

JAN 20 2017

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# 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 to participate in  
3     daily fantasy sports contests and win money based on the  
4     performance of the athletes they select. Daily fantasy sports  
5     contests involve online competitions among thousands and  
6     millions of people and are played daily. A person can draft a  
7     new team each day for a wager with the goal of picking the  
8     highest scoring players. Daily fantasy sports contests allow  
9     wagers of up to \$1,000 and allow each person multiple entries  
10    leading to top prizes of up to \$1,000,000. The rate at which a  
11    person wins or loses a daily fantasy sports cash prize is  
12    substantial because the person can play in multiple daily  
13    fantasy sports contests every day.

14           Daily fantasy sports contests were crafted to comply with  
15    the federal Unlawful Internet Gambling Enforcement Act of 2006  
16    that shuttered online poker websites, but the Act provided a



1 specific exemption for daily fantasy sports contests. As a  
2 result, the legality of these contests is a matter of state law.

3 In January 2016, the attorney general concluded in Opinion  
4 Number 16-1 that daily fantasy sports contests constitute  
5 illegal gambling under Hawaii law. The attorney general opined  
6 that because daily fantasy sports contests are contests of  
7 chance and involve future contingent events not under the  
8 control of players, these contests fall under the definition of  
9 "gambling" under section 712-1220, Hawaii Revised Statutes.  
10 Accordingly, daily fantasy sports contests are deemed to be  
11 illegal under Hawaii law.

12 However, in August 2016, New York enacted a law that  
13 legalized and regulated daily fantasy sports websites serving  
14 persons located in New York. The new law authorizes regulatory  
15 control by the New York State Gaming Commission, requires  
16 registration of these operators and registrants, prohibits  
17 certain sports and individuals from registered interactive  
18 fantasy sports contests and platforms, and exempts registered  
19 interactive fantasy sports contests from criminal gambling laws.

20 In passing the law, the New York State Legislature found  
21 that interactive fantasy sports contests are not wagers on



1 future contingent events not under the contestants' control or  
2 influence because contestants have control over which players  
3 they choose and the outcome of each contest is not dependent  
4 upon the performance of any one player or any one actual team.  
5 The outcome of any fantasy sports contest does not correspond to  
6 the outcome of any one sporting event. Instead, the outcome  
7 depends on how the athletes performed in their respective event.  
8 Once the athletic events are completed the daily fantasy sport  
9 participant's roster of players is compared to the rosters of  
10 other participants to see which roster scored the most points.  
11 Accordingly, the New York State Legislature declared that  
12 interactive fantasy sports contests do not constitute gambling  
13 in New York. Furthermore, the New York State Legislature found  
14 that because participation in a lawful and licensed interactive  
15 fantasy sports industry is a privilege and not a right,  
16 regulatory oversight provided in the law is intended to  
17 safeguard the integrity of the games and the participants and  
18 ensure accountability and the public trust.

19 The legislature further finds that despite the attorney  
20 general's gambling concerns regarding daily fantasy sports  
21 contests in Hawaii, the New York State Legislature concluded



1 that these contests are games of skill, not games of chance.  
2 Accordingly, because the federal Unlawful Internet Gambling  
3 Enforcement Act of 2006 exempts daily fantasy sports contests  
4 and leaves the legality of these contests a matter of state law,  
5 daily fantasy sports contests should not be considered gambling  
6 under the penal code as long as these contests are appropriately  
7 registered and monitored.

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

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

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

21 "CHAPTER





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



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

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

11          §   -4   **Safeguards; minimum standards.**   (a) As a condition  
12          of registration in the State, each operator or registrant shall  
13          implement the following safeguards:

14          (1) Limit each authorized player to one active and  
15               continuously used account, and prevent prohibited  
16               players from maintaining accounts or participating in  
17               any contest offered by that operator or registrant;

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

20               (A) If a registrant becomes or is made aware that a  
21               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;



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- 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 is  
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.



1 (e) Registrants shall not permit any minor or prohibited  
2 participant to enter any contest.

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

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

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

15 (g) Registrants shall prohibit the use of third-party  
16 scripts or scripting programs for any contest and ensure that  
17 measures are in place to deter, detect, and, to the extent  
18 reasonably possible, prevent cheating, including collusion, and  
19 the use of cheating devices, including the use of software  
20 programs that submit entry fees or adjust the athletes selected  
21 by an authorized player.



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

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

14           § -5 Department powers and duties. (a) The department  
15 shall have the following powers and duties for purposes of  
16 administering and enforcing this chapter:

17           (1) Approve and deny applications for registration to  
18           conduct contests in the State and to suspend, refuse  
19           or renew, or revoke any registration issued to the  
20           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;



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- 1           (4) The total amount of prizes awarded to authorized  
2           players;
- 3           (5) The total amount of online fantasy sports revenue  
4           received by the registrant;
- 5           (6) The total number of authorized players that requested  
6           to exclude themselves from contests; and
- 7           (7) Any additional information that the department deems  
8           necessary to carry out this chapter.

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

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



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

4 "§712- Online fantasy sports contests. (a) Online  
5 fantasy sports contests registered and conducted pursuant to  
6 chapter are exempt from this part.

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

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

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

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

20 2. By amending the definition of "contest of chance" to  
21 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 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 2017-2018 and  
8 the same sum or so much thereof as may be necessary for fiscal  
9 year 2018-2019 for the department of the attorney general to  
10 establish and implement a registration and monitoring program  
11 for online fantasy sports contests.

12 The sums appropriated shall be expended by the department  
13 of the attorney general for the purposes of this Act.

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

17 SECTION 7. Statutory material to be repealed is bracketed  
18 and stricken. New statutory material is underscored.

19 SECTION 8. This Act shall take effect on July 1, 2017.

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INTRODUCED BY: Michelle A. Tidani  
Will Will  
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**Report Title:**

Online Fantasy Sports; 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 to the department of the attorney general to establish and implement a registration and monitoring program for online fantasy sports contests.

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

