

SENATE No. 2273

The Commonwealth of Massachusetts

PRESENTED BY:

Eileen M. Donoghue

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to regulate online gaming, daily fantasy sports, and online sports betting.

PETITION OF:

NAME:

Eileen M. Donoghue

DISTRICT/ADDRESS:

First Middlesex

SENATE No. 2273

By Ms. Donoghue, a petition (accompanied by bill) (subject to Joint Rule 12) of Eileen M. Donoghue for legislation to regulate online gaming, daily fantasy sports, and online sports betting. Economic Development and Emerging Technologies.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act to regulate online gaming, daily fantasy sports, and online sports betting.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1: Chapter 4 of the general laws, as so appearing, is hereby amended by
2 striking out lines 67-76, in section 7, and inserting in place thereof the following: -

3 Tenth, “illegal gaming,” banking or percentage game played with cards, dice, tiles or
4 dominoes, an electronic, electrical or mechanical device or machine for money, property, checks,
5 credit or any representative of value, but excluding: (i) a lottery game conducted by the state
6 lottery commission, under sections 24, 24A and 27 of chapter 10; (ii) a game conducted under
7 chapter 23K; (iii) an online game conducted under chapter 23N; (iv) pari-mutuel wagering on
8 horse races under chapters 128A and 128C and greyhound races under said chapter 128C; (v) a
9 game of bingo conducted under chapter 271; and (vi) charitable gaming conducted under said
10 chapter 271.

11 SECTION 2: The general laws, as so appearing, is hereby amended by inserting after
12 chapter 23M, the following chapter: -

13 Chapter 23N: Regulation of Online Gaming: Daily Fantasy Sports

14 Section 1. Definitions

15 As used in this chapter, the following words shall have the following meanings unless the
16 context clearly requires otherwise:

17 (a) “Commission”, the Massachusetts Gaming Commission established under chapter
18 23K of the general laws.

19 (b) “Daily Fantasy Sports” or “DFS”, any online game in which (i) the offer or award
20 of a prize is connected to the statistical performance or finishing position of one or more persons
21 participating in an underlying amateur or professional sports competition, but does not include
22 offering or awarding a prize to the winner of or participant in the underlying competition itself;
23 (ii) the value of all prizes and awards offered to winning participants is established and made
24 known to the participants in advance of the game commencing; and (iii) the value of the prize or
25 award is not determined by the number of participants or the amount of any fees paid by those
26 participants.

27 (c) “Game Operator”, a person or entity that offers DFS for a prize to members of the
28 public.

29 (d) “Game Participant”, a person who or an entity that participates in a DFS offered
30 by a game operator.

31 (e) “Gross Revenue” or “Gross Gaming Revenue”, the total of all sums actually
32 received by a game operator less the total of all sums paid out as winnings to game participants;
33 provided, however, that the total of all sums paid out as winnings to patrons shall not include the

34 cash equivalent value of any merchandise or thing of value included in a jackpot or payout;
35 provided further, that the issuance to or wagering by game participants of any promotional
36 gaming credit shall not be included for the purposes of determining gross revenue.

37 (f) "Online Game", a game, including DFS, offered through the internet or through
38 other communications technology that allows a person utilizing money or currency of any kind
39 to transmit information to (i) risk something of value, (ii) on the outcome of an event, (iii) with
40 an opportunity to win a prize.

41 (g) "Prize", anything of monetary value, including but not limited to money, game
42 credits, merchandise, or admission to another game or contest in which a prize may be awarded.

43 Section 2. Registration Requirements

44 (a) Any game operator offering DFS in the commonwealth shall register with the
45 commission.

46 (b) The registration application shall include: (i) the name and principal address of
47 the applicant; (ii) the form of the applicant's organization, including the place and date of
48 incorporation, and, if a foreign corporation, whether the applicant is qualified to do business in
49 the commonwealth; (iii) the names and addresses of each officer, director, partner, and trustee of
50 the applicant; (iv) the names and addresses of each principal stockholder or member of such
51 corporation of the applicant; (v) the addresses of all offices of the applicant in the
52 commonwealth; (vi) the name and address of the designated agent for process in the
53 commonwealth; (vii) evidence acceptable to the commission that the operator has established
54 and will implement processes and procedures that satisfy all regulations promulgated by the
55 attorney general and the commission related to DFS and online gaming; (viii) a list and

56 description of all DFS online games offered; and (ix) any additional information the commission
57 deems necessary to ensure compliance with the provisions of this chapter.

58 (c) Every registration shall be accompanied by a nonrefundable, initial application
59 fee set by the commission, equal to the lesser of \$100,000 or one and one-half percent of the
60 gross revenue generated by the registrant in the previous calendar year; provided that if such
61 registrant did not generate any gross revenue in the preceding year, such registrant shall be
62 required to pay an initial registration of \$50,000.

63 (d) The commission may deny or revoke registration to any applicant upon finding
64 that the applicant, or any officer, partner, principal stockholder, or director: (i) has knowingly
65 made a false statement or knowingly failed to disclose any information requested; (ii) has been
66 found guilty of any illegal, corrupt, or fraudulent act in connection with online games or has been
67 convicted of a felony, a crime of moral turpitude, or any criminal offense involving dishonesty or
68 breach of trust within ten years of the date of application; (iii) has knowingly failed to comply
69 with any provisions in this chapter or any requirements set out by the commission; (iv) has
70 violated any regulation promulgated by the attorney general or the commission related to online
71 gaming; or (v) has defaulted in the payment of any obligation or debt due to the commonwealth.

72 (e) The commission shall issue a decision on registration not more than 90 days from
73 receipt of a completed application. If registration is denied, the commission shall provide the
74 operator with the justification for not issuing registration. Applicants may operate during
75 application period unless the commission or the attorney general has reason to believe that the
76 operator is in violation of this chapter or regulations promulgated by the attorney general related

77 to DFS or online gaming, and requires that the operator suspend operation until registration
78 status is granted, denied, or revoked.

79 (f) All registration and renewal fees received by the commission pursuant to this
80 section shall be deposited into the Gaming Revenue Fund establish in section 59 of chapter 23K
81 of the general laws, as so appearing.

82 Section 3. Auditing

83 (a) The commission shall audit as often as the commission determines necessary, but
84 not less than annually, the accounts, programs, activities, and functions of all registered game
85 operators.

86 (b) To conduct the audit, authorized officers and employees of the commission shall
87 have access to such accounts at reasonable times, and the commission may require the
88 production of books, documents, vouchers and other records relating to any matter within the
89 scope of the audit, except tax returns. The superior court shall have jurisdiction to enforce the
90 production of records that the commission requires to be produced under this section, and the
91 court shall order the production of all such records within the scope of any such audit.

92 (c) All audits shall be conducted in accordance with generally accepted auditing
93 standards. In any audit report of the accounts, funds, programs, activities and functions of a game
94 operator issued by the commission containing adverse or critical audit results, the commission
95 may require a response, in writing, to the audit results. The response shall be forwarded to the
96 commission within 15 business days of notification by the commission.

97 (d) On or before April 1 of each year, the commission shall submit a report to the
98 clerks of the house of representatives and the senate who shall forward the report to the house
99 and senate committees on ways and means. The report shall include, but not be limited to: (i) the
100 number of audits performed under this section, (ii) a summary of the findings of the audits, and
101 (iii) the cost of each audit.

102 Section 4. Assessment

103 (a) Any registered game operator shall pay a tax of 15 per cent on gross revenue.
104 Taxes imposed under this section shall be remitted to the department of revenue quarterly by the
105 registered game operator.

106 Section 5. Registration Is Not Endorsement

107 (a) Registration under this chapter in no way constitutes endorsement or approval by
108 the commonwealth of the game operator's activities.

109 Section 6. Promulgation of Rules and Regulations

110 (a) The commission shall promulgate regulations for the implementation,
111 administration and enforcement of this chapter. Regulations shall include: (i) ensuring fairness
112 in game play; (ii) requiring the use of geolocation technology to verify that no player is located
113 outside Massachusetts; (iii) requiring that game participants be at least 21 years of age; (iv)
114 authorizing which DFS online games may be offered for play; (v) establishing standards for
115 combatting compulsive gambling through responsible gaming practices, education, and
116 dedicated funding to support prevention, treatment, and recovery services; (vi) requiring
117 messages about responsible gaming be prominently displayed; (vii) prohibiting misleading

118 information about winning and marketing efforts that encourage excessive play; (viii) controlling
119 for any apparent conflict of interest; (ix) preventing the misuse of insider information and unfair
120 advantages by any individual or group of individuals; (x) ensuring data and transactional
121 security; and (xi) safeguarding segregation of player funds, financial guarantees, responsive
122 customer service, limitations on deposits, and secured transactions.

123 (b) The registered game operator, or an employee or agent thereof, shall at all times
124 follow all regulations promulgated by the commission and by the attorney general relative to
125 DFS or online gaming.

126 Section 7. Penalties

127 (a) A game operator, or an employee or agent thereof, who violates any provision of
128 this chapter is subject to a civil penalty not to exceed two thousand dollars for each violation,
129 which may be recovered in a civil action brought by the commission or the attorney general. The
130 penalty may be assessed whether or not the violation was willful. In determining the amount of
131 the civil penalty, the commission or the attorney general shall consider: (i) the nature of the
132 violation; (ii) the length of time the violation occurred; (iii) the risk to the public and to the
133 integrity of gaming operations created by the conduct of the person; (iv) the seriousness of the
134 conduct of the person; (v) any justification or excuse for such conduct by the person; (vi) the
135 prior history of the particular person involved with respect to gaming activity; (vii) any
136 corrective action taken by the person to prevent future misconduct; and (viii) other relevant
137 factors.

138 (b) A game operator, or an employee or agent thereof, who willfully provides false or
139 misleading information shall be subject to a civil penalty not to exceed ten thousand dollars for
140 each violation.

141 (c) In addition to collecting any civil penalties recoverable under this chapter or any
142 other general or special law, the commission or the attorney general may bring an action in the
143 superior court to restrain, prevent or enjoin any conduct prohibited by this chapter or to compel
144 action to comply immediately and fully with any order issued by the commission or the attorney
145 general. Except in cases of emergency where, in the opinion of the court, immediate abatement
146 of the unlawful conduct is required to protect the public interest, the court may fix a reasonable
147 time during which the person responsible for the unlawful conduct may abate and correct the
148 violation. The expense of the proceeding shall be recoverable from the subject of the proceeding.

149 (d) The commission or the attorney general shall issue an order to cease and desist
150 any activity if the commission or attorney general finds that a registered operator has engaged in
151 or is about to engage in an act or practice that constitutes a violation of this chapter or any other
152 laws of the commonwealth. The commission or the attorney general may take such affirmative
153 action to effectuate the order.

154 (e) All penalties collected under this chapter shall be deposited into the Gaming
155 Revenue Fund established in section 59 of the general laws chapter 23K, as so appearing.

156 SECTION 3. Sections 24, 24A and 27 of chapter 10 of the general laws, as so appearing,
157 shall not apply to a registered game operator conducting an online game in accordance with this
158 chapter.

159 SECTION 4. Section 2 of chapter 271 of the general laws, as so appearing, is hereby
160 amended, in line 4, by striking out “except as permitted under chapter 23K” and inserting in its
161 place thereof the following:- “except as permitted under chapters 23K or 23N.”

162 SECTION 5. Section 3 of chapter 271 of the general laws, as so appearing, is hereby
163 amended, in line 1, by striking out “Except as permitted under chapter 23K” and inserting in its
164 place thereof the following:- “except as permitted under chapters 23K or 23N.”

165 SECTION 6. Section 5 of chapter 271 of the general laws, as so appearing, is hereby
166 amended, in line 1, by striking out “except as permitted under chapter 23K” and inserting in its
167 place thereof the following:- “except as permitted under chapters 23K or 23N.”

168 SECTION 7. Section 5B of chapter 271 of the general laws, as so appearing, is hereby
169 amended, in line 58, by striking out “under chapter 23K” and inserting in its place thereof the
170 following:- “under chapters 23K or 23N.”

171 SECTION 8. Section 8 of chapter 271 of the general laws, as so appearing, is hereby
172 amended, by striking out lines 10-11 and inserting in its place thereof the following:- “other
173 illegal gaming that is not being conducted pursuant to chapters 23K or 23N.”

174 SECTION 9. Chapter 271 of the general laws, as so appearing, is hereby amended by
175 striking section 17A and inserting in its place thereof the following section: -

176 271:17A. Telephones, internet or other communications technology; use for gaming
177 purposes

178 Section 17A. Except as permitted under chapter 23N, whoever uses a telephone, internet
179 or other communications technology or, being the occupant in control of premises where a

180 telephone, internet or other communications technology is located or a subscriber for a
181 telephone, knowingly permits another to use a telephone, internet or other communications
182 technology so located or for which he subscribes, as the case may be, for the purpose of
183 accepting wagers or bets, or buying or selling of pools, or for placing all or any portion of a
184 wager with another, upon the result of a trial or contest of skill, speed, or endurance of man,
185 beast, bird, or machine, or upon the result of an athletic game or contest, or upon the lottery
186 called the numbers game, or for the purpose of reporting the same to a headquarters or booking
187 office, or who under a name other than his own or otherwise falsely or fictitiously procures
188 telephone, internet or other communications technology service for himself or another for such
189 purposes, shall be punished by a fine of not more than two thousand dollars or by imprisonment
190 for not more than one year.

191 SECTION 10: In the event that any part of 28 U.S. Code Chapter 178, “Professional and
192 Amateur Sports Protection Act” of 1992, is deemed unconstitutional by the United States
193 Supreme Court, there shall be a special commission to conduct a comprehensive study and offer
194 proposed legislation relative to the regulation of online sports betting. The commission shall
195 convene within 30 calendar days following any decision by the United States Supreme Court,
196 and shall review all aspects of online sports betting including, but not limited to: economic
197 development, consumer protection, taxation, legal and regulatory structures, burdens and benefits
198 to the commonwealth and any other factors the commission deems relevant. The commission
199 shall consist of: 1 person who shall be appointed by the governor who shall have industry
200 expertise in online gaming and sports betting; 1 person who shall be appointed by the
201 Massachusetts gaming commission; 2 people who shall be appointed by the president of the
202 senate, 1 person who shall be appointed by the minority leader of the senate; 2 people who shall

203 be appointed by the speaker of the house of representatives; and 1 person who shall be appointed
204 by the minority leader of the house of representatives. The commission shall elect a chair at its
205 first meeting and shall submit recommendations for legislation with the clerks of the senate and
206 the house of representatives not later than 120 calendar days following the decision by the
207 United States Supreme Court.