

# ANALYSIS OF AMENDED BILL

Author: Gray Analyst: Diane Deatherage Bill Number: AB 1437  
 See Legislative  
 Related Bills: History Telephone: 845-4783 Amended Dates: September 10, 2015 & January 12, 2016  
 Attorney: Bruce Langston Sponsor \_\_\_\_\_

<b>SUBJECT:</b>	Internet Fantasy Sports Games Consumer Protection Act/Licensed Operators Shall Facilitate Collection of Personal Income Tax by FTB
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**SUMMARY**

This bill would, under the Business and Professions Code, establish the Internet Fantasy Sports Game Protection Act and would modify provisions of the Penal Code.

This analysis only addresses the provisions of the bill that impact the department’s programs and operations, but provides a high-level summary in the “This Bill” section.

**RECOMMENDATION**

No position.

**Summary of Amendments**

The September 10, 2015, amendments removed provisions related to gaming, and replaced them with the provisions discussed in this analysis.

The January 12, 2016, amendments added coauthors, modified provisions related to the requirements of licensed operators, and made a nonsubstantive change.

This is the department’s first analysis of the bill.

**REASON FOR THE BILL**

The reason for this bill is to ensure that Californians who participate in fantasy sports wagering are given a measure of consumer protection.

**EFFECTIVE/OPERATIVE DATE**

This bill would be effective on January 1, 2017, and operative as of that date.

**FEDERAL/STATE LAW**

**Income Tax and Withholding**

Existing federal and state laws impose tax on the income earned by individuals, estates, trusts, and certain business entities.

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Under federal and state law, taxpayers are required to make estimated tax payments if the amount of taxes withheld or otherwise available for a taxable year is less than the amount due. Penalties are imposed if the estimated taxes are underpaid.

Federal law requires withholding for tax payments on gambling winnings in excess of specified amounts.

For California residents, state law requires reporting all gambling winnings or losses from gambling activities regardless of where the activity is located, except the California lottery. However, withholding on gambling winnings for state income tax payments is not required when the payee is a California resident.

For nonresidents of California, state law requires reporting of gambling winnings or losses from California gambling activities, except the California lottery. However, withholding on gambling winnings for state income tax payments is required at a rate of 7 percent when the winnings exceed \$1,500 when the payee is not a California resident.

## **Gaming**

Under federal law, the Unlawful Internet Gambling Enforcement Act of 2006<sup>1</sup> (Unlawful Gambling Act), prohibits a person engaged in the business of betting or wagering from accepting methods of payment, including credit cards, electronic fund transfers, and checks in connection with the participation in “unlawful Internet gambling.” Unlawful Internet gambling is defined as a bet or wager that knowingly involves the use of the Internet where such a bet is unlawful under any applicable federal or state law in the state or tribal lands in which the bet or wager is initiated, received, or otherwise made.

The Unlawful Gambling Act, specifically excludes from the definition of “bet or wager,” participation in any fantasy or simulation sports game in which (if the game or contest involves a team or teams) no fantasy or simulation sports team is based on the current membership of an actual team that is a member of an amateur or professional sports organization and that meets the following conditions:

- All prizes and awards offered to winning participants are established and made known to the participants in advance of the game and their value is not determined by the number of participants or the amount of any fees paid by those participants;
- All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals (athletes in the case of sports events) in multiple real-world sporting or other events; and

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<sup>1</sup> [Public Law 109-347 \(10/13/06\)](#). The Unlawful Internet Gambling Enforcement Act can be found at title VIII of the Security and Accountability for Every Port Act of 2006.

- No winning outcome is based on the score, point-spread, or any performance or performances of any single real-world team or any combination of such teams; or solely on any single performance of an individual athlete in any single real-world sporting or other event.

## **THIS BILL**

This bill would establish the Internet Fantasy Sports Games Consumer Protection Act (Act).

### Licensed Operators/Registered Players

The Act would require a person or entity to apply for and receive a license to operate an authorized Internet Web site from the Department of Justice (DOJ) as specified, prior to offering an Internet fantasy sports game for play in California. "Internet fantasy sports game" would mean a game of any duration conducted on the Internet in which a registered player does all of the following:

- 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.
- Uses the statistics accumulated by the athletes in real-world sporting events to determine the scores of the imaginary or simulated game.
- Plays for a predetermined prize.
- Pays a charge to the licensed operator providing the game in order to participate.

In order to ensure the protection of registered players, an authorized Internet Web site would identify the person or entity that is the licensed operator. A licensed operator would ensure that an Internet fantasy sports game on its authorized Internet Web site complies with certain requirements. In addition, the licensed operator would be subject to requirements specified in the bill relating to holding funds of a registered player, issuing credit, the number of accounts or user names that could be established, and advertising. A "licensed operator" would mean a person or entity licensed to offer Internet fantasy sports games for play on an authorized Internet Web site. An "authorized Internet Web site" would mean an Internet Web site operated by a licensed operator.

A person would be required to register with a licensed operator prior to participating in an Internet fantasy sports game on an authorized Internet Web site. The licensed operator would be required to ensure that a registered player is eligible to play on an authorized Internet Web site, and implement appropriate data security standards to prevent access by a person whose age and location have not been verified. The DOJ may assess a civil penalty against a licensed operator that violates the verification requirements. The DOJ would be required, by regulation, to provide a process for a licensed operator to exclude from play any person who had filled out an online self-exclusion form.

### Collection of Taxes

A licensed operator would be required to facilitate the collection by the Franchise Tax Board (FTB) of personal income taxes from registered players and would be responsible for providing current and accurate documentation on a timely basis to all state agencies.

The state and its agencies would be required to treat the proprietary information provided by a licensed operator as confidential. Proprietary information supplied by a licensed operator to a state agency would be exempt from public disclosure.

### Fees and Financial Provisions

This bill would create the Fantasy Sports Fund in the State Treasury, administered by the DOJ. Each licensed operator would pay an annual regulatory fee, to be deposited in the Fantasy Sports Fund, in an amount to be determined by the DOJ, for the reasonable costs of license oversight, consumer protections, state regulation, problem gambling programs, and other regulatory purposes.

Prior to operating its authorized Internet Web site, a licensed operator would remit to the Treasurer a one-time license fee in the amount of \$\_\_\_\_\_ to be deposited into the General Fund and credited against the annual regulation fee. Upon depletion of the license fee balance, the DOJ would notify the licensed operator to begin quarterly payments to the state.

In consideration of the substantial value of each license, a licensed operator would remit to the Treasurer on a quarterly basis for deposit in the General Fund an amount equal to \_\_\_\_ percent of its gross income that is attributable to the operation of an authorized Internet Web site in California.

### **IMPLEMENTATION CONSIDERATIONS**

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve this and other concerns that may be identified.

The bill provides that a licensed operator would facilitate the collection by the FTB of personal income taxes from registered players and would be responsible for providing current and accurate documentation on a timely basis to all state agencies. It is unclear what is meant by "facilitate the collection by the FTB of personal income taxes." The author should amend the bill to provide clarity on this provision.

### **LEGISLATIVE HISTORY**

SB 1366 (Correa, 2013/2014) would have established a framework to authorize intrastate Internet poker and required the Department of Justice, in consultation with the California Gambling Control Commission, to adopt regulations governing the intrastate play of poker games on the Internet. SB 1366 failed to pass out of the Senate Committee on Governmental Organization.

SB 51 (Wright, 2013/2014) would have established a framework to authorize intrastate Internet poker and to require the Department of Justice, in consultation with the California Gambling

Control Commission, to adopt regulations governing the intrastate play of poker games on the Internet. SB 51 failed to pass out of the Senate Committee on Governmental Organization.

SB 678 (Correa, 2013/2014) would have established a framework to authorize intrastate Internet poker and required the Department of Justice, in consultation with the California Gambling Control Commission, to adopt regulations governing the intrastate play of poker games on the Internet. SB 678 failed to pass out of the Senate Committee on Governmental Organization.

AB 2291 (Jones-Sawyer, 2013/2014) would have established a framework to authorize intrastate Internet poker and required the Department of Justice, in consultation with the California Gambling Control Commission, to adopt regulations governing the intrastate play of poker games on the Internet. AB 2291 failed to pass out of the Assembly Committee on Governmental Organization.

SB 40 (Correa, 2011/2012) would have established a framework to authorize intrastate Internet poker and required the Department of Justice, in consultation with the California Gambling Control Commission, to adopt regulations governing the intrastate play of poker games on the Internet. SB 40 failed to pass out of the Senate Committee on Governmental Organization.

SB 45 (Wright, 2011/2012) would have established a framework authorizing intrastate Internet gambling and required the Department of Justice, in consultation with the California Gambling Control Commission, to adopt regulations governing intrastate gambling on the Internet. SB 45 failed to pass out of the Senate Committee on Governmental Organization.

SB 1463 (Wright, 2011/2012) was substantially similar to SB 45. SB 1463 was held in the Senate Committee on Governmental Organization.

AB 293 (Mendoza, Chapter 233, Statutes of 2009), among other things, prohibited gambling enterprises from cashing checks drawn against any federal, state, or county fund.

SB 1485 (Wright, 2009/2010) was substantially similar to SB 45. SB 1485 failed to pass out of the Senate Committee on Government Organization.

AB 1385 (Battin, et al., Chapter 874, Statutes of 1999) clarified the Governor's role in entering into memoranda of understanding with Indian tribes and ratified 57 Tribal-State Gaming Compacts.

## **OTHER STATES' INFORMATION**

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

*Florida, Michigan, and Minnesota* laws do not provide a provision comparable to the licensing and regulatory framework by which entities may facilitate Internet fantasy sports games to players within their respective states as proposed by this bill.

Recently, attorney generals in *Illinois*, *New York*, *Texas*, and *Vermont* have declared daily fantasy sports illegal under state law. *Nevada* is requiring a gambling license to operate daily fantasy sports. The Attorney General in *Massachusetts* has proposed daily fantasy sports regulations.

## **FISCAL IMPACT**

Department staff is unable to determine the costs to administer this bill until the implementation concern has been resolved.

## **ECONOMIC IMPACT**

### **Revenue Estimate**

This bill would not impact state income or franchise tax revenue.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

## **SUPPORT/OPPOSITION<sup>2</sup>**

Support: Anschutz Entertainment Group (AEG), California Police Chiefs Association, Daily Fantasy Sports Players Alliance, Los Angeles Clippers, and various daily fantasy sports players in California.

Opposition: Stand Up For California!

## **ARGUMENTS**

Proponents: Some may argue that this bill would establish a framework for California entities to offer Internet fantasy sports gaming, generate revenue in California as a result of licensing and ongoing operating fees, and provide oversight and regulate Internet fantasy sports gaming.

Opponents: Some may argue that this bill may increase the number of problem and addicted gamblers and may result in a decrease in revenues to the tribal casinos.

## **LEGISLATIVE STAFF CONTACT**

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<sup>2</sup> Assembly Governmental Organization analysis, dated January 6, 2016.