

**House Gaming Oversight Committee
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Pennsylvania Gaming Control Board
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Good morning Chairman Payne, Chairman Kotik and members of the Committee. I am Doug Sherman, the Chief Counsel for the Pennsylvania Gaming Control Board ("Board"). I am pleased to be here this morning to provide you with an overview of the Fantasy Sports Report which the Board produced pursuant to Act 7 of 2016. As you know, the Report was distributed more than two weeks ago, and covered a wide range of issues. I will try to be brief and not go into too much detail and will focus on the recommendations included in the Report.

While Act 7 provided a road map of topic-areas to be addressed in the Report, the Board is a regulatory agency and, as such, approached this from a perspective which includes experience licensing complex in-state and out of state corporate entities, and then regulating these entities to assure adherence to expected standards of accountability, fairness of the games as well as the security and equitable treatment of the patrons of the games.

The Report comprehensively examines the background of fantasy sports, relevant federal laws, the treatment of fantasy sports by a number of other States and Pennsylvania's treatment of gambling and the "predominance" test which is used to determine whether an activity is gambling. As concluded in the Report, fantasy sports are not an activity which easily fit into a bright line test of whether it is or is not gambling. It is an

activity that, depending on the game offered, the players involved and other factors, can invoke elements of skill and chance on an often varying basis.

We see that a number of state Attorneys General have declared Daily Fantasy Sports, or DFS, to constitute gambling. We do not have such a determination in Pennsylvania at present. If the activity does constitute gambling, then it could not be legally conducted within the state without legislative authorization.

From the Board's perspective, if Fantasy Sports, whether of the Daily or the more traditional season long variety, are addressed and authorized through legislation, and if the Board is the body designated to regulate the activity, the Board suggests that regulation be accomplished through authorizing Pennsylvania's existing casinos to offer fantasy sports contests as an amenity of those licensees. This approach would bring with it regulatory efficiency and, from a regulator's perspective, other advantages.

First, licensed casinos have a physical presence in the Commonwealth whereas existing fantasy sports entities such as DraftKings and FanDuel and others likely would not. Pennsylvania's bricks and mortar casinos permit ready accessibility for the Board to inspect and review documents. The in-state presence also provides levels of accountability as casino licensees would have a significant vested interest in assuring compliance with any regulations as the fantasy sports activity would be conducted under their casino license.

Second, utilizing existing licensed casinos alleviates the necessity to determine payment of regulatory costs. Currently, the Board's regulatory costs are funded through assessments and direct billing of the casino industry as well as the licensed manufacturers and suppliers and gaming service

providers. If fantasy sports entities operated outside the confines of licensed casinos a mechanism would have to be developed to assure that the regulatory costs associated with the fantasy sports industry are compartmentalized and not borne by the casino industry.

The Board set forth in the Report a number of recommendations to assure the integrity of the games, as well as protection of the patron. The recommendations are not dissimilar to some which exist, or have been proposed, in other jurisdictions to address perceived problems or to provide patron security and protection. I will quickly run through those.

First, officials, officers and employees of a fantasy sports provider should be prohibited from establishing an account and participating in fee-based contests. In fantasy sports, information relative to player injuries, discipline or not playing for whatever reason is incredibly important. Having access to and using such information prior to it being publicly available represents an unfair advantage and undermines the integrity of the contests.

Second, and for similar reasons, professional athlete participation in fantasy sports fee-based contests in the sport in which they participate should be prohibited.

Third, the Board recommends that fantasy sports providers be limited in accepting team selections generated from any algorithm or computer generated system. The use of such a system to search for news or calculate and predict how players will perform based on past performance at a certain field or under certain weather performances tilts the playing field and imparts inherent unfairness in a game which touts itself as one of personal skill. It is

also the basis for various news reports that the top 1% of players paid 40% of the entry fees and won 91% of profits.

Fourth, relative to compulsive and problem gaming concerns, the Board recommends the following:

- Participation in a self-exclusion program without having to open an account.
- Establish funding for compulsive and problem gambling.
- Examine the potential for third party exclusion upon satisfaction of certain legal requisites.

Moreover, research and literature has identified concern and potential danger of addiction for individuals between the ages of 18 and 21 years of age engaged in gambling-type activities. Given the current restrictions relative to licensed casinos, the Board recommends that participation in fee-based contests should be restricted to individuals 21 years of age or older, and not the 18 year standard currently used by the fantasy sports industry.

Fifth, security concerns related to establishing an account, passwords, credit card information, segregation and security of funds, the privacy of patron information, and the avoidance of the disclosure of non-public information are critically important for protecting the consumer. As with any internet based operation, establishing controls to protect and limit access to this information is vital to safeguard patrons and their assets, as well as to guard against unauthorized play or threats to the integrity of the games.

Finally, whether talking of internet gambling or fantasy sports, we must recognize that technology changes daily, and often in unpredictable ways.

Any regulatory agency must be provided broad-based regulatory powers with expansive power to issue temporary regulatory authority to address this changing environment expeditiously to meet the challenges with which it will be faced.

In closing, the Board's Fantasy Sports Report had the goal of being comprehensive, objective and measured. We believe we have highlighted the issues which should be considered when implementing a regulatory environment within this activity. While recognizing that there can be a number of ways to accomplish the goal, the Board has set forth a reasoned approach which is consistent with the manner in which we have attempted to implement casino gaming in the Commonwealth. I thank you for the opportunity to provide testimony relative to this issue and I would be happy to answer any questions you may have.