposed by this
26 section to the State Treasurer for credit as follows:

27 (a) Twenty percent to the Charitable Gaming Division of the
28 Department of Revenue for enforcement of the act and maintenance of the
29 central server;

30 (b) Two and one-half percent to the Compulsive Gamblers Assistance
31 Fund;

- 1 (c) Two and one-half percent to the General Fund;
- 2 (d) Ten percent to the Nebraska Tourism Commission;
- 3 (e) Forty percent to the Property Tax Credit Cash Fund; and
- 4 (f) The remaining twenty-five percent to the county treasurer of the
- 5 county in which the cash device is located to be distributed as follows:
- 6 (i) If the cash device is located completely within an unincorporated
- 7 area of a county, the remaining twenty-five percent shall be distributed
- 8 to the county in which the cash device is located, or (ii) if the cash
- 9 device is located within the limits of a city or village in such county,
- 10 one-half of the remaining twenty-five percent shall be distributed to
- 11 such county and one-half of the remaining twenty-five percent shall be
- 12 distributed to the city or village in which such cash device is located.

13 Sec. 15. Section 77-3011, Revised Statutes Cumulative Supplement,
14 2022, is amended to read:

15 77-3011 Sections 77-3001 to 77-3011 and sections 4, 13, and 14 of
16 this act shall be known and may be cited as the Mechanical Amusement
17 Device Tax Act.

18 Sec. 16. Original sections 77-3002, 77-3003, 77-3004, 77-3005, and
19 77-3009, Reissue Revised Statutes of Nebraska, and sections 77-3001,
20 77-3003.01, 77-3003.02, 77-3006, 77-3007, 77-3008, and 77-3011, Revised
21 Statutes Cumulative Supplement, 2022, are repealed.