

Op-Ed/Editorials - California Legalizes Internet Gambling

August 21, 2002

Professor I. Nelson Rose,
Whittier Law School,
Costa Mesa, CA.

California Gov. Gray Davis recently authorized what may be the second largest expansion of legal gambling in the history of the United States. At the same time, he brought legal Internet gambling to a significant percentage of the country's population.

Of course, nothing can compare to Gov. Davis's campaign for Prop. 1A and the dozens of tribal-state compacts he signed. Within ten years, California will surpass all other states, including Nevada, as the nation's largest casino market.

Gov. Davis's legalization of Internet gambling may be not as big, but it is big news, even if it has not yet been recognized by the press.

Gov. Davis signed a bill permitting everyone in California to bet on authorized horse races from their homes, offices, schools, etc., by phone and computer. The new law also allows California licensed operators to accept bets from anyone in any state.

This new form of gambling is called Advance Deposit Wagering ("ADW"). Bettors are required to set up accounts and deposit money in advance, before they can make their long-distance bets.

The law went into effect on January 1, 2002. (It will expire on January 1, 2008, unless the State Legislature extends it - a near certainty.) The statute requires the California Racing Board to make regulations and to approve all arrangements involving ADW.

In 2000, Gov. Davis vetoed an identical bill. He issued a news release at the time, saying it would open the door to children and teenagers placing bets using their parents' accounts over the Internet. . . I cannot support provisions lifting the state ban on Internet and telephone wagering. It would expand the scope of gambling

by allowing Internet and telephone betting on out-of-state and out-of-country horse races.

In 2001, he said he could sign the proposal for ADW because there had been a change in federal law, so this time it would not be an expansion of gambling.

Legalizing Internet and phone betting for 34 million Californians and millions more in other states is a massive expansion of gambling. And the change in federal law did not require states to authorize interstate at-home wagering on horse races.

In December 2000, Congress amended the Interstate Horseracing Act, expanding the definition of interstate off-track wager to include parimutuel wagers across state lines by phone or "other electronic media." But it is still up to the lawmakers of each state to decide whether they want to allow interstate betting.

A bet which violates the laws of a state also violates federal law. Federal law now allows an individual to make a bet with an Off-Track Betting ("OTB") operator in another state, but only if both the state where the bettor is and the state where the OTB is have passed laws making interstate betting legal.

The amendment was necessary because it was unclear whether the federal Wire Act prohibited gamblers sitting in their homes in one state from using telephones or computers to make wagers with licensed OTB operators in other states.

The Wire Act makes it a crime for anyone in the business of gambling, even legal gaming, to send wagering information by wire across a state or national boundary. There has always been an explicit exception for bets placed in person at an OTB outlet under the Interstate Horseracing Act. But, federal prosecutors in the Department of Justice had indicated they believed the Wire Act did not allow at-home interstate wagers. So the law was changed to make it clear that horseracing bets, legal under state law, do not violate federal law.

California is home to some of the leading tracks: Hollywood Park, Santa Anita, Del Mar and more. The bill signed by Gov. Davis also allows bets to be placed on races taking place at tracks in California, even if both the bettor and the OTB (which has to be approved by the California Racing Board) are in other states.

Bettors in other countries make up approximately 60% of the world Internet gaming market. The Interstate Horseracing Act seems to only allow wagering

information to be transmitted from one state within the U.S. to another. However, racing signals have been sent internationally for decades: American OTBs accept bets on races taking place in Hong Kong and Canadian OTBs accept bets on the Kentucky Derby. In fact, the Canadian federal Agricultural Code lays out what a Canadian OTB has to do to be able to take bets on American races.

The new California law expressly allows Californians to place bets with an approved OTB outside the state, and it does not restrict those OTBs to the United States.

Once the regs. are in place, Californians will be able to make bets by phone to approved OTBs in California and in other states which allow out-of-state telephone wagers, like New York, Connecticut, Oregon and Pennsylvania. The last two, like California, also allow out-ofstate computer bets.

California is such a major market that other states will soon also allow out-of-state bettors to wager online.

What about other countries? Canada has so far prohibited its OTBs from taking computer bets from outside their province. But California is larger and has more potential bettors than all of Canada.

Perhaps the new California law will be the breakthrough to true licensed international Internet gaming.