

ForPlayers-ByPlayers, LLC.
1133 Broadway, Suite 529
New York, NY 10001

March 2, 2016

Dear Governor McAuliffe,

We, the undersigned, traditional fantasy sports operators, write this letter to voice our concerns with aspects of Bill SB 646 (the “Fantasy Contests Act”), which currently awaits your signature. Although we understand that the Fantasy Contests Act was written to legalize and regulate a hybrid form of gaming known as “daily fantasy sports,” one plausible reading of the Fantasy Contests Act is that it also would regulate full-season fantasy sports contests, even though it has long been presumed that full-season fantasy sports contests constitute legal games of skill within your state. As you will see below, full-season fantasy sports are a completely different game than daily fantasy sports (DFS). If it is proper to conclude that the Fantasy Contests Act would apply to full-season fantasy sports contests, the act would require each of our companies to pay the same \$50,000 licensing fee as “daily fantasy sports” operators DraftKings and FanDuel, even though none of our companies have the legal issues, financial resources, or the types of profits of either DraftKings or FanDuel. Given the cost constraints of our hobbyist business model, any requirement that we each pay a \$50,000 licensing fee to the State of Virginia would lead us each to exit the Virginia marketplace – thus depriving hundreds of thousands of Virginia sports fans of access to play in their favorite traditional fantasy sports games.

For purposes of further background into our business model, our games are very different from the types of contests offered by companies such as DraftKings and FanDuel that led to heightened legal scrutiny, and our contests generally have been discussed in positive terms with respect to their structure and legal status by both business publications and law review articles. Our style of contests date back to the early 1960s when Professor William Gamson, a psychology professor at Harvard University, first created “The Baseball Seminar” – a contest among friends with an entry fee and a prize that involved predicting athlete performance during the course of an entire baseball season. Another early iteration of our type of contests was the Rotisserie League of Baseball, founded by *New York Times* reporter Dan Okrent in 1979.

Although none of our businesses churn the type of revenues as do DraftKings or FanDuel, far more Americans play in full-season fantasy sports contests than “daily fantasy sports” – perhaps because we exist primarily as a hobby. Furthermore, unlike DraftKings or FanDuel, our companies have never faced any meaningful legal challenge, either under state gambling law or consumer protection law. To the contrary, the only court opinion to ever address the legal status of our type of fantasy sports contests, *Humphrey v. Viacom*, No. 06-2768 (DMC), 2007 WL 1797648 (D. N.J. June 20, 2007), recognized that our contests include truly skill-based activities due to ongoing, active roster management and interaction among the participants. Even the New York State attorney general’s letter, dated November 10, 2015, and the Nevada Gaming Control Board’s letter, dated October 16, 2015, recognize a fundamental legal distinction between our business structure and that of “daily fantasy sports.”

While we respect, and likely share, the myriad concerns underlying the Fantasy Sports Contests Act, we do not believe the currently proposed version of the act serves Virginia citizen interest without at least a small change to make it economically feasible for any season-long fantasy game operator to continue to operate in your state. To achieve that result, we would suggest any of three different revisions to the act.

- The first potential revision would be to rename the act as the “Daily Fantasy Sports Contests Act” and entirely exclude full-season fantasy sports businesses from the scope of the act. In that case, you may ultimately seek to regulate full-season fantasy sports under a separate act with a more modest licensing fee.
- A second potential revision would be to replace the \$50,000 licensing fee with a flat tax for all fantasy providers (daily or full-season) based on a share of collected revenues. This alternative would not only protect full-season fantasy sports but also protect smaller, start-up companies that seek to enter the “daily fantasy sports” marketplace and would thus prevent DraftKings and FanDuel from gaining a shared monopoly over that marketplace.
- A final potential revision would be to include a small business exemption that allows fantasy sports businesses with less than 2,000 Virginia customers to apply for a hardship waiver to forgo paying the licensing fee.

We appreciate your concern for the fantasy sports marketplace and its consumers, and we share your goals in keeping the market safe for the next generation of players. We hope you will work with us on the mentioned topics and refer the bill back to your state legislature for appropriate modifications. As we do not employ personal lobbyists as do DraftKings and FanDuel, this was our first opportunity to review the bill in detail, and thus we did not have the opportunity to voice our concerns, particularly about the proposed licensing fees, until this time.

Lastly, while you see just a handful of season-long fantasy sports businesses signed below, there are dozens of small businesses that would be negatively impacted by the signing of this legislation.

If you have any questions or concerns, please do not hesitate to contact us.

You also should feel free to reach out to Professor Marc Edelman, who has written extensively about the legal landscape of the fantasy sports industry, has provided legal consulting services to one of our businesses, and has assisted us collectively in compiling aspects of this letter.

Very truly yours,

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