



LEGISLATIVE MEMORANDUM

To: Members, Wisconsin State Senate and Assembly
From: Julaine K. Appling, President, Wisconsin Family Action
Lorri Pickens, Executive Director, Citizens Against Expanded Gambling
Date: September 11, 2017
Re: LRB 2122 – Daily Fantasy Sports Registry, relating to: registration of fantasy contest operators, requiring the exercise of rule-making authority, and providing a penalty

We are writing to urge you to *not* co-sponsor LRB 2122, proposed by Representative Tyler Vorpapel (R-Plymouth) and Senator Dan Feyen (R-Fond du Lac), joined by Rep. Cory Mason (D-Racine).

The bill would legalize online gambling and represents the largest expansion of gambling in Wisconsin’s history. The proposed “Daily Fantasy Sports (DFS) bill” allows the state to force internet gambling into nearly every home, every dorm room and onto every smart phone in the state, a far greater expansion of commercialized gambling than constituents, legislators and state media have been led to believe.

Constitutional issues with the proposal

In an attempt to make DFS constitutionally permissible, LRB 2122 defines DFS as a game of skill rather than a game of chance, which according to Representative Vorpapel, “clarify[ies] that these games of skill are allowed and not viewed as gambling.”

Declaring in the bill that DFS is a game of skill and not a game of chance does not make it so. But such a declaration is the only way that DFS would have any chance of withstanding constitutional scrutiny. In 1993, Article IV of the Wisconsin state constitution was amended to prohibit gambling expansion and to clarify that all “forms of gambling are prohibited except bingo, raffles, pari-mutuel on track betting and the current state-run lottery.” This means online gaming is prohibited, including online Poker.

Furthermore, section 945.01 (1) of Wisconsin Statutes makes clear the definition of the term ‘bet’: “a bet is a bargain in which the parties agree that, dependent upon chance even though accompanied by some skill, one stands to win or lose something of value specified in the agreement.” That describes what happens with DFS.

Games of chance, like poker, often involve some amount of skill; but that doesn’t make betting on them legal per Wisconsin’s online gambling prohibition. Just like online poker, DFS relies on a large volume of less skilled players to feed the jackpot for the few who are more highly skilled.

- A recent [analysis](#) of DFS winners and losers from *Bloomberg Businessweek* shows that the “majority of DFS customers lack the skill to ever have success and thus are relying largely on chance” to earn their money back
- [Numbers](#) from DraftKings showed that 89.3% of players had an overall negative return across 2013 and 2014.

- *The New York Times* [reported](#) that just 10 to 20 percent of DFS entrants win anything at all.
- *The Sports Business Journal* [found](#) that through the first half of the 2015 Major League Baseball season, 91% of all DFS winnings were collected by just 1% of all players.

In addition, to date, [ten state Attorneys General](#) have opined that DFS is gambling, along with other experts in this area.

Not to be ignored is the reality that the [state's compacts](#) with the Native American tribes indicate that if the state legalizes new gambling opportunities, then the tribes must be able to do the same. Thus, if DFS is legalized, it is reasonable to assume the tribes will deem this gambling, which it is, and will sue the state for the right to also offer online gambling. The result being a virtual explosion of gambling in The Badger State—an explosion that is especially targeted at young people.

Legalizing and regulating protects DFS interests, not consumers

The point of this DFS bill is to give the appearance of regulation and create the impression this is being done on behalf of consumers. However, no consumer protection groups are advocating for DFS. Only the industry itself is advocating for “legalizing” and “regulating,” a situation which should give any lawmaker pause. What industry has ever sought to regulate itself?

The so-called "consumer protections" are toothless, in place solely to give the appearance that consumers are being protected. The bills favor the gambling interests who stand to benefit by setting up a structure of self-regulation.

Expansion of gambling in Wisconsin

Gambling expansion in Wisconsin is occurring in multiple ways:

1. The Ho-Chunk Nation Legislature approved \$143 million in expansion for four of the tribe's six gaming facilities.
2. The proposed 2017-2018 Wisconsin State Budget calls for a \$1 million increase in lottery advertising to increase the number of tickets sold annually.
3. Proposed off-reservation casinos in Beloit and Shullsburg are pending approval from the Federal Bureau of Indian Affairs.

Legalizing online gambling for Daily Fantasy Sports threatens to be the largest expansion of gambling in our state's history.

Gambling that involves the state receiving funds from the operation of the gambling is especially bad. Should this DFS bill pass, as with casinos and the lottery, the state will receive some revenue, as the bill provides that DFS operators pay 3% of net revenue or \$500 for startups. In order for the state to win, its citizens must lose—and that should be a perverse notion for any government entity.

As is well documented, gambling is addictive; and opening up online gambling, such as DFS, will result in more problem gamblers, more gambler indebtedness, and more broken families. Online gambling in particular does not put money back into the economy; but rather makes it more difficult for problem gamblers in particular to be productive, contributing citizens, helping to enrich the local and state economy.

Summary

Not co-sponsoring LBR 2122 and opposing any legislation that legalizes Daily Fantasy Sports is the best way to protect Wisconsin citizens and to ensure constitutionality.

Thank you for your attention to this request involving this important issue.