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# **Fantasy Sports Law**

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**5:20-1. Findings, declarations relative to fantasy sports.**

The Legislature finds and declares as the public policy of this State that:

- (1) Under the New Jersey Constitution, gambling activities may not be authorized without voter approval;
- (2) New Jersey courts define gambling as contests in which the elements of chance are considered to play a predominant role or affect a material impact upon the results of the contest;
- (3) Participation in fantasy sports activities cannot be considered gambling under New Jersey laws because fantasy sports activities are contests in which the relative skill of the participants predominates to a degree that chance plays no material role in determining the outcome of the activities;
- (4) Further, there is a longstanding and still growing national consensus that fantasy sports activities do not constitute gambling, as shown by the enactment of federal statutes; state laws in New York, Massachusetts, Kansas, Tennessee, and several other states; and current New Jersey regulations adopted by the Division of Gaming Enforcement finding that fantasy sports activities do not constitute gambling; and
- (5) Therefore, it is within the New Jersey Legislature's constitutional authority to authorize and regulate fantasy sports contests.

The Legislature further finds and declares that:

- (6) Fantasy sports are popular and quickly expanding commercial activities for tens of thousands of New Jersey residents;
  - (7) Investigation of the industry in other states has revealed instances of unethical behavior by some employees of fantasy sports operators, which is enabled by lack of adequate regulation and oversight;
  - (8) It is in the State's interest to protect participants and promote a positive business environment in the conduct of fantasy sports activities;
  - (9) Therefore, it is proper and fitting for the Legislature to regulate the fantasy sports industry and protect consumers of fantasy sports activities in New Jersey; and
  - (10) Fantasy sports activities conducted in accordance with the provisions of P.L.2017, c.231 (C.5:20-1 et seq.) by an operator holding a permit to do so do not constitute:
    - (a) an authorized game or authorized gambling game as defined in section 5 of P.L.1977, c.110 (C.5:12-5);
    - (b) a contest of chance as defined in N.J.S.2C:37-1;
    - (c) gambling as defined in N.J.S.2C:37-1;
    - (d) a gambling transaction pursuant to N.J.S.2A:40-1; or
    - (e) lottery as defined in N.J.S.2C:37-1.
- L.2017, c.231, s.1.

**5:20-2. Definitions relative to fantasy sports.**

a. As used in this section:

"entry fee" means cash or a cash equivalent that is paid by a participant to a fantasy sports operator to participate in a fantasy sports activity offered by that operator, but shall not include a fee paid to an operator that does not offer a prize;

"fantasy sports activity" or "fantasy sports activities" means any fantasy or simulated activity or contest with an entry fee in which a participant owns or manages an imaginary team and competes against other participants or a target score for a predetermined prize with the outcome reflecting the relative skill of the participants and determined by statistics generated based on performance by actual individuals participating in actual competitions or athletic events, provided that the outcome shall not be based solely on the performance of an individual athlete, or on the score, point spread, or any performance of any single real team or combination of real teams; "fantasy sports activity" shall not include any activity in which no entry fee is paid to the fantasy sports operator or in which a prize is not collected, managed, or awarded by the operator;

"fantasy sports gross revenue" means, for each fantasy sports activity, the amount equal to the total of all entry fees that a fantasy sports operator collects from all participants less only the total of all prizes paid out as prizes to all participants multiplied by the location percentage for this State;

"fantasy sports operator" or "operator" means a business entity, including a casino licensee or the holder of a permit to conduct a horse race meeting, that has been issued a permit by the Division of Consumer Affairs in the Department of Law and Public Safety to offer persons the opportunity to participate in a fantasy sports activity;

"location percentage" means, for each authorized fantasy sports activity, the percentage rounded to the nearest tenth of one percent (0.1%) of the total entry fees collected from players located in this State, divided by the total entry fees collected from all players in the fantasy sports activity; and

"prohibited participant" means an individual who has access to non-public confidential information about fantasy sports activities, any athlete whose performance may be used to determine the outcome of a fantasy sports activity in the sport with which the athlete is associated, any team employee, referee, or league official in a fantasy sports activity in the sport with which that person is associated, and any sports agent associated with any sport used for fantasy sports activities.

b. The Division of Consumer Affairs in the Department of Law and Public Safety shall be responsible for the regulation of fantasy sports activities in this State.

A fantasy sports operator applicant seeking to conduct fantasy sports activities in this State shall apply to the division for a permit to conduct such activities on such forms and in such manner as the division shall require. The division shall promptly investigate each application, and shall oversee the conduct of activities. The division shall charge a permit fee to each fantasy sports operator applicant that applies for a permit in an amount sufficient to cover the division's cost in issuing fantasy sports permits and overseeing the conduct of such activities, which permit fee shall be in addition to the quarterly operations fee required pursuant to subsection g. of this section. The division shall have the authority to inspect the facilities of fantasy sports operators in order to ensure the integrity of fantasy sports activities.

The division shall allow a fantasy sports operator applicant operating fantasy sports activities on the date of enactment of this act, P.L.2017, c.231 (C.5:20-1 et seq.), to continue to legally operate for up to

60 days after applications for permits are made available to the public by the division. Operator applicants who have applied for a permit during that 60-day period may continue to operate while the application is pending. A provider of fantasy sports activities that has not applied for a permit shall cease operations in this State by the expiration of the 60-day period. A fantasy sports operator applicant that is not operating fantasy sports activities in this State on the effective date of this act shall be prohibited from operating fantasy sports activities pending approval of the applicant's application for a permit.

Upon the granting of a permit, a fantasy sports operator may continue to operate fantasy sports activities pending the renewal of the operator's permit, provided that the operator has applied for the renewal in a timely manner.

c. (1) With respect to a fantasy sports operator that is a casino, all equipment used by the holder of the permit, including computers and servers, to conduct fantasy sports activities shall be physically located within the boundaries of the municipality specified in section 20 of P.L. 2013, c.27 (C.5:12-95.22) for the location of Internet gambling equipment.

(2) With respect to a fantasy sports operator that is not a casino, at least one server used to conduct fantasy sports activities shall be physically located within the boundaries of the municipality specified in section 20 of P.L. 2013, c.27 (C.5:12-95.22) on or before January 1, 2018.

d. The division shall regulate the conduct of fantasy sports activities by fantasy sports operators that have been issued a permit by the division to conduct fantasy sports activities.

e. The division shall permit a fantasy sports operator to conduct fantasy sports activities subject to the following conditions:

the outcome of fantasy sports activities shall be determined by statistics generated based on the performance of actual individuals participating in real competitions or athletic events;

all prizes offered to participants shall be established and disclosed in advance to all participants;

the outcome shall not be based solely on the performance of an individual athlete, or on the score, point spread, or any performance of a single real team or combination of real teams;

a fantasy sports operator may permit participants to use a mobile account or a participant deposit account;

a casino licensee or licensed racetrack may use its facilities to accept entry fees and to pay prizes;

a casino licensee may partner with, or enter into a contract with, one or more fantasy sports operators to offer fantasy sports activities, notwithstanding the provisions of section 104 of P.L.1977, c.110 (C.5:12-104); and

a participant in a fantasy sports activity shall be at least 18 years of age.

f. A fantasy sports operator shall:

use commercially reasonable practices to prohibit the sharing of statistical information with third parties that could affect a fantasy sports activity until that information is publicly available;

adopt procedures to ensure that any prohibited participant does not participate in fantasy sports activities;

adopt procedures to ensure that a fantasy sports participant is at least 18 years of age;

offer individuals the ability to restrict themselves from participating in fantasy sports activities and take reasonable steps to prevent any such individual from participating in fantasy sports activities;

prohibit fantasy sports activities based upon high school athletics;

contract with a certified public accountant to perform a financial audit of the operator to ensure compliance with the provisions of this section and submit the accountant's report to the division on an annual basis;

disclose the number of entries a participant may submit to each fantasy sports activity and take reasonable steps to prevent a participant from exceeding that number; and

segregate participants' funds from operational funds and maintain a reserve in cash, cash equivalents, payment processor reserves and receivables; and an irrevocable letter of credit, a bond, or a combination thereof in the amount of the deposits in participants' accounts for the benefit and protection of participants' funds held in fantasy sports activity accounts.

g. A fantasy sports operator shall pay, on a quarterly basis, to the division for deposit into the general fund of the State, an operations fee in an amount equal to 10.5 percent of fantasy sports gross revenue for each quarter. The administration of the operations fee, including but not limited to the form, method, and manner of the assessment, collection, and enforcement thereof, shall be as determined by the division pursuant to regulations that, notwithstanding any provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), may be adopted by the division immediately upon filing with the Office of Administrative Law the regulations as the division deems necessary to implement this subsection, which regulations shall be effective for a period not to exceed 360 days following the date of enactment of P.L.2017, c.231 and may thereafter be amended, adopted, or readopted by the division in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

With respect to a fantasy sports operator that is a casino, an entry fee, management fee, or other revenue generated from a fantasy sports activity shall not be considered "gross revenue" as defined in section 24 of P.L.1977, c.110 (C.5:12-24) or "Internet gaming gross revenue" as defined in section 6 of P.L.2013, c.27 (C.5:12-28.2), and no investment alternative tax provided for by any other provision of law shall apply to fantasy sports operators.

h. (1) Any person who provides fantasy sports activities without approval of the division shall be subject to a fine of not more than \$25,000 and, in the case of a person other than a natural person, to a fine of not more than \$100,000.

(2) Any person who knowingly tampers with software, computers, or other equipment used to conduct fantasy sports activities to alter the payout of an activity or disables the activity from operating according to the rules of the activity as promulgated by the division shall be subject to a fine of not more than \$50,000 and, in the case of a person other than a natural person, to a fine of not more than \$200,000.

(3) Any person who knowingly offers or allows to be offered any fantasy sports activity that has been tampered with in a way that affects the payout of an activity or disables the activity from operating according to the rules of the activity as promulgated by the division shall be subject to

a fine of not more than \$50,000 and, in the case of a person other than a natural person, to a fine of not more than \$200,000.

(4) Any person who violates any provision of this section shall be subject to a fine of not more than \$25,000 and, in the case of a person other than a natural person, to a fine of not more than \$100,000, and to injunctive relief to prevent future violations of this section.

(5) Notwithstanding the penalties provided for in this subsection, the division shall, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt and promulgate such rules and regulations as may be necessary to address additional violations of this section. The division shall also have the authority to disqualify an operator either by allowing the operator to voluntarily withdraw from the operation of fantasy sports activities, or by suspending the operations of the operator, or by revoking the permit to conduct such operations.

(6) The fines provided by this subsection shall be in addition to any fine or penalty that may be imposed pursuant to any criminal law of this State.

i. Fantasy sports activities shall be conducted in New Jersey only in accordance with the provisions of this section.

L.2017, c.231, s.2.