

1 AN ACT relating to fantasy contests and making an appropriation therefor.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. KRS CHAPTER 239 IS ESTABLISHED AND A NEW
4 SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

5 *As used in this chapter unless the context requires otherwise:*

- 6 *(1) "Adjusted gross revenue" means the total sum of entry fees collected by a fantasy*
7 *contest operator from all participants entering a fantasy contest, less winnings*
8 *paid to participants in the contest, multiplied by the resident percentage;*
- 9 *(2) "Beginner" means a fantasy sports contest player who has entered fewer than*
10 *fifty-one (51) contests offered by a single fantasy sports contest operator and who*
11 *does not otherwise meet the definition of highly experienced player;*
- 12 *(3) "Cabinet" means the Public Protection Cabinet;*
- 13 *(4) "Confidential information" means information related to the play of a fantasy*
14 *contest by fantasy contest participants obtained as a result of or by virtue of a*
15 *person's employment;*
- 16 *(5) "Entry fee" means the cash or cash equivalent that is required to be paid by a*
17 *fantasy contest participant to a fantasy contest operator in order to participate in*
18 *a fantasy contest;*
- 19 *(6) "Fantasy contest" means any fantasy or simulated game or contest that meets the*
20 *following conditions:*
- 21 *(a) The values of all prizes and awards offered to winning participants and*
22 *made known to the participants in advance of the contest;*
- 23 *(b) All winning outcomes reflect the relative knowledge and skill of the*
24 *participants and shall be determined predominantly by accumulated*
25 *statistical results of the performance of individuals, including athletes in the*
26 *case of sports events; and*
- 27 *(c) No winning outcome is based on:*

- 1 1. Randomized or historical events;
- 2 2. The score, point spread, or any performance or performances of any
- 3 single actual team or combination of such teams; or
- 4 3. Solely on any single performance of an individual athlete or
- 5 participant in any single actual event;
- 6 (7) "Fantasy contest operator" or "operator" means a person who offers or
- 7 administers one (1) or more fantasy contests with an entry fee to the general
- 8 public, and awards a prize of value;
- 9 (8) "Fantasy contest participant" or "participant" means a person who participates
- 10 in a fantasy contest offered by a registrant;
- 11 (9) "Highly experienced player" means a person who has either:
- 12 (a) Entered more than one thousand (1,000) fantasy contests offered by a single
- 13 fantasy sports contest operator; or
- 14 (b) Won more than three (3) fantasy sports contest prizes valued at one
- 15 thousand dollars (\$1,000) or more from a single fantasy sports contest
- 16 operator. Upon making a determination that a player is a highly
- 17 experienced player, the fantasy sports contest operator shall continue to
- 18 classify the player as a highly experienced player indefinitely;
- 19 (10) "Immediate family" means a person's parents, grandparents, spouse, siblings,
- 20 children, or grandchildren residing in a home occupied by the person as a
- 21 primary residence;
- 22 (11) "Location percentage" means for each fantasy contest, the percentage, rounded
- 23 to the nearest tenth of a percent (0.1%), of the total entry fees collected from
- 24 participants located in the Commonwealth divided by the total entry fees collected
- 25 from all participants in the fantasy contest;
- 26 (12) Person" has the same meaning as in KRS 446.010;
- 27 (13) "Principal stockholder" means any person who, individually or together with his

1 or her spouse and immediate family members, beneficially owns or controls,
2 directly or indirectly, fifteen percent (15%) or more of the equity ownership of a
3 registrant or who, together with his or her spouse and immediate family
4 members, has the power to vote or cause the vote of fifteen percent (15%) or more
5 of a registrant;

6 (14) "Registered fantasy contest operator" or "registrant" means a fantasy contest
7 operator that has been issued a valid registration by the cabinet;

8 (15) "Script" means automating a manual act using a coding language online,
9 whereby a list of multiple commands may be executed without the user's
10 interaction; and

11 (16) "Secretary" means the secretary of the Public Protection Cabinet.

12 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 239 IS CREATED TO
13 READ AS FOLLOWS:

14 (1) No fantasy contest operator shall offer a fantasy contest to residents of the
15 Commonwealth without a valid registration issued by the cabinet, except that
16 fantasy contest operators with fewer than one hundred (100) participants located
17 in the Commonwealth in a calendar year shall be exempt from this requirement.

18 (2) Any person seeking to be registered as a fantasy contest operator shall submit an
19 application to the cabinet on a form prescribed by the cabinet as promulgated in
20 an administrative regulation, accompanied by payment of the required fee
21 established in subsection (4) of this section.

22 (3) The applicant shall provide the following information to the cabinet as a
23 prerequisite for registration:

24 (a) The name of the applicant;

25 (b) The location of the applicant's principal place of business;

26 (c) A disclosure of ownership of the applicant including all directors, officers,
27 and principal stockholders;

1 (d) A designation of the responsible party who is the agent for the contest
 2 operator for all communications with the cabinet;

3 (e) 1. The criminal record of all officers, general partners, and principal
 4 stockholders of the applicant.

5 2. An applicant may not be eligible for registration or renewal as a
 6 fantasy contest operator if the applicant or any of its officers, general
 7 partners, or principal stockholders has been convicted of or has
 8 entered a plea of nolo contendere or guilty to a felony; and

9 (f) Any other documentation the cabinet may require.

10 (4) (a) The initial registration fee for a fantasy contest operator shall be five
 11 thousand dollars (\$5,000).

12 (b) The annual renewal fee for a fantasy contest operator shall be an amount
 13 equal to the greater of:

14 1. Six percent (6%) of the adjusted gross revenues for the prior calendar
 15 year; or

16 2. Five thousand dollars (\$5,000).

17 (c) The initial registration fee and the annual renewal fee shall be deposited
 18 into the fantasy contest administration fund established in Section 4 of this
 19 Act.

20 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 239 IS CREATED TO
 21 READ AS FOLLOWS:

22 (1) (a) The cabinet shall promulgate administrative regulations for the operation
 23 of fantasy contests as necessary to enforce the provisions of this chapter, but the
 24 cabinet shall not promulgate administrative regulations limiting or regulating:

25 1. Rules or the administration of an individual contest or contests;

26 2. The statistical makeup of a contest or contests; or

27 3. The digital platform of an operator.

1 **(b) The cabinet shall promulgate the administrative regulations listing the**
2 **requirements for registration within thirty (30) days of the effective date of**
3 **this Act.**

4 **(2) The cabinet shall consider all applications for registration and shall issue a valid**
5 **registration to an applicant that meets the criteria set forth in Section 2 of this**
6 **Act and any administrative regulations promulgated by the cabinet.**

7 **(3) (a) The cabinet shall have thirty (30) days after receiving an initial application**
8 **to issue a registration or deny the application.**

9 **(b) The cabinet shall prepare and issue a written statement setting forth the**
10 **reasons why an application for registration has been denied.**

11 **(4) All fantasy contest operators who meet the requirements for registration shall be**
12 **registered by January 15, 2019.**

13 **(5) The cabinet may revoke, deny, or suspend the registration of a fantasy contest**
14 **operator if it finds that:**

15 **(a) Any partner, member, officer, or principal stockholder of the operator has**
16 **been convicted of a felony in this state, a felony in another state which**
17 **would be a felony if committed in this state, or a felony under the laws of**
18 **the United States. For purposes of this paragraph, the term "convicted"**
19 **means having been found guilty, regardless of adjudication of guilt, as a**
20 **result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo**
21 **contendere; or**

22 **(b) Any fantasy contest operator has:**

23 **1. Violated any order of the secretary or any of the provisions set forth in**
24 **this chapter;**

25 **2. Failed to meet the requirements for licensure under this chapter; or**

26 **3. Used fraud, misrepresentation, or deceit in applying for or attempting**
27 **to apply for a registration or otherwise in operating or offering to**

1 operate a fantasy contest.

2 (6) If it appears to the secretary, based upon credible evidence presented in a written
3 complaint, that a person is operating or offering to operate a fantasy contest
4 without being registered, the secretary may issue an order to cease and desist the
5 activity.

6 (7) The secretary shall set forth in the order:

7 (a) The statutes and administrative regulations alleged to have been violated;

8 (b) The facts alleged to have constituted the violation; and

9 (c) The requirement that all unauthorized practices immediately cease.

10 (8) (a) Within ten (10) days after service of the order to cease and desist, the person
11 may request a hearing on the question of whether acts or practices in
12 violation of this section have occurred. The hearing shall be conducted
13 pursuant to KRS Chapter 13B.

14 (b) The person may appeal the final order of the cabinet with the Franklin
15 Circuit Court within thirty (30) days of the hearing.

16 (9) To ensure that the cabinet is not spending more than what is necessary to cover
17 administrative expenses, on June 30 of each year, the cabinet shall submit to the
18 Legislative Research Commission and the Interim Joint Committee on Licensing,
19 Occupations, and Administrative Regulations Committee a written report
20 detailing financial transactions, including:

21 (a) The number of applications received;

22 (b) The number of applications approved;

23 (c) The number of applications denied;

24 (d) The amount of funds received from initial registration fees;

25 (e) The amount of funds received from annual renewal fees; and

26 (f) The amount of funds expended to enforce the provisions of this chapter.

27 (10) KRS Chapters 230 and 528 shall not apply to fantasy contests operated in

1 accordance with this chapter.

2 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 239 IS CREATED TO
3 READ AS FOLLOWS:

4 (1) (a) There is hereby established in the State Treasury a restricted account to be
5 known as the fantasy contest administration fund. The fund shall consist of
6 moneys received from the money collected under this chapter and state
7 appropriations.

8 (b) 1. Amounts deposited in the fund shall be used for administrative
9 expenses and disbursed by the Finance and Administration Cabinet
10 upon the warrant of the Public Protection Cabinet.

11 2. The remaining funds not used for administrative purposes shall be
12 transferred to the Kentucky Employees Retirement System established
13 under KRS 61.510 to 61.705 and 78.510 to 78.852.

14 3. Any interest accruing to the fund shall become a part of the fund and
15 shall not lapse.

16 (2) Notwithstanding KRS 45.229, fund amounts not expended at the close of a fiscal
17 year shall not lapse but shall be carried forward into the next fiscal year.

18 (3) Moneys deposited in the fund are hereby appropriated for the purposes set forth
19 in this section and shall not be appropriated or transferred by the General
20 Assembly for any other purposes.

21 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 239 IS CREATED TO
22 READ AS FOLLOWS:

23 (1) (a) A registrant offering fantasy contests shall annually submit its records to a
24 certified public accountant to perform an annual independent audit
25 consistent with the standards of the American Institute of Certified Public
26 Accountants to ensure compliance with all of the requirements in this
27 chapter.

1 **(b) The registrant shall pay all costs of the audit. The audit shall cover one (1)**
2 **fiscal year.**

3 **(2) (a) Each registrant shall keep daily records of its operations and shall maintain**
4 **the records for at least four (4) years.**

5 **(b) The records shall sufficiently detail all financial transactions to determine**
6 **compliance with the requirements of this chapter and shall be available for**
7 **audit and inspection by the cabinet during the registrant's regular business**
8 **hours.**

9 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 239 IS CREATED TO
10 READ AS FOLLOWS:

11 **(1) A registrant shall implement commercially reasonable procedures for the conduct**
12 **of fantasy contests requiring an entry fee that are intended to:**

13 **(a) Prevent the registrant, its employees, and the immediate family of employees**
14 **from competing in any public fantasy contest with a cash prize offered by**
15 **any fantasy contest operator;**

16 **(b) Prevent sharing of confidential information with third parties that could**
17 **affect fantasy contest play until that information is made publicly available;**

18 **(c) Verify that each fantasy contest participant in each fantasy contest is**
19 **eighteen (18) years of age or older;**

20 **(d) Prevent an individual who is a participant or game official in an actual**
21 **sporting event or competition from participating in any fantasy contest that**
22 **is determined in whole or in part on the performance of that individual, the**
23 **individual's actual team, or the accumulated statistical results of the**
24 **sporting event or competition in which the individual is a participant or**
25 **contest official;**

26 **(e) Allow an individual upon request to exclude himself or herself from**
27 **entering a fantasy contest upon request and provide reasonable steps to**

- 1 prevent that person from entering the fantasy contests offered by the fantasy
2 contest operator;
- 3 (f) Disclose the number of entries that a participant may submit to each
4 fantasy contest;
- 5 (g) Provide reasonable steps to prevent participants from submitting more than
6 the allowable number of entries;
- 7 (h) 1. In any contest involving more than one hundred (100) entries, prevent
8 a participant from submitting more than the lesser of:
- 9 a. Three percent (3%) or more of all entries; or
10 b. One hundred fifty (150) entries.
- 11 2. Notwithstanding subparagraph 1. of this paragraph, a registrant may
12 establish contests in which there are no restrictions on the number of
13 entries if:
- 14 a. The registrant clearly discloses that there are no limits on the
15 number of entries by each participant in the contest; and
16 b. That the entry fee is fifty dollars (\$50) or more per entry;
- 17 (i) Segregate participants' funds from operational funds or maintain a reserve
18 in the form of cash, cash equivalents, payment processor reserves, payment
19 processor receivables, an irrevocable letter of credit, a bond, an escrow
20 account approved by the cabinet, or a combination thereof, in the amount of
21 the deposits in participants' accounts for benefit and protection of the funds
22 held in those accounts;
- 23 (j) Distinguish highly experienced participants and beginner participants and
24 ensure that highly experienced participants are conspicuously identified to
25 all participants;
- 26 (k) Prohibit the use of external scripts in fantasy contests that give a participant
27 an unfair advantage over other participants and make all authorized scripts

- 1 readily available to all fantasy contest participants;
- 2 (l) Clearly and conspicuously disclose all rules that govern its contests,
3 including the material terms of each promotional offer at the time the offer
4 is advertised; and
- 5 (m) Use technologically reasonable measures to limit each fantasy contest
6 participant to one (1) active account with that operator.
- 7 (2) A registrant shall not conduct, operate, or offer a fantasy contest that:
- 8 (a) Utilizes:
- 9 1. Video or mechanical reels or symbols or any other depictions of slot
10 machines, poker, blackjack, craps, or roulette; or
- 11 2. Any device that qualifies as or replicates contest activities that
12 constitute gaming; or
- 13 (b) Includes a university, college, high school, or youth athletic contest or
14 event.
- 15 (3) Officers and directors of registrants along with their immediate family are
16 prohibited from competing in any fantasy contest offered by any fantasy contest
17 operator in which the operator offers a cash prize.
- 18 (4) (a) Any person who knowingly violates any provision of this chapter shall:
- 19 1. For the first offense, be liable for a civil penalty of not less than one
20 thousand dollars (\$1,000) nor more than five thousand dollars
21 (\$5,000) for each act or omission that constitutes a violation; or
- 22 2. a. For a second or subsequent offense, be liable for a civil penalty
23 of not less than five thousand dollars (\$5,000) and not more than
24 twenty-five thousand dollars (\$25,000); or
- 25 b. Revocation of registration at the discretion of the secretary.
- 26 (b) A civil penalty assessed under this subsection shall accrue to the
27 Commonwealth and may be recovered in a civil action brought by the

1 *cabinet.*
2 *(c) Nothing in this chapter shall deprive an aggrieved participant of any*
3 *personal right of redress.*