

# Legislative Analysis



## SPORTS BETTING

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 4916 as introduced**  
**Sponsor: Rep. Brandt Iden**

Analysis available at  
<http://www.legislature.mi.gov>

**House Bill 4917 as introduced**  
**Sponsor: Rep. Matt Hall**

**House Bill 4918 as introduced**  
**Sponsor: Rep. Michael Webber**

**Committee: Regulatory Reform**  
**Complete to 9-10-19**

## BRIEF SUMMARY:

House Bill 4916 would create a Sports Betting Act, which would, among other things, create a set of rules for people to engage in *sports betting*, establish a tax for conducting sports betting, and prohibit certain actions and prescribe penalties for violation.

*Sports betting* would be defined in the bill as the business of accepting wagers on athletic events or portions of athletic events, the individual performance statistics of athletes in an athletic event or other events, or a combination of any of the same by a system or method of betting approved by the Division of Sports Betting in the Michigan Gaming Control Board, including mobile applications and other digital platforms that use communication technology to accept wagers. Sports betting would include single-game bets, teaser bets, parlays, over-under, moneyline, pools, exchange betting, in-game betting, in-play bets, proposition bets, and straight bets. Sports betting would not include fantasy contests.

House Bill 4917 would exempt sports betting conducted under the proposed Sports Betting Act from certain provisions of the Michigan Penal Code.

House Bill 4918 would place the maximum term of imprisonment for a felony violation of the Sports Betting Act within the sentencing guidelines under the Code of Criminal Procedure.

## DETAILED SUMMARY:

### HOUSE BILL 4916

#### Scope of the act

The bill would provide that, if the Michigan Gaming Control Board (MGCB) authorized by rule that a person holding a casino license could conduct sports betting, it could be conducted only to the extent that it was in accordance with the proposed act. Additionally, the act would not apply to lottery games offered by the Bureau of State Lottery, either through the internet or through its online terminal and network systems. It also would not apply to fantasy contests.

### **Tribal gaming and tax for operators other than Indian tribes**

A federally recognized Michigan Indian tribe that operated a casino in Michigan in which Class III gaming was conducted could conduct sports betting at that casino under the proposed act.

A sports betting operator that conducted sports betting at a location other than a casino operated by an Indian tribe would be subject to a tax of 8% on the adjusted gross sports betting receipts, paid on a monthly basis. If the monthly adjusted gross receipts were negative, the licensee could carry over the negative amount to returns filed for the subsequent month. This tax would be allocated as follows: 30% to the city containing the casino, to be used for local purposes as described in the bill; 55% to the state to be deposited into the Sports Betting Fund, described below; 5% to the State School Aid Fund; 5% to the Michigan Transportation Fund; and 5% to the Michigan Agriculture Equine Industry Development Fund. (However, if the amount to be directed to the MAEID fund exceeded \$3.0 million in a fiscal year, the excess would have to be deposited in the Sports Betting Fund.)

### **Division of Sports Betting**

The bill would create a Division of Sports Betting (DSB) within the MGCB, with jurisdiction over every person licensed by the DSB and authorization to take enforcement action against a person not licensed by the DSB that offers sports betting in Michigan. The DSB could enter into agreements with other jurisdictions, including Indian tribes, to facilitate, administer, and regulate multijurisdictional sports betting by sports betting operators to the extent consistent with state and federal laws and if the gaming under the agreement was conducted only in the United States.

With the exception of sports betting conducted by authorized Indian tribes, the DSB would have jurisdiction over, and could do anything necessary or desirable to effect, the proposed act, including all of the following:

- Conduct all hearings pertaining to violations of the act or rules promulgated thereunder.
- Provide for the establishment and collection of all license fees and taxes imposed by the act and rules promulgated thereunder and the deposit of the fees and taxes into the fund.
- Develop and enforce testing and auditing requirements for sports betting and sports betting 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 sports betting.
- Develop and administer civil fines for licenses that violate the act or the rules promulgated thereunder, with a maximum fine of \$5,000.
- Audit and inspect, with reasonable notice, books and records relevant to sports betting operations, sports wagers, sports betting accounts, sports betting games, or internet sports betting platforms, including the books and records regarding financing and accounting materials held by or in custody of a licensee.

The DSB would be authorized to investigate, issue cease and desist orders against, and obtain injunctive relief against a person that offered sports betting in this state without being a licensee. Finally, the DSB would have to keep all information and other data used by it during an investigation confidential and could use that information only for investigative purposes. This material would be exempt from disclosure under the Freedom of Information Act (FOIA).

### **Sports Betting Fund**

The Sports Betting Fund would be created in the state treasury, and the state treasurer could receive money or other assets for deposit into the fund. The MGCB would be the administrator of the fund for auditing purposes. Upon appropriation, the MGCB would have to expend \$1.0 million from the fund annually to the Compulsive Gaming Prevention Fund, as well as fund its costs of regulating and enforcing sports betting under the bill.

### **Rule promulgation**

Under the bill, the DSB would have to promulgate rules to implement the act within one year after the bill took effect. These rules would have to govern all of the following:

- The acceptance of wagers on sports events, other events, or a series of sports events or other events.
- The development and posting of house rules regarding sports betting.
- Types of betting tickets that could be used.
- Method of issuing tickets.
- Method of accounting to be used by sports betting licensees.
- Types of records that would have to be kept.
- Type of system for betting.
- The ways in which a patron could fund his or her account.
- Protections for patrons placing wagers.
- Requirements to ensure responsible gaming.
- Procedures for conducting contested case hearings under the proposed act.

### **Licensure**

The DSB would have to determine the eligibility of a person to hold a license, issue all licenses, and maintain a record of licenses issued under the proposed act. The fee for a sports betting license would be \$100,000, the fee for a management services provider license would be \$50,000, and the fee for a supplier license would be \$5,000. Also, the DSB would have to grant a sports betting license to a gaming facility that met the requisite rules, including payment of a \$200,000 initial license fee.

The DSB would levy and collect all fees, surcharges, civil penalties, and tax on adjusted gross sports betting receipts.

A person could not offer sports betting in Michigan unless the person was a licensee or a federally recognized Michigan Indian tribe. A person who knowingly violated this provision would be guilty of a felony punishable by imprisonment for up to 10 years or a fine of up to \$100,000, or both, and the attorney general or a county prosecuting attorney could bring an action against a violator.

Likewise, a *person* could not engage in sports betting without obtaining the appropriate license, and the DSB could not grant a license until it determined that each person with control over the applicant met the qualifications of licensure. (Under the bill, a legal *person* would mean an individual, partnership, corporation, association, limited liability company, federally recognized Indian tribe, or other legal entity. Person would not include the state or any department or agency of the state. The specific entities governed by the provision are detailed in the bill.)

The license would have to be displayed prominently in a place of business or be available for inspection by officials. Licensees would have to give the DSB notice within 30 days of any change to material information provided in the application.

An applicant licensed in another jurisdiction could submit a request for a temporary license. The DSB would review the request and, if it determined that the licensee was authorized and in good standing and had paid the required license fee, could authorize temporary status until a final determination was made.

A sports betting licensee could operate and contract with a management service provider to operate sports betting at casinos and not more than one individually branded digital sports betting platform approved by the DSB. An authorized participant could create a sports betting account on a sports betting platform without being present at the casino.

Upon application and annually thereafter, a sports betting licensee would have to submit to the DSB an annual audit of the financial transactions and condition of the licensee's total operations prepared by a certified public accountant in accordance with generally accepted accounting principles and applicable state and federal laws.

#### **Ineligible applicants**

The DSB could not issue a license to an applicant if any of the following applied:

- The applicant had knowingly made a false statement of material fact to the DSB.
- The applicant had not paid the appropriate license fee.
- The applicant had been suspended from operating a gambling game, gaming device, or gaming operation, or had a license revoked by any governmental authority responsible for regulation of gaming activities.
- The applicant had been convicted of a gambling-related offense or fraud offense.

Additionally, the DSB could deny a license to an applicant, reprimand a licensee, or suspend or revoke a license if the applicant or licensee had not demonstrated sufficient financial responsibility or was not the true owner. The DSB could also take any of those actions against an applicant if the applicant did not meet the requirements of the bill.

#### **Powers of sports governing bodies**

Under the bill, the DSB could use information from *sports governing bodies* to determine whether to allow betting on a particular event or to allow patrons to make particular types of wagers. If a sports governing body requested betting information or requested the DSB to prohibit betting on a particular event or making wagers of a particular type, and showed good cause, the DSB would have to grant the request.

*Sports governing bodies* would be defined as organizations that prescribe final rules and enforce codes of conduct with respect to sporting events and the participants in the sporting events.

The DSB and sports betting licensees would have to cooperate with investigations conducted by sports governing bodies or law enforcement agencies. Licensees could use any data source to determine the results of sports bets unless those sources violate specified rules for the event or viewing platform.

A sports governing body could notify the DSB of a desire to supply official league data to licensees for determining the results of *Tier 2 sports bets*, and the DSB would have to determine whether it was necessary and appropriate within 30 days. If the DSB decided that it was, a licensee could only use official league data to determine the results of tier 2 sports bets unless it could demonstrate that the sports governing body could not provide that data on commercially reasonable terms.

*Tier 2 sports bet* would mean a sports wager that was placed after the athletic event had begun, was not determined solely by the final score or final outcome of the event, and was not a sports wager made between quarters, halves, or periods of a sporting event where the outcome of the wager is related only to the quarter, half, or period that had yet to commence.

(A *Tier 1 sports bet* would mean all other sports wagers.)

### **Requirements for sports betting licensees**

As stated above, a sports betting licensee could contract with a management service provider to operate sports betting at casinos and not more than one individually branded digital sports betting platform approved by the DSB.

Sports betting licensees and management service providers would have to do all of the following:

- Employ a monitoring system using software to identify non-normal irregularities in volume or odd swings that could signal suspicious activities requiring further investigation, which would have to be reported to and investigated by the DSB.
- Promptly report to the DSB any facts or circumstances related to the operation of a licensee or provider that constituted a violation of state or federal law and immediately report to the appropriate authorities any suspicious betting over the established threshold.
- Conduct all sports betting activities and functions in a manner that does not pose a threat to the public health, safety, or welfare of the citizens of Michigan.
- Keep current in all payments and obligations to the DSB.
- Prevent a person from tampering with or interfering with the operation of any sports betting.
- Ensure that sports betting conducted at buildings in which gaming was being conducted under the Michigan Gaming Control and Revenue Act complied with line-of-sight and observation requirements.
- Ensure that sports betting occurred only in the DSB-approved locations or using a DSB-approved mobile application or other digital platform that used communications technology to accept allowable wagers.
- Maintain sufficient cash and other supplies to conduct sports betting at all times.
- Maintain daily records showing the gross sports betting receipts and adjusted sports betting receipts of the licensee.

### **Internet gaming**

A sports betting licensee who also held a license to conduct internet gaming could offer sports betting online. A licensee who did not hold a license to conduct internet gaming would have to apply for and be granted a license as an internet gaming operator, under the Lawful Internet Gaming Act proposed in HB 4311, before offering sports betting online.

For purposes of the proposed act, the intermediate routing of a sports wager conducted online, including routing across state lines, would not determine the location or locations in which the wager was initiated, received, or otherwise made. A sports wager conducted online and received by a sports betting operator would be considered to be gambling or gaming conducted in the sports betting operator's casino located in Michigan, regardless of the participant's location in the state when initiating the wager.

### **HOUSE BILL 4917**

The bill would add a new section to the Michigan Penal Code to specify that Chapter 44 (Gambling) would not apply to sports betting conducted under the proposed Sports Betting Act.

Proposed MCL 750.310d

### **HOUSE BILL 4918**

The bill would amend the Code of Criminal Procedure to specify that a sports betting offense under section 13 of the proposed Sports Betting Act would be a Class D felony against the public order punishable by a maximum term of imprisonment of 10 years.

MCL 777.14d

#### **Tie-bars**

House Bill 4916 is tie-barred to HBs 4308<sup>1</sup> and 4311,<sup>2</sup> which means that HB 4916 could not take effect unless the other two bills were also enacted. HB 4308 proposes the creation of a Fantasy Contests Consumer Protection Act. HB 4311 would establish a Lawful Internet Gaming Act. Both bills were referred from the House Regulatory Reform committee and are currently before the House Ways and Means committee.

Additionally, House Bills 4917 and 4918 are tie-barred to HB 4916, which means they could not take effect unless HB 4916 were also enacted.

#### **FISCAL IMPACT:**

Presumably, the legalization of wagers on sporting events under House Bill 4916 would increase revenues to the following areas through the tax on sports betting:

- City of Detroit
- Sports Betting Fund
- School Aid Fund
- Michigan Transportation Fund
- Michigan Agriculture Equine Industry Development Fund

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<sup>1</sup> House Fiscal Agency analysis of HB 4308: <http://www.legislature.mi.gov/documents/2019-2020/billanalysis/House/pdf/2019-HLA-4308-77012AA9.pdf>

<sup>2</sup> House Fiscal Agency analysis of HB 4311: <http://www.legislature.mi.gov/documents/2019-2020/billanalysis/House/pdf/2019-HLA-4311-295CBACF.pdf>

The city of Detroit would also realize increased revenues from the municipal services fee and casino development agreement payment, since both are based on total adjusted gross receipts (AGR).

For purposes of this analysis, two scenarios are provided with market size derived from available data in other states offering sports betting both at the casino and on an internet platform. In all comparable cases, the market is still in its infancy because sports betting was only recently legalized for all states at the federal level.

Assuming a mature market range of between \$175.0 million and \$225.0 million would yield the tax revenue ranges presented in **Table 1**. For simplicity, the outcomes in the table assume a 50/50 split of the market between tribal casinos and Detroit’s commercial casinos. Additionally, the table assumes that tribal casinos would provide 8% state revenue sharing payments (as a default). Ultimately, the tribal casino revenue sharing payment amounts, and the recipient(s) of those revenues, would be negotiated in the tribal-gaming compact.

**TABLE 1**  
**Tax Revenue Distribution of Sports Betting Market Scenarios**

<b>Distribution of 8% Tax</b>	<b>\$175.0 million AGR Market</b>		<b>\$225.0 million AGR Market</b>	
	<u>Detroit (50%)</u>	<u>Tribal (50%)</u>	<u>Detroit (50%)</u>	<u>Tribal (50%)</u>
State of Michigan* (8%)	\$0	\$7,000,000	\$0	\$9,000,000
Local Revenue Sharing (2%)	0	1,750,000	0	2,250,000
City of Detroit	2,100,000	0	2,700,000	0
Sports Betting Fund	3,850,000	0	4,950,000	0
School Aid Fund	350,000	0	450,000	0
Michigan Transportation Fund	350,000	0	450,000	0
Michigan Ag Equine Fund	350,000	0	450,000	0
<b>TOTAL</b>	<b>\$7,000,000</b>	<b>\$8,750,000</b>	<b>\$9,000,000</b>	<b>\$11,250,000</b>

*\*Payments under the compacts are currently directly deposited with the MSF/MEDC*

It should be noted that there are downside risks associated with tribal gaming. Instead of offering sports betting, any of the tribes making payments could elect to simply stop making revenue sharing payments to the Michigan Strategic Fund/Michigan Economic Development Corporation (MSF/MEDC) if they deemed the sports betting legalization to be an expansion of gaming that voids the terms of the compact. Additionally, for locals, it is unclear whether the compact language would be expanded to include sports betting AGR when calculating the 2% local revenue sharing payments. In 2018, payments to the MSF/MEDC totaled \$53.4 million and revenue sharing payments to local governments totaled \$30.1 million.

In addition to the tax revenues noted in Table 1, the increased AGR would result in increased municipal services fee and casino development agreement payments for the city of Detroit. Increased revenues from the municipal services fee would total between \$1.1 million to \$1.4 million. Increased revenues from the casino development agreement payments would total between \$1.5 million and \$2.0 million.

Based on analysis of other states, sports betting on the internet platform likely would comprise between 80-90% of total sports betting AGR, with brick and mortar providing the remaining

10-20%. Because commercial casino tax rates are the same for both brick and mortar and internet sports betting, the gaming platform distribution does not necessarily have an impact on overall revenues. Any sports betting forgone at the tribal casinos that elect not to offer it would likely be redistributed to other licensees, either through brick-and-mortar play or internet play.

All license fees and civil fines authorized under the act would be deposited in the Sports Betting Fund. After the annual transfer of \$1.0 million to the Compulsive Gaming Prevention Fund, any remaining balance would be available, upon appropriation, for costs associated with regulating and enforcing sports betting under the act. It is assumed that the fund would receive sufficient revenues from the fees, civil fines, and tax to pay for the costs associated with oversight and enforcement.

Forecast uncertainties include customer base differences with comparison states, the size of the sports betting market in Michigan, the split of the overall market between tribal and commercial casinos, the ability of sports betting at casinos to have a stimulative effect on other casino gaming, and the availability of sports betting in surrounding states. The provisions of the bill also require a sports betting licensee to be licensed as an internet gaming operator under the Lawful Internet Gaming Act (proposed in HB 4311) before offering sports betting on the internet. If sports betting were not offered through the internet platform, the above-mentioned estimates would be reduced.

#### **Corrections and Judiciary**

House Bill 4916 would have an indeterminate fiscal impact on the state and on local units of government. The fiscal impact would depend on judicial sentencing decisions made for individuals convicted under provisions of the bill. The bill would make it a felony for a person who is not a licensee or not a federally recognized Michigan Indian tribe to offer sports betting for play. Also, the bill would make it a felony for a person to knowingly provide false testimony to the MGCB or an authorized representative of the MGCB while under oath. If convicted, individuals could be imprisoned for not more than 10 years or fined not more than \$100,000, or both. New felony convictions under HB 4916 would result in increased costs related to state prisons and state probation supervision if the convictions result in imprisonment. In fiscal year 2018, the average cost of prison incarceration in a state facility was roughly \$38,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,700 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. Any fiscal impact on the judiciary and local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

Legislative Analyst: Jenny McInerney  
Fiscal Analysts: Ben Gielczyk  
Robin Risko

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