

LEGISLATURE OF NEBRASKA  
ONE HUNDRED EIGHTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 685**

Introduced by Briese, 41.

Read first time January 18, 2023

Committee: General Affairs

1 A BILL FOR AN ACT relating to gaming; to amend sections 2-1201.01,  
2 2-1202, 77-3002, 77-3003, 77-3004, 77-3005, and 77-3009, Reissue  
3 Revised Statutes of Nebraska, and sections 28-1107, 77-3001,  
4 77-3003.01, 77-3003.02, 77-3006, 77-3007, 77-3010, 77-3011, and  
5 77-5601, Revised Statutes Cumulative Supplement, 2022; to rename,  
6 transfer, and change provisions relating to the Mechanical Amusement  
7 Device Tax Act; to transfer powers and duties from the Department of  
8 Revenue to the State Racing and Gaming Commission; to change the age  
9 required to play a cash device; to provide a tax on cash devices; to  
10 increase penalties; to harmonize provisions; to eliminate provisions  
11 relating to the power to tax under the Mechanical Amusement Device  
12 Tax Act; to provide a duty for the Revisor of Statutes; to provide  
13 an operative date; to repeal the original sections; and to outright  
14 repeal section 77-3008, Revised Statutes Cumulative Supplement,  
15 2022.

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

1 Section 1. Section 2-1201.01, Reissue Revised Statutes of Nebraska,  
2 is amended to read:

3 2-1201.01 The purpose of the commission is to provide statewide  
4 regulation of horseracing and games of chance as defined in the Nebraska  
5 Racetrack Gaming Act and mechanical amusement devices and cash devices as  
6 defined in the Mechanical Amusement Device Act in order to prevent and  
7 eliminate corrupt practices and fraudulent behavior, and thereby maintain  
8 a high level of integrity and honesty in the horseracing industry of  
9 Nebraska and the operation of games of chance, mechanical amusement  
10 devices, and cash devices in Nebraska, and to insure that all funds  
11 received by the commission are properly distributed.

12 Sec. 2. Section 2-1202, Reissue Revised Statutes of Nebraska, is  
13 amended to read:

14 2-1202 (1) The commission shall elect one of its members to be  
15 chairperson thereof, and it shall be authorized to employ an executive  
16 director and such other assistants and employees as may be necessary to  
17 carry out the purposes of the Mechanical Amusement Device Act sections  
18 2-1201 to 2-1218, the Nebraska Racetrack Gaming Act, and sections 2-1201  
19 to 2-1218 and 9-1201 to 9-1209. Such executive director shall have no  
20 other official duties. The executive director shall keep a record of the  
21 proceedings of the commission, preserve the books, records, and documents  
22 entrusted to the executive director, and perform such other duties as the  
23 commission shall prescribe; and the commission shall require the  
24 executive director to give bond in such sum as it may fix, conditioned  
25 for the faithful performance of the duties of the executive director. The  
26 commission shall be authorized to fix the compensation of the executive  
27 director, and also the compensation of its other employees, subject to  
28 the approval of the Governor. The commission shall have an office at such  
29 place within the state as it may determine and shall meet at least eight  
30 times per year.

31 (2) The commission shall appoint or employ deputies, investigators,

1 inspectors, agents, security personnel, and other persons as deemed  
2 necessary to administer and effectively enforce the regulation of  
3 horseracing, the Mechanical Amusement Device Act, the Nebraska Racetrack  
4 Gaming Act, and sections 9-1201 to 9-1209. Any appointed or employed  
5 personnel shall perform the duties assigned by the commission.

6 (3) All personnel appointed or employed by the commission shall be  
7 bonded or insured as required by section 11-201. As specified by the  
8 commission, certain personnel shall be vested with the authority and  
9 power of a law enforcement officer to carry out the laws of this state  
10 administered by the commission.

11 Sec. 3. Any appropriation and salary limit provided in any  
12 legislative bill enacted by the One Hundred Eighth Legislature, First  
13 Session, to Agency No. 16, Department of Revenue, regarding the powers,  
14 duties, and functions transferred to the State Racing and Gaming  
15 Commission by this legislative bill shall be reduced, and any such  
16 amounts are hereby appropriated to Agency No. 36, State Racing and Gaming  
17 Commission. Any financial obligations of the Department of Revenue  
18 regarding the powers, duties, and functions transferred to the State  
19 Racing and Gaming Commission that remain unpaid as of December 31, 2023,  
20 and are subsequently certified as valid encumbrances to the accounting  
21 division of the Department of Administrative Services pursuant to  
22 sections 81-138.01 to 81-138.04, shall be paid by the State Racing and  
23 Gaming Commission from the unexpended balance of appropriations existing  
24 in such classification on December 31, 2023.

25 Sec. 4. On and after January 1, 2024, whenever the Department of  
26 Revenue is referred to or designated by any contract or other document in  
27 connection with the duties and functions transferred to the State Racing  
28 and Gaming Commission, such reference or designation shall apply to the  
29 State Racing and Gaming Commission. All contracts entered into by the  
30 Department of Revenue prior to January 1, 2024, in connection with the  
31 duties and functions transferred to the State Racing and Gaming

1 Commission are hereby recognized, with the State Racing and Gaming  
2 Commission succeeding to all rights and obligations under such contracts.  
3 Any cash funds, custodial funds, gifts, trusts, grants, and any  
4 appropriations of funds from prior fiscal years available to satisfy  
5 obligations incurred under such contracts shall be transferred and  
6 appropriated to such commission for the payments of such obligations. All  
7 licenses, certificates, registrations, permits, seals, decals, or other  
8 forms of approval issued by the Department of Revenue in accordance with  
9 the functions or duties transferred to the commission shall remain valid  
10 as issued under the names of the original department unless revoked or  
11 their effectiveness is otherwise terminated as provided by law. All  
12 documents and records transferred, or copies of the same, may be  
13 authenticated or certified by such commission for all legal purposes.

14       Sec. 5. No suit, action, or other proceeding, judicial or  
15 administrative, lawfully commenced prior to January 1, 2024, or which  
16 could have been commenced prior to that date, by or against the  
17 Department of Revenue, or the director or any employee thereof in such  
18 director's or employee's official capacity or in relation to the  
19 discharge of such person's official duties, shall abate by reason of the  
20 transfer of duties and functions from the Department of Revenue to the  
21 State Racing and Gaming Commission.

22       Sec. 6. On and after January 1, 2024, unless otherwise specified,  
23 whenever any provision of law refers to the Department of Revenue in  
24 connection with duties and functions transferred to the State Racing and  
25 Gaming Commission, such law shall be construed as referring to the State  
26 Racing and Gaming Commission.

27       Sec. 7. On January 1, 2024, all books, documents, and records of  
28 the Department of Revenue pertaining to the duties and functions  
29 transferred to the State Racing and Gaming Commission pursuant to this  
30 legislative bill, shall become the property of such commission.

31       Sec. 8. Section 77-3011, Revised Statutes Cumulative Supplement,

1 2022, is amended to read:

2 ~~77-3011~~ Sections 3 to 20 of this act ~~77-3001 to 77-3011~~ shall be  
3 known and may be cited as the Mechanical Amusement Device Tax Act.

4 Sec. 9. Section 77-3001, Revised Statutes Cumulative Supplement,  
5 2022, is amended to read:

6 ~~77-3001~~ For purposes of the Mechanical Amusement Device Tax Act,  
7 unless the context otherwise requires:

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

13 (2) Commission means the State Racing and Gaming Commission  
14 ~~Department means the Department of Revenue;~~

15 (3) Distributor means any person who sells, leases, or delivers  
16 possession or custody of a ~~machine or~~ mechanical amusement device to  
17 operators thereof for a consideration either directly or indirectly  
18 received;

19 (4) Gross operating revenue means the dollar amount collected by an  
20 owner or operator of any cash device as computed pursuant to applicable  
21 statutes, rules, and regulations less the total of cash awards paid out  
22 to players as defined in subdivision (1) of this section;

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

1           **(b)** Mechanical amusement device does not mean vending machines which  
2 dispense tangible personal property, devices located in private homes for  
3 private use, pickle card dispensing devices which are required to be  
4 registered with the Department of Revenue ~~department~~ pursuant to section  
5 9-345.03, gaming devices or limited gaming devices as defined in and  
6 operated pursuant to the Nebraska Racetrack Gaming Act, or devices which  
7 are mechanically constructed in a manner that would render their  
8 operation illegal under the laws of the State of Nebraska;

9           **(6)** ~~(5)~~ Operator means any person who operates a place of business  
10 in which a mechanical amusement machine ~~or device~~ owned by him or her is  
11 physically located or any person who places and who either directly or  
12 indirectly controls or manages any mechanical amusement machine ~~or~~  
13 device;

14           **(7)** ~~(6)~~ Person means an individual, partnership, limited liability  
15 company, society, association, joint-stock company, corporation, estate,  
16 receiver, lessee, trustee, assignee, referee, or other person acting in a  
17 fiduciary or representative capacity, whether appointed by a court or  
18 otherwise, and any combination of individuals; and

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

21           **(8)** Whenever in the act, the words electronic video games of skill,  
22 games of skill, or skill-based devices are used, they refer to mechanical  
23 amusement devices which produce an outcome predominantly caused by skill  
24 and not chance. ~~;~~ and

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

28           Sec. 10. Section 77-3006, Revised Statutes Cumulative Supplement,  
29 2022, is amended to read:

30           ~~77-3006~~ **(1)** The administration of the Mechanical Amusement Device  
31 Tax Act is hereby vested in the commission ~~Tax Commissioner~~ subject to

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

9 (2) All rules, regulations, and orders of the Department of Revenue  
10 adopted prior to January 1, 2024, in connection with the powers, duties,  
11 and functions transferred to the commission pursuant to this act, shall  
12 continue to be effective until revised, amended, repealed, or nullified  
13 pursuant to law.

14 Sec. 11. Section 77-3002, Reissue Revised Statutes of Nebraska, is  
15 amended to read:

16 ~~77-3002~~ (1) Any operator shall be required to procure an annual  
17 license from the commission ~~Tax Commissioner~~ permitting him or her to  
18 operate mechanical amusement machines ~~or~~ devices within the State of  
19 Nebraska. The commission ~~Tax Commissioner~~, upon the application of any  
20 person, may issue a license, except that if the applicant (a) is not of  
21 good character and reputation in the community in which he or she  
22 resides, (b) has been convicted of or has pleaded guilty to a felony  
23 under the laws of the State of Nebraska, any other state, or of the  
24 United States, or (c) has been convicted of or has pleaded guilty to  
25 being the proprietor of a gambling house, or of any other crime or  
26 misdemeanor opposed to decency and morality, no license shall be issued.  
27 If the applicant is a corporation whose majority stockholders could not  
28 obtain a license, then such corporation shall not be issued a license. If  
29 the applicant is an individual, the application shall include the  
30 applicant's social security number. Procuring a license shall constitute  
31 sufficient contact with this state for the exercise of personal

1 jurisdiction over such person in any action arising out of the operation  
2 of mechanical amusement machines or devices in this state.

3 (2)(a) The application shall be filed on or before January 1 of each  
4 year.

5 (b) Until January 1, 2024, no license fee shall be required.

6 (c) Beginning January 1, 2024, the license fee shall be one thousand  
7 dollars.

8 ~~(2)(a) For the period beginning July 1, 1998, through December 31,~~  
9 ~~1999, if the applicant operates ten or more machines, the application~~  
10 ~~shall be accompanied by a fee of two hundred fifty dollars, and such~~  
11 ~~license will remain in effect until December 31, 1999. If the applicant~~  
12 ~~operates fewer than ten machines, no fee is due. Any licensee that places~~  
13 ~~additional machines into operation during this period which results in a~~  
14 ~~total of ten or more machines in operation becomes subject to the two-~~  
15 ~~hundred-fifty-dollar fee.~~

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

18 Sec. 12. Section 77-3003, Reissue Revised Statutes of Nebraska, is  
19 amended to read:

20 ~~77-3003~~ Any distributor shall be required to procure an annual  
21 license from the commission ~~Tax Commissioner~~ permitting him or her to  
22 sell, lease, or deliver possession or custody of a mechanical amusement  
23 ~~machine~~ or device within the State of Nebraska. The commission ~~Tax~~  
24 ~~Commissioner~~, upon the application of any person, may issue a license,  
25 subject to the same limitations as an operator's license under section 11  
26 of this act ~~77-3002~~. If the applicant is an individual, the application  
27 shall include the applicant's social security number. The application  
28 shall be filed on or before January 1 of each year. Until January 1,  
29 2024, no license fee shall be required. Beginning January 1, 2024, the  
30 license fee shall be one thousand dollars. ~~For applications filed for the~~  
31 ~~period beginning July 1, 1998, through December 31, 1999, such~~



1 ~~application shall be accompanied by a fee of two hundred fifty dollars,~~  
2 ~~and the license shall remain in effect until December 31, 1999. Beginning~~  
3 ~~January 1, 2000, the application shall be filed on or before January 1 of~~  
4 ~~each year, and no license fee will be required.~~

5 Sec. 13. Section 77-3003.01, Revised Statutes Cumulative Supplement,  
6 2022, is amended to read:

7 ~~77-3003.01~~ (1)(a) The commission ~~Tax Commissioner~~ or any his or her  
8 agents or employees of the commission, at the direction of the commission  
9 ~~Tax Commissioner~~, or any peace officer of this state may seize, without a  
10 warrant, any mechanical amusement device if there is cause to believe  
11 such mechanical amusement device is not in compliance with the Mechanical  
12 Amusement Device ~~Tax~~ Act or any rules and regulations adopted and  
13 promulgated under the act or if the commission ~~department~~ determines the  
14 response to a request for information is materially deficient without  
15 good cause. In addition to seizure, any person placing in service or  
16 operating a cash device constituting a game of chance outside of a  
17 licensed racetrack enclosure within this state shall be subject to a  
18 penalty of one thousand dollars for each day of such operation.

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

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

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

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

1 authorized by the laws of this state.

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

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

10 (b) Submit an application fee of one thousand five hundred ~~five hundred~~ dollars;

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

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

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

24 (3) The commission ~~Tax Commissioner~~ shall issue a response in  
25 writing to the applicant within forty-five days after the applicant has  
26 completed and submitted all application requirements. The commission's  
27 ~~Tax Commissioner's~~ response shall state the reason for any denial or the  
28 reasons a determination 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 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 device or by the device having a predetermined  
6 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; or -

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 commission department or any court considering whether a  
25 gambling 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 commission Tax  
28 ~~Commissioner~~ to evaluate the reaction time required for a player of a  
29 particular game on such cash\_device to perform the tasks required by the  
30 game to win; or

31 (b) The results of an analysis by the any independent testing

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

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

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

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

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

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

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

1 issue of whether the cash device is specifically authorized by law and is  
2 not a gambling device as defined in section 28-1101. After such hearing,  
3 the commission ~~Tax Commissioner~~ shall enter a final decision approving or  
4 denying the application. The commission's ~~Tax Commissioner's~~ final  
5 decision may be appealed, and the appeal shall be in accordance with the  
6 Administrative Procedure Act.

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

10 (i) If certified by the manufacturer to be functionally identical in  
11 both hardware and software configurations to the specimen provided to the  
12 commission department; and

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

16 (b) An owner or operator of a retail establishment shall operate no  
17 more than eight ~~four~~ cash devices and no single address shall have more  
18 than eight cash devices, except that an establishment operating more than  
19 eight licensed cash devices on December 31, 2022, may continue to operate  
20 the cash devices that were licensed and displayed the annual decal issued  
21 from the Department of Revenue on that date. Any operator governed by  
22 such exception shall not be permitted to have any additional cash devices  
23 than such operator had licensed as of December 31, 2022. Separate  
24 businesses which share the same physical address or location shall not be  
25 permitted to have any additional cash devices for any reason, regardless  
26 of the square footage of the establishment. Each seat available for play  
27 at a cash device shall count as one cash device. Multiplayer games which  
28 allow more than eight players to play simultaneously shall not be  
29 permitted. If a retail establishment has one cash device that allows  
30 eight players to play simultaneously, such establishment shall not be  
31 permitted to have any additional cash devices. , ~~except that an~~

1 ~~establishment with over four thousand square feet may have one cash~~  
2 ~~device for each one thousand square feet, up to a maximum of fifteen cash~~  
3 ~~devices.~~

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

13 (d) The number of player seats available per cash device equals the  
14 number of decals required for such device. Cash devices with multiplayer  
15 games with more than eight seats for players for such device shall not be  
16 eligible for approval and licensing and shall not be issued a decal.

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

29 ~~(10)(a) Before any rules and regulations adopted and promulgated to~~  
30 ~~carry out this section become effective, any manufacturer, distributor,~~  
31 ~~or owner may continue to manufacture, sell, transport, place, possess, or~~

1 ~~enter into a transaction involving (i) cash devices already in operation~~  
2 ~~at an establishment as of May 1, 2019, or (ii) other cash devices that~~  
3 ~~are functionally identical to those already in operation at an~~  
4 ~~establishment as of May 1, 2019.~~

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

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

20 ~~(10) (11) Application fees collected under subsection (2) of this~~  
21 ~~section and annual decal fees collected under subsection (8) of this~~  
22 ~~section shall be remitted to the State Treasurer for credit to the XXXX~~  
23 ~~Department of Revenue Enforcement Fund.~~

24 Sec. 14. Section 77-3003.02, Revised Statutes Cumulative Supplement,  
25 2022, is amended to read:

26 ~~77-3003.02~~ No cash device shall be operated using a credit card,  
27 charge card, or debit card. No person under twenty-one ~~nineteen~~ years of  
28 age shall play or participate in any way in the operation of a cash  
29 device. No operator or employee or agent of any operator shall knowingly  
30 permit any individual under twenty-one ~~nineteen~~ years of age to play or  
31 participate in any way in the operation of a cash device. All cash

1 devices shall be located in a separate enclosed area, designated only for  
2 individuals twenty-one years of age and older. Any operator violating  
3 this section shall be subject to an administrative penalty of five  
4 hundred dollars per violation.

5       Sec. 15. Section 77-3004, Reissue Revised Statutes of Nebraska, is  
6 amended to read:

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

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

29       ~~(3) The amount of the occupation tax shall be fifty dollars for each~~  
30 ~~machine or device for the period from July 1, 1998, through December 31,~~  
31 ~~1999, except that for machines placed in operation after April 1, 1999,~~



1 ~~and before January 1, 2000, the occupation tax shall be twenty-five~~  
2 ~~dollars for each machine or device.~~

3       (3) (4) The amount of the occupation tax shall be thirty-five  
4 dollars for each mechanical amusement machine ~~or~~ device for any period  
5 beginning on or after January 1, 2000, until January 1, 2024, except that  
6 for mechanical amusement devices ~~machines~~ placed in operation after July  
7 1, and before January 1 of each year, the occupation tax shall be twenty  
8 dollars for each mechanical amusement machine ~~or~~ device. Beginning  
9 January 1, 2024, the occupation tax shall be one thousand dollars for  
10 each mechanical amusement device.

11       Sec. 16. Section 77-3005, Reissue Revised Statutes of Nebraska, is  
12 amended to read:

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

30       Sec. 17. Section 77-3007, Revised Statutes Cumulative Supplement,  
31 2022, is amended to read:

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

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

8           Sec. 18. (1) A tax is hereby imposed and levied, in the amount and  
9 in accordance with this section, upon the gross operating revenue of all  
10 cash devices operating within the State of Nebraska for profit or gain  
11 either directly or indirectly received. Every person who engages in the  
12 business of operating such devices in the State of Nebraska shall pay  
13 such tax in the amount and manner specified in this section.

14           (2) Beginning on and after July 1, 2024, any operator of a cash  
15 device within the State of Nebraska shall pay a tax for each cash device  
16 operated each calendar quarter during the taxable year. The tax shall be  
17 collected by the commission and due and payable on January 1, April 1,  
18 July 1, and October 1 of each year on each cash device in operation  
19 during the preceding calendar quarter. For every cash device put into  
20 operation on a date subsequent to a quarterly due date, and which has not  
21 been included in computing the tax imposed and levied by the Mechanical  
22 Amusement Device Act, the tax shall be due and payable on the immediately  
23 succeeding quarterly due date.

24           (3) The amount of the tax imposed and levied under this section  
25 shall be twenty percent of the gross operating revenue for each cash  
26 device. The operator shall submit the quarterly tax on a form prescribed  
27 by the commission documenting the total gross and net revenue for that  
28 quarter.

29           (4) The commission shall remit the taxes imposed by this section to  
30 the State Treasurer for credit as follows:

31           (a) Two and one-half percent to the Compulsive Gamblers Assistance

1 Fund;

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

3 (c) Seventy percent to the Property Tax Credit Cash Fund; and

4 (d) The remaining twenty-five percent of the tax shall be remitted  
5 to the county treasurer of the county in which the cash device is located  
6 to be distributed as follows: (i) If the cash device is located  
7 completely within an unincorporated area of a county, the remaining  
8 twenty-five percent shall be distributed to the county in which the cash  
9 device is located, or (ii) if the cash device is located within the  
10 limits of a city or village in such county, one-half of the remaining  
11 twenty-five percent shall be distributed to such county and one-half of  
12 the remaining twenty-five percent shall be distributed to the city or  
13 village in which such cash device is located.

14 Sec. 19. Section 77-3009, Reissue Revised Statutes of Nebraska, is  
15 amended to read:

16 ~~77-3009~~ (1) Any person who places a mechanical amusement device in  
17 operation in the State of Nebraska without the necessary decal being  
18 placed conspicuously upon it or without having obtained the necessary  
19 license shall be subject to an administrative penalty of five thousand  
20 ~~seventy-five~~ dollars for each violation.

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

27 (3) Any person violating the Mechanical Amusement Device Tax Act  
28 shall be guilty of a Class I ~~II~~ misdemeanor. Each day on which any person  
29 engages in or conducts the business of operating or distributing the  
30 mechanical amusement machines ~~or devices~~ subject to the Mechanical  
31 Amusement Device Tax Act, without having paid the tax or obtained the

1 required license as provided, shall constitute a separate offense.

2 Sec. 20. Section 77-3010, Revised Statutes Cumulative Supplement,  
3 2022, is amended to read:

4 ~~77-3010~~ Prosecutions for any violations of the Mechanical Amusement  
5 Device Tax Act shall be brought by the Attorney General or county  
6 attorney in the county in which the violation occurs. Any prosecution for  
7 the violation of any of the provisions of the act shall be instituted  
8 within three years after the commission of the offense.

9 Sec. 21. Section 28-1107, Revised Statutes Cumulative Supplement,  
10 2022, is amended to read:

11 28-1107 (1) A person commits the offense of possession of a gambling  
12 device if he or she manufactures, sells, transports, places, possesses,  
13 or conducts or negotiates any transaction affecting or designed to affect  
14 ownership, custody, or use of any gambling device, knowing that it shall  
15 be used in the advancement of unlawful gambling activity.

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

26 (3) Notwithstanding any other provisions of this section, any  
27 mechanical game or device classified by the federal government as an  
28 illegal gambling device and requiring a federal Gambling Device Tax Stamp  
29 as required by the Internal Revenue Service in its administration of 26  
30 U.S.C. 4461 and 4462, amended July 1, 1965, by Public Law 89-44, is  
31 hereby declared to be illegal.

1           (4) Possession of an illegal a gambling device is a Class I ~~II~~  
2 misdemeanor.

3           Sec. 22. Section 77-5601, Revised Statutes Cumulative Supplement,  
4 2022, is amended to read:

5           77-5601 (1) From August 1, 2004, through October 31, 2004, there  
6 shall be conducted a tax amnesty program with regard to taxes due and  
7 owing that have not been reported to the Department of Revenue. Any  
8 person applying for tax amnesty shall pay all unreported taxes that were  
9 due on or before April 1, 2004. Any person that applies for tax amnesty  
10 and is accepted by the Tax Commissioner shall have any penalties and  
11 interest waived on unreported and delinquent taxes notwithstanding any  
12 other provisions of law to the contrary.

13           (2) To be eligible for the tax amnesty provided by this section, the  
14 person shall apply for amnesty within the amnesty period, file a return  
15 for each taxable period for which the amnesty is requested by December  
16 31, 2004, if no return has been filed, and pay in full all taxes for  
17 which amnesty is sought with the return or within thirty days after the  
18 application if a return was filed prior to the amnesty period. Tax  
19 amnesty shall not be available for any person that is under civil or  
20 criminal audit, investigation, or prosecution for unreported or  
21 delinquent taxes by this state or the United States Government on or  
22 before April 16, 2004.

23           (3) The department shall not seek civil or criminal prosecution  
24 against any person for any taxable period for which amnesty has been  
25 granted. The Tax Commissioner shall develop forms for applying for the  
26 tax amnesty program, develop procedures for qualification for tax  
27 amnesty, and conduct a public awareness campaign publicizing the program.

28           (4) If a person elects to participate in the amnesty program, the  
29 election shall constitute an express and irrevocable relinquishment of  
30 all administrative and judicial rights to challenge the imposition of the  
31 tax or its amount. Nothing in this section shall prohibit the department

1 from adjusting a return as a result of any state or federal audit.

2 (5)(a) Except for any local option sales tax collected and returned  
3 to the appropriate municipality and any motor vehicle fuel, diesel fuel,  
4 and compressed fuel taxes, which shall be deposited in the Highway Trust  
5 Fund or Highway Allocation Fund as provided by law, no less than eighty  
6 percent of all revenue received pursuant to the tax amnesty program shall  
7 be deposited in the General Fund and ten percent, not to exceed five  
8 hundred thousand dollars, shall be deposited in the Department of Revenue  
9 Enforcement Fund. Any amount that would otherwise be deposited in the  
10 Department of Revenue Enforcement Fund that is in excess of the five-  
11 hundred-thousand-dollar limitation shall be deposited in the General  
12 Fund.

13 (b) For fiscal year 2005-06, all proceeds in the Department of  
14 Revenue Enforcement Fund shall be appropriated to the department for  
15 purposes of employing investigators, agents, and auditors and otherwise  
16 increasing personnel for enforcement of the Nebraska Revenue Act of 1967.

17 (c) For fiscal years after fiscal year 2005-06, twenty percent of  
18 all proceeds received during the previous calendar year due to the  
19 efforts of auditors and investigators hired pursuant to subdivision (5)  
20 (b) of this section, not to exceed seven hundred fifty thousand dollars,  
21 shall be deposited in the Department of Revenue Enforcement Fund for  
22 purposes of employing investigators and auditors or continuing such  
23 employment for purposes of increasing enforcement of the act.

24 (d) Ten percent of all proceeds received during each calendar year  
25 due to the contracts entered into pursuant to section 77-367 shall be  
26 deposited in the Department of Revenue Enforcement Fund for purposes of  
27 identifying nonfilers of returns, underreporters, nonpayers of taxes, and  
28 improper or fraudulent payments.

29 (6)(a) The department shall prepare a report by April 1, 2005, and  
30 by February 1 of each year thereafter detailing the results of the tax  
31 amnesty program and the subsequent enforcement efforts. For the report

1 due April 1, 2005, the report shall include (i) the amount of revenue  
2 obtained as a result of the tax amnesty program broken down by tax  
3 program, (ii) the amount obtained from instate taxpayers and from out-of-  
4 state taxpayers, and (iii) the amount obtained from individual taxpayers  
5 and from business enterprises.

6 (b) For reports due in subsequent years, the report shall include  
7 (i) the number of personnel hired for purposes of subdivision (5)(b) of  
8 this section and their duties, (ii) a description of lists, software,  
9 programming, computer equipment, and other technological methods acquired  
10 and the purposes of each, and (iii) the amount of new revenue obtained as  
11 a result of the new personnel and acquisitions during the prior calendar  
12 year, broken down into the same categories as described in subdivision  
13 (6)(a) of this section.

14 (7) The Department of Revenue Enforcement Fund is created. Transfers  
15 may be made from the Department of Revenue Enforcement Fund to the  
16 General Fund at the direction of the Legislature. The Department of  
17 Revenue Enforcement Fund may receive transfers from the Civic and  
18 Community Center Financing Fund at the direction of the Legislature for  
19 the purpose of administering the Sports Arena Facility Financing  
20 Assistance Act. The Department of Revenue Enforcement Fund shall include  
21 any money credited to the fund (a) under section 77-2703, and such money  
22 shall be used by the Department of Revenue to defray the costs incurred  
23 to implement Laws 2019, LB237, ~~(b) under the Mechanical Amusement Device~~  
24 ~~Tax Act, and such money shall be used by the department to defray the~~  
25 ~~costs incurred to implement and enforce Laws 2019, LB538, and any rules~~  
26 ~~and regulations adopted and promulgated to carry out Laws 2019, LB538,~~  
27 ~~and (b) (c) under section 77-2906, and such money shall be used by the~~  
28 Department of Revenue to defray the costs incurred to implement Laws  
29 2020, LB310. Any money in the Department of Revenue Enforcement Fund  
30 available for investment shall be invested by the state investment  
31 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska

1 State Funds Investment Act.

2 (8) For purposes of this section, taxes mean any taxes collected by  
3 the department, including, but not limited to state and local sales and  
4 use taxes, individual and corporate income taxes, financial institutions  
5 deposit taxes, motor vehicle fuel, diesel fuel, and compressed fuel  
6 taxes, cigarette taxes, transfer taxes, and charitable gaming taxes.

7 Sec. 23. The Revisor of Statutes shall assign sections 3 to 20 of  
8 this act to Chapter 9.

9 Sec. 24. This act becomes operative on January 1, 2024.

10 Sec. 25. Original sections 2-1201.01, 2-1202, 77-3002, 77-3003,  
11 77-3004, 77-3005, and 77-3009, Reissue Revised Statutes of Nebraska, and  
12 sections 28-1107, 77-3001, 77-3003.01, 77-3003.02, 77-3006, 77-3007,  
13 77-3010, 77-3011, and 77-5601, Revised Statutes Cumulative Supplement,  
14 2022, are repealed.

15 Sec. 26. The following section is outright repealed: Section  
16 77-3008, Revised Statutes Cumulative Supplement, 2022.