

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 983**

Introduced by Karpisek, 32; Cornett, 45.

Read first time January 19, 2010

Committee: Revenue

A BILL

1 FOR AN ACT relating to the Mechanical Amusement Device Tax  
2 Act; to amend sections 2-1207.01, 77-3001, 77-3002,  
3 77-3003, 77-3004, 77-3005, 77-3006, 77-3007, 77-3008,  
4 77-3009, 77-3010, and 77-3011, Reissue Revised Statutes  
5 of Nebraska; to provide for the taxation and regulation  
6 of skilled mechanical amusement devices as prescribed;  
7 to provide for excise fees; to distribute certain funds  
8 to the State Racing Commission; to harmonize provisions;  
9 to provide an operative date; to repeal the original  
10 sections; and to declare an emergency.  
11 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 2-1207.01, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           2-1207.01 (1) The amount deducted from wagers pursuant to  
4 subsection (2) of section 2-1207 may be used to promote agriculture  
5 and horsebreeding in Nebraska and shall be distributed as purse  
6 supplements and breeder and stallion awards for Nebraska-bred  
7 horses, as defined and registered pursuant to section 2-1213, at  
8 the racetrack where the funds were generated, except that if a  
9 racetrack does not continue to conduct live race meets, amounts  
10 deducted may be distributed as purse supplements and breeder and  
11 stallion awards at racetracks that conduct live race meets and  
12 amounts deducted pursuant to a contract with the organization  
13 representing the majority of the licensed owners and trainers at  
14 the racetrack's most recent live race meet shall be used by that  
15 organization to promote live thoroughbred horseracing in the state  
16 or as purse supplements at racetracks that conduct live race meets  
17 in the state. Any costs incurred by the State Racing Commission  
18 pursuant to this section and subsection (2) of section 2-1207 shall  
19 be separately accounted for and be deducted from such funds.

20           (2) Any excise fee collected pursuant to section 7 of  
21 this act shall be distributed (a) as purse supplements and breeder  
22 and stallion awards for Nebraska-bred horses and (b) for racetrack  
23 construction and maintenance.

24           Sec. 2. Section 77-3001, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

1                   77-3001 For purposes of the Mechanical Amusement Device  
2 Tax Act, unless the context otherwise requires:

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

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

24                   (3) Operator means any person who operates a place of  
25 business in which a machine or device owned by him or her is

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

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

7 (5) Net profits means the amount of money that is  
8 inserted into a machine or device minus the amount of money awarded  
9 to the player;

10 (6) Skilled mechanical amusement device means any machine  
11 which (a) upon the insertion of a coin, currency, credit card, or  
12 substitute into the machine, operates or may be operated or used  
13 for a game, contest, or amusement of any description, (b) has the  
14 ability to award something of value and such award is earned by an  
15 element of skill, and (c) a matchup or lineup game on the machine  
16 or device is operated for consideration in which two or more  
17 numerals, symbols, letters, or icons align in a winning combination  
18 on one or more lines vertically, horizontally, diagonally, or  
19 otherwise, with the use of a player skill-stop. The device must  
20 print a validated ticket for accountability and creditability; and

21 ~~(5)~~ (7) Whenever in the act, the words machine or device  
22 are used, they refer to mechanical amusement device or skilled  
23 mechanical amusement device. + and

24 ~~(6)~~ Whenever in the act, the words machine, device,  
25 person, operator, or distributor are used, the words in the

1 ~~singular include the plural and in the plural include the singular.~~

2           Sec. 3. Section 77-3002, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           77-3002 ~~(1)~~ Any operator shall be required to procure ~~an~~  
5 ~~annual~~ a license annually from the Tax Commissioner permitting him  
6 or her to operate ~~machines or devices~~ either a mechanical amusement  
7 device or a skilled mechanical amusement device within the State  
8 of Nebraska by filing an application with the Tax Commissioner on  
9 or before January 1 of each year. An operator may hold both a  
10 license to operate a mechanical amusement device and a license to  
11 operate a skilled mechanical amusement device simultaneously. The  
12 Tax Commissioner, upon the application of any person, may issue a  
13 the appropriate license, except that if the applicant ~~(a)~~ (1) is  
14 not of good character and reputation in the community in which he  
15 or she resides, ~~(b)~~ (2) has been convicted of or has pleaded guilty  
16 to a felony under the laws of the State of Nebraska, any other  
17 state, or of the United States, or ~~(c)~~ (3) has been convicted of or  
18 has pleaded guilty to being the proprietor of a gambling house, or  
19 of any other crime or misdemeanor opposed to decency and morality,  
20 no license shall be issued. If the applicant is a corporation  
21 whose majority stockholders could not obtain a license, then such  
22 corporation shall not be issued a license. If the applicant is an  
23 individual, the application shall include the applicant's social  
24 security number. Procuring a license shall constitute sufficient  
25 contact with this state for the exercise of personal jurisdiction

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

3 ~~(2)(a) For the period beginning July 1, 1998, through~~  
 4 ~~December 31, 1999, if the applicant operates ten or more machines,~~  
 5 ~~the application shall be accompanied by a fee of two hundred fifty~~  
 6 ~~dollars, and such license will remain in effect until December 31,~~  
 7 ~~1999. If the applicant operates fewer than ten machines, no fee is~~  
 8 ~~due. Any licensee that places additional machines into operation~~  
 9 ~~during this period which results in a total of ten or more machines~~  
 10 ~~in operation becomes subject to the two-hundred-fifty-dollar fee.~~

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

14 Sec. 4. Section 77-3003, Reissue Revised Statutes of  
 15 Nebraska, is amended to read:

16 77-3003 Any distributor shall be required to procure an  
 17 annual a license annually from the Tax Commissioner permitting  
 18 him or her to sell, lease, or deliver possession or custody of a  
 19 machine or device either a mechanical amusement device or a skilled  
 20 mechanical amusement device within the State of Nebraska by filing  
 21 an application with the Tax Commissioner on or before January 1  
 22 of each year. A distributor may hold both a license to sell,  
 23 lease, or deliver possession or custody of a mechanical amusement  
 24 device and a license to sell, lease, or deliver possession or  
 25 custody of a skilled mechanical amusement device simultaneously.

1 The Tax Commissioner, upon the application of any person, may issue  
2 a the appropriate license, subject to the same limitations as an  
3 operator's license under section 77-3002. If the applicant is an  
4 individual, the application shall include the applicant's social  
5 security number. ~~For applications filed for the period beginning~~  
6 ~~July 1, 1998, through December 31, 1999, such application shall be~~  
7 ~~accompanied by a fee of two hundred fifty dollars, and the license~~  
8 ~~shall remain in effect until December 31, 1999. Beginning January~~  
9 ~~1, 2000, the application shall be filed on or before January 1 of~~  
10 ~~each year, and no license fee will be required.~~

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

13 77-3004 (1) An occupation tax is hereby imposed and  
14 levied, in the amount and in accordance with the terms and  
15 conditions hereafter stated, upon the business of operating  
16 mechanical amusement devices or skilled mechanical amusement  
17 devices within the State of Nebraska for profit or gain either  
18 directly or indirectly received. Every person who now or hereafter  
19 engages in the business of operating such devices in the State of  
20 Nebraska shall pay such tax in the amount and manner specified in  
21 this section.

22 (2) Any operator of a mechanical amusement device or a  
23 skilled mechanical amusement device within the State of Nebraska  
24 shall pay an occupation tax for each machine or device which he or  
25 she operates during all of the taxable year. The tax shall be due

1 and payable on January 1 of each year on each machine or device  
2 in operation on that date, except that it shall be unlawful to pay  
3 any such occupation tax unless the sales or use tax has been paid  
4 on such ~~mechanical amusement~~ devices. For every machine or device  
5 put into operation on a date subsequent to January 1~~7~~ and which  
6 has not been included in computing the tax imposed and levied by  
7 the Mechanical Amusement Device Tax Act, the tax shall be due and  
8 payable therefor prior to the time the machine or device is placed  
9 in operation. All occupation taxes collected pursuant to the act  
10 shall be remitted to the State Treasurer for credit to the General  
11 Fund.

12 ~~(3) The amount of the occupation tax shall be fifty~~  
13 ~~dollars for each machine or device for the period from July 1~~7~~~~  
14 ~~1998~~7~~, through December 31~~7~~, 1999~~7~~, except that for machines placed~~  
15 ~~in operation after April 1~~7~~, 1999~~7~~, and before January 1~~7~~, 2000~~7~~, the~~  
16 ~~occupation tax shall be twenty-five dollars for each machine or~~  
17 ~~device.~~

18 ~~(4) (3)~~ The amount of the occupation tax shall be  
19 thirty-five dollars for each machine or device, ~~for any period~~  
20 ~~beginning on or after January 1~~7~~, 2000~~7~~, except that for machines~~  
21 ~~or devices placed in operation after July 1~~7~~ and before January 1~~  
22 ~~of each year, the occupation tax shall be twenty dollars for each~~  
23 ~~machine or device.~~

24 Sec. 6. Section 77-3005, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

1           77-3005 The occupation tax and excise fee levied and  
2 imposed by the Mechanical Amusement Device Tax Act shall be in  
3 addition to any and all taxes or fees, of any form whatsoever,  
4 now imposed by the State of Nebraska or any of its subdivisions,  
5 upon the business of operating or distributing mechanical amusement  
6 devices or skilled mechanical amusement devices as defined in  
7 section 77-3001~~7~~ or otherwise defined by the subdivisions and  
8 municipalities of the State of Nebraska, except that payment of the  
9 ~~tax and license fees~~ taxes and fees due and owing on or before  
10 the licensing date of each year shall exempt any such mechanical  
11 amusement device or skilled mechanical amusement device from the  
12 application of the sales tax which would or could otherwise be  
13 imposed under the Nebraska Revenue Act of 1967. Nonpayment of  
14 the taxes or fees due and owing on or before the licensing date  
15 of each year shall render the exemption provided by this section  
16 inapplicable and the particular machines or devices shall then  
17 be subject to all the provisions of the Nebraska Revenue Act of  
18 1967, including the penalty provisions pertaining to the owner or  
19 operator of such machines or devices.

20           Sec. 7. (1) An excise fee of ten percent is hereby  
21 imposed and levied on the net profits of a skilled mechanical  
22 amusement device. Any manufacturer of a skilled mechanical  
23 amusement device shall pay the fee that is due and payable on  
24 January 1, April 1, July 1, and October 1 of each year. All excise  
25 fees collected pursuant to the Mechanical Amusement Device Tax Act

1 shall be remitted to the State Treasurer for distribution by the  
2 State Racing Commission in accordance with section 2-1207.01.

3 (2) Any manufacturer of a skilled mechanical amusement  
4 device shall submit to the Tax Commissioner, in conjunction with  
5 the submission of the excise fee to the State Treasurer, an  
6 online report detailing the activity of each skilled mechanical  
7 amusement device. To ensure accurate monitoring and the security  
8 and integrity of each skilled mechanical amusement device, each  
9 manufacturer shall have a central server system located in the  
10 state that connects all skilled mechanical amusement devices of the  
11 manufacturer.

12 Sec. 8. Section 77-3006, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14 77-3006 The administration of the ~~provisions of sections~~  
15 ~~77-3001 to 77-3011~~ Mechanical Amusement Device Tax Act is hereby  
16 vested in the Tax Commissioner of the State of Nebraska subject  
17 to other provisions of law relating to the Tax Commissioner.  
18 The Tax Commissioner may prescribe, adopt, and enforce rules and  
19 regulations relating to the administration and enforcement of the  
20 ~~provisions of sections 77-3001 to 77-3011, and act,~~ may delegate  
21 authority to his or her representatives to conduct hearings, ~~or~~  
22 and may perform any other duties imposed under the ~~provisions of~~  
23 ~~sections 77-3001 to 77-3011.~~ act.

24 Sec. 9. Section 77-3007, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

1           77-3007 (1) The payment of the occupation tax imposed by  
 2 the ~~provisions of sections 77-3001 to 77-3011~~ Mechanical Amusement  
 3 Device Tax Act shall be evidenced by a separate decal for each  
 4 device signifying payment of the tax, in a form prescribed by the  
 5 Tax Commissioner.

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

9           Sec. 10. Section 77-3008, Reissue Revised Statutes of  
 10 Nebraska, is amended to read:

11           77-3008 Nothing in ~~sections 77-3001 to 77-3011~~ the  
 12 Mechanical Amusement Device Tax Act shall be construed to limit,  
 13 usurp, or repeal any power to tax granted to the subdivisions  
 14 and municipalities of the State of Nebraska by the laws and  
 15 Constitution of the State of Nebraska. In addition, nothing in the  
 16 act shall be construed to authorize any game of chance.

17           Sec. 11. Section 77-3009, Reissue Revised Statutes of  
 18 Nebraska, is amended to read:

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

25           (2) Any mechanical amusement device or skilled mechanical

1 amusement device which does not have the necessary decal  
 2 conspicuously displayed upon it shall be subject to being sealed  
 3 by the Tax Commissioner or his or her ~~delegate~~ designee. If such  
 4 seal is broken prior to payment of the occupation tax upon such  
 5 device, the device shall be subject to forfeiture and sale by the  
 6 Tax Commissioner.

7 (3) Any person violating the Mechanical Amusement Device  
 8 Tax Act shall be guilty of a Class II misdemeanor. Each day on  
 9 which any person engages in or conducts the business of operating  
 10 or distributing the machines or devices subject to the Mechanical  
 11 Amusement Device Tax Act, without having paid the ~~tax~~ taxes or fees  
 12 or obtained the ~~required~~ appropriate license as provided, shall  
 13 constitute a separate offense. Each day that a manufacturer fails  
 14 to pay the fees required by section 7 of this act shall constitute  
 15 a separate offense.

16 Sec. 12. Section 77-3010, Reissue Revised Statutes of  
 17 Nebraska, is amended to read:

18 77-3010 Prosecutions for any violations of ~~sections~~  
 19 ~~77-3001 to 77-3011~~ the Mechanical Amusement Device Tax Act shall be  
 20 brought by the Attorney General or county attorney in the county  
 21 in which the violation occurs. Any prosecution for the violation  
 22 of any of the provisions of ~~sections 77-3001 to 77-3011~~ the act  
 23 shall be instituted within three years after the commission of the  
 24 offense.

25 Sec. 13. Section 77-3011, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           77-3011 Sections 77-3001 to 77-3011 and section 7 of this  
3 act shall be known and may be cited as the Mechanical Amusement  
4 Device Tax Act.

5           Sec. 14. This act becomes operative on July 1, 2010.

6           Sec. 15. Original sections 2-1207.01, 77-3001, 77-3002,  
7 77-3003, 77-3004, 77-3005, 77-3006, 77-3007, 77-3008, 77-3009,  
8 77-3010, and 77-3011, Reissue Revised Statutes of Nebraska, are  
9 repealed.

10           Sec. 16. Since an emergency exists, this act takes effect  
11 when passed and approved according to law.