

LEGISLATIVE BILL 353

Approved by the Governor April 21, 1977

Introduced by Revenue Committee, Keyes, 3, Chmn.;
Burrows, 30; Dworak, 22; Newell, 13; Hefner,
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AN ACT to amend sections 77-3001, 77-3004, 77-3007, and 77-3009, Reissue Revised Statutes of Nebraska, 1943, relating to the Mechanical Amusement Device Tax Act; to redefine a term; to increase the tax; to change enforcement provisions; to provide a penalty and for forfeitures; to provide an operative date; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 77-3001, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-3001. As used in sections 77-3001 to 77-3011, unless the context otherwise requires:

(1) Person shall mean and include an individual, partnership, society, association, joint stock company, corporation, estate, receiver, lessee, trustee, assignee, referee, or any 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 any machine which, upon insertion of a coin, or substitute therefor, 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; and mechanical amusement device shall also include game and draw lotteries and coin-operated automatic musical devices; Provided, that it shall not mean and include vending machines which dispense tangible personal property, coin-operated automatic-musical-devices, devices located in private homes for private use, 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 any person who operates a place of business in which a machine or device owned by him 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 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 sections 77-3001 to 77-3011 the words machine or device are used they refer to mechanical amusement device; and

(6) Whenever in sections 77-3001 to 77-3011, 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. That section 77-3004, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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 ten fifteen dollars for each machine or device which he operates during all of the taxable year. The tax shall be due and payable on July 1 of each year, on each machine or device in operation on that date; 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, and which has not been included in computing the tax imposed and levied by the provisions of sections 77-3001 to 77-3011, the tax shall be due and payable therefor prior to the time the machine or device is placed in operation; Provided, a tax in the amount of five seven dollars and fifty cents shall be due and payable on each machine placed into operation after January 1 of each tax year but prior to July 1.

Sec. 3. That section 77-3007, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-3007. (1) The payment of the tax imposed by the provisions of sections 77-3001 to 77-3011 shall be evidenced by a separate certificate decal for each device, ~~or other document~~ signifying payment of the tax, in a form prescribed by the Tax Commissioner.

(2) Every operator shall place such decal in a conspicuous place on each device to denote and keep conspicuously posted on or about each device a certificate or other document denoting payment of the tax on one for each device for the current year.

~~(3) The certificate or other document required by this section shall be general in form and assignable to any device; Provided, that one certificate or other document signifying payment of the tax shall be posted for each device present.~~

Sec. 4. That section 77-3009, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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 shall be subject to an administrative penalty of thirty 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 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 shall, upon conviction thereof, be fined in an amount not less than twenty-five dollars nor more than five hundred dollars, or be imprisoned for a period not exceeding six months, or both, in the discretion of the court. Each day on which any person 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, without having paid the tax as provided, shall constitute a separate offense.

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Sec. 5. This act shall become operative on July 1, 1977.

Sec. 6. That original sections 77-3001, 77-3004, 77-3007, and 77-3009, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 7. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.