

JAN 26 2022

A BILL FOR AN ACT

RELATING TO ONLINE FANTASY SPORTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that websites, such as
2 FanDuel and DraftKings, allow Hawaii residents and visitors
3 staying in Hawaii to participate in online fantasy sports
4 contests and win money based on the performance of the athletes
5 they select. Online fantasy sports contests involve online
6 competitions among thousands and millions of people and are
7 played daily. A person can draft a new team each day for a
8 wager with the goal of picking the highest scoring players.

9 Online fantasy sports contests were crafted to comply with
10 the federal Unlawful Internet Gambling Enforcement Act of 2006
11 that shuttered online poker websites, but the Act provided a
12 specific exemption for online fantasy sports contests. As a
13 result, the legality of these contests is a matter of state law.
14 Due to the increasing popularity of online fantasy sports
15 contests, several states have taken the initiative to recognize
16 and regulate online fantasy sports contests, which allows those



1 several states to tap into the financial benefits of the
2 industry and generate monies for public programs.

3 The legislature further finds that there is no existing
4 state law that prohibits online sports fantasy contests;
5 however, the existing ban in the State is solely based on the
6 opinion of a former attorney general. In January 2016, the
7 department of the attorney general issued Opinion Number 16-1,
8 wherein the department concluded that online fantasy sports
9 contests constitute illegal gambling under Hawaii law. The
10 attorney general opined that because online fantasy sports
11 contests are contests of chance and involve future contingent
12 events not under the control of players, these contests fall
13 under the definition of "gambling" under section 712-1220,
14 Hawaii Revised Statutes. Accordingly, online fantasy sports
15 contests were deemed to be illegal under Hawaii law. Such an
16 interpretation is an affront to the balance of powers and
17 democracy to have an opinion of a non-elected official serve as
18 law when the legislature should be the ones promulgating any
19 laws or policies of general applicability.

20 The legislature finds that the attorney general Opinion
21 Number 16-1 is flawed in its finding that online fantasy sports



1 contests is a game of chance and not of skill unlike other games
2 of skill, such as solitaire, where, although there is an element
3 of chance, that element is minimal compared to the skill needed
4 to be successful. While it is possible for a person to randomly
5 select athletes in online fantasy sports contests and win,
6 research has demonstrated a miniscule percentage of wins result
7 from a player who randomly selects athletes compared to players
8 who utilize skill to repeatedly have a successful outcome. In
9 online fantasy sports contests, players utilize statistics,
10 trends, weather, interpersonal chemistry, and other elements to
11 select the athletes and be successful as opposed to simply
12 selecting the athletes at random. In contrast, players in games
13 of chance, such as roulette or slot machines, are capable of
14 winning without any knowledge.

15 The legislature additionally finds that other states have
16 adopted the rationale that online fantasy sports contests are
17 games of skill, which has subsequently resulted in several
18 jurisdictions recognizing and regulating online fantasy sports
19 contests. For example, in August 2016, New York enacted a law
20 that legalized and regulated online fantasy sports websites
21 serving persons located in New York. The law authorized



1 regulatory control by the New York State Gaming Commission,
2 required registration of these operators and registrants,
3 prohibited certain sports and individuals from registered
4 interactive fantasy sports contests and platforms, and exempted
5 registered interactive fantasy sports contests from criminal
6 gambling laws.

7 In passing the law, the New York State Legislature found
8 that interactive fantasy sports contests are not wagers on
9 future contingent events not under the contestants' control or
10 influence because contestants have control over which players
11 they choose and the outcome of each contest is not dependent
12 upon the performance of any one player or any one actual team.
13 The outcome of any fantasy sports contest does not correspond to
14 the outcome of any single sporting event. Instead, the outcome
15 depends on how the athletes performed in their respective event.
16 Once the athletic events are completed the online fantasy sport
17 participant's roster of players is compared to the rosters of
18 other participants to see which roster scored the most points.
19 Accordingly, the New York State Legislature declared that
20 interactive fantasy sports contests do not constitute gambling
21 in New York. Furthermore, the New York State Legislature found



1 that because participation in a lawful and licensed interactive
2 fantasy sports industry is a privilege and not a right,
3 regulatory oversight provided in the law is intended to
4 safeguard the integrity of the games and the participants and
5 ensure accountability and the public trust.

6 The legislature further finds that despite the attorney
7 general's gambling concerns regarding online fantasy sports
8 contests in Hawaii, the New York State Legislature concluded
9 that these contests are games of skill, not games of chance.
10 Accordingly, because the federal Unlawful Internet Gambling
11 Enforcement Act of 2006 exempts online fantasy sports contests
12 and leaves the legality of these contests a matter of state law,
13 online fantasy sports contests should not be considered gambling
14 under the penal code as long as these contests are appropriately
15 registered and monitored.

16 Furthermore, this prohibition impacts numerous visitors who
17 lawfully participate in online fantasy sports in their resident
18 states, but are unable to when they visit Hawaii, thereby
19 impeding their ability to participate in fantasy sports while on
20 vacation. In addition, economists have advised that the State
21 needs to maximize visitor spending to compensate for revenues



1 lost during the COVID-19 pandemic. As such, creating a
2 framework for the regulation of online fantasy sports will
3 encourage visitors to continue to participate in fantasy sports
4 while visiting the State, which may drive further revenue to the
5 State.

6 The purpose of this Act is to legalize online fantasy
7 sports contests in Hawaii by:

- 8 (1) Establishing an online fantasy sports contests
9 registration and monitoring program under the
10 department of the attorney general;
11 (2) Exempting registered online fantasy sports contests
12 from state gambling laws; and
13 (3) Appropriating funds to the department of the attorney
14 general to establish and implement a registration and
15 monitoring program for online fantasy sports contests.

16 SECTION 2. The Hawaii Revised Statutes is amended by
17 adding a new chapter to be appropriately designated and to read
18 as follows:

19 **"CHAPTER**

20 **ONLINE FANTASY SPORTS**



1 § -1 **Definitions.** As used in this chapter, unless the
2 context otherwise requires:

3 "Animal contest" means any event that competes animals
4 against each other, including horses, dogs, or roosters.

5 "Authorized player" means an individual residing in this
6 State who is not a prohibited player and who participates in an
7 online fantasy sports contest offered by a registrant.

8 "Collegiate sport or athletic event" means a sport or
9 athletic event offered or sponsored by or played in connection
10 with a public or private institution that offers education
11 services beyond the secondary level.

12 "Department" means the department of the attorney general.

13 "Entry fee" means cash or cash equivalent that is paid by
14 an authorized player to an operator or registrant to participate
15 in an online fantasy sports contest offered by the operator or
16 registrant.

17 "High school sport or athletic event" means a sport or
18 athletic event offered or sponsored by or played in connection
19 with a public or private institution that offers education
20 services at the secondary level.



1 "Highly experienced player" means an authorized player who
2 has:

3 (1) Entered more than one thousand contests offered by a
4 single operator or registrant; or

5 (2) Won more than three prizes valued at \$1,000 each or
6 more from a single operator or registrant.

7 "Minor" means any person who is under the age of eighteen
8 years.

9 "Online fantasy sports contest" or "contest" means a game
10 of skill in which one or more contestants compete against each
11 other online by using their knowledge and understanding of
12 athletic events and athletes to select and manage rosters of
13 simulated players whose performance directly corresponds with
14 the actual performance of human competitors on sports teams and
15 in sports events.

16 "Online fantasy sports operator" or "operator" means any
17 person or entity that offers any online fantasy sports contest
18 to any authorized player through any online fantasy sports
19 platform.

20 "Online fantasy sports platform" or "platform" means the
21 combination of hardware, software, and data networks used to



1 manage, administer, or control contests and any associated entry
2 fees.

3 "Online fantasy sports registrant" or "registrant" means an
4 operator who is registered by the department.

5 "Prohibited player" means:

6 (1) Any member, officer, employee, or agent of an operator
7 or registrant;

8 (2) Any spouse, child, brother, sister, or parent residing
9 as a member of the same household in the principle
10 place of abode of any member, officer, employee, or
11 agent of an operator or registrant;

12 (3) Any individual with access to confidential information
13 about contests;

14 (4) Any amateur or professional athlete whose performance
15 may be used to determine the outcome of a contest;

16 (5) Any sports agent, team employee, referee, or league
17 official associated with any sport or athletic event
18 on which contests are based;

19 (6) Any individual located in a state where the conduct of
20 contests is expressly prohibited; or

21 (7) Any minor.



1 "Prohibited sports event" means any collegiate sport or
2 athletic event, any high school sport or athletic event, or any
3 animal contest.

4 "Sports event" means any amateur or professional sport or
5 athletic event except a prohibited sports event.

6 § -2 **Registration; operators.** (a) No operator shall
7 administer, manage, or otherwise make available an online
8 fantasy sports platform to persons located in this State unless
9 registered with the department pursuant to section -3. A
10 registrant may use multiple online fantasy sports platforms and
11 offer multiple types of contests; provided that each platform
12 and each type of contest has been reviewed and approved by the
13 department. This chapter shall apply only to online fantasy
14 sports contests for which an authorized player pays an entry
15 fee.

16 (b) Registration issued by the department pursuant to
17 section -3 shall remain in effect for three years. The
18 department shall establish a process for renewal.

19 (c) The department shall post a list of all operators
20 registered in the State pursuant to this section on the
21 department's website for public use.



1 (d) The department shall adopt rules to implement this
2 chapter, including the initial form of the application for
3 registration. The rules shall provide for the registration and
4 operation of contests in the State and include but not be
5 limited to responsible protections with regard to compulsive
6 play and safeguards for fair play.

7 § -3 Scope of registration review. (a) The department
8 shall prescribe the initial form of the application for
9 registration that shall include but not be limited to:

10 (1) The full name and principle address of the operator;

11 (2) If a corporation, the name of the state in which
12 incorporated and the full names and addresses of any
13 partner, officer, director, shareholder holding ten
14 per cent or more equity, and ultimate equitable
15 owners;

16 (3) If a business entity other than a corporation, the
17 full names and addresses of the principals, partners,
18 shareholders holding five per cent or more equity, and
19 ultimate equitable owners;

20 (4) Whether the corporation or business entity files
21 information and reports with the United States



1 Securities and Exchange Commission as required under
2 section 13 of the Securities Exchange Act of 1934, as
3 amended, or whether the securities of the corporation
4 or business entity are regularly traded on an
5 established securities market in the United States;

6 (5) The type and estimated number of contests to be
7 conducted annually; and

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

10 (b) The department may require the full names and
11 addresses of the officers and directors of any creditor of the
12 operator and stockholders who hold more than ten per cent of the
13 stock of the creditor.

14 (c) Each individual listed on the application for
15 registration as an officer or director shall be subject to a
16 criminal history record check in accordance with section 846-
17 2.7, including providing a full set of electronic fingerprints
18 for the purpose of obtaining federal and state criminal history
19 record checks to the Hawaii criminal justice data center for
20 processing with the Federal Bureau of Investigation. The
21 application shall not be considered complete until the results



1 of the criminal history record check are received by the
2 department. The department may obtain criminal history
3 information through the Hawaii criminal justice data center in
4 accordance with section 846-2.7 for the purposes of this
5 section.

6 (d) Upon receipt of the criminal history record check
7 pursuant to subsection (c), the department shall determine
8 whether to approve or deny any application for registration.
9 The department shall deny any application for registration or
10 suspend, refuse to renew, or revoke any existing registration
11 issued pursuant to this chapter upon the finding that the
12 operator or registrant, or any partner, officer, director, or
13 shareholder has:

- 14 (1) Knowingly made a false statement of material fact or
15 deliberately failed to disclose any information
16 required by the department;
17 (2) Possessed a registration or license to offer or
18 conduct contests that was denied, suspended, or
19 revoked in any other state or country for just cause;
20 (3) Legally defaulted in the payment of any obligation or
21 debt due to any state or political subdivision; or



(4) Knowingly failed at any time to comply with any requirement under this chapter, adopted rule, or requirement prescribed by the department.

(e) If an application for registration is denied or an existing registration is suspended, denied renewal, or revoked, the department shall notify the operator or registrant of the right to submit a request for a contested case hearing pursuant to chapter 91 within sixty days of the department's decision. The contested case hearing shall be conducted in accordance with chapter 91.

§ -4 Safeguards; minimum standards. (a) As a condition of registration in the State, each operator or registrant shall implement the following safeguards:

(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 that operator or registrant;

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

(A) If a registrant becomes or is made aware that a minor has participated in one of its contests,



1 the registrant shall promptly refund any deposit
2 received from the minor no later than two
3 business days after the registrant is aware of
4 the minor's participation regardless of whether
5 the minor engaged or attempted to engage in a
6 contest; provided that any refund may be offset
7 by any prizes already awarded;

8 (B) Each registrant shall publish and facilitate
9 parental control procedures to allow parents or
10 guardians to exclude minors from access to any
11 contest or platform. These procedures shall
12 include a toll-free number to call for help in
13 establishing the parental controls; and

14 (C) Each registrant shall take appropriate steps to
15 confirm that an individual opening an account is
16 not a minor;

17 (3) When referencing the chances or likelihood of winning
18 in advertisements or upon contest entry, make clear
19 and conspicuous, accurate statements that are not
20 misleading concerning the chances of winning and the
21 number of winners;



- 1 (4) Enable authorized players to exclude themselves from
2 contests and take reasonable steps to prevent these
3 players from entering a contest from which they have
4 excluded themselves;
- 5 (5) Permit any authorized player who requests to be
6 excluded from contests to permanently close an account
7 registered to that player on any platforms supported
8 by the operator or registrant at any time and for any
9 reason;
- 10 (6) Offer introductory procedures for authorized players,
11 which shall be prominently displayed on the main page
12 of the operator's or registrant's platform, that
13 explain contest play and how to identify a highly
14 experienced player;
- 15 (7) Identify all highly experienced players in any contest
16 by a symbol attached to the highly experienced
17 players' usernames or by any other easily visible
18 means on all platforms supported by the operator or
19 registrant;
- 20 (8) Disclose the number of entries a single authorized
21 player may submit to each contest;



- 1 (9) Disclose the maximum number of total entries allowed
- 2 for each contest;
- 3 (10) Implement measures to protect the privacy and online
- 4 security of authorized players and their accounts;
- 5 (11) Offer all authorized players access to their account
- 6 history and account details;
- 7 (12) Ensure authorized players' funds are protected upon
- 8 deposit and segregated from the operating funds of the
- 9 operator or registrant and otherwise protected from
- 10 corporate insolvency, financial risk, or criminal or
- 11 civil actions against the operator or registrant;
- 12 (13) List on each website, in a prominent place,
- 13 information concerning assistance for compulsive play
- 14 in the State, including a toll-free number directing
- 15 callers to reputable resources containing further
- 16 information that shall be free of charge;
- 17 (14) Ensure the value of any prizes and awards offered to
- 18 authorized players is established and made known to
- 19 the authorized players in advance of the contest, and
- 20 that the value is not determined by the number of



1 authorized players or the amount of any entry fee paid
2 by the authorized players;

3 (15) Ensure all winning outcomes reflect the relative
4 knowledge and skill of the authorized players and are
5 determined predominately by accumulated statistical
6 results of the performance of individuals in sports
7 events;

8 (16) Ensure no winning outcome is based on the score, point
9 spread, or performance of a single sports team, or any
10 combination of teams;

11 (17) Ensure no winning outcome is based solely on any
12 single performance of an individual athlete in a
13 single sport or athletic event; and

14 (18) Ensure no game or contest is based on a prohibited
15 sports event.

16 (b) Each registrant shall restrict the number of entries
17 submitted by a single authorized player for any contest to a
18 maximum of one hundred fifty entries per player per contest, or
19 a maximum of three per cent of the total number of entries by
20 all authorized players for any contest, whichever is less, or as
21 determined by the department. Registrants shall take reasonable



1 steps to prevent authorized players from submitting more than
2 the allowable number of entries per contest. The department
3 shall adopt rules to further effectuate this section to ensure
4 that the number of entries submitted by a single authorized
5 player for any contest will lead to a fair and equitable
6 distribution of number of entries.

7 (c) Operators shall not directly or indirectly operate,
8 promote, or advertise any platform or contest to individuals
9 located in the State unless registered pursuant to this chapter.

10 Unless otherwise approved by the department, operators and
11 registrants shall not directly or indirectly promote or
12 advertise any online fantasy or simulation sports games or
13 contests with an entry fee during the conduct of any online
14 fantasy or simulation sports games or contests without an entry
15 fee. This subsection shall not apply to any operator or
16 registrant that prohibits prohibited players from participating
17 in online fantasy or simulation sports games or contests without
18 an entry fee.

19 (d) Registrants shall not offer any contest based on any
20 prohibited sports event.



(e) Registrants shall not permit any minor or prohibited player to enter any contest.

(f) Advertisements for contests and prizes offered by a registrant shall not target prohibited players, minors, or self-excluded individuals. Representations or implications about average winnings from contests shall be fair and not be misleading, and shall, at a minimum, include:

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

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

(g) 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 the use of cheating devices, including the use of software programs that submit entry fees or adjust the athletes selected by an authorized player.



(h) Operators and registrants shall develop and prominently display procedures on the main page of the operator's or registrant's platform for the filing of a complaint by the authorized player against the registrant. An initial response shall be given by the registrant to the player filing the complaint within forty-eight hours. A complete response shall be given by the registrant to the player filing the complaint within ten business days. An authorized player may file a complaint alleging a violation of this chapter with the department.

(i) Registrants shall maintain records of all accounts belonging to authorized players and retain these records for five years from the date an account was created.

§ -5 Department powers and duties. (a) The department shall have the following powers and duties for purposes of administering and enforcing this chapter:

- (1) Approve and deny applications for registration to conduct contests in the State and to suspend, refuse or renew, or revoke any registration issued to the registrant pursuant to this chapter;



- 1 (2) Review and approve each platform and contest offered
- 2 by an operator or registrant;
- 3 (3) Accept and investigate complaints of any kind from an
- 4 authorized player and attempt to mediate these
- 5 complaints where appropriate;
- 6 (4) Investigate alleged violations of this chapter;
- 7 (5) Initiate proper enforcement proceedings where action
- 8 is deemed by the department to be necessary or
- 9 appropriate; and
- 10 (6) Execute all powers and duties assigned by and
- 11 necessary to implement this chapter.
- 12 (b) The department shall adopt rules pursuant to chapter
- 13 91 to effectuate the purposes of this chapter. The rules shall
- 14 include but not be limited to the following:
- 15 (1) Guidelines for the development of the initial form of
- 16 the application for registration;
- 17 (2) Procedures for the registration and operation of
- 18 contests in the State; and
- 19 (3) Responsible protections with regard to compulsive play
- 20 and safeguards for fair play.



1 The rules may monitor the conduct and operation of contests and
2 platforms, protect authorized players, and promote the fairness,
3 honestly, and integrity of contests.

4 **§ -6 Penalties.** Any individual, operator, or registrant
5 that violates this chapter shall be liable for a civil penalty
6 of no more than \$1,000 for each violation that shall accrue to
7 the State and may be recovered in a civil action brought by the
8 department.

9 **§ -7 Annual report.** (a) Each registrant shall annually
10 submit a report to the department no later than June 30 of each
11 year that shall include the following information that applies
12 to accounts held by authorized players located in the State:

13 (1) The number of accounts held by authorized players on
14 all platforms offered by the registrant and the number
15 of accounts held by highly experienced players on all
16 platforms offered by the registrant;

17 (2) The total number of new accounts established in the
18 preceding year as well as the total number of accounts
19 permanently closed in the preceding year;

20 (3) The total amount of entry fees received from
21 authorized players;



(4) The total amount of prizes awarded to authorized players;

(5) The total amount of online fantasy sports revenue received by the registrant;

(6) The total number of authorized players that requested to exclude themselves from contests; and

(7) Any additional information that the department deems necessary to carry out this chapter.

(b) Upon receipt of the annual report submitted by each registrant, the department shall be authorized, to the extent that the department deems to be in the public interest, to conduct a financial audit of any registrant, at any time, to ensure compliance with this chapter.

(c) The department shall annually publish a report based on the aggregate information provided by all registrants pursuant to this section. The department shall submit the annual report to the legislature no later than twenty days prior to the convening of each regular session and post the annual report on the department's website no later than one hundred eighty days after the deadline for the submission of individual reports as required under subsection (a)."



SECTION 3. Chapter 712, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

"§712- Online fantasy sports contests. (a) Online fantasy sports contests registered and conducted pursuant to chapter are exempt from this part.

(b) The conduct of unregistered online fantasy sports contests is prohibited and may be subject to this part."

SECTION 4. Section 712-1220, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

"Online fantasy sports contest" means a game of skill in which one or more contestants compete against each other online by using their knowledge and understanding of athletic events and athletes to select and manage rosters of simulated players whose performances directly corresponds with the actual performance of human competitors on sports teams and in sports events."

2. By amending the definition of "contest of chance" to read:



1 ""Contest of chance" means any contest, game, gaming
2 scheme, or gaming device in which the outcome depends in a
3 material degree upon an element of chance, notwithstanding that
4 skill of the contestants may also be a factor therein[-];
5 provided that a contest of chance shall not include online
6 fantasy sports contests registered and conducted pursuant to
7 chapter _____."

8 3. By amending the definition of "gambling" to read:

9 ""Gambling" [~~— A person engages in gambling if he stakes or~~
10 ~~risks~~] means staking or risking something of value upon the
11 outcome of a contest of chance or a future contingent event not
12 under [~~his~~] the person's control or influence, upon an agreement
13 or understanding that [~~he~~] the person or someone else will
14 receive something of value in the event of a certain outcome.
15 [~~Gambling~~] "Gambling" does not include [~~bona~~]:

16 (1) Bona fide business transactions valid under the law of
17 contracts, including but not limited to contracts for
18 the purchase or sale at a future date of securities or
19 commodities [~~, and agreements~~];

20 (2) Agreements to compensate for loss caused by the
21 happening of chance, including but not limited to



1 contracts of indemnity or guaranty and life, health,
2 or accident insurance[-]; and

3 (3) Online fantasy sports contests registered and
4 conducted pursuant to chapter ."

5 SECTION 5. There is appropriated out of the general
6 revenues of the State of Hawaii the sum of \$ or so
7 much thereof as may be necessary for fiscal year 2022-2023 to
8 establish and implement a registration and monitoring program
9 for online fantasy sports contests.

10 The sum appropriated shall be expended by the department of
11 the attorney general for the purposes of this Act.

12 SECTION 6. This Act does not affect rights and duties that
13 matured, penalties that were incurred, and proceedings that were
14 begun before its effective date.

15 SECTION 7. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 8. This Act shall take effect on July 1, 2022.

18
INTRODUCED BY:

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S.B. NO. 3028

Report Title:

Online Fantasy Sports Contests; Gambling; Exemption; Department of the Attorney General; Appropriation

Description:

Establishes an online fantasy sports contests registration and monitoring program under the department of the attorney general. Exempts registered online fantasy sports contests from state gambling laws. Appropriates funds.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

