

AMENDMENTS TO LB538

Introduced by General Affairs.

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

3           Section 1. Section 28-1107, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

5           28-1107 (1) A person commits the offense of possession of a gambling  
6 device if he or she manufactures, sells, transports, places, possesses,  
7 or conducts or negotiates any transaction affecting or designed to affect  
8 ownership, custody, or use of any gambling device, knowing that it shall  
9 be used in the advancement of unlawful gambling activity.

10           (2) The owner or operator of a retail establishment who is not a  
11 manufacturer, distributor, or seller of mechanical amusement devices as  
12 defined under the Mechanical Amusement Device Tax Act, shall have an  
13 affirmative defense to possession of a gambling device described in  
14 subsection (1) of this section if the device bears an unexpired  
15 mechanical amusement device decal as required by such act. However, such  
16 affirmative defense may be overcome if the owner or operator had actual  
17 knowledge that operation of the device constituted unlawful gambling  
18 activity at any time such device was operated on the premises of the  
19 retail establishment.

20           ~~(2) This section shall not apply to any coin-operated mechanical~~  
21 ~~gaming device, computer gaming device, electronic gaming device, or video~~  
22 ~~gaming device which has the capability of awarding free games, which is~~  
23 ~~intended to be played and is in fact played for amusement only, and which~~  
24 ~~may allow the player the right to replay such gaming device at no~~  
25 ~~additional cost, which right to replay shall not be considered money or~~  
26 ~~property, except that such mechanical game (a) can be discharged of~~  
27 ~~accumulated free replays only by reactivating the game for one additional~~

1 ~~play for each accumulated free replay and (b) makes no permanent record~~  
2 ~~directly or indirectly of free replays so awarded.~~

3 (3) Notwithstanding any other provisions of this section, any  
4 mechanical game or device classified by the federal government as an  
5 illegal gambling device and requiring a federal Gambling Device Tax Stamp  
6 as required by the Internal Revenue Service in its administration of 26  
7 U.S.C. 4461 and 4462, amended July 1, 1965, by Public Law 89-44, are  
8 hereby declared to be illegal ~~and excluded from the exemption granted in~~  
9 ~~this section.~~

10 (4) ~~(3)~~ Possession of a gambling device is a Class II misdemeanor.

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

13 77-3001 For purposes of the Mechanical Amusement Device Tax Act,  
14 unless the context otherwise requires:

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

20 (2) Department means the Department of Revenue;

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

24 (4) Mechanical amusement device means any machine which, upon  
25 insertion of a coin, currency, credit card, or substitute into the  
26 machine, operates or may be operated or used for a game, contest, or  
27 amusement of any description, such as, by way of example, but not by way  
28 of limitation, pinball games, shuffleboard, bowling games, radio-ray  
29 rifle games, baseball, football, racing, boxing games, electronic video  
30 games of skill, and coin-operated pool tables. Mechanical amusement  
31 device also includes game and draw lotteries and coin-operated automatic

1 musical devices. Mechanical amusement device does not mean vending  
2 machines which dispense tangible personal property, devices located in  
3 private homes for private use, pickle card dispensing devices which are  
4 required to be registered with the department pursuant to section  
5 9-345.03, or devices which are mechanically constructed in a manner that  
6 would render their operation illegal under the laws of the State of  
7 Nebraska;

8 (5) Operator means any person who operates a place of business in  
9 which a machine or device owned by him or her is physically located or  
10 any person who places and who either directly or indirectly controls or  
11 manages any machine or device;

12 (6) (1) Person means an individual, partnership, limited liability  
13 company, society, association, joint-stock company, corporation, estate,  
14 receiver, lessee, trustee, assignee, referee, or other person acting in a  
15 fiduciary or representative capacity, whether appointed by a court or  
16 otherwise, and any combination of individuals;

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

31 ~~(3) Operator means any person who operates a place of business in~~

1 ~~which a machine or device owned by him or her is physically located or~~  
2 ~~any person who places and who either directly or indirectly controls or~~  
3 ~~manages any machine or device;~~

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

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

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

13 ~~(9) (6) Whenever in the act, the words machine, device, person,~~  
14 ~~operator, or distributor are used, the words in the singular include the~~  
15 ~~plural and in the plural include the singular.~~

16 Sec. 3. ~~(1) The department may seize any mechanical amusement device~~  
17 ~~if there is cause to believe such device is not in compliance with the~~  
18 ~~Mechanical Amusement Device Tax Act or any rules and regulations adopted~~  
19 ~~and promulgated under the act or if the department determines the~~  
20 ~~response to a request for information is materially deficient without~~  
21 ~~good cause. In addition to seizure, any person placing in service or~~  
22 ~~operating a device constituting a game of chance within this state shall~~  
23 ~~be subject to a penalty of one thousand dollars for each day of such~~  
24 ~~operation. For purposes of this subsection, a mechanical amusement device~~  
25 ~~is subject to seizure and penalties as if it were a game of chance if:~~

26 ~~(a) The mechanical amusement device is a cash device; and~~

27 ~~(b) The mechanical amusement device does not bear an unexpired decal~~  
28 ~~as required under the Mechanical Amusement Device Tax Act.~~

29 ~~(2) To receive a determination from the department that a cash~~  
30 ~~device is in compliance with the Mechanical Amusement Device Tax Act and~~  
31 ~~the rules and regulations adopted and promulgated under the act, a~~

1 manufacturer or distributor of the device shall:

2 (a) Submit an application to the Tax Commissioner containing  
3 information regarding the device's location, software, Internet  
4 connectivity, and configuration as may be required by the Tax  
5 Commissioner;

6 (b) Submit an application fee of seventy-five dollars;

7 (c) Provide a specimen of the proposed device;

8 (d) Provide all supporting evidence to the Tax Commissioner  
9 indicating that, under all configurations, settings, and modes of  
10 operation, operation of the device constitutes a game of skill and not a  
11 game of chance and the use, operation, sale, or manufacture of the device  
12 would not constitute a violation of section 28-1107; and

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

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

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

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

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

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

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

3           (v) There is no possibility for the player to win every game played  
4 on the device or there are unwinnable games or game modes on the device;

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

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

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

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

17           (a) The results of an analysis by any independent testing authority  
18 approved by the Tax Commissioner to evaluate the reaction time required  
19 for a player of a particular game on such device to perform the tasks  
20 required by the game to win; or

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

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

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

31           (b) Whether a player can increase his or her chance of winning based

1 on knowledge of probabilities in general or the probabilities of any  
2 particular prize or outcome in a game or on a device;

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

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

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

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

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

31 (ii) If the occupation tax described in section 77-3004 has been

1 paid.

2 (b) The decal issued under this section shall be distinct from other  
3 decal s issued by the department for mechanical amusement devices that are  
4 not required to be evaluated under this section. Regardless of the  
5 payment of the occupation tax or issuance of a decal by the department,  
6 no device shall be considered in compliance if it does not bear an  
7 unexpired decal in a conspicuous place.

8 (9) The application process described in this section shall not be  
9 construed to limit further investigation by the department or the  
10 issuance of further regulations to promote compliance after the  
11 application process is completed. At any point after a determination of  
12 skill by the department, the department may request from the  
13 manufacturer, distributor, or operator information about any device in  
14 operation in this state, including, but not limited to, information  
15 regarding currently operable source code, changes to software or  
16 hardware, and communications from or to the device over the Internet. A  
17 manufacturer, distributor, or operator that receives a request shall  
18 respond with all responsive information in its possession or control  
19 within fifteen business days.

20 Sec. 4. Section 77-3004, Reissue Revised Statutes of Nebraska, is  
21 amended to read:

22 77-3004 (1) An occupation tax is hereby imposed and levied, in the  
23 amount and in accordance with the terms and conditions hereafter stated,  
24 upon the business of operating mechanical amusement devices within the  
25 State of Nebraska for profit or gain either directly or indirectly  
26 received. Every person who now or hereafter engages in the business of  
27 operating such devices in the State of Nebraska shall pay such tax in the  
28 amount and manner specified in this section.

29 (2) Any operator of a mechanical amusement device within the State  
30 of Nebraska shall pay an occupation tax for each machine or device which  
31 he or she operates during all of the taxable year. The tax shall be due



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

11 (3) Except as provided in subsection (5) of this section, the The  
12 amount of the occupation tax shall be fifty dollars for each machine or  
13 device for the period from July 1, 1998, through December 31, 1999,  
14 except that for machines placed in operation after April 1, 1999, and  
15 before January 1, 2000, the occupation tax shall be twenty-five dollars  
16 for each machine or device.

17 (4) Except as provided in subsection (5) of this section, the The  
18 amount of the occupation tax shall be thirty-five dollars for each  
19 machine or device for any period beginning on or after January 1, 2000,  
20 except that for machines placed in operation after July 1, and before  
21 January 1 of each year, the occupation tax shall be twenty dollars for  
22 each machine or device.

23 (5) Beginning on or after January 1, 2020, the amount of the  
24 occupation tax shall be two hundred fifty dollars for each cash device.

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

27 77-3006 The administration of the Mechanical Amusement Device Tax  
28 Act provisions of sections 77-3001 to 77-3011 is hereby vested in the Tax  
29 Commissioner of the State of Nebraska subject to other provisions of law  
30 relating to the Tax Commissioner. The Tax Commissioner may prescribe,  
31 adopt and promulgate, and enforce rules and regulations relating to the

1 administration and enforcement of the act ~~the provisions of sections~~  
2 ~~77-3001 to 77-3011,~~ and may delegate authority to his or her  
3 representatives to conduct hearings, or perform any other duties imposed  
4 under the act. The Tax Commissioner shall adopt and promulgate rules and  
5 regulations necessary to carry out section 3 of this act no later than  
6 October 15, 2019 ~~provisions of sections 77-3001 to 77-3011.~~

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

9 77-3007 (1) Subject to section 3 of this act, the The payment of the  
10 tax imposed by the Mechanical Amusement Device Tax Act ~~provisions of~~  
11 ~~sections 77-3001 to 77-3011~~ shall be evidenced by a separate decal for  
12 each device signifying payment of the tax, in a form prescribed by the  
13 Tax Commissioner.

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

17 Sec. 7. Section 77-3008, Reissue Revised Statutes of Nebraska, is  
18 amended to read:

19 77-3008 Nothing in the Mechanical Amusement Device Tax Act ~~sections~~  
20 ~~77-3001 to 77-3011~~ shall be construed to limit, usurp, or repeal any  
21 power to tax granted to the political subdivisions and municipalities of  
22 the State of Nebraska by the laws and Constitution of ~~the State of~~  
23 Nebraska.

24 Sec. 8. Section 77-3010, Reissue Revised Statutes of Nebraska, is  
25 amended to read:

26 77-3010 Prosecutions for any violations of the Mechanical Amusement  
27 Device Tax Act ~~sections 77-3001 to 77-3011~~ shall be brought by the  
28 Attorney General or county attorney in the county in which the violation  
29 occurs. Any prosecution for the violation of any of the provisions of the  
30 act ~~sections 77-3001 to 77-3011~~ shall be instituted within three years  
31 after the commission of the offense.

1           Sec. 9. Section 77-3011, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

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

5           Sec. 10. This act becomes operative on November 1, 2019.

6           Sec. 11. Original sections 28-1107, 77-3001, 77-3004, 77-3006,  
7 77-3007, 77-3008, 77-3010, and 77-3011, Reissue Revised Statutes of  
8 Nebraska, are repealed.