

LAWS OF DELAWARE
VOLUME 81
CHAPTER 371
149th GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 340

AN ACT TO AMEND TITLE 29 AND TITLE 30 OF THE DELAWARE CODE RELATING TO INTERACTIVE FANTASY SPORTS CONTESTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds 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 and by redesignating accordingly:

§ 4860 Short title [Expires July 1, 2019, pursuant to § 4868(b) of this title]

This subchapter shall be known and may be cited as the "Delaware Interactive Fantasy Contests Act." The provisions of this subchapter shall expire on July 1, 2019, unless reauthorized. The Director of the Delaware Division of Gaming Enforcement shall report to the General Assembly on recommendations for revisions to this subchapter by January 1, 2019.

§ 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.

~~() "Authorized Delaware player" means an authorized player located in Delaware.~~

~~(3) "Commission" means the currently existing agency or department of the State designated by the Governor by August 25, 2017.~~

(4) "Director" means the Director of the ~~Commission~~Delaware Division of Gaming Enforcement.

~~() "Division" means the Delaware Division of Gaming Enforcement.~~

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

~~(9) "Interactive fantasy sports contest" or "contest" means a an online simulated game of skill wherein 1 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. It does not include contests that are free to all participants or contests that encompass an entire season of the activity in which the underlying competition is being conducted, consists of at least 150 underlying competitions, and the prize or prizes awarded, if any, are determined by agreement of the participants only in order to distribute fully the participants' contributions to a fund established to award a prize or prizes for the contest.~~

~~(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.~~

~~(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 fee. any online method by which access to an interactive fantasy sports contest is provided.~~

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

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

~~(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 authorized Delaware players located in Delaware, divided by the total entry fees collected from all authorized players in interactive fantasy sports contests.~~

~~() "Ultimate Equitable Owner" shall mean a person who owns or controls any ownership interest of ten percent (10%) or more in a person or entity either directly or indirectly, regardless of whether the person or entity owns or controls the ownership interest through one or more other persons or proxies, powers of attorney, or other variances.~~

§ 4864 Scope of registration review [Expires July 1, 2019, pursuant to § 4868(b) of this title]

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

(7) Criminal Record

a. Information regarding the criminal record, if any, of the following individuals, if those individuals are involved in the day-to-day management of interactive fantasy sports contests or operations, and as applicable to the entity's business structure:

1. Each partner of a partnership holding 10% or more of the partnership;
2. Each member of a limited liability company holding 10% or more of the LLC;
3. Each director and officer of a non-publicly held corporation;
4. Each director and officer of a publicly held corporation;
5. Each stockholder holding 10% or more of a corporation; and
6. Ultimate equitable owners.

b. Individuals identified in subsection (7)(a) shall have a duty to disclose on the application for registration whether they have been convicted of a crime, other than traffic violations and convictions that have been expunged, and provide the nature of the crime, the date and place of the conviction, and the legal disposition of the case.

c. Fingerprinting procedure required.

1. Individuals identified in subsection (7)(a) shall be required to submit fingerprints and other necessary information in order to obtain the following:

A. A report of the individual's entire criminal history record from the State Bureau of Identification or a statement from the State Bureau of Identification that the State Bureau of Identification Central Repository contains no such information relating to that individual; and

B. A report of the individual's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544. The State Bureau of Identification shall be the intermediary for the purposes of this section and the Division shall be the screening point for the receipt of said federal criminal history records.

2. All information obtained pursuant to this subsection shall be forwarded to the Division, which shall access the information and make a determination to approve or deny an application for registration. A copy of all information forwarded to the Division shall be provided to the individual. The individual shall have an opportunity to respond in writing to the Division regarding any information obtained pursuant to (7)(a)(1) of this section prior to a determination of suitability for registration. Information obtained under this subsection is confidential and may only be disclosed to the Director and designated personnel of the Division. The State Bureau of Identification may release any subsequent criminal history to the Division.

3. An individual whose criminal record is required pursuant to subsection (7)(a) who has submitted to a criminal background check in this or any other state within the previous 12 months shall not be required to submit to another criminal background check if the individual submits:

A. the results of such previous criminal background check, including any previous federal criminal background check; and

B. a reference from the individual's most recent employer, if any, covering the previous 12 months.

4. Individuals identified in subsection (7)(a) of those operators who received a conditional registration or registration to administer, manage or otherwise make available an interactive fantasy sports platform to offer interactive fantasy sports contests to persons located in Delaware on or before August 25, 2017 shall submit by January 1, 2019, at the registrant's expense, fingerprints and other necessary information in order to obtain a criminal background pursuant to Section 4864(a)(7).

(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, members, partners, or other equity holders who hold more than 10% of the stock, interests, or equity of the creditor.

(c) The Director may impose a monetary penalty, not to exceed \$1,000 per violation, 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 individual identified in subsection (7)(a) 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 the federal government, or any state or political subdivision.

(4) Within 10 years of the date of the application for registration, has been (a) found guilty of any illegal, corrupt, or fraudulent act, practice, or conduct in connection with any interactive fantasy sport contest in this or any other state; or (b) convicted of a felony, or any criminal offense involving dishonesty or breach of trust;

(4.5) At any time, knowingly failed to comply with any requirement of this chapter, any regulations promulgated by the Director, or any other additional requirements of the Director.

(d) The Director may revoke a registration if the Director finds that facts not known at the time the Director considered the application that if know, would have justified the denial of the application.

(d e) When the Director denies, revokes or fails to renew 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.

(f) All information and data required by the Director to be furnished in the application or investigative process, or which otherwise may be obtained by the Division, pertaining to an applicant's criminal record, financial record, and background, including an application form and registration investigation report, shall be considered confidential, shall not be public records subject to Chapter 100 of this title, and shall not be revealed in whole or in part except in the ordinary administration of the chapter, or upon the lawful order of a court of competent jurisdiction, or with the approval of the Attorney General, to a duly authorized law-enforcement agency. The Director may enter agreements with other law enforcement agencies or other interactive fantasy sports contest regulatory agencies for the sharing of confidential information. Any person who violates this paragraph (f) shall be guilty of a Class A misdemeanor.

(g) All information and data required by the Director to be furnished, or which otherwise may be obtained by the Division, relative to internal controls of an operator or registrant shall be considered confidential, shall not be public records subject to Chapter 100 of this title, and shall not be revealed in whole or in part except in the ordinary administration of the chapter, or upon the lawful order of a court of competent jurisdiction, or with the approval of the Attorney General, to a duly authorized law-enforcement agency. Any person who violates this paragraph (g) shall be guilty of a Class A misdemeanor.

§ 4865. Required safeguards; minimum standards.

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

(19) Prevent the sharing of confidential information that could affect interactive fantasy sports contest play with third parties until such information is made publicly available.

§ 4868 [Transferred to Title 30]Fees [Expires July 1, 2019, pursuant to paragraph (b) of this section]

(a) For the privilege of conducting interactive fantasy sports contests in the State, registrants shall pay a fee equivalent to 15.5% or equivalent to highest rate adopted by another state, whichever is greater, of their interactive fantasy sports gross revenue generated within the State. In addition, registrants shall pay an annual licensing fee in the amount of \$50,000. The Secretary of Finance shall on an annual basis determine the fee rate in accordance with the provisions of this subchapter.

(b) The provisions of this subchapter shall expire on July 1, 2019, unless reauthorized. The Director shall report to the General Assembly by January 1, 2019, on recommendations for revisions to this subchapter.

§ 4869 [Transferred to Title 30]Disposition of fees [Expires July 1, 2019, pursuant to § 4868(b) of this title]

(a) The Director shall pay into the general fund all fees imposed by this subchapter; any interest and penalties imposed by the Director relating to those fees; 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 title, 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 fee liability [Expires July 1, 2019, pursuant to § 4868(b) of this title]~~

~~The Director may perform audits of the books and records of an interactive fantasy sports operator or registrant, at such times and intervals as it deems appropriate, for the purpose of determining the sufficiency of fee 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 fees due shall be determined by the Director. Notice of such determination shall be given to the interactive fantasy sports operator or registrant liable for the payment of the fees. Such determination shall finally and irrevocably fix the fees unless the person against whom it is assessed, within 30 days after receiving notice of such determination, shall apply to the Commission for a hearing in accordance with the regulations of the Director.~~

~~§ 4873. Unregistered Practice.~~

~~(a) Where the Director has determined, upon notice and hearing pursuant to Chapter 101 of Title 29, that an operator has administered, managed or otherwise made available an interactive fantasy sports platform to persons located in Delaware regulated by this subchapter without having lawfully registered or that an operator or registrant previously registered under this subchapter is engaged in a practice regulated by this subchapter notwithstanding that the operator's registration has been suspended or revoked, the Director may issue a cease and desist order. In addition to the power to issue a cease and desist order, the Director may seek a injunctive relief prohibiting such unlawful practice and seek the imposition of other civil penalties defined by this subchapter.~~

~~(b) Upon notice and hearing pursuant to Chapter 101 of Title 29, the Director may fine any operator or registrant who violates such cease and desist order not less than \$1,000 or more than \$5,000 for each offense. Each day a violation continues may be deemed a separate offense in the Director's discretion.~~

Section 2. Amend Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2301 Occupations requiring licenses; definitions; fees; exemptions.

(a) "Persons" as defined in § 2701 of this title engaged in the occupations listed and defined in this section shall pay annual license taxes at the rates specified below. In addition to the license fee indicated below, each such person shall pay a fee of \$25 for each additional branch or business location, except that a finance or small loan agency as defined in this section shall pay the basic annual fee for each place of business.

(27) Interactive Fantasy Sports Registrant, \$50,000. "Interactive Fantasy Sports Registrant" shall have the same meaning as set forth in Title 29, § 4862(13) of the Delaware Code.

Section 3. Further amend § 2301 of Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows

(d)(3)

a. For persons described in paragraph (a)(27) of this section, for the privilege of conducting interactive fantasy sports contests in the State, interactive fantasy sports registrants shall also pay a license fee at a rate equal to the greater of 15.5% or the highest rate adopted by another state, of their aggregate interactive fantasy sports gross receipts generated within the State. For purposes of this section, "Interactive fantasy sports gross receipts" means an amount equal to the total of all entry fees that the registrant collects from all authorized players, less the total of all sums paid out as winnings to all authorized players, multiplied by the resident percentage, as defined in § 4862(17) of Title 29. If the Secretary of Finance determines that another state is imposing an operating fee percentage greater than 15.5%, the Secretary of Finance shall, not later than the end of a calendar quarter, notify all registrants, in writing, of the increased rate to be imposed on such registrant's interactive fantasy sports gross receipts generated within the State during the next succeeding calendar quarter.

b. The fees provided by this section shall be remitted to the Division of Revenue on forms issued by the Director of Revenue and subject to such regulations and requirements as shall be prescribed by the Director of Revenue. The Director of Revenue shall deposit the license fees imposed by subsection (a)(27) and (d)(3) on Interactive Fantasy Sports Registrants to the credit of the general fund, net of administrative expenses incurred by the Division of Revenue in enforcing this subsection and the Division of Gaming Enforcement in enforcing Chapter 48 of Title 29.

c. Subsections (a)(27) and (d)(3) of this section shall expire upon the expiration of chapter 48 of Title 29.

Section 4. Amend Title 30, § 581 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 581 Inspection of returns by federal, state and local officials.

(b) Notwithstanding any other provision of this section or § 368 of this title, the Director is specifically authorized to enter into an agreement with the Department of Labor or the Alcoholic Beverage Control Commission to provide for the inspection of any tax return filed under this title (other than Chapters 30, 51 and 52) or under Title 4; provided, however, that such inspection shall be pursuant to the Department of Labor's duties under Title 19 or the Alcoholic Beverage Control Commission's duties under Title 4, and may be subject to such additional requirements as may be imposed by the Director.

(c) The Director is authorized to provide the Division of Gaming Enforcement with copies of all books, papers, records and other documents related to or provided by interactive fantasy sports registrants as defined in § 4862() of Title 29, provided, however, that such information shall be provided to enable the Division of Gaming Enforcement to fulfill its duties under Chapter 48 of Title 29.

Section 5. If any provision of this Act or the application thereof to any person or circumstance is held invalid, unenforceable or unconstitutional, the remainder of such provisions, and the application of such provisions to any person or circumstances other than those as to which it is held invalid, shall not be affected.

Approved August 10, 2018