

State legislatures looking at expanding slot machine type gaming through 'Instant Racing'



Kilpatrick Townsend & Stockton LLP

Charles W. Galbraith, Catherine F. Munson, Rob Roy Edward Stuart Smith, Robert C. Harmala and John C. F. Loving

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What is Instant Racing?

Instant Racing, also known as Historical Horse Racing, is an electronic terminal game that allows players to bet on short video replays of the last few seconds of old horse races. All of the identifying information about the races is removed from the video clips. There are a variety of machines on the market, however many very closely resemble slot machines with spinning reels that correspond to the results of the wager and the races. Accordingly, the Instant Racing machines can offer a casino-like experience at existing racetracks or off-track betting facilities.

Supporters of the games argue that they constitute pari-mutuel betting and are simply a new way to bet on horse racing. Opponents argue that they are nothing more than slot machines specifically designed to take advantage of favorable state horse racing laws. One state Supreme Court went as far as calling the Instant Racing devices “a slot machine that attempts to mimic traditional pari-mutuel wagering.” *Wyoming Downs Rodeo Events, LLC v. State*, 2006 WY 55, 134 P.3d 1223 (Wyo. 2006).

The concept of Instant Racing has been sold politically to legislative bodies as an economic opportunity to revive a struggling horse racing industry. Proponents of the games have compared them to other types of exotic wagers allowed at horse races such as a “Pick Six,” where bettors at different tracks try to win a jackpot that can carry over from one day to the next.

Potential Tribal Impacts

The impacts to tribes will be greatly varied based on state laws, tribal-state compacts and geography. In some instances, Instant Racing could present tribes with a substantial business opportunity. However, it could also become direct competition for tribal gaming in states permitting Instant Racing, or for tribal gaming in neighboring states that rely on a cross-border customer base.

State-by-State Background

Arkansas: An Arkansas based track developed the Instant Racing machines, in partnership with a Maryland based company, and began service in 2000. They have worked to try to create a casino-like environment at race facilities by adding a variety of other games that the State considers to be “electronic games of skill.”

Idaho: The State Legislature approved the use of Instant Racing machines in 2013. Currently, three facilities in Idaho are operating Instant Racing, however others may soon follow. A few members of the Idaho Legislature have claimed to have “buyer’s remorse from having passed the statute not knowing what exactly was involved [with Instant Racing machines.]”¹¹

Kentucky: In 2012, Kentucky authorized Instant Racing to help its struggling horse racing industry. The legality of the games has been challenged in court and the Kentucky Supreme Court recently ruled that the racing commission had authority to regulate Instant Racing, but remanded the case for discovery. From 2011 to April 2014, the betting on Instant Racing generated approximately \$37 million for its two tracks.

Maryland: In March 2009, upon request of the racing commission, the Attorney General issued an Advisory Opinion that found Instant Racing was impermissible under Maryland law. The Attorney General's opinion found that Instant Racing did not constitute "pari-mutuel betting," as authorized by the Maryland Horse Racing Act.

Nebraska: Instant Racing passed the State's unicameral legislature but was vetoed by the Governor in 2012. Now, an Amendment to the State's Constitution will appear on the ballot in November 2014 to allow betting on live or replayed horseraces at facilities throughout the State. The Winnebago Tribe of Nebraska is supporting the ballot initiative and hopes to develop a new gaming and entertainment venue at a racetrack.

Oregon: In an attempt to help revive the state's struggling horse racing industry the Legislature enacted and the Governor signed a law permitting Instant Racing in June 2013. Race officials are hoping the new form of gaming will allow the track to offer larger purses to compete with other tracks in the region, such as Emerald Downs near Seattle, WA.

Texas: The Texas Racing Commission has proposed a rule to permit instant racing, held public meetings and done a note and comment period. The Commission could vote on a rule to permit Instant Racing this year. If the Commission approves the rule a legal challenge is expected on their authority absent legislative action. Indeed, some Texas State Legislators have already asked the Attorney General to issue an Advisory Opinion on whether the Commission has authority to allow such betting at the state's racetracks.

Wyoming: In 2004, the Wyoming Attorney General issued an Advisory Opinion saying the games were illegal under state law because they did not operate in 'real time.' In 2006, the Wyoming Supreme Court ruled that 'instant racing' machines were illegal gambling devices. However, the state legislature amended the gaming laws in 2013 to permit Instant Racing at state race tracks and off-track betting sites.

Conclusion

Instant Racing machines provide the player with an experience that is very similar to slot machines and could potentially compete with traditional gaming facilities. Tribes should actively monitor legislative action that could bring Instant Racing to their state or a neighboring state. States with a significant horse racing industry would be the most likely to consider Instant Racing, especially if it continues to produce revenue as it did in Kentucky. The development of Instant Racing could provide an opportunity or an obstacle to tribal gaming. It is important for tribes to closely monitor efforts at amending state laws to ensure tribal interests can be analyzed and best represented in the political process.