

AMENDMENTS TO LB70

Introduced by Revenue.

1           1. Strike original section 2 and insert the following new sections:

2           Sec. 2. (1) Beginning sixty days after the effective date of this  
3 act, in addition to the occupation tax imposed pursuant to section  
4 77-3004, an additional occupation tax shall be levied upon the business  
5 of operating a mechanical amusement device that:

6           (a) Accepts currency, coins, tokens, or other value in exchange for  
7 play;

8           (b) Awards a monetary prize or anything redeemable for a monetary  
9 prize;

10           (c) Is played by a player using a touch screen, computer mouse,  
11 touch pad, light pen, laser, or device of similar function by which the  
12 player competes against software running the device; and

13           (d) Has not been adjudicated by a court of competent jurisdiction  
14 within the State of Nebraska to not constitute a gambling device as  
15 defined in subdivision (5) of section 28-1101. Any such adjudication  
16 shall be by way of a final order in which the Tax Commissioner has been  
17 made a party to the action and written notice shall have been provided to  
18 the Attorney General at the commencement of the action.

19           (2) Any operator of such mechanical amusement device shall pay the  
20 occupation tax. If an operator believes that a mechanical amusement  
21 device is not taxable under subsection (1) of this section, the burden is  
22 on the operator to prove to the Tax Commissioner that such device does  
23 not have one or more of the characteristics required for taxability under  
24 subsection (1) of this section. Such proof may be made by, among other  
25 things, a showing that the software running the game remains constant  
26 with the nature of a game that had its software at issue in a judicial  
27 case, not overturned by appeal, in which the State of Nebraska was party,

1 the issue was litigated, and the final order found that the particular  
2 game is more controlled by the player than not, and thus is predominantly  
3 a game of skill.

4 (3) The amount of the occupation tax shall be equal to ten percent  
5 of the gross revenue derived from the operation of any mechanical  
6 amusement device described in subsection (1) of this section. The Tax  
7 Commissioner shall collect such occupation tax concurrently with  
8 collection of the state sales tax in the same manner as the state sales  
9 tax is collected.

10 (4) For purposes of this section, gross revenue means the total  
11 aggregate receipts received from the operation of any mechanical  
12 amusement device described in subsection (1) of this section without any  
13 reduction for prizes, discounts, taxes, or expenses and includes receipts  
14 from admission costs, any consideration necessary for participation, and  
15 the value of any free tickets, games, or plays used.

16 (5) The occupation tax imposed in this section shall not apply to  
17 any device not within the definition of a gambling device as defined in  
18 subdivision (5) of section 28-1101 or to any device that is specifically  
19 authorized by law.

20 (6) For purposes of this section, the fact that the device is played  
21 or connected via league or tournament play shall play no factor in  
22 determining whether the occupation tax imposed by this section is due.

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