

Date of Hearing: January 6, 2016

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

AB 1437 (Gray) – As Amended September 10, 2015

**SUBJECT:** Internet Fantasy Sports Game Protection Act

**SUMMARY:** Would enact the Internet Fantasy Sports Games Consumer Protection Act, which would require a person or entity to apply for, and receive, a license from the Department of Justice (DOJ) prior to offering an Internet fantasy sports game for play in California.

Specifically, **this bill:**

- 1) Defines “Internet fantasy sports game” as a game of any duration conducted on the Internet in which a registered player does all of the following: 1) Competes against other registered players or a target score as the owner or manager of an imaginary or simulated team of athletes in an imaginary or simulated game; 2) Uses the statistics accumulated by the athletes in real-world sporting events to determine the scores of the imaginary or simulated game; 3) Plays for a predetermined prize; and 4) Pays a charge to the licensed operator providing the game in order to participate.
- 2) Would require the DOJ to issue a license to a person or entity that applies for a license if the person or entity satisfies specified requirements, including, among others, that the applicant is of good character, honesty, and integrity.
- 3) Would require a person to register with a “licensed operator” prior to participating in an “Internet fantasy sports game” on an “authorized Internet Web site,” as those terms are defined.
- 4) Would require a licensed operator, among other things, to ensure that a registered player is eligible to play on an authorized Internet Website, and to implement appropriate data security standards to prevent access by a person whose age is under 21 and location has not been verified.
- 5) Would authorize the DOJ to assess a civil penalty against a licensed operator that violates these provisions according to a specified schedule depending on the number of violations.
- 6) Would require DOJ to develop an online self-exclusion form for problem gamblers on or before July 1, 2017, and to deliver that form to each licensed operator, and would require each licensed operator to make that form available to its registered players.
- 7) Would require a licensed operator to facilitate the collection by the Franchise Tax Board of personal income taxes from registered players and shall be responsible for providing current and accurate documentation on a timely basis to all state agencies.
- 8) The Fantasy Sports Fund is hereby created in the State Treasury, to be administered by DOJ, All moneys in the fund are continuously appropriated to DOJ, without regard to fiscal years, in the amounts necessary for the department to perform its duties under this bill.
- 9) Each licensed operator shall pay an annual regulatory fee, to be deposited in the Fantasy Sports Fund, in an amount to be determined by DOJ, for the reasonable costs of license

oversight, consumer protection, state regulation, problem gambling programs, and other regulatory purposes related to this chapter, including, but not limited to, enforcement efforts related to illegal Internet gambling activities.

- 10) Would require each licensed operator to pay a one-time license fee into the General Fund in an unspecified amount. The license fee would be credited against quarterly fees equivalent to an unspecified percentage of the licensed operator's gross income that is attributable to the operation of an authorized Internet Web site in California.
- 11) Would make proprietary information provided by a licensed operator confidential in order to protect the licensed operator and to protect the security of an authorized Internet Web site. The bill would also prohibit a city, county, or city and county from regulating, taxing, or entering into a contract with respect to any matter governed to the bill's provisions, and would make conforming changes.
- 12) Makes various legislative findings.

**EXISTING LAW:**

- 1) Prohibits lotteries, with exceptions for the California State Lottery, bingo for charitable purposes, and charitable raffles conducted by non-profit, tax-exempt organizations.
- 2) Defines a lottery as any scheme for the disposal or distribution of property by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property or a portion of it, or for any share or any interest in such property, upon any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle, or gift enterprise, or by whatever name the same may be known.
- 3) States the Legislature may authorize private, nonprofit, and other eligible organizations, to conduct raffles as a funding mechanism to provide support for their own or another private, nonprofit, eligible organization's beneficial and charitable works, provided that (1) at least 90 percent of the gross receipts from the raffle go directly to beneficial or charitable purposes in California, and (2) any person who receives compensation in connection with the operation of a raffle is an employee of the private nonprofit organization that is conducting the raffle.
- 4) Prohibits any raffle to be conducted by means of, or otherwise utilize any gaming machine, apparatus, or device, whether or not that machine, apparatus, or device meets the definition of a slot machine as currently define in California law.
- 5) Defines "bingo" as a game of chance in which prizes are awarded on the basis of designated numbers or symbols on a card that conform to numbers or symbols that are selected at random.
- 6) States the Legislature has no power to authorize, and shall prohibit, casino games of the type currently operating in Nevada and New Jersey.
- 7) Prohibits games as defined in Penal Code Section 330, or any banking and/or percentage games.

- 8) Prohibits any bet, bets, wager, wagers, or betting pool or pools made between the person and any other person or group of persons who are not acting for gain, hire, or reward, other than that at stake under conditions available to every participant, upon the result of any lawful trial, or purported trial, or contest, or purported contest, of skill, speed, or power of endurance of person or animal, or between persons, animals, or mechanical apparatus.
- 9) Prohibits bookmaking and pool selling.
- 10) Authorizes and defines "Advance Deposit Wagering" as a form of pari-mutuel horse wagering in which a person "establishes an account with a board-approved betting system or wagering hub where the account owner provides 'wagering instructions' authorizing the entity holding the account to place wagers on the owner's behalf via the phone or Internet.
- 11) Prohibits false advertising, unfair competition and unlawful business practices, specifically prohibiting certain acts or practices undertaken by a person in the operation of a contest, including misrepresenting the odds of winning a prize or failing to award and distribute all prizes, providing for civil penalties and other remedies.
- 12) The Gambling Control Act (Act), Business & Professions Code sections 19800 through 19985 governs the licensing and operation of California card rooms under the regulation of the California Gambling Control Commission (CGCC) and the enforcement of those activities by the Department of Justice (DOJ).
- 13) Requires DOJ to investigate the qualifications of applicants before any license or other approval is issued and, if necessary, recommends the denial or the limitation, conditioning, or restriction of any license or other approval. DOJ is also required to monitor the conduct of all licensees and other persons having a material involvement, directly or indirectly, with a gambling operation or its holding company, for the purpose of ensuring that licenses are not issued or held by, and that there is no direct or indirect material involvement with, a gambling operation or holding company by ineligible, unqualified, disqualified, or unsuitable persons, or persons whose operations are conducted in a manner that is adverse to the public health, safety, or welfare. DOJ may investigate suspected violations of the Act and relevant provisions of the Penal Code to investigate complaints that are lodged against licensees or other persons associated with a gambling operation, by members of the public, and to initiate, where appropriate, disciplinary actions as provided in the Act.
- 14) Existing federal law, the Unlawful Internet Gaming Enforcement Act of 2006 (UIGEA), prohibits gambling businesses from knowingly accepting payments in connection with the participation of another person in a bet or wager that involves the use of the Internet and that is unlawful under any federal or state law." The act specifically excludes fantasy sports that meet certain criteria, skill-games and legal intrastate and inter-tribal gaming. The three criteria are: (1) the value of the prizes is not determined by the number of participants or the amount of any fees paid by those participants; (2) all winning outcomes reflect the relative knowledge and skill of the participants; and (3) the fantasy game's result is not dependent on the outcome of any real-world games. Additionally, it allows states to make their own determinations on whether gaming activity is illegal or legal based on their own statute.

- 15) Existing federal law, The Professional and Amateur Sports Protection Act of 1992 (PASPA), defines the legal status of sports betting throughout the United States and outlaws sports betting nationwide, excluding four states (Nevada, Oregon, Delaware, and Montana).
- 16) Existing federal law, The Interstate Wire Act of 1964 (Wire Act), prohibits individuals and entities from engaging in the business of betting or wagering through the knowing use of “a wire communication for the transmission in interstate and foreign commerce.”

**FISCAL EFFECT:** Unknown

**COMMENTS:**

Purpose of the bill: According to the author, AB 1437 will establish a first in the nation framework to license and regulate Daily Fantasy Sports in California to ensure consumers are playing on websites which provide comprehensive consumer protections. Currently, Californians participate in Daily Fantasy Sports (DFS) games on a daily basis on unregulated Internet Websites. Despite a lack of regulation, participation in DFS still remains very popular. AB 1437 will bring more transparency, accountability and protections to this rapidly growing industry.

Neither federal nor California laws provide any protections for DFS consumers causing California players to assume all the risk. Any negative social or financial impacts are borne by the citizens of California, while the revenues generated from these games are being realized by unlicensed operators and do not provide any benefits to the citizens of California. In California, every legal gaming industry, whether it is card clubs, horse racing or Indian casinos are subject to licensing requirements, regulatory oversight, and enforcement under the Department of Justice, California Gaming Commission, or the California Horse Racing Board. Even church fundraisers are subject to regulation when conducting a charitable raffle or bingo night.

The author states, it is not his intent to stifle or ban this growing industry as other states have done, but to protect its consumers, which the California Legislature has a responsibility to do. AB 1437 would replace an unregulated online industry with a safe and responsible entertainment option for adults, which include safeguards against compulsive and underage play, money laundering, fraud, and identity theft.

General Background: “Fantasy Sports” has been around for about 30 years, since the creation of a competition called “Rotisserie Baseball”, in which friends bid on players to build a roster/team, then spend the season seeing which fan’s players are the most successful. Fantasy football soon followed, often in a format where competitors draft players one by one rather than selecting them in an auction format. Participants assemble imaginary or virtual teams of real players of a professional sport. Teams compete based on the statistical performance of those players in actual games. This performance is converted into points that are compiled and totaled according to a roster selected by each fantasy team’s manager. Traditional online fantasy sports are a multibillion-dollar industry with an estimated 56.8 million users in North America alone.

DFS, which AB 1437 seeks to regulate, are a subset of traditional fantasy sport games. As with traditional fantasy sports games, DFS players compete against others by building a team of professional athletes from a particular league (NFL, NBA, MLB, NHL, etc.) or competition, and earn points based on the actual statistical performance of the players in real-world competitions. However, DFS are an accelerated variant of traditional fantasy sports that are conducted over short-term periods, such as a week (NFL) or single day (MLB, NBA, NHL) of competition, as

opposed to those that are played across an entire season. DFS games are structured in the form of competitions; users pay an entry fee in order to participate, and build a team of players in a certain sport while complying with a salary cap. The best players — i.e. Tom Brady or Adrian Peterson— are most likely to produce superior statistics, but they also are the most expensive. The most successful competitors assemble rosters that mix high-profile players with less celebrated athletes who cost less but still are capable of standout performances. Depending on their overall performance, players may win a share of a pre-determined pot. Entry fees help fund prizes, while a portion (10%-15%) of the entry fee goes to the provider (i.e. Draft Kings, FanDuel, Yahoo). A player is also able to play in head-to-head games against another player. FanDuel reports that 62 percent of its entries each night are for \$1 or \$2 tournaments. FanDuel has reported that the average initial deposit is \$25. Fees can range from a dollar to thousands of dollars, while fans with the best-performing rosters have won as much as \$1 million in events that include tens of thousands of entries.

Substantial sales and marketing budgets from major DFS operators have helped drive overall awareness in the last 12-months. Although DFS websites had been operating since 2009, the two largest operators—DraftKings and FanDuel—became household names through a large media blitz that began just prior to the commencement of the 2015 NFL season. According to Nomura analyst Anthony DiClemente, DraftKings and FanDuel likely spent a combined \$150 million on TV and internet advertising in the third quarter, which ended September 30, 2015 and included the beginning of the NFL season. DFS websites experienced one million new customers signing up during the NFL's opening week. DraftKings alone reported registering 220,000 new players that week. By 2016, according to industry experts, Daily Fantasy Sports players are projected to wager more on Daily Fantasy websites (i.e. FanDuel, DraftKings and Yahoo!) than the total amount wagered annually on legal sports wagering sports in Nevada. Daily fantasy games are expected to generate roughly \$3.72 billion in entry fees and \$370 million in revenue this year, according to industry consultant Eilers Research. By 2020, they are expected to reach about \$17.7 billion and \$1.77 billion, respectively. Industry experts have estimated that California accounts for approximately 10%-15% of the overall national DFS market.

Many companies have invested in DFS websites, including: Professional sports teams and leagues, media conglomerates (Google Capital, Time Warner, NBC Sports Ventures, Comcast Ventures) and venture capitalists. The NBA has a four year agreement with FanDuel that includes a percentage in the company, and Major League Baseball and the NHL own equity in DraftKings. The NFL does not own equity in either, but has an advertising partnership with one. New England Patriots owner, Robert Kraft, and Dallas Cowboys owner, Jerry Jones, also own equity in DraftKings. DraftKings has entered into an arrangement with the Patriots, Cowboys and Chiefs under which there is a DraftKings fantasy area in each of the three teams' home stadiums.

On October 5, 2015, The New York Times reported that an employee of DraftKings was placing bets on rival site, FanDuel, using information not generally available to the public, calling it insider trading. The DraftKings employee, a midlevel content manager, won \$350,000 that same week. DraftKings admitted to inadvertently releasing data before the start of the third week of NFL games. However, the company denied insider trading or any accusations the employee won any contest due to inside information, because the data was released after all lineups/rosters for the contest that week were locked. Shortly after, the FBI launched an investigation into allegations of insider trading. To date, they have not stated the results of their investigation, or whether it even continues. A law firm hired by DraftKings determined that there was no

evidence of wrongdoing, but the issue called attention to the fact that DFS — unlike most businesses — faced no regulation and little government oversight. Since the incident, FanDuel and DraftKings responded by permanently banning employees from playing in daily contests for money. Shortly after the insider trading story hit the news, regulators across the nation began to take action, beginning with Nevada and New York. AB 1437 was introduced in September, almost an entire month prior to the data leak.

#### Federal Gaming Laws:

UIEGA (2006): The Unlawful Internet Gambling Enforcement Act of 2006 (UIEGA) is United States legislation regulating online gambling. It was added as Title VIII to the SAFE Port Act (found at 31 U.S.C. §§ 5361–5367) which otherwise regulated port security. The UIGEA "prohibits gambling businesses from knowingly accepting payments in connection with the participation of another person in a bet or wager that involves the use of the Internet and that is unlawful under any federal or state law." The act specifically excludes fantasy sports that meet certain criteria, skill-games and legal intrastate and inter-tribal gaming. The three criteria related to DFS are: (1) the value of the prizes is not determined by the number of participants or the amount of any fees paid by those participants; (2) all winning outcomes reflect the relative knowledge and skill of the participants; and (3) the fantasy game's result is not dependent on the outcome of any real-world games. Additionally, it allows states to make their own determinations on whether gaming activity is illegal or legal based on their own statute. In the "Congressional Findings and Purpose" section of the statute, the "Rule of Construction" notes that: "No provision of this subchapter shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States."

PASPA/Bradley Act (1992): The Professional and Amateur Sports Protection Act of 1992 (Pub.L. 102–559), also known as the "Bradley Act," attempts to define the legal status of sports betting throughout the United States. This act effectively outlawed sports betting nationwide, excluding a few states. The sports lotteries conducted in Oregon, Delaware, and Montana were exempt, as well as the licensed sports pools in Nevada. In addition, Congress provided a one-year window of opportunity from the effective date of PASPA (January 1, 1993) for states which operated licensed casino gaming for the previous ten-year period to pass laws permitting sports wagering—California did not take advantage of this window, thus sports betting is illegal in CA.

The Wire Act of 1961: The Interstate Wire Act of 1964 (Wire Act) prohibits individuals and entities from engaging in the business of betting or wagering through the knowing use of "a wire communication for the transmission in interstate and foreign commerce." The Wire Act was recommended as law by U.S. Attorney General Robert Kennedy "to crack down on organized crime members using the telegraph to get results on horse races." However, the U.S. Department of Justice also on occasion has used this act to prosecute professional gamblers.

Under the Wire Act, the legal definition of a "wire communication" includes any communication made through an "instrumentality used or useful in the transmission of writings, signs, pictures, and sounds ... by aid of wire, cable, or other like connection between the points of origin and reception." Although Congress' passing of the Wire Act predated the advent of the Internet, several court decisions have held that the Wire Act's scope includes Internet communications based on the clear meaning of "wire communications" set forth in the act. For instance, the U.S. Court of the Appeals for the First Circuit held in *United States v. Lyons* that online sports betting

violated the Wire Act because “[a]nyone . . . would readily agree that the internet is used and useful in the transmission of writings.” The court further noted that even though the Wire Act predated the Internet, its definition of wire communications “so accurately describes it].”

In 2011, the United States Department of Justice made available its legal opinion on the Wire Act, 18 U.S.C. § 1084, which concluded that “interstate transmissions of wire communications that do not relate to a ‘sporting event of contest’ fall outside the reach of the Wire Act.” In essence, the opinion stated that the Act applies only to sports betting and has no application to casino games or other forms of gambling. Among other things, that opinion opened the door for states to permit and regulate gambling over the Internet. Thus far, Delaware, Nevada and New Jersey have done so.

Illegal Gambling Business Act of 1970: In 1970, as part of the Organized Crime Control Act, Congress passed the Illegal Gambling Business Act (IGBA). The statute was aimed at syndicated gambling. Congress determined that large-scale, illegal gambling operations, like casino-type activities, including games such as blackjack, financed organized crime, which, in turn, has a significant impact on interstate commerce. In order to determine if a defendant violated IGBA the government must show:

- (1) A gambling business described in the indictment was conducted which violated the laws of the state in which it was conducted;
- (2) Five or more persons including the defendant, knowingly and deliberately conducted, financed, managed, supervised, directed or owned all or part of that gambling business; and
- (3) The gambling business was either in substantially continuous operation for more than thirty days, or, alternatively, the gambling business, on at least one day, had gross revenues of two thousand dollars or more.

Regulatory Enforcement in CA: There are two main entities that handle regulatory enforcement of gaming issues in California. It is a common misconception that the California Gambling Control Commission (Commission) and the California Bureau of Gambling Control (Bureau) are the same entity. The Commission works in the regulatory and adjudicatory arena while the Bureau deals with investigatory and enforcement issues.

- (1) California Gambling Control Commission (Commission): Makes determinations of suitability for the issuance of licenses, work permits, registrations and Tribal key employees, vendors and financial sources to ensure that no ineligible, unqualified, disqualified or unsuitable persons are associated with controlled gaming activities. Additionally, acts as the decision maker in disciplinary accusations brought against licensees by the Bureau of Gambling Control; sets policy, criteria and standards; serves as the trustee of the Indian Gaming Revenue Sharing Trust Fund and administrator of the Indian Gaming Special Distribution Fund; reviewing and ruling body at evidentiary hearings.
- (2) California Bureau of Gambling Control (GBGC): Conducts all financial review inspections, gaming device testing, investigations and Tribal casino visits; receives all applications, fees, and deposits; handles questions about licensing (background

investigations, initial applications, renewal applications) or compliance matters (inspections, audits); receives, reviews and investigates gambling related complaints. Additionally, the GBGC is the enforcement for game legality issues; reviews and approves the rules of games and gaming activities in all California cardrooms prior to them being offered for play; initiates disciplinary accusations against licensees; administers self-exclusion program list for cardrooms; register non-profit organizations and suppliers of gambling equipment and/or services to conduct charity fundraising events using controlled games (charity poker night fundraisers); processing applications associated with the Charitable Remote Caller Bingo program. The Attorney General's Charitable Trust Section regulates charitable raffles. Nonprofit organizations must register and file annual financial disclosure reports

- (3) Other Areas of California Gaming Regulation: The California Horse Racing Board regulates pari-mutuel wagering, racing, breeding, and track standards in the State. The California Lottery Commission is charged with the authority and responsibility to oversee the California Lottery and ensure its integrity, security and fairness. Charitable Bingo (non-tribal) – Complaints and questions should be directed to the local government (city or county regulator) where the bingo games are conducted. The Office of Problem Gambling (California Department of Public Health) offers help and training resources for problem gambling.

“Lottery” and “Skill vs. Chance”: As stated above, the Legislature is prohibited from authorizing lotteries. Thus, if an activity is deemed to be a lottery, then it is considered illegal gambling. When deciding whether an activity is a lottery, one factor the State must determine is whether it is a game of “skill” or “chance”. Should an activity meet all the criteria of a “lottery”, which includes the determination that it is a game of “chance” not “skill”, the activity is illegal under current California law (See CA PC Sections 319). In determining whether a particular game or scheme is a lottery, the test in California is whether the game is dominated by change, the test is not whether the game contains an element of chance or an element of skill but rather, as between them, which is the dominating factor in determining the result of the game— “The Predominate Factor Test”. (See *In re Allen* (1962) 59 Cal.2d 5; *Bell Gardens Bicycle Club v. Department of Justice* (1995) 36 Cal.App.4th 717, 748).

“Percentage Games”: As stated above, PC Section 330 prohibits specific “percentage games”, however, Section 330 does not define “percentage game.” The First Appellate California court construed Section 330 of the Penal Code referring to percentage game as prohibiting “any game of chance from which the house collects money calculated as a portion of wagers made or sums won in play.” See *Sullivan v. Fox* (1987) 189 Cal.App.3d 673, 679. “The Predominant Factor Test” would also be used in determining a “percentage game”, because, like lotteries, it too must be a game of chance.

Regulatory and Legislative Actions: Many states have begun to take regulatory actions or propose legislation on DFS. Several states, specifically Nevada, New York and Illinois, have determined—through regulatory bodies—DFS to be illegal gambling, thus attempting to put a cease and desist on the activity their respective state. Other states, like Massachusetts, have issued more favorable rulings to the industry, because they do not consider DFS to be illegal gambling, but do put in place regulations on DFS. See notable actions by states below:

- Nevada: On October 15, 2015, A. G. Burnett, the Nevada Gaming Control Board's chair, issued a ruling stating that fantasy sports betting is prohibited under Nevada law unless the operators had the appropriate Nevada licenses. In Burnett's view, daily fantasy sports activity constituted a "game" as defined by Nevada law, thus making conduct of the "game" a form of "gambling" for which a license was required. He also stated that daily fantasy sports activities constituted a "sports pool," which also required a Nevada license. Nevada Attorney General Adam Laxalt called the opinion, "well-reasoned, methodical, and a step-by-step analysis. "Under Nevada law today, this is both gambling and sports pool betting. "I don't think anybody wants to shut out a new and lucrative business. But the way Nevada law is currently written, they didn't fit." No action has been taken by the AG's office, other than issuing a legal analysis on DFS.
- New York: In November, New York Attorney General Eric Schneiderman declared DFS to be illegal gambling and issued an order for the industry to cease and desist their operations. An emergency hearing was held to consider injunctions from the AG, FanDuel and DraftKings in November. A Supreme Court judge found on the side of the NY AG on December 11, 2015, but an appeals court put a stay on the preliminary ruling, reinstating the status quo until January 4, 2016 when another hearing will take place.

There are four bills pending in the legislature — two that seek to put DFS under the purview of the gaming commission, and another that would exempt DFS from the gambling code as a game of skill using UIGEA language, and another that seeks to amend the state constitution.

- Massachusetts: On November 19, 2015, Massachusetts Attorney General Maura Healey announced regulations that would govern the DFS industry from a consumer protection standpoint. The state Gaming Commission, which is expected to produce a "white paper" regarding the issues surrounding regulation of daily fantasy sports. Lawmakers have expressed interest in licensing and taxing DFS operators, things that AGs regulations do not do. A court case is also pending in Massachusetts in which DraftKings is suing payment processors to continue doing business with them while they accept customers in New York.
- Illinois: On December 23, 2015, Illinois Attorney General Lisa Madigan declared in an opinion letter that daily fantasy sports are considered illegal gambling under Illinois law. "Participants (in the online fantasy leagues) must pay an entry fee or buy-in amount in order to win a prize. State law "clearly declares that all games of skill or chance, when played for money, are illegal gambling in Illinois," Madigan's opinion said. "Absent legislation specifically exempting daily fantasy sports contests from the gambling provisions, it is my opinion that daily fantasy sports contests constitute illegal gambling under Illinois law," Madigan wrote. The AG examined the legality of daily fantasy sports at the behest of two state legislators. In response to the AG opinion, DraftKings and FanDuel filed lawsuits in Illinois asking a judge to declare their games legal a day after the state's attorney general outlawed them as gambling. Unlike the ongoing case in New York, DraftKings' and FanDuel's cases will not be linked. DraftKings' case will take an "expedited" schedule, with the AG responding by January 22. A trial will not take place until June. Meanwhile, FanDuel is suing jointly with Head2Head Sports — a season long fantasy sports provider. Both sites continue to operate in Illinois, and presumably will until the case is resolved in court

Approximately 16 states have introduced legislation that would authorize and regulate DFS, including Illinois and New York. States have generally taken one of three legislative approaches to DFS:

- Regulatory—States which have taken the regulatory approach, such as AB 1437, have proposed legislation that would subject DFS operators to some form of formal oversight.
- Casino-Partnership—States, such as Indiana, have proposed legislation that would authorize land-based casinos to partner with DFS operators.
- Carve-Out—States which have taken the carve-out approach, such as Louisiana, have proposed legislation that would merely exempt DFS competitions from statutory gambling prohibitions.

Author's Amendments: The author will offer amendments in committee that will further strengthen consumer protections for DFS consumers in California, specifically:

#### **I. Protections for DFS consumer accounts:**

1. Funds in DFS consumer accounts will be held in trust by the Daily Fantasy Sports Operator (DFSOP) for the DFS consumer that establishes the account. DFSOPs will implement and prominently publish procedures that:
  - a. Prevent unauthorized withdrawals from DFS consumer accounts by DFSOPs or others;
  - b. Prevent commingling of funds in a DFS consumer account with other funds including, without limitation, funds of the DFSOP; and
  - c. Establish procedures for responding to and reporting on complaints by DFS consumers that their accounts have been misallocated, compromised or otherwise mishandled.

#### **II. Truthful Advertising - Limitations on Advertising Content:**

1. DFSOP advertisements will not depict minors (under the age of 21), students or school or college settings.
2. DFSOPs will not advertise in publications or other media that are aimed exclusively or primarily at minors.

#### **III. Protections for Problem Gamers:**

1. DFSOPs will not market a contest to DFS consumers by phone, email or in any form of individually targeted advertisement or marketing material if the player is self-excluded or otherwise barred from playing in that contest.
2. DFSOPs shall not issue credit to DFS consumers.

**IV. Fairness of DFS contests:**

1. No DFSO employee, DFSO principal, DFSO officer, DFSO director, or DFSO contractor may play on any DFS contest platform of any DFSO. Nor may such person play through another person as a proxy.
2. No DFSO employee, DFSO principal, DFSO officer, DFSO director, or DFSO contractor may disclose proprietary or non-public information that may affect DFS gameplay to any person permitted to engage in DFS gameplay. DFSOs will make these restrictions known to all affected individuals and corporate entities.
3. DFSOs will identify highly experienced players by a symbol attached to their username, or by other easily visible means, on all DFSO contest platforms.
4. All DFSOs will develop games in which highly experienced players cannot participate either directly or through another person as a proxy.
5. DFSOs will not allow a DFS player to establish more than one username or more than one account.

Support: According to Daily Fantasy Sports Players Alliance (DFSPA), AB 1437 (Gray) would create a regulatory framework for Daily Fantasy Sports (DFS) websites (i.e. Fan Duel, Yahoo, and Draft Kings) to operate in California. Specifically, it would establish a regulatory framework by which entities, as authorized and licensed by DOJ, may facilitate Internet fantasy sports games to consumers. DFS is enjoyed by millions of Californians and should continue to in a regulated environment where consumers are protected.

The Los Angeles Clippers writes in support: “As you know, fantasy sports has been an important tool used by many sports teams, including the LA Clippers to deepen connections and engagement with our fans. Our organization looks for ways to increase fan enjoyment of our games. We are supportive of your efforts to ensure that our enjoying fantasy sports in a protected, regulated environment. AB 1437 is an important positive step towards protecting Californians who enjoy fantasy sports, and as such, we support your initiative.”

Opposition: Stand Up For California! writes in opposition: “DFS is a sports pool or percentage game. The California State Legislature long ago determined that sports pools and percentage games are illegal gambling. In addition, because online DFS operators charge bettors a rake that is a percentage of the wager, DFS is an illegal percentage game. Of great importance, in 1999, the California Supreme Court ruled in *HERE v. Davis* case that: *Article 4 Section 19 (e) of the California Constitution elevated Penal Code Section 330 et. seq. to a constitutional level.* Accordingly, the Legislature may not authorize any game that would constitute banking, gambling pools or percentage games.”

**REGISTERED SUPPORT / OPPOSITION:****Support**

Anschutz Entertainment Group (AEG)  
California Police Chiefs Association

Daily Fantasy Sports Players Alliance  
Los Angeles Clippers  
Various DFS Players in California

**Opposition**

Stand up for California!

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