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Anti-gambling group threatens lawsuit to halt fantasy sports approval in New York State

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By **Tom Precious** | News Albany Bureau | @TomPreciousALB

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ALBANY – A national anti-gambling group may sue to try to reverse a new law legalizing daily fantasy sports contests in New York State.

“We believe in improving the lives of New Yorkers, and part of that mission is to repeal the state’s predatory gambling policies, and litigation is part of that effort,” said Les Bernal, national director of the Washington, D.C.–based Stop Predatory Gambling.

Critics of the new law, signed by Gov. Andrew M. Cuomo two weeks ago, say the Legislature needed to go through a lengthy constitutional amendment process to legalize a new form of gambling. Instead, the bill’s sponsors relied on a statutory change that declared the fantasy sports contests to be “games of skill” instead of illegal games of chance.

The state Gaming Commission is now examining applications filed by six fantasy sports companies, including industry giants DraftKings and FanDuel, to allow them to reopen in the state on a temporary basis until the agency finalizes new regulations for the companies.

Bernal would not say if his organization has decided to sue, but he confirmed that his organization is finding potential plaintiffs who are state residents.

“We are definitely advanced in this process,” he said. “But we’re not in a position to say when it will be filed. But anyone investing in these businesses should really keep their hands in their pockets for the near future.”

Hundreds of thousands of fantasy sports players in the state have been anxious to get the contests restarted, especially before the beginning of the National Football League season, the busiest period for the games.

There has been quiet talk of others possibly suing the state to block the fantasy sports law. Some casino companies opposed the bill that passed in June. There has also been some talk whether

the contests will violate gambling exclusivity agreements that several Indian tribes, including the Seneca Nation of Indians, have signed with the Cuomo administration.

An official with the New York Gaming Association, a trade group that was among the most outspoken against the fantasy sports bill, said the association has ruled out a lawsuit against the new fantasy sports law. Unlike many seasonal fantasy sports contests, the daily – and weekly – fantasy sports games require upfront fees to play and, at times, have marketed large payouts for people who gamble on their online sites.

Where the money to fund the litigation by the national anti-gambling group would come from is not certain, but Bernal said his group would not partner, directly or indirectly, with any casino companies that also opposed the June legislation.

Bernal pointed to a May Siena College poll that found 45 percent of New Yorkers opposed daily fantasy sports and 37 percent supported it.

“There is no single act of New York State government that creates more inequality of opportunity than its sponsorship of predatory gambling,” Bernal said. “And now what state government is trying to do is force predatory gambling into every home and smart phone in the state as a result of a push by very powerful gambling interests.”

Word of the potential lawsuit on the fantasy sports games comes several days after a top legal expert on sports gambling told a panel of lawyers that New York State may have opened itself up to a legal challenge by the manner in which it chose to legalize the fantasy sports contests.

“I think it’s all going to rise and fall if there’s a challenge under the state constitution,” Daniel Wallach, a Florida attorney, told a group of gambling industry lawyers and executives at a conference last week in Saratoga Springs.

With the sponsor of the fantasy sports bill sitting on the panel with him, Wallach said if backers of the bill wanted “to play by the rules and by the book,” legalization of fantasy sports in the state would have gone through a constitutional amendment process.

The state’s constitution forbids gambling, except those specifically granted exemptions, such as wagering on horse races, charitable contests and a limited number of commercial casinos. In June, lawmakers instead amended state law to declare that fantasy sports contests are “games of skill” and not illegal “games of chance,” instead of going through the longer process of amending the constitution. That process requires passage by two successive legislatures in Albany followed by a statewide voter referendum. That was the procedure officials took with the 2013 referendum approving up to seven casinos statewide.

Wallach noted that Attorney General Eric T. Schneiderman is already on record declaring that fantasy sports contests violate both the constitution and several sections of the penal law. Following the recent approval by Cuomo of the fantasy sports legislation, Schneiderman said he would uphold that new law.

Wallach, who said he favors legalization of the contests, warned that a constitutional challenge to the new law could set back the industry's presence in New York by at least a couple years.

Sen. John Bonacic, the chairman of the Senate's racing and wagering committee who sponsored the fantasy sports bill, said the new law was carefully crafted to withstand a legal challenge. He said that representatives of the Legislature and fantasy sports companies were meeting "every step of the way" during the battle over whether and how to legalize the contests at the end of the session in June.

"They were satisfied that what we were doing would meet the constitutional challenge," Bonacic said of the industry.

The Republican senator added that New Yorkers have expressed their support for more gambling in the state.

"That's why I don't fear a constitutional challenge," he said. "It could happen, but I'm feeling comfortable it will survive."