John Wiemer February 9, 2023 402-471-0051

LB 685

Revision: 00 FISCAL NOTE LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)							
	FY 202	3-24	FY 2024-25				
_	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE			
GENERAL FUNDS							
CASH FUNDS							
FEDERAL FUNDS							
OTHER FUNDS							
TOTAL FUNDS	See Below	See Below	See Below	See Below			

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

LB 685 changes the purpose of the Racing and Gaming Commission (Commission) to add an additional purpose to provide statewide regulation of mechanical amusement devices and cash devices as defined in the Mechanical Amusement Device Act.

The bill transfers the powers, duties, and functions related to mechanical amusement devices and cash devices from the Department of Revenue (DOR) to the Commission. The appropriations and salary limits enacted by the 108th Legislature, First Session, to the DOR regarding the powers, duties, and functions transferred to the Commission by this bill would be transferred to the Commission along with other applicable funds. This transfer would take place on January 1, 2024.

LB 685 changes the name of the Mechanical Amusement Device Tax Act to the Mechanical Amusement Device Act (Act) and changes and adds definitions.

The bill makes changes so that the administration of the Mechanical Amusement Device Act would be vested in the Commission.

The bill creates an annual licensing fee for operators and distributors in the amount of \$1,000.

The bill makes changes so that it is now the Commission, or any agents or employees of the Commission, or any peace officer of the state, that can seize a mechanical amusement device.

Manufacturers or distributors of cash devices are to submit an application with a fee increased to \$1,000 from \$500 to determine if a cash device is in compliance with the Act. The bill also changes the limits for the number of cash devices at establishments to eight with certain exceptions and details how those cash devices are to be counted. The owner or operator of cash devices is to pay an annual decal fee of \$1,000, increased from \$250 per cash device. The application and decal fees are to be credited to a yet to be named fund, a change from the Department of Revenue Enforcement Fund.

The bill makes changes so that the legal age to play or participate in any way in the operation of a cash device is 21 years old instead of 19 years old. Cash devices are to be located in a separate enclosed area designated for those 21 years of age and older. Operators in violation are subject to a penalty of \$500 per violation.

LB 685 makes the occupation tax for each mechanical amusement device \$1,000 starting January 1, 2024 and after.

The bill creates a tax for operators each calendar quarter on the gross operating revenue on cash devices. The tax would be 20% of the gross operating revenue for each cash device. Tax would be credited as follows:

- 2.5% to the Compulsive Gamblers Assistance Fund
- 2.5% to the General Fund
- 70% to the Property Tax Credit Cash Fund
- 25% to the county or 12.5% to the county and 12.5% to the city/village

The bill puts the fine for decals not being placed conspicuously or when the necessary license isn't obtained at \$5,000.

Finally, LB 685 repeals §77-3008 outright, which explicitly does not take away the taxing power of political subdivisions connected to the Mechanical Amusement Device Tax Act.

Revenue Estimates:

The Department of Revenue (DOR) estimates the following fiscal impact from the bill:

[Compulsive	Property Tax	Revenue	UNNAMED	County/
			Gamblers	Credit Cash	Enforcement	Fund	Municipal
	Fiscal Year	General Fund	Assistance Fund	Fund	Fund		Funds*
	FY 2023-24	\$ -	\$ -	\$ -	\$ -	\$ -	\$-
	FY 2024-25	\$ 225,000*	\$ 225,000	\$ 6,300,000	\$ (1,233,000)	\$ 9,885,000	\$2,250,000
	FY 2025-26	\$ 236,000*	\$ 236,000	\$ 6,615,000	\$ (1,295,000)	\$ 10,379,000	\$2,363,000

Note: The General Fund calculations do not include effects to the sales tax that creates a sales tax exemption for operators, distributors, or owners who are licensees of the commission based on the transfer of responsibilities in this bill from the DOR to the Commission. The DOR estimates this sales tax exemption to be an indeterminant effect that could be substantial loss of General Fund revenue. Funds of political subdivisions could also be impacted with the repeal in statute relating to their taxing power.

There is no basis to disagree with this revenue estimate by the DOR.

The Commission estimates \$6,133,000 per year for licensing fees based on the \$1,000 rate. This amount would be less than that in FY 23-24 for the Commission with the transfer from DOR to the Commission occurring on January 1, 2024. However, there is no basis to disagree with \$6,133,000 as an overall increase in revenue to the state as a result of the new \$1,000 fee when combining the effects to both the DOR and the Commission.

Expenditure Estimates:

The DOR estimates a reduction of 2.0 FTE as a result of the bill, 1.0 FTE of Revenue Investigator and 1.0 FTE of Revenue Operations Clerk II. The Commission estimates a need of 16 FTE for its new responsibilities. The Commission will receive appropriations connected to its new responsibilities from this bill to help hire the appropriate number of new staff while the DOR will need to make the proper reductions based on its loss in appropriations due to this transfer of responsibilities. The Commission may need to hire additional staff than what the appropriations covered for DOR due to it possibly needing to build a staff structure for its new role.

	ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE							
LB:	LB: 685 AM: AGENCY/POLT. SUB: Department of Revenue							
RE\	REVIEWED BY: Jacob Leaver DATE: 2/10/2023 PHONE: (402) 471-4173							
	COMMENTS: The Department of Revenue's estimated fiscal impact to the agency as a result of LB 685 appears reasonable.							

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

LB: 685	AM:	AGENCY/POLT. SUB: Nebraska Racing and Gaming Commission						
REVIEWED BY:	Jacob Leaver	DATE: 2/10/2023	PHONE: (402) 471-4173					
COMMENTS: The Racing and Gaming Commission's estimated fiscal impact to the agency as a result of LB 685 appears excessive.								

Fiscal Note 2023

		State Agency	Estimate			
State Agency Name: Departmen	t of Revenue				Date Due LFO:	
Approved by: Glen White		Date Prepared:	02/08/2023		Phone: 471-5896	
	FY 2023	3-2024	FY 2024	-2025	FY 2025	-2026
	Expenditures	Revenue	Expenditures	Revenue	Expenditures	Revenue
General Funds		See Below		See Below		See Below
Cash Funds	(\$124,900)	See Below	(\$131,300)	See Below	(\$134,500)	See Below
Federal Funds						
Other Funds						
Total Funds	(\$124,900)	See Below	(\$131,300)	See Below	(\$134,500)	See Below

T (*)

LB 685 amends multiple statutes, but also transfers the enforcement of the Mechanical Amusement Device Tax Act (MAD Act) to the State Racing and Gaming Commission (Commission) and moves the MAD Act to Chapter 9.

*LB 685 moves licensing of mechanical amusement devices and cash devices to the Commission. Licensees of the State Racing and Gaming Commission are exempt from sales and use taxes (Neb. Rev. Stat. §77-2704.20).

LB 685 corrects necessary verbiage related to the Commissions' authority to seize cash devices outside of a licensed racetrack enclosure. Clarifies that this section does not apply to devices used at licensed racetracks in accordance with the Nebraska Racetrack Gaming Act.

LB 685 introduces a fee to be an operator of \$1,000 with renewals each year by January 1, starting each year after January 1, 2024. LB 685 also increases the fee for device approval from \$500 to \$1,000, and the annual fee for distributors from \$250 to \$1000. LB 685 clarifies that devices means "mechanical amusement" devices in the collection of occupation taxes. LB 685 increases the occupation tax from \$35 to \$1,000 for devices placed in operation on or after January 1, 2024.

LB 685 removes the limitation on devices based on square footage. Previously any location could have at least four but would be given an additional device for every 1,000 square feet above 4,000, maxing out at 15 devices. LB 685 sets the max to 8 devices. LB 685 creates additional limitations on "single addresses" with more than one business. LB 685 carves out an exception that grandfathers in locations who had more than eight devices as of December 31, 2022. Separate business "which share the same physical address" will not be permitted any more than eight devices for any reason.

Multiplayer games which have more than eight people would not be legal. All others still need to be tested. Each seat at a multiplayer game constitutes one device, which means a single eight-player device would be the only device allowed in the location. LB 685 raises the decal fee for cash devices increases from \$250 to \$1,000.

Major Objects of Expenditure							
Class Code	Classification Title	23-24 <u>FTE</u>	24-25 <u>FTE</u>	25-26 <u>FTE</u>	23-24 <u>Expenditures</u>	24-25 <u>Expenditures</u>	25-26 Expenditures
X62730	Revenue Investigator	1.0	1.0	1.0	(\$56,900)	(\$59,800)	(\$61,300)
R29112	Revenue Operations Clerk II	1.0	1.0	1.0	(\$37,000)	(\$38,900)	(\$39,800)
Benefits					(\$31,000)	(\$32,600)	(\$33,400
Operating Costs							
Travel							
Capital Outlay							
Capital Improvem	ents						
					(\$124,900)	(\$131,300)	(\$134,500)

Application fees collected under the Act will be transferred to a yet to be named Fund. Currently all fees go to the Revenue Enforcement Fund.

LB 685 sets the new age minimum to play a cash to device to 21 (currently 19). All cash devices will be located in a separate enclosed area of the business and only people at least 21 years old will be allowed to enter. Any "operator" violating this will be subjected to a \$500 penalty per violation.

LB 685 creates a new tax created on the "gross operating revenue" of all cash devices. Beginning July 1, 2024, taxes will be paid quarterly, due January 1, April 1, July 1, and October 1. The tax is 20% of the gross operating revenue for each device. Submitted on a tax form provided by the Commission, documenting the total gross and net revenue for the quarter. Gross operating revenue means the dollar amount collected by an owner or operator of any cash device less the total of cash awards paid out. The taxes will be remitted as follows:

- 2.5% Compulsive Gamblers Assistance Fund
- 2.5% General Fund
- 70% Property Tax Credit Cash Fund

25% To the County where the Device is located and is to be distributed as follows:

If the location (where the device is located) is completely within an unincorporated area, the full 25% to the county.

If the location is within the limits of a city or village, the city/village and the county will split the 25% equally.

LB 685 increases the penalty for not having a license to \$5,000. Removes language regarding sealing of devices and allows for the seizure of devices which do not have the necessary decals. Violations of the Act would be increased to a Class I misdemeanor.

LB 685 repeals §77-3008 outright, which allows for local governments to retain taxing authority over MAD devices. While Department of Revenue (DOR) does not maintain lists of local governments who do have their own tax, DOR is aware of at least one local government who does and would seemingly be impacted by this repeal.

*Due to the interaction with \$77-2704.20 created by moving MAD under the authority of the Commission, LB 685 creates a sales tax exemption on any purchase by an operator, distributor, or owner regardless of the relationship to the devices covered under MAD. This exemption creates an incentive for taxpayers to acquire a license. As such, the fiscal impact of the sales tax exemption is undeterminable and has the potential to be quite substantial.

DOR is able to estimate the fiscal impact of the revenue generated for LB 685, without consideration of the sales tax exemption discussed above. This is presented in the following. Currently, DOR oversees approximately 3,900 devices and estimates 3% annual growth. Assuming that each seat at a device, equal to the number of decals, yields \$200 wagered a day with an 85% prize rate, DOR estimates the following fiscal impact under LB 685:

LB 0685 page 3

		Compulsive	Property Tax	Revenue	UNNAMED	County/
		Gamblers	Credit Cash	Enforcement	Fund	Municipal
Fiscal Year	General Fund	Assistance Fund	Fund	Fund		Funds*
FY 2023-24	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
FY 2024-25	\$ 225,000*	\$ 225,000	\$ 6,300,000	\$ (1,233,000)	\$ 9,885,000	\$2,250,000
FY 2025-26	\$ 236,000*	\$ 236,000	\$ 6,615,000	\$ (1,295,000)	\$ 10,379,000	\$2,363,000

* Estimates provided here are generated without regard to the sales tax exemption. The impact of the sales tax exemption is undeterminable.

DOR estimates a reduction of 2.0 FTE to implement LB 685. Of the 2.0 FTE, 1.0 FTE of Revenue Investigator and 1.0 FTE of Revenue Operations Clerk II will no longer be needed.

LB 685 becomes operative for tax years beginning on or after January 1, 2024

Please complete <u>ALL</u> (5) blanks in the first three lines.

LB ⁽¹⁾ 685					FISCAL NOTE
State Agency OR Political	Subdivision Name: ⁽²⁾	NE Racing & Gam	ing Commission		
Prepared by: ⁽³⁾ Tom	Sage	Date Prepared: ⁽⁴⁾	<u>1-27-2023</u> P	hone: ⁽⁵⁾	402-471-4155
	ESTIMATE PROVI	DED BY STATE AGEN	NCY OR POLITICAL SU	UBDIVIS	ION
	FY	2023-24		FY 2024	-9.5
	EXPENDITURES	<u>REVENUE</u>	EXPENDITURE		<u>REVENUE</u>
GENERAL FUNDS					
CASH FUNDS	1,277,260	6,133,000	1,229,778	_	6,133,000
FEDERAL FUNDS					
OTHER FUNDS					
TOTAL FUNDS				_	

Explanation of Estimate:

Expenditures mainly will be for personnel. We estimate we would need 16 FTEs for the regulation of mechanical devices. The revenue is estimated as the following: 47 distributors 2208 operators 3878 machines. These are estimations from information obtained from the Department of Revenue. We are estimating the additional licensing fees will generate \$6,133,000 per year.

We have no solid number as to the gross gaming revenue the mechanical devices will generate. The American Gaming Association recently released a report that they estimate the mechanical devices generate \$50,000 per year per machine. For the purpose of this fiscal note, we will be estimating each machine's revenue at \$20,000 per year. This would generate an estimated gross gaming revenue of \$77,560,000. Twenty percent would be \$15,512,000.

Personal Services:	NUMBER OF	F POSITIONS	2023-24	2024-25
POSITION TITLE	23-24	<u>24-25</u>	EXPENDITURES	EXPENDITURES
	16	16	569,440	603,607
Benefits			457,360	477,511
Operating			151,532	49,732
Travel			98,928	98,928
Capital outlay				
Aid				
Capital improvements				
TOTAL			1,277,260	1,229,778