

E AND R AMENDMENTS TO LB 70

Introduced by Hansen, 26, Chairman Enrollment and Review

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

3           Section 1. Section 9-1006, Revised Statutes Cumulative Supplement,  
4 2014, is amended to read:

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

26           Sec. 2. Section 77-3004, Reissue Revised Statutes of Nebraska, is  
27 amended to read:

1           77-3004 (1) An occupation tax is hereby imposed and levied, in the  
2 amount and in accordance with the terms and conditions hereafter stated,  
3 upon the business of operating mechanical amusement devices within the  
4 State of Nebraska for profit or gain either directly or indirectly  
5 received. Every person who now or hereafter engages in the business of  
6 operating such devices in the State of Nebraska shall pay such tax in the  
7 amount and manner specified in this section.

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

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

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

31           Sec. 3. (1) Beginning sixty days after the effective date of this

1 act, in addition to the occupation tax imposed pursuant to section  
2 77-3004, an additional occupation tax shall be levied upon the business  
3 of operating a mechanical amusement device that:

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

6 (b) Awards a monetary prize or anything redeemable for a monetary  
7 prize;

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

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

17 (2) Any operator of such mechanical amusement device shall pay the  
18 occupation tax. If an operator believes that a mechanical amusement  
19 device is not taxable under subsection (1) of this section, the burden is  
20 on the operator to prove to the Tax Commissioner that such device does  
21 not have one or more of the characteristics required for taxability under  
22 subsection (1) of this section. Such proof may be made by, among other  
23 things, a showing that the software running the game remains constant  
24 with the nature of a game that had its software at issue in a judicial  
25 case, not overturned by appeal, in which the State of Nebraska was a  
26 party, the issue was litigated, and the final order found that the  
27 particular game is more controlled by the player than not, and thus is  
28 predominantly a game of skill.

29 (3) The amount of the occupation tax shall be equal to ten percent  
30 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  
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 (4) For purposes of this section, gross revenue means the total  
8 aggregate receipts received from the operation of any mechanical  
9 amusement device described in subsection (1) of this section without any  
10 reduction for prizes, discounts, taxes, or expenses and includes receipts  
11 from admission costs, any consideration necessary for participation, and  
12 the value of any free tickets, games, or plays used.

13 (5) The occupation tax imposed in this section shall not apply to  
14 any device not within the definition of a gambling device as defined in  
15 subdivision (5) of section 28-1101 or to any device that is specifically  
16 authorized by law.

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

20 Sec. 4. Section 77-3005, Reissue Revised Statutes of Nebraska, is  
21 amended to read:

22 77-3005 The occupation ~~tax~~ taxes levied and imposed by ~~the~~  
23 ~~Mechanical Amusement Device Tax Act~~ under section 77-3004 and section 3  
24 of this act shall be in addition to any and all taxes or fees, of any  
25 form whatsoever, now imposed by the State of Nebraska or any of its  
26 subdivisions, upon the business of operating or distributing mechanical  
27 amusement devices as defined in section 77-3001, or otherwise defined by  
28 the subdivisions and municipalities of the State of Nebraska, except that  
29 payment of the tax imposed under section 77-3004 and license fees due and  
30 owing on or before the licensing date of each year and payment of any tax  
31 due and owing under section 3 of this act shall exempt any such

1 mechanical amusement device from the application of the sales tax which  
2 would or could otherwise be imposed under the Nebraska Revenue Act of  
3 1967. Nonpayment of the ~~taxes or tax imposed under section 77-3004 and~~  
4 license fees due and owing on or before the licensing date of each year  
5 or nonpayment of any tax due and owing under section 3 of this act shall  
6 render the exemption provided by this section inapplicable and the  
7 particular machines or devices shall then be subject to all the  
8 provisions of the Nebraska Revenue Act of 1967, including the penalty  
9 provisions pertaining to the owner or operator of such machines or  
10 devices.

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

13 77-3006 The administration of the ~~provisions of sections 77-3001 to~~  
14 ~~77-3011~~ Mechanical Amusement Device Tax Act is hereby vested in the Tax  
15 Commissioner of the State of Nebraska subject to other provisions of law  
16 relating to the Tax Commissioner. The Tax Commissioner may prescribe,  
17 adopt, and enforce rules and regulations relating to the administration  
18 and enforcement of the ~~provisions of sections 77-3001 to 77-3011,~~ act and  
19 may delegate authority to his or her representatives to conduct hearings,  
20 or perform any other duties imposed under the ~~provisions of sections~~  
21 ~~77-3001 to 77-3011~~ act.

22 Sec. 6. Section 77-3007, Reissue Revised Statutes of Nebraska, is  
23 amended to read:

24 77-3007 (1) The payment of the tax imposed ~~by the provisions of~~  
25 ~~sections 77-3001 to 77-3011~~ under section 77-3004 shall be evidenced by a  
26 separate decal for each device signifying payment of ~~the~~ such tax, in a  
27 form prescribed by the Tax Commissioner.

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

31 Sec. 7. Section 77-3008, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 77-3008 Nothing in sections ~~77-3001 to 77-3011~~ the Mechanical  
3 Amusement Device Tax Act shall be construed to limit, usurp, or repeal  
4 any power to tax granted to the subdivisions and municipalities of the  
5 State of Nebraska by the laws and Constitution of the State of Nebraska.

6 Sec. 8. Section 77-3009, Reissue Revised Statutes of Nebraska, is  
7 amended to read:

8 77-3009 (1) Any person who places a mechanical amusement device in  
9 operation in the State of Nebraska without the necessary decal being  
10 placed conspicuously upon it, ~~or~~ without having obtained the necessary  
11 license, or without having paid any occupation tax due under section 3 of  
12 this act shall be subject to an administrative penalty of seventy-five  
13 dollars for each violation.

14 (2) If a Any mechanical amusement device ~~which~~ does not have the  
15 necessary decal conspicuously displayed upon it or if an occupation tax  
16 under section 3 of this act has been imposed on a mechanical amusement  
17 device and such tax has not been paid, the mechanical amusement device in  
18 question shall be subject to being sealed by the Tax Commissioner or his  
19 or her delegate. If such seal is broken prior to payment of ~~the~~ all  
20 occupation tax upon taxes owed on such device, the device shall be  
21 subject to forfeiture and sale by the Tax Commissioner.

22 (3) Any person violating the Mechanical Amusement Device Tax Act  
23 shall be guilty of a Class II misdemeanor. Each day on which any person  
24 engages in or conducts the business of operating or distributing the  
25 machines or devices subject to the Mechanical Amusement Device Tax Act,  
26 without having paid the ~~tax~~ taxes required by section 77-3004 and section  
27 3 of this act or without having obtained the required license as  
28 provided, shall constitute a separate offense.

29 Sec. 9. Section 77-3010, Reissue Revised Statutes of Nebraska, is  
30 amended to read:

31 77-3010 Prosecutions for any violations of ~~sections 77-3001 to~~

1 ~~77-3011~~ the Mechanical Amusement Device Tax Act shall be brought by the  
2 Attorney General or county attorney in the county in which the violation  
3 occurs. Any such prosecution ~~for the violation of any of the provisions~~  
4 ~~of sections 77-3001 to 77-3011~~ shall be instituted within three years  
5 after the commission of the offense.

6 Sec. 10. Section 77-3011, Reissue Revised Statutes of Nebraska, is  
7 amended to read:

8 ~~77-3011~~ Sections 77-3001 to 77-3011 and section 3 of this act shall  
9 be known and may be cited as the Mechanical Amusement Device Tax Act.

10 Sec. 11. Original sections 77-3004, 77-3005, 77-3006, 77-3007,  
11 77-3008, 77-3009, 77-3010, and 77-3011, Reissue Revised Statutes of  
12 Nebraska, and section 9-1006, Revised Statutes Cumulative Supplement,  
13 2014, are repealed.

14 Sec. 12. Since an emergency exists, this act takes effect when  
15 passed and approved according to law.

16 2. On page 1, line 3, after "Nebraska" insert ", and section 9-1006,  
17 Revised Statutes Cumulative Supplement, 2014"; in line 5 after the  
18 semicolon insert "to change the distribution of certain occupation  
19 taxes;"; in line 6 strike "and"; and in line 7 after "sections" insert "  
20 and to declare an emergency".