



NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

STATEMENT FOR THE RECORD BY
SENATOR CURT BRAMBLE
PRESIDENT PRO TEMPORE
UTAH STATE SENATE
President of the
National Conference of State Legislatures

ON BEHALF OF THE

NATIONAL CONFERENCE OF STATE LEGISLATURES

REGARDING

DAILY FANTASY SPORTS: ISSUES AND PERSPECTIVES

TO THE

SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND TRADE
ENERGY AND COMMERCE COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES

MAY 11, 2016

**SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND TRADE
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Statement of

**Senator Curt Bramble
President, NCSL**

National Conference of State Legislatures

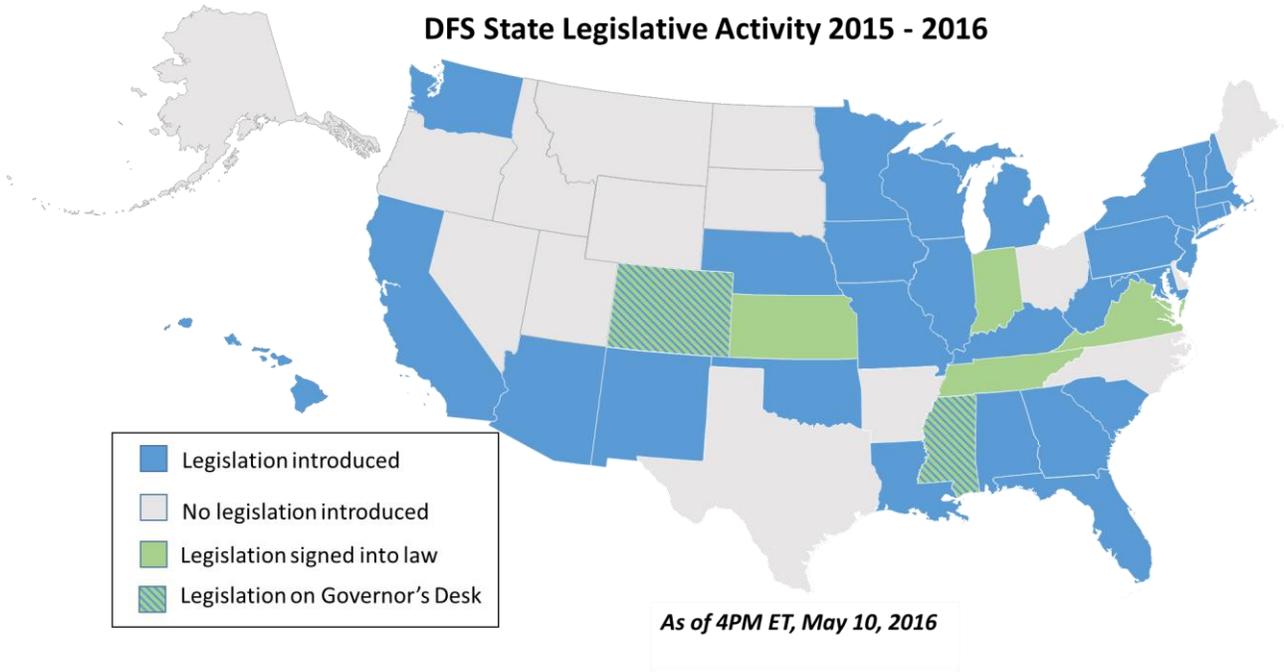
Chairman Burgess, Ranking Member Schakowsky, and members of the Commerce, Manufacturing, and Trade Subcommittee, I am pleased to submit this statement on behalf of the National Conference of State Legislatures (NCSL) and respectfully request that you submit it for the record. The National Conference of State Legislatures is the bipartisan organization that represents the 50 state legislatures and the legislatures of our nation's commonwealths, territories, possessions, and the District of Columbia.

I appreciate the opportunity to provide a brief overview of the recent state activity regarding the emerging industry of daily fantasy sports (DFS). While the DFS industry is not new, it was not until a \$200 million advertising blitz in the fall of 2015 by DFS industry leaders, DraftKings and FanDuel, that the industry achieved widespread popularity with the public. Due to this massive growth in popularity in the fantasy sports realm, it's estimated that in 2015, 16 million players spent more than \$4 billion competing in daily fantasy sports contests.¹ While the industry seeks to solidify itself in the fantasy market, its emergence has also caught the attention of lawmakers and attorneys general in the states.

While most states do not have statutes that address the legality of daily fantasy sports, states do maintain the most control over the regulation of games of skill and chance, including lotteries and gambling. Therefore, legislatures across the country have started to examine the legality of this young and thriving industry, debating whether it's a skill-based game or if it's chance-based gambling. Each state appears to be tackling the issue in its own way. So far in 2016, 35 state legislatures have introduced bills addressing DFS, many of which seek to legalize and regulate the industry. In some states, attorneys general have issued opinions asserting that it is illegal gambling and have halted the business in its tracks.

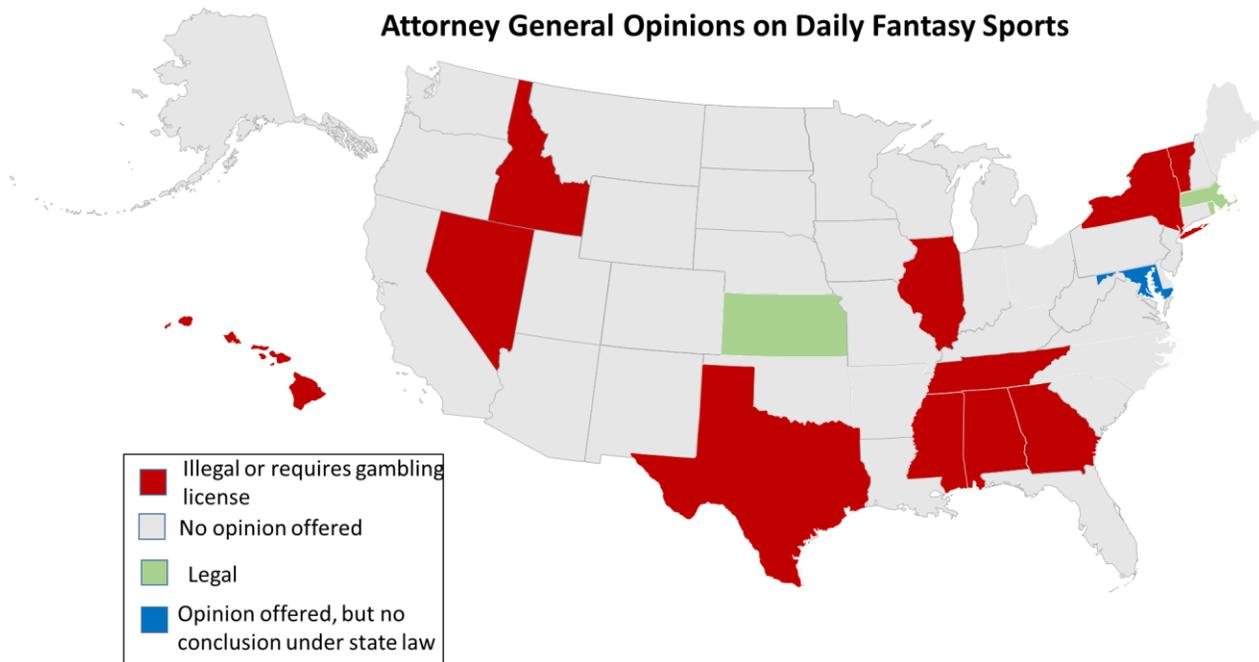
¹ Bob Hohler, "An uncertain line between fantasy sports, gambling" Boston Globe, Aug. 2, 2015, <https://www.bostonglobe.com/sports/2015/08/02/fantasy-games-draw-scrutiny-ban-sports-gamblingblurs/XxWUs2cwrveLvJe8bFt3wI/story.html>

DFS State Legislative Activity 2015 - 2016



Over the past year, over a dozen attorneys general have weighed in on daily fantasy sports. Ten state attorneys general have released opinions that daily fantasy sports is illegal gambling under state law, while Nevada also states that it is gambling and requires licensing. Three others have come out asserting that the contests are legal. Notably, Massachusetts attorney general Maura Healy is the first attorney general to have filed a series of regulations to oversee the daily fantasy sports industry. These regulations include setting a minimum age of 21 to play, excluding contests based on college events, as well as a number of consumer protections ranging from who cannot participate in the contests as well as how much a person can participate. While legislatures continue to develop and debate legislation on daily fantasy sports, it is likely we will see more attorneys general provide opinions on the legality of the games based on each state's unique laws.

Attorney General Opinions on Daily Fantasy Sports



Virginia was the first state to pass legislation that both legalized and created regulations on the contests on March 7, 2016. The bill was the first formal recognition of the industry, putting the state's Department of Agriculture and Consumer Service in charge of overseeing the industry and classifying the contests as a game of skill. Operators in the state must register and pay a \$50,000 operating fee. Some of the other regulations include setting a minimum age of 18 to play, requires operators to take steps to prevent employees and their immediate relatives from playing in contests, to ensure security of data at the sites, to segregate player funds from operational funds, and require an annual audit of all registered operators.

Indiana followed in Virginia's footsteps when they also passed a law regulating daily fantasy sports on March 24, 2016. The bill gives oversight to a newly created Paid Fantasy Sports Division of the Indiana Gaming Commission. Like Virginia, regulations of the industry include a \$50,000 licensing fee, ensure players are over the age of 18, prevent employees and relatives from playing, and segregating players' funds from operational funds. One area of contention that has been growing in the discussion is DFS's interaction between student athletes and college or youth sports. Indiana's law is the first legislation to be enacted forbids operators from offering contests based on amateur contests which includes college or high school sports.

Finally, Tennessee is the most recent state to sign legislation into law on April 27, 2016. This is the first case where a legislature voted to legalize and regulate daily fantasy sports just days after the Tennessee attorney general provided a negative opinion regarding the legality of the contests. The new law is similar to Indiana and Virginia in that it establishes a minimum age of 18 for players and segregates player funds from operating funds, as well as other popular consumer protections, but where it differs is how the operators are charged. Rather than an operating fee, this legislation charges operators a 6% tax on revenue generated by Tennessee residents. It also gives oversight powers to the Secretary of State and gives the Secretary the power to establish appropriate fees for application and license renewal, and other applicable fees.

States across the country are continuing to debate legislation that would better define the gray area in which fantasy sports has been operating. Just this past Monday, Colorado sent legislation to the governor's desk, making it the fifth legislature this year to pass a bill regulating daily fantasy sports. The states that have passed legislation on the matter have done so with overwhelming majorities because appropriate consumer protections were an integral part of the legalization and regulation process. Regulation of gaming has historically been a state matter and it is important that this remains the norm.

While the subcommittee considers whether there is a federal role to play in the industry and as states continue to consider the legality and regulation of daily fantasy sports, it is important to remember that the federal Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA) specifically excludes fantasy sports. Therefore, the interpretation of these contests is left purely to the states, and consequently, legislatures have been producing creative policy solutions to address this issue.

NCSL strongly opposes any effort by the federal government to consider legislation that would overrule state authority by regulating daily fantasy sports at the federal level. However, should Congress feel the need for additional federal regulation of DFS, NCSL requests that Congress consider the perspective of the states and asks that it involve state legislators in any federal decisions. NCSL believes the federal government must recognize the sovereignty of states to regulate and tax daily fantasy sports. NCSL also requests that federal lawmakers be respectful of state legislatures that prohibit daily fantasy sports within their state. With regards to the broader discussion of online gaming and sports betting, NCSL believes current federal laws to be outdated given the evolving and significant effect that the internet is playing on everyday American life. I respectfully request the state legislative perspective be considered as Congress continues to examine this issue and that our testimony be submitted for the record along with NCSL policies on gaming. I appreciate the opportunity to express the views of my colleagues across the country on this topic.



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NCSL Supports State Sovereignty in Online Gaming

WHEREAS, the National Conference of State Legislatures (NCSL) believes the federal government must respect the sovereignty of states to allow or to prohibit Internet gambling by its residents; and

WHEREAS, the 2011 ruling by the United States Justice Department on the Federal Wire Act of 1961, 18 U.S.C. §1084, clarifies that intra-state online gambling is lawful. Any effort by Congress or the administration to reverse this ruling is preemptive and diminishes the flexibility of state legislatures to be innovative and responsive to the unique needs of the residents of each state; and

NOW, THEREFORE BE IT RESOLVED, that NCSL requests Congress consider the perspective of the states as it examines this issue and asks that it involve state legislators in any federal efforts that seek to reform the regulation of online gaming. NCSL strongly opposes any effort by the federal government to overturn the Justice Department's ruling or consideration of legislation overruling state authority by legalizing or regulating gambling at the federal level. NCSL also requests that federal lawmakers be respectful of state legislatures that prohibit online gaming or other forms of gaming within their state.



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NCSL Supports State Sovereignty in Sports Gambling

WHEREAS, the National Conference of State Legislatures (NCSL) believes the federal government must recognize the sovereignty of states to allow or to prohibit sports gambling by its residents; and

WHEREAS, the “Professional and Amateur Sports Protection Act,” 28 U.S.C. §§ 3701-3704 (PASPA), currently prohibits states from “sponsoring, operating, advertising, or promoting sports gambling,” except for a handful of states grandfathered under the law; and

WHEREAS, the federal ban instituted under the PASPA has not prevented the conduct of illegal sports gambling, but has in effect restricted the ability of all but a few states to regulate and collect revenue from sport gambling wagers estimated to be in the billions of dollars each year, to the detriment of state economies; and

NOW, THEREFORE BE IT RESOLVED, that NCSL requests Congress recognize the sovereignty of states to regulate and tax sports gambling, and repeal the federal ban on sports gambling by enacting legislation that would allow state legislatures to authorize sports gambling by statute. NCSL also requests that federal lawmakers be respectful of state legislatures that prohibit sports gaming or other forms of gaming within their state.