

## UNITED STATES

# iGaming Developments in the Northeast

By Patrick Madamba, Jr.

In December 2011, the U.S. Department of Justice (the “DOJ”) publicly revealed that the DOJ had abandoned its long-held position that the Wire Act of 1961 prohibitions extend to Interstate transmissions of wire communications relating to most forms of Internet gaming. In an opinion regarding proposals by the New York and Illinois lotteries, the DOJ’s Office of Legal Counsel concluded that: [I]nterstate transmissions of wire communications that do not relate to a ‘sporting event or contest’ . . . fall outside of the reach of the Wire Act.” In other words, the Wire Act’s prohibitions apply to only sports betting. The DOJ’s clear departure from its prior position led Internet gaming advocates and many state lawmakers to predict an onslaught of state legislative initiatives legalizing Internet gaming. More than six months later, however, only tiny Delaware – whose official slogan is “The First State” – has enacted legislation legalizing intrastate Internet gaming. Other initiatives in the Northeast have not, as yet, succeeded.

## DELAWARE

On June 28, 2012, the Delaware Gaming Competitiveness Act of 2012 (the “DGCA”) was signed into law. The DGCA authorizes the Delaware Lottery Office to conduct traditional lottery games over the Internet and also operate the existing sports lottery at venues other than those of video lottery agents, such as bars or convenience stores. In conjunction with the Lottery, the DGCA also authorizes Delaware’s video lottery agents to offer through their websites Internet



In the DGCA, the technical term for Internet gaming is the “Internet Lottery,” which is defined as:

... all lottery games in which the player’s interaction with the game operated by the [Lottery] Office occurs over the Internet (which, for purposes of this chapter, shall include any public or private computer or terminal network, whether linked electronically, wirelessly, through optical networking technology or other means), including Internet ticket games, the Internet video lottery and Internet table games.<sup>1</sup>

The term “Internet ticket games” refers to the sale of tickets for traditional lottery games over the Internet by the Lottery.<sup>2</sup> The real “meat and potatoes” of the DGCA lies in its authorization of the “Internet video lottery” and “Internet table games.”

The term “Internet video lottery” is defined as:

... a lottery game in which the player’s interaction with the game operated by the [Lottery] Office occurs over the Internet through a website or network of a video lottery agent, rather than at a video lottery machine in a video lottery facility, and in which the game is an Internet

variation of a video lottery game, and which shall not include keno, table games, and other forms of the Internet lottery.<sup>3</sup>

The term “Internet table games” is defined as: . . . a lottery game in which the player’s interaction with the game operated by the [Lottery] Office occurs over the Internet through a website or network of a video lottery agent, rather than at a table game in a video lottery facility, and in which the game is an Internet variation or compilation of a table game or table games, provided that the game is expressly authorized by rule of the Director.<sup>4</sup>

Taken together, the broadly worded definitions for the terms “Internet video lottery” and “Internet table game” encompass online versions of all traditional casino style games currently played in Delaware’s “brick and mortar” racino facilities, including slot machines, poker, blackjack, roulette, craps, baccarat and pai gow poker.

Persons twenty-one years of age and older who are physically present in Delaware are permitted to participate in Internet gaming.<sup>5</sup> As noted in the official synopsis, Delaware’s legalization of Internet gaming “capitalize[s] on a recent DOJ ruling clarifying that wagering within a state’s boundaries does not violate federal law.”<sup>6</sup> To ensure compliance with federal law, the DGCA expressly requires that the equipment utilized to conduct Internet gaming is capable of verifying that the player is physically present in the state at the time they engage in such gaming.<sup>7</sup> The DGCA does

leave the door open for persons outside the state also to participate in Delaware online gaming. It excludes from the Delaware territorial limitation: (1) Internet gaming conducted pursuant to an interstate compact to which the state is a party; and (2) Internet gaming which is “not inconsistent with federal law and the law of the jurisdiction in which the person is physically present.”<sup>8</sup>

The DGCA requires the Lottery Director to promulgate rules to initiate Internet gaming “at the earliest feasible time” and “in a manner that provides for the security and effective administration of such gam[ing].”<sup>9</sup> The Director is expected to initiate the rulemaking process in the next few months to set-out the details for the DGCA’s implementation.

Revenues from Internet gaming are to be distributed generally pursuant to the pre-existing formulae applicable to the non-Internet versions of the games currently offered in the racinos’ “brick and mortar” facilities, with the exception that the first \$3.75 million of proceeds from Internet gaming in each state fiscal year is to be retained by the Lottery. Under the pre-existing formulae, Delaware racinos retained approximately 43.89 percent of casino revenues generated in 2011.<sup>10</sup>

The Lottery is expected to conduct a Request for Proposals competitive public bidding process (“RFP”) to award the contract for the host/operator of the central server to conduct Internet gaming. The RFP is expected to require a “white label system” usable by all three Delaware racinos for the offering of Internet gaming.



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**“With passage of the DGCA, racino operators will be able to offer online versions of their table games and slot machine offerings which will be accessible through each racino’s website and controlled centrally by the lottery.”**

### NEW JERSEY

Internet gaming legislation continues to wend its way through the legislative process in New Jersey even though questions remain as to whether Governor Christie will sign the legislation into law if it musters sufficient votes in the Legislature for passage. Last time around, in March 2011, Governor Christie cited state constitutional concerns when vetoing a bill permitting New Jersey's casinos to offer intrastate online gaming. Supporters of the current bills pending in the New Jersey Senate (S1565) and Assembly (A2578) assert that they have addressed Governor Christie's concerns and predict that the legislation will be acted upon by the Legislature this fall. Unlike Delaware's legislation that provides only a skeletal framework for the conduct of Internet gaming and leaves the details to the Lottery Director, New Jersey's proposed legislation is lengthy and detailed.

#### *General Overview:*

Under the proposed legislation, Internet wagering sites could be hosted only by New Jersey casino licensees. All equipment used by casino licensees to conduct Internet gaming must be located within a casino licensee's casino hotel facility in Atlantic City. Individuals who are physically present in New Jersey would be able to log on to the sites from anywhere in the State and participate in Internet gaming. Additionally, wagers could be accepted from persons from other states and foreign countries if the New Jersey Division of Gaming Enforcement (the "NJDE") determines that such wagering does not violate applicable federal, state or



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foreign law. Casino licensees would be allowed to offer online versions of all games authorized under the New Jersey Casino Control Act, including slot machines, poker, roulette, baccarat, blackjack, craps, big six and other games.

#### *Internet Gaming Permit Costs and Taxation:*

A casino licensee must first obtain an Internet gaming permit from the NJDE to offer Internet gaming. The minimum permit issuance and renewal fees are \$200,000 and \$100,000, respectively. The NJDE is to establish the specific amount of such fees above the minimums.

The annual tax rate on Internet gaming gross revenue would be 20 percent. Additionally, casino licensees must either pay an additional 10 percent investment alternative tax or participate in investments administered by the Casino Reinvestment Development Authority through payments equaling 5 percent of a casino licensee's Internet gaming gross revenue.

#### *Internet Gaming Accounts:*

There are strict requirements for establishing an Internet gaming account. A person (twenty-one years of age or older) must submit an application form approved by the NJDE along with proof of age. The NJDE is to specify by regulation what types of proof are sufficient to authenticate age. A person is not required to visit the

“brick and mortar” casino to apply to open an account. However, the equipment used to conduct Internet gaming must be capable of verifying that the player placing a wager is physically present in New Jersey. Additionally, if a casino licensee violates the underage Internet gaming prohibition more than once, its permit is to be revoked.

#### *Internet Gaming Service Providers:*

Third party companies may provide services to casino licensees to facilitate the conduct of Internet gaming, including website hosting, electronic commerce capabilities related to Internet gaming, and the provision of game content. Revenue sharing between a casino licensee and a licensed Internet gaming service provider is permitted. However, an Internet gaming service provider must first obtain a casino service industry (“CSI”) enterprise license from the NJDE before transacting business with a casino licensee. Companies seeking such licensure would be responsible for the full cost of their licensure, including any investigative costs.

The proposed legislation prohibits CSI enterprise licensure of anyone who has, either directly or indirectly, knowingly and willfully committed or facilitated conduct potentially violating the Unlawful Internet Gambling Enforcement Act of 2006 (“UIGEA violator”). The licensure prohibition also extends to anyone who has

acquired a “significant part” of an UIGEA violator or the tainted assets of an UIGEA violator, and intends to use the UIGEA violator or tainted assets in connection with Internet gaming in New Jersey. Waiver of the licensure prohibition is, however, available. To obtain a waiver, the license applicant must demonstrate by clear and convincing evidence that the subject conduct was not unlawful.

## CONNECTICUT

While there was much favorable public discussion regarding Internet gaming by Governor Malloy and some legislators in January of this year, those discussions quickly fizzled out. By February, both the Governor and the co-chair of the General Assembly’s committee traditionally responsible for overseeing gaming legislation publicly stated that they did not intend to introduce Internet gaming legislation in the 2012 regular legislative session. Notably, the Governor, even when expressing his support, made clear that his support was limited to permitting the Mohegan Tribe and Mashantucket Pequot Tribe to offer Internet gaming.



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## OTHER STATES IN THE NORTHEAST

While there has been some public discussion of legalizing Internet gaming by members of the legislatures of Maine, Rhode Island, New York and Pennsylvania, Internet gaming legislation is not currently pending in any of these states. ♣

<sup>1</sup> 29 Del. C. §4803(i) (Emphasis added).

<sup>2</sup> 29 Del. C. §4803(k).

<sup>3</sup> 29 Del. C. §4803(l).

<sup>4</sup> 29 Del. C. §4803(j).

<sup>5</sup> 29 Del. C. §§ 4805(b)(19), 4810(a) and 4826(b).

<sup>6</sup> DGCA, Synopsis.

<sup>7</sup> 29 Del. C. §4826(b).

<sup>8</sup> 29 Del. C. §4826(b).

<sup>9</sup> 29 Del. C. §4826(c).

<sup>10</sup> See “2012 State of the States, AGA Survey of Casino Entertainment”

[http://www.americangaming.org/files/aga/uploads/docs/sos/aga\\_sos\\_2012\\_web.pdf](http://www.americangaming.org/files/aga/uploads/docs/sos/aga_sos_2012_web.pdf).



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