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The MICHIGAN GAMING Newsletter



The Michigan Gaming Newsletter is publishing the below article that was authored by Mr. Donald S. McGehee, Division Chief, Alcohol and Gambling Enforcement Division, Michigan Department of Attorney General who has been the state's top lawyer for gaming law enforcement. As the Division Chief of the Alcohol and Gambling Enforcement Division of the Michigan Department of Attorney General, he serves as chief legal counsel to the Michigan Gaming Control Board, Bureau of State Lottery, Charitable Gaming Director, Horse Racing Director, Michigan Liquor Control Commission, and the Michigan Sheriff's Coordinating and Training Council of Michigan.

He is a recognized expert in gaming and alcohol law. He has co-authored various legislative amendments to the Liquor Control Code and Michigan Gaming laws and their Administrative Rules. He was the principal attorney for Michigan on the landmark Supreme Court decision in Heald v Granholm, a direct shipping case involving the interplay between the Commerce Clause and the 21st Amendment. He works closely with the Gaming Control Board and Lottery Commissioner in regulating gaming activity and overseeing tribal casino compact issues. He also works closely with law enforcement agencies in combating illegal gambling operations.

He has spoken numerous times at gaming and alcohol conferences and as a visiting speaker at state universities and law enforcement associations.

MICHIGAN'S BATTLE OVER INTERNET SWEEPSTAKES CAFES CONTINUES

Michigan Attorney General Bill Schuette, Executive Director Rick Kalm of the Michigan Gaming Control Board (MGCB), and the Michigan State Police (MSP) have worked diligently since 2011 to close down illegal Internet sweepstakes cafés, otherwise known as pop-up

casinos. In total, over 65 such businesses have been closed in Michigan through law enforcement action. In some cases, civil lawsuits were filed by the cafés challenging law enforcement's authority, and in other cases property seizures occurred resulting in criminal charges against the café operators and owners. All of the civil lawsuits brought by the cafés failed and were dismissed per the State's motion.

Internet sweepstakes cafés have a long and protracted history, first popping up in the South about 2005. They quickly expanded throughout the South, Midwest and some western states, including Utah and as far as Hawaii. It is estimated that over 5,000 of these pop-up-casinos opened in more than 20 states over the last decade.

In Michigan, they typically spring up in strip malls near lower-income populated areas. But other states have them in storefronts, gas stations, and convenience stores. They advertise selling a service or product, usually Internet access or telephone cards. However, when a purchase of Internet access is made, the customer is provided with what the café calls "sweepstakes entries" for use on casino-style games like video slot machines. When a customer wins one of the games, points are awarded that can be immediately redeemed for cash at the location.

These points or credits are often placed on a plastic swipe card. The customer goes to the computer station with the swipe card or account number and plays a variation of casino-style games to see if they win a prize, which is usually cash. In other cases, account numbers are issued and a running tally of the customer's purchased credits can be accessed on the computer. Typically, the operator gives away 100 chances or entries for every dollar spent on a phone card or Internet time. Each point has a payout value of one cent, meaning every 100 points can be redeemed for \$1.

While the café purports to sell Internet time, the casino-style gaming and cash payouts completely overshadow that business.

Nationally, pop-up casinos generate an estimated \$10 billion-plus a year. The MGCB and MSP estimate one closed location brought in more than \$1 million per year based on copies of the pop-up

casino's cash transaction reports. The business identified itself on one report as a gambling business. But unlike legally authorized casinos, these gambling businesses are unlicensed, unregulated and untaxed.

Proponents of these businesses try to compare their practices to other businesses' promotional giveaways, such as McDonald's Monopoly game, that are legal in most states. They also try to claim their gaming is not by chance but is predetermined by sweepstakes prize codes already issued and coded before the customer receives them.

Michigan's approach has been to conduct undercover surveillance, confirming the illegality of these businesses. After surveillance is completed, the Attorney General may send cease-and-desist letters to the operators, owners, lessors, lessees, software licensees, and software companies. The letters provide the cafés 14 business days to shut down or face criminal and civil sanctions.

In this regard, Michigan's law is particularly helpful in accomplishing the closures. Under Michigan's Gaming Act, an unlicensed gambling business operator can be guilty of a felony punishable by imprisonment for up to 10 years and/or a fine up to \$100,000. Michigan's Penal Code also broadly prohibits gambling in any form unless specifically authorized by statute.

Café operators have no assurance of receiving a cease-and-desist letter before law enforcement action is taken. However, the use of such a threat has effectively resulted in the closure of the illegal cafés in Michigan and preserves precious law enforcement resources so other significant crimes can be thwarted.

Michigan also has focused its enforcement efforts on the software companies that provide the casino-style games to the illegal cafés. Much of the software for the casino-style games is provided by the same companies.

Michigan also educates local law enforcement and the public regarding the illegality of these businesses, giving numerous presentations before law enforcement associations, bar associations, educational institutions, and gaming associations.

In some instances, this action has motivated local law enforcement and zoning regulators to keep these illegal businesses out of their jurisdictions.

Unfortunately, several closed illegal sweepstake locations attempt to convert their software into so-called skill games to meet the Chuck E. Cheese and Dave and Busters redemption gaming exception, under Michigan and other state gambling laws. But, these businesses should be forewarned that Michigan law enforcement agencies – at the highest level – take illegal gambling very seriously.

Should Michigan businesses try to skirt the law, they will likely face severe consequences and may not be so fortunate as to get a warning letter.