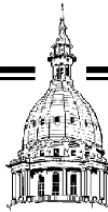




**Senate Fiscal Agency**  
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BILL



ANALYSIS

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Senate Bills 203, 204, and 205 (as introduced 3-1-17)  
Sponsor: Senator Mike Kowall (S.B. 203 & 204)  
Senator Joe Hune (S.B. 205)  
Committee: Regulatory Reform

Date Completed: 3-8-17

### **CONTENT**

**Senate Bill 203 would create the "Lawful Internet Gaming Act" to do the following:**

- Allow internet gaming 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, and prescribe its responsibilities.
- Allow the Division to issue applicants an internet gaming license if they met certain criteria.
- Prescribe a \$100,000 application fee, a \$200,000 initial license fee, and a \$100,000 annual fee for an internet gaming license.
- 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 casino in the State.
- Allow internet gaming licensees to conduct internet gaming.
- Allow the Division to license internet gaming vendors to provide goods, software, or services to internet gaming licensees.
- Prescribe a maximum \$5,000 application fee, a \$5,000 initial license fee, and a \$2,500 annual fee for an internet gaming vendor.
- Require an internet gaming platform provider to pay an initial license fee of \$100,000, and \$50,000 each year after the initial license was issued.
- Provide that a license would be valid for five years and could be renewed for additional five-year periods.
- Impose a tax of 10% on the gross gaming revenue received by an internet gaming licensee from internet gaming, but provide for the tax rate to be reduced to a rate equivalent to that provided in a compact, amendment to a compact, or other agreement negotiated with the State.
- Require an internet gaming licensee to have adequate gaming participant verification measures, including mechanisms to detect and prevent the unauthorized use of internet wagering accounts and to detect and prevent fraud, money laundering, and collusion.
- Allow 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 offered by an internet gaming licensee.
- Allow the Division to enter into agreements with other jurisdictions to facilitate, administer, and regulate multijurisdictional internet gaming by internet gaming licensees to the extent that entering into an agreement was consistent with State and Federal laws and if the gaming under the agreement were conducted only in the United States.

- **Create the "Internet Gaming Fund" and require fees and taxes to be deposited into the Fund.**
- **Allow the Michigan Gaming Control Board to spend money from the Fund, on appropriation, for the First Responder Presumed Coverage Fund and the Board's costs of regulating and enforcing internet gaming.**
- **Prescribe a felony penalty of imprisonment for up to 10 years and/or a maximum fine of \$100,000, for a person who committed an action prohibited by the Act.**

**Senate Bill 204 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.**

**Senate Bill 205 would amend the Code of Criminal Procedure to include the offense proposed by Senate Bill 203 in the sentencing guidelines as a Class D felony against public order.**

Each bill would take effect 90 days after its enactment. Senate Bills 203 and 204 are tie-barred. Senate Bill 205 is tie-barred to Senate Bill 203.

A more detailed description of Senate Bill 203 follows.

### Internet Gaming

Internet gaming could be conducted only to the extent that it was conducted in accordance with the proposed Act. A law that was inconsistent with the Act would not apply to internet gaming as provided for by the Act. The Act would not apply to lottery games offered by the Bureau of State Lottery.

An internet wager received by an internet gaming licensee would be considered gambling or gaming that was conducted in the licensee's casino located in the State, regardless of the authorized participant's location at the time the participant placed the internet wager.

Only an internet gaming licensee at its casino could aggregate computers or other internet access devices in order to enable multiple players to simultaneously play an internet game. Except as otherwise provided, a person could not aggregate computers or other internet access devices in a place of public accommodation in Michigan, including a club or other association, in order to enable multiple players to simultaneously play an internet game.

"Internet gaming" would mean operating, conducting, or offering for play an internet game. "Internet game" would mean a game of skill or chance that is offered for play through the internet in which a person wagers money or something of monetary value for the opportunity to win money or something of monetary value. For purposes of the definition, free plays or extended playing time that was won on a game of skill or chance that was offered through the internet would not be something of monetary value. "Internet game" would include gaming tournaments conducted via the internet in which people competed against one another in one or more of the games authorized by the Division of Internet Gaming (described below) or in approved variations or composites as authorized by the Division.

### 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 licensed by it, and could take enforcement action against a person that was not licensed by it that offered internet gaming in the State.

The Division could enter into agreements with other jurisdictions to facilitate, administer, and regulate multijurisdictional internet gaming by internet gaming licensees licensed by the Division to the extent that entering into the agreement was consistent with State and Federal laws and if the gaming under the agreement were conducted only in the United States.

The Division could not authorize, administer, or otherwise license a person to conduct internet wagering on any amateur or professional sporting event or contest, unless doing so would be consistent with State and Federal laws.

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

"Internet wagering" would mean risking money or something of monetary value on an internet game authorized by the Act.

#### 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 proposed Act and the rules promulgated under it. If the applicant held a casino license under the Michigan Gaming Control and Revenue Act, the Division would have to consider the applicant to be eligible for an internet gaming license, and would have to issue an internet gaming license to the applicant after receiving the application and the application fee if the Division determined that the internet gaming proposed by the applicant complied with the proposed Act.

An internet gaming license would be valid for the five-year period after the date of issuance and, if the Division determined that the licensee continued to meet the eligibility standards under the Act, would be renewable for additional five-year periods.

The Division could issue an internet gaming license only to a person that was one of the following:

- A casino licensee under the Michigan Gaming Control and Revenue Act.
- A federally recognized Michigan Indian tribe that operates a casino in the State in which Class III gaming other than internet gaming is conducted under a facility license issued in accordance with a tribal gaming ordinance approved by the chairperson of the National Indian Gaming Commission.

The Division could not issue an internet gaming license to an Indian tribe unless the tribe, in connection with its application to conduct internet gaming under the proposed Act, waived its sovereign immunity with respect to conducting internet gaming under the Act, including obtaining licensure and subjecting itself to enforcement by the Division in State and Federal courts and paying fees and taxes imposed under the Act.

A qualified applicant could apply to the Division for an internet gaming license to offer internet gaming as provided in the Act. The application would have to be made on forms provided by the Division and contain the information it required, 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. However, if the applicant held a casino license under the Michigan Gaming Control and Revenue Act, the applicant would not have to provide any information that it had previously provided to the Division unless notified by the Division that the information could not be located.

An initial application for an internet gaming license would have to be accompanied by an application fee of \$100,000. The rules promulgated under the proposed Act could include provisions for the refund of an application fee, or the portion of an application fee that had not been spent by the Division in processing the application, and the circumstances under which the fee would be refunded.

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 (FOIA).

An application would have to be submitted and considered in accordance with the proposed Act and any rules promulgated under it. An institutional investor that held for investment purposes only less than 30% of the equity of an applicant would be exempt from the Act's licensure requirements.

An internet gaming licensee licensed by the Division would have to pay a license fee of \$200,000 to the Division at the time the initial license was issued and \$100,000 each year after that. The Division would have to deposit all application and license fees paid under the Act into the Internet Gaming Fund.

#### Tribal Internet Gaming

A federally recognized Michigan Indian tribe that operated a casino in the State in which Class III gaming other than internet gaming was conducted under a facility license issued in accordance with a tribal gaming ordinance approved by the chairperson of the National Indian Gaming Commission could conduct internet gaming on the same basis as any internet gaming licensee licensed by the Division, only if either the Indian tribe held an internet gaming license under the proposed Act; or the Indian tribe had entered into a compact with Michigan under the Indian Gaming Regulatory Act, or an amendment to such a compact, that had, to the extent required by the compact, been approved by the Legislature and that met all of the following requirements:

- The compact or amendment specifically authorized the tribe to conduct internet gaming to the same extent as an internet gaming licensee licensed by the Division under the proposed Act could, subject to certain terms and laws.
- The compact or amendment had been approved by the applicable Federal agencies as required by the Indian Gaming Regulatory Act.
- The compact or amendment included provisions addressing the amount and manner of revenue sharing to be paid to the State by the tribe related to internet gaming; a dispute resolution process, which would have to include a limited waiver of sovereign immunity, to provide the State with legal and equitable remedies enforceable in State and Federal courts to enforce the tribe's agreement to make revenue sharing payments to the State related to internet gaming; the types of internet games that would be offered; responsible gaming; technical and financial standards for internet wagering accounts, and internet gaming platforms, systems and software, and other electronic components for internet gaming; and one or more mechanisms designed to reasonably verify that an individual who desired to place a wager over the internet gaming platform used by the Indian tribe was 21 years of age or older.
- The compact or amendment contained additional provisions regarding verification requirements and mechanisms designed to detect and prevent the unauthorized use of internet wagering accounts and to detect and prevent fraud, money laundering, and collusion, and a requirement that the internet gaming platform provider, if not tribally owned, be licensed as an internet gaming vendor under the proposed Act.

The Act would not limit the additional terms that the State and an Indian tribe could negotiate and include in a compact or amendment to a compact under the Indian Gaming Regulatory Act.

"Internet gaming platform" would mean an integrated system of hardware, software, and servers through which an internet gaming licensee conducts internet gaming under the proposed Act.

"Internet wagering accounts" 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 authorized participant, if any.
- Adjustments to the account.

### Internet Gaming Vendors

The Division could issue an internet gaming vendor license to a person to provide goods, software, or services to internet gaming licensees. A person that was not a licensed internet gaming vendor could not provide goods, software, or services as an internet gaming vendor to an internet gaming licensee.

On application by an interested person, the Division could issue a provisional internet gaming vendor license. A provisional license would allow the applicant to conduct business with an internet gaming licensee or applicant for an internet gaming license before the internet gaming vendor license was issued. A provisional license would expire on the date provided in the license by the Division.

An internet gaming vendor 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 Division determined that the internet gaming vendor continued to meet the eligibility standards of the proposed Act.

A person could apply to the Division to become an internet gaming vendor licensee as provided in the Act and the rules promulgated under it.

An application would have to be made on forms provided by the Division and contain any information it required, 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. However, if the applicant were licensed as a supplier under the Michigan Gaming Control and Revenue Act, the applicant would not have to provide any information that it had previously provided to the Division unless notified by the Division that the information could not be located. An application would have to be accompanied by a nonrefundable application fee in an amount to be determined by the Division, not to exceed \$5,000.

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 licensure as an internet gaming vendor strictly confidential and could use the materials only to evaluate an applicant for licensure. These materials would be exempt from disclosure under FOIA.

An internet gaming vendor would have to pay a license fee of \$5,000 to the Division at the time an initial license was issued to the vendor and \$2,500 each year after the initial license was issued. An internet gaming platform provider would have to pay a license fee of \$100,000 to the Division at the time the initial license was issued to the provider and \$50,000 each year after the initial license was issued. The Division would have to deposit all application and license fees paid under the proposed Act into the Fund.

"Internet gaming vendor" would mean a person that provides to an internet gaming licensee goods, software, or services that directly affect the wagering, play, and results of internet games authorized, conducted, and played under the Act, including goods, software, or services necessary to the acceptance, operation, administration, or control of internet wagers, internet games, internet wagering accounts, or internet gaming platforms. Internet gaming vendor would not include a person that provided to an internet gaming licensee only such goods, software, or services that it also provided to others for purposes not involving internet gaming, including a payment processor or a geolocation service provider.

#### Gross Gaming Revenue Tax

A person that received an internet gaming license from the Division would be subject to a tax of 10% on the gross gaming revenue received by the licensee from internet gaming conducted under the proposed Act. The licensee would have to pay the tax on a monthly basis. The payment for a month would be due on the 10<sup>th</sup> day of the following month.

If, as provided in a compact, amendment to a compact, or other agreement negotiated with the State, a person were able to lawfully conduct internet gaming in the State for a period of time subject to payment of a revenue share or other payment to the State that was lower than the tax rate described above, the tax rate would automatically be reduced to a rate equivalent to the rate paid as a revenue share or other payment under the compact, compact amendment, or other agreement with the State during that period of time, as determined by the Michigan Gaming Control Board. If the State entered into compacts, compact amendments, or agreements described in these provisions with more than one person, the tax rate would be reduced to the rate in the compact, amendment, or agreement with the lowest rate. For all calculations under these provisions, if there were more than one rate paid under a compact, compact amendment, or agreement, the rate to be applied would be the highest rate in the compact, amendment, or agreement in effect during the applicable time period.

"Gross gaming revenue" would mean the total of all internet wagers actually received by an internet gaming licensee licensed by the Division, less the total of all winnings paid out to authorized participants.

"Winnings" would include all of the following:

- The total amount authorized participants receive as prizes during the accounting period.
- Stakes returned to authorized participants.
- Other amounts credited to authorized participants' accounts, including the monetary value of loyalty points, free play, and other similar compliments and incentives granted to authorized participants as a result of participation in internet games.

#### Additional Division Responsibilities

Except for internet gaming conducted by an Indian tribe that had entered into a compact with the State, the Division would have jurisdiction over and would have to supervise all internet gaming operations governed by the proposed Act. 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 internet gaming vendors.
- Decide promptly and in reasonable order all license applications and approve, deny, suspend, revoke, restrict, or refuse to renew internet gaming and internet gaming vendor licenses.
- Conduct all hearings pertaining to violations of the Act or rules promulgated under it.
- Provide for the establishment and collection of all license fees and taxes imposed by the Act and the rules, and the deposit of the fees and taxes into the Fund.
- Investigate, issue cease and desist orders, and obtain injunctive relief against a person that was not licensed by the Division that offered internet gaming in the State.
- Develop and enforce testing and auditing requirements for internet gaming platforms, internet wagering, and internet wagering accounts.
- Develop and enforce requirements for responsible gaming and player protection, including privacy and confidentiality standards and duties.
- Develop and enforce requirements for accepting internet wagers.
- Adopt by rule a code of conduct governing 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 fines (up to \$5,000 per violation) for internet gaming and internet gaming vendor licensees that violated the Act or the rules promulgated under it.
- 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 and accounting materials held by or in the custody of an internet gaming or internet gaming vendor licensee.
- Acquire or lease real property and make improvements to it, and lease or purchase personal property.

A party aggrieved by an action of the Division denying, suspending, revoking, restricting, or refusing to renew a license could request a hearing before the Division. A request for hearing would have to be made to the Division in writing within 21 days after service of notice of the action by the Division.

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

#### Administrative Rules

The Division would have to promulgate rules governing the licensing, administration, and conduct of internet gaming necessary to carry out the proposed Act within one year after its effective date. A person could not conduct internet gaming under the Act until 150 days after the Division promulgated the rules and they took effect. The promulgation of emergency rules would not satisfy the requirement for the promulgation of rules to allow a person to conduct internet gaming. The rules could include only things expressly authorized by the Act, including all of the following:

- The types of internet games to be offered, which would have to include at least poker.
- The qualifications, standards, and procedures for approval and licensure by the Division of internet gaming and internet gaming vendor licensees consistent with the Act.
- Requirements to ensure 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.
- Procedures for conducting contested case hearings under the Act.
- Procedures and requirements for the acceptance, by an internet gaming licensee licensed by the Division, of internet wagers initiated or otherwise made by people located in other jurisdictions.
- Requirements for multijurisdictional agreements entered into by the Division with other jurisdictions, including qualifications, standards, and procedures for approval by the Division of vendors providing internet gaming platforms in connection with the agreements.

#### Gaming Participant Verification

An internet gaming licensee licensed by the Division would have to provide one or more mechanisms on the internet gaming platform that the licensee used that were designed 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 by an authorized participant located in the State or a jurisdiction in the United States in which internet gaming was legal.

An individual who wished to place an internet wager under the proposed Act would have to satisfy the verification requirements before he or she could establish an internet gaming account or make an internet wager on an internet game offered by an internet gaming licensee.

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

- An individual less than 21 years old.
- An individual whose name appeared in the Division's responsible gaming database.

An internet gaming licensee also would have to include mechanisms on the internet gaming platform the licensee used that were designed to detect and prevent the unauthorized use of internet wagering accounts and to detect and prevent fraud, money laundering, and collusion.

#### Responsible Gaming Database & Responsible Gaming

The Division could 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 maintained by the State or another jurisdiction in the United States.



The Division could promulgate rules for the establishment and maintenance of the responsible gaming database. An internet gaming licensee, in a format specified by the Division, could provide the Division with names of individuals to be included in the database.

An internet gaming licensee licensed by the Division would have to display, on the internet gaming platform used by the licensee, 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 participants, consisting of both temporary and permanent self-exclusion for all internet games offered and the ability for participants to establish their own periodic deposit and internet wagering limits and maximum playing times.

An authorized participant could voluntarily prohibit himself or herself from establishing an internet wagering account with an internet gaming licensee. The Division could 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 FOIA.

### 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 proposed 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, for both of the following:

- Each year, \$5.0 million to the First Responder Presumed Coverage Fund created in the Worker's Disability Compensation Act.
- The Board's costs of regulating and enforcing internet gaming under the proposed Act.

(Under the Worker's Disability Compensation Act, a member of a fully paid fire department or public fire authority who is in active service of the fire department or public fire authority, has been employed 60 months or more in the active service of the department or public fire authority at the time cancer manifests itself, and is exposed to the hazards incidental to fire suppression, rescue, or emergency medical services in the performance of his or her work-related duties with the department or authority must suspend a claim against his or her employer under the Act and may claim like benefits from the First Responder Presumed Coverage Fund for any respiratory tract, bladder, skin, brain, kidney, blood, thyroid, testicular, prostate, or lymphatic cancer.)

### Prohibitions & Penalties

It would be a felony for a person to do any of the following:

- Offer internet gaming for play in the State if the person were not an internet gaming licensee.
- Knowingly make a false statement on an application for a license to be issued under the proposed Act.
- Knowingly provide false testimony to the Michigan Gaming Control Board or its authorized representative while under oath.

The felony would be punishable by imprisonment for up to 10 years or a maximum fine of \$100,000, or both. The Division could not issue a license under the Act to a person that violated these provisions. The Attorney General or a county prosecuting attorney would have to bring an action to prosecute a violation in his or her discretion, in the county in which the violation occurred or in Ingham County.

### Invalidation

If a court entered a final judgment or order that had the effect of invalidating or otherwise rendering inoperative the section of the proposed Act that would authorize the Division to issue an internet gaming license to a person that held a casino license under the Michigan Gaming Control and Revenue Act, the entire proposed Act would be inoperable and of no effect.

If a court held that a provision of the Act, or the application of a provision of the Act to any person or circumstance, were invalid other than as provided above, the validity and application of the remainder of the Act to other people and circumstances would not be affected.

### 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. 204)  
MCL 777.14d (S.B. 205)

### **BACKGROUND**

In 2011, the U.S. Department of Justice (DoJ) determined that a ban on interstate gambling over "wire communications" in the Wire Act of 1961 applied only to sports betting. The Act prohibits anyone engaged in the business of betting or wagering from knowingly using a wire communication facility to transmit bets, wagers, or information assisting in the placing of a bet or wager on any sporting event or contest, or for the transmission of a wire communication that entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers. New York and Illinois had asked for an opinion determining whether in-state online lottery transactions would violate the Wire Act. Until the DoJ issued its decision, the Act had been interpreted to include online gaming as a prohibited activity.

The Unlawful Internet Gambling Enforcement Act (UIGEA) also prohibits certain "unlawful internet gambling" and financial transactions related to gambling but allows for interstate gambling as long as it does not violate state law. The Criminal Division of the DoJ had raised concerns that the Wire Act could have criminalized conduct that would be lawful under the UIGEA. In its 2011 interpretation of the Wire Act, however, the DoJ found that it was not necessary to address the statutes' interaction, because the Wire Act applied only to wagering on sporting events or contests, which the lotteries proposed by Illinois and New York did not involve.

Legislative Analyst: Drew Krogulecki

## **FISCAL IMPACT**

### **Senate Bill 203**

The bill would have an indeterminate negative impact on the City of Detroit, result in additional expenses to the Michigan Gaming Control Board, generate additional revenue to the First Responder Presumed Coverage Fund, and have an indeterminate impact on the General Fund and School Aid Fund. There are a number of factors that would affect revenue in a variety of ways. Much of the variation in estimates arises from the extent to which Internet Gaming Fund revenue would supplant revenue from other gaming activities. No state that has introduced internet gaming while also having casinos and a state lottery has yet to have an overall increase from all three sources, so it is difficult to estimate an overall revenue increase with the introduction of internet gaming for the State of Michigan. However, it is possible for the State to experience an overall increase even if internet gaming revenue is taken from other gaming activities.

Furthermore, more felony arrests and convictions could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. The average cost to State government for felony probation supervision is approximately \$3,024 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government would be approximately \$3,764 per prisoner per year. Any associated increase in fine revenue would increase funding to public libraries.

### **Lottery**

It is likely that the Michigan Lottery's instant lottery and internet iLottery and instant lottery would directly compete with internet gaming in the State since these games are similar in that they are played day-to-day as opposed to the larger lottery games, which have more activity when jackpots are large and less activity when jackpots are smaller. Instant ticket games currently account for 36% of total Lottery revenue (up from 33% four years ago), and they accounted for 57% of the total increase in lottery revenue over the past four years (\$628.0 million). The iLottery, which totaled \$48.0 million in revenue in fiscal year 2015-16, the largest amount since its introduction in 2014, would be the most directly in competition with internet gaming. In the long term, the iLottery and instant ticket games could move to internet gaming. It is estimated that between 1% and 3% of Lottery revenue could move to internet gaming, but accounting for the amount of instant gaming activity, this amount could be up to 5% in the long term (beyond four years). The amount of State Lottery revenue that goes to the School Aid Fund (SAF) is roughly 28%, while internet gaming would be taxed at 10%. This means that for every 1% decrease in Lottery revenue (\$31.2 million in total revenue with \$8.6 going to the School Aid Fund), there would be a net loss to the State of \$5.5 million since internet gaming would raise only \$3.1 million for the Internet Gaming Fund. For the long term, this means that if the State Lottery were to lose 3% to 5% of revenue to internet gaming, the State would lose between \$16.5 million and \$27.5 million in SAF dollars.

Another way to think about the revenue shift is that for every 1% decrease in total State Lottery activity due to internet gaming, the internet gaming would need to generate \$86.0 million in order to be revenue neutral; and for every 3% decrease in Lottery activity, the internet gaming revenue would need to be \$258.0 million. It is projected that internet gaming revenue would generate \$220 million to \$280 million over the long term, so it is possible that internet gaming could be revenue neutral if the loss to State Lottery were less than 3% and internet gaming met its expectations. However, if the loss were greater than 3% or it took longer for internet gaming to be established, then the State would experience a net revenue loss in the tens of millions of dollars.

### Casino

Casinos are taxed at 19% of "net win" (gross receipts less winnings paid to wagerers), with 8.1% going to the School Aid Fund and 10.9% going to the City of Detroit. Since internet gaming would be taxed at 10%, for every 1% decrease in casino revenue for internet gaming, the State would actually experience an increase of \$150,000. This means that even if there were a significant change in revenue from casinos to internet gaming, the State would largely remain revenue neutral. However, with the potential for a reduced tax rate due to a lower rate under a compact, this amount could be less.

### City of Detroit

The City of Detroit would experience a revenue decrease as a result of internet gaming. If the Detroit casino revenue were to decrease between 1% and 3% due to internet gaming in the long term, the City would experience a revenue loss between \$1.5 million and \$4.5 million. Since internet gaming would not produce revenue for the City of Detroit, the City would not have any way to mitigate the revenue loss.

### Tribal Casinos

The bill 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 the State due to the opening of the three Detroit casinos and the introduction of the Lottery's iLottery games. These payments significantly fund the Michigan Economic Development Corporation (MEDC) and the Jobs for Michigan Investment Fund, and in FY 2014-15 totaled \$43.9 million. This revenue, however, is not included in the State revenue totals and is only represented in the Michigan Strategic Fund (MSF)/MEDC financial report. The only direct impact on the State from the loss of tribal revenue to the MSF/MEDC would be that some employees who are funded with the corporate funding administer some of the State-appropriated programs. The corporate funds also provide additional funding to State programs as well as other economic development programs. If the MSF/MEDC lost all of the tribal revenue, the State could have less administration of economic development programs or need to provide additional revenue to supplement the MSF and administer those programs.

### School Aid Fund

The School Aid Fund would experience a loss due to any shift in gaming revenue to internet gaming even if overall State revenue remained revenue neutral. If the State Lottery revenue shifted to internet gaming in the long term by 3% to 5% and casino revenue shifted by 1% to 3%, the School Aid Fund would experience a loss of between \$27.0 million and \$46.7 million or roughly \$18 to \$32 per pupil. This could significantly affect appropriations from the School Aid Fund.

## Administration

The bill would result in additional expenses to the Michigan Gaming Control Board to regulate and issue licenses for internet gaming, and internet gaming vendors. The applications and license fees would make up the majority of the administrative revenue for the Board. Since the initial licenses would be valid for five years, it is difficult to predict whether the administrative revenue would be sufficient to support the regulatory costs. However, the Department of Treasury estimates that the fee amount would be sufficient to cover the administrative expenses of internet gaming. If the Board needed additional revenue for administration, there would be an even greater overall negative impact on the State.

## First Responder Presumed Coverage Fund

The bill would result in \$5.0 million in annual appropriations to the First Responder Presumed Coverage Fund. Using the introduction of the iLottery games to predict initial revenue, it is estimated to take two full years from introduction for revenue to be sufficient to make this annual appropriation.

## **Senate Bill 204**

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

## **Senate Bill 205**

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 struck down portions of the sentencing guidelines law). According to one interpretation of that decision, 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.

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