HOUSE DOCKET, NO. 120 FILED ON: 1/13/2021

HOUSE . . . . . No. 518

The Commonwealth of Massachusetts

PRESENTED BY:

Bradford Hill

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 relative to increasing education funding.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Bradford Hill	*4th Essex*	*1/13/2021*

HOUSE DOCKET, NO. 120 FILED ON: 1/13/2021

HOUSE . . . . . No. 518

By Mr. Hill of Ipswich, a petition (accompanied by bill, House, No. 518) of Bradford Hill relative to the regulation of online gaming and daily fantasy sports and increasing education funding from monies received from such activities. Economic Development and Emerging Technologies.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *379* OF 2019-2020.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

An Act relative to increasing education funding.

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

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

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

game of bingo conducted under chapter 271; and (vi) charitable gaming conducted under said chapter 271.

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

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

Section 1. Definitions

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

(a) "Commission", the Massachusetts Gaming Commission established under chapter 23K of the general laws.

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

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

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

(e) “Gross Revenue” or “Gross Gaming Revenue”, the total of all sums actually received by a game operator less the total of all sums paid out as winnings to game participants; provided, however, that the total of all sums paid out as winnings to patrons shall not include the cash equivalent value of any merchandise or thing of value included in a jackpot or payout; provided further, that the issuance to or wagering by game participants of any promotional gaming credit shall not be included for the purposes of determining gross revenue.

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

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

Section 2. Registration Requirements

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

(b) The registration application shall include: (i) the name and principal address of the applicant; (ii) the form of the applicant’s organization, including the place and date of incorporation, and, if a foreign corporation, whether the applicant is qualified to do business in the commonwealth; (iii) the names and addresses of each officer, director, partner, and trustee of

the applicant; (iv) the names and addresses of each principal stockholder or member of such corporation of the applicant; (v) the addresses of all offices of the applicant in the commonwealth; (vi) the name and address of the designated agent for process in the commonwealth; (vii) evidence acceptable to the commission that the operator has established and will implement processes and procedures that satisfy all regulations promulgated by the attorney general and the commission related to DFS and online gaming; (viii) a list and description of all DFS online games offered; and (ix) any additional information the commission deems necessary to ensure compliance with the provisions of this chapter.

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

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

(e) The commission shall issue a decision on registration not more than 90 days from receipt of a completed application. If registration is denied, the commission shall provide the operator with the justification for not issuing registration. Applicants may operate during the application period unless the commission or the attorney general has reason to believe that the operator is in violation of this chapter or regulations promulgated by the attorney general related to DFS or online gaming, and requires that the operator suspend operation until registration status is granted, denied, or revoked.

(f) All registration and renewal fees received by the commission pursuant to this section shall be deposited into the Public Advancement Fund established in section 7 of this bill.

Section 3. Auditing

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

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

(c) All audits shall be conducted in accordance with generally accepted auditing standards. In any audit report of the accounts, funds, programs, activities and functions of a game operator issued by the commission containing adverse or critical audit results, the commission

may require a response, in writing, to the audit results. The response shall be forwarded to the commission within 15 business days of notification by the commission.

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

Section 4. Assessment

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

(b) The tax of 15 per cent on gross revenue from any registered game operator received by the commission shall be deposited into the Public Advancement Fund established in section 7 of this bill.

Section 5. Registration Is Not Endorsement

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

Section 6. Promulgation of Rules and Regulations

(a) The commission shall promulgate regulations for the implementation, administration and enforcement of this chapter. Regulations shall include: (i) ensuring fairness in game play; (ii) requiring the use of geolocation technology to verify that no player is located

outside Massachusetts; (iii) requiring that game participants be at least 21 years of age; (iv) authorizing which DFS online games may be offered for play; (v) establishing standards for combatting compulsive gambling through responsible gaming practices, education, and dedicated funding to support prevention, treatment, and recovery services; (vi) requiring messages about responsible gaming be prominently displayed; (vii) prohibiting misleading information about winning and marketing efforts that encourage excessive play; (viii) controlling for any apparent conflict of interest; (ix) preventing the misuse of insider information and unfair advantages by any individual or group of individuals; (x) ensuring data and transactional security; and (xi) safeguarding segregation of player funds, financial guarantees, responsive customer service, limitations on deposits, and secured transactions.

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

Section 7. Public Advancement Fund

(a) There shall be established and set up on the books of the commonwealth a fund to be known as the Public Advancement Fund. The fund shall be credited with any monies accumulated under sections 2 and 4 of this chapter and all monies credited to or transferred to the fund from any other fund or source. Expenditures from the fund shall be subject to appropriation; provided, however, that 100 per cent of any expenditures from the fund shall be used to supplement, and not offset, the appropriation in line-item 7061-0008 of the general appropriation act from the previous fiscal year’s general appropriation act.

Section 8. Penalties

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 17A. Except as permitted under chapter 23N, whoever uses a telephone, internet or other communications technology or, being the occupant in control of premises where a telephone, internet or other communications technology is located or a subscriber for a telephone, knowingly permits another to use a telephone, internet or other communications technology so located or for which he subscribes, as the case may be, for the purpose of accepting wagers or bets, or buying or selling of pools, or for placing all or any portion of a wager with another, upon the result of a trial or contest of skill, speed, or endurance of man, beast, bird, or machine, or upon the result of an athletic game or contest, or upon the lottery called the numbers game, or for the purpose of reporting the same to a headquarters or booking office, or who under a name other than his own or otherwise falsely or fictitiously procures telephone, internet or other communications technology service for himself or another for such

purposes, shall be punished by a fine of not more than two thousand dollars or by imprisonment for not more than one year.

SECTION 10. There shall be a special commission to conduct a comprehensive study and offer proposed legislation relative to the regulation of online sports betting. The commission shall convene within 30 calendar days following any the passage of this bill, and shall review all aspects of online sports betting including, but not limited to: economic development, consumer protection, taxation, legal and regulatory structures, burdens and benefits to the commonwealth and any other factors the commission deems relevant. The commission shall consist of: 1 person who shall be appointed by the governor who shall have industry expertise in online gaming and sports betting; 1 person who shall be appointed by the Massachusetts gaming commission; 2 people who shall be appointed by the president of the senate; 1 person who shall be appointed by the minority leader of the senate; 2 people who shall be appointed by the speaker of the house of representatives; and 1 person who shall be appointed by the minority leader of the house of representatives. The commission shall elect a chair at its first meeting and shall submit recommendations for legislation with the clerks of the senate and the house of representatives not later than 120 calendar days following the passage of this bill.