



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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Sub. H.B. 132*

132nd General Assembly

(As Reported by H. Government Accountability and Oversight)

Reps. Dever and McColley

BILL SUMMARY

- Grants the Ohio Casino Control Commission the authority to investigate, license, penalize, and regulate anyone conducting or participating in a "fantasy contest" in Ohio.
- Defines "fantasy contest" as a simulated game or contest with an entry fee, where all prize values are known in advance, with the winning outcome determined by specific conditions related to accumulated statistical results based on the player's skill in anticipating the performance of a roster of selected athletes.
- Requires a fantasy contest operator to obtain a license from the Commission to operate a fantasy contest in Ohio.
- Requires the Commission to adopt rules to govern the conduct of a fantasy contest in Ohio, including rules to exclude certain individuals from playing a fantasy contest, rules governing internal procedures of fantasy contest operators, and rules establishing licensure conditions.
- Requires a fantasy contest operator to contract with a third party to conduct fiscal and compliance audits, and to maintain, organize, and provide certain records to the Commission.
- Prohibits a fantasy contest operator from offering fantasy contests based on youth or college sports contests, allowing fantasy contest players to use certain computer

* This analysis was prepared before the report of the House Government Accountability and Oversight Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

programs, targeting certain persons in the operator's advertising materials, or operating fantasy contests on a kiosk in a business location.

- Exempts fantasy contests from the Gambling Law.

CONTENT AND OPERATION

Fantasy contests

The bill grants the Ohio Casino Control Commission the authority to investigate, license, penalize, and regulate anyone conducting or participating in a "fantasy contest" in Ohio and directs the Commission to adopt rules under the Administrative Procedure Act governing the operation of a fantasy contest.¹ "Fantasy contests" are defined in the bill as simulated games or contests a person must pay an entry fee to enter, in which: (1) the value of all prizes and awards are established and made known ahead of the contest, (2) all winning outcomes are based on the relative skill and knowledge of the players, as determined by accumulated statistical results of the performance of a roster of athletes in actual sporting events, and (3) winning outcomes are not based on randomized or historical events, or on the score or performance of any individual athlete, single team, or combination of teams in an actual sporting event.²

Rules governing fantasy contests

The bill requires the Commission to adopt rules under the Administrative Procedure Act to govern the conduct of fantasy contests in Ohio. The Commission is directed to adopt rules to:

- Prohibit employees of fantasy contest operators, relatives living in the same households as those employees, and athletes and officials in the underlying sports contests from competing in public fantasy contests offered by an operator or from sharing material nonpublic information that was obtained as a result of employment with third parties;
- Ensure fantasy contest operators prohibit access to minors and anyone who has requested to restrict themselves from entering fantasy contests;
- Establish requirements with respect to funds controlled by fantasy contest operators, including maintaining player funds separate from operational

¹ R.C. 3772.03(L).

² R.C. 3774.01(C).



funds or a reserve of player funds that may not be used for operational activities and prescribing the forms these reserve funds may take;

- Prescribe requirements related to beginning and highly experienced players;
- Establish requirements for fantasy contest operators' internal procedures to ensure compliance with state and federal privacy laws, suspend the accounts of players who violate the law, regulate the number of fantasy contests a person can enter, and provide players with information on playing responsibly;
- Require fantasy contest operators to designate at least one key employee as a condition to obtain a license. A key employee must be responsible for ensuring that all the bill's requirements are met.
- Establish the length of time for which a license may be valid, not to exceed three years;
- Establish the fee to obtain a license, not to exceed \$30,000 for a three-year license; and
- Any other procedure or thing the Commission determines necessary to establish consumer protections or regulate fantasy contests.³

Commission may not adopt certain rules

Additionally, the bill prohibits the Commission from adopting rules that would limit or regulate a fantasy contest operator's digital platform or the statistical makeup of a game, or require licensure of any person who is not an operator, holding company, or management company.⁴ For the purposes of the bill, a "holding company" is a business organization with the power to control a fantasy contest operator or that owns or holds voting rights over at least 10% of a fantasy contest operator,⁵ and a "management company" is a company hired by a fantasy contest operator to maintain a fantasy contest platform and perform associated business services.⁶

³ R.C. 3774.01(H) and (J) and 3774.03(A)(1) through (9) and (C).

⁴ R.C. 3774.03(B).

⁵ R.C. 3774.01(G).

⁶ R.C. 3774.01(I).



Fantasy contest operators

Licensure

Under the bill, a fantasy contest operator cannot offer a fantasy contest in Ohio without first obtaining a license to do so from the Commission. A person operating a pool not conducted for profit, like an office sports pool in which all the money collected from the players in the contest is paid as prize money, is not a fantasy contest operator for the purposes of the bill and does not need to obtain a license to operate the pool not conducted for profit. To obtain or renew a license, a fantasy contest operator must pay a nonrefundable license fee set by the Commission, not to exceed \$10,000 for a one-year license or \$30,000 for a three-year license. Also, the operator must establish the operator's suitability for a license by clear and convincing evidence. The Commission may investigate licensees to ensure that they are complying with applicable statutes and rules.⁷ If a licensee is found to be violating applicable statutes or rules, the Commission may penalize an operator or deny, revoke, limit or suspend a license, after conducting an adjudication under the Administrative Procedure Act.⁸ The Commission may also renew a license for up to three years after the licensee pays the renewal fee and the Commission verifies the licensee's compliance with any applicable statutes and rules.⁹

Grace period for current fantasy contest operators

Any fantasy contest operator offering fantasy contests in Ohio on the bill's effective date may continue to operate without interruption until the Commission issues or denies a license for the operator. The operator must apply for a license no more than 30 days after the Commission makes the license available.¹⁰

Records submitted with license application not public records

Information concerning internal procedures of a fantasy contest operator, personal information, financial information, trade secrets, or privileged attorney-client communications provided to the Commission as part of the license application process are confidential and not subject to disclosure by any state agency or political subdivision under the Public Records Law. The Commission may share the information provided by a fantasy contest operator with other appropriate licensing or

⁷ R.C. 3774.01(D), 3774.02, and 3774.03(A)(8).

⁸ R.C. 3774.07.

⁹ R.C. 3774.02.

¹⁰ Section 3 of the bill.



governmental agencies as needed as long as those agencies comply with the same confidentiality protections as the Commission.¹¹

Fantasy contest operator must maintain records

The bill requires a fantasy contest operator to maintain records relating to the operator's business structure, correspondence or reports from governmental agencies (including the Commission), financial statements and accounting records, records relating to the conduct of fantasy contests in Ohio, promotional materials, and any other documents or records the Commission requires the operator to maintain in subsequently adopted rules. The operator must maintain the records for at least five years, and must organize the records in such a way that the Commission can locate, inspect, review, and analyze them with ease and efficiency.¹²

Independent audit of fantasy contest operator

A fantasy contest operator offering fantasy contests in Ohio must contract with a third party to perform an audit to ensure compliance with Ohio law and any rules adopted by the Commission at least once every three years unless determined otherwise by the Commission. A fantasy contest operator must also contract with a third party to perform an annual independent financial audit. The Commission must approve any third party performing an audit, and must receive the audit results from the fantasy contest operator.¹³

Prohibited conduct

Fantasy contest operators are prohibited from offering fantasy contests based on youth or college sports events or allowing players to use "scripts," or computer commands that automate processes involved in playing a fantasy contest, unless the script is available to all players. Advertising by fantasy contest operators may not be false or misleading, target players who have restricted themselves from entering fantasy contests, or target minors. Fantasy contests also may not be operated on kiosks or machines in business locations.¹⁴

¹¹ R.C. 3774.08.

¹² R.C. 3774.04.

¹³ R.C. 3774.05.

¹⁴ R.C. 3774.06.

Gambling law exemption

Fantasy contests offered according to the bill and the rules subsequently adopted by the Commission are exempted from the Gambling Law.¹⁵ Ohio's Gambling Law does not currently directly address fantasy contests (see **COMMENT**).

COMMENT

The legal effect of exempting fantasy contests from the Gambling Law is unclear. The Gambling Law contains a wide range of definitions, gambling crimes, bingo regulations, and penalties.¹⁶ Given this range of topics, exempting fantasy sports contests from the entire chapter has no apparent consequence—except for three or four sections that define gambling crimes. By exempting fantasy contests from the Gambling Law, it could also suggest that a fantasy contest would be considered gambling but for the exemption. If fantasy contests are not gambling, it is not clear why they need to be exempt from the Gambling Law.

HISTORY

| ACTION | DATE |
|---|----------|
| Introduced | 03-16-17 |
| Reported, H. Gov't Accountability & Oversight | --- |

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¹⁵ R.C. 3770.09.

¹⁶ R.C. Chapter 2915.

