



Internet Gambling: Keys to a Successful Regulatory Climate

by Steven Titch



Reason Foundation



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Executive Summary

As cash-strapped states explore ways to expand commerce and fill their coffers, many are considering increasing the reach of state lotteries through permitting online gambling. Indeed, Illinois and New York late last year received word from the Department of Justice indicating that as long as it does not involve sports betting, such gambling would not violate the federal Wire Act. Other states have taken note and are examining their options for this potential tax revenue stream.

Yet any discussion of gambling sparks controversy from citizenry and special interest groups, which legislators must address. This paper makes the principled case for legalized Internet gambling, and recommends a policy approach that would create win-win-win regulatory environments for consumers, game site operators and state governments. In keeping with American ideals of personal freedom, U.S. citizens should be free to gamble online, just as they legally can in casinos throughout the country. It is irrational and hypocritical for states that benefit from brick-and-mortar casinos or horse-racing to then attempt to ban Internet gambling.

From the consumer perspective, Internet gambling stands to offer better value for low-end players. It also offers states significant economic benefits:

- It plays to American skill strengths and creates demand for high-paying IT jobs, which will help states stem the exodus of college graduates skilled in technology sector areas to other parts of the country. This aim works in tandem with other efforts to cultivate a business climate that welcomes tech industry entrepreneurs and start-ups, and the increase in jobs and tax base these enterprises bring.
- It stands to be a major revenue opportunity for state governments. As Jeff Danielson, president pro tempore of the Iowa state Senate, pointedly said, “\$30 million leaving the state economy is a problem.” He went on to say, “It’s an e-commerce issue. If Iowa has to compete, we have to come to grips with the fact it [Internet gambling] can be done safely and securely.”¹

Although states will likely differ in the particulars of how they structure license and tax arrangements, a successful climate for legalized Internet gambling is likely to derive from a number of fundamental principles. This report recommends several guidelines for state legislators:

- Consumers are best served when there is ample competition. Regulation and licensing arrangements should reflect this.
- Online gambling has a different cost structure than brick-and-mortar casinos. States must grasp the lower revenue and tax expectations and set up tax and licensing structures so they are compatible.
- States should avoid creative new tax structures that place levies on players' accounts or introduce "hand charges" that are paid directly to the state. Any taxes should fall on Internet gambling operators, not players.
- Regulation should aim to protect players from fraud and promote fair games. It should not attempt to protect players from themselves. Such regulations have proved ineffective and easy to defeat.
- States should not discount the market as an effective regulator. Independent game analysts have proved adept at identifying problem software and posting their findings, while online information sites, message boards and discussion groups all help players to make informed Internet gambling choices.

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Introduction

It was quite a Christmas present. On December 23, 2011, the Department of Justice gave millions of adults who enjoy playing poker the hope that they might once again play with real cash on the Internet as easily and safely as they can in casinos and local card rooms.

The DoJ's gift took the form of a memo to the states of Illinois and New York, which had each inquired whether their proposed online sale of lottery tickets violated the Wire Act. The DoJ said it did not. Further, its memo went on to say that the Wire Act's "prohibitions relate solely to sport-related gambling activities in interstate and foreign commerce."

Gambling industry attorneys such as I. Nelson Rose grasped the significance of the wording immediately. That simple phrase, Rose argued, opens the door not only to online lottery ticket sales, but to nearly all types of Internet wagering as long as the gambling activity remains in-state and sports betting is not involved.

If the Wire Act is limited to bets on sports events and races...all that are left are the federal laws designed to go after organized crime. These all require that there first be a violation of another law, like the Wire Act, the federal anti-lottery statutes, or a state anti-gambling law. If a state has expressly legalized intra-state games like poker, as Nevada and the District of Columbia have done, there is simply no federal law that could apply.²

Bottom line, according to Rose: if the bettors and operator are all in the same state, and the gambling does not involve a sports event, the Wire Act cannot be used against the operator, even if phone wires happen to cross into another state. And if the state legislature has made the online game legal, it does not violate any other federal anti-gambling law.³

As a result, several states have already moved ahead with various forms of online wagering. In April 2012, Illinois began lottery ticket sales via the Internet. The Delaware legislature has enacted a bill that authorizes "Internet gaming" under the control and operation of the Delaware lottery. In August 2012, Nevada became the first state to permit legal online poker in the U.S. when the Nevada Gaming Commission, acting in accordance with state legislation, granted a license to South Point Poker LLC, a venture of Las Vegas casino magnate Michael Gaughan. Other states with pending legislation include Massachusetts, Mississippi and New Jersey (see appendix for a full list and summaries).

In fact, Internet gambling in Washington, D.C. came very close to reality. Washington became the first jurisdiction in the U.S. to permit online poker and other games of chance and skill, when, in March 2011, its city council amended a pending proposed budget to allow online gaming. Because of Washington's unique status as a federal enclave, its city council can make its own laws unless Congress specifically objects, which in this case it did not.⁴

The initiative, however, came under fire from local anti-gambling activists, a protest that gained wider support after questions arose about improprieties in the award of the city contract for running the gaming operation. In the face of this new opposition, the D.C. City Council in February 2012 repealed the Internet gambling vote 10-2.⁵

But that reversal may prove to be an anomaly. Facing declining tax revenues and budget shortfalls, many states are desperate for new ways to fill coffers. Many legislators see cultivating a domestic Internet gambling industry—for both the potential tax revenues and job creation it presents—as an opportunity to keep online gaming revenues inside the state or country. Although there tends to be a strong anti-gambling presence in most jurisdictions, this moral argument is dampened by the evidence that state-sanctioned gambling is widespread. Forty-three states plus D.C., Puerto Rico and the U.S. Virgin Islands conduct lotteries; 40 states permit pari-mutuel horse-racing; 33 states have authorized casino gambling, either commercial, on Native American reservations, or both. Internet wagering has been popular since the outset, and state legislators have recognized a pent-up market. It appears to be only a matter of time before online gambling returns.

The Unlawful Internet Gaming Enforcement Act and its Effect

Contrary to common understanding, Internet gambling is not illegal in the U.S.—quite the opposite. As there is no federal law against any form of gambling, Congress has left it to the states to permit, prohibit or regulate it. Despite its name, the Unlawful Internet Gaming Enforcement Act (UIGEA) did not outlaw online wagering. It did however make it illegal for U.S. banks and financial institutions to transfer funds to online gambling sites or agencies that handled money on their behalf. While U.S. citizens can still gamble on the Internet, UIGEA has turned it into a cumbersome process whereby players need to constantly keep ahead of both the banks and the Treasury Department in identifying appropriate transaction processing operations to deposit and withdraw gambling funds to and from foreign sites.

Even so, the U.S. government stepped up its anti-gambling efforts in 2011, arresting executives from three major international Internet poker sites—PokerStars, Full Tilt Poker and Absolute Poker—on charges of money-laundering. The action was controversial for a number of reasons. First, all three sites are operated by legitimate, publicly traded companies. Second, along with the arrests, the DoJ seized the domain names, a move many felt overstepped international Internet agreements, especially since Internet gambling is legal in other countries. Critics felt the U.S. government’s action would give political cover to more repressive regimes to block access or shutdown access to news and information sites that were considered “illegal” inside their boundaries.

This is why, in the wake of these controversial crackdowns, many observers were surprised by the DoJ’s liberal reading of the Wire Act in regard to intrastate online gambling. On his blog, Rose went as far as to speculate that the memo’s wide scope was unintentional.⁶

Although the government has raised obstacles to online wagering, online gambling sites have not gone away. U.S. citizens can still play for fun on many sites that otherwise offer real money gambling to non-U.S. players. In the U.S., sites such as Videopoker.com promote casino-based video poker games by offering simulated games, strategy help and tournaments and contests in which players risk no cash. A limited number of casino hotels have begun to experiment with wireless gaming, whereby registered guests can download a gaming application to a smartphone or tablet and gamble within the casino property. The most significant development in online gambling, however, may grow out of Internet social networking. Research from the Innovation Group, a gaming marketing research company, shows that more than half the users on online gaming come

in through social media or search. Companies such as Zynga, which began by offering multiplayer social games such as Cityville, Castleville and Mafia Wars on Facebook, are particularly well-positioned. Zynga's most popular online game is poker, and Zynga and companies like it have a logical growth path into online gambling. Given their established connection with social networks, industry observers believe that virtual online casino environments ultimately will emerge within social networks such as Facebook, Google+, Orkut and others.⁷

While prohibition efforts might continue, they will face considerable headwinds from the U.S. culture of gambling, strong brick-and-mortar casino brands that are likely to become involved in online ventures, and states' growing need for revenues.⁸

Part 3

The Case for Internet Gambling

From the perspective of principle, gambling is a voluntary form of entertainment enjoyed by millions of responsible adults. Some even make their living at it. From a cultural standpoint, however, gambling carries a stigma. Some claim gambling discourages productive work and instead exudes a false promise of gaining “something for nothing.” This notion might be discounted by a skilled poker player who, hand by hand, must be able to quickly compute his own odds against his opponent’s, not only in terms of pure math, but in view of past playing patterns and observed habits.

While some moralize, others pathologize. While it is true that a small percentage of the gambling population could be categorized as compulsive, many anti-gambling groups tend to inflate this number by expanding the category to include gamblers who have trouble controlling their emotions when winning or losing, or who fail to grasp proper money management techniques due to a poor understanding of probability, statistics and odds. By enlarging the definition of compulsive gambling, progressives construct a meme that gambling presents a social problem for a significant degree of the population.⁹

While acknowledging the reality of compulsive gambling, it’s also fair to say it is just one more human activity that is addictive to a minority. Shopping, eating, work, exercise, even sex have all proved destructively addictive to some. Gambling is the only item on this list that has been legislatively outlawed, and that effort proved disastrously ineffective. Therefore, attempting to prohibit Internet gambling on the basis that it is potentially addictive is futile.¹⁰

Evolution has wired human brains to reward certain behaviors. Physiologically, it’s not the behavior itself, but the release of endorphins and dopamine triggered by the behavior that creates the addiction. At the same time, evolution has made humans capable of rational thought. The correct application of law incentivizes us to behave rationally when the alternative is harmful to us or others. That means holding individuals responsible for the consequences of their actions, not banning an activity wholesale. Compulsive gamblers exist whether or not wagering is legal within a jurisdiction. Proscriptions push compulsives into the shadows. Even today, with significant barriers to online play, a compulsive gambler, by the very nature of his problem, will have the drive to find Internet gambling.

Overall, however, it’s an understatement to say gambling is popular. It is steeped in human history. Archeologists have found evidence at sites around that world that almost every ancient culture engaged in wagering on contests and games of chance. The Bible mentions the casting of lots,

sometimes favorably, sometimes not. Legal bans can't hold up against this sheer force of human history. Individuals who want to gamble will do so, whether it's legal or not. Legalization, however, places gambling in the light of day, subject to law and offering players more protection from fraud or abuse.

On a more practical level, many states sanction some level of gambling as an entertainment and a form of tax revenue. It appears both irrational and hypocritical when a state benefits from brick-and-mortar casinos or horse-racing, then attempts to ban Internet gambling, as both Washington State and Kentucky have tried to do. While a handful of states habitually vote to prohibit gambling, the fact that casinos tend to set up just beyond their borders suggests that those states' residents do not necessarily share their legislators' concerns. For instance, Utah prohibits gambling, yet the casinos of West Wendover, Nev., about 120 miles west of Salt Lake City, remain a popular destination for Utah residents. Similarly, although most forms of gambling are illegal in Texas, Lake Charles and Shreveport, La.—just three-hour drives from Houston and Dallas, respectively—draw considerable business from the Lone Star State.

Internet Gambling Offers Economical Alternatives

From the consumer perspective, Internet gambling stands to offer better value for low-end players. In terms of payback, almost all brick-and-mortar casinos have tightened up their low-end games. For example, penny slot machines often carry a house edge of 10 percent or more. A 10 percent house edge means, in the long run, that a player will lose 10 cents for every \$1 wagered. House edge tends to decrease as the minimum bet requirement increases, and in many casinos, only “high rollers” have the budget to play the games with the best payback. For example, the video poker games with the best pay tables—which give the house an edge of between 0.5 and 1 percent, are often only available to players willing to wager \$5 on each draw.¹¹

At table games like blackjack, the house edge for many low-roller \$5 and \$10 games can be greater than 2 percent, especially when the payout for a natural two-card 21 is reduced to 6-to-5 from the conventional 3-to-2. Games with rules that are more advantageous for the player, sometimes limiting the house edge to one-quarter of 1 percent or less, often require a minimum bet of \$25 or more.¹²

At poker, the cheapest brick-and-mortar Texas Hold ’Em poker cash games usually call for a minimum \$3 bet at “limit” games (known as 3-6 Limit) and a minimum \$2 at no-limit games (known as 1-2 No Limit). A rule of thumb, especially at No Limit Hold ’Em, is buy-in to a game with at least 100 bets. For a 1-2 No Limit game, that would be \$200. While players may buy-in for less, thereby playing “short-stacked,” it takes a greater degree of skill to succeed at this approach.

Because overhead is lower, Internet casinos can provide games that offer both low cost and superior value to players with lower amounts of disposable income. Indeed, one study of European online gambling found that 73 percent of users wagered \$50 or less over the course of each gaming session. Note this is not \$50 lost per session, but a total of \$50 in betting action, irrespective of win or loss.¹³ The same study found that 43 percent of respondents wagered less than \$1 per bet.¹⁴

| Real Money Wagering per Online Gaming Session | |
|---|------------|
| Over \$250 | 7 percent |
| \$51-\$250 | 20 percent |
| \$11-50 | 35 percent |
| \$1-10 | 28 percent |
| Less than \$1 | 13 percent |

Source: The Innovation Group

Online wagering games offer an even better deal when measured against the odds offered by state lotteries. As noted above, even the worst brick and mortar slot machines return 90 cents per \$1 wagered, and most Internet games do far better, returning anywhere from 95 to 99.5 cents per \$1 bet. By contrast, the best return from any state lottery is 72 cents, in Massachusetts, and the average return among the 43 states that run lotteries is 60 cents per \$1 bet.¹⁵ Like most Internet commerce, online gambling cuts costs for customers by offering goods and services without the need to pay for the overhead of brick-and-mortar structures. This is a win-win for both consumers and operators.

Online Gambling Plays to U.S. Skill Strengths

Another point in favor of online gambling is that it plays to U.S. technology skill strengths. While it is true that online casinos do not offer the same types of jobs as brick-and-mortar operations, they do call for 21st century knowledge-industry skills in software-writing and engineering, development and use of encryption and security protocols, and real-time database management.

If online gambling were to emerge as analysts currently envision, it will call on expertise in four major information technology areas where the U.S. leads.

- **Geographical location verification:** To determine that users of an intrastate gambling site are indeed connecting from inside the state. Mobility applications will be especially challenging to engineer.
- **Age verification:** To verify that users meet the minimum age requirement to gamble legally online.
- **Security:** To ensure the validity of player accounts, deposits and withdrawals, protect player funds, protect player privacy, protect the integrity of the games against hacks, cheats or, in the case of poker, collusion or use of computerized playing programs (known colloquially as “poker bots.”)
- **Database management:** Critical for the maintenance and updating of self-exclusion lists, as well as for management of promotions (and to curtail promotions abuse).

Internet gambling, especially if it requires every operator to have an in-state presence, will create demand for these types of high-paying IT jobs, and help stem the exodus of college graduates skilled in technology sector areas, to other states. This aim works in tandem with other state efforts to cultivate a business climate that welcomes tech industry entrepreneurs and start-ups, and the increase in jobs and tax base these enterprises bring.

Can States Afford to Say No?

States that don't permit online gambling will place themselves at a substantial economic disadvantage against those that do. Although this risks descending to an argument of "everybody's doing it, so why not us," there's more to it than that. Internet gambling stands to be part of the rapidly growing social networking and recreational gaming aspect of the Web. Jeff Danielson, president pro tempore of the Iowa state Senate, sees Internet gambling as part of a confluence of economic development issues that states avoid at their peril. Recognizing that Iowans currently gamble online, even amid the UIGEA difficulties, Danielson pointedly said, "\$30 million leaving the state economy is a problem." He went on to say, "It's an e-commerce issue. If Iowa has to compete, we have to come to grips with the fact it [Internet gambling] can be done safely and securely."¹⁶

Taxation and Regulation of Internet Gambling

Some important lessons about taxation and regulation of Internet gambling can be learned from Europe, where most forms of wagering—lotteries, horse-racing, poker and casino games, and sports are legal.

In general, the European policy goals were to:

- Increase general revenue;
- Move players from illegal sites to legal sites;
- Respond to gaming addiction, and
- Protect players from fraud.

Significantly, European lawmakers understood early that if legal betting sites were going to compete with illegal sites, taxation and regulation had to be favorable enough to draw license applicants. Experience has borne out that gambling sites can successfully operate in a regulated environment as long as operators believe that the advantages—such as a level playing field and fair, impartial oversight—outweigh the tax burden. On the other hand, operators won't participate in a regulated market if taxes, license fees and other government-imposed costs inhibit positive cash flow and create major operational or compliance burdens.¹⁷

This was learned through early experience in Europe with Internet poker. In early iterations, regulations demanded poker rooms “rake” all Hold 'Em pots, including those where no bettors call the initial ante, or “big blind,” or call a big blind raise. In these cases, there is no three-card “flop” that results in a contested poker hand. The rake is a percentage of each pot the casino takes as its charge for hosting the game. Brick-and-mortar casinos rarely rake a pot if there is no flop as it significantly raises the cost of playing. The requirement that Internet poker rooms do so was driving away players. Ultimately, regulators allowed online poker rooms to adopt a “no flop, no drop” policy.¹⁸

Tax rates on Internet gambling sites vary from country to country. All countries tax gross gaming revenues (GGR), ranging from 7.5 percent in France to 16.67% in Germany. Based on the rate of success various countries have had in successfully creating legal Internet gambling structures,

experience is showing that the market sees a maximum GGR tax of 15 to 20 percent as reasonable, but higher rates reduce potential applicants.¹⁹

That supposition could be tested in the U.S. as different states have set different tax rates. Mississippi, Nevada and Florida are among the lowest, proposing 5, 6.7 and 10 percent taxes on GGR, respectively. Iowa, which proposes a 23.24 percent tax on GGR, the same tax it levies on brick-and-mortar casinos, stands to test the upper limit.

Looking across legislation and proposals in the U.S., some general trends emerge.

- States looking at licensing Internet gambling are low-tax states.
- Earliest activity is in states with brick-and-mortar casino presence (e.g., Nevada, Iowa, Mississippi).
- Taxes are likely to apply to gross gambling revenues.
- States will not tax player deposits or wagers.
- States will be looking to balance brick-and-mortar interests with new Internet entrants, possibly through allowing joint ventures.
- States will require gambling sites to be based in the U.S. and have operations in-state.

Successful Legislation and Regulation for Internet Gambling Sites

Proper state legislation and regulation of Internet gambling will create a favorable growth climate for intrastate online gambling sites that offer fair, competitive games and high player value. Although it is likely states will differ in the particulars of how they structure the license and tax arrangements, a successful climate for legalized Internet gambling is likely to derive from these fundamental principles. Lawmakers should heed the following guidelines.

Legislation should create a competitive environment.

Consumers are best served when there is ample competition. This is apparent in brick-and-mortar gaming, as areas where there are numerous competitors tend to yield better games with good rules and low house edges. The greater the competition, the more incentive competing companies have to offer better value—both to win new customers, and to keep existing ones loyal. That’s why Nevada’s casinos confronted the economic downturn with aggressive marketing tactics. Last spring for instance, the Tropicana, Palms and Riviera resorts got into an escalating war of “cashback,” that is, reimbursement for player losses. The Tropicana initially offered new slot club members up to \$200 reimbursement in free play. The Palms responded a few weeks later with a \$500 offer. Finally, the Riviera weighed in with a \$1,000 loss rebate.

Likewise, the unregulated nature of early online casinos and poker rooms meant there was significant competition. On the Internet, this usually took the form of sign-up bonuses in which the online casino matched a percentage of the player’s deposit up to a certain amount. As competition increased, so did the sign-up bonuses. Eventually, it was not surprising for the major online casinos to be matching as much as \$500 in deposits. To keep players loyal, online casinos regularly provide cashback bonuses based on number of hands played. For discerning, knowledgeable players, these bonuses reduce the house edge even further, and sometimes shift the math to the player’s favor.

Since competition benefits consumers, states should be leery of limiting online gambling licenses to two or three applicants, and should allow the market to grow to meet demand. Unfortunately, California’s bill to permit intrastate online gambling, SB1463, fell victim to gambling interests seeking to restrict competition. After pressure from tribal interests and card room operators in the state, the original bill was changed to “poker only” and would have excluded any operators that were not already offering poker at brick-and-mortar establishments within the state. Rather than

pass a flawed bill, its co-author, State Senator Roderick Wright, pulled it from the Senate calendar. “If you limit who can participate, you are limiting the number of dollars that come in to the state,” said Wright. “Underlying all of this is you still have a public interest to uphold.”²⁰

Worst of all would be creating a single-company monopoly. This could prove to be a problem in Delaware, where thus far only the state’s lottery operation has been authorized to operate online gaming. An intrastate gambling site insulated from competition may offer sound returns in the short term, but its inevitable complacency, followed by exploitation of its monopoly position, will turn players off. In the end, players will choose to take their gambling money elsewhere, either to brick-and-mortar casinos or off-shore sites.

The state government itself should not compete for players.

As a corollary to the competition guideline, states should not attempt to operate online casinos themselves. They should also be wary of giving incumbent lottery management companies a built-in advantage, such as an automatic license set-aside. Experiences in Europe, where some countries initially granted exclusive Internet poker and other gaming licenses to lottery operators, have shown that such ventures are rarely competitive, are inefficiently run, and do not draw players.²¹ While Internet gambling might be a logical extension for lottery operators, they should be required to follow the same licensing procedures as new applicants. This might help avoid some of the budding irregularities that plagued the Washington D.C. plan and ultimately provided opponents with the fuel to win repeal.

Legislators should recognize that intrastate online gambling has a different cost structure than brick-and-mortar casinos.

States that do not account for the difference in cost models between brick-and-mortar casinos and Internet counterparts are setting themselves up for failure. An Internet gaming site can be established with a capital investment that is a fraction of that required to build a land-based casino. But revenues scale down as well—one reason an online poker room can support penny-ante games. States must grasp the lower revenue and tax expectations and set up compatible tax and licensing structures. This is one reason Iowa’s decision to tax Internet casinos at 23.24 percent of GGR, the same rate as brick-and-mortar, is so risky. Likewise, many questioned a provision in the now-defunct California bill which, while setting a fairly modest 10 percent tax on GGR, required a \$30 million application fee upfront. While this sum might be within the means of the state’s larger casino companies, it is likely to freeze out dozens of smaller poker rooms in California for whom Internet poker would otherwise present a solid business opportunity. California’s \$30 million fee contrasts with Mississippi’s proposed permit fee of \$200,000.

States should tax operators, not players.

Ideally, Internet casinos (and casinos in general) should be treated like any other business, rather than being subject to discriminatory taxation. The fact that states create a special tax structure speaks to the underlying hypocrisy of “sin taxes.” On one hand, legislators wring their hands about

permitting adults to legally gamble. When they do permit it, however, lawmakers do their best to extract as much money as possible. This applies as much to gambling as it does tobacco and alcohol use.

While just about every other business is taxed on net income, that is, roughly speaking, revenues minus expenses, casinos are taxed off-the-top—on their gross gaming revenues (GGR). Unfortunately, this seems to be a fixture of gambling policy and regulation, and while on principle it is unfair, it is unlikely to be undone. The industry appears to have made peace with it. With that in mind, it may be necessary to tax Internet casinos the same way.

On the other hand, states should avoid creative new tax structures purely on the justification that some hold the opinion that gambling is a vice or sin. Players should not be taxed through levies on their accounts or through “hand charges” that are paid directly to the state, as some European countries have attempted (again without success; players migrated to Internet casinos in countries without such taxes).²² Meanwhile, winning players under law are obliged to report winnings (and are often held accountable through W-2Gs). Anything else is double taxation.

States should promote and permit fair games.

The goal here is to protect players from fraud. If a state elects to regulate online gambling, it needs to have a readily accessible and responsive way of registering complaints and arbitrating disputes. The key is that players feel there is an authoritative, responsive resource to which complaints can be brought and resolved.

Of course, a balance must be struck: the danger with all regulation is that it will impose burdens and raise costs. Moreover, it is not as if online casinos are starting from scratch. Operating online means that all play is documentable—and to a much greater extent than at brick-and-mortar casinos. This means that evidence in the form of an audit trail can be preserved far longer. Every online poker hand, for instance, has a unique reference number.

Indeed, legislators should remember that private operators have a strong commercial incentive to provide fair games, and that they already take steps to prevent the abuse of their platforms. Internet poker provides a good example of this. The game has two significant vulnerabilities, players who cheat by collusion and players who use computer programs—so-called poker bots—that can automatically play across numerous virtual games on a poker site.

Collusion is possible if a site allows two or more computers from the same location to log in and access the same virtual “table.” This allows two or three individuals (or one individual using three computers) to see that many more dealt cards. There are a number of ways colluders can gain an unfair advantage. The shared information may help them better determine whether an opponent has made his hand. Colluders can also bet in such a way to build a large pot and then drive out other bettors, assuring that a member of their group wins the pot. Private sector countermeasures against collusion include strong location verification software as well as analytics that can flag unusual game patterns, such as when the same two or three players consistently win large pots over a short space of time.

Poker bots can be more difficult to detect, and they are fairly easy to acquire or self-program. However, casino operators have no reason to tolerate them. For one, a user can unleash hundreds of bots on one site. Second, because they play a mathematically strong game, bots infesting a site can wear down beginners or lesser-skilled players quickly, and drive them away. Skilled players are capable of at least suspecting a bot because it plays robotically. Then they, too, leave the site. Experience and better technology have given operators tools to counter poker bots, such as Captcha codes (a display of distorted text that users must enter to gain access to a site) and analytics that flag “players” that appear to be making all playing decisions within microseconds or that play every hand for hours on end with no break or log off.

The point is that when creating policies to protect players from fraud, legislators benefit from an understanding of the major threats to game integrity and the steps already taken to deal with them. This will allow them to prescribe remedies that address actual harms that are not adequately being dealt with, rather than simply burdening Internet gambling operators with unnecessary red tape.

Regulation should not attempt to “protect players from themselves.”

State legislatures tend to have a love/hate relationship with gambling. They covet the tax revenues, yet they believe that they are being “responsible” by creating artificial notions, such as limiting casinos to “riverboats” or out-of-way locations, in the belief that this will somehow either mask or temper the popular appeal of gambling. The ineffectiveness of these measures is seen in how these conventions gradually fall by the wayside. People who want to gamble will travel to casinos wherever they are, as seen by the popularity of Foxwoods and the Mohegan Sun casinos in rural eastern Connecticut. When riverboat casinos were first approved some 20 years ago, they were required to have specific day and evening boarding times, and actually leave the dock, usually for two hours at a time. The requirement to set sail soon gave way, although “boarding times” remained in force. Then those restrictions were dropped and soon, casino boats were accessible 24/7. Finally, when Hurricane Katrina destroyed the shoreline casino boats on the Mississippi Gulf Coast, costing the state a year’s worth of casino tax revenue, the legislature allowed casinos to build on dry land.

Another example was a Missouri state rule that limited the casino player buy-in to \$200 every two hours. The notion was to prevent players from going on emotional tilts and losing “too much” during one session. But this regulation ignored the basic volatility of gambling games and put the player at the mercy of short-term luck. For example, \$200 represents just eight \$25 blackjack bets, which could just as easily be won as lost in the first few minutes of play. Likewise, the rule makes it easy for a “deep stacked” poker player to bully a newcomer to the table by going “all in,” forcing the newcomer to choose between folding a possibly winning hand or losing his whole buy-in and having to sit out for two hours. Meanwhile, players fortunate enough to win early in their session learned to hold onto their chips to hedge against a short-term downswing. Missouri ultimately scrapped the loss limit rule, realizing that it did little to address compulsive behavior and instead infantilized players who were perfectly capable of managing their own money.

States should empower the market as an effective regulator.

The perception that every would-be gambler is a gullible naïf who presents easy pickings for an exploitive casino is popular among anti-gambling groups. The truth is that many gamblers are knowledgeable about the games they play and, where it's a factor, their own skill level. The Internet itself offers numerous resources in the form of information sites, message boards and discussion groups where players can exchange information about the quality and reliability of particular sites, the general skill level of players, and any concerns about sites that might be cheating or too tolerant of collusion or poker bots.

The market, too, fulfills a role in educating and protecting players, and policing games. While there have been instances of online cheating, these attempts do not remain undetected for long. One of the best examples was last year's discovery of apparently biased dice software by two prominent gaming analysts.²³ In craps, the bettor wins a pass bet by rolling a 7 or 11 on the initial, or "come-out," roll. He loses immediately on a 2, 3 or 12. Rolling a 4, 5, 6, 8, 9 or 10 establishes a "point." After this, in order to win, the player must roll the point before rolling another 7. A "don't pass" bet works in exactly the opposite way.

Responding to a complaint from a reader of his gaming site that the craps software used by a number of Internet sites was producing anomalous results, Michael Shackleford, a mathematician, actuarial and casino gaming analyst, conducted his own series of trials, which confirmed the anomaly. For example, the probability of rolling a 7 or 11 on a come-out roll is 22.2 percent. In the 328 bets Shackleford made, his expectation was about 73 come-out wins. His actual result with the BLR software was 33. By Shackleford's calculations, the odds of his overall result—a 24.7 percent win rate against an expectation of 49.29 percent—was 1 in 6 billion. Putting this in layman's perspective, he said, "it would be 184 times easier to win the Powerball [lottery] 2 out of 2 times than to be as unlucky as I was in this craps game."²⁴

Shackleford's test was repeated by mathematician and gaming software consultant Eliot Jacobson, who also experienced the same extreme improbabilities, and concluded outright the software was "rigged."²⁵

Further, Shackleford's reporting did not remain isolated to gambling-related sites. At least one major newspaper, the *Pittsburgh Post-Gazette*, followed up on the report.²⁶ At least one online gambling site using the software, 5Dimes.com, removed it.

Conclusions

The return of Internet gambling is only a matter of time; the consumer demand is there and the fiscal situation in many states makes the taxation opportunities attractive. While a number of states will resist, for most, the issue should lead to lengthy debate.

All debate should start from the position that people should be free to gamble online, just as they legally can in casinos throughout the United States. With an enlightened approach that respects the responsibility and intelligence of citizens, and a tax and regulatory regime that promotes diverse and fair games that offer players excellent value and return for their gambling dollar, Internet gambling can be a safe, secure pastime.

In addition, Internet gambling, as an offshoot of e-commerce and social networking, stands to present job opportunities in high-tech sectors, providing a base for states to build out information technology enterprises, rather than see that skilled, entrepreneurial talent migrate elsewhere.

About the Author

Steven Titch is a policy analyst at Reason Foundation, focusing on telecommunications, Internet and e-commerce issues. His columns have appeared in *Investor's Business Daily*, *Detroit News*, *Orange County Register*, *Total Telecom* and *America's Network*, among others. Previously, he was managing editor of the Heartland Institute's InfoTech & Telecom News. He also co-created the website SecuritySqaured.com. He has held the positions of editorial director of *Telephony*, editor of *Global Telephony*, Midwest bureau chief of *CommunicationsWeek* and associate editor (communications) at *Electronic News*. Titch graduated cum laude from Syracuse University with a dual degree in journalism and English.

Titch also enjoys playing poker and looks forward to the return of legal online play.

A p p e n d i x A

State Legislation Online Gaming Summary²⁷

California

SB 1463 would have provided for the licensure, regulation and taxation of Internet gambling, with licensees initially restricted to authorized poker games; additional games may be phased in, if allowed under the California Constitution and Penal Code.

Status: Withdrawn after amendments would have restricted license applicants to established operators or brick-and-mortar casinos and card rooms in the state.

Key Points:

- Licenses are for 10-year terms, with a required review in the third year.
- Initial licenses shall take effect simultaneously no later than Jan. 1, 2014.
- Licenses are restricted to those holding a California “owner license,” federally recognized California-based tribes operating a casino pursuant to a tribal-state compact, horse associations holding a license from the California Horse Racing Board (CHRB), and ADW operators regulated by the CHRB for at least three years.
- License application fees will be \$1-5 million, as needed to cover expected costs of investigation and determining suitability, with excess returned or additional amounts paid if needed.
- Tribal applicants are required to waive sovereign immunity for purposes of licensure evaluation and tribal licensees must agree to be subject to California jurisdiction in relation to Internet gaming.
- Licensees must pay a nonrefundable license fee of \$30 million, which will be used to cover a monthly deposit to the California General Fund equal to 10 percent of its gross revenues. When the \$30 million is depleted, the licensee shall directly make the monthly payment.
- Preserves the right for the legislature, by statute, to opt out or opt in for any federal system and to enter into any agreement with other states to provide online gambling, “if the United States Department of Justice notifies the Department in writing that it is permissible under federal law.”

Delaware

In **HB 333**, the Delaware Gaming Competitiveness Act of 2012 improves the ability of the Delaware Lottery and Delaware's video lottery agents to offer services to lottery players in an increasingly competitive marketplace. The Act authorizes Internet gaming under the control and operation of the Delaware Lottery. The Delaware Lottery Office is authorized to conduct traditional lottery games over the Internet. Delaware's video lottery agents are authorized to offer through their websites Internet versions of the table.

Status: Enacted June 28, 2012.

District of Columbia

In 2011, the D.C. City Council enacted the 2011 budget that included, as subtitle G, the Lottery Modernization Act of 2010. Subtitle G authorized the D.C. Lottery to conduct Internet gaming. It defined "lottery or lottery game" to mean "both games of skill and games of chance operated for the benefit of the District of Columbia," if, when offered over the Internet, it can be confirmed that those playing are located in the District and if "no method, media, or device for play of the games of skill and games of chance" violates federal law. On Feb. 7, 2012, the Lottery Modernization Act of 2010 was repealed when B19-0474 passed by a 10-2 vote.

Status: B19-0474 was introduced Sept. 20, 2011. On Jan. 20, 2012, the D.C. Office of Inspector General issued report that modification of the Council-approved contract to add an online gaming system did not conform to procurement regulations, which might lead to a Council decision to rebid the contract. On Feb. 7, 2012, B19-0474 passed by a 10-2 vote, repealing the Lottery Modernization Act of 2010. Councilman Brown is reported as saying he will probably reintroduce the legislation, but doubts it would survive another 30-day review on Capitol Hill.

Hawaii

Three bills introduced in 2012; one carried over from 2011:

- HB2316, introduced Jan. 23, 2012, would authorize a state lottery. While the bill prohibits the establishment of "any game played on the Internet," it would permit "noncomputerized online games."
- HB2422/SB 2980, introduced Jan. 25, 2012, would create a state lottery and gaming commission to offer, with the "assistance" of a private online gaming provider, Internet wagering and gaming and "enter into agreements with other state gaming entities for the offering of multi-state games, consistent with state and federal law."
- SB755 SD2 HD1, originally introduced Jan. 21, 2011. It was amended in the House to strip the original language and turned into a bill that would create a "peer-to-peer entertainment commission" authorized to "determine what contests of skill may be conducted as peer-to-peer entertainment" and license the two qualified applicants with the highest bid (minimum \$100 million) to provide online peer-to-peer entertainment.

Status: All bills failed on adjournment.

Illinois

The Illinois State Lottery is moving forward to sell lottery tickets on the Internet after the release of the DoJ's Dec. 23, 2011 opinion that the Wire Act is implicated only by wagering activity related to sports.

Status: In 2009, Illinois enacted legislation permitting the Illinois Lottery to operate a pilot program to sell individual lottery tickets on the Internet, conditioned on receipt of an opinion from the DOJ that doing so would not violate federal law. The legislation was later amended to permit the pilot program to proceed, if no objection was raised by DOJ within a reasonable time. When the DOJ opinion was released, the Illinois Lottery's executive director moved ahead with a plan to test selling Powerball, MegaMillion and Lotto tickets online, which began in April 2012. Full online lottery sales are expected to begin in the third or fourth quarter of 2012. Lottery ticket-vendors have sought to delay or stop online sales citing loss of jobs and increased underage gambling as reasons for doing so.

Another bill, HB 5018, which creates a state Internet Gaming Act but contains only a short title provision, was sent to the House Committee on Rules.

Iowa

SF 2275, "an act authorizing licensees authorized to conduct gambling games on an excursion boat, gambling structure, or racetrack enclosures to operate Internet wagering on poker and making penalties applicable," would authorize Internet poker. The state racing and gaming commission have to establish requirements for Internet wagering. Internet poker is to be conducted through a single Internet site and limited to persons who have registered with the licensee to conduct Internet wagering. One license would be available to Iowa gambling games licensees and may be awarded to one (single license) or more than one (joint license). If a single license, the adjusted gross receipts from Internet wagering shall be included as part of the licensee's adjusted gross receipts for purposes of the wagering tax. If a joint Internet wagering license is issued to more than one gambling games licensee, the wagering tax imposed on adjusted gross receipts from Internet wagering would be 22 percent or, if the majority of participating licensees are otherwise subject to a wagering tax of 24 percent, the tax would be 24 percent.

Status:

- On Dec. 1, 2011, the State Racing and Gaming Commission, as required by a 2011 law, provided the General Assembly with a report "regarding the creation of a framework for the state regulation of intrastate internet poker."
- SSB 3164, sponsored by Sen. Danielson, was recorded and sent to the State Government Committee on Feb. 15, 2012. After discussion by the State Government Committee on Feb. 20, 2012, the Committee on Feb. 22, 2012 voted 11-4 to approve its introduction as a Committee bill, and SSB 3164 was succeeded by SF 2275.

- On Feb. 27, 2012, SF 2275 was introduced and placed on the Senate calendar.
- In March 2012, SF 2275 passed the Iowa Senate but failed upon adjournment of the Iowa House of Representatives.

Maine

SP 657 defines an agent as it pertains to businesses licensed to sell lottery tickets on behalf of the state, and provides that a gambling activity not expressly authorized by law does not cease to be unlawful solely because it is authorized under federal law or the laws of another state or jurisdiction. The change in law is in reaction to the Department of Justice opinion regarding Internet gaming.

Status: Enacted April 12, 2012.

Maryland

The Maryland state lottery is moving forward with plans to sell tickets and offer traditional lottery games online.

Status:

- In 2011, the legislature required the Maryland Lottery Commission “to report on the sale of traditional lottery games over the Internet, including efforts made by other jurisdictions and the federal government in this area; review of federal and state laws; detail the agency’s proposal regarding the development and implementation of Internet lottery sales and the impact Internet sales may have on existing Lottery retailers; and report to the budget committees by December 15, 2011.” The MLC report concluded that “Distribution over the Internet would expand the market opportunity for everyone involved with the Maryland Lottery, including the state of Maryland, its players and its retailers.”
- The governor included, in his proposed budget for fiscal year 2013, revenue from the sale of lottery tickets over the Internet.
- News reports indicate the lottery director told legislative committees that he has budgeted \$500,000 for a consultant to set up the system and \$167,000 for new employees to manage the launch. Revenue from the sales is estimated at \$2-2.5 million. The system is expected to be operational in 12 months.

Massachusetts

The Chair of the Massachusetts State Lottery Commission, State Treasurer David Grossman, has formed a task force to consider and advise the lottery concerning online gaming. In addition to himself, the task force will include, among others, a gubernatorial appointee, the legislative leaders or their designees. In a meeting with the *Boston Herald*, Grossman expressed concern about the impact of online lottery tickets on the convenience store lottery vendors.²⁸ State Rep. Dan Winslow, a task force member, is reported to like the idea of the lottery offering scratch tickets and video poker on the Internet.

Status: On Jan. 9, 2012 the Massachusetts State Lottery Commission issued a request for response (RFR) for a consultant to assist the task force and provide a report that reviews the law, economic implications, business opportunities and social issues concerning online gaming and advise as to “legislative and regulatory measures needed to position the lottery for the introduction of online products, while protecting its assets and safeguarding the interests of [Massachusetts] citizens.” The state is currently seeking input on the current state of online play in Massachusetts and nationwide. The state is also working with consultants regarding the development of an online gaming system (currently defined as “lottery terminals connected to a lottery computer system via a lottery controlled network”) to replace the 14-year-old system in use.

Michigan

SB 1006 would prohibit sale of tickets or shares in the state lottery “over the Internet.”

Status: Enacted April 12, 2012.

Mississippi

HB 1373 would provide for the licensing and regulation of Internet gambling. Gaming licensees would apply for an Internet wagering permit, with a permit fee of no less than \$200,000, with \$100,000 non-refundable, that is to be deposited with the permit application. The yearly renewal fee must be at least \$100,000. Each licensee would pay a 5 percent monthly fee on its Internet wagering gross revenues. The bill would permit seizure of domain names associated with unlawful gambling websites and blocking of access to sites on a “blacklist” to be drawn up by regulators.

Status: Introduced by Rep. Moak (D) and referred to the House Gaming and Ways and Means Committees on Feb. 20, 2012 but failed to advance.

Nevada

In 2001, Nevada enacted legislation (AB 258) providing for the licensure and regulation of “interactive gaming,” including what is typically referred to as Internet gaming, i.e., using the Internet to place, and receive potential winnings associated with, bets or wagers.

- In 2011, Nevada enacted 2 bills (AB 218 and AB 258) that collectively required gaming regulators to issue regulations governing interactive gaming licenses.
- In 2011, Nevada enacted AB 213, which permitted Nevada gaming authorities to issue renewable preliminary determinations of suitability for licensure to entities.

History/Status: The Nevada law provided that regulations could not be adopted concerning interactive gaming until, among other things, Nevada gaming authorities determined that “[i]nteractive gaming can be operated in compliance with all laws.” AB 258, as enacted, removed the restrictions on adopting interactive gaming regulations and required the Nevada Gaming Commission to adopt such regulations on or before Jan. 31, 2012, which it did. It also included a requirement that no “license to operate interstate interactive gaming” would be effective until:

(1) A federal law authorizing the type of interactive gaming for which the license was granted is enacted, or

(2) The United States Department of Justice notifies the Board or Commission in writing that it is permissible under federal law to operate the specific type of interactive gaming for which the license was granted [NRS 463.750.2(g)]. By the end of 2011, regulations applicable to interactive gaming licenses had been adopted. Applications are being taken for interactive gaming licenses and preliminary determinations of suitability.

The Nevada Gaming Commission, viewing the Dec. 23 DoJ memo as declaring intrastate Internet gambling as permissible, began the license application process in early 2012. On Aug. 23, it issued the first intrastate online gaming license to South Point Poker LLC. In addition, Monarch Interactive Inc. of Reno also received an operator's license, and Global Cash Access Inc. was licensed to provide online payment services for South Point. South Point Poker is scheduled to begin limited online trials of its Internet poker system in October 2012.

New Jersey

- In early 2011, Gov. Christie vetoed a bill (S. 3019) that would have permitted Atlantic City casinos to offer their approved games to New Jersey residents over the Internet.
- After the release of the Dec. 23, 2011 DoJ opinion, Gov. Christie is reported to have said: "I think we should be an epicenter for [I-gaming], but I want to do it right—I do not want to rush and get legislation that either doesn't pass state constitutional muster, or creates other problems for us." State Sen. Lesniak, the primary sponsor of online gaming legislation, said he will introduce a bill early in the 2012-2013 session.
- In 2012, Sens. Lesniak and Whelan introduced a new bill, S. 1565, which would permit Atlantic City casinos to offer their approved games to New Jersey residents on the Internet. An identical bill—A. 2578—was introduced in the assembly.
- In 2012, Sen. Codey introduced S. 56, which would permit the State Lottery to sell tickets and conduct games online "to the extent not inconsistent with Federal law."

Status: S. 1565 was introduced on Feb. 9, 2012 by Sens. Lesniak and Whelan and referred to the Senate State Government, Wagering, Tourism & Historic Preservation Committee. On March 5, 2012, it was reported with amendments, including one: "to permit wagers to be accepted from persons who are outside of New Jersey if the Division of Gaming Enforcement determines that this would not be inconsistent with federal law or the law of the jurisdiction, including any foreign nation, in which any such a person is located, or if such wagering is conducted pursuant to an interstate compact to which this State is a party that is not inconsistent with federal law." After a second reading, it was referred to Senate Budget Committee.

S. 56 was introduced by Sen. Codey on Jan. 10, 2012 and referred to the Senate State Government, Wagering, Tourism & Historic Preservation Committee.

A. 2578, a counterpart bill in the state assembly, would limit online gambling to Atlantic City, although other legislators want to see it expanded to areas such as the Meadowlands. Bars and

restaurants would be prohibited from advertising or offering Internet gambling, although it is unclear whether patrons would still be able to access games from any WiFi hotspot operated by these establishments. A.2578 was released by the Assembly Budget and Appropriations Committee June 18 and has been cleared for vote by the full assembly.

New York

New York, like Illinois, in 2009, asked the DoJ for an opinion, specifically asking if it could transmit data related to Internet sales of tickets and games to be stored outside the boundaries of New York. The DoJ opinion, released Dec. 23, 2011 concluded doing so would not violate the Wire Act.

Status: According to a Dec. 27, 2012 *New York Times* article:

New York has offered an online subscription service since 2005 that allows state residents to enter a string of Lotto or Mega Millions drawings. The director of the New York Lottery, Gordon Medenica, said Saturday that the lottery had built a broader online gaming system for New York, but that the contractor that put the system together was wary about moving forward because it feared it could get into legal trouble.

“We’ve been waiting for a couple years,” Mr. Medenica said in a telephone interview. “We’re thrilled that this ruling has now come down and confirmed that our legal analysis was correct all along.” As a result of the new policy, New York Lottery officials said they planned to add two additional jackpot games—Powerball and Sweet Million—to its current online lottery subscription service, and would allow New York residents to buy single-draw tickets online for the first time. Mr. Medenica said it would take several months for the lottery to finalize the new offerings, and he said officials would “take a very cautious initial approach” in rolling out additional online options.²⁹

Pennsylvania

The HB 65 bill amends the Amusements Code. It provides for an Internet gambling public awareness campaign and for the revocation and auction of slot machine licenses, provides for a Category 2 slot machine license and for a number of slot machine licenses and table game taxes, provides for a prohibition on the use of state funds, includes public awareness of the risks of Internet gambling and of being defrauded of large amounts of money, risks of identity theft, risks to underage and problem gamblers and risks to personal safety.

Status: Passed House May 2, 2012. Awaits action in Senate.

Utah

The bill, HB 108; 2012 Utah Laws, Ch. 157, modifies the Criminal Code regarding the definition of gambling, defines Internet gambling, and clarifies that gambling—which is prohibited in Utah—includes any form of Internet gambling.

Status: Enacted April 2012

U.S. Virgin Islands

In 2001, the U.S. Virgin Islands enacted legislation authorizing Internet gambling.

Status: While regulations were promulgated in 2002 and a license awarded to a hosting facility in 2003, no Internet gambling has yet been conducted. The USVI received a letter from the DoJ informing it that Internet gambling would violate certain federal statutes, even if conducted intra-state.

A p p e n d i x B

Federal Legislative Efforts

HR 1174

Sponsor: John Campbell, R-Calif.

Introduced March 17, 2011

This bill is identical to the Frank bill (HR 2267) as amended and reported out in 2010 by the House Financial Services Committee. It would, among other things: add a new subchapter to 31 USC that would provide for licensing and regulation of Internet gambling other than on sports; exclude any operator that “knowingly participated in, or should have known [it was] participating in, any illegal Internet gambling activity,” such as “taking an illegal Internet wager,” and allow individual states or tribes to opt out (and opt back in). It does not provide for new taxes or fees for licenses. The bill provides for oversight by the Secretary of Treasury, who would be able to delegate suitability and licensure determinations to qualified state or tribal authorities.

Status: The bill has 29 co-sponsors (including Barney Frank, and Ron Paul), but none since July 14, 2011. No hearings have been held since introduction.

HR 2230

Sponsor: Jim McDermott, D-Wash.

Introduced June 16, 2011

The bill would amend the Internal Revenue Code to provide for a fee and tax related to any Internet gambling that might be authorized by HR 1174.

Status: The bill has five co-sponsors. No hearings have been held since introduction.

HR 2366

Sponsor: Joe Barton, R-Tex.

Introduced June 24, 2011

This bill would provide for licensure and regulation of Internet poker facility operators and strengthen UIGEA under the oversight of the Secretary of Commerce, who is required to approve qualified state and tribal authorities to determine suitability and issue licenses to operate Internet poker facilities. Initial licensure would be limited to certain U.S. licensed gaming operators (com-

mercial and tribal casinos, racetracks, card rooms) meeting specified criteria; all other Internet wagering, except for that conducted pursuant to the Interstate Horseracing Act (IHA) or by state lotteries, would be illegal. State laws inconsistent with the bill would be pre-empted. UIGEA amendments include the development of a list of those operating unlawful Internet gaming facilities.

Status: The bill has 27 co-sponsors (including Campbell, Frank and Paul), with the most recent (Murphy, R-Pa.), on 1 Feb 2012. Two hearings were held in 2011 by a subcommittee of the House Energy and Commerce Committee. While not specific to this bill, hearings on Internet gambling have also been held by the Senate Indian Affairs Committee.

HR 2702

Sponsor: Chris Gibson, R-NY
Introduced July 29, 2011

This one-paragraph bill would amend the Wire Act to provide that it, along with UIGEA, and “any other provision of Federal law that establishes criminal penalties for any activity involved in placing, receiving or otherwise transmitting a bet or wager” does not apply to bets or wagers permissible under the IHA.

Status: Introduced July 29, 2011 and referred to the House Committee on the Judiciary. On Aug. 5, 2011, Rep. Schrader, D. OR, signed on as a co-sponsor. The bill is noted as related to HR 2366, Rep. Barton’s bill.

Kyl/Reid Compromise

This compromise bill, negotiated by Senators Jon Kyl (R-AZ) and Harry Reid (D-NV), would deem unlawful all Internet wagering not authorized by or inconsistent with the bill, would provide for licensing and regulation of Internet poker facilities, would limit initial licensees, would provide for licensure and regulation by “qualified” state or tribal regulatory bodies, and would strengthen UIGEA.

Status: It has been reported that the negotiations are a continuation of those that took place during the lame duck session in 2010 but no draft has been leaked.

Endnotes

- ¹ Jeff Danielson, Iowa Senate president pro tempore, remarks via teleconference, iGaming North America Conference “State Legislation Panel,” March 5, 2012.
- ² I. Nelson Rose, “A Present from the DoJ: Internet Lotteries (and Poker?) Are Legal,” *Gambling and the Law* blog, Dec. 24, 2011, available at <http://www.gamblingandthelaw.com/blog/320-a-present-from-the-doj-internet-lotteries-and-poker-are-legal-december-24-2011.html>.
- ³ *Ibid.*
- ⁴ I. Nelson Rose, “Poker And The Law: D.C. Lottery Plans Internet Poker,” *Poker Player Newsletter*, Aug. 8, 2011, available at <http://www.pokerplayernewspaper.com/content/poker-and-law-dc-lottery-plans-internet-poker-10567>.
- ⁵ Brian Pempus, “D.C. Votes to Repeal Online Gaming, Poker Plans,” *CardPlayer.com*, Feb. 5, 2012, available at <http://www.cardplayer.com/poker-news/12768-d-c-votes-to-repeal-online-gaming-poker-plans>.
- ⁶ Rose, “A Present from the DoJ: Internet Lotteries (and Poker?) Are Legal.”
- ⁷ Steve Rittko, Chairman, The Innovation Group (casino market research firm), remarks during iGaming North America session, “The Economic Impact of Regulated I-Gaming,” Planet Hollywood, Las Vegas, March 5, 2012.
- ⁸ *Ibid.*
- ⁹ As an example of this, the National Council on Problem Gambling claims 2 to 3 percent of the U.S. population develops a gambling problem each year (<http://www.npgaw.org/whatisnpgaw/missiongoals.asp>). This contrasts with estimates by physicians William G. McCown and Linda C. Chamberlain, who write in *Best Possible Odds: Contemporary Treatment Strategies for Gambling Disorders* (John Riley & Sons, 2000, p. 4), that problem gambling affects 3 to 5 percent of individuals who gamble, a considerably smaller portion of the population.
- ¹⁰ A distinction is drawn here between addictive substances and addictive behaviors. Alcohol and certain drugs are chemically addictive in and of themselves, inducing observable physical dependency. Shopping, eating, work, exercise, sex— and gambling—are behaviors. Like alcohol and drugs, they unleash dopamine in the brain, but those who engage in these behaviors compulsively tend to have other psychological issues that drive their overindulgence. That is not to say that alcoholics and drug addicts do not have underpinning psychological issues, but treatment of chemical addiction is different from behavioral addiction. An alcoholic can control his addiction by abstaining from drink. Someone with an

eating or shopping disorder can't address the problem by simply stopping eating or shopping. That's why there tends to be more debate and controversy over how behavioral addictions should be defined and what appropriate treatment is.

- ¹¹ VPfree2.com (www.vpfree2.com) provides a comprehensive database of video poker games with payback of 99 percent or greater for 426 casinos nationwide. Most of these games require a minimum coin-in of 25 cents, plus a five-unit play (i.e. \$1.25) for full payback. A majority require \$1 coin-in or higher, or \$5 for full payback.
- ¹² *Stanford Wong's Current Blackjack News*, published monthly by Pi Yee Press, Las Vegas (subscription only, see www.bj21.com), provides a comprehensive listing of games, rules, house edge and table minimums at casinos in the U.S. and Canada.
- ¹³ Steve Ritvo and Paul Girvan, Innovation Group, presentation and remarks at iGaming North America conference, "The Economic Impact of Regulated iGaming," March 5, 2012.
- ¹⁴ Ibid.
- ¹⁵ Rick Smith, "Who Are the Nation's Biggest Suckers? Lottery players," Daily Finance.com, March 27, 2012, available at <http://www.dailyfinance.com/2012/03/27/who-are-the-nations-biggest-suckers-lottery-players/>.
- ¹⁶ Jeff Danielson, Iowa Senate president pro tempore, remarks via teleconference, iGaming North America Conference "State Legislation Panel," March 5, 2012.
- ¹⁷ John Krehbiel, head of business development for Winamax, a France-based Internet poker room, remarks at iGaming North America conference "Developing a Feasible Taxation Model," March 5, 2012.
- ¹⁸ Ibid.
- ¹⁹ Ibid.
- ²⁰ Michael Gentile, "Amendments Not Enough: California Online Poker Bill a Last-Minute Scratch," Pokerfuse.com, June 13, 2012, available at <http://pokerfuse.com/news/law-and-regulation/amendments-not-enough-california-online-poker-bill-last-minute-scratch/>.
- ²¹ John Krehbiel, remarks at iGaming North America conference.
- ²² John Krehbiel, Business Development Manager, Winamax, Remarks during workshop "Developing a Feasible Taxation Model" at iGaming North America Conference, Las Vegas, Nev., March 5, 2012.
- ²³ Steven Titch, "How Players Police Online Gambling," Reason.org, Nov. 15, 2011, available at <http://reason.org/blog/show/how-players-police-online-gambling>.
- ²⁴ Michael Shackelford, "BLR Technologies Software Warning," Wizard of Odds, Nov. 2, 2011, available at <http://wizardofodds.com/online-gambling/blr/>.
- ²⁵ Eliot Jacobson, "Rogue Software" post on Casinomeister.com, Nov. 4, 2011, available at <http://www.casinomeister.com/rogue/BLRTechnologies.php>.
- ²⁶ Mark Gruetze, "Studies Say Software Cheats Players at 2 Online Casinos," *Pittsburgh Post-*

Gazette, Nov. 18, 2011, available at http://triblive.com/x/pittsburghtrib/ae/gambling/s_768058.html.

- ²⁷ The bulk of this information is derived from two sources: a U.S. I-gaming policy brief compiled by BolaVerde Media Group and K&L Gates LLP, published in March 2012, and the National Conference of State Legislators website page, 2012 Legislation Regarding Internet Gambling or Lotteries (<http://www.ncsl.org/issues-research/econ/2012-online-gambling-legislation.aspx>). Portions have been updated by the author.
- ²⁸ Video available at http://bostonherald.com/news/regional/view/20220223poker_on_the_table_as_state_mulls_online_bets.
- ²⁹ <http://www.nytimes.com/2011/12/25/us/online-gaming-loses-obstacle-at-justice-department.html?pagewanted=all>



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