

**Local Government Mandate Statement
Kentucky Legislative Research Commission
2023 Regular Session**

Part I: Measure Information

Bill Request #: 1103

Bill #: SB 73

Document ID #: 2050

Bill Subject/Title: AN ACT relating to wagering and making an appropriation therefor.

Sponsor: Senator David Yates

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

Office(s) Impacted: Law enforcement, Jails

Requirement: Mandatory Optional

Effect on
Powers & Duties: Modifies Existing Adds New Eliminates Existing

**Part II: Bill Provisions and the Estimated Fiscal Impact Relating to Local
Government**

SB 73 would authorize fantasy sports contests, sports wagering, and online poker games.

Sections 1-6 govern “fantasy contests” or simulated games played for prizes and awards.

Section 1 provides several definitions which include “fantasy contest” and “online poker.”

Section 2 requires that an operator of a fantasy contest with 100 or more participants would be required to register with the Public Protection Cabinet (PPC). The initial registration fee would be \$5,000; the annual renewal fee would be either 6% of adjusted gross revenues for the prior calendar year, or \$5,000, whichever is greater.

Section 4 establishes the wagering administration account to receive all funds under the bill and pay program expenses incurred by the PPC. The remainder would be deposited in the Kentucky permanent pension fund established in KRS 42.205.

Sections 7-8 authorize the PPC to oversee online poker. No person under 18 would be allowed to place an online poker game wager. A vendor that wishes to offer online poker gaming must obtain a license from the cabinet, with an initial licensing fee of \$250,000 and an annual renewal fee of \$10,000. A gaming fee of 6.75% of net poker revenue would also be imposed on each online poker vendor. The online poker account is established to which licensing and gaming fees would be deposited. Payments received in excess of expenses incurred would be deposited to the **Kentucky permanent pension fund**.

Section 9 adds the definition of “**sports wagering**” to mean the placing of wagers on the outcomes of professional sports contests and other events conforming to federal law and as authorized by the racing commission.

Sections 10-31 establishes a system of sports wagering, under the jurisdiction of the Kentucky Horse Racing Commission, that could only be offered by a licensed track. A license to offer sports wagering would be required, with an initial licensing fee of \$500,000 and annual renewal fee of \$50,000, payable to the Commission and deposited to the wagering administration fund. The tax rate on sports wagers would be 9.75% on the adjusted gross revenue from wagers placed at the licensed track or 14.25% on the adjusted gross revenue received from off-site technology.

Section 32-33 prohibits a person from wagering on a game in which the person is a participant. Violation of the prohibition would be a Class A misdemeanor, and tampering with the outcome of a sporting event would be a Class C felony.

Section 35 exempts the crime of loitering from application to persons engaged in licensed sports wagering.

Section 36 exempts authorized sports wagering, online poker wagering, and fantasy contest wagering activities from the definition of “gambling”. Exempts devices used in the conduct of fantasy contest, online poker, or sports wagering from the definition of “gambling devices”.

Sections 37-39 exempts the same activities from the provisions relating to promoting various gambling offenses.

SB 73 would have an indeterminate to moderate positive fiscal impact in those communities with tracks or professional sports venues having a license to offer sports wagering.

There is insufficient data currently to estimate the fiscal impact of increased wagering at race tracks because of its possible negative fiscal impact on historical horse racing.

Occupational License Fees and Taxes

If sports wagering results in increased business activity, those local governments authorized to impose a license or occupational tax on businesses within their jurisdiction and that have a track or professional sports venue may see an increase in collections. Cities

and counties may impose a license or occupational license fee of 1%-1.25% (counties) depending on the county population, or up to 1.25% (cities) depending on city classification, on payroll and net profits or gross receipts.

As of 2021, 157 cities, 47 counties, Louisville/Jefferson County Metro Government, and Lexington Fayette Urban-County Government impose an occupational tax or fee. The average tax on payroll is 1.23%. A first-class city may impose a license fee of up to 1.25% on wages and net profits; home rule cities may levy franchise and license fees with no maximum rate specified. An occupational license fee paid by a track or venue to a city would be credited against such a fee levied by the county, so that the business would only pay the county the difference between the two fees. If a venue employed five additional people at an average salary of \$42,000, the average rate of 1.23% would generate approximately \$2,600 per year. Revenue on net profits or gross receipts would be in addition to or in lieu of the payroll tax. However, there is too little data to quantify net profits or gross receipts in the first two years.

Retirement Systems

Most cities and counties participate in the County Employees Retirement System (CERS). Distributions to the permanent pension fund established by KRS 42.205 through **Section 4** would be used to support unfunded liabilities of the Commonwealth's pension funds. If any distributions were made to Kentucky Public Pensions Authority and subsequently applied to CERS, there could be a positive fiscal impact on any unfunded actuarial liability.

The bill would have an indeterminate to minimal fiscal impact as a result of new criminal penalties. The bill creates a new Class A misdemeanor and a new Class C felony. A person convicted of a Class A misdemeanor may be incarcerated for up to 12 months. Misdemeanants are housed in one of Kentucky's 74 full-service jails or three life safety jails. While the expense of housing inmates varies by jail, this estimated impact will be based on an average cost to incarcerate of \$40.11 per day. While most misdemeanor defendants are granted bail, those who do not will also cost local jails an average cost to incarcerate of \$40.11 per day.

When a court denies bail to a Class C felony defendant, the local government is responsible for incarcerating the defendant until disposition of the case in one of Kentucky's 74 full-service jails or three life safety jails. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an average cost to incarcerate of \$40.11, which includes the \$35.34 per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. Class C felons are ineligible for placement in local jails until they are classified at the lowest custody level with 24 months or less to their minimum expiration date or parole eligibility date. The Department of Corrections pays a jail \$35.34 per day to house a Class C felon. The per diem may be less than, equal to, or greater than the actual housing cost.

There could be fewer prosecutions related to loitering and gambling as a result of the exemptions in Sections 35-39.

Part III: Differences to Local Government Mandate Statement from Prior Versions

Part II refers to SB 73 as introduced.

Data Source(s): LRC Staff, Kentucky Department of Corrections

Preparer: WB (RB) **Reviewer:** KHC **Date:** 3/3/23