

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 9A Fantasy Sports Contests

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

**TIED BILLS:** HB 3A; CS/HB 11A **IDEN./SIM. BILLS:** CS/SB 16-A

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Select Subcommittee on Authorized Gaming Activity	12 Y, 6 N, As CS	Wright	Hamon
2) Select Committee on Gaming		Wright	Hamon

### SUMMARY ANALYSIS

In general, gambling is illegal in Florida, with certain exceptions, including certain permitted locations, operators, and prizes, including penny-ante games, bingo, cardrooms, and game promotions. 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 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 athletes. Daily fantasy sports contests are an accelerated version of fantasy sports contests, which are played across a shorter period of time. Daily fantasy contests are typically played as "contests" which require an entry fee. Florida law does not specifically address fantasy contests.

The bill creates the "Fantasy Sports Contest Act" which authorizes and outlines a regulatory structure for fantasy sports contests. The bill requires a contest operator of a fantasy sports contest to obtain a license from the division and establishes licensing and application requirements, including background checks. Noncommercial contest operators do not need to obtain a license, subject to total collected entry fees.

The bill defines a "fantasy sports contest" as a fantasy or simulation sports game or contest in which a contest participant pays an entry fee and manages a fantasy or simulation sports team composed of athletes from a professional sports organization and which meets each of the following requirements:

- All prizes are not determined by the number of contest participants or the amount of their fees paid.
- All winning outcomes reflect the relative knowledge and skill of the contest participants.
- Any winning outcome must be based on the performance of at least 7 individual athletes who play in at least 5 separate team events, or on the performance of at least 5 players in individual athlete sports.
- No winning outcome is based on the score, point spread, or any performance or performances of any single actual team or combination of such teams.
- No winning outcome is based on a pari-mutuel event, card game, or the performances of participants in amateur, collegiate, high school, or youth sporting events.

The bill requires contest operators to implement procedures for consumer protection, such as protecting participants' funds, stopping fraud, and preventing advertising to persons under the age of 21.

The bill provides that contest operators, or an employee or agent thereof, may be subject to an administrative fine, not to exceed \$5,000 for each violation and not to exceed \$100,000 in the aggregate, for violations of the act, in an action brought by the division or the Department of Legal Affairs.

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 July 1, 2021.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Gaming in Florida**

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> Certain exceptions have been authorized, with restrictions on permitted locations, operators, and prizes, including penny-ante games,<sup>5</sup> bingo,<sup>6</sup> cardrooms,<sup>7</sup> charitable drawings,<sup>8</sup> game promotions (sweepstakes),<sup>9</sup> amusement arcade games,<sup>10</sup> and bowling tournaments.<sup>11</sup>

The Division of Pari-mutuel Wagering (division) in the Department of Business and Professional Regulation (DBPR) regulates pari-mutuel wagering.<sup>12</sup> 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.<sup>13</sup>

#### **Fantasy Sports Contests**

##### ***Background***

Generally, fantasy sports contests are any of a number of games that permit a person to pay an entry fee and 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.<sup>14</sup>

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

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

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

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

<sup>5</sup> S. 849.085, F.S.

<sup>6</sup> S. 849.0931, F.S.

<sup>7</sup> S. 849.086, F.S.

<sup>8</sup> S. 849.0935, F.S.

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

<sup>10</sup> S. 546.10, F.S.

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

<sup>12</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. Pari-mutuel wagering involves placing bets on races and games at licensed greyhound tracks, horse tracks, and jai alai frontons. See Chapter 550, F.S.

<sup>13</sup> S. 550.0251, F.S.

<sup>14</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).

The two most-prominent fantasy sports in the U.S are fantasy baseball and fantasy football.<sup>15</sup> 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.<sup>16</sup>

Daily fantasy sports 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.<sup>17</sup> The legality of daily fantasy contests has been challenged in many states and jurisdictions, with some critics arguing that the contests more closely resemble proposition wagering on athlete performance than traditional fantasy contests.

The online fantasy sports contest industry is now a multi-billion dollar industry in the United States.<sup>18</sup> In 2017, an estimated 59.3 million people competed in fantasy contests in the United States and Canada.<sup>19</sup>

### ***Legality of Fantasy Sports Contests in Florida***

Florida law does not specifically address fantasy sports 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. Florida's Attorney General has opined in the past that some fantasy contests appear to violate state gambling laws.

Section 849.14, F.S., provides that a stake, bet, or wager of money or another thing of value placed "upon the result of any trial or contest of skill, speed, power, or endurance of human or beast" is unlawful. Receiving money or acting as the custodian or depository of money as part of such a stake, bet, or wager is also unlawful.

Section 849.25, F.S., Florida's anti-bookmaking statute, defines bookmaking as "the act of taking or receiving, while engaged in the business or profession of gambling, any bet or wager upon the result of any trial or contest of skill, speed, power, or endurance of human, beast, fowl, motor vehicle, or mechanical apparatus or upon the result of any chance, casualty, unknown, or contingent event whatsoever." The statute includes factors that are to be considered evidence of bookmaking, including charging a percentage on accepted wagers, receiving more than five wagers in a day, and receiving over \$500 in total wagers in a single day or over \$1500 in a single week.<sup>20</sup>

On January 8<sup>th</sup>, 1991, Florida Attorney General Robert A. Butterworth provided an advisory legal opinion<sup>21</sup> regarding whether participation in a fantasy sports league violated Florida's gambling laws. Butterworth concluded that the operation of a fantasy league would violate s. 849.14, F.S. Butterworth concluded that since the fantasy sports league's entry fee was used to make up the prizes, it qualified

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<sup>15</sup> Adam Augustyn, Britannica.com, *Fantasy sport*, <https://www.britannica.com/sports/fantasy-sport> (last visited May 12, 2021).

<sup>16</sup> Ben Klayman, Reuters, *Technology spurs growth of fantasy sports in U.S.* (Sep. 24, 2008) <https://www.reuters.com/article/us-fantasysportsussports/technology-spurs-growth-of-fantasy-sports-in-u-s-idUSTR48O02L20080925> (last visited May 12, 2021).

<sup>17</sup> 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](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).

<sup>18</sup> 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>.

<sup>19</sup> Fantasy Sports & Gaming Association, *Industry Demographics*, <https://thefsga.org/industry-demographics/> (last visited May 13, 2021).

<sup>20</sup> S. 849.25(1)(b), F.S.

<sup>21</sup> 91-03 Fla. Op. Att'y Gen. (1991).

as a "stake, bet, or wager" under Florida law.<sup>22</sup> He stated that, "while the skill of the individual contestant picking the members of the fantasy team is involved, the prizes are paid to the contestants based upon the performance of the individual professional football players in actual games."<sup>23</sup>

Butterworth concluded that contests in which the skill of the contestant predominates over the element of chance, such as in certain sports contests, are not prohibited lotteries. As an example, he noted that golf and bowling tournaments were contests of skill and were not prohibited. He considered that "it might well be argued that skill is involved in the selection of a successful fantasy team by requiring knowledge of the varying abilities and skills of the professional football players who will be selected to make up the fantasy team."<sup>24</sup>

### ***Legality of Fantasy Sports in Federal Law***

The federal Unlawful Internet Gambling Enforcement Act of 2006<sup>25</sup> ("UIGEA") prohibits the processing of certain online financial wagering to prevent payment systems from being used in illegal online gambling. The UIGEA prohibits gambling businesses from knowingly accepting payments in connection with a "bet or wager" that involves the use of the Internet and that is unlawful under any federal or state law.

The UIGEA expressly states that participation in fantasy or simulation sports contests is not included in the definition of "bet or wager"<sup>26</sup> when certain conditions are met. For purposes of the UIGEA, participation in a fantasy or simulation sports contest is not a bet or wager when:

- Prizes and awards offered to winning participants are established and made known in advance of the game or contest and the value is not determined by the number of participants or amount of fees paid by the participants.
- Winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals.
- Winning outcomes are not based on the score, point spread, or any performance of any single sports team or combination of such teams or solely on a single performance of an individual athlete in a single sporting event.

Contest operators argue that they are legal under the UIGEA. In *Humphrey v. Viacom, Inc.*, the court determined that because the entry fee was paid "unconditionally," the owner did not participate, and the prizes were guaranteed and determined in advance, the fantasy contest entry fees were not "wagers" under the act.<sup>27</sup> However, although the UIGEA exempts fantasy and simulation sports contests from the application of the UIGEA, it does not make such contests legal generally. The UIGEA does not change or preempt any other federal or state law. As expressed in the Rule of Construction in the UIGEA, "no provision of this subchapter 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."<sup>28</sup> Therefore, any other state or federal law could apply.

The federal Illegal Gambling Business Act of 1970 ("IGBA")<sup>29</sup> defines an "illegal gambling business" as a gambling business that is in violation of the law of the state in which it is conducted, involves five or more persons who conduct or manage all or part of such business, and that has been in continuous operation for a period of more than 30 days or has a gross revenue of \$2000 in a single day. The IGBA specifically exempts savings promotion raffles and bingo games, lotteries, or other games of chance

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<sup>22</sup> *Creash v. State*, 131 Fla. 111, 118 (Fla. 1938).

<sup>23</sup> 91-03 Fla. Op. Att'y Gen. (1991).

<sup>24</sup> *Id.* Also, a 1990 Florida Attorney General advisory legal opinion provides that a golf hole-in-one contest, which is an exercise of skill, with an entry fee where such fee does not go toward the purse or prize does not violate the state's gambling laws. 90-58 Fla. Op. Att'y Gen. (1990).

<sup>25</sup> 31 U.S.C. § 5361-5366 (2006).

<sup>26</sup> 31 U.S.C. § 5362(1) (2006).

<sup>27</sup> *Humphrey v. Viacom, Inc.*, 2007 WL 1797648 (D.N.J. June 20, 2007).

<sup>28</sup> 31 U.S.C. § 5361(b) (2006).

<sup>29</sup> 18 U.S.C. § 1995 (1970).

operated by certain non-profit corporations.<sup>30</sup> An employee or company that has violated the IGBA is subject to penalties including fines, forfeiture of profits and assets, and imprisonment for up to 5 years.

### ***Fantasy Sports Contests in the 2021 Compact***

The Seminole Indian Tribe of Florida (the Tribe) is a federally recognized Indian tribe whose reservations and trust lands are located in the State. A Gaming Compact between the Tribe and the State of Florida was executed by Governor Ron DeSantis and the Tribe on April 23, 2021 (the 2021 Compact). If ratified, the 2021 Compact will supersede the 2010 Compact.

Under the 2021 Compact, "fantasy sports contest" means 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 and that meets each of the following requirements:

- All prizes and awards offered to winning contest participants are established and made known to the contest participants in advance of the game or contest.
- All winning outcomes reflect the relative knowledge and skill of the contest participants and are determined predominantly by accumulated statistical results of the performance of individuals, including athletes in the case of sporting events.
- No winning outcome is based on the score, point spread, or any performance or performances of any single actual team or combination of such teams, solely on any single performance of an individual athlete or player in any single actual event, on a pari-mutuel event, as the term "pari-mutuel" is defined in s. 550.002, Florida Statutes, as of January 1, 2021, on a game of poker or other card game, or on the performances of participants in collegiate, high school, or youth sporting events.
- No casino graphics, themes, or titles, including, but not limited to, depictions of slot machine-style symbols, cards, dice, craps, roulette, or lotto, are displayed or depicted.

The 2021 Compact allows the Tribe to offer fantasy sports contests at all their facilities. However, the 2021 Compact does not include fantasy sports contests in the games for which the Tribe is granted exclusivity to conduct in the state.

### **Effect of the Bill**

The bill provides that the act may be cited as the "Fantasy Sports Contest Act" (the act). The act outlines a regulatory structure for fantasy sports contests.

### ***Definitions***

The bill provides the following definitions:

- "Contest operator" means 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.
- "Contest participant" means a person who pays an entry fee for the ability to participate in a fantasy or simulation sports game or contest offered by a contest operator or noncommercial contest operator.
- "Division" means the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation.
- "Entry fee" means the cash or cash equivalent amount that is required to be paid by a person to a contest operator or noncommercial contest operator to participate in a fantasy sports contest.
- "Fantasy sports contest" means 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 and which meets each of the following requirements:
  - All prizes and awards offered to winning contest participants are established and made known to the contest participants in advance of the game or contest and their value is

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<sup>30</sup> See 26 U.S.C. § 501.

not determined by the number of contest participants or the amount of any fees paid by those contest participants.

- All winning outcomes reflect the relative knowledge and skill of the contest participants and are determined exclusively by accumulated statistical results of the performance of athletes.
- No winning outcome is based on the score, point spread, or any performance or performances of any single actual team or combination of such teams.
- Any winning outcome must be based on the performance of at least 7 individual athletes who play in at least 5 separate actual team events; or must be based on the performance of at least 5 players in individual athlete sports.
- No winning outcome is based on a pari-mutuel event.
- No winning outcome is based on a game of poker or other card game.
- No winning outcome is based on the performances of participants in amateur, collegiate, high school, or youth sporting events.
- No casino graphics, themes, or titles, including, but not limited to, depictions of slot machine-style symbols, cards, dice, craps, roulette, or lotto, are displayed or depicted.
- **“Noncommercial contest operator”** means a natural person who organizes and conducts a fantasy 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 and a total of \$10,000 per calendar year; and all entry fees are returned to the contest participants in the form of prizes.

## ***Licensing***

The bill requires that a contest operator must be licensed by the division to conduct fantasy sports contests within the state.

The application for licensure must include:

- The full name of the applicant.
- If the applicant is a corporation, the name of the state in which the applicant is incorporated and the names and addresses of each shareholder or other person who holds 15 percent or more equity in the corporation and each officer and director.
- If the applicant is a business entity other than a corporation, the names and addresses of each principal, partner, member, or other person who holds 15 percent or more equity or interest.
- The names and addresses of the ultimate equitable owners of the corporation or other business entity, unless the securities of the corporation or entity are registered pursuant to the Securities Exchange Act of 1934, and:
  - The corporation or entity files with the United States Securities and Exchange Commission the reports required by that act; or
  - The securities of the corporation or entity are regularly traded on a national securities exchange registered with the United States Securities and Exchange Commission.
- The estimated number of fantasy sports contests to be conducted by the applicant annually.
- A statement of the assets and liabilities of the applicant.
- If required by the division, 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.
- For each individual required to be listed in the application, a full set of fingerprints to be submitted to the division or to an authorized vendor, entity, or agency.
  - The division, vendor, entity, or agency must forward the fingerprints to the Department of Law Enforcement (FDLE) for state processing, and the FDLE must forward the fingerprints to the Federal Bureau of Investigation (FBI) for national processing.
  - Fingerprints submitted to the FDLE must be retained and, when the FDLE begins participation in the program, enrolled in the FBI’s national retained print arrest notification program. Any arrest record identified must be reported to the division by the FDLE.
- For each foreign national, such documents as necessary to allow the division to conduct criminal history records checks.

The bill provides that a person or entity is not eligible for licensure as a contest operator or for licensure renewal if an individual required to be listed in the application is determined by the division, after investigation, not to be of good moral character or is found to have been convicted of a felony in this state, any offense in another jurisdiction which would be considered a felony if committed in this state, or a felony under the laws of the United States.

The bill provides that if a contest operator fails to pay an administrative fine within 30 days after the final order is entered imposing the administrative fine, the license of the contest operator must be automatically suspended until the fine is paid. The license of the contest operator may not be renewed, and an application for licensure as a contest operator may not be approved, if the contest operator or the applicant for licensure as a contest operator is liable for an outstanding administrative fine imposed under the act. However, a contest operator's license may not be suspended and an application for licensure as a contest operator may not be denied if the contest operator or the applicant has an appeal from a final order pending in any appellate court.

### ***Consumer Protection Measures***

The bill requires contest operators to implement procedures for fantasy sports contests which:

- Prevent its employees, their relatives,<sup>31</sup> or persons living in the same household as the employees, from competing in a fantasy sports contest in which a cash prize is awarded.
- Prohibit the contest operator from being a contest participant in a fantasy sports contest that he or she offers.
- Prevent its employees or agents from sharing confidential information<sup>32</sup> with a third party 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 an athlete, 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 an athlete, 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.
- 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.
- Prevent the display of advertisements in publications or other media in Florida that are aimed exclusively or primarily to persons under 21 years of age and prevent the display of advertisements at events or locations that are primarily attended by persons under 21 years of age.

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

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<sup>31</sup> The bill provides that 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.

<sup>32</sup> The bill provides that the term "confidential information" means information related to the playing of fantasy sports contests by contest participants which a person obtains solely as a result of the person's employment with, or work as an agent of, a contest operator.

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.

### ***Records Requirements***

The bill requires each contest operator to keep and maintain daily records of its operations and to maintain such records for at least 3 years. The records must sufficiently detail all financial transactions required to determine compliance with 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.

### ***Penalties and Applicability***

The bill provides that a contest operator, or an employee or agent thereof, who violates this act is subject to an administrative fine not to exceed \$5,000 for each violation and not to exceed \$100,000 in the aggregate. All fines must be deposited with the Chief Financial Officer to the credit of the General Revenue Fund. An action to recover penalties may be brought by the Division or the Department of Legal Affairs in the name and on behalf of the state.

The bill provides that an unlicensed contest operator is not liable for penalties under the act if the contest operator applies for a license within 90 days after July 1, 2021, and receives a license within 240 days after July 1, 2021.

The bill provides that any contest in which one or more participants pay a fee or contribute anything of value to a contest in which participants manage a fantasy or simulation sports team must meet the definition and requirements of a fantasy sports contest.

The bill also requires that any person who offers, operates, or conducts any contest in which one or more participants pay a fee or contribute anything of value to a contest in which participants manage a fantasy or simulation sports team must meet the definition and requirements of a contest operator or a noncommercial contest operator.

The bill provides that fantasy sports contests conducted by a contest operator or noncommercial contest operator in accordance with the act are not subject to provisions for gambling houses (s. 849.01, F.S.), gambling (s. 849.08, F.S.), lotteries (s. 849.09, F.S.), games of chance by lot (s. 849.11, F.S.), bets on results of a trial or contest of skill (s. 849.14, F.S.), or bookmaking (s. 849.25, F.S.).

### ***Enforcement***

The bill provides that the division will enforce and administer the act.

The bill allows the division to:

- Conduct investigations and monitor the operation and play of fantasy sports contests.
- Review the books, accounts, and records of any current or former contest operator.
- Deny, suspend, or revoke any license under the act for any violation of state law or rule.
- Take testimony, issue summons and subpoenas for any witness, and issue subpoenas duces tecum in connection with any matter within its jurisdiction.
- Monitor and ensure the proper collection and safeguarding of entry fees and the payment of contest prizes in accordance with consumer protection procedures.
- Investigate any licensed or unlicensed person or entity when such person or entity is advertising as offering or providing or is engaged in conducting a fantasy sports contest which requires licensure under this act or when a contest operator or noncommercial contest operator is engaged in activities which do not comply with or are prohibited by this act. The division has authority to issue an order to such licensed or unlicensed person or entity, or contest operator or noncommercial contest operator to cease and desist the further conduct of such activities, or seek an injunction, or take other appropriate action to enforce the requirements of this act.

The bill requires the division to adopt rules to implement and administer the act. Such rules must be consistent with the 2021 Compact.

Should HB 3A pass, the Division of Law Revision will prepare a reviser's bill effective July 1, 2022, to replace references of the Division of Pari-mutuel Wagering and the Department of Business and Professional Regulation relating to gaming, including this act, with references to the Florida Gaming Control Commission to conform to the transfer described therein.

### ***Legislative Intent***

The bill provides that it is the intent of the Legislature to ensure public confidence in the integrity of fantasy sports contests and contest operators. The act is designed to regulate the contest operators and individuals who participate in such contests and to enact consumer protections related to fantasy sports contests.

### ***Effective Date***

The bill is effective July 1, 2021.

## **B. SECTION DIRECTORY:**

- Section 1: Creates s. 849.51, F.S., providing a short title.
- Section 2: Creates s. 849.52, F.S., providing legislative intent.
- Section 3: Creates s. 849.53, F.S., providing definitions.
- Section 4: Creates s. 849.54, F.S., providing enforcement mechanisms and rulemaking authority.
- Section 5: Creates s. 849.55, F.S., providing licensing requirements.
- Section 6: Creates s. 849.56, F.S., providing measures for consumer protection.
- Section 7: Creates s. 849.57, F.S., providing records and reporting requirements for contest operators.
- Section 8: Creates s. 849.58, F.S., providing penalties, applicability, and exemptions.
- Section 9: Conforms a cross-reference in HB 3A, contingent upon HB 3A becoming law.
- Section 10: Provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

Authority to perform fantasy sports contests does not appear to impact revenues.

#### **2. Expenditures:**

The bill will likely have a negative fiscal impact on state expenditures due to costs for the division to implement and enforce the act.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Persons who act as fantasy sports contest operators will be authorized to do business in Florida, but must meet various requirements imposed by the bill, such as auditing and consumer protection measures, that will have associated costs.

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:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes and requires the division to adopt rules to implement and administer the act. Such rules may not conflict with, and must be applied, construed, and interpreted in a manner consistent with, the 2021 Compact.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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

- Clarifies that all corporate officers and directors must be identified in a license application, not just those with at least a 15 percent equity share.
- Clarifies that required audits must be conducted annually.
- Removes a duplicative provision.

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