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FANTASY SPORTS BILL PROPOSED FOR NEVADA

by Kate Lowenhar-Fisher, Jennifer Gaynor, Greg Gemignani, and Jeff Silver

On August 23, 2016, the two largest daily fantasy sports (“DFS”) operators, DraftKings and FanDuel, will be presenting their proposed Nevada daily fantasy sports legislation (the “Proposed Bill”) to the Nevada Gaming Policy Committee in Las Vegas. If enacted, the Proposed Bill would create a new class of licensee for fantasy sports operators offering pay-to-play-and-win contests in Nevada. Like other forms of gaming license, the new Operator of Fantasy Sports (“OFS”) license would be granted by the Nevada Gaming Commission (“Commission”).

Unlike other forms of gaming license, the Commission would (i) be compelled to grant a license to any OFS applicant with a completed application along with a \$500 application fee, (ii) be precluded from issuing regulations applicable to contests, contest operations, or betting platforms, (iii) not have discretionary licensing powers related to OFS operations, and (iv) be limited to imposing a maximum \$1000 fine for any enforcement or disciplinary action. Additionally, there is no provision in the Proposed Bill for Nevada regulators to investigate OFS applicants, nor is there a requirement that applicants must be found suitable as is required for other gaming licenses granted by the Commission. The license fee for an OFS license is set at \$10,000 with no other applicable taxes. Finally, the Proposed Bill would deem fantasy sports to not be a sports pool, a gambling game, or a lottery under Nevada statutes.

The Proposed Bill is a response to an Industry Notice issued by the Nevada State Gaming Control Board that reflected the opinion of the Attorney General of Nevada that DFS was a form of sports pool wagering permitted in Nevada so long as it was offered by a licensed sports pool operator. As a sports wagering product, Nevada regulators believed DFS regulation was permissible despite the general prohibition in the federal Professional and Amateur Sports Protection Act (“PASPA”) on regulating any contest based directly or indirectly on the performance of athletes because Nevada has a broad exemption under PASPA to regulate sports pool activities. Since the two largest DFS operators lacked a sports pool operator’s license, they stopped offering DFS contests to Nevada residents.

If enacted, the Proposed Bill would pave the way for DFS operators to offer DFS contests to Nevada residents. The Proposed Bill does not exempt current gaming licensees from suitability requirements or regulatory requirements regarding suitable operations based on their interaction or involvement with DFS or an OFS licensee. The Proposed Bill is solely a Nevada bill and has no impact on the laws of other states or federal law. Whether current Nevada gaming licensees will participate in interstate DFS or be involved with an OFS licensee involved with interstate DFS is not clear because at least 10 states have Attorney General Opinions identifying DFS as an illegal form of gambling and two federal prosecutors’ offices have confirmed that there are ongoing investigations regarding the legality of DFS in interstate commerce under federal law.

The proposed legislation is one of the topics that will be addressed at the Nevada Gaming Policy Committee’s meeting on August 23, 2016. No action will be taken by the Policy

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Committee in this meeting regarding the legislation, which is on the agenda only for discussion. The Policy Committee is tasked by Nevada Governor Sandoval with preparing recommendations on issues including daily fantasy sports for consideration by the Commission, the Nevada Gaming Control Board, and the Nevada Legislature.

The full text of the Proposed Bill may be found at:

<http://gaming.nv.gov/modules/showdocument.aspx?documentid=11359>

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