

Daily Fantasy Facing Increased U.S. Legal Scrutiny

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Amid an increase in advertising to coincide with the new NFL season, daily fantasy sports are rapidly attracting heightened regulatory and legislative scrutiny from state and federal policymakers.

Despite the marketing blitz, Fantasy Sports Trade Association (FSTA) chairman Peter Schoenke insists the contests remain games of skill based on “sports knowledge and strategy.”

“Fantasy sports bring fans closer to the games they love and have been a major driver of fan interest and engagement for decades,” Schoenke told GamblingCompliance.

“While fantasy contests involving cash prizes may have brought increased attention to the sport, they have not changed the nature of the game.”

DraftKings and FanDuel in particular have noticeably ramped up their marketing over the past month as they bid to extend their lead over an **increasing number of rival companies** in the daily fantasy sports space.

However, in recent weeks various media outlets as well as policymakers in several states and in Congress have all either questioned the legality of daily fantasy games or pondered whether they should be formally regulated.

The scrutiny should not be a surprise, said Robert McLaughlin, head of the gaming practice at law firm Hodgson Russ in Albany and a former director of the New York Lottery.

“You are inviting regulators to ask what is going on and figure out how to protect the public when they start seeing millions of dollars spent on wagering, whether it is called fantasy sports or not,” McLaughlin said.

On Tuesday, New Jersey’s U.S. Senator Cory Booker became the latest policymaker to take an interest in daily fantasy sports when he told the Meadowlands Matters blog that he was studying fantasy sports to

see if it is a form of gambling.

"I think that it's right for us to ask questions, but I don't have any conclusion or opinion yet because I haven't dug enough into it," said Booker.

"There are some of my colleagues who are looking at it even more," he said. "Obviously the [Senate] Commerce Committee, which I'm on, is the right place to do it."

Booker's comments come **less than a week after** New Jersey Representative Frank Pallone formally asked for a hearing on the topic before the House Energy and Commerce Committee.

The committee's chairman, Republican Fred Upton of Michigan, has since said such a hearing is likely to be held.

The critical eye of New Jersey lawmakers towards fantasy sports could be linked to the Garden State's **long-standing efforts to overturn a federal ban on legalized sports betting**, said Daniel Wallach, a shareholder in the law firm of Becker and Poliakoff.

"Pallone's background as a supporter for New Jersey sports betting shouldn't be lost on lawmakers," Wallach told GamblingCompliance.

"While he might not be the ideal messenger for the issue, it could resonate with other members of Congress."

As for state action regarding fantasy sports, Wallach said the announcement last week by Massachusetts attorney general Maura Healey that her office was reviewing the legality of fantasy sports could turn out to have wider repercussions in other states that may also want to consider the issue.

"The most immediate point of entry for every state is for the attorney general to review fantasy sports and possibly issue an advisory or formal opinion to give guidance to lawmakers," Wallach said.

As far as the FSTA is concerned, Schoenke said the review of fantasy sports by attorney generals in different states is less a cause for concern than it is an opportunity to educate policymakers on the industry.

"The only legislation and attorney general opinions this year that passed were both positive for fantasy sports and those were in Kansas," said Schoenke, referring to a bill passed earlier this year formally exempting fantasy sports from the state's gambling laws.

The FSTA is continuing to expand its lobbying efforts in Michigan, where state Senator Curtis Hertel introduced a bill **in August** that would classify daily fantasy sports as legal.

Meanwhile, outreach efforts are also beginning in California after Assemblyman Adam Gray introduced

a bill to establish a licensing and tax regime for "Internet fantasy sports games" **earlier this month**.

Elsewhere, the Nevada Gaming Control Board has said it is **studying the legality of daily fantasy sports games**.

In August, the executive director of Michigan's Gaming Control Board **told GamblingCompliance** that daily fantasy sports should be considered a form of gambling under state law.

"The operation of fantasy sports contests in states where the law is ambiguous could lead to more momentum for state regulations," said Mark Hichar, chair of the gaming law group at Hinckley Allen in Providence.

"It doesn't surprise me that the public doesn't draw a bright line distinction between fantasy sports and sports betting," Hichar told GamblingCompliance.

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