

AMENDMENTS TO LB685

Introduced by General Affairs.

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

3 Section 1. Section 9-1,101, Revised Statutes Supplement, 2023, is
4 amended to read:

5 9-1,101 (1) The Nebraska Bingo Act, the Nebraska County and City
6 Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle
7 Card Lottery Act, the Nebraska Small Lottery and Raffle Act, and section
8 9-701 shall be administered and enforced by the Charitable Gaming
9 Division of the Department of Revenue, which division is hereby created.
10 The Department of Revenue shall make annual reports to the Governor,
11 Legislature, Auditor of Public Accounts, and Attorney General on all tax
12 revenue received, expenses incurred, and other activities relating to the
13 administration and enforcement of such acts. The report submitted to the
14 Legislature shall be submitted electronically.

15 (2) The Charitable Gaming Operations Fund is hereby created. Any
16 money in the fund available for investment shall be invested by the state
17 investment officer pursuant to the Nebraska Capital Expansion Act and the
18 Nebraska State Funds Investment Act.

19 (3)(a) Forty percent of the taxes collected pursuant to sections
20 9-239, 9-344, 9-429, and 9-648 shall be available to the Charitable
21 Gaming Division for administering and enforcing the acts listed in
22 subsection (1) of this section and providing administrative support for
23 the Nebraska Commission on Problem Gambling. The remaining sixty percent
24 shall be transferred to the General Fund. Any portion of the forty
25 percent not used by the division in the administration and enforcement of
26 such acts and section shall be distributed as provided in this
27 subsection.

1 (b) Beginning July 1, 2019, through June 30, 2025, on or before the
2 last day of the last month of each calendar quarter, the State Treasurer
3 shall transfer one hundred thousand dollars from the Charitable Gaming
4 Operations Fund to the Compulsive Gamblers Assistance Fund.

5 (c) Any money remaining in the Charitable Gaming Operations Fund
6 after the transfer pursuant to subdivision (b) of this subsection not
7 used by the Charitable Gaming Division in its administration and
8 enforcement duties pursuant to this section may be transferred to the
9 General Fund and the Compulsive Gamblers Assistance Fund at the direction
10 of the Legislature.

11 (4) The Tax Commissioner shall employ investigators who shall be
12 vested with the authority and power of a law enforcement officer to carry
13 out the laws of this state administered by the Tax Commissioner or the
14 Department of Revenue and to enforce sections 28-1101 to 28-1117 relating
15 to possession of a gambling device. For purposes of enforcing sections
16 28-1101 to 28-1117, the authority of the investigators shall be limited
17 to investigating possession of a gambling device, notifying local law
18 enforcement authorities, and reporting suspected violations to the county
19 attorney for prosecution.

20 (5) The Charitable Gaming Division may charge a fee for publications
21 and listings it produces. The fee shall not exceed the cost of
22 publication and distribution of such items. The division may also charge
23 a fee for making a copy of any record in its possession equal to the
24 actual cost per page. The division shall remit the fees to the State
25 Treasurer for credit to the Charitable Gaming Operations Fund.

26 (6) The taxes collected and available to the Charitable Gaming
27 Division pursuant to section 17 of this act shall be used by the division
28 for enforcement of the Mechanical Amusement Device Tax Act and
29 maintenance of the central server established pursuant to section 16 of
30 this act.

31 (7) ~~(6)~~ For administrative purposes only, the Nebraska Commission on

1 Problem Gambling shall be located within the Charitable Gaming Division.
2 The division shall provide office space, furniture, equipment, and
3 stationery and other necessary supplies for the commission. Commission
4 staff shall be appointed, supervised, and terminated by the director of
5 the Gamblers Assistance Program pursuant to section 9-1004.

6 Sec. 2. Section 53-101, Revised Statutes Supplement, 2023, is
7 amended to read:

8 53-101 Sections 53-101 to 53-1,122 and section 3 of this act shall
9 be known and may be cited as the Nebraska Liquor Control Act.

10 Sec. 3. (1) For purposes of this section:

11 (a) Co-branded alcoholic beverage means an alcoholic liquor beverage
12 containing the same or similar brand name, logo, or packaging as a
13 nonalcoholic beverage;

14 (b) Immediately adjacent means directly touching or immediately
15 bordering one another from above, below, or the side. Immediately
16 adjacent does not include a separate aisle; and

17 (c) Retail sales floor means the part of a retailer's premises that
18 contains goods on display that are freely accessible to the consumer.

19 (2) Except as provided in subsection (4) of this section, the holder
20 of a retail license to sell alcoholic liquor, beer, or wine at retail for
21 consumption off the licensed premises with a retail sales floor that is
22 larger than two thousand five hundred square feet shall not display any
23 co-branded alcoholic beverage immediately adjacent to any soft drink,
24 fruit juice, bottled water, candy, or snack food portraying cartoons or
25 youth-oriented images.

26 (3) Except as provided in subsection (4) of this section, the holder
27 of a retail license to sell alcoholic liquor, beer, or wine at retail for
28 consumption off the licensed premises with a retail sales floor that is
29 two thousand five hundred square feet or smaller shall either:

30 (a) Not place any co-branded alcoholic beverage immediately adjacent
31 to any soft drink, fruit juice, bottled water, candy, or snack food

1 portraying cartoons or youth-oriented images; or

2 (b) Equip any such display containing any co-branded alcoholic
3 beverage immediately adjacent to any soft drink, fruit juice, bottled
4 water, candy, or snack food portraying cartoons or youth-oriented images
5 with signage that indicates the product is an alcoholic beverage. Such
6 signage shall be clearly visible to consumers, shall be not less than
7 eight and one-half by eleven inches in size, and shall contain language
8 substantially similar to: "This product is an alcoholic beverage
9 available only to persons who are twenty-one years of age or older."

10 (4) This section does not apply to a shelf, aisle, display, or
11 display area in which the primary items for sale contain alcoholic liquor
12 or in an area in which persons younger than twenty-one years of age are
13 prohibited from entering without a parent or legal guardian.

14 (5) The commission may cause inspection to be made on the premises
15 of all retail licensees relating to co-branded alcoholic beverage
16 displays, and if it is found that any such licensee is violating this
17 section or any rules and regulations adopted and promulgated by the
18 commission pursuant to this section, the license may be suspended,
19 canceled, or revoked after the licensee is given an opportunity to be
20 heard in the licensee's defense.

21 Sec. 4. Section 77-3001, Revised Statutes Cumulative Supplement,
22 2022, is amended to read:

23 77-3001 For purposes of the Mechanical Amusement Device Tax Act,
24 unless the context otherwise requires:

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

30 (2) Department means the Department of Revenue;

31 (3) Distributor means any person who sells, leases, or delivers

1 possession or custody of a ~~machine or~~ mechanical amusement device to
2 operators thereof for a consideration either directly or indirectly
3 received;

4 (4) Manufacturer means an individual, partnership, corporation, or
5 limited liability company that manufactures, builds, rebuilds,
6 fabricates, assembles, produces, programs, designs, or otherwise makes
7 modifications to cash devices or associated equipment for use or play of
8 cash devices;

9 (5)(a) (4) Mechanical amusement device means any machine which, upon
10 insertion of a coin, currency, credit card, or substitute into the
11 machine, operates or may be operated or used for a game, contest, or
12 amusement of any description, such as, by way of example, but not by way
13 of limitation, pinball games, shuffleboard, bowling games, radio-ray
14 rifle games, baseball, football, racing, boxing games, electronic video
15 games of skill, and coin-operated pool tables. Mechanical amusement
16 device also includes game and draw lotteries and coin-operated automatic
17 musical devices.

18 (b) Mechanical amusement device does not mean vending machines which
19 dispense tangible personal property, devices located in private homes for
20 private use, pickle card dispensing devices which are required to be
21 registered with the department pursuant to section 9-345.03, gaming
22 devices or limited gaming devices as defined in and operated pursuant to
23 the Nebraska Racetrack Gaming Act, or devices which are mechanically
24 constructed in a manner that would render their operation illegal under
25 the laws of the State of Nebraska;

26 (6) Net operating revenue means the dollar amount collected by an
27 owner or operator of any cash device as computed pursuant to applicable
28 statutes, rules, and regulations less the total of cash awards paid out
29 to players as described in subdivision (1) of this section;

30 (7) (5) Operator means any person who operates a place of business
31 in which a mechanical amusement machine or device owned by him or her is

1 physically located or any person who places and who either directly or
2 indirectly controls or manages any mechanical amusement machine or
3 device;

4 (8) (6) Person means an individual, partnership, limited liability
5 company, society, association, joint-stock company, corporation, estate,
6 receiver, lessee, trustee, assignee, referee, or other person acting in a
7 fiduciary or representative capacity, whether appointed by a court or
8 otherwise, and any combination of individuals; and

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

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

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

18 Sec. 5. Section 77-3002, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 77-3002 (1) Any operator shall be required to procure an annual
21 license from the Tax Commissioner permitting him or her to operate
22 mechanical amusement machines or devices within the State of Nebraska.
23 The Tax Commissioner, upon the application of any person, may issue a
24 license, except that if the applicant (a) is not of good character and
25 reputation in the community in which he or she resides, (b) has been
26 convicted of or has pleaded guilty to a felony under the laws of the
27 State of Nebraska, of any other state, or of the United States, or (c)
28 has been convicted of or has pleaded guilty to being the proprietor of a
29 gambling house, or of any other crime or misdemeanor opposed to decency
30 and morality, no license shall be issued. If the applicant is a
31 corporation whose majority stockholders could not obtain a license, then

1 such corporation shall not be issued a license. If the applicant is an
2 individual, the application shall include the applicant's social security
3 number. Procuring a license shall constitute sufficient contact with this
4 state for the exercise of personal jurisdiction over such person in any
5 action arising out of the operation of mechanical amusement machines or
6 devices in this state.

7 (2)(a) Except for an applicant that holds a liquor license under the
8 Nebraska Liquor Control Act, an applicant for a license as an operator of
9 a cash device shall be subject to a one-time background check by the
10 department prior to the issuance of a license. An applicant shall pay the
11 costs associated with the background check along with any required fees
12 as determined by the department.

13 (b) The Tax Commissioner has the authority to deny any application
14 for a license to operate a cash device for cause. Cause for denial of a
15 license application includes instances in which the applicant
16 individually, or in the case of a business entity, any officer, director,
17 employee, or limited liability company member of the applicant or
18 licensee other than an employee whose duties are purely ministerial in
19 nature:

20 (i) Violated the provisions, requirements, conditions, limitations,
21 or duties imposed by the Mechanical Amusement Device Tax Act or any rules
22 or regulations adopted and promulgated pursuant to the act;

23 (ii) Knowingly caused, aided, abetted, or conspired with another to
24 cause any person to violate any of the provisions of the act or any rules
25 or regulations adopted and promulgated pursuant to the act;

26 (iii) Obtained a license or permit under the act by fraud,
27 misrepresentation, or concealment;

28 (iv) Has been convicted of, forfeited bond upon a charge of, or
29 pleaded guilty or nolo contendere to any offense or crime, whether a
30 felony or a misdemeanor, involving any gambling activity or fraud, theft,
31 willful failure to make required payments or reports, or filing false

1 reports with a governmental agency at any level;

2 (v) Denied the department or its authorized representatives,
3 including authorized law enforcement agencies, access to any place where
4 activity required to be licensed under the act is being conducted or
5 failed to produce for inspection or audit any book, record, document, or
6 item required by law, rule, or regulation;

7 (vi) Made a misrepresentation of or failed to disclose a material
8 fact to the department;

9 (vii) Failed to prove by clear and convincing evidence such
10 applicant's qualifications to be licensed in accordance with the act;

11 (viii) Failed to pay any taxes and additions to taxes, including
12 penalties and interest required by the act or any other taxes imposed
13 pursuant to the Nebraska Revenue Act of 1967; or

14 (ix) Has been cited for a violation of the Nebraska Liquor Control
15 Act and had a liquor license suspended, canceled, or revoked by the
16 Nebraska Liquor Control Commission for illegal gambling activities, on or
17 about the premises licensed by the commission pursuant to the Nebraska
18 Liquor Control Act or the rules and regulations adopted and promulgated
19 pursuant to such act.

20 (c) No renewal of a license issued pursuant to this section shall be
21 issued when the applicant for renewal would not be eligible for a license
22 upon a first application.

23 (3) The Tax Commissioner has the authority to suspend or revoke the
24 license of any operator that is in violation of the Mechanical Amusement
25 Device Tax Act.

26 ~~(2)(a) For the period beginning July 1, 1998, through December 31,~~
27 ~~1999, if the applicant operates ten or more machines, the application~~
28 ~~shall be accompanied by a fee of two hundred fifty dollars, and such~~
29 ~~license will remain in effect until December 31, 1999. If the applicant~~
30 ~~operates fewer than ten machines, no fee is due. Any licensee that places~~
31 ~~additional machines into operation during this period which results in a~~

1 ~~total of ten or more machines in operation becomes subject to the two-~~
2 ~~hundred fifty dollar fee.~~

3 ~~(b) Beginning January 1, 2000, the application shall be filed on or~~
4 ~~before January 1 of each year, and no license fee will be required.~~

5 Sec. 6. Section 77-3003, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 77-3003 (1) Any distributor shall be required to procure an annual
8 license from the Tax Commissioner permitting him or her to sell, lease,
9 or deliver possession or custody of a mechanical amusement machine or
10 device within the State of Nebraska. The Tax Commissioner, upon the
11 application of any person, may issue a license, subject to the same
12 limitations as an operator's license under section 77-3002. If the
13 applicant is an individual, the application shall include the applicant's
14 social security number. ~~For applications filed for the period beginning~~
15 ~~July 1, 1998, through December 31, 1999, such application shall be~~
16 ~~accompanied by a fee of two hundred fifty dollars, and the license shall~~
17 ~~remain in effect until December 31, 1999. Beginning January 1, 2000, the~~
18 ~~application shall be filed on or before January 1 of each year, and no~~
19 ~~license fee will be required.~~

20 (2)(a) Except for an applicant that holds a liquor license under the
21 Nebraska Liquor Control Act, an applicant for a license as a distributor
22 of a cash device shall be subject to a one-time background check by the
23 department prior to issuance of the license. An applicant shall pay the
24 costs associated with the background check along with any required fees
25 as determined by the department.

26 (b) The Tax Commissioner has the authority to deny any application
27 for a license to distribute a cash device for cause. Cause for denial of
28 a license application includes instances in which the applicant
29 individually, or in the case of a business entity, any officer, director,
30 employee, or limited liability company member of the applicant or
31 licensee other than an employee whose duties are purely ministerial in

1 nature:

2 (i) Violated the provisions, requirements, conditions, limitations,
3 or duties imposed by the Mechanical Amusement Device Tax Act or any rules
4 or regulations adopted and promulgated pursuant to the act;

5 (ii) Knowingly caused, aided, abetted, or conspired with another to
6 cause any person to violate any of the provisions of the act or any rules
7 or regulations adopted and promulgated pursuant to the act;

8 (iii) Obtained a license or permit under the act by fraud,
9 misrepresentation, or concealment;

10 (iv) Has been convicted of, forfeited bond upon a charge of, or
11 pleaded guilty or nolo contendere to any offense or crime, whether a
12 felony or a misdemeanor, involving any gambling activity or fraud, theft,
13 willful failure to make required payments or reports, or filing false
14 reports with a governmental agency at any level;

15 (v) Denied the department or its authorized representatives,
16 including authorized law enforcement agencies, access to any place where
17 activity required to be licensed under the act is being conducted or
18 failed to produce for inspection or audit any book, record, document, or
19 item required by law, rule, or regulation;

20 (vi) Made a misrepresentation of or failed to disclose a material
21 fact to the department;

22 (vii) Failed to prove by clear and convincing evidence such
23 applicant's qualifications to be licensed in accordance with the act;

24 (viii) Failed to pay any taxes and additions to taxes, including
25 penalties and interest required by the act or any other taxes imposed
26 pursuant to the Nebraska Revenue Act of 1967; or

27 (ix) Has been cited for a violation of the Nebraska Liquor Control
28 Act and had a liquor license suspended, canceled, or revoked by the
29 Nebraska Liquor Control Commission for illegal gambling activities, on or
30 about the premises licensed by the commission pursuant to the Nebraska
31 Liquor Control Act or the rules and regulations adopted and promulgated

1 pursuant to such act.

2 (c) No renewal of a license issued pursuant to this section shall be
3 issued when the applicant for renewal would not be eligible for a license
4 upon a first application.

5 (3) Beginning January 1, 2025, the annual license for a distributor
6 of a cash device shall be accompanied by a fee of one hundred dollars per
7 device up to a maximum of five thousand dollars.

8 (4) The Tax Commissioner has the authority to suspend or revoke the
9 license of any distributor that is in violation of the Mechanical
10 Amusement Device Tax Act.

11 Sec. 7. (1) A manufacturer of a cash device shall be required to
12 procure an annual license from the Tax Commissioner permitting such
13 manufacturer to place any cash devices in the State of Nebraska for sale,
14 lease, or distribution through a third party. The Tax Commissioner, upon
15 the application of any person, may issue a license subject to the same
16 limitations as an operator's license under section 77-3002. If the
17 applicant is an individual, the application shall include the applicant's
18 social security number. The license fee for a manufacturer of a cash
19 device shall be five thousand dollars.

20 (2)(a) Each applicant for a license as a manufacturer of a cash
21 device shall be subject to a one-time background check by the department
22 prior to the issuance of a license. An applicant shall pay the costs
23 associated with the background check and any required fees as determined
24 by the department.

25 (b) The Tax Commissioner has the authority to deny a license for a
26 manufacturer of a cash device for cause. Cause for denial of a license
27 application includes instances in which the applicant individually, or in
28 the case of a business entity, any officer, director, employee, or
29 limited liability company member of the applicant or licensee other than
30 an employee whose duties are purely ministerial in nature:

31 (i) Violated the provisions, requirements, conditions, limitations,

1 or duties imposed by the Mechanical Amusement Device Tax Act or any rules
2 or regulations adopted and promulgated pursuant to the act;

3 (ii) Knowingly caused, aided, abetted, or conspired with another to
4 cause any person to violate any of the provisions of the act or any rules
5 or regulations adopted and promulgated pursuant to the act;

6 (iii) Obtained a license or permit under the act by fraud,
7 misrepresentation, or concealment;

8 (iv) Has been convicted of, forfeited bond upon a charge of, or
9 pleaded guilty or nolo contendere to any offense or crime, whether a
10 felony or a misdemeanor, involving any gambling activity or fraud, theft,
11 willful failure to make required payments or reports, or filing false
12 reports with a governmental agency at any level;

13 (v) Denied the department or its authorized representatives,
14 including authorized law enforcement agencies, access to any place where
15 activity required to be licensed under the act is being conducted or
16 failed to produce for inspection or audit any book, record, document, or
17 item required by law, rule, or regulation;

18 (vi) Made a misrepresentation of or failed to disclose a material
19 fact to the department;

20 (vii) Failed to prove by clear and convincing evidence such
21 applicant's qualifications to be licensed in accordance with the act;

22 (viii) Failed to pay any taxes and additions to taxes, including
23 penalties and interest required by the act or any other taxes imposed
24 pursuant to the Nebraska Revenue Act of 1967; or

25 (ix) Has been cited for a violation of the Nebraska Liquor Control
26 Act and had a liquor license suspended, canceled, or revoked by the
27 Nebraska Liquor Control Commission for illegal gambling activities, on or
28 about the premises licensed by the commission pursuant to the Nebraska
29 Liquor Control Act or the rules and regulations adopted and promulgated
30 pursuant to such act.

31 (c) No renewal of a license pursuant to this section shall be issued

1 when the applicant for renewal would not be eligible for a license upon a
2 first application.

3 (3) The Tax Commissioner has the authority to suspend or revoke the
4 license of any manufacturer of a cash device that is in violation of the
5 Mechanical Amusement Device Tax Act.

6 Sec. 8. Section 77-3003.01, Revised Statutes Cumulative Supplement,
7 2022, is amended to read:

8 77-3003.01 (1)(a) The Tax Commissioner or his or her agents or
9 employees, at the direction of the Tax Commissioner, or any peace officer
10 of this state may seize, without a warrant, any mechanical amusement
11 device if there is cause to believe such mechanical amusement device is
12 not in compliance with the Mechanical Amusement Device Tax Act or any
13 rules and regulations adopted and promulgated under the act or if the
14 department determines the response to a request for information is
15 materially deficient without good cause. In addition to seizure, any
16 person placing in service or operating a cash device constituting an
17 illegal a game of chance or an unlicensed cash device of any kind within
18 this state shall be subject to a penalty of up to one thousand dollars
19 for each day of such operation. The Tax Commissioner has the authority to
20 suspend or revoke the license of any operator, manufacturer, or
21 distributor of a cash device that is in violation of this section.

22 (b) For purposes of this subsection, a mechanical amusement device
23 is subject to seizure and penalties as if it were a game of chance if:

24 (i) The mechanical amusement device is a cash device; and

25 (ii) The mechanical amusement device does not bear an unexpired
26 decal as required under the Mechanical Amusement Device Tax Act.

27 (c) This section does not apply to any device (i) used in any bingo,
28 lottery by the sale of pickle cards, or other lottery, raffle, or gift
29 enterprise conducted in accordance with the Nebraska Bingo Act, Nebraska
30 County and City Lottery Act, Nebraska Lottery and Raffle Act, Nebraska
31 Pickle Card Lottery Act, Nebraska Small Lottery and Raffle Act, State

1 Lottery Act, or section 9-701, (ii) used for a prize contest as defined
2 in section 28-1101, ~~or~~ (iii) specifically authorized by the laws of this
3 state, or (iv) regulated under the Nebraska Racetrack Gaming Act.

4 (2) To receive a determination from the department that a cash
5 device is in compliance with the Mechanical Amusement Device Tax Act and
6 any rules and regulations adopted and promulgated under the act, a
7 manufacturer or distributor of the device shall:

8 (a) Submit an application to the Tax Commissioner containing
9 information regarding the device's location, software, Internet
10 connectivity, and configuration as may be required by the Tax
11 Commissioner;

12 (b) Submit an application fee of five hundred dollars;

13 (c) Provide a specimen of the proposed cash device;

14 (d) Provide all supporting evidence, including a report by an
15 independent testing laboratory certified authority ~~preapproved~~ by the Tax
16 Commissioner, to the Tax Commissioner indicating that, under all
17 configurations, settings, and modes of operation, operation of the cash
18 device constitutes a game of skill and not a game of chance and the use,
19 operation, sale, or manufacture of the cash device would not constitute a
20 violation of section 28-1107; and

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

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

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

31 (i) The ability of any player to succeed at the game played on the

1 cash_device is impacted by the number or ratio of prior wins to prior
2 losses of players playing such cash_device;

3 (ii) The ability of the player to succeed at the game played on the
4 cash_device is impacted by the ability of any person to set a specified
5 win-loss ratio for the cash_device or by the cash_device having a
6 predetermined win-loss percentage;

7 (iii) The outcome of the game played on the cash_device can be
8 controlled by a source other than any player playing the cash_device;

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

11 (v) There is no possibility for the player to win every game played
12 on the cash_device or there are unwinnable games or game modes on the
13 cash_device;

14 (vi) The ability of any player to succeed at the game played on the
15 cash_device requires the exercise of skill that no reasonable player
16 could exercise; or

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

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

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

26 (a) The results of an analysis by the any independent testing
27 laboratory certified authority ~~preapproved~~ by the Tax Commissioner to
28 evaluate the reaction time required for a player of a particular game on
29 such cash_device to perform the tasks required by the game to win; or

30 (b) The results of an analysis by the any independent testing
31 laboratory certified authority ~~preapproved~~ by the Tax Commissioner to

1 evaluate factors set forth by the Tax Commissioner, other than reaction
2 time, required for the player of a particular game on such cash device to
3 perform the tasks required by the game to win.

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

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

9 (b) Whether a player can increase his or her chance of winning based
10 on knowledge of probabilities in general or the probabilities of any
11 particular prize or outcome in a game or on a cash device;

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

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

17 (7) Upon approval of an application based on a determination that
18 the mechanical amusement device is a game of skill and not a game of
19 chance, the Tax Commissioner shall issue a mechanical amusement device
20 decal for the device as configured and as provided in subsection (8) of
21 this section. No mechanical amusement device decal shall be issued for
22 any cash device unless the department has determined that such cash
23 device is a game of skill and not a game of chance and that the
24 manufacture, sale, transport, placement, possession, or operation of such
25 cash device does not constitute a violation of section 28-1107. If the
26 Tax Commissioner does not approve the application for the cash device,
27 the application shall be denied and the operator shall have the
28 opportunity for an administrative hearing before the Tax Commissioner at
29 which evidence may be presented on the issue of whether the cash device
30 is specifically authorized by law and is not a gambling device as defined
31 in section 28-1101. After such hearing, the Tax Commissioner shall enter

1 a final decision approving or denying the application. The Tax
2 Commissioner's final decision may be appealed, and the appeal shall be in
3 accordance with the Administrative Procedure Act.

4 (8)(a) Upon approval of a specimen of a cash ~~mechanical amusement~~
5 device as a game of skill under this section, the department may issue a
6 mechanical amusement device decal for each such cash device:

7 (i) If certified by the manufacturer to be functionally identical in
8 both hardware and software configurations to the specimen provided to the
9 department; and

10 (ii) If the application fee described in subdivision (2)(b) of this
11 section and the annual decal fee described in subdivision (c) of this
12 subsection have been paid.

13 (b)(i) In order to be eligible to operate cash devices, an owner or
14 operator other than a fraternal organization shall generate at least
15 sixty percent of the gross operating revenue of the retail establishment
16 from sources other than the total gross operating revenue of any cash
17 devices located within the retail establishment.

18 (ii) The number of cash devices permitted at any retail
19 establishment shall not exceed the lesser of either:

20 (A) Except for a fraternal organization, the number of cash devices
21 it takes to generate forty percent of the gross operating revenue of the
22 retail establishment; or

23 (B) Four ~~(b) An owner or operator of a retail establishment shall~~
24 ~~operate no more than four~~ cash devices, except that an establishment with
25 over four thousand square feet may have one cash device for each one
26 thousand square feet, up to a maximum of fifteen cash devices.

27 (c) The owner or operator of a cash device shall pay an annual decal
28 fee of two hundred fifty dollars to the department for each cash device
29 in operation in Nebraska. The decal issued under this section shall be
30 distinct from other decals issued by the department for mechanical
31 amusement devices that are not required to be evaluated under this

1 section. Regardless of the issuance of a decal by the department, no cash
2 device shall be considered in compliance if it does not bear an unexpired
3 decal in a conspicuous place.

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

16 ~~(10)(a) Before any rules and regulations adopted and promulgated to~~
17 ~~carry out this section become effective, any manufacturer, distributor,~~
18 ~~or owner may continue to manufacture, sell, transport, place, possess, or~~
19 ~~enter into a transaction involving (i) cash devices already in operation~~
20 ~~at an establishment as of May 1, 2019, or (ii) other cash devices that~~
21 ~~are functionally identical to those already in operation at an~~
22 ~~establishment as of May 1, 2019.~~

23 ~~(b) After any rules and regulations adopted and promulgated to carry~~
24 ~~out this section become effective, until any determination of compliance~~
25 ~~or noncompliance by the department, any manufacturer, distributor, or~~
26 ~~owner may continue to manufacture, sell, transport, place, possess, or~~
27 ~~enter into a transaction involving cash devices described in subdivision~~
28 ~~(10)(a) of this section if, within ninety days after the date when any~~
29 ~~such rules and regulations become effective, the manufacturer or~~
30 ~~distributor files an application with the department for such a~~
31 ~~determination.~~

1 (10) ~~(e)~~ If a manufacturer or distributor receives a determination
2 from the department that a cash device described in subdivision (10)(a)
3 ~~of this section~~ is not in compliance with the Mechanical Amusement Device
4 Tax Act, such manufacturer or distributor shall have thirty days after
5 the issuance of that determination to remove any such cash device from
6 operation in Nebraska.

7 (11) Application fees collected under subsection (2) of this section
8 and annual decal fees collected under subsection (8) of this section
9 shall be remitted to the State Treasurer for credit to the Department of
10 Revenue Enforcement Fund.

11 Sec. 9. Section 77-3003.02, Revised Statutes Cumulative Supplement,
12 2022, is amended to read:

13 77-3003.02 (1) No cash device shall be operated using a credit
14 card, charge card, or debit card. No person under twenty-one nineteen
15 years of age shall play or participate in any way in the operation of a
16 cash device. No operator or employee or agent of any operator shall
17 knowingly permit any individual under twenty-one nineteen years of age to
18 play or participate in any way in the operation of a cash device.

19 (2) Every operator in the State of Nebraska is required to verify
20 the age of any individual requesting to play a cash device.

21 (3) No operator shall charge a fee or require a gratuity in return
22 for the payment of any prize money won by a player of a cash device.

23 (4) The Tax Commissioner has the authority to suspend or revoke the
24 license of any operator of a cash device for a violation of this section.

25 (5) The department shall adopt and promulgate rules and regulations
26 for the implementation and enforcement of this section as long as such
27 rules and regulations do not restrict how a cash device manufacturer,
28 distributor, or operator markets or advertises the existence of a cash
29 device, unless the advertiser or marketer of a cash device is willfully
30 conflating the cash device play with casino-style gambling or slot
31 machine wagering.

1 Sec. 10. Section 77-3004, Reissue Revised Statutes of Nebraska, is
2 amended to read:

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

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

26 ~~(3) The amount of the occupation tax shall be fifty dollars for each~~
27 ~~machine or device for the period from July 1, 1998, through December 31,~~
28 ~~1999, except that for machines placed in operation after April 1, 1999,~~
29 ~~and before January 1, 2000, the occupation tax shall be twenty-five~~
30 ~~dollars for each machine or device.~~

31 (3) ~~(4)~~ The amount of the occupation tax shall be thirty-five

1 dollars for each mechanical amusement machine ~~or~~ device for any period
2 beginning on or after January 1, 2000, except that for mechanical
3 amusement devices ~~machines~~ placed in operation after July 1, and before
4 January 1 of each year, the occupation tax shall be twenty dollars for
5 each mechanical amusement machine ~~or~~ device.

6 Sec. 11. Section 77-3005, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 77-3005 (1) The occupation tax levied and imposed by the Mechanical
9 Amusement Device Tax Act shall be in addition to any and all taxes or
10 fees, of any form whatsoever, now imposed by the State of Nebraska ~~or any~~
11 ~~of its subdivisions,~~ upon the business of operating or distributing
12 mechanical amusement devices ~~as defined in section 77-3001, or otherwise~~
13 ~~defined by the subdivisions and municipalities of the State of Nebraska,~~
14 except that payment of the tax and license fees due and owing on or
15 before the licensing date of each year shall exempt any such mechanical
16 amusement device from the application of the sales tax which would or
17 could otherwise be imposed under the Nebraska Revenue Act of 1967.
18 Nonpayment of the taxes or fees due and owing on or before the licensing
19 date of each year shall render the exemption provided by this section
20 inapplicable, and the particular machines or devices shall then be
21 subject to all the provisions of the Nebraska Revenue Act of 1967,
22 including the penalty provisions pertaining to the owner or operator of
23 such machines or devices.

24 (2) No political subdivision of the State of Nebraska shall levy or
25 impose any tax on mechanical amusement devices in addition to the taxes
26 imposed by the Mechanical Amusement Device Tax Act.

27 Sec. 12. Section 77-3006, Revised Statutes Cumulative Supplement,
28 2022, is amended to read:

29 77-3006 (1) The administration of the Mechanical Amusement Device
30 Tax Act is hereby vested in the Tax Commissioner subject to other
31 provisions of law relating to the Tax Commissioner. The Tax Commissioner

1 may prescribe, adopt and promulgate, and enforce rules and regulations
2 relating to the administration and enforcement of the act and may
3 delegate authority to his or her representatives to conduct hearings or
4 perform any other duties imposed under the act. The Tax Commissioner may
5 adopt and promulgate rules and regulations necessary to carry out section
6 77-3003.01.

7 (2) The department has the authority to review all documents between
8 a distributor, manufacturer, and operator regarding a cash device. Such
9 documents shall include, but not be limited to, a contract, agreement,
10 lease, profit-sharing document, annual report, tax filing, or bill of
11 sale.

12 (3) The department has the authority to approve all cash device
13 locations across the state. No cash device shall be moved from such cash
14 device's approved location without the prior approval of the department.

15 (4) The department shall establish retail establishment location
16 standards required for the placement of any cash device in this state.
17 Except for a retail establishment owned or operated by a fraternal
18 organization, each retail establishment location is required to generate
19 at least sixty percent of such establishment's gross operating revenue
20 from other sources that do not include the revenue generated from any
21 cash device.

22 (5) The following factors shall be considered for the issuance of a
23 license to operate a cash device at a particular retail establishment
24 location:

25 (a) Whether there are physical walls separating a retail
26 establishment operating a cash device from other businesses located in
27 the same building;

28 (b) Whether there are dedicated entrances and exits to the retail
29 establishment;

30 (c) Whether a separate sales tax permit has been obtained by the
31 retail establishment;

- 1 (d) Whether the retail establishment has separate points of sale;
2 (e) Whether the retail establishment has separate points of ticket
3 redemption;
4 (f) Whether there is diversity of merchandise for sale in the retail
5 establishment;
6 (g) Whether the retail establishment issues a receipt for sales;
7 (h) The number of dedicated employees on duty at the same time at
8 the retail establishment;
9 (i) The level of business activity being conducted in the retail
10 establishment;
11 (j) Whether the physical space for the retail establishment within
12 the building is contiguous to other businesses; and
13 (k) Whether there are distinct owners or officers of the retail
14 establishment within the shared building.

15 (6) The department shall adopt and promulgate rules and regulations
16 to carry out the Mechanical Amusement Device Tax Act.

17 Sec. 13. Section 77-3007, Revised Statutes Cumulative Supplement,
18 2022, is amended to read:

19 77-3007 (1) The payment of the occupation tax imposed by the
20 Mechanical Amusement Device Tax Act shall be evidenced by a separate
21 decal for each mechanical amusement device signifying payment of the tax,
22 in a form prescribed by the Tax Commissioner.

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

26 Sec. 14. Section 77-3008, Revised Statutes Cumulative Supplement,
27 2022, is amended to read:

28 77-3008 (1) Each distributor of a cash device shall pay taxes owed
29 quarterly to be filed January 1, April 1, June 1, and October 1 of each
30 calendar year. Such taxes required to be paid shall include income tax,
31 occupation tax, and net operating revenue tax.

1 (2) Each operator of a cash device shall pay income taxes on income
2 generated by such cash device quarterly to be filed January 1, April 1,
3 June 1, and October 1 of each calendar year.

4 (3) Each operator of a cash device shall provide an Internal Revenue
5 Service Form 1099 to each player that wins a prize in excess of one
6 thousand one hundred ninety-nine dollars from a cash device in such
7 operator's retail establishment. The department shall make this form
8 available to all operators on the department's website.

9 (4) A distributor or manufacturer located outside the State of
10 Nebraska shall pay income taxes in Nebraska on all income earned in
11 Nebraska.

12 ~~Nothing in the Mechanical Amusement Device Tax Act shall be~~
13 ~~construed to limit, usurp, or repeal any power to tax granted to the~~
14 ~~political subdivisions and municipalities of the State of Nebraska by the~~
15 ~~laws and Constitution of Nebraska.~~

16 Sec. 15. Section 77-3009, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 77-3009 (1) Any person who places a cash ~~mechanical amusement~~ device
19 in operation in the State of Nebraska without the necessary decal being
20 placed conspicuously upon it or without having obtained the necessary
21 license shall be subject to an administrative penalty of up to one
22 thousand seventy-five dollars per day for each unlicensed cash device
23 violation.

24 (2) Any cash ~~mechanical amusement~~ device which does not have the
25 necessary decal conspicuously displayed upon it shall be subject to being
26 sealed by the Tax Commissioner or his or her delegate. If such seal is
27 broken prior to payment of the occupation tax upon such cash device, the
28 cash device shall be subject to forfeiture and sale by the Tax
29 Commissioner.

30 (3) Any person violating the Mechanical Amusement Device Tax Act
31 shall be guilty of a Class II misdemeanor. Each day on which any person

1 engages in or conducts the business of operating or distributing the
2 mechanical amusement machines or devices subject to the Mechanical
3 Amusement Device Tax Act, without having paid the tax or obtained the
4 required license as provided, shall constitute a separate offense.

5 (4) The department has the authority to levy an administrative
6 penalty of up to one thousand dollars per day for any other violation of
7 the act.

8 Sec. 16. (1) The Tax Commissioner shall establish a central server
9 for purposes of receiving data and accurate revenue and income reporting
10 from cash devices across the State of Nebraska. Such central server shall
11 be in place and operational within one year after the effective date of
12 this act.

13 (2) Once the central server is operational, each cash device in the
14 State of Nebraska shall be connected at all times to the central server
15 operated by the department. Such central server shall report data
16 including sales, transactions, prizes won and paid, duration of play or
17 transactions, hours of operation, and any other requirements established
18 by the department through adoption and promulgation of rules and
19 regulations to enforce and implement this section.

20 Sec. 17. (1) Except for cash devices operated by a fraternal
21 organization, a tax is hereby imposed and levied, in the amount and in
22 accordance with this section, upon the net operating revenue of all cash
23 devices operating within the State of Nebraska for profit or gain either
24 directly or indirectly received. Every operator of such cash devices in
25 the State of Nebraska shall pay such tax in the amount and manner
26 specified in this section.

27 (2) Beginning on and after July 1, 2025, any operator of a cash
28 device within the State of Nebraska other than a fraternal organization
29 shall pay a tax for each cash device operated each calendar quarter
30 during the taxable year. The tax shall be collected by the department and
31 due and payable on January 1, April 1, July 1, and October 1 of each year

1 on each cash device in operation during the preceding calendar quarter.
2 For every cash device put into operation on a date subsequent to a
3 quarterly due date that has not been included in computing the tax
4 imposed and levied by the Mechanical Amusement Device Tax Act, the tax
5 shall be due and payable on the immediately succeeding quarterly due
6 date.

7 (3) The amount of the tax imposed and levied under this section
8 shall be five percent of the net operating revenue for each cash device.
9 The operator shall submit the quarterly tax on a form prescribed by the
10 Tax Commissioner documenting the total gross and net operating revenue
11 for that quarter.

12 (4) The Tax Commissioner shall remit the taxes imposed by this
13 section to the State Treasurer for credit as follows:

14 (a) Twenty percent to the Charitable Gaming Operations Fund for
15 enforcement of the act and maintenance of the central server;

16 (b) Two and one-half percent to the Compulsive Gamblers Assistance
17 Fund;

18 (c) Two and one-half percent to the General Fund;

19 (d) Ten percent to the Nebraska Tourism Commission Promotional Cash
20 Fund;

21 (e) Forty percent to the Property Tax Credit Cash Fund; and

22 (f) The remaining twenty-five percent to the county treasurer of the
23 county in which the cash device is located to be distributed as follows:

24 (i) If the cash device is located completely within an unincorporated
25 area of a county, the remaining twenty-five percent shall be distributed
26 to the county in which the cash device is located, or (ii) if the cash
27 device is located within the limits of a city or village in such county,
28 one-half of the remaining twenty-five percent shall be distributed to
29 such county and one-half of the remaining twenty-five percent shall be
30 distributed to the city or village in which such cash device is located.

31 Sec. 18. Section 77-3011, Revised Statutes Cumulative Supplement,

1 2022, is amended to read:

2 77-3011 Sections 77-3001 to 77-3011 and sections 7, 16, and 17 of
3 this act shall be known and may be cited as the Mechanical Amusement
4 Device Tax Act.

5 Sec. 19. Section 81-3729, Revised Statutes Cumulative Supplement,
6 2022, is amended to read:

7 81-3729 The Nebraska Tourism Commission Promotional Cash Fund is
8 hereby created. The fund shall consist of revenue submitted by vendors
9 and retailers under section 81-3728 and revenue from the tax collected on
10 the net operating revenue of cash devices pursuant to section 17 of this
11 act. Revenue from the sale of advertising shall be remitted to the State
12 Treasurer for credit to the fund. The commission shall use the fund to
13 carry out its purposes under the Nebraska Visitors Development Act. Any
14 money in the fund available for investment shall be invested by the state
15 investment officer pursuant to the Nebraska Capital Expansion Act and the
16 Nebraska State Funds Investment Act.

17 Sec. 20. Original sections 77-3002, 77-3003, 77-3004, 77-3005, and
18 77-3009, Reissue Revised Statutes of Nebraska, sections 77-3001,
19 77-3003.01, 77-3003.02, 77-3006, 77-3007, 77-3008, 77-3011, and 81-3729,
20 Revised Statutes Cumulative Supplement, 2022, and sections 9-1,101 and
21 53-101, Revised Statutes Supplement, 2023, are repealed.