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BILL ANALYSIS



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House Bill 4308 (Substitute H-1 as passed by the House)

House Bill 4309 (as passed by the House)

Sponsor: Representative Brandt Iden (H.B. 4308)

Representative Michael Webber (H.B. 4309)

House Committee: Regulatory Reform

Ways and Means

Senate Committee: Regulatory Reform

Date Completed: 12-4-19

CONTENT

House Bill 4308 (H-1) would create the "Fantasy Contests Consumer Protection Act" to do the following:

- Except as otherwise provided, prohibit a person from offering fantasy contests in Michigan unless the person was a licensed fantasy contest operator.
- Require a person seeking to be licensed as a fantasy contest operator to submit an application, with an initial \$50,000 fee, to the Michigan Gaming Control Board.
- Specify that a casino licensee licensed by the Board under the Michigan Gaming Control and Revenue Act could offer and conduct fantasy contests without applying for or holding a license under the proposed Act.
- Create penalties for a person who offered a fantasy contest in the State without being licensed by the Board.
- List the documentation an applicant for licensure would have to provide to the Board.
- Specify that a license would be valid for one year, and that the Board would have to renew a license each year if the applicant demonstrated continued eligibility for licensure under the proposed Act and paid the renewal fee of \$20,000.
- Require a fantasy contest operator to prohibit an individual who was less than 18 years of age from participating in a fantasy contest, and list further responsibilities and requirements of a fantasy contest operator.
- List commercially reasonable procedures and internal controls a fantasy contest operator would have to implement.
- Require, by July 1 of each year, a licensed fantasy contest operator to contract with a certified public accountant to perform an independent audit of the operator and require those results to be submitted to the Board not later than 180 days after the end of the fantasy contest operator's fiscal year.
- Provide the Board jurisdiction over each person involved in the conduct of a fantasy contests, and allow it to promulgate rules related to the conduct of fantasy contests.
- Allow the Board to suspend, revoke, or restrict the license of a fantasy contest operator that violated the Act, a rule promulgated under the Act, or an order of the Board, and impose civil fines of not more than \$20,000.
- List the locations/devices a fantasy contest could not be offered on, at, or from.

House Bill 4309 would amend the Code of Criminal Procedure to create in the sentencing guidelines a Class E felony against the public order for fantasy contest offenses, third or subsequent violations.

Each bill would take effect 90 days after it was enacted. House Bill 4309 is tie-barred to House Bill 4308.

House Bill 4308 (H-1) is described in further detail below.

House Bill 4308 (H-1)

Principal Definitions

Under the proposed Fantasy Contests Consumer Protection Act, "fantasy contest" would mean a simulated game or contest with an entry fee that meets all of the following conditions:

- No fantasy contest team is composed of the entire roster of a real world sports team.
- No fantasy contest team is composed entirely of individual athletes who are members of the same real world sports team.
- Each prize and award or the value of all prizes and awards offered to winning fantasy contest players is made known to the fantasy contest players in advance of the fantasy contest.
- Each winning outcome reflects the relative knowledge and skill of the fantasy contest players and are determined by the aggregated statistical results of the performance of multiple individual athletes selected by the fantasy contest player to form the fantasy contest team, whose individual performances in the fantasy contest directly correspond with the actual performance of those athletes in the athletic event in which those individual athletes participated.
- A winning outcome is not based on randomized or historical events, or on the score, point spread, or performance in a single athletic event of a single real-world sports team, a single athlete, or any combination of real-world sports teams.
- The fantasy contest does not constitute or involve and is not based on any of the prescribed activities or games.
- A fantasy contest must not be based on a high school or youth sporting event or any event that is not an athletic event.
- A fantasy contest must not be conducted in a manner that involves or results in betting on a race, game, contest, or on sports.

"Athletic event" would mean a real world professional, collegiate, or nationally recognized sports game, contest, or competition that involves the physical exertion and skill of the participating individual athletes, as to which each participant is physically present at the location in which the sports game, contest, or competition occurs, and the outcomes of the sports game, contest, or competition is directly dependent on the performance of the participating athletes.

"Fantasy contest team" would mean the simulated team composed of multiple individual athletes, each of whom is a member of a real world sports team, that a fantasy contest player selects to compete in a fantasy contest. "Fantasy contest player" would mean an individual who participates in a fantasy contest offered by a fantasy contest operator. "Fantasy contest operator" would mean a person that operates, carries on, conducts, maintains, exposes, or offers for play fantasy contests and awards prizes of value.

"Board" would mean the Michigan Gaming Control Board created under the Michigan Gaming Control and Revenue Act.

Fantasy Contest Regulation

Under the proposed Act, except as otherwise provided, a person could not offer fantasy contests in Michigan unless the person was a licensed fantasy contest operator. An individual could offer, solely from his or her private residence, one or more fantasy contests, if none of the contests were made available to the general public, each of the contests were limited to no more than 15 total fantasy contest players, and the individual collected no more than \$10,000 in total entry fees for all fantasy contests offered in a calendar year, at least 95% of which entry fees were awarded to fantasy contest players.

A person that met the definition of fantasy contest operator in Michigan on May 1, 2018, could continue offering fantasy contests until it was issued or denied a license under the Act if the person applied for a license within 60 days after the date the application for the license was made available by the Board.

A casino licensee licensed by the Board under the Michigan Gaming Control and Revenue Act could offer and conduct fantasy contests without applying for or holding a license under the proposed Act.

To ensure the integrity of fantasy contests, the Board would have jurisdiction over each person involved in the conduct of a fantasy contests, and could promulgate rules related to the conduct of fantasy contests, including rules setting forth penalties for violations of the Act or any rules promulgated under the Act.

A person could not do any of the following:

- Except as otherwise provided, offer a fantasy contest in Michigan unless the person was licensed by the Board.
- Knowingly make a false statement on an application for a license to be issued under the Act.
- Knowingly provide false testimony to the Board or any authorized representative of the Board while under oath.

The Board could not issue a license under the Act to a person who violated the above provisions. A person who offered a fantasy contest in the State without being licensed by the Board would be guilty of a crime as follows:

- For the first or second violation, the person would be guilty of a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$10,000, or both.
- For a third or subsequent violation, the person would be guilty of a felony punishable by imprisonment for not more than five years or a fine of not more than \$50,000, or both.

Licensure

A person seeking to be licensed as a fantasy contest operator would have to submit an application, with the applicable fee, to the Board. The applicant would have to provide sufficient documentation to the Board to ensure that the applicant met the requirements for licensure as determined by the Board, including documentation of all of the following:

- The name of the applicant.
- The location of the applicant's principal place of business.
- The applicant's telephone number and Social Security number or, if applicable, Federal tax identification number.

- The name and address of each person that held a 5% 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, officer, or key employee of, or who had a 5% or greater ownership interest in, the applicant.
- Any ownership interest that a director, officer, key employee, or individual owner of 5% or greater of the applicant held that was a fantasy contest operator or similar entity in any jurisdiction.
- An identification of any business, including, if applicable, the state of incorporation or registration, in which an applicant, director, officer, key employee, or individual owner of 5% or greater, had an equity interest of 5% or more.
- Whether an applicant, director, officer, key employee, or individual owner of 5% or greater had ever applied for or been granted any license, registration, or certificate issued by a licensing authority in Michigan or any other jurisdiction.
- Whether an applicant, director, officer, key employee, or individual owner of 5% or greater had filed, or been served with, a compliant or other notice filed by a public body regarding the delinquency in payment of, or dispute over filings concerning, the payment of any tax required under Federal, State, or local law, including the amount, the type of tax, the taxing agency, and the time periods involved.
- A description of any physical facility operated by the applicant in Michigan, the employees who work at the facility, and the nature of the business conducted at the facility.
- Information sufficient to show , as determined by the Board, that the applicant could meet the requirements of procedures submitted by the applicant under the Act and under any rules promulgated under the Act.

The Board could require licensure of a holding company, management company, or any other person it considered sufficiently connected to the fantasy contest operator if that licensure were necessary to preserve the integrity of fantasy contests and protect fantasy contest players.

A license issued under these provisions would be valid for one year. The Board would have to renew a license each year if the applicant demonstrated continued eligibility for licensure under the Act and paid the renewal fee. The Board could investigate a licensee at any time it determined it was necessary to ensure that the licensee remained in compliance with the Act and the rules promulgated under it.

The initial license fee would be \$50,000, and the annual license renewal fee would be \$20,000. The Board could assess investigative costs if the cost of a licensure investigation exceeded the amount of the license or renewal fee.

Reasonable Procedure Requirements

As a condition of licensure, a fantasy contest operator would have to submit to, and receive approval from, the Board commercially reasonable procedures and internal controls intended to accomplish all of the following:

- Prevent the fantasy contest operator, its owners, directors, officers, and employees, and any relative of any of these individuals living in the same household, from participating in a fantasy contest other than a fantasy contest offered by the fantasy contest operator for which participation was limited to the people described above.
- Prevent the employees or agents of the fantasy contest operator from sharing protected information with third parties unless the information was otherwise made publicly available.

- Prevent participants and officials in an athletic event from participating in a fantasy contest that was based on the athletic event.
- Establish the number of entries a single fantasy contest player could enter in a single fantasy contest and take reasonable steps to prevent fantasy contest players from submitting more than the allowable number of entries.
- Identify each highly experienced fantasy contest player by a symbol attached to the highly experienced fantasy contest player's name.
- Offer some fantasy contests that were open only to players other than highly experienced fantasy contest players.
- Either segregate the deposits in the fantasy contest players' accounts from operational money or maintain a reserve in the form of cash, cash equivalents, an irrevocable letter of credit, a bond, or a combination of these, the aggregate amount of which exceeded the total dollar value amount of deposits in the fantasy contest players' accounts, and which reserve could not be used for operational activities.
- Ensure compliance with the applicable State and Federal requirements to protect the privacy and online security of a fantasy contest player and the fantasy contest player's account.
- Otherwise ensure the integrity of fantasy contests.

("Highly experienced player" would mean a fantasy contest player who has done at least one of the following:

- Entered more than 1,000 fantasy contests offered by a single fantasy contest operator.
- Won more than three prizes valued at \$1,000 each or more from a single fantasy contest operator.)

A licensed fantasy contest operator would have to comply with the procedures and internal controls that were submitted to the Board and approved by the Board. A licensed fantasy contest operator also could make technical adjustments to its procedures and internal controls if they were not material and it notified the Board in advance and continued to meet or exceed standards required by the Act and any rules promulgated by the Board.

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

Independent Audit

By July 1 of each year, a licensed fantasy contest operator would have to contract with a certified public accountant to perform an independent audit in accordance with generally accepted accounting principles of the financial condition of the licensed fantasy contest operator's total operations for the previous fiscal year and to ensure compliance with additional requirements and for any other purpose the Board considered appropriate. A licensed fantasy contest operator would have to submit the audit results to the Board not later than 180 days after the end of the fantasy contest operator's fiscal year. The results would be confidential and privileged, would not be subject to 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.

Fantasy Contest Operators

A fantasy contest operator would have to prohibit an individual who was less than 18 years of age from participating in a fantasy contest. A licensed fantasy contest operator could not do any of the following:

- Allow the use of a script unless the script was made readily available to all fantasy contest players.
- Employ false, deceptive, or misleading advertising, or advertising that was not based on fact.
- Target, in advertising or promotions, either individuals who had restricted themselves from entering a fantasy contest under the procedures established by the Board, or individuals who were less than 18 years of age.

A licensed fantasy contest operator would have to do the following:

- Make available on its website information about resources relating to compulsive gaming behavior, including a telephone number or link to information on compulsive gaming behavior and where to seek assistance for compulsive gaming behavior.
- Make available, by website, telephone, or online chat, a means to allow an individual to irrevocably restrict the individual's ability to enter a fantasy contest and to select the length of time the restriction would be in effect.
- Offer a fantasy contest player access to the player's playing history, including a summary of entry fees spent, games played, previous lineups, and prizes awarded.
- Retain and maintain in a place secure from theft, loss, or destruction all of the records required to be maintained under the proposed Act and the rules promulgated under it for at least three years after the date of the record's creation.
- Organize all records in a manner that enabled the operator to provide the Board with the records.

Information obtained under the records described above would be confidential and privileged, would not be subject to the Freedom of Information Act, would not be subject to subpoena, and would not be subject to discovery or admissible as evidence in a private civil action.

Fantasy Contests

A fantasy contest could not be offered on, at, or from any of the following:

- A kiosk or machine physically located in a retail business location, bar, restaurant, or other commercial establishment.
- A place of public accommodation.
- A facility owned, operated, or occupied by a private club, association, or similar membership-based organization.

These provisions do not apply to a casino licensee licensed by the Board under the Michigan Gaming Control and Revenue Act.

A fantasy contest conducted under the proposed Act would not violate the Michigan Penal Code, and the Act would not create an exemption to a violation of Chapter 44 (Gambling) of the Code.

Michigan Gaming Control Board

The Board would have to promulgate rules to implement the proposed Act under the Administrative Procedures Act, including rules that addressed all of the following:

- Requiring a fantasy contest operator to implement commercially reasonable procedures to prohibit access to both individuals who requested to restrict themselves from playing fantasy contests, and individuals who were less than 18 years of age.

- Prescribing requirements related to the beginning players and highly experienced players.
- Suspending the account of a fantasy contest player who violated the proposed Act or a rule promulgated under it.
- Providing a fantasy contest player with access to information on playing responsibly and how to ask for assistance for compulsive gaming behavior.
- Requiring an applicant for a fantasy contest operator license to designate at least one key employee as a condition for obtaining a license.
- Any other rule the Board determined was necessary to ensure the integrity of fantasy contests.

The Board could suspend, revoke, or restrict the license of a fantasy contest operator that violated the Act, a rule promulgated under the Act, or an order of the Board, and could impose a civil fine of not more than \$20,000 for those violations. A fine would be payable to the State and could be recovered in a civil action brought by the Board.

The Board could issue a cease and desist order and obtain injunctive relief against a person that violated the Act.

MCL 777.14d (H.B. 4309)

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

House Bill 4308

The bill would have an indeterminate fiscal impact on the Michigan Gaming Control Board (MGCB) and local units of government.

The bill would increase administrative costs to the MGCB to promulgate rules, operate licenses, review audits, and regulation of fantasy contest operators. The MGCB would generate revenue in the form of initial license and renewal fees on fantasy contest operators. Additional fees could be authorized by the MGCB to support investigations. It is currently unknown if the additional fees would be sufficient to support the additional administrative costs on the MGCB.

The bill would have a negative fiscal impact on the State and local government. New misdemeanor arrests and convictions under the proposed bill could increase resource demands on law enforcement, court systems, community supervision, and jails. However, it is unknown how many people would be prosecuted under the bill's provisions. Any additional revenue from imposed fines would go to local libraries.

Additionally, the bill would make a third or subsequent violation a felony. Felony convictions would have a negative fiscal impact on the State and local government. New felony arrests and convictions under the proposed bill could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. However, it is unknown how many people would be prosecuted under the bill's provisions. The average cost to State government for felony probation supervision is approximately \$3,500 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government is approximately \$5,315 per prisoner per year. Any additional revenue from imposed fines would go to local libraries.

House Bill 4309

The bill would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge*, in which the Court ruled that the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

Fiscal Analyst: Joe Carrasco
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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.