

1 SB28  
2 180543-1  
3 By Senator Whatley  
4 RFD: Tourism and Marketing  
5 First Read: 07-FEB-17  
6 PFD: 01/30/2017

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8 SYNOPSIS: Under existing law, there is no provision to  
9 allow gaming in the form of fantasy and simulated  
10 sports contests.

11 This bill would establish the Fantasy Sports  
12 Contests Act to regulate the operation of fantasy  
13 or simulated sports contests in this state.

14 This bill would require fantasy sports  
15 contest operators to register with the Secretary of  
16 State in order to conduct fantasy sports contests  
17 in the state, would establish registration and  
18 renewal fees, and would provide procedures for the  
19 approval or denial of an application.

20 This bill would require fantasy sports  
21 contest operators to implement procedures for  
22 consumer protection of fantasy sports contest  
23 players, would require audits of fantasy sports  
24 contest operators, and would provide for the  
25 administration and enforcement of the act by the  
26 Secretary of State.

1                   This bill would also exempt fantasy sports  
2                   contests from criminal penalties associated with  
3                   gambling activity.

4                   Amendment 621 of the Constitution of Alabama  
5                   of 1901, now appearing as Section 111.05 of the  
6                   Official Recompilation of the Constitution of  
7                   Alabama 1901, as amended, prohibits a general law  
8                   whose purpose or effect would be to require a new  
9                   or increased expenditure of local funds from  
10                  becoming effective with regard to a local  
11                  government entity without enactment by a 2/3 vote  
12                  unless: it comes within one of a number of  
13                  specified exceptions; it is approved by the  
14                  affected entity; or the Legislature appropriates  
15                  funds, or provides a local source of revenue, to  
16                  the entity for the purpose.

17                  The purpose or effect of this bill would be  
18                  to require a new or increased expenditure of local  
19                  funds within the meaning of the amendment. However,  
20                  the bill does not require approval of a local  
21                  government entity or enactment by a 2/3 vote to  
22                  become effective because it comes within one of the  
23                  specified exceptions contained in the amendment.

24  
25                                   A BILL  
26                                   TO BE ENTITLED  
27                                   AN ACT

1  
2           To establish the Fantasy Sports Contests Act; to  
3 regulate fantasy and simulated sports contests; to provide  
4 definitions; to require fantasy sports contest operators to  
5 register with the Secretary of State in order to conduct  
6 fantasy sports contests in the state; to provide for  
7 application and renewal fees; to provide for the distribution  
8 of application fees; to provide procedures for the approval or  
9 denial of an application; to require fantasy sports contest  
10 operators to post a surety bond; to require certain fantasy  
11 sports contest operators to implement procedures for consumer  
12 protection of fantasy sports contest participants; to require  
13 an audit of fantasy sports contest operators; to provide for  
14 administration and enforcement of the act by the Secretary of  
15 State; to provide that certain violations would be deemed a  
16 deceptive trade practice; to require fantasy sports contest  
17 operators to maintain certain records and to submit annual  
18 reports to the Secretary of State; to exempt fantasy sports  
19 contests from certain criminal penalties associated with  
20 gambling activity; to establish the fantasy sports fund; and  
21 to provide for the administering of the fantasy sports fund by  
22 the Secretary of State; and in connection therewith would have  
23 its purpose or effect the requirement of a new or increased  
24 expenditure of local funds within the meaning of Amendment 621  
25 of the Constitution of Alabama 1901, now appearing as Section  
26 111.05 of the Official Reconciliation of the Constitution of  
27 Alabama of 1901, as amended.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. This act shall be known and may be cited  
3 as the Fantasy Sports Contests Act.

4 Section 2. For the purposes of this act, the  
5 following terms shall have the following meanings:

6 (1) AUTO DRAFT. Athlete selection offered by a  
7 fantasy sports operator that does not involve any input or  
8 control by a player.

9 (2) CONFIDENTIAL INFORMATION. Information related to  
10 the play of a fantasy sports contest by fantasy sports contest  
11 participants obtained as a result of or by virtue of a  
12 person's employment by a fantasy sports contest operator.

13 (3) ENTRY FEE. Cash or cash equivalent that is  
14 required to be paid by a fantasy contest player to a fantasy  
15 sports contest operator in order to participate in a fantasy  
16 sports contest.

17 (4) FANTASY SPORTS CONTEST. Includes any fantasy  
18 sports or simulated sports game or contest, in which all of  
19 the following are satisfied:

20 a. Players are subject to an entry fee to assemble  
21 imaginary teams of athletes.

22 b. The value of all prizes and awards offered to  
23 winning participants are established and made known to the  
24 participants in advance of the contest, and the value of such  
25 prizes and awards is not determined by the number of fantasy  
26 contest participants or the amount of entry fees paid by the  
27 fantasy contest participants.

1 c. All winning outcomes reflect the relative  
2 knowledge and skill of the fantasy sports contest participants  
3 and shall be determined predominantly by accumulated  
4 statistical results of the performance of athletes  
5 participating in actual sports events.

6 d. No winning outcome is based on the score, point  
7 spread, or any performance or performances of any single  
8 actual team or combination of such teams or solely on any  
9 single performance of an individual athlete or player in any  
10 single actual sports event.

11 e. A fantasy sports contest does not include either  
12 of the following:

13 1. A contest in which the operator allows the  
14 players to auto draft athletes or to choose between  
15 preselected teams of athletes.

16 2. A contest where the winning outcome is based on  
17 the score, point spread, or any performance or performances of  
18 any single actual team or combination of teams or solely on  
19 any single performance of an athlete or participant in any  
20 single actual event.

21 (5) FANTASY SPORTS CONTEST OPERATOR. A person or  
22 entity that offers fantasy sports contests through an online  
23 digital platform with an entry fee for a cash or cash  
24 equivalent prize to members of the public.

25 (6) FANTASY SPORTS CONTEST PARTICIPANT. A person who  
26 pays a fee for the ability to participate in a fantasy sports  
27 contest offered by a fantasy sports contest operator.

1           (7) IMMEDIATE FAMILY. A person's parents, children,  
2 spouse, siblings, and first cousins. The term includes those  
3 related by birth, marriage, adoption, civil partnership, or  
4 cohabitation.

5           (8) PERSON. An individual, a corporation, or other  
6 business entity.

7           (9) PRIZE. An award, incentive, promotion, or  
8 anything of value, including, but not limited to, money,  
9 contest credits, merchandise, or admission to another fantasy  
10 sports contest.

11           Section 3. (a) A person may not offer a fantasy  
12 sports contest through an online digital platform that enables  
13 Alabama consumers to participate in such contests without that  
14 person being licensed as a fantasy sports operator by the  
15 Secretary of State.

16           (b) A fantasy sports contest operator offering  
17 fantasy sports contests to persons in this state must complete  
18 and submit an application to the Secretary of State in order  
19 to register to conduct fantasy sports contests.

20           (1) An initial registration application fee shall be  
21 remitted to the Secretary of State with the fantasy sports  
22 contest operator's initial application.

23           (2) An annual registration renewal fee shall be  
24 remitted to the Secretary of State with the fantasy sports  
25 contest operator's annual registration renewal application as  
26 established by the Secretary of State.

1           (3) The Secretary of State may also collect a  
2     licensing fee, late fee, correction of information fee, and a  
3     change of information fee according to the schedule provided  
4     in subsection (b) of Section 5.

5           (4) Fees collected under this subsection shall be  
6     deposited in the Fantasy Sports Fund created in Section 6.

7           (c) A complete registration renewal application  
8     shall include written evidence of both the actual entry fees  
9     collected in this state and cash or cash equivalents paid to  
10    fantasy sports contest participants in this state during the  
11    prior period of registration.

12          (d) Within 120 days after receipt of a complete  
13    application, the Secretary of State shall approve or deny the  
14    registration. A complete application that is not acted upon  
15    within 120 days after receipt shall be deemed approved, and  
16    the Secretary of State shall register the fantasy sports  
17    contest operator. A fantasy sports contest operator that  
18    submits a complete initial registration application within 10  
19    days of the effective date of this act may continue to operate  
20    during the period in which the Secretary of State reviews the  
21    application.

22          (e) An application for a fantasy sports contest  
23    operator's registration shall include all of the following:

24           (1) The full name of the applicant.

25           (2) The location of the applicant's principal place  
26    of business.



1           (3) The applicant's criminal record, if any, or if  
2 the applicant is a corporation or other business entity, the  
3 criminal records, if any, of any person owning 15 percent or  
4 more equity interest in the applicant, as determined pursuant  
5 to a rule of the Secretary of State.

6           (4) A description of any physical facility operated  
7 by the fantasy sports operator in this state, the facility's  
8 employees, and the nature of the facility's business.

9           (5) If the applicant is a corporation or other  
10 business entity, the name of the state in which it is  
11 incorporated and the names and addresses of the officers,  
12 directors, and shareholders of the corporation who hold 15  
13 percent or more equity in the corporation. If the applicant is  
14 a business entity other than a corporation, the names and  
15 addresses of the principals, partners, or shareholders who  
16 hold 15 percent or more equity in the entity.

17           (6) If the applicant is a corporation or other  
18 business entity, the names and addresses of the ultimate  
19 equitable owners of the corporation or entity, if different  
20 from those provided under subdivision (5), unless the  
21 securities of the corporation or entity are registered  
22 pursuant to Section 12 of the Securities Exchange Act of 1934,  
23 15 U.S.C. §§78a.-78kk, and either of the following are  
24 satisfied:

25           a. The corporation or entity files the reports  
26 required by Section 13 of the Securities Exchange Act of 1934,  
27 with the United States Securities Exchange Commission.

1           b. The securities of the corporation or entity are  
2 regularly traded on an established securities market in the  
3 United States.

4           (7) The estimated total number of fantasy sports  
5 contests that the applicant will conduct annually and the  
6 estimated number of fantasy sports contests that the applicant  
7 will conduct annually in this state.

8           (8) A statement of the applicant's assets and  
9 liabilities.

10          (9) If applicable and required by the Secretary of  
11 State, the names and addresses of the officers and directors  
12 of any debtor of the applicant and the names and addresses of  
13 any stockholder who holds more than 15 percent of the stock of  
14 the debtor.

15          (10) For each person listed in the application as an  
16 officer or director, a complete set of fingerprints shall be  
17 taken by an authorized law enforcement officer. The  
18 fingerprints must be submitted to the Secretary of State for  
19 processing. Foreign nationals shall submit such documents as  
20 necessary to allow the Secretary of State to conduct criminal  
21 history records checks in the person's home country. The  
22 applicant shall pay all costs of fingerprint processing, and  
23 the Secretary of State may charge a reasonable handling fee  
24 for each set of fingerprints.

25          (f) (1) An applicant is not eligible for registration  
26 for a fantasy sports contest operator's license or the renewal  
27 of such registration if the person or any officer or any

1 director of the corporation or entity has been convicted of a  
2 felony in this state, a felony in another state which would be  
3 a felony if committed in this state, or a felony under the  
4 laws of the United States, or has been determined by the  
5 Secretary of State, after investigation, not to be of good  
6 moral character.

7 (2) For purposes of this subsection, an individual  
8 is convicted of a felony if he or she is found guilty of a  
9 felony as a result of a jury verdict or non-jury trial, or has  
10 entered a plea of guilty or nolo contendere to a felony.

11 (g) An applicant for registration as a fantasy  
12 sports contest operator shall provide evidence of a surety  
13 bond in the amount of one million dollars (\$1,000,000),  
14 payable to the Secretary of State, furnished by a corporate  
15 surety authorized to conduct business in the state in such a  
16 form as established by the Secretary of State. The bond shall  
17 be kept in full force and effect by the fantasy sports contest  
18 operator during the term of the registration and any renewal  
19 thereof.

20 Section 4. (a) For fantasy sports contests with an  
21 entry fee, fantasy sports contest operators shall implement  
22 procedures to accomplish all of the following:

23 (1) Prevent the fantasy sports contest operator from  
24 being a participant in a fantasy contest the fantasy sports  
25 contest operator offers.

26 (2) Prevent employees of the fantasy sports contest  
27 operator, and immediate family of those employees, from

1 competing in any fantasy sports contest offered by the fantasy  
2 sports contest operator in which the operator offers a cash  
3 prize.

4 (3) Verify each player's true identity and location  
5 using commercially reasonable means.

6 (4) Prevent sharing of confidential information that  
7 could affect fantasy sports contest play with third parties  
8 until the information is made publicly available.

9 (5) Use technologically reasonable measures to  
10 detect and prevent the use of a player's account by another  
11 player.

12 (6) Verify that fantasy sports contest participants  
13 are 18 years of age or older.

14 (7) Ensure that individuals who participate or  
15 officiate in a game or contest that is the subject of a  
16 fantasy sports contest are restricted from entering a fantasy  
17 sports contest that is determined, in whole or in part, on the  
18 accumulated statistical results of a team of individuals in  
19 the game or contest in which they are a participant or  
20 official.

21 (8) Allow individuals to restrict themselves from  
22 entering a fantasy sports contest upon request and take  
23 reasonable steps to prevent those individuals from entering  
24 fantasy sports contests offered by the fantasy sports contest  
25 operator.

26 (9) Ensure any fantasy sports operators'  
27 advertisements in the state clearly and conspicuously depict

1 accurate representations concerning chances of winning and the  
2 number of persons winning.

3 (10) Disclose the number of entries a single fantasy  
4 sports contest participant may submit to each fantasy sports  
5 contest and take reasonable steps to prevent participants from  
6 submitting more than the allowable number.

7 (11) Clearly and conspicuously identify highly  
8 experienced players in fantasy sports contests by a symbol  
9 attached to a player's username, or by other easily visible  
10 means, on all fantasy sports operator contest mediums and  
11 platforms.

12 (12) Prohibit the use of scripts in fantasy sports  
13 contests that give players an unfair advantage over other  
14 players and ban players found to have used such scripts from  
15 further fantasy sports contests.

16 (13) Ensure prompt distribution of any prize awarded  
17 to a player.

18 (14) Return all funds from a closed player account  
19 within five business days.

20 (15) Segregate fantasy sports contest participant  
21 funds from operational funds and maintain a reserve in the  
22 form of cash, cash equivalents, an irrevocable letter of  
23 credit, a bond, or a combination thereof, in the amount of the  
24 deposits in participant accounts for the benefit and  
25 protection of funds authorized fantasy sports contest  
26 participants held in fantasy sports contest accounts.

1           (16) Annually contract a third party to perform an  
2 independent audit, consistent with generally accepted  
3 accounting standards, to ensure compliance with all of the  
4 requirements in this act. The fantasy sports contest operator  
5 shall submit the results of the independent audit conducted  
6 within the previous 12 months to the Secretary of State when  
7 submitting the annual registration renewal application.

8           (17) Provide information to show that the applicant  
9 is in good standing with the Department of Revenue.

10           (18) Provide any other information that the  
11 Secretary of State deems necessary.

12           (b) In order to maintain a fantasy sports operator  
13 license, the licensee shall maintain records of all player  
14 accounts, retain such records for five years from the date the  
15 account was created, and submit annual reports of all fantasy  
16 sports accounts opened or maintained by Alabama consumers to  
17 the Secretary of State, including all of the following  
18 information:

19                   (1) All account transactions.

20                   (2) All winnings by Alabama consumers.

21                   (3) The amount in accounts opened or maintained by  
22 Alabama consumers.

23                   (4) All fantasy sports operator revenue derived from  
24 Alabama consumer accounts and transactions.

25           Section 5. (a) The Secretary of State is responsible  
26 for the administration and enforcement of this act. The  
27 Secretary of State shall do all of the following:

1           (1) Oversee the licensing of fantasy sports  
2 operators that seek to operate in this state.

3           (2) Adopt rules pursuant to the Alabama  
4 Administrative Procedure Act for the administration and  
5 enforcement of this act.

6           (3) Maintain a registry of fantasy sports operators  
7 licensed to operate in this state.

8           (4) Ensure fantasy sports operators do not directly  
9 or indirectly operate or promote to Alabama consumers any  
10 fantasy sports contest without a valid license obtained from  
11 the Secretary of State.

12           (5) Conduct investigations and monitor the operation  
13 of fantasy sports contests.

14           (6) Provide information to the Department of Revenue  
15 to assist in its administration and collection of taxes  
16 applicable to fantasy sports operators.

17           (7) Review the books, accounts, and records of any  
18 current or former contest operator who is or was registered to  
19 do business in this state.

20           (8) Require fantasy sports operators to report  
21 annually all winnings earned by fantasy sports players in this  
22 state on online platforms supported by the fantasy sports  
23 operator to the Secretary of State.

24           (9) Ensure that all licensed fantasy sports  
25 operators comply with the audit requirements of subdivision  
26 (16) of subsection (a) of section 4.

1           (10) Take testimony and issue summons, subpoenas,  
2 and subpoenas duces tecum in connection with any matter  
3 related to the administration or enforcement of this act.

4           (11) Monitor and enforce the collection and  
5 safeguard of contest entry fees, the payment of contest  
6 prizes, and the consumer protection provisions of Section 4.

7           (12) Coordinate with other state personnel as needed  
8 to assist in the administration and enforcement of this act.

9           (13) Suspend or revoke, after hearing, the  
10 registration of a fantasy sports contest operator that  
11 violates Section 3 or Section 4 or rules adopted by the  
12 Secretary of State pursuant to this act.

13           (14) Perform any other duties authorized by this  
14 act.

15           (b) (1) In addition to the duties set out in  
16 subsection (a), the Secretary of State shall establish the  
17 following schedule of fees in a reasonable amount:

18           a. A nonrefundable application fee.

19           b. A nonrefundable fee for licensing.

20           c. An annual licensing renewal fee.

21           d. Late fees.

22           e. A correction of information fee.

23           f. A change of information fee.

24           (2) In addition to the fees in subdivision (b) (1),  
25 the Secretary of State is authorized to charge an online  
26 transaction fee to cover costs associated with processing



1 payments for applicants for licensing or renewals of licenses  
2 submitted online.

3 (c) A violation of this act is a deceptive trade  
4 practice under the Deceptive Trade Practices Act, Chapter 19  
5 of Title 8, Code of Alabama 1975.

6 Section 6. (a) There is created within the State  
7 Treasury a fund to be known as the Fantasy Sports Fund.

8 (b) All fees collected under Section 3 shall be  
9 deposited in the Fantasy Sports Fund.

10 (c) All costs to the Secretary of State for the  
11 administration of this act shall be paid from the fund.

12 (d) All funds remaining in the Fantasy Sports Fund  
13 shall revert to the General Fund at the conclusion of each  
14 fiscal year.

15 Section 7. (a) Each fantasy sports contest operator  
16 shall keep and maintain daily records of its operations as  
17 required by the Secretary of State, shall maintain the records  
18 for at least seven years, and shall make the records available  
19 for audit and inspection by the Secretary of State and  
20 appropriate law enforcement agencies during the fantasy sports  
21 contest operator's regular business hours. The records must  
22 include all financial transactions with sufficient detail to  
23 determine compliance with the requirements of this act.

24 (b) Each fantasy sports contest operator shall file  
25 an annual report with the Secretary of State that includes the  
26 required records and any additional information deemed  
27 necessary by the Secretary of State. The reports shall be

1 deemed confidential and exempt from disclosure under Section  
2 36-12-40, Code of Alabama 1975. Nothing in this act shall  
3 prohibit the sharing of information by the Secretary of State  
4 with law enforcement agencies that agree to abide by this  
5 subsection.

6 Section 8. Article 2 of Chapter 12 of Title 13A,  
7 Code of Alabama 1975, does not apply to a fantasy sports  
8 contest conducted in compliance with this act.

9 Section 9. Although this bill would have as its  
10 purpose or effect the requirement of a new or increased  
11 expenditure of local funds, the bill is excluded from further  
12 requirements and application under Amendment 621, now  
13 appearing as Section 111.05 of the Official Recompilation of  
14 the Constitution of Alabama of 1901, as amended, because the  
15 bill defines a new crime or amends the definition of an  
16 existing crime.

17 Section 10. This act shall become effective on the  
18 first day of the third month following its passage and  
19 approval by the Governor, or its otherwise becoming law.