

Panelists warn lawmakers about challenges of online gambling

By Richard N. Velotta, Las Vegas Sun

As the prospect of passage of federal legislation legalizing online poker play continues to dim, several states are looking to move independently to offer various forms of Internet gambling.

But panelists in Sunday's closing session of the National Council of Legislators from Gaming States had cautionary advice for lawmakers: Glean as much regulatory expertise as you can find, stay ahead of the technology curve and be prepared for a lot of disagreement.

The council concluded three days of meetings that brought about 100 lawmakers and regulators from 21 states, a Canadian province and Washington, D.C., to the Rio. Representatives of several American Indian tribes that operate casinos also attended.

Late last year, the council adopted a resolution on its position on federal Internet gaming legislation. Citing states' rights in the oversight of public policy within their borders, the council stated that it would oppose any federal legislation that would diminish state policymakers' authority over gaming within their states.

The organization in late November notified Senate Majority Leader Harry Reid and Arizona Sen. Jon Kyl, who at the time were considering a last-ditch effort to bring Internet poker legislation to a vote, and other members of Congress of its position.

Lobbyists for the gaming industry, most notably the American Gaming Association, support federal legislation so that companies that operate in multiple states can have a consistent Internet gaming policy nationwide. The bill that Reid and Kyl have proposed would allow states to opt out of participating in iGaming.

Now that the council, which represents state lawmakers from several states that have some form of commercial or tribal gambling, has taken that position, many members are educating themselves about the industry and the issues. Sunday's panel included five Internet gaming experts, including two Las Vegas attorneys that have been on the front lines of the debate in Nevada.

Tony Cabot of the Lewis & Roca law firm, who also is an adjunct instructor in gaming law at UNLV, told lawmakers that Nevada has learned a great deal since it began issuing licenses to companies to operate intrastate Internet poker in 2012.

"Even the most experienced people are not completely ready to regulate online play," Cabot said. "You will need at least a year before a regulatory body can competently regulate it. If New Jersey thinks they can do it in three months, they're kidding themselves."

New Jersey recently became the second state to approve legislation to conduct Internet gambling.

Cabot said it took Nevada regulators six months to determine what companies and individuals needed to be investigated for licensure because it wasn't just the oversight of games that needed review but the means of communication. Many of the regulations for poker play in casino poker rooms could be used for online poker, but state officials also had to review player eligibility verification by age and geography, the prevention of collusion and security concerns.

“You can be sure that hackers, cheats and scoundrels will try to hack the system,” Cabot said. “There will be persons trying to defeat the verification systems. They’ll find the weakest of the jurisdictions and compromise those jurisdictions.”

Toni Cowan of the Catania & Ehrlich law firm said she didn’t think most government entities realize how rapidly technology is changing the industry – which is one of the reasons she has more confidence in states regulating gaming than the federal government.

Federal lawmakers approved the Indian Gaming Regulatory Act to oversee aspects of tribal gaming, but she said the legislation “treats gambling and games as if they’ve been frozen in time.”

“Progressive states like Nevada and New Jersey are constantly changing their gambling legislation to try to keep up with changing technology,” Cowan said. “The federal government has done nothing, mostly due to political reasons.”

Panelists told lawmakers there are other things states must do if they are going to effectively oversee Internet gaming.

Kimberly Arnold, co-manager of the Denver-based Innovation Group, said it would be important for states to watch how social media sites affect the gaming landscape. Her company also is studying the potential of online casinos cannibalizing land-based casinos if Internet play is legalized.

Panelist Mark Hichar, a lawyer with the Hinckley, Allen & Snyder law firm in Boston, told lawmakers they’ll also need to pay attention to the lottery industry.

Lottery directors from Iowa and Kentucky were among the state officials that lobbied against the Reid-Kyl online poker legislation. Some state lotteries already have moved into online lottery ticket sales, with Illinois and Georgia lotteries beginning sales last year.

And then there was panelist Michael Fagan of the St. Louis-based Center for Advanced Prosecution, who suggested that state lawmakers keep online gaming illegal.

“Public opinion polls show an overwhelming majority of Americans don’t want Internet poker casinos or other forms of Internet casino gambling legalized,” Fagan said.

He said the Reid-Kyl bill is “deceitfully titled” (the Gambling Prohibition, Poker Consumer Protection Act) and that analysts say the Internet poker business model is unsustainable.

“If Congress legalizes Internet casinos, it would put the federal government into the gambling business for the first time in modern American history,” Fagan said. “Governments should protect, not exploit, their people. For those with genuine concern about the supposed ambiguity of the (federal) Wire Act, a simple legislative fix effectively broadening the scope of the Wire Act to more clearly include all forms of gambling and all types of communication facilities, including the Internet, is all that is required.”