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BILL ANALYSIS



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Senate Bill 152 (as enacted)
House Bill 4286 (as enacted)
Sponsor: Senator Dave Robertson (S.B. 152)
Representative Harvey Santana (H.B. 4286)
Senate Committee: Regulatory Reform
House Committee: Regulatory Reform

PUBLIC ACT 183 of 2015
PUBLIC ACT 184 of 2015

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CONTENT

Senate Bill 152 amends the Michigan Unarmed Combat Regulatory Act to do the following:

- **Revise the responsibilities of the Michigan Unarmed Combat Commission and the Director of the Department of Licensing and Regulatory Affairs (LARA).**
- **Vest the Commission and LARA with jurisdiction over all professional boxing, professional or amateur mixed martial arts, and unarmed combat contests or events conducted in Michigan, and otherwise revise provisions relating to the scope of the Act.**
- **Revise and establish new regulations concerning the conduct of events.**
- **Revise and establish new requirements, including the payment of fees, regarding licenses issued under the Act.**
- **Allow the Commission or LARA to require a promoter to ensure the availability of a contestant for drug testing, and delete a provision allowing the Commission or LARA to perform drug testing.**
- **Prohibit a promoter from conducting a professional boxing or professional or amateur mixed martial arts event unless at least one inspector is present at the event, and establish requirements for inspectors.**
- **Require LARA to initiate an action against an applicant or licensee under certain circumstances, and otherwise revise investigative procedures for LARA to follow in the event of a complaint alleging a violation of the Act.**
- **Establish new violations and penalties, including administrative sanctions and criminal penalties.**

The bill also repeals certain sections of the Act dealing with licensing requirements.

House Bill 4286 amends the Code of Criminal Procedure to include in the sentencing guidelines knowingly allowing a professional to participate as a contestant in an amateur mixed martial arts contest with an amateur. The offense is a Class E felony against public safety with a maximum term of incarceration of three years.

Senate Bill 152 defines "unarmed combat" as any of the following:

- Professional boxing.
- Professional or amateur mixed martial arts.

-- Any other form of competition in which a blow is usually struck or another fighting technique is applied that may reasonably be expected to inflict injury.

"Contest" means an individual bout between two boxers, two mixed martial artists, or two individuals engaged in other unarmed combat that is subject to the Act. "Event" means a program of unarmed combat that is planned for a specific date and time by a promoter and is subject to LARA approval under the Act.

The bills will take effect on February 10, 2016.

A more detailed description of Senate Bill 152 follows.

Commission & Fund

Commission. The Michigan Unarmed Combat Commission exists within LARA and consists of 11 voting members appointed by the Governor and the LARA Director, who serves as a non voting ex officio member. Under the bill, the LARA Director will not be a member of the Commission.

The Act requires the Commission to meet at least four times per year. On the request and at the discretion of the chair, LARA must schedule additional interim meetings. The bill allows the chair, in his or her discretion, to cancel one or more of the required annual meetings if he or she determines that there is no business to conduct.

Under the Act, a person who has a material financial interest in a club, organization, or corporation, whose main object is the holding or giving of boxing or mixed martial arts contests or exhibitions, is not eligible for appointment to the Commission. The bill specifies instead that an individual who has a material financial interest in a club, corporation, or other organization is not eligible for appointment to the Commission if the primary purpose of that organization is to conduct unarmed combat contests or events.

The Act allows the LARA Director to promulgate rules for the administration of the Act, after consulting with the Commission. The Act specifies topics for which the Department must promulgate rules. The bill also requires rules regarding the activities and responsibilities of licensees and standards to protect the health and safety of contestants participating in contests and events. The bill allows the LARA Director to establish any additional rules that he or she considers necessary to administer and enforce the Act.

The Act also requires the LARA Director, in consultation with the Commission, to promulgate rules to set standards for boxing and mixed martial arts exhibitions and participants, and to provide for license fees for all participants in the activities regulated by the Act and not otherwise provided for in the Act. The bill instead allows the Director, after consultation with the Commission, to promulgate rules to set standards for unarmed combat events and participants, to establish training requirements for promoters, contestants, and participants regulated under the Act, or to establish license fees or training requirements for individuals who are engaged in activities regulated by the Act and not otherwise provided for in it.

The bill requires the Director to review the rules of the Association of Boxing Commissions before he or she promulgates rules for the administration of the Act. The Director may adopt by reference any of the rules of that Association that are not inconsistent with the Act.

Fund. The Act created the Unarmed Combat Fund in the State Treasury, and requires the LARA Director to administer it. The bill refers to the Fund as the "Michigan Unarmed Combat Fund". The bill specifies that the Director is the administrator of the Fund, including for auditing purposes.

The bill also requires the State Treasurer to direct the investment of the Fund and credit to it interest and earnings from Fund investments.

Scope of the Act

The Act currently does not apply to any of the following:

- Professional or amateur wrestling.
- Amateur martial arts sports or activities.
- Contests or exhibitions conducted by or participated in exclusively by an agency of the U.S. government or by a school, college, or university or an organization composed exclusively of those entities if each participant is an amateur.
- Amateur boxing regulated by the Federal Amateur Sports Act.
- Boxing elimination contest regulated under Section 50 of the Act.
- Amateur mixed martial arts.

The bill specifies, instead, that the Act does not apply to any of the following:

- Professional or amateur wrestling.
- An event conducted by or participated in exclusively by an agency of the U.S. government or by a school, college, or university or an organization composed exclusively of those entities if each contestant was an amateur.
- An event sponsored by or under the supervision of the U.S. Olympic Committee in which all of the contestants are amateur boxers.

Under the bill, the Act also does not apply to an amateur boxing event that is sponsored by or under the supervision of USA Boxing or any of the following organizations affiliated with USA Boxing:

- Golden Gloves Association of America, Inc.
- National Association of Police Athletic League.
- National Collegiate Boxing Association.
- Native American Sports Council.
- Silver Gloves Association.

The bill specifies that boxing elimination contests regulated under Section 50 of the Act are not subject to other provisions of the Act.

The Act vests the Commission and LARA with management, control, and jurisdiction over all professional boxing and professional mixed martial arts contests or exhibitions conducted, held, or given within Michigan. Under the bill, the Commission and LARA are vested with management, control, and jurisdiction over all professional boxing, professional or amateur mixed martial arts, and unarmed combat contests or events conducted in Michigan.

The Act incorporates by reference the requirements and standards contained in standards adopted by the New Jersey State Athletic Control Board, except for license fees described in those rules. The bill deletes this provision.

Conduct of Events

Currently, before LARA grants an approval for a contest or exhibition, the promoter must file with the Department a bond in an amount fixed by the Department but not less than \$20,000 or more than \$50,000. The Act specifies standards that the bond must meet. The bill refers to a contest or event and requires the bond to meet the following standards:

- Be conditioned on the faithful distribution of all money owed by the promoter as a result of the event.
- Be for the benefit of any person that is damaged by the promoter's nonpayment of any liabilities associated with the event.
- Allow an affected person to bring an action on the bond.
- Remain in effect until all complaints properly filed with LARA for nonpayment of obligations covered by the bond are fully adjudicated.

The bill specifies that a complaint is not properly filed if it is not filed within 30 business days following the event covered by the bond.

The bill establishes requirements with which a licensed promoter presenting an unarmed combat event in Michigan must comply. These include requirements for requesting approval of the event by LARA; submitting contestants' fight records; paying obligations related to promoting the event; arranging for a physician to attend; arranging for an ambulance and an alternate ambulance staffed by emergency medical technicians to be on the premises; arranging for a referee, judges, and timekeeper to attend; arranging for an inspector who meets the bill's criteria to attend the event; and maintaining records of the event for at least one year after the date of the event and making the records available to LARA or law enforcement officials upon request.

The bill also requires a promoter to comply with requirements regarding the length of contests; equipment to be used; weigh-ins and weight class designations; medical certifications; professional staffing of events; contestants' eligibility to participate; and reporting of results to the Department.

Licenses

License Requirements. The Act prohibits a person from engaging in or attempting to engage in an activity regulated under it unless the person possesses a license issued by LARA or is exempt from licensure. The bill instead prohibits a person from conducting a contest or event that is regulated under the Act without a promoter's license, or engaging in or attempting to engage in any other activity regulated under the Act without the applicable license unless the person is exempt from licensure.

A person who violates the current prohibition is guilty of a misdemeanor punishable by a maximum fine of \$500 and/or imprisonment for up to 90 days. The penalty for a repeat violation is a maximum fine of \$1,000 and/or imprisonment for up to one year. The bill deletes these penalties but establishes a new penalty for engaging in a regulated activity without a required license (as described below).

Promoter's License. The Act requires a promoter to apply for and obtain an annual license in order to present a program of contests or exhibitions regulated under it. The bill refers to a program of contests or events. Currently, the annual license fee is \$250. The bill increases the fee to \$300.

Currently, a boxing promoter must pay an event fee of \$125. A mixed martial arts promoter must pay an event fee of \$125. The bill instead requires a promoter that conducts an event in Michigan to pay an event fee of \$500.

Contestant License. Under the bill, before an individual participates in a contest, he or she must obtain a contestant license from the Department. The bill specifies requirements for an application for a contestant license, including the payment of a nonrefundable application processing fee of \$45 and an annual license fee of \$45.

Except as otherwise provided, the bill requires LARA to issue a contestant license to an individual who meets the licensing requirements under the Act and rules promulgated under it. The Department must assign a license number to each license issued. In any notice, report, or other communication with LARA or the Commission that identifies or refers to a specific contestant, a promoter must include the contestant's license number.

An individual may not receive a contestant license unless he or she passes a physical examination performed by a physician and submits the results of the examination to LARA on a form prescribed by the Department.

Participant License. The bill prohibits an individual from participating in a contest or event as a referee, judge, matchmaker, or timekeeper without a participant license from LARA. The bill specifies requirements for obtaining a participant license, including the payment of a nonrefundable application processing fee of \$30 and one of the following annual license fees, as applicable:

- \$150 for a referee license.
- \$70 for a judge license.
- \$150 for a matchmaker license.
- \$70 for a timekeeper license.

Failure to Renew. Under the bill, a person who fails to renew a promoter license on or before its expiration date may not conduct a contest or event or advertise, operate, or use the title "promoter" after the license expires.

An individual who fails to renew a contestant license by its expiration date may not participate in a contest or event or use the title "contestant" after his or her license expires.

An individual who fails to renew a participant license by its expiration date may not participate in an event or contest or use the various titles associated with participation in a boxing or mixed martial arts event.

A person who does not renew a license by its expiration date may renew the license within 60 days after that date by paying the required license fee and a late renewal fee of \$30. After the 60-day period, the person may obtain a license only by complying with the requirements for obtaining a new license, paying the required license fee, and paying a late renewal fee of \$30.

Federal or National ID Card. The bill prohibits an individual from receiving a license as a professional contestant in boxing if he or she does not possess a Federal identification card. A person who does not have a card, and who is a resident of Michigan or is not a resident of any state of the United States, must submit a request to LARA for a Federal ID card. An individual who is a resident of another state must apply to that state.

The bill also provides that an individual may not receive a license as a professional contestant in mixed martial arts if he or she does not possess a national identification card. An individual who does not have such a card must submit a separate request to LARA for one.

The bill requires payment to LARA of a nonrefundable application processing fee of \$20 for a Federal or national ID card.

Drug Testing

The Act allows the Commission or LARA to perform drug testing on a professional before or after a contest or exhibition to detect the presence of alcohol, stimulants, or drugs. The bill instead allows the Commission or LARA to require a promoter to ensure that a contestant is

available for drug testing before or after a contest to detect the presence of controlled substances, alcohol, enhancers, stimulants, performance enhancing drugs, or other drugs or substances prohibited by rules promulgated by LARA, or derivatives or metabolites of any of those substances.

Inspector

The bill prohibits a promoter from conducting a professional boxing, professional mixed martial arts, or amateur mixed martial arts event in Michigan unless at least one inspector is present at the event.

An inspector may not have any relationship or business interest with a licensee involved in an event for which he or she is the inspector. An inspector must collect and submit all contestant drug tests as required by LARA to ensure their chain of custody.

An inspector must be an individual who meets any of the following requirements:

- Is certified by the Commission on Law Enforcement Standards under the Commission on Law Enforcement Standards Act.
- Is licensed by LARA as a private security guard or security guard agency.
- Is employed by a security guard agency licensed by LARA.

An inspector must receive reasonable compensation, and reimbursement of his or her actual and necessary travel expenses, for attending an event. The promoter of an event is responsible for paying an inspector for that event.

The Department may promulgate rules to establish additional duties of inspectors.

Complaints & Investigations

The Act requires a complaint alleging that a person has violated the Act or a rule promulgated or an order issued under it be submitted to LARA, and outlines procedures for the Department to investigate the allegations. The bill deletes a provision requiring the investigative unit of the Department to report to the Director within 30 days on the status of the investigation.

After conducting an investigation, LARA may issue an order summarily suspending a license. A person whose license is summarily suspended may petition the Department to dissolve the order. Upon receiving a petition, LARA must immediately schedule a hearing to decide whether to grant or deny the requested relief. Under the bill, if LARA receives a petition to dissolve a summary suspension order, it may deny the request, grant the request, or immediately schedule a hearing to decide whether to grant or deny the request.

The Department must initiate an action against an applicant or take any other allowable actions against the license of any contestant, promoter, or participant if it determines the applicant or licensee has done certain things. The bill includes the following among those activities:

- Engaging in fraud, deceit, or dishonesty in obtaining a license.
- Engaging in fraud, deceit, or dishonesty in performing the duties of a promoter, if applicable, or otherwise practicing that person's licensed occupation.
- Engaging in false advertising.
- Failing to comply with a subpoena issued under the Act.
- Failing to provide a requested document or records to the Department.
- Violating or failing to comply with a settlement with, or final order issued by, the Department or the Commission.

- Failing to pay any obligation related to the normal course of promoting an event, including venue rent or fees for a judge, physician, referee, or timekeeper.
- Entering into a contract for a contest or event in bad faith.
- Gambling on the outcome of a contest or event of which the person is a promoter.
- Failing to file current address information with the Department.
- Tampering with or coercing a contestant.
- Aiding or abetting another person to act as a promoter, contestant, or participant or conduct an event without a license.
- Violating any other provision of the Act or a rule promulgated under it for which a penalty or remedy is not otherwise prescribed.

The bill also requires LARA to initiate an action if it determines that an applicant or licensee fails to pay a fee and reimburse the Department for any charges incurred, if the applicant or licensee pays a fee under the Act with a check, money order, or similar instrument or with a credit card or debit card, and that payment is dishonored or otherwise refused when presented by the Department for payment. If a payment is dishonored or refused, the license will be immediately suspended and remain suspended until the fee and related charges are paid.

Settlement

After an investigation is conducted and a formal complaint is prepared, LARA must serve the complaint on the respondent and the complainant. Within 15 days after receiving the notice, a respondent may select certain options, including an opportunity to meet with the Department to negotiate a settlement on the matter.

An informal conference may result in a settlement, consent order, waiver, default, or other method of settlement agreed upon by the parties and LARA. The bill instead provides that an informal conference may result in the agreement of the parties and the Department to a settlement. (The bill defines "settlement" as an agreement, stipulation, consent order, waiver, default, or other method of settlement of a complaint that is agreed to by the parties and LARA.)

Under the bill, if the parties and the Department agree to a settlement, and that settlement requires imposition of a penalty under the Act but does not specify the penalty, the Commission must make a determination of the penalties within 60 days after it receives the settlement, based on the terms of the settlement.

Violations & Penalties

Under the bill, if a person licensed under the Act violates the Act or a rule promulgated or an order issued under it, the Department may take one of more of the following actions:

- Suspend the person's license.
- Deny the renewal of the person's license.
- Revoke the person's license.
- Assess an administrative fine.
- Censure the licensee.

The person who commits the violation is responsible for the Department's expenses related to the investigation and any disciplinary proceeding for the violation, and must reimburse the Department for those expenses.

The Department may bring an injunctive action to restrain or prevent a person from violating the Act.

A person who engages in or attempts to engage in an activity for which a license is required, or uses a title designated in the Act, without the appropriate license, is guilty of a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$1,000.

A person who knowingly allows a professional in mixed martial arts or boxing to participate as a contestant in an amateur mixed martial arts contest with an amateur is guilty of a felony punishable by up to three years' imprisonment and/or a maximum fine of \$10,000 per incident.

If a court finds in an action initiated by the Department that a person violated the Act or a rule promulgated under it, the person must be assessed costs related to the investigation and the prosecution of the action.

Repealed Provisions

The bill repeals sections that require promoters and certain participants to be licensed under the Act. These sections also establish examination, training, and experience requirements for the licensure of certain participants. The bill also repeals a section that sets limits on the number of rounds in a professional boxing contest or exhibition and the weight of boxing gloves used in a boxing event, and requires participants to be certified to be in proper physical condition.

MCL 338.3610 et al. (S.B. 152)
777.13p (H.B. 4286)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Administrative Impact

Senate Bill 152 will have an indeterminate, but likely positive fiscal impact on the Department of Licensing and Regulatory Affairs, and no fiscal impact on local units of government. The bill increases certain fees paid by people participating in boxing or mixed martial arts contests, and requires that a person found to be in violation of the Act reimburse LARA for its costs in conducting the investigation.

A number of license fees for individuals who participate in boxing or mixed martial arts are currently established by administrative rule. The bill puts a number of those fees into statute at their current level, except that the bill raises the fee for promoters from \$250 to \$300, and the fee paid per event from \$125 to \$500, and creates a new fee of \$20 for issuance of a Federal identification card. According to the Department, 19 promoters currently operate in Michigan, so the increased annual promoter fee will generate an additional \$950 in revenue each year. Data to estimate the amount raised by the increase in the event fees and the Federal identification fees are currently not available.

The bill does not appear to significantly increase LARA's costs related to the regulation of boxing and mixed martial arts, but according to a report from LARA, in fiscal year 2012-13, the revenue generated by the program totaled approximately \$75,300, and program costs totaled \$167,200. Additional revenue generated under the bill will serve to offset some of the difference between program revenue and costs.

Other than renaming the Unarmed Combat Fund, the bill does not significantly change the restricted fund into which the revenue generated from the regulation of boxing and mixed martial arts is deposited.

Corrections Impact

The bills may result in a cost to the State's corrections budget. For any new conviction resulting from the new felony, in the short term, the marginal cost to State government will be approximately \$4,100 per additional prisoner per year. Over the long term, the marginal cost to State government will be approximately \$31,100 per additional prisoner per year. With any increase in the number of felony cases, costs to local courts and law enforcement may increase. Any increase in collected fine revenue will be dedicated to public libraries. To the extent that courts are able to collect assessed costs from an offender, costs to the State and local government may be offset.

Including the new felony in the sentencing guidelines will have an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge* (in which the Court struck down portions of the sentencing guidelines law). According to one interpretation of that decision, the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under House Bill 4286 will not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction will depend on judicial decisions.

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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.