

# Why Fantasy Sports Should Welcome Uniformity of the Law: A Suggestion that the Uniform Law Commission Become Involved in Shaping Laws Concerning Fantasy Sports

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**WHY FANTASY SPORTS SHOULD  
WELCOME UNIFORMITY OF THE LAW:  
A SUGGESTION THAT THE UNIFORM LAW  
COMMISSION BECOME INVOLVED IN SHAPING  
LAWS CONCERNING FANTASY SPORTS**

*Darren Adam Heitner\**

I. INTRODUCTION

It seems as though the season-long fantasy sports industry has been around forever as compared to daily fantasy sports, which as a sub-industry has only sprouted from the ground in the recent past.<sup>1</sup> With momentum and popularity, great controversy has followed daily fantasy sports. Even though daily fantasy sports as a sub-industry is young, the problems that the likes of FanDuel, DraftKings, and dozens (if not hundreds) of other operators have encountered are difficult to downplay. It is widely believed that controversy surrounding the daily fantasy sports industry began in New York with a war of words between FanDuel, DraftKings, and the New York Attorney General. FanDuel and DraftKings are two of the largest companies offering services in daily fantasy sports. Both were hauled into court with allegations of violating New York’s gambling laws. Ultimately, both companies entered into substantially similar settlements with the state of New York.<sup>2</sup> Within the agreements, both companies had been required to add New York to the list of states where contestants were prohibited from depositing funds or entering paid contests.<sup>3</sup> DraftKings and FanDuel were also forced to “[b]lock all people located in New York from entering fantasy sports contests that involve an entry fee.”<sup>4</sup>

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1. Marc Edelman, *Navigating the Legal Risks of Daily Fantasy Sports: A Detailed Primer in Federal and State Gambling Law*, 2016 U. ILL. L. REV. 117, 119 (2016).

2. David O. Klein, *Landmark Daily Fantasy Sports Settlement Between DraftKings, FanDuel and New York*, LINKEDIN: PULSE (Mar. 21, 2016), <https://www.linkedin.com/pulse/landmark-daily-fantasy-sports-settlement-between-draftkings-klein>.

3. *Id.*

4. *Id.*

The aforementioned settlement did not lead to a determination of whether daily fantasy sports falls into the category of competitions that provide outcomes more determinant on chance rather than skill.<sup>5</sup> This was especially important in a state such as New York, which only required that chance be a “material” element of the outcome of a pay-for-prize game for it to be determined gambling.<sup>6</sup> It is speculated that New York courts delayed deciding on the issue with the hope of change or clarification from state legislators.<sup>7</sup> While New York has evolved to explicitly exclude daily fantasy sports from its gambling laws, it leaves DraftKings, FanDuel and many competing daily fantasy sports companies in the dark as to how other states will view daily fantasy sports under their respective gambling laws. There is a global need for change and consistency. This Article explores (1) the Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA) and a desire to add clarity as it relates to whether daily fantasy sports is properly carved out therein, how daily fantasy sports would be defined, and how to determine the level of skill versus chance;<sup>8</sup> (2) the Professional and Amateur Sports Protection Act of 1992 (PASPA) and how it should create a carve out for fantasy sports;<sup>9</sup> and (3) how the Uniform Law Commission should play a role in developing effective legislation to bring finality to the legality of daily fantasy sports.<sup>10</sup>

## II. THE DISTINCTION BETWEEN DAILY FANTASY SPORTS AND TRADITIONAL FANTASY SPORTS

Fantasy sports started out as a hobby for many, but later developed into a successful business for certain players who decided to dedicate extensive time to research and develop tools to effectively analyze data.<sup>11</sup> Business-minded people have even begun dedicating themselves to helping others compile their teams’ line-ups, for a fee, to maximize their fantasy teams’ points during each game. There are books that people read, shows that people watch, and Internet message boards contestants can participate in to create the optimal team

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5. *Id.*

6. N.Y. PENAL LAW §225.00(1) (McKinney 2015).

7. *Id.*

8. *See infra* notes 37–53 (explaining UIGEA’s regulation of internet gambling, the need for a daily fantasy sports carve-out, and whether daily fantasy sports require chance or skill).

9. *See infra* notes 18–35 (discussing PASPA’s role in sports gambling regulations and the need for a daily fantasy sports carve-out).

10. *See infra* notes 54–71 (demonstrating the ULC’s role in creating uniform state statutory law and how it can assist with daily fantasy sports legislation).

11. Matt Hunt, *How Fantasy Football Works: Fantasy Football Goes Public*, HOW STUFF WORKS (Dec. 12, 2005), <http://entertainment.howstuffworks.com/fantasy-football3.htm>.

for an improved chance of success. The end goals of daily fantasy sports and traditional fantasy sports are the same—acquire the most points and win the game, with the fruits of such labor often being in the form of a hefty cash payout. The outcome of that achievement, however, can differ greatly depending on the format of the fantasy sports offering. To begin, it is important to understand the difference between daily fantasy sports and traditional season-long fantasy sports.

In traditional season-long fantasy sports, each player has his or her own team. Fantasy sports is meant to mimic the real world. The league begins when the real season starts, and the league ends when the regular season comes to a close.<sup>12</sup> Season-long fantasy sports players also get to compile an actual roster by drafting and trading, just like a general manager of a real professional sports franchise would do representing a team in a brand new league.

Daily fantasy sports differs most from season-long fantasy sports in the “duration of the contest, the type of competition, and how players are selected.”<sup>13</sup> Daily fantasy sports takes away the season-long term and condenses game play into a shorter amount of time. Daily fantasy sports contestants usually play on a daily basis, but can also play in other increments such as once per week. Similar to season-long leagues, daily fantasy sports owners pick a team from a pool of real players, points are awarded based on those players’ actual statistics, and the person with the most points is the champion; however, many daily fantasy sports competitions are structured to take place as a tournament, in which the top performers receive payouts depending on their rank on an overall leaderboard.<sup>14</sup> The meticulous selection of players to build a roster still exists in daily fantasy sports, only for more limited durations of time.

A big difference between the two types of fantasy sports is the eventual payouts for those fortunate to receive prizes.<sup>15</sup> In traditional season-long gameplay, individuals pool in money with roughly a dozen friends. If everyone puts in ten dollars, there is the potential of someone walking away with approximately one hundred dollars at the end of the season. In daily fantasy sports, the stakes tend to be much higher. In tournament play, everyone buys in at a specified entry fee

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12. Marc Edelman, *A Short Treatise on Fantasy Sports and the Law: How America Regulates its New National Pastime*, 3 HARV. J. SPORTS & ENT. L. 1, 15 (2012).

13. Nathaniel J. Ehrman, *Out of Bounds?: A Legal Analysis of Pay-To-Play Daily Fantasy Sports*, SPORTS LAW. J., Spring 2015, at 85.

14. Michael Trippiedi, *Daily Fantasy Sports Leagues: Do You Have the Skill to Win at These Games of Chance?*, 5 UNLV GAMING L.J. 201, 209 (2014).

15. *Id.* at 209–10.

and they can play against thousands of competitors.<sup>16</sup> It is not uncommon for the largest weekly payout in a DraftKings National Football League (NFL) tournament to be \$1 million to the individual who finishes in first place. Although daily fantasy sports and traditional fantasy sports are seemingly similar, various elements set them apart that call for distinctions on the federal level.

### III. THE NEED FOR FEDERAL GUIDANCE

#### A. *Professional and Amateur Sports Protection Act (PASPA) of 1992*

PASPA<sup>17</sup> makes it unlawful for any governmental entity or person to “sponsor, operate, advertise, promote, license, or authorize by law” a betting or wagering scheme based on one or more games involving amateur or professional athletes or “on one or more performances of such athletes in such games.”<sup>18</sup> In other words, states that authorize, license, or regulate gambling activities could be in violation of federal law. PASPA was initially enacted to cease the spread of “State-sponsored sports gambling,”<sup>19</sup> but, the federal government compromised by creating a grandfather clause for betting schemes that only a few states had previously sanctioned between 1976 and 1990.<sup>20</sup>

PASPA is important because it set the stage for sports gambling regulations.<sup>21</sup> Sports leagues, like the NFL, fiercely lobbied legislators to pass the legislation and remain staunch advocate of its permanence.<sup>22</sup> Sports leagues were concerned and distraught by the actions of states prior to the existence of PASPA.<sup>23</sup> For example, the NFL brought a lawsuit against Delaware for hosting lotteries tied to professional sports.<sup>24</sup> Delaware’s sports lottery was the sort of gaming that sports leagues were trying to prevent with the passage of PASPA, which left Nevada as the only state permitted to offer true betting on the outcome of single sports games at the professional and collegiate levels.<sup>25</sup> The attitude sports leagues have towards state-sponsored gaming is

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16. *Id.* at 210.

17. *Professional and Amateur Sports Protection Act*, 28 U.S.C. §§ 3701–3704 (2012).

18. *Id.* § 3702.

19. Trippiedi, *supra* note 14, at 212 (quoting S. REP. NO. 102-248, at 4 (1991) *reprinted in* 1992 U.S.C.C.A.N. 3553, 3555).

20. Eric Meer, *The Professional and Amateur Sports Protection Act (PASPA): A Bad Bet for the States*, 2 UNLV GAMING L.J. 281, 287 (2011) (quoting 28 U.S.C. § 3704(a)(1)).

21. Trippiedi, *supra* note 14, at 210.

22. *Id.* at 212.

23. *Id.*

24. *Id.*; see *Nat’l Football League v. Governor of Del.*, 435 F. Supp. 1372, 1375 (D. Del. 1977).

25. See Trippiedi, *supra* note 14, at 203, 212.

not reciprocated towards daily fantasy sports.<sup>26</sup> PASPA was not passed with the internet in mind, let alone daily fantasy sports.<sup>27</sup> PASPA has played a pivotal role in the area of sports-related gambling; thus, it is important for the PASPA to take into consideration the current landscape of sports gambling, which includes not only season-long fantasy sports, but also daily fantasy sports.

Some of the very same professional leagues that lobbied to have PASPA enacted are the same leagues that now endorse and invest in daily fantasy sports companies. Both the National Basketball Association (NBA) and the National Hockey League (NHL) have signed exclusive deals with daily fantasy sports companies.<sup>28</sup> Major League Baseball (MLB) even endorsed daily fantasy sports a year after comparing daily fantasy sports to a “flip of the coin.”<sup>29</sup>

In order to keep up with the changing landscape, Congress should either repeal PAPSAs outright or amend and clarify a carve-out specifically for daily fantasy sports, and fantasy sports in general. As is the case with Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA),<sup>30</sup> a carve-out is not an unusual phenomenon. A carve-out can help to distinguish different types of games, and provide further legal clarity by way of making it clear that PASPA does not serve to prohibit states from authorizing entry fee fantasy sports competitions. PASPA does not refer to fantasy sports, in any context. Without guidance from the federal government, states have begun to take it upon themselves to regulate fantasy sports and daily fantasy sports, and states are seemingly paying no attention to PASPA’s provisions. Maryland and Kansas exempted certain fantasy sports games from state laws prohibiting gambling.<sup>31</sup> Other states have already followed, or are anticipated to fall in line with Kansas and Maryland’s lead, while certain conservative states have chosen to expressly ban daily fantasy

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26. Steve Fainaru et al., *Betting on the Come: Leagues Strike Deals with Gambling-Related Firms*, ESPN (Jan. 28, 2016), [http://www.espn.com/espn/otl/story/\\_/id//-mlb-nhl-striking-various-business-deals-gambling-related-firms](http://www.espn.com/espn/otl/story/_/id//-mlb-nhl-striking-various-business-deals-gambling-related-firms); see Darren Rovell, *NBA Partners with FanDuel*, ESPN (Nov. 12, 2014), [http://www.espn.com/nba/story/\\_/id/11864920/nba-fanduel-reach-4-year-exclusive-daily-fantasy-deal](http://www.espn.com/nba/story/_/id/11864920/nba-fanduel-reach-4-year-exclusive-daily-fantasy-deal).

27. Trippiedi, *supra* note 14, at 213.

28. Rovell, *supra* note 26.

29. Marc Edelman, *Major League Baseball Reverses Course; Now Fully Endorses Daily Fantasy Sports*, FORBES: SPORTSMONEY (Mar. 25, 2014, 4:25 PM), <http://www.forbes.com/sites/marc-edelman/2014/03/25/major-league-baseball-reverses-course-now-fully-endorses-daily-fantasy-sports/#3a9cb03030d4>.

30. 31 U.S.C. § 5362 (2012); see *infra* notes 28–40 (explaining UIGEA’s regulations of internet gambling and the need for a daily fantasy sports carve-out).

31. Andy Moore, *Does State Regulation of Fantasy Sports Violate PASPA?*, LAW360 (Dec. 8, 2015, 10:24 AM), <http://www.law360.com/articles/734823/does-state-regulation-of-fantasy-sports-violate-paspa>.

sports (and perhaps fantasy sports as a whole) when it comes to pay-for-prize offerings.<sup>32</sup> In Florida, a state senator proposed a bill that requires daily fantasy sports operators to register with the Florida Department of Agriculture and Consumer Services.<sup>33</sup> The proposal has a registration fee and annual renewal fee attached to it, which is similar to legislation pending or already passed in other states.<sup>34</sup> A daily fantasy sports carve-out in PASPA is, therefore, an appropriate solution to an ever-entangling controversy as additional states contemplate adjusting their laws to tacitly permit entry fee fantasy sports despite the federal prohibition on gambling on sports matches.

### *B. Unlawful Internet Gambling Enforcement Act (UIGEA) of 2006*

The UIGEA exists to regulate internet gambling. The primary purpose of the UIGEA is to supplement “traditional [gambling] law enforcement mechanisms” and to facilitate the regulation of gambling prohibitions or regulations on the internet.<sup>35</sup> The UIGEA broadly defines “unlawful Internet gambling” as acts in which individuals:

place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet, where such bet or wager is unlawful under any applicable Federal or State law in the State . . . in which the bet or wager is initiated, received or otherwise made.<sup>36</sup>

UIGEA goes on to define a “bet or wager” as:

staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome.<sup>37</sup>

The UIGEA contains a specific provision for fantasy sports that provides protection for business “participation in any fantasy or simulation sports game . . . in which no fantasy or simulation sports team is based on the current membership of an actual team that is a member of an amateur or professional sports organization.”<sup>38</sup> In addition, the business has to meet additional requirements:

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32. *Id.*

33. *Id.*

34. *Id.*

35. Edelman, *A Short Treatise*, *supra* note 12, at 37 (quoting Interactive Media Entm’t & Gaming Ass’n v. Att’y Gen. of U.S., 580 F.3d 113, 114 (3d. Cir. 2009)).

36. Lisa Boikess, *The Unlawful Internet Gambling Enforcement Act of 2006: The Pitfalls of Prohibition*, 12 N.Y.U. J. LEGIS. & PUB. POL’Y 151, 153 (2008) (quoting 31 U.S.C. § 5362(10) (2012)).

37. 31 U.S.C. § 5362(1)(A) (2012).

38. *Id.* § 5362(1)(E)(ix).

- (I) All prizes and awards offered to winning participants are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid by those participants.
- (II) All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals (athletes in the case of sports events) in multiple real-world sporting or other events.
- (III) No winning outcome is based—
- (aa) on the score, point-spread, or any performance or performances of any single real-world team or any combination of such teams; or
- (bb) solely on any single performance of an individual athlete in any single real-world sporting or other event.<sup>39</sup>

### C. *The Implications of Grouping Together Season-Long and Daily Fantasy Sports*

The UIGEA clearly creates an exemption for season-long fantasy sports, provided the winning outcomes reflect the relative knowledge and skill of the participants.<sup>40</sup> It is safe to assume that lawmakers deemed traditional season-long fantasy sports to qualify because they were generally known as “fantasy sports” at the time the UIGEA was enacted. This carve-out, however, does not specifically apply to daily fantasy sports.<sup>41</sup> With different types of fantasy sports in existence (including variations within season-long, daily fantasy sports, and even varieties that do not fall clearly within either umbrella), it is important to define the difference between what is and is not acceptable at the federal level. Certainly season-long fantasy sports and daily fantasy sports cannot be coupled together because they are not the same offerings. Furthermore, daily fantasy sports did not exist when the UIGEA was enacted. Each type of entity operates differently, and each generates substantially different revenues. The prizes at stake cannot be compared, thus a definition of what constitutes daily fantasy sports, and what sites fall within that category, is necessary.<sup>42</sup> This

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39. *Id.* § 5362(1)(E)(ix)(I)–(III).

40. *Id.* § 5362(1)(E)(ix).

41. Dustin Gouker, *UIGEA Author: “No One Ever Conceived” That Law Would Allow Daily Fantasy Sports*, LEGAL SPORTS REP. (May 8, 2015, 8:15 PM), <http://www.legalsportsreport.com/1369/uigea-author-did-not-intend-daily-fantasy-sports-carveout/>.

42. Darren Heitner, *2 Major Flaws with Virginia’s Fantasy Sports Law*, INC.COM (Mar. 8, 2016), <http://www.inc.com/darren-heitner/2-major-flaws-with-virginia-s-fantasy-sports-law.html>; Kimberly Pierceall, *Governor Signs Fantasy Contest Bill Into Law, Affects Daily and Season-long Fantasy Sports*, VIRGINIAN-PILOT (Mar. 7, 2016), [http://pilotonline.com/business/consumer/governor-signs-fantasy-contest-bill-into-law-affects-daily-and/article\\_ca6d4fa3-78af-52c0-927c-3a9bd5566940.html](http://pilotonline.com/business/consumer/governor-signs-fantasy-contest-bill-into-law-affects-daily-and/article_ca6d4fa3-78af-52c0-927c-3a9bd5566940.html).



sort of coupling has already occurred in Virginia with the Fantasy Contests Act.<sup>43</sup> In creating an overbroad and overreaching law, Virginia has negatively affected the season-long fantasy sports business when that was not (or should not have been) the intention of lawmakers.<sup>44</sup>

#### D. Skill versus Chance

The second provision of the UIGEA makes the distinction between chance and skill vitally important. Fantasy sports are carved out from the definition of a “bet or wager” *if* the winning outcomes reflect relative knowledge and skill of the participants.<sup>45</sup> It is important to note that the self-classification of a business as a fantasy sports operation does not inherently qualify it as protected under the UIGEA or even the specific skill-versus-chance provision. In creating this exemption, the government failed to authorize or comprehensively regulate daily fantasy sports or fantasy sports in general.<sup>46</sup> A clarification of how to determine when the requisite level of skill is met is necessary for real guidance in the matter, but a real dilemma exists in the need for this clarification as it is nearly impossible to develop criteria that measures skill versus chance. The UIGEA neither provides a definition for skill or chance, nor, provides a test to distinguish the two.

It has been noted the shorter the fantasy sports competition, the more likely it could involve chance as a material element. Chance, more so than skill, will have a greater influence on the game.<sup>47</sup> In a season-long game, competitors have opportunities to strategize for the future. In daily fantasy sports, users are at the mercy of contingencies concerning the specific days and times of competitions.<sup>48</sup> Most state courts have been known to use the “predominance test”<sup>49</sup> to determine whether “player skill” or “uncontrollable chance” is the most likely factor to influence the outcome of a contest or game.<sup>50</sup> Although the test is widely used, it is also inconsistently applied.<sup>51</sup> There

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43. Pierceall, *supra* note 42.

44. *Id.*

45. 31 U.S.C. § 5362(1)(A) (2012).

46. Kevin P. Braig, *Federal Law and the Birth of Daily Fantasy Sports*, OHIO ST. B. ASS'N, <https://www.ohiobar.org/NewsAndPublications/News/OSBANews/Pages/Daily-fantasy-football-under-fire-part-1.aspx> (last visited Aug. 8, 2016).

47. Edelman, *A Short Treatise*, *supra* note 12, at 30.

48. *Id.* (statistics are wiped out at the end of any given day or week).

49. Anthony N. Cabot & Louis V. Csoka, *Fantasy Sports: One Form of Mainstream Wagering in the United States*, 40 J. MARSHALL L. REV. 1195, 1204 (2007) (quoting ANTHONY N. CABOT, INTERNET GAMING REPORT IV 13 (2001)).

50. *Id.*

51. *Id.*

have been instances in which different courts apply this test to the same game and produce different results;<sup>52</sup> however, a test of this nature can be useful because daily fantasy sports has many methods of gameplay.

#### IV. UNIFORM LAW COMMISSION

The Uniform Law Commission (ULC) exists to bring clarity and stability to critical areas of state statutory law by drafting and promoting the enactment of uniform state laws in areas of state law in which the uniformity is desirable and practical.<sup>53</sup> The ULC is a helpful asset when the area under observation lacks certainty and guidance. No overarching set of laws exists that can direct states in the new uncharted waters of daily fantasy sports. Each state has its own set of laws and each state has its respective state attorney general with his or her own interpretation of whether daily fantasy sports fits within the states' definition of gambling.<sup>54</sup> States that do have laws expressly legalizing daily fantasy sports may not be truly reflective of the actual landscape of daily fantasy sports.<sup>55</sup> Many of these laws are lobbied by big corporations, thus creating laws that benefit larger entities and not necessarily smaller, important companies that many consumers enjoy.<sup>56</sup> Additionally, no state or federal court has determined whether daily fantasy sports meets the requisite level of skill in order to not be considered gambling regardless of the criteria.<sup>57</sup> An inherent problem persists in that the terms "fantasy sports" and "daily fantasy sports" are not all encompassing. Simply legalizing one and/or the other fails to clarify what is needed for an entity to fall within the scope of same.

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52. Jeffrey C. Meehan, *The Predominate Goliath: Why Pay-to-Play Daily Fantasy Sports Are Games of Skill Under the Dominant Factor Test*, 26 MARQ. SPORTS L. REV. 5, 16 (2015).

53. *About the ULC*, UNIFORM L. COMM'N, <http://www.uniformlaws.org/Narrative.aspx?title=About%20the%20ULC> (last visited Aug. 31, 2016).

54. Zachary Zagger, *Piecemeal State Laws Create 50 Headaches for Daily Fantasy*, LAW360 (Apr. 15, 2016, 8:51 PM), <http://www.law360.com/articles/785314/piecemeal-state-laws-create-50-headaches-for-daily-fantasy>.

55. Darren Heitner, *Fantasy Sports Industry Desperate for Thoughtful Solution in New York*, FORBES (Mar. 21, 2016), <http://www.forbes.com/sites/darrenheitner/2016/03/21/fantasy-sports-in-dustry-desperate-for-thoughtful-solution-in-new-york/#59cbd8606bab>; see David Purdum, *Virginia Passes Legislation that Allows Legal Playing of DFS*, ESPN (Mar. 8, 2016), [http://espn.go.com/chalk/story/\\_id/14924179/virginia-passes-legislation-allows-legal-playing-daily-fantasy-games](http://espn.go.com/chalk/story/_id/14924179/virginia-passes-legislation-allows-legal-playing-daily-fantasy-games).

56. Heitner, *Fantasy Sports Industry*, *supra* note 55.

57. Daniel Wallach, *Fantasy Sports Legislation by States May Run Afoul of PASPA*, SPORTS L. BLOG (Mar. 14, 2015, 1:22 AM), <http://sports-law.blogspot.com/2015/03/fantasy-sports-legislation-by-states.html>.

A. *The Uniform Law Commission's Role in Shaping the Uniform Athlete Agents Act*

The ULC has played a predominant role in sports related issues. Most states now use the Uniform Athlete Agents Act (UAAA) as the foundation for laws governing athlete agents – those in the position of representing athletes in a fiduciary capacity primarily for the purpose of negotiating their contracts with professional sports teams. Similar to the situation concerning daily fantasy sports, several states created their own laws and rules pertaining to athlete agents prior to the ULC's involvement.<sup>58</sup> The discrepancy in laws from state to state created confusion and difficulty for practitioners to remain compliant in each state.<sup>59</sup> As a result of the complexities in athlete agent laws, “the NCAA, along with several universities, requested the Conference to draft a uniform set of laws.”<sup>60</sup> The UAAA simplified the environment for athlete agents by providing procedures that are “effective and familiar for both regulators and the regulated community.”<sup>61</sup> The ULC drafted an Act that has “become part of the core foundation for agent regulation and agent-athlete interaction throughout the country.”<sup>62</sup> The UAAA has been adopted in forty-one states and has recently been introduced in Michigan.<sup>63</sup>

B. *The ULC's Potential Role in Shaping Daily Fantasy Sports Legislation*

Complexities and irregularities among state laws already exist for daily fantasy sports. States are currently forced to determine for themselves whether daily fantasy sports meets the standards of gambling within their existing laws.<sup>64</sup> Many states have introduced legislation to either expressly allow or ban daily fantasy sports within their borders because there is so little clarity. Fantasy sports are often mixed into the equation. The result is piecemeal governance throughout the United States on this important issue.

A few states have either banned fantasy sports outright through legislation or received an advisory opinion from their respective attor-

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58. Noam Silverman, *Regulation of Sports Agents and College Football: Perception or Reality?*, 7 FIU L. REV. 187, 195 (2011).

59. *Id.*

60. *Id.*

61. *Why States Should Adopt the Uniform Athlete Agents Act*, UNIFORM L. COMM'RS, [http://uniformlaws.org/uniformact\\_why/uniformacts-why-uaaa.aspx](http://uniformlaws.org/uniformact_why/uniformacts-why-uaaa.aspx) (last visited Aug. 14, 2016).

62. *Id.*

63. *Legislative Fact Sheet—Athlete Agents Act*, UNIFORM L. COMM'N, <http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Athlete%20Agents%20Act> (last visited Aug. 14, 2016).

64. *Supra* notes 18–47 and accompanying text.

neys general.<sup>65</sup> Certain states wish to legalize daily fantasy sports to avoid confrontation with their attorneys general, whom have opined that daily fantasy sports is illegal within their borders.<sup>66</sup> Other states have furthered the problem by severely lowering the threshold of what is considered “chance” with respect to their gambling laws.<sup>67</sup> In some other states, like Illinois, if an activity has even a “modicum” of chance attached to it, it runs the risk of violating the state statute.<sup>68</sup>

The ULC clarified many of the lingering issues concerning athlete agents in the UAAA and created a comprehensive resolution that was adopted by the vast number of states.<sup>69</sup> The ULC has the opportunity to do the same with daily fantasy sports, and it should be urged to act as quickly as possible. Even if states pass legislation in the meantime, the laws can be amended in the future to create uniformity based on what the ULC suggests a goal that all states should favor.

A necessary provision for the ULC to include in any recommended fantasy sports resolution is one discussing reasonable fees for enforcement. Some states require daily fantasy sports companies to pay registration fees. These annual fees can be quite pricey.<sup>70</sup> Most fee proposals are not a problem for companies like FanDuel or DraftKings, two of the largest companies in daily fantasy sports. However, a large portion of the daily fantasy sports companies in existence are smaller and unable to pay such high costs for entry and existence. Unreasonable fees can destroy smaller companies and push them out of the business. It is important for any proposed resolution by the ULC to contain a cap or some other method of setting fees (i.e., suggesting that states require no up-front fees from operators, and instead receive a percentage of revenues received from players within respective states) in order to ensure the fees are proportionate to the size of the business.

The ULC has an opportunity to create a desperately needed piece of legislation that will ensure clarity and fairness in an area of law that affects tens of millions of people. It is a task within the scope of the ULC, but first the ULC must be petitioned and accept an obligation to draft proposed legislation. The process, as a whole, could take two

65. Wallach, *supra* note 57.

66. Zagger, *supra* note 54.

67. See Wallach, *supra* note 57; see also Kavitha A. Davidson, *In Fantasy Sports Fight, Bet on New York*, BLOOMBERG (Nov. 12, 2015, 10:04 AM), <https://www.bloomberg.com/view/articles/2015-11-12/in-fantasy-sports-fight-bet-on-new-york>.

68. *Id.*; 720 ILL. COMP. STAT. 5/28-1(a)(1) (2014).

69. *Why States Should Adopt the Uniform Athlete Agents Act*, *supra* note 61 and accompanying text.

70. Zagger, *supra* note 54 (with a \$50,000 fee in Virginia alone).

years before any meaningful resolution arises from the ULC's efforts. In the meantime, fantasy sports lobbyists will continue to press the issue of express legalization in many states.

#### V. CONCLUSION

The rapid rise of daily fantasy sports caught nearly everyone by surprise. States are scrambling to make sense of the issue in an environment in which daily fantasy sports runs rampant and consumers desire a variety of fantasy-sports-related options. States should be provided clarification and guidance on a number of issues that remain concerning daily fantasy sports and season-long fantasy sports. PASPA should be altered or repealed, and the UIGEA needs to be clarified. Finally, the ULC should become involved in the matter and inject uniformity whole for the industry to thrive.