

# WEST VIRGINIA LEGISLATURE

## 2024 REGULAR SESSION

Introduced

### House Bill 5667

FISCAL  
NOTE

By Delegates Cannon, Chiarelli, Smith, Willis, and

Maynor

[Introduced February 13, 2024; Referred to the  
Committee on Technology and Infrastructure]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §29-22F-1, §29-22F-2, §29-22F-3, §29-22F-4, §29-22F-5, §29-22F-6, §29-  
 3 22F-7, §29-22F-8, §29-22F-9, and §29-22F-10 all relating to permitting the operation of  
 4 daily fantasy sports contests in which participants own, manage, or coach imaginary teams  
 5 in competition against the operator responsible for creating, administering or operating  
 6 such contest; defining terms; detailing duties and powers of the West Virginia Lottery  
 7 Commission; providing rule-making authority and emergency rule-making authority;  
 8 establishing license requirements and prohibitions; defining duties of an operator  
 9 conducting daily fantasy sports contests; authorizing Lottery Commission to collect  
 10 licensing fees for daily fantasy sports contest operators; requiring independent audits of  
 11 daily fantasy sports contests; requiring investigation of prohibited conduct and authorizing  
 12 the reporting of same to law enforcement; authorizing the West Virginia Lottery  
 13 Commission to levy and collect a tax on the privilege of operating daily fantasy sports  
 14 contests of 15 percent of adjusted gross daily fantasy sports contest receipts; creating the  
 15 West Virginia Daily Fantasy Sports Contests Fund; defining how moneys deposited in the  
 16 West Virginia Daily Fantasy Sports Contests Fund shall be distributed; and providing for  
 17 compulsive gaming assistance and requiring daily fantasy sports contest operators to  
 18 provide for self-exclusion from contests.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 22F. WEST VIRGINIA DAILY FANTASY SPORTS CONTEST ACT.**

<b><u>§29-22F-1.</u></b>	<b><u>Short</u></b>	<b><u>Title.</u></b>
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1	<u>This article shall be known and may be cited as the West Virginia Daily Fantasy Sports</u>	
2	<u>Contest Act.</u>	

<b><u>§29-22F-2.</u></b>	<b><u>State authorization of Daily Fantasy Sports Contests.</u></b>
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3           (1) "Adjusted gross daily fantasy sports contest receipts" means the amount equal to the  
4 total of all entry fees that a daily fantasy sports operator collects from all participants less only the  
5 total of all prizes paid out as prizes to all participants multiplied by the location percentage for this  
6 State.

7           (2) "Commission" or "State Lottery Commission" means the West Virginia Lottery  
8 Commission, created by §29-22-1 et seq. of this code.

9           (3) "Entry fee" means a nonrefundable cash or cash equivalent that is paid by a participant  
10 and set in advance by a daily fantasy sports contest operator granting the participant the right to  
11 participate in a daily fantasy sports contest.

12           (4) "Daily fantasy sports contest" means any online fantasy or simulated game or contest  
13 of skill with an Entry Fee in which:

14           (A) The values of all prizes offered to a winning participant are established and made  
15 known to the participant in advance of the contest;

16           (B) All winning outcomes reflect the relative knowledge and skill of the participant;

17           (C) The participant assembles, owns, or manages a fictional entry or roster of actual  
18 professional or amateur athletes, in real-world sports or E-sports events; and

19           (D) Competes for prizes awarded by the daily fantasy sports contest operator based on  
20 terms and conditions published by the daily fantasy sports operator and made known to the  
21 participant in advance of the contest;

22           (E) Winning outcomes are determined solely by clearly-established scoring criteria based  
23 on one or more statistical results of the performance of an individual athlete in a real-world event or  
24 an E-sports event, including, but not limited to, a fantasy score; and

25           (F) No winning outcome is entirely based on the score, point spread, or any performance  
26 of any single actual team or combination of teams or solely on any single performance of an  
27 individual athlete or player in any single actual event. Daily fantasy contest does not include any  
28 daily fantasy sports contest without an Entry Fee.

29 (5) "Director" means the Director of the West Virginia Lottery Commission.

30 (6) "Large Operator" means either:

31 (A) An operator, that, at the time of receiving its initial or renewed daily fantasy sports  
32 contest operator license has adjusted gross daily fantasy sports contests receipts greater than or  
33 equal to \$1,000,000 for the preceding twelve months; or

34 (B) An operator that, at any point, achieves ten-thousand or more daily fantasy sports  
35 contest participants with an active account, and who participated in at least one daily fantasy  
36 sports contest with an entry fee.

37 (7) "Location percentage" means, for each authorized daily fantasy sports activity, the  
38 percentage rounded to the nearest tenth of one percent (0.1%) of the total entry fees collected  
39 from players located in this State, divided by the total entry fees collected from all players in the  
40 daily fantasy sports activity.

41 (8) "Daily Fantasy Sports Contest Operator" or "Operator" shall mean a person or entity  
42 that offers Daily Fantasy Sports Contests to members of the public. This shall not include an  
43 Internet Service Provider or a provider of mobile data services merely as a result of that entity's  
44 transporting general traffic that may include a Daily Fantasy Sports Contest.

45 (9) "Participant" means a natural person or individual who participates in a daily fantasy  
46 sports contest offered by a daily fantasy sports operator.

47 (10) "Qualified applicant" means an applicant for a license under this article whose  
48 application meets the mandatory minimum qualification criteria as required by the commission.

**§29-22F-4. Commission duties and powers.**

1 (a) In addition to the duties set forth elsewhere in this article of this code, the commission  
2 shall have the authority to regulate the conduct of daily fantasy sports contest operators, as  
3 defined under this article: *Provided*, That such authority shall not extend to daily fantasy sports  
4 contests in which participants own, manage, or coach imaginary teams in competitions against

4 other participants, and not against the individual or entity responsible for creating, administering or  
5 operating such contest, for a prize and/or award.

6 (b) The Commission shall examine the regulations implemented in other states where  
7 daily fantasy sports contests are conducted and shall, as far as practicable, adopt a similar  
8 regulatory framework through promulgation of rules and regulations: *Provided*, That said rules  
9 and regulations adequately ensure that daily fantasy sports contest operators are suitable to offer  
10 daily fantasy sports contests under this article.

11 (c) The Commission shall levy and collect all fees, surcharges, civil penalties, and monthly  
12 taxes on adjusted gross daily fantasy sports contest receipts imposed by this article.

13 (d) The Commission has the authority, pursuant to §29A-1-1, *et seq.* and §29A-3-1, *et*  
14 *seq.* of this code, to promulgate or otherwise enact any legislative, interpretive, and  
15 procedural rules the commission considers necessary for the successful implementation,  
16 administration, and enforcement of this article. Rules proposed by the commission before  
17 December 1, 2024, may be promulgated as emergency rules pursuant to §29A-3-15 of this code.

18 (e) The Commission may exercise any other powers necessary to enforce the provisions  
19 of this article that it regulates and the rules of the commission.

20 (f) The Commission and daily fantasy sports contest operator licensees may cooperate  
21 with investigations conducted by law enforcement agencies, including, but not limited to, providing  
22 and facilitating the provision of account-level entry and participation information.

23 (g) A daily fantasy sports contest operator licensee shall make all reasonable efforts to  
24 promptly notify the commission of any information relating to:

25 (1) A confirmed breach of a relevant sports governing body's internal rules and codes of  
26 conduct pertaining to participation in real-money daily fantasy sports;

27 (2) Any conduct that corrupts any outcome related to a sports event or sports events for  
28 purposes of financial gain, including match fixing; and

29 (3) Confirmed illegal activities, including use of funds derived from illegal activity, entries to  
30 conceal or launder funds derived from illegal activity, multiaccounting, and using false  
31 identification.

**§29-22F-5. License required.**

1 (a) Except as otherwise provided in this section, a person may not offer fantasy sports  
2 contests in this state unless the person is first licensed by the Commission as a fantasy sports  
3 contest operator.

4 (b) The Commission shall not grant a license required under this article to any applicant  
5 until the Commission has published the notice in the State Register, as required by §29-22D-15(f)  
6 of this code.

7 (c) An applicant for a license issued under this article shall submit an application to the  
8 Commission in the form the Commission requires. The applicant shall submit fingerprints for a  
9 national criminal records check by a law enforcement agency. The fingerprints shall be furnished  
10 by the applicant's owners, officers, and directors (if a corporation), managers and members (if a  
11 limited liability company), and partners (if a partnership). The fingerprints shall be accompanied by  
12 a signed authorization for the release of information by the law enforcement agency. The  
13 Commission may require additional background checks on licensees when they apply for license  
14 renewal, and an applicant convicted of a disqualifying offense shall not be licensed.

15 (d) The information required by the Commission shall include documentation of all of the  
16 following:

17 (1) The name of the applicant.

18 (2) The location of the applicant's principal place of business.

19 (3) The applicant's contact information.

20 (4) The applicant's social security number or, if applicable, the applicant's federal tax  
21 identification number.

22           (5) The name and address of each individual that holds a ten percent or more ownership  
23 interest in the applicant or in shares of the applicant.

24           (6) The applicant's criminal record, if any, or if the applicant is a business entity, on request,  
25 any criminal record of an individual who is a director, officer or key employee of, or any individual  
26 who has a ten percent or more ownership interest in, the applicant.

27           (7) Any ownership interest that a director, officer, key employee or individual owner of ten  
28 percent or more of the applicant holds in a person that is or was a daily fantasy sports contest  
29 operator or similar entity in any jurisdiction.

30           (8) An identification of any business, including, if applicable, the state of incorporation or  
31 registration, in which an applicant, director, officer, key employee or individual owner of ten percent  
32 or more of the applicant, has an equity interest of five percent or more.

33           (9) Whether an applicant, director, officer, key employee or individual owner of ten percent  
34 or more of the applicant has ever applied for or been granted any license, registration or certificate  
35 issued by a licensing authority in this state or any other jurisdiction for a gaming activity.

36           (10) Whether an applicant, director, officer, key employee or individual owner of ten  
37 percent or more of the applicant has filed or been served with a complaint or other notice filed by a  
38 public body regarding the delinquency in payment of or dispute over filings concerning the  
39 payment of any tax required under federal, state or local law, including the amount of tax, the type  
40 of tax, the taxing agency and the time periods involved.

41           (11) Information sufficient to show, as determined by the commission, that the applicant  
42 can meet the requirements of procedures submitted by the applicant under this article and under  
43 any rules adopted under this article.

44           (12) The commission may adopt rules to establish additional qualifications and  
45 requirements to preserve the integrity and security of daily fantasy sports in this State and to  
46 promote and maintain a competitive daily fantasy sports market.



47 (e) On receipt of a completed application and the required fee, the Commission shall  
48 conduct the necessary background investigation to determine if the applicant meets the  
49 qualifications for licensure. On completion of the necessary background investigation, the  
50 Commission shall either issue a license or deny the application. If the application for licensure is  
51 denied, a statement setting forth the grounds for denial shall be forwarded to the applicant  
52 together with all other documents relied on by the Commission, to the extent allowed by law.

**§29-22F-6. Issuance of License; denial of same.**

1 (a) The initial license fee for an entity that, prior to the effective date of the provisions of this  
2 article, operated in the state daily fantasy sports contests in which participants competed against  
3 other participants and not the operator shall be 15% of its adjusted gross daily fantasy sports  
4 contest receipts from the preceding calendar year or \$1,000,000, whichever is less.

5 (b) The initial license fee for a fantasy contest operator that did not operate in the state for  
6 at least twelve months prior to the effective date of this article shall be \$10,000, provided that, once  
7 an operator has ten-thousand or more fantasy contest participants in the state with an active  
8 account, and who participated in at least one fantasy contest with an entry fee, then such an  
9 operator shall notify the commission and remit an application fee in the amount of \$990,000 within  
10 ten (10) days of notifying the commission.

11 (c) Licenses issued by the commission shall remain in effect for four years. The  
12 commission shall establish a process for renewal provided that the renewal fee shall be 1% of  
13 adjusted gross fantasy contests receipts for the preceding four years.

14 (d) Any operator applying for licensure or renewal of a license may operate during the  
15 application period unless the commission has reasonable cause to believe that such operator is or  
16 may be in violation of the provisions of this article and the commission requires such operator to  
17 suspend the operation of any fantasy contest until the license or renewal of a license is issued.

**§29-22F-7. Independent audits required.**

1 (a) As part of its submission for licensure or renewal, an applicant shall:

2 (1) Contract with a certified public accountant to conduct an independent audit, consistent  
3 with Generally Accepted Accounting Principles;

4 (2) Annually contract with a testing laboratory recognized by the commission to verify  
5 compliance with the provisions of this article; and

6 (3) Submit to the commission a copy of: (A) the audit report; and (B) the report of the testing  
7 laboratory.

8 (b) An initial applicant with adjusted gross daily fantasy sports contest receipts less than or  
9 equal to \$999,999 for the twelve months preceding the month of application shall not be required  
10 to submit an audit report and report of the testing laboratory until the twenty-four months following  
11 the issuance of a licensee to such a licensee.

**§29-22F-8. Reporting prohibited conduct; investigation of prohibited conduct.**

1 (a) The commission shall investigate all reasonable allegations of prohibited conduct and  
2 refer any allegations it deems credible to the appropriate law enforcement entity.

3 (b) The identity of any reporting person shall remain confidential unless that person  
4 authorizes disclosure of his or her identity or until such time as the allegation of prohibited conduct  
5 is referred to law enforcement.

6 (c) If the commission receives a complaint of prohibited conduct by an athlete, the  
7 commission shall notify the appropriate sports governing body of the athlete to review the  
8 complaint as provided by rule.

9 (d) The commission shall adopt rules governing investigations of prohibited conduct and  
10 referrals to law enforcement entities.

**§29-22F-9. Daily fantasy sports contest revenues; accounting for the state’s share of**  
**revenue imposed for the privilege of offering West Virginia Daily Fantasy Sports**  
**Contests.**

1 (a) For the privilege of holding a license to operate daily fantasy sports contests under this  
2 article, the state shall impose and collect 15% of a daily fantasy sports contest operator's adjusted

3 gross daily fantasy sports contest receipts. The accrual method of accounting shall be used for  
4 purposes of calculating the amount of the tax owed by the licensee. The taxes levied and collected  
5 pursuant to this subsection (a) are due and payable to the commission no later than the last day of  
6 the month following the calendar month in which the adjusted gross daily fantasy sports contest  
7 receipts were received and the tax obligation was accrued.

8 (b) Privilege tax obligation imposed by this section is in lieu of other taxes. -- With the  
9 exception of the ad valorem property tax collected under chapter eleven-a of this code, the  
10 privilege tax on adjusted gross daily fantasy sports contest receipts imposed by this section is in  
11 lieu of all other state and local taxes and fees imposed on the operation of, or the proceeds from  
12 operation of West Virginia Daily Fantasy Sports Contests, except as otherwise provided in this  
13 section. The consumers sales and services tax imposed pursuant to §11-15-1 et seq. of this code,  
14 and any similar local tax imposed at the municipal or county level, shall not apply to the licensee's  
15 gross receipts from any West Virginia Daily Fantasy Sports Contests or to the licensee's purchase  
16 of daily fantasy sports contest equipment, supplies, or services directly used in operation of the  
17 daily fantasy sports contests authorized by this article.

18 (c) The special fund in the State Treasury known as the West Virginia Daily Fantasy Sports  
19 Contests Fund is hereby created and all moneys collected under this article by the commission  
20 shall be deposited with the State Treasurer to the West Virginia Daily Fantasy Sports Contests  
21 Fund. The fund shall be an interest-bearing account with all interest or other return earned on the  
22 money of the fund credited to and deposited in the fund. All expenses of the commission incurred  
23 in the administration and enforcement of this article shall be paid from the West Virginia Daily  
24 Fantasy Sports Contests Fund pursuant to §29-22F-8(d) of this code.

25 (d) The commission shall deduct an amount sufficient to reimburse its actual costs and  
26 expenses incurred in administering licensed daily fantasy sports contests from the gross deposits  
27 into the West Virginia Daily Fantasy Sports Contests Fund. The amount remaining after the  
28 deduction for administrative expenses is the net profit.



13           (d) A daily fantasy sports contest operator may not pay any prize or award to a person who  
14 is on the commission's self-exclusion list. Any prize or award won by a person on the self-  
15 exclusion list shall be forfeited and shall be donated by the daily fantasy sports contest operator to  
16 the problem gaming charities or programs as identified and directed by the commission on a  
17 quarterly basis by the twenty-fifth day of the following month.

18           (e) A daily fantasy sports contest operator shall develop and maintain a program to  
19 mitigate compulsive play and curtail compulsive play, which may be in conjunction with the  
20 commission.

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NOTE: The purpose of this bill is to authorize, regulate, and tax the operation of daily fantasy sports contests in which participants utilize skill to compete against the entity operating the fantasy sports contest.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.