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BILL ANALYSIS



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Senate Bills 889 and 890 (as introduced 4-4-16)
Sponsor: Senator Mike Kowall
Committee: Regulatory Reform

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CONTENT

Senate Bill 889 would create the "Lawful Internet Gaming Act" to do the following:

- Allow internet wagering to the extent that it was carried out in accordance with the proposed Act.
- Create the Division of Internet Gaming in the Michigan Gaming Control Board, with specified powers to execute the Act.
- Allow the Division to issue applicants an internet gaming license if they met certain criteria, and establish the process for an applicant to acquire an internet gaming license.
- Prescribe a \$100,000 application fee and a \$5.0 million license fee for an internet gaming license, and provide that a license fee would be an advance payment of internet wagering taxes.
- Allow an internet gaming license to be issued only to a casino licensee or, under certain conditions, to a Michigan Indian tribe that operates a gaming facility.
- Limit the number of internet gaming licenses that could be issued to eight.
- Allow internet gaming licensees to offer wagering on internet games.
- Allow the Division to certify internet gaming vendors to provide goods, software, or services to internet gaming licensees; establish the process for an applicant to become certified as a vendor; and require an application fee of up to \$100,000.
- Provide that a license or certification would be valid for five years and could be renewed for additional five-year periods.
- Prescribe misdemeanor penalties for violations associated with the application process for an internet gaming license or internet gaming vendor certification.
- Impose a tax of 10% on the gross gaming revenue received by an internet gaming licensee from internet games authorized under the Act.
- Require an internet gaming licensee to have adequate gaming participant verification measures, including mechanisms to detect and prevent fraud, money laundering, and collusion.
- Require the Division to develop responsible gaming measures, including a statewide responsible gaming database identifying individuals who were prohibited from establishing an internet wagering account or participating in internet gaming.
- Allow a wager to be accepted from an individual not physically present in the State if certain conditions were met.
- Create the "Internet Gaming Fund" and require fees and taxes to be deposited into the Fund.
- Require money in the Fund to be spent, on appropriation, for purposes specified by the Legislature.

Senate Bill 890 would amend the Michigan Penal Code to exclude gaming conducted under the proposed Lawful Internet Gaming Act from Chapter XLIV of the Code, which prescribes penalties for illegal gambling activities.

Each bill would take effect 90 days after it was enacted. The bills are tie-barred.

A more detailed description of Senate Bill 889 follows.

Internet Wagering Authorization

Internet wagering would be authorized to the extent that it was carried out in accordance with the proposed Act. A wager under the Act initiated by an individual in Michigan and received in a casino in Michigan, whether a casino in a city and operated under the Michigan Gaming Control and Revenue Act or a casino operated by an Indian tribe, would be considered gambling or gaming in the casino.

"Internet wagering" would mean the acceptance of a wager by an internet gaming licensee from an individual who is either physically present in Michigan when placing the wager or otherwise permitted to place the wager by law. The intermediate routing of electronic data in connection with internet wagering, including across state lines, would not determine the location or locations in which the wager was initiated, received, or otherwise made.

Division of Internet Gaming

The Division of Internet Gaming would be created in the Michigan Gaming Control Board. The Division would have the powers and duties specified under the proposed Act and all other powers necessary and proper to enable it to fully and effectively execute the Act to administer, regulate, and enforce the system of internet gaming established by the Act. The Division would have jurisdiction over every person involved in internet gaming operations.

The Division could enter into agreements with other gaming entities, including foreign entities, to facilitate, administer, and regulate multijurisdiction internet gaming to the extent consistent with State and Federal laws and the laws of any foreign jurisdiction. For this purpose, the Division could enter into multijurisdictional agreements with other states and foreign jurisdictions.

The Division could not authorize, administer, or otherwise maintain a system for offering wagering on any amateur or professional sporting event or contest, unless doing so were consistent with State and Federal laws.

Notwithstanding anything else in the Act, a wager could be accepted from an individual who was not physically present in Michigan if the Division determined that the wager was not inconsistent with Federal law or the law of the jurisdiction, including any foreign nation, in which the individual was located or that the wagering was conducted under a multijurisdictional agreement to which Michigan was a party that was not inconsistent with Federal law.

Internet Gaming License

The Division could issue an internet gaming license to a person that applied for the license if the Division determined that the applicant was eligible for an internet gaming license under the Act and the rules promulgated under it. An internet gaming license would be valid for five years after the date of issuance and would be renewable after that five-year period for additional five-year periods, if the Division determined that the licensee continued to meet all the requirements of the Act and rules.

The Division could issue an internet gaming license only to a person that was a casino licensee under the Michigan Gaming Control and Revenue Act; or a federally recognized Michigan Indian tribe that operates a gaming facility under a facility license issued in accordance with a tribal gaming ordinance approved by the chair of the National Indian Gaming Commission, if the Indian tribe, in connection with its application to conduct gaming under the proposed Act, waived its sovereign immunity with respect to conducting gaming under the Act and paying fees and taxes imposed under the Act.

The Division could not issue an internet gaming license if the issuance would allow more than eight internet gaming licensees to conduct internet gaming under the Act.

A qualified applicant could apply to the Division for an internet gaming license to offer wagering on internet games as provided in the Act. The application would have to be made on forms provided by the Division and contain the information required by the Division, including detailed information regarding the ownership and management of the applicant, detailed personal and financial information regarding the applicant, and the gaming history and experience of the applicant in the United States and other jurisdictions. An application would require a \$100,000 nonrefundable application fee.

An assignment or transfer of an interest in an internet gaming license, or a greater than 10% interest, whether direct or indirect, in an internet gaming licensee, would be subject to written approval by the Division. An approved transferee would have to pay a \$100,000 nonrefundable application fee.

The Division would have to keep all information, records, interviews, reports, statements, memoranda, or other data supplied to or used by it in the course of its review or investigation of an application for an internet gaming license or a renewal of a license strictly confidential and could use that material only to evaluate an applicant for a license or renewal. These materials would be exempt from disclosure under the Freedom of Information Act.

An application for an internet gaming license would have to be filed and considered in accordance with the rules promulgated under the Act. The Division would have to promulgate rules to effectuate these provisions within 60 days after the effective date of the Act. An institutional investor that held less than 30% of the equity of an applicant would be exempt from the consideration process.

An internet gaming licensee would have to pay a license fee of \$5.0 million to the Division at the time the license was issued. The Division would have to deposit all application and license fees paid into the Internet Gaming Fund. A license fee would be an advance payment of internet wagering taxes owed by the internet gaming licensee.

A person that did any of the following would be guilty of a misdemeanor punishable by imprisonment for up to 93 days or a fine of up to \$500, or both:

- Knowingly made materially false statements to obtain an internet gaming license.
- Knowingly advertised in Michigan any game, product, or feature that was not authorized by the person's license.
- Violated any other provision of the proposed Act or any rules promulgated under the Act.

A person that committed a second or subsequent violation would be guilty of a misdemeanor punishable by imprisonment for up to one year or a fine of up to \$1,000, or both. If a person that was not an individual committed a violation of these provisions, imprisonment could be imposed on the partners, officers, or members who knowingly participated in the violation.

"Internet game" would mean a game of skill or chance offered by an internet gaming licensee, as authorized by the Division. "Internet game" would include gaming tournaments conducted

via the internet in which players compete against one another in one or more of the games authorized by the Division or in approved variations or composites as authorized by the Division.

Certification of Internet Gaming Vendors

The Division could certify internet gaming vendors to provide goods, software, or services to internet gaming licensees. The Division would have to certify an internet gaming vendor for five years. A certification would be renewable after the initial five-year period for an additional five years if the Division determined that the internet gaming vendor continued to meet all the requirements of the Act and the rules promulgated under it.

A person could apply to the Division to become an internet gaming vendor. An application would have to be made on forms provided by the Division and contain any information required by the Division, including detailed information regarding the ownership and management of the applicant, detailed personal and financial information regarding the applicant, and the gaming history and experience of the applicant in the United States and other jurisdictions. An application would require a nonrefundable application fee in an amount determined by the Division, not to exceed \$100,000.

The Division would have to keep all information, records, interviews, reports, statements, memoranda, or other data supplied to or used by it in the course of its review or investigation of an application for certification as an internet gaming vendor strictly confidential and could use the materials only to evaluate an applicant for certification. These materials would be exempt from disclosure under the Freedom of Information Act.

A person that did any of the following would be guilty of a misdemeanor punishable by imprisonment for up to 93 days or a fine of up to \$500, or both:

- Knowingly made materially false statements to obtain certification as an internet gaming vendor.
- Violated any other provision of the proposed Act or any rules promulgated under the Act.

A person that committed a second or subsequent violation would be guilty of a misdemeanor punishable by imprisonment for up to one year or a fine of up to \$1,000, or both. If a person that was not an individual committed a violation, imprisonment could be imposed on the partners, officers, or members who knowingly participated in the violation.

"Internet gaming vendor" would mean a person that was certified by the Division to provide or offer to provide goods, software, or services to an internet gaming licensee, including goods, software, or services related to or supporting the acceptance, testing, auditing, management, operation, support, administration, or control of internet wagering, internet games, internet wagering accounts, or internet gaming platforms.

"Internet wagering account" would mean an electronic ledger in which all of the following types of transactions relative to the internet gaming platform are recorded:

- Deposits.
- Withdrawals.
- Amounts wagered.
- Amounts paid on winning wagers.
- Service or other transaction-related charges authorized by the patron, if any.
- Adjustments to the account.
- Any other information required by the Division.

"Internet gaming platform" would mean an interactive set of related data networks used to provide internet wagering to authorized participants.

Gross Gaming Revenue Tax

A tax of 10% would be imposed on the gross gaming revenue received by an internet gaming licensee from internet games authorized under the proposed Act. An internet gaming licensee would have to pay the tax on a monthly basis. Payment would be due on the 10th day of the following month.

"Gross gaming revenue" would mean the total of all money actually received by an internet gaming licensee from internet gaming operations, less only the total of all money paid out as winnings to patrons.

"Winnings" would include all of the following:

- The total amount players receive as prizes during the accounting period.
- Stakes returned to players.
- Other amounts credited to players' accounts, including the cash value of loyalty points and similar incentives granted to patrons.

Additional Division Responsibilities

The Division could do anything necessary or desirable to effectuate the Act, including all of the following:

- Develop qualifications, standards, and procedures for approval and licensure of internet gaming licensees and certification of internet gaming vendors.
- 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 certifications.
- Provide for the establishment and collection of all license and certification fees and taxes imposed by the Act and the rules promulgated under it and the deposit of the fees and taxes into the Fund.
- Develop and enforce testing, audit, and certification requirements and schedules 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, internet wagering accounts, and authorized participants and minimum insurance requirements.
- Develop and promote standards governing contracts between internet gaming licensees and the payments industry.
- Develop and enforce standards and requirements regarding antifraud, anti-money-laundering, and anticollusion methods.
- Develop protocols related to the security of and disputes arising over internet wagers and internet wagering accounts.
- Adopt by rule a code of conduct governing Division employees that ensured, to the maximum extent possible, that people subject to the Act avoided situations, relationships, or associations that could represent or lead to an actual or perceived conflict of interest.
- Develop and administer civil penalties for internet gaming licensees and internet gaming vendors that violated the Act or the rules promulgated under it.
- Acquire or lease real property and make improvements to the property and acquire by lease or by purchase personal property.

In addition, the Division could audit and inspect, on 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 or accounting, marketing or operational materials, or any other similar materials held by or in the custody of an internet gaming licensee or internet gaming vendor. The Division could assert its authority by an administrative subpoena, which could also contain a request for relevant documents or interrogatories, and would be enforceable in the circuit court.

A party aggrieved by an action of the Division denying, suspending, revoking, restricting, or refusing to renew a license or certification could request a hearing before the Division. A request for hearing would have to be made to the Division in writing within five days after service of notice of the action by the Division. The Division would have to serve notice of action either by personal delivery or certified mail, postage prepaid, to the aggrieved party. Notice served by certified mail would be considered complete on the business day following the date of mailing. The Division would have to conduct a hearing requested in reasonable order.

The Division could conduct all hearings pertaining to civil violations of the Act or the rules promulgated under it. The Division would have to promulgate rules that contained procedures for conducting hearings. In a hearing or in a court action, a reproduced copy of a record of the Division relating to an internet gaming licensee or internet gaming vendor, including a notice prepared in the ordinary course of business of the Division or a book, record, or other document offered in the name of the Division under certificate of the executive director of the Michigan Gaming Control Board or of any officer or employee of the Division designated in writing by the executive director, would have to be admitted into evidence and would be prima facie proof of the information contained in the record. The Attorney General would have to prosecute a violation of the Act or a rule promulgated under it.

The Division would have to promulgate and enforce rules governing the administration and conduct of internet gaming as it considered necessary to carry out the Act. The rules could include all of the following:

- The types of internet games to be offered, including poker.
- Forms of payment accepted for internet games.
- Responsible gaming.
- Technical and financial standards for internet wagering, internet wagering accounts, and internet gaming platforms, systems, and software or other electronic components for internet gaming.
- Anything else necessary or desirable for the efficient and economical operation and administration of internet gaming and for the convenience of authorized participants, internet gaming licensees, and internet gaming vendors.

Gambling Participant Verification

An internet gaming licensee's internet gaming platform would have to provide one or more mechanisms to reasonably verify that an authorized participant was 21 years of age or older and that internet wagering was limited to transactions that were initiated and received or otherwise made exclusively within the State. An individual who wished to place a wager over the internet under the proposed Act would have to satisfy the verification requirements before he or she could establish an internet gaming account or wager on an internet game offered by an internet gaming licensee. When a legally compliant mechanism was established to permit wagering on internet games, the Division could promulgate rules and adopt procedures to allow and govern wagering by those individuals and could enter into multijurisdictional agreements and related and ancillary agreements to effectuate the wagering.

An internet gaming licensee's internet gaming platform also would have to provide mechanisms designed to detect and prevent the unauthorized use of internet wagering accounts and to detect and prevent fraud, money laundering, and collusion.

If a participant in internet gaming violated the Act or a rule promulgated under it, the participant's winnings would be forfeited. An internet gaming licensee would have to deposit forfeited winnings into the Internet Gaming Fund.

An internet gaming licensee could not authorize any of the following individuals to establish an internet gaming account or allow them to wager on internet games offered by the licensee, except if required and authorized by the Division for testing purposes or otherwise to fulfill the purposes of the Act:

- An individual less than 21 years old.
- A partner, officer, or member or an individual employed by an internet gaming licensee or internet gaming vendor.
- A spouse, civil union partner, child, brother, sister, or parent residing as a member of the same household in the principal place of abode of an individual described above.
- An individual whose name appeared in the Division's responsible gaming database.

Responsible Gaming Database & Responsible Gambling

The Division would have to develop responsible gaming measures, including a statewide responsible gaming database identifying individuals who were prohibited from establishing an internet wagering account or participating in internet gaming offered by an internet gaming licensee. The executive director of the Michigan Gaming Control Board could place an individual's name in the responsible gaming database if any of the following applied:

- The individual had been convicted in any jurisdiction of a felony, a crime of moral turpitude, or a crime involving gaming.
- The individual had violated the proposed Act or another gaming-related act.
- The individual had performed an act or had 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 gaming.
- The individual's name was on a valid and current exclusion list from another jurisdiction in the United States or a foreign jurisdiction.

The Division would have to promulgate rules for the establishment and maintenance of the responsible gaming database, and could impose reasonable fees on people authorized to gain access to and use the responsible gaming database. An internet gaming licensee, in a format specified by the Division, would have to provide the Division with names of individuals to be included in the database.

An internet gaming licensee's internet gaming platform would have to offer in a clear, conspicuous, and accessible manner responsible gambling services and technical controls to participants, including both temporary and permanent self-exclusion for all games offered; the ability for participants to establish their own periodic deposit and wagering limits and maximum playing times; referrals to crisis counseling and referral services for individuals and families experiencing difficulty as a result of problem or compulsive gambling; and other services as the Division reasonably determined to be necessary or appropriate to reduce and prevent problem gambling.

Any authorized participant could voluntarily prohibit himself or herself from establishing an internet gaming account. The Division would have to incorporate the voluntary self-exclusion list into the responsible gaming database and maintain both the list and the database in a confidential manner. The self-exclusion list and responsible gaming database would be exempt from disclosure under the Freedom of Information Act.

Internet Gaming Fund

The "Internet Gaming Fund" would be created in the State Treasury. The State Treasury could receive money or other assets required to be paid into the Fund under the Act or from any other source for deposit into the Fund. The State Treasurer would have to direct investment of the Fund, and would have to credit to it interest and earnings from Fund investments. Money in the Fund at the close of a fiscal year would have to remain in the Fund and could not lapse to the General Fund.

The Michigan Gaming Control Board would be the administrator of the Fund for auditing purposes, and the Board could spend money from the Fund, on appropriation, only for purposes specified by the Legislature in the appropriation.

Legislative Findings

The bill states several legislative findings, including the following.

"In an opinion dated September 20, 2011, the United States Department of Justice reversed its previous interpretation of 18 USC 1084, commonly referred to as the Federal wire act, allowing states, subject to certain restrictions, to legalize and regulate Internet gaming and capture the revenue for the benefit of state governments."

"In order to protect residents of this state who wager on games of chance and skill through the Internet and to capture revenues and create jobs generated from internet gaming, it is in the best interest of this state and its citizens to regulate this activity by authorizing and establishing a secure, responsible, fair, and legal system of Internet gaming that complies with the United States Department of Justice's September 2011 opinion concerning 18 USC 1084."

"The legislature additionally finds that this act is consistent and complies with the unlawful Internet gambling enforcement act of 2006, 31 USC 5361 to 5367, and specifically authorizes use of the Internet to place, receive, or otherwise knowingly transmit a bet or wager if that use complies with this act and the rules promulgated under this act."

Proposed MCL 750.310c (S.B. 890)

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

Senate Bill 889

The bill would have an indeterminate impact on State and City of Detroit revenue and would result in additional expenses to the Michigan Gaming Control Board. At this time, it is difficult to accurately estimate the impact of internet gaming revenue on State revenue. There are a number of factors that would affect revenue in various ways. The first is whether the tax revenue from internet gaming would produce an overall increase to tax revenue or whether the additional revenue from internet gaming would be transferred from other gaming revenue, such as lottery and casino revenue. New Jersey has had internet gaming for three years and the revenue generated for the full first and second years was \$44.3 million and \$45.7 million. If Michigan were to experience similar revenue given the similar population size and existence of casino activity, Michigan would generate around \$4.5 million in revenue annually. However, in New Jersey traditional casino revenue also declined \$20.0 million during this period. It is impossible to say whether this decrease was due completely to internet gaming or other factors, but if Michigan did experience a similar change, then overall State revenue would decline. Also, if internet casino revenue increased at the same level as State lottery revenue decreased, the overall State revenue would decline, since 100% of lottery revenue goes to the School Aid Fund while internet gaming would be taxed only at 10%. Also, even if overall

revenue remained the same, the funds that receive the revenue would be affected. If internet gaming revenue were similar to any lost casino and lottery revenue, then the School Aid Fund would experience a decrease while the General Fund experienced an increase, which would have an impact on spending for the budgets that are supported by these fund sources. No state that introduced internet gaming while also having casinos and a state lottery has yet to have an overall increase in the revenue generated from all three sources, so it is difficult to estimate an overall increase with the introduction of internet gaming for the State of Michigan.

The bill also could affect money received from tribal gaming in the event that additional Indian tribes declined to make payments, similar to what occurred when other tribes declined to pay due to the opening of the three Detroit casinos and the lottery's Club Keno game. These payments significantly fund the Michigan Economic Development Corporation and the Jobs for Michigan Investment Fund, and in FY 2014-15 totaled \$43.9 million.

The bill would result in additional expenses to the Michigan Gaming Control Board to regulate and issue licenses for internet gaming, and certifications of internet gaming vendors. The license fees would make up the majority of the administrative revenue for the Board. Since the licenses would be issued every five years, the \$5.0 million generated per license would need to be spread out, which would leave \$1.0 million each year for regulation per license issued. Given the high information technology costs that would associated with this type of regulation, it is difficult to predict whether the administrative revenue would be sufficient to support the regulatory costs. In the event that the Board needed addition revenue in order to support administration, there would be a greater overall negative impact on the State.

In addition, the proposed misdemeanor penalties could have a negative fiscal impact on local governments. An increase in misdemeanor arrests and convictions could increase resource demands on local court systems, law enforcement, and jails. Any associated increase in fine revenue would be dedicated to public libraries.

Senate Bill 890

The bill would have no fiscal impact on State or local government.

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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.