

## LEGISLATIVE BILL 317

Approved by the Governor May 9, 1997

Introduced by Schellpeper, 18; Hartnett, 45; Landis, 46; Wickersham, 49

AN ACT relating to the Mechanical Amusement Device Tax Act; to amend sections 77-3001 to 77-3005 and 77-3009, Reissue Revised Statutes of Nebraska; to redefine terms; to change provisions related to fees, licenses, and occupation taxes; to change a penalty; to provide an operative date; and to repeal the original sections.

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

Section 1. Section 77-3001, Reissue Revised Statutes of Nebraska, is amended to read:

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

(1) Person shall mean and include 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;

(2) Mechanical amusement device shall mean and include means any machine which, upon insertion of a coin, currency, credit card, or substitute therefor 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, and coin-operated pool tables. Mechanical amusement device shall also include includes game and draw lotteries and coin-operated automatic musical devices. The term shall not mean and include 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 of Revenue pursuant to section 9-345.03, or devices which are mechanically constructed in a manner that would render their operation illegal under the laws of the State of Nebraska;

(3) Operator shall mean and include means any person who operates a place of business in which a 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;

(4) Distributor shall mean and include means any person who sells, leases, or delivers possession or custody of a machine or mechanical device to operators thereof for a consideration either directly or indirectly received;

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

(6) 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. 2. Section 77-3002, Reissue Revised Statutes of Nebraska, is amended to read:

77-3002. (1) Any operator shall be required to procure ~~a~~ an annual license from the Tax Commissioner permitting him or her to operate machines or devices within the State of Nebraska. The Tax Commissioner, upon the application of any person, may issue a license, except ~~7~~ PROVIDED, that if the applicant (a) (1) is a person who is not of good character and reputation in the community in which he or she resides, (b) (2) is a person who has been convicted of or has pleaded guilty to a felony under the laws of the State of Nebraska, any other state, or of the United States, or (c) (3) is a person who 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 likewise not be issued a license. Such application shall be accompanied by a fee of two hundred fifty dollars, and an annual renewal fee of two hundred fifty dollars shall be payable thereafter on or before July 1 of each year; PROVIDED, that if the person required under the provisions of this section to obtain a license operates less than five machines the fee shall be twenty dollars per machine, all of which fees shall be paid into the state treasury to the credit of the General Fund. Procuring a license shall constitute sufficient contact with this state for the exercise of personal jurisdiction over such a person in any action arising out of the operation of

such machines or devices in this state.

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

77-3003. Any distributor shall be required to procure ~~a~~ an annual license from the Tax Commissioner permitting him or her to sell, lease, or deliver possession or custody of a 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 the provisions of section 77-3002. Such application shall be accompanied by a fee of two hundred fifty dollars, and an annual renewal fee of two hundred fifty dollars shall be payable thereafter on or before July 1 of each year, all of which fees shall be paid into the state treasury to the credit of the state General Fund. 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.

Sec. 4. 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, upon the business of operating mechanical amusement 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 devices in the State of Nebraska shall pay such tax in the amount and manner specified in this section.

(2) Any operator of a mechanical amusement device within the State of Nebraska shall pay an occupation tax in the amount of twenty-five dollars for each machine or device which he or she operates during all of the taxable year. The tax shall be due and payable on July 1 ~~January 1~~ of each year, on each machine or device in operation on that date, except 7 PROVIDED, that it shall be unlawful to pay any such occupation tax unless the operator has actual ownership of the mechanical amusement devices being taxed and unless the sales or use tax has been paid on such mechanical amusement devices. For every machine or device put into operation on a date subsequent to July 1 ~~January 1~~, and which has not been included in computing the tax imposed and levied by the provisions of sections 77-3001 to 77-3011 ~~77-3001 to 77-3011~~ Mechanical Amusement Device Tax Act, the tax shall be due and payable therefor prior to the time the machine or device is placed in operation, 7 PROVIDED, a tax in the amount of fifteen dollars shall be due and payable on each machine placed into operation after January 1 of each tax year but prior to July 1. All 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.

(4) The amount of the occupation tax shall be thirty-five dollars for each machine or device for any period beginning on or after January 1, 2000, except that for machines placed in operation after July 1, and before January 1 of each year, the occupation tax shall be twenty dollars for each machine or device.

Sec. 5. Section 77-3005, Reissue Revised Statutes of Nebraska, is amended to read:

77-3005. The occupation tax, levied and imposed by the provisions of sections 77-3001 to 77-3011 ~~77-3001 to 77-3011~~, 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 7 PROVIDED, that payment of the tax and license fees

due and owing on or before July 1 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 provisions of the Nebraska Revenue Act of 1967. Nonpayment of the taxes or fees due and owing on or before July 1 the licensing date of each year shall render the exemption provided by this section inapplicable and the particular 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 owner or operator of such machines or devices.

Sec. 6. Section 77-3009, Reissue Revised Statutes of Nebraska, is amended to read:

77-3009. (1) Any person who places a mechanical amusement device 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 thirty seventy-five dollars for each violation.

(2) Any 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 device, the device shall be subject to forfeiture and sale by the Tax Commissioner.

(3) Any person violating any of the provisions of sections 77-3001 to 77-3011 the Mechanical Amusement Device Tax Act shall be deemed guilty of a Class II misdemeanor. Each day on which any person engages in or conducts shall engage in or conduct the business of operating or distributing the machines or devices subject to the provisions of sections 77-3001 to 77-3011 Mechanical Amusement Device Tax Act, without having paid the tax or obtained the required license as provided, shall constitute a separate offense.

Sec. 7. This act becomes operative on July 1, 1998.

Sec. 8. Original sections 77-3001 to 77-3005 and 77-3009, Reissue Revised Statutes of Nebraska, are repealed.