

The Senate Committee on Regulated Industries and Utilities offered the following substitute to HB 118:

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 a short title; to provide for definitions; to provide for civil penalties; to exempt fantasy contests from certain criminal penalties; to provide for rules and regulations; to provide for appeals; to amend Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use taxes, so as to create a sales tax exemption for entry fees paid to enter a fantasy contest; 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) 'Representative' means any:

(A) Officer of an entity for which an application is submitted under this article; or

(B) Shareholder holding 5 percent or more interest in an entity for which an application is submitted under this article.

(12) '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 that 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 until an application for registration under this article has been approved or denied, provided that such fantasy contest operator:

(1) Submits a written certification via certified mail, return receipt requested, to the state revenue commissioner within ten days of the effective date of this article disclosing the:

(A) Name and address of the fantasy contest operator;

(B) Names of the representatives of the fantasy contest operator; and

(C) Amount of gross revenue collected from fantasy contest players within the state during the 12 months immediately preceding such certification; and

(2) Files an application for registration with the commissioner within 30 days of the application's availability.

(b) An application for registration under this article, and all attachments thereto, shall not be subject to public inspection or disclosure under Article 4 of Chapter 18 of Title 50 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. The commissioner may require a background investigation of any representative. The fantasy contest operator shall be responsible for the reasonable and necessary costs incurred by the commissioner related to conducting any background investigations.

(d)(1) 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:

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

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

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

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

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

(F) The registered fantasy contest operator, applicant, or any representative of the fantasy contest operator 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;

(G) The registered fantasy contest operator, applicant, or any representative of the fantasy contest operator has been convicted of a misdemeanor or felony at any time for a crime involving gambling; or

(H) The registered fantasy contest operator fails to remit taxes pursuant to subsection (f) of this Code section.

(2) The registered fantasy contest operator or applicant shall be entitled to at least 30 days' written notice and, if requested, a hearing in the following instances:

(A) After an application for registration or renewal of a registration has been refused;

(B) Before the commissioner may revoke, suspend, or penalize a registration; and

(C) Before the commissioner may invoke any other sanctions provided by this article.

(3) All hearing procedures shall be conducted in conformance with Article 1 of Chapter 13 of Title 50.

(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 any or all fantasy contest operators remit such tax more frequently than annually, but no more frequently than monthly; provided, however that the tax frequency shall be designed to protect the state in the event that the state has reason to believe the operator is in financial jeopardy. Such tax shall be deemed to be collected and held in trust by the fantasy contest operator on behalf of the commissioner so as to further protect the state in the event of a bankruptcy filing by a fantasy contest 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 or transfer of a registration under this Code section may operate while awaiting renewal or transfer of 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:

(1) 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; and

(2) 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) Prevent the fantasy contest operator from participating 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 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 rules and regulations of the commissioner, which may include such 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 in any advertising minors or players excluded pursuant to paragraph (9) of subsection (a) of this Code section.

(d) All fantasy contest operators shall develop fantasy contests that are limited to beginners and shall keep nonbeginner players from participating, either directly or through

205 another person as a proxy, in those fantasy contests. A fantasy contest operator shall
206 suspend the account of any fantasy contest player who is not a beginner and who enters a
207 beginner contest directly or through another person as a proxy and shall ban such
208 individual from further play. A fantasy contest operator may allow a player who is not a
209 beginner or a highly experienced player to enter up to ten beginner contests in any sport in
210 which that player has not already entered 20 fantasy contests.

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

214 10-1-934.

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

220 10-1-935.

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

224 10-1-936.

225 (a) The commissioner shall be authorized to promulgate rules and regulations to administer
226 this article which may include administrative penalties to be imposed upon registered
227 fantasy contest operators for any violation of this article or the rules and regulations of the
228 commissioner. The commissioner is further authorized to require such appearances,
229 reports, records, documentation, and other information from registered fantasy contest
230 operators and parties acting on their behalf as the commissioner deems necessary for the
231 administration of this article and the rules and regulations of the commissioner.

232 (b) The taxes, fees, and penalties imposed pursuant to this article shall be subject to
233 interest and penalties and administered, assessed, and enforced in accordance with Chapters
234 2, 3, and 4 of Title 48, and the commissioner may require a proper surety bond to secure
235 the same. The commissioner is specifically authorized to issue and enforce an execution
236 for all amounts due the state under this article.

237 (c) The remedies provided in this Code section shall be in addition to all other remedies
238 provided in this article.

239 10-1-937.
240 Any determination made by the commissioner under this article that is adverse to a fantasy
241 contest operator may be challenged by such fantasy contest operator within 30 days of such
242 adverse action through an appeal to the Georgia Tax Tribunal in accordance with Chapter
243 13A of Title 50. The Georgia Tax Tribunal shall issue a final judgment on such an appeal."

244 **SECTION 2.**

245 Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use
246 taxes, is amended in Code Section 48-8-3, relating to exemptions from state sales and use
247 taxes, by deleting "or" at the end of paragraph (99), by replacing the period with "; or" at the
248 end of paragraph (100), and by adding a new paragraph to read as follows:
249 "(101) Entry fees, as such term is defined in Code Section 10-1-931."

250 **SECTION 3.**

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