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# The \_\_\_\_\_ MICHIGAN GAMING \_\_\_\_\_ Newsletter



## **GOVERNOR WHITMER SIGNS BILLS LEGALIZING SPORTS BETTING AND INTERNET GAMING IN MICHIGAN**

Today Governor Whitmer signed bipartisan House Bills 4311-12, 4916-18, 4307, and 4308 into law, legalizing sports betting and internet gaming at Michigan's commercial and tribal casinos. Revenue from the new forms of gaming will support the School Aid Fund and the First Responder Presumed Coverage Fund (FRPCF).

Whitmer said, "My top priority in signing this legislation was protecting and investing in the School Aid Fund, because our students deserve leaders who put their education first. Thanks in part to the hard work and leadership of Senator Hertel and Representative Warren, these bills will put more dollars in Michigan classrooms and increase funding for firefighters battling cancer."

It is estimated that the new legislation will bring in \$19 million in revenue to the State, with \$4.8 million going to the School Aid Fund and \$4 million to the FRPCF. The FRPCF provides workers' compensation wage loss and medical benefits to first responders that have developed certain cancers. These contributions will provide the FRPCF with its first dedicated funding stream to treat illnesses that firefighters battle due to smoke inhalation and exposure to chemicals.

Michigan's tribal casinos are able to participate in online gaming and sports betting at equal levels to the Detroit casinos, helping to fund tribal community activities.

HB 4311 creates the Lawful Internet Gaming Act, which allows the MGCB to issue license for online and mobile casino games to commercial and tribal casinos.

HB 4916 creates the Lawful Sports Betting Act, which legalizes sports betting

in casinos, online, and on mobile devices.

HB 4308 creates the Fantasy Contests Consumer Protection Act, which establishes the legal framework to regulate fantasy sports contests within the state. It allows for paid, commercial contests, as well as private contests.

Governor Whitmer also signed HB 4310, HB 4323, and HB 4173, involving pari-mutuel wagering of horse race meetings, excluding lawful internet gaming from the Penal Code, and charitable gaming, respectively.

House Bills 4307 and 4308 were sponsored by Rep. Iden. House Bill 4310 was sponsored by Rep. Vaupel. House Bills 4311, 4312, and 4323 were sponsored by Rep. Iden, Rep. Byrd, and Rep. Garrett. House Bill 4173 was sponsored by Rep. Chirkun. House Bills 4916, 4917, and 4918 were sponsored by Rep. Iden, Rep. Hall, and Rep. Webber.

## **DOJ ISSUES MEMO EXTENDING FORBEARANCE PERIOD ON WIRE ACT PROSECUTIONS**

The Department of Justice, through Deputy Attorney General Jeff Rosen, released a [memo dated December 18, 2019](#), to United States Assistant Attorneys General directing them to forbear any prosecutions for Wire Act violations until June 30, 2020, or 60 days after final entry of judgment in the litigation currently pending in the 1<sup>st</sup> Circuit Court of Appeals. The litigation arose from the January 2019 DOJ Wire Act Opinion (“2019 Opinion”) that reverses a prior 2011 DOJ Opinion that held the Wire Act only applied to sports gambling. That case is currently before the 1<sup>st</sup> Circuit on appeal from a New Hampshire District Court’s opinion vacating the 2019 Opinion. The DOJ must file its brief by December 20, 2019, with New Hampshire Lottery’s brief due 30 days later and the DOJ’s reply brief due 20 days after the New Hampshire Lottery’s brief.

The DOJ originally issued a memorandum on February 28, 2019, directing that no Assistant Attorney General should pursue any prosecutions

based upon the new interpretation explained in the 2019 Opinion until June 14, 2019. The DOJ also issued a memo on April 8, 2019, directing that no Assistant Attorney General should pursue any prosecutions against State lotteries or their vendors until receiving further DOJ direction. With the New Hampshire court issuing its opinion on June 3, 2019, vacating the 2019 Opinion, the June 14, 2019, deadline was extended to December 31, 2019, or 60 days following final judgement in the New Hampshire litigation by a June 12, 2019, memo. With the 1<sup>st</sup> Circuit case likely being appealed to the Supreme Court regardless of the outcome, the moratorium will extend well past June 30, 2019, unless the DOJ changes its position.

## **SIXTH CIRCUIT COURT OF APPEALS REMANDS BAY MILLS VANDERBILT CASINO CASE**

On Friday, December 13<sup>th</sup>, the Sixth Circuit Court of Appeals reversed a District Court opinion that had found in favor of the State of Michigan with regard to the Bay Mills Indian Community’s Vanderbilt, Michigan casino location. Bay Mills had opened a casino location in Vanderbilt claiming that the land involved was “Indian Land” as a result of it having been acquired using proceeds from the Michigan Indians Land Claims Settlement Act (“MILCS”). In the lower District Court proceedings, both sides entered into a stipulation asking the court to interpret the phrase “held as Indian lands are held” under the MILCS to determine whether such lands qualify as “Indian Lands” for purposes of IGRA. By putting the stipulation together and asking for a ruling, the parties were seeking to simplify the case. The District Court went along with this request, and as a result issued an opinion stating that such land acquired with the proceeds from the MILCS did not necessarily constitute Indian Lands for purposes of IGRA.

On appeal, the Sixth Circuit Court of Appeals reversed the decision on the basis that the District Court should not have responded to the

hypothetical legal question involved until the underlying factual issues were resolved. In particular, the Court noted that the Governor had argued that there was a material issue of fact with regard to the question of whether the funds used to acquire the parcel had actually come from the land claim settlement under the MILCS. The Court opined that if that factual dispute were to be resolved in favor of the state, then there would not be any need for the Court to reach a decision on the legal question involved. The Court pointed to long standing precedent suggesting that the Courts should not get involved in resolving hypothetical questions or issues, and thus found that the District Court should not have done so. The Sixth Circuit Court remanded the case to the District Court for further proceedings. The Court also suggested that the District Court should explore what effect, if any, the National Indian Gaming Commission proceedings on the case will have.

The case will now return to the District Court for further proceedings. For further information, the website [Turtletalk.blog](https://turtletalk.blog/2019/12/16/sixth-circuit-vacates-bay-mills-gaming-case/) has done an excellent job compiling the relevant briefs and the Opinion in the case at this link: <https://turtletalk.blog/2019/12/16/sixth-circuit-vacates-bay-mills-gaming-case/>.

## **MICHIGAN SPORTS WAGERING GETS PRELIMINARY FOCUS**

Michigan's legislature passed a bill (HB 4916) authorizing sports wagering last week as part of a comprehensive gaming reform package and Governor Whitmer signed the bill into law today, December 20, 2019. More information on the package of bills can be found in [Volume 25, Issue 34 of The Michigan Gaming Newsletter](#).

The bill contemplates sports wagering being offered at both commercial and tribal casinos in the state, and online by licensed commercial and licensed tribal operators. In pushing to pass the bills, key members of the legislature made it clear that they were hopeful that the MGCB could act quickly to get sports wagering systems in place

and have expressed a goal of seeing this offering being available, at least in bricks and mortar casino sportsbooks, by the NCAA basketball tournament in March.

Before launch, the Michigan Gaming Control Board will need to promulgate regulations governing sports wagering. Given that the mobile component of sports wagering will present unique challenges and rules, Michigan's Detroit casinos will likely launch sports wagering on-premise first. Online wagering, however, will take more time as it will require outside operators to become licensed and the MGCB to promulgate new mobile-related regulations.

Several key regulatory policy questions will arise for regulators in states where the activity becomes lawful. RMC Legal has recently published an article entitled "Sports Betting Oversight" in Global Gaming Business Magazine. The article explores the question of how jurisdictions can best regulate and oversee sports wagering as it becomes more prevalent across the United States. The article identifies several policy issues that need to be addressed in sports betting regulation, including: integrity issues; who will operate sportsbooks; licensing of service providers; mobile and online wagering; cash reserve requirements; and collegiate sports wagering. In addition, the article discusses the four different approaches states have taken for internal controls and the practices surrounding the development of house rules. Finally, the article gives an overview of tribal sports wagering in the United States. The full article can be found [here](#).

Some of Michigan's tribal casinos may be able to bring on-premise sports wagering to market very quickly. Tribal casinos are subject to the Indian Gaming Regulatory Act ("IGRA") and the jurisdiction of the National Indian Gaming Commission ("NIGC"). Sports wagering is defined as a form of Class III gaming under IGRA and the applicable NIGC regulations. Each compact that the tribes have entered into with the state of Michigan is unique, with some specifically

defining the types of Class III games allowed, and others broadly authorizing all forms of Class III gaming. It is important to note, however, that for any mobile or online wagering, the recently passed legislation provides for licensing of tribes by the MGCB for gaming that extends beyond the tribal reservation borders.

## **MICHIGAN CHARITABLE GAMING ASSOCIATION COMMENTS ON NEW CHARITABLE GAMING LEGISLATION**

One of the several gaming bills that passed last week was HB 4173, which amends the Traxler-McCauley Bingo Act to address the topic of charitable gaming in the state of Michigan. The Michigan Charitable Gaming Association (“MIGCA”) long sought amendments to the Act to address concerns that various charities and suppliers had with Administrative Rules adopted by the Michigan Gaming Control Board that has oversight responsibilities for Millionaire Parties in Michigan. Initially, the MIGCA was supportive of the bill, as it contained identical language to a bill the association had advocated for during the last session. The MICGA had been working to help restore charities to the level of fund raising that they enjoyed before the adoption of the Administrative Rules. Specifically, they sought: a raise to the chip limit; a provision allowing for 7 days that a location could be open; and an increase in the number of licenses a charity could obtain each year to six from four.

During the legislative process, a House substitute was introduced and the MICGA sought to address concerns it had with the substitute at the Senate Regulatory Reform Committee hearing in mid-December. As amended, the Association stated that it was neutral to the bill at that time. Given this history, this Newsletter touched base with the MICGA to get its reaction to the bill as passed by both houses of the legislature.

The MICGA responded and noted that although the final draft of the legislation did not include all of the changes the Association had sought, it did

make some changes that the MICGA had advocated for including:

- Sec. 32(1)(D): returning the “lawful purpose” definition to the language that had been in the definition in last year’s HB 4081;
- Sec. 32(1)(a) making it clear that spouses would be allowed to be considered as workers for a millionaire party;
- Sec. 40(1): strengthening the language that no more than 2 workers are required;
- Sec. 51: reducing the felony penalties to misdemeanors; and
- A chip limit increase from \$15,000 to \$20,000.

That being said, the Association noted that its work is not over. The MICGA sent an update to its membership stating that it will continue to monitor events, and will let charities, suppliers, locations and advocates know as the changes take effect and get implemented by the MGCB. The MICGA has indicated that it will continue to advocate for the sustainability and the expansion of charitable gaming.

## **SPORTS CREEK RACETRACK UPDATE**

2020 could be a significant year for thoroughbred horse racing with a possible reestablishment of a thoroughbred track. On October 31, 2019, the Michigan Gaming Control Board Executive Director issued an [Order](#) granting a 2020 race meeting license and simulcast permit to AmRace & Sports, LLC (“AmRace”) for 10 days of live racing on Fridays and Saturdays from August 7, 2020, to September 5, 2020. AmRace & Sports, LLC has acquired the previous Sports Creek harness track and is working to convert the track to a thoroughbred track. Last year, AmRace voluntarily surrendered the track license it had been granted, noting former Governor Snyder’s veto of the Advanced Deposit Wagering (“ADW”) bill and suggesting that without supporting legislation the overall economics were not present to allow it to move forward. AmRace indicated at that time, however, that it would remain committed to the process and noted that it would seek beneficial

legislation. See related story, in [Volume 25, Issue 4 of the Michigan Gaming Newsletter](#).

Earlier this month, the Michigan Legislature once again passed HB 4310 which permits third party facilitator licenses for ADW at Michigan horseracing tracks. This bill was presented to the Governor on December 13<sup>th</sup> and was signed on December 20. Additionally, the state Senate passed a bill (SB 661) that would permit “historical horse racing” at tracks. This bill has been referred to the House Committee on Regulatory Reform.

The Michigan Gaming Newsletter touched base with AmRace & Sports LLC to get an update on its plans for 2020. In response, Nelson Clemmens, CEO of AmWest Entertainment LLC, stated:

“AmRace & Sports LLC remains committed to our efforts to bring Thoroughbred racing and breeding back to Michigan through establishing a fiscal foundation that will support viable and sustainable industry economics and growth, as well as allow for the significant investment that AmRace is prepared to make.”

Mr. Clemmens further provided insight as to their current thinking on the viability of reopening the track based on the current state of law and legislation in Michigan. He stated:

We are working constructively with the other Michigan horse racing stakeholders through the legislative process to attain this common goal for all operators. The benefits to Michigan for a successful outcome will be extensive in the agricultural, tourism, employment and service sectors of the state economy in addition to the significant tax revenues that will be contributed to the state treasury. Towards this end, we have realized the passage of the ADW bill through both Houses and the passage of the HHR bill through the Senate by a unanimous 38-0 vote. The ADW bill provides for a positive contribution to the future of the state horse racing and breeding industry and we look forward to having the MGCB putting that in

place in the near future. But it is having the HHR pari-mutuel revenues that will make it possible to operate a viable racing and track program. Without HHR our goals cannot be met. So, we clearly hope that the House will pass the HHR legislation as soon as possible and that the Governor will then affirm her support and sign it into law.”

Historical Horse Racing has been a controversial wagering product in several jurisdictions where it has been introduced. The machines involved in this process provide players with a slot machine type experience. One of the most recent states to see the introduction of these machines is the Commonwealth of Virginia, where the machines are being operated by Colonial Downs at a facility called “Rosie’s Emporium”. Colonial Downs has put out a video showing how to play these machines available at the following link, which demonstrates the different modes that players can choose, including an “autocap” option that allows the players to just keep spinning without going through any process of selecting horses in a race: <https://www.youtube.com/watch?v=9Rmh5K3pXwg>.

## **AGEM ANNOUNCES EIGHT NEW MEMBERS JOINING ORGANIZATION**

The Association of Gaming Equipment Manufacturers (AGEM) announced today that its Board of Directors approved the membership applications of eight new companies. The new members are:

- ASTOUND Group – based in Las Vegas, design and fabrication company specializing in the delivery of exhibits, events, and environments
- Bluberi – based in Quebec, Canada, focuses on high-performance games and machines
- eConnect – based in Las Vegas with an office in Macau, provides secure enterprise software
- General Touch – based in Chengdu, China, a leading manufacturer of touch screens for the gaming industry
- Nutanix – based in San Jose, California, a global leader of hyperconverged operating

systems focused on simplifying and securing gaming operations

- Rad Game Tools – based in Kirkland, Washington, a leading provider of innovative video game development tools
- RES-EXHIBITS Services – based in Rochester, New York, a trade show services company specializing in one-of-a-kind experiences
- UL – based in Northbrook, Illinois, promotes safe, secure, and sustainable living and working environments using science, hazard-based safety engineering, and data acumen

With the addition of the eight new companies, AGEM has a total of 177 members, its highest number yet. AGEM is a non-profit international technology trade association representing manufacturers, suppliers, and services for the gaming industry. AGEM works to further the interests of gaming suppliers through political action, regulatory influence, trade shows, and education.