

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: SB 16A

INTRODUCER: Senator Hutson

SUBJECT: Fantasy Sports Contests

DATE: May 14, 2021

REVISED: 5/17/21 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer/Imhof</u>	<u>Sadberry</u>	<u>AP</u>	<u>Pre-meeting</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____

I. Summary:

SB 16A creates the Fantasy Contest Amusement Act, which authorizes the offering of fantasy sports contests by contest operators, and provides fantasy contests, as defined in the bill, involve the skill of contest participants.

See Section V, Fiscal Impact Statement.

Except as otherwise expressly provided in the bill, the bill takes effect on the same date that SB 2A (Implementation of the 2021 Gaming Compact) or similar legislation is adopted in the same legislative session and becomes a law.

II. Present Situation:

Background

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 However, the following gaming activities are authorized by law and regulated by the state:

- Pari-mutuel⁵ wagering at licensed greyhound and horse tracks and jai alai frontons;⁶

¹ *See* s. 849.08, F.S.

² *See* s. 849.01, F.S.

³ *See* s. 849.09, F.S.

⁴ Section 849.16, F.S.

⁵ “Pari-mutuel” is defined in Florida law as “a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes. *See* s. 550.002(22), F.S.

⁶ *See* ch. 550, F.S., relating to the regulation of pari-mutuel activities.

- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;⁷ and
- Cardrooms⁸ at licensed pari-mutuel facilities.⁹

A license to offer pari-mutuel wagering, slot machine gambling, or a cardroom at a pari-mutuel facility is a privilege granted by the state.¹⁰

The 1968 State Constitution states that “[l]otteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution . . .” are prohibited.¹¹ A constitutional amendment approved by the voters in 1986 authorized state-operated lotteries. Net proceeds of the lottery are deposited to the Educational Enhancement Trust Fund (EETF) and appropriated by the Legislature. Lottery operations are self-supporting and function as an entrepreneurial business enterprise.¹²

Chapter 849, F.S., also authorizes, under specific and limited conditions, the conduct of penny-ante games,¹³ bingo,¹⁴ charitable drawings,¹⁵ game promotions (sweepstakes),¹⁶ and bowling tournaments.¹⁷ The Family Amusement Games Act was enacted in 2015 and authorizes skill-based amusement games and machines at specified locations.¹⁸

Fantasy Sports Contests

The operation of fantasy sports activities in Florida has recently received significant publicity, much like the operation of internet cafes in recent years. Many states are now evaluating the

⁷ See FLA. CONST., art. X, s. 23, and ch. 551, F.S.

⁸ Section 849.086, F.S. See s. 849.086(2)(c), F.S., which defines “cardroom” to mean “a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility.”

⁹ The Department of Business and Professional Regulation (DBPR) issued licenses to permitholders with 2020-2021 Operating Licenses to operate 27 cardrooms. See <http://www.myfloridalicense.com/DBPR/pari-mutuel-wagering/permitholder-operating-licenses-2021-2022/> (last visited May 11, 2021).

¹⁰ See s. 550.1625(1), F.S., “...legalized pari-mutuel betting at dog tracks is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state.” See also, *Solimena v. State*, 402 So.2d 1240, 1247 (Fla. 3d DCA 1981), *review denied*, 412 So.2d 470, which states “Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right,” citing *State ex rel. Mason v. Rose*, 122 Fla. 413, 165 So. 347 (1936).

¹¹ The pari-mutuel pools that were authorized by law on the effective date of the State Constitution, as revised in 1968, include horseracing, greyhound racing, and jai alai games. The revision was ratified by the electorate on November 5, 1968.

¹² The Department of the Lottery is authorized by s. 15, Art. X of the State Constitution. Chapter 24, F.S., was enacted by ch. 87-65, Laws of Fla., to establish the state lottery. Section 24.102, F.S., states the legislative purpose and intent for the operations of the state lottery.

¹³ See s. 849.085, F.S.

¹⁴ See s. 849.0931, F.S.

¹⁵ See s. 849.0935, F.S.

¹⁶ See s. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.

¹⁷ See s. 849.141, F.S.

¹⁸ See s. 546.10, F.S.

status of fantasy gaming activities in their jurisdictions,¹⁹ as there are millions of participants.²⁰ A fantasy game typically has multiple players who select and manage imaginary teams whose players are actual professional sports players. Fantasy game players compete against one another in various formats, including weekly leagues among friends and colleagues, season-long leagues, and on-line contests (daily and weekly) entered by using the Internet through personal computers or mobile telephones and other communications devices. There are various financial arrangements among players and game operators.

Florida law does not specifically address fantasy contests. Section 849.14, F.S.,²¹ provides that a person who wagers any “thing of value” upon the result of a contest of skill or endurance of human or beast, or who receives any money wagered, or who knowingly becomes the custodian of money or other thing of value that is wagered, is guilty of a second degree misdemeanor.²²

The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA)

The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA)²³ was signed into law by President George W. Bush on October 13, 2006.²⁴ Under this act, internet gambling is not determined to be legal in a state, nor illegal. Instead, UIGEA targets financial institutions in an attempt to prevent the flow of money from an individual to an internet gaming company. Congress found that enforcement of gambling laws through new mechanisms “are necessary because traditional law enforcement mechanisms are often inadequate for enforcing gambling prohibitions or regulations on the Internet, especially where such gambling crosses state or national borders.”²⁵ UIGEA expressly states that none of its provisions “shall 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.”²⁶

“Unlawful internet gambling” prohibited by UIGEA includes the placement, receipt, or transmission of certain bets or wagers.²⁷ However, the definition of the term “bet or wager” specifically excludes any fantasy game or contest in which a fantasy team is not based on the current membership of a professional or amateur sports team, and:

- All prizes and awards are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of fees by the participants;

¹⁹ See Marc Edelman, *A Short Treatise on Fantasy Sports and the Law: How America Regulates its New National Pastime*, Journal of Sports & Entertainment Law, Harvard Law School Vol. 3 (Jan. 2012) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1907272 (last visited May 11, 2021).

²⁰ According to the Fantasy Sports Trade Association, which states it represents the interests of 57 million fantasy sports players, fantasy sports leagues were originally referred to as “roisserie leagues” with the development of Rotisserie League Baseball in 1980, by magazine writer/editor Daniel Okrent, who met and played it with friends at a New York City restaurant La Rotisserie Francaise. See <https://thefsga.org/history/> (last visited May 11, 2021).

²¹ See Fla. AGO 91-03 (Jan. 8, 1991) available at <http://myfloridalegal.com/. . . 91-03> (last visited May 11, 2021)

²² A conviction for a second degree misdemeanor may subject the violator to a definite term of imprisonment not exceeding 60 days, and a fine not exceeding \$500. See ss. 775.082 and 775.083, F.S.

²³ 31 U.S.C. ss. 5361-5366.

²⁴ The provisions of UIGEA were adopted in Conference Committee as an amendment to H.R. 4954 by Representative Daniel E. Lungren (CA-3), “The SAFE Ports Act of 2006.”

²⁵ 31 U.S.C. s. 5361(a)(4).

²⁶ 31 U.S.C. s. 5361(b).

²⁷ 31 U.S.C. s. 5362(10).

- Prize amounts are not based on the number of participants or the amount of entry fees;
- Winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals or athletes in multiple “real-world sporting or other events;” and
- No winning outcome is based:
 - On the score, point-spread, or any performance or performances of any single “real-world” team or combination of teams; or
 - Solely on any single performance of an individual athlete in any single “real-world sporting or other event.”²⁸

While UIGEA excludes bets or wagers of participants in certain fantasy sports games and contests,²⁹ it does not, however, authorize fantasy sports contests and activities in Florida.

Regulation of Pari-mutuel Wagering and Associated Licenses

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.

III. Effect of Proposed Changes:

Section 1 creates the short title the “Fantasy Sports Contest Amusement Act (act)” for ss. 546.11 through 546.18, F.S. (Sections 1 through 8).

Section 2 creates s. 542.12, F.S., to state the legislative purpose and intent for the act, which is to “ensure public confidence in the integrity of fantasy sports contests and contest operators” through the regulation of contest operators and participants and the enactment of consumer protections related to fantasy sports contests. The bill includes a legislative finding that fantasy sports contests, as defined in the act, involve the skill of contest participants.

Section 3 creates s. 546.13, F.S., to provide definitions for fantasy sports contests and contest operators, and the requirements for such contests to comply with the act. A “fantasy sports contest” is a fantasy or simulation sports game or contest offered by a contest operator or a noncommercial contest operator in which a contest participant manages a fantasy or simulation sports team composed of athletes from a professional sports organization, under the following conditions:

- Contest operators and their employees and agents may not be participants in a contest;
- Prizes and awards must be established and disclosed before a contest and be unrelated to the number of participants in the contest or the amount of fees paid by participants;
- Winning outcomes must reflect knowledge and skill of participants and be determined predominantly by statistical results of performances of individuals, including athletes in sporting events; and

²⁸ See 31 U.S.C. s. 5362(1)(E)(ix).

²⁹ *Id.*

- Winning outcomes may not be based on the score, point spread, the performance of any single team or combination of teams; solely on any single performance of an individual athlete or player in a single event; on pari-mutuel events; on poker or other card games; or on performances of those participating in collegiate, high school, or youth sporting events; and
- Casino themes such as slot machine symbols, cards, craps, roulette, or lotto, may not be displayed or depicted.

The bill authorizes fantasy sports contests in which participants, who must be 21 years of age or older, pay an entry fee to a person or entity that offers such contests for a cash prize to members of the public, defined as a “contest operator;” however, the term does not include a noncommercial operator in Florida. The term “noncommercial operator” means an individual who organizes and conducts fantasy sports contests for participants 21 years of age or older who pay an entry fee for the contest. A noncommercial contest operator must pay all entry fees to participants as prizes, and may not pay fantasy sports contest prize monies exceeding \$1,500 per season or \$10,000 annually.

Section 4 creates s. 546.14, F.S., to require the division to enforce and administer the act. The division may:

- Conduct investigations and monitor the operation and play of fantasy sports contests;
- Review the books, accounts, and records of current and former contest operators;
- Deny, suspend, or revoke licenses for any violation of state law or rule;
- Take testimony, issue witness summonses and subpoenas for matters in its jurisdiction;
- Monitor and ensure the proper collection and safeguarding of entry fees and the payment of contest prizes in accordance with the consumer protection procedures enacted pursuant to the act;
- Investigate any licensed or unlicensed persons or entities when they are:
 - Advertising as offering or providing or are engaged in conducting a fantasy sports contest which requires licensure under the act; or
 - Engaged in activities which do not comply with or are prohibited by the act.
- Issue orders to licensed or unlicensed persons or entities, or to contest operators or noncommercial contest operators, to stop engaging in activities that require licensure or are prohibited by the act, seek an injunction, or take other appropriate action to enforce the requirements of the act; and
- Adopt rules to implement and administer the act, which may not conflict with, and must be applied, construed, and interpreted in a manner consistent with the 2021 Gaming Compact.

Section 5 creates s. 546.15, F.S., to require licensure of contest operators by the division to conduct fantasy sports contests in Florida. Applications for licensure must include:

- The full name of the applicant; for a corporate applicant, the name of the state of incorporation, the names and addresses of the officers, directors, and shareholders who hold 15 percent or more equity in the corporation must be provided, and for an applicant that is another type of business entity, the names and addresses of each principal, partner, or shareholder who holds 15 percent or more equity in the entity;
- The names and addresses of the ultimate equitable owners of the corporation or other business entity, if different from those otherwise provided, unless the securities of the

corporation or entity are registered pursuant to the federal Securities Exchange Act of 1934, and:

- The applicant files reports with the United States Securities and Exchange Commission as required by section 13 of that act; or
- The securities of the corporation or entity are regularly traded on an established securities market in the United States.
- The estimated number of fantasy sports contests to be conducted by the applicant annually;
- A statement of the assets and liabilities of the applicant;
- The names and addresses of the officers and directors of any creditor of the applicant and of stockholders who hold more than 10 percent of the stock of the creditor, if required by the division;
- For each individual listed in the application, a full set of fingerprints to be submitted to the division or to a vendor, entity, or agency authorized by s. 943.053(13), F.S., which must be:
 - Forwarded to the Department of Law Enforcement (FDLE) for state processing;
 - Forwarded to the Federal Bureau of Investigation by the FDLE for national processing.
 - Retained by the FDLE as provided in s. 943.05(2)(g) and (h), F.S.; and
 - Enrolled in the Federal Bureau of Investigation's national retained print arrest notification program when the FDLE begins participation in that program. Any arrest record identified must be reported to the division.
- For each foreign national, such documents as necessary to allow the division to conduct criminal history records checks in the individual's home country; the applicant must pay the full cost of processing fingerprints and required documentation.

Under the bill, a person or entity is not eligible for licensure as a contest operator or for licensure renewal if the division determines after investigation that an individual required to be listed in the application, is not of good moral character or is found to have been convicted of a felony in Florida, any offense in another jurisdiction which would be considered a felony if committed in Florida, or a felony under the laws of the United States. The term "convicted" means having been found guilty, with or without adjudication of guilt, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

In addition, the bill provides the license of a contest operator is automatically suspended 30 calendar days after entry of a final order imposing an administrative fine against the contest operator, if the administrative fine has not been paid. The license of a contest operator may not be renewed, and an application for licensure as a contest operator may not be approved, if the contest operator or an applicant is liable for an outstanding administrative fine imposed under the act. A contest operator's license remains suspended until the administrative fine is paid. However, a contest operator's license may not be suspended and an application for licensure may not be denied if the contest operator or the applicant has an appeal from a final order pending in any appellate court.

Section 6 creates s. 546.16, F.S., relating to consumer protections that require a contest operator to implement fantasy sports contests procedures that:

- Prevent the contest operator's employees, their relatives, or persons living in the same household as the employees, from competing in a fantasy sports contest in which a cash prize is awarded. The term "relative" means a spouse, father, mother, son, daughter, grandfather,

grandmother, brother, sister, uncle, aunt, cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister;

- Prohibit the contest operator from being a contest participant in a fantasy sports contest that he or she offers;
- Prevent the contest operator's employees or agents from sharing with a third party confidential information that could affect fantasy sports contest play until the information has been made publicly available;
- Verify that contest participants are 21 years of age or older;
- Restrict an individual who is a player, a game official, or another participant in a real-world game or competition from participating in a fantasy sports contest that is determined, in whole or in part, on the performance of that individual, the individual's real-world team, or the accumulated statistical results of the sport or competition in which he or she is a player, game official, or other participant;
- Allow individuals to restrict or prevent their own access to fantasy sports contests and take reasonable steps to prevent those individuals from entering a fantasy sports contest;
- Limit the number of entries a single contest participant may submit to each fantasy sports contest and take reasonable steps to prevent participants from submitting more than the allowable number of entries; and
- Segregate contest participants' funds from operational funds or maintain a reserve in the form of cash, cash equivalents, payment processor reserves, payment processor receivables, an irrevocable letter of credit, a bond, or a combination thereof in the total amount of deposits in contest participants' accounts for the benefit and protection of authorized contest participants' funds held in fantasy sports contest accounts.

A contest operator must annually contract with a third party to perform an independent audit, consistent with the standards established by the American Institute of Certified Public Accountants, to ensure compliance with the act, and submit the results of the independent audit to the division no later than 90 days after the end of each annual licensing period.

A contest operator must use only statistics, results, outcomes, and other data relating to a professional sporting event that have been obtained from the relevant sports governing body or an entity expressly authorized by the sports governing body to provide such information to contest operators.

Section 7 creates s. 546.17, F.S., to require each contest operator to keep and maintain daily records of its operations and to maintain such records for at least three years. The records must sufficiently detail all financial transactions required to determine compliance with the requirements of the act and must be available for audit and inspection by the division or other law enforcement agencies during the contest operator's regular business hours. Under the bill, the division must adopt rules to implement s. 547.17, F.S.

Section 8 creates s. 546.18, F.S., relating to penalties for violations of the act. A contest operator, or its employee or agent, who violates the act is subject to an administrative fine, not to exceed \$5,000 for each violation and not to exceed \$100,000 in the aggregate, for deposit to the state's general revenue fund. An action to recover such penalties may be brought by the division or the Department of Legal Affairs in the circuit courts in the name and on behalf of the state.

However, the penalty provisions do not apply to violations committed by a contest operator which occurred prior to the issuance of a license under the act if the contest operator applies for a license within 90 days after the effective date of s. 546.18, F.S., and receives a license within 240 days after the effective date of that section.

Under the bill, fantasy sports contests conducted by a contest operator or noncommercial contest operator in compliance with all fantasy sports contest requirements are not subject to certain gambling laws³⁰ set forth in ch. 849, F.S., relating to Gambling.

Sections 9, 10, 11 and 12 amend provisions in ss. 16.71, 16.712, 16.713, and 16.715, F.S., relating to the Florida Gaming Control Commission (commission), as created in SB 4A (Gaming Enforcement), if SB 4A becomes a law. The commission must receive and review violations of ch. 546, F.S., (Amusement Facilities), which includes fantasy sports contests, and to prohibit certain commission candidates, members, employees, or former commissioners or employees from holding a license issued under ch. 546, F.S., prior to, during, and after appointment or employment with the commission, for the time frames described in the bill.

Section 13 amends s. 849.144, F.S., created in the linked bill, SB 4A (Gaming Enforcement). The bill includes fantasy sports contests as an activity exempted from certain gambling laws in ch. 849, F.S. (Gambling).

Section 14 provides, if SB 4A (Gaming Enforcement) becomes a law in the 2021 Special Session A, the portion of SB 4A, relating to a Type Two transfer of various powers, duties and funds of the DBPR to the Florida Gaming Control Commission, is amended to include in the transfer such powers, duties, and funds relating to the regulation of fantasy sports contests under ch. 546, F.S.

Section 15 provides the act takes effect on the same date that SB 2A (Implementation of the 2021 Gaming Compact) or similar legislation is adopted in the same legislative session and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³⁰ See ss. 849.01, 849.08, 849.09, 849.11, 849.14, and 849.25, F.S., relating to various activities that are prohibited by or must comply with Florida law.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons who act as fantasy sports contest operators will be required to meet various requirements imposed by the bill, such as auditing and consumer protection measures, that will have associated costs.

C. Government Sector Impact:

The division must implement the provisions of the bill and adopt forms and procedures for the licensing of fantasy sports contest operators. The Revenue Estimating Conference has not reviewed the fiscal impact of this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 16.71, 16.712, 16.713, and 16.715.

The bill creates the following sections of the Florida Statutes: 546.11, 546.12, 546.13, 546.14, 546.15, 546.16, 546.17, 546.18, and 849.142.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
