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MEMORANDUM

April 14, 2016

TO: Interested Persons
FROM: Luisa Altmann, Research Analyst, 303-866-3518
SUBJECT: Regulation of Fantasy Sports Contests

Summary

This memorandum provides an overview of the current legal status of fantasy sports contests and legislation related to fantasy sports contests currently being considered by states.

Background

Fantasy sports include season-long fantasy sports contests, where an individual manages a fantasy team for an entire season, and daily fantasy sports contests, where an individual selects a fantasy team for a single day. The fantasy team's performance is based on the actual statistical performance of athletes during real-world games. Individuals often pay an entry fee to enter a fantasy team in a fantasy sports contest and may win prize money based on the fantasy team's performance compared to other fantasy teams entered in the fantasy contest.

Federal law. The U.S. Unlawful Internet Gambling Enforcement Act (UIGEA) exempts the participation in any fantasy or simulation sports game that meets specific conditions from unlawful gambling under UIGEA. UIGEA specifies that in order to be lawful, winning outcomes in fantasy contests must reflect the relative knowledge and skill of participants and must be determined by the aggregate statistical performance of multiple individual athletes.¹

Current status. Twenty-five states are currently considering legislation to formally legalize fantasy sports contests under state law. Additionally:

- seven states (Indiana, Kansas, Maryland, Massachusetts, Nevada, Rhode Island, and Virginia) have taken action to make fantasy sports contests explicitly legal;
- four states (Iowa, Louisiana, Montana, and Washington), have laws that prohibit fantasy sports;

¹31 U.S.C. § 5362 (1)(E)(ix).

- seven states' attorneys general (Arizona, Florida, Hawaii, Illinois, Mississippi, Tennessee, and Texas) have issued opinions stating that fantasy sports contests are illegal under state gambling laws; and
- the attorneys general in New York and Alabama issued cease-and-desist letters to FanDuel and DraftKings, two of the main companies providing daily fantasy sports contests across the country.

Table 1 provides a summary of state actions related to fantasy sports contests.

Main Components of State Legislation

Generally, state legislation to regulate fantasy sports contest operators addresses one or more of the following areas.

Licensing. States may require fantasy contest operators to obtain a license issued by a state department and pay an initial and/or annual licensing fee.

Consumer protections. States may require fantasy contest operators to implement measures designed for consumer protection. For example:

- preventing employees of the company and family members from competing in fantasy contests run by the company;
- preventing companies from sharing confidential information with third parties;
- preventing minors (defined as those under 18 years of age or under 21 years of age) from participating in fantasy sports contests; and
- allowing individuals to restrict themselves from entering fantasy contests upon request.

Audits. States may require fantasy contest operators to conduct annual independent audits.

Penalties. States may create a civil penalty for violations of the law.

Exclusion from gambling provisions under state law. States may specify that fantasy sports are not considered gambling, gaming, and/or betting under state law.

Table 1
State Actions Related to Fantasy Sports Contests

State	Summary of Actions & Legislation
Alabama	<p>On April 5, 2016, after determining that paid daily fantasy sports contests constitute illegal gambling under state law, the Alabama Attorney General issued cease-and-desist letters to DraftKings and FanDuel demanding that the companies stop offering paid daily fantasy sports contests in Alabama.</p> <p>House Bill 56/Senate Bill 114 (pending). These bills enact the “Fantasy Contests Act,” which requires fantasy contest operators to implement specific consumer protection measures and conduct annual independent audits. The bills also create a civil penalty for violations and exempt fantasy contests from gambling laws.</p>
Arizona	<p>In 1998, the Arizona Attorney General issued an opinion stating that fantasy football contests that involve a wager are considered gambling and therefore illegal under state law.</p> <p>Senate Bill 1515 (died in committee on February 22, 2016). This bill would have specified that participation in a fantasy sports league competition is not considered gambling under state law.</p>
California	<p>Assembly Bill 1437 (pending). This bill enacts the “Internet Fantasy Sports Games Consumer Protection Act,” which requires Internet fantasy contest operators to be licensed by the Department of Justice and meet specific requirements, follow specific procedures, and implement specific consumer protection measures. The bill also creates a civil penalty for violations.</p>
Colorado	<p>House Bill 16-1404 (pending). The introduced version of this bill enacts the “Fantasy Contests Act,” which creates the Office of Fantasy Contests and requires fantasy contest operators to be licensed by the office, meet specific requirements, implement specific consumer protection measures, conduct annual independent audits, and maintain specific records. The bill also creates a civil penalty for violations.</p>
Connecticut	<p>Senate Bill 192 (pending). This bill requires the Commissioner of Consumer Protection to adopt regulations designed to protect consumers who play daily fantasy sports contests for prizes from unfair or deceptive acts or practices. The bill specifies that these regulations must include consumer protection measures and a registration requirement for daily fantasy sports contest operators. The bill also exempts daily fantasy sports from the definition of gambling.</p>
Florida	<p>A 1991 opinion issued by the Florida Attorney General concluded that the operation of a fantasy league would violate state law if the league’s entry fee was used to make up the prizes since this would make it a “stake, bet, or wager” under state law.²</p> <p>House Bill 707 (died in committee on March 11, 2016). This bill would have created the “Fantasy Contest Amusement Act,” which would have required fantasy contest operators to be licensed by the Division of Regulation and meet specific requirements, implement specific consumer protection measures, conduct annual independent audits, provide training to employees on responsible play and practices, and maintain specific records. The bill would have required the division to provide services related to the prevention of compulsive or addictive behavior. The bill would have created a civil penalty for violations and exempted fantasy contests from gambling.</p> <p>Senate Bill 832 (died in committee on March 11, 2016). This bill would have created the “Fantasy Contest Amusement Act,” which would have created the Office of Amusements and required fantasy contest operators to be licensed by the office, implement specific consumer protection measures, conduct annual independent audits, and maintain specific records. The bill would have created a civil penalty for violations and exempted fantasy contests from gambling.</p>
Georgia	<p>Senate Bill 352 (died on Senate calendar during 2016 session). This bill would have required fantasy contest operators to implement specific consumer protection measures, conduct annual independent audits, and register with the Attorney General. The bill also would have created a civil penalty for violations and specified that fantasy contests are not considered gambling, a bet, or a lottery.</p>

²1991 Fla. Op. Att’y Gen. 91-03.

**Table 1 (Cont.)
State Actions Related to Fantasy Sports Contests**

State	Summary of Actions & Legislation
Hawaii	<p>The Hawaii Attorney General issued an opinion on January 27, 2016, stating that daily fantasy sports contests constitute illegal gambling under existing state law.³</p> <p>Senate Bill 2722/House Bill 1838 (pending). These bills create the “Fantasy Contests Act,” which requires fantasy contest operators to register with the Attorney General, implement specific consumer protection measures, and conduct annual independent audits. The bills also create a civil penalty for violations and specify that fantasy contests are not a contest of chance or considered gambling.</p> <p>House Bill 2111 (pending). This bill makes promoting a fantasy competition in situations outlined in the bill a violation of state gambling laws and provides an affirmative defense in limited situations.</p> <p>Senate Bill 2429 (pending). This bill adds fantasy competitions to the definition of a “contest of chance,” thereby exempting fantasy competitions from state gambling laws.</p>
Illinois	<p>The Illinois Attorney General issued an opinion on December 23, 2015, stating that daily fantasy sports contests constitute illegal gambling under state law.⁴</p> <p>House Bill 4323/Senate Bill 2193 (pending). These bills create the “Fantasy Contests Act,” which requires fantasy contest operators to implement specific procedures for consumer protection, creates a civil penalty for violations, and specifies that fantasy contests are not considered gambling.</p> <p>Senate Bill 2843 (pending). This bill requires the Illinois Gaming Board to adopt rules that regulate how all fantasy sports gaming in the state is to be conducted.</p>
Indiana	<p>Senate Bill 339 (signed by Governor on March 24, 2016). This Act specifies that fantasy sports games do not constitute gambling. The Act also creates the Paid Fantasy Sports Division and requires paid fantasy sports contest operators to be licensed by the division, implement specific consumer protection measures, and conduct annual independent audits. The Act also creates a civil penalty for violations.</p>
Iowa	<p>Current Iowa law is generally interpreted to identify fantasy sports as gambling and within the meaning of a gaming activity based on chance, thereby making fantasy sports contests illegal.</p> <p>Senate Bill 166 (pending). This bill defines a fantasy sports contest as a bona fide contest, thereby exempting it from existing state gambling laws, and requires the Department of Inspections and Appeals to conduct a study and submit a report with recommendations concerning the impact of changing this definition.</p> <p>Senate Study Bill 331 (pending). This bill specifies that Internet fantasy sports contests are legal when conducted by a licensed service provider, requires the State Racing and Gaming Commission to license and regulate service providers, and requires service providers to implement specific consumer protection measures.</p>
Kansas	<p>Kansas law, enacted in 2015, excludes a fantasy sports league from the definition of a bet.⁵</p>
Kentucky	<p>House Bill 625 (pending). This bill requires the Public Protection Cabinet to adopt regulations to establish requirements and standards for the operation of fantasy sports contests.</p>

³2016 Haw. Op. Att’y Gen. 16-1.

⁴2015 Ill. Op. Att’y Gen. 15-007.

⁵Kan. Stat. Ann. § 21-6403 (a)(9).

**Table 1 (Cont.)
State Actions Related to Fantasy Sports Contests**

State	Summary of Actions & Legislation
Louisiana	<p>Louisiana state law, enacted in 1997, specifies that gambling by computer is illegal.⁶</p> <p>House Bill 676/Senate Bill 93 (pending). These bills specify that the participation in any fantasy or simulation sports game or contest shall not be considered gambling or gambling by computer if specific conditions are met.</p>
Maryland	<p>Maryland state law, enacted in 2012, specifies that the provisions against betting, wagering, and gambling do not apply to participation in online fantasy sports competitions and allows the Comptroller to adopt regulations.⁷</p> <p>House Bill 930 (pending). This bill transfers the authority to adopt specified fantasy competition regulations from the Comptroller to the Director of the Lottery and Gaming Control Agency.</p> <p>Senate Bill 976 (pending). This bill requires the State Lottery and Gaming Control Commission to regulate the operation of Internet fantasy sports games. The bill also requires Internet fantasy sports operators to be licensed by the Commission, meet specific requirements, and implement specific consumer protections.</p> <p>Senate Bill 980 (pending). This bill specifies that fantasy competitions are not betting, wagering, or gambling, and requires the State Lottery and Gaming Control Commission to adopt regulations pertaining to fantasy sports competitions.</p>
Massachusetts	<p>The Massachusetts Attorney General filed final regulations for daily fantasy sports wagering on March 25, 2016.⁸ The regulations specify that no one under the age of 21 may play online daily fantasy sports and require daily fantasy sports operators to implement a variety of consumer protection measures.</p>
Michigan	<p>Senate Bill 459 (pending). This bill exempts participation in a fantasy or simulation sports game or contest from gambling.</p>
Minnesota	<p>House Bill 2426/Senate Bill 3369 (pending). These bills specify that fantasy sports contest operators must register with the Commissioner of Public Safety. The bills also place several restrictions on who may play fantasy sports and on the conduct of fantasy sports contest operators, and also specify that fantasy sports contests are not gambling or betting.</p> <p>House Bill 2509 (pending). This bill specifies that participating in any fantasy or simulation sports game is not betting.</p> <p>House Bill 2540 (pending). This bill creates several consumer protection measures that fantasy sports contest operators must implement, and specifies that fantasy sports contests are bona fide contests and not gambling.</p> <p>Senate Bill 3007 (pending). This bill specifies that fantasy sports contests are bona fide contests and not gambling.</p>
Mississippi	<p>The Mississippi Attorney General issued an opinion on January 29, 2016, stating that fantasy sports wagering is illegal under current law.⁹</p> <p>Senate Bill 2541 (pending). This bill creates the “Fantasy Contest Act,” which clarifies that fantasy contests with an entry fee are legal and do not constitute gaming or gambling under state law. The bill also requires fantasy sports contest operators to implement specific consumer protection measures and register with the Commissioner of Insurance. The bill also creates a civil penalty for violations.</p>

⁶La. Rev. Stat. Ann. § 14:90.3.

⁷Md. Code, Crim. Law § 12-114.

⁸940 C.M.R. 34.00.

⁹2016 Miss. Op. Att’y Gen. 2015-00445.

**Table 1 (Cont.)
State Actions Related to Fantasy Sports Contests**

State	Summary of Actions & Legislation
Missouri	<p>House Bill 1941 (pending). This bill exempts certain fantasy sports contests from state gaming laws and specifies that fantasy contests do not constitute gambling. The bill also requires fantasy sports contest operators to register with the Department of Insurance, Financial Institutions, and Profession Registration, implement specific consumer protection measures, and conduct annual independent audits. The bill also creates a civil penalty for violations.</p> <p>Senate Bill 1045 (pending). This bill specifies that fantasy sports contests are not considered gambling.</p> <p>Senate Bill 1131 (pending). This bill creates the “Missouri Daily Fantasy Sports Consumer Protection Act,” which requires Internet daily fantasy sports contest operators to be licensed by the Missouri Gaming Commission, implement specific consumer protection measures, and conduct annual independent audits. The bill also adds the participation in an unlicensed daily fantasy sports game under the definition of gambling.</p>
Montana	Montana law, enacted in 2007, specifies that participation in a fantasy sports league is a gambling activity and that it is illegal to wager on a fantasy sports league by telephone or Internet. ¹⁰
Nebraska	Legislative Bill 862 (pending). This bill specifies that conducting or participating in a fantasy contest does not constitute a gambling activity.
Nevada	On October 15, 2015, the Nevada Gaming Control Board concluded that daily fantasy sports constitute gambling under Nevada law and that in order to lawfully conduct daily fantasy sports contests in Nevada, operators must be licensed by the Nevada Gaming Commission to operate a sports pool. ¹¹
New Jersey	<p>Assembly Bill 872 (pending). This bill requires fantasy sports providers to adopt and enforce a policy prohibiting its employees from playing fantasy sports.</p> <p>Assembly Bill 3532/Senate Bill 1927 (pending). These bills requires daily fantasy sports providers to obtain a permit from the Department of Law and Public Safety, implement specific consumer protection measures, and follow specific procedures. The bills also require daily fantasy sports providers that are not a casino to have at least one server used to conduct daily fantasy sports games physically located within the boundaries of Atlantic City. The bills also require the department to regulate the conduct of daily fantasy sports games and create a civil penalty for violations.</p>
New Mexico	House Bill 314/Senate Bill 279 (died in committee at close of 2016 session). These bills create the “Fantasy Contests Act,” which requires fantasy contest operators to implement specific consumer protection measures and conduct annual independent audits. The bills also exempt fantasy contests from gambling and create a civil penalty for violations.
New York	<p>In November 2015, following an investigation that found FanDuel and DraftKings to be in violation of New York gambling laws, the New York Attorney General issued cease-and-desist letters demanding that the companies stop accepting illegal wagers for daily fantasy sports contests. The companies reached a settlement with the Attorney General's Office on March 21, 2016, to stop operating in New York pending current litigation and legislation.</p> <p>Assembly Bill 8554/Senate Bill 6305 (pending). These bills give the New York State Gaming Commission jurisdiction over fantasy sports gaming.</p> <p>Assembly Bill 8587 (pending). This bill amends the New York Constitution to permit fantasy sports wagering on professional sports.</p> <p>Assembly Bill 8588/Senate Bill 6092 (pending). These bills classify certain fantasy or simulation sports games or contests as games of skill rather than games of chance, thus exempting these fantasy contests from gambling offenses.</p> <p>Senate Bill 6793 (pending). This bill regulates interactive fantasy sports, requiring interactive fantasy sports platform operators to be registered by the newly created Fantasy Sports Contests Division and implement specific safeguards and minimum standards. The bill also exempts interactive fantasy sports contests from gambling.</p>

¹⁰Mont. Code Ann. § 23-5-801, *et seq.*

¹¹Nevada Gaming Control Board Notice No. 2015-99.

**Table 1 (Cont.)
State Actions Related to Fantasy Sports Contests**

State	Summary of Actions & Legislation
Oklahoma	House Bill 2278/Senate Bill 1396 (pending). These bills create the “Oklahoma Fantasy Contests Act,” which requires fantasy sports contest operators to register with the Department of Consumer Credit, implement specific consumer protection measures, and conduct annual independent audits. The bills also create a civil penalty for violations and specify that fantasy contests are exempt from gambling laws.
Pennsylvania	House Bill 941 (approved by Governor on February 23, 2016). This act requires the Pennsylvania Gaming Control Board to submit a report evaluating the potential of fantasy sports as a gambling product in the state, including the need for potential regulation. House Bill 1197 (pending). This bill allows a license gaming entity that holds a valid fantasy sports license to operate fantasy sports tournaments subject to specific conditions.
Rhode Island	The Rhode Island Attorney General sent a letter to the Governor on February 4, 2016, indicating that daily fantasy sports are legal under Rhode Island law and that they do not constitute a game of chance. House Bill 7075 (pending). This bill authorizes the Division of Racing and Athletics to implement online games of skill, including fantasy sports. House Bill 7492 (pending). This bill requires daily fantasy sports contest operators to be licensed by the Department of Business Regulation and provide information to the department for principals and key employees of the company. House Bill 7917 (pending). This bill requires fantasy contest operators to be registered with the Department of Business Regulations and to implement specific consumer protection measures. The bill also creates a civil penalty for violations. House Bill 7938/Senate Bill 2881 (pending). This bill creates the “Fantasy Contests Act,” which requires fantasy contest operators to register with the Department of Business Regulations, implement specific consumer protection measures, and conduct annual independent audits. The bill also creates a civil penalty for violations and exempts fantasy sports from gambling.
South Carolina	Senate Bill 1093 (pending). This bill creates the “Fantasy Contests Act,” which regulates fantasy contest operators and requires them to implement consumer protection measures. The bill also creates a civil penalty for violations and exempts fantasy contests from gambling.
Tennessee	The Tennessee Attorney General issued an opinion on April 5, 2016, stating that paid fantasy sports contests constitute illegal gambling under state law. ¹² House Bill 2105/House Bill 2254/Senate Bill 2109/Senate Bill 2151 (pending). These bills create an advisory task force to review online simulated competitions, including online fantasy football, and recommend any necessary statutory changes that should be made to protect consumers who pay to participate in an online fantasy contest.
Texas	The Texas Attorney General issued an opinion on January 19, 2016, stating daily fantasy sports operators are illegally operating as prohibited gambling in Texas. ¹³ Under this opinion, season-long traditional fantasy sports leagues remain legal.

¹²2016 Tenn. Op. Att’y Gen. 16-13.

¹³2016 Tex. Op. Att’y Gen. KP-0057.

**Table 1 (Cont.)
State Actions Related to Fantasy Sports Contests**

State	Summary of Actions & Legislation
Vermont	Senate Bill 223 (pending). This bill requires fantasy sports contest operators to adopt several consumer protection policies and procedures and to conduct annual independent audits. The bill also creates a civil penalty for violations.
Virginia	Senate Bill 646 (signed by Governor on March 7, 2016). This act creates the “Fantasy Contests Act,” which requires fantasy sports contest operators to register with the Department of Agriculture and Consumer Services, implement specific consumer protection measures, and conduct annual independent audits. The act also creates a civil penalty for violations and specifies that fantasy contests are not illegal gambling.
Washington	According to the Washington State Gambling Commission, online fantasy sports wagering is considered to be illegal online gambling under state law. ¹⁴ House Bill 2370 (pending). This bill specifies that fantasy sports games are games of chance and therefore constitute illegal gambling under the law. The bill also makes it illegal to advertise a fantasy sports game. House Bill 1301/Senate Bill 5284/Senate Bill 6333 (pending). These bills specify that fantasy competitions are games of skill and therefore exempt from state gambling laws.
West Virginia	House Bill 4583/Senate Bill 529 (pending). These bills specify that the offering of or participation in fantasy games is lawful.
Wisconsin	Assembly Bill 800/Senate Bill 702 (died on calendar on April 13, 2016). These bills require fantasy game operators to register with the Department of Financial Institutions and implement specific consumer protection measures. The bills also create a civil penalty for violations and specify that a fantasy game is not betting or a lottery.

Source: Legislative Council Staff.

¹⁴www.wsgc.wa.gov/publications/brochures/5-165-internet-gambling-brochure.pdf.