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Senate Hearing: Community, Economic, Recreational Development  
Committee  
June 17, 2015

Good morning, Chairman Ward and Chairman Wiley and members of the Committee. I am Doug Sherman, the Chief Counsel of the Gaming Control Board. With me today is Cyrus Pitre, the Chief Enforcement Counsel of the Board. We have been asked to provide an overview of the federal laws which may have an impact on issues relating to on-line gambling as well as to address the difference between online social gaming and online wager based gaming. Following a brief presentation, Cyrus and I will try to field any questions you may have.

### **The Wire Act, UIGEA & PASPA**

There are three different federal laws which could have some limiting effect on efforts to legalize internet gambling in Pennsylvania.

First, the **Wire Act** was passed in 1961 as an effort to criminalize the act of using wire communications for the transmissions of bets or wagers in interstate or foreign commerce on any sporting event or contest. The Wire Act was an effort by then Attorney General Robert Kennedy to target the sports betting and bookie operations of organized crime.

Obviously in 1961, the internet was not in existence and the Wire Act at that time was targeting telephone and telegraph communications. Upon creation of the internet, the Wire Act has widely presumed to also include all betting occurring over the internet.

In 2011, however, the Department of Justice issued a letter opinion as a result of a question from New York and Illinois Lottery officials requesting whether those state's use of an out-of-state processor of lottery tickets accessed through the internet but sold only to in-state adults violates the Wire Act. In September 2011, the DOJ issued its opinion that the Wire Act applies only to sports and contest betting and would not apply to the sale of lottery tickets. Based upon the limitation in the application of the Wire Act in this opinion, many operators in the gaming industry put the push for intrastate internet gaming into over-drive.

Second, the **Unlawful Internet Gambling and Enforcement Act or UIGEA** was passed in 2006 and outlawed many online gambling activities by clarifying and continuing restrictions in the Wire Act. UIGEA defined "unlawful internet gambling" as "to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the internet where such bet or wager is unlawful under any applicable Federal or State or Tribal laws in

which the bet or wager is initiated, received or to otherwise made.”

UIGEA accomplished this by prohibiting payment processors such as credit card companies from depositing funds related to “unlawful internet gambling” but it contains an exemption from the prohibition of intrastate transactions if certain conditions are met.

The bill also contained a carve-out for fantasy sports if three criteria are met: 1) the value of the prize is not determined by the number of participants or the amount of fees paid; 2) all winning outcomes reflect the relative knowledge and skill of the participants; and 3) the fantasy game’s result is not based on the final score of any real world game.

The September 2011 DOJ opinion, coupled with UIGEA’s exemption of intrastate online gambling from its proscriptions, resulted in the sudden interest in internet gambling.

New Jersey became the first US State to pass a bill (S490) expressly legalizing certain forms of online gambling. The bill as passed, allows for bets to be taken by in-State companies on poker games, casino games and slots but excludes sports betting. Since then, Delaware and Nevada have approved online gaming – Pennsylvania would be the fourth state if the General Assembly determines to do so.

The third relevant federal law is the **Professional and Amateur Sports Protection Act of 1992**, also referred to as **PASPA** or the **Bradley Act**, the latter reference to Senator Bill Bradley of NBA fame who was the key sponsor of the Act which sought to outlaw sports betting at the federal level in accordance with the Wire Act, and simultaneously established state-wide bans for all states which did not pass laws permitting sports wagering within one year of the Act. Only Montana, Oregon, Delaware and Nevada currently allow sports wagering with Nevada being the only one of those states that allows individual game wagering on sports other than professional football to take place at a physical location.

PASPA provides that a State may not “sponsor, operate, advertise, promote ... a lottery, sweepstakes, or other betting, gambling or wagering scheme based directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games. “ 28 U.S. C. §3702.

New Jersey has had a four year battle with PASPA ongoing in the federal courts with argument in the Third Circuit Court of Appeals having occurred for the second time this past Spring. A decision by that

Court may finally determine whether New Jersey and potentially other states could have sports betting in the future.

Finally, no overview of relevant federal laws would be complete without mentioning the **Restoration of America's Wire Act or RAWA** introduced in the House of Representatives by Rep Jason Chaffetz of Utah. RAWA seeks to restore the federal Wire Act to what proponents say was the original intent before the DOJ issued its opinion letter relating to the Wire Act only applying to sports betting. Sen. Lindsey Graham has said he will also introduce RAWA in the Senate. If RAWA were passed into law in the United States, much of the discussion of internet gambling could suddenly become moot.

### **Online Social Gaming vs. Wager-based iGaming**

Addressing social gaming and wager-based iGaming, the biggest thing to remember is that they can be the same except for one vital component – one is legal and the other currently illegal.

#### ***Social games:***

Social games can range from the games many people play on their cell phones while waiting for an appointment or riding in a car. They can include games like Farmville and Angry Birds. But they can also include more traditional casino-type games. The key is that they are

played for fun, many times at no cost to the player and with no monetary reward for winning. In fact, 90 to 95% of social game players never spend any money on games. The ones who do buy in to the games to acquire more points, move faster throughout the game, etc. But there is no payout based on performance.

These are revenue producing businesses, but they are not gambling and have no connection with a casino floor or any interaction with what happens in a casino game. There is also no requirement to pay to play these games and you can never win anything of real value.

To a large extent, most PA Casinos already use some sort of social internet gaming – whether that be “play-for-fun-games”; “social casino-style games”; or “player loyalty program play-for-fun games”. However these games cannot have interaction with casino games on the floor or allow casinos to reward gamers with gaming casino credits. They may award patrons with non-gaming comps. The sites are used for advertising and marketing purposes, to develop player loyalty as well as to familiarize a casino’s patrons with the online aspects of play in the event online gambling is legalized in Pennsylvania. The Board has determined that these games, so long as they do not meet the definition of gambling set forth by the Courts, do not constitute gambling.

### ***Wager Based iGaming:***

Wager based iGaming, as its name implies, involves playing online games in conjunction with wagering money with the hope of winning a reward. This is real gambling but occurring with on-line play as opposed to playing for fun or playing in a bricks and mortar casino.

As stated, most PA Casinos already use some sort of social internet gaming. The Board does not regulate those games per se but has taken the position that the play of social games cannot have a tie in to the play of actual legalized gambling. That means that a social gamer cannot receive gaming related comps for his or her play or win free play or other prize which crosses over into the area of legalized gambling.

That completes the overview of those two topics. Cyrus and I are happy to answer any questions about these two areas or on any other topics about which you may have questions.