



**Senate Fiscal Agency**  
P. O. Box 30036  
Lansing, Michigan 48909-7536

BILL



ANALYSIS

**Telephone: (517) 373-5383**  
**Fax: (517) 373-1986**

Senate Bill 462 (as introduced 6-14-17)  
Sponsor: Senator Curtis Hertel, Jr.  
Committee: Regulatory Reform

Date Completed: 10-11-17

### **CONTENT**

**The bill would enact the "Fantasy Sports Games Consumer Protection Act" to do the following:**

- **Authorize fantasy sports games in the State if they were conducted by a licensed game operator.**
- **Require a person seeking to be a licensed game operator to submit an application and a fee to the Department of Licensing and Regulatory Affairs (LARA).**
- **Require a licensed game operator to submit to LARA procedures intended to regulate the operation of a fantasy sports game.**
- **Require a game operator to ensure that an individual under the age of 18 did not participate in a fantasy sports game.**
- **Prohibit an operator from conducting fantasy sports game based on a university, college, high school, or youth sporting event.**
- **Require a licensed game operator to make available means to allow an individual to irrevocably restrict his or her ability to enter a fantasy sports game.**
- **Require LARA to promulgate rules to implement the Act.**
- **Prescribe a civil fine for a violation of the Act, a promulgated rule, or an order of LARA.**

The bill would take effect 90 days after it was enacted. The bill is tie-barred to House Bill 4742. (That bill would amend the Michigan Penal Code to prescribe conditions under which Chapter 44, which prohibits certain gambling activities, would not prohibit a game or contest that involved an athletic event or that was a fantasy or simulation sports game or contest.)

### **Fantasy Sports Gaming**

The proposed Act would authorize fantasy sports games if they were conducted in accordance with the Act by a licensed game operator, or if they were conducted by a game operator who was awaiting issuance or denial of a license.

Any other law that was inconsistent with the proposed Act would not apply to fantasy sports games authorized by the Act.

A game operator that was conducting fantasy sports games in the State on May 1, 2016, could continue operating fantasy sports games until the game operator was issued or denied a license by the Department of Licensing and Regulatory Affairs.

"Fantasy sports game" would mean a fantasy or simulation sports game or contest with an entry fee that meets all of the following conditions:

- The value of all prizes and awards offered to winning game participants is established and made known to the game participants in advance of the game.
- All winning outcomes reflect the relative knowledge and skill of game participants and are determined predominantly by accumulated statistical results of the performance of individuals, including athletes.
- A winning outcome is not based on the score, point spread, or performance of a single team or combination of teams or on any single performance of an individual athlete or player in a single event.

"Game operator" would mean a person that offers a software platform for the playing of a fantasy sports game, administers one or more fantasy sports games with an entry fee, and awards a prize of value.

#### Game Operator Licensure

A person could not offer fantasy sports games in the State unless the person were a licensed game operator.

A person seeking to be a licensed game operator would have to submit an application, with a fee (described below), to LARA. The applicant would have to provide sufficient documentation to LARA to assure that the applicant met the requirements for licensing, including documentation of all of the following:

- The name of the applicant.
- The location of the applicant's principal place of business.
- The name and address of each person that held a 15% or greater ownership interest in the applicant or in shares of the applicant.
- The applicant's criminal record, if any, or, if the applicant were a business entity, any criminal record of an individual who was a director or officer of or who had a 15% or greater ownership interest in the applicant.
- Any ownership interest that a director, officer, policy-making manager, or principal stockholder of the applicant held in a person that was or had been a licensed fantasy sports operator or similar entity.
- A description of any physical facility operated by the applicant in the State, the employees who worked at the facility, and the nature of the business conducted at the facility.
- Information sufficient to show, as determined by LARA, that the applicant could meet the requirements of procedures submitted by the applicant.

A license would be valid for one year. The Department would have to renew a license each year if the applicant demonstrated continued eligibility for licensure.

The initial license fee would be \$5,000, and the annual license renewal fee would be \$1,000. However, an initial license fee or annual license renewal fee could not exceed 10% of the total amount of entry fees collected by the applicant from the operation of fantasy sports games in the State less the total amount of cash and value of cash equivalents paid as prizes or awards to game participants.

("Person" would mean an individual, partnership, corporation, association, or other legal entity other than a governmental entity. It also would include a sovereign tribal government and its business entities.)

## Gaming Procedures

A licensed game operator that offered paid fantasy sports games in the State would have to submit to LARA procedures that were intended to do all of the following:

- Prevent the game operator, its owners, directors, officers, and employees, and any relative of any of those individuals living in the same household, from competing in a fantasy sports game.
- Prevent the employees or agents of the game operator from sharing protected information that could affect fantasy sports game play with third parties until the information was made public.
- Prevent participants and officials in a real-world sporting event that had any effect on the outcome of a fantasy sports game from participating in the fantasy sports game.
- Disclose the number of fantasy sports games a single game participant could enter and take reasonable steps to prevent game participants from entering more than the allowable number of fantasy sports games.
- Either segregate game participants' money from operational money, or maintain a reserve in the form of cash, cash equivalents, security deposits held by banks and processors, an irrevocable letter of credit, a bond, or a combination of these in the total amount of deposits in game participants' accounts for the benefit and protection of authorized game participants' money held in fantasy sports game accounts.

("Protected information" would mean information related to the playing of paid fantasy sports games by game participants that is obtained solely as a result of an individual's employment with or work as an agent for a game operator.)

A person would be prohibited from violating a procedure that was submitted to LARA and approved the Department.

Procedures submitted to LARA would be confidential and privileged, would not be subject to disclosure under the Freedom of Information Act, would not be subject to subpoena, and would not be subject to discovery or admissible in evidence in a private civil action.

## Operator Restrictions & Requirements

A game operator would have to undertake commercially reasonable procedures intended to ensure that an individual under 18 years of age did not participate in a fantasy sports game.

A licensed game operator could not conduct, operate, or offer a fantasy sports game that was based on a university, college, high school, or youth sporting event.

A licensed game operator would have to make available on the operator's website information about resources relating to compulsive behavior, including a telephone number or link to information on compulsive behavior and where to seek assistance for compulsive behavior.

A licensed game operator would have to make available, by website, telephone, or online chat, a means to allow an individual to irrevocably restrict his or her ability to enter a fantasy sports game and to select the length of time the restriction would be in effect.

A licensed game operator would have to offer a game participant access to the participant's playing history, including a summary of entry fees spent, games played, previous lineups, and prizes awarded.

## Sanctions

The Department could suspend, revoke, or restrict the license of a game operator that violated the Act, a rule promulgated under the Act, or an order of LARA.

The Department could impose a civil fine of up to \$1,000 for such a violation. The fine would be payable to the State and could be recovered in a civil action brought by the Department.

## Audit

By July 1 of each year, a licensed game operator would have to submit to LARA an audit of financial condition of the operator's total operations for the previous calendar year. An audit would have to be conducted by a certified public accountant in accordance with generally accepted auditing standards. An audit submitted to LARA would be confidential and privileged, would not be subject to disclosure under the Freedom of Information Act, would not be subject to subpoena, and would not be subject to discovery or admissible in evidence in a private civil action.

Legislative Analyst: Stephen Jackson

## **FISCAL IMPACT**

The bill would have no fiscal impact on local government. The bill would have a negligible or possibly small negative fiscal impact on State government. The Department of Licensing and Regulatory Affairs would be required to promulgate rules to implement the provisions of the bill. The Department also could incur additional expenses creating and reviewing the application forms, reviewing the audit documents required under the bill, and enforcing the prohibitions. It is possible that most of these expenses would be covered by the licensing fees or absorbed by LARA. The license fees would be \$5,000 for the first year, and \$1,000 for each renewal year, but would be capped at 10% of entry fees less cash and prizes paid out by the game operator. According to the Federal Trade Commission, two industry providers control over 95% of the market in regard to fantasy sports gaming entry fees. As many as a dozen additional providers could apply for a license, as has happened recently in Indiana and Mississippi; however, fees from those providers would more likely be capped under the bill. After the initial licensing fees were paid in the first year, LARA could be required to regulate the industry within the State with as little as \$2,000 in new revenue each year.

Fiscal Analyst: Michael Siracuse

SAS\S1718\462sa

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.