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Date: (Filing No. S- )

**VETERANS AND LEGAL AFFAIRS**

Reproduced and distributed under the direction of the Secretary of the Senate.

**STATE OF MAINE  
SENATE  
128TH LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 449, L.D. 1320, Bill, “An Act To Regulate and Tax Sports Fantasy League Activities in Maine”

Amend the bill by striking out the title and substituting the following:

**'An Act To Regulate Fantasy Sports Contests'**

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

**'Sec. 1. 8 MRSA §1003, sub-§5** is enacted to read:

**5. Additional duties of the director.** The director also serves as the director of the Gambling Control Unit within the department. As director of the Gambling Control Unit, the director shall administer and enforce the laws governing fantasy contests under chapter 33.

**Sec. 2. 8 MRSA c. 33** is enacted to read:

**CHAPTER 33**

**REGULATION OF FANTASY CONTESTS**

**§1101. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Beginner fantasy contestant.** "Beginner fantasy contestant" means an individual who has entered fewer than 51 fantasy contests offered by a single fantasy contest operator.

**2. Director.** "Director" means the director of the Gambling Control Unit within the Department of Public Safety.

**COMMITTEE AMENDMENT**

1           **3. Entry fee.** "Entry fee" means cash or a cash equivalent that is required to be paid  
2 by a fantasy contestant to a fantasy contest operator in order to participate in a fantasy  
3 contest.

4           **4. Fantasy contest.** "Fantasy contest" means a simulated game or contest in which:

5           A. One or more fantasy contestants pay an entry fee to participate;

6           B. Fantasy contestants compete against each other by using their knowledge and  
7 understanding of sports events and persons engaged in those sports events to select  
8 and manage a simulated team roster whose performance directly corresponds with the  
9 actual performance of human competitors on sports teams and in sports events; and

10          C. The outcome of the game or contest reflects the relative knowledge and skill of  
11 the contestants and does not depend on the performance of any one participant in a  
12 sports event or the outcome of any one sports event but is determined predominantly  
13 by accumulated statistical results of the performance of individual competitors on  
14 sports teams and in sports events.

15          **5. Fantasy contestant.** "Fantasy contestant" means an individual who participates in  
16 a fantasy contest offered by a fantasy contest operator.

17          **6. Fantasy contest operator.** "Fantasy contest operator" means a person that offers  
18 a platform for the playing of fantasy contests and that administers a fantasy contest for  
19 which a prize of value is awarded.

20          **7. Gross fantasy contest revenues.** "Gross fantasy contest revenues" means the  
21 amount determined by subtracting the total of all sums paid out by a fantasy contest  
22 operator as cash prizes to all fantasy contestants from the total of all entry fees that the  
23 fantasy contest operator collects from all fantasy contestants and multiplying the result by  
24 the resident percentage. Sums paid out as prizes may not include the cash equivalent of  
25 any merchandise or something of value awarded as a prize.

26          **8. Highly experienced fantasy contestant.** "Highly experienced fantasy contestant"  
27 means a fantasy contestant who has:

28          A. Entered more than 1,000 fantasy contests operated by a single fantasy contest  
29 operator; or

30          B. Won more than 3 prizes of \$1,000 or more each from a single fantasy contest  
31 operator.

32          **9. Platform.** "Platform" means an online or electronic method by which access to a  
33 fantasy contest is provided, including, but not limited to, a website, personal digital  
34 device, such as a device commonly known as a smartphone, or other application  
35 providing access to a fantasy contest.

36          **10. Resident percentage.** "Resident percentage" means, for each fantasy contest,  
37 the percentage, rounded to the nearest tenth of a percent, obtained by dividing the total  
38 amount of entry fees collected from fantasy contestants located in the State by the total  
39 amount of entry fees collected from all fantasy contestants.

40          **§1102. Power and duties of director**

41          **1. Powers.** In administering and enforcing this chapter, the director may:

- 1           A. Pursuant to section 1103, issue or deny any application and limit, restrict, suspend  
2           or revoke any license issued under this chapter;
- 3           B. Review reports of the investigation and qualifications of an applicant before a  
4           license is issued;
- 5           C. Prescribe the manner for the collection of all license fees and revenues under this  
6           chapter;
- 7           D. Adopt rules the director determines necessary to administer this chapter;
- 8           E. Investigate complaints regarding the conduct of fantasy contests in violation of  
9           this chapter and rules adopted pursuant to this chapter;
- 10          F. Impose sanctions, penalties and costs of investigation and hearing against an  
11          applicant or licensee for violation of this chapter or rules adopted pursuant to this  
12          chapter;
- 13          G. Review and approve each platform for compliance with the provisions of this  
14          chapter and rules adopted pursuant to this chapter; and
- 15          H. Conduct a financial audit of any licensee, at any time, to ensure compliance with  
16          this chapter.

17        **§1103. License to conduct fantasy contests**

18           The director shall exercise authority over the licensing of all persons operating  
19           fantasy contests in the State.

20           **1. License required.** A person or fantasy contest operator may not offer a fantasy  
21           contest in the State without first being licensed by the director, except during such time as  
22           the person's or fantasy contest operator's application for a license is pending before the  
23           director as provided in subsection 9.

24           **2. Application.** Applications for a license must be submitted in a manner prescribed  
25           by the director.

26           **3. Content of application.** An application submitted to the director must, at a  
27           minimum, include the following:

- 28           A. The name, primary business location and contact information of the applicant;
- 29           B. Disclosure of ownership interests in the applicant;
- 30           C. Consent to permit the director to conduct a criminal background check;
- 31           D. The applicant's interest, if any, in other fantasy contest operators licensed in the  
32           State or another jurisdiction;
- 33           E. Gross fantasy contest revenues in the State, and any another jurisdiction as  
34           determined by the director, for the period of 12 months preceding the application;
- 35           F. The type and estimated number of fantasy contests to be conducted during the  
36           term of the license and during any period of operation authorized under subsection 9;
- 37           G. The methods by which the fantasy contest operator will determine and verify the  
38           geographic location of a fantasy contestant using the operator's platform;

1           H. The methods by which the fantasy contest operator will protect a fantasy  
2           contestant's personal and private information; and

3           I. Any additional information required by the director or as determined by rule to  
4           ensure that the applicant meets licensing criteria.

5           **4. Signature as consent.** Submission of a signed application is consent of the  
6           applicant to be subject to the laws and rules prescribed by this chapter for the operation of  
7           fantasy contests.

8           **5. Application fee.** The director may charge a one-time application fee limited to  
9           the projected cost of processing the application and performing any background  
10           investigations. If the application fee exceeds the actual cost of processing the application  
11           and performing background investigations, the excess amount must be applied to the  
12           license fee, if the applicant is issued a license, or reimbursed to an applicant not subject to  
13           a license fee in accordance with subsection 6 or to an applicant that was not issued a  
14           license.

15           **6. License fee; term.** The initial and renewal fee for a license for a fantasy contest  
16           operator that had gross fantasy contest revenues during the 12 months preceding  
17           application equal to or greater than \$100,000 is \$2,500. A fantasy contest operator that  
18           had gross fantasy contest revenues during the 12 months preceding application of less  
19           than \$100,000 is not required to pay a license fee. Licenses must be renewed annually.

20           **7. Denial of license; suspension, refusal to renew and revocation.** The director  
21           may deny an application for licensure or suspend, refuse to renew or revoke a license  
22           issued pursuant to this chapter upon finding that the applicant or licensee or any partner,  
23           officer, director or shareholder of the applicant or licensee has:

24           A. Made a false statement on an initial application or application for renewal or has  
25           deliberately failed to disclose any information required by the director;

26           B. Legally defaulted in the payment of any obligation or debt due to the State;

27           C. Violated any provision of this chapter or rules adopted pursuant to this chapter; or

28           D. Been determined, upon investigation and finding by the director, to have a  
29           background, including a criminal record, business associations, questionable business  
30           practices or prior activities, that poses a threat to the public interest or the security  
31           and integrity of the conduct of fantasy contests.

32           **8. Appeals.** A person aggrieved by the decision of the director in denying an  
33           application for license or refusing to renew, suspending, revoking or denying transfer of a  
34           license issued under this chapter or in imposing disciplinary sanctions prescribed by rules  
35           adopted pursuant to this chapter may appeal the decision to the Commissioner of Public  
36           Safety for a final decision. The director's decision stands until the commissioner issues a  
37           decision to uphold, modify or overrule the director's decision. In the case of appeal to the  
38           commissioner, the person must be afforded the opportunity for an adjudicatory hearing in  
39           accordance with this chapter and the Maine Administrative Procedure Act. A person  
40           aggrieved by the final decision of the commissioner may appeal the commissioner's  
41           decision to the Superior Court in accordance with Title 5, chapter 375, subchapter 7.

1           **9. Operation pending application approval.** A fantasy contest operator applying  
2 for an initial license, a license renewal or a license transfer under this chapter may operate  
3 fantasy contests during the period the application is pending unless the director, for  
4 reasonable cause, believes that the applicant is or may be in violation of the provisions of  
5 this chapter or rules adopted pursuant to this chapter. In that case, the director shall notify  
6 the applicant in writing that the applicant may not operate or must suspend the operation  
7 of any fantasy contest until the license or renewal or transfer of licensure is issued.

8           **10. Transfer.** A license issued under this chapter may be transferred upon  
9 submission of an application for transfer and approval of the director. If the person to  
10 whom the license is being transferred is not licensed as a fantasy contest operator, the  
11 director shall require application in the same manner as, or a similar manner to, an initial  
12 application as prescribed under this section.

13           **§1104. Conditions of licensure**

14           **1. Conditions of operation.** As a condition of licensure, a fantasy contest operator  
15 shall submit evidence that the fantasy contest operator has established and will implement  
16 procedures for fantasy contests that:

17           A. Prevent the fantasy contest operator and directors, officers and employees of the  
18 fantasy contest operator, and relatives living in the same household as those persons,  
19 from participating in a fantasy contest offered or operated by that fantasy contest  
20 operator;

21           B. Prevent the sharing with 3rd parties of confidential information that could affect  
22 the outcome of a fantasy contest until the information is made publicly available. As  
23 used in this paragraph, "confidential information" means information related to the  
24 play of a fantasy contest by fantasy contestants obtained as a result of or by virtue of  
25 a person's employment;

26           C. Provide that a winning outcome may not be based on the score, point spread or  
27 performance of a single actual sports team or combination of such teams or solely on  
28 a single performance of an individual athlete or participant in a single actual sports  
29 event;

30           D. Prohibit the following individuals from participating in a fantasy contest based on  
31 the sport, athletic event or competition in which the individual participates or is  
32 otherwise associated:

33           (1) An athlete or individual who participates or officiates in a game, league,  
34 athletic event or competition that is the subject of a fantasy contest; or

35           (2) A sports agent, team employee, referee or umpire or league official  
36 associated with a sport or athletic event that is the subject of a fantasy contest;

37           E. Verify that a fantasy contestant in a fantasy contest is 18 years of age or older. If  
38 the licensee discovers that a person under 18 years of age has accessed the platform  
39 as a potential or active fantasy contestant, the licensee shall immediately refund any  
40 entry fees or other deposits made by the person under 18 years of age;

- 1           F. Publish and facilitate parental control procedures to permit adults to exclude  
2           minors from access to the platform and fantasy contests offered by the fantasy contest  
3           operator;
- 4           G. Provide fantasy contestants with access to information on responsible play;
- 5           H. Provide fantasy contestants with access to information on seeking assistance for  
6           compulsive behavior;
- 7           I. Disclose the number of entries that a fantasy contestant may submit to each fantasy  
8           contest and provide reasonable steps to prevent fantasy contestants from submitting  
9           more than the allowable number;
- 10          J. Allow individuals to restrict themselves from entering fantasy contests upon  
11          request and provide reasonable steps to prevent the individuals from entering fantasy  
12          contests offered by the fantasy contest operator;
- 13          K. Ensure that a fantasy contest is not offered on a prohibited sports event;
- 14          L. Limit each fantasy contestant to one active and continuously used account;
- 15          M. Protect the privacy and security of a fantasy contestant's information and  
16          accounts maintained or accessed by the fantasy contest operator; and
- 17          N. Prohibit the extension of credit from the fantasy contest operator to a fantasy  
18          contestant.
- 19          **2. Certain leagues and contests prohibited.** A fantasy contest operator may not  
20          offer a fantasy contest based on the performances of participants in collegiate or high  
21          school athletic events or other athletic events involving participants under 18 years of  
22          age.
- 23          **3. Notice of prizes required.** A fantasy contest operator shall provide publicly  
24          available notice of all prizes offered to a winning contestant in advance of the fantasy  
25          contest.
- 26          **4. Contestant funds segregated; reserve account; audit.** A fantasy contest  
27          operator licensed under this chapter shall:
- 28                A. Segregate fantasy contestant funds from operational funds;
- 29                B. Maintain a reserve that exceeds the amount of entry fees and any other funds on  
30                deposit; this reserve may not be used for operational activities. Reserve funds may  
31                take the form of cash, cash equivalents, payment processor reserves, payment  
32                processor receivables, an irrevocable letter of credit, a bond or any combination  
33                thereof, and must be in an amount that exceeds the total balances of the fantasy  
34                contestants' accounts with the fantasy contest operator;
- 35                C. Annually contract with a certified public accountant to conduct an independent  
36                audit, consistent with the standards accepted by the American Institute of Certified  
37                Public Accountants or a successor organization, to ensure compliance with paragraph  
38                B, except that fantasy contest operators with annual gross fantasy contest revenues of  
39                less than \$100,000 are not required to contract with a certified public accountant as  
40                prescribed by this paragraph unless required by the director, in which case the

1 director shall notify the operator and allow a reasonable period of time to comply  
2 with the director's requirement for an independent audit; and

3 D. Provide to the director a copy of the audit report prepared pursuant to paragraph  
4 C. Information submitted to the director pursuant to this paragraph is deemed to  
5 contain information regarding trade practices of the operator and is confidential and  
6 is not a public record within the meaning of Title 1, chapter 13, subchapter 1.

7 **5. Annual report.** By June 30th of each year, a fantasy contest operator licensed  
8 under this chapter shall submit a report to the director that includes the following  
9 information regarding accounts with the fantasy contest operator held by fantasy  
10 contestants in the State:

11 A. The number of accounts held by fantasy contestants on all platforms offered by  
12 the fantasy contest operator. The fantasy contest operator must identify the number  
13 of accounts held by highly experienced fantasy contestants on all platforms offered  
14 by the fantasy contest operator;

15 B. The total number of new accounts established and accounts permanently closed in  
16 the preceding year or, if the fantasy contest operator has been licensed for less than  
17 one year, the number of new accounts and permanently closed accounts in the period  
18 since the fantasy contest operator's license was issued;

19 C. The total amount of entry fees received from fantasy contestants in the State;

20 D. The total value and number of prizes awarded to fantasy contestants in the State;

21 E. The total amount of gross fantasy contest revenues received by the fantasy contest  
22 operator; and

23 F. The total number of fantasy contestants who requested to restrict themselves from  
24 participating in fantasy contests on all platforms offered by the fantasy contest  
25 operator.

26 Upon submission of a report required by this subsection to the director, to the extent the  
27 director considers it necessary to ensure the fantasy contest operator's compliance with  
28 this chapter and rules adopted pursuant to this chapter, the director is authorized to  
29 conduct a financial audit of the fantasy contest operator. The report of an audit conducted  
30 by the director pursuant to this subsection is deemed to contain information regarding  
31 trade practices of the operator and is confidential and is not a public record within the  
32 meaning of Title 1, chapter 13, subchapter 1.

33 **§1105. Operation of fantasy contests; allocation of funds**

34 **1. Operation of fantasy contests.** A fantasy contest operator licensed under this  
35 chapter shall:

36 A. Disclose the number of entries that a fantasy contestant may submit to each  
37 fantasy contest and provide reasonable steps to prevent fantasy contestants from  
38 submitting more than the allowable number;

39 B. Prohibit fantasy contestants from submitting more than one entry in any fantasy  
40 contest involving 12 entries or fewer;

1 C. Prohibit fantasy contestants from submitting more than 2 entries in any fantasy  
2 contest involving more than 12 entries but fewer than 36 entries;

3 D. Prohibit fantasy contestants from submitting more than 3 entries in any fantasy  
4 contest involving 36 or more entries but fewer than 101 entries;

5 E. Prohibit, unless otherwise provided by this chapter, fantasy contestants from  
6 submitting more than 3% of all entries in any fantasy contest involving more than  
7 100 entries;

8 F. Permit unlimited entries in no more than 3% of all fantasy contests; the entry fee  
9 for such contests must be a minimum of \$150; and

10 G. Inform fantasy contestants of state and federal tax obligations on certain  
11 winnings.

12 **2. Allocation of funds.** The director shall collect for deposit to the General Fund  
13 10% of gross fantasy contest revenues, including any revenues earned while operating  
14 pending approval of an application submitted to the director as described in section 1103,  
15 subsection 9, from a fantasy contest operator licensed under this chapter that has gross  
16 fantasy contest revenues of \$100,000 or greater.

17 **§1106. Rules**

18 The director shall adopt rules for the proper enforcement and administration of this  
19 chapter. When rules are initially adopted as required by this section, rules are major  
20 substantive rules as defined by Title 5, chapter 375, subchapter 2-A. Amendments or  
21 changes to those rules, after initial adoption, are routine technical rules as defined by Title  
22 5, chapter 375, subchapter 2-A.

23 **1. Required rules.** Rules adopted pursuant to this section must include but are not  
24 limited to the following:

25 A. Prohibiting the operator from making statements that are not accurate or are  
26 misleading regarding the likelihood of winning;

27 B. Requiring disclosure of the number of entries an individual fantasy contestant  
28 may submit to each fantasy contest and the maximum number of entries allowed by a  
29 fantasy contest operator for each contest;

30 C. Prohibiting advertisements or promotions that target minors and individuals with  
31 gambling addiction, including individuals who have requested to be restricted from  
32 play on a fantasy contest operator's platform;

33 D. Requiring the fantasy contest operator to provide information on how to  
34 participate and compete in fantasy contests, including an explanation of fantasy  
35 contest play and how to identify a highly experienced fantasy contestant;

36 E. Requiring a system that identifies a highly experienced fantasy contestant by  
37 means of a symbol or other identifier easily viewed by fantasy contestants engaged in  
38 the fantasy contest on the platform;

39 F. Prohibiting the use of 3rd-party scripts or 3rd-party scripting programs for any  
40 fantasy contest and implementing methods to detect, deter and to the greatest extent  
41 possible prevent cheating and improper manipulation of the fantasy contest;



1 G. Requiring the implementation of a system within the platform by which a fantasy  
2 contestant may submit a complaint against the fantasy contest operator and requiring  
3 the fantasy contest operator to respond to the complaint within 48 hours;

4 H. Requiring the maintenance of records of fantasy contestant accounts, which must  
5 be made available to the director upon request, for a period of up to 5 years;

6 I. Requiring the development and offering of fantasy contests limited to beginner  
7 fantasy contestants; and

8 J. Requiring the fantasy contest operator to ensure that winning outcomes reflect the  
9 relative knowledge and skill of the fantasy contestant and that winning outcomes are  
10 determined primarily by accumulated statistical results of the performance of human  
11 competitors in sports events.

12 **§1107. Violations and penalties**

13 1. Violation. A person, firm, corporation or association or an agent or employee of  
14 one of those entities may not violate this chapter or a rule adopted pursuant to this  
15 chapter.

16 2. Penalty. For each violation of this chapter or any rule adopted pursuant to this  
17 chapter, the director may:

18 A. Impose a fine of up to \$1,000 per violation; or

19 B. Impose a fine not to exceed \$5,000 for violations arising out of the same  
20 transaction or occurrence.

21 **§1108. Applicability of other laws**

22 Unless expressly provided in this chapter, the provisions of Title 17, chapter 62 and  
23 Title 17-A, chapter 39 do not apply to the conduct of fantasy contests operated in  
24 accordance with this chapter and rules adopted pursuant to this chapter.

25 **Sec. 3. Operation of fantasy contests prior to availability of application**  
26 **for licensure.** Notwithstanding the Maine Revised Statutes, Title 8, section 1103,  
27 subsection 1, a person who offered fantasy contests to persons located in the State prior to  
28 the effective date of this Act may continue to offer contests to persons located in the State  
29 until 60 days after the date that the director of the Gambling Control Unit within the  
30 Department of Public Safety begins accepting applications for a fantasy contest operator  
31 license as prescribed by Title 8, chapter 33 and rules adopted in accordance with Title 8,  
32 chapter 33.

33 **Sec. 4. Appropriations and allocations.** The following appropriations and  
34 allocations are made.

35 **PUBLIC SAFETY, DEPARTMENT OF**

36 **Gambling Control Board Z002**

37 Initiative: Provides appropriations for one Information System Security Analyst position  
38 and related costs for oversight of fantasy contest gaming.

1	<b>GENERAL FUND</b>	<b>2017-18</b>	<b>2018-19</b>
2	POSITIONS - LEGISLATIVE COUNT	1.000	1.000
3	Personal Services	\$95,487	\$98,352
4	All Other	\$4,442	\$4,442
5			
6	GENERAL FUND TOTAL	\$99,929	\$102,794
7			

8 **SUMMARY**

9 This amendment replaces the bill and changes the title. Like the bill, the amendment  
 10 sets up a structure to regulate the conduct of fantasy contests in the State.

11 The bill requires fantasy contest operators to register with the Department of Public  
 12 Safety and sets a registration fee of 10% of the fantasy contest operator's annual gross  
 13 fantasy contest revenues not to exceed \$5,000. The amendment requires the director of  
 14 the Gambling Control Unit within the Department of Public Safety to oversee and  
 15 administer the licensing and enforcement of the conduct of fantasy contests in the State.  
 16 The amendment establishes an annual license fee of \$2,500 for contest operators that  
 17 receive \$100,000 or more in gross fantasy contest revenue per year and authorizes the  
 18 director of the Gambling Control Unit to set an application fee to cover the costs of  
 19 administering the application process and conducting necessary background  
 20 investigations. Fantasy contest operators that receive less than \$100,000 in gross fantasy  
 21 contest revenues are not required to pay the license fee but are subject to the application  
 22 fee. The amendment establishes licensing criteria and conditions of licensure for the  
 23 operators of fantasy contests and requires the director to adopt rules.

24 The amendment requires a distribution of 10% of gross fantasy contest revenues of  
 25 fantasy contest operators that receive revenues of \$100,000 or more annually. Finally,  
 26 the amendment provides that the laws governing unlawful gambling and games of chance  
 27 do not apply to fantasy contest operators that comply with the laws governing fantasy  
 28 contests.

29 **FISCAL NOTE REQUIRED**

30 **(See attached)**