

AMENDMENTS TO LB70

(Amendments to E and R amendments, ER27)

Introduced by Schumacher, 22.

1 1. Strike section 3 and insert the following new sections:

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

4 77-3001 For purposes of the Mechanical Amusement Device Tax Act,
5 unless the context otherwise requires:

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

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

25 (3) Operator means any person who operates a place of business in
26 which a machine or device owned by him or her is physically located or

1 any person who places and who either directly or indirectly controls or
2 manages any machine or device;

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

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

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

11 Sec. 4. (1) Beginning January 1, 2016, in addition to the occupation
12 tax imposed pursuant to section 77-3004, an additional occupation tax
13 shall be levied upon the business of operating a mechanical amusement
14 device that:

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

17 (b) Awards a monetary prize or anything redeemable for a monetary
18 prize;

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

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

28 (2) Any operator of such mechanical amusement device shall pay the
29 occupation tax. The amount of the occupation tax shall be equal to ten
30 percent of the gross revenue derived from the operation of any mechanical
31 amusement device described in subsection (1) of this section. The Tax

1 Commissioner shall collect such occupation tax concurrently with the
2 collection of the state sales tax in the same manner as the state sales
3 tax is collected. All taxes collected pursuant to this section shall be
4 remitted to the State Treasurer, and the State Treasurer shall credit
5 ninety-seven percent of such taxes to the General Fund and the remaining
6 three percent of such taxes to the Compulsive Gamblers Assistance Fund.

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

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

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

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

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

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

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

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

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

27 (a) A showing that the software running the game remains constant
28 with the nature of a game that had its software at issue in a judicial
29 case, not overturned by appeal, in which the State of Nebraska was a
30 party, the issue was litigated, and the final order found that the
31 particular game was more controlled by the player than not, and thus was

1 predominantly a game of skill; or

2 (b) Providing the results of an examination of the relevant
3 software, an analysis of the software's performance conducted by a gaming
4 laboratory approved by the Tax Commissioner, the results of human
5 performance tests that weigh the skill component against the chance
6 component of the play, and such other information as may be required by
7 the Tax Commissioner to demonstrate to the satisfaction of the Tax
8 Commissioner that all games playable on the device are more controlled by
9 the player than not, and thus are predominantly games of skill.

10 (6) Except as provided in subsection (7) of this section, the Tax
11 Commissioner shall make an initial review of an application for exemption
12 under this section and any supporting materials within a reasonable time
13 after the application and supporting materials are submitted. If upon
14 such review the Tax Commissioner determines that the device qualifies for
15 exemption, the Tax Commissioner shall submit notice of such determination
16 to the Attorney General for review. If the Attorney General does not
17 object within thirty days after receiving such notification, the Tax
18 Commissioner shall grant the exemption for the device as configured. If
19 the Attorney General objects or the Tax Commissioner determines that the
20 device does not qualify for exemption, the operator shall have the
21 opportunity for an administrative hearing before the Tax Commissioner at
22 which evidence may be presented on the issue of whether the device
23 qualifies for the exemption. After such hearing, the Tax Commissioner
24 shall enter a final decision approving or denying the exemption. The Tax
25 Commissioner's final decision may be appealed, and the appeal shall be in
26 accordance with the Administrative Procedure Act.

27 (7) For any device in operation on the effective date of this act,
28 the operator of such device may apply to the Tax Commissioner, in a
29 manner prescribed by the Tax Commissioner, within fifteen days after the
30 effective date of this act for an exemption under this section. The Tax
31 Commissioner shall make an initial review of such an application and any

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

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

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

26 2. Renumber the remaining sections, correct internal references, and
27 correct the repealer accordingly.