



SENATE OF PENNSYLVANIA BILL SUMMARY

Senate Bill 1324 Printer's No. 1946

Prime Sponsor: Senator Williams and Senator Reschenthaler
Committee: Community, Economic and Recreational Development

SYNOPSIS:

This legislation provides for the **Fantasy Sports Consumer Protection Act** that provides for the licensing and regulation of fantasy contests and imposes duties upon the Department of Revenue, the Department of Drug and Alcohol Programs and the Pennsylvania Gaming Control Board (board/PGCB); and making appropriations.

SUMMARY:

Senate Bill 1324, Printer's No. 1946 provides for fantasy contests; imposing duties upon the Department of Revenue, the Department of Drug and Alcohol Programs and the Pennsylvania Gaming Control Board (PGCB); and making appropriations. More Specifically this legislation provides for the **Fantasy Sports Consumer Protection Act** that provides for the licensing and regulation of fantasy contests as follows:

- A fantasy contest license that authorize existing entities and/or PA casinos to offer fantasy contests in Pennsylvania to participants whether the individual is located in PA or another jurisdiction (and would now prohibit fantasy contests in PA without a license).
- Basically defines a "Fantasy contest" as an online fantasy or simulated game or contest with an entry fee and prize or award (etc.).
- PGCB shall have regulatory authority over licensed operators, principals and key employees and shall ensure the integrity of fantasy contests.
- At PGCB's discretion, permits the placement and operation of fantasy contest terminals within licensed facilities (PA casinos).
- A licensed entity representative (i.e., attorney, agent or lobbyist) must register with the board and has an affirmative duty to update registration information (a failure to update is punishable by the board), and the board is required to maintain a list of licensed entity representatives that shall be available to the public.
- PGCB may only require background checks for key employees and principals.
- Nonrefundable application fee to reimburse the costs of the board in relation to the application and the issuance and denial of a license.
- License fee (deposited in General Fund):
 - \$50,000 (to be paid to board within 30 days of issuance of fantasy contest license) or 7.5% of the applicant's fantasy contest adjusted revenue for the previous calendar year (whichever less).
 - \$50,000 (to be paid to board within 30 days of issuance of fantasy contest license) if the applicant is also a licensed gaming entity.
- A license is valid for five (5) years.
- Renewal fee (deposited in General Fund):

- \$5,000 (to be paid to board within 30 days of the renewal of a fantasy contest license)
- A participant must be at least 18 years old.
- A licensed operator shall establish and implement procedures that allow a person to restrict [self-exclude] himself from entering a fantasy contest or accessing a fantasy contest account.
- Conspicuously post compulsive and problem play notices at fantasy contest registration points and provide a toll-free telephone number.
- Prohibits the use of scripts (unapproved automated processes/computer programs created by a participant or third party) by a participant on a licensed operator’s fantasy contest platform if not approved by the licensed operator.
- Precludes fantasy contest based on collegiate or high school athletic event.
- A licensed operator may not Issue credit to a participant to establish or fund a fantasy contest account.
- Licensed operators are prohibited from knowingly marketing to a self-excluded individual or allowing them to enter a fantasy contest.
- Licensed operators are prohibited from offering a fantasy contest where winning outcomes do not reflect the relative knowledge and skill of participants.
- A 5% tax is imposed on the quarterly fantasy contest adjusted revenue of a licensed operator.
- Fantasy contest terminals – A licensed gaming entity (PA casino) may place and operate fantasy contest terminals within a PA casino (subject to board approval).
 - But fantasy contest terminals may not be placed on the gaming floor.
- Funding:
 - Gaming service providers – A licensed operator who is not a licensed gaming entity may, at the discretion of the board, be certified or registered as a gaming service provider under 4 Pa.C.S. § 1317.2 (relating to gaming service provider) in order to operate fantasy contests on behalf of a PA casino.
 - Appropriation:
 - \$1.25M (FY 16-17) appropriated to board for implementing and administering.
 - \$500,000 (FY 16-17) appropriate to department (DOR) for implementing and administering.
 - Repayment – The appropriations are a loan from the General Fund and shall be repaid quarterly (over a period of no more than 10 years) through assessments on licensed operators to their Section 702 accounts.
 - Unused amounts – Any portion of appropriated amounts unused as of July 1, 2017 reverts back to General Fund.

{Section 102 – Definitions}

The following terms are defined:

- “Board” – PA Gaming Control Bd. (PGCB)
- “Conduct of gaming” – Play of slot machines and table games under Title 4 (Amusements)
- “Controlling interest” – Either:
 - Publicly traded corporation controlling interest in a fantasy contest license or a licensed operator is a person’s sole voting right to appoint one or more members of the board of directors or other governing board or the ownership of 5% or more of the securities of the corporation (unless presumptive control or ability to elect is rebutted)

- Privately held corporation, partnership, limited liability company controlling interest is the holding of securities of 15% or more in the legal entity (unless presumptive control is rebutted)
- “Department” – PA Department of Revenue (DOR)
- “Entry fee” – *The cash or cash equivalent paid by a participant to a licensed operator in order to participate in a fantasy contest.*
- “Fantasy contest” – *An online fantasy or simulated game or contest with an entry fee and a prize or award [administered by a licensed operator] in which:*
 - *The value of all prizes or awards offered to winning participants is established and made know to participants in advance of the contest.*
 - *All winning outcomes reflect the relative knowledge and skill of participants and are determined by accumulated statistical results of the performance of individuals, including athletes in the case of sports events.*
 - *No winning outcome is based on the score, point spread or performance of single actual team or combination of teams or solely on a single performance of an individual athlete or player in a single actual event.*
- “Fantasy contest account” – *The formal electronic system implemented by a licensed operator to record a participant’s entry fee, prizes or awards and other activities. . . .*
- “Fantasy contest adjusted revenues” *For each fantasy contest, the amount equal to the total amount of all entry fees collected from all participants entering the fantasy contest minus prizes or awards paid to participants in the fantasy contest multiplied by the in-State percentage.*
- “Fantasy contest license” – *A license issued by the board authorizing a person to offer fantasy contest in the Commonwealth in accordance with this act.*
- “Fantasy contest terminal” – *A physical, land-based computerized or electronic terminal or similar device that allows participants to:*
 - *register for a fantasy contest account;*
 - *pay an entry fee;*
 - *select an imaginary team;*
 - *receive winnings; or*
 - *otherwise participate in a fantasy contest.*
- “Gaming floor”
- “Gaming service provider”
- “In-State participant”
- “In-state percentage” *For each fantasy contest, the percentage, rounded to the nearest tenth of a percent, equal to the total entry fees collected from all in-State participants divided by the total entry fees collected from all participants in the fantasy contest.*
- “Key employee”
- “Licensed entity representative” – *Attorney, agent or lobbyist, etc.*
- “Licensed facility” – *As defined in 4 Pa.C.S. § 1103 (relating to definitions)*
- “Licensed gaming entity” – *As defined in 4 Pa.C.S. § 1103 (relating to definitions)*
- “Licensed operator” – *A person who holds a fantasy contest license.*
- “Participant” – *An individual who participates in a fantasy contest, whether the individual is located in this Commonwealth or another jurisdiction.*
- “Person”
- “Principal”
- “Prize or award” – *Anything of value worth \$100 or more or any amount of cash or cash equivalent.*
- “Publically traded corporation”

- “Script” – A list of commands that a fantasy-contest-related computer system program can execute that is created by a participant or third party not approved by the licensed operator to automate processes on a licensed operator’s fantasy contest platform.
- “Season-long fantasy sports contest” *A fantasy contest offered by a licensed operator or that is conducted over an entire sports season where any entry fees are paid prior to the start of the season.*

{Section 301 – General and Specific Powers of the Board}

- General powers:
 - Board shall have regulatory authority over licensed operators, principals and key employees and shall ensure the integrity of fantasy contests.
 - Board may employ individuals as necessary.
- Specific powers:
 - Board’s discretion to issue, approve, renew, revoke, suspend, condition or deny issuance of licenses
 - Levy fines
 - Publish each January on board’s website a list of persons who applied for or held a fantasy contest license during the preceding calendar year.
 - Prepare and submit through the governor an itemized budget.
 - In event appropriations for the administration of this act are not enacted by June 30, any funds appropriated for the administration which are unexpended shall remain available for expenditure.
 - Promulgate rules and regulations necessary for the administration and enforcement of this act
 - To administer oaths, examine witnesses and issue subpoenas
 - Board may delegate its responsibilities to the executive director
 - Require licensed operators and applicants to submit any information or documentation
 - Require licensed operators (except for a licensed operator operating season-long fantasy contests) to:
 - Annually contract with a certified public accountant to conduct an independent audit
 - Annually contract with a testing laboratory approved by the board to verify compliance
 - Annually submit to the board and the department a copy of the audit report and testing report
 - In conjunction with the Department of Drug and Alcohol Programs, develop a process by which licensed operators provide participants with a toll-free telephone number
 - At board’s discretion, to permit the placement and operation of fantasy contest terminals within licensed facilities (PA casinos)
- Licensed entity representative – A licensed entity representative (i.e., attorney, agent or lobbyist) must register with the board and has an affirmative duty to update registration information (a failure to update is punishable by the board), and the board is required to maintain a list licensed entity representatives that shall be available to the public.
- Exceptions – Except as provided under section 902 (related to licensed gaming entities) the board is not authorized to:
 - Require background checks for employees other than key employees and principals.
 - Require any additional permits or licenses.

- Impose additional conditions of licensure or prohibitions on the operation of fantasy contests.

{Section 302 – Temporary Regulations}

- Promulgation – Regulations promulgated by the board shall be temporary and shall expire within two (2) years, which are not subject to various sections of the Commonwealth Documents Law (Act 240 of 1968) or the Regulatory Review Act (Act 181 of 1982).
- Expiration – Except for temporary regulations concerning network connectivity, security and testing and compulsive and problem play.

{Section 303 – Fantasy Contest License Appeals} – An applicant or licensee may appeal any final order involving the approval, issuance, denial, revocation or conditioning of a fantasy contest license.

{Section 304 – Board Minutes and Records}

- Record of proceedings – The board shall maintain a record of all public meetings
- Applicant information – The board shall maintain a list of all applicants and all actions taken (denied, revoke or not renewed info. shall be removed after seven years).
- Other files and records – The board shall maintain other files and records as deemed appropriate,
- Confidential information – Information relating to character, honesty and integrity; nonpublic personal information, propriety information, unwarranted invasion of privacy information, records of reports not required to be filed with the Securities and Exchange commission, records considered nonpublic by the Securities and Exchange Commission, financial or security information deemed confidential by the board upon the showing of good cause.
 - No claim of confidentiality regarding:
 - Criminal history.
 - Any record otherwise publically available from a Commonwealth agency, local agency or another jurisdiction.
 - Confidential shall be withheld from public disclosure, except upon court order.
 - Board may seek voluntary waiver of confidential information.
- Notice – Notice of the contents of any information (except to a duly authorized law enforcement agency) shall be given to the applicant or licensee.
- Information held by department – Information in the possession of the department (DOR) pertaining to licensed operator shall be made available to the board.

{Section 305 – Reports of Board}

The annual report of the board submitted under 4 Pa.C.S. § 1211 (relating to reports of board) shall include information on the conduct of fantasy contests (i.e., total adjusted revenue; all taxes, fees, fines; and any other related info.).

{Section 501 – General Prohibitions}

- General rule – Must have a fantasy contest license to offer a fantasy contest in the Commonwealth.

- Existing activity – May operate fantasy contest during application or renewal period (unless the board has reasonable cause to believe in violation of this act or the board requires suspension until license is issued or renewed).

{Section 502 – Application}

- Form and information – Application for a license shall be submitted on form and in manner required by the board and shall contain the following information:
 - Name, address, etc. of the applicant.
 - Name and address of person having custody of the applicant’s financial records.
 - Names and addresses of key employees.
 - Names and addresses of principals.
 - Information related to financial and criminal history to establish by clear and convincing evidence the financial stability, integrity and responsibility of the applicant and the applicant’s key employees and principals.
 - Information necessary to establish the applicant’s ability to comply with section 505 (relating to conditions of licensure).
 - Any other information required by the board.
- Nonrefundable application fee – Each application shall be accompanied by a nonrefundable application fee (established by the board, but not to exceed amount necessary to reimburse the costs of the board in relation to the application and the issuance and denial of a license).
- Additional information – Applicant has continuing duty to provide information to board.
- Abbreviated application process – Board at its discretion may establish an abbreviated application process for a fantasy contest license if the applicant is also a licensed gaming entity.

{Section 503 – Issuance and Denial of License}

- Duty to review applications – The board shall review all applications and shall issue a license to any applicant that:
 - Has submitted a completed application and paid the nonrefundable application fee.
 - Has demonstrated that the applicant’s financial stability, integrity and responsibility
 - Has not been denied a license.
- Reasons to deny applications:
 - Knowingly made false statement of material fact
 - Employs a principal or key employee convicted of a felony, a crime of moral turpitude or any criminal offense involving dishonesty or breach of trust within 10 years.
 - Knowingly failed to comply with the provisions of this act or requirements of the board
 - Has had registration, permit or license to conduct fantasy contest denied or revoked in any other jurisdiction.
 - Has legally defaulted in the payment of any obligation to the Commonwealth or is not compliant with taxes due to the department.
 - Not qualified to do business with the Commonwealth or not subject to the jurisdiction of the courts of the Commonwealth.
- Time period for review – The board has a 120 days to complete its review (upon submission of a completed application and if it does not issue a licenses must provide specific justification for denial.
- License Fee:

- \$50,000 (to be paid to board within 30 days of issuance of fantasy contest license) or 7.5% of the applicant's fantasy contest adjusted revenue for the previous calendar year (whichever less).
- \$50,000 (to be paid to board within 30 days of issuance of fantasy contest license) if the applicant is also a licensed gaming entity.
- Deposited in the General Fund.
- Failure to pay license fee will result in fantasy contest license being suspended or revoked.
- Abbreviated approval process – Board at its discretion may establish an abbreviated approval process for a fantasy contest license to a licensed gaming entity whose slot machine license and table game certificate are in good standing.

{Section 504 – License Renewal}

- Renewal
 - A license issued under this act is valid for five (5) years.
 - License operator has an affirmative duty to notify the board of any changes relating to the status of its fantasy contest license.
 - Application for renewal must be submitted at least 90 days prior to expiration.
- Revocation or failure to renew
 - Board may at its discretion suspend, revoke or deny renewal of a fantasy contest license if:
 - Applicant or any of its key employees or principals are in violation.
 - Applicant has furnished the board with false or misleading information.
 - Information contained in the initial application or any renewal application is no longer true.
 - Applicant has failed to remit taxes or assessments under Section 701, 702 or 703.
 - Applicant has legally defaulted in obligation due to the Commonwealth.
 - In event of revocation or failure to renew, the authorization to conduct fantasy contests shall immediately cease.
 - In event of a suspension, the authorization to conduct fantasy contests shall immediately cease.
- Renewal fee:
 - \$5,000 (to be paid to board within 30 days of the renewal of fantasy contest license) or 7.5% of the applicant's fantasy contest adjusted revenue for the previous calendar year (whichever less).
 - Deposited in the General Fund.
 - Failure to pay license fee will result in fantasy contest license being suspended or revoked.

{Section 505 – Conditions of Licensure}

- A licensed operator shall establish and implement the following procedures that:
 - Require participants establish a fantasy contest account with the licensed operator.
 - Verify the age (at least 18 years old), location and identity of any participant (prior to making a deposit into a fantasy contest account).
 - Verify identity of participant by requiring a unique user name and password.
 - Ensure rules and prizes and awards are made know prior to the acceptance of any entry fee.
 - Ensure a player who is the subject of a fantasy contest is restricted from entering as a participant.

- Allow a person to restrict (self-exclude) himself from entering a fantasy contest or accessing a fantasy contest account.
- Allow a person to restrict the total amount of deposits that the participant may pay to the licensed operator for a specific time period established by the participant.
- Conspicuously post compulsive and problem play notices at fantasy contest registration points and provide a toll-free telephone number.
- Disclose the number of entries a single participant may submit to each fantasy contest.
- Prevent the licensed operator's [principals], employees and relatives living in the same household from competing in a fantasy contest.
- Prevent the sharing of confidential information with third parties until the information is public.
- Take commercially reasonable steps to maintain confidentiality of a participant's personal and financial information.
- Segregate participant funds from operational funds.
- Provide winning in-State participants with documentation necessary to ensure proper reporting of winnings in-State participants to the department.
- Remit taxes or assessments to the department in accordance with sections 701, 702 and 703.
- Prohibit use of scripts.
- Monitor for use of scripts.
- Other conditions deemed by the board.

{Section 506 – Prohibitions}

No licensed operator may:

- Accept an entry fee or allow a person under 18 years of age to participate in a fantasy contest.
- Offer a fantasy contest based on a collegiate or high school athletic event.
- Permit a participant to enter a fantasy contest without establishing a fantasy contest account.
- Establish a fantasy contest account for anyone but an individual (natural person).
- Alter the rules of a fantasy contest after a participant has entered it.
- Issue credit to a participant to establish or fund a fantasy contest account.
- Knowingly market to a self-excluded individual.
- Knowingly permit a self-excluded individual to enter a fantasy contest.
- Knowingly accept a deposit in excess of a limit established by a participant for specified time period.
- Share confidential information that could affect play with third parties until it's made public.
- Knowing permit [a principal], an employee or relative living in the same household to participate in a fantasy contest.
- Offer a fantasy contest where:
 - Value of prize or award not established in advance.
 - Winning outcomes do not reflect the relative knowledge and skill of participants.
 - The winning outcome is based on the score, point spread or performance of a single athlete.
 - The winning outcome is not based on statistical results
- Make available a fantasy contest terminal (except as permitted under section 902 (relating to licensed gaming entities – PA casinos).
- Fail to remit taxes or assessments to the department.
- Knowingly allow a participant to use a script.
- Perform any other action prohibited by the board.

{Section 507 – Change in Ownership or Control of Licensed Operators}

- Notification and approval – A licensed operator shall notify the board upon becoming aware of any proposed change of ownership that involves more than 15% ownership interest, the of assets (other than in the ordinary course of business), any other transaction deemed by the board to be relevant. Excluded is any acquisition by an institutional investor less than 10% ownership interest held by the institutional investor.
- Qualification of purchaser and change of control
- Change in control defined – A change in control shall mean the acquisition by a person or group of persons acting in concert of more than 20% of a licensed operator’s securities or other ownership interests.
- License revocation – Failure to comply with this section may result in license revocation or suspension.

{Section 508 – Penalties}

- Suspension or revocation of license:
 - After a public hearing (with at least 15 days’ notice) the board may suspend or revoke a fantasy contest license for any violation of this act.
 - The board may revoke a fantasy contest license if it finds facts not known at time of issuance that would precluded the issuance of the license.
- Administrative penalties:
 - Board may impose an administrative penalty not to exceed \$5,000 for each violation.
 - Violations of a continuing nature subject to a max. penalty of \$25,000.
 - A licensed operator shall have the right to appeal.
 - Administrative penalties shall be deposited in the General Fund.
- Civil penalties:
 - A max. of \$1,000 civil penalty shall apply where person knowing violates this act.
 - Civil penalties shall be deposited in the General Fund.

{Section 701 – Fantasy Contest Tax}

- Imposition – A **tax of 5%** is imposed on the quarterly fantasy contest adjusted revenue of a licensed operator.
- Deposits and distributions:
 - Tax is payable to the department on a quarterly basis.
 - Tax funds are held in trust for the Commonwealth.
- Penalty – A penalty of 5% per month up to a maximum of 25% of the amount due applies where a licensed operator fails to timely remit the tax to the department, which shall be deposited in the General Fund.

{Section 702 – Licensed Operator Deposits}

- The State Treasury shall establish a Section 702 Account for each licensed operator for purposes of repaying any loans from the General Fund and assessing the regulatory costs attributable to licensed operators as determined by the department on a quarterly basis.

- The board and the department are required to annually prepare and submit to the House and Senate Appropriations Committees an itemized budget (along with analysis and recommendations). A penalty of 5% per month up to a maximum of 25% of the amount due applies where a licensed operator fails to timely remit the assessed amounts.

{Section 703 – Responsibility and Authority of Department}

The department is charged with administering and collecting the tax and promulgating regulations needed to carry out its duties (in the same manner in which the board is authorized).

{Section 901 – Applicability of Other Statutes}

- Unlawful gambling – The provisions of 18 Pa.C.S. § 5513 (relating to gambling devices, gambling, etc.) shall not apply to fantasy contest.
- Pool selling and bookmaking – The provisions of 18 Pa.C.S. § 5514 (relating to pool selling and bookmaking) shall not apply to fantasy contest.
- State Lottery Law – This act shall not apply to fantasy contests or similar product authorized under the State Lottery Law (Act 91 of 1971).

{Section 902 – Licensed Gaming Entities}

- Scope – This section applies to a licensed gaming entity that holds a fantasy contest license (PA casino).
- Applicability – A fantasy contest terminal shall not be considered a slot machine or table game under 4 Pa.C.S. § 1103 (relating to definitions).
- Fantasy contest terminals – A licensed gaming entity (PA casino) may place and operate fantasy contest terminals within a PA casino (subject to board approval).
 - But fantasy contest terminals may not be placed on the gaming floor.
- Restricted contests – PA casinos may offer fantasy contests that are exclusive to participants that are at least 21 years of age.
- Promotional play – PA casino may offer slot machine and table game promotional play to a participant who is at least 21 years old for participating in a fantasy contest.
- Gaming service providers – A licensed operator who is not a licensed gaming entity may, at the discretion of the board, be certified or registered as a gaming service provider under 4 Pa.C.S. § 1317.2 (relating to gaming service provider) in order to operate fantasy contests on behalf of a PA casino.

{Section 903 – Funding}

- Appropriation:
 - \$1.25M (FY 16-17) appropriated to board for implementing and administering.
 - \$500,000 (FY 16-17) appropriate to department (DOR) for implementing and administering.
- Repayment – The appropriations are a loan from the General Fund and shall be repaid quarterly (over a period of no more than 10 years) through assessments on licensed operators to their Section 702 accounts.
- Unused amounts – Any portion of appropriated amounts unused as of July 1, 2017 reverts back to General Fund.

Section 903 shall take effect immediately (relating to funding) and the remainder of this act shall take effect in 180 days.

[A09106] (Reschenthaler) Amendment Summary

This is primarily a technical amendment, which also specifies the following substantive provisions:

- In regards to the requirement that licensed operators annually contract for an independent audit and with a testing laboratory, except for a licensed operator operating season-long fantasy contests it is further specified that this exception applies where such generates less than \$250,000 in season-long fantasy contest adjusted revenue, unless the board determines otherwise.
- It further specifies the requirement of a single toll-free telephone number (compulsive and problem play of fantasy contests) [vs. the potential for multiple numbers].
- In regards to the nonrefundable application fee which may not exceed the amount necessary to reimburse the board for all costs incurred it is further specified that such amount may not exceed an amount equal to 5% of the applicant's fantasy contest adjusted revenues for the previous calendar year if the applicant is not a licensed gaming entity.
- In relation to the reasons to deny a license it specifies that an applicant is not compliant with taxes due in general [vs. due to the department (DOR)]
- In regards to the requirement that a licensed operator segregate a participants funds and maintain a reserve (i.e., in the form of cash, irrevocable letter of credit, bond, etc.), it alternative provides that a licensed operator of season-long fantasy contests that generate less than \$250,000 in season-long fantast contest adjusted revenue may contract with a third party to hold prizes and awards until after the season is concluded.
- Adds no licensed operator may knowing allow a self-excluded individual to keep a prize or award and provides any amount forfeited by a self-excluded individual shall be deposited in the General Fund.
- Tax rate is set at 18% [vs. 5%].

Effective Date: Portions shall take effect immediately and the remainder shall take effect in 180 days.

BILL HISTORY:

Current PA law does not regulate or license fantasy contests.

Part II (Gaming), Title 4 (Amusements) of the Pennsylvania Consolidated Statutes, known as the Pennsylvania Horse Race Development and Gaming Act (Gaming Act) licenses and regulates PA casino gambling.

Prepared by: Brehouse 6/27/2016