

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 3532

STATE OF NEW JERSEY
217th LEGISLATURE

ADOPTED JANUARY 30, 2017

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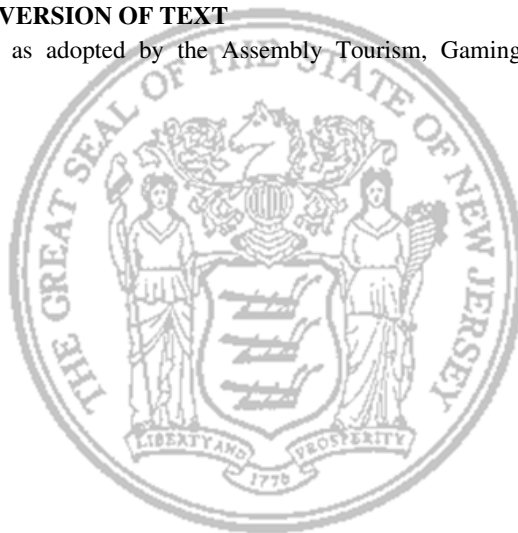
Assemblyman Giblin

SYNOPSIS

Provides for regulation of fantasy sports activities in New Jersey.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Tourism, Gaming and the Arts Committee.



1 **AN ACT** providing for the regulation of fantasy sports activities and
2 supplementing Title 5 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. The Legislature finds and declares as the public policy of
8 this State that:

9 (1) Under the New Jersey Constitution, gambling activities may
10 not be authorized without voter approval;

11 (2) New Jersey courts define gambling as contests in which the
12 elements of chance are considered to play a predominant role or
13 affect a material impact upon the results of the contest;

14 (3) Participation in fantasy sports activities cannot be
15 considered gambling under New Jersey laws because fantasy sports
16 activities are contests in which the relative skill of the participants
17 predominates to a degree that chance plays no material role in
18 determining the outcome of the activities;

19 (4) Further, there is a longstanding and still growing national
20 consensus that fantasy sports activities do not constitute gambling,
21 as shown by the enactment of federal statutes; state laws in New
22 York, Massachusetts, Kansas, Tennessee, and several other states;
23 and current New Jersey regulations adopted by the Division of
24 Gaming Enforcement finding that fantasy sports activities do not
25 constitute gambling; and

26 (5) Therefore, it is within the New Jersey Legislature's
27 constitutional authority to authorize and regulate fantasy sports
28 contests.

29 The Legislature further finds and declares that:

30 (6) Fantasy sports are popular and quickly expanding
31 commercial activities for tens of thousands of New Jersey residents;

32 (7) Investigation of the industry in other states has revealed
33 instances of unethical behavior by some employees of fantasy
34 sports operators, which is enabled by lack of adequate regulation
35 and oversight;

36 (8) It is in the State's interest to protect participants and
37 promote a positive business environment in the conduct of fantasy
38 sports activities;

39 (9) Therefore, it is proper and fitting for the Legislature to
40 regulate the fantasy sports industry and protect consumers of
41 fantasy sports activities in New Jersey; and

42 (10) Fantasy sports activities conducted in accordance with the
43 provisions of P.L. , c. (C.) (pending before the Legislature
44 as this bill) by an operator holding a permit to do so do not
45 constitute:

46 (a) an authorized game or authorized gambling game as defined
47 in section 5 of P.L.1977, c.110 (C.5:12-5);

48 (b) a contest of chance as defined in N.J.S.2C:37-1;

- 1 (c) gambling as defined in N.J.S.2C:37-1;
- 2 (d) a gambling transaction pursuant to N.J.S.2A:40-1; or
- 3 (e) lottery as defined in N.J.S.2C:37-1.

4

5 2. a. As used in this section:

6 “entry fee” means cash or a cash equivalent that is paid by a
 7 participant to a fantasy sports operator to participate in a fantasy
 8 sports activity offered by that operator, but shall not include a fee
 9 paid to an operator that does not offer a prize;

10 “fantasy sports activity” or “fantasy sports activities” means any
 11 fantasy or simulated activity or contest with an entry fee in which a
 12 participant owns or manages an imaginary team and competes
 13 against other participants or a target score for a predetermined prize
 14 with the outcome reflecting the relative skill of the participants and
 15 determined by statistics generated based on performance by actual
 16 individuals participating in actual competitions or athletic events,
 17 provided that the outcome shall not be based solely on the
 18 performance of an individual athlete, or on the score, point spread,
 19 or any performance of any single real team or combination of real
 20 teams; “fantasy sports activity” shall not include any activity in
 21 which no entry fee is paid to the fantasy sports operator or in which
 22 a prize is not collected, managed, or awarded by the operator;

23 “fantasy sports gross revenue” means, for each fantasy sports
 24 activity, the amount equal to the total of all entry fees that a fantasy
 25 sports operator collects from all participants less only the total of all
 26 prizes paid out as prizes to all participants multiplied by the location
 27 percentage for this State;

28 “fantasy sports operator” or “operator” means a business entity,
 29 including a casino licensee or the holder of a permit to conduct a
 30 horse race meeting, that has been issued a permit by the Division of
 31 Consumer Affairs in the Department of Law and Public Safety to
 32 offer persons the opportunity to participate in a fantasy sports
 33 activity;

34 “location percentage” means, for each authorized fantasy sports
 35 activity, the percentage rounded to the nearest tenth of one percent
 36 (0.1%) of the total entry fees collected from players located in this
 37 State, divided by the total entry fees collected from all players in
 38 the fantasy sports activity; and

39 “prohibited participant” means an individual who has access to
 40 non-public confidential information about fantasy sports activities,
 41 any athlete whose performance may be used to determine the
 42 outcome of a fantasy sports activity in the sport with which the
 43 athlete is associated, any team employee, referee, or league official
 44 in a fantasy sports activity in the sport with which that person is
 45 associated, and any sports agent associated with any sport used for
 46 fantasy sports activities.

1 b. The Division of Consumer Affairs in the Department of Law
2 and Public Safety shall be responsible for the regulation of fantasy
3 sports activities in this State.

4 A fantasy sports operator applicant seeking to conduct fantasy
5 sports activities in this State shall apply to the division for a permit
6 to conduct such activities on such forms and in such manner as the
7 division shall require. The division shall promptly investigate each
8 application, and shall oversee the conduct of activities. The
9 division shall charge a permit fee to each fantasy sports operator
10 applicant that applies for a permit in an amount sufficient to cover
11 the division's cost in issuing fantasy sports permits and overseeing
12 the conduct of such activities, which permit fee shall be in addition
13 to the quarterly operations fee required pursuant to subsection g. of
14 this section. The division shall have the authority to inspect the
15 facilities of fantasy sports operators in order to ensure the integrity
16 of fantasy sports activities.

17 The division shall allow a fantasy sports operator applicant
18 operating fantasy sports activities on the date of enactment of this
19 act, P.L. , c. (C.) (pending before the Legislature as this
20 bill), to continue to legally operate for up to 60 days after
21 applications for permits are made available to the public by the
22 division. Operator applicants who have applied for a permit during
23 that 60 day period may continue to operate while the application is
24 pending. A provider of fantasy sports activities that has not applied
25 for a permit shall cease operations in this State by the expiration of
26 the 60 day period. A fantasy sports operator applicant that is not
27 operating fantasy sports activities in this State on the effective date
28 of this act shall be prohibited from operating fantasy sports
29 activities pending approval of the applicant's application for a
30 permit.

31 Upon the granting of a permit, a fantasy sports operator may
32 continue to operate fantasy sports activities pending the renewal of
33 the operator's permit, provided that the operator has applied for the
34 renewal in a timely manner.

35 c. (1) With respect to a fantasy sports operator that is a casino,
36 all equipment used by the holder of the permit, including computers
37 and servers, to conduct fantasy sports activities shall be physically
38 located within the boundaries of the municipality specified in
39 section 20 of P.L. 2013, c.27 (C.5:12-95.22) for the location of
40 Internet gambling equipment.

41 (2) With respect to a fantasy sports operator that is not a casino,
42 at least one server used to conduct fantasy sports activities shall be
43 physically located within the boundaries of the municipality
44 specified in section 20 of P.L. 2013, c.27 (C.5:12-95.22) on or
45 before January 1, 2018.

46 d. The division shall regulate the conduct of fantasy sports
47 activities by fantasy sports operators that have been issued a permit
48 by the division to conduct fantasy sports activities.

1 e. The division shall permit a fantasy sports operator to
2 conduct fantasy sports activities subject to the following conditions:
3 the outcome of fantasy sports activities shall be determined by
4 statistics generated based on the performance of actual individuals
5 participating in real competitions or athletic events;
6 all prizes offered to participants shall be established and
7 disclosed in advance to all participants;
8 the outcome shall not be based solely on the performance of an
9 individual athlete, or on the score, point spread, or any performance
10 of a single real team or combination of real teams;
11 a fantasy sports operator may permit participants to use a mobile
12 account or a participant deposit account;
13 a casino licensee or licensed racetrack may use its facilities to
14 accept entry fees and to pay prizes;
15 a casino licensee may partner with, or enter into a contract with,
16 one or more fantasy sports operators to offer fantasy sports
17 activities, notwithstanding the provisions of section 104 of
18 P.L.1977, c.110 (C.5:12-104); and
19 a participant in a fantasy sports activity shall be at least 18 years
20 of age.

21 f. A fantasy sports operator shall:
22 use commercially reasonable practices to prohibit the sharing of
23 statistical information with third parties that could affect a fantasy
24 sports activity until that information is publicly available;
25 adopt procedures to ensure that any prohibited participant does
26 not participate in fantasy sports activities;
27 adopt procedures to ensure that a fantasy sports participant is at
28 least 18 years of age;
29 offer individuals the ability to restrict themselves from
30 participating in fantasy sports activities and take reasonable steps to
31 prevent any such individual from participating in fantasy sports
32 activities;
33 prohibit fantasy sports activities based upon high school
34 athletics;
35 contract with a certified public accountant to perform a financial
36 audit of the operator to ensure compliance with the provisions of
37 this section and submit the accountant's report to the division on an
38 annual basis;
39 disclose the number of entries a participant may submit to each
40 fantasy sports activity and take reasonable steps to prevent a
41 participant from exceeding that number; and
42 segregate participants' funds from operational funds and
43 maintain a reserve in cash, cash equivalents, payment processor
44 reserves and receivables; and an irrevocable letter of credit, a bond,
45 or a combination thereof in the amount of the deposits in
46 participants' accounts for the benefit and protection of participants'
47 funds held in fantasy sports activity accounts.

1 g. A fantasy sports operator shall pay, on a quarterly basis, to
2 the division for deposit into the general fund of the State, an
3 operations fee in an amount equal to 10.5 percent of fantasy sports
4 gross revenue for each quarter. The administration of the
5 operations fee, including but not limited to the form, method, and
6 manner of the assessment, collection, and enforcement thereof, shall
7 be as determined by the division pursuant to regulations that,
8 notwithstanding any provisions of the "Administrative Procedure
9 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), may be adopted by the
10 division immediately upon filing with the Office of Administrative
11 Law the regulations as the division deems necessary to implement
12 this subsection, which regulations shall be effective for a period not
13 to exceed 360 days following the date of enactment of P.L. ,
14 c. (pending before the Legislature as this bill) and may thereafter
15 be amended, adopted, or readopted by the division in accordance
16 with the "Administrative Procedure Act," P.L.1968,
17 c.410 (C.52:14B-1 et seq.).

18 With respect to a fantasy sports operator that is a casino, an entry
19 fee, management fee, or other revenue generated from a fantasy
20 sports activity shall not be considered "gross revenue" as defined in
21 section 24 of P.L.1977, c.110 (C.5:12-24) or "Internet gaming gross
22 revenue" as defined in section 6 of P.L.2013, c.27 (C.5:12-28.2),
23 and no investment alternative tax provided for by any other
24 provision of law shall apply to fantasy sports operators.

25 h. (1) Any person who provides fantasy sports activities
26 without approval of the division shall be subject to a fine of not
27 more than \$25,000 and, in the case of a person other than a natural
28 person, to a fine of not more than \$100,000.

29 (2) Any person who knowingly tampers with software,
30 computers, or other equipment used to conduct fantasy sports
31 activities to alter the payout of an activity or disables the activity
32 from operating according to the rules of the activity as promulgated
33 by the division shall be subject to a fine of not more than \$50,000
34 and, in the case of a person other than a natural person, to a fine of
35 not more than \$200,000.

36 (3) Any person who knowingly offers or allows to be offered
37 any fantasy sports activity that has been tampered with in a way that
38 affects the payout of an activity or disables the activity from
39 operating according to the rules of the activity as promulgated by
40 the division shall be subject to a fine of not more than \$50,000 and,
41 in the case of a person other than a natural person, to a fine of not
42 more than \$200,000.

43 (4) Any person who violates any provision of this section shall
44 be subject to a fine of not more than \$25,000 and, in the case of a
45 person other than a natural person, to a fine of not more than
46 \$100,000, and to injunctive relief to prevent future violations of this
47 section.

1 (5) Notwithstanding the penalties provided for in this
2 subsection, the division shall, in accordance with the
3 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
4 seq.), adopt and promulgate such rules and regulations as may be
5 necessary to address additional violations of this section. The
6 division shall also have the authority to disqualify an operator either
7 by allowing the operator to voluntarily withdraw from the operation
8 of fantasy sports activities, or by suspending the operations of the
9 operator, or by revoking the permit to conduct such operations.

10 (6) The fines provided by this subsection shall be in addition to
11 any fine or penalty that may be imposed pursuant to any criminal
12 law of this State.

13 i. Fantasy sports activities shall be conducted in New Jersey
14 only in accordance with the provisions of this section.
15

16 3. This act shall take effect on the 90th day after the date of
17 enactment, except that the Division of Consumer Affairs may take
18 any anticipatory administrative actions in advance as shall be
19 necessary for the implementation of this act.