

SIGNIFICANT DEVELOPMENTS IN ILLINOIS GAMING

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From gaming expansion bills and available owner's licenses to smoking bans and mandatory identification checks, the gaming environment in Illinois has seen some significant developments in 2007, and anticipates more in 2008. Here are the highlights:

The Tenth Owner's License (*Finally*) Becomes Available. The tenth owner's license – which was initially granted to Emerald Casino Inc. (“Emerald”), an operator in East Dubuque, Illinois – has been the subject of nearly six years worth of protracted litigation that has finally concluded. Various appeals in the Illinois Appellate Court for the First and Fourth Districts followed the Illinois Gaming Board's (the “IGB”) denial of Emerald's request for renewal of the tenth license on March 6, 2001 and subsequent revocation of that license in December 2005. Although it ultimately ordered the IGB to issue Emerald's license for renewal, the Illinois Appellate Court also affirmed the IGB's decision to revoke that license. The Illinois Supreme Court refused Emerald's request to review the latter decision, and Emerald recently announced that it would not be pursuing any additional appeals in the matter.

As a result, the IGB has authorized a bid process to issue the tenth – and final – license to a new operator. On December 6, 2007, the Illinois Department of Central Management Services issued a Request for Proposal to receive bids from investment banking firms to oversee the bid process. The IGB recently extended the deadline for submission of bids from interested investment banking firms until mid-March 2008. At present, the IGB has indicated that the tenth license should be issued in the fourth quarter of 2008, although the exact location of the operation of the successful bidder for this license is currently unknown.

Gaming Expansion in Illinois, Anyone? On December 11, 2007, House Bill 4194 (“Bill 4194”) was introduced to the Illinois General Assembly in an attempt to significantly expand gaming in Illinois. Proposals contained in Bill 4194 included:

- An additional casino owner's license, bringing the total number of riverboat casinos permitted in Illinois to eleven;
- A land-based casino located in Chicago, Illinois;
- The ability of existing and new casinos to purchase additional gaming positions;
- Permitting Illinois horse race tracks to operate slot machines and video poker upon the payment of a per-position fee (read, racinos); and
- The formation of a new Gaming Board appointed by the Governor and a new Gaming Enforcement Division to monitor gaming operations, conduct background checks, conduct investigations and investigate violations of the Illinois Riverboat Gambling Act.

Although Bill 4194 was ultimately not enacted, it is expected that a gaming expansion bill may be introduced in 2008 that may provide similar terms to expand gaming in Illinois. Stay tuned.

Governor Blagojevich Proposes a New – and Increased – Gaming Tax Scheme. On February 20, 2008, Governor Blagojevich introduced a new gaming tax scheme in his Fiscal Year 2009 Proposed Illinois State Budget. Specifically, Governor Blagojevich proposed – beginning in fiscal year 2009 – a tax on Illinois riverboat casinos at a flat 46 percent rate on all adjusted gross receipts (“AGR”) below \$250 million, and a 70 percent rate on AGRs in excess of \$250 million. These additional tax revenues would then be directed to P-12 education funding. Currently, riverboat casinos pay a “privilege tax” pursuant to a graduated tax scheme, with riverboat casinos with AGRs of over \$200 million paying the highest privilege tax percentage of 50%. Governor Blagojevich’s new gaming tax scheme, however, is only a proposal, and may or may not be enacted into law.

Mandatory I.D. Checks at Illinois Casinos? The issue of keeping minors and self-excluded patrons out of Illinois casinos has prompted the IGB to consider issuing a requirement that each Illinois riverboat casino check the identification of all patrons entering casino gaming areas. The IGB held a special meeting on December 3, 2007 to allow the public and industry representatives to speak on the issue, and reported at that time the results of studies it conducted at selected casinos during which the identification of patrons was checked for specific periods of time. Although the IGB has not yet decided whether to make identification checks mandatory, it is anticipated that the issue will continue to be of interest to the IGB. Industry leaders in Illinois have expressed concern that mandatory identification checks may adversely affect gaming revenues resulting from a decreased number of patrons by causing some of them to visit casinos in neighboring states that do not perform such checks.

What Effect Will Illinois’ Smoking Ban on Casino Operations? Illinois’ Smoke Free Illinois Act became effective on January 1, 2008 and bans smoking in nearly all public places in Illinois, including bars, restaurants, work places, schools and casinos. Senate Bill 890 (“Bill 890”) was introduced on May 25, 2007 in an attempt to exempt Illinois casinos from the Smoke Free Illinois Act for a period of five years. Although the Senate Executive Committee voted 9-4 to approve a casino exemption on May 30, 2007, the Illinois Senate ultimately voted down Bill 890 on June 1, 2007. The effect the Smoke Free Illinois Act has had on the profitability of the gaming industry in Illinois currently remains unclear.

The “Horse Racing Tax” Found Unconstitutional. On May 26, 2006, amendments to Illinois’ Riverboat Gambling Act were made that – for a two year period – required certain owner’s licensees operating riverboat casinos with adjusted gross receipts in 2004 greater than \$200 million to pay an amount equal to 3% of the adjusted gross receipts received into the Horse Racing Equity Trust Fund (the “Horseracing Surcharge”).

On May 30, 2006, four days after the Horseracing Surcharge was made effective, the four casinos affected by the Horseracing Surcharge filed a lawsuit in the Circuit Court of the Twelfth Judicial Circuit in Will County, Illinois against the Treasurer of the State of Illinois and the Illinois Racing Board. The four-count Complaint sought a declaratory judgment that the Fourth Amended Act’s Surcharge was unconstitutional and a permanent injunction against its enforcement. On March 26, 2007, the Will County Circuit Court granted summary judgment in

favor of the four casinos for the Horseracing Surcharge's violation of the Illinois Constitution's Uniformity Clause. The defendants and the racetracks that intervened in the lawsuit have since filed an appeal, which is now pending before the Illinois Supreme Court. A decision by the Illinois Supreme Court is expected to be issued in the first quarter of 2008.

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What 2008 holds for the Illinois gaming community is anyone's guess. One thing, however, remains certain: you have to stay tuned to IAGA for all the latest news.