

Department of Legislative Services
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 7
Ways and Means

(Delegate Olszewski)

Judicial Proceedings

Criminal Law - Betting, Wagering, and Gambling - Fantasy Competition

This bill explicitly exempts a specified “fantasy competition” from prohibitions against betting, wagering, and gambling in State law. The Comptroller’s Office may adopt regulations to carry out the provisions of the bill.

Fiscal Summary

State Effect: None. The bill has no material impact on State finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The prohibitions against betting, wagering, and gambling do not apply to participation in a fantasy competition. “Fantasy competition” is any online fantasy or simulated game or contest such as fantasy sports in which:

- participants own, manage, or coach imaginary teams;
- all prizes and awards offered to winning participants are established and made known to participants in advance of the game or contest;
- the winning outcome of the game or contest reflects the relative skill of the participants and is determined by statistics generated by actual individuals (*e.g.*, professional sports players and teams).

Winning outcomes may not be based solely on the performance of an individual athlete and may not be based on the score, point spread, or any performances of any single real-world team, or combination of real-world teams.

Current Law: Except when specifically otherwise authorized, a gaming device is prohibited in the State if it is a gaming table, except a billiard table, at which a game of chance is played for money or any other thing or consideration of value, or a game or device at which money or any other thing or consideration of value is bet, wagered, or gambled. Gaming devices include a paddle wheel, wheel of fortune, chance book, and bingo.

A person may not bet, wager, or gamble; make or sell a book or pool on the results of a race, contest, or contingency; establish, keep, rent, use, or occupy, or knowingly allow to be established, kept, rented, used, or occupied, all or a part of a building, vessel, or place on land or water, within the State for the purpose of:

- betting, wagering, or gambling;
- making, selling, or buying books or pools; or
- receiving, becoming the depository of, or forwarding money or any thing of consideration of value, to be bet, wagered, or gambled on the result of a race, contest, or contingency.

The State allows specified types of gambling, including the State lottery and wagering on horse racing. Bingo, bazaars, gaming nights, and raffles are allowed for some nonprofit organizations on a county-by-county basis. Several counties permit for-profit bingo. In addition, some nonprofit organizations in Eastern Shore counties are allowed to operate up to five slot machines, provided that at least 50% of the proceeds go to charity.

Two video lottery terminal (VLT) gambling bills passed during the 2007 special session – House Bill 4 (Chapter 5) and Senate Bill 3 (Chapter 4). House Bill 4 is a constitutional amendment that was approved by Maryland voters at the November 2008 general election authorizing 15,000 VLTs at five locations in the State. The constitutional amendment also specifies that the General Assembly may only authorize expanded forms of gambling subject to certain restrictions. Senate Bill 3, which was contingent on ratification of House Bill 4, established the operational and regulatory framework for the authorized VLT program, which has been modified by subsequent legislation.

Conducting or operating jai alai or any other game, contest, or event with pari-mutuel betting, or with any similar form of betting, wagering, or gambling is prohibited, with exceptions for horse racing, bingo, carnivals, raffles, bazaars, or similar games of entertainment, and for authorized slot machines.

The legality of a given fantasy competition is not directly addressed by State gambling law. However, an Attorney General opinion from March of 2006 (91 *opinions of the Attorney General* 64) regarding a particular form of poker tournament indicates that three main elements are common to all gambling: consideration, chance, and reward. Consideration refers to a payment made by a participant for the chance to win a reward. The opinion indicates that though poker contains elements of skill or judgment, it is well accepted that it is a game of chance because it depends substantially on the hand a player is dealt and the placement of cards. A reward may be anything of value, such as money or points that may be converted to receive a prize. While not binding in Maryland, the District of New Jersey Court ruled in a 2007 case that fantasy sports do not constitute gambling. (*Humphrey v. Viacom, Inc. et al.*, 2007)

The federal Unlawful Internet Gambling Enforcement Act specifically exempts fees paid in connection with fantasy games from the definition of “bet or wager” when three conditions are met (when the game or contest involves a team or teams):

- no fantasy team is based on the current membership of an actual professional or amateur sports team;
- all prizes and awards are established in advance of the game and their value is not determined by the number of participants or the amount of any fees paid by those participants; and
- winning outcomes reflect the relative knowledge and skill of participants, and are determined predominantly by accumulated statistical results of the performance of individuals in multiple real-world or other events.

In addition, no winning outcome may be based on:

- the score, point spread, or any performance or performances of any single real-world team or any combination of such teams; or
- solely on any single performance of an individual athlete in any single real-world sporting or other event.

Background: Though fantasy competitions originated as paper and pencil games, they most prevalently operate over the Internet. Participation grew dramatically in the 1990s with the Internet boom. Recent estimates indicate that nearly 30 million people in the United States actively participate in fantasy sports. Sports-related fantasy competitions are most common; competitions related to football and baseball being the most common of these. Participants select players for their team through an auction or a draft, or in some cases players may be randomly selected for participants. In some cases participants may trade players over the course of a season. The outcome of a fantasy sport competition is based on the statistics of the participants’ players. Often the participant has an opportunity to win either money or a prize based on his or her team’s performance during the season, relative to the performances of the other participants’ teams. While

competition over the course of an entire season is common, some fantasy competitions have far shorter durations, including competitions based on performance on one given day.

Participants typically pay an entry fee to purchase a team roster consisting of players selected for the purpose of competing in the contest. Participants often pay additional costs for services provided by the competition's host or by third-party providers, such as quick updates of player statistics and the ability to make moment-by-moment team management decisions. Some fantasy competitions do not require a payment to participate. Further, fantasy competitions can and have revolved around things other than team sports (*e.g.*, the movie business, professional golf and fishing, and the U.S. Congress).

Few states have deliberately addressed fantasy competitions in their laws. In Arizona, fantasy sports team competitions hosted by businesses and other organizations are illegal if the host receives a fee for services or a portion of any pooled participant money. The Kansas Racing and Gaming Commission finds that a fantasy sports league involving a prize, chance, and consideration is an illegal lottery prohibited by Kansas criminal law. The Florida Attorney General's opinion AGO 91-03 indicates that Florida law prohibits a fantasy sports league resulting in cash payments from the contestants' entry fees, based on the performance of contestants' selected professional sports players. Montana began licensing a network of operators to run fantasy sports competitions (currently football and auto racing) in 2008, with a portion of proceeds going toward support of its horse racing industry. In Montana, competitions are regulated by state law, and it is unlawful to wager on a fantasy sports league by telephone or the Internet.

Additional Information

Prior Introductions: Similar bills, House Bill 750 of 2010 and House Bill 21 of 2009, each received a hearing before the House Ways and Means Committee, but no further action was taken on either bill.

Cross File: None.

Information Source(s): Office of the Attorney General, Comptroller's Office, Judiciary (Administrative Office of the Courts), Maryland State Lottery Agency, *Harvard Journal of Sports and Entertainment Law*, Department of Legislative Services

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