

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3687-02
Bill No.: SCS for SB 557
Subject: Gambling
Type: Original
Date: January 28, 2020

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

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
General Revenue	(\$272,655 to \$3,431,464)	Less than (\$490,637 to \$2,734,364)	Less than (\$492,883 to \$2,761,688)
Total Estimated Net Effect on General Revenue	(\$272,655 to \$3,431,464)	Less than (\$490,637 to \$2,734,364)	Less than (\$492,883 to \$2,761,688)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Div Alcohol & Tobacco Ctrl (0544)	(\$305,019)	Less than (\$906,823)	Less than (\$909,571)
Lottery Proceeds Fund (0291)	\$0 to Unknown, Could Exceed \$5,000,000	\$0 to Unknown, Could Exceed \$5,000,000	\$0 to Unknown, Could Exceed \$5,000,000
Gaming Commission (0286)	(\$599,235)	(\$505,675)	(\$578,702)
Highway (0644)	Unknown	Unknown	Unknown
Total Estimated Net Effect on <u>Other</u> State Fund	(Less than \$904,254) to Could Exceed \$4,095,746	(Less than \$1,412,498) to Could Exceed \$3,587,502	(Less than \$1,488,273) to Could Exceed \$3,511,727

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 14 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
General Revenue	2 to 16 FTE	2 to 16 FTE	2 to 16 FTE
Div Alcohol & Tobacco Ctrl (0544)	3 FTE	3 FTE	3 FTE
Gaming Commission (0286)	4 FTE	4 FTE	4 FTE
Total Estimated Net Effect on FTE	9 to 23 FTE	9 to 23 FTE	9 to 23 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 2021	FY 2022	FY 2023
Local Government	\$0	Less than (\$2,381,250)	Less than (\$2,381,250)

FISCAL ANALYSIS

ASSUMPTION

§§311.660, 311.710, 311.720, 313.004, 313.255, 572.010 and 572.100 - Illegal 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 the MOU with the Gaming Commission) and Missouri Lottery Commission.

The MHP will not only be assisting local law enforcement agencies with their investigations in some cases, but could also be taking a lead role in other cases. The Patrol received information from Alcohol and Tobacco Control (ATC) regarding the number of premises with illegal gambling machines, which is substantial. Therefore, the Patrol assumes it will need a range of 6 to 15 new Sergeants and 1 Clerk Typist to perform the primary function of fulfilling section 13(1) of 313.004 RSMo. This is based on ATC's estimate of the number of premises with illegal gambling machines being 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.

If the MHP were assigned 6 new 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.

ASSUMPTION (continued)

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 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 FY21 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 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, 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 that illegal gambling machines result in lost profits to public elementary, secondary, and higher education of \$5 million to \$20 million per year. This proposal will reduce or eliminate illegal gambling which will then restore lost Lottery sales and increase Lottery profits to education accordingly.

Oversight notes these machines are no longer limited to fraternal and private clubs but are now in convenience stores, truck stops, bars, clubs, etc. Oversight contacted the Lottery Commission to get some clarification on how they determined the fiscal impact.

ASSUMPTION (continued)

The Lottery Commission provided the following chart as an estimated impact of “gray” machines:

			Actual Less Expected	Actual Less Expected	Machine Less Non-Machines	Machine Less Non-Machines
Estimated Number of Retailers	Average Number of Machines/ Location	Estimated Number of Machines	Estimated Sales Impact	Estimated Profit Impact	Estimated Sales Impact	Estimated Profit Impact
770	3.2	2,500	\$ 5,035,946	\$1,167,332	\$ 22,213,162	\$ 5,149,011
1,000	5.0	5,000	\$10,071,892	\$2,334,665	\$ 44,426,324	\$10,298,022
1,429	7.0	10,000	\$20,143,784	\$4,669,329	\$ 88,852,648	\$20,596,044
2,000	7.0	14,000	\$28,201,298	\$6,537,061	\$124,393,707	\$28,834,461

Source: Missouri Lottery Commission

The **Lottery Commission** stated the “Actual Less Expected” estimate is the same methodology used last year which measures the expected sales less the actual sales, with the expected sales being the previous year’s average times the growth rate of the non-gray machine retailers. The “Machines Less Non-Machine” estimate uses the gray machine retailers’ average less the non-gray machine average by route. Both methods used totals from routes that are impacted more. There are some routes/retailers where the gray machine retailer has a higher average which tends to happen when there is a higher percentage of gray machine retailers. This indicates routes with more gray machine locations on them are getting placed in some of the better sales locations but haven’t had the same apparent impact on sales. This chart also illustrates what the potential impacts might be with more locations and machines since we believe the 2,500 machine and \$5.1 million profit/transfer impact is the low end of the range.

There are many moving parts to this analysis and it is virtually impossible to account for all of them (timing, number of game launches, weather events, large jackpot runs, etc.). Therefore, the Lottery Commission used the FY 2019 “traditional lottery” overall profitability percentage of 23.18 percent to estimate the profit/transfer.

Oversight is unsure of LOT’s estimate, and therefore, will reflect a positive sales impact of \$0 or Unknown, Could exceed \$5,000,000 to the Lottery Proceeds Fund for fiscal note purposes.

ASSUMPTION (continued)

Officials from the **Department of Public Safety - Alcohol and Tobacco Control (ATC)** state §311.660(10) requires the supervisor of Alcohol and Tobacco Control (or employees of the supervisor) to report any suspected illegal gambling activity being conducted on the premises of licensed liquor locations.

Section 311.710.1(7) allows the sheriff, or any peace officer of the county, or eight or more taxpaying citizens of the county or city, to bring proceedings in circuit court against any licensee that permits any form of gambling on their licensed premises. Section 311.720.2 provides that a liquor licensee who is convicted in court for illegal gambling shall automatically and permanently have their liquor license revoked.

Section 572.100 contains language that preempts any agency or governmental subdivision from regulating gambling as described in Chapter 572, but makes an exception for the revocation of a liquor license from applying under this preemption, which means the ATC would be allowed to revoke a liquor license for gambling violations.

The ATC began tracking illegal gambling machines seen at liquor licensed establishments in March 2019 as a result of proposed bill SCS/SB 431 (1513-04) 2019. In comparing the number of illegal gambling machines reported to the number of active retail liquor licenses, approximately 15% of licensees have been reported since March 2019 for possessing illegal gambling machines. However, ATC was down several enforcement staff during this time which has limited enforcement abilities. ATC assumes there will be as many as 25% of retailers who 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, $12,700 \text{ retail licensees} \times 25\% = 3,175 \text{ licensees}$ who could potentially have their licenses revoked if convicted in court of illegal gambling. This would be a 93% increase in activities in the administrative disciplinary process.

As a basis for numbers, ATC expects to hear 220 cases in FY 2020. If even half of the 3,175 licensees were to have their licenses revoked, this would require ATC to prepare violation reports, hold 1,588 informal conferences, and provide for the appeal process for those who do so. ATC states three additional FTE will be needed to administer the requirements of this bill. 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. The Special Agent would process violations and reports the additional caseload is expected to generate by the revocation of liquor licensees of those convicted in court of illegal gambling. The two AOSA positions would process hearing information and paperwork as the administrative disciplinary process would increase substantially as a result of this bill.

ASSUMPTION (continued)

ATC assumes there may be as many as 3,175 licenses that are revoked; therefore 3,175 licenses x \$300 average license fee = \$952,500 in lost revenue because these licensees will not be able to renew their license. The ATC Dedicated Fund will be reduced by 70% of the license fees or \$666,750, and the General Revenue Fund will be reduced by 30% of the license fees or \$285,750. ATC does not anticipate a loss in revenue from license fees in FY 2021 because those license fees will have already been paid upon implementation of this bill, and will not be refunded if revoked. The loss will affect FY 2022 and going forward.

ATC states that §311.220 allows cities to charge up to 1.5 times the state license fee and allows counties to charge up to the amount of the state license fee. ATC fees can range between \$100 and \$500 depending on the license. For fiscal note purposes, an average of \$300 per license was used to calculate the loss to cities and counties. Using the same assumption of 3,175 revoked licenses, ATC assumes a loss of revenue to cities of \$1,428,750 [$3,175 * (\$300 * 1.5 = \$450)$] annually and a loss of revenue to counties of \$952,500 ($3,175 * \300) annually. The loss will affect FY 2022 and going forward.

Oversight does not have any information contrary to that provided by ATC. Oversight assumes licensees will adhere to state law instead of risk losing their liquor license, therefore, Oversight will reflect a loss of ATC license revenue as “Less than” ATC’s estimate.

Officials from the **Department of Public Safety-Gaming Commission (MGC)** state section 311.660(10) requires MGC to be notified of any suspected illegal gambling activity of any business licensed by ATC.

Section 311.720.2 mandates that conviction of illegal gambling activity involving illegal gambling devices will result in “the automatic and permanent revocation” of the business’ liquor license.

Additionally, section 313.004.13(1) 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.

The cost for the MGC in fiscal year FY 2021 is estimated to be \$286,908 which includes two (2) Electronic Gaming Device Specialist II at an annual salary of \$71,727 each, one (1) Financial Investigator at an annual salary of \$71,727, and one (1) Electronic Gaming Device (EGD) Coordinator at an annual salary of \$71,727.

The EGD Coordinator would act as the program leader pertaining to investigations. MGC will station two full-time employees in Kansas City and two more in St. Louis. The Coordinator position will be open to Kansas City, St. Louis, or Jefferson City.

ASSUMPTION (continued)

The two EGD Specialists II would provide technical assistance in support of investigation and enforcement activities conducted by the MGC related to illegal machines. The anticipated travel costs for the EGD employees to respond outside of major cities for a total of 60 nights per year is estimated to be \$5,000 per employee. Forensic evaluations, which would include inspection by an independent testing laboratory, may also be necessary in support of these investigations. These examinations and estimated cost is \$30,000 per year. Additional cost would be incurred in training consisting of a two-day, 16-hour training course by an independent testing laboratory at the MGC central office in Jefferson City, with the class size of 30. The cost associated with the shipment of machines and training is \$43,024. Lodging and meals for the class participants in Jefferson City total \$12,600.

The Financial Investigator would compile financial evidence, analyze, interpret, summarize and report findings. The position would entail tracing funds, asset identification and quantification of financial impact, as well as testifying as an expert witness in criminal investigations. Anticipated travel cost for this employee for a total of 20 nights per year is estimated at \$2,500.

MGC states there will be an additional cost for storage facilities to store the illegal machines after they have been seized and during prosecution. A reasonable cost for a 10x20 facility would be \$150 per month. The cost of 10 units would total approximately \$18,000 per year.

Oversight notes the on-site training consisting of a two-day, 16-hour training course may be held every other year as per the expenses provided by the MGC. Oversight does not have any information contrary to that provided by MGC. Therefore, Oversight will reflect MGC's impact for fiscal note purposes to the Gaming Fund.

Officials from the **Office of Attorney General (AGO)** assume any additional litigation costs arising from this proposal can be absorbed with existing personnel and resources. However, the AGO may seek additional appropriations if there is a significant increase in litigation.

Oversight does not have any information to the contrary. Therefore, Oversight assumes the AGO will be able to perform any additional duties required by this proposal with current staff and resources and will reflect no fiscal impact to the AGO for fiscal note purposes.

Officials from the **Missouri Office of Prosecution Services (MOPS)** assume the proposal will have no measurable fiscal impact on MOPS.

ASSUMPTION (continued)

Oversight notes the **Office of State Courts Administrator** and the **State Public Defender's Office** have each stated the proposal would not have a direct fiscal impact on their respective organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

This proposal contains an emergency clause.

<u>FISCAL IMPACT - State Government</u>	FY 2021	FY 2022	FY 2023
GENERAL REVENUE FUND			
<u>Costs - MHP (§313.004) p. 3-4</u>			
Personal Services (2 FTE to 16 FTE)	(\$100,248 to \$1,181,832)	(\$101,250 to \$1,193,650)	(\$102,263 to \$1,205,587)
Fringe Benefits	(\$89,501 to \$1,055,140)	(\$90,396 to \$1,065,691)	(\$91,300 to \$1,076,348)
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)
<u>Total Costs - MHP</u>	<u>(\$272,655 to \$3,431,464)</u>	<u>(\$204,887 to \$2,448,614)</u>	<u>(\$207,133 to \$2,475,938)</u>
FTE Change - MHP	2 to 16 FTE	2 to 16 FTE	2 to 16 FTE
<u>Loss - ATC (§311.720) Revoked liquor license revenue p. 6-7</u>	\$0	Less than (\$285,750)	Less than (\$285,750)
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	<u>(\$272,655 to \$3,431,464)</u>	<u>Less than (\$490,637 to \$2,734,364)</u>	<u>Less than (\$492,883 to \$2,761,688)</u>
Estimated Net FTE Change for the General Revenue Fund	2 to 16 FTE	2 to 16 FTE	2 to 16 FTE

FISCAL IMPACT - State Government FY 2021 FY 2022 FY 2023
 (continued)

LOTTERY PROCEEDS FUND (0291)

<u>Income</u> - LOT (§313.255) Increased sales and profits from elimination of illegal machines p. 4-5	<u>\$0 to Unknown,</u> <u>Could Exceed</u> <u>\$5,000,000</u>	<u>\$0 to Unknown,</u> <u>Could Exceed</u> <u>\$5,000,000</u>	<u>\$0 to Unknown,</u> <u>Could Exceed</u> <u>\$5,000,000</u>
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ESTIMATED NET EFFECT ON THE LOTTERY PROCEEDS FUND	<u>\$0 to</u> <u>Unknown,</u> <u>Could Exceed</u> <u>\$5,000,000</u>	<u>\$0 to</u> <u>Unknown,</u> <u>Could Exceed</u> <u>\$5,000,000</u>	<u>\$0 to</u> <u>Unknown,</u> <u>Could Exceed</u> <u>\$5,000,000</u>
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HIGHWAY FUNDS (0644)

<u>Savings</u> - MHP (§313.004) Replacing existing Sergeant(s) with probationary troopers (less expensive) p. 4	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
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ESTIMATED NET EFFECT TO HIGHWAY FUNDS	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
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Estimated Net FTE Change for the Highway Fund	0 FTE	0 FTE	0 FTE
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FISCAL IMPACT - State Government FY 2021 FY 2022 FY 2023
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DIVISION ALCOHOL AND TOBACCO CONTROL FUND (0544)

Costs - ATC (§311.720) p. 6-7

Personal Services (3 FTE)	(\$121,112)	(\$123,534)	(\$124,770)
Fringe Benefits	(\$74,781)	(\$75,586)	(\$75,996)
Equipment and Expense	(\$109,126)	(\$40,953)	(\$42,055)
<u>Total Costs - ATC</u>	<u>(\$305,019)</u>	<u>(\$240,073)</u>	<u>(\$242,821)</u>
FTE Change - ATC	3 FTE	3 FTE	3 FTE

<u>Loss - ATC</u> (§311.720) Revoked liquor license revenue	\$0	Less than (\$666,750)	Less than (\$666,750)
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ESTIMATED NET EFFECT ON DIVISION ALCOHOL & TOBACCO CONTROL FUND

	<u>(\$305,019)</u>	<u>Less than (\$906,823)</u>	<u>Less than (\$909,571)</u>
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Estimated Net FTE change for the Division Alcohol and Tobacco Control Fund	3 FTE	3 FTE	3 FTE
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GAMING COMMISSION (0286)

Costs - MGC (§313.004) p. 7-8

Personal Services (4 FTE)	(\$286,908)	(\$289,777)	(\$292,675)
Fringe Benefits	(\$133,682)	(\$142,315)	(\$143,277)
Equipment and Expenses	(\$178,645)	(\$73,583)	(\$142,750)
<u>Total Costs - MGC</u>	<u>(\$599,235)</u>	<u>(\$505,675)</u>	<u>(\$578,702)</u>
FTE Change - MCG	4 FTE	4 FTE	4 FTE

ESTIMATED NET EFFECT ON GAMING COMMISSION

	<u>(\$599,235)</u>	<u>(\$505,675)</u>	<u>(\$578,702)</u>
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Estimated Net FTE Change for the Gaming Commission Fund	4 FTE	4 FTE	4 FTE
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<u>FISCAL IMPACT - Local Government</u>	FY 2021	FY 2022	FY 2023
LOCAL GOVERNMENTS - CITIES AND COUNTIES			
<u>Loss - Cities and Counties (\$311.720)</u>		<u>Less than</u>	<u>Less than</u>
License fees revenue p. 7	<u>\$0</u>	<u>(\$2,381,250)</u>	<u>(\$2,381,250)</u>
ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS - CITIES AND COUNTIES			
	<u>\$0</u>	<u>Less than</u> <u>(\$2,381,250)</u>	<u>Less than</u> <u>(\$2,381,250)</u>

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.

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 Commission finds sufficient evidence of illegal gambling, it shall refer such violation to the prosecuting attorney. Upon the request of the prosecuting attorney, the Attorney General may aid such prosecuting attorney in prosecuting violations referred by the Commission.

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)

FISCAL DESCRIPTION (continued)

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 devices 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 activity involving an illegal gambling device 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 modifies the definitions of "gambling device" and "slot machine" for the purposes of provisions of law relating to the prosecution of illegal gambling. (Section 572.010)

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



Julie Morff
Director
January 28, 2020



Ross Strobe
Assistant Director
January 28, 2020