

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/SB 1566

INTRODUCER: Regulated Industries Committee and Senator Hutson

SUBJECT: Fees/Fantasy Sports Contest Operator

DATE: February 5, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Kraemer</u>	<u>Yeatman</u>	<u>FP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1566 imposes license fees on certain fantasy sports contest operators who offer fantasy sports contests for a cash prize to members of the public in this state. Contest operators must pay an initial license application fee of \$1 million and renewal fees of \$250,000 annually. Such fees may not exceed 10 percent of the difference between the amount of entry fees collected by a contest operator from the operation of fantasy sports contests in this state, and the amount of cash or cash equivalents paid to contest participants in this state. These license fees do not apply to individuals who act as noncommercial contest operators, as defined in SB 1568, who collect and distribute entry fees totaling no more than \$1,500 per season or \$10,000 annually, and who meet other specified requirements. The fees are to be paid to the Florida Gaming Control Commission (commission) and deposited in the Pari-mutuel Wagering Trust Fund.

SB 1568 (Fantasy Sports Contest Amusement Act), is a linked bill that addresses authorized fantasy sports contests.

The impact on state revenues and expenditures is indeterminate. There is no impact expected on local government revenues and expenditures. *See* Section V, Fiscal Impact Statement.

The bill is effective on the same date that SB 1568 (Fantasy Sports Contest Amusement Act) or similar legislation) takes effect, if adopted in the same legislative session or any extension, and becomes law.

II. Present Situation:

Background

In general, gambling is illegal in Florida.¹ Chapter 849, F.S., prohibits keeping a gambling house,² running a lottery,³ or the manufacture, sale, lease, play, or possession of slot machines.⁴ In Florida, if a gaming activity is not expressly authorized by law, then the activity constitutes illegal gambling. In addition to the activities the Seminole Tribe of Florida is authorized by law to conduct pursuant to ch. 285.710, F.S.,⁵ the following gaming activities are authorized by law and regulated by the state:

- Pari-mutuel⁶ wagering at licensed greyhound and horse tracks and jai alai frontons;⁷
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;⁸
- Cardrooms⁹ at certain pari-mutuel facilities;¹⁰
- The state lottery authorized by section 15 of Article X of the State Constitution and established under ch. 24, F.S.;¹¹
- Skill-based amusement games and machines at specified locations as authorized by s. 546.10, F.S, the Family Amusement Games Act;¹² and
- The following activities, if conducted as authorized under ch. 849, relating to Gambling, under specific and limited conditions:
 - Penny-ante games;¹³
 - Bingo;¹⁴
 - Charitable drawings;¹⁵
 - Game promotions (sweepstakes);¹⁶ and

¹ See s. 849.08, F.S.

² See s. 849.01, F.S.

³ See s. 849.09, F.S.

⁴ Section 849.16, F.S.

⁵ See s. 285.710(3), F.S. The activities currently authorized to be conducted by the Seminole Tribe of Florida subject to limitations described in s. 285.710, F.S., and the 2021 Gaming Compact, include the following: slot machines; banking or banked card games (such as blackjack, limited to the tribal facilities in Broward County, Collier County, and Hillsborough County); raffles and drawings; craps and other dice games; roulette; fantasy sports contests; and sports betting.

⁶ “Pari-mutuel” is defined in Florida law as “a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes. See s. 550.002(22), F.S.

⁷ See ch. 550, F.S., relating to the regulation of pari-mutuel activities.

⁸ See FLA. CONST., art. X, s. 23, and ch. 551, F.S.

⁹ Section 849.086, F.S. See s. 849.086(2)(c), F.S., which defines “cardroom” to mean “a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility.”

¹⁰ See Florida Gaming Control Commission, *Annual Report Fiscal Year 2022-2023* (Annual Report), at p. 15, at <https://flgaming.gov/pmw/annual-reports/docs/2022-2023%20FGCC%20Annual%20Report.pdf> (last visited Jan. 23, 2024), which states that of 29 licensed permitholders, 26 operated at a pari-mutuel facility.

¹¹ Chapter 24, F.S., was enacted by ch. 87-65, Laws of Fla., to establish the state lottery; s. 24.102, F.S., states the legislative purpose and intent for the operations of the state lottery.

¹² See s. 546.10, F.S.

¹³ See s. 849.085, F.S.

¹⁴ See s. 849.0931, F.S.

¹⁵ See s. 849.0935, F.S.

¹⁶ See s. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.

- Bowling tournaments.¹⁷

A license to offer pari-mutuel wagering, slot machine gambling, or a cardroom at a pari-mutuel facility is a privilege granted by the state.¹⁸

The 1968 State Constitution states that “[l]otteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution . . .” are prohibited.¹⁹ A constitutional amendment approved by the voters in 1986 authorized state-operated lotteries. Net proceeds of the lottery are deposited to the Educational Enhancement Trust Fund (EETF) and appropriated by the Legislature. Lottery operations are self-supporting and function as an entrepreneurial business enterprise.²⁰

Enforcement of Gaming Laws and Florida Gaming Control Commission

In 2021, the Legislature updated Florida law for authorized gaming in the state, and for enforcement of the gambling laws²¹ and other laws relating to authorized gaming.²² The Office of Statewide Prosecution in the Department of Legal Affairs is authorized to investigate and prosecute, in addition to gambling offenses, any violation of ch. 24, F.S., (State Lotteries), part II of ch. 285, F.S., (Gaming Compact), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S., (Gambling), which are referred to the Office of Statewide Prosecution by the Florida Gaming Control Commission (commission).²³

In addition to the enhanced authority of the Office of Statewide Prosecution, the commission was created²⁴ within the Department of Legal Affairs. The commission has two divisions, including the Division of Gaming Enforcement (DGE), and the Division of Pari-mutuel Wagering

¹⁷ See s. 849.141, F.S.

¹⁸ See s. 550.1625(1), F.S., “. . . legalized pari-mutuel betting at dog tracks is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state.” See also, *Solimena v. State*, 402 So.2d 1240, 1247 (Fla. 3d DCA 1981), *review denied*, 412 So.2d 470, which states “Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right,” citing *State ex rel. Mason v. Rose*, 122 Fla. 413, 165 So. 347 (1936), and *Zimmerman v. State of Florida, Fla. Gaming Control Comm’n*, ___ So.3d ___ (Fla. 5th DCA Jan. 12, 2024) (*Case No. 5D23-1062; not final until disposition of motions as set forth in the opinion*).

¹⁹ The pari-mutuel pools that were authorized by law on the effective date of the State Constitution, as revised in 1968, include horseracing, greyhound racing, and jai alai games. The revision was ratified by the electorate on November 5, 1968.

²⁰ The Department of the Lottery is authorized by s. 15, Art. X of the State Constitution. Chapter 24, F.S., was enacted by ch. 87-65, Laws of Fla., to establish the state lottery. Section 24.102, F.S., states the legislative purpose and intent for the operations of the state lottery.

²¹ See [Special agents confiscate over 70 illegal gambling devices in Gadsden \(tallahassee.com\)](https://www.tcpalm.com/story/news/crime/st-lucie-county/2023/10/24/st-lucie-county-deputies-raid-close-arcade-accused-of-gambling/71302519007/) and <https://www.tcpalm.com/story/news/crime/st-lucie-county/2023/10/24/st-lucie-county-deputies-raid-close-arcade-accused-of-gambling/71302519007/> relating to recent enforcement by local law enforcement and agents of the Florida Gaming Control Commission (both last visited Jan. 23, 2024).

²² See ch. 2021-268, Laws of Fla., (Implementation of 2021 Gaming Compact between the Seminole Tribe of Florida and the State of Florida); ch. 2021-269, Laws of Fla., (Gaming Enforcement), ch. 2021-270, Laws of Fla., (Public Records and Public Meetings), and 2021-271, Laws of Fla., (Gaming), as amended by ch. 2022-179, Laws of Fla., (Florida Gaming Control Commission). Conforming amendments are made in ch. 2022-7, Laws of Fla., (Reviser’s Bill) and ch. 2023-8, Laws of Fla., (Reviser’s Bill).

²³ Section 16.56(1)(a), F.S.

²⁴ Section 16.71, F.S.

(DPMW) which was transferred from the Department of Business and Professional Regulation (DBPR) effective July 1, 2022.²⁵

Fantasy Sports Contests

The operation of fantasy sports activities in Florida has recently received significant publicity, much like the operation of internet cafes in recent years. Many states are now evaluating the status of fantasy gaming activities in their jurisdictions,²⁶ as there are millions of participants.²⁷ A fantasy game typically has multiple players who select and manage imaginary teams whose players are actual professional sports players. Fantasy game players compete against one another in various formats, including weekly leagues among friends and colleagues, season-long leagues, and on-line contests (daily and weekly) entered by using the Internet through personal computers or mobile telephones and other communications devices. There are various financial arrangements among players and game operators.

Florida law does not specifically address fantasy contests. Section 849.14, F.S.,²⁸ provides that a person who wagers any “thing of value” upon the result of a contest of skill or endurance of human or beast, or who receives any money wagered, or who knowingly becomes the custodian of money or other thing of value that is wagered, is guilty of a second degree misdemeanor.²⁹ The commission has issued cease and desist correspondence to various companies operating fantasy contests in the state concerning possible violations of Florida’s gambling laws. The letters have generated controversy, concern, and interest from contest operators, elected officials, and the Seminole Tribe of Florida, which has entered into gaming compacts with the state (as discussed below).³⁰ The legality of various forms of fantasy sports games and contests is being reviewed and addressed in a number of states.³¹

III. Effect of Proposed Changes:

The bill imposes license fees on certain fantasy sports contest operators³² who offer fantasy sports contests for a cash prize to members of the public. Contest operators must pay an initial

²⁵ See ch. 2021-269, s. 11, Laws of Fla., which delineates the transfer of the DPMW to the commission from the DBPR.

²⁶ See Marc Edelman, *A Short Treatise on Fantasy Sports and the Law: How America Regulates its New National Pastime*, Journal of Sports & Entertainment Law, Harvard Law School Vol. 3 (Jan. 2012) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1907272 (last visited Jan. 23, 2024).

²⁷ According to the Fantasy Sports Trade Association, which states it represents the interests of 57 million fantasy sports players, fantasy sports leagues were originally referred to as “roisserie leagues” with the development of Rotisserie League Baseball in 1980, by magazine writer/editor Daniel Okrent, who met and played it with friends at a New York City restaurant La Rotisserie Francaise. See <https://thefsga.org/history/> (last visited Jan. 23, 2024).

²⁸ See Fla. AGO 91-03 (Jan. 7, 1991) available at <https://www.myfloridalegal.com/ag-opinions/gambling-fantasy-sports-league> (last visited Jan. 23, 2024).

²⁹ A conviction for a second degree misdemeanor may subject the violator to a definite term of imprisonment not exceeding 60 days, and a fine not exceeding \$500. See ss. 775.082 and 775.083, F.S.

³⁰ See <https://www.floridatrend.com/article/38854/questions-swirl-around-fantasy-sports> (last visited Jan. 23, 2024).

³¹ See [State Regulators Take Closer Look At Fantasy Sports Operators \(sportshandle.com\)](#) (last visited Jan. 23, 2024).

³² SB 1568 (Fantasy Sports Contest Amusement Act) defines the term “contest operator” to mean “a person or entity that offers fantasy sports contests for a cash prize to members of the public, but does not include a noncommercial contest operator in this state. The term “noncommercial contest operator” is defined to mean “a natural person who organizes and conducts a fantasy or simulation sports contest in which contest participants are charged entry fees for the right to participate; entry fees are collected, maintained, and distributed by the same natural person; the total entry fees collected, maintained, and

license application fee of \$1 million and renewal fees of \$250,000 annually. Such fees may not exceed 10 percent of the difference between the amount of entry fees collected by a contest operator from the operation of fantasy sports contests in this state, and the amount of cash or cash equivalents paid to contest participants in this state.

These license fees do not apply to individuals who act as noncommercial contest operators by organizing and conducting fantasy or simulation sports contests in which:

- Contest participants are charged entry fees for the right to participate;
- Entry fees are collected, maintained, and distributed by the same natural person;
- The total entry fees collected, maintained, and distributed total no more than \$1,500 per season or \$10,000 per calendar year; and
- All entry fees are returned to the contest participants in the form of prizes.

The bill provides the commission must require a contest operator applicant to provide written evidence to the commission of the proposed amount of entry fees and cash or cash equivalents to be paid to contest participants during the annual license period. Before a license renewal, a contest operator must:

- Provide written evidence to the commission of the actual entry fees collected and cash or cash equivalents paid to contest participants during the previous period of licensure; and
- Remit to the commission any difference in a license fee which results from the difference between the proposed amount of entry fees and cash or cash equivalents paid to contest participants, and the actual amounts collected and paid during the previous period of licensure.

Under the bill, fees for state and federal fingerprint processing and retention must be borne by license applicants; the state cost for fingerprint processing must meet the requirements of s. 943.053(3)(e), F.S., for records provided to persons or entities other than as specified in that section. The commission also may charge a \$2 handling fee for each set of fingerprints submitted for a contest operator license.

The bill requires all fees collected by the commission under s. 546.151, F.S., to be deposited into the Pari-mutuel Wagering Trust Fund.

The bill is effective on the same date that SB 1568 (Fantasy Sports Contest Amusement Act) or similar legislation) takes effect, if adopted in the same legislative session or any extension, and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

distributed by such natural person do not exceed \$1,500 per season or a total of \$10,000 per calendar year; and all entry fees are returned to the contest participants in the form of prizes.” *Id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Section 19 of Article VII of the State Constitution requires a “state tax or fee imposed, authorized, or raised under this section must be contained in a separate bill that contains no other subject.” A “fee” is defined by the Florida Constitution to mean “any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.”³³

Section 19 of Article VII of the State Constitution also requires that a tax or fee raised by the Legislature must be approved by two-thirds of the membership of each house of the Legislature.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill imposes initial license and annual renewal fees on certain fantasy sports contest operators who offer fantasy sports contests to members of the public in this state.

B. Private Sector Impact:

Certain licensed fantasy sports contest operators who offer fantasy sports contests to members of the public in this state will be required to pay an initial application fee and annual renewal fees for licensure as a contest operator, as described in the bill.

C. Government Sector Impact:

The creation of an additional licensing and regulatory structure for the conduct of fantasy sports contests by licensed persons may result in a fiscal impact to the commission. According to the commission, the bill will likely require a Revenue Impact Conference where revenue estimates are formally adopted by conference constituents, but estimates the fiscal impact for the Pari-Mutuel Wagering Trust Fund is as follows:³⁴

³³ FLA. CONST. art. VII, s. 19(d)(1).

³⁴ See Florida Gaming Control Commission, *2024 Agency Legislative Bill Analysis for SB 1566* at 4-5 (Jan. 19, 2024) (on file with the Senate Committee on Regulated Industries).

1. Positive Indeterminate due to the unknown number of fantasy sports contest operators that may apply for an initial license and renewals annually thereafter, and the language in the bill that prohibits the respective fees exceeding 10 percent of the difference between the amount of entry fees collected by a contest operator from the operation of fantasy sports contests in this state and the amount of cash or cash equivalents paid to contest participants in this state the amount of licensing fees.
2. Slight increase in revenue associated with a contest operator license applicant's fingerprint processing fee, plus the \$2 handling fee the Commission may charge for each set of fingerprints submitted. Fees would be collected and deposited into the Pari-Mutuel Trust Fund and then pass-through to the Florida Department of Law Enforcement.

The commission also notes the bill will require configuration changes to the current licensing system and software, to add a new license category for fantasy contest operators.³⁵

The Florida Department of Law Enforcement (FDLE) notes it has inquired of the commission to obtain an estimate of the potential increase, if any, in additional screenings required by the bill, and that the fiscal impact to state government is currently indeterminate.³⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:+

This bill creates section 546.151 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries Committee on January 29, 2024:

The CS includes the linked bill number, SB 1568, that addresses authorized fantasy sports contests, in the bill.

³⁵ *Id.* at 5.

³⁶ See Florida Department of Law Enforcement (FDLE) *2024 Agency Legislative Bill Analysis for SB 1566* at 3 (Jan. 12, 2024) (on file with the Senate Committee on Regulated Industries).

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
