

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 980

(Senator Miller)

Budget and Taxation

Ways and Means

Gaming - Traditional Noncommercial Fantasy Competitions - Clarification

This bill prohibits a person from offering or participating in a commercial game or competition that includes the elements of consideration, chance (if chance has more than a mere incidental effect on the game or competition), and reward. The Office of the Attorney General, the State Lottery and Gaming Control Commission (SLGCC), the Department of State Police, local law enforcement units, and the court must narrowly construe any provision of law that expands or authorizes gambling activities and devices in the State in order to limit the expansion of those activities and devices.

The bill also alters the definition of “fantasy competition” to specify that participants must organize themselves and participate directly in the competition and that the use of a website is solely assistive in nature in playing the game to keep track of the imaginary teams. A fantasy competition does not include any online fantasy or simulated game or contest, such as fantasy sports, if the provider or vendor of the game or contest requires the payment of an entry fee in order to participate in the game or contest and receive a prize. SLGCC must adopt regulations to carry out the bill, instead of the Comptroller being authorized to adopt regulations on fantasy competitions.

The bill takes effect January 1, 2017.

Fiscal Summary

State Effect: The State Lottery and Gaming Control Agency can implement the bill with existing resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law/Background: A person may not:

- bet, wager, or gamble;
- make or sell a book or pool on the result of a race, contest, or contingency;
- establish, keep, rent, use, or occupy or knowingly allow to be established, kept, rented, used, or occupied, a building, vessel, or place for the purpose of betting, wagering, or gambling or making, selling, or buying books or pools on the result of a race, contest, or contingency; or
- receive, become the depository of, record, register, or forward, or propose, agree, or pretend to forward, money or any other thing or consideration of value to be bet, wagered, or gambled on the result of a race, contest, or contingency.

A qualified organization is not prevented from conducting a gaming event for the exclusive benefit of a qualified organization if an individual or a group of individuals does not benefit financially from the gaming event or receive any of the proceeds from the gaming event for personal use or benefit.

A person who violates betting, wagering, and gambling laws is guilty of a misdemeanor and on conviction is subject to imprisonment for six months to one year and/or a fine of \$200 to \$1,000.

The Office of the Attorney General, SLGCC, the Department of State Police, local law enforcement units, and the court must liberally construe the law relating to gambling and betting to prevent prohibited activities.

Fantasy Competitions

Chapter 346 of 2012 exempts a specified “fantasy competition” from prohibitions against betting, wagering, and gambling in State law. The law defines “fantasy competition” as any online fantasy or simulated game or contest such as fantasy sports in which (1) participants own, manage, or coach imaginary teams; (2) all prizes and awards offered to winning participants are established and made known to participants in advance of the game or contest; and (3) the winning outcome of the game or contest reflects the relative skill of the participants and is determined by statistics generated by actual individuals. The Comptroller is authorized to adopt regulations to limit fantasy sport competitions.

In December 2015, the Attorney General's Office issued a letter of advice on whether Chapter 346 of 2012 had the effect of expanding *commercial* gaming and, thus, should have been subject to a voter referendum. Chapter 5 of the 2007 Special Session amended the Maryland Constitution so that after November 15, 2008, the General Assembly may only authorize additional forms or expansion of commercial gaming if approved through a referendum by a majority of the voters in a general election.

The Attorney General's Office concluded that Chapter 346 of 2012 clearly authorized *traditional* fantasy sports, and that traditional fantasy sports likely does not constitute commercial gaming and, thus, is not subject to a voter referendum under Article XIX of the Maryland Constitution. However, to the extent that Chapter 346 authorized *daily* fantasy sports, the Attorney General's Office concluded that it should have been referred to a voter referendum. Due to the substantial uncertainty surrounding the issue and since the General Assembly did not focus on the regulation of daily fantasy sports when it passed the 2012 legislation, the Attorney General recommended that the General Assembly clarify whether daily fantasy sports are authorized in Maryland.

In 2015, only two states, Maryland and Montana, expressly address fantasy sports in statute. The Montana law authorizes fantasy sports leagues but prohibits online wagering on fantasy sports leagues. On March 8, 2016, Virginia became the first state to regulate daily fantasy sports.

Daily Fantasy Sports

Daily fantasy sports is a new form of gaming in which participants' fantasy teams compete against each other based on professional player or team statistics. Daily fantasy sports operates on a shorter time table than traditional fantasy sports competitions. With daily fantasy sports competitions players usually draft a team for a day or a week. Fantasy sports have not been challenged under the Professional and Amateur Sports Protection Act or the Wire Act because generally the activity has not been viewed as a game of chance or gambling. In addition, the Unlawful Internet Gambling Enforcement Act includes an exemption for fantasy sports if (1) the value of prizes is not dependent on the number of players; (2) the outcome is determined by fantasy player skill and knowledge; and (3) the outcome cannot be determined by the score of the game or based solely on one individual player's performance. This exemption does not preempt state law, and daily fantasy sports competitions must still comply with each state's particular prohibitions on gambling and private lotteries.

While daily fantasy sport competitions are widely advertised across the country, the competitions have ceased in some states where regulators, court decisions, or attorneys general have raised questions about their legality. Most recently, the Nevada Gaming Control Board concluded that daily fantasy sports meet the definition of a game or

gambling because the competitions involve wagering on the collective performance of individuals participating in a sporting event. The board determined that a person must possess a license to operate a sports pool issued by the Nevada Gaming Commission in order to conduct a daily fantasy sports competition.

Recent news coverage identified individuals employed by daily fantasy sports operators that allegedly used insider information to participate in competitions on rival websites. These news reports have brought additional scrutiny to the industry. It has been widely reported that federal investigators and a grand jury in Florida are investigating whether daily fantasy sports competitions violate federal law. Until there is clear guidance from the federal government, the issue of daily fantasy sports will be left to the states to enforce through state gaming laws.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General, Comptroller's Office, Department of State Police, Maryland State Lottery and Gaming Control Agency, *The New York Times*, Department of Legislative Services

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