

CORRECTIONS IMPACT STATEMENT

SESSION: 20RS BILL # HB 137 HCS 1 BR # 364 DOC ID #: HB013730.100 - 364 - XXXX

BILL SPONSOR(S): Rep. A. Koenig, A. Gentry, K. Banta, T. Bojanowski, C. Booker, G. Brown Jr, T. Burch, J. Donohue, K. Flood, J. Glenn, D. Graham, J. Graviss, C. Harris, A. Hatton, K. Hinkle, C. Howard, J. Jenkins, M. Koch, N. Kulkarni, C. Massey, C. McCoy, C. Miller, J. Miller, P. Minter, K. Moser, J. Nemes, R. Palumbo, J. Raymond, S. Santoro, J. Sims Jr, M. Sorolis, C. Stevenson, S. Westrom, B. Wheatley, R. Wiederstein, L. Willner

AMENDMENT SPONSOR(S): . . .

TITLE: AN ACT relating to wagering and making an appropriation therefor.

SUMMARY OF LEGISLATION: Establish KRS Chapter 239 and create new sections to define "adjusted gross revenue," "beginner," "cabinet," "confidential information," "entry fee," "fantasy contest," "fantasy contest operator," "fantasy contest participant," "highly experienced player," "immediate family," "location percentage," "person," "principal stockholder," "registered fantasy contest operator," "script," "secretary," and "wager"; establish requirements for registration as a fantasy contest operator; require the cabinet to promulgate administrative regulations for the operation of fantasy contests; establish the wagering administration fund and direct the uses of that fund; establish the Kentucky problem gambling assistance account and direct the uses of that account; require an annual audit of fantasy contest registrants; establish requirements for fantasy contest procedures; amend KRS 230.210 to define "professional sports venue" and "sports wagering"; create new sections of KRS Chapter 230 to require the racing commission to institute a system of sports wagering at tracks and other specified locations; limit the types of events upon which wagers may be placed; amend KRS 230.215 to declare the intent to allow citizens to enjoy sports wagering and allow the racing commission to promulgate administrative regulations prescribing conditions under which sports wagering is to be conducted; amend KRS 230.225, 230.240, and 230.260 to include sports wagering; create a new section of KRS Chapter 230 to establish sports wagering licensure requirements; amend KRS 230.320 to conform; amend KRS 230.361 to include sports wagering; amend KRS 230.3615 to conform; create a new section of KRS Chapter 138 to define "adjusted gross income" and impose a tax on sports wagering; amend KRS 230.362, 230.363, 230.364, 230.365, 230.366, 230.369, 230.371, 230.372, 230.373, 230.374, and 230.750 to conform; create a new section of KRS Chapter 230 to prohibit participants from wagering on events in which they participate and to prohibit tampering with the outcome of a sporting event; amend KRS 230.990 to provide penalties for participants who wager on sporting events or tamper with the outcome of a sporting event; amend KRS Chapter 154A.010 to define "net poker revenue," "online poker," and "rake"; amend KRS 154A.050 and 154A.060 to include conducting online poker games; amend KRS 154A.063 to delete restriction on playing cards and where winners are based on the outcome of a sports contest; amend KRS 154A.070 to include online poker; amend 154A.110 to prohibit anyone under 18 from placing a wager through an online poker game; amend KRS 154A.120 to include online poker; amend KRS 154A.130 to exempt online poker; create new sections of KRS Chapter 154A to require licensure for online poker games; require the Lottery Corporation to promulgate requirements in conformance with federal law for providers through administrative regulations; establish licensing fees; impose a gaming fee on providers; establish the Kentucky Lottery Corporation online poker account and provide for the uses of the funds deposited therein; amend KRS 154A.600 to include online poker; amend KRS 243.500 to exempt sports wagering and online poker; amend KRS 525.090 to exempt sports wagering; amend KRS 528.010 to exempt fantasy contests, sports wagering, and online poker and the devices used in the conduct of those forms of wagering; amend KRS 528.020, 528.070, and KRS 528.080 to exempt fantasy contests, sports wagering, and online poker; create a noncodified section to assert that the provisions of the Act are severable.

AMENDMENT: Add definitions of "net poker revenue," "online poker," and "rake" to KRS Chapter 239; remove oversight of online poker from the Lottery Corporation and place online poker under the Public Protection Cabinet in newly created sections of KRS Chapter 239; segregate sports wagering from advanced deposit wagering; establish a January 1, 2022 end point for the requirement to download the sports wagering phone application at a licensed venue; remove the prohibition on wagering on Kentucky collegiate teams; delete the provision for the professional sports leagues to submit names for consideration for membership on the Kentucky Horse Racing Commission.

This bill amendment committee substitute is expected to:

Have the following Corrections impact Have no Corrections impact

- | | |
|---------------------------------------------------------------------------------------|------------------------------------------------------------------|
| <input checked="" type="checkbox"/> Creates new crime(s) | <input type="checkbox"/> Repeals existing crime(s) |
| <input type="checkbox"/> Increases penalty for existing crime(s) | <input type="checkbox"/> Decreases penalty for existing crime(s) |
| <input type="checkbox"/> Increases incarceration | <input type="checkbox"/> Decreases incarceration |
| <input type="checkbox"/> Reduces inmate/offender services | <input type="checkbox"/> Increases inmate/offender services |
| <input type="checkbox"/> Increases staff time or positions | <input type="checkbox"/> Reduces staff time or positions |
| <input checked="" type="checkbox"/> Changes elements of offense for existing crime(s) | |
| <input type="checkbox"/> Otherwise impacts incarceration (Explain) . | |
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STATE IMPACT: Class A, B, & C felonies are based on an average daily prison rate of \$75.91. Community Custody Class C and most Class D felons are housed in one of 77 full service jails for up to 5 years. Department of Corrections' cost to incarcerate a felony inmate in a jail is \$36.70 per day, which includes \$31.34 per diem, medical costs, & central office administrative costs

(substance abuse treatment not included). *Projections are based on the daily rate x 365 days x number of years. Offenders may have multiple offenses or incarcerated on other charges unless otherwise noted. Unless otherwise noted, numbers will include inchoate offenses at the underlying offense level.*

Projected Impact: NONE MINIMAL to MODERATE (< \$1 million) SIGNIFICANT (> \$1 million)

The proposed legislation creates a new Class C felony offense under KRS 230.990 of tampering with the outcome of a sporting event. Tampering occurs when a person interacts with a player, coach, referee, or other participant with the intent to persuade the individual to act in a way that would alter the outcome of the sporting event or alter actions within the sporting event.

Tampering with the outcome of a sporting event would be a Class C felony, subject to possible incarceration in a Kentucky state prison at an average cost of \$75.91 per day or at a local detention center at a cost to the state of \$36.70, depending on eligibility for community custody.

Additionally, wagering on a sporting event in which he or she is a participant is prohibited and shall be subject to a Class A misdemeanor. A participant is defined as: players; coaches; referees or other officials involved in enforcing the rules of the game; spouses and close family members of players, coaches, referees/officials; owners or shareholders of professional sports teams who might have influence over players and coaches through the ability to hire or fire; and employees of companies supplying technology or services related to sports wagering to a professional sports venue or track.

Under modifications to KRS 528.020 unlawful gambling activity is specified as gambling activity not authorized under KRS 154A, 230, or 239. Promoting Gambling 1st Degree is when an individual knowingly profits from unlawful gambling activity by 1) engaging in bookmaking and receiving more than \$500 in bets in one day, 2) receiving money or written records (where chances or plays are represented by money or records) from a lottery or mutuel scheme, or receiving more than \$500 in one day played in the scheme or enterprise, or 3) setting up and operating a gambling device.

Under KRS 528.070 activities not authorized under KRS 154A, 230, or 239 are added. Permitting gambling is having possession or control of premises which are known to advance unlicensed gambling activity and failing to halt the gambling activity within a reasonable period of time. Permitting Gambling is a Class B misdemeanor.

Additionally, KRS 528.080 also adds gambling devices not authorized under not authorized under KRS 154A, 230, or 239. Possession of a Gambling Device is when an individual knowingly manufactures, sells, transports, places, or possesses a gambling device or conducts a transaction of a gambling device, believing it to be used in the advancement of unlawful gambling activity. Possession of a Gambling Device is a Class A misdemeanor.

The legislation also provides licensing/registration restrictions based on criminal history. Provisions for severability are included.

AOC records reflect sixty-six (66) convictions from FY2017-FY2019 surrounding Permitting Gambling, Possession of a Gambling Device, Possession of Gambling Records, and Promoting Gambling 1st and 2nd Degree (includes inchoate offenses). AOC records do not reflect any offenders convicted in FY2017-FY2019 under KRS 518.040 Sports Bribery, KRS 518.050 Receiving Sports Bribe, or KRS 518.060 Tampering with or rigging Sports Contest.

The Department of Corrections currently has zero (0) offenders incarcerated for gambling related offenses, including Sports Bribery, Receiving Sports Bribe, or Tampering/Rigging Sports Contest, but there are nine (9) offenders on supervision for Gambling offenses under KRS 528.

It is not possible to estimate how many offenses of tampering with the outcome of a sporting event would occur in the Commonwealth. Overall, the impact to the Department of Corrections resulting from this legislation is not expected to be significant due to limited convictions of this specific offense.

A Class C Felony sentence is 5 to 10 years.

1 Class C Felon costs KY \$138,541.366 to \$277,082.72

10 Class C Felons cost KY \$1,385,413.59 to \$2,770,827.17

100 Class C Felons cost KY \$13,854,135.86 to \$27,708,271.72

LOCAL IMPACT: Local governments are responsible for the cost of incarcerating individuals charged with Class A or B misdemeanors and felony defendants until disposition of the case. While the expense varies by jail, this estimated impact will be based on \$31.34 per day, which equals the per diem and medical that DOC pays jails to house felony offenders. Since the per

diem is an estimated average cost of housing an inmate, the per diem may not be the actual housing cost for the jail. *Projections are based on the daily rate x 365 days x number of years. Offenders may have multiple offenses or incarcerated on other charges unless otherwise noted. Unless otherwise noted, numbers will include inchoate offenses at the underlying offense level.*

Projected Impact: NONE MINIMAL to MODERATE (< \$1 million) SIGNIFICANT (> \$1 million)

The legislation establishes a Class C felony. Class C offenders may be eligible to serve their sentences at the county jail if qualifying for community custody, based on length of sentence remaining and custody classification. Jails receive \$31.34 per diem for state offenders serving their sentence in a county jail.

The legislation establishes a Class A misdemeanor for wagering on a sporting event if a participant. Misdemeanors are subject to the jurisdiction and cost of the county.

The modifications for Promoting Gambling, Permitting Gambling, or Possession of a Gambling Device under this legislation are not expected to significantly alter the number of convictions under these offenses.

Overall, it is expected that the number of offenders sentenced to incarceration for this offense is likely to be minimal.

A Class A misdemeanor is 90 days to 1 year in jail.
1 Class A misdemeanor: \$2,820.60 to \$11,439.10

10 Class A misdemeanants: \$28,206.00 to \$114,391.00
100 Class A misdemeanants: \$282,060.00 to \$1,143,910.00

Projected Corrections Impact from Amendments:

The House Committee Substitute moves definitions for net poker revenue, online poker, and rake from KRS 154A to KRS Chapter 239. Sections 8-9 specific to online poker are moved from KRS Chapter 154 to Chapter 239. Section 11 provides for a January 2022 start date for a downloadable smart phone application. Until that time, availability requires in-person registration at a licensed track or professional sports venue. Section 12 language is removed which prohibited sports wagers on any collegiate sporting event in which a Kentucky team was competing. Wording is added for consultation with the league related to specific actions which do not represent the end result of the game. Under Section 14 (KRS 230.255) wording is removed for appointment recommendations to the Kentucky Horse Racing Commission by professional sports leagues. Language is also added tasking the Racing Commission to develop a program to share wagering information to help identify potential problems or questionable wagering activity. Wording is removed from Section 16 (KRS 230.260) related to reporting requirements as well as removing sports wagering from Racing Commission jurisdiction over advance deposit account wagering.

There are no changes to the criminal penalties under Section 34 (KRS 230.990), which creates the Class C felony of tampering with the outcome of a sporting event and the Class A misdemeanor of wagering on a sporting event if a participant. Several statutes under KRS 154A are removed from the legislation. Under Section 36 (KRS 525.090), in addition to sports wagering licensed under KRS Chapter 230, wording for fantasy contests and online poker authorized under KRS Chapter 239 is added to the violation of law for Loitering. Under Section 37 (KRS 528.010) the definition of gambling, gambling device, and other related definitions removes the reference to gambling activity authorized under KRS 154A. The same modifications removing the reference to KRS 154A (State Lottery) are made in Sections 38-40 (KRS 528.020, KRS 528.070, and KRS 528.080) for the criminal offense of Promoting Gambling, Permitting Gambling, and Possession of a Gambling Device.

The impact to incarceration at the state and local level under the House Committee Substitute remains in the minimal to moderate range.

The following offices contributed to this Corrections Impact Statement:

Dept. of Corrections Dept. of Kentucky State Police Administrative Office of the Courts Parole Board Other

NOTE: *Consideration should be given to the cumulative impact of all bills that increase the felon population or that impose new obligations on state or local governments. The Department of Corrections and local jails continue to operate over capacity. Without steps to reduce the population, any legislation that increases population or lengthens the term of incarceration will have a significant impact on correctional operations.*

APPROVED BY: Kathleen M. Kenney **1/17/2020**
Commissioner, Kentucky Department of Corrections Date