
A BILL FOR AN ACT

RELATING TO ONLINE FANTASY SPORTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that websites, such as
2 FanDuel and DraftKings, allow Hawaii residents to participate in
3 daily fantasy sports contests and win money based on the
4 performance of the athletes they select. Daily fantasy sports
5 contests involve online competitions among thousands and
6 millions of people and are played daily. A person can draft a
7 new team each day for a wager with the goal of picking the
8 highest scoring players.

9 Daily fantasy sports contests were crafted to comply with
10 the federal Unlawful Internet Gambling Enforcement Act of 2006
11 that shuttered online poker websites, but the Act provided a
12 specific exemption for daily fantasy sports contests. As a
13 result, the legality of these contests is a matter of state law.

14 In January 2016, the attorney general concluded in Opinion
15 Number 16-1 that daily fantasy sports contests constitute
16 illegal gambling under Hawaii law. The attorney general opined
17 that because daily fantasy sports contests are contests of



1 chance and involve future contingent events not under the
2 control of players, these contests fall under the definition of
3 "gambling" under section 712-1220, Hawaii Revised Statutes.
4 Accordingly, daily fantasy sports contests are deemed to be
5 illegal under Hawaii law.

6 However, in August 2016, New York enacted a law that
7 legalized and regulated daily fantasy sports websites serving
8 persons located in New York. The new law authorizes regulatory
9 control by the New York State Gaming Commission, requires
10 registration of these operators and registrants, prohibits
11 certain sports and individuals from registered interactive
12 fantasy sports contests and platforms, and exempts registered
13 interactive fantasy sports contests from criminal gambling laws.

14 In passing the law, the New York State Legislature found
15 that interactive fantasy sports contests are not wagers on
16 future contingent events not under the contestants' control or
17 influence because contestants have control over which players
18 they choose and the outcome of each contest is not dependent
19 upon the performance of any one player or any one actual team.
20 The outcome of any fantasy sports contest does not correspond to
21 the outcome of any one sporting event. Instead, the outcome



1 depends on how the athletes performed in their respective event.
2 Once the athletic events are completed the daily fantasy sport
3 participant's roster of players is compared to the rosters of
4 other participants to see which roster scored the most points.
5 Accordingly, the New York State Legislature declared that
6 interactive fantasy sports contests do not constitute gambling
7 in New York. Furthermore, the New York State Legislature found
8 that because participation in a lawful and licensed interactive
9 fantasy sports industry is a privilege and not a right,
10 regulatory oversight provided in the law is intended to
11 safeguard the integrity of the games and the participants and
12 ensure accountability and the public trust.

13 The legislature further finds that despite the attorney
14 general's gambling concerns regarding daily fantasy sports
15 contests in Hawaii, the New York State Legislature concluded
16 that these contests are games of skill, not games of chance.
17 Accordingly, because the federal Unlawful Internet Gambling
18 Enforcement Act of 2006 exempts daily fantasy sports contests
19 and leaves the legality of these contests a matter of state law,
20 daily fantasy sports contests should not be considered gambling



1 under the penal code as long as these contests are appropriately
2 registered and monitored.

3 Furthermore, numerous visitors who come to Hawaii and
4 participate in daily fantasy sports in their resident state are
5 prohibited, even though they are not residents of the State,
6 thereby impeding their ability to participate in fantasy sports
7 while on vacation. In addition, economists have advised that
8 the State needs to maximize visitor spending to compensate for
9 revenues lost during the COVID-19 pandemic. As such, creating a
10 framework for the regulation of daily fantasy sports will
11 encourage visitors to continue to participate in fantasy sports
12 while visiting the State, which may drive further revenue to the
13 State.

14 The purpose of this Act is to legalize online fantasy
15 sports contests in Hawaii by:

- 16 (1) Establishing an online fantasy sports contests
17 registration and monitoring program under the
18 department of the attorney general;
- 19 (2) Exempting registered online fantasy sports contests
20 from state gambling laws; and



1 (3) Appropriating funds to the department of the attorney
 2 general to establish and implement a registration and
 3 monitoring program for online fantasy sports contests.

4 SECTION 2. The Hawaii Revised Statutes is amended by
 5 adding a new chapter to be appropriately designated and to read
 6 as follows:

7 **"CHAPTER**

8 **ONLINE FANTASY SPORTS**

9 § -1 **Definitions.** As used in this chapter, unless the
 10 context otherwise requires:

11 "Animal contest" means any event that competes animals
 12 against each other, including horses, dogs, or roosters.

13 "Authorized player" means an individual residing in this
 14 State who is not a prohibited player and who participates in an
 15 online fantasy sports contest offered by a registrant.

16 "Collegiate sport or athletic event" means a sport or
 17 athletic event offered or sponsored by or played in connection
 18 with a public or private institution that offers education
 19 services beyond the secondary level.

20 "Department" means the department of the attorney general.



1 "Entry fee" means cash or cash equivalent that is paid by
2 an authorized player to an operator or registrant to participate
3 in an online fantasy sports contest offered by the operator or
4 registrant.

5 "High school sport or athletic event" means a sport or
6 athletic event offered or sponsored by or played in connection
7 with a public or private institution that offers education
8 services at the secondary level.

9 "Highly experienced player" means an authorized player who
10 has:

11 (1) Entered more than one thousand contests offered by a
12 single operator or registrant; or

13 (2) Won more than three prizes valued at \$1,000 each or
14 more from a single operator or registrant.

15 "Minor" means any person who is under the age of eighteen
16 years.

17 "Online fantasy sports contest" or "contest" means a game
18 of skill in which one or more contestants compete against each
19 other online by using their knowledge and understanding of
20 athletic events and athletes to select and manage rosters of
21 simulated players whose performance directly corresponds with



1 the actual performance of human competitors on sports teams and
2 in sports events.

3 "Online fantasy sports operator" or "operator" means any
4 person or entity that offers any online fantasy sports contest
5 to any authorized player through any online fantasy sports
6 platform.

7 "Online fantasy sports platform" or "platform" means the
8 combination of hardware, software, and data networks used to
9 manage, administer, or control contests and any associated entry
10 fees.

11 "Online fantasy sports registrant" or "registrant" means an
12 operator who is registered by the department.

13 "Prohibited player" means:

14 (1) Any member, officer, employee, or agent of an operator
15 or registrant;

16 (2) Any spouse, child, brother, sister, or parent residing
17 as a member of the same household in the principle
18 place of abode of any member, officer, employee, or
19 agent of an operator or registrant;

20 (3) Any individual with access to confidential information
21 about contests;



- 1 (4) Any amateur or professional athlete whose performance
- 2 may be used to determine the outcome of a contest;
- 3 (5) Any sports agent, team employee, referee, or league
- 4 official associated with any sport or athletic event
- 5 on which contests are based;
- 6 (6) Any individual located in a state where the conduct of
- 7 contests is expressly prohibited; or
- 8 (7) Any minor.

9 "Prohibited sports event" means any collegiate sport or
10 athletic event, any high school sport or athletic event, or any
11 animal contest.

12 "Sports event" means any amateur or professional sport or
13 athletic event except a prohibited sports event.

14 § -2 **Registration; operators.** (a) No operator shall
15 administer, manage, or otherwise make available an online
16 fantasy sports platform to persons located in this State unless
17 registered with the department pursuant to section -3. A
18 registrant may use multiple online fantasy sports platforms and
19 offer multiple types of contests; provided that each platform
20 and each type of contest has been reviewed and approved by the
21 department. This chapter shall apply only to online fantasy



1 sports contests for which an authorized player pays an entry
2 fee.

3 (b) Registration issued by the department pursuant to
4 section -3 shall remain in effect for three years. The
5 department shall establish a process for renewal.

6 (c) The department shall post a list of all operators
7 registered in the State pursuant to this section on the
8 department's website for public use.

9 (d) The department shall adopt rules to implement this
10 chapter, including the initial form of the application for
11 registration. The rules shall provide for the registration and
12 operation of contests in the State and include but not be
13 limited to responsible protections with regard to compulsive
14 play and safeguards for fair play.

15 § -3 **Scope of registration review.** (a) The department
16 shall prescribe the initial form of the application for
17 registration that shall include but not be limited to:

- 18 (1) The full name and principle address of the operator;
19 (2) If a corporation, the name of the state in which
20 incorporated and the full names and addresses of any
21 partner, officer, director, shareholder holding ten



1 per cent or more equity, and ultimate equitable
2 owners;

3 (3) If a business entity other than a corporation, the
4 full names and addresses of the principals, partners,
5 shareholders holding five per cent or more equity, and
6 ultimate equitable owners;

7 (4) Whether the corporation or business entity files
8 information and reports with the United States
9 Securities and Exchange Commission as required under
10 section 13 of the Securities Exchange Act of 1934, as
11 amended, or whether the securities of the corporation
12 or business entity are regularly traded on an
13 established securities market in the United States;

14 (5) The type and estimated number of contests to be
15 conducted annually; and

16 (6) A statement of the assets and liabilities of the
17 operator.

18 (b) The department may require the full names and
19 addresses of the officers and directors of any creditor of the
20 operator and stockholders who hold more than ten per cent of the
21 stock of the creditor.



1 (c) Each individual listed on the application for
2 registration as an officer or director shall be subject to a
3 criminal history record check in accordance with section 846-
4 2.7, including providing a full set of electronic fingerprints
5 for the purpose of obtaining federal and state criminal history
6 record checks to the Hawaii criminal justice data center for
7 processing with the Federal Bureau of Investigation. The
8 application shall not be considered complete until the results
9 of the criminal history record check are received by the
10 department. The department may obtain criminal history
11 information through the Hawaii criminal justice data center in
12 accordance with section 846-2.7 for the purposes of this
13 section.

14 (d) Upon receipt of the criminal history record check
15 pursuant to subsection (c), the department shall determine
16 whether to approve or deny any application for registration.
17 The department shall deny any application for registration or
18 suspend, refuse to renew, or revoke any existing registration
19 issued pursuant to this chapter upon the finding that the
20 operator or registrant, or any partner, officer, director, or
21 shareholder has:



- 1 (1) Knowingly made a false statement of material fact or
2 deliberately failed to disclose any information
3 required by the department;
- 4 (2) Possessed a registration or license to offer or
5 conduct contests that was denied, suspended, or
6 revoked in any other state or country for just cause;
- 7 (3) Legally defaulted in the payment of any obligation or
8 debt due to any state or political subdivision; or
- 9 (4) Knowingly failed at any time to comply with any
10 requirement under this chapter, adopted rule, or
11 requirement prescribed by the department.
- 12 (e) If an application for registration is denied or an
13 existing registration is suspended, denied renewal, or revoked,
14 the department shall notify the operator or registrant of the
15 right to submit a request for a contested case hearing pursuant
16 to chapter 91 within sixty days of the department's decision.
17 The contested case hearing shall be conducted in accordance with
18 chapter 91.
- 19 § -4 **Safeguards; minimum standards.** (a) As a condition
20 of registration in the State, each operator or registrant shall
21 implement the following safeguards:



- 1 (1) Limit each authorized player to one active and
2 continuously used account, and prevent prohibited
3 players from maintaining accounts or participating in
4 any contest offered by that operator or registrant;
5 (2) Prohibit minors from participating in any contest,
6 including:
7 (A) If a registrant becomes or is made aware that a
8 minor has participated in one of its contests,
9 the registrant shall promptly refund any deposit
10 received from the minor no later than two
11 business days after the registrant is aware of
12 the minor's participation regardless of whether
13 the minor engaged or attempted to engage in a
14 contest; provided that any refund may be offset
15 by any prizes already awarded;
16 (B) Each registrant shall publish and facilitate
17 parental control procedures to allow parents or
18 guardians to exclude minors from access to any
19 contest or platform. These procedures shall
20 include a toll-free number to call for help in
21 establishing the parental controls; and



- 1 (C) Each registrant shall take appropriate steps to
2 confirm that an individual opening an account is
3 not a minor;
- 4 (3) When referencing the chances or likelihood of winning
5 in advertisements or upon contest entry, make clear
6 and conspicuous, accurate statements that are not
7 misleading concerning the chances of winning and the
8 number of winners;
- 9 (4) Enable authorized players to exclude themselves from
10 contests and take reasonable steps to prevent these
11 players from entering a contest from which they have
12 excluded themselves;
- 13 (5) Permit any authorized player who requests to be
14 excluded from contests to permanently close an account
15 registered to that player on any platforms supported
16 by the operator or registrant at any time and for any
17 reason;
- 18 (6) Offer introductory procedures for authorized players,
19 which shall be prominently displayed on the main page
20 of the operator's or registrant's platform, that



- 1 explain contest play and how to identify a highly
2 experienced player;
- 3 (7) Identify all highly experienced players in any contest
4 by a symbol attached to the highly experienced
5 players' usernames or by any other easily visible
6 means on all platforms supported by the operator or
7 registrant;
- 8 (8) Disclose the number of entries a single authorized
9 player may submit to each contest;
- 10 (9) Disclose the maximum number of total entries allowed
11 for each contest;
- 12 (10) Implement measures to protect the privacy and online
13 security of authorized players and their accounts;
- 14 (11) Offer all authorized players access to their account
15 history and account details;
- 16 (12) Ensure authorized players' funds are protected upon
17 deposit and segregated from the operating funds of the
18 operator or registrant and otherwise protected from
19 corporate insolvency, financial risk, or criminal or
20 civil actions against the operator or registrant;



- 1 (13) List on each website, in a prominent place,
2 information concerning assistance for compulsive play
3 in the State, including a toll-free number directing
4 callers to reputable resources containing further
5 information that shall be free of charge;
- 6 (14) Ensure the value of any prizes and awards offered to
7 authorized players is established and made known to
8 the authorized players in advance of the contest, and
9 that the value is not determined by the number of
10 authorized players or the amount of any entry fee paid
11 by the authorized players;
- 12 (15) Ensure all winning outcomes reflect the relative
13 knowledge and skill of the authorized players and is
14 determined predominately by accumulated statistical
15 results of the performance of individuals in sports
16 events;
- 17 (16) Ensure no winning outcome is based on the score, point
18 spread, or performance of a single sports team, or any
19 combination of teams;



1 (17) Ensure no winning outcome is based solely on any
2 single performance of an individual athlete in a
3 single sport or athletic event; and

4 (18) Ensure no game or contest is based on a prohibited
5 sports event.

6 (b) Each registrant shall restrict the number of entries
7 submitted by a single authorized player for any contest to a
8 maximum of one hundred fifty entries per player per contest, or
9 a maximum of three per cent of the total number of entries by
10 all authorized players for any contest, whichever is less, or as
11 determined by the department. Registrants shall take reasonable
12 steps to prevent authorized players from submitting more than
13 the allowable number of entries per contest. The department
14 shall adopt rules to further effectuate this section to ensure
15 that the number of entries submitted by a single authorized
16 player for any contest will lead to a fair and equitable
17 distribution of number of entries.

18 (c) Operators shall not directly or indirectly operate,
19 promote, or advertise any platform or contest to individuals
20 located in the State unless registered pursuant to this chapter.
21 Unless otherwise approved by the department, operators and



1 registrants shall not directly or indirectly promote or
2 advertise any online fantasy or simulation sports games or
3 contests with an entry fee during the conduct of any online
4 fantasy or simulation sports games or contests without an entry
5 fee. This subsection shall not apply to any operator or
6 registrant that prohibits prohibited players from participating
7 in online fantasy or simulation sports games or contests without
8 an entry fee.

9 (d) Registrants shall not offer any contest based on any
10 prohibited sports event.

11 (e) Registrants shall not permit any minor or prohibited
12 participant to enter any contest.

13 (f) Advertisements for contests and prizes offered by a
14 registrant shall not target prohibited participants, minors, or
15 self-excluded individuals. Representations or implications
16 about average winnings from contests shall be fair and not be
17 misleading, and shall, at a minimum, include:

18 (1) The median and mean net winnings of all authorized
19 players participating in contests offered by the
20 registrant; and



1 (2) The percentage of winnings awarded by the registrant
2 to highly experienced players participating in
3 contests offered by the registrant within the
4 preceding calendar year.

5 (g) Registrants shall prohibit the use of third-party
6 scripts or scripting programs for any contest and ensure that
7 measures are in place to deter, detect, and, to the extent
8 reasonably possible, prevent cheating, including collusion, and
9 the use of cheating devices, including the use of software
10 programs that submit entry fees or adjust the athletes selected
11 by an authorized player.

12 (h) Operators and registrants shall develop and
13 prominently display procedures on the main page of the
14 operator's or registrant's platform for the filing of a
15 complaint by the authorized player against the registrant. An
16 initial response shall be given by the registrant to the player
17 filing the complaint within forty-eight hours. A complete
18 response shall be given by the registrant to the player filing
19 the complaint within ten business days. An authorized player
20 may file a complaint alleging a violation of this chapter with
21 the department.



1 (i) Registrants shall maintain records of all accounts
2 belonging to authorized players and retain these records for
3 five years from the date an account was created.

4 § -5 Department powers and duties. (a) The department
5 shall have the following powers and duties for purposes of
6 administering and enforcing this chapter:

- 7 (1) Approve and deny applications for registration to
8 conduct contests in the State and to suspend, refuse
9 or renew, or revoke any registration issued to the
10 registrant pursuant to this chapter;
- 11 (2) Review and approve each platform and contest offered
12 by an operator or registrant;
- 13 (3) Accept and investigate complaints of any kind from an
14 authorized player and attempt to mediate these
15 complaints where appropriate;
- 16 (4) Investigate alleged violations of this chapter;
- 17 (5) Initiate proper enforcement proceedings where action
18 is deemed by the department to be necessary or
19 appropriate; and
- 20 (6) Execute all powers and duties assigned by and
21 necessary to implement this chapter.



1 (b) The department shall adopt rules, pursuant to chapter
2 91, to effectuate the purposes of this chapter. The rules shall
3 include but not be limited to the following:

4 (1) Guidelines for the development of the initial form of
5 the application for registration;

6 (2) Procedures for the registration and operation of
7 contests in the State; and

8 (3) Responsible protections with regard to compulsive play
9 and safeguards for fair play.

10 The rules may monitor the conduct and operation of contests and
11 platforms, protect authorized players, and promote the fairness,
12 honestly, and integrity of contests.

13 § -6 **Penalties.** Any individual, operator, or registrant
14 that violates this chapter shall be liable for a civil penalty
15 of no more than \$1,000 for each violation that shall accrue to
16 the State and may be recovered in a civil action brought by the
17 department.

18 § -7 **Annual report.** (a) Each registrant shall annually
19 submit a report to the department no later than June 30 of each
20 year that shall include the following information that applies
21 to accounts held by authorized players located in the State:



- 1 (1) The number of accounts held by authorized players on
2 all platforms offered by the registrant and the number
3 of accounts held by highly experienced players on all
4 platforms offered by the registrant;
- 5 (2) The total number of new accounts established in the
6 preceding year as well as the total number of accounts
7 permanently closed in the preceding year;
- 8 (3) The total amount of entry fees received from
9 authorized players;
- 10 (4) The total amount of prizes awarded to authorized
11 players;
- 12 (5) The total amount of online fantasy sports revenue
13 received by the registrant;
- 14 (6) The total number of authorized players that requested
15 to exclude themselves from contests; and
- 16 (7) Any additional information that the department deems
17 necessary to carry out this chapter.
- 18 (b) Upon receipt of the annual report submitted by each
19 registrant, the department shall be authorized, to the extent
20 that the department deems to be in the public interest, to



1 conduct a financial audit of any registrant, at any time, to
2 ensure compliance with this chapter.

3 (c) The department shall annually publish a report based
4 on the aggregate information provided by all registrants
5 pursuant to this section. The department shall submit this
6 annual report to the legislature no later than twenty days prior
7 to the convening of the regular session of each year and post
8 this annual report on the department's website no later than one
9 hundred eighty days after the deadline for the submission of
10 individual reports as required under subsection (a)."

11 SECTION 3. Chapter 712, Hawaii Revised Statutes, is
12 amended by adding a new section to part III to be appropriately
13 designated and to read as follows:

14 "§712- Online fantasy sports contests. (a) Online
15 fantasy sports contests registered and conducted pursuant to
16 chapter are exempt from this part.

17 (b) The conduct of unregistered online fantasy sports
18 contests is prohibited and may be subject to this part."

19 SECTION 4. Section 712-1220, Hawaii Revised Statutes, is
20 amended as follows:



1 1. By adding a new definition to be appropriately inserted
2 and to read:

3 "Online fantasy sports contest" means a game of skill in
4 which one or more contestants compete against each other online
5 by using their knowledge and understanding of athletic events
6 and athletes to select and manage rosters of simulated players
7 whose performances directly corresponds with the actual
8 performance of human competitors on sports teams and in sports
9 events."

10 2. By amending the definition of "contest of chance" to
11 read:

12 "Contest of chance" means any contest, game, gaming
13 scheme, or gaming device in which the outcome depends in a
14 material degree upon an element of chance, notwithstanding that
15 skill of the contestants may also be a factor therein[-];
16 provided that a contest of chance shall not include online
17 fantasy sports contests registered and conducted pursuant to
18 chapter ____."

19 3. By amending the definition of "gambling" to read:

20 "Gambling" [-. A person engages in gambling if he stakes or
21 risks] means staking or risking something of value upon the



1 outcome of a contest of chance or a future contingent event not
2 under [~~his~~] the person's control or influence, upon an agreement
3 or understanding that [~~he~~] the person or someone else will
4 receive something of value in the event of a certain outcome.
5 [~~Gambling~~] "Gambling" does not include [~~bona~~]:

6 (1) Bona fide business transactions valid under the law of
7 contracts, including but not limited to contracts for
8 the purchase or sale at a future date of securities or
9 commodities [~~, and agreements~~];

10 (2) Agreements to compensate for loss caused by the
11 happening of chance, including but not limited to
12 contracts of indemnity or guaranty and life, health,
13 or accident insurance [~~-~~]; and

14 (3) Online fantasy sports contests registered and
15 conducted pursuant to chapter ."

16 SECTION 5. There is appropriated out of the general
17 revenues of the State of Hawaii the sum of \$ or so much
18 thereof as may be necessary for fiscal year 2021-2022 and the
19 same sum or so much thereof as may be necessary for fiscal year
20 2022-2023 to establish and implement a registration and
21 monitoring program for online fantasy sports contests.

1 The sums appropriated shall be expended by the department
2 of the attorney general for the purposes of this Act.

3 SECTION 6. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun before its effective date.

6 SECTION 7. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 8. This Act shall take effect on July 1, 2021.

9

INTRODUCED BY: 

JAN 25 2021



H.B. NO. 850

Report Title:

Online Fantasy Sports; Gambling; Exemption; Department of the Attorney General; Appropriation

Description:

Establishes an online fantasy sports contests registration and monitoring program under the department of the attorney general. Exempts registered online fantasy sports contests from state gambling laws. Appropriates funds.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

