

CALIFORNIA: THE GATTO AND JONES-SAWYER BILLS

With two iPoker bills already in play in California, leading gaming lawyer **David M Fried** analyses the main differences between these and how the various stakeholders are positioned on the main underlying issues going into 2015.

There is another legislative session in California, with two Internet poker bills introduced so far. But before we get to the details, the passengers - many of whom have been riding in this car for years - want to know, are we there yet? Sadly no, we are not.

We have travelled a long way down the dark desert highway toward legalized iGaming. But there continue to be differences on the role of horse racing, bad actors and tainted assets. Underlying these issues is the fact that the various political camps are not in the required alignment.

The journey

When California first began considering Internet gaming, the questions were: (1) should we do it all; (2) what games will be offered; (3) how many licenses will there be; (4) who can apply for them and under what terms, and (5) how would current igaming operators and out of state companies participate?

The first three questions are largely resolved: we should go ahead if we agree on terms; it will be poker and poker tournaments

only; and without limits on the number of operator licenses but limited to existing California land based operators. The out-of-state companies can be service providers to

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the licensed operators. The various political camps are still struggling with whether racing associations can be operators.

The question of out-of-state operators has morphed into bad actors and tainted assets, that is, customer information, brand and software derived in conjunction with illegal activity. For example, the head of payment processing for PokerStars testified that the company knowingly managed transactions for Internet poker in violation of US banking laws while these assets were developed. The assets have been sold. But the opponents will argue that a horse that has been eating

steroids should not be allowed to race, even under the colors of a new owner.

Two runners this year ... so far

In December, Assemblyman Mike Gatto introduced AB 9, a modified version of the “Unified Bill” proposed last June by 13 Indian tribes. The Gatto bill includes some of the

improvements circulated last year making the bill fairer to the card rooms, who are non-tribal poker operators. The bill also added in-person registration and initial deposits, but Assemblyman Gatto has stated that he is now satisfied that these are not needed.

In January, Assemblyman Reggie Jones-Sawyer introduced AB 167, also based on the Unified Bill, albeit with racing associations included, bad actor terms neutered, no restrictions on tainted assets, and without the updated commercial terms for non-tribal operators. A comparison of the contrasting provisions in the two bills can be seen in Figure 1.

Figure 1: Gatto and Jones-Sawyer bills – main differences

	Gatto AB 9	Jones-Sawyer AB 167
License term	10 years, automatic renewal	4 years, automatic renewal
Tax advance	\$5 million	\$10 million
Tax rate	5% on GGR as defined	8.5% on GGR as defined
Eligible entities	Tribes, card rooms, or combinations of them	Tribes, card rooms, horse racing associations, or combinations of these
Experience requirement for land-based operators	3 years prior to application	5 years prior to application
Changes in form of Ownership during experience period (converting from a partnership to a corporation)	OK	No. Disqualifies you from licensing.
Can form separate business entity for iPoker license	Yes	Only tribes can do so
Future ownership changes	Permitted consistent with ownership rules and experience requirements.	You lose your iGaming license if there is any change in the ownership of the land-based business, i.e., an owner dies
Tribe or card room licensee needs a suitability determination	No	Yes (even though non tribal owners have already been investigated by the state and licensed)
Regulators	<ul style="list-style-type: none"> • California Gambling Control Commission issues licenses and makes the regulations • Department of Justice investigates, reports, enforces • Tribal regulators participate 	Same, except Department of Justice regulates games and has to find licensees suitable
Suitability determinations for operators and service providers	<ul style="list-style-type: none"> • Made by Commission following Department investigation and report. Commission issues the licenses. • Effectively both the Department and Commission must approve an applicant – two approvals 	Made by Department after which the Commission considers licensing
Bad actors	Presumed ineligible if processed/operated Internet wagers after 2006. Presumption can be rebutted.	Must have been convicted of a felony for illegal internet gambling
Tainted assets	Excluded, subject to exceptions	No controls - permitted
Tribes and card rooms as marketing affiliates	Just register	Have to be licensed as a service provider. Costs will discourage participation
Licensing of service providers	Yes	Yes. Excludes payment processors and geo location
Marketing affiliates	Included. Licensing cost and investigation depends on referral volume	Treated as a service provider, which is more expensive and reduces affiliates
Federal bill/market	Need affirmative legislative act to join, refunds if Calif. joins	Omits
Use of out of state facilities/persons	Discretion of owner	Department has to approve
Play for free/fun	Exempted	Omitted

The camps

Neither bill will pass in its current form. How the legislation takes shape will be influenced by the legislators and legislative agenda (beyond the scope of this current article), and also these camps:

The tribes who sponsored the Unified Bill. Now minus a couple of tribes, this group of tribes is opposed to letting in bad actors and tainted assets, or race tracks, as licensees. This position is largely reflected in Gatto's AB 9.

The Pokerstars/Amaya/Morongu/San Manuel/Big 3 LA card rooms (Bike, Commerce, Hawaiian Gardens) group. Their position is largely reflected in Jones-Sawyer's AB 167. Interestingly, some members of this group opposed licenses for tracks, but have now changed position.

The Rincon/Auburn/Pala ("RAP") group. These tribes have business agreements in place. On February 10 they published letters with the support of some card rooms to the bill authors. They are looking for compromises that will get the legislation approved. They would include the tracks as licensees but do not as yet have a proposal for tainted assets.

Card Room Coalition. Last June, a coalition of 24 card rooms throughout the state signed a legislative statement (in which I participated). The card rooms wanted fair and level business terms, with bad actors and tainted assets excluded. Some of these terms are included in AB 9.

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Horse racing. The racing associations want the ability to hold a license, as provided in AB 167. They may be agnostic about the other issues.

The regulators. The Commission has spent several years preparing for its role but cannot take public positions. The Department's preferred position seems reflected in AB 167, which gives the Department a larger role.

Sheldon Adelson. He can afford to be everywhere.

Where to now?

Horse Racing. Horse racing has to be included in any final bill. If the racing industry remains committed to eligibility for licensing, then those opposed may be put to a choice about whether they want the legislation at all. The racing associations will have to come to terms with the trainers, clerks, teamsters and fair boards about the proceeds.

Bad actors and tainted assets. Other states have delayed the licensing of persons or the use of tainted assets (a "penalty box"). This may be floated as a compromise here, but it is not clear that either opposing camp will accept a fixed delay.

Commercial terms. Some of the terms in the first version of the Unified Bill were unfair for non-tribal businesses. Legislation which pretends to include non-tribal businesses but contains terms which handicap them and foreclose their effective participation is ultimately not good policy.

Despite these problems, we stay glued to the road because it is the Golden State. California ranks as the eighth largest economy in the world. Its population is younger, more affluent and more connected than most other states. Poker is also an indigenous game with more licensed poker tables than any other gaming market. Reportedly, some 30% of US Internet poker players were in California. Wouldn't it be grand for the industry if we finally arrived?



David M. Fried attended the University of California at Berkeley, receiving his JD in 1988. He represents land-based casinos and suppliers. He appears before the California Gambling Control Commission and the Department in licensing and regulatory matters and has processed gaming license applications and approvals in many other jurisdictions.