VIXIO GAMBLING COMPLIANCE

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Unintended Consequences Linger 15 Years After UIGEA Enactment

UIGEA expanded online gaming but still vexes industry

Presidential ambition led to last major federal gambling law

Support growing to amend UIGEA, the Wire Act and IGRA

There may not be a better example of a federal statute creating the opposite of what Congress intended than the Unlawful Internet Gambling Enforcement Act (UIGEA), which President George W. Bush signed into law 15 years ago today.

UIGEA specifically exempted fantasy sports from its prohibitions, opening the door for a new breed of fantasy operators led by DraftKings and FanDuel to redefine the segment by offering daily fantasy sports contests, claiming they were games of skill, not gambling.

When the U.S. Supreme Court ruled on May 14, 2018, that states could legalize sports betting, DraftKings and FanDuel had already amassed huge databases of fantasy sports customers, whom they transformed almost overnight into sports-betting customers.

Other commercial gambling companies followed suit, making the online sports betting industry in the United States one of the fastest growing businesses in the world.

“What the Unlawful Internet Gambling Enforcement Act did not do was prevent or even substantially diminish illegal online gambling,” said Behnam Dayanim, a prominent gaming attorney with the firm of Paul Hastings in Washington, D.C.

Although several major publicly traded operators withdrew from the U.S. market, offshore gambling activity continued largely without interruption until April 15, 2011 – Black Friday as it is known in the gaming industry – when federal officials abruptly shut down offshore poker websites, including PokerStars.

But even now, illegal offshore gambling websites continue to thrive, so much so that eliminating them remains a top priority for the legal and regulated commercial gaming industry.

"The irony of the statute ultimately is that what was intended as an anti-gambling effort eventually fostered the growth of both gambling and a new ‘quasi-gambling’ activity [daily fantasy sports],” Dayanim said.

Perhaps just as interesting as the aftermath of UIGEA is how the law was created.

It is a classic Washington, D.C. political tale, with the man most responsible for UIGEA believing he could become President of the United States by ramming the statute through Congress in the dead of night on the day of adjournment in 2006.

Senate Majority Leader Bill Frist, a Republican from Tennessee seeking to bolster his conservative bona fides for a presidential run in 2008, resurrected UIGEA single-handedly after the statute appeared to be dead in the water.

"When we went to bed on the night of September 29, 2006, supporters had tried to attach UIGEA to several different conference reports [on pending legislation] and had failed," said Dan Walsh, a lobbyist for online gambling association iDEA Growth in Washington, D.C.

Walsh, who was the lead lobbyist for the Interactive Gaming Council at the time, said Frist forced lawmakers to open the conference report on a totally unrelated port security bill and add UIGEA.

"Only the [Senate] Majority Leader could have done that," Walsh said.

The reaction of the gaming industry, both in North America and Europe, bordered on despair.

European online gaming operators all but abandoned their hopes of expanding in a massive new online gaming market in the United States.

Less than seven weeks after President Bush signed UIGEA into law, Frist announced he would not run for president after all. A wealthy heart and lung transplant surgeon, Frist would end his political career in 2008 by leaving the Senate and fulfilling his pledge to serve only two terms.

But while Frist has faded into obscurity, UIGEA endures as a statute that must be reckoned with by the gaming industry.

Specifically prohibiting the processing of financial transactions for any unlawful online gambling, UIGEA is among a trio of federal statutes that linger as potential roadblocks to gambling industry expansion.

After intense lobbying by powerful Nevada casino interests eager to quash the competitive threat of tribal gaming, Congress passed the Indian Gaming Regulatory Act (IGRA) of 1988, and just like UIGEA, the exact opposite occurred.

Indian gaming seems destined to overtake commercial gaming in annual gross gaming revenue within the next five years, with tribes led by the Seminole Tribe of Florida eager to explore online sports betting under IGRA in the months and years ahead.

The third and arguably most vexing member of this troublesome legislative triumvirate for the gaming industry is the U.S. Wire Act of 1961, which prohibits any interstate transmissions of sports bets.

The U.S. Department of Justice, under President Donald Trump, attempted to use the Wire Act to outlaw all internet gambling, but an adverse ruling by a federal judge in New Hampshire scuttled the effort.

"With the Justice Department repeatedly positing that UIGEA does not impact the Wire Act during the recently-concluded New Hampshire litigation, Wire Act liability for sports leagues and tethered companies selling sports wagering information across state lines remains a massive issue moving forward," said Ryan Rodenberg, a professor at Florida State University.

"The Wire Act's two-pronged safe harbor has not been litigated since the Supreme Court's ruling in the New Jersey [sports betting] case three years ago and remains a key issue for sports gambling transmissions that cross state lines," Rodenberg said.

The lingering contingencies created by the Big Three federal gambling statutes has fueled support within pockets of the gaming industry to lobby Congress to amend the three laws, particularly the Wire Act, given the challenges it presents for legal sportsbooks.

On the other hand, it is almost in the gaming industry's DNA to shun any federal intrusion into its operations.

Jeff Ifrah, a Washington, D.C. attorney and founder of iDEA, put it bluntly.

"I would prefer Congress stayed out of online gaming regulation."

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