

BAN INTERNET GAMBLING

House Bill 4689 as introduced First Analysis (5-25-99)

**Sponsor: Rep. James Koetje
Committee: Gaming and Casino Oversight**

THE APPARENT PROBLEM:

Internet gambling is growing at a quick pace. Just a few years ago, on-line lotteries, virtual casinos, bingos, and on-line sports betting sites generated several million dollars from a couple dozen sites. This year, it is expected that the approximately 140 sites will bring in well over \$600 million, perhaps even a billion dollars, with a forecast of future earnings topping \$10 billion by the year 2000.

On-line gambling is virtually unregulated, thus creating a plethora of problems for individuals as well as state and federal governments. On-line gambling provides 24-hour access from the comfort, isolation, and anonymity of one's own home. An account can quickly be established via credit card, electronic transfer, or check. Potential problems therefore include easy access to gambling sites by compulsive gamblers (as well as providing an atmosphere conducive to increasing the numbers of compulsive gamblers), easy access by children who have obtained their parent's credit card numbers, sites acting as a draw for hackers using stolen credit card numbers or who create havoc by attempting to tilt the games, businesses that don't make good on winning bets or that unfairly tip the outcomes of games in favor of the house, and an increased burden on state and federal agencies and programs left to deal with the social and economic impact on families from those suffering heavy losses due to compulsive gambling.

Since the vast majority of businesses conducting on-line gambling are located overseas, mostly on Caribbean islands, and since businesses owners are difficult to identify and locate, creating an effective regulatory structure is no easy task. Further, though all states, with the exception of Hawaii and Utah, legalize some form of gambling (and thus prohibit other forms), few states have laws that explicitly prohibit Internet gambling. Some initial court cases have been promising as several states have sued

operators of on-line gambling sites under consumer protection laws, but the process is slow and costly,

and so far has only been successful against the few businesses based within the United States. At the federal level, the Wire Act does make it unlawful for businesses to use phone lines to transmit information regarding bets and wagers, and the government recently successfully prosecuted several people under the act who were operating overseas sports betting businesses over the Internet, but the act currently only applies to sports betting. A bill that was recently passed by the Senate would amend the Wire Act to extend the act's prohibitions to gambling businesses using the Internet or any other interactive computer service to place or receive bets or wagers or information regarding bets and wagers.

However, in a statement given last year before a U.S. House of Representatives Judiciary subcommittee, Deputy Assistant Attorney General Kevin Di Gregory stated that the Department of Justice believed that "in the absence of fraud or organized crime involvement, primary regulatory enforcement responsibility for gambling laws should remain with the states." He went on to say that amending the federal Wire Act to include Internet gambling was appropriate, especially given the fact that so many operations are off shore, but that "efforts to make an anti-Internet gambling statute an international law enforcement priority are misguided." It would appear therefore, that states do have a part to play in creating laws regarding Internet gambling activity within their borders. Legislation that would ban gambling on the Internet or that would tax revenue generated by Internet gambling is currently pending in several states, and several states already have prohibitions in place. Some people strongly believe that in light of the detrimental effect that unregulated Internet gambling could have on the residents of the state, Michigan should be proactive in taking a stand to prohibit unlicensed gambling activity conducted in the state via the Internet.

THE CONTENT OF THE BILL:

House Bill 4689 would amend Chapter XLIV, entitled "Gambling", of the Michigan Penal Code (MCL 750.315b) to prohibit a gambling business from using the Internet or a service provider to bet or wager. The bill would ban a person engaged in a gambling business from using the Internet or an interactive computer service (which would include an Internet service provider or system providing access to the Internet) from using the Internet to bet or wager. "Bet" or "wager" would be defined as receiving or accepting money or other valuable thing either directly or indirectly with the understanding that the money or valuable thing would be paid or delivered to a person contingent upon the result of a race, contest, or game or the uncertain happening of an event. A bet or wager would not include the purchase, sale, or trade of securities or commodities under state or federal law. A "gambling business" would be a business conducted at a gambling establishment or that involved the placing, receiving, or making bets or wagers or even the offer to engage in placing, receiving, or making bets or wagers. "Internet" would be defined as "the international computer network of both federal and nonfederal interoperable packet switched data networks."

Under the bill, a person (defined to mean an individual, association, partnership, corporation, and so forth) would be prohibited from conducting a gambling business on or over the Internet or a service provider from a location or site in the state, including Indian tribal land. Gambling that originated or ended in the state would constitute a felony offense, with penalties of up to two years imprisonment or a fine up to \$5,000, or both, for a first offense and up to five years imprisonment and a fine up to \$25,000, or both, for a second or subsequent offense. Each individual bet or wager would constitute a separate violation.

The attorney general or a county prosecutor could prosecute violations of the bill. The attorney general could, but would not have to, notify a gambling business that its web site was illegal in the state and list the penalties for violations. A gambling business could be enjoined from transmitting bets or wagers or information assisting in the placing of bets or wagers as a condition of bond pending trial or disposition of the case. A permanent injunction could be entered against a gambling business found to be guilty or who pled guilty to violating the bill.

The bill would not apply to the Bureau of State Lottery and its licensees, persons licensed under the Horse Racing Law of 1995, a licensee under the Michigan Gaming Control and Revenue Act (which regulates the Detroit casinos), or persons licensed under the Traxler-McCauley-Law-Bowman Bingo Act.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

According to an International Gaming and Wagering Business Special Report dated August, 1997, one of every ten recreational dollars is spent on gambling. The last few years have seen a rise in the numbers of compulsive gamblers, with teenagers and college students being the fastest growing segment of the population to develop compulsive gambling behaviors. Studies have shown that young people are very vulnerable to developing addictive behaviors, and the widespread availability of gaming venues has taken a toll. Dr. Howard Schaeffer of the Harvard Center for Addictive Studies was quoted last year in a Congressional press release from Senator Kyl, sponsor of last year's and this year's bill to ban Internet gambling in the U.S., as predicting that within ten years youth gambling would surpass drug use as a societal problem. Anecdotal information, as well as research statistics, reveal that compulsive gambling has devastating social and economic effects on families as well as on society. Charitable and governmental agencies must often step in and shoulder the financial burden when jobs are lost, families become homeless, health insurance is lost, and so on due to a family member's addiction to gambling.

Compounding the fight to curb the rising numbers of compulsive gamblers is the role that the Internet plays. Online Internet gambling sites provide easy access to casino-type games, sports betting, online lotteries and so on. However, though all gambling activities carry the dangers of compulsive gambling, Internet gambling poses more of a threat for several reasons. For starters, access is easy, even by children who have obtained access to parent's credit card numbers. Secondly, where casino gambling is a social activity,

with people trained to spot compulsive gambling or to encourage people not to gamble when intoxicated, there are no outside controls on the Internet gambler. Further, regulated gambling businesses must adhere to certain operating procedures and equipment standards that ensure fairness of play and that give consumers recourse in case of a dispute over winnings. Again, there are no such controls with Internet gambling sites. There is no guarantee that games are being conducted fairly, no recourse to collect unpaid winnings or to dispute losses; it may not even be known who is behind the business, leading some to believe that organized crime could be operating some of the sites.

For these and other reasons, many believe that the Internet should not be used to promote gambling activities. Though there currently is a bill moving at the federal level that would ban Internet gambling in the U.S., it has died in the process twice before. The state should therefore take a proactive stance to protect residents. The bill would be an important first step in outlawing the Internet as a source for gaming activities in the state by targeting gambling businesses, not individual gamblers. Under the bill, no one could establish a website for gambling from Michigan, nor could he or she solicit business from Michigan residents. It would be a felony offense to violate the bill's provisions, and a person convicted under the bill could face imprisonment and fines up to \$25,000 for second offenses for each individual wager received from a Michigan resident. This could eventually deter businesses from soliciting residents of the state.

Response:

Regardless of people's positions on Internet gambling, almost all agree that whether banned by state or federal government, enforcement will be difficult. With almost all businesses located off-shore and owners of websites hard to track, some have predicted enforcement attempts will be little better than cat and mouse games, with an operation disappearing from one site only to appear on another. This has led some to believe that regulation, rather than a total ban, on Internet gambling might be a workable solution. To even collect taxes on revenue generated by a site might help state governments offset the cost to state agencies from aiding compulsive gamblers. Further, if regulated gambling businesses in the U.S. were able to participate in Internet gaming, consumers might abandon unlicensed sites in favor of the licensed ones because they would have greater assurance that the games were legitimate and conducted fairly.

For:

Short of world wide cooperation to create an international ban on Internet gambling, it may indeed

prove to be difficult to enforce any state prohibition against businesses operating overseas, and even more so when the owners are unknown and hard to find. However, some people believe that by making Internet gambling illegal in the state, consumers would not be financially liable for losses incurred on gambling sites, as a business cannot collect debt incurred through illegal activity. Reportedly, at least one court case on this point is working its way through the legal system. Last year, a woman in California sued her credit card companies after they paid \$70,000 in charges to online gambling sites that she had lost money to. In her suit, she maintains that the credit card companies should not have paid the charges because California law prohibits gaming activities in which players compete against the house. (The woman denies intentionally participating in an unlawful activity, as she felt that she was tricked into thinking it was legal because the operators were based offshore.) Perhaps the incentive to offer online gambling will decrease as the lucrative nature of these sites decline from credit card companies and individuals refusing to pay for losses incurred on the gambling sites.

Response:

The issue of whether or not a consumer would be responsible for debts incurred through gambling on the Internet if the activity were made illegal is uncertain at this time and is an issue that would ultimately have to be settled by the courts. However, making a particular activity illegal certainly would throw into question the enforceability of payments. Further complicating this issue is the role that credit card companies play. It may be unreasonable to expect a credit card company to recognize the name of each business that is behind an Internet gambling site (there are more than 140 sites currently operating with more on the way), and to know the particular laws of each of the states (or even the particular state that the customer contacted the gambling site from), so as to determine which ones of hundreds of thousands of charges a day that are processed by the company are actually charges made on illegal Internet gambling activities and should be denied by the credit card company. The bill could be a first step in protecting consumers from unregulated and possibly crooked gambling activity, but would not be a cure-all.

Against:

The bill's definition of "state" would include tribal land that was owned, occupied, or held in trust for an Indian tribe. This provision needs to be amended as

it is in violation of federal law, which holds tribes to be sovereign nations and immune from state criminal laws. According to Federal Public Land and Resources Law, (Coggins, George C. and Wilkinson, Charles F., 2nd ed., The Foundation Press, Inc., pg. 17), "a state has jurisdiction within a reservation only to the extent that Congress has delegated specific authority to it or in situations in which neither federal nor tribal law preempt state law." Further, the federal Indian Gaming and Regulatory Act (IGRA) specifies that Indian gaming activities be regulated through compacts between tribes and state governments. Therefore, the bill's definition of "state" would appear to be interfering with the established compacts between the state and the original seven tribes and the four new tribes who entered into compacts with the state in 1998.

Response:

Though it is true that under federal laws, Indians generally enjoy sovereign immunity from criminal prosecution, and especially for activities conducted on Indian land, it could be argued that Internet gambling constitutes activity off of Indian land because of using phone lines and airways that do not come under tribal authority. Last year, the Coeur d'Alene Indian tribe of Idaho was prohibited by a Missouri state circuit judge from offering online gambling in Missouri, even though the tribe maintained that in effect gamblers were leaving their state and coming onto the reservation via the Internet. Indeed, several recent rulings have found that operators of Web sites are subject to the laws of the states in which they do business. In light of prevailing case law, the state may be able to include Indian land in the prohibition against establishing online gambling sites in the state.

Rebuttal:

The final word on how jurisdictional matters relate to Indian tribes is not in yet. Meanwhile, what is clear from IGRA is that any and all Indian gaming activity is to be regulated through agreed upon compacts negotiated between a state and a tribe. According to various legal counsel representing tribes in the state, the compacts developed between the state and the 11 tribes contain mechanisms by which to add new games and to resolve disputes. Any regulation pertaining to Internet gambling that would involve an Indian tribe, therefore, must be resolved within the provisions of the existing compacts and not through a state criminal law. To do otherwise could constitute a breach of the compacts, which are binding under law, thereby opening up a long and costly legal battle. Besides, the

compacts specify which gaming activities are legal for a tribe to offer, and none of the 11 compacts currently allow tribes to offer Internet gambling. Further, if the

bill moving through Congress becomes law, it would institute a nationwide ban on Internet gambling, and would apply to Indians and activities conducted on tribal land. Therefore, it is not even necessary to include them in the bill in order to ensure a statewide ban on Internet gambling.

Against:

The bill as written would exempt Internet activity conducted by individuals licensed under the Lottery Act, Bingo Act, Horse Racing Law, and the Detroit casinos from the prohibition established by the bill when engaging in permitted activities. The language may be an attempt to continue to permit activities already allowed under current gaming laws such as administrative functions conducted over the Internet in regards to the Big Game offered by the Lottery Bureau, simulcasting of live races at the state's horse race tracks, and certain charitable games allowed under the Bingo Act. Under federal law, however, tribes are permitted to engage in any gaming activity that is legal in a state. It could be argued that the exemption for these individuals might open up Internet gaming to Indian tribes under the parity clause contained in IGRA. Therefore, the language exempting individuals under these acts should specifically delineate what activities would be allowed so that what is intended to be prohibited (namely, Internet gambling activities such as virtual casinos, online lotteries, sports betting, bingos, and so on) really will be prohibited in total.

POSITIONS:

The Michigan Family Forum supports the bill. (5-21-99)

The Office of the Governor supports the concept of the bill. (5-24-99)

The Sault St. Marie Indian Tribe opposes the bill. (5-21-99)

The Grand Traverse Band of Ottawa and Chippewa Indians opposes the bill in so far as it includes Indian tribes and Indian land. (5-24-99)

Analyst: S. Stutzky

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