

Virginia and Indiana: Governors sign laws regulating daily fantasy sports



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David M. Kall | Friday, April 8, 2016

March was a big month for the legalization of daily fantasy sports (DFS). On March 7, 2016, Virginia's Gov. Terry McAuliffe signed HB 775, the [Fantasy Contests Act](#), which, among other things, defines "fantasy contests," and specifically states that they are not illegal gambling.

The act provides that fantasy contests include any online fantasy or simulated game or contest with an entry fee in which the following three conditions apply:

1. The value of all prizes and awards offered to winning participants is established and made known to the participants in advance of the contest.
2. All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals, including athletes in the case of sports events.
3. No winning outcome is based on the score, the 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.

The measure requires operators of fantasy contests to register annually with the Department of Agriculture and Consumer Services. The application must contain the entry fee, which is to be set by the department, and relatively detailed information pertaining to applicant, officers, directors, and other executives of the organization. The applicant must also establish procedures that do the following:

1. Prevent the operator or his employees and relatives 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.

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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. 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.
7. 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, or a combination thereof in an amount sufficient to pay all prizes and awards offered to winning participants.

Indiana's Gov. Mike Pence signed a comparable bill, [SB 339](#), which, technically, is an amendment to the state's laws on trade regulation. It establishes a fantasy sports division within the Indiana Gaming Commission that is tasked with "maintaining high standards of honesty, integrity, and impartiality," for the purpose of administering, regulating, and enforcing the system of paid fantasy sports. SB 339 also provides that "a paid fantasy sports game conducted under this chapter does not constitute gambling for any purpose..."

Instead, a "paid fantasy sports game" is one that meets the following conditions:

1. The values of all prizes and awards offered to winning game participants are established and made known to the game participants in advance of the game or contest.
2. All winning outcomes reflect the relative knowledge and skill of the game participants and are determined predominantly by accumulated statistical results of the performance of individuals, including athletes in the case of sporting events.
3. No winning outcome is based on the score, point spread, or performance or performances of any single team or combination of teams, or solely on any single performance of an individual athlete or player in any single event.
4. The statistical results of the performance of individuals under subdivision No. 2 are not based on college or high school sports.
5. All participants must pay, with cash or a cash equivalent, an entry fee to participate.
6. Unless authorized by the horse racing commission, no winning outcome is based on the accumulated statistical results of a performance by an individual or horse.

A game operator must pay a \$50,000 fee "for the privilege of conducting paid fantasy sports games." This may go up to \$75,000 as the division deems necessary to pay for all of the direct and indirect costs of its operations. In addition, an operator must pay \$5,000 annually to renew its privileges. SB 339 sets forth other requirements for operators as well, like informing the division of its plan for verifying the identity and age of patrons, and maintaining the security of patrons' identifying and financial information.

DFS is "not illegal gambling"

These laws proclaim that DFS is not illegal gambling quite promptly and unambiguously in their language. Indeed, the Fantasy Sports Trade Association (FSTA) itself devotes an entire [page](#) on its website to explain *Why Fantasy Sports Is Not Gambling—It's a Game of Skill*. Reasoning that "[m]anagers must take into account a myriad of statistics, facts and game theory in order to be competitive," the FSTA insists that "[a] manager must know more than simple depth charts and statistics to win; they also must take into account injuries, coaching styles, weather patterns, prospects, home and away statistics, and many other pieces of information in order to be a successful fantasy sports manager....the behavior of fantasy sports players differs greatly from sports bettors, because [fantasy] sports players are motivated to enter the hobby for reasons that have nothing to do with money or prizes."

This matters so much because many forms of gambling are illegal, and are highly regulated and taxed, though the DFS industry has conceded to the regulation and taxation of such games. In a Dec. 10, 2015, report titled [The Future of Fantasy Sports and the State Legislatures](#), attorneys for DraftKings, FanDuel and the FSTA note their implicit approval of "tough but fair consumer protection obligations," like the employee bans and age verification provisions contained in the Virginia and Indiana legislation.

In other states

In its [Daily Fantasy Sports Weekly Wrap](#), the Legal Sports Report noted other happenings that made the last week in March so busy. In New York, FanDuel and DraftKings reached a settlement with the Attorney General in which they both agreed to cease operations there, at least until September, when an appeal

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concerning the legality of DFS is set for arguments. There is also a pending bill, [S 6793](#), which would regulate DFS and impose a 15 percent tax on gross revenues.

Also, the Attorney General in Massachusetts filed [final DFS regulations](#). Last December, we [addressed](#) the draft version and accompanying tax rule changes that state officials, like Gov. Charlie Baker and Attorney General Maura Healey were considering. Among other things, the final regulations require operators to disclose potential tax liabilities to DFS consumers in the on-boarding process, and again at the time of award, of any prize in excess of \$600. These disclosures must include a statement that it is the consumer's obligation to pay applicable taxes on winnings, and that failure to do so may result in civil penalties or criminal liability.

What's next?

The Legal Sports Report expects Mississippi's legislature to resolve the regulation of DFS in the Magnolia state. The issue is on the ballot in Maryland as well, so voters may do the same there.



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[Team member bio](#)