

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1513-04
Bill No.: SCS for SB 431
Subject: Gambling
Type: Original
Date: March 28, 2019

Bill Summary: This proposal modifies provisions relating to illegal gambling.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue	(\$290,625 to \$3,449,109)	(\$223,307 to \$2,466,706)	(\$226,014 to \$2,494,487)
Total Estimated Net Effect on General Revenue	(\$290,625 to \$3,449,109)	(\$223,307 to \$2,466,706)	(\$226,014 to \$2,494,487)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Lottery Proceeds Fund (0291)	\$0 or Unknown Up to \$848,958	\$0 or Unknown Up to \$848,958	\$0 or Unknown Up to \$848,958
Highway (0644)	Unknown	Unknown	Unknown
Division of Alcohol & Tobacco Control (0544)	(Less than \$331,554)	(Less than \$262,414)	(Less than \$266,942)
Total Estimated Net Effect on <u>Other</u> State Funds	(Less than \$331,554) or Unknown Up to \$517,404	(Less than \$262,414) or Unknown Up to \$586,544	(Less than \$266,942) or Unknown Up to \$582,016

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 12 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue	2 to 16	2 to 16	2 to 16
Division of Alcohol & Tobacco Control (0544)	3	3	3
Total Estimated Net Effect on FTE	5 to 19	5 to 19	5 to 19

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 2020	FY 2021	FY 2022
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§§311.660, 311.710, 311.720, 313.004, 313.255, 572.010 and 572.100 - Gambling

Officials from the **Department of Public Safety - Missouri State Highway Patrol (MHP)** state this bill addresses the ability of three existing state agencies to take enforcement action against any gambling device defined as "any device, machine, paraphernalia or equipment not approved by the Missouri gaming commission or state lottery commission under the provisions of chapter 313...". The three existing state agencies are Alcohol and Tobacco Control, Missouri Gaming Commission (Patrol by virtue of a Memorandum of Understanding (MOU) with the Gaming Commission), and Missouri Lottery Commission.

In MHP's response to 1513-03, it indicated that 4 Sergeants would be necessary. However, that was based on the assumption that the Patrol would only be assisting local law enforcement agencies with their investigations. It has since been determined that the Patrol will not only be assisting in some cases, but will also be taking a lead role in other cases. The MHP has since received information from the Division of Alcohol and Tobacco Control (ATC) regarding the number of premises with illegal gambling machines, which is substantial. Therefore, the Patrol now assumes it will need a range of 6 to 15 new Sergeants and 1 Clerk Typist to perform the primary function of fulfilling section 313.004.13(1), RSMo. This is based on ATC's estimate of the number of premises with illegal gambling machines being approximately 2,500.

Each officer could reasonably open up to 50 cases per year, for a total of 300-750 cases per year depending on the number of officers involved (6-15). This is based on factoring in the geographic size of the state, drive time, surveillance, investigation, evidence, and follow-up.

Section 313.004.13(1) states, "The commission shall establish a telephone contact number, which shall be prominently displayed on the commission's website, to receive reports of suspected illegal gambling activities. **Upon the receipt of such report, the commission shall initiate an investigation of such suspected illegal activity....**". This language requires an investigation on every complaint received on the statutorily mandated telephone contact number. The Clerk Typist will be responsible for handling reports, entering them into a database, maintaining property records, responding to record requests, and other administrative duties.

An additional cost will be storage facilities to store the illegal machines during prosecution. A reasonable cost for a 10 x 20 facility would be \$150 per month and for 10 units, the cost would be approximately \$18,000 per year (\$150 x 10 x 12). If the Patrol were assigned 6 new

ASSUMPTION (continued)

sergeants, they would be assigned throughout the state as follows: 2 at Troop A, 2 at Troop C, and 2 at Troop F, and the Clerk Typist would also be at Troop F. If the Patrol received more than 6 Sergeants, it would determine the most effective way to distribute them.

In addition to the General Revenue expense indicated for the 6-15 Sergeants that will be transferring from the Highway fund, it is assumed there will be some savings to the Highway Fund as those 6-15 formerly Highway-funded Sergeants are ultimately replaced by 6-15 Highway-funded Probationary Troopers. While the exact dollar amount of that savings cannot be determined, due to the cost of promotions that will occur during the backfilling process, etc., there will likely be some amount of savings to the Highway fund.

Because this legislation states that it is an emergency act and shall be in full force upon its passage and approval, the FY20 impact is shown as a full 12 months.

This legislation does not specifically indicate a funding source for any necessary costs to fulfill the statutory requirements of the bill. Currently, Patrol costs are reimbursed via the gaming industry through a billing process administered by the Missouri Gaming Commission. The Gaming Commission has indicated their belief that the Patrol should be responsible for costs associated with this legislation. Therefore, the Patrol is showing the impact as General Revenue.

Oversight notes the MHP assumes not only will the MHP in some cases be assisting local law enforcement agencies with their investigations but will also be taking a lead role in other cases. Oversight also notes the provisions of this legislation do not provide a funding source for conducting investigations.

Oversight does not know how many gray machines exist statewide and has received information stating there are approximately 562 to 2,500 gray machines at various locations throughout the state. Because Oversight cannot determine how many gray machines exist statewide or how many will continue to exist after the passage of this bill (with the threat of losing their liquor license), Oversight will reflect a range for MHP of 1 Sergeant and 1 Clerk Typist to 15 Sergeants and 1 Clerk Typist to the General Revenue fund for fiscal note purposes.

Officials from the **Lottery Commission (LOT)** estimate illegal gambling machines have resulted in \$1.8 million in lost sales over the last six months. This proposal will reduce or eliminate illegal gambling which will then restore lost Lottery sales.

The LOT states 1513-04 adds an emergency clause to the proposal. After further review, the LOT realized an error in the original estimate. The LOT now estimates \$3.5 million in lost sales will be restored in the first year and subsequent years. Lottery proceeds to education will increase by \$848,958 in the first year and each subsequent year.

ASSUMPTION (continued)

Oversight notes representatives from the LOT state there has been a significant dip in sales due to “gray machine market penetration”. These machines are no longer limited to fraternal and private clubs but are now in convenience stores, truck stops, bars, clubs, etc. The LOT stated retailers that do not have “gray machines” have higher lottery sales year over year compared to retailers who do have “gray machines”.

Oversight notes the LOT defines a retailer as a licensed Lottery store that sells Missouri Lottery products. Based on information received from the LOT, the total number of LOT retailers included in this analysis is 4,101. The LOT states some retailers were excluded from the analysis for various reasons such as a retailer that is not in good standing (on suspension) or Lottery retailers that didn’t have sales in the “base” period (the comparison year-to-date FY18 in this case). Additionally, sales from Lottery offices or other Lottery-operated promotional events and vending machines sales were not included in the analysis. Of the 4,101 retailers included, 14.63 percent or 600 (4,101 * 14.63) are retailer locations with gray machines.

Oversight received net sales data for retailers with gray machines to retailers without gray machines for July through January for FY17, FY18, and FY19.

	FY17 Net Total Sales	FY18 Net Total Sales	FY17 to FY18 % Change	FY19 Net Total Sales	FY18 to FY19 % Change
With Gray Machines	61,879,959	70,916,706	14.60%	79,016,612	11.42%
Without Gray Machines	520,593,869	596,381,925	14.56%	652,201,116	9.36%

Source: Missouri Lottery Commission

Oversight has requested gross sales instead of net sales to determine a sales trend and has not received this information. Upon the receipt of this additional information, Oversight will review to determine if an updated fiscal note should be prepared and if so, seek the necessary approval of the chairperson of the Joint Committee on Legislative Research to publish a new fiscal note.

Oversight is unsure of LOT’s estimate, and therefore, will reflect a positive sales impact of \$0 or Unknown - Up to \$848,958 impact for fiscal note purposes.

ASSUMPTION (continued)

Officials from the **Department of Public Safety - Alcohol and Tobacco Control (ATC)** estimate as many as 40 percent of retailers could have illegal gambling activities on their premises. ATC is required to refer to the Missouri Gaming Commission any suspected illegal gambling on the premises of liquor licensees. Therefore, 12,767 retail licensees x .40 = 5,107 licensees who could potentially have their licenses suspended while Gaming Commission investigates. This would be a 94 percent increase in activities in the administrative disciplinary process.

ATC expects to hear 317 cases in FY19. If even half of the 5,107 licensees were to have their licenses suspended, that would require ATC to prepare violation reports, hold 2,554 (5,107/2) informal conferences and provide for the appeal process for those who do so.

ATC states three (3) FTE will be required for the additional caseload expected to be generated by the suspension of liquor licensees while the Gaming Commission investigates the activity. These FTE include one (1) Special Agent at an annual salary of \$51,112 and two (2) Administrative Office Support Assistants (AOSA) at an annual salary of \$35,000 each.

Oversight contacted ATC regarding the duties of these FTE. ATC stated at the end of FY19, ATC had 16,366 licensees and 13 Special Agents to enforce Missouri statutes and regulations relating to the manufacture, distribution and sale of alcoholic beverages as set out in Section 311.660, RSMo. This equates to approximately 1,259 licensees per agent (16,366 / 13). Therefore, ATC is not able to absorb the additional caseload that may result from this proposal within their existing resources. ATC stated the special agent would process violations and reports and work with and/or follow-up with the MHP on investigations involving liquor license suspensions. The two AOSA positions would process hearing information and paperwork as the administrative disciplinary process would increase substantially as a result of this bill.

Additionally, **Oversight** inquired how the ATC determined the percentage of retailers who have illegal gambling activities on their premises. ATC stated the estimate is from agents in the field who came across these machines at a high rate of occurrence while doing routine inspections and investigations. Therefore, based on agents seeing them in the field, ATC can conclude the machines are in high numbers. ATC does not have statistics collected currently to document this but does have a plan in place now to document and report illegal gambling machines at licensed liquor locations.

Oversight notes the ATC originally assumed no impact for 1513-03; however, upon further review, ATC determined the administrative disciplinary process will increase substantially as a result of this bill requiring liquor licenses to be suspended while the Gaming Commission is doing an investigation of illegal gambling activities. Oversight does not have any information contrary to that provided by ATC. Therefore, Oversight will reflect ATC's impact for fiscal note

ASSUMPTION (continued)

purposes. Oversight assumes ATC's estimated equipment and expense costs for the three (3) FTE are not in alignment with the Office of Administration's expense and equipment guidelines. Therefore, Oversight will reflect an estimated net effect of "less than" for ATC's impact to the Division of Alcohol and Tobacco Control Fund.

Officials from the **Department of Public Safety-Gaming Commission (MGC)** state section 313.004.9 allows the MGC to enter into an agreement with certain agencies to carry out the duties of the commission which will include investigating and enforcing of provisions of Chapter 572 related to illegal gambling. MGC currently has an agreement with the MHP and would revise the agreement to include this responsibility.

Additionally, section 313.004.13 requires the MGC to establish a telephone contact number and have it displayed on the Commission's website in order to receive reports of suspected illegal gambling activity. Through the agreement with the MHP, the Patrol will investigate the suspected illegal gambling activity and MGC will notify the subject of such investigation within thirty days. If the subject of the investigation is a person or establishment licensed under Chapter 311, MGC will notify ATC which will temporarily suspend the liquor license pending the completion of the investigation.

If there is sufficient evidence, the MHP will refer the case to the prosecuting attorney. If the prosecuting attorney determines not to file the case, MGC may forward the case to the Attorney General's Office (AGO) for review and possible prosecution. The cost for the telephone contact number and publishing the number of the MGC website is estimated to be under \$1,000 annually. The tracking of complaints and notifying of any investigation of suspected illegal gambling activity to the person, ATC, prosecuting attorney, or AGO will be minimal.

Oversight does not have any information contrary to that provided by MGC. Therefore, Oversight will reflect MGC's no impact for fiscal note purposes.

Oversight notes that the **Attorney General's Office, Missouri Office of Prosecution Services, Office of State Courts Administrator, State Public Defender's Office, Springfield Police Department, St. Louis County Police Department, St. Louis County Department of Justice Services** and the **City of Springfield** have stated the proposal would not have a direct fiscal impact on their organizations.

In response to a previous version, **Oversight** notes the **Joplin Police Department** stated the proposal would not have a direct fiscal impact on their organization.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

ASSUMPTION (continued)

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, other police and sheriffs' departments were requested to respond to this proposed legislation but did not. For a general listing of political subdivisions included in our database, please refer to www.legislativeoversight.mo.gov.

This proposal contains an emergency clause.

<u>FISCAL IMPACT - State Government</u>	FY 2020	FY 2021	FY 2022
GENERAL REVENUE FUND			
<u>Costs - MHP (\$313.004)</u>			
Personal services	(\$100,248 to \$1,181,832)	(\$101,250 to \$1,193,650)	(\$102,263 to \$1,205,587)
Fringe benefits	(\$89,471 to \$1,054,785)	(\$90,366 to \$1,065,333)	(\$91,270 to \$1,075,986)
Vehicle and equipment	(\$62,657 to \$939,855)	\$0	\$0
Weapons and personal equipment	(\$4,475 to \$67,125)	\$0	\$0
Computer Equipment	(\$829)	\$0	\$0
Office Equipment	(\$2,028)	\$0	\$0
Expenses - gas, cell phone, uniform allowance, vehicle maintenance	(\$12,917 to \$184,655)	(\$13,241 to \$189,273)	(\$13,570 to \$194,003)
Storage Fees	(\$18,000)	(\$18,450)	(\$18,911)
<u>Total Costs - MHP</u>	<u>(\$290,625 to \$3,449,109)</u>	<u>(\$223,307 to \$2,466,706)</u>	<u>(\$226,014 to \$2,494,487)</u>
FTE Change - MHP	2 to 16 FTE	2 to 16 FTE	2 to 16 FTE
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	<u>(\$290,625 to \$3,449,109)</u>	<u>(\$223,307 to \$2,466,706)</u>	<u>(\$226,014 to \$2,494,487)</u>
Estimated Net FTE Change for the General Revenue Fund	2 to 16 FTE	2 to 16 FTE	2 to 16 FTE

<u>FISCAL IMPACT - State Government</u>	FY 2020	FY 2021	FY 2022
(continued)			
LOTTERY PROCEEDS FUND			
(0291)			
<u>Income</u> - LOT (§313.255)			
Increased sales and profits from elimination of illegal machines	<u>\$0 or Unknown</u> - Up to <u>\$848,958</u>	<u>\$0 or Unknown</u> - Up to <u>\$848,958</u>	<u>\$0 or Unknown</u> - Up to <u>\$848,958</u>
ESTIMATED NET EFFECT ON THE LOTTERY PROCEEDS FUND	<u>\$0 or Unknown - Up to \$848,958</u>	<u>\$0 or Unknown - - Up to \$848,958</u>	<u>\$0 or Unknown - Up to \$848,958</u>
HIGHWAY FUNDS (0644)			
<u>Savings</u> - MHP (§313.255)			
Replacing existing Sergeant(s) with probationary troopers (less expensive)	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT TO HIGHWAY FUNDS	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
Estimated Net FTE Change for the Highway Fund	0 FTE	0 FTE	0 FTE

FISCAL IMPACT - State Government FY 2020 FY 2021 FY 2022
 (continued)

**DIVISION ALCOHOL AND
 TOBACCO CONTROL FUND
 (0544)**

<u>Costs - ATC (\$313.004)</u>			
Personal service	(\$121,112)	(\$122,323)	(\$123,546)
Fringe benefits	(\$74,739)	(\$75,108)	(\$75,480)
Equipment and expense	<u>(\$135,703)</u>	<u>(\$64,983)</u>	<u>(\$67,916)</u>
<u>Total Costs - ATC</u>	<u>(\$331,554)</u>	<u>(\$262,414)</u>	<u>(\$266,942)</u>
FTE Change - ATC	3 FTE	3 FTE	3 FTE

**ESTIMATED NET EFFECT ON
 DIVISION ALCOHOL &
 TOBACCO CONTROL FUND** **(Less than
 \$331,554)** **(Less than
 \$262,414)** **(Less than
 \$266,942)**

Estimated Net FTE change for the Division Alcohol and Tobacco Control Fund	3 FTE	3 FTE	3 FTE
--	-------	-------	-------

FISCAL IMPACT - Local Government FY 2020 FY 2021 FY 2022
 (10 Mo.)

\$0 **\$0** **\$0**

FISCAL IMPACT - Small Business

Small businesses convicted of, or who have pleaded guilty to, having illegal gambling devices shall have their Lottery retailer license and liquor license permanently revoked and may possibly face prosecution.

FISCAL DESCRIPTION

Current law allows the Missouri Gaming Commission to enter into agreements with various federal, state, and local agencies to carry out the duties of the Commission. This act also allows the Commission to enter into agreements with such agencies for investigations relating to and the enforcement of criminal provisions relating to illegal gambling.

FISCAL DESCRIPTION (continued)

This act requires the Gaming Commission to establish a telephone contact number, which shall be prominently displayed on the Commission's website, to receive reports of suspected illegal gambling activity. The Commission shall initiate an investigation upon receiving such report. If the subject of an investigation is licensed under the Liquor Control Law or under provisions of law relating to gaming, such license shall be suspended pending the outcome of the investigation. If the Commission finds sufficient evidence of illegal gambling, it shall refer such violation to the prosecuting attorney. If the prosecuting attorney determines not to commence a case for such violation, the Commission may forward the case to the Attorney General's office for review. If the Attorney General determines there is probable cause of a violation of state law, the Attorney General may prosecute such case.

Any person or establishment licensed under current law relating to gaming that is convicted of or pleads guilty to illegal gambling, and any affiliated company of such person or establishment, shall be permanently prohibited from being licensed to participate in any way in a program implementing video lottery gaming terminals should such a program be implemented in this state. (Section 313.004)

This act also allows the supervisor of liquor control to refer to the Commission any suspected illegal gambling activity being conducted on the premises of a location licensed under the Liquor Control Law. (Section 311.660)

Current law allows a sheriff, peace officer, or eight or more citizens of a county or city to bring an action in circuit court to initiate proceedings to suspend or revoke a license issued under the Liquor Control Law as a result of certain offenses committed by a licensee. This act adds permitting illegal gambling on the licensed premises of a licensee to such list of offenses. (Section 311.710)

This act provides that any conviction in this state for illegal gambling shall result in the automatic and permanent revocation of a license issued under the Liquor Control Law, as well as any lottery game retailer license. (Sections 311.720 and 313.255)

This act contains an emergency clause.

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

Attorney General's Office
Department of Public Safety -
 Alcohol and Tobacco Control
 Missouri Gaming Commission
 Missouri State Highway Patrol
Lottery Commission
Missouri Office of Prosecution Services
Office of State Courts Administrator
State Public Defender's Office
Joplin Police Department
Springfield Police Department
St. Louis County Department of Justice Services
St. Louis County Police Department
City of Springfield



Kyle Rieman
Director
March 28, 2019

Ross Strobe
Assistant Director
March 28, 2019