

Act No. 157
Public Acts of 2019
Approved by the Governor
December 20, 2019

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**STATE OF MICHIGAN
100TH LEGISLATURE
REGULAR SESSION OF 2019**

Introduced by Rep. Iden

ENROLLED HOUSE BILL No. 4308

AN ACT to regulate the conduct of fantasy contests; to protect Michigan participants in fantasy contests; to require licensing of the operators of fantasy contests; to impose fees on the operators of fantasy contests; to provide for the powers and duties of certain state governmental officers and entities; to create the fantasy contest fund; to prohibit violations of this act; to prescribe civil sanctions; and to prescribe penalties.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the “fantasy contests consumer protection act”.

Sec. 2. As used in this act:

(a) “Athletic event” means 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.

(b) “Board” means the Michigan gaming control board created under section 4 of the Michigan Gaming Control and Revenue Act, 1996 IL 1, MCL 432.204.

(c) “Entry fee” means cash or cash equivalent paid by a participant to a fantasy contest operator in order to participate in a fantasy contest.

(d) “Fantasy contest” means a simulated game or contest with an entry fee that meets all of the following conditions:

(i) No fantasy contest team is composed of the entire roster of a real world sports team.

(ii) No fantasy contest team is composed entirely of individual athletes who are members of the same real world sports team.

(iii) 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.

(iv) 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.

(v) A winning outcome is not based on randomized or historical events, or 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.

(vi) The fantasy contest does not constitute or involve and is not based on any of the following:

(A) Racing involving animals.

(B) A game or contest ordinarily offered by a horse track or casino for money, credit, or any representative of value, including any races, games, or contests involving horses or that are played with cards or dice.

(C) A slot machine or other mechanical, electromechanical, or electronic device, equipment, or machine, including computers and other cashless wagering systems.

(D) Poker, blackjack, faro, monte, keno, bingo, fan tan, twenty one, seven and a half, Klondike, craps, chuck a luck, Chinese chuck a luck, Wheel of Fortune, Chemin de Fer, Baccarat, Pai Gow, Beat the Banker, Panguingui, roulette, or other banking or percentage games.

(E) Any other game or device authorized by the board under the Michigan Gaming Control and Revenue Act, 1996 IL 1, MCL 432.201 to 432.226.

(vii) A fantasy contest is not based on a high school or youth sporting event or any event that is not an athletic event.

(viii) A fantasy contest is not conducted in a manner that involves or results in betting on a race, game, contest, or on sports.

(e) "Fantasy contest adjusted revenues" means the amount equal to the total of all entry fees that a fantasy contest operator collects from all fantasy contest players minus the total of all sums paid out as prizes or awards to all fantasy contest players, multiplied by the in-state percentage.

(f) "Fantasy contest operator" means a person that operates, carries on, conducts, maintains, exposes, or offers for play fantasy contests and awards prizes of value and includes a licensed fantasy contest operator, a casino licensee under the Michigan Gaming Control and Revenue Act, 1996 IL 1, MCL 432.201 to 432.226, and a federally recognized Indian tribe licensed under the lawful internet gaming act or the lawful sports betting act.

(g) "Fantasy contest platform" means any digital or online method through which a fantasy contest operator provides access to a fantasy contest.

(h) "Fantasy contest player" means an individual who participates in a fantasy contest offered by a fantasy contest operator.

(i) "Fantasy contest team" means 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.

(j) "Highly experienced player" means a fantasy contest player who has done at least 1 of the following:

(i) Entered more than 1,000 fantasy contests offered by a single fantasy contest operator.

(ii) Won more than 3 prizes valued at \$1,000.00 each or more from a single fantasy contest operator.

(k) "Holding company" means a corporation, firm, partnership, limited partnership, limited liability company, trust, or other form of business organization that is not an individual and that directly or indirectly does either of the following:

(i) Holds an ownership interest of 5% or more, as determined by the board, in a fantasy contest operator.

(ii) Holds voting rights with the power to vote 5% or more of the outstanding voting rights of a fantasy contest operator.

(l) "In-state percentage" means for each fantasy contest, the percentage, rounded to the nearest tenth of a percent, equal to the total entry fees collected from all in-state participants divided by the total entry fees collected from all participants in the fantasy contest, unless otherwise prescribed by the board.

(m) "Key employee" means an employee of a fantasy contest operator who has the power to exercise significant influence over decisions concerning the fantasy contest operator.

(n) "Licensed fantasy contest operator" means a fantasy contest operator that is licensed by the board under this act.

(o) "Management company" means a person retained by a fantasy contest operator to manage a fantasy contest platform and provide general administration and other operational services.

(p) "Person" means an individual, partnership, corporation, association, limited liability company, federally recognized Indian tribe, or other legal entity.

(q) "Prize or award" means anything of value or any amount of cash or cash equivalents.

(r) "Protected information" means information related to the playing of fantasy contests by fantasy contest players that is obtained by a fantasy contest operator.

(s) "Script" means a list of commands that a fantasy-contest-related computer program can execute and that is created by a fantasy contest player, or by a third party for a fantasy contest player, to automate processes on a fantasy contest platform.

Sec. 3. (1) Except as otherwise provided in this section, a person shall not offer fantasy contests in this state unless the person is a licensed fantasy contest operator.

(2) An individual may offer, solely from his or her private residence, 1 or more fantasy contests, if none of the contests are made available to the general public, each of the contests is limited to no more than 15 total fantasy contest players, and the individual collects no more than \$10,000.00 in total entry fees for all fantasy contests offered in a calendar year, at least 95% of which entry fees are awarded to the fantasy contest players.

(3) A person that met the definition of fantasy contest operator in this state on May 1, 2018 may continue offering fantasy contests until the fantasy contest operator is issued or denied a license under this act if the person applies for a license within 60 days after the date the application for the license is made available by the board.

(4) Both of the following may offer and conduct fantasy contests without applying for or holding a license under this act:

(a) A casino licensee licensed by the board under the Michigan Gaming Control and Revenue Act, 1996 IL 1, MCL 432.201 to 432.226.

(b) An Indian tribe that lawfully conducts class III gaming in a casino located in this state under a facility license issued in accordance with a tribal gaming ordinance approved by the chair of the National Indian Gaming Commission and is licensed under the lawful sports betting act or the lawful internet gaming act. As used in this subdivision, "class III gaming" means that term as defined in 25 USC 2703.

(5) To ensure the integrity of fantasy contests, the board has jurisdiction over each person involved in the conduct of a fantasy contest. The board may promulgate rules related to the conduct of fantasy contests, including rules setting forth penalties for violations of this act or any rules promulgated under this act.

(6) A person seeking to be licensed as a fantasy contest operator shall submit an application, with the license fee under subsection (9), to the board. The applicant shall provide sufficient documentation to the board to ensure that the applicant meets the requirements for licensure as determined by the board, including, but not limited to, documentation of all of the following:

(a) The name of the applicant.

(b) The location of the applicant's principal place of business.

(c) The applicant's telephone number.

(d) The applicant's Social Security number or, if applicable, the applicant's federal tax identification number.

(e) The name and address of each person that holds a 5% or greater ownership interest in the applicant or in shares of the applicant.

(f) The applicant's criminal record, if any, or, if the applicant is a business entity, any criminal record of an individual who is a director, officer, or key employee of, or who has a 5% or greater ownership interest in, the applicant.

(g) Any ownership interest that a director, officer, key employee, or individual owner of 5% or greater of the applicant holds in a person that is or was a fantasy contest operator or similar entity in any jurisdiction.

(h) 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, has an equity interest of 5% or more.

(i) Whether an applicant, director, officer, key employee, or individual owner of 5% or greater has ever applied for or been granted any license, registration, or certificate issued by a licensing authority in this state or any other jurisdiction.

(j) Whether an applicant, director, officer, key employee, or individual owner of 5% or greater has filed, or been served with, a complaint 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.

(k) A description of any physical facility operated by the applicant in this state, the employees who work at the facility, and the nature of the business conducted at the facility.

(l) Information sufficient to show, as determined by the board, that the applicant can meet the requirements of procedures submitted by the applicant under this act and under any rules promulgated under this act.

(7) The board may require licensure of a holding company, management company, or any other person it considers sufficiently connected to the fantasy contest operator if that licensure is necessary to preserve the integrity of fantasy contests and protect fantasy contest players.

(8) A license issued under this section is valid for 1 year. The board shall renew a license each year if the applicant demonstrates continued eligibility for licensure under this act and pays the renewal fee. Notwithstanding this subsection, the board may investigate a licensee at any time the board determines it is necessary to ensure that the licensee remains in compliance with this act and the rules promulgated under this act.

(9) The initial license fee is \$10,000.00. The annual license renewal fee is \$5,000.00. The board may assess investigative costs if the cost of a licensure investigation exceeds the amount of the initial license or renewal fee.

Sec. 4. (1) As a condition of licensure, a fantasy contest operator must submit to, and receive approval from, the board commercially reasonable procedures and internal controls intended to accomplish all of the following:

(a) 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 is limited to the persons described in this subdivision.

(b) Prevent the employees or agents of the fantasy contest operator from sharing protected information with third parties unless the protected information is otherwise made publicly available.

(c) Prevent participants and officials in an athletic event from participating in a fantasy contest that is based on the athletic event.

(d) Establish the number of entries a single fantasy contest player may enter in a single fantasy contest and take reasonable steps to prevent fantasy contest players from submitting more than the allowable number of entries.

(e) Identify each highly experienced player by a symbol attached to the highly experienced player's username.

(f) Offer some fantasy contests that are open only to players other than highly experienced players.

(g) Either of the following:

(i) Segregate the deposits in the fantasy contest players' accounts from operational money.

(ii) 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 exceeds the total dollar value amount of deposits in the fantasy contest players' accounts, and which reserve must not be used for operational activities.

(h) 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.

(i) Otherwise ensure the integrity of fantasy contests.

(2) A licensed fantasy contest operator shall comply with the procedures and internal controls that are submitted to the board under subsection (1) and approved by the board. A licensed fantasy contest operator may make technical adjustments to its procedures and internal controls if the adjustments are not material and it notifies the board in advance and continues to meet or exceed the standards required by this act and any rules promulgated by the board.

(3) Procedures submitted to the board under subsection (1) are confidential and privileged, are not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, are not subject to subpoena, and are not subject to discovery or admissible in evidence in a private civil action.

Sec. 5. By July 1 of each year, a licensed fantasy contest operator shall 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 section 4(1)(g) and for any other purpose the board considers appropriate. A licensed fantasy contest operator shall submit the audit results under this section to the board not later than 180 days after the end of the fantasy contest operator's fiscal year. The results of an audit submitted to the board under this section is confidential and privileged, is not subject to disclosure under the freedom of information act, 1976

PA 442, MCL 15.231 to 15.246, is not subject to subpoena, and is not subject to discovery or admissible in evidence in a private civil action.

Sec. 6. A fantasy contest operator shall prohibit an individual who is less than 18 years of age from participating in a fantasy contest.

Sec. 7. A licensed fantasy contest operator shall not do any of the following:

- (a) Allow the use of a script unless the script is made readily available to all fantasy contest players.
- (b) Employ false, deceptive, or misleading advertising, or advertising that is not based on fact.
- (c) Target, in advertising or promotions, either of the following:
 - (i) Individuals who have restricted themselves from entering a fantasy contest under the procedures established by the board.
 - (ii) Individuals who are less than 18 years of age.

Sec. 8. (1) A fantasy contest must not be offered on, at, or from any of the following:

- (a) A kiosk or machine physically located in a retail business location, bar, restaurant, or other commercial establishment.
 - (b) A place of public accommodation.
 - (c) A facility owned, operated, or occupied by a private club, association, or similar membership-based organization.
- (2) This section does not apply to a casino licensee licensed by the board under the Michigan Gaming Control and Revenue Act, 1996 IL 1, 432.201 to 432.226, or a federally recognized Indian tribe licensed under the lawful internet gaming act or the lawful sports betting act.

Sec. 9. (1) A licensed fantasy contest operator shall make available on the licensed fantasy contest operator's 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.

(2) A licensed fantasy contest operator shall 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 will be in effect.

(3) A licensed fantasy contest operator shall offer a fantasy contest player access to the fantasy contest player's playing history, including a summary of entry fees expended, games played, previous lineups, and prizes awarded.

Sec. 10. The board shall promulgate rules to implement this act under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, including, but not limited to, rules that address all of the following:

- (a) Requiring a fantasy contest operator to implement commercially reasonable procedures to prohibit access to both of the following:
 - (i) Individuals who request to restrict themselves from playing fantasy contests.
 - (ii) Individuals who are less than 18 years of age.
- (b) Prescribing requirements related to beginning players and highly experienced players.
- (c) Suspending the account of a fantasy contest player who violates this act or a rule promulgated under this act.
- (d) Providing a fantasy contest player with access to information on playing responsibly and how to ask for assistance for compulsive gaming behavior.
- (e) Requiring an applicant for a fantasy contest operator license to designate at least 1 key employee as a condition for obtaining a license.
- (f) Any other rule the board determines is necessary to ensure the integrity of fantasy contests.

Sec. 11. (1) A licensed fantasy contest operator shall retain and maintain in a place secure from theft, loss, or destruction all of the records required to be maintained under this act and the rules promulgated under this act for at least 3 years after the date of the record's creation.

(2) A licensed fantasy contest operator shall organize all records under subsection (1) in a manner that enables the licensed fantasy contest operator to provide the board with the records.

(3) Information obtained under this section is confidential and privileged, is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, is not subject to subpoena, and is not subject to discovery or admissible as evidence in a private civil action.

Sec. 12. (1) The board may suspend, revoke, or restrict the license of a fantasy contest operator that violates this act, a rule promulgated under this act, or an order of the board.

(2) The board may impose a civil fine of not more than \$20,000.00 for a violation of this act, a rule promulgated under this act, or an order of the board.

(3) A civil fine imposed under this section is payable to this state and may be recovered in a civil action brought by the board.

Sec. 13. (1) A person shall not do any of the following:

(a) Except as otherwise provided in section 3, offer a fantasy contest in this state unless the person is licensed by the board.

(b) Knowingly make a false statement on an application for a license to be issued under this act.

(c) Knowingly provide false testimony to the board or any authorized representative of the board while under oath.

(2) The board shall not issue a license under this act to a person that violates subsection (1).

(3) A person who violates subsection (1)(a) is guilty of a crime as follows:

(a) For the first or second violation, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$10,000.00, or both.

(b) For a third or subsequent violation, the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$50,000.00, or both.

(4) The board may issue a cease and desist order and obtain injunctive relief against a person that violates this act.

Sec. 14. (1) A fantasy contest operator shall report to the board and pay from its monthly fantasy contest adjusted revenues, on a form and in the manner prescribed by the board, a tax of 8.4% of its monthly fantasy contest adjusted revenues. This subsection does not apply to a person running a contest solely from his or her private residence under section 3(2).

(2) The tax imposed under subsection (1) must be payable to the board by the twentieth day of each month and must be based on monthly fantasy contest adjusted revenue derived during the previous month.

(3) The tax imposed and collected by the board under subsection (1) must be deposited into the fantasy contest fund created under section 16.

(4) A licensed fantasy contest operator who fails to remit to the board the tax imposed under this section is liable, in addition to any sanction or penalty imposed under this act, for the payment of a penalty of 5% per month up to a maximum of 25% of the amounts ultimately found to be due, to be recovered by the board. Penalties imposed and collected by the board under this subsection must be deposited into the state school aid fund established under section 11 of article IX of the state constitution of 1963.

Sec. 15. A fantasy contest conducted under this act does not violate the Michigan penal code, 1931 PA 328, MCL 750.1 to 750.568. This act does not create an exemption to a violation of chapter XLIV of the Michigan penal code, 1931 PA 328, MCL 750.301 to 750.315a.

Sec. 16. (1) The fantasy contest fund is created in the department of treasury.

(2) The state treasurer may receive money or other assets required to be paid into the fund under this act or from any other source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) The board shall expend money from the fund, on appropriation, for all of the following:

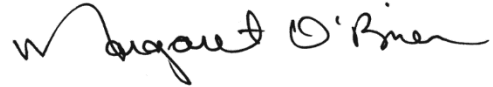
(a) The board's costs of regulating and enforcing fantasy contests under this act.

(b) All money remaining in the fund after the expenditures under subdivision (a) is to be deposited into the state school aid fund established under section 11 of article IX of the state constitution of 1963.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor