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GAMING LEGALNEWS

IDAHO TRIBES AND COMMUNITY LEADERS SEEK TO LIMIT "INSTANT RACING" GAMING MACHINES

by Patrick Sullivan

A popular and profitable form of gaming has sparked a controversy in Idaho between the state's Indian tribes and horse racetracks. "Instant Racing" video slot machines replay the last seconds of horse races run in the past, but with identifying marks eliminated from the horses and riders. Players bet on the outcome of the race. Proponents also refer to the new games as "historical horse racing." The machines were legalized in 2013 by an Idaho law intended to revitalize the declining Idaho horse racing industry. The traditional pari-mutuel horse racing industry has experienced serious declines in revenue in the past years, and racetrack owners argue that Instant Racing is a lifeline saving them from otherwise inevitable closure. At Boise's Les Bois Park racetrack alone, players wagered over \$40 million in only seven months in 2014, bringing the racetrack into the black after years of shortfalls.

Idaho's largest Indian tribe, the Coeur d'Alene Tribe, along with the Kootenai, Shoshone-Bannock and Shoshone-Paiute Tribes, opposes the machines and has succeeded in introducing legislation in the Idaho Senate to repeal the 2013 legalization and prohibit the games throughout Idaho. A separate bill seeks to limit the gaming to three racetrack locations. The Tribes claim that the games are actually slot machines, which are illegal under Idaho's Constitution. The Tribes argue that Instant Racing threatens tribal gaming conducted pursuant to Class III gaming compacts with the State and that the games have nothing to do with true pari-mutuel wagering.

Instead, the Tribes allege the games are an "illegal hoax" slipped past the Idaho legislature as a revived form of horse racing. Opponents and tribal representatives claim the industry represented that "historical horse racing" would be identical to live horse racing but using previously run races. Instead, opponents allege the machines require no skill and do not even require that the player select any horse to play and win the game. Nor are the bets pooled and the odds adjusted as in true pari-mutuel racing. Even some Idaho legislators say the legislature was duped when it legalized the machines in 2013 and did not realize the games were pure games of chance disguised as horse racing terminals.

The Tribes sent a unified letter to Idaho Governor "Butch" Otter demanding the games be prohibited. Similarly, "Stop Instant Racing Casinos in Idaho," a group of non-Indian business and community leaders, mayors and sheriffs, issued a statement opposing the machines. The group called the machines "Vegas-style casino gaming" and "nothing more than illegal video slot machines attempting to pass as horse racing." The leaders pointed out that the machines threatened

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the gaming operations of the Coeur d'Alene Tribe, which employs 2,000 people in Northern Idaho and enjoys strong community support as a major contributor to the Northern Idaho economy by providing millions of dollars of donations each year and supporting transportation infrastructure and healthcare needs in the community.

In a Senate hearing on the legality of the machines earlier this month, developer Race Tech LLC sought to distinguish Instant Racing from illegal slot machines. According to the manufacturer, the games are not slot machines because the outcome of the game is not determined by a random number generator but by the outcome of the race itself. Idaho senators questioned this theory and focused on whether Instant Racing is a game of chance or a game of skill. Unlike true pari-mutuel betting, in which a knowledgeable bettor has an advantage, these games eliminate the possibility of any advantage from skill by removing identifying marks. The Senate committee is expected to vote on the bills this week, paving the way for a floor vote.

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