SPONSOR: Rep. Potter & Sen. Sokola
Reps. Keeley, Schwartzkopf, B. Short; Sens. Bonini, McBride, Poore

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 249

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO INTERACTIVE FANTASY CONTESTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

CHAPTER 48: LOTTERIES

Subchapter III. Interactive Fantasy Contests

§ 4860. Short title.

This subchapter shall be known and may be cited as the "Delaware Interactive Fantasy Contests Act."

§ 4861. Legislative findings and purpose.

(a) The General Assembly hereby finds and declares that:

(1) Interactive fantasy sports are not games of chance because they consist of fantasy sports games or contests in which the fantasy sports teams are selected based upon the skill and knowledge of the participants and not based on the current membership of an actual team that is a member of an amateur or professional sports organization;

(2) Interactive fantasy sports contests are not wagers on future contingent events not under the contestants' control or influence because contestants have control over which players they choose and the outcome of each contest is not dependent upon the performance of any one player or any one actual team. The outcome of any fantasy sports contest does not correspond to the outcome of any one sporting event. Instead, the outcome depends on how the performances of participants' fantasy roster choices compare to the performance of others' roster choices.

(b) Based on the findings in subsection (a) of this section, the General Assembly declares that interactive fantasy sports do not constitute gambling in Delaware within the meaning of §§ 1401 - 1431 of Title 11.

(c) The General Assembly further finds that as the internet has become an integral part of society, and interactive fantasy sports a major form of entertainment for many consumers, any interactive fantasy sports enforcement and regulatory structure must begin from the bedrock premise that participation is lawful and licensed interactive fantasy sports industry is a privilege and not a right, and that regulatory oversight is intended to safeguard the integrity of the games and

participants to ensure accountability and the public trust.

§ 4862. Definitions.

As used in this subchapter the following terms shall have the following meanings:

(1) “Authorized player” means an individual located in Delaware, who is not a prohibited player, that participates in an interactive fantasy sports contest offered by a registrant.

(2) "Collegiate sport or athletic event" means a sport or athletic event offered or sponsored by or played in connection with a public or private institution that offers education services beyond the secondary level.

(3) "Commission" means the Delaware Lottery Commission.

(4) “Director” means Director of the State Lottery Office or his or her designee.

(5) "Entry fee" means cash or cash equivalent that is paid by an authorized player to an operator or registrant to participate in an interactive fantasy sports contest offered by such operator or registrant.

(6) “High school sport or athletic event” means a sport or athletic event offered or sponsored by or played in connection with a public or private institution that offers education services at the secondary level.

(7) “Highly experienced player” means an authorized player who has done one of the following:

a. Entered more than one thousand contests offered by a single operator or registrant.

b. Won more than three prizes valued at one thousand dollars each or more from a single operator or registrant.

(8) "Horse racing event" means any sport or athletic event conducted in Delaware that is subject to the provisions of Chapters 100 and 101 of Title 3, or any sport or athletic event conducted outside of Delaware, which if conducted in Delaware would be subject to the provisions of Chapters 100 and 101 of Title 3.

(9) "Interactive fantasy sports contest" or “contest” means a game of skill wherein one or more contestants compete against each other by using their knowledge and understanding of athletic events and athletes to select and manage rosters of players whose performance directly corresponds with the actual performance of competitors on sports teams and in sports contests.

(10) "Interactive fantasy sports gross revenue" means the amount equal to the total of all entry fees that a registrant collects from all players, less the total of all sums paid out as winnings to all players, multiplied by the resident percentage for Delaware..

(11) “Interactive fantasy sports operator” or “operator” means any person or entity that offers any interactive fantasy sports contest to any player through any interactive fantasy sports platform.

(12) "Interactive fantasy sports platform" or “platform” means the combination of hardware, software, and data

networks used to manage, administer, or control contests and any associated entry fees.

(13) “Interactive fantasy sports registrant” or "registrant" means an operator that is registered by the Director. A registrant may utilize multiple interactive fantasy sports platforms and offer multiple contests.

(14) “Minor” means any person under the age of eighteen years.

(15) "Prohibited players" means any of the following:

a. A member, officer, employee or agent of an operator or registrant.

b. A spouse, child, brother, sister or parent residing as a member of the same household in the principal place of abode of any member, officer, employee or agent of an operator or registrant.

c. An individual with access to non-public confidential information about contests.

d. Professional athlete whose performance may be used to determine the outcome of a contest, in the sport in which that professional athlete competes.

e. A minor.

(16) "Prohibited sports event" means any collegiate sport or athletic event, any high school sport or athletic event or any horse racing event.

(17) “Resident percentage” means, for each interactive fantasy sports contest, the percentage, rounded to the nearest tenth of a percent, of the total entry fees collected from players located in Delaware, divided by the total entry fees collected from all players in interactive fantasy sports contests.(18) “Sports event” shall mean any amateur or professional sport or athletic event, except a prohibited sports event.

§ 4863. Registration.

(a) Registration requirement.

(1) No operator shall administer, manage, or otherwise make available an interactive fantasy sports platform to persons located in Delaware unless registered with the Director pursuant to § 4864 of this subchapter. A registrant may use multiple interactive fantasy sports platforms and offer multiples types of contests. This subchapter, and any and all rules and regulations adopted under the authority of this subchapter, shall apply only to interactive fantasy sports contests for which an authorized player pays an entry fee.

(2) Any operator that offered contests to persons located in Delaware prior to the effective date of this act, may offer contests to persons located in Delaware from the effective date of this act until sixty (60) days after applications for registration are made available to the public by the Director. Operators who have applied for registration during that sixty day period may continue to operate until such operator’s application for registration has been approved or denied in accordance with § 4864 of this subchapter. Operators who have not applied for registration

shall cease operations in this state by the expiration of the sixty day period.

(b) Registration issued by the Director shall remain in effect for three years. The Director shall establish a process for renewal.

(c) The Director shall publish a list of all operators registered in Delaware pursuant to this subchapter on the State Lottery website for public use.

(d) Interactive fantasy sports contests offered by a registrant in accordance with the provisions of this subchapter shall not constitute gambling as defined in §§ 1401 - 1431 of Title 11.

(e) The Director shall promulgate regulations to implement the provisions of this subchapter, including the development of the initial form of the application for registration. Such regulations shall provide for the registration and operation of contests in Delaware and shall include responsible protections with regard to compulsive play and safeguards for fair play.

§ 4864. Scope of registration review.

(a) The Director shall prescribe the initial form of the application for registration which shall include the following requirements:

(1) The full name and principal address of the operator.

(2) If a corporation, the name of the state in which incorporated and the full names and addresses of any partner, officer, director, shareholders holding ten percent or more equity, and ultimate equitable owners.

(3) If a business entity other than a corporation, the full names and addresses of the principals, partners, shareholders holding five percent or more equity, and ultimate equitable owners.

(4) Whether such corporation or entity files information and reports with the United States Securities and Exchange Commission as required by section thirteen of the Securities Exchange Act of 1934, 27 15 U.S.C. §§ 78a-78kk; or whether the securities of the corporation or entity are regularly traded on an established securities market in the United States.

(5) The type and estimated number of contests to be conducted annually.

(6) A statement of the assets and liabilities of the operator.

(b) The Director may require the full names and addresses of the officers and directors of any creditor of the operator, and of those stockholders who hold more than ten percent of the stock of the creditor.

(c) The Director may deny any application for registration, or suspend, refuse to renew, or revoke any existing registration issued pursuant to this subchapter, upon the finding that the operator or registrant, or any partner, officer, or director has done any of the following:

(1) Knowingly made a false statement of material fact or has deliberately failed to disclose any information required by the Director.

(2) Had a registration or license to offer or conduct contests denied, suspended, or revoked in any other state or country for just cause.

(3) Legally defaulted in the payment of any obligation or debt due to any state or political subdivision.

(4) At any time, knowingly failed to comply with any requirement outlined in § 1404 of this chapter, any other provision of this chapter, any regulations promulgated by the Director, or any other additional requirements of the Director.

(d) When the Director denies an application, the operator shall be afforded notice and the right to be heard and offer proof in opposition to such determination in accordance with the regulations of the Director.

§ 4865. Required safeguards; minimum standards.

(a) As a condition of registration, each operator and registrant shall implement commercially reasonable measures to:

(1) Limit each authorized player to one active and continuously used account, and prevent prohibited players from maintaining accounts or participating in any contest offered by such operator or registrant.

(2) Prohibit minors from participating in any contest, which includes:

a. If a registrant becomes or is made aware that a minor has participated in one of its contests, such registrant shall promptly, within no more than two business days, refund any deposit received from the minor, whether or not the minor has engaged in or attempted to engage in a contest; provided, however, that any refund may be offset by any prizes already awarded;

b. Each registrant shall publish and facilitate parental control procedures to allow parents or guardians to exclude minors from access to any contest or platform; and

c. Each registrant shall take appropriate steps to confirm that an individual opening an account is not a minor.

(3) When referencing the chances or likelihood of winning in advertisements or upon contest entry, make clear and conspicuous statements that are not inaccurate or misleading concerning the chances of winning and the number of winners.

(4) Enable authorized players to exclude themselves from contests and take reasonable steps to prevent such players from entering a contest from which they have excluded themselves.

(5) Permit any authorized player to permanently close an account registered to such player, on any or all

platforms supported by such operator or registrant, at any time and for any reason.

(6) Offer introductory procedures for authorized players that explain contest play and how to identify a highly experienced player.

(7) Identify all highly experienced players in any contest by a symbol attached to such players' usernames, or by other easily visible means, on all platforms supported by such operator or registrant.

(8) Disclose the number of entries that a single authorized player may submit to each contest.

(9) Disclose the maximum number of total entries allowed for each contest.

(10) Implement measures to protect the privacy and online security of authorized players and their accounts.

(11) Offer all authorized players information regarding his or her account history and account details;

(l2) Ensure authorized players' funds are protected upon deposit and segregated from the operating funds of such operator or registrant and otherwise protected from corporate insolvency, financial risk, or criminal or civil actions against such operator or registrant.

(13) List on each website, in a prominent place, information concerning assistance for compulsive play, including a toll-free number directing callers to reputable resources containing further information, which shall be free of charge.

(14) Ensure the value of any prizes and awards offered to authorized players shall be established and made known to such players in advance of the contest.

(15) Ensure all winning outcomes reflect the relative knowledge and skill of the authorized players and shall be determined predominantly by accumulated statistical results of the performances of individuals in sports events.

(16) Ensure no winning outcome shall be based on the score, point spread, or performance of a single actual sports team, or any combination of such teams.

(17) Ensure no winning outcome shall be based solely on any single performance of an individual athlete in a single sport or athletic event.

(18) Ensure no game or contest shall be based on a prohibited sports event.

(b) Each registrant shall restrict the number of entries submitted to one entry by a single authorized player for a contest involving 12 entries or fewer. Each registrant shall restrict the number of entries submitted by a single authorized player to two entries for a contest involving 13-36. Each registrant shall restrict the number of entries submitted by a single authorized player to three entries for a contest involving 37-100 entries. In any contest involving more than 100 entries, registrants shall restrict the number of entries submitted by a single authorized player to 3% of all entries or 150 entries, whichever is smaller.

(c) For all advertised contests, the registrant shall prominently include information about the maximum number of entries that may be submitted by a single authorized player for that contest.

(d) Registrants may establish contests, representing less than 2% of the total number of contests it offers, in which there is no restriction on the number of entries by a single authorized player, provided that (i) the registrant clearly discloses that there are no limits on the number of entries by a single authorized player, and (ii) that the cost of participating in a contest with no restriction on the number of entries by a single authorized player is $50 or more per entry.

(e) Operators shall not directly or indirectly operate, promote or advertise any platform or contest to persons located in Delaware state unless registered pursuant to this subchapter or the operators conducted business in Delaware prior to the enactment of this Act.

(f) Registrants shall not offer any contest based on any prohibited sports event.

(g) Registrants shall not permit any minor or prohibited participant to enter any contest.

(h) Advertisements for contests and prizes offered by a registrant shall not target prohibited participants, minors, or self-excluded persons. Representations or implications about average winnings from contests shall not be unfair or misleading. Such representations shall include, at a minimum:

(1) The median and mean net winnings of all authorized players participating in contests offered by such registrant; and

(2) The percentage of winnings awarded by the registrant to highly experienced players participating in contests offered by such registrant within the preceding calendar year.

(i) Registrants shall prohibit the use of third-party scripts or scripting programs for any contest and ensure that measures are in place to deter, detect and, to the extent reasonably possible, prevent cheating, including collusion, and use of cheating devices, including use of third party software programs that submit entry fees or adjust the athletes selected by an authorized player.

(j) Operators and registrants shall develop and prominently display procedures for the filing of a complaint by the authorized player against such registrant. An initial response shall be given by such registrant to such player filing the complaint within forty-eight hours. A complete response shall be given by such registrant to such player filing the complaint within ten business days. An authorized player may file a complaint alleging a violation of the provisions of this subchapter with the Director.

(k) Registrants shall maintain records of all accounts belonging to authorized players and retain such records for five years.

§ 4866. Powers and duties of the Director.

(a) The Director shall promulgate regulations to implement the provisions of and effectuate the policy and objectives of this subchapter as the Director may deem necessary or advisable, including the development of the initial form of the application for registration. Such regulations shall provide for the registration and operation of contests in Delaware and shall include, without limitation, responsible protections with regard to compulsive play and safeguards for fair play. Such regulations may regulate the conduct and operation of contests and platforms, protect contestants and promote the fairness, honesty and integrity of contests. Provided, however, the Director shall not promulgate resolutions or limitations addressing any of the following:

(1) Rules or the administration of an individual game or contest.

(2) The statistical makeup of a game or contest.

(3) The digital platform of a platform operator.

(b) The Director shall have the following powers and duties for purposes of administrating, regulating, and enforcing the provisions of this subchapter:

(1) All powers and duties assigned by this subchapter, as well as all powers necessary and properly to fully and effectively execute this subchapter.

(2) To approve and deny applications for registration to conduct contests in Delaware state, and to suspend, refuse to renew, or revoke any registration issued to a registrant under this subchapter.

(3) To review and approve each platform and contest offered by an operator or registrant.

(4) To accept and investigate complaints of any kind from an authorized player and attempt to mediate such complaints where appropriate.

(5) To investigate alleged violations of this subchapter.

(6) To initiate proper enforcement proceedings where such action is deemed by the Director to be necessary or appropriate.

(7) All powers and duties assigned by this subchapter.

§ 4867. Annual report.

(a) Each registrant shall annually submit a report to the Director no later than the thirtieth of June of each year, which shall include all of the following information as it shall apply to accounts held by authorized players located in Delaware:

(1) The number of accounts held by authorized players on all platforms offered by the registrant, and the number of accounts held by highly experienced players on all platforms offered by the registrant.

(2) The total number of new accounts established in the preceding year, as well as the total number of accounts permanently closed in the preceding year.

(3) The total number of entry fees received from authorized players.

(4) The total number of prizes awarded to authorized players.

(5) The total amount of interactive fantasy sports revenue received by the registrant.

(6) The total amount of authorized players that requested to exclude themselves from contests.

(7) Any additional information that the Director deems necessary to carry out the provisions of this subchapter.

(b) Upon the submission of such annual report, to such extent that the Director deems it to be in the public interest, the Director shall be authorized to conduct a financial audit of any registrant, at any time, to ensure compliance with this subchapter.

(c) The Director shall annually publish a report based on the aggregate information provided by all registrants pursuant to subdivision one of this section, which shall be published on the State Lottery website no later than one hundred eighty days after the deadline for the submission of individual reports as specified in subsection (a) of this section.

§ 4868. State tax.

For the privilege of conducting interactive fantasy sports contests in the state, registrants shall pay a tax equivalent to fifteen percent of their interactive fantasy sports gross revenue generated within the state. In addition, registrants shall pay an annual fee in the amount of $50,000.

§ 4869. Disposition of taxes.

(a) The Director shall pay into the general fund all taxes imposed by this subchapter; any interest and penalties imposed by the Director relating to those taxes; all penalties levied and collected by the Director; and all appropriate funds, cash or prizes forfeited from interactive fantasy sports.

(b) The Director shall require quarterly deposits by the interactive fantasy sport operator of any payments pursuant to § 4868 of this chapter, at such time, under such conditions, and in such depositories as shall be prescribed by the state comptroller. The deposits shall be deposited to the credit of the general fund. The Director may require a quarterly report and reconciliation statement to be filed with it with respect to gross revenues and deposits received and made, respectively, during the preceding quarter.

§ 4870. Determination of tax liability.

The Director may perform audits of the books and records of an interactive fantasy sports operator with a permit or registration, at such times and intervals as it deems appropriate, for the purpose of determining the sufficiency of tax

payments. If a return required with regard to obligations imposed is not filed, or if a return when filed or is determined by the Director to be incorrect or insufficient with or without an audit, the amount of tax due shall be determined by the Director. Notice of such determination shall be given to the interactive fantasy sports operator liable for the payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within thirty days after receiving notice of such determination, shall apply to the Commission for a hearing in accordance with the regulations of the Director.

§ 4871. Contests authorized.

Interactive fantasy sports contests registered and conducted pursuant to the provisions of this subchapter are hereby authorized.

§ 4872. Contests prohibited.

The conduct of unregistered interactive fantasy sports contests is prohibited.

SYNOPSIS

An estimated 100,000 people in Delaware participate in some form of fantasy sports, whether it is a football or baseball league with their friends and family, or more recently, a daily or weekly contest against players from across the country. This legislation confirms that those contests are "games of skill" and, therefore, not a form of illegal gambling under Delaware law. It also requires operators to apply for a license and comply with some of the strictest consumer protection safeguards in the nation. Finally, the legislation subjects operators of paid fantasy sports contests to a 15% tax on their net adjusted revenues, as well as a $50,000 annual fee.