

Revised due to adoption of amendments on Select File

FISCAL NOTE
LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)				
	FY 2019-20		FY 2020-21	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS				
CASH FUNDS	\$126,900	\$611,000	\$113,700	\$643,000
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	\$126,900	\$611,000	\$113,700	\$643,000

Any Fiscal Notes received from state agencies and political subdivisions are attached following the Legislative Fiscal Analyst Estimate.

LB 538, as amended, defines and redefines terms for purposes of the Mechanical Amusement Device Tax Act, provides for an application process for decals under the act, and provides for enforcement.

Manufacturers and distributors of a cash device must apply to the Department of Revenue to receive a determination that the device is in compliance with the act. "Cash device" is defined as a mechanical amusement device capable of awarding awards cash, anything redeemable for cash, gift cards, credit, or other instruments of value. The application must include

- Information regarding the device's location, software, internet connectivity, configuration;
- A fee of \$500;
- A specimen of the device;
- Supporting evidence that under all configurations, settings, and modes of operation that the device is a game of skill and not a game of chance; and
- An affidavit from the distributor that no functional changes in hardware or software will be made without further approval from the Tax Commissioner.

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. The department or a court can consider the results of analysis by any independent testing authority evaluating reaction time and other factors in considering whether a gambling device is a game of skill.

Upon a determination that the device is a game of skill, the Tax Commissioner must issue a mechanical amusement device decal for the device as configured. If the application is denied, the operator is provided the opportunity for an administrative hearing before the Tax Commissioner, after which the Tax Commissioner must enter a final decision. Any final decision can be appealed pursuant to the Administrative Procedure Act.

Decals can be issued for any device that is functionally identical to the specimen provided to the department if the application is approved and an annual fee of \$250 per device is paid. The mechanical amusement device tax in section 77-3005 is unchanged, and the fees in LB 538 are in addition to the tax. As amended on Select File, applications fees and annual decal fees are remitted to the Department of Revenue Enforcement Fund, and monies in the fund are used for costs associated with the bill.

The bill permits the Tax Commissioner, his or her agents, or any peace officer to seize mechanical amusement devices not in compliance with the act and imposes a penalty of \$1,000 per day for operating such device. A device is subject to seizure if the device is a cash device that does not have an unexpired decal as required. The department can request information about any device to promote compliance after the application process, and the recipient of the request must respond within 15 business days.

The criminal offense of possession of a gambling device is amended to provide for an affirmative defense for owners and operators or retail establishments who are not manufacturers, distributors, or sellers of mechanical amusement devices if the device has an unexpired decal as required.

As amended on Select File, LB 538 provides that cash devices cannot be operated using credit cards, charge cards, or debit cards, or by persons under the age of 19. Owners and operators of retail establishments are also prohibited from having more than 4 cash devices, except an establishment more than 4,000 sq ft can have one cash device/1,000 sq ft, up to 15 devices.

The department can adopt and promulgate rules and regulations under the act. Before any regulations become effective, devices in operation on May 1, 2019, or devices functionally identical to those in operation on May 1, 2019, can be manufactured, sold,

transported, placed, or possessed. After any regulations become effective, devices can be manufactured, sold, transported, placed, or possessed if, within 90 day, an application is filed for determination of compliance. If not in compliance, the device must be removed within 30 days.

The operative date is January 1, 2020.

Revenue:

The department estimates the revenue from the fees to the Department of Revenue Enforcement Fund to be the following:

Fiscal Year	Department of Revenue Enforcement Fund
2019-20	\$611,000
2020-21	\$643,000
2021-22	\$675,000
2022-23	\$708,000

This estimate seems reasonable based on the data available.

Expenditures:

The Attorney General's Office could see costs associated with additional prosecutions under the bill, but is unable to estimate the amount.

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 \$116,900 in FY 19-20 and \$113,700 in FY 20-21 for 1.0 FTE Revenue Investigator and 1.0 FTE Revenue Operations Analyst II.

These estimates seem reasonable based on the administrative requirements under the bill.

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE			
LB: 538	AM: 1278	AGENCY/POLT. SUB: Attorney General	
REVIEWED BY: Lee Will	DATE: 4/22/2019	PHONE: (402) 471-4175	
COMMENTS: Concur with the Attorney General's assessment of fiscal impact.			

State Agency Estimate

State Agency Name: Department of Revenue

Date Due LFA:

Approved by: Tony Fulton

Date Prepared:

Phone: 471-5896

	FY 2019-2020		FY 2020-2021		FY 2021-2022	
	Expenditures	Revenue	Expenditures	Revenue	Expenditures	Revenue
General Funds	\$0	\$0	\$0	\$0	\$0	\$0
Cash Funds	\$126,900	\$611,000	\$113,700	\$643,000	\$112,000	\$675,000
Federal Funds						
Other Funds						
Total Funds	\$126,900	\$611,000	\$113,700	\$643,000	\$112,000	\$675,000

LB 538 as amended by AM 1768 and FA 72 prohibits the use of credit cards, debit cards or charge cards on “Cash Devices.” It also implements a minimum age of 19 years old. The application and decal fees for cash devices are now remitted to the State Treasurer for credit to the Department of Revenue Enforcement Fund. The Revenue Enforcement Fund will include money credited under Nebr. Rev. Stat. § 77-2703 and LB 538 and will be used to defray the cost of implementing LB 237, and LB 538 including any rules and regulations adopted and promulgated to carry out LB 538.

FA 72 sets a limit for the number of devices that may be in an establishment. The limit is now four devices for all establishments unless an establishment is bigger than 4,000 square feet, then one additional device per thousand square feet for a maximum of 15 machines is allowed.

Prior to the promulgation of rules, those operating devices on or before May 1, 2019 can continue to operate the devices, or “other cash devices that are functionally identical to those already in operation at an establishment as of May 1, 2019.” After rules are adopted, an establishment can continue to operate machines if they file an application for determination within 90 days of the regulation/rules effective date. If notified that any device is not in compliance there are 30 days to remove the device.

The annual decal fee remains \$250 and application fee remains unchanged at \$500. The operative date remains January 1, 2020.

The Department estimates the following increase to the Revenue Enforcement Fund due to the annual decal fee and application fee.

Fiscal Year	Revenue Enforcement Fund
2019-20	\$611,000
2020-21	\$643,000
2021-22	\$675,000
2022-23	\$708,000

The Department estimates \$10,000 will be required to reprogram the Charitable Gaming Licensing System, as well as 1.0 FTE Revenue Investigator and 1.0 FTE Revenue Operations Analyst II to implement the bill.

Major Objects of Expenditure

Class Code	Classification Title	19-20	20-21	21-22	19-20	20-21	21-22
		FTE	FTE	FTE	Expenditures	Expenditures	Expenditures
X62730	Revenue Investigator	1.0	1.0	1.0	\$48,700	\$51,800	\$51,000
S29112	Revenue Operations Clerk II	1.0	1.0	1.0	\$31,700	\$33,700	\$33,200
Benefits.....					\$26,500	\$28,200	\$27,800
Operating Costs.....					\$10,000		
Travel.....							
Capital Outlay.....					\$10,000	\$0	\$0
Capital Improvements.....							
Total.....					\$126,900	\$113,700	\$112,000

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2019

LB⁽¹⁾ 538, AM1278

FISCAL NOTE

State Agency OR Political Subdivision Name: ⁽²⁾ Attorney General

Prepared by: ⁽³⁾ Jay Bartel Date Prepared: ⁽⁴⁾ 4-16-19 Phone: ⁽⁵⁾ 402-471-2687

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	FY 2019-20		FY 2020-21	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	_____	_____	_____	_____
CASH FUNDS	_____	_____	_____	_____
FEDERAL FUNDS	_____	_____	_____	_____
OTHER FUNDS	_____	_____	_____	_____
TOTAL FUNDS	=====	=====	=====	=====

Explanation of Estimate:

The fiscal impact to the Attorney General's Office depends on the number of appeals generated. If the number is significant, additional funds would be required, however, we are unable to quantify at this time.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

POSITION TITLE	NUMBER OF POSITIONS		2019-20	2020-21
	<u>19-20</u>	<u>20-21</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	_____	_____
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____
Aid.....	_____	_____	_____	_____
Capital improvements.....	_____	_____	_____	_____
TOTAL.....	_____	_____	_____	_____

ATB