

LAWFUL INTERNET GAMING ACT

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

House Bill 4926 (passed by the House as substitute H-4)
House Bill 4927 (passed by the House without amendment)
Sponsor: Rep. Brandt Iden

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

House Bill 4928 (passed by the House without amendment)
Sponsor: Rep. Klint Kesto

Committee: Regulatory Reform
Complete to 9-20-18

BRIEF SUMMARY: Taken together, the bills would create the Lawful Internet Gaming Act, allow internet gaming to be conducted in accordance with the new Act and except it from Penal Code prohibitions, license various activities, create the Division of Internet Gaming in the Michigan Gaming Control Board, 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, add the new felony penalties to the sentencing guidelines, and authorize the promulgation of rules.

FISCAL IMPACT: The bills would have an indeterminate fiscal impact on state and local units of government. (See *Fiscal Information*, below, for a detailed analysis.)

THE APPARENT PROBLEM:

Federal law has never prohibited a state from regulating online gambling within its own borders, yet only Delaware, New Jersey, Nevada, and most recently, Pennsylvania, have adopted legislation to do so. The federal Professional and Amateur Sports Protection Act (PASPA) did prohibit a state from allowing betting on sporting events (except for Nevada), but a recent U.S. Supreme Court decision¹ held, among other things, that a provision within PASPA violated the anti-commandeering rule—which says that Congress cannot commandeer the legislative process of the states and compel them to enact and enforce a federal regulatory program—and so is unconstitutional. Within days of the ruling, sports betting was legal in Delaware, and a bill to allow it in New Jersey has passed the legislature and is awaiting the governor’s signature. More states are expected to legalize both online and sports gambling in the near future.

Online gambling can be a revenue source for those states that authorize and regulate it. Further, with more and more business and entertainment being conducted online and on mobile devices, some feel it is inevitable that online venues for gaming will proliferate. Rather than Michigan citizens traveling to other states to engage in online gambling, it has been suggested that Michigan enact a regulatory structure that can benefit citizens and yet provide adequate protections to mitigate the impact on vulnerable individuals.

¹ *Murphy v NCAA, et al.*, 584 US __ (2018)

THE CONTENT OF THE BILLS:

House Bill 4926 would create the Lawful Internet Gaming Act, described below.

Definitions

The Act provides definitions for numerous terms used throughout it. These include:

Athletic event: A sports activity involving the athletic skill of one or more players or participants. The term would include any of the following:

- Horse racing.
- College, high school, or other amateur sports.
- Roulette, poker, blackjack, a card game, a dice game, or any other game or contest typically offered in a casino.

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

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 under a facility license issued in accordance with a tribal gaming ordinance approved by the chair of the National Indian Gaming Commission. (***Class III gaming*** would mean that term as defined in 25 USC 2703; it generally encompasses slot machines and games offered in an electronic format or as an electromechanical facsimile of a game of chance, as well as certain card games such as blackjack.)

Fantasy sports game: A fantasy or simulation sports game or contest with a cash or cash equivalent entry fee meeting all of the conditions specified in the bill.

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 approved by the Division of Internet Gaming.

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

Internet gaming licensee: A person issued an internet gaming license from the Division of Internet Gaming to conduct internet gaming or otherwise authorized to conduct internet gaming under the Act.

Internet wager: Money or something of monetary value risked on an internet game offered under the Act.

Internet wagering: The placing of wagers with an internet gaming licensee using a computer network of both federal and nonfederal interoperable packet switched data networks through which the internet gaming licensee may offer internet games to authorized participants who have established a wagering account with the internet gaming licensee.

Internet wagering account: An electronic ledger in which deposits, withdrawals, amounts wagered or paid on winning wagers, certain charges authorized by the authorized participant, and adjustments to the account are recorded.

Person: An individual, partnership, corporation, association, limited liability company, federally recognized Indian tribe, or other legal entity. The term would not include the state of Michigan or any department or agency of Michigan.

Applicability of Act, Location of Operation/Equipment

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 State Lottery. In addition, the Act would not apply to a fantasy sports game.

Under the Act, an internet wager would be considered placed when received by the internet gaming licensee, 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. Similarly, an internet wager received by a federally recognized Michigan Indian tribe would be gambling or gaming conducted wholly within the tribe's casino on Indian tribal lands located in the state, regardless of the participant's location at the time the internet wager was placed. Intermediate routing of electronic data in connection with a wager—including across state lines—would not determine the location or locations in which the wager was initiated, received, or otherwise made, nor would it affect the fact that the wager was considered placed in the licensee's casino.

A licensee's primary internet gaming operation (including facilities, equipment, and personnel directly engaged in the conduct of internet gaming activities) would have to be located in a restricted area on the casino's premises, although backup equipment could be located outside of the casino as long as any wager placed with the licensee is done on equipment physically located within the casino.

Aggregating computers or other internet access devices in order to enable multiple players to simultaneously play an internet game would be restricted to a licensee at its casino.

Further, an internet gaming licensee would have to display on its internet gaming platform (and in a clear, conspicuous, and accessible manner) evidence of its internet gaming license issued under the Act.

Division of Internet Gaming, Multijurisdictional Gaming, Sports Betting

The Division of Internet Gaming (“the Division”) would be established in the Michigan Gaming Control Board to administer, regulate, and enforce the system of internet gaming established by the Act. The Division would have jurisdiction over licensees and could take enforcement action as provided in the Act against an unlicensed person offering internet gaming in the state.

Under the Act, the Division could enter into agreements for multijurisdictional internet gaming by gaming licensees if consistent with state and federal law and for gaming conducted only in the United States. The Division could permit an internet gaming licensee to conduct internet wagering on amateur or professional sporting events or contests if the wagering were not prohibited by federal law.

Internet Gaming License

The person applying for an internet gaming license would have to hold a casino license under the Michigan Gaming Control and Revenue Act (the three Detroit casinos). After receiving an application and application fee, the Division would have to issue a license if the internet gaming proposed by the applicant complied with the Act. However, a licensee could not conduct internet gaming until 1 year after the Act’s effective date. The application form, provided by the Division, would require certain information to be provided that would include at least the following:

- Detailed information regarding the ownership and management of the person applying for the internet gaming license.
- Detailed personal information regarding the person.
- Financial information regarding the applicant.
- The gaming history and experience of the person in the U.S. and other jurisdictions.

Information previously provided to the Division would not have to be included in the application unless the Division notified the person that the information cannot be located.

An internet gaming license would be valid for 5 years and could be renewed for additional 5-year periods if the licensee continues to meet the Act’s eligibility standards.

Tribal Internet Gaming

A federally recognized tribe in Michigan that operates a casino in the state in which Class III gaming is conducted could conduct internet gaming at that casino if authorized by a compact the tribe entered into with the state under the federal Indian Gaming Regulatory Act, subject to the terms of the compact or amendment, and requirements of applicable federal law. However, internet gaming could not be offered sooner than 1 year after the bill’s effective date.

A request for a compact amendment or a new compact permitting internet gaming would be made by letter from the tribal chairperson on behalf of the tribe to the governor on behalf of the state. The letter would have to include proposed terms consistent with the Act. The governor would be required to negotiate in good faith regarding the request for a compact amendment or new compact. If the governor failed to negotiate or to negotiate in good faith

with respect to requests addressing provisions in the compact (described below), the Indian tribe could initiate a claim of action in federal court under provisions of the Indian Gaming Regulatory Act (IGRA). Moreover, a tribe could become a party to any multijurisdictional agreement entered into by the Division under provisions of the Act and could enter into agreements with other Indian tribes to facilitate, administer, and regulate multijurisdictional internet gaming to the extent the agreement is consistent with applicable tribe, state, and federal laws (including IGRA and the Unlawful Internet Gambling Enforcement Act of 2006).

In addition, a tribe that has an existing compact that authorizes the tribe to request the addition of new Class III games with approval by the governor would have to request that internet gaming be added as an additional Class III game under the compact.

The terms of a compact or amendment to a compact that expressly authorizes internet gaming could be negotiated and entered into by the governor with a federally recognized Indian tribe. The terms would have to address certain listed provisions specified in the Act, such as the amount and manner of revenue sharing payments to be made to the state related to internet gaming and the types of internet games to be offered for play (only games approved by the Division for internet gaming licensees could be offered).

The terms would also have to include the tribe's obligation to cease internet gaming operations should a court enter a judgment or order that has the effect of invalidating the Act's provision authorizing the Division to issue internet gaming licenses to casinos licensed under the Michigan Gaming Control and Revenue Act (currently, the 3 Detroit casinos) and also to cease all internet gaming operations if the tribe ceased operating its casino or failed to offer Class III games other than internet gaming at its casinos.

Internet Gaming Vendor and Gaming Platform Vendor Provider Licenses

An internet gaming vendor licensee would be a person providing to an internet gaming licensee goods, software, or services that directly affect the wagering, play, and results of internet games offered under the Act. Only a person licensed under the Act could provide goods, software, or services as an internet gaming vendor to an internet gaming licensee. The license category would not include a payment processor, a geolocation service provider, or a person providing an internet gaming licensee such goods, software, or services it also provides to others for purposes not involving internet gaming.

A vendor license would be valid for 5 years and would be renewable for additional 5-year periods if eligibility standards continued to be met. Applications would be made on forms provided by the Division and would have to include certain information specified in the Act, such as personal and financial information regarding the applicant. A person licensed as a supplier under the Michigan Gaming Control and Revenue Act who is applying for an internet gaming vendor gaming would not need to provide any information that it had previously provided to the Division unless the Division notified the person that the previously provided information cannot be located.

A provisional license would be available to enable the person applying for a vendor license to conduct business with an internet gaming licensee or applicant for an internet gaming license before receiving the vendor's license. The provisional license would expire on the date listed.

The Act would also create an internet gaming platform provider license and establish an initial and annual renewal fee.

Fees for License Application and Initial and Renewal Licenses

The fees for the various license categories are as follows:

Internet Gaming License

\$100,000—Application fee for initial license

\$200,000—Fee for initial license

\$100,000—Yearly license renewal fee

Departmental rules could allow for a refund of the application fee, or a partial refund of a fee not wholly expended in processing the application, and provide the circumstances under which a fee would be refunded.

Internet Gaming Vendor License

Non-refundable application fee for initial license—To be determined/not to exceed \$5,000

\$5,000—Fee for initial license

\$2,500—Yearly license renewal fee

Internet Gaming Platform Provider

\$100,000—Fee for initial license

\$50,000—Yearly license renewal fee

[*Internet gaming platform provider* is not defined in the Act, nor are any license requirements or application processes specified. The Act defines *internet gaming platform* to mean an integrated system of hardware, software, and servers through which an internet gaming licensee conducts internet gaming under the Act.]

Application and license fees for each license category would be deposited into the Internet Gaming Fund created under the Act.

Information included with an application for an internet gaming license or internet gaming vendor license and records pertaining to the application process would be confidential and not be subject to the Freedom of Information Act (FOIA). An institutional investor holding less than 30% of the equity of a person applying for an internet gaming license or internet gaming vendor license would be exempt from licensure under the Act.

Jurisdiction of the Division, Civil Fines, Civil Remedies

The Division would have jurisdiction over and responsibility to supervise all internet gaming operations governed by the Act, except for internet gaming conducted by an Indian tribe under a compact with the state or an amendment to such a compact. The Division

could do anything necessary or desirable to effectuate the Act, including, but not limited to, the following:

- Develop qualifications, standards, and procedures for approval and licensure of internet gaming licensees and gaming vendors [internet gaming platform provider licensee is not mentioned here].
- Decide promptly and in reasonable order all license applications and approve, deny, suspend, revoke, restrict, or refuse to renew internet gaming licenses and internet gaming vendor licenses [internet gaming platform provider license is not mentioned here]. An aggrieved party could request within 21 days of receiving notice of the action a contested case hearing before the Division.
- Conduct hearings pertaining to violations of the Act or rules and develop and administer civil fines (not to exceed \$5,000 per violation) for internet gaming licensees and internet gaming vendor licensees that violate the Act or departmental rules [internet gaming platform provider licensee is not mentioned here].
- Develop and enforce:
 - Testing and auditing requirements for internet gaming platforms, internet wagering, and internet wagering accounts.
 - Requirements for responsible gaming and player protection, including privacy and confidentiality standards and duties.
 - Accepting internet wagers.
- By rule, adopt a code of conduct governing Division employees regarding avoiding situations or relationships that could represent or lead to actual or perceived conflicts of interest.
- Conduct audits and inspections of books and records relevant to internet gaming operations, internet games, internet wagers, etc., held or in the custody of internet gaming or internet gaming vendor licensees.
- Acquire or lease real property; make improvements to the real property; and lease or purchase personal property, including computer hardware, equipment and terminals, and intangible property such as computer programs and systems.

The Division could investigate, issue cease and desist orders, and obtain injunctive relief against a person that offers internet gaming in the state but is not an internet gaming licensee. Information, records, interviews, reports, and other data supplied to or used by the Division in the course of an investigation of a licensee would be confidential and not be subject to FOIA.

Rule Promulgation

The Division would be required, within 1 year after the Act takes effect, to promulgate rules governing the licensing, administration, and conduct of internet gaming necessary to carry out the Act. The promulgation of emergency rules would not satisfy the requirement that would allow a person to conduct internet gaming. Rules must be promulgated under the Administrative Procedures Act and could only include things expressly authorized by the Act, including the following:

- Types of internet games to be offered; poker must be offered.
- Qualifications, standards, and procedures for approval and licensure of internet gaming licensees and internet gaming vendor 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 integral to offering internet gaming.
- Procedures for conducting contested case hearings.
- Procedures and requirements for the acceptance, by an internet gaming licensee, of internet wagers initiated or otherwise made by persons located in other jurisdictions.
- Requirements for multijurisdictional agreements entered into with other jurisdictions. These would include qualifications, standards, and procedures for approval of vendors providing internet gaming platforms in connection with the agreement.

Age Verification Requirements, Requirements of Internet Gaming Licensees

An internet gaming licensee would be required to provide 1 or more mechanisms on the gaming platform it uses designed to:

- Reasonably verify that an authorized participant is at least 21 years of age. An individual would have to satisfy the verification requirements in order to establish an internet gaming account or to make an internet wager on an internet game.
- Limit internet wagering to transactions that are initiated and received or otherwise made by an authorized participant located in Michigan or a jurisdiction in the United States in which internet gaming is legal.

The internet gaming licensee would also have to require its internet gaming platform provider to include mechanisms to detect and prevent the unauthorized use of internet wagering accounts and to detect and prevent fraud, money laundering, and collusion.

An internet gaming licensee could not knowingly authorize an individual less than 21 years old or an individual whose name appears in the responsible gaming database created under the Act (see below) to establish an internet gaming account or knowingly allow them to wager on internet games offered by the licensee—unless required and authorized by the Division for testing purposes or to otherwise fulfill the purposes of the Act.

Responsible Gaming Database, Posting of Compulsive Gambling Hotline

The Division could develop responsible gaming measures, including a statewide responsible gaming database that would identify individuals who are prohibited from establishing an internet wagering account or participating in internet gaming offered by an internet gaming licensee. An individual's name could be placed in the database if any of the following applied to the individual:

- He or she has been convicted in any jurisdiction of a felony, a crime of moral turpitude, or a crime involving gaming.
- He or she has violated the Act or another gaming-related act.
- He or she has performed an act, or has a notorious or unsavory reputation, such that his or her participation in internet gaming under the Act would adversely affect public confidence and trust in internet gaming.

- His or her name is on a valid and current exclusion list maintained by Michigan or another U.S. jurisdiction.

Names of individuals to be included on the list could be provided by an internet gaming licensee in a format specified by the Division.

The number of the toll-free compulsive gambling hotline maintained by the state would have to be displayed in a clear, conspicuous, and accessible manner on the internet gaming platform used by an internet gaming licensee. Also, responsible services and technical controls must be offered to participants. These would consist of both temporary and permanent self-exclusion for all internet games offered and the ability for participants to establish their own periodic deposit and internet wagering limits and maximum playing times.

A participant could voluntarily prohibit himself or herself from establishing an internet wagering account with a licensee. The voluntary self-exclusion list could be incorporated into the responsible gaming database and both be maintained by the Division in a confidential manner. Both lists would be exempt from disclosure under FOIA.

Prohibited Conduct, Criminal Penalties

Except as authorized in an opinion by the U.S. Department of Justice discussed in a section of the Act listing numerous “Legislative findings,” the Act would prohibit a person from doing any of the following:

- Offering internet gaming for play without an internet gaming license.
- Knowingly making a false statement on an application for a license issued under the Act.
- Knowingly providing false testimony to the Michigan Gaming Control Board or its authorized representative while under oath.

A violation of any of the above would be a felony punishable by imprisonment for not more than 10 years and/or a fine of not more than \$100,000. A license could not be issued to a person that committed a listed violation. An action to prosecute a violation could be brought by the attorney general or a county prosecuting attorney, in either the county in which the violation occurred or Ingham County.

Gross Gaming Revenue Tax, Allocation of Tax

An internet gaming licensee would be subject to an 8% tax on the gross gaming revenue from internet gaming conducted under the Act. The tax would be paid on a monthly basis, due on the tenth day of the following month.

The tax would have to be allocated as follows:

- 55% to the city in which the internet gaming licensee’s casino is 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.

- 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 in that city.
- Relief to the taxpayers of the city from 1 or more taxes or fees imposed by that city.
- Costs of capital improvements.
- Road repairs and improvements.
- 35% to the state to be deposited into the Internet Gaming Fund.
- 5% to the State School Aid Fund.
- 5% to the Michigan Transportation 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 Michigan Gaming Control Board would be the administrator for auditing purposes. The Board would be required to expend money from the Fund, on appropriation, for its costs of regulating and enforcing internet gaming under the Act.

In addition, the Board would have to expend from the Fund \$1.0 million to the Compulsive Gaming Prevention Fund created in Section 3 of the Compulsive Gaming Prevention Act. (A portion of the Compulsive Gaming Prevention Fund is required to be used exclusively for the treatment, prevention, education, training, research, and evaluation of pathological gamblers and their families and to fund the toll-free compulsive gaming helpline number. Public funds for the treatment of pathological gamblers is also required to be taken exclusively from the Compulsive Gaming Prevention Fund).

Voiding of Act, Severability of Act

Should a court enter a final judgment or order that invalidates or otherwise renders inoperative the provision of the Act allowing the Division to issue an internet gaming license to any of the casinos licensed under the Michigan Gaming Control and Revenue Act, the entire Lawful Internet Gaming Act would be inoperable and of no effect.

If a court held that a provision of the Act, or an application of a provision, to a person or circumstance is invalid or inoperative other than as provided above, the remainder of the Act and the application of the remainder of the Act to other persons and circumstances would not be affected.

House Bill 4927 would add a new section to the Michigan Penal Code to specify that Chapter XLIV (Gambling) does not apply to gambling conducted under the proposed new Lawful Internet Gaming Act.

Proposed MCL 750.310d

House Bill 4928 would amend the Code of Criminal Procedure to specify that internet gaming offenses under Section 13 of the proposed new Lawful Internet Gaming Act are a Class D felony against the public order punishable by a maximum term of imprisonment of 10 years.

MCL 777.14d

Tie-bars: House Bills 4926 and 4927 are tie-barred to each other, and House Bill 4928 is tie-barred to House Bill 4926. A bill cannot take effect unless the bill to which it is tie-barred is also enacted.

FISCAL INFORMATION:

In general, the bills likely would result in a net reduction in revenues for state and local governments, including the City of Detroit, mainly due to the tax and revenue structure differences between the proposed online gaming and existing gaming sources.

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), and New Jersey (2013)). Additionally, casino revenues are affected by economic conditions, societal trends, 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, one notable difference is New Jersey licensees pay a higher tax rate (15%) on internet gaming adjusted gross receipts compared to brick and mortar adjusted gross receipts (8%), while under the provisions of this bill Michigan licensees would pay a lower tax rate (8%) on internet gaming adjusted gross receipts than brick and mortar casino adjusted gross receipts (effective rate exceeds 19%).² This difference changes the incentive structure for licensees regarding the promotion of internet gaming versus brick and mortar gaming.

Further, 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.

State School Aid Fund

The State School Aid Fund (SAF) likely would realize reduced revenues under House Bill 4926. Currently, casino adjusted gross receipts are levied a casino wagering tax of 19%. Of that amount, 42.6% is distributed to the SAF. Under the bill, the adjusted gross receipts would be taxed at a rate of 8%, with 5% of the tax revenues deposited in the School Aid

² In addition to the 19% wagering tax on adjusted gross receipts, the Detroit casinos pay a municipal services fee and development agreement payment based on adjusted gross receipts.

Fund. Therefore, every \$1 in gross gaming revenues lost at brick and mortar casinos due to the introduction of internet gaming would result in a 7.7-cent loss to the SAF. The reduction in revenues would be directly related to the substitutive effect internet gaming would have on brick and mortar casinos. The SAF would receive 0.4 cents for every \$1 of new adjusted gross receipts due to new wagering caused by the introduction of online gaming which would offset a portion of the losses due to the substitution effect of online gaming.

Internet gaming presumably would also reduce lottery sales, mainly by diverting participants from the iLottery platform, because many of the games offered would be substantially similar from a user perspective, but payouts for individuals playing casino-operated games would be higher. Higher payout rates likely would lead to increased internet gaming play at the expense of iLottery play. Net revenue from iLottery is deposited in the SAF. Therefore, any diminishment in iLottery sales from the introduction of online gaming would result in lower SAF transfers from the Bureau of State Lottery. In 2017 net revenues from iLottery totaled \$80.0 million.

Alternatively, if no substitution effect were assumed and online gaming had a neutral or stimulative effect on brick and mortar casino revenues, the SAF could still realize a decrease in dedicated revenues due to a loss in iLottery revenues. However, the lower tax rate for online gaming likely would result in the Detroit casinos promoting online gaming at the expense of brick and mortar gaming. The strength of this incentive likely would be affected by any expected non-gaming revenue a casino expected from brick and mortar casino patrons.

City of Detroit Revenues

The bill likely would reduce City of Detroit revenues from casino gaming sources. Currently, casino adjusted gross receipts are levied a casino wagering tax of 19%. Of that amount, 57.4% is distributed to the City of Detroit. In 2017, the City of Detroit received approximately \$152.7 million.

Assuming some substitution effect, for every \$1 in gross gaming revenues that was lost at brick and mortar casinos due to the introduction of internet gaming, the city of Detroit would lose 10.9 cents of the casino wagering tax. However, for every \$1 of gross gaming revenue taxed at the 8% rate under HB 4926, the City of Detroit would receive 4.4 cents. When combined, the net result would be loss of 6.5 cents for every \$1 transferred from brick and mortar gaming to internet gaming. Put another way, for the City of Detroit to receive an equal amount of revenue, internet gaming would have to bring in \$2.47 in gross gaming revenues for every \$1 reduction in brick and mortar casino gross gaming revenues. In addition, any revenue substitution would reduce revenues from the municipal services fee that each casino pays (equal to the greater of 1.25% of adjusted gross receipts or \$4.0 million) to the city of Detroit. In 2017, the city of Detroit received \$17.5 million from the municipal services fee. Due to the way the fee is currently structured in statute, the municipal services fee is levied at a rate of no less than \$4.0 million per casino, or \$12.0 million total. Therefore, this would set a floor for municipal services fee collections.

The city also receives a development agreement payment based on adjusted gross receipts from the casinos. The payment is a percentage-based payment that increases from 1% to 2% once adjusted gross receipts reach \$400.0 million. In addition, once the \$400.0 million mark is reached, the casino is required to make an additional \$4.0 million deposit to the City of Detroit. In FY 2017, the city of Detroit received \$24.7 million from the development agreement payments. As is the case with the other revenues, any substitution effect would reduce revenues received from the development agreement payment.

It should be noted that if the impact on brick and mortar casino revenue were relatively neutral or stimulative, the City of Detroit would realize increased revenues. The magnitude of the increase would depend on adjusted gross receipts from online gaming and a combination of the effective tax rate and any new revenues directly attributable to enhanced brick and mortar play due to online gaming.

That said, the commercial casinos in Detroit likely would have an incentive to promote online gaming at the expense of brick and mortar play due to the lower tax rate of online gaming. As noted above, the strength of this incentive would be affected by any expected non-gaming revenue a casino expected from brick and mortar casino patrons.

Tribal Gaming – Payments to the State of Michigan

Tribal casino payments to the State of Michigan under the Tribal-State Compacts are made directly to the Michigan Strategic Fund and Michigan Economic Development Corporation (MSF/MEDC). Any fiscal impact would depend on the negotiated terms related to online gaming revenue sharing payments. Of the 12 tribes, 6 tribes do not currently make revenue sharing payments to the state. The other 6 tribes pay between 4% to 12% of net win. Payments to MSF/MEDC totaled \$57.3 million in 2017.

If the tribes that currently don't make revenue sharing payments to the state negotiate a revenue sharing agreement for online gaming, the state would realize increased revenues. However, the magnitude and purpose of those revenues for the state would depend on the terms of the negotiated compact.

Any fiscal impact related to tribes that currently make revenue sharing payments to the state would depend on the percentage of the online gaming payment agreed upon and the substitution effect of online gaming versus brick and mortar casino gaming.

Alternatively, tribal casinos that currently make revenue sharing payments to MSF/MEDC could choose to withhold payments if they deemed online gaming to be an expansion of gaming. Each tribe would have to determine whether revenues generated from online gaming would exceed revenues saved from withholding state payments.

Tribal Gaming – Payments to Local Units of Government

The provisions of the bill would have an indeterminate fiscal impact on tribal casino payments to local units of government. Any fiscal impact would depend on the tax rate for online gaming agreed to by the tribal casino and the state and the substitution effects that result. All tribal casinos make payments equal to 2% of net win to local units of government

in their defined regional area. These payments totaled \$29.7 million in 2017. These payments cannot be withheld for an expansion of gaming violation of the Tribal-State Compacts.

Michigan Transportation Fund

The bill would increase revenues to the Michigan Transportation Fund (MTF) by an unknown amount. The bill directs that 5% of the tax revenues received be deposited in the MTF established in Section 10 of Public Act 51 of 1951 (Act 51) to be distributed in accordance with the provisions of Section 10(1)(I) of Act 51. The MTF is the primary collection and distribution fund for state restricted transportation revenue. The Act 51 distribution provisions referenced in the bill, Section 10(1)(I), provide for the distribution of net MTF revenue as follows: 39.1% to the State Trunkline Fund (STF); 39.1% to county road commissions; 21.8% to cities and villages.

As provided by Section 11 of Act 51, the STF is used for construction and preservation of the state trunkline highway system as well as administration of the Michigan Department of Transportation. The MTF distributions to county road commissions and to cities and villages are used primarily for the preservation of local road systems as provided by Sections 12 and 13 of Act 51.

The amount of internet gaming tax revenue that would be credited to the MTF would depend on the total internet gaming tax revenue generated, which in turn would depend on adjusted gross receipts identified and taxed from online gaming.

Administration and Enforcement

The bill would create a new division within the Michigan Gaming Control Board. This would increase costs associated with staffing, office space, information technology, and other administrative, enforcement, audit, and regulatory costs. The extent of these costs is unknown. However, the bill would authorize the licensing and application fees levied on internet gaming licensees and vendors to be used to cover administrative expenses. In addition, 35% of the funds collected under the internet gaming tax are deposited in the Internet Gaming Fund in part for use for administration. Presumably, the funds collected and allocated for administration under the bill would be sufficient to cover necessary expenses related to administration and enforcement of the provisions of the bill.

Compulsive Gaming Prevention Fund

The bill would increase revenues for the Compulsive Gaming Prevention Fund by \$1.0 million annually due to the required deposit from the Internet Gaming Fund created under the bill.

Impact on the Judiciary and/or State and Local Corrections

The bill 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 2017, the average cost of prison incarceration in a state facility was roughly \$37,000 per prisoner, a

figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,600 per supervised offender in the same year.

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

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.

ARGUMENTS:

For:

Reportedly, the desire at the federal level to enact a nationwide ban on internet gambling is waning. Coupled with the recent Supreme Court decision allowing states to offer sports betting, some say the argument as to whether to allow or prohibit online gambling is moot and the time is right for Michigan to enact laws to allow and regulate online gambling. The trend is for all things—whether business, education, shopping, information gathering, or entertainment—to be offered and consumed in an online format. Thus, it is said, internet gambling is going to happen. The bigger question becomes how to structure the framework so that it benefits individuals, the existing casinos, and state and local governments and does not become a detriment to society. The legislation offered represents a concerted effort to address concerns raised by industry members and other stakeholders, as well as being sensitive to protecting those vulnerable to compulsive gambling.

Technology already exists that can track a user's location and only allow a person within the state's borders to access online gambling sites. Technology can also prevent children from accessing gambling sites, allow a person to set limits on how much or how often he or she gambles, and enable a person to block himself or herself from online play. The legislation would also allow creation of a statewide responsible gaming database that could identify and block a person who had previously committed certain crimes or who violates the provisions of the Lawful Internet Gaming Act from engaging in internet gambling in the state.

The proposed legislation also limits the offering of online gambling to the three licensed Detroit casinos and to tribal casinos. These casinos are already strictly regulated by state and federal law, respectively, and have a track record of adherence to gambling regulations.

Against:

Some questions and concerns have been raised, such as the following:

- HB 4926 creates a new act to authorize online gambling rather than amending the Michigan Gaming Control and Revenue Act (MGCRA), also known as the Initiated Law, which was approved by voters and which would need a supermajority (three-

quarters of each chamber) to amend. This has raised several legal questions; including the following:

- Can internet gaming be approved in a separate act as HB 4926 would do, or would the Initiated Law have to be amended instead by incorporating the provisions currently contained in HB 4926 into the Initiated Law?
 - If internet gaming can be regulated in a separate act instead of having to amend the Initiated Law, would HB 4926 need only a simple majority vote in each chamber for passage or, because gaming is regulated in the state by an initiated law, would HB 4926 also require a supermajority vote to pass?
- Revenue is difficult to estimate or guarantee. Whereas New Jersey appears to have had some success with internet gambling, other states have reported disappointing revenues. In addition, the impact on funding for schools and the City of Detroit is uncertain. Tribal participation is also unknown, as is the impact on revenues based on the negotiated compacts. Should internet gaming have a deleterious effect on revenues to the state, the city of Detroit, tribal casinos, or the Detroit casinos, would the act be repealed? Would weaknesses in the act be able to be identified and corrected in a timely manner?
 - Clear relationships between online gambling and problem gambling have yet to be definitively established, but multiple studies do appear to support the idea that problem internet gamblers tend to be younger adults. Coupled with being burdened by either student loans or entry-level jobs, or both, the easy accessibility of online gambling, and online gambling utilizing mobile devices, afforded by the bill and the generational preference to engage in online activities could over-proportionately, negatively impact young adults.
 - It is not clear if the bill could be interpreted to also allow sports betting, or if the Initiated Law would have to be amended before online sports betting could be offered under the provisions of the bill.

POSITIONS:

Entities indicating support for, or testifying in support of, the bills include the following:

- The Stars Group (7-15-18)
- Poker Players Alliance (9-13-17)
- MotorCity Casino [supports legislation authorizing internet wagering] (7-12-18)
- MGM Grand Detroit [supports the concept of the bills] (5-1-18)

The following entities indicated, or testified to, a neutral position regarding the bills:

- Nottawaseppi Huron Band of Potawatomi (8-13-18)
- The Michigan Gaming Control Board (9-13-17)
- The Michigan Charitable Gaming Association (12-13-17)

The following entities indicated or testified in opposition to the bills:

- The Coalition to Stop Internet Gambling (testified in opposition 9-13-17 and indicated opposition 12-13-17)
- Michigan Family Forum (12-13-17)
- Greektown Casino [as introduced] (9-13-17)
- Sault Ste. Marie Tribe of Chippewa Indians (12-13-17)

Legislative Analyst: Susan Stutzky
Fiscal Analysts: Ben Gielczyk
Robin Risko
William E. Hamilton

■ 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.