

## FANTASY CONTESTS CONSUMER PROTECTION ACT

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

**House Bill 6419 as reported without amendment**  
**House Bill 6420 as reported without amendment**  
**Sponsor: Rep. Brandt Iden**  
**Committee: Regulatory Reform**  
**Complete to 11-28-18**

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

**BRIEF SUMMARY:** House Bill 6420 would create a new act, the Fantasy Contests Consumer Protection Act, to establish a statutory framework to regulate fantasy contests within the state, to place oversight of fantasy contests with the Michigan Gaming Control Board, and to create civil, administrative, and criminal penalties for violations of the act.

House Bill 6419 would revise a provision in the Penal Code that currently exempts certain games or contests from the general prohibition against gambling to additionally exempt a fantasy or simulation sports game or contest that satisfies certain conditions.

**FISCAL IMPACT:** The bills would have an indeterminate fiscal impact on various state departments and local governmental units. (See **Fiscal Information**, below, for a detailed discussion.)

### **THE APPARENT PROBLEM:**

Fantasy sports players assemble an imaginary team, made up of real athletes, which competes against the imaginary teams of other players, with points being awarded based on the performance of the athletes in real-world sporting events. Long an activity shared among friends or family, with bragging rights or small pots of money going to the winner at the end of a sport's season, participation in fantasy sports leagues has grown to include commercial businesses offering season-long leagues and/or daily fantasy sports (DFS) games, with the potential for big payouts for players who pay to play. Fantasy and DFS sports are generally not considered sports gambling because a measure of skill, rather than chance, is needed to select athletes from across a sport, while being mindful of who is in a slump or recovering from an injury. However, some feel that fantasy sports businesses are operating in a legal gray area.

In recent years, most states have considered legislation to regulate commercial businesses that offer fee-for-entry fantasy sports games. At least 19 states have enacted some form of law to specifically legalize commercial fantasy sports and DFS and to add consumer protections. Under Michigan law, accepting or paying money or any valuable thing contingent on an uncertain outcome is generally prohibited as gambling unless the activity or conduct is specifically exempted from that prohibition. It has been suggested that Michigan consider legalizing fantasy sports and providing a structure to regulate the commercial side of fantasy sports and to establish consumer protections.

## ***THE CONTENT OF THE BILLS:***

### **House Bill 6420**

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. The Michigan Gaming Control Board (MGCB) would be tasked with regulatory oversight of fantasy contests and licensees.

*Fantasy contest* would mean a simulated game or contest with an entry fee that meets all of several conditions listed in the Act. Among those conditions:

- Winning outcomes could not be based on the score, point spread, or performance in an athletic event of a single real-world sports team, a single athlete, or any combination of real-world sports teams.
- 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 contest could not constitute, involve, or be based on games or contests ordinarily offered by horse tracks or casinos for money or credit; a slot machine or other electronic device or equipment; games such as poker or blackjack; racing involving animals; or games or devices authorized by the MGCB under the Michigan Gaming Control and Revenue Act.
- Winning outcomes would have to reflect the relative knowledge and skill of the players and be determined by the aggregated statistical results of the performance of multiple individual athletes selected by a player to form his or her 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 athletes participated. The teams could not constitute the whole roster of a real-world team.

### **Exemptions from licensure**

The new Act would not apply to an individual who offered 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.

A person who met the definition of *fantasy contest operator* on May 1, 2017 would be “grandfathered,” or allowed to operate fantasy contests, 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.

Further, a casino licensee licensed under the Michigan Gaming Control and Revenue Act could conduct fantasy contests without being licensed as a fantasy contest operator. [Note: It appears that casinos operated by Indian tribes would be required to obtain a fantasy contest operator

license under the Act, since they are not licensed under the Michigan Gaming Control and Revenue Act.]

### **Fantasy contest operator license**

House Bill 6420 would do all of the following regarding the 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 one year.
- Require certain information to be included in an application for licensure. This would include, among other things, the applicant's criminal record and certain information pertaining to those with ownership or equity interest in the applicant of 5% or more. [Note: The bill does not specify how the criminal record information would be obtained. While anyone can conduct a name-based search of Michigan criminal records, only a law enforcement agency can obtain national criminal history information, and then only if fingerprints are submitted and forwarded to the FBI.]
- Require an applicant to submit to certain procedures and internal controls as a condition of licensure to, among other things, ensure compliance with applicable state and federal requirements to protect the privacy and online security of a player and a player's account and otherwise ensure the integrity of fantasy contests.
- Require an annual audit, performed by a certified public accountant, of the fantasy contest operator's financial condition.
- Require a licensed fantasy contest operator to comply with record retention and maintenance requirements and keep the records for at least three years after creation. Information in the records would be exempt from public disclosure under the Freedom of Information Act (FOIA), would not be subject to subpoena, and would not be subject to discovery or admissible as evidence in a private civil action.

### **Miscellaneous provisions and prohibitions**

House Bill 6420 would also do the following:

- Require operators to prohibit minors under 18 years of age from participating in fantasy contests.
- Prohibit certain conduct by licensed fantasy contest operators, such as employing false or misleading advertising or allowing the use of a *script* unless the script is made readily available to all fantasy contest players. (*Script* is defined in the Act as a list of commands that a fantasy-contest-related computer can execute and that is created by a player, or by a third party for a player, to automate processes on a fantasy contest platform.)
- 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.
- Specify that any other law inconsistent with the Act would not apply to fantasy contests conducted by a fantasy contest operator.
- Require the MGCB to promulgate rules to implement the Act.

### **Civil, criminal, and administrative penalties**

The bill would provide the following sanctions or penalties for the following violations:

- *Offering a fantasy contest in the state without a license*: felony punishable by imprisonment for up to five years and/or a fine of up to \$50,000.
- *Violation of the Act, a rule, or an order of the MGCB by a licensed fantasy contest operator*: license suspension, revocation, or restriction and/or could be subject to a civil fine capped at \$20,000.
- *Offering a fantasy contest without a license, knowingly making a false statement on a license application, and/or knowingly providing false testimony to the MGCB or its authorized representative while under oath*: ineligibility for a fantasy contest operator license.
- *Violation of the Act*: the person could be subject to a cease and desist order or injunctive relief.

House Bill 6420 would take effect 90 days after enactment. It is tie-barred to House Bill 6419, which means it cannot take effect unless House Bill 6419 is also enacted.

### **House Bill 6419**

Michigan law currently prohibits gambling unless the conduct or activity is specifically excluded from the general prohibition. 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 related to operation of games of skill or chance at certain fairs, exhibitions, and events governed by the Exposition and Fairgrounds Authority Act or giving or paying certain purses and prizes relating to a race, contest, or game. 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, in relation to a game or contest, the exemption would only apply 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 individuals, 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.

[Note: Although the bill would thus define *athletic game or contest*, the phrase does not appear to be used anywhere in the bill.]

MCL 750.310

#### ***BACKGROUND INFORMATION:***

House Bill 6419 is almost identical to House Bill 4742 and Senate Bill 461 of the current legislative session. House Bill 6420 is similar to provisions in House Bill 4743 and Senate Bill 462.

#### ***FISCAL INFORMATION:***

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 act, 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.

#### ***ARGUMENTS:***

##### ***For:***

Many consider fantasy sports to be games of skill, rather than chance, and therefore do not believe participating in fantasy sports constitutes an act of gambling. To others, it is not black or white. Since Michigan law currently prohibits gambling, an amendment is needed to specifically exempt fantasy sports from being treated as an illegal activity. House Bill 6419 would amend the Michigan Penal Code to provide the needed exemption for fantasy sports. The bill would clearly establish the parameters and requirements needed for a fantasy sports game to qualify for the exemption.

House Bill 6420 would create the regulatory framework to license operators of fantasy game contests and establish protections for consumers. Anyone running an unlicensed business would face criminal penalties and be barred from obtaining a license to operate in the state. The sensitive information of players would have to be protected and consumers would have to be allowed a way to block themselves from participating in fantasy sports should they, for any reason, wish to do so. Given that participation in fantasy sports leagues is growing in popularity, the legislation is important to keep out bad actors and protect consumers. Though similar to other bills currently under consideration by the legislature, House Bill 6420 would provide for beefed-up penalties for bad acts and require higher license fees (which helps support enforcement and ensure compliance by licensees).

##### ***Against:***

The provision requiring an applicant for a fantasy sports operator license to include criminal history information with the application is inadequate. House Bill 6420 does not specify whether this is merely a name-based check such as provided to anyone through ICHAT or a fingerprint search of the national FBI database. Name-based criminal history checks do not

provide the level of accuracy regarding a person's background as would a fingerprint check. However, the FBI requires certain specific statutory authority regarding the taking of fingerprints and their submission to the state and FBI for the background checks and does not disseminate the results of a fingerprint check to the subject of the criminal history check. Considering the potential for fraud and financial harm to consumers, it is important to ensure that sufficient protections are built into the bill's provisions, especially when it comes to verifying an applicant's suitability for licensure.

***POSITIONS:***

The following entities indicated support for both bills (10-3-18):

- Fan Duel
- Draft Kings

Motor City Casino indicated support for House Bill 6420. (10-3-18)

The following entities indicated support for House Bill 6420 and a neutral position regarding House Bill 6419 (10-3-18):

- Greektown Casino
- MGM Grand Detroit

The Michigan Gaming Control Board indicated it has no position on the bills. (10-3-18)

Legislative Analyst: Susan Stutzky  
Fiscal Analyst: Ben Gielczyk

---

■ 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.