

Wire Act Memo Clouds Pennsylvania I-Gaming As Industry Ponders Fallout

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The U.S. Department of Justice's (DOJ) new opinion on the scope of the federal Wire Act could disrupt the planned launch of online casino gaming in Pennsylvania, with regulators now poised to revisit rules allowing companies to streamline operations by using servers in neighboring New Jersey.

Although the prospect remains that the DOJ's advisory opinion could be overturned through a legal challenge, Pennsylvania's yet-to-launch i-gaming market is one of several pockets of the industry now facing possible disruption as a result of [Monday's guidance](#) that the federal Wire Act's ban on interstate gambling transmissions extends beyond sports betting to casino, poker and lottery games.

Pennsylvania Gaming Control Board (PGCB) regulations adopted last year suggested operators would be able to host their i-gaming servers and other equipment "anywhere within the United States", allowing companies to use the same infrastructure already serving New Jersey's established online casino market.

In deference to the Wire Act, the PGCB is requiring that servers for online sports wagering be [located within the state's borders](#).

"The new DOJ opinion certainly adds another dimension to the landscape as to what was thought permissible before its issuance," Doug Harbach, a PGCB spokesman, told GamblingCompliance on Wednesday.

"Based upon this opinion, the Pennsylvania Gaming Control Board's focus will be placed on the location of servers to determine whether regulations need to be re-examined. Upon conclusion of our review, we anticipate further discussion with our licensed industry on the topic."

The new DOJ opinion comes as internet gaming had been tentatively set to launch in Pennsylvania sometime this spring, with various operators understood to have been actively planning to host their servers in Atlantic City.

"If I were the Pennsylvania regulator, that's the primary and immediate issue that needs to be dealt with," said Jeremy Kleiman, a partner at Saiber Law in New Jersey who advises clients in Pennsylvania.

Requiring servers to be in Pennsylvania would create additional costs for companies already facing a [high tax rate](#) and licensing fees in the Keystone State, noted Chris Soriano and Frank DiGiacomo, partners at Duane Morris law firm.

Still, it may be the more prudent approach for both regulators and operators to take in the wake of Monday's legal opinion.

"It's a new federal landscape ... and I think the last thing they would want is to be a test case," Soriano told GamblingCompliance.

Internet Poker & Interstate WAPs

Pennsylvania is far from the only state where regulators and operators are asking themselves legal questions as a result of Monday night's Wire Act reversal.

Elsewhere, there is the collaboration of Nevada, New Jersey and Delaware to pool online poker liquidity via a network hosted in New Jersey.

Outgoing Nevada Gaming Control Board chair Becky Harris acknowledged that the DOJ's Wire Act opinion appeared to be broad in scope and carry possible consequences for the state's gaming industry. Harris, however, declined to comment specifically on interstate poker.

"We are continuing to evaluate the opinion to see what the potential impacts are for Nevada," Harris told GamblingCompliance.

The New Jersey Division of Gaming Enforcement declined to comment on the impact of the Wire Act memo, with the opinion understood to be under evaluation by the state attorney general's office. The director of the Delaware Lottery did not respond to a request for comment.

It is not only the regulatory landscape for internet gaming that was affected by the U.S. Justice Department's original 2011 opinion limiting the Wire Act to sports wagering.

Since 2011, some state lotteries are understood to have allowed certain lottery transactions to be processed out-of-state.

Meanwhile, Nevada, New Jersey, South Dakota and other states have permitted the rollout of [multistate wide-area progressive \(WAP\)](#)

[slots games](#) that pool jackpots across state lines.

Lawyers had previously argued that multistate WAPs would not violate the Wire Act as no bet or wager actually crosses state lines; nevertheless, it was not a coincidence that the games got a green light from regulators only after the DOJ's previous legal opinion.

The U.S. gambling industry now appears to have three months to consider what, if any, operational changes will have to be made due to the revised interpretation of the Wire Act.

In a [memo published on Wednesday](#), Deputy U.S. Attorney General Rod Rosenstein advised that federal prosecutors should not bring any Wire Act charges for past conduct that conformed to the 2011 opinion, or for a period of 90 days from Monday.

"A 90-day window will give businesses that relied on the 2011 [Wire Act] opinion time to bring their operations into compliance with federal law," Rosenstein said in a memo to U.S. attorneys and the head of the Federal Bureau of Investigation.

Intermediate Routing

Whether the new opinion will have any impact on gambling activities other than overtly interstate wagering transactions remains a question mark, according to legal experts.

Coming into focus is the long-standing legal issue of "[intermediate routing](#)" — the concept that an online transaction for lawful intrastate gambling could still cross state lines en route between player and server.

The issue was not addressed directly in Monday's opinion. However, the DOJ did state that the Wire Act was not altered in scope by a separate federal law from 2006 — the Unlawful Internet Gambling Enforcement Act, or UIGEA — that does contain an express protection for the intermediate routing of lawful intrastate bets.

The UIGEA language is one legal argument that might have been used against any potential application of the Wire Act to the intermediate routing of an online gambling transaction starting and ending within the same state.

But it is not the only one.

"There remain multiple reasons why the Wire Act should not be construed to apply to intrastate transactions," said Behnam Dayanim, a partner with Paul Hastings law firm in Washington, D.C.

In the hypothetical scenario that the Wire Act was applied to intermediate routing, then lawyers warn the fallout could spread far beyond states' internet gaming, online sports wagering or i-lottery markets.

Electronic communications are used to support server-based gaming and wagering kiosks in land-based casinos, and even by state lottery terminals to send traditional draw entries to central systems.

"There's all sorts of gaming that depends on the internet," said Mark Hichar, a partner with Greenberg Traurig law firm.

Additional reporting by Chris Sieroty.

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