

SENATE BILL No. 889

April 14, 2016, Introduced by Senators KOWALL, HERTEL, WARREN, JOHNSON and KNOLLENBERG and referred to the Committee on Regulatory Reform.

A bill to create the lawful Internet gaming act; to require the licensing and certification of persons to engage in Internet gaming; to create the division of Internet gaming; to provide for the powers and duties of the division of Internet gaming and other state governmental officers and entities; to impose fees; to impose a tax on the conduct of Internet gaming; to create the Internet gaming fund; to prohibit certain acts in relation to applications for licenses and certification and in relation to Internet gaming and to prescribe penalties for those violations; to require the promulgation of rules; and to provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "lawful Internet gaming act".

3 Sec. 2. (1) The legislature finds that the Internet has become

1 an integral part of everyday life for a significant number of
2 residents of this state, not only in regard to their professional
3 lives, but also in regard to personal business and communication.
4 Internet wagering on games of chance and games of skill is a core
5 form of entertainment for millions of individuals worldwide. In
6 multiple jurisdictions across the world, Internet gaming is legal,
7 regulated, and taxed, generating billions of dollars in revenue for
8 governments.

9 (2) In an opinion dated September 20, 2011, the United States
10 Department of Justice reversed its previous interpretation of 18
11 USC 1084, commonly referred to as the federal wire act, allowing
12 states, subject to certain restrictions, to legalize and regulate
13 Internet gaming and capture the revenue for the benefit of state
14 governments.

15 (3) In order to protect residents of this state who wager on
16 games of chance and skill through the Internet and to capture
17 revenues and create jobs generated from Internet gaming, it is in
18 the best interest of this state and its citizens to regulate this
19 activity by authorizing and establishing a secure, responsible,
20 fair, and legal system of Internet gaming that complies with the
21 United States Department of Justice's September 2011 opinion
22 concerning 18 USC 1084.

23 (4) The legislature additionally finds that this act is
24 consistent and complies with the unlawful Internet gambling
25 enforcement act of 2006, 31 USC 5361 to 5367, and specifically
26 authorizes use of the Internet to place, receive, or otherwise
27 knowingly transmit a bet or wager if that use complies with this

1 act and rules promulgated under this act.

2 Sec. 3. As used in this act:

3 (a) "Authorized participant" means an individual who has a
4 valid Internet wagering account with an Internet gaming licensee
5 and is at least 21 years of age.

6 (b) "Board" means the Michigan gaming control board created
7 under section 4 of the Michigan gaming control and revenue act,
8 1996 IL 1, MCL 432.204.

9 (c) "Division" means the division of Internet gaming
10 established under section 5.

11 (d) "Fund" means the Internet gaming fund created under
12 section 13.

13 (e) "Gross gaming revenue" means the total of all money
14 actually received by an Internet gaming licensee from Internet
15 gaming operations, less only the total of all money paid out as
16 winnings to patrons. As used in this subdivision:

17 (i) "Prizes" includes both cash and noncash prizes. The value
18 of noncash prizes is the actual cost of the prize if the prize is
19 purchased from an unrelated party or, if purchased from a related
20 party, the amount the prize would have cost if purchased from an
21 unrelated party.

22 (ii) "Winnings" includes all of the following:

23 (A) The total amount players receive as prizes during the
24 accounting period.

25 (B) Stakes returned to players.

26 (C) Other amounts credited to players' accounts, including the
27 cash value of loyalty points and similar incentives granted to

1 patrons.

2 (f) "Institutional investor" means that term as defined in
3 section 2 of the Michigan gaming control and revenue act, 1996 IL
4 1, MCL 432.202.

5 (g) "Internet" means the international computer network of
6 interoperable packet-switched data networks, inclusive of such
7 additional technological platforms as mobile, satellite, and other
8 electronic distribution channels approved by the division.

9 (h) "Internet game" means a game of skill or chance that is
10 offered by an Internet gaming licensee, as authorized by the
11 division. Internet game includes gaming tournaments conducted via
12 the Internet in which players compete against one another in 1 or
13 more of the games authorized by the division or in approved
14 variations or composites as authorized by the division.

15 (i) "Internet gaming licensee" means a person that is issued
16 an Internet gaming license from the division to conduct Internet
17 wagering.

18 (j) "Internet gaming platform" means an interactive set of
19 related data networks used to provide Internet wagering to
20 authorized participants.

21 (k) "Internet gaming vendor" means a person that is certified
22 by the division to provide or offer to provide goods, software, or
23 services to an Internet gaming licensee, including goods, software,
24 or services related to or supporting the acceptance, testing,
25 auditing, management, operation, support, administration, or
26 control of Internet wagering, Internet games, Internet wagering
27 accounts, or Internet gaming platforms.

1 (l) "Internet wagering" means the acceptance of a wager by an
2 Internet gaming licensee from an individual who is either
3 physically present in this state when placing the wager or
4 otherwise permitted to place the wager by law. For purposes of this
5 subdivision, the intermediate routing of electronic data in
6 connection with Internet wagering, including across state lines,
7 does not determine the location or locations in which the wager is
8 initiated, received, or otherwise made.

9 (m) "Internet wagering account" means an electronic ledger in
10 which all of the following types of transactions relative to the
11 Internet gaming platform are recorded:

12 (i) Deposits.

13 (ii) Withdrawals.

14 (iii) Amounts wagered.

15 (iv) Amounts paid on winning wagers.

16 (v) Service or other transaction-related charges authorized by
17 the patron, if any.

18 (vi) Adjustments to the account.

19 (vii) Any other information required by the division.

20 (n) "Person" means an individual, partnership, corporation,
21 association, or other legal entity.

22 Sec. 4. (1) Internet wagering is authorized to the extent that
23 it is carried out in accordance with this act.

24 (2) A wager under this act initiated by an individual in this
25 state and received in a casino in this state, whether a casino in a
26 city and operated under the Michigan gaming control and revenue
27 act, 1996 IL 1, MCL 432.201 to 432.226, or a casino operated by an

1 Indian tribe, is considered to be gambling or gaming in the casino.

2 Sec. 5. (1) The division of Internet gaming is established in
3 the board. The division has the powers and duties specified in this
4 act and all other powers necessary and proper to enable it to fully
5 and effectively execute this act to administer, regulate, and
6 enforce the system of Internet gaming established by this act.

7 (2) The division has jurisdiction over every person involved
8 in Internet gaming operations.

9 (3) The division may enter into agreements with other gaming
10 entities, including foreign entities, to facilitate, administer,
11 and regulate multijurisdiction Internet gaming to the extent
12 consistent with state and federal laws and the laws of any foreign
13 jurisdiction. For this purpose, the division may enter into
14 multijurisdictional agreements with other states and foreign
15 jurisdictions.

16 (4) The division shall not authorize, administer, or otherwise
17 maintain a system for offering wagering on any amateur or
18 professional sporting event or contest, unless doing so is
19 consistent with state and federal laws.

20 (5) Notwithstanding anything else in this act, a wager may be
21 accepted from an individual who is not physically present in this
22 state if the division determines that the wager is not inconsistent
23 with federal law or the law of the jurisdiction, including any
24 foreign nation, in which the individual is located or that the
25 wagering is conducted under a multijurisdictional agreement to
26 which this state is a party that is not inconsistent with federal
27 law.

1 Sec. 6. (1) The division may issue an Internet gaming license
2 to a person that applies for the license if the division determines
3 that the applicant is eligible for an Internet gaming license under
4 this act and the rules promulgated under this act.

5 (2) An Internet gaming license issued under this act is valid
6 for 5 years after the date of issuance and is renewable after that
7 5-year period for additional 5-year periods, if the division
8 determines that the licensee continues to meet all the requirements
9 of this act and the rules promulgated under this act.

10 (3) An assignment or transfer of an interest in an Internet
11 gaming license, or a greater than 10% interest, whether direct or
12 indirect, in an Internet gaming licensee, is subject to written
13 approval by the division. An approved transferee is subject to a
14 \$100,000.00 nonrefundable application fee.

15 (4) The division shall only issue an Internet gaming license
16 to a person that is 1 of the following:

17 (a) A casino licensee under the Michigan gaming control and
18 revenue act, 1996 IL 1, MCL 432.201 to 432.226.

19 (b) A federally recognized Michigan Indian tribe that operates
20 a gaming facility under a facility license issued in accordance
21 with a tribal gaming ordinance approved by the chair of the
22 National Indian Gaming Commission. The division shall not issue an
23 Internet gaming license under this subdivision unless the Indian
24 tribe, in connection with its application to conduct gaming under
25 this act, waives its sovereign immunity with respect to conducting
26 gaming under this act and paying fees and taxes imposed under this
27 act.

1 (5) The division shall not issue an Internet gaming license if
2 the issuance would allow more than 8 Internet gaming licensees to
3 conduct Internet gaming under this act.

4 (6) A qualified applicant may apply to the division for an
5 Internet gaming license to offer wagering on Internet games as
6 provided in this act. The application must be made on forms
7 provided by the division and contain the information required by
8 the division, including, but not limited to, detailed information
9 regarding the ownership and management of the applicant, detailed
10 personal information regarding the applicant, financial information
11 regarding the applicant, and the gaming history and experience of
12 the applicant in the United States and other jurisdictions.

13 (7) An application under this section must be accompanied by a
14 nonrefundable application fee of \$100,000.00.

15 (8) The division shall keep all information, records,
16 interviews, reports, statements, memoranda, or other data supplied
17 to or used by the division in the course of its review or
18 investigation of an application for an Internet gaming license or a
19 renewal of an Internet gaming license strictly confidential and
20 shall use that material only to evaluate an applicant for a license
21 or renewal. The materials described in this subsection are exempt
22 from disclosure under section 13 of the freedom of information act,
23 1976 PA 442, MCL 15.243.

24 (9) A person that does any of the following is guilty of a
25 misdemeanor punishable by imprisonment for up to 93 days or a fine
26 of up to \$500.00, or both:

27 (a) Knowingly makes materially false statements to obtain an

1 Internet gaming license.

2 (b) Knowingly advertises in this state any game, product, or
3 feature that is not authorized by the person's license.

4 (c) Violates any other provision of this act or of a rule
5 promulgated under this act.

6 (10) A person that commits a second or subsequent violation
7 under subsection (9) is guilty of a misdemeanor punishable by
8 imprisonment for up to 1 year or a fine of up to \$1,000.00, or
9 both.

10 (11) If a person that is not an individual commits a violation
11 under subsection (9) or (10), imprisonment may be imposed on the
12 partners, officers, or members who knowingly participated in the
13 violation.

14 (12) An application under this section must be filed and
15 considered in accordance with the rules promulgated under this act.
16 The division shall promulgate rules to effectuate this section
17 within 60 days after the effective date of this act.

18 (13) An institutional investor that holds less than 30% of the
19 equity of an applicant under this section is exempt from the
20 consideration process under subsection (12).

21 (14) An Internet gaming licensee shall pay a license fee of
22 \$5,000,000.00 to the division at the time the license is issued.
23 The division shall deposit all application and license fees paid
24 under this act into the fund. A license fee imposed by this section
25 is an advance payment of Internet wagering taxes owed by the
26 Internet gaming licensee under section 12.

27 Sec. 7. (1) The division may certify Internet gaming vendors

1 to provide goods, software, or services to Internet gaming
2 licensees.

3 (2) The division shall certify an Internet gaming vendor for 5
4 years. A certification under this section is renewable after the
5 initial 5-year period for an additional 5 years if the division
6 determines that the Internet gaming vendor continues to meet all
7 the requirements of this act and rules promulgated under this act.

8 (3) A person may apply to the division to become an Internet
9 gaming vendor as provided in this act and the rules promulgated
10 under this act.

11 (4) An application under this section must be made on forms
12 provided by the division and contain any information required by
13 the division, including, but not limited to, detailed information
14 regarding the ownership and management of the applicant, detailed
15 personal information regarding the applicant, financial information
16 regarding the applicant, and the gaming history and experience of
17 the applicant in the United States and other jurisdictions.

18 (5) An application under this section must be accompanied by a
19 nonrefundable application fee in an amount to be determined by the
20 division, not to exceed \$100,000.00.

21 (6) The division shall keep all information, records,
22 interviews, reports, statements, memoranda, or other data supplied
23 to or used by the division in the course of its review or
24 investigation of an application for certification as an Internet
25 gaming vendor strictly confidential and use the materials only to
26 evaluate an applicant for a certification. The materials described
27 in this subsection are exempt from disclosure under section 13 of

1 the freedom of information act, 1976 PA 442, MCL 15.243.

2 (7) A person that does any of the following is guilty of a
3 misdemeanor punishable by imprisonment for up to 93 days or a fine
4 of up to \$500.00, or both:

5 (a) Knowingly makes materially false statements to obtain
6 certification as an Internet gaming vendor.

7 (b) Violates any other provision of this act or of a rule
8 promulgated under this act.

9 (8) A person that commits a second or subsequent violation
10 under subsection (7) is guilty of a misdemeanor punishable by
11 imprisonment for up to 1 year or a fine of up to \$1,000.00, or
12 both.

13 (9) If a person that is not an individual commits a violation
14 under subsection (7) or (8), imprisonment may be imposed on the
15 partners, officers, or members who knowingly participated in the
16 violation.

17 Sec. 8. The division may do anything necessary or desirable to
18 effectuate this act, including, but not limited to, all of the
19 following:

20 (a) Develop qualifications, standards, and procedures for
21 approval and licensure of Internet gaming licensees and
22 certification of Internet gaming vendors.

23 (b) Decide promptly and in reasonable order all license
24 applications and approve, deny, suspend, revoke, restrict, or
25 refuse to renew Internet gaming licenses and Internet gaming vendor
26 certifications. A party aggrieved by an action of the division
27 denying, suspending, revoking, restricting, or refusing to renew a

1 license or certification may request a hearing before the division.
2 A request for hearing under this subdivision must be made to the
3 division in writing within 5 days after service of notice of the
4 action by the division. The division shall serve notice of action
5 under this subdivision either by personal delivery or certified
6 mail, postage prepaid, to the aggrieved party. Notice served by
7 certified mail is considered complete on the business day following
8 the date of mailing. The division shall conduct a hearing requested
9 under this subdivision in reasonable order.

10 (c) Conduct all hearings pertaining to civil violations of
11 this act or rules promulgated under this act. The division shall
12 promulgate rules that contain procedures for conducting hearings
13 under this subdivision. In a hearing under this subdivision or in a
14 court action, a reproduced copy of a record of the division
15 relating to an Internet gaming licensee or Internet gaming vendor,
16 including, but not limited to, a notice prepared in the ordinary
17 course of business of the division or a book, record, or other
18 document offered in the name of the division under certificate of
19 the executive director of the board or of any officer or employee
20 of the division designated in writing by the executive director
21 must be admitted into evidence and is prima facie proof of the
22 information contained in the record. The attorney general shall
23 prosecute a violation of this act or a rule promulgated under this
24 act.

25 (d) Provide for the establishment and collection of all
26 license and certification fees and taxes imposed by this act and
27 the rules promulgated under this act and the deposit of the fees

1 and taxes into the fund.

2 (e) Develop and enforce testing, audit, and certification
3 requirements and schedules for Internet gaming platforms, Internet
4 wagering, and Internet wagering accounts, including, but not
5 limited to, age and identification verification software,
6 geolocation software, Internet games, and gaming hub software.

7 (f) Develop and enforce requirements for responsible gaming
8 and player protection, including privacy and confidentiality
9 standards and duties.

10 (g) Develop and enforce requirements for accepting Internet
11 wagers, Internet wagering accounts, and authorized participants and
12 minimum insurance requirements.

13 (h) Develop and promote standards governing contracts between
14 Internet gaming licensees and the payments industry.

15 (i) Develop and enforce standards and requirements regarding
16 antifraud, anti-money-laundering, and anticollusion methods.

17 (j) Develop protocols related to the security of and disputes
18 arising over Internet wagers and Internet wagering accounts.

19 (k) Adopt by rule a code of conduct governing division
20 employees that ensures, to the maximum extent possible, that
21 persons subject to this act avoid situations, relationships, or
22 associations that may represent or lead to an actual or perceived
23 conflict of interest.

24 (l) Develop and administer civil penalties for Internet gaming
25 licensees and Internet gaming vendors that violate this act or the
26 rules promulgated under this act.

27 (m) Audit and inspect, on reasonable notice, books and records

1 relevant to Internet gaming operations, Internet wagers, Internet
2 wagering accounts, Internet games, or Internet gaming platforms,
3 including, but not limited to, the books and records regarding
4 financing or accounting, marketing or operational materials, or any
5 other similar materials held by or in the custody of an Internet
6 gaming licensee or Internet gaming vendor. The division may assert
7 its authority under this subdivision by an administrative subpoena,
8 which may also contain a request for relevant documents or
9 interrogatories, and which is enforceable in the circuit court.

10 (n) Acquire or lease real property and make improvements to
11 the property and acquire by lease or by purchase personal property,
12 including, but not limited to, any of the following:

13 (i) Computer hardware.

14 (ii) Mechanical, electronic, and online equipment and
15 terminals.

16 (iii) Intangible property, including, but not limited to,
17 computer programs, software, and systems.

18 Sec. 9. The division shall promulgate and enforce rules
19 governing the administration and conduct of Internet gaming as it
20 considers necessary to carry out this act. The division shall
21 promulgate the rules pursuant to the administrative procedures act
22 of 1969, 1969 PA 306, MCL 24.201 to 24.328. The rules may include
23 all of the following:

24 (a) The types of Internet games to be offered, including
25 poker.

26 (b) Forms of payment accepted for Internet games.

27 (c) Responsible gaming.

1 (d) Technical and financial standards for Internet wagering,
2 Internet wagering accounts, and Internet gaming platforms, systems,
3 and software or other electronic components for Internet gaming.

4 (e) Anything else necessary or desirable for the efficient and
5 economical operation and administration of Internet gaming and for
6 the convenience of authorized participants, Internet gaming
7 licensees, and Internet gaming vendors.

8 Sec. 10. (1) An Internet gaming licensee's Internet gaming
9 platform must provide 1 or more mechanisms to reasonably verify
10 that an authorized participant is 21 years of age or older and that
11 Internet wagering is limited to transactions that are initiated and
12 received or otherwise made exclusively within this state.

13 (2) An individual who wishes to place a wager over the
14 Internet under this act must satisfy the verification requirements
15 under subsection (1) before he or she may establish an Internet
16 gaming account or wager on an Internet game offered by an Internet
17 gaming licensee.

18 (3) When a legally compliant mechanism is established to
19 permit wagering on Internet games by individuals physically located
20 outside of this state, the division may promulgate rules and adopt
21 procedures to allow and govern wagering by those individuals and
22 may enter into multijurisdictional agreements and related and
23 ancillary agreements to effectuate the wagering.

24 (4) An Internet gaming licensee's Internet gaming platform
25 must also provide mechanisms designed to detect and prevent the
26 unauthorized use of Internet wagering accounts and to detect and
27 prevent fraud, money laundering, and collusion.

1 (5) If a participant in Internet gaming violates this act or a
2 rule promulgated under this act, the participant's winnings are
3 forfeited. An Internet gaming licensee shall deposit forfeited
4 winnings into the fund.

5 (6) An Internet gaming licensee shall not authorize any of the
6 following individuals to establish an Internet gaming account or
7 allow them to wager on Internet games offered by the Internet
8 gaming licensee, except if required and authorized by the division
9 for testing purposes or to otherwise fulfill the purposes of this
10 act:

11 (a) An individual less than 21 years old.

12 (b) A partner, officer, or member or an individual employed by
13 an Internet gaming licensee or Internet gaming vendor.

14 (c) A spouse, civil union partner, child, brother, sister, or
15 parent residing as a member of the same household in the principal
16 place of abode of an individual described in subdivision (b).

17 (d) An individual whose name appears in the division's
18 responsible gaming database.

19 Sec. 11. (1) The division shall develop responsible gaming
20 measures, including a statewide responsible gaming database
21 identifying individuals who are prohibited from establishing an
22 Internet wagering account or participating in Internet gaming
23 offered by an Internet gaming licensee. The executive director of
24 the board may place an individual's name in the responsible gaming
25 database if any of the following apply:

26 (a) The individual has been convicted in any jurisdiction of a
27 felony, a crime of moral turpitude, or a crime involving gaming.

1 (b) The individual has violated this act or another gaming-
2 related act.

3 (c) The individual has performed an act or has a notorious or
4 unsavory reputation such that the individual's participation in
5 Internet gaming under this act would adversely affect public
6 confidence and trust in gaming.

7 (d) The individual's name is on a valid and current exclusion
8 list from another jurisdiction in the United States or a foreign
9 jurisdiction.

10 (2) The division shall promulgate rules for the establishment
11 and maintenance of the responsible gaming database.

12 (3) An Internet gaming licensee, in a format specified by the
13 division, shall provide the division with names of individuals to
14 be included in the responsible gaming database.

15 (4) The division may impose reasonable fees on persons
16 authorized to access and use the responsible gaming database.

17 (5) An Internet gaming licensee's Internet gaming platform
18 must offer in a clear, conspicuous, and accessible manner
19 responsible gambling services and technical controls to
20 participants, including both temporary and permanent self-exclusion
21 for all games offered; the ability for participants to establish
22 their own periodic deposit and wagering limits and maximum playing
23 times; referrals to crisis counseling and referral services for
24 individuals and families experiencing difficulty as a result of
25 problem or compulsive gambling; and other services as the division
26 reasonably determines are necessary or appropriate to reduce and
27 prevent problem gambling.

1 (6) Any authorized participant may voluntarily prohibit
2 himself or herself from establishing an Internet gaming account.
3 The division shall incorporate the voluntary self-exclusion list
4 into the responsible gaming database and maintain both the self-
5 exclusion list and the responsible gaming database in a
6 confidential manner.

7 (7) The self-exclusion list and responsible gaming database
8 established under this section are exempt from disclosure under
9 section 13 of the freedom of information act, 1976 PA 442, MCL
10 15.243.

11 Sec. 12. (1) A tax of 10% is imposed on the gross gaming
12 revenue received by an Internet gaming licensee from Internet games
13 authorized under this act.

14 (2) An Internet gaming licensee shall pay the tax imposed by
15 this section on a monthly basis. The payment for a month is due on
16 the tenth day of the following month.

17 Sec. 13. (1) The Internet gaming fund is created in the state
18 treasury.

19 (2) The state treasurer may receive money or other assets
20 required to be paid into the fund under this act or from any other
21 source for deposit into the fund. The state treasurer shall direct
22 the investment of the fund. The state treasurer shall credit to the
23 fund interest and earnings from fund investments.

24 (3) Money in the fund at the close of the fiscal year must
25 remain in the fund and not lapse to the general fund.

26 (4) The board is the administrator of the fund for auditing
27 purposes.

1 (5) The board shall expend money from the fund, on
2 appropriation, for the purposes specified by the legislature in the
3 appropriation.

4 Enacting section 1. This act takes effect 90 days after the
5 date it is enacted into law.

6 Enacting section 2. This act does not take effect unless
7 Senate Bill No. 890.
8 of the 98th Legislature is enacted into law.