

New York: Fantasy sports legislation expected to raise \$4 million for education aid



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David M. Kall | Monday, August 8, 2016

On August 3, 2016, New York's Gov. Andrew Cuomo signed Senate Bill [S8153](#) into law. The measure establishes that Interactive Fantasy Sports (IFS) does not constitute gambling, clearing the way for the institution of a taxation and regulatory structure. Thus, effective on August 3, 2016, registrants will be subject to a 15 percent tax on gross revenues generated within the state, along with a tax of one half of one percent, not to exceed \$50,000, annually. Any operator that is registered with the state's Gaming Commission is considered to be a registrant and any registrant is allowed to utilize multiple interactive fantasy sports platforms, and offer multiple contests, as long as the Gaming commission has approved of each platform and contest.

Interactive fantasy sports, also known as daily fantasy sports, has been a topic of interest since late 2015. At that time, we [described](#) the fall-out that resulted when an employee of Boston-based DraftKings, Ethan Haskell, inadvertently leaked proprietary player ownership data, and then won \$350,000 in a similar tournament on FanDuel, a rival daily fantasy sports site. During that month, various parties filed more than 24 class action lawsuits, which focused on fairness for all participants in daily fantasy sports.

In reporting on New York's just-passed law, [Legal Sports Report](#) pointed out that New York has been the "epicenter" of the turmoil stemming from the Attorney General's November 11, 2015, cease and desist letters to [FanDuel](#) and [DraftKings](#). Those letters were a consequence of an [investigation](#) in which the Attorney General's office found that "unlike traditional fantasy sports, daily fantasy sports companies are engaged in illegal gambling under New York law, causing the same kinds of social and economic harms as other forms of illegal gambling, and misleading New York consumers... Daily fantasy sports is neither victimless nor harmless, and it is clear that DraftKings and FanDuel are the leaders of a massive, multi-billion-dollar scheme intended to evade the law and fleece sports fans across the country. Today we have sent a clear message: not in New York, and not on my watch."

Now, the New York law explicitly states that interactive fantasy sports "are not games of chance because they consist of fantasy or simulation sports games or contests in which the fantasy or simulation sports teams are selected based upon the skill and knowledge of the participants and not based on the current membership of an actual team that is a member of an amateur or professional sports organization."

In addition, the legislation declares that IFS "are not wagers on future contingent events not under the contestants' control or influence, because contestants have control over which players they choose and the outcome of each contest is not dependent upon the performance of any one player or any one actual team. The outcome of any fantasy sports contest does not correspond to the outcome of any one sporting event. Instead, the outcome depends on how the performances of participants' fantasy roster choices compare to the performance of others' roster choices."

Gov. Cuomo's [press release](#) announcing the law touted it for "strick[ing] the right balance that allows this activity to continue with oversight from state regulators, new

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consumer protections, and more funding for education.” Consumer protections include offering introductory procedures to new players, identifying highly experienced players, prohibiting the participation of minors, and protecting players' funds upon deposit.

Assemblyman J. Gary Pretlow was equally pleased: “Fantasy sports are more than online games – they have the potential to generate millions of dollars in revenue for New York State. This bill will allow these companies to continue operating while ensuring fans have a safe environment to play in. I am proud Gov. Cuomo has signed this legislation to keep fantasy sports in New York and I thank my partners in the legislature for their work in getting this legislation passed.” In fact, the new law is expected to generate approximately \$4 million in additional revenues to fund state education aid.



David M. Kall

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