

US I-Gaming Policy Brief

March 8, 2012

State/Territory I-Gaming Legislation/Regulatory Efforts

CALIFORNIA

SB 1463, sponsored by Senators Wright and Steinberg, would provide for the licensure, regulation and taxation of Internet gambling, with licensees initially restricted to authorized poker games; additional games may be phased in, if allowed under the California Constitution and Penal Code. Some key points in the legislation are:

- Licenses for 10-year terms, with a required review in the third year.
- Initial licenses shall take effect simultaneously no later than Jan. 1, 2014.
- Licenses restricted to those holding a CA "owner license," federally-recognized CA-based tribes operating a casino pursuant to a tribal-state compact, horse associations holding a license from the California Horse Racing Board ("CHRB"), and ADW operators regulated by the CHRB for at least 3 years.
- License application fees will be \$1-5 million, as needed to cover expected costs of investigation and determining suitability, with excess returned or additional amounts paid if needed.
- Tribal are applicants required to waive sovereign immunity for purposes of licensure evaluation and tribal licensees must agree to be subject to CA jurisdiction in relation to I-gaming.
- Licensees must pay a nonrefundable license fee of \$30 million, which will be used to cover a monthly deposit to the CA General Fund equal to 10% of its gross revenues. When the \$30 million is depleted, the licensee shall directly make the monthly payment.
- Preserves the right for the legislature, by statute, to opt out or opt in for any federal system and to enter into any agreement with other states to provide I-gaming, "if the United States Department of Justice notifies the Department in writing that it is permissible under federal law."

History/Status

- Introduced Feb. 24, 2012 and referred to Rules Committee for assignment;
- Read first time Feb. 27, 2012.

Issues

- Tribal exclusivity.
- Dormant commerce clause.

CONNECTICUT

Governor Malloy told the press, on Jan. 19, 2012, that he was considering how the State should address competition with respect to gaming expected from neighboring states. On Feb. 2, 2012, the Governor noted it was unlikely the executive branch would submit a bill addressing I-gaming in the 2012 legislative session.

History/Status

The House Public Safety and Security Committee held a 2.5-hour informational forum on online gaming on Feb. 2, 2012. Speakers included representatives from Mohegan Sun and Foxwoods, among others.

Issues

- How should the tribal issues be handled?
- Should I-gaming be done by the state lottery, the tribes or both?

DISTRICT OF COLUMBIA

In 2011, the D.C. Council enacted the 2011 budget that included, as subtitle G, Lottery Modernization Act of 2010, which became Law #L 18-370. Subtitle G authorized the D.C. Lottery to conduct Internet gaming. It defined "lottery or lottery game" to mean "both games of skill and games of chance operated for the benefit of the District of Columbia," if, when offered over the Internet, it can be confirmed that those playing are located in the District and if "no method, media, or device for play of the games of skill and games of chance" violates federal law. On Feb. 7, 2012, the Lottery Modernization Act of 2010 was repealed when *B19-0474* passed by a 10-2 vote.

History/Status

B19-0474 was introduced Sept. 20, 2011. On 20 Jan. 2012, DC Office of Inspector General issued report that modification of Council-approved contract to add I-gaming system did not conform to procurement regulations, which might lead to Council decision to rebid contract. On Feb. 7, 2012, *B19-0474* passed by a 10-2 vote, repealing the Lottery Modernization Act of 2010. Councilman Brown is reported as saying he will probably reintroduce the legislation, but doubts it would survive another 30-day review on Capitol Hill.

Issues

Can I-gaming pass City Council and, if so, survive review by Congress?

HAWAII

Three bills introduced in 2012; one carried over from 2011:

- *HB2316*, introduced Jan. 23, 2012, would authorize a state lottery. While the bill prohibits the establishment of "any game played on the Internet," it would permit "noncomputerized online games."
- *HB2422/SB 2980*, introduced Jan. 25, 2012, would create state lottery and gaming commission to offer, with "assistance" of private I-gaming provider, Internet wagering and gaming and "enter into agreements with other state gaming entities for the offering of multistate games, consistent with state and federal law."
- *SB755 SD2 HD1*, originally introduced Jan. 21, 2011. Amended in House to strip original language and turn into bill that would create a "peer-to-peer entertainment commission" authorized to "determine what contests of skill may be conducted as peer-to-peer entertainment" and license the two qualified applicants with the highest bid (minimum \$100 million) to provide online peer-to-peer entertainment.

History/Status

- All 2012 bills passed first reading and referred to multiple committees.
- Held over 2011 bill, after amendment, passed second reading in House and referred to Finance Committee.

Issues

- Will Hawaii change its no gambling posture?
- Will Hawaii establish a state lottery?
- Will Hawaii permit I-gaming?

ILLINOIS

Illinois State Lottery moving forward to sell lottery tickets on the Internet with no concern, after release on Dec. 23, 2011 of the opinion of the Office of Legal Council of the DOJ ("DOJ opinion") that the Wire Act is implicated only by wagering activity related to sports.

History/Status

In 2009, Illinois enacted legislation permitting the Illinois Lottery to operate a pilot program to sell individual lottery tickets on the Internet, conditioned on receipt of an opinion from the DOJ that doing so would not violate federal law. The legislation was later amended to permit the pilot program to proceed, if no objection was raised by DOJ within a reasonable time. When the DOJ opinion was released, the Executive Director of the Illinois Lottery is reported to have said that he expects to test selling Powerball, MegaMillion, and Lotto tickets online by the end of March or early April and hopes to have full sales online for the third or fourth quarter of 2012. Lottery ticket-vendors are reported to want the sale delayed or stopped and cite loss of jobs and increased underage gambling as reasons for doing so.

Issues

Can associations representing retail merchants and convenience stores delay or stop online sale of lottery tickets?

IOWA

SF 2275, "an act authorizing licensees authorized to conduct gambling games on an excursion boat, gambling structure, or racetrack enclosures to operate Internet wagering on poker and making penalties applicable, " would authorize Internet poker. The state racing and gaming commission would be required to establish requirements for internet wagering. Internet poker is to be conducted through a single Internet site and limited to persons who have registered with the licensee to conduct internet wagering. One license would be available to Iowa gambling games licensees and may be awarded to one (single license) or more than one (joint license). If a single license, the adjusted gross receipts from Internet wagering shall be included as part of the licensee's adjusted gross receipts for purposes of the wagering tax. If a joint internet wagering license is issued to more than one gambling games licensee, the wagering tax imposed on adjusted gross receipts from internet wagering would be 22% or, if the majority of participating licensees are otherwise subject to a wagering tax of 24%, the tax would be 24%.

History/Status

- On Dec. 1, 2011, State Racing and Gaming Commission, as required by a 2011 law, provided General Assembly with report "regarding the creation of a framework for the state regulation of intrastate internet poker."
- *SSB 3164*, sponsored by Sen. Danielson, was recorded on and sent to the State Government Committee on Feb. 15, 2012. After discussion by the State Government Committee on Feb. 20, 2012, the Committee on Feb. 22, 2012 voted 11-4 to approve its introduction as a Committee bill, and *SSB 3164* was succeeded by *SF 2275*.
- On Feb. 27, 2012, *SF 2275* was introduced and placed on the Senate calendar.

Issues

- Does Iowa have enough population to support intrastate I-poker?
- Will major and mid-size casinos operating in Iowa take a position in favor or against?

MARYLAND

State lottery is moving forward with plans to sell tickets and offer traditional lottery games online.

History/Status

In 2011, the legislature required the Maryland Lottery Commission "to report on the sale of traditional lottery games over the Internet, including efforts made by other jurisdictions and the federal government in this area; review of federal and state laws; detail the agency's proposal regarding the development and implementation of Internet lottery sales and the impact Internet sales may have on existing Lottery retailers; and report to the budget committees by December 15, 2011." The Report concluded: "Distribution over the Internet would expand the market opportunity for everyone involved with the Maryland Lottery, including the state of Maryland, its players and its retailers." The Governor included, in his proposed budget for FY2013, revenue from the sale of lottery tickets over the Internet. News reports indicate the Lottery Director told legislative committees that he has budgeted \$0.5 million for consultant to set up the system and \$167,110 for new employees to manage the launch. Revenue from the sales is estimated at \$2-2.5 million. The system is expected to be operational in 12 months.

Issues

Will there be opposition from the State's lottery ticket vendors?

MASSACHUSETTS

The Chair of the Mass. State Lottery Commission, State Treasurer David Grossman, formed a task force to consider and advise the Lottery concerning online gaming. In addition to himself, the task force will include, among others, a gubernatorial appointee, the legislative leaders or their designees,. In a meeting with the Boston Herald (video available at http://bostonherald.com/news/regional/view/20220223poker_on_the_table_as_state_mulls_online_bets), Grossman expressed concern about the impact of online lottery tickets on the convenience store lottery vendors. State Rep. Winslow (R), a task force member, is reported to like the idea of the lottery offering scratch tickets and video poker on the Internet.

History/Status

On Jan. 9, 2012 the State Lottery Commission issued a request for response ("RFR") for a consultant and facilitator to assist the task force and provide a report that reviews the law, economic implications, business opportunities, and social issues concerning online gaming and advises as to "legislative and regulatory measures needed to position the Lottery for the introduction of online products, while protecting its assets and safeguarding the interests of [MA] citizens." Responses to the RFR were due Feb. 13, 2012. The RFR requires the successful vendor to report on "the current 'State of Online Play' in Massachusetts and across the Nation" in 60 days after being awarded a contract, with a complete report due no later than Nov. 28, 2012. In addition, the vendor must be able to work with the winner of a second RFR, issued Nov. 23, 2011 by the Lottery, that seeks consulting services regarding the development of a request for responses for new on-line gaming system ("on-line gaming system" defined as "lottery terminals connected to a lottery computer system via a lottery controlled network") to replace the 14-year-old system in use.

Issues

Will legislation be needed for the Massachusetts Lottery to sell lottery tickets and lottery games on the Internet?
Will lottery ticket vendors oppose Internet sales?

MICHIGAN

SB 1006 would prohibit sale of tickets or shares in the State Lottery "over the Internet."

History/Status

On March 6, 2012, Senators Green, Marleay, and Jones introduced SB 1006 and it was referred to the Committee on Regulatory Reform. News reports indicate the bill is in response to comments by the lottery officials about the possibility of selling tickets online.

Issues

Does the sale of lottery tickets on the Internet "threaten[] local businesses" and "bring financial harm to Michigan residents" and "run counter" to the goals of attracting new business, creating jobs and turning our state around?"

MISSISSIPPI

HB 1373 would provide for the licensure and regulation of Internet gambling. Gaming licensees would apply for an Internet wagering permit, with a permit fee of be no less than \$200,000, with \$100,000 non-refundable, that is to be deposited with the permit application. The yearly renewal fee must be at least \$100,000. Each licensee would pay a 5% monthly fee on its Internet wagering gross revenues. The bill would permit seizure of domain names associated with unlawful gambling websites and blocking of access to sites on a black list to be drawn up by regulators.

History/Status

Introduced by Rep. Moak (D) and referred to the House Gaming and Ways and Means Committees on Feb. 20, 2012.

Issues

Is there industry support for the bill?

NEVADA

- In 2001, Nevada enacted legislation (*AB 258*) providing for the licensure and regulation of "interactive gaming," including what is typically referred to as Internet gaming, i.e., using the Internet to place, and receive potential winnings associated with, bets or wagers.
- In 2011, Nevada enacted 2 bills (*AB 218* and *AB 258*) that collectively required gaming regulators to issue regulations governing interactive gaming licenses.
- In 2011, Nevada enacted *AB 213*, which permitted Nevada gaming authorities to issue renewable preliminary determinations of suitability for licensure to entities.

History/Status

The Nevada law provided that regulations could not be adopted concerning interactive gaming until, among other things, Nevada gaming authorities determined that "[i]nteractive gaming can be operated in compliance with all laws." DOJ told Nevada that I-gambling would violate certain federal statutes and no regulations were developed. *AB 258*, as enacted, removed the restrictions on adopting interactive gaming regulations and required Nevada gaming

authorities to adopt such regulations "on or before Jan. 31, 2012." It also included a requirement that no "license to operate interstate interactive gaming" would be effective until:

- (1) A federal law authorizing the type of interactive gaming for which the license was granted is enacted; or
- (2) The United States Department of Justice notifies the Board or Commission in writing that it is permissible under federal law to operate the specific type of interactive gaming for which the license was granted.

NRS 463.750.2(g). By the end of 2011, regulations applicable to interactive gaming licenses had been adopted. Applications are being taken for interactive gaming licenses and preliminary determinations of suitability.

NEW JERSEY

- In early 2011, Gov. Christie vetoed a bill (S3019) that would have permitted Atlantic City casinos to offer their approved games to New Jersey residents over the Internet.
- After the release of the 23 Dec. 2011 DOJ opinion, Gov. Christie is reported to have said: "I think we should be an epicenter for [I-gaming], but I want to do it right -- I do not want to rush and get legislation that either doesn't pass state constitutional muster, or creates other problems for us." State Sen. Lesniak, the primary sponsor of I-gaming legislation, said he will introduce a bill early in the 2012-2013 session.
- In 2012, Sens. Lesniak and Whelan introduced a new bill, S1565, which would permit Atlantic City casinos to offer their approved games to NJ residents on the Internet. An identical bill - A2578 - was introduced in the Assembly.
- In 2012, Sen. Cody introduced S56, which would permit the State Lottery to sell tickets and conduct games online "to the extent not inconsistent with Federal law."

History/Status

S1565 - Introduced Feb. 9, 2012 by Sens. Lesniak and Whelan and referred to the Senate State Government, Wagering, Tourism & Historic Preservation Committee. On March 5, 2012, it was reported with amendments, including one: "to permit wagers to be accepted from persons who are outside of New Jersey if the Division of Gaming Enforcement determines that this would be not be inconsistent with federal law or the law of the jurisdiction, including any foreign nation, in which any such a person is located, or if such wagering is conducted pursuant to an interstate compact to which this State is a party that is not inconsistent with federal law. After a second reading, it was referred to Senate Budget Committee..

S56 - Introduced by Sen. Codey on 10 Jan. 2012 and referred to the Senate State Government, Wagering, Tourism & Historic Preservation Committee.

Issues

Is a constitutional amendment needed for i-gaming to be authorized?

Will racetracks, as "threatened" at the March 5 committee hearing, challenge the i-gaming legislation if it is enacted?

NEW YORK

New York, like Illinois, in 2009, asked the DOJ for an opinion, specifically asking if it could transmit data related to Internet sales of tickets and games to be stored outside the boundaries of New York. The DOJ opinion, released 23 Dec. 2011 concluded doing would not violate the Wire Act.

History/Status

According to a Dec. 27, 2012 New York Times article:

New York has offered an online subscription service since 2005 that allows state residents to enter a string of Lotto or Mega Millions drawings. The director of the New York Lottery, Gordon Medenica, said Saturday that the lottery had built a broader online gaming system for New York, but that the contractor that put the system together was wary about moving forward because it feared it could get into legal trouble.

"We've been waiting for a couple years," Mr. Medenica said in a telephone interview. "We're thrilled that this ruling has now come down and confirmed that our legal analysis was correct all along."

As a result of the new policy, New York Lottery officials said they planned to add two additional jackpot games, Powerball and Sweet Million, to its current online lottery subscription service, and would allow New York residents to buy single-draw tickets online for the first time. Mr. Medenica said it would take several months for the lottery to finalize the new offerings, and he said officials would "take a very cautious initial approach" in rolling out additional online options.

<http://www.nytimes.com/2011/12/25/us/online-gaming-loses-obstacle-at-justice-department.html?pagewanted=all>

Issues

Will there be push back from other segments of the gaming industry active in New York?

Will lottery ticket vendors be able to delay or stop implementation of ticket sales and games on the Internet?

US VIRGIN ISLANDS

In 2001, the US Virgin Islands enacted legislation authorizing Internet gambling.

History/Status

While regulations were promulgated in 2002 and a license awarded to a hosting facility in 2003, no Internet gambling has yet been conducted. The USVI received a letter from the DOJ informing it that Internet gambling would violate certain federal statutes, even if conducted intrastate.

Issues

Will the USVI move forward with offering some form of Internet gaming over the Internet?

Federal Legislative Efforts

HR 1174

Sponsor: Campbell, R-Calif.
Introduced March 17, 2011

Identical to Frank bill (*HR 2267*) as amended and reported out in 2010 by the House Financial Services Committee. It would, among other things: add a new subchapter to 31 U.S.C. that would provide for licensure and regulation of Internet gambling, other than on sports; exclude any operator that "knowingly participated in, or should have known [it was] participating in, any illegal Internet gambling activity," such as "taking an illegal Internet wager;" allow individual states or tribes to opt out (and opt back in). It does not provide for new taxes or fees for licenses. Provides for oversight by the Secretary of Treasury, who would be able to delegate suitability and licensure determinations to qualified state or tribal authorities.

Status

The bill has 29 co-sponsors (including Frank, D-Mass., and Paul, R-Tex.), but none since July 14, 2011. No hearings have been held since introduction.

Issues

How should tribal and state lottery issues be addressed?

HR 2230

Sponsor: McDermott, D-Wash.
Introduced June 16, 2011

Would amend the Internal Revenue Code to provide for a fee and tax related to any Internet gambling that might be authorized by HR 1174.

Status

The bill has five co-sponsors. No hearings have been held since introduction.

Issues

Is a fee on player deposits a realistic method of taxing Internet gambling operators?

HR 2366

Sponsor: Barton, R-Tex.
Introduced June 24, 2011

Would provide for licensure and regulation of Internet poker facility operators and strengthen UIGEA under the oversight of the Secretary of Commerce, who is required to approve qualified state and tribal authorities to determine suitability and issue licenses to operate Internet poker facilities. Initial licensure would be limited to certain US-licensed gaming operators (commercial and tribal casinos, racetracks, card rooms) meeting specified criteria; all other Internet wagering, except for that conducted pursuant to the IHA or by state lotteries, would be illegal. State laws inconsistent with the bill would be pre-empted. UIGEA amendments include the development of a list of those operating unlawful Internet gaming facilities.

Status

The bill has 27 co-sponsors (including Campbell, Frank, and Paul), with the most recent (Murphy, R-Pa.), on 1 Feb 2012. Two hearings were held in 2011 by a subcommittee of the House Energy and Commerce Committee. While not specific to this bill, hearings on Internet gambling have also been held by the Senate Indian Affairs Committee.

Issues

How should tribal and state lottery issues be addressed?

HR 2702

Sponsor: Gibson, R-NY

Introduced July 29, 2011

One paragraph bill that would amend the Wire Act to provide that it, along with UIGEA, and "any other provision of Federal law that establishes criminal penalties for any activity involved in placing, receiving or otherwise transmitting a bet or wager" does not apply to bets or wagers permissible under the IHA.

Status

Introduced July 29, 2011 and referred to the House Committee on the Judiciary. On Aug. 5, 2011, Rep. Schrader, D-Ore., signed on as a co-sponsor. The bill is noted as related to *HR 2366*, Rep. Barton's bill.

KYL/REID COMPROMISE

Speculated that a compromise bill, negotiated by Senators Kyl (R-AZ) and Reid (D-NV) would deem unlawful all Internet wagering not authorized by or inconsistent with the bill, would provide for licensure and regulation of Internet poker facilities, would limit initial licensees, would provide for licensure and regulation by "qualified" state or tribal regulatory bodies, and would strengthen UIGEA.

Status

It has been reported that the negotiations are a continuation of those that took place during the lame duck session in 2010 but no draft has been leaked. It has also been reported that the compromise will be "dropped into" a "must pass" bill.

Issues

Will it happen in 2012?

Pari-mutuel Wagering on Horse Races

According to a Feb. 20, 2012 article, 43 states had authorized pari-mutuel wagering on horseracing in accordance with the Interstate Horseracing Act, leaving only 7 states that do not currently offer legal pari-mutuel wagers – Alaska, Georgia, Hawaii, Mississippi, North Carolina, South Carolina, and Utah. See:

<http://www.worldcasinodirectory.com/american-casinos/pari-mutuel>. Many of these states permit those located within their borders to do so over the Internet through advance deposit wagering entities ("ADWs"). There is a lack of consensus among the entities as to how many states actually permit the ADWs to accept wagers from individuals located within their states.

Two states have enacted legislation that defines exchange wagering as pari-mutuel wager – California in 2010 and New Jersey in 2011. Both the California and New Jersey laws define exchange wagering as "a form of pari-mutuel wagering in which two or more persons place identically opposing wagers in a given market." Ca. Bus. & Prof. Code §19604.5(7); N.J.C. 5.5-170. In both states, exchange wagering must be conducted in compliance with the Interstate Horseracing Act of 1978, 15 U.S.C. §3001 et seq. and pursuant to a license.

In California, the California Horse Racing Board ("CHRC") will issue licenses. The California law provides that exchange wagering is not to commence sooner than May 1, 2012. The CHRC is required to seek input from interested parties and to promulgate exchange wagering regulations so as to be able to have issues licenses so that exchange wagering can commence on May 1, 2012. The CHRC, on August 3, 2011, sought input from interested parties, and, at its Jan. 19, 2012, named an ad hoc committee to conduct a hearing on the proposed regulations, to be held Feb. 9, 2012. The Ad Hoc Committee reported to the CHRC at its Feb. 23, 2012 meeting but no action was taken.

In New Jersey, the New Jersey Racing Commission ("NJRC") will issue the license. The only entity permitted to be an exchange wagering licensee is the New Jersey Sports and Exposition Authority ("NJSEA"), but the Authority is permitted to enter into an agreement or contract with a person or entity to operate the exchange. The law also provides for the NJRC to promulgate regulations to govern the application process and the operation of exchange wagering. No regulations had been issued as of December 2011. The NJSEA is responsible for managing the Meadowlands and Monmouth Park racetracks. NJSEA has entered a 30-year race with a private party to run the Meadowlands but has been unsuccessful in securing a lessee for Monmouth Park. Recent reports indicate that New Jersey Governor Christie has said there will be no exchange wagering until Monmouth Park is privately managed.

About Us



BolaVerde Media Group is a consultancy specializing in Internet gambling, a nascent entertainment medium that, since its birth nearly a decade ago, has blossomed into a vibrant, \$30 billion global business. Director Mark Balestra has served the industry for 14 years, and from our base in St. Louis, Missouri, we are positioned to empower you with innovative custom research and analytics, tailored Web-based seminars and tutorials, independent advice and consulting, and access to an extensive network of contacts both in the United States and abroad. We believe every client is unique and approach each project, therefore, with an open mind – we are passionate about delivering nuanced solutions that build understanding, balance expectations and foster clear decision making. We invite you to put our experience, insight and professional network to work in service of your strategic vision.

Web: www.BVMediaGroup.com | Email: info@bvmediagroup.com | Phone: + 314 685 8965 | Twitter: @BVMG

K&L | GATES

K&L Gates LLP comprises nearly 2,000 lawyers who practice in 41 offices located on four continents. We represent leading global corporations, growth and middle-market companies, capital markets participants and entrepreneurs in every major industry group as well as public sector entities, educational institutions, philanthropic organizations and individuals. Our practice is a robust full market practice - cutting edge, complex and dynamic, at once regional, national and international in scope. In 2009 and 2010, our revenues exceeded \$1 Billion and, as stated in the July 2010 issue of the UK publication Legal Business, the firm “has further cemented its position as the Global 100’s fastest growing firm.”

Web: www.klgates.com