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The _____ MICHIGAN GAMING _____ Newsletter



MICHIGAN LEGISLATIVE UPDATE

On February 23, 2012, four bills were introduced in the Michigan legislature that, if passed, would amend the state's charitable gaming laws to provide increased oversight of "millionaire parties," as well as change the state laws regarding lottery prize payments. In addition, separate legislation was introduced or advanced in the House regarding lottery operations and payments.

Charitable Gaming Bills

[House Bill 5434 \(HB 5434\)](#) – This bill, introduced on February 23, 2012 by Rep. Tom McMillan (R-Rochester Hills), would amend the Traxler-McCauley-Law-Bowman Bingo Act ("Bingo Act") to limit the amount of expenses that a licensed charitable organization could pay a supplier or other service provider in connection with assistance in operating a millionaire party. Those licensed organizations would not be allowed to "incur or pay expenses" related to the gaming event in excess of 25% of the gross proceeds from the event. The bill has been referred to the House Committee on Regulatory Reform.

[House Bill 5435 \(HB 5435\)](#) – This bill, also introduced on February 23, 2012 by Rep. McMillan, would establish licensing procedures and fees for venues that host millionaire parties. The bill would amend the Bingo Act and require a written application, \$1,000.00 annual fee, \$200.00 monthly fee, and \$50.00 weekly fee for operating a venue. Licenses would be issued annually and would run from March 1 to the last day of February. The bill has been referred to the House Committee on Regulatory Reform.

[House Bill 5436 \(HB 5436\)](#) – HB 5436 was introduced on February 23, 2012 and would amend the Bingo Act would allow a local unit of government to limit the number of millionaire parties conducted per month within its jurisdiction. The bill was introduced by Rep. McMillan and has been referred to the House Committee on Regulatory Reform.

Lottery Bills

[House Bill 5437 \(HB 5437\)](#) – Introduced by Rep. Dale Zorn (R-Ida) on February 23, 2012, this bill would require the Bureau of Lottery to determine whether a winner of a prize over \$1,000.00 has any current liability to the state unemployment insurance agency prior to awarding the prize. If the winner has a debt to the agency, then the amount of the debt would be deducted from the winner's award prior to payment. The bill has been referred to the House Committee on Commerce.

[House Bill 5417 \(HB 5417\)](#) – This bill was introduced on February 21, 2012 by Rep. Jimmy Womack (D-Detroit) and would allow certain cities to establish and run independent lotteries. If passed, cities with a population of over 300,000 to create a city-run lottery after receiving approval by local voters. In order to operate these lotteries, the city would be authorized to contract with outside operators, to establish city lottery commissions, and to put forth licensing rules and regulations for the sale of city lottery tickets. The bill has been referred to the House Committee on Regulatory Reform.

[House Bill 5033 \(HB 5033\)](#) – This bill was introduced on October 4, 2011 by Rep. Dave Agema (R-Grandville) and would amend The Social Welfare Act to require the inclusion of lottery or other gaming winnings in the calculation as to whether an individual is eligible to receive food assistance. The bill would count lottery and gaming winnings as income, regardless of whether the winnings occur through a lump-sum or monthly payments. On February 21, 2012, the bill passed a House vote 67-39 and, on February 22, 2012, was referred to the Senate Committee on Families, Seniors, and Human Services.

[Senate Bill 5009 \(SB 5009\)](#) - Introduced on September 27, 2011, by Rep. Pete Lund (R-Shelby Twp.), this bill would amend the state penal code to allow senior citizen centers to conduct card games with limited betting. The bill would allow senior citizen centers or a group of at least fifteen members who are 60 years of age or older to conduct and participate in card games. Players would be limited to paying a maximum of \$5 to enter the game, would not be allowed to bet more than 25¢ per bet, and

the maximum win from any single hand could be \$5. On February 29, 2012, the bill was referred back to the Senate for a second reading.

G2E WEBINAR OFFERS ONLINE GAMBLING INSIGHTS

Yesterday, March 1, 2012, gaming industry experts held an online webinar and offered their insights regarding the changing landscape of online gambling in the United States. The webinar, *Online Gaming: The New U.S. Landscape – Find Out What the Changes Mean to You*, focused on the Department of Justice's recent opinion on the Wire Act and its potential state and federal impact on online gaming.

The webinar was moderated by Frank J. Fahrenkopf, Jr., President and CEO of the American Gaming Association. Panelists included the Honorable Tom Ridge, First Secretary of the U.S. Department of Homeland Security; and David Stewart, gaming attorney at Ropes & Gray LLP.

A Changing Landscape

On Friday, December 23, 2011, the United States Department of Justice (“DOJ”) announced through an official memorandum opinion relative to lottery matters that the Department would no longer consider non-sports related wagers to be prohibited under the Wire Act. Prior interpretations by the Department considered all forms of interstate wagering occurring over wire communications as being prohibited by the Act.

Thus, the Department now considers the language of the Act to apply only to wire communications that cross state lines in connection on placing a wager on “any sporting event or contest” and not to other forms of wagering. 18 U.S.C. § 1084(a). Therefore, under the Department's new interpretation, the transmission of wagering information on any other activity is not prohibited under the Act, bringing uniformity between the Unlawful Internet Gambling Enforcement Act (“UIGEA”) and the Act.

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Mr. Stewart stated his surprise by the DOJ's December, 2011 opinion, noting that it was a one-hundred eighty degree shift from the past 20 years. He went on to note that the Department of Justice's Office of Legal Counsel was the governing body that produced the memorandum, which was in response to Illinois and New York's interest in selling online lottery tickets. As such, decisions of the office are binding on all executive agencies.

Currently, states such as Nevada, New Jersey, Iowa and Mississippi are taking a proactive approach to implement intrastate online gambling. Nevada is currently accepting applications from online gaming operators in the state. Mr. Stewart stated that this is going to be a very attractive area for states over the next year.

Needed Regulatory Enforcement

Webinar participants noted that there are currently 10-15 million Americans engaging in illegal online gambling each year. All agreed that a strict regulatory structure is needed before online gambling can go forward.

The Honorable Tom Ridge of FairPlayUSA advocates fair, safe, and law abiding online poker in the United States. He believes that state-of-the-art technology, coupled with thoughtful and adequate regulatory structure is the key for safe and secure online poker. Hon. Ridge also believes that the use of proper identification and verification processes such as geo-location technology would ensure the identity of players across the various jurisdictions and prevent underage gambling. The panel pointed to the other 80 plus jurisdictions, which currently host online gambling, as examples where implementing regulated and policed online gaming has been successful.

Notably, on Tuesday Calvin Ayre, founder of Bodog.com and three other alleged conspirators were indicted in Maryland for illegal online gambling. The individual defendants face a maximum sentence of five years in prison for conducting a gambling business; and 20 years in prison for the money laundering conspiracy. Bodog.com faces a maximum fine of \$500,000 on each of the two counts. Mr. Stewart stated that this is an example of the DOJ stepping up its efforts to

thwart the illegal activity within our borders.

According to a February 28, 2012, DOJ statement regarding the indictments, "[s]ports betting is illegal in Maryland, and federal law prohibits bookmakers from flouting that law simply because they are located outside the country," said U.S. Attorney Rod J. Rosenstein. "Many of the harms that underlie gambling prohibitions are exacerbated when the enterprises operate over the internet without regulation."

Panelists noted that there are currently more than 2,000 "rogue" online gaming companies around the world that offer gambling within the United States.

What's Next

Mr. Farhenkopf, stated that the AGA is in full support of legalized online gambling as long as legislation follows three principles: it doesn't make any currently legal gaming illegal; it does not restrict state's rights; and it must be equally implemented across all aspects of the industry. He went on to note that gaming is an industry that depends on luck. He feels luck would be on the side of their efforts if federal legislation were introduced in the next four to eight months. Though he noted that it may be unlikely as it is a presidential election year and that the Congress is preoccupied with other matters. "We will continue to educate Congress that this needs to be addressed and encourage the necessity of proper regulation and legalization," stated Mr. Fahrenkopf.

Mr. Stewart feels that legalizing and regulating online gambling is 'doable' within one year but is very difficult to predict at this time. He noted that the potential incentive of states to collect revenue may be a driving force behind legalization efforts at the state level. Generally, Mr. Stewart said that he would be surprised to see any federal legislation gain momentum this year and that the focus for now would remain in the individual states.

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S&P INCREASES GUN LAKE TRIBAL GAMING AUTHORITY'S CREDIT RATING

On Wednesday, February 29, 2012, Standard and Poor's Rating Service ("S&P") announced that it had raised its issuer credit rating for the Gun Lake Tribal Gaming Authority ("Authority") from a B to a B+. The Gun Lake Tribal Gaming Authority is the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians' ("Tribe") entity that operates its Gun Lake Casino in Wayland Township, Michigan.

In August of 2011, S&P rated the Authority a B or "positive" rating. Since this rating, the S&P report notes that the Authority has displayed a strong operating performance and is expected to perform well in the immediate future. The analysis points to a number of factors that increase the credit outlook for the Authority, including the limited number of competitors in the casino's immediate market area, the strong initial operating performance, and the payoff of its development loan in the final quarter of 2011. These factors, among other items, led to the assessment by S&P that the risk profile for the Authority is "weak."

The Authority is the Tribe's primary development and operating party for the Gun Lake Casino, located off of U.S. 131 in Wayland Township. The Authority has partnered with MPM Enterprises, LLC, an affiliate of Station's Casinos, Inc., to manage the casino operations. The casino opened on February 11, 2011 and features 1,450 slot machines and 28 table games. In addition, the facility offers a food court, multiple dining options, lounges, and live entertainment.

FIREKEEPERS MANAGEMENT CONTRACT UPDATE

FireKeepers Casino is wholly owned and operated by the Nottawaseppi Huron Band of Potawatomi Indians ("Tribe") and has previously been managed by Full House Resorts Inc. The Tribe entered into an agreement to buy out the FireKeepers casino management contract for \$97.5M.

The casino was managed by Gaming Entertainment Michigan, L.L.C., a joint venture between Las Vegas-based Full House Resorts Inc., and RAM Entertainment, L.L.C., a privately owned investment company. According to the *Las Vegas Review Journal*, the original deal was scheduled to run until August, 2016.

Full House Resorts stated that it will report fourth quarter 2011 financial results before the market opens on Thursday, March 8, 2012. To access the conference call, please dial 888-245-0988. For more information on Full House Resorts, please visit: www.fullhouserestorts.com.

OHIO GAMING UPDATE

Commercial Casinos

At its latest public meeting on February 15, 2012, the Ohio Casino Control Commission ("OCCC") voted to set the opening dates for two of Ohio's four new commercial casinos. Horseshoe Casino Cleveland will be the first to open during the week of May 14th, while Hollywood Casino in Toledo was approved to open during the week of May 28th. Rock Ohio Caesars, LLC, the owner of the Horseshoe Casino Cleveland, is investing \$350 Million in its casino facility in downtown Cleveland that, when completed, is expected to offer 2,100 slot machines, a 30-table poker room, 63 table games as well as a 400-seat buffet, food court and a feature bar. Likewise, Penn National Gaming is spending \$300 Million on its casino complex to be located just off Interstate 75 outside of downtown Toledo that, when completed, will offer a 125,000 square foot gaming floor with up to 2,000 slot machines and 60 table games, as well as a steakhouse, buffet and two other bar/restaurants.

The Hollywood Casino in Columbus and the Horseshoe Casino Cincinnati, the state's other commercial casino developments, are tentatively scheduled to open in Fall, 2012 and Spring, 2013, respectively.

VLT Lawsuit

The lawsuit seeking to challenge the constitutionality of bringing Video Lottery

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Terminals (“VLTs”) to the state’s horse racetracks, as well as many aspects of the deal that was struck between Ohio Governor Kasich and commercial casino developers in June of 2011 concerning, among other things, casino licensing fees and application of the commercial activities tax to gaming revenue, is ongoing in the Franklin County Court of Common Pleas. The complaint in the matter of State ex rel Robert L. Walgate, Jr., et al v John R. Kasich, et al, was filed by the individual members of the conservative Ohio Roundtable organization, the American Policy Roundtable and Agnew Sign Lighting, Inc. in October, 2011. The plaintiffs’ main argument in the case is that VLTs cannot be installed at racetracks without a statewide vote of the Ohio electorate. In passing the VLT law, the Ohio legislature has contended that the 2009 constitutional amendment authorizing four commercial casinos in the state also gave the Ohio Lottery Commission the power to expand its offerings in the form of electronic gambling devices.

The defendants in the case include Ohio Governor John Kasich, the interim director and members of the Ohio Lottery Commission, the executive director and members of the Ohio Casino Control Commission and the Commissioner of the Ohio Department of Taxation. Notably, the Rock Ohio organizations, Penn National Gaming and a number of the other Ohio racetracks have been allowed to intervene into the case. There are a number of cross motions to dismiss and motions for summary judgment currently pending before the Court. If the case is not decided upon motion by the Court, the matter is set to go to trial in November, 2012.