

# SENATE BILL REPORT

## SB 6333

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As of January 25, 2016

**Title:** An act relating to fantasy sports contests.

**Brief Description:** Classifying fantasy sports contests as contests of skill.

**Sponsors:** Senators Ericksen and Dansel.

**Brief History:**

**Committee Activity:** Commerce & Labor: 1/20/16.

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### SENATE COMMITTEE ON COMMERCE & LABOR

**Staff:** Susan Jones (786-7404)

**Background:** Federal Law and Fantasy Sports. In 2006, Congress passed the Unlawful Internet Gambling Enforcement Act (UIGEA) prohibiting most types of online gambling in the US. UIGEA prohibits gambling businesses from knowingly accepting payments in connection with the participation of another person in a bet or wager that involves the use of the Internet and that is unlawful under any federal or state law. The term bet or wager excludes fantasy or simulation sports games - fantasy sports competitions - meeting certain conditions.

The Professional and Amateur Sports Protection Act (PASPA), enacted in 1992, 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 those amateur or professional athletes in those games. PASPA contains a grandfather clause exempting states with pre-existing sport wagering laws. No court has ruled on PASPA's application to fantasy sports competitions.

Fantasy Sports - In General. A fantasy sports competition is generally a game where participants construct a team that competes against other fantasy owner's teams using statistics generated by real life individual players or teams. There are many variations of scoring and league structure, but all are based on the real life statistical performance. In the US the most common fantasy sports are baseball, football, basketball, golf, hockey, and auto racing. Fantasy sports competitions vary in length. The competition may last a season or only a week or a day.

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By 2009, online daily fantasy sports competitions (DFS) had been introduced and gained popularity in the US. By 2013, 21 million people were playing fantasy sports in the US. There have been a number of recent events in the news regarding DFS. A number of states have taken action regarding the legality of fantasy sports through their Attorney Generals, legislation, and court systems. The Washington State Gambling Commission studied the issue and prepared a report for its November 2015 meeting.

Washington Law. The Washington State Constitution prohibits all forms of gambling unless specifically authorized by statute. Under the Gambling Act, gambling means 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. There are exceptions.

The Legislature has not authorized fantasy sports competitions. The Washington State Gambling Commission has a brochure on sports wagering that addresses fantasy sports as being illegal and prohibited. The prohibition of fantasy sports in Washington is based on the definition of a game of chance, and on the prohibition on transmitting gambling information over the phone or Internet.

Under the Gambling Act, a person who engages in or knowingly causes, aids, abets, or conspires with another to engage in professional gambling is guilty of a gross misdemeanor or felony, depending on the circumstances. Engaging in professional gambling includes:

- acting other than as a player, and knowingly engaging in conduct that materially aids any form of gambling activity;
- paying a fee to participate in a card game, contest of chance, lottery, or other gambling activity;
- acting other than as a player, and knowingly accepting or receiving money or other property pursuant to an agreement or understanding with any other person whereby the person participates, or is to participate, in the proceeds of gambling activity;
- engaging in bookmaking; or
- conducting a lottery.

Also, a person who knowingly transmits or receives gambling information by phone or the Internet is guilty of a class C felony.

**Summary of Bill:** Fantasy competitions are considered games of skill and not gambling for purposes of the Gambling Act. Fantasy competitions are any fantasy or simulated sports game or educational game or contest that involves a fantasy team not based on the current membership of an actual team that is a member of an amateur or professional sports organization and that meets the following conditions:

- all prizes offered to winners are known in advance of the game and the value of the prizes is not determined by the number of participants or the amount of any fees paid by participants;
- all winning outcomes reflect the participant's relative knowledge and skill and are determined mostly by accumulated statistical results of the individuals' performance in multiple real world sporting or other events; and

- a winning outcome is not based (1) on the score, point spread, or performance of any single real world team or any combination of teams; or (2) solely on any single performance of an individual athlete in any single real world sporting or other event.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: Washington state is not hostile to gambling and has embraced gambling. Billions of dollars are spent every year in casinos and hundreds of millions are spent on the state lottery. Our state gambling act has a long list of gambling activities that have been authorized in statute that involve an element of chance as our state constitution requires, from church bingo to fishing derby. The issue is not whether it is a game of skill or a game of chance, under our constitution, the legislature just has to decide if it wants to add fantasy sports to that long list of authorized activities. Fantasy sports in their week-long and daily form are very popular in this country with 50 million people participating. Many friends and co-workers participate socially in fantasy sports. This allows people to be more engaged in the sports they love. The average amount spent is about \$11 a month per contestant. Now 43 states allow fantasy sports. There were 45 states allowing fantasy sports. Large companies and major league sports that have been historically opposed to gambling are embracing fantasy sports because they are fantasy. Concerns about point shaving are not present because it is a fantasy team. It is a contest of your skill in taking a salary cap and pick a team. This gives another way to participate in the sport and increases viewership of teams that people might not otherwise watch. It is not gambling. It does need to be authorized. It can be regulated and regulations have been developed in Massachusetts. Regulation would be welcomed by the industry because it would like to preserve fantasy sports. If the bill passes and it becomes a game of skill, the Gambling Commission would not have authority over it. But after the bill passes, the legislature could choose to give the Commission regulatory authority of this activity. That could be an approach that the legislature could take and the industry would welcome it.

OTHER: The Gambling Commission has always taken the position that fantasy sports are unauthorized in Washington state. There has been one case in the last 5 years that has been prosecuted, which was a NASCAR fantasy sports game operator. This is an ever changing landscape. The Commission was briefed about this last Friday and does not take a position on this bill or any of the fantasy sports bills, hoping that the Legislature will provide some protection. A couple points of what other states are doing where they are providing legislation: (1) providing consumer protection, making sure that players' information is protected; (2) ensuring that employees or family members can't play on their own websites because there have been some insider trading issues; (3) age requirements; (4) audits; and (5) self-exclusion related to gambling addiction. These include Florida and California. Some Washington State players are getting around the exclusion, whether on a small scale or on-line. Two of the larger operators are excluding Washington residents. However, there are gray market and off-shore operators who care whether they preserve the ability to get into a

licensed or regulated operation in the future. The Commission does get complaints on those operators and follows up on them. Washington State casinos do not operate fantasy sports. There is one federal bill, the Restoration of Americas Wire Act, that was introduced in Congress which would eliminate the exception for fantasy sports under UIGEA. The Commission is not aware of any states that tax fantasy sports. Regulating could also provide for a fee that would cover the cost of the regulation. With respect to the skill issue, technology today can auto-pick a team, thereby replace the player's ability to pick the player whether the player has skill or knowledge. There is an element of skill in fantasy sports but there are a number of elements of chance, what can happen on the field. The integrity of the game needs to be preserved. A player may get into a game with \$0.50 or a \$1, up to thousands of dollars. Some statistics show that 1 to 2 percent of people are winning because there are players with scripts and, like in the poker world, are acting like a shark and everyone else is the minnow. They are able to monopolize the teams, and will. Fantasy sports is not expressly prohibited but is not authorized. A recent Commission report provided that Washington has the 12th or 13th largest market of the fantasy sports billion-dollar industry. This bill takes it out of the Commission's hands. Under Senator Roach's bill, the Commission would probably just use a complaint-based system. The Commission is still looking at the issue of daily versus season-long.

The Recreational Gaming Association has a concern about enforcement. The bill does not make it an enforceable act but the Commission will receive calls about the legality of fantasy sports. Since the Commission is a non-appropriated agency, licensees would have to pay fees to cover these issues. Consider having some sort of funding to cover these activities.

**Persons Testifying:** PRO: Rob McKenna, Outside Counsel - Fantasy Sports Trade Association, DraftKings & FanDuel.

OTHER: Chris Stearns, Chair, Washington State Gambling Commission; Dave Trujillo, Director, Washington State Gambling Commission; Brian Considine, Managing Attorney/Leg. Liaison, Washington State Gambling Commission; Dolores Chiechi, Recreational Gaming Association.

Persons Signed In To Testify But Not Testifying: No one.