

Department of Legislative Services  
Maryland General Assembly  
2016 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

Senate Bill 976

(Senator Peters)

Budget and Taxation

Ways and Means

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Commercial Daily Fantasy Sports - Authorization and Regulation

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This bill, which is subject to voter referendum, requires the State Lottery and Gaming Control Commission (SLGCC), with the assistance of the State Lottery and Gaming Control Agency, to regulate the operation of Internet fantasy sports games. Only a person with an Internet fantasy sports operator license may offer Internet fantasy sports games for public use in the State. A licensed operator may offer Internet fantasy sports games to registered players in the State where the registered player competes against other registered players or a target score as the owner or manager of an imaginary or simulated team of athletes in an imaginary or simulated game and uses the statistics accumulated by the athletes in real-world sporting events to determine the scores of the imaginary or simulated game. SLGCC must adopt regulations to implement the bill.

The bill takes effect July 1, 2016, contingent on passage of a referendum by voters in November 2016.

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Fiscal Summary

**State Effect:** If the bill is approved at referendum, general fund revenues increase by an indeterminate amount beginning in FY 2017 from one-time license fees for each licensed operator. SLGCC must collect annual regulatory license fees for each licensed operator to defray the costs of implementing the bill so SLGCC special fund revenues increase annually and SLGCC special fund expenditures increase annually by a corresponding amount beginning in FY 2017.

**Local Effect:** None. It is assumed that local boards of elections' budgets contain funding for notifying voters about referendums.

**Small Business Effect:** Minimal.

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## Analysis

**Bill Summary:** Among other provisions, a person may apply to SLGCC for a license to offer Internet fantasy sports games, and SLGCC must establish an application fee for a license by regulation. SLGCC must investigate the applicant and any owner, officer, director, or principal of the applicant, and SLGCC must determine whether these individuals are of good character, do not pose specified threats, do not create or enhance specified dangers, and are qualified to be licensed. A licensed operator must ensure that an Internet fantasy sports game offered on its website is in compliance with specified requirements.

A licensed operator must hold the funds of a registered player's account in a trust for that registered player. A licensed operator must establish and display on its website specified procedures relating to funds and withdrawals. A licensed operator may not allow a registered player to have more than one account or user name on its website. A licensed operator may not target advertising to those under age 21 or those on a specified self-excluded list.

An individual must register with a licensed operator before participating in an Internet fantasy sports game, and a licensed operator must verify specified information relating to a registered player, including that the individual is at least age 21 and physically located in the State at the time of participating in an Internet fantasy sports game on the licensed operator's website. SLGCC may establish and assess a civil penalty against a licensed operator for a violation of these requirements.

SLGCC must establish by regulation a process for a licensed operator to exclude from play any individual who has filled out an online self-exclusion form. An owner, officer, director, principal, employee, or contractor of a licensed operator may not play, or play through a proxy, an Internet fantasy sports game offered by a licensed operator or disclose proprietary or nonpublic information that may affect the play of an Internet fantasy sports game. A licensed operator must make these prohibitions known to the affected individuals.

A licensed operator must identify a highly experienced registered player and develop and offer at least one Internet fantasy sports game in which a highly experienced player may *not* participate.

A licensed operator must collect State income tax from registered players and provide current and accurate documentation to all State agencies. A unit of the State must treat the proprietary information as confidential.

SLGCC must establish a one-time license fee for each licensed operator, and SLGCC must deposit this fee into the general fund. SLGCC must establish an annual regulatory licensing fee for each licensed operator to be paid into a special fund.

**Current Law/Background:** 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 addressed 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.

**State Fiscal Effect:** Assuming the referendum passes, general fund revenues increase by an indeterminate amount beginning in fiscal 2017 from one-time license fees for each licensed operator. SLGCC must collect annual regulatory license fees for each licensed operator to defray the costs of implementing the bill, so SLGCC special fund revenues increase annually and SLGCC special fund expenditures increase annually by a corresponding amount beginning in fiscal 2017.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

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