
Commerce & Gaming Committee

HB 2370

Brief Description: Prohibiting fantasy sports games.

Sponsors: Representatives Hurst and Sawyer.

Brief Summary of Bill

- Declares fantasy sports games in which a participant provides valuable consideration of any kind a prohibited form of illegal gambling.
- Makes offering for play, operating, or advertising a fantasy sports game in the State of Washington punishable as a class C felony and a violation of the Consumer Protection Act.

Hearing Date: 1/18/16

Staff: Peter Clodfelter (786-7127).

Background:

Fantasy Sports Games.

A fantasy sports game, as commonly understood, is a game or contest in which participants act like an owner, coach, or manager of an imaginary sports team and compete against other participants' teams, using statistics generated by real-world athletes. There are numerous variations on scoring and game structure. But all fantasy sports games are based on the statistical performance of real-world athletes in real-world sporting events.

In fantasy football, for example, participants receive varying numbers of points when, during a real-world game, a real-world athlete on a participant's fantasy team runs for a touchdown, catches a touchdown pass, kicks a field goal, makes an interception, etc. In the end, the participant with the most points wins.

In the United States, fantasy sports games are based on such sports as football, baseball, basketball, golf, hockey, and auto racing. Fantasy sports games may be played informally among

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friends or against other people or a target score on the Internet. Fantasy sports games may last the length of an entire sport's season or last only a week or day.

Fantasy sports' origin traces at least back to the 1970s and a group of sports journalists playing a form of fantasy baseball in a New York City French restaurant. Fantasy sports have evolved. Companies now offer week-long or daily fantasy sports games to millions of participants through globally marketed Internet websites. Participants can pay an entry fee, construct a fantasy team or lineup within set parameters, compete against other participants or a target score, and, potentially, win cash prizes. Currently, the biggest fantasy sports companies include DraftKings, FanDuel, DraftOps, YahooSports, and FantasyDraft. These companies do not currently offer daily and weekly types of fantasy sports games in Washington, but some advertise in Washington.

Because of the structure of daily and weekly fantasy sports games, state legislatures across the United States are now considering whether fantasy sports games constitute gambling. At common law, unless changed by statute, gambling consists of any activity with three elements: (1) consideration, (2) chance, and (3) prize. There is currently a national discussion about whether fantasy sports games are a skill-based game or a game of chance.

State Gambling Law.

In Washington, all forms of gambling except those specifically authorized by or excluded from the Gambling Act are illegal. The word "gambling" is defined in the Gambling Act as "staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under the person's control or influence, upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome." The term "contest of chance" is defined as "any contest, game, gaming scheme, or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein."

Excluded from the definition of "gambling" in the Gambling Act are things such as parimutuel betting on horse racing, bona fide business transactions valid under contract law (like contracts for the purchase or sale at a future date of securities or commodities), and contracts for life, health, and accident insurance. Specifically authorized are bingo games, raffles, and amusement games conducted by a bona fide charitable organization or nonprofit organization, as well as certain promotional contests of chance, the state lottery, and licensed sports pools.

Under the Gambling Act, a person who engages in or knowingly causes, aids, abets, or conspires with another to engage in professional gambling as defined in the Gambling Act is guilty of gross misdemeanor, a class C felony, or a class B felony, depending on the specific factual circumstances. A person engages in professional gambling when a person does any of the following:

- acts other than as a player and knowingly engages in conduct that materially aids any form of gambling activity;
- pays a fee to participate in a card game, contest of chance, lottery, or other gambling activity;
- acts other than as a player and knowingly accepts or receives money or other property pursuant to an agreement or understanding with any other person whereby he or she participates or is to participate in the proceeds of gambling activity;

- engages in bookmaking; or
- conducts a lottery.

Also under the Gambling Act, a person who knowingly transmits or receives gambling information by telephone, telegraph, radio, semaphore, the Internet, a telecommunications transmission system, or similar means, or knowingly installs or maintains equipment for the transmission or receipt of gambling information is guilty of a class C felony.

Federal Gambling Law.

Whether conduct constitutes gambling under federal law typically depends on whether the conduct meets the definition of gambling under state law. Although several federal laws address gambling, it is unclear if those laws apply to fantasy sports.

The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA) prohibits businesses from knowingly accepting payments in connection with another person's participation in a bet or wager that involves the use of the Internet and that is unlawful under state or federal law. However, UIGEA provides fantasy sports games that meet certain criteria an express exclusion from UIGEA's prohibition. To fit in the UIGEA exclusion, a fantasy sports game must meet the following criteria:

- No fantasy or simulation sports team may be based on the current membership of an actual team that is a member of an amateur or professional sports organization.
- All prizes offered to winning participants must be established and made known to the participants in advance of the game, and the value of the prizes may not be determined by the number of participants or the amount of any fees paid by those participants.
- All winning outcomes must reflect the relative knowledge and skill of the participants and be determined predominantly by accumulated statistical results of the performance of individuals in multiple real-world sporting events.
- No winning outcome is based on the score, point spread, or any performance of any single real-world team or any combination of such teams, or solely on any single performance of an individual athlete in any single real-world sporting or other event.

Although UIGEA contains the fantasy sports exclusion, UIGEA also says that none of its provisions may be construed as altering, limiting, or extending any federal or state law or tribal-state compact prohibiting, permitting, or regulating gambling within the United States.

A different federal law addresses gambling in the context of sports. Enacted by Congress in 1992, the Professional and Amateur Sports Protection Act (PASPA) prohibits government entities and people from sponsoring, operating, advertising, or promoting any gambling operation based directly or indirectly on one or more competitive games in which amateur or professional athletes participate or on one or more performances of such amateur or professional athletes in such games. PASPA contains a grandfather clause that exempted states with pre-existing sport wagering laws. No court has applied PASPA to fantasy sports games.

At least four other federal gambling laws adopted in the 1950s, 1960s, or 1970s prohibit various conduct related to gambling and impose fines and up to five years imprisonment on violators. Enacted prior to the existence of modern day fantasy sports games, it is unclear if these federal gambling laws apply to fantasy sports games.

The State Consumer Protection Act.

The state Consumer Protection Act (CPA) prohibits unfair methods of competition and unfair or deceptive practices in commerce. The CPA may be enforced by private legal action or through a civil action brought by the Office of the Attorney General. A court may award private individuals injured by an unfair or deceptive practice actual damages, court costs, and additional damages up to triple the actual damages amount. In addition, a court may enjoin a business from conducting further unfair practices.

Summary of Bill:

State Gambling Law.

Fantasy sports games in which a participant provides valuable consideration of any kind are illegal gambling and are prohibited. It is unlawful to offer for play, operate, or advertise a fantasy sports game in Washington. Offering for play, operating, or advertising a fantasy sports game in Washington is punishable as a class C felony. With respect to the advertising prohibition, each discrete advertisement constitutes a separate offense.

"Fantasy sports game" is defined as an imaginary or simulated game or contest, of any duration, and that meets the following requirements:

- Participation in the game requires a player to provide valuable consideration of any kind including, but not limited to, a fee, charge, bet, wager, promise to pay, or other thing of value, to another individual or entity;
- A player competes against other players or a target score, or other benchmark, as the owner, manager, or coach of an imaginary or simulated team of athletes that compete in imaginary or simulated games.
- The game involves the use of statistics accumulated by the athletes in real-world sporting events to determine the scores or outcomes of imaginary or simulated games.

The State Consumer Protection Act.

A violation of the act is a violation of the Consumer Protection Act.

Appropriation: None.

Fiscal Note: Requested on 1/12/16.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.