



Senate Fiscal Agency  
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## BILL ANALYSIS



Telephone: (517) 373-5383  
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Senate Bill 889 (Substitute S-1 as reported)  
Senate Bill 890 (as reported without amendment)  
Sponsor: Senator Mike Kowall  
Committee: Regulatory Reform

Date Completed: 8-5-16

### **RATIONALE**

In 2011, the U.S. Department of Justice determined that a ban on interstate gambling over "wire communications" in the Wire Act of 1961 applied only to sports betting. This allowed states to regulate online gaming (or gambling) within their boundaries. Three states, Nevada, New Jersey, and Delaware, have started to do so. Consumers in Michigan, however, do not have a regulated and protected online gaming website to use; this has raised concerns that they are at risk of being cheated or taken advantage of when playing on unregulated sites. Moreover, there are further concerns that unregulated gaming websites may lead to underage gambling, the promotion of gambling addiction, and money laundering schemes. In order to provide a safe environment for Michigan consumers to participate in online gaming, as well as capture revenue for the State, it has been suggested that the State should regulate online gaming and tax online gaming vendors licensed by the State.

### **CONTENT**

**Senate Bill 889 (S-1) would create the "Lawful Internet Gaming Act" to do the following:**

- **Allow internet wagering to the extent that it was carried out in accordance with the proposed Act.**
- **Create the Division of Internet Gaming in the Michigan Gaming Control Board, with specified powers to execute the Act.**
- **Allow the Division to issue applicants an internet gaming license if they met certain criteria, and establish the process for an applicant to acquire an internet gaming license.**
- **Prescribe a \$100,000 application fee and a \$5.0 million license fee for an internet gaming license issued to a casino licensee, and provide that a license fee would be an advance payment of internet wagering taxes.**
- **Allow an internet gaming license to be issued only to a casino licensee or, under certain conditions, to a Michigan Indian tribe that operates a gaming facility.**
- **Limit the total number of internet gaming licenses that could be issued to casino licensees to three.**
- **Allow internet gaming licensees to offer wagering on internet games.**
- **Allow the Division to certify internet gaming vendors to provide goods, software, or services to internet gaming licensees; establish the process for an applicant to become certified as a vendor; and require an application fee of up to \$100,000.**
- **Provide that a license or certification would be valid for five years and could be renewed for additional three-year and then five-year periods.**
- **Prescribe misdemeanor penalties for violations associated with the application process for an internet gaming license or internet gaming vendor certification.**
- **Impose a tax of 10% on the gross gaming revenue received from internet games by an internet gaming licensee that was not a Michigan Indian tribe gaming facility.**

- **Require an internet gaming licensee to have adequate gaming participant verification measures, including mechanisms to detect and prevent fraud, money laundering, and collusion.**
- **Require the Division to develop responsible gaming measures, including a statewide responsible gaming database identifying individuals who were prohibited from establishing an internet wagering account or participating in internet gaming.**
- **Allow a wager to be accepted from an individual not physically present in the State if certain conditions were met.**
- **Create the "Internet Gaming Fund" and require fees and taxes to be deposited into it.**
- **Require \$5.0 million from the Fund to be given annually to the First Responder Presumed Coverage Fund, and the balance to be spent on the Board's costs of regulating internet gaming and, on appropriation, for purposes specified by the Legislature.**

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

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

A more detailed description of Senate Bill 889 (S-1) follows.

#### Internet Wagering Authorization

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

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

#### Division of Internet Gaming

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

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

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

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

was located or that the wagering was conducted under a multijurisdictional agreement to which Michigan was a party that was not inconsistent with Federal law.

### Internet Gaming License

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

The Division could issue an internet gaming license only to a person that was a casino licensee under the Michigan Gaming Control and Revenue Act; or a federally recognized Michigan Indian tribe that met certain criteria (detailed below). The Division could not issue an internet gaming license to a casino licensee if the issuance would allow more than three internet gaming licensees to conduct internet gaming under the Act.

A qualified applicant could apply to the Division for an internet gaming license to offer wagering on internet games as provided in the Act. The application would have to be made on forms provided by the Division and contain the information 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. An application for an internet gaming license issued to a casino licensee would require a \$100,000 nonrefundable application fee. However, rules under the Act could include provisions for the refund of an application fee that the Division had not spent in processing the application, and the circumstances under which the fee would be refunded.

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

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

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

An internet gaming licensee that was a casino licensee would have to pay a license fee of \$5.0 million to the Division at the time the license was issued. The Division would have to deposit all application and license fees paid into the Internet Gaming Fund. A license fee would be an advance payment of internet wagering taxes owed by the internet gaming licensee. If a court issued a final judgment or order finding the Act or any portion of the Act to be invalid, the Division would have to refund to the licensees the license fees that were paid.

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

- Knowingly made materially false statements to obtain an internet gaming license.
- Knowingly advertised in Michigan any game, product, or feature that was not authorized by the person's license.

-- Violated any other provision of the proposed Act or any rules promulgated under it.

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

"Internet game" would mean a game of skill or chance offered by an internet gaming licensee, as authorized by the Division. "Internet game" would include gaming tournaments conducted via the internet in which players compete against one another in one or more of the games authorized by the Division or in approved variations or composites as authorized by the Division.

#### Michigan Indian Tribe

The Division could issue an internet gaming license to a federally recognized Michigan Indian tribe that operates a gaming facility under a facility license issued in accordance with a tribal gaming ordinance approved by the Chair of the National Indian Gaming Commission.

The Division could not issue an internet gaming license unless the Indian tribe had entered into a compact with the State under the Indian Gaming Regulatory Act that had been approved by the Legislature and that included provisions relating to all of the following:

- The amount and manner of concessions to be paid to the State by the Indian tribe in consideration for an internet gaming license.
- The waiver of sovereign immunity by the Indian tribe with respect to conducting gaming under the proposed Act and paying the concessions referred to above.

The Division could not issue an internet gaming license unless the Indian tribe, in connection with its application to conduct gaming under the Act, waived its sovereign immunity in accordance with the provisions of the compact. The Act would not limit the additional terms that the State and an Indian tribe could negotiate and include in a compact under the Indian Gaming Regulatory Act.

#### Certification of Internet Gaming Vendors

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

A person could apply to the Division to become an internet gaming vendor. An application would have to be made on forms provided by the Division and contain any information 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. An application would require a nonrefundable application fee in an amount determined by the Division, not to exceed \$100,000.

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

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

- Knowingly made materially false statements to obtain certification as an internet gaming vendor.

-- Violated any other provision of the proposed Act or any rules promulgated under it.

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

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

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

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

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

#### Gross Gaming Revenue Tax

A tax of 10% would be imposed on the gross gaming revenue received by an internet gaming licensee that was not a Michigan Indian tribe gaming facility from internet games authorized under the proposed Act. The internet gaming licensee would have to pay the tax on a monthly basis. Payment would be due on the 10<sup>th</sup> day of the following month.

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

"Winnings" would include all of the following:

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

#### Additional Division Responsibilities

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

- Develop qualifications, standards, and procedures for approval and licensure of internet gaming licensees and certification of internet gaming vendors.
- Decide promptly and in reasonable order all license applications and approve, deny, suspend, revoke, restrict, or refuse to renew internet gaming licenses and internet gaming vendor certifications.
- Provide for the establishment and collection of all license and certification fees and taxes imposed by the Act and the rules promulgated under it and the deposit of the fees and taxes into the Internet Gaming Fund.

- Develop and enforce testing, audit, and certification requirements and schedules for internet gaming platforms, internet wagering, and internet wagering accounts.
- Develop and enforce requirements for responsible gaming and player protection, including privacy and confidentiality standards and duties.
- Develop and enforce requirements for accepting internet wagers, internet wagering accounts, and authorized participants and minimum insurance requirements.
- Develop and promote standards governing contracts between internet gaming licensees and the payments industry.
- Develop and enforce standards and requirements regarding antifraud, anti-money-laundering, and anticollusion methods.
- Develop protocols related to the security of and disputes arising over internet wagers and internet wagering accounts.
- Adopt by rule a code of conduct governing Division employees that ensured, to the maximum extent possible, that people subject to the Act avoided situations, relationships, or associations that could represent or lead to an actual or perceived conflict of interest.
- Develop and administer civil penalties for internet gaming licensees and internet gaming vendors that violated the Act or the rules promulgated under it.
- Acquire or lease real property and make improvements to the property and acquire by lease or by purchase personal property.

In addition, on reasonable notice, the Division could audit and inspect books and records relevant to internet gaming operations, internet wagers, internet wagering accounts, internet games, or internet gaming platforms, including the books and records regarding financing or accounting, marketing or operational materials, or any other similar materials held by or in the custody of an internet gaming licensee or internet gaming vendor. The Division could assert its authority by an administrative subpoena, which could also contain a request for relevant documents or interrogatories, and would be enforceable in the circuit court.

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

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

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

- The types of internet games to be offered, including poker.
- Forms of payment accepted for internet games.
- Responsible gaming.
- Technical and financial standards for internet wagering, internet wagering accounts, and internet gaming platforms, systems, and software or other electronic components for internet gaming.

- Anything else necessary or desirable for the efficient and economical operation and administration of internet gaming and for the convenience of authorized participants, internet gaming licensees, and internet gaming vendors.

#### Gambling Participant Verification

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

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

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

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

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

#### Responsible Gaming Database & Responsible Gambling

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

- The individual had been convicted in any jurisdiction of a felony, a crime of moral turpitude, or a crime involving gaming.
- The individual had violated the proposed Act or another gaming-related act.
- The individual had performed an act or had a notorious or unsavory reputation such that his or her participation in internet gaming under the Act would adversely affect public confidence and trust in gaming.
- The individual's name was on a valid and current exclusion list from another jurisdiction in the United States or a foreign jurisdiction.

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

specified by the Division, would have to provide the Division with names of individuals to be included in the database.

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

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

#### Internet Gaming Fund

The Internet Gaming Fund would be created in the State Treasury. The State Treasury could receive money or other assets required to be paid into the Fund under the 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 Internet Gaming Fund for auditing purposes. The Board would have to spend money from the Fund, on appropriation, for all of the following:

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

#### Act Validity

If a court were to enter a final judgment or order finding any portion of the Act to be invalid, the entire Act would be inoperable and of no effect.

#### 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."

MCL 750.310c (S.B. 890)

## **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.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Michigan residents who have access to the internet already are able to make wagers on the many internet gaming sites available to the public. (One 2010 survey found 2,679 internet gambling sites owned by 665 companies.<sup>1</sup>) Because of the lack of internet gaming regulation in the United States, however, consumers typically must use sites that are based in different countries, which often have little regulation. Consumers might make wagers on sites where games could be fixed or players could collude against them, or on sites that could close or not pay out winnings. In one such circumstance, Lock Poker, an online gaming website, was abruptly closed and had an estimated \$10.0 million to \$15.0 million in unprocessed customer withdraws that had been outstanding.<sup>2</sup> Furthermore, the lack of consumer protections and the prevalence of internet access provide minors easy access to gaming opportunities.

The bills would remedy these problems by providing strong consumers protections through State regulation, allowing for safe and fun online gaming. The technology is available to ensure that any gaming would be controlled and restricted to only those consumers who would be allowed to gamble. Three other states, New Jersey, Nevada, and Delaware, have proven that online gaming can be successfully regulated at the state level.

### **Supporting Argument**

The bills would give the State an additional source of revenue without having to raise taxes. According to H2 Gambling Capital, a firm that provides gambling sector data, the global revenue for online gambling was nearly \$30.0 billion in 2010. Combined revenue reports consolidated by another company, Problem Gambling Solutions, Inc., determined that Michigan ranked seventh out of the 50 states and Washington, D.C., in collective lottery sales, commercial casino gaming revenue, and Indian gaming revenue, with \$5.3 billion total, displaying that Michigan has a large

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<sup>1</sup> Survey cited by David O. Stewart, Ropes & Gray, LLP, *Online Gambling Five Years after UIGEA*, 2011.

<sup>2</sup> Estimated number provided by *US Poker* and cited on *PokerNews*.

gambling market. The State should capitalize on the opportunity to regulate online gaming as quickly as possible to capture some of this revenue. The other states that are regulating online gaming have seen the benefit and Michigan could, too.

**Response:** It is unknown how much revenue the State would actually capture if the bills were enacted, as projections are difficult to make. According to a *USA Today* article in 2014, the three states that started regulating online gaming received either "underwhelming" or modest revenue when they launched.<sup>3</sup> The same article reported that Morgan Stanley decreased its market projection for the U.S. online gaming industry by 30%, from \$5.0 billion to \$3.5 billion, by 2017 following a review of the first few months of online gaming operations in Delaware, Nevada, and New Jersey. Moreover, revenue to the State could decline under the bills if overall gaming activity remained at the same level, since online gambling would be subject to lower taxation compared to other forms of gaming.

### **Supporting Argument**

The bills could create up to 22,000 new jobs and provide economic growth for the State. The online gaming industry would require new employees to market the activity and provide technical and customer services to consumers, among other things.

### **Supporting Argument**

Regulating online gaming in Michigan would make this State a tourist destination for online poker tournaments or other online gaming events. Participants would fill Michigan hotels and eat at local restaurants, increasing economic activity across the State. However, other states, including nearby states such as Pennsylvania, also are considering regulating online gaming. The sooner Michigan begins to regulate online gaming, the sooner it may see benefits. If the State delays, other states may capitalize on the mostly empty market and seize the advantage.

### **Supporting Argument**

The technology and ability to successfully regulate online gaming and make it a safe, enjoyable, and secure experience are available. States can prevent minors from participating by requiring any consumer who opens a new account to prove that he or she is of the legal gambling age. The states that have implemented online gaming have yet to report any cases of underage access, however. Online gaming vendors also can allow consumers to limit themselves, so gambling remains fun and does not turn into an addiction. For example, consumers can place a limit on how much they may bet, deposit, and play, and may exclude themselves from online gaming on a website altogether. Vendors also can provide links for consumers to find addiction help if they need it.

Furthermore, there are sufficient data and technology to prevent cheating, collusion, and money laundering. Regulated vendors screen all bets and record all games and hands played. Over the course of thousands of hands or games, vendors can determine what "normal" player behavior is and become proficient at detecting suspicious play. This allows for a safe and secure playing environment for consumers. Additionally, vendors can accurately determine a player's location through geolocation software. This ensures that consumers located within a state are the only players allowed to play on the vendors' sites. Finally, states can require adequate oversight and auditing mechanisms to ensure that online gaming is regulated fairly and appropriately.

**Response:** Online gaming cannot be regulated as easily as this argument suggests, and online gaming environments cannot be controlled in the same manner as casino environments are. A memo from the FBI in 2009 to Congressman Spencer Bachus regarding online gaming stated that, while vendors could create safeguards to deter cheating and collusion, they may not have any incentive to do so. Furthermore, the memo stated that geolocation systems, which identify where an individual is logging online, and proof of personal identification can be bypassed or tricked. According to McAfee, a cybersecurity company, there is free software that can direct internet traffic through a series of relays to conceal users and their locations and usage from surveillance, defeating any attempt to monitor online activities. Users also can employ proxy servers to make a connection appear as if it is coming from another location or country. These services minimize the obstacles that users must overcome to use online gaming platforms for criminal means. Also,

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<sup>3</sup> Adrienne Lu, "Online Gambling Revenues Fall Short", *USA Today*, June 24, 2014.

while vendors may be able to determine whether an account is created by a consumer who is legally able to gamble, there is nothing to stop him or her from providing a minor access to the consumer's device connected to the online gaming website.

### **Opposing Argument**

Online gaming can contribute to gambling addiction. According to a 2005 report on the psychosocial impacts of online gaming from Nottingham Trent University in the United Kingdom, as technology continues to develop, there is increased scope to manipulate the potentially addictive structural characteristics of gambling activities in order to enhance their appeal. The report concluded that addictions are about rewards and the speed of acquiring those awards, something that online gaming lends itself to with solitaire-style games, fast-paced play, and overall accessibility.

**Response:** A study from the University of Nevada, Las Vegas shows that online gambling does not increase the rate of gambling addiction.<sup>4</sup> The study used data from a 2010 British gambling prevalence study and a 2006 survey conducted in Ontario, Canada. The researchers used an instrumental variables model approach and found that participation in online gambling does not have a causal effect on problem gambling observed throughout the general population. A second study from the State University of New York at Buffalo made a similar point.<sup>5</sup> According to an article describing the study, researchers at the university's Research Institute on Addictions compared separate telephone surveys from 1999 to 2000 and from 2011 to 2013 and found that, despite an increase in gambling opportunities over time, rates of problem gambling remained stable.

### **Opposing Argument**

Senate Bill 889 (S-1) could be considered unconstitutional from several different perspectives. Under Article 4, Section 41 of the Michigan Constitution, any law enacted after January 1, 2004, that authorizes any form of gambling must be approved by a majority of voters in a statewide election and a majority of electors voting in the township or city where the gambling would take place. Without requiring a statewide vote, the bill would violate this provision. The bill also could violate the Commerce Clause of the U.S. Constitution; Michigan's equal protection clause; State and Federal due process protections; and Michigan's separation of powers clause. In addition, the legislation could be considered unconstitutionally overbroad.

### **Opposing Argument**

Senate Bill 889 (S-1) would require Michigan Indian tribes to waive their sovereign immunity if they wished to participate in online gaming. While this would not be illegal, it could be unacceptable to the tribes. Furthermore, the bill could affect tribal revenue from gaming that the State currently receives. In 1993, some of the tribes signed a compact with the State that required the tribes to pay 8% of their net gaming wins to the Michigan Strategic Fund in exchange for "exclusivity", or security from the State's approving a nearby casino. When the Detroit casinos (MotorCity, MGM Grand Detroit, and Greektown) opened, the tribes argued that the State broke its promise of exclusivity. For that reason, six tribes that had made compacts with the State in 1993 stopped making those payments to the Fund by 1999. Similarly, in 2015, the Gun Lake Tribe withheld payment to the Fund after the State began selling lottery tickets online. This created a budget emergency for the Michigan Economic Development Corporation, although a settlement was reached recently. The Tribe had claimed that the internet sale of lottery tickets violated the compact it had with the State. If the State started to regulate online gaming, the tribes that still make payments to the State could use the same argument.

### **Opposing Argument**

The proposed exemptions from the Freedom of Information Act could create distrust or make consumers skeptical of the State's regulation of online gaming. This could interfere with the creation of a safe and trusting environment through online gaming regulation.

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<sup>4</sup> Holly Devore, "Would Internet Access Turn You Into a Problem Gambler?", *UNLV News Center*, November 4, 2014.

<sup>5</sup> Cathy Wilde, "Expansion of Gambling Does Not Lead to More Problem Gamblers, Study Finds", *The State University of New York News Center*, November 5, 2014.

### **Opposing Argument**

The bills could decrease revenue for casinos physically located across the State. If online gaming were to hurt the Detroit casinos, it could exacerbate Detroit's debt. Furthermore, online gaming could have a lasting negative effect by diverting money away from poor populations and local businesses.

**Response:** Studies and reports have shown that online gaming does not decrease revenue for physical casinos. On the contrary, it creates additional benefits by providing a new demographic and clientele. During 2014 testimony in Pennsylvania, Caesars Entertainment Corporation reported that 91% of its New Jersey online customers were not in the casino's "land-based" database. The casino also reported an increase in the amount of play in the physical casino from those who were logged in the land-based database. In 2014, Borgata's online gambling properties in New Jersey reported that about 85% of their online players had not had rated play, or tracked activity through a frequency or player's card, at Borgata in at least two years, displaying that online gaming was growing, rather than shrinking or having no net change on the casino's clientele.

### **Opposing Argument**

The legislation would not be fair for the Detroit casinos, as they would have to pay a strict tax on any gaming revenue if they wished to participate in online gaming. Indian tribes, however, would have the ability to negotiate a compact with the State and be regulated differently. Theoretically, the Indian tribes that participated could negotiate and pay a lower tax on any online gaming revenue than the Detroit casinos paid.

Legislative Analyst: Drew Krogulecki

## **FISCAL IMPACT**

### **Senate Bill 889 (S-1)**

The bill would have an indeterminate impact on State and City of Detroit revenue and would result in additional expenses to the Michigan Gaming Control Board. It is difficult to accurately estimate the impact of internet gaming revenue on State revenue. There are a number of factors that would affect revenue in various ways. The first is whether the tax revenue from internet gaming would produce an overall increase to tax revenue or whether the additional revenue from internet gaming would be transferred from other gaming revenue, such as lottery and casino revenue. New Jersey has had internet gaming for three years and the revenue generated for the full first and second years was \$44.3 million and \$45.7 million. If Michigan experienced similar revenue given the similar population size and existence of casino activity, Michigan would generate around \$4.5 million in revenue annually. However, in New Jersey traditional casino revenue also declined \$20.0 million during this period. It is impossible to say whether this decrease was due completely to internet gaming or other factors, but if Michigan experienced a similar change, then overall State revenue would decline. Also, if internet casino revenue increased at the same level as State lottery revenue decreased, the overall State revenue would decline, since 100% of lottery revenue goes to the School Aid Fund while internet gaming would be taxed only at 10%. Even if overall revenue remained the same, the funds that receive the revenue would be affected. If internet gaming revenue were similar to any lost casino and lottery revenue, then the School Aid Fund would decrease while the General Fund increased, which would have an impact on spending for the budgets supported by these fund sources. No state that introduced internet gaming while also having casinos and a state lottery has yet to have an overall increase in the revenue generated from all three sources, so it is difficult to estimate an overall increase with the introduction of internet gaming for the State of Michigan.

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

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

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

### **Senate Bill 890**

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

Fiscal Analyst: Ryan Bergan  
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.