

Amendment to HB 580-FN-A

1 Amend the title of the bill by replacing it with the following:

2
3 AN ACT regulating online fantasy sports contests.
4

5 Amend the bill by replacing all after the enacting clause with the following:
6

7 1 New Chapter; Fantasy Sports Contests. Amend RSA by inserting after chapter 287-G the
8 following new chapter:

9 CHAPTER 287-H

10 FANTASY SPORTS CONTESTS

11 287-H:1 Definitions. In this chapter:

12 I. "Beginner" means a fantasy sports contest player who has entered fewer than 51 contests
13 offered by a single fantasy sports contest operator and who does not otherwise meet the definition of
14 highly-experienced player.

15 II. "Commission" means the New Hampshire lottery commission.

16 III. "Confidential information" means information related to the play of a fantasy sports
17 contest by fantasy sports contest players obtained as a result of or by virtue of a person's
18 employment.

19 IV. "Entry fee" means cash or cash equivalent that is required to be paid by a fantasy sports
20 contest player to a fantasy sports contest operator to participate in a fantasy sports contest.

21 V. "Fantasy sports contest" means a fantasy or simulated game or contest in which one or
22 more players compete against each other and winning outcomes reflect the relative knowledge and
23 skill of the players and are determined predominantly by accumulated statistical results of the
24 performance of individuals, including athletes in the case of sporting events.

25 VI. "Fantasy sports contest operator" means a person that offers fantasy sports contests
26 with an entry fee for a cash prize to the general public.

27 VII. "Fantasy sports contest player" means a person who participates in a fantasy sports
28 contest offered by a fantasy sports contest operator.

29 VIII. "Gross fantasy sports contest revenues" means the amount equal to the total of all
30 entry fees that a fantasy sports contest operator collects from all fantasy sports contest players, less
31 the total of all sums paid out as prizes to all fantasy sports contest players, multiplied by the
32 resident percentage for New Hampshire.

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1 IX.(a) "Highly experienced player" means a person who has either:

2 (1) Entered more than 1,000 fantasy contests offered by a single fantasy sports
3 contest operator; or

4 (2) Won more than 3 fantasy sports contest prizes valued at \$1,000 or more from a
5 single fantasy sports contest operator.

6 (b) Upon making a determination that a player is a highly experienced player, the
7 fantasy sports contest operator shall continue to classify the player as a highly experienced player
8 indefinitely.

9 X. "Residence percentage" means, for each fantasy sports contest, the percentage, rounded
10 to the nearest tenth of a percent, of the total of entry fees collected from fantasy sports contest
11 players located in New Hampshire, divided by the total entry fees collected from all fantasy sports
12 contest players in fantasy sports contests.

13 XI. "Script" means a list of commands that a computer program can execute to automate
14 processes with respect to a fantasy sports contest.

15 287-H:2 Registration with the Commission.

16 I. No fantasy sports contest operator shall offer any fantasy sports contests with an entry
17 fee in this state without first being registered with the commission. However, a fantasy sports
18 contest operator that offered fantasy sports contests in this state prior to the effective date of this
19 chapter may continue to offer fantasy sports contests with an entry fee in this state, provided such
20 operator files an application for registration with the commission within 60 days of the application's
21 availability, and may continue to offer fantasy sports contests until such application for registration
22 has been approved or denied.

23 II. Before obtaining a registration to offer fantasy sports contests in this state, a fantasy
24 sports contest operator shall:

25 (a) Be authorized to transact business in this state; and

26 (b) Pay to the commission the annual fee of \$5,000 or 10 percent of the applicant's gross
27 fantasy sports contest revenue from the previous calendar year, whichever is lower.

28 III. On the anniversary date of the payment made under this section, a fantasy sports
29 contest operator shall pay to the commission an annual registration renewal fee in an amount
30 determined in accordance with subparagraph II(b).

31 IV. In addition to the registration fee, a fantasy sports contest operator shall annually pay
32 to the commission a tax of 5 percent of the fantasy sports contest operator's gross fantasy sports
33 contest revenues for the preceding 12 months of registration.

34 V. An application for registration pursuant to this section shall include the following
35 information:

36 (a) The name of the applicant;

37 (b) The location of the applicant's principal place of business;

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1 (c) The place where and the date when the applicant was legally established and the
2 form of its organization;

3 (d) The names and addresses of all principal salaried executive officers;

4 (e) The name and address of any shareholder holding 5 percent or more of the equity
5 interests of the applicant;

6 (f) The applicant's criminal record, if any, or, if the applicant is a business entity, the
7 criminal records, if any, of all principal salaried executive officers; and

8 (g) Information sufficient to show that the applicant is in good standing with the
9 department of revenue administration.

10 VI. The commission shall adopt rules under RSA 541-A implementing the provisions of this
11 chapter, which shall include the adoption of an application form for registration. The commission
12 shall not adopt rules limiting the digital platforms offered by registered fantasy sports contest
13 operators, or the type or structure of fantasy sports contests offered by registered fantasy sports
14 contest operators, to the extent that such fantasy sports contests are otherwise offered in a manner
15 consistent with this chapter.

16 287-H:3 Consumer Protection.

17 I. As a condition of registration, a fantasy sports contest operator shall submit evidence
18 satisfactory to the commission that the operator has established and shall implement commercially
19 reasonable procedures for fantasy sports contests with an entry fee that:

20 (a) Prevent employees of the fantasy sports contest operator, and relatives living in the
21 same household as such employees, from competing in any fantasy sports contest offered by any
22 fantasy sports contest operator in which the operator offers a prize to the general public;

23 (b) Prevent sharing of confidential information that could affect such fantasy sports
24 contest play with third parties until the information is made publicly available;

25 (c) Prevent the fantasy sports contest operator from participating in such fantasy sports
26 contest he or she offers;

27 (d) Provide that no winning outcome is based on the score, point spread, or any
28 performance of any single actual sports team or combination of such teams or solely on any single
29 performance of an individual athlete or participant in any single actual sporting event;

30 (e) Prohibit the following persons from participating in any fantasy sports contest:

31 (1) Athletes and individuals who participate or officiate in a game or competition
32 that is the subject of the fantasy sports contest;

33 (2) Any sports agent, team employee, referee, or league official associated with a
34 sport or athletic event that is the subject of the fantasy sports contest.

35 (f) Verify that a fantasy sports contest player in such a fantasy sports contest is 18 years
36 of age or older;

37 (g) Provide fantasy sports contest players with access to information on responsible

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1 play;

2 (h) Provide fantasy sports contest players with access to information on seeking
3 assistance for compulsive behavior;

4 (i) Provide fantasy sports contest players with access to the fantasy sports contest
5 player's play history and account details;

6 (j) Allow individuals to restrict themselves from entering such a fantasy sports contest
7 upon request and provide reasonable steps to prevent the person from entering such fantasy sports
8 contests offered by the fantasy sports contest operator;

9 (k) Disclose the number of entries that a fantasy sports contest player may submit to
10 each such fantasy sports contest and provide reasonable steps to prevent players from submitting
11 more than the allowable number; and

12 (l) Take reasonable steps to not advertise or run promotional activities at elementary or
13 secondary schools or on college campuses.

14 II. The information required to be submitted pursuant to paragraph I shall be exempt from
15 disclosure pursuant to RSA 91-A:5, IV.

16 III. A fantasy sports contest operator shall not offer fantasy sports contests based on the
17 performances of participants in collegiate, high school, or youth athletic events.

18 IV. A fantasy sports contest operator offering fantasy sports contests with an entry fee in
19 this state shall:

20 (a) Contract with a third party to annually perform an independent audit to confirm
21 compliance with the provisions of RSA 287-H:3, VIII, consistent with the standards established by
22 the American Institute of Certified Public Accountants, and submit the results of such audit to the
23 commission; and

24 (b) Contract with a third party annually to perform an independent audit to confirm
25 compliance with RSA 287-H:3, I, and submit the results of such audit to the commission.

26 V. A fantasy sports contest operator shall not offer a fantasy sports contest to the general
27 public that does not establish and make known all prizes and awards offered to winning
28 participants in advance of the game or contest.

29 VI. A fantasy sports contest operator offering fantasy sports contests with an entry fee in
30 this state shall not target minors or individuals who have requested a restriction pursuant to
31 paragraph I(j).

32 VII. A fantasy sports contest operator offering fantasy sports contests with an entry fee in
33 this state shall:

34 (a) Prohibit the use of scripts in fantasy sports contests that give any fantasy sports
35 contest player an unfair advantage over other fantasy sports contest players;

36 (b) Monitor fantasy sports contests to detect the use of unauthorized scripts and restrict
37 fantasy sports contest players found to have used such scripts from participation in further fantasy

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1 sports contests;

2 (c) Make all authorized scripts readily available to all fantasy sports contest players;
3 provided, that a licensed operator shall clearly and conspicuously publish its rules on what types of
4 scripts may be authorized in a fantasy sports contest.

5 VIII. Funds in fantasy sports contest operator consumer accounts shall be:

6 (a) Held in trust for the consumer in a segregated account, in which case the fantasy
7 sports contest operator shall segregate fantasy sports contest player funds from operational funds or
8 maintain a reserve that exceeds the amount of player funds on deposit, which reserve shall not be
9 used for operational activities. These reserve funds may take the form of cash, cash equivalents,
10 payment processor reserves, payment processor receivables, an irrevocable letter of credit, a bond,
11 or a combination thereof, in the amount that shall exceed the total balances of the fantasy sports
12 contest players' accounts; or

13 (b) Held in a special purpose account that is maintained and controlled by a properly
14 constituted corporate entity that is not the fantasy sports contest operator and whose governing
15 board includes one or more corporate directors who are independent of the fantasy sports contest
16 operator and of any corporation related to or controlled by the fantasy sports contest operator. Said
17 corporate entity shall require a unanimous vote of all corporate directors to file bankruptcy and
18 shall have articles of incorporation that prohibit commingling of funds with those of the fantasy
19 sports contest operator except as necessary to reconcile the accounts of fantasy sports contest
20 players with sums owed by those fantasy sports contest players to the fantasy sports contest
21 operator. Said special purpose corporate entity shall also be:

22 (1) Restricted from incurring debt other than to fantasy sports contest players
23 pursuant to the rules that govern their accounts with fantasy sports contest operators;

24 (2) Restricted from taking on obligations of the fantasy sports contest operator other
25 than obligations to fantasy sports contest players pursuant to the rules that govern their accounts
26 with fantasy sports contest operators; and

27 (3) Prohibited from dissolving, merging, or consolidating with another company,
28 other than a special purpose corporate entity established by another fantasy sports contest operator
29 that meets the requirements of this section, while there are unsatisfied obligations to fantasy sports
30 contest players.

31 IX. Fantasy sports contest operators shall clearly and conspicuously identify highly
32 experienced players in fantasy sports contests by a symbol attached to a player's username, or by
33 other easily visible means. Fantasy sports contest operators shall offer some fantasy sports contests
34 that are open exclusively to beginner players and that exclude highly experienced players.

35 287-H:4 Penalty. Any person who violates any provision of this chapter shall be subject to a
36 civil penalty of not more than \$1,000 for each violation, not to exceed \$5,000 for violations arising
37 out of the same transaction or occurrence, which shall accrue to the state and may be recovered in a

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1 civil action brought by the commission.

2 287-H:5 Authorization of Fantasy Sports Contests. Notwithstanding any law to the contrary,
3 the conduct of fantasy sports contests shall be authorized in accordance with the provisions of this
4 chapter.

5 287-H:6 Exemptions. Fantasy sports contests with or without an entry fee, conducted in
6 accordance with this chapter, shall be exempt from RSA 647 and RSA 338.

7 287-H:7 Applicability of RSA 358-A. Nothing contained in this section shall be construed as
8 limiting the applicability of RSA 358-A to fantasy sports contest operators.

9 2 New Paragraph; Business Profits Tax Credit for Fantasy Sports Contest. Amend RSA 77-A:5
10 by inserting after paragraph XV the following new paragraph:

11 XVI. Taxes paid pursuant to RSA 287-H:2, IV. The credit for these taxes may be utilized
12 against the business profits tax due pursuant to RSA 77-A, or against the business enterprise tax
13 due pursuant to RSA 77-E, or apportioned against both provided the total credit granted against
14 both shall not exceed the total amount of taxes paid pursuant to RSA 287-H:2, IV.

15 3 New Section; Business Enterprise Tax; Credit for Fantasy Sports Contest. Amend RSA 77-E
16 by inserting after section 3-d the following new section:

17 77-E:3-e Credit for Fantasy Sports Contests. Taxes paid pursuant to RSA 287-H:2, IV shall be
18 allowed as a credit against tax due under this chapter. The credit for these taxes may be utilized
19 against the business profits tax due pursuant to RSA 77-A, or against the business enterprise tax
20 due pursuant to RSA 77-E, or apportioned against both provided the total credit granted against
21 both shall not exceed the total amount of taxes paid pursuant to RSA 287-H:2, IV.

22 4 Effective Date. This act shall take effect 60 days after its passage.

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2017-0657h

AMENDED ANALYSIS

This bill:

- I. Allows participation in online fantasy sports contests for money.
- II. Requires fantasy sports contest operators to register with the lottery commission for a fee.
- III. Levies a tax on the revenue of fantasy sports contest operators and allows the amount of such tax to be credited against the business profits tax and the business enterprise tax.