

# HOUSE BILL No. 4308

March 7, 2019, Introduced by Rep. Iden and referred to the Committee on Regulatory Reform.

A bill 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 prohibit violations of this act; to prescribe civil sanctions; and to prescribe penalties.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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

3           Sec. 2. As used in this act:

4           (a) "Athletic event" means a real world professional,  
5 collegiate, or nationally recognized sports game, contest, or

1 competition that involves the physical exertion and skill of the  
2 participating individual athletes, as to which each participant is  
3 physically present at the location in which the sports game,  
4 contest, or competition occurs, and the outcome of the sports game,  
5 contest, or competition is directly dependent on the performance of  
6 the participating athletes.

7 (b) "Board" means the Michigan gaming control board created  
8 under section 4 of the Michigan gaming control and revenue act,  
9 1996 IL 1, MCL 432.204.

10 (c) "Entry fee" means a cash or cash equivalent amount that a  
11 fantasy contest operator requires to be paid by a fantasy contest  
12 player to participate in a fantasy contest.

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

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

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

20 (iii) Each prize and award or the value of all prizes and  
21 awards offered to winning fantasy contest players is made known to  
22 the fantasy contest players in advance of the fantasy contest.

23 (iv) Each winning outcome reflects the relative knowledge and  
24 skill of the fantasy contest players and are determined by the  
25 aggregated statistical results of the performance of multiple  
26 individual athletes selected by the fantasy contest player to form  
27 the fantasy contest team, whose individual performances in the

1 fantasy contest directly correspond with the actual performance of  
2 those athletes in the athletic event in which those individual  
3 athletes participated.

4 (v) A winning outcome is not based on randomized or historical  
5 events, or on the score, point spread, or performance in an  
6 athletic event of a single real-world sports team, a single  
7 athlete, or any combination of real-world sports teams.

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

10 (A) Racing involving animals.

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

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

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

23 (E) Any other game or device authorized by the board under the  
24 Michigan gaming control and revenue act, 1996 IL 1, MCL 432.201 to  
25 432.226.

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

1 (viii) A fantasy contest must not be conducted in a manner  
2 that involves or results in betting on a race, game, contest, or on  
3 sports.

4 (e) "Fantasy contest operator" means a person that operates,  
5 carries on, conducts, maintains, exposes, or offers for play  
6 fantasy contests and awards prizes of value.

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

10 (g) "Fantasy contest player" means an individual who  
11 participates in a fantasy contest offered by a fantasy contest  
12 operator.

13 (h) "Fantasy contest team" means the simulated team composed  
14 of multiple individual athletes, each of whom is a member of a real  
15 world sports team, that a fantasy contest player selects to compete  
16 in a fantasy contest.

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

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

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

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

27 (i) Holds an ownership interest of 5% or more, as determined

1 by the board, in a fantasy contest operator.

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

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

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

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

12 (n) "Person" means an individual, partnership, corporation,  
13 association, or other legal entity. Person includes a sovereign  
14 tribal government and its business entities.

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

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

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

25 (2) An individual may offer, solely from his or her private  
26 residence, 1 or more fantasy contests, if none of the contests are  
27 made available to the general public, each of the contests is

1 limited to no more than 15 total fantasy contest players, and the  
2 individual collects no more than \$10,000.00 in total entry fees for  
3 all fantasy contests offered in a calendar year, at least 95% of  
4 which entry fees are awarded to the fantasy contest players.

5 (3) A person that met the definition of fantasy contest  
6 operator in this state on May 1, 2017 may continue offering fantasy  
7 contests until the fantasy contest operator is issued or denied a  
8 license under this act if the person applies for a license within  
9 60 days after the date the application for the license is made  
10 available by the board.

11 (4) A casino licensee licensed by the board under the Michigan  
12 gaming control and revenue act, 1996 IL 1, MCL 432.201 to 432.226,  
13 may offer and conduct fantasy contests without applying for or  
14 holding a license under this act.

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

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

26 (a) The name of the applicant.

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

1 business.

2 (c) The applicant's telephone number.

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

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

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

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

16 (h) An identification of any business, including, if  
17 applicable, the state of incorporation or registration, in  
18 which an applicant, director, officer, key employee, or individual  
19 owner of 5% or greater, has an equity interest of 5% or more.

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

24 (j) Whether an applicant, director, officer, key employee, or  
25 individual owner of 5% or greater has filed, or been served with, a  
26 complaint or other notice filed by a public body regarding the  
27 delinquency in payment of, or dispute over filings concerning, the

1 payment of any tax required under federal, state, or local law,  
2 including the amount, the type of tax, the taxing agency, and the  
3 time periods involved.

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

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

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

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

23 (9) The initial license fee is \$50,000.00. The annual license  
24 renewal fee is \$20,000.00. The board may assess investigative costs  
25 if the cost of a licensure investigation exceeds the amount of the  
26 license or renewal fee.

27 Sec. 4. (1) As a condition of licensure, a fantasy contest



1 operator must submit to, and receive approval from, the board  
2 commercially reasonable procedures and internal controls intended  
3 to accomplish all of the following:

4 (a) Prevent the fantasy contest operator, its owners,  
5 directors, officers, and employees, and any relative of any of  
6 these individuals living in the same household, from participating  
7 in a fantasy contest other than a fantasy contest offered by the  
8 fantasy contest operator for which participation is limited to the  
9 persons described in this subdivision.

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

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

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

21 (e) Identify each highly experienced fantasy contest player by  
22 a symbol attached to the highly experienced fantasy contest  
23 player's username.

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

26 (g) Either of the following:

27 (i) Segregate the deposits in the fantasy contest players'

1 accounts from operational money.

2 (ii) Maintain a reserve in the form of cash, cash equivalents,  
3 an irrevocable letter of credit, a bond, or a combination of these,  
4 the aggregate amount of which exceeds the total dollar value amount  
5 of deposits in the fantasy contest players' accounts, and which  
6 reserve must not be used for operational activities.

7 (h) Ensure compliance with the applicable state and federal  
8 requirements to protect the privacy and online security of a  
9 fantasy contest player and the fantasy contest player's account.

10 (i) Otherwise ensure the integrity of fantasy contests.

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

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

24 Sec. 5. By July 1 of each year, a licensed fantasy contest  
25 operator shall contract with a certified public accountant to  
26 perform an independent audit in accordance with generally accepted  
27 accounting principles of the financial condition of the licensed

1 fantasy contest operator's total operations for the previous fiscal  
2 year and to ensure compliance with section 4(1)(g) and for any  
3 other purpose the board considers appropriate. A licensed fantasy  
4 contest operator shall submit the audit results under this section  
5 to the board not later than 180 days after the end of the fantasy  
6 contest operator's fiscal year. The results of an audit submitted  
7 to the board under this section is confidential and privileged, is  
8 not subject to disclosure under the freedom of information act,  
9 1976 PA 442, MCL 15.231 to 15.246, is not subject to subpoena, and  
10 is not subject to discovery or admissible in evidence in a private  
11 civil action.

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

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

17       (a) Allow the use of a script unless the script is made  
18 readily available to all fantasy contest players.

19       (b) Employ false, deceptive, or misleading advertising, or  
20 advertising that is not based on fact.

21       (c) Target, in advertising or promotions, either of the  
22 following:

23       (i) Individuals who have restricted themselves from entering a  
24 fantasy contest under the procedures established by the board.

25       (ii) Individuals who are less than 18 years of age.

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

1 (a) A kiosk or machine physically located in a retail business  
2 location, bar, restaurant, or other commercial establishment.

3 (b) A place of public accommodation.

4 (c) A facility owned, operated, or occupied by a private club,  
5 association, or similar membership-based organization.

6 (2) This section does not apply to a casino licensee licensed  
7 by the board under the Michigan gaming control and revenue act,  
8 1996 IL 1, 432.201 to 432.226.

9 Sec. 9. (1) A licensed fantasy contest operator shall make  
10 available on the licensed fantasy contest operator's website  
11 information about resources relating to compulsive gaming behavior  
12 including a telephone number or link to information on compulsive  
13 gaming behavior and where to seek assistance for compulsive gaming  
14 behavior.

15 (2) A licensed fantasy contest operator shall make available,  
16 by website, telephone, or online chat, a means to allow an  
17 individual to irrevocably restrict the individual's ability to  
18 enter a fantasy contest and to select the length of time the  
19 restriction will be in effect.

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

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

1 (a) Requiring a fantasy contest operator to implement  
2 commercially reasonable procedures to prohibit access to both of  
3 the following:

4 (i) Individuals who request to restrict themselves from  
5 playing fantasy contests.

6 (ii) Individuals who are less than 18 years of age.

7 (b) Prescribing requirements related to beginning players and  
8 highly experienced players.

9 (c) Suspending the account of a fantasy contest player who  
10 violates this act or a rule promulgated under this act.

11 (d) Providing a fantasy contest player with access to  
12 information on playing responsibly and how to ask for assistance  
13 for compulsive gaming behavior.

14 (e) Requiring an applicant for a fantasy contest operator  
15 license to designate at least 1 key employee as a condition for  
16 obtaining a license.

17 (f) Any other rule the board determines is necessary to ensure  
18 the integrity of fantasy contests.

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

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

27 (3) Information obtained under this section is confidential

1 and privileged, is not subject to disclosure under the freedom of  
2 information act, 1976 PA 442, MCL 15.231 to 15.246, is not subject  
3 to subpoena, and is not subject to discovery or admissible as  
4 evidence in a private civil action.

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

8       (2) The board may impose a civil fine of not more than  
9 \$20,000.00 for a violation of this act, a rule promulgated under  
10 this act, or an order of the board.

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

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

14       (a) Except as otherwise provided in section 4, offer a fantasy  
15 contest in this state unless the person is licensed by the board.

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

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

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

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

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

27       (b) For a third or subsequent violation, the person is guilty

1 of a felony punishable by imprisonment for not more than 5 years or  
2 a fine of not more than \$50,000.00, or both.

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

5 Sec. 14. A fantasy contest conducted under this act does not  
6 violate the Michigan penal code, 1931 PA 328, MCL 750.1 to 750.568.  
7 This act does not create an exemption to a violation of chapter  
8 XLIV of the Michigan penal code, 1931 PA 328, MCL 750.301 to  
9 750.315a.

10 Enacting section 1. This act takes effect 90 days after the  
11 date it is enacted into law.