

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5525-05
Bill No.: SS for SCS for HCS for HB 1941
Subject: Taxation and Revenue - General; Gambling
Type: Original
Date: May 11, 2016

Bill Summary: This proposal provides licensing and taxation for daily fantasy sports games.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
General Revenue	Unknown	Unknown	Unknown
Total Estimated Net Effect on General Revenue	Unknown	Unknown	Unknown

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Gaming Proceeds for Education Fund*	\$498,333	\$598,000	\$598,000
Gaming Commission Fund	(\$237,737)	(\$212,434)	(\$214,924)
Total Estimated Net Effect on Other State Funds	\$260,596	\$385,566	\$383,076

*Revenue and Costs Net to Zero
 Numbers within parentheses: () indicate costs or losses.
 This fiscal note contains 9 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Gaming Commission	4 FTE	4 FTE	4 FTE
Total Estimated Net Effect on FTE	4 FTE	4 FTE	4 FTE

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Department of Public Safety - Gaming Commission (GAM)** assume there will initially be two companies which will be interested in obtaining a license in Missouri. GAM also assumes there would be approximately 7 Key licensees, 4 Level I licensees, and 10 Level II licensees.

GAM assumes it will be necessary to have four new full-time positions for regulatory monitoring, tracking and auditing of fantasy contest activity in Missouri totaling approximately \$336,366 annually for salary and fringe benefits. The positions necessary would be an IT Manager (at \$72,768 annually), an Information Systems Auditor (at \$52,092 annually), a Financial Auditor (at \$50,040 annually), and an Auditor II (at \$55,416 annually). The background investigations would be absorbed by the current Missouri State Highway Patrol background investigators.

Oversight assumes the costs for these positions would be \$240,044 for FY17 (10 months), \$283,607 for FY18 and \$286,097 for FY19 based on a starting salary for all positions at two steps above the base salary. This decision reflects a study of actual starting salaries for new state employees and policy of the Joint Committee on Legislative Research.

§313.970 of this proposal states, “A fantasy sports contest operator wishing to offer fantasy sports contests in this state shall annually apply to the commission for a license and shall remit to the commission an annual application fee of ten thousand dollars or ten percent of the applicant’s net revenue from the previous calendar year, whichever is lower.” These fees are to be deposited in the Gaming Commission Fund created under section 313.835.

§313.970.3 of this proposal states, “In addition to the application fee, a licensed operator shall also pay an annual operation fee, on April fifteenth of each year, in a sum equal to eleven and one-half percent of the licensed operator’s net revenue from the previous calendar year.” These fees are to be deposited into the Gaming Proceeds for Education Fund created under section 313.822.

§313.910(9) of this proposal states, “Net revenue, for all fantasy sports contests, the amount equal to the total entry fees collected from all participants entering such fantasy sports contests less winnings paid to participants in the contests, multiplied by the resident percentage.”

§313.910(13) of this proposal states, “Resident percentage, for all fantasy sports contests, the percentage, rounded to nearest one-tenth of one percent, of the total entry fees collected from Missouri residents divided by the total entry fees collected from all players, regardless of the

ASSUMPTION (continued)

player's location, of the fantasy sports contests.”

§313.970.4 of this proposal states, “Any fantasy sports contest operator operating under this subsection after August 28, 2016, shall pay the annual operation fee of eleven and one-half percent of its net revenue from the effective date of this section until action is taken on its application”

GAM also assumes their organization would spend approximately \$81,000 the first year for equipment, supplies, and training of the four new employees and travel expenses to conduct background investigations and licensing activity for the two companies. The ongoing expenses would be approximately \$29,000 annually.

Based on the fees listed in the proposed legislation and the above assumed number of licensees, GAM would collect approximately \$100,000 the first year and then \$100,000 each year thereafter. The collection of these fees would be deposited in the state treasury to the credit of the Gaming Commission Fund (0286) to be administered pursuant to the provisions of section 313.835.

Oversight will show a fiscal impact in FY17 to the Gaming Commission Fund of \$83,333 (\$100,000 multiplied by 10/12ths to reflect 10 months) based on the effective date stated in section 313.970.4. Oversight will show a fiscal impact in FY18 and FY19 to the Gaming Commission Fund of \$100,000 for each year respectively.

§313.835 states all revenue received by GAM should be deposited in the state treasury to the credit of the “Gaming Commission Fund” for the sole purpose of funding the administrative costs of the commission, subject to appropriation.

GAM states the fantasy contest industry generates approximately \$2,600,000,000 in wagers annually world-wide. The GAM assumes approximately 2% of those wagers are placed in Missouri. GAM assumes the companies withhold an average of 10% of the gross receipts from wagering which is what we consider the adjusted gross receipts and what the 11.5% tax is calculated on. As a result, this proposed legislation would generate approximately \$598,000 (\$2.6 billion x 2% x 11.5% x 10%) annually in taxes to be deposited in the state treasury to the credit of the Gaming Proceeds for Education Fund. These monies will be kept separately from the General Revenue Fund as well as any other funds or accounts in the state treasury, and shall be used solely for education.

Oversight notes that proceeds from the Gaming Proceeds for Education Fund are earmarked for education purposes and eventually sent to public school districts. However, for fiscal note simplification purposes Oversight will show additional income to the Gaming Proceeds for

ASSUMPTION (continued)

Education Fund in FY17 based on the amount of \$498,333 (11.5% tax to be collected on net revenue multiplied by 10/12ths to reflect 10 months) per the effective date stated in section 313.970.4. For FY18 and FY19 Oversight will show proceeds to the Gaming Proceeds for Education Fund based on the amount of \$598,000 (11.5% tax collected on net revenue).

In response to a similar proposal from this year (SB 1131), officials at the **Department of Revenue (DOR)** assumed the proposal would have a negative fiscal impact on their organization requiring additional staff, equipment and expenses.

DOR noted Collections and Tax Assistance will see additional customer contact from registration and withholding calls. The section requires one Revenue Processing Technician I per

13,200 contacts to the registration section and two Tax Collection Technicians I per 15,000 contacts; one for the non-delinquent tax line and one for contacts annually on the delinquent tax line. Each technician requires CARE equipment and license.

This proposal imposes a 11.5% tax on adjusted net revenue from daily fantasy sports games. The legislation deposits the proceeds from the tax into the "Fantasy Sports Fund".

Programming changes required to add the new fund and Excise Tax requires one Revenue Processing Technician I.

Oversight will not show a fiscal impact for the new positions of two Revenue Processing Technicians I and two Tax Collection Technicians I. Oversight assumes, DOR can absorb the costs related to these new positions. If necessary DOR, could request additional funding through the appropriation process.

§313.960 of this proposal states, "Each licensed operator shall comply with all applicable federal, state, local laws and regulations, including without limitation laws and regulations applicable to tax withholdings and laws and regulations applicable to providing information about winnings and the withholding to taxing authorities."

Oversight will show an unknown positive fiscal impact to DOR for the state income tax to be withheld on all prizes.

Officials at the **Lottery Commission (LOT)** assume this proposal will have an unknown negative fiscal impact on their organization.

The proposal legalizes fantasy sports betting which competes with the sale of Lottery products. Lottery proceeds net of prizes and administrative expenses are currently appropriated solely for public institutions of elementary, secondary and higher education. Individuals who might otherwise play the Missouri Lottery but choose to play fantasy sports instead divert Lottery

ASSUMPTION (continued)

proceeds funding away from elementary, secondary and higher education. The resulting shortfall in elementary, secondary and higher education funding would have to be absorbed with General Revenue funding, negatively impacting Total State Revenue.

Oversight will not show a fiscal impact to the Lottery based on their assumption.

Officials at the **Attorney General's Office** assume that any potential costs arising from this proposal can be absorbed with existing resources. If the proposal results in a significant increase in cases, will make a request for additional appropriations.

Officials at the **Office of State Courts Administrator, State Public Defender's Office and Office of Prosecution Services** each assume this proposal will not have a fiscal impact on their respective organizations.

In response to a previous version, officials from the **Department of Insurance, Financial Institutions and Professional Registration** assumed no fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2017 (10 Mo.)	FY 2018	FY 2019
GENERAL REVENUE			
Revenue §313.960 - State Income Tax Withheld on Prizes	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
GAMING PROCEEDS FOR EDUCATION FUND			
<u>Revenue - §313.970 - Annual Operation Fee - 11.5% of Gross Receipts</u>	<u>\$498,333</u>	<u>\$598,000</u>	<u>\$598,000</u>
ESTIMATED NET EFFECT ON GAMING PROCEEDS FOR EDUCATION FUND	<u>\$498,333</u>	<u>\$598,000</u>	<u>\$598,000</u>

FISCAL IMPACT - State Government FY 2017 FY 2018 FY 2019
 (continued) (10 Mo.)

GAMING COMMISSION FUND

Revenue - §313.970
 Licensing Fees \$83,333 \$100,000 \$100,000

Costs - Regulatory Monitoring
 Personnel (4 FTE) (\$156,810) (\$190,054) (\$191,954)
 Fringe Benefits (\$83,234) (\$93,553) (\$94,143)
 Equipment and Expense (\$81,026) (\$28,827) (\$28,827)
 Total Costs (\$321,070) (\$312,434) (\$314,924)

FTE Change - GAM 4 FTE 4 FTE 4 FTE

**NET EFFECT ON GAMING
 COMMISSION FUND** **(\$237,737)** **(\$212,434)** **(\$214,924)**

Net FTE Change - GAM 4 FTE 4 FTE 4 FTE

FISCAL IMPACT - Local Government FY 2017 FY 2018 FY 2019
 (10 Mo.)

\$0 \$0 \$0

FISCAL IMPACT - Small Business

Small business Fantasy Sports Contest operators could be impacted by this proposal.

FISCAL DESCRIPTION

This act is known as the "Missouri Daily Fantasy Sports Consumer Protection Act." Daily fantasy sports games are defined in the act as games of any duration where a player competes against other players or a target score as the manager of an imaginary team of athletes, uses statistics from real-world sporting events, plays for a predetermined prize, and pays a charge or fee to participate.

Under this act the Missouri Gaming Commission will provide licenses for the operation of websites engaged in daily fantasy sports games in Missouri. The licensed entity must ensure that the website does not allow a simulated sports team to be based on the current membership of a professional or amateur sports team, that prizes are made known to competitors before the

FISCAL DESCRIPTION (continued)

contest, that the value of a prize is not based on the amount of players or the amount of fees contributed by players, and that the winning outcome is not based on score, point spread, or performance of a single team or based solely on performance of an individual athlete in a single sporting event.

Licensed operators must hold amounts for their players in trust and must post procedures on their website that will prevent unauthorized withdrawals or commingling of the funds and provide procedures for a player to report a compromised account. Licensed operators may not issue credit to players and may not allow multiple accounts for one player.

Licensed operators shall verify players' states of residence and that players are over 21 - the legal age of participation in Missouri. Licensed operators shall maintain and enforce lists of disassociated persons and exclusion lists. Licensed operators are subject to advertising restrictions.

The annual license fee for all licensed operators shall be \$10,000 or 10% of net revenue whichever is less and payable to the Gaming Commission Fund. An operator is liable for all fees related to any investigation and not to exceed \$50,000 per investigation.

Licensed operators are subject to an annual operation fee to be equal to 11.5% on net revenue to be paid by April 15th of each year and calculated on the net revenue of the previous calendar year. This amount must be paid monthly and will be placed in the Fantasy Sports Fund. The Fantasy Sports Fund shall be used solely for funding Missouri public schools.

Licensed operators must conduct and pay for an annual independent audit to ensure compliance with this act.

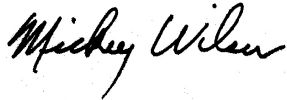
Documents and information provided to the commission are closed records, but certain information must be disclosed to the public based on a written request. The commission shall oversee all licensed operators and has certain investigatory, licensing, and rule-making powers under this act.

This act changes definitions under the criminal code to include operating an unlicensed daily fantasy sports game under the definition of "advance gambling activity". The definition of "gambling" will now include participating in an unlicensed daily fantasy sports game.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Revenue
Department of Public Safety - Gaming Commission
Lottery Commission
Office of State Courts Administrator
Attorney General's Office
State Public Defender's Office
Office of Prosecution Services
Department of Insurance, Financial Institutions and Professional Registration_



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May 11, 2016

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