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FIRST REGULAR SESSION-2017

Legislative Document

No. 1320

S.P. 449

In Senate, April 4, 2017

An Act To Regulate and Tax Sports Fantasy League Activities in Maine

Reference to the Committee on Veterans and Legal Affairs suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator KATZ of Kennebec.
Cosponsored by Representative TIMBERLAKE of Turner and
Senators: CUSHING of Penobscot, JACKSON of Aroostook, MASON of Androscoggin,
Representatives: FARRIN of Norridgewock, GOLDEN of Lewiston.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 8 MRSA c. 33** is enacted to read:

3 **CHAPTER 33**

4 **REGULATION OF FANTASY CONTESTS**

5 **§1101. Definitions**

6 As used in this chapter, unless the context otherwise indicates, the following terms
7 have the following meanings.

8 **1. Department.** "Department" means the Department of Public Safety.

9 **2. Entry fee.** "Entry fee" means cash or a cash equivalent that is required to be paid
10 by a fantasy contest player to a fantasy contest operator in order to participate in a fantasy
11 contest.

12 **3. Fantasy contest.** "Fantasy contest" means a simulated game or contest in which:

13 A. One or more players pay an entry fee;

14 B. The players compete for prizes of value;

15 C. A prize is awarded to the winner of the game based on the outcome of the game;
16 and

17 D. The outcome of the game reflects the relative knowledge and skill of the players
18 and is determined predominantly by accumulated statistical results of the
19 performance of individuals, including athletes in the case of sporting events.

20 **4. Fantasy contest operator.** "Fantasy contest operator" means a person that offers
21 a platform for the playing of fantasy contests and that administers a fantasy contest for
22 which an entry fee is collected and a prize of value is awarded.

23 **5. Fantasy contest player or player.** "Fantasy contest player" or "player" means an
24 individual who participates in a fantasy contest offered by a fantasy contest operator.

25 **6. Gross fantasy contest revenues.** "Gross fantasy contest revenues" means the
26 amount determined by subtracting the total of all sums paid out by a fantasy contest
27 operator as prizes to all fantasy contest players from the total of all entry fees that the
28 fantasy contest operator collects from all fantasy contest players and multiplying the
29 result by the resident percentage.

30 **7. Platform.** "Platform" means a website or a mobile application.

31 **8. Resident percentage.** "Resident percentage" means, for each fantasy contest, the
32 percentage, rounded to the nearest tenth, obtained by dividing the total amount of entry
33 fees collected from fantasy contest players located in this State by the total amount of
34 entry fees collected from all fantasy contest players.

1 **§1102. Registration requirements for fantasy contest operators**

2 A fantasy contest operator may not offer a fantasy contest in this State without first
3 being registered with the department, except during such time as the fantasy contest
4 operator's application for registration is pending before the department as provided in
5 section 1103, subsection 2. Applications for registration must be on forms provided by
6 the department.

7 **1. Initial registration.** Before obtaining a registration to offer fantasy contests in
8 this State, a fantasy contest operator must:

9 A. Be authorized to transact business in this State; and

10 B. Pay to the department a fee of 10% of the fantasy contest operator's gross fantasy
11 contest revenues for the preceding 12 months, not to exceed \$5,000. If a fantasy
12 contest operator did not operate a fantasy contest in this State in the 12 months
13 preceding registration, no registration fee is due.

14 **2. Annual registration.** Annually, on or before the anniversary date of the initial
15 registration pursuant to subsection 1, a fantasy contest operator shall file for renewal of
16 the registration and pay to the department a registration renewal fee of 10% of that
17 fantasy contest operator's gross fantasy contest revenues for the preceding 12 months, not
18 to exceed \$5,000.

19 **3. Transfer of registration.** A registration under this chapter may be transferred
20 from one person to another. The transferor and transferee each must file a request for
21 transfer with the department. The department may not withhold approval of the transfer
22 unless the department reasonably believes that the transferee is or may be in violation of
23 the provisions of this chapter, in which case it shall notify, in writing, the transferor and
24 transferee of the decision of the department. The transferee, unless notified by the
25 department that approval of the transfer has been withheld, may operate as a fantasy
26 contest operator during the pendency of the transfer application. If the transferee begins
27 operation as a fantasy contest operator, the transferor shall cease operation in this State as
28 a fantasy contest operator immediately. In no case may more than one person operate as
29 a fantasy contest operator in this State under the same registration at the same time.

30 **4. Form of payment; nonrefundable.** A fantasy contest operator shall pay all fees
31 under this section to the department in the manner required by the department and in the
32 form, which may be electronic, required by the department. The fees paid by a fantasy
33 contest operator pursuant to this section are nonrefundable.

34 **5. Extension to file; lapse of registration.** The department, upon receipt of a
35 written request received prior to the expiration of the registration, may grant an extension
36 of time to file for registration under subsection 2. A fantasy contest operator that allows
37 its registration to lapse without requesting an extension of time to file shall resubmit an
38 initial registration under subsection 1.

1 **§1103. Registration issuance by department**

2 **1. Review and issuance by department.** The department shall consider all
3 applications for registration pursuant to section 1102 and shall issue a registration to an
4 applicant that meets the criteria set forth in this section and as established by the
5 department by rule pursuant to section 1104. The department may not issue a registration
6 to an applicant that does not meet those criteria.

7 **2. Operation while application is pending.** A fantasy contest operator applying for
8 registration or renewal or transfer of a registration under this chapter may operate during
9 the period the application is pending unless the department, based on reasonable cause,
10 believes that the applicant is or may be in violation of the provisions of this chapter. In
11 that case, the department shall notify the applicant in writing that the applicant may not
12 operate or must suspend the operation of any fantasy contest until registration or renewal
13 or transfer of registration is issued.

14 **3. Approval or denial required within 60 days.** The department shall issue or
15 deny a registration or renewal or approval of transfer of registration under this chapter
16 within 60 days of receipt of the application for registration, renewal or transfer. If the
17 department denies the registration, renewal or transfer, the department shall provide the
18 applicant or fantasy contest operator with the specific reason or reasons, in writing, for
19 not issuing the registration, renewal or transfer.

20 **§1104. Powers and duties of department**

21 **1. Adoption of rules.** The department shall adopt rules to implement this chapter,
22 including rules for the following purposes:

23 A. Administration of this chapter, including forms and acceptable methods of filing
24 forms and paying fees;

25 B. Prevention of practices that are detrimental to the public interest and protection of
26 the best interests of fantasy contest players and operators;

27 C. Standards and criteria for the review of registrations; and

28 D. Establishing methods for imposing penalties and collecting fines authorized
29 pursuant to section 1106 for violations of this chapter.

30 Rules adopted pursuant to this subsection are routine technical rules as described in Title
31 5, chapter 375, subchapter 2-A.

32 **2. Prohibited rulemaking.** The department may not adopt rules limiting or
33 regulating:

34 A. The administration of individual fantasy contests;

35 B. The statistical makeup of a fantasy contest; or

36 C. The platform of a fantasy contest operator.

1 **§1105. Duties of fantasy contest operator to protect consumers**

2 **1. Conditions of operation.** As a condition of registration, a fantasy contest
3 operator shall submit evidence that the fantasy contest operator has established and will
4 implement commercially reasonable procedures for fantasy contests that:

5 A. Prevent an employee of the fantasy contest operator, and relatives of an employee
6 living in the same household as that employee, from participating in a fantasy contest
7 offered by a fantasy contest operator;

8 B. Prevent sharing with 3rd parties of confidential information that could affect
9 fantasy contest play until the information is made publicly available. As used in this
10 paragraph, "confidential information" means information related to the play of a
11 fantasy contest by fantasy contest players obtained as a result of or by virtue of a
12 person's employment;

13 C. Prevent the fantasy contest operator from participating in a fantasy contest offered
14 or operated by that fantasy contest operator;

15 D. Provide that a winning outcome may not be based on the score, point spread or
16 performance of a single actual sports team or combination of such teams or solely on
17 a single performance of an individual athlete or participant in a single actual sporting
18 event;

19 E. Prohibit the following individuals from participating in a fantasy contest based on
20 the sport or competition in which the individual participates or is otherwise
21 associated:

22 (1) An athlete or individual who participates or officiates in a game, league or
23 competition that is the subject of a fantasy contest; or

24 (2) A sports agent, team employee, referee or umpire or league official
25 associated with a sport or athletic event;

26 F. Verify that a fantasy contest player in a fantasy contest is 18 years of age or older;

27 G. Provide fantasy contest players with access to information on responsible play;

28 H. Provide fantasy contest players with access to information on seeking assistance
29 for compulsive behavior;

30 I. Provide a fantasy contest player with access to that player's play history and
31 account details;

32 J. Allow individuals to restrict themselves from entering fantasy contests upon
33 request and provide reasonable steps to prevent the individuals from entering fantasy
34 contests offered by the fantasy contest operator; and

35 K. Disclose the number of entries that a fantasy contest player may submit to each
36 fantasy contest and provide reasonable steps to prevent players from submitting more
37 than the allowable number.

38 **2. Certain leagues and contests prohibited.** A fantasy contest operator may not
39 offer a fantasy contest based on the performances of participants in collegiate or high

1 school athletic events or other athletic events involving participants less than 18 years of
2 age.

3 **3. Notice of prizes required.** A fantasy contest operator shall provide publicly
4 available notice of all prizes offered to winning players in advance of the fantasy contest.

5 **4. Funds; audit.** A fantasy contest operator registered under this chapter shall:

6 A. Segregate fantasy contest player funds from operational funds;

7 B. Maintain a reserve that exceeds the amount of player funds on deposit; this
8 reserve may not be used for operational activities. Reserve funds may take the form
9 of cash, cash equivalents, payment processor reserves, payment processor
10 receivables, an irrevocable letter of credit, a bond or any combination thereof, in an
11 amount that exceeds the total balances of the fantasy contest players' accounts;

12 C. Annually contract with a certified public accountant to conduct an independent
13 audit, consistent with the standards accepted by the American Institute of Certified
14 Public Accountants or a successor organization, to ensure compliance with paragraph
15 B; and

16 D. Provide to the department a copy of the audit report prepared pursuant to
17 paragraph C. Information submitted to the department pursuant to this paragraph is
18 confidential and is not a public record within the meaning of Title 1, chapter 13,
19 subchapter 1.

20 **§1106. Civil penalty**

21 A person, firm, corporation, association, agent or employee of one of those entities
22 who knowingly violates a provision of this chapter or a rule adopted under this chapter is
23 liable for a civil penalty of not more than \$1,000 for each violation, not to exceed \$5,000
24 for violations arising out of the same transaction or occurrence. Fines collected pursuant
25 to this section accrue to the State and may be recovered in a civil action brought by the
26 department against the violator.

27 **§1107. Fantasy contests conducted under this chapter not illegal gambling**

28 Notwithstanding any provision of law to the contrary, a fantasy contest conducted in
29 accordance with this chapter is not considered gambling subject to Title 17-A, chapter 39
30 or any other laws regulating or prohibiting gambling.

31 **Sec. 2. Existing fantasy contest operators.** Notwithstanding the Maine
32 Revised Statutes, Title 8, section 1102, a fantasy contest operator, as defined in Title 8,
33 section 1101, that was offering contests to persons located in this State prior to the
34 effective date of Title 8, chapter 33 may continue to offer fantasy contests to persons
35 located in this State until 60 days after applications for registration are made available to
36 the public by the Department of Public Safety. A fantasy contest operator that does not
37 apply for registration during that 60-day period shall cease operations within this State by
38 the expiration of the 60-day period.

1 **SUMMARY**

2 This bill requires persons who operate fantasy contests to register annually with the
3 Department of Public Safety and pay a registration fee based on the gross revenues
4 generated by that fantasy contest operator during the 12 months prior to registration or
5 renewal. "Fantasy contest" is defined as a simulated game or contest in which one or
6 more players pay an entry fee and compete for and win prizes of value based on outcomes
7 that reflect the relative knowledge and skill of the players and that are determined
8 predominantly by accumulated statistical results of the performance of individuals,
9 including athletes in the case of sporting events.

10 This bill regulates the operators of fantasy contests, including by prohibiting the
11 fantasy contest operator, an employee of the operator or a relative of the employee in the
12 same household from participating in the contests; requiring the outcome to be based on
13 more than just a score or point spread of a single game or contest; allowing an individual,
14 on that individual's request to the operator, to be barred from playing in the contest;
15 requiring the operator to provide notice of the prizes prior to the contest; and requiring
16 the operator to establish a separate reserve account for the payment of prizes.

17 Finally, the bill exempts fantasy contests from the laws prohibiting games of chance
18 and gambling.