

## LEGISLATIVE BILL 685

Approved by the Governor April 15, 2024

Introduced by Lowe, 37; Briese, 41.

A BILL FOR AN ACT relating to law; to amend sections 77-3002, 77-3003, 77-3004, 77-3005, and 77-3009, Reissue Revised Statutes of Nebraska, sections 77-3001, 77-3003.01, 77-3003.02, 77-3006, 77-3007, 77-3008, 77-3011, and 81-3729, Revised Statutes Cumulative Supplement, 2022, and sections 9-1,101 and 53-101, Revised Statutes Supplement, 2023; to provide for the use of certain funds; to provide requirements for licensees under the Nebraska Liquor Control Act selling co-branded alcoholic beverages; to provide, change, and eliminate definitions; to change and eliminate provisions of the Mechanical Amusement Device Tax Act relating to licensure, powers and duties of the Department of Revenue and Tax Commissioner, operation of cash devices, taxes, and penalties; to change the age at which a person may play a mechanical amusement device; to prohibit taxes by political subdivisions; to provide for a central server; to provide a tax on cash devices; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

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

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

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

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

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

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

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

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

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

(7) ~~(6)~~ For administrative purposes only, the Nebraska Commission on Problem Gambling shall be located within the Charitable Gaming Division. The division shall provide office space, furniture, equipment, and stationery and other necessary supplies for the commission. Commission staff shall be appointed, supervised, and terminated by the director of the Gamblers Assistance Program pursuant to section 9-1004.

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

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

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

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

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

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

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

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

(a) Not place any co-branded alcoholic beverage immediately adjacent to any soft drink, fruit juice, bottled water, candy, or snack food portraying cartoons or youth-oriented images; or

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

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

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

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

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

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

(2) Department means the Department of Revenue;

(3) Distributor means any person who places and who either directly or indirectly controls or manages sells, leases, or delivers possession or custody of a machine or mechanical amusement device within a retail establishment within the State of Nebraska to operators thereof for a consideration either directly or indirectly received;

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

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

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

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

(7) (5) Operator means any person who operates a place of business in

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

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

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

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

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

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

77-3002 (1) Any operator shall be required to procure an annual license from the Tax Commissioner permitting him or her to operate mechanical amusement machines or devices within the State of Nebraska. The Tax Commissioner, upon the application of any person, may issue a license, except that if the applicant (a) is not of good character and reputation in the community in which he or she resides, (b) has been convicted of or has pleaded guilty to a felony under the laws of the State of Nebraska, of any other state, or of the United States, or (c) has been convicted of or has pleaded guilty to being the proprietor of a gambling house, or of any other crime or misdemeanor opposed to decency and morality, no license shall be issued. If the applicant is a corporation whose majority stockholders could not obtain a license, then such corporation shall not be issued a license. If the applicant is an individual, the application shall include the applicant's social security number. Procuring a license shall constitute sufficient contact with this state for the exercise of personal jurisdiction over such person in any action arising out of the operation of mechanical amusement machines or devices in this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) This section does not apply to any device (i) used in any bingo, lottery by the sale of pickle cards, or other lottery, raffle, or gift enterprise conducted in accordance with the Nebraska Bingo Act, Nebraska County and City Lottery Act, Nebraska Lottery and Raffle Act, Nebraska Pickle Card Lottery Act, Nebraska Small Lottery and Raffle Act, State Lottery Act, or section 9-701, (ii) used for a prize contest as defined in section 28-1101, or (iii) specifically authorized by the laws of this state, or (iv) regulated under the Nebraska Racetrack Gaming Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The results of an analysis by ~~the any~~ independent testing laboratory certified authority ~~preapproved~~ by the Tax Commissioner to evaluate factors set forth by the Tax Commissioner, other than reaction time, required for the player of a particular game on such cash device to perform the tasks required by the game to win.

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

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

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

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

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

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

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

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

department; and

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

(b)(i) In order for a distributor or operator of a cash device to place a cash device into operation at a retail establishment, other than a retail establishment owned or operated by a fraternal benefit society organized and licensed under sections 44-1072 to 44-10,109 or a recognized veterans organization as defined in section 80-401.01, such retail establishment shall generate at least sixty percent of the gross operating revenue of such retail establishment from sources other than the total gross operating revenue of any cash devices located within the retail establishment.

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

(A) Except for a fraternal benefit society organized and licensed under sections 44-1072 to 44-10,109 or a recognized veterans organization as defined in section 80-401.01, the number of cash devices it takes to generate forty percent of the gross operating revenue of the retail establishment; or

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

(c) The distributor ~~owner~~ or operator of a cash device shall pay an annual decal fee of two hundred fifty dollars to the department for each cash device in operation in Nebraska. The decal issued under this section shall be distinct from other decals issued by the department for mechanical amusement devices that are not required to be evaluated under this section. Regardless of the issuance of a decal by the department, no cash device shall be considered in compliance if it does not bear an unexpired decal in a conspicuous place.

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

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

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

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

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

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

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

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

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

(4) The department shall adopt and promulgate rules and regulations for the implementation and enforcement of this section as long as such rules and regulations do not restrict how a cash device manufacturer, distributor, or operator markets or advertises the existence of a cash device, unless the advertiser or marketer of a cash device is willfully conflating the cash device

play with casino-style gambling or slot machine wagering.

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

77-3004 (1) An occupation tax is hereby imposed and levied, in the amount and in accordance with the terms and conditions hereafter stated in this section, upon the business of operating mechanical amusement devices that are not cash devices within the State of Nebraska for profit or gain either directly or indirectly received. Every person who now or hereafter engages in the business of operating such mechanical amusement devices that are not cash devices in the State of Nebraska shall pay such occupation tax in the amount and manner specified in this section.

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

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

(3) (4) The amount of the occupation tax shall be thirty-five dollars for each mechanical amusement device that is not a cash machine or device for any period beginning on or after January 1, 2000, except that for such mechanical amusement devices machines placed in operation after July 1, and before January 1 of each year, the occupation tax shall be twenty dollars for each mechanical amusement machine or device.

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

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

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

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

77-3006 (1) The administration of the Mechanical Amusement Device Tax Act is hereby vested in the Tax Commissioner subject to other provisions of law relating to the Tax Commissioner. The Tax Commissioner may prescribe, adopt and promulgate, and enforce rules and regulations relating to the administration and enforcement of the act and may delegate authority to his or her representatives to conduct hearings or perform any other duties imposed under the act. The Tax Commissioner may adopt and promulgate rules and regulations necessary to carry out section 77-3003.01.

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

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

(4) The department shall establish retail establishment location standards required for the placement of any cash device in this state.

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

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

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



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

(d) Whether the retail establishment has separate points of sale;

(e) Whether the retail establishment has separate points of ticket redemption;

(f) Whether there is diversity of merchandise for sale in the retail establishment;

(g) Whether the retail establishment issues a receipt for sales;

(h) The number of dedicated employees on duty at the same time at the retail establishment;

(i) The level of business activity being conducted in the retail establishment;

(j) Whether the physical space for the retail establishment within the building is contiguous to other businesses; and

(k) Whether there are distinct owners or officers of the retail establishment within the shared building.

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

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

(2) Every distributor or operator shall place such decal in a conspicuous place on each mechanical amusement device to denote payment of the tax for each device for the current year.

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

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

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

(b) Each operator of a cash device shall pay occupation tax and net operating revenue tax for such cash device quarterly to be filed January 1, April 1, June 1, and October 1 of each calendar year if the operator is not subject to a revenue-sharing or other agreement with a distributor who is paying such taxes pursuant to subsection (1) of this section.

(3) Each distributor, operator, or employee or agent of any distributor or operator of a cash device shall provide an Internal Revenue Service Form 1099 to each player that wins a prize in excess of one thousand one hundred ninety-nine dollars from a cash device placed into operation by such distributor or operator. The department shall make this form available on the department's website.

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

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

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

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

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

(3) Any person violating the Mechanical Amusement Device Tax Act shall be guilty of a Class II misdemeanor. Each day on which any person engages in or conducts the business of operating or distributing the mechanical amusement machines or devices subject to the Mechanical Amusement Device Tax Act, without having paid the tax or obtained the required license as provided, shall constitute a separate offense.

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

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

(2) Once the central server is operational, each cash device in the State of Nebraska shall be connected at all times to the central server operated by the department. Such central server shall report data including sales, transactions, prizes won and paid, duration of play or transactions, hours of operation, and any other requirements established by the department through adoption and promulgation of rules and regulations to enforce and implement the Mechanical Amusement Device Tax Act.

Sec. 17. (1) Except as otherwise provided in subsection (5) of this section, a tax is hereby imposed and levied, in the amount and in accordance with this section, upon the net operating revenue of all cash devices operating within the State of Nebraska for profit or gain either directly or indirectly received. The tax shall be paid in the amount and manner specified in this section.

(2) Except as otherwise provided in subsection (5) of this section, beginning on and after July 1, 2025, any distributor of a cash device, and any operator of a cash device if the operator is not subject to a revenue-sharing or other agreement with a distributor who is paying the tax, shall pay a tax for each cash device in operation each calendar quarter during the taxable year. The tax shall be collected by the department and due and payable on January 1, April 1, July 1, and October 1 of each year on each cash device in operation during the preceding calendar quarter. For each cash device put into operation on a date subsequent to a quarterly due date that has not been included in computing the tax imposed and levied by the Mechanical Amusement Device Tax Act, the tax shall be due and payable on the immediately succeeding quarterly due date.

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

(4) The Tax Commissioner shall remit the taxes collected pursuant to this section to the State Treasurer for credit as follows:

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

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

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

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

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

(f) The remaining twenty-five percent to the county treasurer of the county in which the cash device is located to be distributed as follows: (i) If the cash device is located completely within an unincorporated area of a county, the remaining twenty-five percent shall be distributed to the county in which the cash device is located, or (ii) if the cash device is located within the limits of a city or village in such county, one-half of the remaining twenty-five percent shall be distributed to such county and one-half of the remaining twenty-five percent shall be distributed to the city or village in which such cash device is located.

(5) This section does not apply to cash devices operated by a fraternal benefit society organized and licensed under sections 44-1072 to 44-10,109 or a recognized veterans organization as defined in section 80-401.01.

Sec. 18. Section 77-3011, Revised Statutes Cumulative Supplement, 2022, is amended to read:

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

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

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

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