



Puerto Rico Sports Betting and Fantasy Contest Regulations
Puerto Rico Government Gaming Commission: Public Hearing
August 19, 2020

As leading innovators in sports entertainment technology, offering among the most successful online sports wagering and fantasy contest platforms, DraftKings Inc. (“DraftKings”) and FanDuel, Inc. (“FanDuel”) appreciate the opportunity to submit testimony regarding Puerto Rico’s proposed sports betting and fantasy contest regulations. While our two companies are fierce competitors in the marketplace, we are aligned in working with U.S. jurisdictions to create competitive, successful and safe sports wagering markets.

Since the repeal of the Professional and Amateur Sports Protection Act of 1992 in May of 2018, states across the country have created legal frameworks for sports betting. Twenty-four (24) jurisdictions have authorized some form of sports betting, and we anticipate many of the remaining jurisdictions will choose to raise revenue while protecting their consumers by passing similar legislation in the coming years. DraftKings and FanDuel have been at the leading edge of these new sports betting markets.

Former Governor Rosselló signed the Government of Puerto Rico Gaming Commission Act (“Act”) into law in July 2019. The law authorizes sports betting over the internet, as well as retail sports betting at casinos, tracks, off-track betting shops, and las galleras. Although the law includes elements that are critical to a successful sports betting market, it contains critical flaws that will prevent the market from succeeding. Most notably, the law prohibits any person who has an ownership interest in a sports team or league from having an ownership interest in a sports betting entity. This blanket prohibition ignores the realities of the sports betting industry and will prevent many sports betting operators from entering the Puerto Rico sports betting market with no corresponding benefit. The prohibition extends beyond just ownership and effectively prohibits anyone affiliated with sports from having any ownership stake in a sports betting entity. These unrealistic prohibitions ignore the fact that many sports betting operators are publicly traded companies and that anyone can purchase a share in a publicly traded company by simply opening an online brokerage account. Restrictions such as the foregoing pose impossible compliance burdens on potential sports betting operators and ensure that the Puerto Rico sports betting market will not be successful.

In October 2019, Hon. Gabriel Rodríguez Aguiló introduced and sponsored a trailer bill, HB 2292, to amend the sports betting chapter of the Act. While HB 2292 proposed important modifications to current law, it did not address all the critical issues that are needed for the Puerto Rico sports betting market to succeed. Attached to this testimony as Exhibit A is a written statement detailing DraftKings’ and FanDuel’s proposed amendments to HB 2292, which was previously submitted to the Treasury and Finance Committee of the House. The attached statement includes the rationale for each proposed amendment and a summary of the amendments to the Act that are already included in HB 2292.

DraftKings and FanDuel feel it is imperative that the legislature address the numerous outstanding issues with the Act before the Puerto Rico Government Gaming Commission (“Commission”) adopts sports betting regulations. While both companies are excited about the prospect of pursuing sports betting opportunities in Puerto Rico, the current law will



exclude both DraftKings and FanDuel – as well as many other major sports betting operators – from entering the sports betting market. Simply put, to adopt regulations before amending the sports betting law would be detrimental to the Island’s market. With these changes to the Act, Puerto Rico drastically increases its chances of having a successful, competitive sports betting market. Without these changes, the Commonwealth’s sports betting market will not see consumer participation that is in line with other successful jurisdictions and will fall well short of projected tax revenue. We urge the Commission to consider working with the legislature to first amend the sports betting legislation before finalizing the sports betting regulations. In doing so, the Commission will ensure that the market has the best opportunity to succeed.

Additionally, we urge the Commission to properly address (and regulate) fantasy contests and sports betting as separate products and platforms. Twenty-two (22) states have authorized and regulated fantasy contests since 2015, and every one of them has acknowledged that fantasy contests are not wagering and thus distinct from wagering products in their state, including sports wagering. This is consistent with Federal law, as the Unlawful Internet Gambling Enforcement Act specifically excludes fantasy contest entries as not meeting the definition of a bet or wager. Just as the Act includes separate provisions – see Chapter III, bets on sports events and Chapter IV, fantasy contests – fantasy contests and sports betting should be subject to different sets of regulations as is done in every other jurisdiction that regulates fantasy contests.

In fantasy contests, participants select a team of real-world athletes and accumulate points based on the statistical performance of players in actual games. Whether a participant wins or loses depends on his or her skill relative to the other participants in the fantasy contest. The regulatory concerns around fantasy contests significantly differ from those around sports wagering, largely because in fantasy contests players compete against one another, with the operator taking a service fee. This is different from sports wagering, where players effectively bet against the sports wagering operator. Should the Commission fail to modify the proposed regulations and clearly delineate fantasy sports and sports betting, DraftKings and FanDuel believe that it is very unlikely that any fantasy contest operators will be able to enter the Puerto Rico market.

In response to the Commission’s August 10, 2020 notice of regulations, DraftKings and FanDuel will submit written comments on Gaming Laboratories International’s draft regulations within the public comment period.

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Thank you for the opportunity to provide input. We hope to continue this conversation and work with legislators and regulators to make Puerto Rico a leader in smart and effective sports betting and fantasy contest regulation.