

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: SB 18A

INTRODUCER: Senator Hutson

SUBJECT: Fees/Fantasy Contest Operators

DATE: May 14, 2021

REVISED: \_\_\_\_\_

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

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**I. Summary:**

SB 18A imposes license fees on certain fantasy sports contest operators who offer fantasy sports contests for a cash prize to members of the public in this state. Contest operators must pay an initial license application fee of \$1 million, and renewal fees of \$250,000 annually. Such fees may not exceed 10 percent of the difference between the amount of entry fees collected by a contest operator from the operation of fantasy sports contests in this state, and the amount of cash or cash equivalents paid to contest participants in this state. These license fees do not apply to individuals who act as noncommercial contest operators, as defined in SB 16A, who collect and distribute entry fees totaling no more than \$1,500 per season or \$10,000 annually, and meet other specified requirements. The fees are to be paid to the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation (division).

SB 16A (Fantasy Sports Contests), is a linked bill that addresses authorized fantasy sports contests.

*See Section V, Fiscal Impact Statement.*

The bill is effective on the same date that SB 16A (Fantasy Sports Contests) or similar legislation takes effect, if such legislation is adopted in the same legislative session or any extension and becomes a law.

## II. Present Situation:

### Background

In general, gambling is illegal in Florida.<sup>1</sup> Chapter 849, F.S., prohibits keeping a gambling house,<sup>2</sup> running a lottery,<sup>3</sup> or the manufacture, sale, lease, play, or possession of slot machines.<sup>4</sup>

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

- Pari-mutuel<sup>5</sup> wagering at licensed greyhound and horse tracks and jai alai frontons;<sup>6</sup>
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;<sup>7</sup>
- Cardrooms<sup>8</sup> at certain pari-mutuel facilities;<sup>9</sup>
- The state lottery authorized by section 15 of Article X of the State Constitution and established under ch. 24, F.S.;<sup>10</sup>
- Skill-based amusement games and machines at specified locations as authorized by s. 546.10, F.S, the Family Amusement Games Act;<sup>11</sup> and
- The following activities, if conducted as authorized under ch. 849, relating to Gambling, under specific and limited conditions:
  - Penny-ante games;<sup>12</sup>
  - Bingo;<sup>13</sup>
  - Charitable drawings;<sup>14</sup>
  - Game promotions (sweepstakes);<sup>15</sup> and
  - Bowling tournaments.<sup>16</sup>

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<sup>1</sup> See s. 849.08, F.S.

<sup>2</sup> See s. 849.01, F.S.

<sup>3</sup> See s. 849.09, F.S.

<sup>4</sup> Section 849.16, F.S.

<sup>5</sup> “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.

<sup>6</sup> See ch. 550, F.S., relating to the regulation of pari-mutuel activities.

<sup>7</sup> See FLA. CONST., art. X, s. 23, and ch. 551, F.S.

<sup>8</sup> 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.”

<sup>9</sup> The Department of Business and Professional Regulation (DBPR) has issued licenses to permitholders with 2021-2022 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).

<sup>10</sup> Chapter 24, F.S., was enacted by ch. 87-65, Laws of Fla., to establish the state lottery; s. 24.102, F.S., states the legislative purpose and intent for the operations of the state lottery.

<sup>11</sup> See s. 546.10, F.S.

<sup>12</sup> See s. 849.085, F.S.

<sup>13</sup> See s. 849.0931, F.S.

<sup>14</sup> See s. 849.0935, F.S.

<sup>15</sup> See s. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.

<sup>16</sup> See s. 849.141, F.S.

## Fantasy Sports Contests

The conduct of fantasy sports contests in the state is not authorized under current law, but is proposed to be authorized as described in ss. 546.11 through 546.19, F.S., created in the linked bill, SB 8A, relating to Gaming.

The operation of fantasy sports activities in Florida has received significant publicity, much like the operation of internet cafes in recent years. Many states are now evaluating the status of fantasy sports activities in their jurisdictions,<sup>17</sup> as there are millions of participants.<sup>18</sup>

A fantasy sports 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. 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.<sup>19</sup>

### III. Effect of Proposed Changes:

The bill imposes license fees on certain fantasy sports contest operators<sup>20</sup> who offer fantasy sports contests for a cash prize to members of the public. Contest operators must pay an initial license application fee of \$1 million, and renewal fees of \$250,000 annually. Such fees may not exceed 10 percent of the difference between the amount of entry fees collected by a contest operator from the operation of fantasy sports contests in this state, and the amount of cash or cash equivalents paid to contest participants in this state.

These license fees do not apply to individuals who act as noncommercial contest operators by organizing and conducting fantasy or simulation sports contests in which:

- Contest participants are charged entry fees for the right to participate;

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<sup>17</sup> 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) (Edelman Treatise), at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1907272](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1907272) (last visited May 11, 2021).

<sup>18</sup> 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 <http://fsta.org/about/history-of-fsta/> (last visited May 11, 2021).

<sup>19</sup> 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).

<sup>20</sup> SB 16A (Fantasy Sports Contests) defines the term “contest operator” to mean “a person or entity that offers fantasy sports contests for a cash prize to members of the public, but does not include a noncommercial contest operator in this state. The term “noncommercial contest operator” is defined to mean “a natural person who organizes and conducts a fantasy or simulation sports contest in which contest participants are charged entry fees for the right to participate; entry fees are collected, maintained, and distributed by the same natural person; the total entry fees collected, maintained, and distributed by such natural person do not exceed \$1,500 per season or a total of \$10,000 per calendar year; and all entry fees are returned to the contest participants in the form of prizes.” *Id.*

- Entry fees are collected, maintained, and distributed by the same natural person;
- The total entry fees collected, maintained, and distributed total no more than \$1,500 per season or \$10,000 per calendar year; and
- All entry fees are returned to the contest participants in the form of prizes.

The bill provides the division must require a contest operator applicant to provide written evidence to the division of the proposed amount of entry fees and cash or cash equivalents to be paid to contest participants during the annual license period. Before a license renewal, 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.

Under the bill, fees for state and federal fingerprint processing and retention must be borne by license applicants; the state cost for fingerprint processing must meet the requirements of s. 943.053(3)(e), F.S., for records provided to persons or entities other than as specified in that section. The division also may charge a \$2 handling fee for each set of fingerprints submitted for a contest operator license.

The bill requires all fees collected by the division under s. 546.151, F.S., to be deposited into the Pari-mutuel Wagering Trust Fund.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

Section 19 of Article VII of the State Constitution requires a “state tax or fee imposed, authorized, or raised under this section must be contained in a separate bill that contains no other subject.” A “fee” is defined by the Florida Constitution to mean “any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.”<sup>21</sup>

<sup>21</sup> FLA. CONST. art. VII, s. 19(d)(1).

Section 19 of Article VII of the State Constitution also requires that a tax or fee raised by the Legislature must be approved by two-thirds of the membership of each house of the Legislature.

E. **Other Constitutional Issues:**

None.

**V. Fiscal Impact Statement:**

A. **Tax/Fee Issues:**

The bill imposes initial license and annual renewal fees on certain fantasy sports contest operators who offer fantasy sports contests for a cash prize to members of the public in this state.

B. **Private Sector Impact:**

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 described in the bill.

C. **Government Sector Impact:**

The creation of an additional licensing and regulatory structure for the conduct of fantasy sports contests by licensed persons may result in a fiscal impact to the Department of Business and Professional Regulation.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 546.151 of the Florida Statutes.

**IX. Additional Information:**

A. **Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.

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

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