Amendments to the Fantasy Sports Contests Act

Summary

Rotisserie league and fantasy sports contests have been around for decades. Now, the internet allows millions of fans to compete in daily and season-long fantasy sports contests, often with entry fees and cash prizes. Participation in daily fantasy sports contests now approaches 10 million Americans. With the rise of this new activity, states are seeking to clarify the legality of daily fantasy sports and ensure that consumers are protected. The Fantasy Sports Contests Act clarifies and establishes registration requirements for operators of fantasy sports contests and provides licensing fees to cover the costs of state regulation.

Section 1 – Definitions.

As used in this Act, unless the context requires otherwise:

“Confidential Information” shall mean information related to the play of a Fantasy Contest by Fantasy Contest Players obtained as a result of or by virtue of a person’s employment.

“Entry Fee” shall mean cash or cash equivalent that is required to be paid by a Fantasy Contest participant to a Fantasy Contest Operator in order to participate in a Fantasy Contest.

“Fantasy Contest” shall mean any online fantasy or simulated game or contest with an Entry Fee in which (i) the value of all prizes and awards offered to winning participants is established and made known to the one or more participants in advance of the contest; (ii) all winning outcomes reflect the relative knowledge and skill of the participants relative to the contest; (iii) one or more participants assemble, own or manages a fictional roster of actual professional or amateur athletes, in the case of sports events, and competes against either other participants or a target score or statistic; (iv) winning outcomes are determined by one or more accumulated statistical results of the performance of individuals, including athletes in the case of sports events; and (iv) no winning outcome is based on the score, point spread, or any performance of any single actual team or combination of teams or solely on any single performance of an individual athlete or player in any single actual event. Fantasy Contest does not include any Season-Long Fantasy contest or free contest.

“Fantasy Contest Operator” or “Operator” shall mean a person or entity that offers Fantasy Contests to members of the public. This shall not include an Internet Service Provider or a provider of mobile data services merely as a result of that entity’s transporting general traffic that may include a Fantasy Contest.

“Fantasy Contest Player” or “player” shall mean a person who participates in a Fantasy Contest offered by a Fantasy Contest Operator.

“Net Revenue” shall mean the amount equal to the total of all entry fees that a registrant collects from all players, less the total of all sums paid out as winnings to all players, multiplied by the Resident Percentage for [State]; provided, however, that the total of all sums paid out as winnings to players shall not include the cash equivalent value of any merchandise or thing of value awarded as a prize. The
issuance to or participation by authorized players of a Fantasy Sports Contest of any promotional credit shall not be included for the purposes of determining Net Revenue.

“Principal stockholder” shall mean any person who individually or in concert with his spouse and immediate family members beneficially owns or controls, directly or indirectly, 15 percent or more of the equity ownership of a Fantasy Contest Operator or who in concert with his spouse and immediate family members has the power to vote or cause the vote of 15 percent or more of any such Fantasy Contest Operator.

“Resident Percentage” shall mean, for each Fantasy Contest Operator, the percentage, rounded to the nearest tenth of a percent, of the total Entry Fees collected from players located in [State], divided by the total Entry Fees collected by the Fantasy Contest Operator from all players.

“Season-Long Fantasy Contest” shall mean any Fantasy Contest that encompasses an entire season of the activity in which the underlying competition is being conducted, consists of at least 100 underlying competitions and the prize or prizes awarded, if any, are determined by agreement of the participants in order to distribute fully the participants’ contributions to a fund established to award a prize or prizes for the contest.

Section 2 – Registration of Fantasy Contest Operators required; application for registration; issuance of registration certificate; penalty.

(A) No Fantasy Contest Operator shall offer a Fantasy Contest in this state without first being registered with the [State Agency]. Applications for registration shall be on forms prescribed by the [State Agency]. Any registration issued by the [State Agency] shall be valid for 5 years from the date of issuance.

(B) The application for registration submitted by a Fantasy Contest Operator shall contain the following information, unless such information is publicly available or currently on record with the [State Agency]:

(1) The name and principal address of the applicant; if a corporation, the state of its incorporation, the full name and address of each officer and director thereof, and, if a foreign corporation, whether it is qualified to do business in the state; if a partnership or joint venture, the name and address of each officer thereof;

(2) The address of any offices of the applicant in [State] and its designated agent for process within [State]. If the Operator does not maintain an office, the name and address of the person having custody of its financial records;

(3) The place where and the date when the applicant was legally established and the form of its organization;

(4) The names and addresses of the officers, directors, trustees, and principal salaried executive staff officer;

(5) The name and address of each principal stockholder or member of such corporation; and

(6) Such information as the [State Agency] deems necessary to ensure compliance with the provisions of this chapter.
(C) As a condition of registration, a Fantasy Contest Operator shall submit evidence satisfactory to the [State Agency] that the Operator has established commercially reasonable procedures for Fantasy Contests that are intended to:

1. Prevent the Fantasy Contest Operator and immediate family members living in the same household as the Operator from competing in any public Fantasy Contest offered by such Operator in which the Operator offers a cash prize;

2. Prevent the sharing of Confidential Information that could affect Fantasy Contest play with third parties until the information is made publicly available;

3. Verify that any Fantasy Contest player is 18 years of age or older;

4. Ensure that players who are the subject of a Fantasy Contest are restricted from entering a Fantasy Contest that is determined, in whole or part, on the accumulated statistical results of a team of individuals in which such players are participants;

5. Allow individuals to restrict themselves from entering a Fantasy Contest upon request and take reasonable steps to prevent those individuals from entering the Operator’s Fantasy Contests;

6. A publicly available Responsible Play plan and attendant resources;

7. Disclose the number of entries a single Fantasy Contest player may submit to each Fantasy Contest and take reasonable steps to prevent such players from submitting more than the allowable number;

8. Segregate player funds from operational funds in separate accounts and maintain a reserve in the form of cash, cash equivalents, irrevocable letter of credit, bond, credit card and payment processor accounts and receivables, or a combination thereof in an amount sufficient to pay all prizes and awards offered to winning participants.

9. Prevent Fantasy Contests based on the performances of participants in collegiate, high school, or youth athletics.

(D) Any Operator that allows its registration to lapse, without requesting an extension of time to file, shall be required to resubmit an initial registration. An extension may be granted by the [State Agency] upon receipt of a written request.

E. A Fantasy Contest Operator wishing to offer Fantasy Contests in this state shall apply to the commission for a license and shall remit to the [State Agency] an application fee of ten thousand dollars ($10,000) or ten percent (10%) of the applicant’s Net Revenue from the previous calendar year, whichever is lower. Such license shall be in effect for 5 years, after which time the operator must reapply to the commission for a license and remit an application fee of five thousand dollars ($5,000) or ten percent (10%) of the applicant’s Net Revenue from the previous calendar year, whichever is lower.

Section 3 – Issuance of registration; denial of same.
(A) The [State Agency] shall consider all applications for registration and shall issue a valid registration to an applicant that meets the criteria set forth in this chapter.

(B) The [State Agency] may deny registration to an applicant if it finds that the applicant, or any officer, partner, principal stockholder, or director of the applicant:

1. Has knowingly made a false statement of material fact or has deliberately failed to disclose any information requested;

2. Is or has been found guilty of any illegal, corrupt, or fraudulent act, practice, or conduct in connection with any Fantasy Contest in this or any other state or has been convicted of a felony, a crime of moral turpitude, or any criminal offense involving dishonesty or breach of trust within the ten (10) years prior to the date of application for registration;

3. Has at any time knowingly failed to comply with the provisions of this chapter or of any requirements of the [State Agency];

4. Has legally defaulted in the payment of any obligation or debt due to the state; or

5. Is not qualified to do business in the state or is not subject to the jurisdiction of the courts of the state.

(C) Any Operator applying for registration or renewal of a registration may operate during the application period unless the [State Agency] has reasonable cause to believe that such Operator is or may be in violation of the provisions of this chapter and the [State Agency] requires such Operator to suspend the operation of any Fantasy Contest until registration or renewal of registration is issued.

(D) The [State Agency] shall issue such registration within sixty (60) days of receipt of the application for registration. If the registration is not issued, the [State Agency] shall provide the Operator with the justification for not issuing such registration with specificity.

(E) Any Fantasy Contest Operator that was offering Fantasy Contests, in [State], no less than twelve (12) months prior to the [Effective Date] of this Article, may continue to offer contests to persons located in [State] until such Fantasy Contest Operator’s application for registration has been approved or denied in accordance with this Article, provided that such Fantasy Contest Operator files an application for registration within thirty (30) months of the promulgation of regulations necessary to effectuate this Article.

Section 4 – Auditing for compliance.
A registered Operator shall (i) annually file a report with the [State Agency] indicating compliance with this Act; and (ii) no less frequently than every two years, contract with a certified public accountant to conduct an independent audit, and submit to the [State Agency] a copy of the independent audit report. Such audit may be part of a national audit conducted by a certified public accountant.

Section 5 – Powers and duties of [State Agency].
(A) The [State Agency] shall have all powers and duties necessary to carry out the provisions of this chapter. The [State Agency] may establish procedures deemed necessary to carry out the provisions of this chapter.

(B) Whenever it appears to the [State Agency] that any person has violated any provision of this chapter, it may apply to the appropriate circuit court for an injunction against such person. The order granting or refusing such injunction shall be subject to appeal as in other cases in equity.

(C) Whenever the [State Agency] has reasonable cause to believe that a violation of this chapter may have occurred, the [State Agency], upon its own motion or upon complaint of any person, may investigate any Fantasy Contest Operator to determine whether such Operator has violated the provisions of this chapter.

Section 6 – Suspension or revocation of registration.

(A) After a hearing with 30 days’ notice, the [State Agency] may suspend or revoke any registration or impose on such Operator a monetary penalty of not more than $1,000 for each violation of this chapter, not to exceed $50,000, in any case where a violation of this chapter has been shown by a preponderance of the evidence. The [State Agency] may revoke a registration if it finds that facts not known by it at the time it considered the application indicate that such registration should not have been issued.

(B) The [State Agency] may summarily suspend any registration for a period of not more than seven days pending a hearing and final determination by the [State Agency] if the [State Agency] determines that a violation of this chapter has occurred and emergency action is required to protect the public health, safety, and welfare. The [State Agency] shall (i) schedule a hearing within seven business days after the registration is summarily suspended and (ii) notify the registered Operator not less than five business days before the hearing of the date, time, and place of the hearing.

(C) If any such registration is suspended or revoked, the [State Agency] shall state its reasons for doing so, which shall be entered of record. Such action shall be final unless appealed in accordance with state law.

Section 7 – Hearing and appeal.

Any person aggrieved by a denial of the [State Agency] to issue a registration, the suspension or revocation of a registration, the imposition of a fine, or any other action of the [State Agency] may seek review of such action in accordance with the state administrative process.

Section 8 – Public inspection of information filed with [State Agency]; charges for production.

(A) Except as provided in subsection B, registrations required to be filed under this chapter shall be open to the public for inspection at such time and under such conditions as the [State Agency] may prescribe. A charge not exceeding $1 per page may be made for any copy of such documents as may be furnished to any person by the [State Agency].

(B) Reports, data, or documents submitted to the [State Agency] pursuant to the audit requirements of this act and records submitted to the [State Agency] as part of an application for registration or renewal
that contain information about the character or financial responsibility of the Operator or its principal stockholders shall be deemed confidential and shall be exempt from public disclosure.

Section 9 – Acquisition of interest in Fantasy Contest Operator.

(A) If any person acquires actual control of a registered Fantasy Contest Operator, such person shall register with the [State Agency] in accordance with this act.

Section 10 – Fantasy contests conducted under this chapter not gambling.

A Fantasy Contest conducted under this chapter does not constitute gambling and/or sports wagering for any purpose [under the state’s penal code] and the award of any prize money for any Fantasy Contest shall not be deemed to be part of any gaming contract within the purview of [State Gambling Ordinance].