



**Colorado
Legislative
Council
Staff**

HB16-1404

FISCAL NOTE

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

Drafting Number: LLS 16-1175 **Date:** April 4, 2016
Prime Sponsor(s): Rep. Duran; Wist **Bill Status:** House Business Affairs and Labor
 Sen. Cooke; Guzman **Fiscal Analyst:** Anna Gerstle (303-866-4375)

BILL TOPIC: REGULATE FANTASY CONTESTS

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
State Revenue	<u>up to \$270,800</u>	<u>up to \$240,846</u>
General Fund	up to 5,000	up to 10,000
Cash Funds*	265,800	230,846
State Expenditures	<u>\$223,046</u>	<u>\$223,693</u>
Cash Funds	195,624	195,773
Centrally Appropriated Costs	27,422	27,920
TABOR Impact	up to \$263,900	up to \$238,293
FTE Position Change	2.2 FTE	2.4 FTE
Appropriation Required: \$195,624 - Multiple agencies (FY 2016-17).		
Future Year Impacts: Ongoing 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 establishes the licensing and regulation of fantasy contest operators and defines a fantasy contest. The bill creates the Office of Fantasy Contests (office) within the Division in Professions and Occupations in the Department of Regulatory Agencies (DORA). The office is established as a Type 2 agency and the office director must establish rules for conducting fantasy contests in the state and for the licensing of fantasy contest operators.

Licensing. A fantasy contest operator license is required for any person who offers a fantasy contest with an entry fee and cash prize to the public. An applicant is not eligible for a license if the applicant or anyone with a financial interest in the applicant of at least 5 percent 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 obtaining a fingerprint criminal background check from the Colorado Bureau of Investigation (CBI) in the Department of Public Safety (DPS). Operators with fewer than 7,500 participants residing in Colorado are exempt from paying the annual licensing fee.

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 by a licensed operator 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 the following restrictions and protections that licensed operators must enact:

- employees of the operator or relatives living in the same household as the employee may not compete in any fantasy contest in which a cash prize is offered;
- confidential information that could affect contest play may not be shared until publically available;
- operators may not participate in games he or she offers;
- all fantasy contest players must be at least 18 years old;
- players and officials may not compete in a fantasy contest that is determined by the event in which they are a playing or officiating;
- reasonable steps for a person to restrict themselves from participating in fantasy contests must be made available by the operator; and
- the limit on the number of entries a person may submit must be disclosed by the operator and there must be steps to prevent players from submitting more than that number.

A licensed operator 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. It 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 the office.

Discipline. The office director may deny, suspend, place on probation, issue a letter of admonition, or revoke a license if the licensee violates rules or provisions of the law, fails to meet the licensing requirements, or uses fraud to apply for a license. The director may appoint an administrative law judge to gather evidence and report findings. A licensed operator who violates the law may be assessed a civil penalty of no more than \$1,000 per violation and the office 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 100 operators will be licensed in FY 2016-17. Based on the industry growth rate, the fiscal note also assumes that 37 new operators will be licensed in FY 2017-18.

Of the expected licensees, the fiscal note assumes that ten will have over 7,500 participants residing in Colorado and be required to pay licensing fees in FY 2016-17. In FY 2017-18, those ten will pay renewal fees and one additional entity will pay the fee for initial license.

The fiscal note assumes that approximately 215 complaints or notifications of criminal history will be received annually, 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.

Because DORA requires time to conduct rulemaking and establish program procedures and guidelines, the fiscal note assumes that work on the program will begin July 1, 2016, with licenses issued beginning January 1, 2017.

State Revenue

The bill increases revenue by up to \$270,800 in FY 2016-17 and up to \$240,846 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 \$250,000 in FY 2016-17 and \$225,000 in FY 2017-18. The bill requires that only licensees with more than 7,500 participants residing in Colorado pay the licensing fee. It is anticipated that ten licensees will pay for an initial license in FY 2016-17 and a renewal license in FY 2017-18, with one new initial license in FY 2017-18. Fee revenue is deposited into the Division of Professions and Occupations Cash Fund. The bill does not specify exact fees and does not provide DORA with the authority to set fees; as a result, the fiscal note estimates the fees based on projected costs.

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 \$15,800 in FY 2016-17 and up to \$5,846 in FY 2017-18, assuming 100 licensees in the first year and 37 in the second 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 FBI fingerprint-based check, which is passed on to that federal agency. The background check is required only upon initial licensure.

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 5 penalties will be paid in FY 2016-17 and up to 10 penalties will be paid per year beginning in FY 2017-18. As a result, up to \$5,000 in fine revenue is expected in FY 2016-17 and up to \$10,000 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	10	\$250,000	\$265,800
	CBI Background Check	\$39.50	400	\$15,800	
FY 2017-18	Initial License	\$25,000	1	\$25,000	\$230,846
	Annual License Renewal	\$20,000	10	\$200,000	
	CBI Background Check	\$39.50	148	\$5,846	

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 does not count against the TABOR limit.

State Expenditures

The bill increases cash fund expenditures in DORA and DPS by a total of \$223,046 in FY 2016-17 and \$223,693 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	\$123,465	\$123,465
FTE**	2.2 FTE	2.4 FTE
Operating Expenses and Capital Outlay Costs	\$11,306	\$1,900
Temporary Staffing	\$21,806	0
Legal Services	\$28,503	\$66,507
Fingerprint Background Check Costs	\$10,544	\$3,901
Centrally Appropriated Costs*	27,422	\$27,920
TOTAL	\$223,046	\$223,693

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

** Includes 2.1 FTE for DORA in each year and 0.1 FTE for the Department of Law in FY2016-17 and 0.3 FTE in FY 2017-18

Personal Services — DORA. DORA requires \$123,465 and 2.1 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 July 1, 2016. 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 to investigate complaints, obtain evidence, prepare reports, and assist in multi-jurisdictional field investigations.

Temporary assistance. DORA also requires \$21,806 in FY 2016-17 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 1,124 hours of temporary staff assistance is required at an hourly rate of \$19.40.

Legal services. DORA requires \$28,503 in FY 2016-17 and \$66,507 in FY 2017-18 for legal services, including rulemaking, enforcement, and complaint resolution. This amount represents approximately 300 hours of rulemaking and enforcement in FY 2016-17 and 700 hours of 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 0.1 FTE in FY 2016-17 and 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 \$10,544 in FY 2016-17 and \$3,901 in 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 400 additional fingerprint-based background checks in FY 2016-17 and up to 148 in FY 2017-18. The fiscal note assumes each application 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. The increase is expected to be minimal and does not require a change in appropriations. Should additional resources be required, it will be requested through the annual budget process.

Judicial Department. The bill increases the workload for the Judicial Department beginning in FY 2016-17 to handle an increase in 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 permits licensed operators to offer fantasy contests 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 be 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.

Table 3. Centrally Appropriated Costs Under HB16-1404		
Cost Components	FY 2016-17	FY 2017-18
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$16,857	\$16,857
Supplemental Employee Retirement Payments	\$10,565	\$11,063
TOTAL	\$27,422	\$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

While the fiscal note assumes that DORA has the authority to set fees to cover costs, it is not explicitly stated in the bill. Without this authority, and to the extent that fantasy contest operator license fees are set in statute, fee revenue may not be sufficient to cover program costs.

Effective Date

The bill takes effect July 1, 2016, and applies to conduct on or after that date.

State Appropriations

For FY 2016-17, the bill requires an appropriation of \$185,080 to the Department of Regulatory Agencies from the Division of Professions and Occupations Cash Fund and an allocation of 2.1 FTE. Of this amount, \$28,503 and an additional allocation of 0.1 FTE should be reappropriated to the Department of Law.

For FY 2016-17, the bill also requires an appropriation of \$10,544 to the Department of Public Safety from the CBI Identification Unit Cash Fund. Of this amount, \$6,900 is pass through funds to the FBI.

State and Local Government Contacts

District Attorneys
Law
Regulatory Agencies

Information Technology
Personnel
Revenue

Judicial
Public Safety