



“The Big Con:” A Fact Sheet on the State-Sanctioned Online Fantasy Sports Gambling Bills Proposed for Alabama

SUMMARY

- 1) The proposed daily fantasy sports gambling bills violate the Alabama State Constitution, Article I, Section 65, which prohibits the kind of gambling that fantasy sports gambling falls under.**
- 2) Proponents are deceitfully blurring the difference between traditional season-long fantasy sports and Daily Fantasy Sports gambling.**
- 3) The “skill” versus “chance” contrast made by proponents is a false argument conjured up in an obvious effort to circumvent the state’s gambling laws.**
- 4) DFS bosses, America’s casino operators and problem gambling treatment providers openly describe DFS as gambling.**
- 5) The proposed bill allows the state to force internet gambling into every home, every dorm room and onto every smart phone in Alabama, a far greater expansion of commercialized gambling than constituents, legislators and state media have been led to believe.**
- 6) The bill is being labeled as a “consumer protection bill” yet the lobbying campaign behind it is being run by gambling interests.**
- 7) The bill legalizes “eSports,” allowing gambling operators to turn every kid’s video game console like PlayStation, Xbox and Wii in the State of Alabama into a Las Vegas casino.**
- 8) Online daily fantasy sports gambling violates federal law.**

1) The proposed daily fantasy sports gambling bills violate the Alabama State Constitution, Article I, Section 65, which prohibits the kind of commercialized gambling that fantasy sports gambling falls under. It reads as follows:

a) The legislature shall have no power to authorize lotteries or gift enterprises for any purposes, and shall pass laws to prohibit the sale in this state of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery; and all acts, or parts of acts heretofore passed by the legislature of this state.

Ala. Const. art. IV § 65. “[This Article] not only prohibits lotteries, but it also prohibits any ‘gift enterprise’ or ‘scheme in the nature of a lottery.’ ‘In this State, therefore, the public policy is emphatically declared against lotteries, or any scheme in the nature of a lottery, both by Constitution and by statutes.’ Opinion of the Justices No. 373, 795 So.2d 630, 640 (2001), quoting Black's Law Dictionary 231 (6th ed.1990) (citing Try–Me Bottling Co., 235 Ala. at 212, 178 So. at 234)

2) Proponents are deceitfully blurring the difference between traditional season-long fantasy sports and Daily Fantasy Sports gambling

- Gambling lobbyists continue to misrepresent DFS by claiming it is the same as traditional season-long games. Legislative proponents then perpetuate this falsehood, assuming it was fact.
- Season-long fantasy sports started as a hobby and a form of community. It was a social activity. The trophy mattered more than the money. Today, because of the introduction of Daily Fantasy Sports gambling (DFS), fantasy sports has become a fleecing operation, plainly incorporating the three elements of gambling: consideration, chance, and prize.
- DFS changed the traditional structure and business model of fantasy sports. DFS contests restart constantly, last a day or a weekend, and typically are played against strangers. Contests don't begin with a draft. Instead, contestants are given a “salary cap” with which to choose real players. Players’ “prices” are set correspond with their perceived ability. Players’ stats are translated into fantasy points. Winning bets are the ones with the best player statistical performances in that day's games.
- Rather than simply hosting leagues for users, DFS gambling operators act as an exchange—just like bookmakers. They profit by keeping a cut of the money wagered, called in gambling talk, “the juice,” “the vigorish,” or “the rake.”

- Bettors have no control over how the athletes perform, nor over other external factors that might affect the outcome such as weather, field conditions, injuries, bad bounces or questionable calls by referees, all of which exist independently of an athlete's ability.

3) The “skill” versus “chance” contrast made by proponents is a false argument conjured up in an obvious effort to circumvent the state’s gambling laws.

- Skill and chance are not mutually exclusive, and just as betting on a horse race can involve skill, the outcome remains uncertain and a bet that one horse will win is still a gamble. **No one seriously argues horse racing is not gambling, despite the fact that an element of skill may be present.**

4) DFS bosses, America’s casino operators and problem gambling treatment providers openly describe DFS as gambling.

- **The people who run online DFS sites privately admit they are running a gambling operation like “a casino.”** DraftKings CEO Jason Robins acknowledged his website was **"almost identical to a casino"** in an online discussion on Reddit four years ago.¹
- MGM Casinos Chairman Jim Murren said those who argue that daily fantasy games are not gambling are “absolutely, utterly wrong. I don’t know how to run a football team, but I do know how to run a casino, and this is gambling.”²
- Sheldon Adelson, CEO of Las Vegas Sands and one of the most prominent executives in the gambling world, unequivocally stated that “daily fantasy sports is gambling. There is no question about it.”³
- The CEO of the major Nevada casino sports book operator William Hill U.S. said it even more bluntly: “You put up of something of value, cash, to win something of value, cash. It’s the classic definition of gambling...any suggestion that (fantasy sports) is not gambling is the biggest bunch of baloney I’ve ever seen.”⁴
- Gamblers Anonymous has added daily fantasy sports gambling to its list of activities it defines as gambling.⁵

5) The proposed bill allows the state to force internet gambling into every home, every dorm room and onto every smart phone in Alabama, a far greater expansion of commercialized gambling than constituents, legislators and state media have been led to believe.

The key language is found where a fantasy sports contest is defined. It's very easy to envision a contest that can meet these conditions that looks nothing like DFS. It also explains why one of Nevada's biggest sports books, William Hill US, has been registering as a "DFS operator" in the handful of states that allowed gambling lobbyists to rush through internet fantasy sports gambling legislation.

For example, there is nothing we've seen in the proposed bill that says a fantasy contest needs to be a peer-to-peer game, meaning it can be house-banked.

Here is a bet someone with a fantasy sports license in Alabama could hypothetically offer, based on the language in the bill:

"Which quarterback will throw for more yards in the Super Bowl, Tom Brady or Matt Ryan? Pick a QB, wager \$100 to win \$200."

This "contest" satisfies these requirements of the bill:

- The prize is known in advance.
- It is not based on a single athlete.
- It is not based on an entire team or teams, and doesn't involve a score or a point spread.

Other examples of bets that don't appear to run afoul of the definition – and therefore, would not be illegal gambling under state law should the bill become law– include:

- "What player will score the most/least points in the next quarter of the Cavaliers game?"
- "Which pitcher will be the first to produce three groundouts when the Reds play the Mets?"

The language also allows for non-sports fantasy contests (e.g., awards shows, political debates, and even spelling bees)."⁶

6) The bill is being labeled as a “consumer protection bill” yet the lobbying campaign behind it is being run by gambling interests.

The point of the bill is to give the appearance of regulation and create the impression this is being done on behalf of consumers. No consumer protection groups are advocating for this bill. The so-called "consumer protections" are toothless, in place solely to give the appearance that consumers are being protected. The bill favors the gambling interests who stand to benefit by setting up a structure of self-regulation.

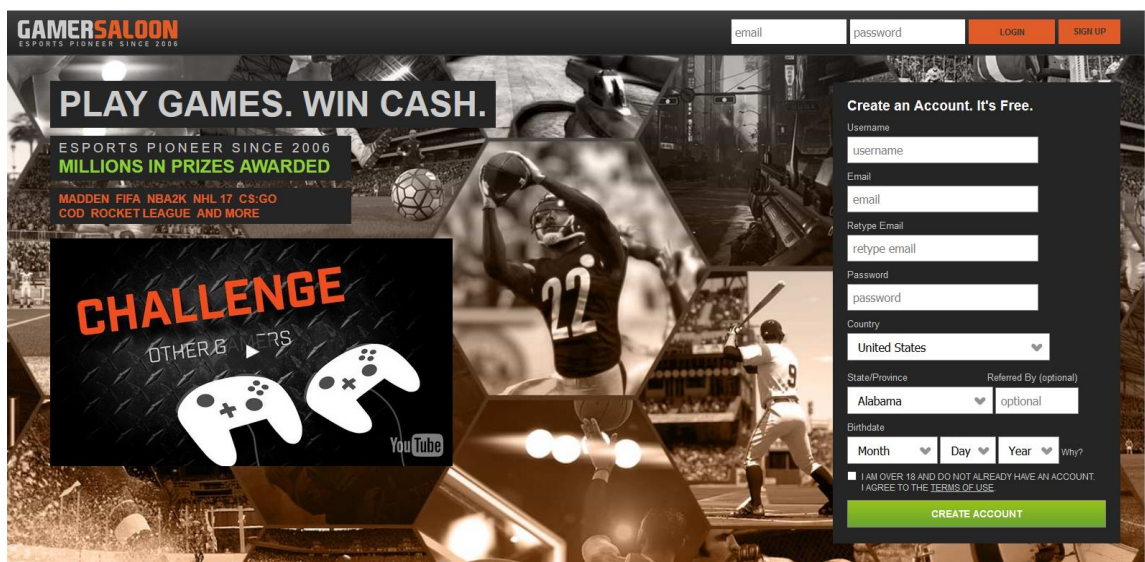
7) The bill legalizes “eSports,” allowing gambling operators to turn every kid’s video game console like PlayStation, Xbox and Wii in the State of Alabama into a Las Vegas casino.

Online gambling companies like DraftKings and Gamersaloon offer what is described as “eSports” where they encourage young people to wager and lose money on video games.⁷

“eSports” is the far more lucrative target for gambling operators. According to industry experts, the eSports revolution is going to change competition as we know it:

Noah Whinston, who recently started an eSports team funded almost entirely by big-name venture capitalists, declared: “Within three years there are going to be more of them watching eSports than there are watching every other traditional sport combined.”

“Young adults today, they don’t want to just go and watch a baseball game,” adds Tobias Sherman, an eSports agent with IMG, one of the nation’s biggest sports agencies. “Whether it’s alien or foreign or absurd to us, it’s eSports that’s going to be second nature.”⁸



Source: Screenshot of Gamersaloon’s home page on March 1, 2017 <https://www.gamersaloon.com/home>

8) Online Daily Fantasy Sports Gambling Violates Federal Law

- Sports gambling operators running DFS games are in direct conflict with the Professional and Amateur Sports Protection Act of 1992 ("PASPA"). While PASPA is commonly understood to prohibit state-regulated sports betting on the outcomes of professional and amateur sporting events, it also contains language that readily applies to daily fantasy sports. Section 3702 of PASPA states:

It shall be unlawful for --

(1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or

(2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographic reference or otherwise) on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, **or on one or more performances of such athletes in such games.**

(emphasis added)

Daily Fantasy Sports are inherently tied to the individual performances of athletes in a game rather than on the final score of the game itself. Any state legislation which attempts to legalize fantasy sports would be doing so in direct violation of PASPA's express prohibition against state sponsorship of sports wagering schemes that are based on the individual performance of athletes in an amateur or professional sporting event. Likewise, "persons" that promote or advertise fantasy sports contests to Alabama residents are also violating PASPA.

- Defiantly, DFS gambling operators often claim that their gambling is shielded by a "carve-out" in the Unlawful Internet Gambling Enforcement Act ("UIGEA"), at 31 U.S.C. §5362(1)(E)(i)-(ix)(2006), but they fail to note that the fantasy sports carve-out was necessarily intended to protect only traditional season-long participants (since the daily game industry did not exist when UIGEA was enacted), and the carve-out only applies to those games where a minimum threshold of skill-to-chance exists.⁹

The author of the federal UIGEA law in 2006, Rep. Jim Leach (R-IA), told reporters that allowing DFS was not his intention: "The assumption was that while unconstrained Internet gambling could change the nature of America's savings and investment patterns, fantasy sports would be a 'de minimus' footnote. No one ever conceived of it becoming a large scale activity or that it could transition into one-day contests."¹⁰

"The only unique legal basis provided fantasy sports by UIGEA is its exemption from one law enforcement mechanism where the burden for compliance has been placed on private sector financial firms," Leach said. "But it is sheer chutzpah for a fantasy sports company to cite the law as a legal basis for existing. **Quite precisely, UIGEA does not exempt fantasy sports companies from any other obligation to any other law...what is self-evident is that UIGEA exempted fantasy sports from one specific law enforcement mechanism but not from the broad sweep of law itself.**"¹¹ Leach added that fantasy sports companies are still bound by state and federal laws on sports betting, wire transfers, anti-trust and securities laws, among others.¹²

¹ "Nevada AG: DraftKings CEO called daily fantasy sports 'a casino'" *Las Vegas Review Journal*, Oct. 17, 2015 <http://www.reviewjournal.com/business/gambling/ag-draftkings-ceo-called-daily-fantasy-sports-casino>

² "Gambling or a Game of Skill: Debate Swirls Over Fantasy Sports," *Las Vegas Review Journal*, July, 11, 2015 <http://www.reviewjournal.com/business/casinos-gaming/gambling-or-game-skill-debate-swirls-over-fantasy-sports>

³ "Why Sheldon Adelson is Against Daily Fantasy Sports," *Yahoo Finance*, Sept. 9, 2016 <http://finance.yahoo.com/news/exclusive-why-sheldon-adelson-is-against-daily-fantasy-sports-144543169.html>

⁴ "Gambling or a Game of Skill: Debate Swirls Over Fantasy Sports," *Las Vegas Review Journal*, July, 11, 2015 <http://www.reviewjournal.com/business/casinos-gaming/gambling-or-game-skill-debate-swirls-over-fantasy-sports>

⁵ "The next frontier of Daily fantasy sports is here," *New York Daily News*, June 6, 2016 <http://www.nydailynews.com/sports/peek-frontier-daily-fantasy-sports-article-1.2662962>

⁶ "States Passing Daily Fantasy Sports Bills May Be Authorizing Far More Sports Betting Than They Realize," *Legal Sports Report*, February, 19, 2016 <http://www.legalsportsreport.com/8421/dfs-bills-authorize-sports-betting/>

⁷ "League Of DFS Legends: DraftKings Launching Fantasy eSports Platform," *Legal Sports Report*, Sept. 18, 2015 <http://www.legalsportsreport.com/4025/draftkings-fantasy-esports/>

⁸ "Will eSports revolution change competition as we know it?" *Orange County Register*, March 6, 2016 <http://www.ocregister.com/articles/esports-707042-immortals-sports.html>

⁹ The exemption often cited by DFS proponents is listed below—and it does not apply—because a winning outcome IS based on the performance or performances of a combination of teams: "31 U.S. Code 5362 (1) (E) (ix) (III) No winning outcome is based— (aa) on the score, point-spread, or any performance or performances of any single real-world team or any combination of such teams;" First, the language of the act prohibits (i.e., doesn't exempt) gambling based on outcomes based on a "combination of teams" and second, the selection of individual players from multiple teams to compose a fantasy team still results in outcomes based on a combination of teams, since each individual player's statistics necessarily materially turn on what his individual team does (plays called; opportunities provided; errors made; etc.) and, in the aggregate. This clearly involves a "combination of teams."

¹⁰ "The Hot New Form Of Fantasy Sports Is Probably Addictive, Potentially Illegal And Completely Unregulated," *ThinkProgress*, May 7, 2015 <http://thinkprogress.org/sports/2015/05/07/3648832/daily-fantasy-sports-gambling/>

¹¹ "Former congressman says DFS is 'cauldron of daily betting,'" *Associated Press*, Oct. 12, 2015
<http://bigstory.ap.org/article/7b3af0d8b0c04f059e8b301adf8b1784/former-congressman-says-dfs-cauldron-daily-betting>

¹² "Former congressman says DFS is 'cauldron of daily betting,'" *Associated Press*, Oct. 12, 2015
<http://bigstory.ap.org/article/7b3af0d8b0c04f059e8b301adf8b1784/former-congressman-says-dfs-cauldron-daily-betting>