| ESTIMATE OF FISCAL IMPACT - STATE AGENCIES (See narrative for political subdivision estimates) |  |  |  |  |
| :---: | :---: | :---: | :---: | :---: |
|  | FY 2019-20 |  | FY 2020-21 |  |
| GENERAL FUNDS | \$126,400 |  | \$112,400 |  |
| CASH FUNDS |  |  |  |  |
| FEDERAL FUNDS |  |  |  |  |
| OTHER FUNDS |  |  |  |  |
| TOTAL FUNDS | \$126,400 |  | \$112,400 |  |

Any Fiscal Notes received from state agencies and political subdivisions are attached following the Legislative Fiscal Analyst Estimate.
LB 538 amends the criminal provision for the offense of possession of a gambling device to establish intent. Intent is established if (1) the gambling device awards cash, anything redeemable for cash, gift cards, credit, or other instruments of value; and (2) the gambling device does not bear an unexpired mechanical amusement device stamp. Possession of a gambling device is currently a Class II misdemeanor.

The bill adds electronic video games of skill to the definition of "mechanical amusement device" for purposes of the Mechanical Amusement Device Tax Act.

LB 538 provides that a tax stamp will not be issued to a mechanical amusement device if the device awards cash, anything redeemable for cash, gift cards, credit, or other instruments of value, unless the Department of Revenue determines the operation of the device is a game of skill and the device's operation does not violate the criminal offense of possession of a gambling device. A manufacturer, distributor, operator, or owner of a device must apply to the Department for such determination. The applicant must provide: (1) information regarding the device's location, software, internet connectivity, and configuration; (2) a device; and (3) proof by a preponderance of the evidence that operation of the device constitutes a game of skill, not a game of chance, and that use of the game does not violate the criminal offense of possession of a gambling device. The bill clarifies when a device is not considered a game of skill and lists other factors that can be considered in determining if the device is a game of skill.

When approved by the Department, the Tax Commissioner must notify the Attorney General. If the Attorney General does not object within 30 days, the tax stamp will be issued. If the Attorney General objects or the Tax Commissioner denies the application, the operator is entitled to an administrative hearing before the Tax Commissioner. The Tax Commissioner must enter a final decision, which can be appealed pursuant to the Administrative Procedures Act.

The bill requires stamps for these devices to be distinct from those for other devices. Stamps can be issued for all devices certified to be identical in hardware and software to the one provided to the Department and for which the occupation tax has been paid.

The Department can investigate further after the application process is complete and can adopt and promulgate rules and regulations.

## Revenue:

Current mechanical amusement device occupation tax rates are $\$ 35$ per device per year, or $\$ 20$ per device placed in operation after July 1. This bill could result in a reduction in General Fund revenue if fewer mechanical amusement devices are approved and less occupation tax is collected under the bill. The Department estimates this amount to be minimal.

## Expenditures:

The Attorney General's Office could see additional costs associated with the bill, but is unable to estimate the amount because it would vary based on the number of devices reviewed and appeals generated. The Department of Revenue estimates the following costs to implement the bill:

- A one-time charge of $\$ 10,000$ to reprogram the Charitable Gaming Licensing System;
- Expenditures of $\$ 116,400$ in FY 19-20 and $\$ 112,400$ in FY 20-21 for 1.0 FTE Revenue Investigator and 1.0 FTE Revenue Operations Analyst II.

There is no basis to disagree with these estimates.

| ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY \& POLT. SUB. RESPONSE |  |  |  |
| :--- | :---: | :---: | :--- |
| LB: 538 | AM: | AGENCY/POLT. SUB: Department of Revenue |  |
| REVIEWED BY: | Lee Will | DATE: $2 / 7 / 2019$ | PHONE: (402) 471-4175 |
| COMMENTS: No basis to disagree with the Department of Revenue's statement of fiscal impact. |  |  |  |

## ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY \& POLT. SUB. RESPONSE

| LB: 538 | AM: | AGENCY/POLT. SUB: Attorney General |  |
| :--- | :---: | :---: | :--- |
| REVIEWED BY: | Lee Will | DATE: $1 / 31 / 2019$ | PHONE: (402) 471-4175 |
| COMMENTS: No basis to disagree with the Attorney General's assessment of fiscal impact. |  |  |  |

## State Agency Estimate

| State Agency Name: Department of Revenue |  |  |  |  | Date Due LFA: $2 / 6 / 19$ <br> Phone: $471-5896$  |  |
| :---: | :---: | :---: | :---: | :---: | :---: | :---: |
| Approved by: Tony Fulton |  | Date Prepared: | 2/5/19 |  |  |  |
|  | FY 2019-2020 |  | FY 2020-2021 |  | FY 2021-2022 |  |
|  | Expenditures | Revenue | Expenditures | Revenue | Expenditures | Revenue |
| General Funds | \$126,400 |  | \$112,400 |  | \$110,100 |  |
| Cash Funds |  |  |  |  |  |  |
| Federal Funds |  |  |  |  |  |  |
| Other Funds |  |  |  |  |  |  |
| Total Funds | \$126,400 |  | \$112,400 |  | \$110,100 |  |

LB 538 amends Neb. Rev. Stat. § 28-1107 to define what constitutes criminal intent with respect to "gambling devices" also known as "mechanical amusement devices" or "skill devices." The bill adds "electronic video games of skill" to the definition of "mechanical amusement device."

The Department will not issue a MAD Tax Stamp for any such device unless, by determination of the Department, the operation of the device constitutes a game of skill and not a game of chance and the use, operation, sale, or manufacture of the device would not constitute a violation of Neb. Rev. Stat. § 28-1107.

The Department will adopt rules and regulations for these "skill-based devices" and prohibit "games of chance," as well as continue to investigate and recall games even after they have been approved.

The bill provides an application process for having a game approved by the Department. An application must be submitted to the Department with information about the device, an actual device, and prove to the Tax Commissioner (TC) by a preponderance of the evidence and at the operator's expense that the device would not violate Neb. Rev. Stat. § 28-1107. The burden of proof is on the applicant to prove the device is legal.

After the Department approves a device, the Department is responsible for submitting its findings to the Attorney General (AG). If the AG does not object to the Department's determination within 30 days, the Department will issue a tax stamp. If the AG does object or the Department rejects the device, the individual may protest and receive an administrative hearing before the TC. The TC would then issue a final order and it would be appealable under the Administrative Procedure Act.

The Stamp for these devices will be distinct from other stamps issued by the Department for mechanical amusement devices that are not required to be approved under this Act.

The operative date for the bill is three months after adjournment.
LB 538 will have a minimal impact on General Fund Revenues.
The Department estimates $\$ 10,000$ will be required to reprogram the Charitable Gaming Licensing System, as well as 1 FTE Revenue Investigator and 1 FTE Revenue Operations Analyst II to implement the bill.

| Major Objects of Expenditure |  |  |  |  |  |  |  |
| :---: | :---: | :---: | :---: | :---: | :---: | :---: | :---: |
|  |  | 19-20 | 20-21 | 21-22 | 19-20 | 20-21 | 21-22 |
| Class Code | Classification Title | FTE | FTE | FTE | Expenditures | Expenditures | Expenditures |
| X62730 | Revenue Investigator | 1 | 1 | 1 | \$48,500 | \$51,200 | \$50,200 |
| S29112 | Revenue Operations Analyst II | 1 | 1 | 1 | \$31,500 | \$33,300 | \$32,600 |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
| Benefits... |  |  |  |  | \$26,400 | \$27,900 | \$27,300 |
| Operating Costs. |  |  |  |  | \$10,000 |  |  |
| Travel.......... |  |  |  |  |  |  |  |
| Capital Outlay... |  |  |  |  | \$10,000 |  |  |
| Capital Improven |  |  |  |  |  |  |  |
| Total... |  |  |  | ...... | \$126,400 | \$112,400 | \$110,100 |

State Agency OR Political Subdivision Name: (2) Attorney General
Prepared by: ${ }^{(3)}$ Jay Bartel ${ }^{(1)}$ Date Prepared: ${ }^{(4)}$ 1-29-19 Phone: (5) 402-471-2687

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION


Explanation of Estimate:
The fiscal impact to the Attorney General's Office depends on the number of devices we may be required to review and how many appeals are generated. If the number is significant, we will require additional funds, however, we are unable to quantify at this time.


