

**Gambling Law Update™**  
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**LEGISLATIVE UPDATE**

Although all Bills concerning Internet gambling died at the end of last session, that does not mean that we won't see a reincarnation of prohibitory efforts in some form or another in the near future. The Christian Science Monitor reported in its January 12, 2005 edition that "The Financial Services Committee has had a long standing interest in combating the scourge of Internet gambling. . ."<sup>1</sup> Its no surprise that the Committee has had such an interest, with members like Rep. Michael Oxley (R-OH), Rep. Spencer Bachus (R-Al.), and Rep. James Leach (R-Iowa), all of whom have introduced some form of prohibitory legislation of their own, and who all wrote to the Christian Science Monitor to assure its readers that they "will continue our efforts in the newly convened Congress to deny offshore gambling interests access to the U.S. Market."<sup>2</sup> However, lawmakers might find that this will be a more difficult task than expected. In the U.K., lawmakers are expected this year to allow 137 land-based casinos to take Internet wagers from United States residents<sup>3</sup> – which would further hamper efforts by United States lawmakers to restrict Internet gambling. In addition, as noted below, the State of North Dakota is considering legislation to allow licensed Internet poker operations to set up shop in that state.<sup>4</sup>

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<sup>1</sup> Located at:

[http://www.csmonitorservices.com/csmonitor/display.jhtml;jsessionid=TLAUNKX3KKHN5KGL4L2SFEQ?\\_requestid=295505](http://www.csmonitorservices.com/csmonitor/display.jhtml;jsessionid=TLAUNKX3KKHN5KGL4L2SFEQ?_requestid=295505)

<sup>2</sup> Interactive Gaming News, *U.S. Law Roundup – January 2005*, Located at [www.igamingnews.com](http://www.igamingnews.com) (1/20/05).

<sup>3</sup> Jon Schwartz, *3 States May Legalize Online Gambling*, USA Today.com located at [http://www.usatoday.com/money/industries/technology/2005-03-15-cyber-gaming-usat\\_x.htm](http://www.usatoday.com/money/industries/technology/2005-03-15-cyber-gaming-usat_x.htm) (3/16/05).

<sup>4</sup> Dale Wetzel, *Lobbying Blitz Begins on Internet Poker Measure*, Located at <http://www.lasvegassun.com/sunbin/stories/gaming/2005/mar/07/518404919.html> (3/7/05).

It is estimated by the American Gaming Association, that bets placed through offshore sports-betting operations, office pool wagers, and wagers illegally made through bookies represent more than 99 percent of all sports betting nationwide.<sup>5</sup> It is these types of bets, which the National Gambling Impact Study Commission estimated to equal up to as much as \$380 billion annually in “illegal wagers,”<sup>6</sup> that have the federal government up in arms. The United States Internal Revenue Service (“IRS”) has been frustrated with the explosion in sports wagering, since the Internet and other industry innovations have made tracking and taxing gambling winnings by U.S. citizens virtually impossible.<sup>7</sup> There are no bells or whistles that go off in cyberspace when a player hits a jackpot, therefore the IRS has no way of knowing who won and how much. In state regulated betting operations, in certain circumstances, Uncle Sam even gets his cut (25 percent on most winnings, up to 33.33 percent for certain non-cash payments) before the winner gets any payout.<sup>8</sup> It is possible that lawmakers will eventually realize the amount of taxable revenue the United States is losing by not having some sort of regulatory scheme in place – analysts say that the federal government will eventually accept the Internet gambling industry.<sup>9</sup> With Internet gambling revenue alone pegged to hit \$10 billion, up by 40 percent from 2004,<sup>10</sup> and “illegal wagers” estimated at \$380 billion, it looks like the gaming industry will once again have to ready itself for battle, as opponents look yet again to immobilize this industry.

#### STATE LEGISLATIVE UPDATE

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<sup>5</sup> Kay Bell, *Bet on It: The IRS Doesn't Get Its Cut of Gambling Winnings*, [http://biz.yahoo.com/brn/050202/497\\_1.html](http://biz.yahoo.com/brn/050202/497_1.html) (02/02/05).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Andy Sullivan, *PluggedIn: Online Poker a Booming Global Enterprise*, [www.Reuters.com](http://today.reuters.com/news/newsArticle.aspx?type=internetNews&storyID=2005-03-06T174312Z_01_N02202499_RTRIDST_0_NET-COLUMN-PLUGGEDIN-DC.XML) located at [http://today.reuters.com/news/newsArticle.aspx?type=internetNews&storyID=2005-03-06T174312Z\\_01\\_N02202499\\_RTRIDST\\_0\\_NET-COLUMN-PLUGGEDIN-DC.XML](http://today.reuters.com/news/newsArticle.aspx?type=internetNews&storyID=2005-03-06T174312Z_01_N02202499_RTRIDST_0_NET-COLUMN-PLUGGEDIN-DC.XML) (02/06/05).

<sup>10</sup> NewsMax.com, *Internet Gambling to Hit \$10 Billion*, [www.NewsMax.com](http://www.NewsMax.com) (02/08/05).

Although the state of Internet gambling in the United States is still somewhat uncertain, some states have taken it upon themselves to consider regulation of Internet poker, like North Dakota, with its House of Representatives recent passage of a bill that was designed to do just that. If the bill is passed in both chambers and signed into law, the legislation would not take effect unless North Dakota voters approve a constitutional amendment to allow state licensing of Internet poker sites.<sup>11</sup> The bill would allow the state's citizens to vote in 2006 on whether the definition of gambling should be amended to exclude Internet poker, reclassifying it as a game of skill. If the measure, which also provides for taxes on poker revenue and an annual \$10 licensing fee for each player,<sup>12</sup> is approved by voters, the state can then license Internet poker companies to operate within the state – providing millions of dollars in tax revenue for education, property tax relief and other public funding.<sup>13</sup> Despite the economic advantages the bill could bring to North Dakota, gambling opponents are against the measure, asserting that since the state-owned Bank of North Dakota could get processing fees from handling player transactions, it would effectively serve as a clearinghouse for gambling money.<sup>14</sup> Adding fuel to the fire, the United States Department of Justice (“DOJ”) recently sent a letter to the North Dakota Attorney General Wayne Stenehjem stating that the proposed bill could be a violation of federal laws, coincidentally, the same federal laws that the World Trade Organization (“WTO”) is evaluating right now. North Dakota Attorney General Wayne Stenehjem sent the letter back to the state Senate Judiciary Committee, which is reviewing the bill. A vote on the bill is expected soon, although the impact of the letter is yet to be seen. The DOJ letter mirrors those sent to the

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<sup>11</sup> Kevin Smith, *North Dakota House Passes Internet Poker Bill*, Igamingsnews.com located at [www.igamingnews.com/index.cfm?page=artlisting&tid=5680](http://www.igamingnews.com/index.cfm?page=artlisting&tid=5680) (2/17/05).

<sup>12</sup> Dale Wetzel, *Lobbying Blitz Begins on Internet Poker Measure*, Located at <http://www.lasvegassun.com/sunbin/stories/gaming/2005/mar/07/518404919.html> (3/7/05).

<sup>13</sup> Bradley Vallerius, *Proposed Bill Could legalize Internet Poker in North Dakota*, Located at <http://www.IGamingNews.com> (2/5/05).

<sup>14</sup> KXMA.com, *Former Governor Opposes Using State Bank for Internet Gambling*, Located at <http://www.kxma.com/news/local.asp?ID=4987> (3/9/05).

Nevada Gaming Commission and the U.S. Virgin Islands after those jurisdictions passed laws regulating the Internet gaming industry.<sup>15</sup> Apparently the Department of Justice is resorting to the same “scare tactics” it utilized during the online gambling advertising fiasco, when it attempted to scare off mainstream advertisers from the industry. While the State of North Dakota will understandably be concerned by this threat, it has a history of independence and individuality. Therefore, the heavy hand of the feds may only serve to solidify its resolve to approve this controversial Bill.

Conversely, right across the border in South Dakota, Governor Mike Rounds recently signed a bill that makes an exception to a state law banning Internet gambling. The measure will allow the use of the Internet or email to place bets on dog and horse races in other states, however all other types of Internet gambling will remain illegal.<sup>16</sup> While the status of Internet gambling in the United States continues to remain in constant limbo, some states are evaluating the possibility of the sale of lottery tickets online to state residents, or allowing bets to be placed over the Internet to dog and horse tracks to bring in much needed revenue. Illinois’ legislature is considering a bill that would allow the sale of lottery tickets over the internet to residents 18 or older.<sup>17</sup> The bill, which is scheduled for a vote next month, is one that is being looked at in several states, such as Georgia, where a similar bill passed the House last week.<sup>18</sup>

New Jersey is also once again evaluating the possibility of bringing Internet wagering within its borders. The State’s Senate Committee on Wagering, Tourism and Historic Preservation recently held a hearing focused on whether the state should consider a regulatory

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<sup>15</sup> Kevin Smith, *DOJ Warns North Dakota*, located at <http://www.igamingnews.com/index.cfm?page=artlisting&tid=5737> (3/14/05).

<sup>16</sup> Joe Kafka, *Gambling, School Aid Bills Signed*, Associated Press located at <http://www.aberdeemnews.com/mld/aberdeennews/news/11132988.htm> (3/14/05).

<sup>17</sup> Jon Schwartz, *3 States May Legalize Online Gambling*, USA Today.com located at [http://www.usatoday.com/money/industries/technology/2005-03-15-cyber-gaming-usat\\_x.htm](http://www.usatoday.com/money/industries/technology/2005-03-15-cyber-gaming-usat_x.htm) (3/16/05).

<sup>18</sup> *Id.*

approach toward I-gaming. Although no conclusions were reached at the hearing, the Committee is set to meet back in April – possibly after the WTO final ruling has been reached, to discuss the decision and what its implications may be.<sup>19</sup> Other New Jersey lawmakers want cable networks that feature gambling shows like “The World Series of Poker,” or “Celebrity Poker Showdown,” to help gambling addicts by giving money to treatment agencies, and called for a surcharge to be applied to state cable providers if the networks did not cooperate.<sup>20</sup>

### **WTO FINAL RULING EXPECTED**

Soon enough, the WTO Appellate Body will have given its final ruling concerning the island nation of Antigua & Barbuda’s precedent-setting case against the United State’s Internet gaming policies. The Appellate Body is currently evaluating the WTO’s dispute panel’s report, which found that the United States was violating its commitments under the General Agreement on Trade in Services (“GATS”) by not providing free trade in commercial services, mainly through its prohibition of online gambling transactions, declaring 3 federal laws and 4 state laws “inconsistent” with U.S. obligation under the 1995 GATS. Antigua-Barbuda Minister of Finance and the Economy, Errol Cort, told the Appellate Body while presenting a 21-page document outlining Antigua & Barbuda’s case, “We believe that any resolution to this dispute will see our two countries developing a scheme reasonably acceptable to both of us that allows Antiguan operators fair competitive access to consumers in the United States. Although the United States is not ready to negotiate with Antigua at this time, we are hopeful that upon Antigua prevailing in this appeal, the United States will consider constructive engagement with us to achieve a

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<sup>19</sup> Bradley Vallerius, *New Jersey Senate Considers Regulated I-Gaming*, Located at <http://igamingnews.com> (3/1/05).

<sup>20</sup> CNN.com, *N.J. Lawmaker Wants Poker Shows to Chip in for Addicts*, Located at <http://www.cnn.com/2005/ALLPOLITICS/03/09/nj.voss.tvpoker.ap/index.html> (3/9/05).

speedy and comprehensive solution.”<sup>21</sup> If the Appellate Body upholds the ruling, the WTO can request that the United States change its policies for Internet gambling or face trade sanctions, and may open up the possibility for future proceedings from additional countries that offer online gambling services. Support for Antigua & Barbuda has so far come from Mexico, while some WTO member states, including others also involved in Internet gambling, are monitoring the case closely as well as U.S. jurisdictions with gaming industries. A final appellate ruling in favor of Antigua & Barbuda could come as a shock to U.S. authorities, who apparently believe that U.S. law can be applied internationally, and in blatant disregard to the laws and policies of other countries.

#### **CASINO CITY PROCEEDINGS**

Many gambling proponents in the industry were hopeful that the Casino City case would re-establish advertising services for Internet gambling services in the United States market. However, the DOJ was successful in having the Casino City case dismissed by the U.S. District Court for the Middle District of Louisiana since the Court held that Casino City lacks standing to bring such a case to court because it failed to demonstrate that it faces a “realistic danger of sustaining direct injury.”<sup>22</sup> The Court based its decision on the fact that since Casino City asserted that it did not, nor did it plan to, engage in any illegal activity, and faced no legitimate threat of prosecution, therefore it lacked standing to bring the case. The Court was un-swayed by Casino City’s argument that it should fear prosecution based on earlier actions of the DOJ, where the Department sent a letter to the National Association of Broadcasters warning that companies that advertised for offshore gambling operations may be guilty of aiding and abetting an illegal

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<sup>21</sup> John Collins at Hardbeatnews.com, *Internet Gambling in Antigua Awaits Another Green Light*, located at <http://www.hardbeatnews.com/details3284.htm> (2/23/05).

<sup>22</sup> Bradley Vallerius, *Casino City Case Dismissed*, IGamingNews.com located at [www.igamingnews.com/index.cfm?page=artlisting&tid=5677](http://www.igamingnews.com/index.cfm?page=artlisting&tid=5677) (2/16/05).

activity. The Court determined that since Casino City did not receive a letter or a subpoena, which was issued to advertisers and other Internet gambling-related companies, that the company did not face an imminent threat of prosecution and stated: “The record simply fails to support a finding that Casino City is in any way subject to threat of investigation of an actual investigation.”<sup>23</sup> The Court also rejected Casino City’s First Amendment argument, holding: “The government has a significant interest in regulating the activity in which plaintiff engages. Internet gambling is of significant interest to the government because of its accessibility by the general public, which includes children and compulsive gamblers. By targeting and punishing advertisers who utilize this type of information, the government reaches its goal of deterring illegal activity.”<sup>24</sup> The gratuitous, early ruling on the First Amendment issues may be a blessing in disguise for Casino City, and the industry, since it allows the Plaintiff to raise these issues in its planned appeal to the Fifth Circuit Court of Appeals, without having to endure the time, expense and inconvenience of a full blown trial in the District Court. All eyes are on the appellate court, now.

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<sup>23</sup> *Casino City, Inc. v. United States Department of Justice* located at <http://www.igamingnews.com/articles/files/CasinoCityRuling-050215.pdf> (2/17/04).

<sup>24</sup> *Id.*