

ONE HUNDRED EIGHTH LEGISLATURE - SECOND SESSION - 2024
COMMITTEE STATEMENT
LB685

Hearing Date: Monday February 13, 2023
Committee On: General Affairs
Introducer: Lowe
One Liner: Rename, transfer, and change provisions relating to the Mechanical Amusement Device Tax Act, transfer powers from the Department of Revenue to the State Racing and Gaming Commission, provide a tax on cash devices, and eliminate provisions relating to the power to tax under the Mechanical Amusement Device Tax Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye:	6	Senators Brewer, Cavanaugh, J., Hardin, Holdcroft, Hughes, Lowe
Nay:		
Absent:	1	Senator Raybould
Present Not Voting:	1	Senator Day

Testimony:

Proponents:

Senator John Lowe
Brian Rockey

Matthew Philippsen
Mark Phalen
Jim Hawes
Ryan Boesen

Rich Otto

Representing:

Opening Presenter
Director of the Lottery and Charitable Gaming
Division of the Nebraska Department of Revenue
Trestle Games
Accel Entertainment
Winners' Marketing Inc.
Bosselman Enterprises and The Nebraska Petroleum
Marketers and Convenience Store Association
Nebraska Hospitality Association and Nebraska
Grocers Association

Opponents:

Cynthia Smith
Kent Rogert
Joyce Frieden
Greg Frieden
John Fox
Andy Dobel
Ryan Kruse
Marilyn Kruse
Brian Halac
Jareis Nettles
Dennis Meng

Representing:

Hastings Exposition and Racing, Inc
American Amusements
Fun Time Amusement Inc.
Fun Time Amusement Inc.
American Amusements
Greater America Distributing
Nebraska Technical Services
Nebraska Technical Services
Self
Self
Self



Neutral:**Representing:**

* ADA Accommodation Written Testimony

Summary of purpose and/or changes:

LB 685 is a bill to increase the regulation and enforcement of laws regarding games of skill. This bill also increases the fees to apply for and license these games, and to move the regulation of all mechanical amusement devices to the Racing and Gaming Commission. They are currently regulated by the Department of Revenue.

Explanation of amendments:

AM 2329 replaces all of the language in LB 685. AM 2329 keeps the mechanical amusement device tax act under the Department of Revenue. It also puts a definition of manufacturer of cash devices into statute and charges an annual licensing fee of five thousand dollars for manufacturers. It requires an annual licensing fee of one hundred dollars per machine up to five thousand dollars for distributors. It requires background checks for anyone applying for a license and it levies a tax of five percent on the net operating revenue of each cash device annually, and provides an exemption from the tax for fraternal organizations. This amendment also establishes the authority of the department to pass rules and regulations to enforce the act and gives them authority to assess administrative penalties for violations of the act.

Section 1: amends section 9-1,101 by adding a new subsection six (6) to this section which allows the taxes collected and available to the Charitable Gaming Division pursuant to section 15 of this act to be used by the Charitable Gaming Division for the enforcement of the Mechanical Amusement Device Tax Act and maintenance of the central server, which is established pursuant to section 14 of this act.

Section 2: amends section 77-3001 by adding two new definitions to the act. The first is the definition of "manufacturer" which means an individual, partnership, corporation, or limited liability company that manufactures, builds, rebuilds, fabricates, assembles, produces, programs, designs, or otherwise makes modifications to cash devices or associated equipment for use or play of cash devices.

The second is the definition of "net gaming revenue" which means the dollar amount collected by an owner or operator of any cash device as computed pursuant to applicable statutes, rules, and regulations less the total of cash awards paid out to players as described in subdivision (1) of this section.

Also throughout this section, the term "mechanical amusement" device is used to replace "machine" for clarification purposes.

Section 3: amends section 77-3002 by adding new language providing that a license application for an operator of cash devices will now be subject to a one time background check by the department prior to the issuance of a license, only if the applicant does not hold a liquor license.

Additional new language details scenarios for which the director has cause for denial of a license application. These include violations of the act; caused, aided or abetted with another person to violate the act; convicted or or pleaded guilty or nolo contendere to any offense or crime, whether a felony or misdemeanor, involving any gambling activity or



fraud; theft; willful failure to make required payments or reports; or filing false reports with a governmental agency at any level; failure to demonstrate good character, honesty, and integrity; or been cited for a violation of the Nebraska Liquor Control act for illegal gambling activities.

The tax commissioner is also given the authority to suspend or revoke the license of any operator that is in violation of this act.

Outdated language is also stricken at the end of this section.

Section 4: amends section 77-3003 by requiring a distributor of mechanical amusement devices to be subject to a one time background check unless the applicant holds a liquor license, and the tax commissioner has the authority to deny an application for cause, for the same violations listed above in section 2 of this memo.

Beginning January 1, 2025, the annual license fee for a distributor is set at one hundred dollars per device they distribute, up to a maximum of five thousand dollars.

Section 5: is new language regarding manufacturers of cash devices, and requires such to procure an annual license from the tax commissioner in the same manner as distributors and operators listed above, including being subject to a background check. They are subject to the same denial of application for cause examples above, and the license fee for a manufacturer of a cash device is five thousand dollars.

Section 6: amends section 77-3003.01 by giving the tax commissioner the authority to suspend or revoke the license of any operator, manufacturer, or distributor of a cash device that is in violation of this section.

Additional new language exempts any device that is regulated under the jurisdiction of the Nebraska Racetrack Gaming Act from this section.

Other new language clarifies that the independent testing authority used to certify devices as a game of skill must be a testing authority that is certified to be used by the tax commissioner. Additionally, this section has new language intending to clarify these new requirements apply only to cash devices, and not all of the other types of mechanical amusement devices.

In subsection (8) of this section, new language creates a new business standard that requires an owner or operator to generate a least sixty (60) percent of their gross operating revenue from their retail establishment from sources other than the total gross operating revenue of any cash devices located within the retail establishment. They are also not permitted to have more cash devices than the number that will generate forty (40) percent or less of the gross operating revenue of the retail establishment. Fraternal organizations are exempt from the requirement that 60% of their revenue is generated from other sources than cash devices.

Section 7: amends section 77-3003.02 to prohibit anyone under the age of twenty-one (21) from playing or operating a cash device. New language is included that requires every operator in the state to verify the age of any individual requesting to play a cash device. Operators are prohibited from charging a fee or requiring a gratuity in return for the payment of any prize money won by a player of a cash device at their retail establishment.

The tax commissioner is again given authority to suspend or revoke the license of any operator of a cash device for a violation of this section, and the department is required to adopt and promulgate rules and regulations for the implementation and enforcement of this section as long as the rules and regulations do not seek to restrict how a cash device manufacturer, distributor, or operator markets or advertises the device, unless they are willfully conflating or advertising the device as a casino-style gambling or slot machine wagering.



Section 8: amends section 77-3004 by clarifying the occupation tax is required to be paid by every person operating mechanical amusement devices in the state of nebraska. The price of the occupation tax is not being increased by this bill, it remains at thirty five dollars per year.

Section 9: amends section 77-3005 by removing the authority of any political subdivision from levying any taxes on mechanical amusement devices.

Section 10: amends section 77-3006 with new language granting the department the authority to review all documents between distributors, manufacturers, and operators regarding cash devices.

Further, new language gives the department the authority to approve the location of all cash devices across the state, and prohibits any cash device from being moved without the prior approval of the department.

The department is further required to establish retail establishment location standards for the placement of any cash device in the state, and is directed to adopt and promulgate rules and regulations to carry out this act.

Section 11: amends section 77-3007 to clarify that the payment of the occupation tax will be evidenced by a separate decal for each mechanical amusement device to signify the occupation tax has been paid.

Section 12: amends section 77-3008 with new language requiring each distributor of cash devices to pay taxes owed quarterly, to be filed January 1, April 1, June 1, and October 1 of each calendar year, and taxes required to be paid include income tax, occupation tack and net gaming revenue tax.

Operators of cash devices are also required to pay income taxes generated quarterly on the same schedule listed above for distributors.

Operators are further required to furnish an IRS Form 1099 to each player of a cash device who wins a prize in excess of one thousand one hundred ninety nine dollars, and the department will make this form available to all operators on the department's website.

Additionally, new language requires distributors and manufacturers located outside of the State of Nebraska to pay income taxes in Nebraska on all income earned within this state.

Section 13: amends section 77-3009 to amend the administrative penalty for placing a cash device in operation in the state without the necessary decal being placed conspicuously on it or without having obtained the necessary license from seventy five dollars per day to up to one thousand dollars per day for each unlicensed cash device.

Further, the department is given authority to levy an administrative penalty of up to one thousand dollars per day for any violation of the act.

Section 14: is new language requiring the tax commissioner to establish a central server for the purposes of receiving data and accurate revenue and income reporting from all cash devices across the state. The central server must be in place and operational within one year of the effective date of this act.

Section 15: is new language regarding the tax placed on the net operating revenue of all cash devices operating within the state for profit or gain, either directly or indirectly received. The tax is due and payable quarterly, on January 1, April 1, July 1, and October 1 of each calendar year.



The tax imposed is five percent of the net operating revenue. Of this, the taxes will be distributed as follows:

Twenty percent to the Charitable Gaming Division of the Department of Revenue for enforcement of the act and maintenance of the central server;

Two and a half percent to the Compulsive Gamblers Assistance Fund;

Two and a half percent to the General Fund;

Ten percent to the Nebraska Tourism Commission;

Forty percent to the Property Tax Credit Cash Fund; and

The remaining twenty five percent to the county treasurer of the county in which the cash device is located. If the cash device is located completely within an unincorporated area of a county, the full amount is retained by the county. If the cash device is located within the limits of a city or village, half of the remaining twenty five percent goes to the city, and half goes to the county within which the cash device is located.

Fraternal organizations that operate cash devices are exempt from this provision.

Section 16: amends section 77-3011 to incorporate all new sections of this bill into the Mechanical Amusement Device Tax Act.

Section 17: amends section 81-3729 to include revenue from the tax collected on the net operating revenue of cash devices pursuant to section fifteen (15) of this act to the Nebraska Tourism Commission Promotional Cash Fund. (See section fifteen (15) above.

Section 18: is the repealer section. No sections in this bill are repealed outright.

Vote to adopt AM 2329:

Yea: Senator Lowe, Senator Brewer, Senator Cavanaugh, Senator Day, Senator Hardin, Senator Holdcroft, Senator Hughes. (7)

No: None

Present Not Voting: None

Absent: Senator Raybould (1)

LB 836 was amended into LB 685. LB 836 is a bill to create a statutory definition and regulatory scheme for a new class of alcoholic beverage, defined below as a co-branded alcoholic beverage. This bill also contains requirements for holders of liquor licenses for the display of these beverages in their retail establishments.

Section 1: amends section 53-101 to include section two of this bill in the Nebraska Liquor Control Act.

Section 2: is new language that creates a definition of co-branded alcohol, which is defined as an alcoholic liquor beverage containing the same or similar brand name, logo, or packaging as a nonalcoholic beverage; a new definition of immediately adjacent, which means directly touching or immediately bordering one another from above, below, or the side. Immediately adjacent does not include a separate aisle; and a new definition of retail sales floor, which means the part of a retailer's premises that contains goods on display that are freely accessible to the consumer.



Subsection two (2) of this section is new language prohibiting the holder of a retail license to sell alcoholic liquor, beer, or wine at retail for consumption off the licensed premises with a retail sales floor that is larger than two thousand five hundred (2500) square feet from displaying any co-branded alcoholic beverage immediately adjacent to any soft drink, fruit juice, bottled water, candy, or snack food portraying cartoons or youth-oriented images.

Further in subsection three (3), new language requires the holder of a retail license to sell alcoholic liquor, beer, or wine at retail for consumption off the licensed premises with a retail sales floor that is two thousand five hundred (2500) square feet or smaller to not place any co-branded alcoholic beverage immediately adjacent to any soft drink, fruit juice, bottled water, candy, or snack food portraying cartoons or youth-oriented images OR equip any such display containing any co-branded alcoholic beverage immediately adjacent to any soft drink, fruit juice, bottled water, candy, or snack food portraying cartoons or youth-oriented images with signage that indicates the product is an alcoholic beverage.

Any signage must be clearly visible to consumers, not less than eight and a half by eleven inches in size, and must contain language substantially similar to the following "This product is an alcoholic beverage available only to persons who are twenty-one years of age or older."

Subsection four (4) of this section contains new language which states this section does not apply to a shelf, aisle, display, or display area in which the primary items for sale contain alcoholic liquor or in an area in which persons younger than twenty-one (21) years of age are prohibited from entering without a parent or legal guardian.

Subsection five (5) of this section allows the commission to make an inspection on the premises of all retail licensees relating to co-branded alcoholic beverage displays, and if violation of this section or any rules and regulations are found, the commission may suspend, cancel, or revoke the license after opportunity for the licensee to be heard.

Section 3: is the repealer section. No sections are outright repealed.

Vote to Amend LB 836 into LB 685:

Yea: Senator Lowe, Senator Brewer, Senator Cavanaugh, Senator Day, Senator Hardin, Senator Holdcroft, Senator Hughes. (7)

No: None

Present Not Voting: None

Absent: Senator Raybould (1)

John Lowe, Chairperson

