

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 920

Introduced by Spivey, 13.

Read first time January 09, 2026

Committee: Revenue

1 A BILL FOR AN ACT relating to the Mechanical Amusement Device Tax Act; to
2 amend sections 77-3003.01, 77-3003.02, 77-3006, 77-3009, and
3 77-3012, Revised Statutes Cumulative Supplement, 2024; to change
4 provisions relating to the advertisement, operation, and records of
5 a cash device under the act; to change provisions relating to
6 violations of the act; to change provisions relating to the amount
7 and distribution of the tax imposed on the net operating revenue of
8 a cash device; to provide powers and duties to the Tax Commissioner
9 and the Department of Revenue; to create the Nebraska Child Care Aid
10 Fund; to harmonize provisions; and to repeal the original sections.
11 Be it enacted by the people of the State of Nebraska,

1 **Section 1.** Section 77-3003.01, Revised Statutes Cumulative
2 Supplement, 2024, is amended to read:

3 77-3003.01 (1)(a) The Tax Commissioner or his or her agents or
4 employees, at the direction of the Tax Commissioner, or any peace officer
5 of this state may seize, without a warrant, any mechanical amusement
6 device if there is cause to believe such mechanical amusement device is
7 not in compliance with the Mechanical Amusement Device Tax Act or any
8 rules and regulations adopted and promulgated under the act or if the
9 department determines the response to a request for information is
10 materially deficient without good cause. In addition to seizure, any
11 person placing in service or operating a cash device constituting an
12 illegal game of chance or an unlicensed cash device of any kind within
13 this state shall be subject to a penalty of up to one thousand dollars
14 for each day of such operation. The Tax Commissioner has the authority to
15 suspend or revoke the license of any operator, manufacturer, or
16 distributor of a cash device that is in violation of this section.

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

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

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

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

30 (2) To receive a determination from the department that a cash
31 device is in compliance with the Mechanical Amusement Device Tax Act and

1 any rules and regulations adopted and promulgated under the act, a
2 manufacturer or distributor of the device shall:

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

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

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

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

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

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

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

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

30 (ii) The ability of the player to succeed at the game played on the
31 cash device is impacted by the ability of any person to set a specified

1 win-loss ratio for the cash device or by the cash device having a
2 predetermined win-loss percentage;

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

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

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

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

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

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

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

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

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

31 (6) Factors which are not sufficient indications of a skill-based

1 game include, but are not limited to:

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

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

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

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

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

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

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

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

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

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

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

26 (B) Four cash devices, except that an establishment with over four
27 thousand square feet may have one cash device for each one thousand
28 square feet, up to a maximum of fifteen cash devices.

29 (c) The distributor or operator of a cash device shall pay an annual
30 decal fee of two hundred fifty dollars to the department for each cash
31 device in operation in Nebraska. The decal issued under this section

1 shall be distinct from other decals issued by the department for
2 mechanical amusement devices that are not required to be evaluated under
3 this section. Regardless of the issuance of a decal by the department, no
4 cash device shall be considered in compliance if it does not bear an
5 unexpired decal in a conspicuous place.

6 (9)(a) An operator, distributor, or manufacturer of a cash device
7 shall not market, advertise, promote, or make available any cash device
8 in this state if the device or its container, packaging, or advertising
9 materials:

10 (i) Depict a cartoon-like or fictional character primarily used to
11 appeal to minors; or

12 (ii) Imitate or mimic the trademark, trade dress, branding, or
13 packaging of products primarily marketed to minors.

14 (b)(i) No person shall place or permit exterior advertising for a
15 cash device on or about any premises where such device is located except
16 as provided in this section.

17 (ii) Each premises where a cash device is located may display not
18 more than three exterior signs advertising the availability of a cash
19 device available for play at such location. Any such sign shall:

20 (A) Not exceed eleven inches in height and ten inches in width; and

21 (B) Be permanently affixed to the exterior of the building that
22 contains a cash device.

23 (iii) No exterior banner, flag, window wraps, digital display,
24 vehicle wrap, or other exterior advertising media shall be used to
25 advertise a cash device other than the signs permitted pursuant to
26 subdivision (9)(b)(ii) of this section.

27 (10) (9) The application process described in this section shall not
28 be construed to limit further investigation by the department or the
29 issuance of further regulations to promote compliance after the
30 application process is completed. At any point after a determination of
31 skill by the department, the department may request from the

1 manufacturer, distributor, or operator information about any cash device
2 in operation in this state, including, but not limited to, information
3 regarding currently operable source code, changes to software or
4 hardware, and communications from or to the device over the Internet. A
5 manufacturer, distributor, or operator that receives a request shall
6 respond with all responsive information in its possession or control
7 within fifteen business days.

8 (11) ~~(10)~~ If a manufacturer or distributor receives a determination
9 from the department that a cash device is not in compliance with the
10 Mechanical Amusement Device Tax Act, such manufacturer or distributor
11 shall have ten ~~thirty~~ days after the issuance of that determination to
12 (a) provide proof of correction and compliance or (b) remove any such
13 cash device from operation in Nebraska.

14 (12) ~~(11)~~ Application fees collected under subsection (2) of this
15 section and annual decal fees collected under subsection (8) of this
16 section shall be remitted to the State Treasurer for credit to the
17 Department of Revenue Enforcement Fund.

18 **Sec. 2.** Section 77-3003.02, Revised Statutes Cumulative Supplement,
19 2024, is amended to read:

20 77-3003.02 (1) No cash device shall be operated using a credit card,
21 charge card, or debit card.

22 (2) No person under twenty-one years of age shall play or
23 participate in any way in the operation of a cash device. No distributor,
24 operator, or employee or agent of any distributor or operator shall
25 knowingly permit any individual under twenty-one years of age to play or
26 participate in any way in the operation of a cash device. The
27 distributor, operator, or employee or agent shall verify the age of any
28 individual requesting to play a cash device and shall comply with
29 subsections (3) and (4) of this section.

30 (3) Beginning August 1, 2026, an operator of a cash device shall not
31 make such device available for play at a retail establishment unless an

1 attendant is physically present on the premises of such retail
2 establishment and capable of actively supervising play of such cash
3 device. An attendant shall be considered to be actively supervising play
4 of such cash device if the attendant:

5 (a) Visually confirms the age of the player in conjunction with the
6 electronic age-verification required pursuant to subsection (4) of this
7 section; and

8 (b) Continuously monitors the area in which a cash device is located
9 and intervenes to prevent play of a cash device by any person under
10 twenty-one years of age.

11 (4)(a) Except as provided in subdivision (c) of this subsection, on
12 and after January 1, 2028, an operator shall not make a cash device
13 available for play in a retail establishment unless such device is
14 equipped with an age-verification mechanism capable of scanning and
15 electronically authenticating a government-issued identification card.

16 (b) The age-verification mechanism shall meet technical standards
17 approved by the department. Such standards shall include, but need not be
18 limited to:

19 (i) Age-verification methods that prevent play of such cash device
20 until the age of the player has been electronically verified as twenty-
21 one years of age or older; and

22 (ii) Requirement of an age-verification identification scan prior to
23 each gameplay session on the cash device and prior to each voucher print
24 or redemption transaction.

25 (c) This subsection shall not apply to a cash device located in a
26 retail establishment that does not allow individuals under twenty-one
27 years of age to enter.

28 (5) {2} No distributor or operator shall charge a fee or require a
29 gratuity in return for the payment of any prize money won by a player of
30 a cash device.

31 (6) {3} The Tax Commissioner has the authority to suspend or revoke

1 the license of any distributor or operator of a cash device for a
2 violation of this section.

3 ~~(7) (4) The department shall adopt and promulgate rules and~~
4 ~~regulations for the implementation and enforcement of this section as~~
5 ~~long as such rules and regulations do not restrict how a cash device~~
6 ~~manufacturer, distributor, or operator markets or advertises the~~
7 ~~existence of a cash device, unless the advertiser or marketer of a cash~~
8 ~~device is willfully conflating the cash device play with casino style~~
9 ~~gambling or slot machine wagering.~~

10 **Sec. 3.** Section 77-3006, Revised Statutes Cumulative Supplement,
11 2024, is amended to read:

12 77-3006 (1) The administration of the Mechanical Amusement Device
13 Tax Act is hereby vested in the Tax Commissioner subject to other
14 provisions of law relating to the Tax Commissioner. The Tax Commissioner
15 may prescribe, adopt and promulgate, and enforce rules and regulations
16 relating to the administration and enforcement of the act and may
17 delegate authority to his or her representatives to conduct hearings or
18 perform any other duties imposed under the act. The Tax Commissioner
19 shall may adopt and promulgate rules and regulations necessary to carry
20 out section 77-3003.01. Such rules and regulations shall include
21 standards for determining when advertising or packaging is used to appeal
22 to minors or primarily marketed to minors.

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

28 (3) The department has the authority to approve all cash device
29 locations across the state. No cash device shall be moved from such cash
30 device's approved location without the prior approval of the department.
31 The department may examine and audit any retail establishment operating a

1 cash device without prior notice to verify compliance with the act.

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

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

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

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

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

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

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

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

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

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

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

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

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

28 **Sec. 4.** Section 77-3009, Revised Statutes Cumulative Supplement,
29 2024, is amended to read:

30 77-3009 (1) Any distributor or operator who places a cash device
31 into operation in the State of Nebraska without the necessary decal being

1 placed conspicuously upon it or without having obtained the necessary
2 license shall be subject to an administrative penalty of up to one
3 thousand dollars per day for each unlicensed cash device.

4 (2) Any cash device which (a) does not have the necessary decal
5 conspicuously displayed upon it or (b) does not comply with the age-
6 verification requirements of subsection (4) of section 77-3003.02 shall
7 be subject to being sealed by the Tax Commissioner or his or her
8 delegate. If such seal is broken prior to payment of the occupation tax
9 upon such cash device, the cash device shall be subject to forfeiture and
10 sale by the Tax Commissioner.

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

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

20 **Sec. 5.** Section 77-3012, Revised Statutes Cumulative Supplement,
21 2024, is amended to read:

22 77-3012 (1) Except as otherwise provided in subsection (5) of this
23 section, a tax is hereby imposed and levied, in the amount and in
24 accordance with this section, upon the net operating revenue of all cash
25 devices operating within the State of Nebraska for profit or gain either
26 directly or indirectly received. The tax shall be paid in the amount and
27 manner specified in this section.

28 (2) Except as otherwise provided in subsection (5) of this section,
29 beginning on and after July 1, 2025, any distributor of a cash device,
30 and any operator of a cash device if the operator is not subject to a
31 revenue-sharing or other agreement with a distributor who is paying the

1 tax, shall pay a tax for each cash device in operation each calendar
2 quarter during the taxable year. The tax shall be collected by the
3 department and due and payable on January 1, April 1, July 1, and October
4 1 of each year on each cash device in operation during the preceding
5 calendar quarter. For each cash device put into operation on a date
6 subsequent to a quarterly due date that has not been included in
7 computing the tax imposed and levied by the Mechanical Amusement Device
8 Tax Act, the tax shall be due and payable on the immediately succeeding
9 quarterly due date.

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

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

17 (a) Two and one-half ~~Twenty~~ percent to the Charitable Gaming
18 Operations Fund for enforcement of the act and maintenance of the central
19 server;

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

22 (c) Nine-tenths of a ~~Two and one-half~~ percent to the General Fund;

23 (d) Three and four-tenths ~~Ten~~ percent to the Nebraska Tourism
24 Commission Promotional Cash Fund;

25 (e) Thirteen and thirty-five hundredths ~~Forty~~ percent to the
26 Property Tax Credit Cash Fund; and

27 (f) Sixty-eight and ninety-five hundredths ~~percent~~ to the Nebraska
28 Child Care Aid Fund; and

29 (g) ~~(f)~~ The remaining eight and four-tenths ~~twenty-five~~ percent to
30 the county treasurer of the county in which the cash device is located to
31 be distributed as follows: (i) If the cash device is located completely

1 within an unincorporated area of a county, the remaining eight and four-
2 tenths ~~twenty-five~~ percent shall be distributed to the county in which
3 the cash device is located, or (ii) if the cash device is located within
4 the limits of a city or village in such county, one-half of the remaining
5 eight and four-tenths ~~twenty-five~~ percent shall be distributed to such
6 county and one-half of the remaining eight and four-tenths ~~twenty-five~~
7 percent shall be distributed to the city or village in which such cash
8 device is located.

9 (5) This section does not apply to cash devices operated by a
10 fraternal benefit society organized and licensed under sections 44-1072
11 to 44-10,109 or a recognized veterans organization as defined in section
12 80-401.01.

13 **Sec. 6.** The Nebraska Child Care Aid Fund is created. The fund shall
14 consist of funds received pursuant to section 77-3012, any money
15 transferred by the Legislature, and any gifts, grants, or bequests from
16 any source, including federal, state, public, and private sources. The
17 fund shall be used for state child care subsidies within the State of
18 Nebraska. Any money in the fund available for investment shall be
19 invested by the state investment officer pursuant to the Nebraska Capital
20 Expansion Act and the Nebraska State Funds Investment Act.

21 **Sec. 7.** Original sections 77-3003.01, 77-3003.02, 77-3006, 77-3009,
22 and 77-3012, Revised Statutes Cumulative Supplement, 2024, are repealed.