

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 70**

Introduced by Schumacher, 22.

Read first time January 08, 2015

Committee: Revenue

1 A BILL FOR AN ACT relating to the Mechanical Amusement Device Tax Act; to  
2 amend sections 77-3004, 77-3005, 77-3006, 77-3007, 77-3008, 77-3009,  
3 77-3010, and 77-3011, Reissue Revised Statutes of Nebraska; to  
4 authorize cities, villages, and counties to impose occupation taxes  
5 on certain mechanical amusement devices; to eliminate obsolete  
6 provisions; to harmonize provisions; and to repeal the original  
7 sections.  
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-3004, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 77-3004 (1) An occupation tax is hereby imposed and levied, in the  
4 amount and in accordance with the terms and conditions hereafter stated,  
5 upon the business of operating mechanical amusement devices within the  
6 State of Nebraska for profit or gain either directly or indirectly  
7 received. Every person who now or hereafter engages in the business of  
8 operating such devices in the State of Nebraska shall pay such tax in the  
9 amount and manner specified in this section.

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

23 ~~(3) The amount of the occupation tax shall be fifty dollars for each~~  
24 ~~machine or device for the period from July 1, 1998, through December 31,~~  
25 ~~1999, except that for machines placed in operation after April 1, 1999,~~  
26 ~~and before January 1, 2000, the occupation tax shall be twenty-five~~  
27 ~~dollars for each machine or device.~~

28 (4 ~~3~~) The amount of the occupation tax shall be thirty-five dollars  
29 for each machine or device ~~for any period beginning on or after January~~  
30 ~~1, 2000~~, except that for machines placed in operation after July 1, ~~and~~  
31 before January 1 of each year, the occupation tax shall be twenty dollars

1 for each machine or device.

2       Sec. 2. (1) In addition to the occupation tax imposed pursuant to  
3 section 77-3004, a city or village may levy an occupation tax upon the  
4 business of operating a mechanical amusement device that awards a  
5 monetary prize or anything redeemable for a monetary prize within the  
6 boundaries of such city or village. If the operation of such mechanical  
7 amusement device occurs outside the boundaries of any city or village,  
8 the county in which the operation occurs may levy such occupation tax.  
9 Any operator of such mechanical amusement device shall pay the occupation  
10 tax.

11       (2) The amount of the occupation tax shall be equal to ten percent  
12 of the gross revenue derived from the operation of any mechanical  
13 amusement device described in subsection (1) of this section. The Tax  
14 Commissioner shall collect such occupation tax concurrently with  
15 collection of the state sales tax in the same manner as the state sales  
16 tax is collected. The Tax Commissioner shall remit monthly the proceeds  
17 of the occupation tax to the city, village, or county levying the tax,  
18 after deducting twenty percent of such amount to be credited to the  
19 General Fund.

20       (3) For purposes of this section, gross revenue means the total  
21 aggregate receipts received from the operation of any mechanical  
22 amusement device described in subsection (1) of this section without any  
23 reduction for prizes, discounts, taxes, or expenses and includes receipts  
24 from admission costs, any consideration necessary for participation, and  
25 the value of any free tickets, games, or plays used.

26       (4) Any occupation tax imposed pursuant to this section by a city or  
27 village shall not be subject to section 18-1208.

28       Sec. 3. Section 77-3005, Reissue Revised Statutes of Nebraska, is  
29 amended to read:

30       77-3005 The occupation tax ~~taxes~~ levied and imposed by ~~the~~  
31 ~~Mechanical Amusement Device Tax Act~~ under section 77-3004 and section 2

1 of this act shall be in addition to any and all taxes or fees, of any  
2 form whatsoever, now imposed by the State of Nebraska or any of its  
3 subdivisions, upon the business of operating or distributing mechanical  
4 amusement devices as defined in section 77-3001, or otherwise defined by  
5 the subdivisions and municipalities of the State of Nebraska, except that  
6 payment of the tax imposed under section 77-3004 and license fees due and  
7 owing on or before the licensing date of each year and payment of any tax  
8 due and owing under section 2 of this act shall exempt any such  
9 mechanical amusement device from the application of the sales tax which  
10 would or could otherwise be imposed under the Nebraska Revenue Act of  
11 1967. Nonpayment of the ~~taxes or~~ tax imposed under section 77-3004 and  
12 license fees due and owing on or before the licensing date of each year  
13 or nonpayment of any tax due and owing under section 2 of this act shall  
14 render the exemption provided by this section inapplicable and the  
15 particular machines or devices shall then be subject to all the  
16 provisions of the Nebraska Revenue Act of 1967, including the penalty  
17 provisions pertaining to the owner or operator of such machines or  
18 devices.

19 Sec. 4. Section 77-3006, Reissue Revised Statutes of Nebraska, is  
20 amended to read:

21 77-3006 The administration of the ~~provisions of sections 77-3001 to~~  
22 ~~77-3011~~ Mechanical Amusement Device Tax Act is hereby vested in the Tax  
23 Commissioner of the State of Nebraska subject to other provisions of law  
24 relating to the Tax Commissioner. The Tax Commissioner may prescribe,  
25 adopt, and enforce rules and regulations relating to the administration  
26 and enforcement of the ~~provisions of sections 77-3001 to 77-3011,~~ act and  
27 may delegate authority to his or her representatives to conduct hearings,  
28 or perform any other duties imposed under the ~~provisions of sections~~  
29 ~~77-3001 to 77-3011~~ act.

30 Sec. 5. Section 77-3007, Reissue Revised Statutes of Nebraska, is  
31 amended to read:

1           77-3007 (1) The payment of the tax imposed by ~~the provisions of~~  
2 ~~sections 77-3001 to 77-3011~~ under section 77-3004 shall be evidenced by a  
3 separate decal for each device signifying payment of ~~the~~ such tax, in a  
4 form prescribed by the Tax Commissioner.

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

8           Sec. 6. Section 77-3008, Reissue Revised Statutes of Nebraska, is  
9 amended to read:

10           77-3008 Nothing in ~~sections 77-3001 to 77-3011~~ the Mechanical  
11 Amusement Device Tax Act shall be construed to limit, usurp, or repeal  
12 any power to tax granted to the subdivisions and municipalities of the  
13 State of Nebraska by the laws and Constitution of the State of Nebraska.

14           Sec. 7. 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, or without having paid any occupation tax due under section 2 of  
20 this act shall be subject to an administrative penalty of seventy-five  
21 dollars for each violation.

22           (2) If a Any mechanical amusement device ~~which~~ does not have the  
23 necessary decal conspicuously displayed upon it or if an occupation tax  
24 under section 2 of this act has been imposed on a mechanical amusement  
25 device and such tax has not been paid, the mechanical amusement device in  
26 question shall be subject to being sealed by the Tax Commissioner or his  
27 or her delegate. If such seal is broken prior to payment of ~~the~~ all  
28 occupation tax upon taxes owed on such device, the device shall be  
29 subject to forfeiture and sale by the Tax Commissioner.

30           (3) Any person violating the Mechanical Amusement Device Tax Act  
31 shall be guilty of a Class II misdemeanor. Each day on which any person

1 engages in or conducts the business of operating or distributing the  
2 machines or devices subject to the Mechanical Amusement Device Tax Act,  
3 without having paid the ~~tax~~ taxes required by section 77-3004 and section  
4 2 of this act or without having obtained the required license as  
5 provided, shall constitute a separate offense.

6 Sec. 8. Section 77-3010, Reissue Revised Statutes of Nebraska, is  
7 amended to read:

8 77-3010 Prosecutions for any violations of ~~sections 77-3001 to~~  
9 ~~77-3011~~ the Mechanical Amusement Device Tax Act shall be brought by the  
10 Attorney General or county attorney in the county in which the violation  
11 occurs. Any such prosecution ~~for the violation of any of the provisions~~  
12 ~~of sections 77-3001 to 77-3011~~ shall be instituted within three years  
13 after the commission of the offense.

14 Sec. 9. Section 77-3011, Reissue Revised Statutes of Nebraska, is  
15 amended to read:

16 77-3011 Sections 77-3001 to 77-3011 and section 2 of this act shall  
17 be known and may be cited as the Mechanical Amusement Device Tax Act.

18 Sec. 10. Original sections 77-3004, 77-3005, 77-3006, 77-3007,  
19 77-3008, 77-3009, 77-3010, and 77-3011, Reissue Revised Statutes of  
20 Nebraska, are repealed.