

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 11A Fees/Fantasy Contest Operators

SPONSOR(S): Select Subcommittee on Authorized Gaming Activity, Tomkow

TIED BILLS: CS/HB 9A **IDEN./SIM. BILLS:** SB 18-A

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Select Subcommittee on Authorized Gaming Activity	12 Y, 5 N, As CS	Wright	Anstead
2) Select Committee on Gaming		Wright	Hamon

SUMMARY ANALYSIS

In general, gambling is illegal in Florida. Certain exceptions have been authorized, with restrictions on permitted locations, operators, and prizes, including penny-ante games, bingo, cardrooms, charitable drawings, game promotions (sweepstakes), amusement arcade games, and bowling tournaments. The Division of Pari-mutuel Wagering (division) in the Department of Business and Professional Regulation (DBPR) regulates pari-mutuel wagering facilities, and cardrooms and slot machines located at pari-mutuel facilities.

Fantasy sports contests allow a person to play either a virtual game or a virtual season of a sport based on the performance statistics of real athletes. Daily fantasy sports contests are an accelerated version of fantasy sports contests, which are played across a shorter period of time. Florida law does not specifically address fantasy sports contests.

The bill requires payment of fees for contest operator licensees and applicants under the "Fantasy Sports Contest Act" created in CS/HB 9A, which authorizes and outlines a regulatory structure for fantasy sports contests. CS/HB 9A requires a contest operator of a fantasy sports contest to obtain a license from the division. Noncommercial contest operators do not need to obtain a license.

The bill requires an applicant for a license as a contest operator to pay an initial license application fee of \$1 million to the division, and an applicant seeking to renew a contest operator license must pay an annual license renewal fee of \$250,000 to the division. A contest operator applicant must provide to the division written evidence of the proposed amount of entry fees and cash or cash equivalents to be paid to contest participants during the annual license period.

The bill requires every contest operator to pay a monthly operating fee to the division by the 20th day of each month. The monthly operating fee is equal to \$1 per contest participant who paid an entry fee to the contest operator during the previous calendar month.

The bill provides that fees for fingerprint processing and retention are borne by an applicant for a contest operator license, and authorizes a \$2 handling fee for each set of fingerprints.

The bill will likely have a significant fiscal impact on state government, and does not have a fiscal impact on local governments.

The bill is effective on the same date that CS/HB 9A or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

This bill imposes a new fee, requiring a two-thirds vote of the membership of the House. See Section III.A.2 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Gaming in Florida

In general, gambling is illegal in Florida.¹ Chapter 849, F.S., prohibits keeping a gambling house,² running a lottery,³ or the manufacture, sale, lease, play, or possession of slot machines.⁴ Certain exceptions have been authorized, with restrictions on permitted locations, operators, and prizes, including penny-ante games,⁵ bingo,⁶ cardrooms,⁷ charitable drawings,⁸ game promotions (sweepstakes),⁹ amusement arcade games,¹⁰ and bowling tournaments.¹¹

The Division of Pari-mutuel Wagering (division) in the Department of Business and Professional Regulation (DBPR) regulates pari-mutuel wagering. The division has regulatory oversight of permitted and licensed pari-mutuel wagering facilities, cardrooms located at pari-mutuel facilities, and slot machines at pari-mutuel facilities located in Miami-Dade and Broward counties.¹²

Fantasy Sports Contests

Generally, fantasy sports contests are any of a number of games that permit a person to play either a virtual game or a virtual season of a sport based on the performance statistics of real sports players. The player acts as both general manager and field manager of their team by building a roster through a draft and trades and making lineups in pursuit of the greatest statistical production. The term “commissioner” has been used in the context of fantasy leagues to denote a person who manages a fantasy league, establishes league rules, resolves disputes over rule interpretations, publishes league standings, or selects the Internet service for publication of league standings.¹³

The two most-prominent fantasy sports in the U.S are fantasy baseball and fantasy football.¹⁴ Participation in fantasy sports contests grew dramatically in the 1990s due to greater access to game and player statistics through growing access to the Internet.¹⁵ The online fantasy contest industry is

¹ S. 849.08, F.S.

² S. 849.01, F.S.

³ S. 849.09, F.S.

⁴ S. 849.16, F.S.

⁵ S. 849.085, F.S.

⁶ S. 849.0931, F.S.

⁷ S. 849.086, F.S.

⁸ S. 849.0935, F.S.

⁹ S. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.

¹⁰ S. 546.10, F.S.

¹¹ S. 546.10, F.S.

¹² S. 550.0251, F.S.

¹³ See Bernhard & Eade, *Gambling in a Fantasy World: An Exploratory Study of Rotisserie Baseball Games*, 9 UNLV Gaming Research & Review Journal Issue 1, at 30, at <http://digitalscholarship.unlv.edu/grrj/vol9/iss1/3/> (last visited May 11, 2021).

¹⁴ Adam Augustyn, Britannica.com, *Fantasy sport*, <https://www.britannica.com/sports/fantasy-sport> (last visited May 12, 2021).

¹⁵ Ben Klayman, Reuters, *Technology spurs growth of fantasy sports in U.S.* (Sep. 24, 2008) <https://www.reuters.com/article/us-fantasysportsusports/technology-spurs-growth-of-fantasy-sports-in-u-s-idUSTRE48O02L20080925> (last visited May 12, 2021).

now a multi-billion dollar industry in the United States.¹⁶ In 2017, an estimated 59.3 million people competed in fantasy contests in the United States and Canada.¹⁷

Daily fantasy contests are an accelerated version of fantasy sports contests, which are played across a shorter period of time. For example, daily fantasy contests may be played over a single week in a season, rather than the entire season. Daily fantasy contests are typically played as "contests" which require an entry fee. The fee funds an advertised prize pool from which the fantasy contest operator (such as FanDuel or DraftKings) takes a percentage as revenue.¹⁸

The Florida Constitution, Florida Statutes, and Florida courts have not specifically addressed fantasy contests. Currently, there is no constitutional, statutory, or regulatory framework expressly allowing for fantasy contests to be conducted in the State of Florida. Moreover, Florida courts have not addressed whether Florida's constitutional and statutory prohibitions on gambling apply to fantasy contests.

Effect of the Bill

The bill requires payment of fees for contest operator licensees and applicants under the "Fantasy Sports Contest Act" created in CS/HB 9A, which authorizes and outlines a regulatory structure for fantasy sports contests. CS/HB 9A requires a contest operator of a fantasy sports contest to obtain a license from the division. Noncommercial contest operators do not need to obtain a license.

The bill requires an applicant for a license as a contest operator to pay an initial license application fee of \$1 million to the division, and an applicant seeking to renew a contest operator license must pay an annual license renewal fee of \$250,000 to the division. A contest operator applicant must provide to the division written evidence of the proposed amount of entry fees and cash or cash equivalents to be paid to contest participants during the annual license period.

The bill requires that before a contest operator license may be renewed, a contest operator must:

- Provide written evidence to the division of the actual entry fees collected and cash or cash equivalents paid to contest participants during the previous period of licensure, and
- Remit to the division any difference in a license fee which results from the difference between the proposed amount of entry fees and cash or cash equivalents paid to contest participants and the actual amounts collected and paid during the previous period of licensure.

The bill requires every contest operator to pay a monthly operating fee to the division not later than the 20th day of each month. The monthly operating fee is equal to \$1 per contest participant who paid an entry fee to the contest operator during the previous calendar month.

The bill provides that fees for fingerprint processing and retention must be borne by an applicant for a contest operator license. The division also may charge a \$2 handling fee for each set of fingerprints submitted for a contest operator license.

The bill provides that all fees collected by the division under this section shall be deposited into the Pari-mutuel Wagering Trust Fund.

The bill is effective on the same date that CS/HB 9A or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

¹⁶ Curt Woodward, The Boston Globe, *Fantasy sports book gives insider view of DraftKings' explosion*, (Mar. 6, 2017) <https://www.bostonglobe.com/business/2017/03/06/fantasy-sports-book-gives-insider-view-draftkings-explosion/qntMQJiiW2IKhrBNXPx2SK/story.html>.

¹⁷Fantasy Sports & Gaming Association, Industry Demographics, <https://thefsga.org/industry-demographics/> (last visited May 13, 2021).

¹⁸ Adam Kilgore, The Washington Post, *Daily fantasy sports Web sites find riches in Internet gaming law loophole*, (Mar. 27, 2015) https://www.washingtonpost.com/sports/daily-fantasy-sports-web-sites-find-riches-in-internet-gaming-law-loophole/2015/03/27/92988444-d172-11e4-a62f-ee745911a4ff_story.html.

B. SECTION DIRECTORY:

Section 1: Creates s. 849.551, F.S., providing a fee structure for applicants for a contest operator license.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill will have a positive fiscal impact on state revenues from the payment of licensing, application, and operating fees to the division for fantasy contest operators.

2. Expenditures:

None. Revenues collected under the bill may be used to offset some or all of the costs associated with the division's regulation of contest operators under CS/HB 9A, if that bill passes.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Certain licensed fantasy sports contest operators who offer fantasy sports contests for a cash prize to members of the public in this state will be required to pay an initial application fee and annual renewal fees for licensure as a contest operator, as well as monthly operating fees, as described in the bill.

D. FISCAL COMMENTS:

The Revenue Estimating Conference has not reviewed the fiscal impact of this bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Article VII, s. 19 of the Florida Constitution requires the imposition, authorization, or raising of a state tax or fee be contained in a separate bill that contains no other subject and be approved by two-thirds of the membership of each house of the Legislature. As such, the bill appears to implicate Art. VII, s. 19 of the Florida Constitution because the bill creates fees for licensing contest operators.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On May 17, 2021, the Select Subcommittee on Authorized Gaming Activity adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Makes a conforming technical change, and
- Makes the bill effective contingent upon adoption of CS/HB 9A.

This analysis is drafted to the committee substitute as passed by the Select Subcommittee on Authorized Gaming Activity.