

House Bill 118 (COMMITTEE SUBSTITUTE)

By: Representatives Kelley of the 16<sup>th</sup>, Harrell of the 106<sup>th</sup>, Clark of the 98<sup>th</sup>, Frye of the 118<sup>th</sup>, and Martin of the 49<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

To amend Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling and other trade practices, so as to provide for the registration, regulation, and taxation of fantasy contest operators; to provide for civil penalties; to exempt fantasy contests from certain criminal penalties; to provide for rules and regulations; to provide a short title; to provide for definitions; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling and other trade practices, is amended by adding a new article to read as follows:

"ARTICLE 35

10-1-930.

This article shall be known and may be cited as the 'Registered Fantasy Contest Operators Act.'

10-1-931.

As used in this article, the term:

(1) 'Beginner' means any fantasy contest player who has entered fewer than 51 contests offered by a single fantasy contest operator and who has not won at least three fantasy contest prizes of \$1,000.00 or more.

(2) 'Commissioner' means the State Revenue Commissioner.

(3) 'Confidential information' means information related to the play of a fantasy contest by fantasy contest players obtained as a result of or by virtue of a person's employment.

(4) 'Entry fee' means cash or cash equivalent that is required to be paid by a fantasy contest player to a fantasy contest operator to enter a fantasy contest.

(5) 'Fantasy contest' means a simulated game or contest in which:

(A) An entry fee is required and the value of all prizes and awards offered is established and made known in advance of the game or contest;

(B) All winning outcomes reflect in part the relative knowledge and skill of those who enter such contest and are determined predominantly by accumulated statistical results of the performance of individuals participating in sporting events not organized by the fantasy contest operator or those who enter such contest and in which those entering the fantasy contest do not directly participate in any way;

(C) Winning outcomes are not based on the score, point spread, or any performance of any single actual team or combination of such teams in a sporting event, series of events or other competition or solely on any single performance of an individual in any single actual sporting event or other competition; and

(D) The statistical results of the performance of individuals under subparagraph (B) of this paragraph are not based on university, college, high school, or youth sporting events or other competitions.

(6) 'Fantasy contest operator' means a person that conducts a fantasy contest offered to the general public.

(7) 'Fantasy contest player' or 'player' means an individual who enters a fantasy contest offered by a fantasy contest operator.

(8) 'Gross fantasy contest revenues' means the amount equal to the total of all entry fees that a fantasy contest operator collects from all fantasy contest players, less the total of all sums paid out as prizes to all fantasy contest players, multiplied by the resident percentage for Georgia.

(9) 'Highly experienced player' means a fantasy contest player who has entered more than 1,000 contests offered by a single fantasy contest operator or who has won more than three fantasy contest prizes valued at \$1,000.00 or more.

(10) 'Person' means an individual, partnership, corporation, company, association, or any other entity.

(11) 'Resident percentage' means the percentage, rounded to the nearest tenth of a percent, of the total of entry fees collected by a fantasy contest operator from fantasy contest players located in Georgia, divided by the total entry fees collected from all fantasy contest players in fantasy contests offered by a fantasy contest operator within the United States.

10-1-932.

(a) No fantasy contest operator shall offer any fantasy contest in this state without first being registered with the commissioner, except a fantasy contest operator that offered fantasy contests in this state prior to the effective date of this article may continue to offer fantasy contests in this state, provided that such operator submits a written certification via certified mail, return receipt requested directed to the state revenue commissioner within ten days of the effective date of this article disclosing its name, address, and corporate officers and providing the amount of gross revenue collected from fantasy contest players within the state during the 12 months immediately preceding such certification and further files an application for registration with the commissioner within 30 days of the application's availability, and until such application for registration has been approved or denied.

(b) A fantasy contest operator's application for registration, and all attachments thereto, shall be exempt from public disclosure, but shall be subject to disclosure in response to a valid subpoena, court order, or other legal process and, without limitation, may be utilized by the commissioner in the enforcement of this article or the rules and regulations promulgated hereunder.

(c) Before registering to offer fantasy contests in this state, a fantasy contest operator shall undergo a background investigation conducted by the commissioner and the commissioner may refuse to register such fantasy operator, may refuse to annually renew a registration, or may suspend, revoke, or penalize a registration if:

(1) The registered fantasy contest operator or applicant has intentionally violated a provision of this article or a rule or regulation promulgated under this article;

(2) The registered fantasy contest operator or applicant has intentionally failed to provide requested information or answer a question, intentionally made a false statement in or in connection with his or her application or renewal, or omitted any material or requested information;

(3) The registered fantasy contest operator or applicant used coercion to accomplish a purpose or to engage in conduct regulated by the commissioner;

(4) Failure to deny, revoke, or suspend the registration would be contrary to the intent and purpose of this article;

(5) The registered fantasy contest operator or applicant has engaged in a violation of Article 15 of this chapter;

(6) The registered fantasy contest operator or applicant, or any officer or shareholder holding 5 percent or more interest in the operation for which an application has been submitted, has been convicted of a felony and served any part of a criminal sentence,

including probation, within the ten years immediately preceding the date of receipt of submission of the registration application;

(7) The registered fantasy contest operator or applicant, or any officer or shareholder holding 5 percent or more interest in the operation for which an application has been submitted, has been convicted of a misdemeanor or felony at any time for a crime involving gambling; or

(8) The registered fantasy contest operator or applicant, or any officer or shareholder holding 5 percent more interest in any operation for which an application has been submitted, fails to meet any obligations imposed by the tax laws or other laws or regulations of this state.

(d) Procedures for registration denials, revocations, suspensions, or other penalties shall be conducted by the commissioner in the same manner as under Title 3.

(e) A fantasy contest operator shall pay to the commissioner an annual registration fee as follows:

(1) For a fantasy contest operator with gross fantasy contest revenues for the preceding 12 months of \$3 million or more, the fantasy contest operator shall pay \$15,000.00; or

(2) For a fantasy contest operator with gross fantasy contest revenues for the preceding 12 months of less than \$3 million, the fantasy contest operator shall pay \$5,000.00.

(f) Not less than 60 nor more than 90 days prior to expiration of the fantasy contest operator's annual registration, the fantasy contest operator shall pay to the commissioner an annual registration renewal fee in accordance with the fee schedule in subsection (e) of this Code section. In addition to the annual registration fee, a fantasy contest operator shall annually pay over to the commissioner a tax of 6 percent of the fantasy contest operator's gross fantasy contest revenues for the preceding 12 months with the first such payment due upon issuance of the initial registration by the commissioner of the fantasy contest operator. The commissioner shall be authorized to direct that all or any fantasy contest operator remit such tax more frequently than annually, but no more frequently than monthly. Such tax shall be deemed to be collected and held in trust by the fantasy contest operator on behalf of the commissioner. Payment frequency is designed to protect the state in the event that the state has reason to believe the operator is in financial jeopardy. Trust designation is to further protect the state in the event of a bankruptcy filing by an operator.

(g) The registration described in this Code section shall be transferable at the discretion of the commissioner.

(h) A fantasy contest operator applying for renewal of a registration under this Code section may operate while awaiting renewal of its registration from the commissioner.

unless the commissioner has reasonable cause to believe that such fantasy contest operator is or may be in violation of the provisions of this article or the rules and regulations promulgated hereunder and the department notifies such fantasy contest operator to suspend the operation of fantasy contests until the renewal or transfer of registration is issued.

(i) As a condition of receiving and holding a registration pursuant to this article, a fantasy contest operator is deemed to consent to the jurisdiction of the commissioner to enforce this article in proceedings before the commissioner and to appear before the commissioner if directed and to provide such reports, documentation, and other information as may be required by the commissioner for the enforcement of this article or the rules and regulations of the commissioner. A fantasy contest operator further consents to the exclusive jurisdiction of the courts of this state for purposes of enforcement of this article, including, but not limited to, any proceedings related to the assessment or collection of the taxes and fees imposed under this article.

10-1-933.

(a) A fantasy contest operator shall submit evidence to the commissioner that such operator has established and will implement commercially reasonable procedures for such operator's fantasy contests that:

(1) Prevent employees of the fantasy contest operator and relatives living in the same household as such employees from entering any public fantasy contest offered by the fantasy contest operator;

(2) Prevent the sharing of confidential information that could affect fantasy contest play with third parties before such information is made publicly available;

(3) Not be permitted to participate in any fantasy contests that such person offers;

(4) Take reasonable steps to ensure that no persons under the age of 18 participate in any fantasy contest, including verifying that all fantasy contest players are 18 years of age or older;

(5) Provide fantasy contest players with access to information on responsible play;

(6) Provide fantasy contest players with access to information on seeking assistance for compulsive behavior;

(7) Provide each fantasy contest player access to such player's own play history and account details;

(8) Prevent individuals who participate, compete, or officiate in a sporting event or other competition that is the subject of a fantasy contest from entering such fantasy contest;

(9) Allow individuals to restrict themselves from entering a fantasy contest upon request and implement reasonable steps to prevent such individuals from entering any fantasy contests offered by the fantasy contest operator;

(10) Disclose the number of entries that a fantasy contest player may submit to participate in each fantasy contest and implement reasonable steps to prevent fantasy contest players from submitting more than the allowable number; and

(11) Segregate fantasy contest player funds from operational funds of the fantasy contest operator or maintain an irrevocable letter of credit, a bond, or a combination thereof, in a form acceptable to the commissioner, in the amount of the deposits made to the accounts of fantasy contest players for the benefit and protection of the funds held in such accounts.

(b) A fantasy contest operator offering fantasy contests with an entry fee in this state shall contract with a third-party auditor approved by the commissioner to perform an independent audit for each annual registration period, consistent with standards established by the American Institute of Certified Public Accountants, to ensure compliance with this article and submit the results of such audit to the commissioner. The third-party auditor's audit submission shall include a certification that the third-party auditor has concluded that the fantasy contest operator is in compliance with this article including the tax and fee provisions of this article for the audit period. Such third-party auditor and the fantasy contest operator shall be required to appear before the commissioner and to produce books, records, working papers, and any other supporting documentation to the commissioner at his or her direction.

(c) A fantasy contest operator offering fantasy contests in this state shall not target minors or other excluded players in any advertising.

(d) All fantasy contest operators shall develop fantasy contests that are limited to beginners and shall keep non-beginner players from participating, either directly or through another person as a proxy, in those fantasy contests. A fantasy contest operator shall suspend the account of any fantasy contest player who is not a beginner and who enters a beginner contest directly or through another person as a proxy and shall ban such individual from further play. A fantasy contest operator may allow a player who is not a beginner or a highly experienced player to enter up to ten beginner contests in any sport in which that player has not already entered 20 fantasy contests.

(e) In advance of accepting any entry fee, a fantasy contest operator shall ensure that all fantasy contests that it offers establish and make known to all potential players all prizes and awards offered to winning participants.

200 10-1-934.

201 In addition to any other remedies provided by law, a fantasy contest operator who violates  
202 this article is subject to a civil penalty of not more than \$5,000.00 for each violation not to  
203 exceed \$125,000.00 for violations arising out of the same transaction or occurrence, which  
204 shall accrue to the state and may be recovered in a civil action brought by the  
205 commissioner or as otherwise provided in this article.

206 10-1-935.

207 Fantasy contests offered by a fantasy contest operator properly registered in accordance  
208 with this article and operated in compliance with this article and the rules and regulations  
209 promulgated hereunder are exempt from Article 2 of Chapter 12 of Title 16.

210 10-1-936.

211 The commissioner shall be authorized to promulgate rules and regulations to administer  
212 this article which may include administrative penalties to be imposed upon registered  
213 fantasy contest operators for violation of this article or the rules and regulations of the  
214 commissioner. The commissioner is further authorized to require such appearances,  
215 reports, records, documentation, and other information from registered fantasy contest  
216 operators and parties acting on their behalf as the commissioner deems necessary for the  
217 administration of this article and the rules and regulations of the commissioner. The taxes,  
218 fees, and penalties imposed pursuant to this article shall be subject to interest and penalties  
219 and administered, assessed, and enforced in accordance with Chapters 2, 3, and 4 of Title  
220 48 and the commissioner may require a proper surety bond to secure the same. The  
221 commissioner is specifically authorized to issue and enforce an execution for all amounts  
222 due the state under this article. The remedies provided in this Code section shall be in  
223 addition to all other remedies provided in this article."

224 **SECTION 2.**

225 All laws and parts of laws in conflict with this Act are repealed.