

June 19, 2020

Volume 26, Issue 25

For more information on Michigan's gaming industry, please visit www.michigangaming.com

Editor in Chief

David D. Waddell, Esq.
Phone: 517.507.3859
waddell@rmclegal.com

*Senior Gaming Analyst
& Editor*

Robert R. Russell, II
Phone: 517.507.3858
russell@rmclegal.com

Associate Editor

J.J. Burchman, Esq.
Phone: 517.999.5414
burchman@rmclegal.com

Features Editor and Reporter

Gabrielle Davis
Phone: 517.999.5416
gdavis@rmclegal.com

Subscription information:
info@michigangaming.com

A publication of
RMC Ventures, LLC

Asher Court
321 W. Lake Lansing Rd.
East Lansing, MI 48823
Phone: 517.507.3860
Fax: 517.908.0235
www.rmclegal.com

The _____ MICHIGAN GAMING _____ Newsletter



MICHIGAN IGAMING AND INTERNET SPORTS WAGERING SUPPLIER TIPS

1. **Where can businesses interested in working with a Detroit casino or Tribal casino with respect to their online gaming operations obtain information on the licensing process?**

The Michigan Gaming Control Board's website has all of the necessary information needed to begin the licensing process. Here is a link to the specific section of the website: <https://www.michigan.gov/mgcb/0,4620,7-351-97573---,00.html>

2. **Which companies are required to obtain a license to work with a Detroit or Tribal casinos' online gaming operation?**

The Michigan Gaming Control Board is following the formal rulemaking process. The current Draft Rules establish the standard for licensing of both Sports and iGaming suppliers:

Sports betting supplier license. A person that provides goods or services regarding the operation of internet sports betting to sports betting operators is required to hold a sports betting supplier license. Sports betting supplier includes, but is not limited to, the following:

- (a) Internet sports betting platform providers
- (b) Geofence providers
- (c) Sports betting data providers
- (d) Software providers
- (e) Providers of software that directly affects sports betting or the integrity sports betting in the state of Michigan
- (f) Providers hosting live sports betting data

- (g) Affiliate marketers that have a payment agreement based on the sharing of gross sports betting receipts or adjusted gross sports betting receipts.
- (h) Unless otherwise determined by the board, any other person that meets one (1) or more of the following criteria:
 - (i) The person manufactures, supplies, or distributes devices, machines, equipment, items, or articles that meet any of the following provisions:
 - (A) Are specifically designed for use in the conduct of internet sports betting
 - (B) Have the capacity to affect the outcome of an internet sports bet
 - (C) Have the capacity to affect the calculation, storage, collection, or control of gross sports betting receipts.
 - (ii) The person services or repairs sports betting wagering devices, machines, equipment, items, or articles impacting the integrity of internet sports betting.
 - (iii) The person provides services directly related to the operation, security, surveillance, or management of internet sports betting.
 - (iv) The person provides other goods or services determined by the board to be so utilized in, or incidental to, the operation of a sports betting operator that the person must be licensed as a sports betting supplier to protect the public and enhance the credibility and integrity of internet sports betting in this state.
- (d) Providers hosting live internet gaming data.
- (e) Affiliate marketers that have a payment agreement based on the sharing of gross receipts or adjusted gross receipts.
- (f) Unless otherwise determined by the board, any other person that meets 1 or more of the following criteria:
 - (i) The person manufactures, supplies, or distributes devices, machines, equipment, items, or articles that meet any of the following provisions:
 - (A) Are specifically designed for use in the conduct of internet gaming.
 - (B) Have the capacity to affect the outcome of a bet.
 - (C) Have the capacity to affect the calculation, storage, collection, or control of gross receipts.
 - (ii) The person services or repairs internet gaming wagering devices, machines, equipment, items, or articles impacting the integrity of internet gaming.
 - (iii) The person provides services directly related to the operation, security, surveillance, or management of internet gaming.
 - (iv) The person provides other goods or services determined by the board to be so utilized in, or incidental to, the operation of an internet gaming operator that the person must be licensed as an internet gaming supplier to protect the public and enhance the credibility and integrity of internet gaming in this state.

Internet gaming supplier license. A person that provides goods or services that directly affect wagering, play, and results of internet games to internet gaming operators is required to hold an internet gaming supplier license. Internet gaming supplier includes, but is not limited to, the following:

- (a) Internet gaming platform providers.
- (b) Geofence providers.
- (c) Providers of software that directly affect wagering, play, the results of an internet game or the integrity of internet gaming

3. Does a company who is already a licensed supplier under the Gaming Control Act still need to apply under the iGaming and/or the internet sports wagering act? If so, is the application streamlined in any way?

Suppliers to the Detroit casinos are licensed under the Gaming Control Act. iGaming and internet sports wagering are entirely different forms of legalized gaming and governed under two separate laws, and the laws have different requirements. While the standards are similar, there is a technical requirement. A supplier that

currently holds a gaming license still must apply for an online gaming supplier license and submit the application with the required information to provide goods or services related to iGaming or internet sports wagering. According to Kurt Steinkamp, Deputy Director of Licensing, Investigations & Audit, "Current supplier licensees will find disclosure requirements significantly limited in comparison with new applicants' requirements. Our goal is to make the application process efficient while ensuring we have accurate, up-to-date information for each applicant."

4. Will there be any priorities for certain types of suppliers or what can companies expect related to the process?

The MGCB has published the online gaming supplier licensing forms and currently is accepting submissions. Given it is the launch of a new form of gaming, the MGCB expects a number of applications will require vetting and suitability determinations. For this reason, the MGCB strongly recommends submitting all applications as soon as possible as they will be processed in the order they are received. According to Steinkamp, "The MGCB anticipates a significant uptick in licensing applications within the next several months. To ensure applications can be considered ahead of these industries 'going live', it is important prospective suppliers submit applications as soon as possible."

5. What are the terms and fees of iGaming and internet sports wagering licenses?

Under both iGaming and internet sports wagering, a supplier's license is good for a five-year term. Applicants must submit a \$5,000 application fee and a \$5,000 licensing fee once approved. A license may be renewed for additional five-year terms upon approval by the MGCB for an additional \$2,500 license fee. Applicants also are responsible for paying investigation fees associated with the application process.

6. What is the current status timeline and expected completion date of the administrative rule-making process?

The MGCB previously distributed its draft rules to interested stakeholders and sought comments and suggestions informally, which it incorporated into the current draft of the rules. The MGCB has sent the draft rules to Treasury and they will likely be published in the next two weeks. The draft rules are sent to the Michigan Office of Administrative Hearings and Rules ("MOAHR"), which submits them to the Legislative Service Bureau (LSB) for informal editing for format and style requirements. The agency makes changes based on LSB's suggestions and resubmits the rules to MOAHR.

The MGCB will publish a notice of hearing to receive any public comments on the rules, and MOAHR publishes the rules in the Michigan Register. This is when any suppliers who have suggestions to register them with the MGCB if they haven't participated in the informal comment period. Once the hearing occurs, the MGCB will make any revisions it feels appropriate and forward the rules back to MOAHR along with the JCAR Report. MOAHR sends the rules to LSB, which certifies them, and MOAHR will forward the rules and report to JCAR.

JCAR must hold the rules for 15 legislative session days unless it waives the time requirement. JCAR then approves the rules, and the rules are implemented. The MGCB expects the entire process to take until the 1st quarter of 2021 but may be able to push it through by the end of the year.

CENTERS FOR DISEASE CONTROL RELEASE CONSIDERATIONS FOR CASINOS AND GAMING OPERATIONS

On June 18, 2020, the Centers for Disease Control ("CDC") released casino-specific considerations to help protect employees and customers from contracting and spreading COVID-19. The CDC noted that its casino-specific considerations are meant to supplement and not replace any local, state, territorial, federal or tribal safety laws, rules or regulations.

The CDC has broken down various stages of casino reopening into four categories (Lowest Risk, More Risk, Even More Risk and Highest Risk) with the first category consisting of online only games, the second category dealing with limited reopening with only games that do not require a dealer, the third category consisting of opening with all games but social distancing and enhanced cleaning and disinfectant, and the fourth category being operations as they were before the pandemic.

The guidance is divided into four sections. The “promoting behaviors” that reduce spread recommends staying home when appropriate, training on appropriate hand hygiene and respiratory etiquette, having adequate signage and supplies, and requiring face coverings. The “maintaining healthy environments” section describes appropriate cleaning and disinfection, discouraging and cleaning shared objects, and providing modified layouts and ventilation changes. The “maintaining healthy operations” section contains recommendations for protections for staff at high risk, regulatory awareness, staggering shifts, avoiding large gatherings, and adopting employee communication, support and staffing plans. The final section concerns preparing for when someone gets sick, including appropriate notifications, transportation of ill persons, and post-cleaning and disinfectant.

The guidance in its entirety can be found at: <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/business-employers/casinos-gaming-operations.html>.

AMERICAN GAMING ASSOCIATION POLICY PRINCIPLES OFFER FRAMEWORK TO ADVANCE CASINO PAYMENTS MODERNIZATION

In a press release dated Tuesday, June 16, 2020 the American Gaming Association (AGA) released their new *Payments Modernization Policy Principles* highlighting options for digital or contactless payments on the casino floor.

Enacting these principles will allow safer transactions for customers, operators, regulators, and law enforcement; hopefully limiting matters of anti-money laundering and increased efforts to monitor financial transactions.

Bill Miller, AGA president and CEO, is excited to begin this initiative, stating: “Advancing opportunities for digital payments has been one of our top priorities since my first day at the AGA. It aligns with gaming’s role as a modern, 21st century industry and bolsters our already rigorous regulatory and responsible gaming measures. The COVID-19 pandemic made it all the more important to advance our efforts to provide customers with the payment choice they are more comfortable with.”

The basic principles in the new plan will help state and tribal regulators to expand payment choices pursuant to seven principles:

1. Equip customers with more tools to wager responsibly.
 2. Give customers payment choice and convenience.
 3. Ensure state laws enable a flexible regulatory approach, capable of keeping pace with evolving forms of digital payments.
 4. Address heightened customer public health concerns.
 5. Provide customers confidence in digital payment security.
 6. Create a uniform regulatory environment for casino operators, suppliers, and regulators.
- Empower law enforcement to better identify offenders through digital payment analysis. The AGA found that 59 percent of casino visitors in the past year were less likely to use cash as a safer practice following the COVID-19 pandemic. The AGA continues to implement new strategies to promote public health on the casino floor and to implement safer gambling.

To read the full press release, click [here](#).

FIRST CIRCUIT HEARS ORAL ARGUMENTS IN WIRE ACT LITIGATION WHILE DOJ EXTENDS

PROSECUTION FORBEARANCE PERIOD

The First Circuit Court of Appeals heard oral arguments in the Wire Act litigation dispute on Thursday, June 18, 2020. The case involves a 2018 Opinion from the Department of Justice (“DOJ”) indicating that the Wire Act’s prohibitions extend to all forms of wagering and are not simply applicable to sports wagering. In issuing this Opinion, the DOJ expressly rescinded a prior 2011 opinion which had limited the application of the Wire Act to only sports wagering. The 3-judge panel hearing the case consisted of Judge Torruella, Judge Lynch, and Judge Kayatta. Both the DOJ and the New Hampshire Lottery Commission were allocated 16-minute arguments to the panel.

The DOJ opened the arguments. It argued that the 2018 Opinion did not open and the DOJ currently does not have any position as to whether the Opinion applies to State Lotteries and therefore there is no credible threat of prosecution and the challenge is not ripe for determination. The DOJ also argued that the Opinion was not a final agency opinion and therefore judicial review is not appropriate. Judge Torruella began the questioning by asking whether the DOJ’s position was that there is no possibility of prosecution at any time in the future? The DOJ indicated that in the future the DOJ may determine that the conduct may be illegal, but it has not done so and there is no credible threat of prosecution right now, which is the determinative question. The judge asked whether the Opinion reflected a change in interpretation and when that was confirmed by the DOJ, he asked why that wouldn’t lead to judicial review? Judge Lynch next questioned the DOJ, wanting to know whether the issue was ripe because the guidance from the DOJ indicating they would not prosecute state lotteries only occurred after New Hampshire brought the lawsuit? While the DOJ argued that the case was still not ripe because the DOJ had not taken any public position about prosecution of state lotteries, Judge Lynch pushed whether the DOJ’s position was because it was sufficiently vague under the Opinion there was no threat of

prosecution? Judge Lynch noted that there had been considerable reliance upon the previous 2011 Opinion resulting in spending hundreds of millions of dollars in investment that was put in jeopardy due to the 2018 Opinion. Judge Kayatta followed with additional questions, noting that part of the reason for the 2018 Opinion was to precipitate judicial review of the interpretation and that it did not distinguish between state lotteries and other operators. He also questioned whether the fact that the DOJ can change its opinion about the potential illegality of the state lotteries at any time and the state would only get a 90-day forbearance period from that time make this a ripe issue? The DOJ indicated that while true, that still doesn’t create a credible threat of prosecution.

The New Hampshire lottery presented its case next. It argued that the lotteries generate millions of dollars for public uses and the 2018 Opinion puts these revenue streams at risk and reverses the 2011 Opinion and restores a pre-2011 DOJ opinion that the Wire Act prohibits state lotteries from using interstate transmission and criminalizes the current online lottery operations. Judge Torruella asked if New Hampshire understood the DOJ position to provide an indefinite moratorium? New Hampshire responded that no, it was an act of prosecutorial discretion but at any time the DOJ could reverse, and the state would only have 90 days to cease. Judge Lynch noted that the relief requested was not limited to New Hampshire and requested a judicial interpretation that would void the 2018 Opinion as to not just state lotteries but all online operators. He asked whether that request was a cause for concern? New Hampshire responded that it is not a concern, because the issue is not related only to state lotteries but the broader question of whether the Wire Act is limited solely to sports betting. Judge Lynch asked if a state changed its lottery operations and moved into sports wagering, would state lotteries still be exempt? New Hampshire indicated that the 10th amendment would still prevent the DOJ from prohibiting the state from offering this form of wagering. Judge

Kayatta asked about the legislative history specifically regarding comments and asked whether language from previous drafting and punctuation would have made the issue clearer if the draft language had not been deleted? New Hampshire conceded that it would do so, but even without the deletions, the Wire Act as drafted accomplishes the goal of preventing criminal enterprise from engaging in illegal sports betting and does not need to be read more broadly.

A decision is expected from the appellate panel later this summer or in the fall.

In a related note, prior to the oral arguments, on June 11, 2020 the Deputy Attorney General issued a memorandum to all U.S. Attorneys extending the grace period on the implementation and prosecution of cases pursuant to the 2018 Opinion. The memo can be found [here](#) in its entirety. The memo directed the U.S. Attorneys not to apply the Wire Act to any non-sports related betting or wagering until December 1, 2020. It also directed that any Wire Act charges brought by U.S. Attorneys must first be approved by the DOJ's Criminal Division Organized Crime and Gang Section. The extension is the fourth extension ordered by the DOJ relating to the new 2018 Wire Act Opinion.

CASINO CITY PRESS ANNOUNCES CASINO PROPERTY REOPENING TRACKER

In a press release issued Wednesday, June 17, 2020, Casino City announced a new web app that tracks and shows complete details on more than 2,000 casino and gaming property closings and the current status of reopenings. The app is available at <https://www.gamingdirectory.com/covid-19/>. The application features both interactive maps color-coded to show the percentages of properties open in each U.S. state and Canadian province, as well as summary tables with the information and property-specific details such as closing and reopening dates and links to summary news articles. The tool covers 2,095 properties in the United States and Canada and can be sorted by property name, location, closing or opening date, current status and property

type.

“This is a challenging and unprecedented time for the entire industry,” says Michael Corfman, Casino City Press CEO. “From the very beginning our dedicated research team has been investigating and chronicling the closing and reopening of gaming properties in the wake of the coronavirus pandemic in the United States and Canada. We look forward to providing instant access to our continuously updated information about reopenings as they occur through our new complimentary COVID-19 web application.”

MICHIGAN ONLINE GAMING LEGISLATIVE ACTIVITY

On June 16, a bipartisan group of senators introduced a bill designed to allow the launch of iGaming prior to completion of the administrative rule-making process currently being undertaken by the Michigan Gaming Control Board (“MGCB”). The bill currently only covers iGaming and does not authorize internet sports wagering. Republican Senators Wayne Schmidt and Tom Barrett joined Democratic Senators Adam Hollier, Marshall Bullock, Paul Wojno, Dayna Polehanki, Curtis Hertel, Erika Geiss and Stephanie Chang in introducing SB 969.

The bill states that any commercial casino license holder and any Indian Tribe who conducts Class III gaming at a casino in the state of Michigan be considered to hold an internet gaming license until either the chief medical officer of the State of Michigan or the federal Centers for Disease Control and Prevention declares that social distancing related to the COVID-19 pandemic is no longer necessary in Michigan or the MGCB issues an internet gaming operator license to the person or Indian tribe, whichever is earliest. The bill also provides that any supplier who has submitted an application for a provisional internet gaming supplier license is deemed to hold a provisional internet gaming supplier license, again until the earlier of the lifting of social distancing requirements or the granting of a license by the MGCB.

The bill was referred to the Senate Committee on Regulatory Reform.

In addition, on June 17, 2020, a pair of House Republicans, Eric Leutheuser (Dist. 58) and Tristan Cole (Dist. 105), introduced a bill that would permit charitable organizations to conduct small and large raffles over the internet. HB 5862 would permit any charitable organization that held a license to conduct a raffle anytime in 2018 or 2019 to conduct either a small or large raffle over the internet. The bill has a sunset of June 30, 2023. HB 5862 was referred to the Committee on Regulatory Reform.