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BILL



ANALYSIS

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Senate Bill 202 (as enacted)
Sponsor: Senator Jack Brandenburg
Senate Committee: Regulatory Reform
House Committee: Regulatory Reform

PUBLIC ACT 41 of 2017

Date Completed: 8-23-17

RATIONALE

Social media internet games, or games played online using a social network, have become popular, particularly with access to the games on "smart" devices, such as telephones and computer tablets. Social media gaming companies, such as Zynga, the creator of popular social media games *FarmVille*, *Mafia Wars*, and *Words with Friends*, attract many players and generate revenue using a "freemium" model, which allows players to play for free but also gives them an option to spend money on in-game items and virtual currency.

Apparently, some casino companies offer social media internet games. Generally, these games are free (i.e., players are given a certain amount of "free plays" per day) and players cannot bet or win money. However, sometimes players may win free plays to play additional games. There was concern that rewarding players with free plays on social media internet games amounted to giving the players a prize. According to a Michigan Supreme Court opinion, if free plays ordinarily would cost the player, the opportunity to have free plays is a thing of value (or a prize). Therefore, if free plays are a prize, social media internet games that award free plays could have been considered gaming in violation of State laws that prohibit gambling. Since many companies use social media internet games for advertising and branding purposes, and not for revenue purposes, it was suggested that an exception to the antigambling prohibitions be created for these types of games.

CONTENT

The bill amended the Michigan Penal Code to specify that Chapter XLIV (which prohibits certain operations and activities relating to gambling) of the Code does not prohibit a social media internet game from rewarding a player, as a result of chance or uncertain event, with either one or more free plays or an extended period of playing time.

The bill defines "social media internet game" as a game offered over the internet or on a telephone or other mobile device. The term does not include fantasy sports.

The bill took effect on May 23, 2017.

MCL 750.310c

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Reportedly, about 41% of internet users in the United States use social networking sites to play games.¹ Some casino companies, such as MGM Resorts International, use these games for promotional purposes and to attract customers, although there is the potential to generate revenue in jurisdictions where online gaming is legal (which do not presently include Michigan). Even if revenue is not generated, however, the Michigan Supreme Court has held that a free play constitutes a reward or prize when a player ordinarily would have to pay for the play (*Automatic Music and Vending Corporation v. Liquor Control Commission*, 426 Mich 452 (1986)). According to the Court, the common-law definition of "gaming" requires the presence of three elements: 1) price or consideration, 2) chance, and 3) prize or reward. If free plays are considered a prize or reward, and social media internet games that reward free plays meet the other criteria, the games could be considered gaming.

The Michigan Penal Code contains a number of prohibitions related to gaming, or gambling. For example, if a person, for hire, gain, or reward, keeps or maintains a gaming room, gaming table, game of skill or chance, or game partly of skill and chance, used for gaming, the person is guilty of a misdemeanor, punishable by imprisonment for up to two years, or a fine of up to \$1,000, or both. The Code makes an exception to this prohibition for a mechanical amusement device that may reward a player with the right to replay the device at no additional cost if it does not accumulate more than 15 replays at one time, and meets other criteria. By creating a broad exception for social media internet games that award free plays or extended playing time, the bill eliminates the possibility that this activity will violate the Code.

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bill will have no fiscal impact on the State and may have a positive fiscal impact on local government. It is unknown under which provisions of the Penal Code a social media internet game would have been prosecuted absent the exception in the bill, but most violations related to gambling are misdemeanors punishable by imprisonment for up to one year or a fine of up to \$1,000. Any reduction in misdemeanor arrests and convictions may reduce resource demands on law enforcement, court systems, community supervision, and jails. Any associated decrease in fine revenue will reduce funding to public libraries.

Fiscal Analyst: Ryan Bergan

¹ Trefis Team, "MGM Resort's Planned Social Gaming Website Offers New Growth", *Forbes.com*, 5-24-2012.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.