

# Wire Act Leaves States No Choice On Server Locations For Online Gambling

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- **States wait for legal certainty on Wire Act before allowing cross-border bets**
- **In-state server requirements costly to internet gambling industry**
- **Federal appeals court could limit pending Wire Act decision to lotteries**

Under siege in the courts, the 59-year-old U.S. Wire Act lingers as a troublesome relic forcing states to confine servers for all forms of internet gambling within their own borders.

Michigan is the latest example, publishing formal draft regulations two weeks ago [requiring](#) servers for both online sports betting and internet gaming to be located inside the state without considering less expensive alternatives in other jurisdictions.

Pennsylvania and West Virginia have adopted similar regulations for their own internet gaming markets to avoid triggering the Wire Act's prohibition against gambling across state lines.

The grim reality is states do not have a choice when it comes to the location of servers because of the Wire Act, according to [Jeremy Kleiman](#), a partner at the New Jersey law firm of Saiber, which represents internet gaming clients in Pennsylvania and other states.

"Until the matter is ultimately settled by the U.S. Supreme Court, I do not see any regulatory body taking any legal or political risk," Kleiman told VIXIO GamblingCompliance in an email.

The 1st U.S. Circuit Court of Appeals in Boston is [expected](#) to announce a ruling this fall in a case pitting the U.S. Department of Justice (DOJ) against the New Hampshire State Lottery and its online gaming vendor, NeoPollard Interactive.

A [federal judge](#) in New Hampshire last year rejected a 2018 opinion by the DOJ's Office of Legal Counsel (OLC) declaring the Wire Act's ban on interstate gambling transmissions applies exclusively to sports betting, and not online lotteries or other forms of internet gambling.

The DOJ appealed to the 1st U.S. Circuit Court of Appeals, only to encounter withering questions from a three-judge panel during oral arguments on June 18.

The losing side is expected to appeal to the U.S. Supreme Court.

If allowed to stand, the 2018 OLC [opinion](#) could stifle the expansion of internet gambling in the United States, according to Behnam Dayanim, a gaming attorney with Paul Hastings law firm in Washington, D.C.

"The OLC did not directly opine on whether an internet transmission originating in the same state would be considered 'interstate' — and hence, prohibited — but its reasoning opens the door to that conclusion," Dayanim said.

"Any such position, if endorsed by a court, would have far-reaching ramifications, not only for iGaming but for the rapidly growing mobile and online sports-betting sector as well."

States are wise to exercise all due caution when it comes to regulations that may run afoul of the Wire Act, according to Kate Lowenhar-Fisher, a Las Vegas-based gaming attorney with the firm of Dickinson Wright.

"Requiring servers to be located in the regulating state provides a robust argument that the wager is taking place where the server is located," Lowenhar-Fisher said.

"There is no interstate commerce 'hook' for federal law to apply," she said. "Also, state regulators would have great difficulty trying to exercise their jurisdiction over equipment located outside the state."

Restricting the location of servers to within each and every state, which Congress and President John F. Kennedy could not have anticipated when they enacted the Wire Act in 1961, is almost certain to cost online casino operators huge sums of money as the industry expands across the U.S.

“We see in the lottery context that many state lotteries rely on server support in out-of-state locations,” Dayanim said.

“A requirement that iGaming operators duplicate infrastructure in each state they enter will add substantially to the costs associated with iGaming and impact the profitability of the activity — and ultimately, the attractiveness of the offerings that will be made available to consumers.”

Kleiman agreed, but added: “I’d rather factor the cost into my financial model than to not include these costs and learn later I am required to install local servers.”

Prior to the OLC opinion, [Pennsylvania](#) had adopted regulations allowing for internet gaming operators to use servers in New Jersey or other states for online casino or poker games but not sports betting.

Even if the 1st U.S. Circuit Court of Appeals, as expected, denies the DOJ’s appeal, states are likely to remain reluctant to locate servers outside their boundaries until the scope of the Wire Act is clarified by the U.S. Supreme Court, according to Kleiman and Lowenhar-Fisher.

“A state wants jurisdiction over its operators and their equipment for purposes of regulation and taxation,” Lowenhar-Fisher said.

Dayanim said the 1st U.S. Circuit Court of Appeals could also issue a narrow decision that does not address internet casino games and online poker but merely concludes the Wire Act does not apply to lotteries.

“In that event, the [internet gambling] industry will be back to square one,” Dayanim said.

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