

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 367

Introduced by Briese, 41.

Read first time January 13, 2021

Committee:

- 1 A BILL FOR AN ACT relating to the Mechanical Amusement Device Tax Act; to
- 2 amend section 77-3005, Reissue Revised Statutes of Nebraska,
- 3 sections 77-3007 and 77-3011, Revised Statutes Cumulative
- 4 Supplement, 2020, and section 77-3001, Reissue Revised Statutes of
- 5 Nebraska, as amended by section 12, Initiative Law 2020, No. 430; to
- 6 define and redefine terms; to impose and levy a tax on cash devices;
- 7 to harmonize provisions; to provide an operative date; and to repeal
- 8 the original sections.
- 9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-3001, Reissue Revised Statutes of Nebraska, as
2 amended by section 12, Initiative Law 2020, No. 430, is amended to read:

3 77-3001 For purposes of the Mechanical Amusement Device Tax Act,
4 unless the context otherwise requires:

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

10 (2) Department means the Department of Revenue;

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

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

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

1 any person who places and who either directly or indirectly controls or
2 manages any machine or device;

3 (6) (1) Person means an individual, partnership, limited liability
4 company, society, association, joint-stock company, corporation, estate,
5 receiver, lessee, trustee, assignee, referee, or other person acting in a
6 fiduciary or representative capacity, whether appointed by a court or
7 otherwise, and any combination of individuals;

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

23 ~~(3) Operator means any person who operates a place of business in~~
24 ~~which a machine or device owned by him or her is physically located or~~
25 ~~any person who places and who either directly or indirectly controls or~~
26 ~~manages any machine or device;~~

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

30 (7) (5) Whenever in the act, the words machine or device are used,
31 they refer to mechanical amusement device;-and

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

5 (9) ~~(6)~~ Whenever in the act, the words machine, device, person,
6 operator, or distributor are used, the words in the singular include the
7 plural and in the plural include the singular.

8 Sec. 2. Section 77-3005, Reissue Revised Statutes of Nebraska, is
9 amended to read:

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

26 Sec. 3. (1) A tax is hereby imposed and levied, in the amount and
27 in accordance with this section, upon the net revenue of all cash devices
28 operating within the State of Nebraska for profit or gain either directly
29 or indirectly received. Every person who engages in the business of
30 operating such devices in the State of Nebraska shall pay such tax in the
31 amount and manner specified in this section.

1 (2) For taxable years beginning on and after the operative date of
2 this act, any operator of a cash device within the State of Nebraska
3 shall pay a tax for each device operated each calendar quarter during the
4 taxable year. The tax shall be due and payable on January 1, April 1,
5 July 1, and October 1 of each year on each device in operation during the
6 preceding calendar quarter, except that it shall be unlawful to pay any
7 such tax unless the sales or use tax has been paid on such devices. For
8 every device put into operation on a date subsequent to a quarterly due
9 date, and which has not been included in computing the tax imposed and
10 levied by the Mechanical Amusement Device Tax Act, the tax shall be due
11 and payable on the immediately succeeding quarterly due date. All taxes
12 collected under this section shall be remitted to the State Treasurer for
13 credit to the Property Tax Credit Cash Fund.

14 (3) The amount of the tax imposed and levied under this section
15 shall be twenty percent of the net revenue for each cash device. The
16 operator shall submit the quarterly tax on a form prescribed by the
17 department documenting the total gross proceeds for that quarter.

18 Sec. 4. Section 77-3007, Revised Statutes Cumulative Supplement,
19 2020, is amended to read:

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

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

27 Sec. 5. Section 77-3011, Revised Statutes Cumulative Supplement,
28 2020, is amended to read:

29 77-3011 Sections 77-3001 to 77-3011 and section 3 of this act shall
30 be known and may be cited as the Mechanical Amusement Device Tax Act.

31 Sec. 6. This act becomes operative on January 1, 2022.

1 Sec. 7. Original section 77-3005, Reissue Revised Statutes of
2 Nebraska, sections 77-3007 and 77-3011, Revised Statutes Cumulative
3 Supplement, 2020, and section 77-3001, Reissue Revised Statutes of
4 Nebraska, as amended by section 12, Initiative Law 2020, No. 430, are
5 repealed.