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BILL



ANALYSIS

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House Bill 4295 (Substitute H-2 as passed by the House)  
House Bill 4296 (Substitute H-1 as passed by the House)  
Sponsor: Representative Dave Agema  
House Committee: Regulatory Reform  
Senate Committee: Regulatory Reform

Date Completed: 10-12-11

## **CONTENT**

**House Bill 4295 (H-2)** would enact the "Amateur Mixed Martial Arts Regulatory Act" to do the following:

- Require a person to be licensed as a promoter in order to hold or conduct an amateur mixed martial arts contest or event or engage in other activities regulated by the Act.
- Set a \$100 application fee and a \$300 annual license fee.
- Require promoters to pay a \$200 regulatory and enforcement fee for each amateur mixed martial arts event presented.
- Create the "Amateur Mixed Martial Arts Fund" and require fees and administrative fines to be deposited into the Fund.
- Require promoters to ensure that conditions and requirements pertaining to the number and length of rounds, weight classes, the exclusion of unfit contestants and professionals, and other matters, were met in the conduct of an event.
- Create the Amateur Mixed Martial Arts Commission and require it to establish disciplinary sanctions against licensees and others who violated the Act.
- Provide that the Department of Licensing and Regulatory Affairs (LARA) would be responsible for administering and enforcing the Act, and allow LARA to promulgate rules for this purpose.

- Provide for administrative sanctions and criminal penalties for violations, and a process for investigating and resolving complaints, including formal and informal procedures.
- Authorize LARA to summarily suspend a license, issue cease and desist orders, and seek injunctive relief.

**House Bill 4296 (H-1)** would amend the sentencing guidelines in the Code of Criminal Procedure to include a felony violation of the proposed Act (allowing a professional to participate in an amateur mixed martial arts contest with an amateur) as a Class E felony against public safety with a statutory maximum term of three years.

House Bill 4295 (H-2) would take effect 90 days after it was enacted. House Bill 4296 (H-1) is tie-barred to House Bill 4295.

Below is a detailed description of House Bill 4295 (H-2).

### Definitions

"Mixed martial arts" would be defined as "the general term that describes the convergence of techniques from a variety of combative sports disciplines", including boxing, wrestling, judo, jujitsu, kickboxing, and other techniques.

"Amateur" would mean an individual mixed martial artist who is not competing and has

never competed in a mixed martial arts contest for a prize or who is not competing and has never competed with or against a professional in a mixed martial arts contest for a prize. "Prize" would mean money or another form of compensation or reward offered or given to a contestant, but would not include an inscribed item given for participation that costs \$200 or less.

"Professional" would mean an individual who is competing or has competed in the past for a prize in any sport regulated under the Michigan Unarmed Combat Regulatory Act (which governs professional boxing and professional mixed martial arts contests and exhibitions).

"Promoter" would mean an individual who produces or stages an amateur mixed martial arts contest or event. It would not include the venue where a contest or event was held unless the venue contracted with the individual promoter to be a copromoter.

"Event" would mean a program of one or more individual amateur mixed martial arts contests. A contest would not include a "mixed martial arts exhibition", which would mean a performance or demonstration of mixed martial arts that meets all of the following:

- It is held at a promoter's gym, dojo, or similar training facility or at a training center.
- Participants in the performance or demonstration do not pay a fee to participate.
- Spectators do not pay a fee to attend.

### Commission

The Amateur Mixed Martial Arts Commission would be created as an advisory body within the Department of Licensing and Regulatory Affairs. The Commission would be required to establish appropriate disciplinary sanctions against licensees or other individuals who violated the proposed Act or rules promulgated under it.

The Commission would consist of the Director of LARA, serving as a nonvoting ex officio member, and seven voting members appointed by the Governor with the advice and consent of the Senate. The appointed members would have to include one who was a former contestant, physician, referee,

or judge, who had experience in the sport of amateur mixed martial arts.

Of the initial appointed members, three would serve for four years, two for three years, and two for two years. Otherwise, appointees would serve for four-year terms. An individual could not serve more than two consecutive terms.

The Commission would have to elect one of its members annually to serve as chair, and would have to meet as often as necessary to fulfill its duties. Members could not vote by proxy.

The Legislature annually would have to establish the per diem compensation of Commission members. Members would have to receive reimbursement for their actual travel expenses to Commission meetings from LARA. The amount of travel reimbursement could not exceed the amounts allowed under the standardized travel regulations of the Department of Technology, Management, and Budget.

While serving as a Commission member, an individual could not promote or sponsor any contest or event of amateur mixed martial arts or have any financial interest in an entity that did so.

An individual would not be eligible for appointment to the Commission if he or she had a material financial interest in a club, organization, or other legal entity whose the primary purpose was conducting amateur or professional mixed martial arts contests or events.

### Fund

The Amateur Mixed Martial Arts Fund would be created in the State Treasury. The Department would have to deposit all money received from application fees, license fees, and administrative fines into the Fund. The Department could spend money from the Fund, upon appropriation, to administer and enforce the Act and for its expenditures under the Act.

The State Treasurer would have to direct investment of the Fund, and credit to it interest and earnings from Fund investments. Money in the Fund at the close of the fiscal year would remain in the Fund and not lapse to the General Fund. The

Department would be the administrator of the Fund for auditing purposes.

#### Promoter's License

An individual would be required to have a promoter's license, or be exempt from licensure, in order to hold or conduct an amateur mixed martial arts contest or event in Michigan or engage in any other activity regulated under the proposed Act.

An individual seeking license would have to submit a written application to LARA, along with a nonrefundable application processing fee of \$100 and an annual license fee of \$300. Beginning one year after the Act's effective date, the LARA Director could biannually adjust the amount of the fees based on the increase or decrease for the preceding six-month period in the Detroit Consumer Price Index.

By filing a license application, an individual would certify his or her general suitability, character, integrity, and ability to participate in, engage in, or be associated with amateur mixed martial arts contests or events. The applicant would have the burden of proof to establish his or her suitability, character, integrity, and qualifications.

Also, by filing a license application, an individual would accept the risk of adverse public notice, embarrassment, criticism, financial loss, or other action with respect to his or her application and would expressly waive any claim for damages as a result of any adverse public notice, embarrassment, etc.

An applicant would be ineligible for a promoter's license if, within the preceding five years, he or she had been convicted of a felony that involved violence, theft, fraud, or an element of financial dishonesty under the laws of Michigan or any other jurisdiction in the United States. An applicant also would be ineligible if he or she had an unsatisfied tax lien of at least \$5,000 under any Federal, State, or local law at the time of application, or if he or she submitted an application that contained false information.

If LARA did not issue an initial or renewal license to an individual, he or she could petition the Department and the Commission for a review.

#### License Renewal; Reinstatement

An annual promoter's license would expire on September 30 of the calendar year following the year in which it was issued.

An individual who failed to renew a license by its expiration date could not hold or conduct an amateur mixed martial arts contest or event or advertise, operate, or use the title "promoter" or "amateur promoter" after that date.

An individual could renew an expired license within 60 days after its expiration date by meeting all requirements for licensure, paying the required license fee, and paying a late renewal fee of \$30. After the 60-day period, an individual could obtain a license only by complying with the requirements for initial licensure.

Except as provided for a revoked or suspended license or as otherwise provided in the Act, an individual could seek reinstatement of a license by filing an application, paying the application processing fee and annual license fee, and filing a petition with LARA.

If LARA revoked or suspended a license, the Department could reinstate it or lift a suspension if LARA received an application for reinstatement and any administrative fine it had assessed.

#### Amateur Mixed Martial Arts Event

A licensee would have to pay a regulatory and enforcement fee of \$200 for each amateur mixed martial arts event he or she presented. The Department would have to deposit the fee in the proposed Fund. By December 1 each year, LARA would have to report to the Legislature the amount of revenue generated by this fee in the prior State fiscal year.

At least five business days before the event, the licensee would have to pay the fee and give LARA notice describing the event. The licensee also would have to pay all obligations related to the normal course of promoting such an event, including venue rent and judge, medical professional, referee, and timekeeper fees. The licensee would have to maintain records of the event for at least one year and make the records

available to LARA or law enforcement officials on request.

The licensee would have to ensure that all specified conditions and requirements were met in the conduct of the event. These pertain to the number and length of rounds; gloves; weight classes; the presence of a medical professional (a nurse practitioner, physician's assistant, or physician); the presence of a trained and competent referee; and contestants' insurance coverage. The requirements and conditions also pertain to the exclusion of the following as a contestant:

- A professional.
- A pregnant woman.
- An individual without proper medical clearance.
- A contestant who did not submit certification of negative results for hepatitis B and C and HIV tests.
- An individual suspected to be impaired by substance abuse, chemical dependency, or drug or alcohol use.
- An individual who had lost a contest or exhibition by a technical knockout within 30 days before the event, unless he or she provided the results of a physical exam showing fitness to compete.
- A contestant who sustained a severe injury or knockout in a contest, until a medical professional certified that he or she was fully recovered.

The licensee also would have to ensure that an individual did not participate as a contestant if he or she had participated in one or more contests or exhibitions within a certain period of time before the event, and, in the previous event or events, he or she was knocked out or the contest or exhibition was stopped because he or she received excessive hard blows to the head. (The number of knockouts or stoppages would vary depending on the number of previous events and the length of time before the event in question.)

#### Remedies & Penalties

Grounds. An individual would be subject to remedies and penalties under the proposed Act if he or she did any of the following:

- Violated the Act or a rule promulgated or order issued under it.

- Practiced fraud or deceit in obtaining a license.
- Practiced fraud, deceit, or dishonesty in performing his or her duties as a promoter.
- Practiced false advertising.
- Failed to comply with a subpoena issued under the Act.
- Failed to give requested documents or records to LARA.
- Violated or failed to comply with a stipulation or settlement agreement with or a final order issued by LARA or the Commission.
- Aided or abetted another individual in promoting an amateur mixed martial arts contest without a license.
- Failed to pay any obligation related to the normal course of promoting an amateur mixed martial arts event.
- Entered into a contract for an amateur mixed martial arts contest or event in bad faith.
- Gambled on the outcome of an amateur mixed martial arts contest or event of which he or she was the promoter.
- Failed to file current address information with LARA.
- Assaulted another licensee, a Commission member, or an employee of LARA.
- Tampered with or coerced another promoter's contestants.

Administrative Sanctions. If a licensee committed a violation, LARA could take one or more of the following actions:

- Place a limitation on the person's license.
- Suspend the license.
- Revoke the license.
- Deny the person a license or renewal of a license.
- Censure the licensee.
- Require the licensee to pay restitution, and suspend the license until restitution was paid.

The Department also could assess an administrative fine of up to \$10,000 per violation. The Commission could impose the fine in addition to, or in lieu of, any other penalty or remedy under the Act, based on proofs submitted to and findings made by a hearing examiner after a contested case.

If LARA imposed an administrative fine, it also could recover the costs of the

proceeding, including investigative costs, court costs, and reasonable attorney fees.

The Department could not take any action against an applicant, licensee, or license more than one year after the violation occurred.

Criminal Penalties. An individual who violated the Act would be guilty of a misdemeanor punishable by up to 93 days' imprisonment, a maximum fine of \$500, or both. The penalty for a second or subsequent offense would be up to one year's imprisonment, a maximum fine of \$1,000, or both.

An individual would be guilty of a felony if he or she knowingly allowed a professional to participate as a contestant in an amateur mixed martial arts contest with an amateur. The penalty would be up to three years' imprisonment, a maximum fine of \$10,000, or both.

Injunctive Action. The Department could bring an injunctive action in a court to restrain or prevent an individual from violating the Act. If successful in obtaining injunctive relief, LARA would be entitled to its costs and reasonable attorney fees.

#### Complaint & Investigation

Any person could file with LARA a written complaint alleging that an individual had violated the proposed Act or a rule promulgated or order issued under it. The Department immediately would have to begin and pursue an investigation of the allegations, and would have to acknowledge the complaint within 15 days after receiving it.

For purposes of its investigation, LARA could administer oaths, take testimony, require the appearance and testimony of witnesses and the production of documents, or request the Attorney General to petition a court for a subpoena.

If LARA determined after an investigation that there was insufficient evidence of a violation of the Act or a rule or order, the Department would have to close the complaint and give its reasons to the complainant and the respondent (the alleged violator).

If LARA determined after an investigation that there was sufficient evidence of a violation, LARA or the Department of Attorney General would have to take appropriate action against the respondent, including any of the following:

- Issuing a formal complaint.
- Obtaining a cease and desist order.
- Issuing an order of summary suspension.
- Seeking injunctive relief.

At any time during its investigation or after it issued a formal complaint, LARA could meet with the complainant and the respondent for an informal conference. At the meeting, the Department would have to attempt to resolve issues raised in the complaint and could attempt to aid the parties in reaching a formal settlement or stipulation.

#### Summary Suspension

After conducting an investigation of a complaint, LARA could issue an order summarily suspending a license based on an affidavit by a person familiar with the facts set forth in the affidavit or, if appropriate, based on an affidavit on information and belief that there was an imminent threat to the integrity of the sport of amateur mixed martial arts, the public interest, or the welfare and safety of a contestant.

If a promoter's license were summarily suspended, the promoter could petition LARA to dissolve the suspension order. The Department immediately would have to schedule a hearing. After the hearing, the administrative law examiner would have to dissolve the order unless presented with sufficient evidence of an imminent threat that required emergency action and continuation of the summary suspension order.

#### Cease & Desist Order

If LARA conducted an investigation after receiving a complaint, the Department could order a person to cease and desist violating the Act or a rule promulgated or order issued under it. The person could file a written request for a hearing on the order within 30 days after its effective date.

If a person violated a cease and desist order, the Department of Attorney General could apply to a court to restrain and enjoin the person, temporarily or permanently, or both, from violating the order.

#### Formal Complaint Procedures

If LARA conducted an investigation and prepared or received a formal complaint alleging a violation, the Department would have to serve the formal complaint on the respondent and the complainant. At the same time, LARA would have to serve the respondent with a notice describing the compliance conference and hearing process, and offering the respondent a choice of one of the following options:

- An opportunity to meet with LARA to negotiate a settlement of the matter.
- If the respondent were a licensed promoter, an opportunity to demonstrate compliance before LARA held a contested case hearing.
- An opportunity to proceed to a contested case hearing.

The respondent would have 15 days after receiving the notice to select one of those options. If he or she did not notify LARA of the selection within that time period, the Department would have to proceed with a contested case hearing.

An informal conference could result in a settlement, consent order, waiver, default, or other method of settlement agreed on by the parties and LARA. A settlement could include any administrative sanction described above or any other remedy authorized by the proposed Act. The Commission could reject a settlement and require a contested case hearing. At LARA's discretion, a member of the Commission could attend an informal conference.

The Department of Attorney General or LARA could petition a court to issue a subpoena to require the person subpoenaed to appear or testify or produce relevant documents for examination at a proceeding.

At the conclusion of a contested case hearing, the administrative law examiner would have to submit a hearing report to LARA, the Department of Attorney General, and the Commission, and submit a copy of the report to the complainant and the

respondent. The report would have to include findings of fact and conclusions of law. The examiner could recommend the assessment of a penalty or remedy.

Within 60 days after receiving the report, the Commission would have to meet and determine what penalty or remedy was appropriate, based on the report. If it requested a transcript of the hearing or a portion of a transcript, the Commission would have to make its determination within 60 days after receiving the transcript. If the Commission did not determine which penalty or remedy to assess within the required time period, the LARA Director could make that determination and issue a final order.

A Commission member who had participated in an investigation or administrative hearing on a complaint, or who had attended an informal conference, could not participate in making a final determination in a proceeding on that complaint.

MCL 777.13p (H.B. 4296)

Legislative Analyst: Suzanne Lowe

#### **FISCAL IMPACT**

House Bill 4295 (H-2) would have an indeterminate fiscal impact on the State and little or no fiscal impact on local government (apart from the potential impact of the criminal penalties). The Amateur Mixed Martial Arts Commission would be paid per diem payments as well as actual travel expenses. In addition, the Department of Licensing and Regulatory Affairs would be responsible for enforcing the proposed Act.

The bill also would establish a fee structure for amateur mixed martial arts promoters. Individuals who applied for a promoter's license would pay a \$100 application fee as well as an annual fee of \$300. It is unknown how many individuals would apply for and receive licenses. In addition to an annual license fee, promoters would have to pay a \$200 regulatory and enforcement fee for each amateur mixed martial arts event they presented. Licensees who violated the Act would be subject to an administrative fine of up to \$10,000. All revenue from these sources would be credited to the Amateur Mixed Martial Arts Fund, which the bill would create. Money in the Fund would be used to pay for the costs of administering

the Act, upon appropriation by the Legislature.

It is unknown if revenue generated under the bill would be sufficient to cover all of the costs of administering the Act. Since the bill would appropriate no additional resources, costs that exceeded the amount of revenue raised under the bill would come from existing Department resources.

The criminal penalties and sentencing guidelines in House Bills 4295 (H-2) and 4296 (H-1) would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed offenses. An offender convicted of the Class E offense under the bills would receive a sentencing guidelines minimum sentence range of 0-3 months to 24-38 months. Local governments would incur the costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,500, as well as the cost of incarceration in a State facility at an average annual cost of \$34,000. Additional penal fine revenue would benefit public libraries.

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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.