

**ONE HUNDRED FOURTH LEGISLATURE - FIRST SESSION - 2015**  
**COMMITTEE STATEMENT**  
**LB70**

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**Hearing Date:** Friday January 23, 2015  
**Committee On:** Revenue  
**Introducer:** Schumacher  
**One Liner:** Authorize an occupation tax on certain mechanical amusement devices

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

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**Vote Results:**

**Aye:** 8 Senators Brasch, Davis, Gloor, Scheer, Schumacher, Smith, Sullivan, Harr

**Nay:**

**Absent:**

**Present Not Voting:**

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**Verbal Testimony:**

**Proponents:**

Senator Paul Schumacher

**Representing:**

Introducer

**Opponents:**

Walt Radcliffe  
John Fox  
Andrew Meier

**Representing:**

Nebraska Operators of Music & Amusements  
American Amusement  
Nebraska Operators of Music & Amusements

**Neutral:**

**Representing:**

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**Summary of purpose and/or changes:**

The distinction between illegal games of chance and lawful games of skill has been blurred by increasingly sophisticated computer technology. Enforcing the states anti-gaming laws requires the state to prove that a computer game which requires payment to play and pays out money upon being won by a player is unlawful. To do that the state must prove "the outcome of the game depends less on the skill and experience of the player than on purely fortuitous or accidental circumstances incidental to the game or the manner of playing it or the device or apparatus with which it is played, but not under the control of the player" American Amusements Co. v. Nebraska Dep't of Revenue, 282 Neb. 908, 807 N.W.2d 492 (Neb., 2011).

In American Amusements, a game called Bankshot was played using a touch screen. It looked much like a slot machine, took money in, and caused money to be paid. It offered 3 levels of games with varying proportions of skill and chance. The Lancaster District Court and the Supreme Court found one of the three levels to be lawful and two not. The case was complex and involved presentation of highly technical and expensive evidence. Following the Court's ruling, the operator of the machine removed the two more entertaining games and left the lackluster, but lawful, game on the machine. The stripped down machines now exist in some bars in Nebraska. However, once their novelty wears off do not get much play. Recently, bolder, out of state machine, operators began placing machines in Nebraska bars and convenience stores which push the envelope on issues reviewed in American Amusements, and may well be unlawful. They are more fun than Bankshot and more profitable. These unregulated machines are appearing with escalating frequency all across the state in bars and convenience stores. Some even claim that a portion of the proceeds go to

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charity. Because of the State's burden of proof for each game, the high cost of establishing that proof, and the ease with which the software can be modified to create a new game that necessitates another round of expensive proof, law enforcement has not pursued the machines and taken the position that until directed otherwise enforcement will consist of examining the machines for required presence of an amusement sticker which can be purchased from the state for nominal cost.

LB70 allows local governments to tax the play on such machines. Because it is a tax and not a criminal matter, it can place the burden of proof on the operator to establish the lawfulness of the game and entitlement to exemption from the tax.

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**Explanation of amendments:**

Clarify the type of mechanical amusement device that will be subject to the additional occupation tax tax and to change the imposition of the tax from the city or county level to the state.

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Mike Gloor, Chairperson