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House Bill 4916 (Substitute H-3 as passed by the House)
House Bill 4917 (as passed by the House)
House Bill 4918 (as passed by the House)
Sponsor: Representative Brandt Iden (H.B. 4916)
Representative Matt Hall (H.B. 4917)
Representative Michael Webber (H.B. 4918)
House Committee: Regulatory Reform
Ways and Means
Senate Committee: Regulatory Reform

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CONTENT

House Bill 4916 (H-3) would create the "Lawful Sports Betting Act" to do the following:

- Allow internet sports betting to be conducted only to the extent that it was conducted in accordance with the proposed Act.
- Specify that an internet sports betting wager received by a sports betting operator would be considered gambling or gaming that was conducted in the sports betting operator's casino located in Michigan.
- Specify that the bill would not apply to internet sports betting conducted exclusively on Indian lands by an Indian tribe under a facility license.
- Except for a casino, prohibit a person from providing or making available sports betting wagering devices in a place of public accommodation in Michigan to enable individuals to place internet sports betting wagers.
- Restrict a sports betting operator to no more than one internet sports betting platform to offer, conduct, or operate internet sports betting.
- Provide the Michigan Gaming Control Board (MGCB) the powers and duties listed in the bill and all other powers necessary to enable it to fully execute the proposed Act to administer, regulate, and enforce internet sports betting.
- Allow the MGCB to enter into agreements with other jurisdictions, including Indian tribes, to facilitate, administer, and regulate multijurisdictional sports betting by sports betting operators.
- Allow the MGCB to permit sports betting operators it licensed to accept internet sports betting wagers on any amateur or professional athletic event.
- Allow the MGCB to issue a sports betting operator license only to an applicant that was either a person that held a casino license under the Michigan Gaming Control and Revenue Act or an Indian tribe that met certain criteria pertaining to existing gaming.
- Provide for the application process required to receive a sports betting operator license or sports betting supplier license, and specify that the licenses would be valid for five-year periods before requiring renewal.
- Address the type of data source a sports betting operator could use for determining the results of tier one and tier two sports bets.

- **Require a sports betting operator to provide mechanisms on the internet sports betting platform that verified that an authorized participant was 21 years of age or older and that internet sports betting was limited to transactions initiated and received or otherwise made by authorized participants located in the State.**
- **Allow the MGC B to develop responsible gaming measures, including a statewide responsible gaming database identifying individuals who were prohibited from establishing an internet sports betting account or participating in internet sports betting.**
- **Specify that a person that offered internet sports betting in the State without a license would be guilty of a felony punishable by imprisonment for up to 10 years or a fine of not more than \$100,000, or both.**
- **Require a sports betting operator to be subject to a tax of 8.75% on its adjusted gross sports betting receipts received by the sports betting operator, and specify how that money would be distributed.**
- **Create the "Internet Sports Betting Fund" within the State Treasury, and require certain licensure fees and revenue collected from internet sports gaming to be deposited into the Fund.**
- **Specify how the money from the Fund would have to be spent.**
- **Specify that a shipment of sports betting equipment would be a legal shipment of a gambling device in Michigan.**
- **Specify that the Act would not authorize the construction or operation of a casino that was not constructed or operating before the bill's effective date.**

House Bill 4917 would amend Chapter 44 (Gambling) of the Michigan Penal Code to specify that the Chapter would not apply to sports betting conducted under the proposed sports betting act.

House Bill 4918 would amend the Code of Criminal Procedure to include in the sentencing guidelines the felony proposed in House Bill 4916 (H-3) as a Class D felony against public order with a maximum sentence of 10 years' imprisonment.

House Bill 4917 and House Bill 4918 are tie-barred to House Bill 4916 and would take effect 90 days after their enactment.

House Bill 4916 (H-3) is described in further detail below.

House Bill 4916 (H-3)

Legislative Findings

The bill states the following:

The Legislature finds and declares all of the following:

- a) Operating, conducting and offering for play sports betting on the internet, including through mobile application, involves gaming activity that already occurs in this state illegally.
- b) This act is consistent and complies with the unlawful internet gambling enforcement act of 2006, 31 USC 5361 to 5367, and with 18 USC 1084, and permits the use of the internet, including through mobile application, to place, receive, or otherwise knowingly transmit a sports bet or wager if that use complies with this act and rules promulgated under this act.

- c) This act is consistent and complies with the state constitution of 1963 by ensuring that internet sports betting may only be offered by licensed sports betting operators who are lawfully operating casinos in this state.
- d) In order to protect residents of this state who wager on sports through the internet, including through mobile application, and to capture revenues generated from such sports betting, 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 sports betting.

Sports Betting Authorization

The bill would allow internet sports betting to be conducted only to the extent that it was conducted in accordance with the proposed Act.

An internet sports betting wager received by a sports betting operator would be considered gambling or gaming that was conducted in the sports betting operator's casino located in Michigan, regardless of the authorized participant's location when the participant initiated or otherwise placed the internet sports betting wager.

"Internet sports betting wager" would mean the cash, or cash equivalent, including free play, loyalty points, and other redeemable sports betting credits, risked by an authorized participant on sports betting through the internet. "Authorized participant" would mean an individual who has a valid internet sports betting account with a sports betting operator and is at least 21 years of age.

A law that was inconsistent with the bill would not apply to internet sports betting as provided for in the proposed Act.

The Act would not apply to internet sports betting conducted exclusively on Indian lands 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. For this purpose, internet sports betting would be conducted exclusively on Indian lands only if the individual who placed the internet sports betting wager were physically present on Indian lands when the wager was initiated and the wager was received or otherwise made on equipment that was physically located on Indian lands, and the wager was initiated, received, or otherwise made in conformity with the safe harbor requirements described in 31 USC 5362(10)(C).

(Title 31 USC 5362(10)(C) states that the term "unlawful internet gambling" does not include placing, receiving, or otherwise transmitting a bet or wager where:

- The bet or wager is initiated and received or otherwise made exclusively within the Indian lands of a single Indian tribe or between the Indian lands of two or more Indian tribes to the extent that intertribal gaming is authorized by the Indian Gaming Regulatory Act.
- The bet or wager and the method by which the bet or wager is initiated and received or otherwise made is expressly authorized by and complies with the requirements of the applicable tribal ordinance or resolution approved by the Chairman of the National Indian Gaming Commission, and with respect to Class III gaming, the applicable tribal-state compact.
- The applicable tribal ordinance or resolution or tribal-state compact includes age and location verification requirements reasonably designed to block access to minors and people located out of the applicable tribal lands and the appropriate data security standards to prevent unauthorized access by any person whose age and current location has not been verified in accordance with the applicable tribal ordinance or resolution.

-- The bet or wager does not violate any provision of the Interstate Horse Racing Act, the Professional and Amateur Sports Protection Act, the Gambling Devices Transportation Act, or the Indian Gaming Regulatory Act.)

A person could not provide or make available sports betting wagering devices in a place of public accommodation in Michigan, including a club or other association, to enable individuals to place internet sports betting wagers. This would not apply to a sports betting operator aggregating, providing, or making available sports betting wagering devices within its own casino.

"Sports betting wagering device" would mean a mechanical, electrical, or computerized terminal, device, apparatus, or piece of equipment used to place an internet sports betting wager. The term would not include a personal computer, mobile phone, or device owned and used by an individual to place an internet sports betting wager.

For the purposes of the Act, the intermediate routing of electronic data in connection with internet sports betting, including routing across State lines, would not determine the location or locations in which the internet sports betting wager was initiated, received, or otherwise made.

A sports betting operator could use no more than one internet sports betting platform to offer, conduct, or operate internet sports betting. The operator would have to clearly display its own brand or that of an affiliate on the platform that it used. The operator also could elect to have the brand of the internet sports betting platform that it used be the name and logos of no more than one internet sports betting supplier if the platform also clearly displayed the operator's own trademarks and logos or those of an affiliate.

"Sports betting operator" would mean a person that is issued a sports betting operator license. "Sports betting supplier" would mean a person that the MGCB has identified as requiring a license to provide goods, software, or services to a sports betting operator to operate, conduct, or offer internet sports betting. The term would include payment processors, geolocation service providers, internet sports betting platform providers, and data providers. The term would not include a person that provided to a sports betting operator only the goods, software, and services that it also provided to others for a purpose that did not involve sports betting.

MGCB Authority

The MGCB would have the powers and duties specified in the Act and all other powers necessary to enable it to fully and effectively execute the proposed Act to administer, regulate, and enforce internet sports betting.

The MGCB would have jurisdiction over every person it licensed and could take enforcement action against a person that was not licensed by the MGCB that offered internet sports betting in Michigan. The MGCB could enter into agreements with other jurisdictions, including Indian tribes, to facilitate, administer, and regulate multijurisdictional sports betting by sports betting operators to the extent that entering into the agreement would be consistent with State and Federal laws and if the sports betting under the agreement were conducted only in the United States.

The MGCB could permit sports betting operators it licensed to accept internet sports betting wagers under the bill on any amateur or professional athletic event.

"Athletic event" would mean a sports activity that involves the athletic skill of one or more players or participants. The term would not include any of the following:

- Horse racing if sports betting on that race were pari-mutuel.
- Any sport or athletic event played by individuals that were at the high school level or below, although the term would include other athletic events where the majority of the participants were 18 years of age or older.
- Roulette, poker, blackjack, a card game, a dice game, or any other game or contest typically offered in a casino other than sports betting.
- A fantasy contest.

Sports Betting Operator License

The MGCB could issue a sports betting operator license only to an applicant that was either of the following:

- A person that held a casino license under the Michigan Gaming Control and Revenue Act.
- An Indian tribe that lawfully conducted Class III gaming in a casino located in Michigan under a facility license issued in accordance with a tribal gaming ordinance approved by the Chair of the National Indian Gaming Commission.

The MGCB would have to issue a sports betting operator license to an applicant described above after receiving the application described below and the application fee, if it determined that the internet sports betting proposed by the applicant complied with the bill and the applicant were otherwise eligible and suitable.

"Applicant would mean a person that applies for a license or for registration under the proposed Act. The term would include an affiliate, director, or managerial employee of the applicant that performed the function of principal executive officer, principal operations officer, or principal accounting officer, or a person who held more than 5% ownership interest rate in the applicant. As used above, affiliate would not include a partnership, a joint venture, a coshareholder of a corporation, a comember of a limited liability company, or a copartner in a limited liability partnership that had 5% or less ownership interest in the applicant and was not involved in the internet sports betting operation.

An applicant would be eligible if it met the requirements described above. It would be the burden of the applicant to establish by clear and convincing evidence its suitability as to character, reputation, integrity, business probity, and financial ability. The application or enforcement of these provisions by the MGCB could not be arbitrary, capricious, or contradictory to the express provisions of the Act. In evaluating the eligibility and suitability of an applicant under the standards provided in the proposed Act, the MGCB would have to establish and apply the standards to each applicant in a consistent and uniform manner. In determining whether to grant a sports betting operator license to an applicant, the MGCB could request from the applicant and consider as a factor in the determination any or all of the following:

- Whether the applicant had adequate capitalization and the financial ability and the means to develop, construct, operate, and maintain its casino and proposed internet sports betting platforms in accordance with the Act and the rules promulgated by the MGCB.
- Whether the applicant had the financial ability to purchase and maintain adequate liability and casualty insurance and to provide an adequate surety bond.
- Whether the applicant had adequate capitalization and the financial ability to responsibly pay its secured and unsecured debts in accordance with its financing agreements and other contractual obligations.

- Whether the applicant had a history of material noncompliance with casino or casino-related licensing requirements or compacts with the State or any other jurisdiction, where the noncompliance resulted in enforcement action by the person with jurisdiction over the applicant.
- Whether the applicant had been indicted for, charged with, arrested for, or convicted of, pleaded guilty or nolo contendere to, forfeited bail concerning, or had expunged any criminal offense under the laws of any jurisdiction, either felony or misdemeanor, not including traffic violations, regardless of whether the offense had been expunged, pardoned, or reversed on appeal or otherwise.
- Whether the applicant had filed, or had filed against it, a proceeding for bankruptcy or had ever been involved in any formal process to adjust, defer, suspend, or otherwise work out the payment of any debt.
- Whether the applicant had a history of material noncompliance with any regulatory requirements in the State or any other jurisdiction where the noncompliance resulted in an enforcement action by the regulatory agency with jurisdiction over the applicant.
- Whether at the time of application the applicant was a defendant in litigation involving the integrity of its business practices.

A sports betting operator license would be valid for the five-year period after the date of issuance and, if the MGCGB determined that the sports betting operator licensee continued to meet the eligibility and sustainability standards under the bill, would be renewable for additional five-year periods.

A person who held a casino license under the Michigan Gaming Control and Revenue Act could apply to the MGCGB for a sports betting operator license to offer internet sports betting. The application would have to be made on forms provided by the MGCGB and include the information required by the MGCGB.

An Indian tribe that lawfully conducted Class III gaming in a casino located in Michigan under a facility license issued in accordance with a tribal gaming ordinance approved by the Chair of the National Indian Gaming Commission could apply to the MGCGB for a sports betting operator license to offer internet sports betting. The application would have to be made on forms provided by the MGCGB that required only the following information:

- The name and location of any of the applicant's casinos.
- The tribal law, charter, or any other organizational document of the applicant and other governing documents under which the applicant operated each of its casinos.
- Detailed information about the primary management officials of the applicant's casinos who would have management responsibility for its internet sports betting operations.
- The current facility license for the applicant's casinos.
- The applicant's current tribal gaming ordinance.
- The gaming history and experience of the applicant in the United States and other jurisdictions.
- Financial information, including copies of the last independent audit and management letter submitted by the applicant to the National Indian Gaming Commission under certain Federal regulations.
- The total number of gaming positions, including electronic gaming devices and table games, at each of the applicant's casinos.

An initial application for a sports betting operator license would have to be accompanied by an application fee of \$50,000. The rules promulgated under the bill could include provisions for the refund of an application fee, or the portion of an application fee that had not been spent by the MGCGB in processing the application, and the circumstances under which the fee

would be refunded. The MGCB could assess additional fees for the costs related to the licensure investigation.

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

An application would have to be submitted and considered in accordance with the bill and any rules promulgated under it.

A sports betting operator would have to pay a license fee of \$100,000 to the MGCB at the time the initial sports betting operator license was issued and \$50,000 each year after that initial issuance.

The MGCB would have to deposit all application and license fees paid under these provisions into the Internet Sports Betting Fund (described below).

A sports betting operator could not offer internet sports betting until the MGCB had issued a license to at least one eligible person or six months after the bill's effective date, whichever occurred first.

An eligible Indian tribe that offered gaming in Michigan under a compact that required agreement by the Governor for the addition of any new Class III gaming games could require the addition of sports betting as an allowable Class III gaming game. If a tribe made a request within 60 days after the bill's effective date, the Governor would have to allow the addition of sports betting as a Class III gaming game under the applicable compact. A tribe that received the addition of sports betting could not offer internet sports betting until licensed under the Act as a sports betting operator and the age-verification requirements included in the bill were satisfied.

If the Governor failed to allow the addition of sports betting as a Class III gaming game, the State would waive its sovereign immunity to permit the Indian tribe to initiate an action against the Governor in his or her official capacity in either State or Federal court to enforce these provisions.

An institutional investor that held for investment purposes only less than 25% of the equity of an applicant under these provisions would be exempt from the licensure requirements of the proposed Act.

Tribal Licensure

The MGCB would have to condition the issuance, maintenance, and renewal of a sports betting operator license to an eligible Indian tribe on its compliance with all of the following conditions:

- The tribe complied with the proposed Act, the rules promulgated by the MGCB, and minimum internal controls pertaining to i) the types of and rules for internet sports betting offered under the bill, ii) technical standards, procedures, and requirements for the acceptance, by the person, of internet sports betting wagers initiated or otherwise made by individuals located in Michigan who were not physically present on the Indian lands in Michigan at the time the wager was initiated or otherwise made, iii) procedures and

- requirements for the acceptance of internet sports betting wagers initiated or otherwise made by individuals located in other jurisdictions, if the MGCB authorized multijurisdictional sports betting, and iv) further requirements prescribed under the bill.
- The tribe adopted and maintained technical standards for internet sports betting platforms, systems, and software that were consistent with the standards adopted by the MGCB.
 - The tribe maintained one or more mechanisms on the internet sports betting platform that were designed to reasonably verify that an authorized participant was 21 years of age or older and that internet sports betting was limited to transactions that were initiated and received or otherwise made by an authorized participant located in Michigan or, if the MGCB authorized multijurisdictional sports betting, another jurisdiction in the United States authorized by the multijurisdictional agreement.
 - The tribe adopted and maintained responsible gaming measures consistent with the provisions of the bill.
 - The tribe continued to maintain and operate in Michigan a casino offering Class III gaming and the casino contained not less than 50% of the gaming positions that were in place on the bill's effective date.
 - The tribe paid to Michigan within the time period outlined in the bill (described below), 8.75% of the adjusted gross sports betting receipts received by that tribe from all internet sports betting conducted under the proposed Act, with the payments being allocated as outlined in the bill.
 - The tribe agreed to provide and timely provided, on written request of the MGCB, books and records directly related to its internet sports betting for permitting the MGCB to verify the calculation of the payments.
 - The tribe provided a waiver of sovereign immunity to the MGCB for the sole and limited purpose of consenting to both of the following: i) the jurisdiction of the MGCB to the extent necessary and for the limited purpose of providing a mechanism for the MGCB to issue, renew, and revoke the tribe's sports betting operator license; enforce the payment obligations set forth in the bill; regulate the tribe and enforce compliance with certain provisions of the bill; inspect the tribe's sports betting operation and records to verify conformity with the proposed Act; assess fines or monetary penalties for violations; and enforce the payment of sports betting operator license fees, and ii) the jurisdiction of Michigan courts, and expressly waiving the exhaustion of tribal remedies, with venue in Ingham County, and any courts to which appeals from that venue could be taken, to permit the State to enforce administrative orders of the MGCB, the tribe's obligation to make required payments and to enforce collection of any judgment.

The State, acting through the Governor, at the request of any Indian tribe, would have to negotiate and could conclude and execute any amendments to an Indian tribe's compact necessary to effectuate internet sports betting by the Indian tribe and to ensure internet sports betting conducted by the Indian tribe was in compliance with the proposed Act. If the Governor failed to enter into negotiations with the Indian tribe, or failed to negotiate in good faith with respect to any request, the State would waive its sovereign immunity to permit the Indian tribe to initiate an action against the Governor in his or her official capacity in either State or Federal court and obtain those remedies as authorized under 25 USC 2710(d)(7) (which concerns the process of a state and Indian tribe creating a compact, including steps in the event an agreement cannot be reached).

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 proposed Act. Notwithstanding any provision to the contrary, the proposed Act would regulate only internet sports betting and would not extend to the MGCB, or any other State agency, any jurisdiction or regulatory authority over any other aspect of any gaming operations of an Indian tribe beyond those rights granted to the State under the bill and the compact with the Indian tribe.

Sports Betting Supplier License

The MGCB could issue a sports betting supplier license to a sports betting supplier. A person that was not licensed could not provide goods, software, or services as a sports betting supplier to a sports betting operator.

On application by an interested person, the MGCB could issue a provisional sports betting supplier license to an applicant for a sports betting supplier license. A provisional license would allow the applicant for the sports betting supplier license to conduct business with a sports betting operator before the sports betting supplier license was issued to the applicant. A provisional license would expire on the date provided by the MGCB.

A sports betting supplier license would be valid for the five-year period after the date of issuance. The license would be renewable after the initial five-year period for additional five-year periods if the MGCB determined that the supplier continued to meet the eligibility and suitability standards under the bill.

A person could apply to the MGCB for a sports betting supplier license as provided in the proposed Act and the rules promulgated under it.

An application would have to be made on forms provided by the MGCB and include the information it required. An Indian tribe that submitted an application would have to provide only the information described previously for a sports betting operator license. An application for this license would have to be accompanied by a nonrefundable application fee in an amount to be determined by the MGCB, not to exceed \$5,000.

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

A sports betting supplier would have to pay a license fee of \$5,000 to the MGCB at the time an initial sports betting supplier license was issued to the sports betting supplier and \$2,500 each year after the initial license was issued.

The MGCB would have to deposit all application and license fees paid under the proposed Act into the Internet Sports Betting Fund.

An institutional investor that held for investment purposes only less than 25% of the equity of an applicant under these provisions would be exempt from the licensure requirements of the bill.

MGCB Powers

The MGCB would have jurisdiction over and would have to supervise all internet sports betting operations governed by the Act. The MGCB could do anything necessary or desirable to effectuate the Act, including all of the following:

- Develop qualifications, standards, and procedures for approval and licensure by MGCB of sports betting operators and sports betting suppliers.

- Decide promptly and in reasonable order all license applications and approve, deny, suspend, revoke, restrict, or refuse to renew sports betting operator licenses and sports betting supplier licenses (although a party aggrieved by an action of the MGCB denying, suspending, revoking, restricting, or refusing to renew a license could request a contested case hearing).
- Conduct all hearings pertaining to violations of the Act or rules promulgated under it.
- Provide for the establishment and collection of all applicable license fees, taxes, and payments imposed under the bill and the rules promulgated under it and the deposit of the applicable fees, taxes, and payments into the Internet Sports Betting Fund.
- Develop and enforce testing and auditing requirements for internet sports betting platforms, internet sports betting wagering, and internet sports betting 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 sports betting wagers.
- Adopt by rule a code of conduct governing MGCB 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 fines for sports betting operators and sports betting suppliers that violated the Act or rules promulgated under it.
- Audit and inspect, on reasonable notice, books, records, and facilities relevant to internet sports betting operations, sports betting wagers, and sports betting wagering accounts, including the books and records regarding financing and accounting materials held by or in the custody of a sports betting operator or sports betting supplier.
- Acquire by lease or by purchase personal property, including computer hardware; mechanical, electronic, and online equipment and terminals; and intangible property, including computer programs, software, and systems.

The MGCB could investigate and could issue cease and desist orders and obtain injunctive relief against a person that was not licensed by the MGCB that offered internet sports betting in Michigan.

The MGCB would have to keep all information, records, interviews, reports, statements, memoranda, and other data supplied to or used by the MGCB in the course of any investigation of a person licensed under the bill confidential and would have to use that material only for investigative purposes. These materials would be exempt from disclosure under the Freedom of Information Act.

Promulgation of Rules

Within one year after the bill's effective date, the MGCB would have to promulgate rules governing the licensing, administration, and conduct of internet sports betting. The MGCB would have to promulgate the rules under the Administrative Procedures Act. The rules could include only things expressly authorized under the Act, including all of the following:

- The acceptance of internet sports betting wagers.
- The development and posting of house rules regarding internet sports betting.
- The method of reporting to be used by licensees.
- The types of records that would have to be kept.
- The ways in which an authorized participant could fund his or her internet sports betting account, that would have to include the use of cash, cash equivalents, automated clearing house, debit cards, credit cards, and any other form of payment authorized by the MGCB.
- Protections for authorized participants placing internet sports betting wagers.
- The qualifications, standards, and procedures for approval and licensure by the MGCB for sports betting operators and sports betting suppliers consistent with the bill.

- Requirements to ensure responsible gaming.
- Technical and financial standards for internet sports betting platforms.
- Procedures for a contested case hearing.

The MGCB could audit and inspect books and records relating to internet sports betting operations, internet sports betting wagers, internet sports betting accounts, or internet sports betting platforms, including the books and records regarding financing and accounting materials held by, or in the custody of, a licensee.

Subject to the procedures below, the MGCB could use information received from a sports governing body to determine whether to allow either of the following:

- Internet sports betting wagering on a particular event.
- Authorized participants to make internet sports betting wagers of a particular type.

If a sports governing body requested internet sports betting wagering information or requested the MGCB to prohibit internet sports betting wagering on a particular event or making internet sports betting wagers of a particular type, the MGCB would have to notify, in writing, all sports betting operators, which would have to be allowed to respond to the sports governing body's request, in writing, in the time prescribed by the MGCB. After reviewing the request, any response, and any other information available to the MGCB, it could grant the request or part of the request if it determined that it was necessary to protect the integrity of the event or public confidence in the integrity of the event on which the internet sports betting wagers were being placed.

Sports Betting; Data Source to Determine Results

A sports betting operator could use any data source for determining the results of all tier one sports bets. "Tier one sports bet" would mean an internet sports betting wager that is not a tier two sports bet. "Tier two sports bet" would mean an internet sports betting wager that is placed after an athletic event has started.

A sports governing body headquartered in the United States could notify the MGCB that it desired sports betting operators to use official league data to settle tier two sports bets. A notification under this provision would have to be made in the form and manner as the MGCB could require. The MGCB would have to notify each sports betting operator of the sports governing body's notification within five days after receiving the notification. If a sports governing body did not notify the MGCB of its desire to supply official league data, an operator could use any data source for determining the results of any tier two sports bets on athletic events of that sports governing body.

Within 60 days after the MGCB notified each sports betting operator of a sports governing body notification to the MGCB, sports betting operators would have to use only official league data to determine the results of tier two sports bets on athletic events sanctioned by that sports governing body unless any of the following applied:

- The sports governing body or designee could not provide a feed of official league data to determine the results of a particular type of tier two sports bet, in which case sports betting operators could use any data source for determining the results of the applicable tier two sports bet until the data feed became available on commercially reasonable terms.
- A sports betting operator could demonstrate to the MGCB that the sports governing body or its designee would not provide a feed of official league data to the sports betting operator on commercially reasonable terms.

- The sports governing body or other designee did not obtain a sports betting supplier license to the extent required by law.

While the MGCB was determining whether official league data was commercially reasonable, a sports betting operator could use any data source for determining the results of any tier two sports bets. The MGCB would have to make a determination within 120 days after the sports betting operator notified the MGCB that it desired to demonstrate that the sports governing body or its designee would not provide a feed of official league data to the operator on commercially reasonable terms.

Verification Requirements

A sports betting operator would have to provide, or would have to require the sports betting supplier providing an internet sports betting platform to provide, one or more mechanisms on the internet sports betting platform that were designed to reasonably verify that an authorized participant was 21 years of age or older and that internet sports betting was limited to transactions that were initiated and received or otherwise made by an authorized participant located in the State or, if the MGCB authorized multijurisdictional internet sports betting as provided in the proposed Act, another jurisdiction in the United States authorized by the multijurisdictional agreement.

An individual who wished to place an internet sports betting wager under the bill would have to satisfy the verification requirements described above before the individual could establish an internet sports betting account or make an internet sports betting wager on an internet sports bet offered by a sports betting operator.

A sports betting operator would have to include, or would have to require the sports betting supplier providing an internet sports betting platform to include, mechanisms on its internet sports betting platform that were designed to detect and prevent the unauthorized use of internet sports betting accounts and to detect and prevent fraud, money laundering, and collusion.

A sports betting operator, or a sports betting supplier providing its internet sports betting platform, could not knowingly authorized any of the following individuals to establish an internet sports betting account or knowingly allow them to place an internet sports betting wager, except if required and authorized by the MGCB for testing purposes or to otherwise fulfill the purposes of the proposed Act:

- An individual who was less than 21 years old.
- An individual whose name appeared in the MGCB responsible gaming database.

A sports betting operator would have to display, or would have to require the sports betting supplier providing its sports betting platform to display, in a clear, conspicuous, and accessible manner, evidence of the sports betting operator's license issued under the Act.

Responsible Gaming Database

The Act would require the MGCB to develop responsible gaming measures, including a Statewide responsible gaming database identifying individuals who were prohibited from establishing an internet sports betting account or participating in internet sports betting offered by a sports betting operator. The Executive Director of the MGCB 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 Act or another gaming-related law.
- The individual had performed an act or had a notorious or unsavory reputation such that the individual's participation in sports betting would adversely affect public confidence and trust in sports betting.
- The individual's name was on a valid and current exclusion list maintained by the State or another jurisdiction in the United States.
- Any other reason the MGCB considered appropriate to protect the integrity of sports betting under the proposed Act.

The MGCB could promulgate rules for the establishment and maintenance of the responsible gaming database. A sports betting operator, in a format specified by the MGCB, could provide the MGCB with names of individuals to be included in the responsible gaming database.

A sports betting operator would have to require a sports betting supplier providing an internet sports betting platform to display, on the internet sports betting platform used by the sports betting operator, in a clear, conspicuous, and accessible manner the number of the toll-free compulsive gambling hotline maintained by the State and offer responsible gambling services and technical controls to authorized participants, consisting of both temporary and permanent self-exclusion for all internet sports betting offered and the ability for authorized participants to establish their own periodic deposit and internet sports betting wagering limits and maximum playing times.

An authorized participant could voluntarily prohibit himself or herself from establishing an internet sports betting account with a sports betting operator. The MGCB could incorporate the voluntary self-exclusion list into the responsible gaming database and maintain both the self-exclusion list and the responsible gaming database in a confidential manner.

The self-exclusion list and responsible gaming database established under the bill would be exempt from disclosure under the Freedom of Information Act.

Penalties

A person would be prohibited from doing any of the following:

- Offering internet sports betting in the State if the person were not a sports betting operator unless the Act did not apply to internet sports betting conducted on Indian lands.
- Knowingly make a false statement on an application for a license.
- Knowingly provide false information to the MGCB or its authorized representative.

A person that offered internet sports betting in the State without a license, unless the Act did not apply, would be guilty of a felony punishable by imprisonment for up to 10 years or a fine of not more than \$100,000, or both. The Attorney General or a county prosecuting attorney could bring an action to prosecute this violation in the county in which it occurred or in Ingham County.

The MGCB could not issue a license to a person that violated any of the above prohibitions.

Tax Rate

Except for a sports betting operator that was an Indian tribe, a sports betting operator would be subject to a tax of 8.75% on its adjusted gross sports betting receipts received by the operator.

A sports betting operator that was an Indian tribe would be subject to the payment requirements described previously. A sports betting operator would have to pay the tax or payment, as applicable, on a monthly basis. The payment for each monthly accounting period would be due on the 10th day of the following month.

No other tax, payment, or fee could be imposed on a sports betting operator by the State or a political subdivision of the State for sports betting conducted under the Act. This would not impair the contractual rights under an existing development agreement between a city and a sports betting operator that held a casino license under the Michigan Gaming Control and Revenue Act.

In addition to payment of the tax and other fees, and to any payment required under an existing development agreement, if a city had imposed a municipal services fee equal to 1.25% on a casino licensee, the city could charge a 1.25% fee on the adjusted gross sports betting receipts of a sports betting operator that held a casino license under the Act whose casino was in that city.

Tax Distribution

The tax imposed above would have to be allocated as follows:

- Thirty percent to the city in which the sports betting operator's casino was located, for use in connection with the hiring, training, and development of street patrol officers in that city; neighborhood development programs designed to create jobs in that city with a focus on blighted neighborhoods; public safety programs such as emergency medical services, fire department programs, and street lighting in that city; anti-gang and youth development programs in that city; other programs that were designed to contribute to the improvement of the quality of life in that city; relief to the taxpayers of that city from one or more taxes or fees imposed by that city; the costs of capital improvements in that city; and road repairs and improvements in that city.
- Sixty-five percent to the State to be deposited in the Internet Sports Betting Fund.
- Five percent to the Michigan Agriculture Equine Industry Development Fund, unless this amount exceeded \$3.0 million in a fiscal year, in which case the excess amount would have to be deposited into the Internet Sports Betting Fund.

Any of the 8.75% adjusted gross sports betting receipt payments made by Indian tribes would have to be allocated as follows:

- Thirty percent to the governing body of the jurisdiction in which the sports betting operator licensee's casino was located, for its use in connection with the provision of governmental services.
- Fifty-two and one-half percent to the State to be deposited in the Internet Sports Betting Fund.
- Seventeen and one-half percent to the Michigan Strategic Fund.

Internet Sports Betting Fund

The Internet Sports Betting Fund would be created in the State Treasury. The State Treasurer could receive money or other assets required to be paid into the Fund under the bill or from any other source for deposit into the Fund, would have to direct the investment of the Fund, and credit to it interest and earnings from Fund investments.

The MGCB would be the administrator of the Fund for auditing purposes. The MGCB would have to spend money from the Fund, on appropriation, for all of the following:

- Each year, \$1.0 million to the Compulsive Gaming Prevention Fund created in the Compulsive Gaming Prevention Act.
- The MGCB's costs of regulating and enforcing internet sports betting.
- All money remaining in the Fund after the expenditures listed above to be deposited into the State School Aid Fund.

Gambling Device Exception

To the extent that sports betting equipment used to offer internet sports betting was a gambling device as defined in Federal statute, a shipment of sports betting equipment, the registering, recording, and labeling of which had been completed by the manufacturer or the manufacturer's dealer in accordance with Federal law, would be a legal shipment of a gambling device in Michigan.

Lack of Authorization for Constructing/Operating New Casinos

The proposed Act would not authorize the construction or operation of a casino that was not constructed or operating before the bill's effective date.

Proposed MCL 750.310d (H.B. 4917)
MCL 777.14d (H.B. 4918)

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

House Bill 4916

The bill likely would have an indeterminate fiscal impact on the School Aid Fund, the Michigan Agriculture Equine Development Fund, the Michigan Strategic Fund (MSF), and the City of Detroit.

The bill would open a new area of gaming activity within the State. However, because the State already offers a substantial number of gaming opportunities and data suggest the market for existing games is relatively saturated, it is unclear the degree to which the bill would generate new gaming activity or trade-off with existing activity. Furthermore, the tax under the bill represents a markedly lower tax rate than that imposed on other types of gaming activity within the State, meaning the bill would generate substantial incentives for casinos to direct gaming to the activity that would be allowed under the bill. The fiscal impacts illustrated below assume no substitution effect with respect to existing gaming activity, and thus likely overstate the net revenue that the bill would generate.

Under these assumptions, if the bill increased total gaming activity by 5% or 10% above current adjusted gross receipts, the City of Detroit and Tribal casinos would generate between \$120.2 million and \$240.4 million in gaming activity and between \$10.5 million and \$21.0 million in new gross revenue. [Table 1](#) and [2](#) below shows the total potential revenue generated under an 8.75% tax rate and the distribution of the tax revenue for the casinos in the City of Detroit and on Tribal land. The estimates for Tribal revenue assumes all tribes that currently make payments to the MSF/ Michigan Economic Development Corporation (MEDC) participate in activities allowed under the bill. However, the true amount of revenue generated from casinos on Tribal land would depend on tribal compact agreements and the number of tribes that engaged in internet sports betting, whether or not a tribe currently makes payments to the MSF/MEDC.

Table 1

Tax Revenue Distribution of Sports Betting (in millions)				
	5% Increase		10% Increase	
	Detroit	Tribal	Detroit	Tribal
Adjusted Gross Receipts.....	\$72.2	\$48.0	\$144.4	\$96.0
Total Tax Revenue (8.75%)	\$6.3	\$4.2	\$12.6	\$8.4
Distribution.....				
Local Revenue Sharing	---	\$1.3	---	\$2.5
MSF/MEDC*	---	\$0.7	---	\$1.5
City of Detroit	\$1.9	---	\$3.8	---
Michigan Equine Fund	\$0.3	---	\$0.6	---
Internet Sports Betting Fund.....	\$4.1	\$2.2	\$8.2	\$4.4

**Assumes current payments to the MSF continue at current level*

Table 2

Tax Revenue Distribution of Internet Sports Betting Fund (in millions)		
	5% Increase	10% Increase
Total Internet Sports Betting Fund	\$6.3	\$12.6
Compulsive Gaming Prevention	\$1.0	\$1.0
School Aid Fund	\$5.3	\$11.6

The bill could decrease payment to the MSF because of current exclusivity clauses in tribal compacts. Currently, casinos on Tribal lands make payments to local units on 2% of adjusted gross receipts under their compacts. It is unclear if the current 2% rate would continue if a tribe elected to operate under the bill's provisions or if the rate and distribution proposed under the bill would be implemented, or if Tribal operators would pay both rates. Additionally, the bill is unclear as to what would happen to the 30% distribution from the 8.75% tax if a casino were not located within a city.

The bill would not tax Tribal gaming activity allowed under the bill if the wagers were not placed online. Under the bill, the 8.75% tax on sports bets at Tribal casinos would be imposed only on internet gaming activity, thus exempting sports betting made at brick-and-mortar casinos. Furthermore, this activity would not be covered by existing gaming compact provisions because the Tribal compacts only tax gaming activity on electronic games of chance. Furthermore, sports betting at Tribal casinos would be taxed at a lower level than sports betting at the Detroit casinos because the 8.75% tax on the Detroit casinos would include wagers placed at brick-and-mortar facilities.

The impact of any substitution effects, in which individuals place wagers on the sports betting that would be allowed by the bill instead of on currently authorized gaming activities, could be substantial. For example, after prizes and expenses are paid, the School Aid Fund receives approximately 27% of gross lottery sales, while under the Casino Gaming Tax, the School Aid Fund receives 8.1% of adjusted gross receipts and the City of Detroit receives 12.9% (inclusive of the development agreements) - for a combined tax rate of 21%. In comparison, the bill would impose a tax of 8.75%. As a result, for every \$100 of lottery sales redirected to sports betting allowed under the bill, the bill would need to generate an additional \$309 of new gaming activity to replace the revenue (without accounting for distribution under the bill that would not be directed to the School Aid Fund). Similarly, every \$100 of gaming activity

at a Detroit casino would require an additional \$206 of new gaming activity to offset the revenue loss (again without accounting for the bill's revenue distribution formulas).

In the context of the estimates presented in Tables 1 and 2, if 25% of the gaming that occurred under the bill represented wagers that otherwise would have been spent on lottery tickets, and another 25% represented wagers that would have been made in Detroit casinos, the total revenue of \$10.5 million generated by a 5% total increase would be reduced by \$8.1 million, leaving a total net revenue increase of less than \$2.4 million. Similarly, under the 10% scenario, the \$21.0 million in revenue from sports betting would be offset by approximately \$16.2 million in losses, leaving a net gain of slightly less than \$4.8 million. To the extent that any substitution effects were greater than in this example, the net revenue generated would be less, while reduced substitution effects would increase the net revenue generated under the bill.

All license and vendor fees authorized under the proposed Act would be deposited into the Internet Sports Betting Fund and would cover administrative costs necessary to promulgate rules and oversee internet sports betting. It is assumed that the Michigan Gaming Control Board would generate sufficient revenue from fees to cover the administrative costs. If fees were insufficient, the Board would be able to use the revenue generated from the 8.75% tax to cover administrative costs. However, this would reduce deposits to the School Aid Fund.

House Bill 4917

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

House Bill 4918

The bill would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge*, in which the Court ruled that the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

Fiscal Analyst: Joe Carrasco
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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.