

FANTASY CONTESTS CONSUMER PROTECTION ACT

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House Bills 6419 and 6420 as introduced

Sponsor: Rep. Brandt Iden

Committee: Regulatory Reform

Complete to 10-3-18

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

BRIEF SUMMARY:

House Bill 6419 would revise a provision that currently exempts certain games or contests from the general prohibition on gambling to include in the exemption a fantasy or simulation sports game or contest that satisfies certain conditions.

House Bill 6420 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.

DETAILED SUMMARY:

House Bill 6419 would amend a provision within the Michigan Penal Code that specifies that Chapter XLIV (Gambling) does not prohibit or make unlawful certain conduct. Currently, exempted conduct in connection with a race, contest, or game includes:

- Giving or paying purses, prizes, or premiums to players in a game or participants in a contest; to the owner, driver, manager, or trainer of animals; or to the drivers, mechanics, or operators of a machine.
- Giving or paying entry fees.
- Paying expenses or a reward for services or labor.

Under the bill, the exemption would only apply to a *game or contest* if either of the following applied (how the exemption applies to a race would not be amended):

- The game or contest involves an athletic event that satisfies all of the following:
 - The sponsor or operator of the game or contest is not a player or participant in the game or contest.
 - The performance of the player or participant relative to the performance of others is determinative of the outcome.
 - The prizes and awards offered to winning participants are established and made known to the participants in advance of the game or contest.

OR

- The game or contest is a fantasy or simulation sports game or contest that satisfies 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 fantasy 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 individual, including athletes in the case of sporting events.
- 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.

As used in the bill, the terms “athletic event” and “athletic game or contest” 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 outcome of the sports game, contest, or competition is directly dependent on the performance of the participating athletes.

MCL 750.310

House Bill 6420 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. “Person” would mean an individual, partnership, corporation, association, or other legal entity. The term would include a sovereign tribal government and its business entities.

“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 would also not constitute or involve or be based on racing involving animals, or on slot machines, games such as poker or blackjack, or games authorized by the MGCB under the Michigan Gaming Control and Revenue Act.

Very briefly, the bill would, among other things, do the following:

- Task the MGCB with regulatory oversight of fantasy contests and licensees.
- Make it a 5-year felony and/or \$50,000 fine to offer a fantasy contest in the state without a license.
- Authorize the MGCB to impose license sanctions, or impose a civil fine capped at \$20,000, for a violation of the Act, rule, or order of the MGCB.
- Specify that any other law inconsistent with the Act would not apply to fantasy contests conducted by a fantasy contest operator.
- 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, 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.
- 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 a casino licensee licensed under the Michigan Gaming Control and Revenue Act to conduct fantasy contests without a fantasy contest operator license.
- 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 1 year.
- 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.
- Require an annual audit of the operator's financial condition.
- Require operators to prohibit minors under 18 years of age from participating in fantasy contests.
- Prohibit certain conduct by licensed fantasy contest operators.
- 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 the MGCB.)
- 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 the MGCB to promulgate rules to implement the act.
- Establish record retention and maintenance requirements for licensees and require a licensed fantasy contest operator to keep records for at least 3 years after creation.
- Exempt information obtained from a licensee's records from public disclosure under the Freedom of Information Act.

The bill, which is tie-barred to House Bill 6419, would take effect 90 days after enactment. A tie-bar means a bill cannot take effect unless the bill to which it is tie-barred is also enacted.

FISCAL IMPACT:

By revising the exemptions to the state's general prohibition on gambling, **House Bill 6419** could result in a decrease in costs for the state and for local units of government, which would depend on the number of people that would no longer be convicted of misdemeanors or felonies. Reduced felony charges would result in reduced costs related to the state correctional system, and reduced misdemeanor charges would result in reduced costs related to county jails and/or local misdemeanor probation supervision. In fiscal year 2017, the average cost of prison incarceration in a state facility was roughly \$37,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,600 per supervised offender in the same year. The costs of local incarceration in county jails and local misdemeanor probation supervision vary by jurisdiction. 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 a decrease in penal fine revenues, which would

decrease funding for local libraries, which are the constitutionally designated recipients of those revenues.

House Bill 6420 would increase costs for the MGCB by an unknown, but potentially significant amount. The proposed act would require the 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. The 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 the 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 the MGCB for the entirety of the costs incurred under the proposed act.

House Bill 6420 authorizes the MGCB to impose a civil fine of not more than \$20,000 for a violation of the proposed act, rules promulgated under the bill, or an order of the MGCB. Any revenue collected would be a function of the number of violations cited by the 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 6420 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 FY 2017, the average cost of prison incarceration in a state facility was roughly \$37,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,600 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.

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