



Written Statement in Support of HB 2292

DraftKings and FanDuel appreciate the opportunity to meet with legislators, staff, and regulators regarding the Puerto Rico Gaming Commission Act (the “Act”). As leading operators in the fantasy sports market in the United States – and leading mobile sportsbook operators in multiple United States markets – we look forward to working with the Legislature to create a thriving, competitive mobile sports wagering market in Puerto Rico.

In October 2019, Hon. Gabriel Rodríguez Aguiló introduced (and sponsored) a trailer bill, HB 2292, to amend the sports betting chapter of the Gaming Commission Act. While the bill contains many improvements to the previously adopted Act, it still contains several flaws. This statement is divided into the following three sections: (1) DraftKings and FanDuel’s proposed sports betting amendments to HB 2292; (2) DraftKings and FanDuel’s proposed fantasy contest amendments to HB 2292; and (3) an overview of the provisions included in HB 2292. We encourage the Legislature to consider incorporating the amendments outlined in sections one and two into HB 2292. With these amendments, Puerto Rico will be best positioned to maximize sports betting revenue and will create an environment where the Commission can properly regulate the industry, preserve integrity, and best protect consumers.

1. Proposed Sports Betting Amendments to HB 2292

ACCOUNT FUNDING

Chapter 1, article 1.3, paragraph 4

Summary: Clarifies that pre-paid debit cards are prohibited when the source of funds cannot be identified.

Justification: The prohibition on pre-paid debit cards should be limited to those cards where the source of funds is unknown. The prohibition on pre-paid debit cards is included in the legislation as an anti-money laundering tool. Fighting against money laundering is an essential component of the regulated sports betting market and all measures should be taken to ensure there are no abuses taking place. That said, if the source of funds can be identified, there is no reason that this payment method should be excluded.

“Apuestas por internet” significa el negocio de aceptar apuestas en cualquier Evento Deportivo a través del uso de comunicación electrónica y plataformas como internet, páginas web, y aplicaciones móviles incluyendo plataformas móviles para apuestas deportivas que permiten a una persona utilizar dinero, cheques, cheques electrónicos, transferencias electrónicas de dinero, micro transacciones, tarjetas de crédito, tarjetas de débito o cualquier otro medio, para transmitir información a un ordenador y completar la transacción con la información correspondiente. Se excluyen de esta definición las tarjetas de débito prepagadas, cuando se desconozca el origen de los fondos.”



DEFINITIONS

Chapter 1, article 1.3, paragraph 12, gross revenue definition

Summary: Clarifies that cash value of merchandise, free bets, and sports betting excise tax should be excluded/deducted from gross revenue.

Justification: This modification is necessary in order to account for critical tools that operators use in order to convert customers from the illegal market to the regulated market. As New Jersey and other regulated states sports wagering markets have demonstrated, promotions are critical towards this end. Operators should have the ability to use the most valuable tools available and ensure the long-term viability of the Puerto Rico sports wagering market. However, if operators are required to pay taxes on money that is an expense and in no way revenue received, it severely limits the ability of that operator to offer attractive promotions to convert customers from the illegal market. It defies logic that operators would be required to pay tax on money that was the operators to begin with.

““Ingreso bruto” significa el Ingreso Total Recibido por el tenedor de una licencia menos las partidas pagadas por el tenedor de la licencia a los jugadores ganadores, incluyendo el equivalente en efectivo de cualquier mercadería u objeto de valor otorgado a modo de premio, las apuestas gratuitas que se ofrezcan y los pagos del impuesto sobre el consumo de bienes específicos al Gobierno Federal de los Estados Unidos de América.”

Chapter 1, article 1.3, paragraph 13, total revenue received definition

Summary: Amends the definition of “Total Revenue Received” to make clear this is revenue that is generated from customers participating in wagering.

Justification: This modification provides clarity that the tax is on sports wagering revenue derived from wagering activity and does not extend beyond to potentially include different areas of the business that are not meant to be subject to the sports wagering taxation model.

““Ingreso Total Recibido” significa el ingreso dinero recibido por un tenedor de una licencia de parte de los jugadores por las apuestas deportivas por un tenedor de una licencia para con el fin de aceptar y pagar apuestas.”

Chapter 1, article 1.3, paragraph 17, technology platform provider definition

Summary: Amends the definition of “Technology Platform Provider” to clarify that companies will be permitted to enter the Puerto Rico sports wagering market in both a business to business (“b2b”) and business to consumer (b2c) capacity.

Justification: This modification is necessary as it recognizes market realities and will allow companies that have products in both the b2b and b2c space to participate in the Puerto Rico market. As currently drafted the definition would restrict companies from entering the market with both products, which will



inevitably hinder the success of the regulated market. The current definition ignores the practical realities of the sports wagering industry and will only serve to hinder the growth of the regulated market with no corresponding public policy benefit.

(17) “Proveedor de Plataformas Tecnológicas” se refiere a una entidad autorizada a través de una licencia emitida por la Comisión para proporcionar los programas (software) con el fin de realizar las apuestas, así como los periféricos (hardware) donde residen los programas. ~~Un Operador en Puerto Rico que también tiene el estatus de Proveedor de Plataforma Tecnológica, es decir, el propietario de un Proveedor de Plataforma Tecnológica, no puede proporcionar servicios a otro Operador en Puerto Rico. [Un Proveedor de Plataforma Tecnológica que brinde servicios a un Operador en Puerto Rico puede no ser un Operador en Puerto Rico.]~~

GAMING COMMISSION DISCRETION

Chapter 2, article 2.7

Summary: Provides the Commission with the flexibility to determine if the nature of the violations/timeframe make license revocation appropriate as opposed to simply requiring revocation following a third violation.

Justification: The Commission should be afforded the opportunity to assess each situation on its individual merits. With the nascent sports betting industry, there could be scenarios where violations occur that do not rise to the level where it is appropriate to take severe actions against a licensee. In those instances where the violations are of a serious nature, the Commission should have the ability to take appropriate action but should not be required to do so. The Commission is best positioned to assess each situation and should have the ability to impose appropriate punishment.

“En aras de garantizar la seguridad de la niñez, prevenir actividades ilícitas y así como por cualquier otra violación de esta ley o reglamento dirigido a garantizar la efectiva ejecución de la misma, la Comisión impondrá multas administrativas de: diez mil dólares (\$10,000) por la primera violación, veinte mil dólares (\$20,000) por la segunda violación, y veinticinco mil dólares (\$25,000) por una tercera violación. Además, una tercera violación ~~podrá provocar, si así lo determina la Comisión,~~ provocará puede llegar a provocar la revocación de la licencia de la parte que incurra en la violación. Los recaudos de estas multas serán destinados a la distribución provista en el Artículo 3.15. La Comisión adoptará mediante reglamentación a esos efectos, un procedimiento de revisión de las multas que expida.”

PLAYER LIMITS

Chapter 3, article 3.1

Summary: Adjusts the maximum daily cash limit to apply only to a satellite and not to an operator.



Justification: The below modification will accomplish Puerto Rico’s goal to ensure there is not a significant amount of cash on hand at satellites and avoid scenarios where small satellites are unable to settle sports bets with their customers. However, by applying this restriction to operators such as DraftKings and FanDuel you are negatively impacting the ability of operators to succeed in the market and in turn, ensuring that Puerto Rico will not maximize the tax revenue received from sports betting as individuals will remain in the illegal market due to the inconvenience of an unreasonable blanket maximum daily wagering limit. No two customers are the same and a wager that may be excessive for one, may be normal for another. To apply a daily limit across the whole sports betting industry without a clear corresponding benefit will only ensure that the Puerto Rico sports betting market does not reach its full potential.

“El límite máximo diario de Apuestas Deportivas permitidas en efectivo por Jugador Autorizado en ~~un Operador o en un satélite~~ podrá ser dispuesto por la Comisión mediante reglamentación a esos efectos. ~~será de dos mil dólares (2,000) (\$2,000) mientras que en un Satélite será de quinientos dólares (\$500). Dichos límites no aplicarán a las Apuestas Deportivas permitidas en efectivo por Jugador Autorizado en Casinos e Hipódromo .”~~

LICENSING FEES

Chapter 3, article 3.5

Summary: Changes licensing cost structure from a “minimum” to a “maximum” fee for a sports betting license.

Justification: It is critical that sports betting licensing fees be reasonable and recognize that the market is sensitive to exorbitant costs. The licensing fees contemplated in the bill, if fixed at the amount identified, are on par with other jurisdictions that have chosen to regulate sports wagering. However, should Puerto Rico establish fees that exceed the floor that is created, it will likely lead to operators choosing to pass on the Puerto Rico market altogether.

“La Comisión establecerá, mediante Reglamento, los derechos para la otorgación y renovación de las licencias. No obstante, los costos ~~mínimos anuales máximos~~ de las licencias que podrá fijar la Comisión serán como siguen:

- (a) para licencias de Operador Principal y Plataforma de Apuestas por Internet los costos ~~mínimos anuales máximos~~ serán de cincuenta mil dólares (\$50,000);
- (b) para licencias de Satélite o Puntos de Venta los costos ~~mínimos anuales máximos~~ serán de dos mil quinientos dólares (\$2,500);”

OPERATOR ELIGIBILITY

Chapter 3, article 3.12



Summary: As drafted, HB 2292 removes the restriction on athletes, referees, coaches, and other team or league personnel from having any ownership interest in an entity that conducts sports betting. This is an important amendment, however, the legislature should further clarify this provision by removing the restriction on team or league personnel from (1) having any control in an entity that conducts sports betting and (2) being an employee of an entity that conducts sports betting.

Justification: This is an overly broad prohibition that will have wide ranging unintended consequences for the sports betting industry in Puerto Rico. This prohibition should be removed as it accomplishes no public policy goal that may not be achieved by simply restricting these individuals wagering activity, as would be the case with the below modifications. The proposed amendment to Article 3.12 is a common sense, critical amendment that recognizes the reality of the regulated sports wagering industry and will help ensure that the Puerto Rico sports wagering market is best positioned for success. In many cases, professional sports team owners and leagues have an ownership interest in companies that operate a sportsbook.

It is important to note that the language in HB 2292 and this amendment will still restrict these individuals from wagering on the events of which they are affiliated. All that is being modified is the ownership, control, and employment restriction that ignores the realities of the nascent sports wagering industry.

Cualquier persona, de Puerto Rico, Estados Unidos o cualquier parte del mundo que sea reconocida como un profesional que sea atleta, entrenador, árbitro o director de un organismo de gobierno deportivo o cualquiera de sus equipos miembros, un organismo de gobierno deportivo o cualquiera de sus equipos miembros, un jugador o un árbitro miembro del personal, en cualquier Evento Deportivo supervisado por el organismo rector de deportes; una persona que ocupa un puesto de autoridad o influencia suficiente para ejercerla sobre los participantes en un torneo o Evento Deportivo, incluidos, entre otros, entrenadores, gerentes, manejadores, entrenadores atléticos o entrenadores de deportes en general; una persona con acceso a ciertos tipos de información exclusiva sobre cualquier Evento Deportivo, según definido en el Artículo 1.3 de esta Ley; o una persona identificada por cualquier lista provista por el organismo rector de los deportes en Puerto Rico, no podrá ~~tener interés de propiedad en, control de, o ser empleado de un Operador licenciado de apuestas deportivas, o en una instalación en la que se ubica una sala de apuestas deportivas~~ o hacer una apuesta en el lugar de un Evento Deportivo del cual puedan beneficiarse, puedan tener alguna información privilegiada, o cualquier otro que sea identificado por la Comisión. Cualquier empleado de un organismo rector de deportes o sus equipos miembros a quien no le esté prohibido apostar en un Evento Deportivo, deberá, sin embargo, notificar a la Comisión antes de colocar una apuesta en un Evento Deportivo. El propietario, directo o indirecto, legal o beneficiario, de un organismo rector de deportes o cualquiera de sus equipos miembros no colocará ~~ni aceptará~~ ninguna apuesta en un Evento Deportivo en el que participa cualquier equipo miembro de ese organismo rector del deporte. La Comisión deberá mantener al día un listado con todas las personas que les está prohibido participar en apuestas deportivas, tanto conforme a lo dispuesto en el párrafo anterior, como sujeto a lo dispuesto por el Artículo 2.8 de esta Ley.”



Chapter 3, article 3.13

Summary: Amends this section to acknowledge “Gross Revenue” is a defined term and removes language that would conflict with said definition.

Justification: This change avoids contradictory definitions being applied in the same chapter, removing any ambiguity as to what constitutes “Gross Revenue.”

~~“Artículo 3.13. Impuestos por las apuestas permitidas por este capítulo Capítulo.~~

Por las apuestas deportivas y apuestas en *eSports* que se realicen de manera presencial, el Estado impondrá y cobrará un impuesto de siete por ciento (7%) del ~~Ingreso bruto~~ Bruto de dichas apuestas.

Por las apuestas deportivas y apuestas en *eSports* que se realicen por internet, el Estado impondrá y cobrará un impuesto de doce (12) por ciento del Ingreso Bruto de dichas apuestas.

~~El ingreso bruto será determinado deduciendo del ingreso total recibido por el tenedor de una licencia, las partidas pagadas por el tenedor de la licencia a los jugadores ganadores.~~ El método contable, método de pago, así como la frecuencia de pago, se establecerá por la Comisión.”

COMMISSION INVOLVEMENT – FEE STRUCTURE

Chapter 3, article 3.14

Summary: The Commission should not determine how operators establish their fee structure.

Justification: There is no jurisdiction regulating sports betting that sets the fee structure for operators. Operators need to have the ability to adjust the pricing models that are posted in order to help appropriately balance risk. Puerto Rico has adopted a sports betting industry model that allows for competition and in doing so those operators that inappropriately price markets will not be able to compete and acquire the customers they need in order to succeed. This issue is appropriately left to the market to determine appropriate pricing and should not be set by the regulator, as doing so is likely to discourage competition, stifle innovation, and lead to an overall poor customer experience.

~~“Artículo 3.14. Limitaciones en el monto y división de comisiones.
La Comisión establecerá la comisión total deducida de las apuestas autorizadas por cualquier agente con licencia de conformidad con este capítulo Capítulo.”~~



2. Proposed Fantasy Contest Amendments to HB 2292

TAX RATE

Chapter 4, article 4.2

Summary: Clarifies that the tax is implemented on Fantasy Contest operator revenue, not entry fees and reduces the tax rate from 12% to 6%.

Justification: It is important to recognize that the tax is implemented on an operator's gross revenue and not the total amount of entry fees collected. We believe that this is the Legislature's intention and offer the below clarification to ensure there can be no other interpretation. This is in line with every jurisdiction that implements a tax on the fantasy sports industry. Further, the tax rate of 12% represents one of the highest tax rates in the country. It is inappropriate to implement a tax rate that is equal to that being applied to sports betting, as the fantasy sports industry is typically taxed at a much lower rate. The proposed 6% tax rate is appropriately aligned with the taxation models across the country for the fantasy sports industry.

“Artículo 4.2.-Impuestos ~~por las apuestas cuota de ingreso~~ los Ingresos Brutos procedentes de Concursos de Fantasía permitidos en este capítulo Capítulo.

Por la participación en los concursos de fantasía, el Estado impondrá y cobrará un doce seis (126) por ciento del ingreso bruto procedente de la cuota de ingreso del concurso Concursos de Fantasía.”

LICENSING

Chapter 4, article 4.3

Summary: The below modification allows qualified Fantasy Contest operators to enter the market expeditiously without undue interference.

Justification: The below language is critically important in order to allow Fantasy Contest Operators the ability to enter the Puerto Rico market in an efficient and expedient manner. By including the below language, Puerto Rico will ensure that the Fantasy Contest market is not unreasonably delayed and ensure that Puerto Rico begins responsibly offering desirable products to those located in Puerto Rico and collecting tax revenue from the activity. If the below language is not included, it is likely that Fantasy Contests will be delayed while unrelated gaming issues are resolved.

“Ningún Operador de Concursos de Fantasía podrá ofrecer éstos con cuotas de ingreso en la jurisdicción de Puerto Rico sin antes registrarse y licenciarse en la Comisión de Juegos del Gobierno de Puerto Rico. Las solicitudes de inscripción y la renovación se harán según lo establecerá la Comisión, que pondrá las solicitudes a disposición de los Operadores dentro de los 60 días a partir de la fecha de entrada en vigencia de esta ley.



No obstante lo anterior, el Director Ejecutivo de la Comisión de Juegos del Gobierno de Puerto Rico podrá permitir el registro temporero de operadores de Concursos de Fantasía para ofrecer dichos concursos a ser jugados por personas en Puerto Rico. El Registro deberá incluir la identidad, nombre, dirección, número de teléfono o entidad de negocio ofreciendo Concurso de Fantasía, así como el nombre, ficticio o de negocio bajo el cual esta ofreciendo los Concursos de Fantasía; el deber de proveer información reciente y precisa de manera constante. Toda esa información deberá estar disponible para el escrutinio público.

Chapter 4, article 4.3

Summary: Changes license cost structure from a “minimum” to a “maximum” fee for a Fantasy Contest licenses.

Justification: It is critical that Fantasy Contest licensing fees be reasonable and recognize that the market is sensitive to exorbitant costs. The licensing fees contemplated in the bill, if fixed at the amount identified, are on par with other jurisdictions that have chosen to regulate Fantasy Contests. However, should Puerto Rico establish fees that exceed the floor that is created, it will likely lead to Fantasy Contest operators choosing to pass on the Puerto Rico market altogether.

“Para poder ofrecer Concursos de Fantasía con cuotas de ingreso en Puerto Rico, el Operador de Concursos de Fantasía deberá abonar a la Oficina una licencia inicial. La Comisión establecerá, mediante Reglamento, los derechos para la otorgación y renovación de estas licencias. No obstante, los costos mínimos de las licencias que podrá fijar la Comisión serán como siguen:

- (a) La licencia para un Operador de Concursos de Fantasía que perciba ingresos brutos por estos Concursos ~~a nivel nacional en Puerto Rico~~ que superen ~~los la suma de un millón diez millones~~ de dólares (\$10,000,000), tendrá un costo ~~mínimo~~ de diez mil dólares (\$10,000). Este ~~mínimo costo~~ aplicará también a las renovaciones.
- (b) La licencia para todos los otros Operadores de Concursos de Fantasía tendrá un costo ~~mínimo~~ de mil dólares (\$15,000). Este ~~mínimo costo~~ aplicará también a las renovaciones.”

3. Amendments Included in HB 2292

As drafted, HB 2292 contains several improvements to the Act, all of which DraftKings and FanDuel support:

Income Verification / Account Registration: Removes requirement that Operators be required to assess financial capacity for every customer that registers an account; Shifts verification requirements from the Commission to the operators and clarifies that players have the ability to set their own play limits; Clarifies that remote registration is permitted and the individual is not required to visit a physical location



in order to register an account; Removes the requirement to “physically” authenticate the identity of an individual registering an account.

Customer Access: Provides the Commission the ability to assess individual situations and work with operators to ensure that everyone has equal access to sports betting locations and platforms.

Establishment of Physical Presence in Puerto Rico: Clarifies the extent to which operators must establish a presence in Puerto Rico (limits the requirement to locating equipment on the island that is necessary to comply with relevant law).

Gaming Commission Discretion: Adjusts the standard of review so that the Commission is not required to make a determination and has discretion to appropriately evaluate a license application.

License Assignability: Allows operators to transfer licenses, subject to Commission approval.

Clarifications: Provides better, more inclusive, definition of “Fantasy Contests”; Adds “Fantasy Contests” to those activities exempted from the definition of “Sports Event;” Clarifies that licensing and regulation applies to sports betting operators and Fantasy Contest operators, not the underlying activity (including e-sports); Clarifies that operators must disclose the maximum number of entries for Fantasy Contests; Clarifies that in granting sports wagering licenses for physical locations – as opposed to all licenses, including online operator licenses – the Commission will give preference to proposals that may promote economic growth and maximize employment; Clarifies that “gaming operators” are to be licensed in Puerto Rico and international laboratories are not subject to the same licensing requirements.