

Legislative Analysis



LAWFUL INTERNET GAMING ACT

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

House Bill 4311 (H-5) as passed by the House
Sponsor: Rep. Brandt Iden

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

House Bill 4312 (H-2) as passed by the House
Sponsor: Rep. Wendell Byrd

House Bill 4323 as passed by the House
Sponsor: Rep. LaTanya Garrett

1st Committee: Regulatory Reform
2nd Committee: Ways and Means
Complete to 12-9-19

BRIEF SUMMARY: House Bill 4311 would create the Lawful Internet Gaming Act; allow internet gaming to be conducted in accordance with the new act; license various activities; impose a tax on the conduct of licensed internet gaming; create the Internet Gaming Fund; prohibit certain conduct; establish civil sanctions and criminal penalties for violations of the act; and authorize the promulgation of rules.

House Bill 4312 would place the maximum term of imprisonment for a felony violation of the proposed Lawful Internet Gaming Act in the sentencing guidelines provisions of the Code of Criminal Procedure.

House Bill 4323 would exempt gambling conducted under the proposed Lawful Internet Gaming Act from certain provisions of the Michigan Penal Code.

FISCAL IMPACT: Please see *Fiscal Information*, below, for a detailed fiscal analysis.

THE CONTENT OF THE BILLS:

HOUSE BILL 4311

The bill would create a Lawful Internet Gaming Act; allow internet gaming to be conducted in accordance with the new act; license various activities; impose a tax on the conduct of licensed internet gaming; create the Internet Gaming Fund; prohibit certain conduct; establish civil sanctions and criminal penalties for violations of the act; and authorize the promulgation of rules.

Definitions

The new act provides definitions for numerous terms used throughout it, including:

Authorized participant: An individual who is at least 21 years of age with a valid internet wagering account with an internet gaming operator.

Casino: A building or buildings in which gaming is lawfully conducted under the Michigan Gaming Control and Revenue Act (the initiated law voted on by Michigan electors that authorized the three Detroit casinos) or in which Class III gaming is conducted by an Indian tribe 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.

Internet gaming: Operating, conducting, or offering for play an internet game.

Internet game: A game of skill or chance offered for play through the internet in which a person wagers money or something of monetary value for the opportunity to win money or something of monetary value. Free plays or extended playing time won on a game of skill or chance would not be “something of monetary value.” The term would include gaming tournaments conducted via the internet in which persons compete in games authorized by the Michigan Gaming Control Board.

Internet gaming operator: A person issued an internet gaming operator license from the Michigan Gaming Control Board to operate, conduct, or offer internet gaming.

Internet wagering: Risking money or something of monetary value on an internet game.

Internet wagering account: An electronic ledger in which deposits and credits, withdrawals, internet wagers, monetary value of winnings, certain charges authorized by the authorized participant, and adjustments to the account are recorded.

Scope of the act

The Lawful Internet Gaming Act would allow internet gaming only to the extent that it is conducted in accordance with the act. A law inconsistent with the act would not apply to internet gaming, and the act would not apply to lottery games offered by the Bureau of Lottery, Class II and Class III gaming conducted exclusively on Indian lands by a properly licensed Indian tribe, a fantasy contest, or any lawful sports betting.

Internet gaming locations

Under the act, an internet wager would be considered placed when received by the internet gaming operator, regardless of the location of the participant at the time the wager was placed. An internet wager received by an internet gaming licensee would be considered to be gambling or gaming conducted in the licensee’s casino, regardless of the authorized

participant's location at the time the wager was placed. The intermediate routing of electronic data in connection with internet wagering, including routing across state lines, would not determine the location where the internet wager was initiated, received, or otherwise made.

Except for an internet gaming operator aggregating or making available computers or other internet access devices at its own casino, the bill would prohibit a person from providing or making available those devices in a place of public accommodation (including a club or other association) to enable individuals to place internet wagers or play an internet game.

Internet gaming brands

An internet gaming operator could offer internet gaming under up to two brands (one for interactive poker and one for other casino-style games) or could offer any combination of interactive poker or other casino-style games under a single brand. Websites and applications used to offer internet gaming would have to clearly display the operator or its affiliate. The operator could also choose to have the brand of each of its internet gaming platforms be the name and logo of no more than one internet gaming supplier if the platform also clearly displayed the operator's or affiliate's own trademarks and logos.

Michigan Gaming Control Board

The Michigan Gaming Control Board (MGCB) would have powers and duties specified in the proposed act and all other powers necessary to administer, regulate, and enforce the system of internet gaming established by the act. The MGCB would have jurisdiction over licensees and could take enforcement action against an unlicensed person offering internet gaming in Michigan.

The MGCB could enter into agreements with other jurisdictions, including Indian tribes, for multijurisdictional internet gaming by gaming licensees if consistent with state and federal law and if the gaming was conducted only in the United States.

Internet gaming operator license

The MGCB could issue an internet gaming operator license only to an applicant holding a casino license under the Michigan Gaming Control and Revenue Act or to an Indian tribe that lawfully conducts Class III gaming in a Michigan casino under an appropriate license. An operator license would be valid for five years and renewable in five-year increments.

After receiving an application and application fee, the MGCB would have to issue a license if the internet gaming proposed by the applicant complied with the act and the applicant was otherwise eligible and suitable. The burden would be on the applicant to demonstrate suitability, but the MGCB would have to apply any standards used in a consistent and uniform manner.

In determining whether an applicant was eligible and suitable, the MGCB could request and consider information specified in the bill regarding the applicant's financial situation, historical compliance with casino-related licensing requirements, criminal history, or history of bankruptcy.

The MGCB would have to keep all information received or used by it in its investigation confidential; these materials would be exempt from disclosure under the Freedom of Information Act (FOIA).

An initial application for an operator license would have to be accompanied by an application fee of \$50,000. Rules could allow for a refund of the fee, or a partial refund if not wholly expended in processing the application, and provide the circumstances under which a fee would be refunded. The MGCB could assess additional fees for costs related to the licensure investigation.

The license fee would be an initial \$100,000 payable at the time the license was issued and \$50,000 annually thereafter. Application and license fees would be deposited into the Internet Gaming Fund created by the act.

An institutional investor (such as a financial institution or pension fund) holding for investment purposes less than 25% of the equity of an applicant would be exempt from the licensure requirements of the act.

Tribal internet gaming

A federally recognized tribe in Michigan could apply to the MGCB to conduct internet gaming and would have to include relevant information on its application, such as the name and location of its casinos, relevant tribal law and governing documents, and financial information.

Issuance, maintenance, and renewal of internet gaming licenses to tribal casinos would be based on all of the following:

- Compliance with the act, related rules, and minimum internal controls pertaining to the types of internet games and rules for playing them and technical standards for the acceptance of internet wagers.
- Adoption and maintenance of technical standards consistent with those adopted by the MGCB.
- Maintenance of a mechanism to determine that participants are at least 21 years old and in allowed jurisdictions.
- Adoption and maintenance of responsible gaming measures.
- Maintenance and operation of a casino operating Class III gaming and containing at least 50% of the gaming positions in place on the act's effective date.
- Timely payment of a percentage of the person's adjusted gross receipts for internet gaming, as set forth below:
 - For the first three years of internet gaming operations:
 - 4% for adjusted gross receipts of less than \$4.0 million.
 - 6% for adjusted gross receipts of \$4.0 million or more but less than \$8.0 million.
 - 8% for adjusted gross receipts of \$8.0 million or more but less than \$10.0 million.
 - 10% for adjusted gross receipts of \$10.0 million or more but less than \$12.0 million.
 - 19% for adjusted gross receipts of \$12.0 million or more.

- For the fourth year:
 - 6% for adjusted gross receipts of less than \$4.0 million.
 - 8% for adjusted gross receipts of \$4.0 million or more but less than \$8.0 million.
 - 10% for adjusted gross receipts of \$8.0 million or more but less than \$10.0 million.
 - 12% for adjusted gross receipts of \$10.0 million or more but less than \$12.0 million.
 - 21% for adjusted gross receipts of \$12.0 million or more.
- For each year after the fourth year:
 - 8% for adjusted gross receipts of less than \$4.0 million.
 - 10% for adjusted gross receipts of \$4.0 million or more but less than \$8.0 million.
 - 12% for adjusted gross receipts of \$8.0 million or more but less than \$10.0 million.
 - 14% for adjusted gross receipts of \$10.0 million or more but less than \$12.0 million.
 - 23% for adjusted gross receipts of \$12.0 million or more.
- Provision of internet gaming records to verify the payment amounts, upon request by the MGCB.
- Provision of a waiver of sovereign immunity to consent to the MGCB's jurisdiction for specified purposes, as well as to the exclusive jurisdiction of Michigan's court system (expressly waiving the exhaustion of tribal remedies).

Under the bill, at the request of any Indian tribe, the state (acting through the governor) would have to negotiate any amendments to a tribe's compact necessary to effectuate internet gaming by the tribe and ensure that internet gaming conducted by the tribe is in compliance with the act and any applicable federal law. If the governor failed to enter into negotiations or failed to negotiate in good faith, the tribe could initiate a cause of action against the governor in state or federal court.

The MGCB would have to exercise its limited direct regulatory and enforcement authority in a manner that was not arbitrary, capricious, or contradictory to the act. The act would only regulate internet gaming and would not extend to any further aspect of tribal gaming operations beyond those granted to the state under a compact with the tribe.

Internet gaming supplier license

An internet gaming supplier would be a person providing to an internet gaming operator goods, software, or services that directly affect the wagering, play, and results of authorized internet games. Only a person licensed under the act could provide goods, software, or services as an internet gaming supplier to an internet gaming operator.

A provisional license would be available to enable the applicant for a supplier license to conduct business with an internet gaming operator before receiving a supplier license. The provisional license would expire on the date provided by the MGCB.

A supplier license would be valid for five years and would be renewable for additional five-year periods if eligibility and suitability standards continued to be met. Applications would be made on forms provided by the MGCB and would have to include information required by the MGCB.

A nonrefundable application fee to be determined by the MGCB (but of not more than \$5,000) would have to accompany the application. A license fee of \$5,000 would be payable upon issuance of a license. The annual fee thereafter would be \$2,500. Application and license fees, taxes, and payments would be deposited into the Internet Gaming Fund created under the act.

Information included with the application and records pertaining to the application process would be confidential and not subject to FOIA.

An institutional investor holding less than 25% of the equity of an applicant would be exempt from the licensure requirements of the act.

MGCB responsibilities

The MGCB would have jurisdiction over all internet gaming operations governed by the proposed act and could do all of the following to effectuate the act:

- Develop qualifications, standards, and procedures for approval and licensure of internet gaming operators and internet gaming suppliers.
- Decide promptly and in reasonable order all license applications and approve, deny, suspend, revoke, restrict, or refuse to renew internet gaming operator and supplier licenses. A party aggrieved by one of these actions could request a hearing before the MGCB; the request would have to be in writing and made within 21 days of notice of the MGCB's action.
- Conduct hearings pertaining to violations of the act or rules promulgated under the act.
- Provide for the establishment and collection of all license fees and taxes imposed by the act and rules promulgated under the act and the deposit of the fees and taxes into the Internet Gaming Fund.
- Develop and enforce testing and auditing requirements for internet gaming platforms, internet wagering, and internet wagering accounts.
- Develop and enforce requirements for responsible gaming and player protection, including privacy and confidentiality standards and duties.
- Develop and enforce requirements for accepting internet wagers.
- Adopt by rule a code of conduct governing supplier employees that ensures, as much as possible, that persons subject to the act avoid the appearance and existence of conflicts of interest.
- Develop and administer civil fines for internet gaming operators and suppliers that violate the act or the rules promulgated under the act.
- Audit and inspect, with reasonable notice, books and records relevant to internet gaming operations, internet wagers, internet wagering accounts, internet games, or internet gaming platforms, including the books and records regarding financing and accounting materials held by a licensee.

- Acquire personal property by lease or purchase, including computer hardware; mechanical, electronic, and online equipment and terminals; or intangible property, including computer programs, software, and systems.

The MGCB could investigate, issue cease and desist orders against, and obtain injunctive relief against a person that offered internet gaming in this state without being licensed to do so. Information, records, interviews, reports, and other data supplied to or used by the MGCB in the course of an investigation of a licensee would be confidential and not subject to FOIA.

Rule promulgation

Under the bill, the MGCB would have to promulgate rules to implement the act within one year after the proposed act took effect. The rules could include only things expressly authorized by the act, including all of the following:

- Types of internet games to be offered, which must include poker, blackjack, cards, slots, and other games typically offered at a casino, but would not include pick numbers games offered by the Bureau of Lottery.
- Qualifications, standards, and procedures for approval and licensure of internet gaming operator and internet gaming supplier licensees.
- Requirements to ensure responsible gaming.
- Technical and financial standards for internet wagering, wagering accounts, and internet gaming platforms, systems, and software or other electronic components for internet gaming.
- Procedures for conducting contested case hearings.
- Requirements for multijurisdictional agreements entered into with other jurisdictions. These would include qualifications, standards, and procedures for approval of internet gaming suppliers providing internet gaming platforms in connection with the agreement.
- Procedures and requirements for the acceptance, by an internet gaming operator, of internet wagers initiated or otherwise made by persons in other jurisdictions, if the MGCB authorized multijurisdictional gaming.

Responsible gaming measures

An internet gaming operator would have to provide, or require the supplier providing its internet gaming platform to provide, one or more mechanisms designed to verify that a participant was at least 21 years old and that the internet wagering was limited to transactions in Michigan or, if multijurisdictional sports betting was authorized, in an allowable jurisdiction in the United States. An individual seeking to place an internet wager would have to satisfy these verification requirements before he or she could establish an account or make a wager.

An operator would have to include, or require the supplier to include, mechanisms on the platform to detect and prevent unauthorized use of internet wagering accounts and to detect and prevent fraud, money laundering, and collusion.

An operator or the supplier providing its platform could not knowingly authorize an individual under 21 years old or an individual whose name was on the MGCB's responsible gaming database to establish an internet wagering account or knowingly allow such an individual to place a wager, except if authorized for testing purposes.

A sports betting operator would have to display or have its platform display evidence of the operator's licensure under the act.

Responsible gaming database

The MGCB could develop responsible gaming measures, including a statewide responsible gaming database listing people prohibited from establishing an internet wagering account or participating in internet gaming offered by an operator. The MGCB's executive director could place a person's name on the list for certain specified convictions or acts, inclusion on other such lists, or any other reason the MGCB considered appropriate. The MGCB could promulgate rules for the establishment and maintenance of the responsible gaming database.

Hotline and self-exclusion list

An internet gaming operator would have to include on its platform the number of the toll-free compulsive gambling hotline maintained by Michigan and offer responsible gambling services and technical controls, including temporary and permanent self-exclusion and the ability for participants to set their own periodic deposit and internet wagering limits and maximum playing times.

An authorized participant could voluntarily prohibit himself or herself from establishing an internet wagering account with an operator. The MGCB could incorporate the voluntary self-exclusion list into the responsible gaming database and maintain both the list and database in a confidential manner. Both would be exempt from disclosure under FOIA.

Prohibited conduct

The act would prohibit a person from doing any of the following:

- Offering internet gaming for play without being an internet gaming operator (except if exempt as a lottery game, tribal casino, or fantasy contest). A person who violated this prohibition would be guilty of a felony punishable by imprisonment for up to 10 years or a fine of up to \$100,000, or both.
- Knowingly making a false statement on an application for a license to be issued under the proposed act.
- Knowingly providing false testimony to the MGCB or an authorized representative of the MGCB while under oath.

The MGCB could not issue a license under the act to a person that violated any of these provisions.

Gross gaming revenue tax

An internet gaming operator that was not an Indian tribe would be subject to a graduated tax on the adjusted gross receipts received by the operator from all internet gaming conducted under the act as set forth below:

- For the first three years of internet gaming operations:
 - 4% for adjusted gross receipts of less than \$4.0 million.
 - 6% for adjusted gross receipts of \$4.0 million or more but less than \$8.0 million.
 - 8% for adjusted gross receipts of \$8.0 million or more but less than \$10.0 million.
 - 10% for adjusted gross receipts of \$10.0 million or more but less than \$12.0 million.
 - 19% for adjusted gross receipts of \$12.0 million or more.
- For the fourth year:
 - 6% for adjusted gross receipts of less than \$4.0 million.
 - 8% for adjusted gross receipts of \$4.0 million or more but less than \$8.0 million.
 - 10% for adjusted gross receipts of \$8.0 million or more but less than \$10.0 million.
 - 12% for adjusted gross receipts of \$10.0 million or more but less than \$12.0 million.
 - 21% for adjusted gross receipts of \$12.0 million or more.
- For each year after the fourth year:
 - 8% for adjusted gross receipts of less than \$4.0 million.
 - 10% for adjusted gross receipts of \$4.0 million or more but less than \$8.0 million.
 - 12% for adjusted gross receipts of \$8.0 million or more but less than \$10.0 million.
 - 14% for adjusted gross receipts of \$10.0 million or more but less than \$12.0 million.
 - 23% for adjusted gross receipts of \$12.0 million or more.

No other tax, payment, or fee could be imposed on an internet gaming operator for internet gaming. However, this provision would not impair contractual rights under an existing development agreement between a city and an internet gaming operator with a casino license under the Michigan Gaming Control and Revenue Act. In addition to the tax and other fees imposed by the proposed act, a city that had imposed a municipal services fee of 1.25% on a casino licensee would charge a 1.25% fee on the adjusted gross receipts of an internet gaming operator with a casino license whose casino was in that city.

The tax would have to be allocated as follows:

- 30% to the city in which the internet gaming operator licensee's casino was located, for use in that city in connection with the following:
 - Hiring, training, and deployment of street patrol officers.
 - Neighborhood and downtown economic development programs designed to create jobs, with a focus on blighted neighborhoods.
 - Public safety programs such as emergency medical services, fire department programs, and street lighting.

- Anti-gang and youth development programs.
- Other programs designed to contribute to the improvement of the quality of life.
- Relief to city taxpayers from one or more taxes or fees imposed by the city.
- Costs of capital improvements.
- Road repairs and improvements.
- 65% to the state to be deposited into the Internet Gaming Fund.
- 5% to the Michigan Agricultural Equine Industry Development Fund. (However, if that amount exceeded \$3.0 million in a fiscal year, the excess would have to be deposited in the Internet Gaming Fund.)

If the combined total of the 30% allocated to the city, the wagering tax under the Michigan Gaming Control and Revenue Act, and all payments received by the city under existing development agreements with internet gaming operators was less than \$183.0 million, the MGCB would have to distribute to the city from the Internet Gaming Fund an amount equal to the difference between \$183.0 million and the amount received by the city in the previous year from those sources. This would have to take place by December 31, 2020, and each December 31 thereafter. However, the total amount from the 30% allocation and this distribution could not be more than 55% of the total tax imposed under this section in the fiscal year.

If the contributions from the Bureau of Lottery's iLottery program to the School Aid Fund were less than \$70.0 million, the MGCB would distribute from the Internet Gaming Fund to the School Aid Fund an amount equal to the difference between \$70.0 million and the amount received from the iLottery program. This distribution would have to take place by December 31, 2020, and each December 31 thereafter. This distribution would be made after any distribution to a city as described above.

The tax on gross receipts paid by Indian tribe internet gaming operators (see **Tribal internet gaming**, above) would be allocated as follows:

- 30% to the governing body of the jurisdiction where the internet gaming operator licensee's casino was located for use in providing government services.
- 52.5% to this state for deposit into the Internet Gaming Fund.
- 17.5% to the Michigan Strategic Fund.

Internet Gaming Fund

The Internet Gaming Fund would be created in the treasury. Money or assets required to be paid into the fund or received from any other sources would be received by the state treasurer. Interest and earnings from fund investments would be credited to the fund. The MGCB would be the administrator for auditing purposes. The MGCB would be required to deposit \$1.0 million annually from the fund to the Compulsive Gaming Prevention Fund and would also expend money, upon appropriation, for its costs in regulating and enforcing internet gaming under the act. Any money remaining in the Internet Gaming Fund after these expenditures would be deposited into the School Aid Fund.

HOUSE BILL 4312

The bill would amend the Code of Criminal Procedure to specify that internet gaming offenses under section 13 of the proposed new Lawful Internet Gaming Act would be a Class D felony against the public order punishable by a maximum term of imprisonment of 10 years. Additionally, under the bill, a violation of section 51(2) of the Traxler-McCauley-Law-Bowman Bingo Act would be a Class G felony against the public trust punishable by a maximum term of imprisonment of two years. (That section would be added to the Bingo Act by House Bill 4173, as it was passed by the House, and concerns false statements made under that act.) The bill would take effect 90 days after being enacted.

MCL 777.14d

HOUSE BILL 4323

The bill would add a new section to the Michigan Penal Code to specify that Chapter 44 (Gambling) would not apply to gambling conducted under the proposed Lawful Internet Gaming Act. The bill would take effect 90 days after being enacted.

Proposed MCL 750.310d

Tie-bars

House Bill 4312 is tie-barred to HBs 4311 and 4173, and House Bill 4323 is tie-barred to HB 4311. A bill cannot take effect unless the bill to which it is tie-barred is also enacted.

BACKGROUND:

House Bills 4311, 4312, and 4323 are part of a series of reintroduced bills regarding gaming regulation in Michigan. The bills' counterparts in the 2017-18 legislative session—House Bills 4926, 4928, and 4927, respectively—were passed by the House and Senate but vetoed by the governor. In his veto message,¹ Governor Snyder cited unknown budgetary concerns and a desire for more careful study of the issue.

FISCAL INFORMATION:

For the reasons explained in more detail below, a net fiscal impact for state and local governments, including the city of Detroit, is difficult to determine. Determining a fiscal impact is difficult in both scope and magnitude due to the financial, legal, and tax structure of the Michigan gaming industry; the dynamic interplay between the different types of gaming offered in Michigan (commercial casinos, tribal casinos, and a state-run lottery); and the relatively small sample size of states that have legalized internet casino gaming (Delaware [2012], Nevada [2013], New Jersey [2013], and Pennsylvania [2017]). Additionally, casino revenues are affected by economic conditions, societal trends,

¹https://content.govdelivery.com/attachments/MIGOV/2018/12/28/file_attachments/1130293/Veto%20Letter%204926%20-%204928.pdf

expansion of gaming in other states, and the offering of alternative gaming opportunities, all of which make differentiating between correlation and causation when reviewing other states difficult.

New Jersey’s online gaming market is structured most similarly to the proposed online gaming market under this bill. However, there are notable differences that limit its usefulness as a direct comparable for Michigan’s gaming market. While Michigan’s population is almost one million greater than New Jersey’s, New Jersey has a per capita personal income that is 40% greater than Michigan’s. In addition, population demographics, geography, and the dependence on tourism as a source of business for casino gaming diminish the value of direct comparisons.

The scope and magnitude of the fiscal impact would depend on whether online gaming had a substitution, neutral, or stimulative effect on other forms of gaming. All of these factors are discussed in more detail below.

As background, 2018 internet gaming adjusted gross receipts (AGR) from New Jersey totaled approximately \$300.0 million, which represented 10% of the overall casino gaming market (based on AGR). Assuming that internet gaming AGR comprises approximately 12% of the total amount wagered, roughly \$2.5 billion was wagered online in New Jersey in 2018.

For purposes of this analysis, market scenarios of \$200.0 million and \$300.0 million are presented. After presenting revenues and distributions in the following tables, offsetting downside risks to revenues are discussed. **Table 1** provides estimated tax collections based on initial marginal tax rates and the maximum marginal tax rates that go into effect beginning in year 5. Marginal tax rates are explained in more detail in the analysis above. It should be noted that the initial revenue scenarios below assume only 50% of the mature market assumption on AGR. For example, in the \$200.0 million AGR market, the base is assumed to be \$100.0 million initially, split evenly between the commercial and tribal casinos. The 50/50 split of AGR is maintained as an assumption throughout the analysis. Additionally, the calculation in the tables assumes that all tribal casinos participate and offer gaming. In order to calculate revenue from marginal tax rates, the total AGR is spread proportionately to each casino based on 2018 AGR.

TABLE 1
iGaming Tax Revenue Collections

	\$200.0 million AGR Market		\$300.0 million AGR Market	
	<u>Detroit (50%)</u>	<u>Tribal (50%)</u>	<u>Detroit (50%)</u>	<u>Tribal (50%)</u>
Initial Revenue* (50% of AGR)	\$7,220,000	\$4,465,300	\$11,970,000	\$8,303,000
TOTAL		\$11,685,300		\$20,273,000
Mature Market Revenue	18,440,000	12,930,600	29,940,000	22,605,900
TOTAL		\$31,370,600		\$52,545,900

**Initial Revenues utilize AGR totaling 50% of potential AGR market, which represents an estimate of early-year revenues*

Tables 2 and 3 provide estimated statutory distributions for the revenues identified in Table 1. Table 2 provides distributions of initial and mature market revenues in a \$200.0 million AGR market scenario. Table 3 provides the same distributional information for a \$300.0 million AGR market scenario.

TABLE 2
iGaming Tax Revenue Allocations - \$200.0 million AGR Market

	Initial (Yr 1) Revenue*		Mature (Yr 5) Market Revenue	
	<u>Detroit (50%)</u>	<u>Tribal (50%)</u>	<u>Detroit (50%)</u>	<u>Tribal (50%)</u>
City of Detroit	\$2,166,000	\$0	\$5,532,000	\$0
Internet Gaming Fund	4,693,000	2,344,300	11,986,000	6,788,500
Ag Equine Development Fund	361,000	0	922,000	0
Local Unit Governing Bodies**	0	1,339,600	0	3,879,200
Michigan Strategic Fund	0	781,400	0	2,262,900
TOTAL	\$7,220,000	\$4,465,300	\$18,440,000	\$12,930,600

**Initial Revenues utilize AGR totaling \$100.0 million which represents an estimate of early-year revenues*

***Funds are deposited with Local Government Body where casino is located.*

Note: Total AGR is split 50/50 between Detroit casinos and Tribal Casinos

TABLE 3
iGaming Tax Revenue Allocations - \$300.0 million AGR Market

	Initial (Yr 1) Revenue*		Mature (Yr 5) Market Revenue	
	<u>Detroit (50%)</u>	<u>Tribal (50%)</u>	<u>Detroit (50%)</u>	<u>Tribal (50%)</u>
City of Detroit	\$3,591,000	\$0	\$8,982,000	\$0
Internet Gaming Fund	7,780,500	4,359,100	19,461,000	11,868,100
Ag Equine Development Fund	598,500	0	1,497,000	0
Local Unit Governing Bodies	0	2,490,900	0	6,781,800
Michigan Strategic Fund	0	1,453,000	0	3,956,000
TOTAL	\$11,970,000	\$8,303,000	\$29,940,000	\$22,605,900

**Initial Revenues utilize AGR totaling \$150.0 million which represents an estimate of early-year revenues.*

***Funds are deposited with Local Government Body where casino is located.*

Note: Total AGR is split 50/50 between Detroit casinos and Tribal Casinos

In a \$200.0 million AGR market scenario, Internet Gaming Fund revenues would total \$7.0 million initially and increase to an estimated \$18.8 million in a mature market. In a \$300.0 million AGR market scenario, Internet Gaming Fund revenues would total \$12.1 million initially and increase to an estimated \$31.3 million in a mature market.

Expenditures from the Internet Gaming Fund include the following, upon appropriation: Compulsive Gaming Prevention Fund (\$1.0 million), Michigan Gaming Control Board (MGCB) costs associated with enforcing and regulating the act, and the remainder to the

School Aid Fund (SAF). Expenditures would also include any hold harmless payments to the city of Detroit if the internet wagering tax, brick and mortar wagering tax, and development agreement payments fell below \$183.0 million and the SAF if the iLottery transfer fell below \$70.0 million. It should be noted that because any remainder in the Internet Gaming Fund is required to be deposited in the SAF, making a payment to the SAF under the iLottery hold harmless provision would provide no net benefit to the SAF because the SAF would have received the funds regardless.

According to the most recent data available, the wagering tax and development agreement payments totaled \$182.9 million in calendar year 2018. The iLottery transfer to the SAF is estimated to be at least \$90.0 million based on FY 2018-19 preliminary data. Continued growth is projected for both iLottery and brick-and-mortar casino gaming under current law.

If it is assumed that MGCB costs associated with enforcement and regulation are \$4.0 million and a Compulsive Gaming Prevention Fund deposit of \$1.0 million, based on the tables above, the \$200.0 million AGR market scenario would yield an Internet Gaming Fund balance to the SAF of between \$2.0 million (initial) and \$13.8 million (mature). The \$300.0 AGR market scenario would yield an Internet Gaming Fund balance to the SAF of between \$7.1 million (initial) and \$26.3 million (mature).

Because the substitution effect between internet gaming, brick and mortar, and iLottery is unknown, it is difficult to determine what effect the introduction of internet gaming would have on each sector. That said, if it is assumed that there was no loss at brick-and-mortar casinos, the total lottery transfer to the SAF could fall by approximately 0.2% initially and 1.3% in a mature market before the SAF realizes a net negative impact in a \$200.0 million AGR market and by approximately 0.7% initially and 2.5% in a mature \$300.0 million AGR market. Any substitution effect in brick-and-mortar casino play would lower the percentages. Additionally, if either of the hold harmless provisions was triggered, the Internet Gaming Fund SAF transfer would be reduced.

In a \$200.0 million AGR market, the city of Detroit would realize development agreement revenue of between \$883,000 initially and \$1.8 million in a mature market. In a \$300.0 million AGR market scenario, these figures would increase to \$1.3 million and \$2.7 million, respectively.

As of this writing, the commercial casino AGR is up 0.3% year-to-date. Based on CY 2018 wagering revenues and development agreement payments of \$182.9 million, the CY 2019 city of Detroit revenues would total an estimated \$183.5 million. When factoring projected internet wagering taxes and development agreement revenues from internet wagering, the hold harmless provision would be triggered if brick and mortar revenue fell by between 1.9% initially and 4.2% in a mature \$200.0 million AGR market scenario from their projected FY 2018-19 level. In a \$300.0 AGR market scenario, these estimates would be 2.9% and 6.6%, respectively.

The city of Detroit also receives municipal services fee payments based on casino AGR. In a \$200.0 million market these fees would increase by between \$625,000 initially and \$1.3 million in a mature market. In a \$300.0 million AGR market, the fees would be \$937,500 and \$1.9 million, respectively.

It is unclear whether the AGR associated with internet gaming would be included in the calculation of the local government revenue sharing payment under the Tribal-State Gaming Compacts; therefore, a projected revenue impact for local governments that receive revenue sharing payments under the Tribal-State Gaming Compacts cannot be determined. That said, the local government body where the tribal casino is located would receive a distribution from the internet wagering tax, which would increase revenues for that local governing body.

The net fiscal impact for the Michigan Strategic Fund (MSF) cannot be determined. While the MSF would receive a distribution of the internet wagering tax revenues as presented in Tables 2 and 3, any substitution effect with existing brick-and-mortar tribal casinos would reduce revenue sharing payments under the Tribal-State Gaming Compacts. Additionally, it is possible that one or more casinos that currently make revenue sharing payments to MSF could discontinue those payments if they determined that the terms of the compact were violated, no longer necessitating revenue sharing payments to MSF.

Lastly, the application and licensing fees would be deposited in the Internet Gaming Fund. Application fees would total less than \$1.0 million and would be a one-time payment. Licensing fees would be paid annually and could be as high as \$1.5 million in the first year and \$750,000 in any subsequent year.

Forecast uncertainties include customer base differences with comparison states; the size of the internet gaming market in Michigan; the split of the overall market between tribal and commercial casinos; and the interplay (substitution or stimulation effect) of internet gaming, brick and mortar, and iLottery; the reaction of tribal casinos with regard to Michigan Strategic Fund payments as a result of the introduction of internet wagering; economic conditions and the impact on discretionary income; and changing player demographics.

Additionally, this analysis does not address the possible transfer of free play between brick-and-mortar and internet gaming platforms and the overall impact on AGR. Internet gaming AGR does not include free play. Any brick and mortar free play awards that are transmitted to internet wagering would reduce brick and mortar AGR compared to current law.

Corrections and Judiciary

House Bill 4311 would have an indeterminate fiscal impact on the state's correctional system and on local court systems. Information is not available on the number of persons who might be convicted under provisions of the bill. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2018, the average cost of prison incarceration in a state facility was roughly \$38,000 per prisoner, a figure that includes various fixed administrative and operational costs. State

costs for parole and felony probation supervision averaged about \$3,700 per supervised offender in the same year.

Civil fines would increase revenues going to the state Justice System Fund, which supports the Legislative Retirement System, the Departments of State Police, Corrections, Health and Human Services, and Treasury, and various justice-related endeavors in the judicial branch.

The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

POSITIONS:

Representatives of the following entities testified in support of the bills:

- Greektown Casino (3-12-19)
- Motor City Casino (5-2-19)
- MGM Grand Detroit (5-2-19)
- Fan Duel (5-2-19)

Representatives of the following entities testified in support of House Bill 4311:

- Draft Kings (3-12-19)
- GEOComply (5-2-19)
- The Stars Group (3-12-19)

The following entities indicated support for the bills:

- City of Detroit (3-12-19)
- Draft Kings (10-29-19)
- Nottawaseppi Huron Band of Potawatomi (5-2-19)
- Gun Lake Tribe (5-2-19)
- Pokagon Band of Potawatomi (5-2-19)

The following entities indicated support for House Bill 4311:

- iDEA Growth (iDevelopment and Economic Association) (3-12-19)
- Huron Band of Potawatomi (3-19-19)

The Michigan Chamber of Commerce indicated support for House Bills 4311 and 4312. (3-12-19)

The Michigan Association on Problem Gambling indicated a neutral position on the bills. (10-29-19)

The following entities indicated a neutral position on House Bill 5311 (10-29-19):

- Lac Vieux Desert Band of Lake Superior Chippewa Indians
- Huron Band of Potawatomi Indians

Representatives of the following entities testified in opposition to the bills (5-2-19):
Department of Treasury
State Budget Office

Representative of the following entities testified in opposition to House Bill 4311 (5-2-19):
Michigan Association of School Boards
Michigan Association of Superintendents and Administrators

The following entities indicated opposition to the bills:
Michigan Association of Secondary School Principals (10-29-19)
Michigan Family Forum (3-19-19)

The following entities indicated opposition to House Bill 4311:
Coalition to Stop Internet Gaming (3-12-19)
Wayne RESA (3-19-19)
Oakland Schools (5-2-19)
Middle Cities Education Association (5-2-19)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.