

# DFS Regulation Now Inevitable, Say U.S. Gaming Experts

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Regulation for popular daily fantasy sports contests is coming, with the key question being whether states or the federal government adopt a traditionally heavy-handed or more light-touch approach, former U.S. casino regulators told GamblingCompliance.

Allegations of insider trading at and **formal investigations** into DraftKings and FanDuel, the top U.S. daily fantasy operators, have in recent weeks put the sector on a collision course with some form of state or federal oversight, former gaming regulators agreed.

"I think that regulation is inevitable, and the allegations and the heavy advertising in particular have really caused a lot of policymakers and regulators to pause and think daily fantasy sports through," said Dennis Neilander, who was chairman of the Nevada Gaming Control Board (NGCB) from 2001 to 2010.

This year, 12 states have considered legislation addressing fantasy sports competitions, compared with just two states last year, according to **U.S. Internet Gambling Regulatory Tracker**, GamblingCompliance's legislative monitoring service.

Notably, a small but growing number of those states, some in response to developments at DraftKings and FanDuel, have now begun to mull legislation that would subject the unregulated daily fantasy industry to the kind of oversight currently applied to online gambling.

For instance, a **California bill** introduced last month would require daily fantasy operators to obtain licenses from the California Department of Justice, implement age-verification and geolocation systems, and provide self-exclusion options for problem gamblers.

At the same time, a Pennsylvania draft bill was floated last week that would see daily fantasy operators regulated by the Pennsylvania Gaming Control Board, while also mandating that those operators offer competitions through websites controlled by the state's 12 licensed casinos.

"For DraftKings and FanDuel it's a hard pill to swallow, but I told them [last week that they had to know that regulations were coming," said Republican Pennsylvania Representative George Dunbar, the author

of the draft bill.

Other states known to be exploring some form of daily fantasy sports regulation include Florida, Illinois, Michigan, Massachusetts, New York and Washington.

Meanwhile, at the federal level, members of Congress from New Jersey earlier this month urged the Federal Trade Commission to determine whether it has the authority to issue regulations governing daily fantasy contests.

U.S. Representative Frank Pallone, a New Jersey Democrat, also pushed last month for a hearing in the House Energy and Commerce Committee to probe parallels between daily fantasy competitions and traditional sports wagering.

With calls for formal oversight beginning to mount, Mark Lipparelli, NGCB chairman from 2010 to 2012, said that the U.S. should embrace “light regulation,” an approach that would require daily fantasy operators to self-regulate in accordance with a set of guidelines developed at the state or federal level.

“At this stage, I don’t see the market failures justifying a traditionally heavy regulatory model with high fees and taxes,” said Lipparelli, a Republican who was recently appointed to serve in the Nevada Senate.



“The convergence of social, fantasy, skill, and other contests has reached a point where we need to embrace light regulation. Without some clarity, we are going to see a steady diet of arguments about existing gaming laws that frankly, in most cases, have not kept pace with industry innovation,” said Mark Lipparelli, former chairman of the Nevada Gaming Control Board.

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John Maloney, who spent eight years in the Investigations Division of the NGCB and a further four years with the Queensland Casino Control Division in Australia, said that any U.S. approaches to daily fantasy regulation should share certain minimum requirements.

Those would include a background investigation of operators, the development of internal controls to ensure compliance with anti-money laundering laws, and the implementation of age-verification technology, said Maloney, now a gaming attorney in private practice in Nevada.

Another regulatory issue to address, particularly in light of the insider trading allegations leveled against

DraftKings, will be the extent to which daily fantasy operator employees may participate, if it all, in daily fantasy competitions.

U.S. state lotteries have long banned their employees from playing lottery games, and it was surprising that daily fantasy operators had not done the same until only recently, said Robert McLaughlin, who was director of the New York Lottery from 2006 to 2009.

"They are going to have to live with the consequences to a certain extent," said McLaughlin, now head of the gaming law practice at Hodgson Russ in New York.

"I can foresee a regulatory scheme developed by individual states or the federal government that would require robust licensing as well as robust compliance to continue to operate."

Gary Ehrlich, deputy director of the New Jersey Division of Gaming Enforcement from 1980 to 2008, said that a federal framework for daily fantasy sports would best suit the nascent industry, some of whose members are currently operating in as many as 44 states.

"Could individual states decide to outlaw or license and regulate daily fantasy sports? Maybe," said Ehrlich, now a gaming attorney and principal with Catania Gaming Consultants in New Jersey.

"But that would result in a hodgepodge of laws that would be inefficient from both an oversight/integrity perspective and an economic perspective."

Still, Mark Hichar, a gaming attorney with Hinckley, Allen and Snyder in Rhode Island, said that regulatory action on daily fantasy sports will more likely remain concentrated at the state level, where lawmakers and regulators could proceed down any number of paths, including light regulation, heavy regulation or even outright prohibition.

"Light regulation focusing mainly on consumer protection issues, such as age-verification requirements and the segregation of customer deposits, will be coming in states that view daily fantasy sports as a lawful activity," Hichar predicted.

Massachusetts could be one state where light regulation is pioneered in the near-term, he said.

The state's attorney general, Maura Healey, has already said that she believes daily fantasy contests are lawful, while the Massachusetts Gaming Commission will become the first state gaming agency to publicly explore possible regulatory approaches to daily fantasy contests when it **meets to discuss the matter** on Thursday.

Elsewhere, Hichar said that although big states such as California may continue to explore heavy, intrastate online gambling-style regulation for daily fantasy operators, smaller states will probably not seek such regulation because they lack the level of player liquidity needed to sustain a standalone daily fantasy market.

Looking further ahead, Neilander, the former NGCB chairman who is now a gaming attorney with Kaempfer Crowell in Nevada, said that light regulation could emerge as the most prevalent form of oversight for the daily fantasy industry, especially if the politically influential U.S. professional sports leagues continue to endorse the business.

One such league, the National Basketball Association, told ESPN last week that it would be maintaining its current business relationship with FanDuel, but that daily fantasy operators should be regulated to provide transparency to consumers.

"If the professional sports leagues continue to support the daily fantasy sports industry, they will definitely have a big say regarding the extent to which it's eventually regulated," Neilander said.

Massachusetts-headquartered DraftKings and New York-based FanDuel, which together control 90 percent of the U.S. daily fantasy sports market, have **recently suggested** that they, too, would be open to the possibility of regulation.

Increasingly, their focus appears to be on ensuring that any future rules are not overburdensome.

"We are seeing a number of state regulators and other authorities taking a reasoned and measured approach to the daily fantasy sports business and hope that trend continues," DraftKings said in a statement last week.

*Additional reporting by Sara Friedman.*

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