

ONLINE GAMING LAW UPDATE

Sports & Entertainment Law Symposium

Nova Southeastern University
Saturday, February 23rd, 2013



Presented By: Lawrence G. Walters, Esq.
of WALTERS LAW GROUP
WWW.GAMEATTORNEYS.COM

OVERVIEW

- The Online Gaming industry in the U.S. is transitioning towards legitimacy and legalization.
- Statutory legalization efforts are under way in numerous states.
- Congress has considered bills that would legalize some or all forms of online betting, but political forces are working against legalization at the federal level.
- Gaming on social networking sites has desensitized the population to gaming activity, causing it to be accepted. This presents idea timing for legalization efforts.
- “Alternate” gaming activity continues to proliferate, as regulators struggle with ways to contain things like sweepstakes cafes, skill gaming, penny auctions, and virtual home games.

Federal Legislation

Previous Year's Bills:

HR 1174 – Internet Gambling Regulation, Consumer Protection & Enforcement Act (Licensure from Treasury Dept.)

(Status 6/1/2011 – Referred to House Subcommittee on Crime, Terrorism & Homeland Security - Died)

HR 2366 – Internet Gambling Prohibition, Poker Consumer Protection, & Strengthening UIGEA Act of 2011 (Exempts poker from UIGEA; overseen by Dept. of Commerce)

(Status 8/25/2011 – Referred to House Subcommittee on Crime, Terrorism, & Homeland Security - Died)

HR 2230 – Internet Gambling Regulation & Tax Enforcement Act of 2011 (2% tax on all online gambling deposits – 50% tax on unauthorized wagers)

(Status: 6/16/2011 – Referred to House Committee on Ways & Means - Died)

Outlook: Passage of legalization at the federal level unlikely in the short term. Divided legislature to blame.

State Legislative Developments - California

- ▣ California: SB 51 – Establishes a framework to authorize intrastate Internet gambling:
 - Authorizes eligible entities to apply to the Gambling Control Commission for a license to operate an intrastate poker website.
 - Eligible entities are limited to: licensed card clubs, Indian tribes, race tracks or advance deposit wagering sites .
 - Prohibits non-authorized games (i.e., only permits poker)
 - Provides application procedures and fees.
 - Requires reporting by the Bureau of State Audits that would detail implementation of the bill.
 - Status: 1/10/2013 – To Senate Committee on Governmental Organization. (Similar bill failed last year).

Florida

- ▣ HB 275 – Authorizes Dept. of Lottery to create and administer program that provides for the sale of lottery tickets online
 - Status: 1/30/2013 – To House Select Committee on Gaming
- ▣ SB 266 – Same as above – also authorizes the Department to adopt applicable rules.
 - Status: 1/17/2013 – To Senate Committee on Gaming
 - Note: Over 20 states have considered legislation to allow online sale of lottery tickets in the last year.
 - Outlook: Positive for passage. State lotteries desire to compete for online gaming customers. Online scratch off tickets are essentially casino games.

Hawaii

SB 768 – Establishes the Hawaii Internet Lottery and Gaming Corporation for the purpose of conducting internet gambling in Hawaii.

No sports betting; only one service provider to be selected to offer wagering activity for the state

Status: 1/11/2013 In Committee: Public Hearing Scheduled

House also gave preliminary approval to a bill that would define sweepstakes machines as 'gambling devices.'

Note: Hawaii & Utah are the two states with no form of legalized gambling.

Illinois

HB 1077 – Creates the Internet Gaming Act – only a short title provision

Status: 1/30/2013 – To House Committee on Rules

HB 1078 – Creates the Internet Gaming Act – only a short title provision

Status: [same as above]

Outlook: Previous legalization efforts unsuccessful but Illinois became the first state to legalize online lottery ticket sales in March, 2012.

Nevada

- ▣ Passed formal legislation legalizing online gambling on 2/21/13!
- ▣ Allows state to move forward with its licensing online poker, and form compacts with other states (in the absence of federal action).
- ▣ Speedy action on legislation prompted by desire to beat New Jersey as the first state to formally legalize online gambling.
- ▣ Gambling Control Commission has been developing licensure criteria, and approving license applications under existing law, in preparation for eventual formal legalization.
- ▣ Nevada requires partnership with licensed casinos, but also issues licenses to online gambling affiliates/promoters.

New Jersey

- ▣ Previously in a race with Nevada to be the first to legalize online gaming (until a few days ago).
- ▣ Pending bill would allow NJ residents to wager online, with all servers and electronic activity centered in Atlantic City.
- ▣ Bill to be voted on Tuesday (Feb 26), and then heads to Governor Christie, who publicly favors the legislation.
- ▣ State also trying to get permission to offer sports betting, through the court system.
- ▣ Case challenges the Professional and Amateur Sports Protection Act, which prohibits sports betting anywhere other than Delaware, Oregon and Montana.
- ▣ Judge Shipp promises a decision within a couple weeks on these 'weighty issues.'

Delaware

- ▣ Delaware Gaming Competitiveness Act of 2012 (HB 333) passed June, 2012. Allows:
 - the state to expand lottery services to the Internet
 - other forms of online gambling – e.g. – poker
 - Multi-state compacts regulating such online gambling activities
 - Note: This is a state run system; no private licenses available.

Internet Sweepstake Cafes

The Internet Sweepstakes Phenomena:

- ▣ Considered the largest unregulated expansion of gambling since the initial Indian casino movement.
- ▣ Internet cafes use electronic sweepstakes to promote the sale of long distance phone minutes or Internet time.
- ▣ Both counties and states have attempted to prohibit the activity, but have faced constitutional challenges.
- ▣ Statistics (Florida example):
 - Expanded to roughly 1,500 locations statewide.
 - Generating an estimated \$1 billion in annual revenue.
 - Industry is forging relationships with lawmakers
 - Starting to rival traditional gambling venues

Sweepstakes Regulation

-Free Expression Issues

- ▣ Internet sweepstakes cafes use software to reveal the results of the game, in an entertaining format.
- ▣ The software plays no role in determining whether a player has won – all winning entries are predetermined.
- ▣ Regulation of Internet sweepstakes devices has proved challenging due to potential infringement on free expression rights.
- ▣ Legislation has been struck down or enjoined since it essentially prohibits a form of video game, but cases have gone both ways.
- ▣ Third Circuit will consider a case in coming months that could set important precedent.

Efforts to Control Internet Sweepstakes

- ▣ Local ordinances banning 'simulated gambling devices.'
- ▣ State laws regulating, licensing or prohibiting various methods of revealing sweepstakes winners.
- ▣ Criminal charges based on gambling or violation of sweepstakes promotion laws.
- ▣ Civil seizure of gaming equipment using forfeiture laws.
- ▣ Note: Regulation cannot go too far or it will impact large sweepstakes operators (i.e., McDonalds, Coke Rewards, Publisher's Clearinghouse)

Ethical Concerns

- ▣ Intentionally violating constitutional rights of operators by passing unconstitutional legislation?
- ▣ Shutting down operators through seizures, without due process?
- ▣ “Cat and Mouse” game of legislation, revised software, and amended legislation?
- ▣ Valid use of taxpayer dollars to prohibit activity that public supports?

Unregulated Gaming Expansions

Alternative Gaming Options

- ▣ Fantasy Sports (UIGEA Exception)
- ▣ Penny Auctions
- ▣ Skill Gaming (no 'chance' element)
- ▣ Poker Tournament Websites
- ▣ Virtual Currency / Free Play (no 'consideration' element).

Factors Influencing U.S. Online Gaming Expansion

- *DOJ Opinion along with UIGEA exemption for intrastate gaming opens the floodgates for statewide legalization.
- *Precedent for intra-state agreements or “compacts” in other areas (e.g., energy, environmental management, transportation) – may support gaming compacts.
- * Impact of Web 2.0 influences like the confluence of gaming and social networking (e.g., *Zynga Poker*), leading to increased social education and acceptance of gambling-related activity.
- *Struggling U.S. economy driving the debate toward revenue enhancement as justification for legalization of otherwise controversial gambling activity.
- *Increased use of mobile devices along with increasingly effective geo-location tools (e.g., GPS in smartphones) suggests that geographic player limitations are not only possible but realistic.

Conclusions

- ▣ Online gambling becoming more accepted as a form of entertainment in the U.S.
- ▣ Legalization will occur state by state, with possible compacts between states.
- ▣ Alternate forms of gaming will continue to flourish, as regulators seek ways to control.
- ▣ While many other countries have legalized online gambling years ago, the U.S. is finally realizing it cannot rely on prohibition in this emerging field.