

Daily Fantasy Sports Contests

What Are Daily Fantasy Sports (DFS) Contests? Are They Considered Gambling?

DFS contests connect a prize to the statistical performance or finishing position of one or more competitors in an underlying sports competition but do not include a prize for the winner or competitor in the underlying competition itself.

Whether DFS contests are considered gambling depends on the state. Generally, in order for an action to be considered gambling, three elements must be present: consideration, prize, and chance. The first two are present in DFS contests, with users entering contests by submitting money (consideration) in the hopes of winning money (prize).

Individual states have come to different conclusions (see reverse page for other states) as to whether DFS contests are games of chance or skill. Connecticut has not definitively ruled on the issue. States generally determine whether the “chance” element is present based on the “Predominance Test,” which assesses whether winning is based more on chance or skill.

Connecticut Attorney General Opinion

Before either 2016 Connecticut bill was heard by the House or Senate, the Senate Democrats asked the attorney general for his opinion on whether passing the DFS legislation would impact the state’s revenue-sharing arrangements with the Mashantucket Pequot and Mohegan tribes. The attorney general [stated](#) that “although there is a high degree of uncertainty, there is a substantial risk that the passage of such legislation could jeopardize the State’s revenue-sharing arrangement with the Tribes.”

Currently, under separate but virtually identical agreements, each tribe contributes 25% of its gross slot machine revenue monthly to the state. The tribes agree to continue to make these payments based on, among other things, the condition that the state would not pass a law or regulation to authorize the operation of any video facsimile games of chance (e.g., video slot machines) or commercial casino games. Although the attorney general did not conclude that passing a law regulating DFS would violate these conditions, he did caution the legislature about the associated risk.

2016 Legislation

[SB 192](#) and [HB 5046](#) would have (1) specifically legalized DFS contests under state law, (2) provided certain consumer protections for participants (e.g., no one under age 18 could play), and (3) generally required DFS operators to pay an initial \$50,000 registration fee and annual renewal fee of up to \$10,000.

[HB 5046](#) also imposed an 8.75% surcharge on the total entry fees less the amount paid out for such contests.

Neither bill was voted on by either chamber.

DFS in Other States

Currently, there are at least 14 states where DFS contests are illegal and 12 where they are specifically allowed (see Figure 1).

States Where DFS Contests Are Specifically Allowed

The 12 states that specifically allow DFS contests are Colorado, Indiana, Kansas, Maryland, Massachusetts, Mississippi, Missouri, New York, Rhode Island, Tennessee, Virginia, and West Virginia.

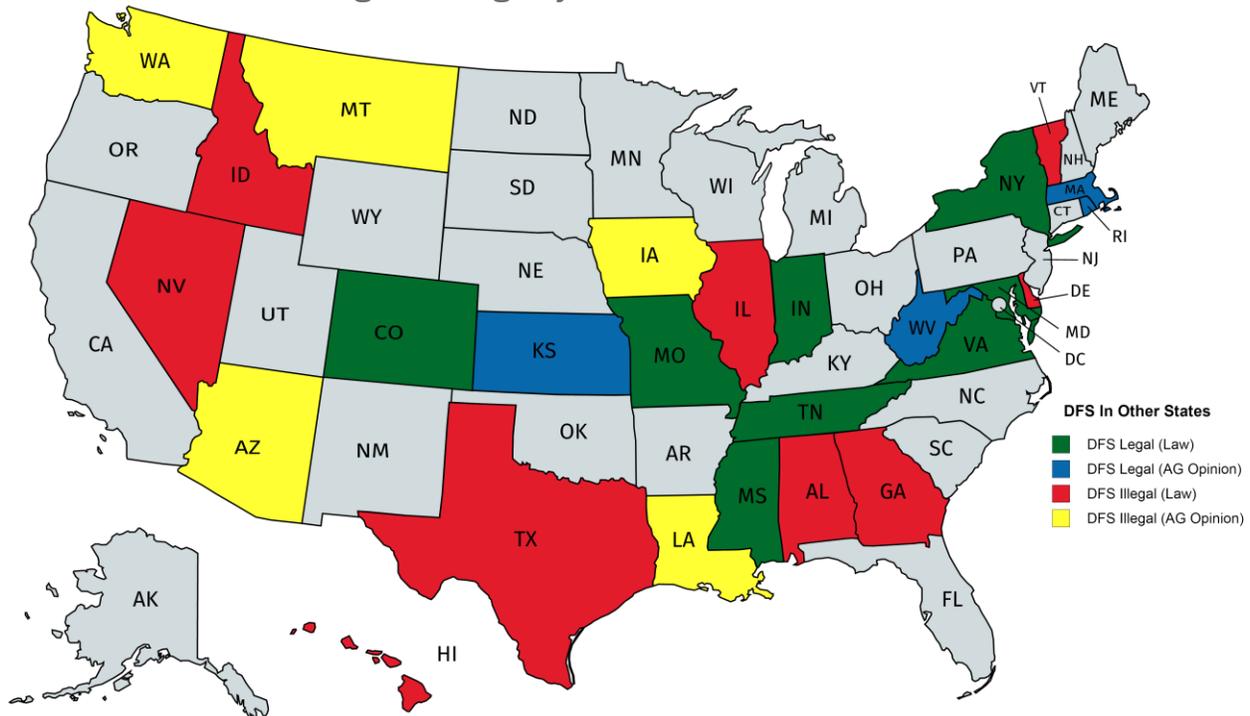
Of these states, Colorado, Indiana, Maryland, Mississippi, Missouri, New York, Tennessee, and Virginia have passed laws specifically allowing DFS contests. In the other four states (Kansas, Massachusetts, Rhode Island, and West Virginia), the attorneys general issued opinions stating DFS contests are legal in these states. An attorney general opinion is a written interpretation of existing law. It does not have the force of law and is not binding or controlling to the courts. An opinion can also change from one attorney general to another.

States Where DFS Contests Are Illegal

The 14 states where DFS contests are illegal are Alabama, Arizona, Delaware, Georgia, Hawaii, Idaho, Illinois, Iowa, Louisiana, Montana, Nevada, Texas, Vermont, and Washington. Of these states, Arizona, Iowa, Louisiana, Montana, and Washington have statutes that have been interpreted to prohibit DFS contests.

In the other nine states (Alabama, Delaware, Georgia, Hawaii, Idaho, Illinois, Nevada, Texas, and Vermont) the attorneys' general issued opinions that DFS contests are considered illegal gambling.

Figure 1: Legality of DFS in Other States



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“Summary of New York’s Daily Fantasy Sports Legislation,” OLR Report [2016-R-0150](#)

Jeremy Kudon, “[The Future of Fantasy Sports and State Legislatures](#),” NCSL Capitol Forum (2015)

