

**FISCAL NOTE**  
 LEGISLATIVE FISCAL ANALYST ESTIMATE

<b>ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)</b>				
	<b>FY 2019-20</b>		<b>FY 2020-21</b>	
	<b>EXPENDITURES</b>	<b>REVENUE</b>	<b>EXPENDITURES</b>	<b>REVENUE</b>
GENERAL FUNDS	\$126,400		\$112,400	
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
<b>TOTAL FUNDS</b>	<b>\$126,400</b>		<b>\$112,400</b>	

**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.



Please complete ALL (5) blanks in the first three lines.

2019

LB<sup>(1)</sup> 538

FISCAL NOTE

State Agency OR Political Subdivision Name: <sup>(2)</sup> Attorney General

Prepared by: <sup>(3)</sup> Jay Bartel Date Prepared: <sup>(4)</sup> 1-29-19 Phone: <sup>(5)</sup> 402-471-2687

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2019-20</u>		<u>FY 2020-21</u>	
	<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 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.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

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

*DTB*