

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1738-01
Bill No.: SB 343
Subject: Gambling
Type: Original
Date: February 25, 2019

Bill Summary: This proposal modifies provisions relating to fantasy sports.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on General Revenue	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Gaming Commission Fund (0286)	(Less than \$25,000)	(Less than \$25,000)	(Less than \$25,000)
Gaming Proceeds for Education Fund (0285)	Could exceed (\$294,903)	Could exceed (\$294,903)	Could exceed (\$294,903)
Total Estimated Net Effect on <u>Other</u> State Funds	Could exceed (\$319,903)	Could exceed (\$319,903)	Could exceed (\$319,903)

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
Total Estimated Net Effect on FTE	0	0	0

☒ 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

Officials from the **Department of Revenue (DOR)** assume the following:

Section 313.905

This section modifies the definitions of "Fantasy Sports Contest" and "Fantasy Sports Contest Operator", adds the definitions of "Location" and "Location Percentage" and removes the definition of "Resident Percentage."

Section 313.915

This section allows for a special purpose entity which is created to properly segregate player funds from operational funds and the powers of these entities are specifically stated.

Section 313.917

This section allows for licensed operators to delay payments if they have a good faith belief that a registered play has engaged in fraud or other conduct that would violate requirements for the licensed operator. Payment may be withheld while an investigation is conducted, but appeals to the commission to investigate the matter will be allowed within 30 days. An appeal process to the administrative hearing commission is also allowed and specified in the bill. If a final determination results in an award being disallowed, the other awards are adjusted accordingly.

Section 313.920

This section states that a person listed in subsection 1 of this section shall not play in any fantasy sports contest offered by any fantasy sports contest operator that is open to the public.

Section 313.935

This section states that the applicant shall be responsible for the cost of the investigation up to ten thousand dollars. If the cost of the investigation exceeds the application fee, the applicant shall remit such cost to the commission prior to any license being issued. An applicant may apply for, and the commission may grant, based on a showing of undue burden, a waiver of all or portion of the cost of investigation. The investigation set forth in this paragraph does not apply to a renewal of a license.

A fantasy sports contest operator with net revenues of two million dollars or more from the previous calendar year shall be required to submit an annual license renewal fee of five thousand dollars by November first of each subsequent calendar year.

ASSUMPTION (continued)

A fantasy sports contest operator with net revenues of less than two million dollars but greater than one million dollars from the previous calendar year shall be required to submit an annual license renewal fee of two thousand five hundred dollars by November first of each subsequent calendar year. A fantasy sports contest operator with net revenues equal to or less than one million dollars but greater than two hundred fifty thousand dollars shall submit an annual license renewal fee of one thousand dollars by November first of each subsequent calendar year. A fantasy sports contest operator with net revenues of two hundred fifty thousand dollars or less from the previous calendar year shall not be required to submit an annual license renewal fee. On the anniversary date of the payment made under subsection 1, a licensed operator shall submit to the commission a notice of license renewal describing any material changes to the operator's compliance with the consumer protections set forth in Sections 313.915, 313.920, and 313.925 together with the license renewal fee required under this subsection. A license is renewed upon submission of the notice and payment of the appropriate renewal fee.

Officials from the **Department of Revenue (DOR)** state per this legislation, any fantasy sports contest operator with net revenues of two million dollars or more from the previous calendar year shall be required to submit an annual license renewal fee of five thousand dollars by November first of each subsequent year. Any fantasy sports contest operator with net revenues of less than two million dollars but greater than one million dollars from the previous calendar year shall be required to submit an annual license renewal fee of two thousand five hundred dollars by November first of each subsequent year. Any fantasy sports contest operator with net revenues equal to or less than one million dollars but greater than two hundred fifty thousand dollars shall submit an annual license renewal fee of one thousand dollars by November first of each subsequent calendar year. Any fantasy sports contests operators with net revenues of two hundred fifty thousand dollars or less from the previous calendar year shall not be required to submit an annual license renewal fee.

Officials from the **Missouri Gaming Commission (MGC)** assume section 313.935.1 allows a one-time application of fee of "\$10,000 or 10% of net revenue from the previous year, whichever is less." Because all companies already doing business in Missouri were grand-fathered in by the law in 2017, only new companies will be applying. According to the definition of "net revenue" in section 313.905(11), this determination would be made from the applicant's net revenue from the company's business in Missouri, which, if it is a new company, would always be zero. As a result, the Commission would never collect any application fee from any new company applying for a fantasy sports operator license in Missouri.

ASSUMPTION (continued)

MGC assumes section 313.935.3(1) reduces the annual license renewal fee based on the licensed fantasy sports operator's net revenues that previous year. Currently, only two operators licensed in Missouri generate net revenues substantial enough to cause them to be liable for any renewal fee under this graduated renewal fee structure.

The table below list the Estimated Net Revenue per each Fantasy Sports Contest Operator for 2016, 2017 and 2018.

Fantasy Sports Contest Operator	Estimated Net Revenue 2016	Estimated Net Revenue 2017	Estimated Net Revenue 2018
FanDuel	\$ 898,043	\$ 1,823,974	\$ 2,730,009
DraftKings, Inc.	\$ 1,088,296	\$ 1,913,513	\$ 2,572,348
RealTime Sports, Inc.	\$ 0	\$ 22,887	\$ 33,000
Fantasy Draft, LLC	\$ 400	\$ 1,774	\$ 7,183
SportsHub Technologies, LLC	\$ 2,983	\$ 57,104	\$ 19,348
Total	\$ 1,989,722	\$ 3,819,252	\$ 5,361,887

* Source: MGC

The table below shows the revenue generated to the Gaming Commission Fund based on the Fantasy Sports Contest Operators Initial Application Fee and Investigation Fee paid in 2016, the Renewal fee paid in 2017 (some have not yet renewed) and the estimated annual license renewal fee based on this proposal.

MGC assumes, based on this legislation, that there will be no investigation for any renewal license so there will be no investigation fee going forward per Section 313.935.2.

ASSUMPTION (continued)

	Initial Application Fee - 2016	Investigation Fee - 2016	Renewal Fee- 2017	Proposed Estimated Annual License Renewal Fee
Fantasy Sports Contest Operator				
FanDuel	\$10,000	\$2,987	\$10,000	\$5,000
Draft Kings	\$10,000	\$3,998	\$10,000	\$5,000
RealTime Fantasy Sports, Inc.	\$823	\$4,508	N/A	\$0
Fantasy Draft	\$0	\$3,421	N/A	\$0
SportsHub Technologies, LLC dba CDM Sports	\$2,622	\$3,009	\$5,699	\$0
Total	\$23,445	\$17,923	\$25,699	\$10,000

* Source: MGC

Oversight assumes, currently, Fantasy Sports Contest Operators pay a one time initial application fee plus an investigation fee and thereafter pay an annual renewal fee. Oversight assumes, based on the requirements of this proposal and MGC's response, Fantasy Sports Contest Operators would now only be required to pay an license renewal fee. Based on 2018 Estimated Net Revenues, revenue generated to the Gaming Commission Fund will be \$10,000. Since the number of new fantasy sports contest operator applicants is unknown, Oversight will reflect a loss of less than \$25,000 to the Gaming Commission Fund.

Officials from the **Department of Revenue (DOR)** addition to the license renewal fee, a licensed operator shall also pay an annual operation fee in the sum equal to six percent of the licensed operator's net revenue from the previous calendar year. If a licensed operator fails to apply for a license renewal or pay the annual operation fee, the commission may suspend the license of such licensed operator until such payment is made.

If a licensed fantasy sports contest operator fails to pay its annual operation fee by November 1, 2019, the commission may suspend the license or deny the pending license application of such fantasy sports contest operator.

If a licensed fantasy sports contest operator ceases to offer fantasy sports contests in Missouri, the operator shall pay an operation fee equal to six percent of its net revenue for the period of the calendar year in which it offered fantasy sports contests in Missouri by November first of the subsequent calendar year.

ASSUMPTION (continued)

Officials from the **Department of Revenue (DOR)** and the **Missouri Gaming Commission (MGC)** assume the following:

Currently, the annual operation fee is imposed on the licensed operator's net revenue from the previous calendar year at a rate of 11.5 %. It is assumed this legislation would require an annual operation fee at a rate of 6%.

Fantasy Sports Contest Estimated Net Revenues, Annual Operation Fees at 11.5% and the proposed Annual Operation Fees at 6% for 2016, 2017 and 2018 are listed in the table below.

Fantasy Sports Contest Operator	Estimated Net Revenue 2016	Annual Operation Fee 2016 (11.5%)	Proposed Annual Operation Fee 2016 (6%)
FanDuel	\$898,043.48	\$103,275	\$53,883
DraftKings, Inc.	\$1,088,295.65	\$125,154	\$65,298
RealTime Sports, Inc.	\$0	\$0	\$0
Fantasy Draft, LLC	\$400.00	\$46	\$24
SportsHub Technologies, LLC	\$2,982.61	\$343	\$179
Total	\$1,989,721.74	\$228,818	\$119,384

Fantasy Sports Contest Operator	Estimated Net Revenue 2017	Annual Operation Fee 2017 (11.5%)	Proposed Annual Operation Fee 2017 (6%)
FanDuel	\$1,823,973.91	\$209,757	\$109,438
DraftKings, Inc.	\$1,913,513.04	\$220,054	\$114,811
RealTime Sports, Inc.	\$22,886.96	\$2,632	\$1,373
Fantasy Draft, LLC	\$1,773.91	\$204	\$106
SportsHub Technologies, LLC	\$57,104.35	\$6,567	\$3,426
Total	\$3,819,252.17	\$439,214	\$229,154

ASSUMPTION (continued)

Fantasy Sports Contest Operator	Estimated Net Revenue 2018	Annual Operation Fee 2018 (11.5%)	Proposed Annual Operation Fee 2018 (6%)
FanDuel	\$2,730,008.70	\$313,951	\$163,801
DraftKings, Inc.	\$2,572,347.83	\$295,820	\$154,341
RealTime Sports, Inc.	\$33,000.00	\$3,795	\$1,980
Fantasy Draft, LLC	\$7,182.61	\$826	\$431
SportsHub Technologies, LLC	\$19,347.83	\$2,225	\$1,161
Total	\$5,361,886.97	\$616,617	\$321,714

Officials from the **Missouri Gaming Commission** assumes under section 313.935, revenue will decrease to the Gaming Proceeds for Education Fund based on the reduction of the operation fee from 11.5% to 6% of the operator's net revenue and changes the payment period to the Commission by November first of the subsequent calendar year.

Based on the 2108 Annual Operation Fee, **Oversight** estimates the following loss(s) to the Gaming Proceeds for Education Fund per Fantasy Sports Contest Operator due to the decrease in the percentage rate from 11.5 % to 6 %, at which the fee is charged.

Fantasy Sports Contest Operator	Decrease to Gaming Proceeds for Education Fund
FanDuel	(\$150,150)
Draft Kings	(\$141,479)
RealTime Fantasy Sports, Inc.	(\$1,815)
Fantasy Draft, LLC	(\$395)
SportsHub Technologies, LLC dba CDM Sports	(\$1,064)
Total	(\$294,903)

For fiscal note purposes, Oversight estimates that the Gaming Proceeds for Education Fund would decrease by \$294,903 each fiscal year. Oversight notes the annual operating fee revenue increased by 40% (from \$439,214 in 2017 to \$616,617 in 2018). Therefore, Oversight will assume the actual loss of revenue from changing the fee percentage from 11.5% to 6% could exceed the \$294,903 estimate. Therefore, Oversight will reflect the impact as "Could exceed" the estimates provided.

ASSUMPTION (continued)

Officials from the **Department of Revenue (DOR)** assume the following:

Section 313.945

Notwithstanding any applicable statutory provision to the contrary, all investigatory, proprietary, or application records, information, and summaries in the possession of the commission or its agents shall be treated by the commission as closed records not to be disclosed to the public; except that the commission shall, on written request from any person, provide such person with the following information furnished by an applicant or licensee.

Section 313.950

The commission shall have the following powers to implement Sections 313.900 to 313.955:

To assess an appropriate administrative penalty of not more than one thousand dollars per violation, not to exceed ten thousand dollars for violations arising out of the same transaction of occurrence, and take action including, but not limited to, the suspension or revocation of a license for violation of Sections 313.900 to 313.955 or the commission's rules, orders, or final decisions;

Section 313.955

This section has been updated to remove the power of the commission to regulate and license the management, operation, and conduct of fantasy sports contests and participants therein;

Section 621.047

This section states, except as otherwise provided by law, any person or entity shall have the right to appeal to the administrative hearing commission from any finding, decision, or determination made by the Missouri gaming commission under Section 313.917. Any person or entity who is a party to such a dispute shall be entitled to a hearing before the administrative hearing commission by the filing of a petition with the administrative hearing commission within thirty days after the decision of the Missouri gaming commission is placed in the United States mail or within thirty days after the decision is delivered, whichever is earlier. The decision of the Missouri gaming commission shall contain a notice of the right of appeal in substantially the following language:

The procedures applicable to the processing of such hearings and determinations shall be those established by Chapter 536. Decisions of the administrative hearing commission under this section shall be binding, subject to appeal by either party.

ASSUMPTION (continued)

Bill as a whole:

Officials from the **Office of Administration - Budget and Planning (B&P)** assume this proposal will decrease fantasy sport operator application and annual operational fees. B&P defers to the Gaming Commission for an estimate of reduced revenues.

This proposal will impact the calculation pursuant to Article X, Section 18(e).

<u>FISCAL IMPACT - State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
GAMING COMMISSION FUND			
<u>Loss - MCG</u>	(Less than	(Less than	(Less than
Decrease in fantasy sports contest operators renewal fee	<u>\$25,000)</u>	<u>\$25,000)</u>	<u>\$25,000)</u>
ESTIMATED NET EFFECT TO THE GAMING COMMISSION FUND	(Less than <u>\$25,000)</u>	(Less than <u>\$25,000)</u>	(Less than <u>\$25,000)</u>
GAMING PROCEEDS FOR EDUCATION FUND			
<u>Loss - MGC</u>	<u>Could exceed</u>	<u>Could exceed</u>	<u>Could exceed</u>
Decrease in Annual Operation Fee	<u>(\$294,903)</u>	<u>(\$294,903)</u>	<u>(\$294,903)</u>
ESTIMATED NET EFFECT TO THE GAMING PROCEEDS FOR EDUCATION FUND	<u>Could exceed (\$294,903)</u>	<u>Could exceed (\$294,903)</u>	<u>Could exceed (\$294,903)</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

Any small business operating as a licensed Fantasy Sports Operator could potentially be impacted

FISCAL DESCRIPTION

This act modifies several provisions relating to fantasy sports.

Several definitions related to fantasy sports are modified. (Section 313.905)

This act also requires that a licensed operator maintain a reserve in the form of cash, cash equivalents, payment processor reserves, payment processor receivables, an irrevocable letter of credit, a bond, an escrow account, or a combination thereof, in an amount that shall equal or exceed the total balances of the fantasy contest players' accounts.

This act also modifies the requirement that any prize won by a registered player from a contest be deposited into the player's account within 48 hours of winning to also allow a prize to be mailed within five business days. A licensed operator may delay such deposit for up to fifteen days if the licensed operator believes in good faith that the registered player engaged in either fraudulent conduct or other conduct that would put the licensed operator in violation of the law so long as the operator provides notice of the nature of the investigation to the player. The Gaming Commission shall establish its own investigation process and issue determinations on a case-by-case basis as to whether the licensed operator is required to deposit the prize in the winner's account. This act provides the right for any person or entity to appeal any such finding, decision, or determination of the Gaming Commission to the Administrative Hearing Commission. (Sections 313.915, 313.917, and 621.047)

This act limits a license applicant's liability for the cost of the Gaming Commission's investigation into the applicant's employees, officers, directors, trustees, and principal salaried executive staff officers to \$10,000 rather than \$50,000. The Commission may grant a waiver of all or a portion of the cost of an investigation.

This act also establishes a graduated annual license renewal fee structure. An operator that made \$2 million or more in the previous calendar year shall pay a fee of \$5,000. An operator that made less than \$2 million but more than \$1 million shall pay a fee of \$2,500. An operator that made less than \$1 million but more than \$250,000 shall pay a fee of \$1,000. An operator that made \$250,000 or less shall not be required to pay an annual license renewal fee.

FISCAL DESCRIPTION (continued)

This act also reduces the annual operation fee from 11.5% of the operator's net revenue from the previous calendar year to 6%. The Commission may suspend an operator's license if such operator fails to apply for an annual license renewal or remit the operation fee. (Section 313.935)

This act reduces the administrative penalty for violations of fantasy gaming laws from not more than \$10,000 to not more than \$1,000 per violation, and from not more than \$100,000 to not more than \$10,000 for violations arising out of the same transaction or occurrence. (Section 313.950)

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 Public Safety
 Missouri Gaming Commission
Department of Revenue
Office of Administration
 Budget and Planning
 Administrative Hearing Commission



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