

JAN 20 2023

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 the determination
2 that online fantasy sports contests constitute gambling under
3 Hawaii law is not established in statute, administrative rule,
4 or a court opinion, but the opinion from a previous attorney
5 general. Online fantasy sports contests, unlike gambling
6 activities, are predominantly a game of skill and not of chance.
7 The notion that online fantasy sports contests are a game of
8 chance has existed since the early days of online fantasy sports
9 contests, but given overwhelming research to the contrary, this
10 theory has been rejected by many states.

11 The legislature further finds that studies have shown that
12 the premise of daily fantasy sports is akin to solitaire and
13 other entertainment recognized as games of skill in the State.
14 For example, a leading study by the Massachusetts Institute of
15 Technology in 2018 looked at the seasonal win and loss record of
16 skilled and unskilled players in a dataset. When all
17 performances were plotted on the same graph, the graph skewed



1 linear, which indicated a game of skill. The study subsequently
2 found that if online fantasy sports contests were a game of
3 chance, the graph would present circular with around a fifty per
4 cent win fraction. In a separate study, the research team split
5 the population into two groups; one of players who had played a
6 significant number of games, and one of players who had played
7 only a few. The group of players who had played more games had
8 a statistically higher win fraction, even after a correction for
9 biases, which the study reported indicated a game of skill.
10 Furthermore, another rigorous data-driven study undertaken by
11 the researchers at the Massachusetts Institute of Technology and
12 Columbia University and led by Professor Vishal Mishra,
13 Professor Devavrat Shah, and Doctor Sudarsan V.S. Ranganathan
14 unequivocally quantifies the degree to which online fantasy
15 sports contests exhibit the predominance of skill. The study
16 found that the use of skill is more present in online fantasy
17 sports contests than in the investing in mutual funds, which is
18 a legally recognized activity in the State. The study also
19 found that not only did the data indicate a predominance of
20 skill in online fantasy sports contests, but that luck may play
21 more of a role in mutual fund management than in team selection



1 in online fantasy sports contests because the variance in skill
2 was higher in online fantasy sports contests than in mutual fund
3 management.

4 The legislature further finds that the revenue from online
5 fantasy sports contests, not only from the general excise tax
6 but also an additional online fantasy sports contests tax, could
7 create additional funding for the State. In addition to
8 residents being able to participate in the highly regulated and
9 recognized industry of online fantasy sports contests, visitors
10 who are presently barred from participating would be able to
11 continue to play in their leagues, which will provide a large
12 stream of additional revenue for the State. The revenue
13 generated through online fantasy sports contests could be used
14 to grant funds with special concerns, such as for highways or to
15 correct the traffic congestion in many areas of the State with
16 limited vehicular access. Furthermore, many highly-regulated
17 entities that are platforms for online fantasy sports contests
18 have offered to act as a common collector of tax revenue for the
19 State, which will ensure a readily available stream of income
20 that will be meticulously monitored, reported on, and held



1 accountable to generally accepted accounting principles and
2 other principles of oversight.

3 The legislature further finds that aligning Hawaii with
4 other states that provide a legal avenue for online fantasy
5 sports contests will not affect the legality of sports book
6 betting, which would remain illegal.

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

- 9 (1) Establishing an online fantasy sports contests
10 registration and monitoring program under the
11 department of the attorney general;
- 12 (2) Imposing an online fantasy sports contests tax;
- 13 (3) Establishing the online fantasy sports contests
14 special fund and allocating proceeds of the fund for:
15 (A) The department of education; and
16 (B) The acquisition, designing, construction,
17 reconstruction, improvement, repair, and
18 maintenance of thoroughfares, highways, and other
19 streets;
- 20 (4) Exempting registered online fantasy sports contests
21 from state gambling laws; and



1 "Entry fee" means cash or cash equivalent that is paid by
2 an authorized player to an operator or registrant to participate
3 in an online fantasy sports contest offered by the operator or
4 registrant.

5 "High school sport or athletic event" means a sport or
6 athletic event offered or sponsored by or played in connection
7 with a public or private institution that offers education
8 services at the secondary level.

9 "Highly experienced player" means an authorized player who
10 has:

- 11 (1) Entered more than one thousand contests offered by a
12 single operator or registrant; or
- 13 (2) Won more than three prizes valued at \$1,000 each or
14 more from a single operator or registrant.

15 "Minor" means any person who is under the age of eighteen
16 years.

17 "Online fantasy sports contest" or "contest" means a game
18 of skill in which one or more contestants compete against each
19 other online by using their knowledge and understanding of
20 athletic events and athletes to select and manage rosters of
21 simulated players whose performance directly corresponds with



1 the actual performance of human competitors on sports teams and
2 in sports events.

3 "Online fantasy sports operator" or "operator" means any
4 person or entity that offers any online fantasy sports contest
5 to any authorized player through any online fantasy sports
6 platform.

7 "Online fantasy sports platform" or "platform" means the
8 combination of hardware, software, and data networks used to
9 manage, administer, or control contests and any associated entry
10 fees.

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

13 "Prohibited player" means:

14 (1) Any member, officer, employee, or agent of an operator
15 or registrant;

16 (2) Any spouse, child, sibling, or parent residing as a
17 member of the same household in the principle place of
18 abode of any member, officer, employee, or agent of an
19 operator or registrant;

20 (3) Any individual with access to confidential information
21 about contests;



- 1 (4) Any amateur or professional athlete whose performance
- 2 may be used to determine the outcome of a contest;
- 3 (5) Any sports agent, team employee, referee, or league
- 4 official associated with any sport or athletic event
- 5 on which contests are based;
- 6 (6) Any individual located in a state where the conduct of
- 7 contests is expressly prohibited; or
- 8 (7) Any minor.

9 "Prohibited sports event" means any collegiate sport or
10 athletic event, any high school sport or athletic event, or any
11 animal contest.

12 "Sports event" means any amateur or professional sport or
13 athletic event except a prohibited sports event.

14 § -2 **Registration; operators.** (a) No operator shall
15 administer, manage, or otherwise make available an online
16 fantasy sports platform to persons located in this State unless
17 registered with the department pursuant to section -3. A
18 registrant may use multiple online fantasy sports platforms and
19 offer multiple types of contests; provided that each platform
20 and each type of contest has been reviewed and approved by the
21 department. This chapter shall apply only to online fantasy



1 sports contests for which an authorized player pays an entry
2 fee.

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

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

9 (d) The department shall adopt rules to implement this
10 chapter, including the initial form of the application for
11 registration. The rules shall provide for the registration and
12 operation of contests in the State and include but not be
13 limited to responsible protections with regard to compulsive
14 play and safeguards for fair play.

15 § -3 **Scope of registration review.** (a) The department
16 shall prescribe the initial form of the application for
17 registration that shall include but not be limited to:

- 18 (1) The full name and principal address of the operator;
19 (2) If a corporation, the name of the state in which
20 incorporated and the full names and addresses of any
21 partner, officer, director, shareholder holding ten



1 per cent or more equity, and ultimate equitable
2 owners;

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

7 (4) Whether the corporation or business entity files
8 information and reports with the United States
9 Securities and Exchange Commission as required under
10 section 13 of the Securities Exchange Act of 1934, as
11 amended, or whether the securities of the corporation
12 or business entity are regularly traded on an
13 established securities market in the United States;

14 (5) The type and estimated number of contests to be
15 conducted annually; and

16 (6) A statement of the assets and liabilities of the
17 operator.

18 (b) The department may require the full names and
19 addresses of the officers and directors of any creditor of the
20 operator and stockholders who hold more than ten per cent of the
21 stock of the creditor.



1 (c) Each individual listed on the application for
2 registration as an officer or director shall be subject to a
3 criminal history record check in accordance with section 846-
4 2.7, including providing a full set of electronic fingerprints
5 for the purpose of obtaining federal and state criminal history
6 record checks to the Hawaii criminal justice data center for
7 processing with the Federal Bureau of Investigation. The
8 application shall not be considered complete until the results
9 of the criminal history record check are received by the
10 department. The department may obtain criminal history
11 information through the Hawaii criminal justice data center in
12 accordance with section 846-2.7 for the purposes of this
13 section.

14 (d) Upon receipt of the criminal history record check
15 pursuant to subsection (c), the department shall determine
16 whether to approve or deny any application for registration.
17 The department shall deny any application for registration or
18 suspend, refuse to renew, or revoke any existing registration
19 issued pursuant to this chapter upon the finding that the
20 operator or registrant, or any partner, officer, director, or
21 shareholder has:



- 1 (1) Knowingly made a false statement of material fact or
2 deliberately failed to disclose any information
3 required by the department;
- 4 (2) Possessed a registration or license to offer or
5 conduct contests that was denied, suspended, or
6 revoked in any other state or country for just cause;
- 7 (3) Legally defaulted in the payment of any obligation or
8 debt due to any state or political subdivision; or
- 9 (4) Knowingly failed at any time to comply with any
10 requirement under this chapter, adopted rule, or
11 requirement prescribed by the department.
- 12 (e) If an application for registration is denied or an
13 existing registration is suspended, denied renewal, or revoked,
14 the department shall notify the operator or registrant of the
15 right to submit a request for a contested case hearing pursuant
16 to chapter 91 within sixty days of the department's decision.
17 The contested case hearing shall be conducted in accordance with
18 chapter 91.
- 19 § -4 **Safeguards; minimum standards.** (a) As a condition
20 of registration in the State, each operator or registrant shall
21 implement the following safeguards:



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- 1 (1) Limit each authorized player to one active and
2 continuously used account, and prevent prohibited
3 players from maintaining accounts or participating in
4 any contest offered by that operator or registrant;
- 5 (2) Prohibit minors from participating in any contest,
6 including:
- 7 (A) If a registrant becomes or is made aware that a
8 minor has participated in one of its contests,
9 the registrant shall promptly refund any deposit
10 received from the minor no later than two
11 business days after the registrant is aware of
12 the minor's participation regardless of whether
13 the minor engaged or attempted to engage in a
14 contest; provided that any refund may be offset
15 by any prizes already awarded;
- 16 (B) Each registrant shall publish and facilitate
17 parental control procedures to allow parents or
18 guardians to exclude minors from access to any
19 contest or platform. These procedures shall
20 include a toll-free number to call for help in
21 establishing the parental controls; and



- 1 (C) Each registrant shall take appropriate steps to
2 confirm that an individual opening an account is
3 not a minor;
- 4 (3) When referencing the chances or likelihood of winning
5 in advertisements or upon contest entry, make clear
6 and conspicuous, accurate statements that are not
7 misleading concerning the chances of winning and the
8 number of winners;
- 9 (4) Enable authorized players to exclude themselves from
10 contests and take reasonable steps to prevent these
11 players from entering a contest from which they have
12 excluded themselves;
- 13 (5) Permit any authorized player who requests to be
14 excluded from contests to permanently close an account
15 registered to that player on any platforms supported
16 by the operator or registrant at any time and for any
17 reason;
- 18 (6) Offer introductory procedures for authorized players,
19 which shall be prominently displayed on the main page
20 of the operator's or registrant's platform, that



- 1 explain contest play and how to identify a highly
2 experienced player;
- 3 (7) Identify all highly experienced players in any contest
4 by a symbol attached to the highly experienced
5 players' usernames or by any other easily visible
6 means on all platforms supported by the operator or
7 registrant;
- 8 (8) Disclose the number of entries a single authorized
9 player may submit to each contest;
- 10 (9) Disclose the maximum number of total entries allowed
11 for each contest;
- 12 (10) Implement measures to protect the privacy and online
13 security of authorized players and their accounts;
- 14 (11) Offer all authorized players access to their account
15 history and account details;
- 16 (12) Ensure authorized players' funds are protected upon
17 deposit and segregated from the operating funds of the
18 operator or registrant and otherwise protected from
19 corporate insolvency, financial risk, or criminal or
20 civil actions against the operator or registrant;



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- 1 (13) List on each website, in a prominent place,
2 information concerning assistance for compulsive play
3 in the State, including a toll-free number directing
4 callers to reputable resources containing further
5 information that shall be free of charge;
- 6 (14) Ensure the value of any prizes and awards offered to
7 authorized players is established and made known to
8 the authorized players in advance of the contest, and
9 that the value is not determined by the number of
10 authorized players or the amount of any entry fee paid
11 by the authorized players;
- 12 (15) Ensure all winning outcomes reflect the relative
13 knowledge and skill of the authorized players and is
14 determined predominately by accumulated statistical
15 results of the performance of individuals in sports
16 events;
- 17 (16) Ensure no winning outcome is based on the score, point
18 spread, or performance of a single sports team, or any
19 combination of teams;



1 (17) Ensure no winning outcome is based solely on any
2 single performance of an individual athlete in a
3 single sport or athletic event;

4 (18) Ensure no game or contest is based on a prohibited
5 sports event; and

6 (19) Assess and collect any tax or fee as provided by law.

7 (b) Each registrant shall restrict the number of entries
8 submitted by a single authorized player for any contest to a
9 maximum of one hundred fifty entries per player per contest, or
10 a maximum of three per cent of the total number of entries by
11 all authorized players for any contest, whichever is less, or as
12 determined by the department. Registrants shall take reasonable
13 steps to prevent authorized players from submitting more than
14 the allowable number of entries per contest. The department
15 shall adopt rules to further effectuate this section to ensure
16 that the number of entries submitted by a single authorized
17 player for any contest will lead to a fair and equitable
18 distribution of number of entries.

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



1 Unless otherwise approved by the department, operators and
2 registrants shall not directly or indirectly promote or
3 advertise any online fantasy or simulation sports games or
4 contests with an entry fee during the conduct of any online
5 fantasy or simulation sports games or contests without an entry
6 fee. This subsection shall not apply to any operator or
7 registrant that prohibits prohibited players from participating
8 in online fantasy or simulation sports games or contests without
9 an entry fee.

10 (d) Registrants shall not offer any contest based on any
11 prohibited sports event.

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

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

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



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

5 (g) Registrants shall prohibit the use of third-party
6 scripts or scripting programs for any contest and ensure that
7 measures are in place to deter, detect, and, to the extent
8 reasonably possible, prevent cheating, including collusion, and
9 the use of cheating devices or software programs that submit
10 entry fees or adjust the athletes selected by an authorized
11 player.

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



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

4 § -5 Department powers and duties. (a) The department
5 shall have the following powers and duties for purposes of
6 administering and enforcing this chapter:

- 7 (1) Approve and deny applications for registration to
8 conduct contests in the State and to suspend, refuse
9 or renew, or revoke any registration issued to the
10 registrant pursuant to this chapter;
- 11 (2) Review and approve each platform and contest offered
12 by an operator or registrant;
- 13 (3) Accept and investigate complaints of any kind from an
14 authorized player and attempt to mediate these
15 complaints where appropriate;
- 16 (4) Investigate alleged violations of this chapter;
- 17 (5) Initiate proper enforcement proceedings where action
18 is deemed by the department to be necessary or
19 appropriate; and
- 20 (6) Execute all powers and duties assigned by and
21 necessary to implement this chapter.



1 (b) The department shall adopt rules, pursuant to chapter
2 91, to effectuate the purposes of this chapter. The rules shall
3 include but not be limited to the following:

4 (1) Guidelines for the development of the initial form of
5 the application for registration;

6 (2) Procedures for the registration and operation of
7 contests in the State;

8 (3) Responsible protections with regard to compulsive play
9 and safeguards for fair play; and

10 (4) Procedures for the collection and payment of taxes and
11 fees as provided by law.

12 The rules may monitor the conduct and operation of contests and
13 platforms, protect authorized players, and promote the fairness,
14 honestly, and integrity of contests.

15 § -6 **Penalties.** Any individual, operator, or registrant
16 that violates this chapter shall be liable for a civil penalty
17 of no more than \$1,000 for each violation that shall accrue to
18 the State and may be recovered in a civil action brought by the
19 department.

20 § -7 **Annual report.** (a) Each registrant shall annually
21 submit a report to the department no later than June 30 of each



1 year that shall include the following information that applies
2 to accounts held by authorized players located in the State:

3 (1) The number of accounts held by authorized players on
4 all platforms offered by the registrant and the number
5 of accounts held by highly experienced players on all
6 platforms offered by the registrant;

7 (2) The total number of new accounts established in the
8 preceding year as well as the total number of accounts
9 permanently closed in the preceding year;

10 (3) The total amount of entry fees received from
11 authorized players;

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

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

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

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

20 (b) Upon receipt of the annual report submitted by each
21 registrant, the department shall be authorized, to the extent



1 that the department deems to be in the public interest, to
2 conduct a financial audit of any registrant, at any time, to
3 ensure compliance with this chapter.

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

12 § -8 Online fantasy sports contests tax; rate;
13 disposition. An online fantasy sports contests tax shall be
14 imposed on the gross revenues of each registrant at the rate
15 of per cent. Tax revenues collected under this section
16 shall be deposited into the online fantasy sports contests
17 special fund and divided as follows:

18 (1) per cent directed to the department of
19 education; and
20 (2) per cent for the acquisition, designing,
21 construction, reconstruction, improvement, repair, and



1 maintenance of county main and general thoroughfares,
2 highways, and other streets.

3 § -9 Online fantasy sports contests special fund;
4 purposes and use. There is created within the state treasury a
5 special fund to be known as the online fantasy sports contests
6 special fund, into which shall be deposited all fees, taxes, and
7 fines collected under this chapter. Moneys from the online
8 fantasy sports contests special fund shall be used for:

- 9 (1) The department of education; and
10 (2) The acquisition, designing, construction,
11 reconstruction, improvement, repair, and maintenance
12 of county main and general thoroughfares, highways,
13 and other streets."

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

17 "§712- Online fantasy sports contests. (a) Online
18 fantasy sports contests registered and conducted pursuant to
19 chapter shall be exempt from this part.

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



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

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

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

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

14 "Contest of chance" means any contest, game, gaming
15 scheme, or gaming device in which the outcome depends in a
16 material degree upon an element of chance, notwithstanding that
17 skill of the contestants may also be a factor therein[+];
18 provided that a contest of chance shall not include online
19 fantasy sports contests registered and conducted pursuant to
20 chapter _____."

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



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1 "Gambling" [~~— A person engages in gambling if he stakes or~~
2 ~~risks~~] means staking or risking something of value upon the
3 outcome of a contest of chance or a future contingent event not
4 under [~~his~~] the person's control or influence, upon an agreement
5 or understanding that [~~he~~] the person or someone else will
6 receive something of value in the event of a certain outcome.
7 [~~Gambling~~] "Gambling" does not include [~~bona~~]:

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

12 (2) Agreements to compensate for loss caused by the
13 happening of chance, including but not limited to
14 contracts of indemnity or guaranty and life, health,
15 or accident insurance [~~-~~]; and

16 (3) Online fantasy sports contests registered and
17 conducted pursuant to chapter _____."

18 SECTION 5. There is appropriated out of the general
19 revenues of the State of Hawaii the sum of \$ _____ or so
20 much thereof as may be necessary for fiscal year 2023-2024 and
21 the same sum or so much thereof as may be necessary for fiscal



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1 year 2024-2025 to establish and implement a registration and
2 monitoring program for online fantasy sports contests.

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

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

8 SECTION 7. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 8. This Act shall take effect on July 1, 2023.

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INTRODUCED BY: _____

A handwritten signature in black ink, appearing to be 'LW', is written over a horizontal line.

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Report Title:

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

Description:

Establishes an online fantasy sports contests registration and monitoring program under the Department of the Attorney General. Imposes an online fantasy sports contests tax on the gross revenues of registrants. Establishes the Online Fantasy Sports Contests Special Fund and allocates proceeds of the fund to the Department of Education and for the acquisition, designing, construction, reconstruction, improvement, repair, and maintenance of county main and general thoroughfares, highways, and other streets. 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.

