

Ohio: Senator introduces daily fantasy sports legislation



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David M. Kall | Monday, October 3, 2016

Ohio Senator Bill Coley has introduced [Senate Bill 356](#), which is intended to classify fantasy sports, and betting on the outcome of an electronic sports contest, as “schemes of chance,” and to grant the Ohio Casino Control Commission authority to regulate pools not conducted for profit. The bill defines a scheme of chance as “any activity in which a person bets on the outcome of an E sports contest and includes the use of an electronic device to reveal the results of a game entry if valuable consideration is paid, directly or indirectly, for a chance to win a prize.”

In addition, SB 356 would require fully 100 percent of the entry fee of a fantasy sports contest to be awarded as the prize. Senator Coley has [characterized](#) the bill as “taking a rake off the top,” which he says is breaking the law and needs to stop. But according to the [Legal Sports Report](#), this provision would “shut down pretty much the entire DFS industry as currently situated, if passed. Nearly all sites run on the model of taking a “rake” — or a portion of all entry fees — when running contests.”

A third issue on Senator Coley’s mind is the tax exemption of the so-called “promotional spend,” also referred to a “promotional play” or “promotional gaming credits.” According to the December 2015 [Annual Report](#) of the Permanent Joint Committee on Wagering, which is charged with reviewing the state’s current gaming laws, rules and practices and annually submitting a report to the governor and legislature, promotional spend is a “widely-used marketing tool in which gaming operators offer their customers house money to wager as an enticement to visit the establishment.” This money is not taxed, although any other wagered amount is. The Committee underscored the importance of re-considering this exemption, because it has lead to a significant loss of funds for schools and local governments.

In a December 2015 [press release](#) addressing that Annual Report, Senator Cooley asserted that “Ohio is one of only nine states that do not tax promotional spend. Among the 26 states with legal gaming, eight states tax every dollar of promotional spend, and nine others have various limitations. Ohio casinos have enjoyed over \$165 million in free promotional spend at the expense of schools and local government.” The current version of SB 356 is silent on this matter.

With his newly introduced bill, Senator Cooley seems to be trying to make it unlawful, or at least more difficult, for entities like DraftKings and FanDuel from operating daily fantasy sports (DFS) contests in Ohio. States that have legalized DFS have done so, in part, by classifying them specifically as games of skill, not chance. We have examined this classification several times this year, as numerous states, like [New York](#) and [Massachusetts](#), have passed laws legalizing DFS.

In April, we [noted](#) that the [Fantasy Sports Trade Association](#) justifies its characterization of DFS as games of skill on the grounds that players must analyze statistics and game theory, and account for voluminous facts, like injuries, coaching styles, weather patterns, prospects, home and away statistics, and the like, in order to be successful.

Despite these provisions in Senator Cooley’s proposal, he told [Cincinnati.com](#) that he does not seek to outlaw all DFS gaming; he “wants to put operators on notice

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and make Ohioans aware of the pitfalls that this type of gaming presents.” To this end, SB 356 aims to give the Casino Control Commission oversight of DFS and e-gaming sites in the Buckeye State, and create new rules to ensure that DFS companies are compliant.

In the wake of Senator Colley’s legislation, Cincinnati.com quoted a spokesperson for DraftKings and FanDuel who accused the Senator of being “completely on an island – isolated from Ohioans who love fantasy sports and isolated from his caucus where he has no support for his attempt to ban fantasy sports.”



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