

Local Mandate Fiscal Impact Estimate
Kentucky Legislative Research Commission
2015 Regular Session

Part I: Measure Information

Bill Request #: 1311

Bill #: HB 528

Bill Subject/Title: AN ACT relating to the placement of illegal gambling devices in business establishments and declaring an emergency

Sponsor: Representative Kevin P. Sinnette

Unit of Government: x City x County x Urban-County
 Unified Local
 x Charter County x Consolidated Local x Government

Office(s) Impacted: local police, local sheriffs and jails

Requirement: x Mandatory Optional

Effect on

Powers & Duties: x Modifies Existing Adds New Eliminates Existing

Part II: Purpose and Mechanics

The purpose of HB 528 is to clarify that Internet gambling cafes or Internet sweepstakes cafes are illegal gambling activity.

HB 528 Section 1 would amend KRS 528.010(4) to add the following to the list of “Gambling device[s]” identified in that statute:

“Any mechanical or electronic device permanently located in a business establishment, including a private club . . . [that allows the user] to play or participate in a simulated gambling program . . . for consideration . . . including consideration paid for Internet access or computer time, or a sweepstakes entry.”

Such devices and programs are commonly known as Internet gambling, or Internet sweepstakes, cafes.

The bill would also add a definition for “simulated gambling program” as used in the above proposed language.

HB 528 Section 2 would make no substantive change to KRS 528.100, regarding forfeiture of gambling devices or records, but would only amend that statute to reflect the re-numbering of subsections of KRS 528.010 by the proposed bill.

HB 528 Section 3 declares an emergency and that the Act would take effect on passage and approval by the Governor.

Part III: Fiscal Explanation, Bill Provisions, and Estimated Cost

The fiscal impact of HB 528 on local governments is expected to be minimal, with more impact in those areas of the state that have a concentration of internet sweepstakes cafes. Forfeited devices are a potential source of revenue or equipment to local governments.

The definition of “Gambling device” added by HB 528 clarifies that internet sweepstakes cafes constitute unlawful gambling under Kentucky law. These cafes have concentrated in Western and Northern Kentucky. The café proprietors typically advertise for sale internet time or long-distance telephone minutes. In addition to the internet time or telephone minutes, the purchaser will receive entries in an internet sweepstakes and can participate in the sweepstakes games on the café’s computers set up for that purpose. Based on a random allocation of winning and losing entries, the customer may or may not win cash prizes through the games.

Testimony on November 17, 2014 before the Interim Joint Committee on Licenses and Occupations, and LRC staff research, indicates local governments are divided over these cafes. Some localities issue them a business license and some do not, believing them to be illegal gaming. The Kentucky League of Cities (KLC) requested a legal opinion of the Kentucky Attorney General whether current law prohibits the activity at these cafes; testimony at the hearing before the Senate Committee on Licensing, Occupations, and Administrative Regulations on February 19, 2015 indicated that it is the AG’s opinion that such devices constitute illegal gambling activity under Kentucky law.

The impact on local government of adding internet sweepstakes cafes to the definition of gambling device is indeterminable but expected to be minimal. The lack of certainty whether the cafes are illegal gambling may cause local governments some increased administrative burden, or require additional legal consultation, to make that determination. If existing cafes are paying sales taxes and licensing fees, then defining them as gambling devices and enforcing against them as illegal gaming will reduce revenue to local government. If they are not paying taxes and fees and they are not defined as illegal gaming, they can be required to pay taxes and fees.

There was testimony at the November 17, 2014 IJC hearing that local charitable organizations (American Legion, Knights of Columbus) have lost charitable gaming revenue to the sweepstakes cafes, and that some may even cease operating because of the competition. If the charitable gaming revenue is used to assist local citizens in need, the loss of that revenue to charities may result in increased expense to the local government in order to provide and pay for such assistance. Internet sweepstakes cafes may also compete for gambling dollars with the Kentucky Lottery and pari-mutuel horse racing, reducing their income and the number of education scholarships awarded by the Lottery, and the amount of taxes paid by horseracing

tracks.

The Kentucky Association of Chiefs of Police believes the bill would have a minimal impact on local law enforcement staff and training needs, and would provide another ‘tool’ for law enforcement.

Criminal offenses involving gambling devices range from a Class A misdemeanor to Class D felony. Clarifying the law to specifically include in the definition of “gambling device” computers used at internet sweepstakes cafes may minimally increase the number of incarcerated persons, though it is not possible to quantify that number. A person convicted of a Class B misdemeanor may be incarcerated for up to 90 days; a Class A misdemeanor, up to one year. Misdemeanants are housed in one of Kentucky’s 78 full service jails or five life safety jails. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an estimated average of \$31.34 per day.

When a court denies bail to a Class D felony defendant, local government is responsible for incarcerating the defendant until disposition of the case in one of Kentucky’s 78 full service jails or five life safety jails. Again, while the expense of housing inmates varies by jail, each additional inmate increases facility costs by an estimated average of \$31.34 per day. On sentencing, a Class D felon is housed in one of Kentucky’s full service jails for the duration of his or her sentence. The Department of Corrections pays a jail \$31.34 per day to house a Class D felon. The per diem pays for the estimated average cost of housing a Class D felon; the actual cost of housing may be less than, equal to, or greater than the per diem received by the jail.

Inclusion of computers used at internet sweepstakes cafes may result in a revenue source to local governments. KRS 528.100 allows forfeiture of “any gambling device . . . used in violation of this chapter” and disposal in accordance with KRS 500.090. That statute allows sale of forfeited property with the proceeds paid to the state, city, or county that seized it. Alternatively, the forfeiting entity may use property it has forfeited. Thus, costs increased as a result of defining “gambling device” to include devices used for internet gambling, including computers, that are permanently located in a business or private club may be offset through forfeiture and sale or use of the devices by the local entity.

Data Source(s): LRC staff, Kentucky League of Cities, Kentucky Association of Chiefs of Police

Preparer: Mary Stephens **Reviewer:** MCY **Date:** 2/24/15