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House Bill 4311 (Substitute H-5 as passed by the House)
House Bill 4312 (Substitute H-2 as passed by the House)
House Bill 4323 (as passed by the House)

Sponsor: Representative Brandt Iden (H.B. 4311)
Representative Wendell Byrd (H.B. 4312)
Representative LaTanya Garrett (H.B. 4323)

House Committee: Regulatory Reform
Ways and Means

Senate Committee: Regulatory Reform

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CONTENT

House Bill 4311 (H-5) 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.
- Prescribe the responsibilities of the Michigan Gaming Control Board (MGCB) regarding effectuating and enforcing the proposed Act.
- Allow the MGCB to issue applicants an internet gaming operator license if they met certain criteria.
- Prescribe a \$50,000 application fee, a \$100,000 initial license fee, and a \$50,000 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 the MGCB to license internet gaming suppliers to provide goods, software, or services to internet gaming operators.
- Prescribe a maximum \$5,000 application fee, a \$5,000 initial license fee, and a \$2,500 annual fee for an internet gaming supplier.
- Provide that a license would be valid for five years and could be renewed for additional five-year periods.
- Impose a graduated tax on the adjusted gross receipts received by an internet gaming operator from internet gaming, and list how the collected taxes would have to be distributed.
- Require an internet gaming operator to provide, or to require the internet gaming supplier providing its internet gaming platform to provide, 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 MGCB 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 operator.

- **Allow the MGCB to enter into agreements with other jurisdictions, including Indian tribes, to facilitate, administer, and regulate multijurisdictional internet gaming by internet gaming operators 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.**
- **Create the "Internet Gaming Fund" and require fees and taxes to be deposited into the Fund.**
- **Require the MGCB to spend money from the Fund for the Compulsive Gaming Prevention Fund, the Board's costs of regulating and enforcing internet gaming, and the School Aid Fund.**
- **Prescribe a felony penalty of imprisonment for up to 10 years and/or a maximum fine of \$100,000 for a person who was not an internet gaming operator and offered internet gaming for play in the State.**

House Bill 4312 (H-2) would amend the Code of Criminal Procedure to create in the sentencing guidelines a Class D felony against public order for internet gaming offenses, and a Class G felony against public trust for bingo - false statements.

House Bill 4323 would amend Chapter 44 (Gambling) of the Michigan Penal Code to exclude gaming conducted under the proposed Lawful Internet Gaming Act from the chapter of the Code, which prescribes penalties for illegal gambling activities.

House Bills 4312 (H-2) and 4323 would take effect 90 days after they were enacted. House Bill 4312 (H-2) is tie-barred to House Bill 4311 and House Bill 4173 (which would amend the Lottery Act.) House Bill 4323 is tie-barred to House Bill 4311.

House Bill 4311 (H-3) is described in further detail below.

House Bill 4311 (H-3)

Internet Gaming

Internet gaming could be conducted only to the extent that it was conducted in accordance with the proposed Lawful Internet Gaming Act.

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

A law that was inconsistent with the Act would not apply to internet gaming as provided for by the proposed Act.

The Act would not apply to any of the following:

- Lottery games offered by the Bureau of Lottery under the Lottery Act.
- Class II and Class III gaming 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.
- A fantasy contest.
- Any lawful internet sports betting.

For the purposes of the above provision, gaming would be conducted exclusively on Indian lands only if the individual who placed the 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 those lands, and the wager was initiated, received, or otherwise made in conformity with certain 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 computers or other internet access devices in a place of public accommodation in Michigan, including a club or association, to enable individuals to place internet wagers or play an internet game. This prohibition would not apply to an internet gaming operator aggregating, providing, or making available computers or other internet access devices at its own casino.

For purposes of the proposed 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.

An internet gaming operator could offer internet gaming under a maximum of two separate brands, one for each of interactive poker and other casino style games. This would not prohibit an internet gaming operator from using fewer than two brands or from using a single brand to offer any combination of interactive poker or other casino style games. All website and corresponding applications used to offer internet gaming would have to clearly display the internet gaming operator or its affiliate. The internet gaming operator also could elect to have the brand of each internet gaming platform that it used be the name and logos or no more than one internet gaming supplier if the internet gaming platform also clearly displayed the internet gaming operator's own trademarks and logos of those of an affiliate.

"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 MGCB or in approved variations or composites as authorized by the MGCB. "Internet wagering" would mean risking money or something of monetary value on an internet game.

MGCB Authority

The MGCB 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 MGCB 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 MGCB could enter into agreements with other jurisdictions, including Indian tribes, to facilitate, administer, and regulate multijurisdictional internet gaming by internet gaming operators 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.

Internet Gaming Operator License

The MGCB could issue an internet gaming operator license only to an applicant that was either of the following:

- A person who 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 an internet gaming operator license to an applicant described above after receiving the application described below and the application fee, if it determined that the internet gaming proposed by the applicant complied with the proposed Act and the applicant was otherwise eligible and suitable. An applicant would be eligible if it met the requirements set forth above. It would be the applicant's burden 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, the MGCB would have to establish and apply the standards to each applicant in a consistent and uniform manner. In determining whether to grant an internet gaming 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 information:

- Whether the applicant had adequate capitalization and the financial ability and the means to develop, construct, operate, and maintain the proposed internet gaming platform and to offer and conduct internet gaming 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 off 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 Michigan 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, charge 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.

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

A person who held a casino license under the Michigan Gaming Control and Revenue Act and 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 MGCB for an internet gaming operator license to offer internet gaming as provided in the proposed Act. The application would have to be made on forms provided by the MGCB and include the information required by it. However, for an Indian tribe, the forms could require only the following:

- 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 operates any of its casinos.
- Detailed information about the primary management officials of the applicant's casinos who would have management responsibility for the applicant's internet gaming 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.
- The total number of gaming positions, including electronic gaming devices and table games, at each of the applicant's casinos.

An initial application for an internet gaming operator license would have to be accompanied by an application fee of \$50,000. 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 MGCB 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 it in the course of its review or investigation of an application for an internet gaming operator license or a renewal of a license confidential and could use that material only to evaluate an applicant for a license or renewal. These materials would not be subject to 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 25% of the equity of an applicant would be exempt from the Act's licensure requirements.

An internet gaming operator would have to pay a license fee of \$100,000 to the MGCB at the time the initial internet gaming license was issued and \$50,000 each year after that. The MGCB would have to deposit all application and license fees paid under these provisions into the Internet Gaming Fund (described below).

Tribal Internet Gaming

The MGCB would have to condition the issuance, maintenance, and renewal of an internet gaming license to 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 on the tribe's compliance with all of the following conditions:

- The person complied with the proposed Act and the rules promulgated by the MGCB, and minimum internal controls pertaining to the types of and rules for playing internet games that internet gaming operators could offer under the Act; technical standards, procedures, and requirements for the acceptance, by the person, of internet wagers initiated or otherwise made by individuals located in Michigan who were not physically present on the tribe's Indian lands in Michigan at the time the internet wager was initiated or otherwise made; procedures and requirements for the acceptance of internet wagers initiated or otherwise made by individuals located in other jurisdictions, if the MGCB authorized multijurisdictional gaming as provided in the Act; and additional requirements provided in the Act.
- The person adopted and maintained technical standards for internet gaming platforms, systems, and software that were consistent with the standards adopted by the MGCB under the Act.
- The person maintained one or more mechanisms on the internet gaming platform 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 Michigan or, if the MGCB authorized multijurisdictional internet gaming, another jurisdiction in the United States authorized by the multijurisdictional agreement.
- The person adopted and maintained responsible gaming measures consistent with those described in the Act.
- The person 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 as of the effective date of the Act.
- The person agreed to provide and timely provided, on written request of the MGCB, books and records directly related to its internet gaming operations for the purpose of permitting the MGCB to verify the calculation of payments under the Act.
- The person provided a waiver of sovereign immunity to the MGCB for the sole and limited purpose of consenting to the jurisdiction of the MGCB to the extent necessary and for the limited purpose of providing a mechanism for the MGCB to perform certain activities listed in the Act, and 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 person's obligation to make payments required under the Act, and collection of any judgment.

In addition, the person, on a monthly basis and with the payments due on the 10th day of the following month, would have to make payments, to be allocated as described below, based on a percentage of the adjusted gross receipts received by the person from all internet gaming it conducted under the proposed Act as an internet gaming operator. (For the first three years

of internet gaming operations, see [Table 1](#); for the fourth year of internet gaming operations, see [Table 2](#); for each year after the first four years of internet gaming operations, see [Table 3](#).)

Table 1

Adjusted Gross Receipts	Percentage of Payment
Under \$4.0 million	4%
At least \$4.0 million but <\$8.0 million	6%
At least \$8.0 million but <\$10.0 million	8%
At least \$10.0 million but <\$12.0 million	10%
\$12.0 million or greater	19%

Table 2

Adjusted Gross Receipts	Percentage of Payment
Under \$4.0 million	6%
At least \$4.0 million but <\$8.0 million	8%
At least \$8.0 million but <\$10.0 million	10%
At least \$10.0 million but <\$12.0 million	12%
\$12.0 million or greater	21%

Table 3

Adjusted Gross Receipts	Percentage of Payment
Under \$4.0 million	8%
At least \$4.0 million but <\$8.0 million	10%
At least \$8.0 million but <\$10.0 million	12%
At least \$10.0 million but <\$12.0 million	14%
\$12.0 million or greater	23%

The State, acting through the Governor, would have to, at the request of any Indian tribe, negotiate and could conclude and execute any amendments to an Indian tribe's compact necessary to effectuate internet gaming by the Indian tribe under the proposed Act and to ensure internet gaming conducted by the tribe was in compliance with the proposed Act and any applicable Federal laws. If the Governor failed to enter into negotiations with the Indian tribe, or failed to negotiate in good faith with respect to the 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 certain remedies authorized under Federal Law.

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 Act. Notwithstanding anything in the Act to the contrary, the Act would only regulate internet gaming as provided and would not extend to the MGCB, or any other Michigan agency, any jurisdiction or regulatory authority over any aspect of any gaming operations of an Indian tribe as described in the Act beyond those rights granted to the State under the compact with the Indian tribe.

Internet Gaming Suppliers

The MGCB could issue an internet gaming supplier license to an internet gaming supplier. A person that was not licensed as an internet gaming supplier could not provide goods, software, or services as an internet gaming supplier to an internet gaming operator.

On application by an interested person, the MGCB could issue a provisional internet gaming supplier license. A provisional license would allow the applicant to conduct business with an

internet gaming operator for an internet gaming license before the internet gaming supplier license was issued. A provisional license would expire on the date provided in the license by the MGCB.

An internet gaming 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 internet gaming supplier continued to meet the eligibility standards of the proposed Act.

A person could apply to the MGCB for an internet gaming supplier license as provided in the Act and the rules promulgated under it.

An application would have to be made on forms provided by the MGCB and include the information required by the MGCB. The MGCB could not require an Indian tribe to submit an application under these provisions that included more information than described previously for a tribe to receive an internet gaming operator license.

An application 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 it in the course of its review or investigation of an application for an internet gaming supplier license or renewal of an internet gaming supplier license 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 supplier would have to pay a license fee of \$5,000 to the MGCB at the time an initial internet gaming supplier license was issued to the 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 these provisions into the Internet Gaming 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 under the Act.

"Internet gaming supplier" 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 offered 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 supplier would not include a person that provided to an internet gaming operator 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.

Adjusted Gross Receipts Tax

Except for an internet gaming operator that was an Indian tribe, an internet gaming operator would be subject to a graduated tax on the adjusted gross receipts received by the internet gaming operator from all internet gaming it conducted under the proposed Act as described above (see [Table 1](#), [Table 2](#), and [Table 3](#)). An internet gaming operator would have to pay the tax or payment 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 an internet gaming operator by the State or a political subdivision of the State for internet gaming conducted under the Act. This would not impair the contractual rights under an existing development agreement between a city and an internet gaming operator that held a casino license under the Michigan Gaming Control and Revenue Act.

In addition to payment of the tax and other fees as provided, 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 would have to charge a 1.25% fee on the adjusted gross receipts of an internet gaming operator that held a casino license under the Act, whose casino was in that city.

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

- 30% to the city in which the internet gaming operator licensee's casino was located, for use in connection with the hiring, training, and deployment 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 designed to contribute to the improvement of the quality of life in that city; relief to the taxpayers of the city from one or more taxes or fees imposed by the city; the costs of capital improvements in that city; and road repairs and improvements in that city.
- 65% to the State to be deposited into the Internet Gaming Fund.
- 5% to the Michigan Agriculture Equine Industry Development Fund, unless the amount to be allocated exceeded \$3.0 million in a fiscal year, in which case the excess amount would have to be allocated and deposited into the Internet Gaming Fund.

(Money received by the Racing Commissioner and State Treasurer under the Horse Racing Law must be paid to the State Treasury and placed into the Michigan Agriculture Equine Industry Development Fund. The Fund is administered by the Director of the Department of Agriculture and Rural Development with the assistance and advice of the Racing Commissioner, and money appropriated by the Legislature for the Fund must be spent by the Director of the Department to provide funding for certain agriculture and equine industry development programs.)

By December 31, 2020, and each December 31 after that date, if the combined amount of money received in the preceding fiscal year by the city in which the internet gaming operator's casino was located from money allocated from the 30% as described above and from the wagering tax allocated under the Michigan Gaming Control and Revenue Act, and all payments received under existing development agreements with internet gaming operators, were less than \$183.0 million, the Michigan Gaming Control Board would have to distribute from the Internet Gaming Fund to the city in which the internet gaming operator's casino was located an amount equal to the difference between \$183.0 million and the combined amount of money the city in which the internet gaming operator's casino was located received in the preceding fiscal year from money allocated from the 30% as described above and from the wagering tax allocated under the Michigan Gaming Control and Revenue Act and all payments received by the city under existing development agreements with internet gaming operators. However, the total amount the city in which the internet gaming operator's casino was located received for the preceding fiscal year under the 30% described above and these provisions could not be more than 55% of the total tax imposed under the proposed Act.

By December 31, 2020, and each December 31 after that date, if the contributions from the Bureau of Lottery's iLottery program to the School Aid Fund were less than \$70.0 million, the MGCB would have to distribute from the Internet Gaming Fund to the School Aid Fund an amount equal to the difference between \$70.0 million and the amount received from the Bureau of Lottery's iLottery program. This distribution would occur after any distributions had to be made under the previous provisions pertaining to the \$183.0 million minimum described above.

Any payments made by an Indian tribe would have to be allocated as follows:

- 30% to the governing body of the jurisdiction where the internet gaming operator licensee's casino was located for its use in connection with the provision of governmental services.
- 52.5% to the State to be deposited into the Internet Gaming Fund.
- 17.5% percent to the Michigan Strategic Fund.

"Adjusted gross receipts" would mean the total value of all internet wagers received by an internet gaming operator under the proposed Act less winnings and voided wagers.

"Winnings" would include all of the following:

- The total monetary value of prizes received by authorized participants.
- Stakes returned to authorized participants.
- Other amounts credited to authorized participants' internet wagering accounts, and redeemed by authorized participants, including the monetary value of loyalty points, freeplay, and other similar complimentaries and redeemable internet gaming credits, and other things of value provided to authorized participants as an incentive to place or as result of their having place internet wagers.

Additional MGCB Responsibilities

The MGCB would have jurisdiction over and would have to supervise all internet gaming 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 of internet gaming operators and internet gaming suppliers.
- Decide promptly and in reasonable order all license applications and approve, deny, suspend, revoke, restrict, or refuse to renew internet gaming and internet gaming supplier licenses.
- 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 by the Act and the rules, and the deposit of the fees, taxes, and payments into the Internet Gaming Fund.
- Investigate, issue cease and desist orders, and obtain injunctive relief against a person that was not licensed by the MGCB 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 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 internet gaming operators and internet gaming suppliers 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 operator or internet gaming supplier.
- Acquire by lease or by purchase personal property, including computer hardware; mechanical, electronic, and online equipment terminals; and intangible property, including computer programs, software, and systems.

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

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 proposed Act confidential and would have to use that material only for investigative purposes. The material would be exempt from disclosure under FOIA.

Administrative Rules

The MGCB would have to promulgate rules governing the licensing, administration, and conduct of internet gaming under the Act within one year after its effective date. 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, blackjack, cards, slots, and other games typically offered at a casino, but would not include pick numbers games offered by the Bureau of Lottery under the Lottery Act.
- The qualifications, standards, and procedures for approval and licensure by the MGCB of internet gaming operators and internet gaming suppliers consistent with the proposed 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 integral to offering internet gaming.
- Procedures for conducting contested case hearings under the Act.
- Procedures and requirements for the acceptance, by an internet gaming operator licensed by the MGCB, of internet wagers initiated or otherwise made by people located in other jurisdictions, if the MGCB authorized multijurisdictional gaming.
- Requirements for multijurisdictional agreements entered into by the MGCB with other jurisdictions, including qualifications, standards, and procedures for approval by the MGCB of internet gaming suppliers providing internet gaming platforms in connection with the agreements.

Gaming Participant Verification

An internet gaming operator would have to require the internet gaming supplier providing its internet gaming platform to provide one or more mechanisms on the internet gaming platform that the internet gaming operator 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, if the MGCB authorized multijurisdictional internet gaming as provided

in the Act, another jurisdiction in the United States authorized by the multijurisdictional agreement.

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 wagering account or make an internet wager on an internet game offered by an internet gaming operator.

An internet gaming operator would have to include, or have to require the internet gaming supplier providing its internet gaming platform to include, mechanism on its internet gaming platform that were designed to detect and prevent the unauthorized use of internet wagering accounts and to detect and prevent fraud, money laundering, and collusion.

An internet gaming operator, or an internet gaming supplier providing its internet gaming platform, could not knowingly authorize either of the following individuals to establish an internet wagering account or knowingly allow them to wager on internet games offered by the operator, unless required and authorized by the MGCB 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 MGCB's responsible gaming database.

An internet gaming operator would have to display, or would have to require the internet gaming supplier providing its internet gaming platform to display, on the internet gaming platform used by the operator, in a clear, conspicuous, and accessible manner, evidence of the internet gaming operator's internet gaming license issued under the Act.

Responsible Gaming Database & Responsible Gaming

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

An internet gaming operator would have to require the internet gaming supplier providing its internet gaming platform to display, on the internet gaming platform used by the 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 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 operator. The MGCB 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 Treasurer 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.

The MGCB would be the administrator of the Fund for auditing purposes, and it could spend money from the Fund, on appropriation, for both of the following:

- Each year, \$1.0 million to the Compulsive Gaming Prevention Fund.
- The MGCB's costs of regulating and enforcing internet gaming under the proposed Act.
- All money remaining after expenditures under the above two spending requirements, to be deposited into the School Aid Fund.

(The Compulsive Gaming Prevention Fund receives money from several sources, including a percentage of the net revenue in the State Lottery Fund and a percentage of the Michigan Agriculture Equine Industry Development Fund. Of the money available in the Compulsive Gaming Prevention Fund, up to \$1.04 million may be distributed annually to the Domestic Violence and Treatment Board. The remaining money must be distributed as determined by the Director of Community Health to be used exclusively for the treatment, prevention, education, training, research, and evaluation of pathological gamblers and their families and to fund the toll-free compulsive gaming helpline.)

Prohibitions & Penalties

A person could not do any of the following:

- Offer internet gaming for play in the State if the person were not an internet gaming operator unless exempt from the Act (a violation of this provision would be a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$100,000, or both).
- 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 MGCB could not issue a license under the Act to a person that violated these provisions. The Attorney General or a county prosecuting attorney could bring an action to prosecute the violation described above regarding the offering of internet gaming as an unlicensed person in the county in which the violation occurred or in Ingham County.

New Casino Authorization

The proposed Act specifies that it would not authorize the construction or operation of a casino that was not constructed or operating before its effective date.

Legislative Findings

The bill states the following:

The Legislature finds and declares all of the following:

- a) Operating, constructing, and offering for play internet games over the internet involves gaming activity that already occurs throughout the state illegally.
- b) 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 rules promulgated under this act.
- c) This act is consistent and complies with the state constitution of 1963 by ensuring that the internet may be used to place wagers only on games of skill or chance that may be lawfully played in this state and that internet gaming is only conducted by persons who are lawfully operating casinos in this state.
- d) In order to protect residents of this state who wager on games of chance or skill through the internet and to capture revenues 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.

MCL 777.14d (H.B. 4312)
Proposed MCL 750.310d (H.B. 4323)

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

House Bill 4311 (H-5)

The bill would have an indeterminate fiscal impact on a variety of State funds and local units, including:

- The School Aid Fund (SAF).
- The City of Detroit.
- The Michigan Agriculture Equine Industry Development Fund.
- The Michigan Strategic Fund and Michigan Economic Development Corporation (MSF/MEDC).
- Local units that receive tribal gaming revenue sharing payments.
- The Compulsive Gaming Prevention Fund.
- The Michigan Gaming Control Board (MGCB).

Estimating the fiscal impact is difficult because of the current number of gaming activity options in the State. Michigan provides more gaming activity options than any other state that has adopted internet casino gaming, and few states have adopted internet casino gaming. Factors that contribute to the indeterminate fiscal impact include the unknown volume of internet casino gaming, the extent to which current gaming activities could be reduced, and the impact on current Tribal payments to the MSF/MEDC. As a result, this analysis presents hypothetical projections of potential outcomes under the bill and what circumstances would be necessary to hold harmless current revenues for any displacement of existing gaming activity.

Under the bill, the tax rate would be based on the adjusted gross receipts. Initially the tax rates would be lower, ranging from 4% to 19%, but after four years would range from 8% for adjusted gross receipts less than \$4.0 million to 23% for adjusted gross receipts greater than \$12.0 million. The bill would distribute tax revenue based on whether the casinos hosting the online platforms were located in the City of Detroit or on Tribal lands. [Tables 4 and 5](#) illustrate the amount of revenue generated estimated for a 5% and 10% increase from current casino gaming revenue after four years. The Tribal gaming revenue figures are based on current payments made by the tribes to the MSF/MEDC. However, it is important to note that each tribe is an independent entity and when and if any given tribe would engage in internet gaming activity is unknown.

Table 4
Tax Revenue Distribution of Internet Gaming
(in millions)

	<u>5% Increase</u>		<u>10% Increase</u>	
	Detroit	Tribal	Detroit	Tribal
Adjusted Gross Receipts	\$72.2	\$48.0	\$144.4	\$96.0
Total Tax Revenue	\$12.0	8.9	\$28.7	\$20.2
Distribution:	---	---	---	---
Local Revenue Sharing - Tribal	---	\$2.7	---	\$6.1
Michigan Strategic Fund	---	\$1.6	---	\$3.5
City of Detroit	\$3.6	---	\$8.6	---
Michigan Equine Fund	\$0.6	---	\$1.4	---
Internet Gaming Fund	\$7.8	\$4.7	\$18.6	\$10.6

Table 5
Internet Gaming Fund Revenue Distribution
(in millions)

	<u>5% Increase</u>	<u>10% Increase</u>
Total Internet Gaming Fund	\$12.5	\$29.2
Compulsive Gaming Prevention	\$1.0	\$1.0
School Aid Fund	\$11.5	\$28.2

As mentioned above, the degree to which internet gaming would substitute away from current brick-and-mortar casinos and the iLottery games is unknown. [Table 6](#) provides information on the potential loss to revenue from current gaming activity for 1%, 5%, and 10% of current gaming activity for brick-and-mortar casinos and iLottery. The reduction in revenue would affect the School Aid Fund, City of Detroit, MSF, and local units that receive revenue sharing payments from Tribal gaming. These reductions would offset any increases shown in [Tables 4 and 5](#).

Table 6

Reduction to Current Gaming Activity					
Reduction	iLottery (SAF)	Casino (SAF)	City of Detroit	MSF	Local Units
1%	(\$900,000)	(\$600,000)	(\$1,800,000)	(\$500,000)	(\$300,000)
5%	(\$4,700,000)	(\$3,200,000)	(\$9,100,000)	(\$2,700,000)	(\$1,500,000)
10%	(\$9,400,000)	(\$6,400,000)	(\$18,300,000)	(\$5,300,000)	(\$3,000,000)

Under these assumptions, the bill would increase SAF revenue from the Detroit casinos—despite any substitution effects on brick-and-mortar casinos because of the differences in the tax structure. Currently, roughly 39% of the 21% tax on current brick-and-mortar gaming activity goes to the SAF, which is 8.1% of adjust gross receipts. Under the proposed bill, the SAF would receive roughly 65% (after the \$1.0 million deposit into the Compulsive Gaming Prevention Fund and administrative costs) of the 23% tax, which is roughly 15% of adjusted gross receipts. As a result, gaming activity that moved from brick-and-mortar casinos to online gaming would be a net positive to the SAF. Additionally, because the tax rate for internet casino gaming would be higher than the current tax rate on brick-and-mortar casino gaming, there would be less incentive for casinos located in Detroit to move brick-and-mortar casino gaming towards internet casino gaming.

In contrast, substitution would result in a net reduction of iLottery revenue to the SAF, because currently roughly 69% of adjust gross receipts for lottery games goes to the SAF after operating expenses. As a result, internet casino gaming would need to generate over four times as much new gaming activity to hold the SAF harmless from any substitute reduction to iLottery games. However, iLottery only represents 18% of Lottery gaming activity in the State, which limits the overall potential decrease to the Michigan Lottery. The bill includes language to increase the distribution from the Internet Gaming Fund to the SAF if SAF deposited from iLottery games dropped below \$70.0 million. However, the Internet Gaming Fund deposits \$1.0 million in the Compulsive Gaming Prevention Fund and administration in the MCGB, the rest is already deposited into the SAF. This means that if revenue from iLottery games decreased significantly (more than \$1.0 million), there would not be insufficient funds to support those losses to the SAF under the current distribution model or would reduce the revenue directed to the SAF under other provisions of the bill.

The City of Detroit would be held harmless, but the relative tax rates and tax distribution formulas would require increases in internet casino gaming revenue in the City of Detroit casinos to be twice as large as any decreases from brick-and-mortar gaming activity. The City receives roughly 61% of the 21% tax on current brick-and-mortar gaming activity, which is roughly 12.9% of total adjust gross receipts. Under the bill, the city would receive 30% of the 23% tax rate, which is roughly 6.9% of total adjusted gross receipts. As a result, casinos would need to generate half of internet casino gaming revenue from new customers to keep the City of Detroit harmless. The bill does include a provision that would maintain current payments to the City of Detroit at \$183.0 million. If payments made to the City of Detroit were less than \$183.0 million, the City would receive an increased portion of the tax revenue generated up to 55% of the total. At the very extreme, this provision would maintain a one-to-one ratio of gaming activity moving from brick-and-mortar to internet casino gaming. However, whenever the hold harmless provision was activated, the SAF would receive a smaller proportion of the tax revenue—meaning that the City would be held harmless at the expense of the SAF. In 2018, the City of Detroit received \$182.9 million from the three casinos

located in the City of Detroit. The bill also is not clear which distributions from the tax revenue would be reduced first to support the City of Detroit.

Tribal casinos represent the greatest unknown factor when estimating the bill's impact. Tribal casinos make payments directly to the MSF/MEDC. Only six out of the 12 tribes make payments to the MSF/MEDC, ranging from 2% and 8% of relevant gaming activity. In FY 2017-18 the MSF/MEDC received \$53.4 million from the six tribes. If all tribes adopted internet casino gaming, the payments would increase to the MSF/MEDC, local units, and the SAF. However, there would be a net increase to the MSF/MEDC on internet casino gaming that substituted gaming activity from brick-and-mortar casino gaming if the tribe currently contributes 4% or less, or in case of tribes that currently make no payments to the MSF/MEDC. The bill proposes 17.5% of the tax revenue be paid to the MSF/MEDC. If a tribe's adjusted gross receipts were greater than \$12.0 million, the payments would equal a 4% tax on adjusted gross revenue, and shifts from brick-and-mortar casino gaming to internet casino gaming would be neutral. The payments from these tribes would be more reliable as the bill would require tribes to give up their sovereignty over gaming exclusivity, which was the basis for tribes withholding payments to the MSF/MEDC in the past. However, the bill could result in additional tribes withholding payments to the MSF/MEDC because of exclusivity clauses in the compacts. Individuals could conduct online casino gaming from any casino directly on tribal lands, which hypothetically would violate exclusivity. If tribes withheld payments, the bill would have a significant negative impact on revenue to the MSF/MEDC, especially given that tribal payments make up nearly all of the MSF/MEDC corporate revenue. The corporate revenue pays for employees who supplement administration of various State economic development programs and provide additional economic development programs operated exclusively by the MEDC.

Any tribal internet gaming options would increase revenue sharing payments by tribes to local units of government. Even if a tribe generated less than \$4.0 million in adjusted gross receipts from online casino gaming, the revenue would be taxed at 8% after the fourth year, of which, 30% would be distributed to the local unit of government. This represents 2.4% of adjusted gross receipts, which is greater than the current 2.0% payment. As a result, any substitution from brick-and-mortar gaming activity to internet casino gaming would be a net positive to local units.

The bill would increase revenue to the Compulsive Gaming Prevention Fund by an additional \$1.0 million annually from the Internet Gaming Fund. This payment would be made before administration and the SAF deposit, which means that even if the hold harmless provision disrupted the distribution of tax revenue, the deposit would be made first.

The bill would increase annual revenue to the Michigan Agriculture Equine Industry Development Fund. Under the 5% and 10% hypothetical increases, the Fund would receive between \$600,000 to \$1,400,000 annually.

The bill would create a new unit within the MGCB, which would increase administrative costs to the MGCB. The estimated costs are currently unknown, but would include oversight, investigations, administration, and monitoring on internet casino gaming. The application and licensing fees would support these administrative costs. If the costs were greater than the revenue generated by the fees, the bill would allow the department to use the tax revenue that is deposited into the Internet Gaming Fund after the \$1.0 million distribution to the Compulsive Gaming Prevention Fund. However, this would limit the amount deposited into the SAF. Because the new unit includes oversight of internet casino gaming, the information

technology costs are likely to be greater when compared to other units within the MGCB. The revenue collected from the fees should be sufficient to cover the administrative expenses.

House Bill 4312

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.

House Bill 4323

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

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Cory Savino

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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.