

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0941S.01I
 Bill No.: SB 87
 Subject: Gambling
 Type: Original
 Date: January 22, 2021

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

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on General Revenue	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
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
Division of Alcohol and Tobacco Control Fund (0544)	(\$614,501)	(\$453,255)	(\$460,518)
Gaming Commission Fund (0286)	(\$1,774,820)	(\$1,275,318)	(\$1,290,578)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0 to Unknown – Could Exceed \$2,610,679	\$0 to Unknown – Could Exceed \$3,271,427	\$0 to Unknown – Could Exceed \$3,248,904

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Division of Alcohol and Tobacco Control Fund (0544)	4 FTE	4 FTE	4 FTE
Gaming Commission Fund	8 FTE	8 FTE	8 FTE
Total Estimated Net Effect on FTE	12 FTE	12 FTE	12 FTE

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§§311.660, 311.680, 311.710, 313.004, 313.255, 572.010, 572.015 & 572.100 - Illegal gambling

Officials from the **Department of Public Safety - Missouri State Highway Patrol (MHP)** state that the current FTE level of the Gaming Division of the Highway Patrol, provides for minimal staffing for every operating hour of the thirteen (13) casino properties in the state, as well as provides for the background investigations necessary and support staffing.

With the Gaming Division of the Patrol being the enforcement arm of SB87, a reasonable number of FTE would be necessary in order to minimally enforce the provisions of the bill. The Gaming Division would require eight FTE to respond and investigate the violations. The eight would be seven Investigators (\$79,584/annually) and one Support Clerk (\$23,688/annually) to enter the associated reports generated.

The Patrol would potentially assign them as follows:

Troop A/H – 1 officer
Troop D – 1 officer
Troop I/G – 1 officer
Troop F – 1 officer
Troop B – 1 officer
Troop C – 1 officer
Troop E – 1 officer

The Patrol assumes based on the language in the bill, "Because the need to eliminate illegal gambling activity in this state, section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and section A of this act shall be in full force and effect upon its passage and approval" that the effective date of the bill will be July 1, 2021.

Oversight does not know how many “gray” machines exist throughout the state. Because Oversight cannot determine how many such machines exist statewide or how many will continue to exist after the passage of this bill, Oversight will reflect the estimated number of FTE the MHP as requested to the Gaming Commission 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.

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.

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 311.680.6(1) upon notification from the Missouri gaming commission or a law enforcement agency, requires the supervisor of alcohol and tobacco control to suspend or revoke a liquor licensee who is found in possession of an illegal gambling device, whichever the supervisor deems appropriate; provided that the licensee is given ten days to remove the illegal gambling device from the premises prior to the supervisor taking action. Upon a second or subsequent notification, the supervisor shall not be required to give the licensee ten days to remove the gambling device prior to taking action.

Section 311.680.6(2) requires the supervisor of alcohol and tobacco control to inform all liquor licensees of the provisions of this subsection and section 311.720.

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 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.

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 25% of licensees are in possession of illegal gambling machines. This bill requires ATC to give licensees ten days to remove illegal gambling machines from their licensed premise, which would require an initial visit by ATC to issue the ten day warning and a subsequent visit to verify the removal. Therefore, $13,025 \text{ retail licensees} \times 25\% = 3,256 \text{ licensees}$ across the state that ATC would potentially need to visit twice to issue the warning and to verify they have removed their illegal gambling machines. This bill also requires the state supervisor to suspend or revoke any licensee who does not remove their gambling machines, however, ATC assumes that most licensees will be voluntarily compliant.

ATC is asking for 4 Special Agents (\$51,112), one for each district office. These special agents will visit the licensees on two occasions; once to issue warnings to those who are found in possession of illegal gambling machines and a subsequent visit to verify the removal of the machines. The agents will also process violations and reports for each location found in possession of these gambling machines.

Oversight does not have any information contrary to that provided by ATC. Oversight assumes licensees will adhere to state law instead of risking the loss of their liquor license, therefore, Oversight will not reflect a loss of ATC license revenue.

Officials from the **Department of Public Safety-Gaming Commission (MGC)** state section 313.004.13(1) of this legislation requires the Missouri Gaming Commission (MGC) to establish a telephone contact number to be available on the commission's website to receive complaints on illegal gambling activities and forward them on to the Missouri Highway Patrol. The MGC must then then notify the subject of the investigation within that 30 day time period.

MGC anticipates the additional duties required by the new language would result in on-site training, travel, and forensic evaluation expenses being incurred in the total amount of \$79,274 in FY 2022, \$38,438 in FY 2023, and \$39,399 in FY 2024.

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.

Officials from the **Department of Correction**, the **Office of State Courts Administrator** and the **State Public Defender's Office** each assume the proposal will have no 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 2022	FY 2023	FY 2024
LOTTERY PROCEEDS FUND (0291)			
<u>Income - LOT</u> Increased sales and profits from elimination of illegal machines	<u>\$0 to Unknown, Could Exceed \$5,000,000</u>	<u>\$0 to Unknown, Could Exceed \$5,000,000</u>	<u>\$0 to Unknown, Could Exceed \$5,000,000</u>
ESTIMATED NET EFFECT ON THE LOTTERY PROCEEDS FUND	<u>\$0 to Unknown, Could Exceed \$5,000,000</u>	<u>\$0 to Unknown, Could Exceed \$5,000,000</u>	<u>\$0 to Unknown, Could Exceed \$5,000,000</u>
DIVISION ALCOHOL AND TOBACCO CONTROL FUND (0544)			
<u>Costs - ATC</u>			
Personal Services	(\$204,448)	(\$208,537)	(\$212,708)
Fringe Benefits	(\$108,801)	(\$118,141)	(\$119,549)
Equipment and Expense	(\$301,252)	(\$126,577)	(\$128,261)
<u>Total Costs - ATC</u>	<u>(\$614,501)</u>	<u>(\$453,255)</u>	<u>(\$460,518)</u>
FTE Change - ATC	4 FTE	4 FTE	4 FTE
ESTIMATED NET EFFECT ON DIVISION ALCOHOL & TOBACCO CONTROL FUND	<u>(\$614,501)</u>	<u>(\$453,255)</u>	<u>(\$460,518)</u>
Estimated Net FTE change for the ATC Fund	4 FTE	4 FTE	4 FTE

<u>FISCAL IMPACT – State Government</u> (continued)	FY 2022	FY 2023	FY 2024
GAMING COMMISSION FUND (0286)			
<u>Costs - MHP</u>			
Personal	(\$580,776)	(\$586,584)	(\$592,450)
Fringe Benefits	(\$516,310)	(\$521,473)	(\$526,688)
Equipment and Expense	(\$598,460)	(\$128,823)	(\$132,041)
Total Costs - MHP	(\$1,695,546)	(\$1,236,880)	(\$1,251,179)
FTE Change - MHP	8 FTE	8 FTE	8 FTE
<u>Costs - MGC on-site training, travel, and forensic evaluation</u>	(\$79,274)	(\$38,438)	(\$39,399)
ESTIMATED NET EFFECT ON GAMING COMMISSION	(\$1,774,820)	(\$1,275,318)	(\$1,290,578)
Estimated Net FTE Change to the Gaming Commission Fund	8 FTE	8 FTE	8 FTE

<u>FISCAL IMPACT – Local Government</u>	FY 2022	FY 2023	FY 2024
	\$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.

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 refer such reports to the Missouri Highway Patrol, which shall conduct investigations into such reports. If the Highway Patrol finds sufficient evidence of illegal gambling, it shall refer such violation to the prosecuting attorney and notify the Supervisor of Liquor Control. 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. (Sections 43.380 and 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)

Upon notification by the Commission or a law enforcement agency of possession of an illegal gambling device, the Supervisor of Liquor Control shall suspend or revoke such person's license on such terms and conditions as the Supervisor deems appropriate, provided such person shall be given ten days to remove the illegal gambling device from the premises prior to the suspension or revocation of a license. The Supervisor of Liquor Control shall not be required to give a person such ten days period upon a second or subsequent notification of a violation. (Section 311.680)

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 lottery game retailer license. (Section 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)

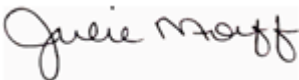
This act defines the terms "net proceeds", "raffle" or "sweepstakes", and "sponsor" for the purposes of Article III, Section 39(f) of the Missouri Constitution authorizing charitable and religious organizations to sponsor raffles or sweepstakes. (Section 572.015)

This act contains an emergency clause.

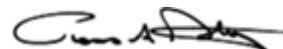
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

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
Department of Corrections



Julie Morff
Director
January 22, 2021



Ross Strobe
Assistant Director
January 22, 2021