

RECAP

- Remember the different theories on choice

RECAP

- What does the Federal Wire Act prohibit?

RECAP

- What does the Federal Wire Act exempt from its prohibitions?

RECAP

- What does the Illegal Gambling Business Act prohibit?

UIGEA

- The background...
- The timing...
- The bill...

UIGEA

- What is the rule of construction?
 - 31 U.S.C. 5361(b) Rule of construction--No provision of this subchapter shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States.

UIGEA

- What is the rule of construction?
 - 31 U.S.C. 5361(b) Rule of construction.--No provision of this subchapter shall be construed as **altering, limiting, or extending** any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States.

UIGEA

- Based on the rule of construction, does the UEIGA make online poker illegal?

UIGEA

- Exceptions to the definition of Bet or Wager
 - Securities trading
 - Indemnity agreements
 - Insurance contracts
 - Free entry contests
 - Certain fantasy sports contests

UIGEA

- Business of Betting or Wagering
 - The term "business of betting or wagering" does not include the activities of a financial transaction provider, or any interactive computer service or telecommunications service.

UIGEA

- Unlawful Internet Gambling
 - The term "unlawful Internet gambling" means 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 law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made.**

UIGEA

- Unlawful Internet Gambling - Exceptions
 - Intrastate wagers where such wagering is legal, provided there is appropriate data security and age verification...
 - Intra-tribal transactions...
 - Interstate horseracing in compliance with the IHRA...

UIGEA

- The operative language [31 USC 5363]
 - No person engaged in the business of betting or wagering may knowingly accept, in connection with the participation of another person in unlawful Internet gambling—
 - ...anything of common value...

UIGEA

- Regs

UIGEA

- Regulatory Definition of Bet or Wager
 - (c) Bet or wager. (1) Means the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome;
 - (2) Includes the purchase of a chance or opportunity to win a lottery or other prize (which opportunity to win is predominantly subject to chance);
 - (3) Includes any scheme of a type described in 28 U.S.C. 3702;
 - (4) Includes any instructions or information pertaining to the establishment or movement of funds by the bettor or customer in, to, or from an account with the business of betting or wagering (which does not include the activities of a financial transaction provider, or any interactive computer service or telecommunications service); and

UIGEA

- Regulatory Definition of Unlawful Internet Gambling
 - Unlawful internet gambling means 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 law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made. The term does not include placing, receiving, or otherwise transmitting a bet or wager that is excluded from the definition of this term by the Act as an intrastate transaction or an intra-tribal transaction, and does not include any activity that is allowed under the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq. ; see §132.1(a)). The intermediate routing of electronic data shall not determine the location or locations in which a bet or wager is initiated, received, or otherwise made.

UIGEA

- 12 CFR Part 233
 - § 233.2 Definitions
 - ...(x) Reasoned legal opinion means a written expression of professional judgment by a State-licensed attorney that addresses the facts of a particular client's business and the legality of the client's provision of its services to relevant customers in the relevant jurisdictions under applicable federal and State law, and, in the case of intratribal transactions, applicable tribal ordinances, tribal resolutions, and Tribal-State compacts. A written legal opinion will not be considered "reasoned" if it does nothing more than recite the facts and express a conclusion.

UIGEA

- 12 CFR Part 233
 - § 233.6 Non-exclusive examples of policies and procedures
 - ...(b) Due diligence. If a non-exempt participant in a designated payment system establishes and implements procedures for due diligence of its commercial customer accounts or commercial customer relationships in order to comply, in whole or in part, with the requirements of this regulation, those due diligence procedures will be deemed to be reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions if the procedures include the steps set out in paragraphs (b)(1), (b)(2), and (b)(3) of this section and subject to paragraph (b)(4) of this section.
 - (2) Based on its due diligence, the participant makes a determination regarding the risk the commercial customer presents of engaging in an Internet gambling business and follows either paragraph (b)(2)(i) or (b)(2)(ii) of this section.
 - (i) Evidence of legal authority to engage in the Internet gambling business, such as—(i) A copy of the commercial customer's license that expressly authorizes the customer to engage in the Internet gambling business issued by the appropriate State or Tribal authority or, if the commercial customer does not have such a license, a reasoned legal opinion that demonstrates that the commercial customer's Internet gambling business does not involve restricted transactions; and

UIGEA

- Other provisions
 - Regulations to make financial organizations the enforcers of the statute...

UIGEA

- Discussion
 - What does the UIGEA prohibit?
 - Does the UIGEA make online casino wagering illegal?
 - Does the UIGEA make funding skill gaming illegal?
 - What are the parameters for acceptable online fantasy sports exempted from the Act?
 - ...

ONLINE GAMING IN THE U.S.

- In 1994, Antigua and Barbuda enacted the Free Trade & Processing Act
 - This permitted online casino operations from their jurisdiction
 - Under the laws of Antigua and Barbuda, bets are deemed to be placed solely where they are recorded in Antigua and Barbuda



ONLINE GAMING IN THE STATE

AB466 - 2001

1. "Interactive gaming" means the conduct of gambling games through the use of communications technology that allows a person, utilizing money, checks, electronic checks, electronic transfers of money, credit cards, debit cards or any other instrumentality, to transmit to a computer information to assist in the placing of a bet or wager and corresponding information related to the display of the game, game outcomes or other similar information. The term does not include the operation of a race book or sports pool that uses communications technology approved by the board pursuant to regulations adopted by the commission to accept wagers originating within this state for races or sporting events.

2. As used in this section, "communications technology" means any method used and the components employed by an establishment to facilitate the transmission of information, including, without limitation, transmission and reception by systems based on wire, cable, radio, microwave, light, optics or computer data networks, including, without limitation, the Internet and intranets.

ONLINE GAMING IN THE STATE

AB466 – 2001 – Sec 3.

1. Except as otherwise provided in subsections 2 and 3, the commission may, with the advice and assistance of the board, adopt regulations governing the licensing and operation of interactive gaming.

2. The commission may not adopt regulations governing the licensing and operation of interactive gaming until the commission first determines that:

- (a) Interactive gaming can be operated in compliance with all applicable laws;
- (b) Interactive gaming systems are secure and reliable, and provide reasonable assurance that players will be of lawful age and communicating only from jurisdictions where it is lawful to make such communications; and
- (c) Such regulations are consistent with the public policy of the state to foster the stability and success of gaming.

ONLINE GAMING IN THE STATE

AB466 – 2001 – Sec 3.

3. The regulations adopted by the commission pursuant to this section must:

- (a) Establish the investigation fees for:
 - (1) A license to operate interactive gaming;
 - (2) A license for a manufacturer of interactive gaming systems; and
 - (3) A license for a manufacturer of equipment associated with interactive gaming.

ONLINE GAMING IN THE U.S.

Nevada's initial efforts to draft regulations and issue licenses for interactive gaming end with the receipt of the DOJ letter.

ONLINE GAMING IN THE U.S.

- Time marches on...
- 2006 – UIGEA is enacted
- 2007 – Publicly traded companies in the U.K. abandon the U.S. online poker market
- 2008 – While the major providers of online poker exited the market, demand was strong and it was filled by three major private companies – Poker Stars, Full Tilt, and Absolute Poker with several other smaller operators
- 2009 - NY and IL begin online lottery subscriptions
- 2009 – Senator's Reid and Kyl reach a preliminary agreement on a federal online poker bill

ONLINE GAMING IN THE U.S.

- Time marches on...
- 2006 – UIGEA is enacted
- 2007 – Publicly traded companies in the U.K. abandon the U.S. online poker market
- 2008 – While the major providers of online poker exited the market, demand was strong and it was filled by three major private companies – Poker Stars, Full Tilt, and Absolute Poker with several other smaller operators
- 2009 - NY and IL begin online lottery subscriptions
- 2011 – Senator's Reid and Kyl reach a preliminary agreement on a federal online poker bill

ONLINE GAMING IN THE U.S. – DELAWARE

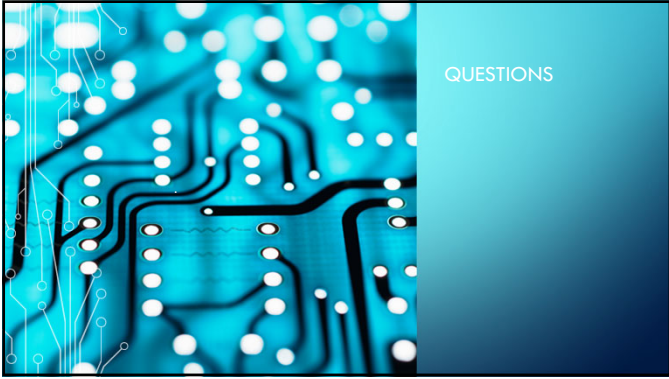
- Run through vendors to the state lottery
- 3 Locations are licensed to engage in iGaming with approved vendors

ONLINE GAMING IN THE U.S. – MICHIGAN

- Operated by 15 of 25 tribes and 3 Michigan Commercial Casinos
- Compacts allow tribes to take wagers within the state of Michigan; however, wagers taken from players not on Indian Lands are regulated by state regulators.
- iGaming was part of the statutory changes of 2019 that ushered in regulated sports betting and daily fantasy sports in Michigan
- Michigan is a member of the NV-NJ-DE-PA cross border iGaming agreement

ONLINE GAMING IN THE U.S. – WEST VIRGINIA

- Operated through the state lottery
- Current operators include:
 - Barstool Casino
 - BetMGM Casino
 - BetRivers Casino
 - Caesars Casino
 - DraftKings Casino
 - FanDuel Casino
 - Golden Nugget Casino
 - PointsBet Casino (soon to be Fanatics)



QUESTIONS
