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By email (DFSRegs@state.ma.us)

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Office of the Attorney General  
% DFS Regulations  
One Ashburton Place  
Boston, MA 02108

Re: Comments to Proposed Daily Fantasy Sports Regulations

Dear Attorney General Healey:

Enclosed please find comments on your Office's proposed Daily Fantasy Sports (DFS) regulations. I both recognize the need for regulation and commend your Office for tackling this difficult and complex topic directly, but would stress that too accelerated an approach to regulating - and therefore, in a sense, legally legitimizing - may result in the unintended de facto authorization of a broad class of sports betting activity.

My comments draw on my experience as the publisher of LegalSportsReport.com - a trade publication covering the DFS and regulated sports betting industries in the U.S. - and on my work as a Senior Consultant to Eilers & Krejcik Gaming, a firm with broadly recognized expertise regarding the DFS industry.

I have ordered my comments following the structure of the proposed regulations.

### **34.03 Definitions**

- The definition of "daily fantasy sports" appears to open the door to a variety of games that would appear to the casual user more a sports bet than a fantasy sports competition. Of particular issue is the use of the term "finishing position" - a term that would appear to leave room for DFS contests based not on player performance, but also on game outcomes (e.g., the "finishing position" of a "one or more individual participants" in a game of football could easily mean the final score or win / loss outcome).
  - Further, the definition of "daily fantasy sports" fails to limit contests to peer-to-peer competitions, opening the door for house-banked variants of fantasy

sports that would (again) appear to most far closer to a traditional sports bet than a fantasy sports competition. The blurring of that line is already occurring in the unregulated daily fantasy sports industry; enshrining that ambiguity in regulations could create a dangerous precedent.

- The definition of "DFS consumer" raises the question of whether a non-resident of the Commonwealth who may be playing DFS while within the border of the Commonwealth is entitled to the same protections while doing so.
- The decision to not define "entry fee" may create an exploitable condition.
- The inclusion of hard numbers in the definition of "highly-experienced Player" creates a condition where the regulations will need to be updated regularly to account for inflation.
  - Further, the definition offers "prevailed" as a standard without defining what prevailed means. Does it simply mean to receive some prize in a contest? To receive a prize that exceeds the entry fee for the contest?
  - The third conditional - "won more than three DFS contest Prizes valued at \$1,000 or more" - is not a useful or rational proxy for establishing experience.

#### **34.05 Protection of Consumer Funds on Deposit and Compliance With Data Security Requirements**

- "Protections for DFS accounts" does not establish exactly what must be protected. Is it the account balance at any given point in time? Does the balance included non-cash items such as tickets to upcoming contests or bonuses?
  - Further, the regulation does not establish a schedule for calculating the liability.
  - Further, the regulation does not provide any mechanism for regulators to ensure that funds are protected, such as a monthly report from the operator.
- I believe consumers would benefit from a plain-language explanation of how their funds are protected and what happens to their funds in the case of operator insolvency.

#### **34.06 Limitation to One Account Per DFS Player**

- I believe this section should articulate what rights the player has regarding their funds should a DFSO terminate accounts under this regulation. Does the DFSO get to seize the funds? If not, what is the timetable for return? Is it the timetable described in 34.05?
- I would encourage the Office to either define "proxy server" or opt for a less specific prohibition. The term left undefined injects unnecessary ambiguity into the regulations.

#### **34.07 Truthful Advertising; Limitations on Advertising Content**

- "Advertisements to Include Information to Assist Problem Gamers" - Given that the Commonwealth has a well-established system for providing problem gambling help, I'm not sure why DFSOs are given the opportunity to "direct consumers to a reputable source for such information." If that opportunity is retained, I see no reason not to articulate said responsible sources, as there are effectively only a handful in the status quo.
  - Further, I would note that "problem gaming" is not a relevant concept culturally (even your proposed regulations revert to the far more common term of "problem gambling"). While DFSOs may wish to avoid the association, their desires should not be prioritized over the need to present clearly, logically labeled tools for consumers who might need them.

#### **34.10 Protections for Problem Gamers**

- I would reiterate my earlier comment that referring to "problem gaming" instead of "problem gambling" is a rhetorical sleight of hand that exists solely to benefit DFSOs and disadvantages consumers seeking tools to manage their play. The term "problem gaming" is not, to the best of my knowledge, a recognized term in the relevant literature.
- The "limitations on consumer deposits" regulations are hamstrung by a hard number that will need to be adjusted going forward.
  - Further, if the intent is consumer protection for the most vulnerable, a what amounts to a \$12,000 annual loss seems to miss the mark.
  - Further, the requirements regarding DFSOs collecting a significant amount of personal financial information arguably moves DFSOs into a data category similar to a bank or other financial institution without providing consumers with any additional protections or recourse, and dramatically increases the personal risk to the consumer should the DFSO suffer a data breach.
  - Further, all of this additional risk occurs within a regulation that is easily circumvented by a consumer that wants to increase the limits and a DFSO that wants to take their deposits.

#### **34.12 Fairness of DFS Contests**

- The use of the phrase "unauthorized scripts" in (8) implies that there is such a thing as an authorized script.
- The language of (11(d)) - "DFSOs will not allow DFS players to submit more than 3% of all entries in any contest involving more than 100 entries" - is a strange departure from the hard caps of the previous points and will incentivize experienced players to delay entry until the last possible moment, undermining what is apparently a primary goal of

these regulations - to allow inexperienced players to appreciate the "toughness" of the field in a contest they're entering.

#### **34.14 Data Retention**

- This section does not appear to address marketing conducted by affiliates of DFSOs.

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I would like to reiterate my support for meaningful regulation of daily fantasy sports and believe that such regulation is in the best interests of the industry, the Commonwealth, and - most importantly - those who risk money playing daily fantasy sports.

Please do not hesitate to contact me - [chris@legalsportsreport.com](mailto:chris@legalsportsreport.com) - if I can be a resource in the process going forward.

Best,

A handwritten signature in black ink, appearing to read 'Chris', followed by a long horizontal flourish.

Chris Grove  
Publisher, LegalSportsReport.com