

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: HB2250**                      **As Engrossed: 3/16/2017**  
**Bill Subtitle: CONCERNING PAID FANTASY SPORTS GAMES.**

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### Basic Change :

#### **Sponsor: Representative Gazaway**

Engrossment 03/16/17 --- House Amendment 2 --- The amendment removes simulation sports game from the definition of a paid fantasy sports game. Horse racing and greyhound racing are added as prohibited statistical sources of which performance may be based. Additional restrictions are added to prohibit a fantasy sports game participant from selecting an athlete through an automatic draft that does not involve any input or control by the fantasy sports game participant or to choose preselected teams of athletes.

Language is also added to further define a paid fantasy sports game to mean a winning outcome that is determined by accumulated statistical results of fully completed contests or events and not merely a portion of a contest or event, except that a paid fantasy sports game participant may be credited for statistical results accumulated in a suspended or shortened contest or event that has been suspended or shortened on account of weather or other natural or unforeseen event.

Engrossment 03/14/17 --- House Amendment 1 --- HB2250 creates a new chapter in Arkansas Code Title 23 authorizing "Paid Fantasy Sports Games" in Arkansas and levying a new state privilege tax on fantasy sport game revenues. A paid fantasy sports game conducted in compliance with the Act would not be considered gambling and would be exempt from the gambling criminal code provisions found in § 5-66-101 et seq.

The bill would authorize game operators to conduct paid fantasy sports games through websites or platforms maintained and operated by the game operator. A "paid fantasy sports game" would be any fantasy or simulation sports game or contest that meets the following conditions:

1. The values of all prizes and awards offered to winning game participants in public contests are established and made known to the game participants in advance of the game or contest;
2. All winning outcomes would reflect the relative knowledge and skill of the game participants and are determined predominantly by accumulated statistical results of the performance of individuals, including athletes in the case of sporting events;
3. A winning outcome would not be based on the score, point spread, or performance or performances of any single team or combination of teams or solely on any single performance of an individual athlete or player in any single event; and
4. The statistical results of the performance of individuals are not based on college or high school sports.

The bill defines a "game operator" as an individual engaged in the business of professionally conducting paid fantasy sports games for cash prizes for members of the general public. Game participants would be required to pay a cash or a cash equivalent as an entry fee to participate in a paid fantasy sports game

The bill would also impose an eight (8%) privilege tax based on the game operator's gross paid fantasy sports game revenues collected during the period of the state's previous fiscal year. The "gross paid fantasy sports game revenues" would be the total of all entry fees that a game operator collects from all game participants, less the total of all sums paid out as prizes to all game participants. The

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remaining balance of revenues would then be multiplied by the location percentage for Arkansas. The "location percentage" would be determined for each paid fantasy sports game and calculated as a percentage of all entry fees collected from game participants located in Arkansas divided by the total of entry fees collected from all of the game participants. The eight percent (8%) tax would then be applied to the calculated amount for subsequent submission to the state.

The Act would be effective 90 days after final adjournment of the 91<sup>st</sup> General Assembly.

### **Revenue Impact :**

Unknown General Revenue Gain from the Levy of the new 8% Privilege Tax on Gross Paid Fantasy Sports Game Revenue.

### **Taxpayer Impact :**

Taxpayers intending to conduct a "paid fantasy sports game" would be required to report privilege taxes on an annual basis based on net revenues generated from playing fantasy sports games.

### **Resources Required :**

If DFA is to collect the privilege tax, DFA computer systems would require modification to allow for the tax report filing and payment of the fantasy sports game privilege tax. Additional DFA Field Audit staff personnel will be required to audit operators conducting the fantasy sports games if DFA is to collect the privilege taxes.

### **Time Required :**

Adequate time is provided for implementation if DFA is to administer the privilege tax collections. DFA audit staff personnel will not be needed until FY2019, after the privilege taxes are reported and paid. Regulatory authority over the game operators is not provided in the bill and time requirements would be dependent on that process.

### **Procedural Changes :**

If the privilege tax is to be remitted to DFA, processes and procedures would need to be developed to administer the privilege tax on the paid fantasy sports games.

### **Other Comments :**

None.

### **Legal Analysis :**

The bill does not indicate which state government agency is to collect the privilege tax. The bill should be amended to provide that direction. The bill does not provide that State Tax Procedures apply to the levy and collection of the privilege tax. Language should be added to provide that authority.

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The privilege tax levy does not have a due date for reporting the tax. The bill provides that the tax would be paid at the end of the state's fiscal year. Without a specific due date, the tax could be reported at any time after the end of the fiscal year. A due date is also necessary for the application of the provisions of State Tax Procedures regarding penalty and interest assessment.

Depending on the method of game participation, Arkansas state and local sales taxes could apply to the total entry fees paid if the fees to play are paid as part of an admission to a place of amusement where the fantasy game is played.

The game operator would hold the Arkansas privilege tax revenue from each game until the end of the state's fiscal year. State taxes and fees collected by businesses for the State are generally reported on a specified reoccurring basis, usually monthly. Consideration of monthly tax reporting is suggested. If DFA is to collect the tax, it is recommended that the bill be amended to require the electronic filing of all tax reports and the electronic payment of all taxes due.

Game operators would be required to register with DFA and withhold income taxes from game participants on game winnings in accordance with Arkansas laws.

If the intent of the bill is for the provisions of the bill to apply to out-of-state internet game operators, it is not clear how Arkansas could require the out-of-state operators to collect the Arkansas taxes and make the tax reports. The provisions of the bill would apply to Arkansas game operators conducting their games within the state.

The bill does not provide for website standards to be used by the game operators. Identification and contact information of the game operator should be required for internet operators of the games.