



**Colorado
Legislative
Council
Staff**

HB16-1404

**REVISED
FISCAL NOTE**

(replaces fiscal note dated April 4, 2016)

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 16-1175

Date: April 21, 2016

Prime Sponsor(s): Rep. Duran; Wist
Sen. Cooke; Guzman

Bill Status: House Appropriations
Fiscal Analyst: Anna Gerstle (303-866-4375)

BILL TOPIC: REGULATE FANTASY CONTESTS

| Fiscal Impact Summary | FY 2016-2017 | FY 2017-2018 |
|---|-------------------------|-------------------------------|
| State Revenue | <u>\$125,790</u> | <u>up to \$210,790</u> |
| General Fund | 0 | up to 10,000 |
| Cash Funds* | 125,790 | 200,790 |
| State Expenditures | <u>\$89,701</u> | <u>\$235,925</u> |
| Cash Funds | 78,073 | 208,005 |
| Centrally Appropriated Costs | 11,628 | 27,920 |
| TABOR Impact | \$125,445 | up to \$210,445 |
| FTE Position Change | 0.9 FTE | 2.4 FTE |
| Appropriation Required: \$78,073 - Multiple agencies (FY 2016-17). | | |
| Future Year Impacts: Ongoing state revenue and expenditure impact. | | |

* A portion of these are pass through moneys to the federal government, treated as reappropriated funds. See the State Revenue and State Appropriations sections.

Summary of Legislation

The bill, **as amended by the House Finance Committee**, establishes the registration of small fantasy contest operators and the licensure of all other large fantasy contest operators by the Division of Professions and Occupations in the Department of Regulatory Agencies (DORA). The bill defines a fantasy contest operator as an entity that offers a fantasy contest with an entry fee and cash prize to the public.

Registration. Small fantasy contest operators are required to register with DORA and may not operate without being registered beginning July 1, 2017. Small fantasy contest operators:

- have fewer than 7,500 fantasy contest players in Colorado;
- may not be eligible to register if the applicant or its officers, directors, or partners have pled guilty or no contest to a felony;
- are not required to obtain a finger-print background check;
- are subject to the civil penalties in the bill; and
- may be investigated by DORA only if a complaint warrants an investigation.

Licensing. On or after July 1, 2017, a license is required for any large fantasy contest operator with more than 7,500 fantasy contest participants in Colorado (licensee) to operate. DORA may set license and renewal fees. An applicant may not be eligible for a license if the applicant or any of its officers, director, or general partners has been convicted of or has entered a guilty or no contest plea to a felony. The bill specifies the information that must be provided on a license application and the required procedures for licensees to obtain a fingerprint criminal background check from the Colorado Bureau of Investigation (CBI) in the Department of Public Safety (DPS).

Operation of fantasy contests. Fantasy contests may not include university, college, high school, or youth sporting events or utilize video or other depictions of slot machines, poker, blackjack, craps, or roulette. Fantasy contests may be conducted at a licensed gaming establishment, class B horse racing track, and a licensed facility at which pari-mutuel wagering occurs. In addition, the bill establishes certain restrictions and protections that registered and licensed operators must enact.

All fantasy contest operators must separate fantasy contest player funds from operational funds and maintain a reserve in the same amount as the deposits made to the accounts of fantasy players. Each operator must also maintain daily records of its operations for at least three years and contract with a third party to annually conduct an independent audit of the operator. The results of the audit must be submitted to DORA.

Discipline. DORA may deny, suspend, place on probation, issue a letter of admonition, or revoke a license if a licensee violates rules or provisions of the law, fails to meet the licensing requirements, or uses fraud to apply for a license. DORA may appoint an administrative law judge to gather evidence and report findings and may issue a cease and desist order to licensed fantasy contest operators. Any operator, including small fantasy contest operators, who violates the law may be assessed a civil penalty of up to \$1,000 per violation and DORA may file a civil action to collect the penalty.

Data and Assumptions

The Fantasy Sports Trade Association (FSTA) estimates that approximately 800,000 Colorado residents participate in fantasy contests, including some who participate in free contests and some who participate in a high number of contests annually.

Based on the FSTA's Colorado membership, the number of casinos licensed by the Department of Revenue, and an industry estimate of the number of operators in Colorado, the fiscal note assumes that of 100 current operators, 10 large operators will be licensed and 90 small fantasy contest operators will be registered. The fiscal note assumes that 45 registrations and 5 initial licenses will be processed in FY 2016-17; and that 5 initial licenses, 5 renewals, and up to 80 registrations (45 current small operators and 35 new small operators) will be processed in FY 2017-18.

The fiscal note assumes that approximately 215 complaints or notifications of criminal history will be received annually beginning in FY 2017-18, based on programs of a similar size, a large consumer base, and a high participation rate by consumers. Of those, 16 will require investigation, 14 will be settled, and 6 will be referred to the Department of Law for adjudication.

The bill specifies that all fantasy contest operators must be registered or licensed beginning July 1, 2017. The fiscal note assumes that the work on the registration and licensure programs will begin in January 2017, licenses must be renewed annually, and that licensing fees will be set by DORA to cover costs of both the licensing and registration components.

State Revenue

The bill increases state revenue by \$125,790 in FY 2016-17 and up to \$210,790 in FY 2017-18. This includes fine revenue to the General Fund and fee revenue to two cash funds. The revenue impacts are detailed below.

License fees. The bill increases fee revenue to DORA by \$125,000 in FY 2016-17 and \$200,000 in FY 2017-18. The bill requires that only licensees pay a fee. It is anticipated that five licensees will pay for an initial license in FY 2016-17 and five will pay for an initial license and five for a renewal in FY 2017-18. Fee revenue is deposited into the Division of Professions and Occupations Cash Fund. DORA has the authority to set licensing fees; however, the bill does not specify whether DORA may charge a registration fee. As a result, the fiscal note estimates the licensing fees based on projected costs of both the licensing and regulation programs.

Fingerprint-based background checks — DPS. Fee revenue from fingerprint-based criminal history background checks deposited into the CBI Identification Unit Cash Fund in the DPS will increase by up to \$790 in FY 2016-17 and FY 2017-18, assuming 5 licensees each year, each with up to 4 individuals requiring a background check. The current fee for background checks is \$39.50, which includes \$17.25 for a Federal Bureau of Investigation (FBI) fingerprint-based check, which is passed on to that federal agency. The background check is required only upon initial licensure and is not required for registration.

Fine revenue. The bill will increase revenue to the General Fund from civil penalties. A fantasy contest operator, employee, or agent who violates the law may be fined up to \$1,000 per violation. It is anticipated that up to 10 penalties will be paid per year beginning in FY 2017-18. As a result, up to \$10,000 in fine revenue is expected in FY 2017-18.

Fee impact on individuals and business. Section 2-2-322, C.R.S., requires legislative service agency review of measures which create or increase any fee collected by a state agency. The table below identifies the fee impact of this bill.

| Table 1. Fee Impact on Individuals, Families or Business | | | | | |
|---|------------------------|----------------------|------------------------|-------------------------|------------------------------|
| Fiscal Year | Type of Fee | Estimated Fee | Number Affected | Total Fee Impact | Total per Fiscal Year |
| FY 2016-17 | Initial License | \$25,000 | 5 | \$125,000 | \$125,790 |
| | CBI Background Check | \$39.50 | 20 | \$790 | |
| FY 2017-18 | Initial License | \$25,000 | 5 | \$125,000 | \$200,790 |
| | Annual License Renewal | \$15,000 | 5 | \$75,000 | |
| | CBI Background Check | \$39.50 | 20 | \$790 | |

TABOR Impact

This bill increases state revenue from fines and fees, which will increase the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund. Fee revenue collected to pass through to the FBI for background checks is approximately \$345 in FY 2016-17 and FY 2017-18 and does not count against the TABOR limit.

State Expenditures

The bill increases cash fund expenditures in DORA and DPS by a total of \$89,701 in FY 2016-17 and \$235,925 in FY 2017-18. The bill also increases the workload of the Department of Revenue, Department of Personnel and Administration, Judicial Department, and Department of Law. The expenditures are listed in Table 2 and detailed below.

| Table 2. Expenditures Under HB16-1404 | | |
|--|-------------------|-------------------|
| Cost Components | FY 2016-17 | FY 2017-18 |
| Personal Services | \$51,489 | \$123,465 |
| FTE | 0.9 FTE | 2.4 FTE** |
| Operating Expenses and Capital Outlay Costs | 5,653 | 6,603 |
| Temporary Staffing | 10,903 | 10,903 |
| Legal Services | 9,501 | 66,507 |
| Fingerprint Background Check Costs | 527 | 527 |
| Centrally Appropriated Costs* | 11,628 | 27,920 |
| TOTAL | \$89,701 | \$235,925 |

* Centrally appropriated costs are not included in the bill's appropriation.

** Includes 2.1 FTE for DORA and 0.3 FTE for the Department of Law in FY 2017-18.

Personal Services — DORA. DORA requires \$51,489 and 0.9 FTE in FY 2016-17 and \$123,465 and 2.1 FTE in FY 2017-18 to establish, implement, and enforce the regulatory program established by the bill. Staffing costs are assumed to begin January 1, 2017. Costs include:

- a program director to oversee the program, conduct outreach with stakeholders, develop procedures and guidelines, and conduct formal rulemaking;
- staff to assist with rulemaking, process and verify applications and renewals, communicate with licensees, review annual audits, receive complaints, and coordinate with the CBI; and
- an investigator beginning in FY 2017-18 to investigate complaints, obtain evidence, prepare reports, and assist in multi-jurisdictional field investigations.

Temporary assistance. DORA also requires \$10,903 in FY 2016-17 and FY 2017-18 for temporary staff to assist with applicant inquiries regarding licensing requirements and application status, registration verification, and the issuing of licenses. It is anticipated that a total of 1,124 hours of temporary staff assistance is required at an hourly rate of \$19.40.

Legal services. DORA requires \$9,501 in FY 2016-17 and \$66,507 in FY 2017-18 for legal services, including rulemaking, enforcement, and complaint resolution. This amount represents approximately 100 hours of rulemaking in FY 2016-17 and 700 hours of rulemaking, enforcement,

and complaint resolution in FY 2017-18. The legal services will be provided by the Department of Law using reappropriated funds. The Department of Law requires 0.3 FTE in FY 2017-18 to provide these services. Should additional resources for legal services be required, it will be addressed through the annual budget process.

Fingerprint-based background checks — DPS. The bill increases the expenditure for DPS by \$527 in each of FY 2016-17 and FY 2017-18. This covers the costs of conducting a CBI background check, including postage and per-print software and equipment costs, as well as the pass through costs of the FBI background check. These costs are based on up to 40 additional fingerprint-based background checks in each of FY 2016-17 and FY 2017-18. The fiscal note assumes that each application for licensure lists up to four individuals, all four must obtain a background check, and no more than four background checks will be required per application.

Administrative law judges — DPA. The bill will increase the caseload for the Office of Administrative Courts in the Department of Personnel and Administration to provide administrative law judges to the office beginning in FY 2017-18. The increase is expected to be minimal and does not require a change in appropriations. Should additional resources required, it will be requested through the annual budget process.

Judicial Department. The bill increases the workload for the Judicial Department beginning in FY 2017-18 to handle an increase case filings. The office may file a civil action to collect a penalty imposed against a fantasy contest operator who violates the law, and parties adversely affected by agency actions may file for a judicial review in district court and potential review by an appellate court. The workload increase is expected to be minimal and does not require a change in appropriations.

Department of Revenue. The bill allows fantasy contests to be conducted at licensed gaming establishments, retailers, Class B racetracks, and other licensed facilities, which are overseen by the Department of Revenue. The bill may increase the workload in the department to handle an increase in violations related to underage gaming and lingering in casinos, racetracks, and other licensed facilities. The fiscal note assumes that approximately 17 casinos will be licensed by DORA and operate fantasy contests for people over the age of 18. However, people under the age of 21 may not participate in limited gaming activities or be present on the gaming floor of a casino environment. An increase in people under 18 years old in casinos to participate in fantasy contests will likely increase intervention and enforcement actions by the department's investigators. This increase will initially be handled within existing appropriations; however, should additional resources required, it will be requested through the annual budget process.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 3.

| Cost Components | FY 2016-17 | FY 2017-18 |
|--|-------------------|-------------------|
| Employee Insurance (Health, Life, Dental, and Short-term Disability) | \$7,222 | \$16,857 |
| Supplemental Employee Retirement Payments | \$4,406 | \$11,063 |
| TOTAL | \$11,628 | \$27,920 |

Local Government

Similar to the state impact, the bill may increase the workload in county courts. This workload increase can be accomplished within the existing resources of these entities, including the Denver County Court, managed and funded by the City and County of Denver.

Technical Note

The bill does not specify whether DORA may charge a registration fee, or whether licensing fees may cover costs of both the registration and licensing programs. The fiscal note assumes that DORA does not have the authority to charge a registration fee and that the costs associated with both the registration and licensing programs will be covered by the licensing fees. Should licensing fees not be allowed to cover registration program costs, a registration fee or General Fund appropriation may be required.

Effective Date

The bill takes effect August 10, 2016, if the General Assembly adjourns on May 11, 2016, as scheduled, and no referendum petition is filed. The bill applies to conduct occurring on or after July 1, 2017.

State Appropriations

For FY 2016-17, the bill requires an appropriation of \$78,073 to the Department of Regulatory Agencies from the Division of Professions and Occupations Cash Fund and an allocation of 0.9 FTE. Of this amount, \$9,501 should be reappropriated to the Department of Law.

For FY 2016-17, the bill also requires an appropriation of \$527 to the Department of Public Safety from the CBI Identification Unit Cash Fund. Of this amount, \$345 is pass through funds to the FBI.

State and Local Government Contacts

| | | |
|---------------------|------------------------|---------------|
| District Attorneys | Information Technology | Judicial |
| Law | Personnel | Public Safety |
| Regulatory Agencies | Revenue | |