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SENATE BILL NO. 646

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws
on February 18, 2016)

(Patron Prior to Substitute—Senator McDougle)

A BILL to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 51, consisting of sections numbered 59.1-556 through 59.1-570, relating to the Fantasy Contests Act; registration required; conditions of registration; penalty.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 51, consisting of sections numbered 59.1-556 through 59.1-570, as follows:

CHAPTER 51.

FANTASY CONTESTS ACT.

§ 59.1-556. Definitions.

As used in this chapter, unless the context requires otherwise:

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

"Department" means the Department of Agriculture and Consumer Services.

"Entry fee" means cash or cash equivalent that is required to be paid by a fantasy contest participant to a fantasy contest operator in order to participate in a fantasy contest.

"Fantasy contest" includes any online fantasy or simulated game or contest with an entry fee in which (i) the value of all prizes and awards offered to winning participants is established and made known to the participants in advance of the contest; (ii) all winning outcomes reflect the relative knowledge and skill of the participants and shall be determined by accumulated statistical results of the performance of individuals, including athletes in the case of sports events; and (iii) no winning outcome is based on the score, point spread, or any performance of any single actual team or combination of teams or solely on any single performance of an individual athlete or player in any single actual event.

"Fantasy contest operator" or "operator" means a person or entity that offers fantasy contests for a cash prize to members of the public.

"Fantasy contest player" or "player" means a person who participates in a fantasy contest offered by a fantasy contest operator.

"Principal stockholder" means any person who individually or in concert with his spouse and immediate family members beneficially owns or controls, directly or indirectly, 15 percent or more of the equity ownership of a fantasy contest operator or who in concert with his spouse and immediate family members has the power to vote or cause the vote of 15 percent or more of any such operator.

§ 59.1-557. Registration of fantasy contest operators required; application for registration; issuance of registration certificate; penalty.

A. No fantasy contest operator shall offer any fantasy contest in the Commonwealth without first being registered with the Department. Applications for registration shall be on forms prescribed by the Department. Any registration issued by the Department shall be valid for one year from the date of issuance.

B. The application for registration submitted by a fantasy contest operator shall contain the following information:

1. The name and principal address of the applicant; if a corporation, the state of its incorporation, the full name and address of each officer and director thereof, and, if a foreign corporation, whether it is qualified to do business in the Commonwealth; if a partnership or joint venture, the name and address of each officer thereof;

2. The address of any offices of the applicant in the Commonwealth and its designated agent for process within the Commonwealth. If no such agent is designated, the applicant shall be deemed to have designated the Commissioner of the Department. If the operator does not maintain an office, the name and address of the person having custody of its financial records;

3. The place where and the date when the applicant was legally established and the form of its organization;

4. The names and addresses of the officers, directors, trustees, and principal salaried executive staff officer;

5. The name and address of each principal stockholder or member of such corporation; and

6. Such information as the Department deems necessary to ensure compliance with the provisions of this chapter.

C. Every registration filed under this chapter shall be accompanied by a nonrefundable, initial

60 application fee set by the Department.

61 D. As a condition of registration, a fantasy contest operator shall submit evidence satisfactory to the
62 Department that the operator has established and will implement procedures for fantasy contests that:

63 1. Prevent him or his employees and relatives living in the same household as the operator from
64 competing in any public fantasy contest offered by such operator in which the operator offers a cash
65 prize;

66 2. Prevent the sharing of confidential information that could affect fantasy contest play with third
67 parties until the information is made publicly available;

68 3. Verify that any fantasy contest player is 18 years of age or older;

69 4. Ensure that players who are the subject of a fantasy contest are restricted from entering a fantasy
70 contest that is determined, in whole or part, on the accumulated statistical results of a team of
71 individuals in which such players are participants;

72 5. Allow individuals to restrict themselves from entering a fantasy contest upon request and take
73 reasonable steps to prevent those individuals from entering the operator's fantasy contests;

74 6. Disclose the number of entries a single fantasy contest player may submit to each fantasy contest
75 and take reasonable steps to prevent such players from submitting more than the allowable number; and

76 7. Segregate player funds from operational funds in separate accounts and maintain a reserve in the
77 form of cash, cash equivalents, irrevocable letter of credit, bond, or a combination thereof in an amount
78 sufficient to pay all prizes and awards offered to winning participants.

79 E. If the registration forms are filed online using a website approved by the Commissioner of the
80 Department, the operator shall follow the procedures on that website for signing the forms.

81 F. Any operator that allows its registration to lapse, without requesting an extension of time to file,
82 shall be required to resubmit an initial registration. An extension may be granted by the Department
83 upon receipt of a written request.

84 **§ 59.1-558. Issuance of registration; denial of same.**

85 A. The Department shall consider all applications for registration and shall issue a valid registration
86 to an applicant that meets the criteria set forth in this chapter.

87 B. The Department shall deny registration to any applicant unless it finds that:

88 1. If the corporation is a stock corporation, such stock is fully paid and nonassessable and has been
89 subscribed and paid for only in cash or property to the exclusion of past services and, if the
90 corporation is a nonstock corporation, that there are at least five members;

91 2. All principal stockholders or members have submitted to the jurisdiction of the Virginia courts for
92 the purposes of this chapter, and all nonresident principal stockholders or members have designated the
93 Commissioner of the Department as their agent for receipt of process;

94 3. The applicant's articles of incorporation provide that the corporation may, on vote of a majority
95 of the stockholders or members, purchase at fair market value the entire membership interest of any
96 stockholder or require the resignation of any member who is or becomes unqualified for such position
97 under subsection C; and

98 4. The applicant meets the criteria established by the Department for the granting of registration.

99 C. The Department may deny registration to an applicant if it finds that the applicant, or any officer,
100 partner, principal stockholder, or director of the applicant:

101 1. Has knowingly made a false statement of material fact or has deliberately failed to disclose any
102 information requested;

103 2. Is or has been found guilty of any illegal, corrupt, or fraudulent act, practice, or conduct in
104 connection with any fantasy contest in this or any other state or has been convicted of a felony, a crime
105 of moral turpitude, or any criminal offense involving dishonesty or breach of trust within the 10 years
106 prior to the date of application for registration;

107 3. Has at any time knowingly failed to comply with the provisions of this chapter or of any
108 requirements of the Department;

109 4. Has had a registration or permit to hold or conduct fantasy contests denied for just cause,
110 suspended, or revoked in any other state or country;

111 5. Has legally defaulted in the payment of any obligation or debt due to the Commonwealth; or

112 6. Is not qualified to do business in the Commonwealth or is not subject to the jurisdiction of the
113 courts of the Commonwealth.

114 D. Any operator applying for registration or renewal of a registration may operate during the
115 application period unless the Department has reasonable cause to believe that such operator is or may
116 be in violation of the provisions of this chapter and the Department requires such operator to suspend
117 the operation of any fantasy contest until registration or renewal of registration is issued.

118 E. The Department shall issue such registration within 60 days of receipt of the application for
119 registration. If the registration is not issued, the Department shall provide the operator with the
120 justification for not issuing such registration with specificity.

121 **§ 59.1-559. Independent audit required; submission to Department.**

A registered operator shall (i) annually contract with a certified public accountant to conduct an independent audit, consistent with the standards accepted by the Board of Accountancy; (ii) annually contract with a testing laboratory recognized by the Department to verify compliance with the provisions of subsection D of § 59.1-557; and (iii) submit to the Department a copy of the (a) audit report and (b) report of the testing laboratory as required by clause (ii).

§ 59.1-560. Powers and duties of Department.

A. The Department shall have all powers and duties necessary to carry out the provisions of this chapter. The Department may establish procedures deemed necessary to carry out the provisions of this chapter.

B. Whenever it appears to the Department that any person has violated any provision of this chapter, it may apply to the appropriate circuit court for an injunction against such person. The order granting or refusing such injunction shall be subject to appeal as in other cases in equity.

C. Whenever the Department has reasonable cause to believe that a violation of this chapter may have occurred, the Department, upon its own motion or upon complaint of any person, may investigate any fantasy contest operator to determine whether such operator has violated the provisions of this chapter. In the conduct of such investigation, the Department may:

1. Require or permit any person to file a statement in writing, under oath or otherwise as the Department determines, as to all facts and circumstances concerning the matter to be investigated; and

2. Administer oaths or affirmations and, upon its own motion or upon request of any party, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangibles and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

D. Any proceedings or hearings by the Department under this chapter, where witnesses are subpoenaed and their attendance is required for evidence to be taken or any matter is to be produced to ascertain material evidence, shall take place within the City of Richmond.

E. Upon failure to obey a subpoena and upon reasonable notice to all persons affected thereby, the Department may apply to the Circuit Court of the City of Richmond for an order imposing punishment for contempt of the subpoena or compelling compliance.

§ 59.1-561. Suspension or revocation of registration.

A. After a hearing with 15 days' notice, the Department may suspend or revoke any registration or impose on such operator a monetary penalty of not more than \$1,000 for each violation of this chapter, not to exceed \$50,000, in any case where a violation of this chapter has been shown by a preponderance of the evidence. The Department may revoke a registration if it finds that facts not known by it at the time it considered the application indicate that such registration should not have been issued.

B. The Department may summarily suspend any registration for a period of not more than seven days pending a hearing and final determination by the Department if the Department determines that a violation of this chapter has occurred and emergency action is required to protect the public health, safety, and welfare. The Department shall (i) schedule a hearing within seven business days after the registration is summarily suspended and (ii) notify the registered operator not less than five business days before the hearing of the date, time, and place of the hearing.

C. If any such registration is suspended or revoked, the Department shall state its reasons for doing so, which shall be entered of record. Such action shall be final unless appealed in accordance with § 59.1-562. Suspension or revocation of a registration issued by the Department for any violation shall not preclude civil liability for such violation.

§ 59.1-562. Hearing and appeal.

Any person aggrieved by a denial of the Department to issue a registration, the suspension or revocation of a registration, the imposition of a fine, or any other action of the Department may seek review of such action in accordance with Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act in the Circuit Court of the City of Richmond. Further appeals shall also be in accordance with Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

§ 59.1-563. Fees and charges.

All fees, charges, and monetary penalties collected by the Department as provided in this chapter shall be paid into a special fund of the state treasury. Such funds shall be used to finance the administration and operation of this chapter.

§ 59.1-564. Department to adjust fees; certain transfer of money collected prohibited.

A. Nongeneral funds generated by fees collected in accordance with this chapter on behalf of the Department and accounted for and deposited into a special fund by the Commissioner of the Department shall be held exclusively to cover the expenses of the Department in administering this chapter and shall not be transferred to any other agency.

183 *B. Following the close of any biennium, when the account for the Department maintained under this*
184 *chapter shows expenses allocated to it for the past biennium to be more than 10 percent greater or less*
185 *than moneys collected on behalf of the Department, it shall revise the fees levied by it for registration*
186 *and renewal thereof so that the fees are sufficient but not excessive to cover expenses.*

187 **§ 59.1-565. Public inspection of information filed with Department; charges for production.**

188 *A. Except as provided in subsection B, registrations required to be filed under this chapter shall be*
189 *open to the public for inspection at such time and under such conditions as the Department may*
190 *prescribe. A charge not exceeding \$1 per page may be made for any copy of such documents as may be*
191 *furnished to any person by the Department.*

192 *B. Reports, data, or documents submitted to the Department pursuant to the audit requirements of*
193 *§ 59.1-559 and records submitted to the Department as part of an application for registration or*
194 *renewal that contain information about the character or financial responsibility of the operator or its*
195 *principal stockholders shall be deemed confidential and shall be exempt from disclosure under the*
196 *Freedom of Information Act (§ 2.2-3700 et seq.).*

197 **§ 59.1-566. Registration not endorsement.**

198 *No registered operator shall use or exploit the fact of registration under this chapter so as to lead*
199 *the public to believe that such registration in any manner constitutes an endorsement or approval by the*
200 *Commonwealth.*

201 **§ 59.1-567. Acquisition of interest in fantasy contest operator.**

202 *A. If any person acquires actual control of a registered operator, such person shall register with the*
203 *Department in accordance with § 59.1-557.*

204 *B. Where any such acquisition of control is without prior approval of the Department, the*
205 *Department may suspend any registration it has issued to such operator, order compliance with this*
206 *section, or take such other action as may be appropriate within the authority of the Department.*

207 **§ 59.1-568. Civil penalty.**

208 *In addition to the provisions of § 59.1-561, any person, firm, corporation, association, agent, or*
209 *employee who knowingly violates any procedure implemented under subsection D of § 59.1-557 or any*
210 *other provision of this chapter shall be liable for a civil penalty of not more than \$1,000 for each such*
211 *violation. Such amount shall be recovered in a civil action brought by the Department and be paid into*
212 *the State Literary Fund.*

213 **§ 59.1-569. Fantasy contests conducted under this chapter not illegal gambling.**

214 *Nothing contained in Article 1 (§ 18.2-325 et seq.) of Chapter 8 of Title 18.2 shall be applicable to a*
215 *fantasy contest conducted in accordance with this chapter. The award of any prize money for any*
216 *fantasy contest shall not be deemed to be part of any gaming contract within the purview of § 11-14.*

217 **§ 59.1-570. Liability imposed by other laws not decreased.**

218 *Nothing contained in this chapter shall be construed as making lawful any act or omission that is*
219 *now unlawful, or as decreasing the liability, civil or criminal, of any person, imposed by existing laws.*

220 **2. That the initial fee for an application for registration in accordance with this act shall be**
221 **\$50,000. Thereafter, the fee for an application for registration shall be set by the Department of**
222 **Agriculture and Consumer Services in accordance with § 59.1-564 of the Code of Virginia, as**
223 **created by this act.**