

May 14, 2021

Volume 27, Issue 17

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A publication of
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The _____ MICHIGAN GAMING _____ Newsletter



Henry Williams Confirmed as New MGCB Executive Director

With a roll call vote of the Michigan Senate on Wednesday, May 12, 2021, Henry Williams was confirmed as the new executive director of the Michigan Gaming Control Board. The Senate approved his appointment by a roll call vote of 34 in favor, 1 against, and one abstention due to an excused absence. Mr. Williams was appointed by Governor Gretchen Whitmer to succeed Rick Kalm, who recently concluded a 14 year term as executive director. Mr. Williams has worked for the MGCB since 2001 in a wide variety of roles and will now serve a six year term as executive director.



"I am honored to begin my appointment Monday as executive director of the Michigan Gaming Control Board," said Henry Williams following his confirmation by the Michigan Senate this week. "I look forward to the agency's continuing success and thank outgoing Executive Director Richard Kalm for his leadership and the opportunities he provided that paved the way for my appointment."

Michigan Court of Appeals Hears Arguments on Request for Declaratory Ruling on Games

In February of 2020 the Michigan Gaming Control Board ("MGCB") issued a press release announcing that more than a dozen businesses (including the Waterford Redemption Center and the Burton Redemption Center) were issued cease-and-desist orders to stop offering illegal gambling games during 2019 through a joint enforcement effort by Michigan Attorney General Dana Nessel's

office and the MGCB.

“Illegal gambling can lead to money laundering and other crimes that impact the safety and security of Michigan communities,” said Richard S. Kalm, Michigan Gaming Control Board (“MGCB”) executive director at the time. “Legal gambling is taxed and regulated, and taxes go back into the community as funding for K-12 education. An illegal gambling operation doesn’t support the community but instead siphons funds away from it.”

According to a press release issued at the time:

“MGCB investigators visited 14 businesses that claimed to operate redemption games, which are legal in Michigan. Investigators determined the locations instead were offering casino-style video slot machines for patrons’ use. Outcomes on these types of machines are based on chance and not on skill.”

“When given the opportunity to cease operations, each location chose to close rather than face potential criminal charges,” Kalm said. “An unlicensed gambling business operator can face a 10-year felony charge.”

https://www.michigan.gov/mgcb/0,4620,7-351-79131_57111-519419--,00.html

“Gambling regulations are in place for a reason, and when bad actors choose to ignore the law, they must be held accountable,” Attorney General Dana Nessel said. “We’re grateful for the opportunity to work with our partners at the Michigan Gaming Control Board in putting a stop to these illegal operations.”

Last week, the Michigan Court of Appeals heard oral arguments in the case of *Waterford Redemption Center v. Michigan Gaming Control Board*, in which the plaintiffs sought declaratory relief to try to nullify a cease and desist letter that they had received from the MGCB with regard to their operation of facilities with various forms of games which the MGCB determined were illegal.

The Court of Claims in Michigan summarily dismissed the plaintiffs’ case in the lower court proceedings, and the operators involved appealed. The oral argument can be viewed at the following link, starting at the 1:39 point: <https://www.youtube.com/watch?v=6m-ykfuLwjs>

Robert W. Stocker, II, attorney for the Waterford Redemption Center and the Burton Redemption Center, said his clients shut down their businesses in light of the cease and desist letter. He argued that unless his clients can obtain declaratory relief from the courts, they will be required to reopen the businesses and face possible criminal sanctions to get a ruling on the matter.

Assistant Attorney General Felepe Hall argued that the recently passed Lawful Internet Gaming Act (“LIGA”) makes it clear that these games are illegal. The Assistant Attorney General argued that even if LIGA does not apply, the Court of Claims had been correct in granting summary disposition, as the issues involved are factual issues rather than a challenge to the constitutionality of a statute. He went on to note that the operations involved had other problems with complying with the Michigan redemption game standards. He likened the situation to that of a corner druggist operating without a pharmacy license. He suggested that the operators should remain shut down given the problems with their operations fitting within the Penal Code exemptions.

MCL 750.301, a provision of the Michigan Penal Code, makes it clear that it is unlawful in Michigan to accept money or a valuable thing contingent on any type of uncertain outcome.

750.301 Accepting money or valuable thing contingent on uncertain event.

Sec. 301. Any person or his or her agent or employee who, directly or indirectly, takes, receives, or accepts from any person any money or valuable thing with the agreement, understanding or allegation that any money or valuable thing will be paid or delivered to any person where the payment or delivery is

alleged to be or will be contingent upon the result of any race, contest, or game or upon the happening of any event not known by the parties to be certain, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00.

MCL 750.310b creates exceptions to this broad prohibition for “redemption games” meeting various technical requirements and that are subject to operational limitations. According to the MGCB press release issued last year, the redemption game requirements were not being met by the operators involved.

As reported in The Michigan Gaming newsletter [Volume 27, Issue 13](#), the American Gaming Association recently issued a White Paper entitled [“SKILLED AT DECEPTION: How Unregulated Gaming Machines Endanger Consumers and Dilute Investments in Local Economies”](#). The top recommendation that the AGA made in the whitepaper is the following:

Law enforcement and policymakers must prioritize robust enforcement of laws to root out illegal and unregulated gaming machines. This includes enforcing laws already in force but also clarifying the law to make the illegality of these machines clear where any ambiguity exists.

If the Court of Claims decision is upheld by the Court of Appeals in the [Waterford Redemption Center](#) case, the MGCB’s practice of issuing cease and desist letters to operations that they view as violating the law can continue. Alternatively, if the Court of Appeals reverses the case, the Michigan Court of Claims may then be put in the position of making determinations with regard to ambiguous gaming machines and whether they fit within exemptions existing under the Penal Code.

Court of Appeals decisions typically take several months to be decided after oral arguments, thus a ruling on the case may be issued later this summer.

AGA’s Report Shows U.S. Quarterly Gaming Revenue Matches Record High

In a [press release](#) on May 11, 2021, the American Gaming Association (“AGA”) announced the 1st quarter results of its Commercial Gaming Revenue Tracker. Commercial gaming revenue across the United States totaled \$11.13 billion, matching the 3rd quarter 2019 as the highest ever. AGA noted that the quarterly results showed a 4.1% increase over pre-pandemic performance in 1st quarter 2019 and represents a 17.7% increase over 1st quarter 2020. Slot revenue accounted for \$6.70 billion, table game revenue accounted for \$1.62 billion, sports betting revenue accounted for \$961.1 million and iGaming revenue accounted for \$784.5 million in revenue.

“Today’s report shows gaming’s comeback is ahead of schedule,” said AGA President and CEO Bill Miller. “Throughout the COVID-19 pandemic, our industry has faced numerous challenges head-on while still reopening responsibly and providing a safe, exciting environment for customers. This is a testament to gaming’s hard work to help ensure our team members’ safety and well-being, which enabled us to reopen safely. We applied those same standards to our customers, whose clear pent-up demand was met by our responsible industry.”

The United States commercial market includes 30 states and the District of Columbia offering some combination of casino gaming, sports betting and iGaming.

Michigan Operators Report \$115.23 Million in April Gross Internet Gaming and Sports Betting Receipts

According to a [press release](#), Michigan internet gaming operators reported \$94.85 million in internet gaming gross receipts for April. Internet sports betting operators received \$20.38 million

in total gross sport betting receipts and reported a total handle of \$249.9 million for the month.

“While the sports betting handle dropped 30-plus percent, which we expected the month after March Madness, internet casino gaming adjusted gross receipts held steady with a slight two-tenths of a percent increase in April,” said Richard S. Kalm, MGCB executive director.

Taxes and payments are based on adjusted gross receipts, which were \$88.87 million for internet gaming and \$10.88 million for internet sports betting during April. The operators paid approximately \$18.1 million in taxes and payments to the State of Michigan for April, with Internet gaming contributing \$17.8 million and internet sports betting contributing \$312,824. As of April 23, 13 operators were authorized for one or both forms of online wagering. Details for each operator’s internet gaming and internet sports betting results are available in tables published on the [MGCB website](#).

For internet gaming, the state receives 70% of the total tax from the commercial operators and 80% of the total payment from tribal operators. The tax and payment rate ranges from 20% to 28% based on yearly adjusted gross receipts.

For internet sports betting, commercial operators pay 70% of the 8.4% tax to the state and 30% to the city of Detroit. Tribal operators make an 8.4% payment on adjusted gross receipts to the State of Michigan.

The three Detroit Casinos – MotorCity Casino, MGM Grand Detroit, and Greektown Casino - reported paying wagering taxes and municipal service fees of \$5.4 million to the City of Detroit during April:

- Internet gaming taxes and fees: \$5.2 million
- Internet sports betting taxes and fees: \$186,939

Tribal operators reported making total payments of \$1.8 million to the tribes’ governing bodies, according to the MGCB.

From the Jan. 22 launch through April 30, aggregate internet gaming adjusted gross receipts

totaled \$280.3 million and aggregate internet sports betting adjusted gross sports betting receipts were \$13.9 million.

An online gaming and sports betting [revenue distribution table](#) is available on the agency’s website.

With Operating at Limited Capacity Detroit Casinos Report \$108.98 Million in April Monthly Revenue

According to a [press release](#), the three Detroit casinos reported \$108.98 million in monthly aggregate revenue in April while continuing to operate at limited capacity due to COVID-19 health concerns. Table games and slots generated \$107.44 million in revenue, and retail sports betting produced revenue of \$1.54 million.

Although monthly revenue fell 3.1 percent when compared to March 2021, through April 30, gaming revenue for table games and slots for the three Detroit casinos was up by 30.9 percent compared to the same period last year. On March 16, 2020, the three Detroit casinos closed and remained closed during April 2020 due to coronavirus-related concerns.

The April market shares were:

- MGM, 40 percent
- MotorCity, 37 percent
- Greektown, 23 percent

During April, the three Detroit casinos paid \$8.7 million in gaming taxes to the State of Michigan. The casinos also reported submitting \$12.8 million in wagering taxes and development agreement payments to the City of Detroit during April.

The Detroit casinos reported retail sports betting total handle of \$24,337,682 during April. Total gross receipts were \$1,542,530. In qualified adjusted gross receipts, MGM led the way with \$604,701, followed by MotorCity with \$420,605

and Greektown with \$517,224. Qualified adjusted gross receipts are gross sports betting receipts minus the monetary value of free play incentives provided to and wagered by bettors. The casinos paid \$58,308 in retail sports betting tax to the state and reported submitting \$71,265 in retail sports betting taxes to the City of Detroit.

For March, fantasy contest operators reported total adjusted revenues of \$889,532 and paid \$74,721 in taxes. Through March 31, fantasy contest operators reported total aggregate adjusted revenues of \$4.2 million and paid \$355,472 in taxes.