

MISSISSIPPI: ONE TASK FORCE, THREE BILLS

The formation of a task force to study the potential impacts of Internet gaming on Mississippi raised hopes of a more positive reception among lawmakers to three Internet gaming bills. **Scott Andress** of Balch & Bingham LLP updates iGaming Business North America on the most recent developments there.

Proposed legislation was again introduced in Mississippi that would authorize Internet gaming. This article discusses its disposition in the 2015 Regular Session, and related developments.

History of Internet gaming legislation in Mississippi

The Mississippi Legislature, beginning in 2012, witnessed the introduction of proposed legislation designed to authorize Internet gaming within the State of Mississippi, said legislation authored and introduced by Representative Bobby Moak. Moak, a prominent Democratic legislator hailing from the town of Bogue Chitto, had over the previous four years chaired the Mississippi House of Representatives Gaming Committee, having been appointed in 2008 to the newly formed committee by the Democratic Speaker of the Mississippi House. In 2012, however, the Republican Party gained a majority in the House, thereby electing a Republican Speaker who saw fit to appoint Richard Bennett (R, Long Beach) as Chair of the House Gaming Committee. Moak, no longer the Chair

(or even a member) of the House Gaming Committee, went on to become the House Minority Leader, yet maintains a keen interest in Mississippi's gaming industry.

Following the December 23, 2011, release by the United States Department of Justice of a memorandum clarifying and limiting the applicability of the Unlawful Internet Gaming Enforcement Act of 2006 (or "UIGEA", 31 USC §5301) and certain other federal anti-gambling laws, Representative Moak acted quickly and introduced a bill in the early stages of the 2012 Regular Legislative Session seeking to enact the Mississippi Lawful Internet Gaming Act of 2012. That bill, as well as its later counterparts introduced in the 2013 and 2014 sessions, went nowhere within the machinations of the Mississippi legislative process, notwithstanding the considerable fanfare the bills attracted in the local as well as national gaming-oriented press. In each of 2012, 2013 and 2014, Moak's Lawful Internet Gaming Act bills were assigned to the House Gaming Committee, never to emerge, dying in committee upon the passage of the deadline for legislation to report from committee for

further consideration on the House floor.

Notwithstanding the proliferation of bricks-and-mortar casinos in certain parts of the state, specifically the Mississippi Gulf Coast and certain counties bordering the Mississippi River, the State of Mississippi is considered to be very conservative. The more conservative of Mississippi's citizenry would view the act of gaming (or "gambling," as it is still called in some quarters) to be immoral, as well as those who engage in it. Mississippi's legislators consistently reflect the conservatism of their respective constituencies when considering matters of social behavior or personal morality. Further, any bill ultimately passed by the Mississippi Legislature must be signed by the Governor in order to become effective as law, and current Mississippi Governor Phil Bryant has given absolutely no indication that he is willing to consider legislation that would benefit (or in any way expand) Mississippi's existing gaming industry. Accordingly, it was no surprise to those closely following Mississippi politics that Moak's Lawful Internet Gaming bills were not seriously considered in 2012-14.

Formation of the Task Force on Internet Gaming

However, near the conclusion of the 2014 Regular Session in March 2014, Mississippi

Gaming Committee Executive Director Allen Godfrey and Mississippi Casino & Hospitality Association Executive Director Larry Gregory conducted a presentation to the House Gaming Committee regarding the condition of Mississippi's gaming industry and the decreases the industry had suffered in revenue and visitation. Further, their and the other attendees' comments elicited a general plea for legislative assistance to the industry, but no specific ideas or concepts were presented. Near the end of the discussion, Committee Chairman Bennett promptly announced the Committee was forming a "Task Force on Internet Gaming," the purpose of which would be to conduct a comprehensive study during the upcoming summer and fall regarding the effect the spread of Internet gaming over the next three to four years will have on Mississippi's bricks-and-mortar gaming industry. The Task Force was charged to complete its study and submit a report of its findings to the Committee in December 2014, in advance of the next legislative session (beginning in January 2015). Bennett then stated that the formation of this Task Force was in no way an endorsement of Internet gaming. From the comments and the context in which they were made, it was unclear whether the Task Force was formed to study whether and how to implement Internet gaming in Mississippi, or rather how the spread of Internet gaming would constitute further competition to, and accordingly negatively impact, Mississippi's existing bricks-and-mortar casino gaming industry. With the announcement of the formation of the Task Force, local and national gaming-oriented press optimistically

reported that this signaled a sea change in the attitude of the House Gaming Committee, as well as the Mississippi Legislature as whole, regarding their consideration of Internet gaming legislation in the future.

The Task Force was chaired by Godfrey, and also included Gregory ("representing the industry"); legal counsel; representatives of the Mississippi Department of Revenue, the Mississippi Department of Information Technology Services and the Mississippi Council on Problem Gambling; and, from academia, representatives from the tourism programs at the University of Southern Mississippi and Mississippi Gulf Coast Community College. Shortly after its formation, the scope of the Task Force's study and report was expanded to include not only Internet gaming, but also sports betting. The Task Force completed its Report on Internet Gaming and Sports Betting (the "Report") and delivered a final version to Chairman Bennett in December 2014; on February 3, 2015, Bennett released the Report for public review.

Mississippi Lawful Internet Gaming Act of 2015

In the meantime, Representative Moak introduced House Bill 306 in the 2015 Regular Session, an act to create the Mississippi Lawful Internet Gaming Act of 2015. As its elder siblings also proposed, the bill purported to legalize, license and tax wagering on games conducted over the Internet. The preamble of the proposed Act recognized the danger of engaging in online gaming through illegal offshore operators in the absence of oversight, regulation or enforcement. For the protection of

Mississippi's citizenry, the Act proposed a regulatory and licensing system for online gaming that would:

- Inhibit underage wagering and otherwise protect vulnerable individuals;
- Ensure that the games offered through the Internet are fair and safe;
- Stop sending much-needed jobs and tax and fee revenue overseas to illegal operators;
- Provide a significant source of taxable revenue;
- Create jobs and economic development;
- Address the concerns of law enforcement; and
- Ensure that only those persons of good character and fitness, who meet strict criteria set forth in law and regulations, are suitable to facilitate and conduct online gaming activities.

The proposed legislation allowed the conduct of Internet wagering by those gaming licensees (i.e. holders of a license to conduct gaming operations within a bricks-and-mortar casino situated in Mississippi) that obtain an internet wagering permit. Although Internet gaming players (or patrons) must be at least 21 years of age and physically located within the borders of the State of Mississippi, the proposed Act permitted the Mississippi Gaming Commission to enter into interstate and international compacts for online gaming, which ostensibly would increase the pool of available players (or liquidity) for games offered by both the Mississippi-licensed Internet wagering permittees, but also by operators licensed in the jurisdictions with which the Commission may compact.¹

Other features of the bill included an

¹ This authorization to compact first appeared in the 2014 version of the Mississippi Lawful Internet Gaming Act bill. Other than this addition, the bills have remained substantively equivalent from year to year.

Internet wagering permit issuance fee of \$200,000 and a renewal fee of \$100,000; annual license fees totaling \$200,000; and additional license fees equivalent to five percent (5%) of the Internet wagering gross revenues. Further, the bill included penalties for the conduct of Internet gambling outside of or beyond that authorized under the proposed Act, not only for those operating an unauthorized Internet gaming site, but also for players engaging in unauthorized Internet gaming. Players found guilty of violating these provisions would be imprisoned for up to 90 days or fined up to \$10,000, or both; penalties for operators of unauthorized Internet gaming are higher.

Also introduced in the 2015 Regular Session were House Bills 782 and 806 by Representative Chuck Espy (D, Clarksdale). House Bill 782 proposed to create the Mississippi Internet Poker Act, the language of which was nearly identical to Moak's proposed Mississippi Lawful Internet Gaming Act, but limited its authorization to the game of poker. House Bill 806 proposed to permit Mississippi gaming licensees to conduct sports wagering when permitted by federal law.

Another year, another folded hand

Although armed with the Task Force's Report on Internet Gaming and Sports Betting, the House Gaming Committee failed to report any of House Bill 306, 782 or 806 out of committee to the House floor, nor were any of these bills the subject of discussion within the Committee. In this author's opinion, this was not a surprise, not only for the reasons articulated supra pertaining to Mississippi conservatism, but also given the fact that every

Legislative seat in the State of Mississippi will be up for election in November 2015, and the current occupants of those seats will likely shy away from controversial issues during this legislative session.

As heretofore discussed, Chairman Bennett released the Report to the public during a meeting of the House Gaming Committee on February 3, 2015, and announced that it would be discussed at a Committee meeting to be scheduled later in the current legislative session. The Report contains no recommendations regarding whether the State of Mississippi should legalize Internet gaming and/or sports betting, nor did it attempt to address the impact of any such authorization upon Mississippi's existing bricks-and-mortar gaming industry. Rather, the Report discusses the following:

- Revenue and financial considerations of Internet gaming, specifically the failure to meet expectations in those jurisdictions authorizing the activity (Nevada, New Jersey and Delaware);
- Revenue and financial considerations of sports betting, specifically the challenges associated with ascertaining potential revenues given estimates that more than 99% of sports betting in the United States is conducted illegally and thus difficult to assess;
- Changes in Mississippi law required to implement legal Internet gaming in the state;
- An analysis of current federal law governing sports betting, and the recognition that the federal issues must be settled before any attempt is made to

legalize the activity at the state level;

- Technical considerations associated with Internet gaming; and
- Ramifications upon Mississippi's responsible gaming efforts of the legalization of Internet gaming and/or sports betting.

It remains to be seen whether the information contained in the Report, or other developments, create a more fertile environment for the consideration of Internet gaming and/or sports betting by the House Gaming Committee or the Mississippi Legislature as a whole. In this author's opinion, there will be little progress toward the implementation of either Internet gaming or sports betting in the State of Mississippi until these activities are afforded further expansion opportunities under federal law.



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