

FISCAL NOTE
 LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)				
	FY 2023-24		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:

Fiscal Year	General Fund	Compulsive Gamblers Assistance Fund	Property Tax Credit Cash Fund	Revenue Enforcement Fund	UNNAMED Fund	County/Municipal 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: 685	AM:	AGENCY/POLT. SUB: Department of Revenue	
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.			

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:

Fiscal Year	General Fund	Compulsive Gamblers Assistance Fund	Property Tax Credit Cash Fund	Revenue Enforcement Fund	UNNAMED Fund	County/Municipal 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

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2023

LB⁽¹⁾ 685

FISCAL NOTE

State Agency OR Political Subdivision Name: ⁽²⁾ NE Racing & Gaming Commission

Prepared by: ⁽³⁾ Tom Sage Date Prepared: ⁽⁴⁾ 1-27-2023 Phone: ⁽⁵⁾ 402-471-4155

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2023-24</u>		<u>FY 2024-25</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<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.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2023-24</u>	<u>2024-25</u>
	<u>23-24</u>	<u>24-25</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
	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

