

FANTASY CONTESTS CONSUMER PROTECTION ACT

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House Bill 4308 as referred to second committee
Sponsor: Rep. Brandt Iden

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4309 as referred to second committee
Sponsor: Rep. Michael Webber

1st Committee: Regulatory Reform
2nd Committee: Ways and Means
Complete to 5-1-19

BRIEF SUMMARY: House Bill 4308 would create the Fantasy Contests Consumer Protection Act to establish a statutory framework to regulate fantasy contests within the state, place oversight of fantasy contests with the Michigan Gaming Control Board (MGCB), and create civil and criminal penalties for violations of the Act.

House Bill 4309 would incorporate the penalties into the Code of Criminal Procedure.

FISCAL IMPACT: House Bill 4308 would have an indeterminate fiscal impact on various state departments and local governmental units. House Bill 4309 would not have a direct fiscal impact on the state or on local units of government. A detailed fiscal analysis can be found in *Fiscal Information*, below.

THE CONTENT OF THE BILLS:

House Bill 4308 would create the Fantasy Contests Consumer Protection Act. Under the Act, a person could not offer *fantasy contests* without being a licensed fantasy contest operator.

Fantasy contest would mean a simulated game or contest with an entry fee that meets all of several conditions listed in the Act. A fantasy contest could not be based on a high school or youth sporting event or any other event that was not an athletic event. A fantasy sports contest also could not involve or be based on racing involving animals, or on slot machines, games such as poker or blackjack, or games authorized by MGCB under the Michigan Gaming Control and Revenue Act.

Briefly, the bill would, among other things, do all of the following:

- Task MGCB with regulatory oversight of fantasy contests and licensees.
- Make offering a fantasy contest in the state without a license a felony punishable by imprisonment for up to five years or a fine of up to \$50,000, or both.
- Establish an initial license fee of \$50,000 and an annual renewal fee of \$20,000, as well as additional investigative costs if the cost of a license investigation exceeded the license or renewal fee. A license would be valid for one year.
- Grandfather in a person who met the definition of “fantasy contest operator” on May 1, 2017, until the person is issued or denied a license under the act if the person applies for a license within 60 days after licenses become available.

- Allow an individual to offer fantasy contests without a license if the contest were offered from his or her home, not open to the general public, and limited to no more than 15 players and the individual collected no more than \$10,000 in total entry fees for all fantasy contests offered in a calendar year, with at least 95% of those fees awarded to the fantasy contest players.
- Allow a casino licensee licensed under the Michigan Gaming Control and Revenue Act to conduct fantasy contests without a fantasy contest operator license.
- Require certain information to be included in an application for licensure.
- Require an applicant to submit to certain procedures and internal controls as a condition of licensure.
- Prohibit certain conduct by licensed fantasy contest operators.
- Require operators to prohibit minors under 18 years of age from participating in fantasy contests.
- Prohibit offering a fantasy contest on, at, or from a kiosk or machine located in a retail business location, bar, restaurant, or other commercial establishment; a place of public accommodation; or a facility owned, operated, or occupied by a private club, association, or similar membership-based organization. (This would not apply to a casino licensee licensed by MGCB.)
- Authorize MGCB to impose license sanctions, or impose a civil fine capped at \$20,000, for a violation of the act, a rule promulgated under the act, or an order of the MGCB.
- Require an annual audit of the operator's financial condition.
- Establish record retention and maintenance requirements for licensees and require a licensed fantasy contest operator to keep records for at least three years after creation.
- Exempt information obtained from a licensee's records from public disclosure under the Freedom of Information Act.
- Require a fantasy contest operator to provide information on compulsive behavior resources and allow a means for an individual to restrict his or her ability to enter a fantasy contest.
- Require MGCB to promulgate rules to implement the act.

House Bill 4309 would amend the Code of Criminal Procedure to include a third or subsequent fantasy contest offense in the sentencing guidelines, categorized as a crime against public order, classified as a class E violation, and with a five-year statutory maximum prison sentence.

MCL 777.14d

Each bill would take effect 90 days after its enactment. House Bill 4309 is tie-barred to House Bill 4308, meaning that it could not take effect unless HB 4308 were also enacted.

BACKGROUND INFORMATION:

This bill is part of a series of reintroductions of bills passed by the House and Senate in December of 2018 and vetoed by the governor. In his veto message for House Bill 6420 (last session's version of House Bill 4308),¹ Governor Snyder stated that, while he was sympathetic with the idea of regulating fantasy contests in a manner consistent with recent federal law

¹https://content.govdelivery.com/attachments/MIGOV/2018/12/28/file_attachments/1130293/Veto%20Letter%204926%20-%204928.pdf

changes, he understood that there were many important factors, some unknown, to evaluate before proceeding with a substantial regulatory structure that had such a significant potential impact on Michigan citizens.

FISCAL INFORMATION:

House Bill 4308 would have an indeterminate fiscal impact on various state departments and local governmental units.

The bill would increase costs for MGCB by an unknown, but potentially significant amount. The proposed act would require MGCB to promulgate rules related to fantasy contests, license fantasy contest operators, review annual audits, and provide general oversight and regulation of fantasy contest operations to ensure compliance with the proposed act. MGCB could recoup some costs through the collection of the initial license fees (\$50,000) and annual license renewal fees (\$20,000). The language in the proposed act would also authorize MGCB to assess additional investigative costs if the licensure investigation exceeded the amount of the license or renewal fee. It is unknown if these fees would compensate MGCB for the entirety of the costs incurred under the proposed act.

House Bill 4308 authorizes MGCB to impose a civil fine of not more than \$20,000 for a violation of the proposed act, rules promulgated under the act, or an order of MGCB. Any revenue collected would be a function of the number of violations cited by MGCB and the civil fines assessed. Revenue collected from the payment of civil fines is deposited into the state Justice System Fund, which supports various justice-related endeavors in the judicial branch and the Departments of State Police, Corrections, and Health and Human Services.

Lastly, House Bill 4308 creates a new felony offense related to unauthorized fantasy contests and false statements related to licensure applications. The proposed act could increase costs related to state prisons, county jails, and/or state probation supervisions. In fiscal year 2018, the average cost of prison incarceration in a state facility was roughly \$38,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,700 per supervised offender in the same year. The fiscal impact on local court systems would depend on how the provisions of the bill affected caseloads and related administrative costs. There could also be an increase in penal fine revenues which would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

House Bill 4309 is a companion bill to HB 4308 and amends sentencing guidelines. The bill would not have a direct fiscal impact on the state or on local units of government.

ARGUMENTS:

For:

Proponents argued that the product of fantasy sports has outstripped the progress of legislation regulating the industry. For four decades, they argued, fantasy sports has been a growing industry, now attracting about 1.6 Michiganders, of whom 400,000 participate in paid fantasy sports. Accordingly, the bills would make clear that fantasy sports are legal, but also institute important consumer protections.

POSITIONS:

A representative of FanDuel and DraftKings testified in support of House Bill 4308. (3-12-19)

The following organizations indicated support for the bills:

Michigan Chamber of Commerce (3-12-19)

City of Detroit (3-19-19)

The Michigan Department of Treasury indicated support in concept but opposed the bills as written. (3-19-19)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.