

# GLS

## eNewsletter

Official Legal Publication of the  
State Bar of Nevada  
**Gaming Law Section**

Quarter 1 | 2019



### Nevada State Legislature – 80th Session

## NEVADA GAMING CONTROL BOARD'S BILLS

#### SENATE BILL 46

- **Overview:** Authorizes the Nevada Gaming Commission to provide by regulation for the operation and registration of tout services; revises the definition of “gross revenue”; provides for registration rather than licensing of certain service providers; and authorizes the Attorney General or district attorney of any county to apply for a court order to intercept communications during an investigation involving certain offenses relating to gaming.
- **Latest Action:** Senate Judiciary Committee heard the bill on February 6th and March 1st, and passed the bill as amended.

#### SENATE BILL 72

- **Overview:** Proposes various changes including defining “table game”; authorizes the Nevada Gaming Control Board to temporarily suspend the registration of a registered gaming employee upon his or her arrest by an agent of the Board; requires the Nevada Gaming Commission to adopt regulations relating to such temporary suspensions of registration; requires the Commission to provide by regulation for the operation and registration of sports wagering ticket brokers and persons associated therewith; revises provisions relating to actions and proceedings of the Board that are exempt from the Open Meeting Law; revises provisions concerning the filing of a change of employment notice by certain registered gaming employees; revises provisions relating to the submission of an application for registration or renewal of registration as a gaming employee or a change of employment notice to the Board; and authorizes the Commission to adopt regulations concerning associated equipment to be located at a hosting center.
- **Latest Action:** Senate Judiciary Committee heard the bill on February 6th and March 22nd, and passed the bill as amended.

#### SENATE BILL 73

- **Overview:** Revises the definition of “gaming device” to include mobile gaming; and removes or repeals certain provisions relating to mobile gaming.
- **Latest Action:** Senate Judiciary Committee heard the bill on February 6th and took no action.

#### Governor's Office of Finance

- Set aside appropriations in the State General Fund to modernize the Nevada Gaming Control Board's technology system and replacement of security system equipment.

#### Gaming Law Section's Executive Committee

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# 2018 USDOJ OPINION SUMMARY

The United States Department of Justice's (USDOJ) Office of Legal Counsel released a [memorandum](#) dated November 2, 2018 ("2018 Opinion") reversing its 2011 Opinion. Specifically, the 2018 Opinion concluded that the federal Wire Act, codified at 18 U.S.C. § 1084, ("Wire Act") applies to all forms of wagering – not just wagering on sporting events. The 2018 Opinion also concluded that the Unlawful Internet Gambling Enforcement Act, codified at 31 U.S.C. §§ 5361-5367, ("UIGEA") does not modify the Wire Act.

First, the 2018 Opinion determined that a gambling business may not knowingly use a "wire communication facility" to transmit in interstate or foreign commerce bets or wagers or certain related transmissions. The prohibited transmissions are as follows: (1) bets or wagers on any gambling game, (2) information assisting in placing bets or wagers on any sporting event, (3) that which entitles the recipient to money or credit as a result of bets or wagers, and (4) that which entitles the recipient to money or credit for information assisting in placing bets or wagers. Unlike the 2011 Opinion, which limited all four prohibitions to wagers on sporting events, the 2018 Opinion has interpreted all but the second prohibition to apply to wagers on all forms of gambling games.

Second, the 2018 Opinion determined that the Wire Act is not modified by UIGEA's intrastate exception, which states that "[t]he intermediate routing of electronic data shall not determine the location or locations where a bet or wager is initiated, received, or otherwise made." Accordingly, transmissions may be interpreted to travel in interstate or foreign commerce under the Wire Act, even if they begin and end in the same state but momentarily travel outside the state.

On February 28, 2019, Deputy Attorney General Rod J. Rosenstein issued a memorandum directing USDOJ attorneys to refrain from seeking criminal or civil actions under the Wire Act through June 14, 2019 to "give businesses that relied on the 2011 OLC opinion time to bring their operations into compliance with federal law." While this may give some comfort to the gaming industry, the memorandum expressly states that it does not create a safe harbor for Wire Act violations.

What does this mean? Although the 2011 Opinion left a lot of unanswered questions ([https://www.nvbar.org/wp-content/uploads/GamingLaw\\_2012\\_Fed\\_Wire\\_Act.pdf](https://www.nvbar.org/wp-content/uploads/GamingLaw_2012_Fed_Wire_Act.pdf)), the 2018 Opinion was clearly written to support a position. The USDOJ now states the Wire Act is clear and unambiguous in expressing Congressional intent. Yet, the 2018 Opinion points out on page 5 that in 1998 and 2000 the USDOJ's Criminal Division testified before Congress and acknowledged that the Wire Act was, in fact, ambiguous and urged Congress to amend its provisions to encompass non-sports wagering activities. More importantly, the legislative history of the Wire Act, tends to demonstrate that the Wire Act was intended to apply to sports wagering, as illustrated by the following: (i) the title of the legislation is "Sporting Events – Transmission of Bets, Wagers, and Related Information," (Pub. L. No. 87-816, § 2, 75 Stat. 491, 552-553 (1961)) (ii) the House of Representatives Report on Senate Bill 1656, dated August 17, 1961 states that the bill was in response to "modern bookmaking" (U.S. Code & Congr. News, 87th Cong. 1st Sess., 2631), (iii) the House of Representatives Report includes a letter from U.S. Attorney General Robert F. Kennedy to the Speaker of the House, dated April 6, 1961, which only refers to wagering on sporting events (*Id.*, at 2633-2634), and (iv) the Congressional debates on this legislation focused on the bill's impact on "horse racing and other sporting events" (*United States v. Baborian*, 528 F. Supp. 324, 328 (D.R.I. 1981), quoting 107 Cong. Rec. 16,534 (1961)). Moreover, the Fifth Circuit recognized the Wire Act's limited reach over 17 years ago. *In re MasterCard Int'l, Inc.*, 132 F. Supp. 2d 468, 480 (E.D. La. 2001), *aff'd*, 313 F.3d 257 (5th Cir. 2001).

In response to the 2018 Opinion, the New Hampshire Lottery and its online game vendor, NeoPollard Interactive (along with Pollard Banknote), filed lawsuits in the United States District Court for the District of New Hampshire. The parties are seeking a declaratory judgment that the 2018 Opinion was wrongly decided and that the USDOJ should be enjoined from acting pursuant to the interpretation in the 2018 Opinion. Several amici curiae briefs have been filed by various states and state lotteries. The cases have been consolidated and oral arguments on summary judgment motions in the case are scheduled for April 11, 2019. The states and gaming industry collectively hope for a favorable decision to be issued in the case.

## Upcoming Events and Publications

- **August 12-15, 2019** – 12th Annual National AML Conference & Expo at The Cosmopolitan of Las Vegas. Gaming Law Section is the Platinum Sponsor. For more information or to register go to <http://www.casinoessentials.com/events/title-31-las-vegas/>. Special rates for Gaming Law Section members.
- **September 1, 2019** – Nevada Gaming Lawyer Magazine is mailed. If interested in writing an article or placing ad, please contact Robert Horne, Programs & Events Manager, State Bar of Nevada ([rhorne@nvbar.org](mailto:rhorne@nvbar.org) or 702-382-2200). Draft articles are due **no later than June 30th**.
- **November 22, 2019** – 2019 Gaming Law Conference at Red Rock Casino Resort & Spa from 8:00 a.m. to 5:00 p.m. 7 hours of CLE credit (including 4 general, 2 ethics & 1 substance abuse). Special rates for Gaming Law Section members. FREE Opening Night Reception on November 21st (5:30 p.m.-7:00 p.m.) at T-Bones Chophouse by the pool (for registered attendees who RSVP online by November 1st). Online registration coming soon.
- **Fall/Winter 2019** – Updated Nevada Gaming Law Index (2nd ed. 2019) released. Free to Gaming Law Section members.

The GLS eNewsletter will be a quarterly digital publication.

Look for next issue on or about July 21, 2019

