

Legislative Analysis



FANTASY SPORTS GAMES CONSUMER PROTECTION ACT

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4742 as introduced
Sponsor: Rep. Jim Tedder

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

House Bill 4743 as introduced
Sponsor: Rep. Aaron Miller

Committee: Regulatory Reform
Complete to 5-15-18

BRIEF SUMMARY:

House Bill 4742 would revise a provision that currently exempts certain games or contests from the general prohibition on gambling to include in the exemption an athletic event or fantasy or simulation sports game that satisfies certain conditions.

House Bill 4743 would create the Fantasy Sports Games Consumer Protection Act to do, among other things, the following:

- Restrict the offering of fantasy sports games to state-licensed operators.
- Establish an initial license fee of \$5,000 and an annual renewal fee of \$1,000, subject to caps specified in the bill.
- Require certain information to be included in an application for licensure.
- Require an applicant to submit certain procedures to LARA designed to protect the integrity of the operation of fantasy sports games.
- Require an annual audit of the operator's financial condition.
- Require operators to adopt procedures to ensure that minors do not participate in fantasy sports games.
- Prohibit fantasy sports games based on high school, college, university, or youth sporting events.
- Require an 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 sports game.
- Allow LARA to impose license sanctions or a civil fine for a violation of the act or a departmental rule or order.
- Require LARA to promulgate rules to implement the act.

DETAILED SUMMARY:

House Bill 4742 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 sports activity involving the physical exertion and skill of one or more players or participants. The terms would not include roulette, poker, blackjack, a card game, a dice game, or any other game or contest ordinarily offered at a gambling casino.

House Bill 4743 would create the Fantasy Sports Games Consumer Protection Act. Under the Act, a person could not offer fantasy sports games without being a licensed game operator. “Person” would mean an individual, partnership, corporation, association, or other legal entity other than a governmental entity. The term would include a sovereign tribal government and its business entities.

Fantasy sports games conducted in accordance with the Act by a licensed game operator would be authorized, as would games conducted by a game operator conducting fantasy sports games in the state on May 1, 2016. Those game operators could continue to operate fantasy sports games until the operator was issued or denied a license under the Act.

Game operator license

Applications for licensure as a game operator would have to be submitted to the Department of Licensing and Regulatory Affairs (LARA) with an initial license fee of \$5,000. However, neither the initial license fee nor the annual license renewal fee could exceed 10% of the total amount of entry fees collected by the applicant from the operation of fantasy sports games less the total amount of cash and value of cash equivalents paid as prizes or awards to game

participants. Licenses would be valid for 1 year. LARA would be required to renew a license if the applicant demonstrated continued eligibility for licensure.

Sufficient documentation assuring that the applicant meets the requirements for licensure would have to be provided with the application. Sufficient documentation would include at least the following:

- Applicant's name and location of principal business.
- Name and address of each person holding a 15% or greater ownership interest in the applicant or in shares of the applicant.
- Applicant's criminal record, if any. If a business, any criminal record of a director or officer or individual having a 15% or greater ownership interest in the applicant would have to be included. (The bill does not provide a mechanism or specify how the criminal records would be obtained.)
- Any ownership interest that a director, officer, policymaking manager, or principal stockholder of the applicant holds in a person that is or was a licensed fantasy sports operator or similar entity.
- A description of any physical facility operated by the applicant in Michigan, the employees who work there, and the nature of the business conducted there.
- Information sufficient to show, as determined by LARA, that the applicant can meet the requirements of procedures submitted by the applicant (described below).

Required procedures by licensed operators

A licensed operator offering paid fantasy sports games in Michigan would have to submit to LARA procedures intended to do all of the following;

- Prevent the game operator; its owners, directors, officers, and employees; and relatives living in the same household from competing in a fantasy sports game.
- Prevent employees or agents from sharing protected information that could affect game play with third parties until the information became publicly available.
- Prevent participants and officials in a real-world sporting event having 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.
- Segregate game participants' money from operational money, **or** maintain a reserve as detailed in the act for the benefit and protection of authorized game participants' money held in fantasy sports game accounts.

A person would be prohibited from violating any of the procedures submitted to and approved by LARA. Further, these procedures would be confidential and privileged, not subject to disclosure under the Freedom of Information Act, not subject to subpoena, and not subject to discovery or admissible in evidence in a private civil action.

Annual audit

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

Minors

A game operator would be required to undertake commercially reasonable procedures intended to ensure that minors (individuals under 18 years of age) do not participate in a fantasy sports game.

School sporting events

The bill would prohibit a licensed game operator from conducting, operating, or offering a fantasy sports game based on a university, college, high school, or youth sporting event.

Compulsive gambling resources information

The bill would require a licensed game operator to make available on its website information about resources relating to compulsive behavior. This would have to include a telephone number or link to information on compulsive behavior and where to seek assistance for compulsive behaviors.

In addition, the bill would require the operator to make a means available for an individual to restrict his or her ability to enter a fantasy sports game and to select the length of time the restriction would be in effect. This could be done on the operator's website or by telephone or online chat. The operator would also have to offer a participant access to his or her own playing history, including a summary of entry fees expended, games played, previous lineups, and prizes awarded.

Penalties for noncompliance

LARA could suspend, revoke, or restrict the license of an operator that violated the act, a departmental rule, or a departmental order, and could impose a civil fine of not more than \$1,000 for each violation of the act, a rule, or an order. The fine would be payable to the state and could be recovered in a civil action brought by LARA.

Rule promulgation

LARA would be required to promulgate departmental rules to implement the act under the Administrative Procedures Act.

The bill would take effect 90 days after being enacted. Further, the bill is tie-barred to House Bill 4742, meaning that it could not take effect unless HB 4742 were also enacted.

FISCAL IMPACT:

By revising the exemptions to the state's general prohibition on gambling, House Bill 4742 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 4743 would have a significant, though indeterminate, fiscal impact on the Department of Licensing and Regulatory Affairs. The bill would require the department to license fantasy game operators, which would entail expenditures for several purposes. The bill would increase revenues by allowing the department to charge initial licensure fees, renewal licensure fees, and civil fines. It is not presently known whether revenues from the aforementioned fees and fines will offset the department's costs for licensing game operators, mainly because it is unknown how large the population of licensure applicants will be.

Costs for the department would increase due to the department's responsibilities in licensing of game operators. This would include processing and reviewing licensure applications and accompanying documentation, reviewing submitted annual audits, promulgating rules to implement the bill, and taking action regarding violations of the bill or associated rules. Since it is unknown how large the applicant pool will be, the department has no estimate of the magnitude of costs associated with implementation of the provisions of this bill.

The bill stipulates that the initial licensure fee is \$5,000 and that the annual licensure renewal fee is \$1,000. The bill also states, however, that initial and renewal licensure fees must not exceed 10% of the total fantasy sports entry fees collected by the applicant, less the value of prizes and awards granted to game participants. The bill would also allow the department to impose a civil fine not to exceed \$1,000 for violations of the bill, associated rules, or an order of the department.

Further, HB 4743 would have an indeterminate fiscal impact on the state. Depending on the number of individuals who are assessed civil fines under provisions of the bill, the state could experience an increase in the amount of revenue available. Revenue collected from 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.

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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.