

# Internet Gaming Status in the United States

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Prepared by: Peter Renevitz

*The advent of the Internet brought forth many possibilities for commerce, including online gaming. While Internet gaming is legal in a few nations,<sup>1</sup> in the United States the legality of placing a bet with or operating an Internet casino or sports book had never been clearly defined in statute. Though the U.S. Justice Department has long maintained the policy that Internet gambling is illegal<sup>2</sup>, some still cling to the belief that the legal framework surrounding the industry to be a "grey zone."<sup>3</sup>*

## Confused Legality

The uncertain status of Internet gambling under federal law had led some states to use the police powers reserved to them by the 10th Amendment to prohibit online gambling at the local level.<sup>4</sup> A number of states took it upon themselves to pass legislation making it illegal for an Internet casino operator anywhere in the world to take bets from a person located within the state.<sup>5</sup> Other states make it a felony to place a bet from within the state.<sup>6</sup> Until recently, states had the ability to legalize and encourage the development of Internet gambling within their borders. Several states have attempted to develop their own policies; however, various jurisdictional issues make it a challenge to legally enforce these laws.<sup>7</sup>

Thousands of Americans are still gambling online even after a federal law prohibiting internet gambling transactions went into effect June 1, 2010.

Gaming proponents are currently exploiting budget shortfalls, at the state and federal level, to propose a legalization of online gaming; they argue that openly taxing the transactions would generate revenues for the government. Opponents of this expansion of gaming cite several concerns, including the ease with which children can access online gaming sites stemming from the pervasiveness of the Internet and lack of proper supervision.<sup>8</sup> Perhaps a greater concern is the potential for an increase in gambling addictions,

resulting from the detached gambling environment on the Internet, the lack of tangible representation of money being won or lost.<sup>9</sup>

However, in an environment where gamblers blindly provide their credit card numbers across the Internet, the greatest concern maybe the broadening of the online customer-base and the potential for additional chances to defraud by "bad actors" in the industry.<sup>10</sup>

## California Internet Gaming

California prohibits all forms of gambling not expressly permitted, including online gambling. In addition, there are express statutory prohibitions on many specific kinds of games. Among permitted forms are charitable bingo, certain card games played in licensed gambling establishments, pari-mutuel wagering on horse racing, the California State Lottery and card and slot machine gambling on Indian lands. To buttress the general rules against gambling it has long been the public policy of the state that gambling debts are unenforceable.

There have been attempts to expressly prohibit online gaming in California, including AB 2179 (Wesson) of 2000 and AB 1229 (Frommer) of 2001. These bills would have prohibited Internet gaming to be offered to, or played or wagered on, in the state. Violation would have been a misdemeanor punishable by 90 days in county jail, \$1,000 fine per transaction, or both.

In June 2009, agents from the Attorney General's office raided Internet cafes in Stockton and San Diego that illegally operated "Las Vegas-style games" including video poker, keno and slots. Players were able to purchase a card that allowed them "Internet time" on the café's computers. If they won, an on-site employee paid them in cash. The raids were made under authority of Penal Code §330b, which prohibits individuals from owning and operating slot machines.<sup>11</sup>

Recently, some have proposed permitting and taxing online gambling operations in an effort to generate revenue for the state. According to the LAO, studies estimate that illegal gambling sites receive roughly \$300 million to \$400 million in gross revenue from Californians participating in online poker, depending on a number of factors.<sup>12</sup>

SB 1485 (Wright) of 2010, backed by one of the gaming tribes and the state's card room operators advocated a bill to legalize Internet gaming. The measure called for creating a consortium of card room operators and the state's 100 or so federally recognized tribes to run the online operation, with the state receiving 20% of the gross revenues. This measure failed to make it out of the Senate's first policy committee.

would comply with federal law.<sup>14</sup> The U.S. Department of Justice issued a letter stating that it considered Internet gambling a violation of federal law and Nevada stopped the push to allow Internet gambling.<sup>15</sup>

North Dakota's Internet Poker Bill of 2001 would have legalized, licensed, and taxed Internet poker. A concurrent resolution, if approved by voters, would have amended the state constitution to make Internet poker legal. Like Nevada, after receiving a letter from the Department of Justice, the Senate voted down the regulation.<sup>16</sup> Several states have taken the opposite approach. The following 10 states have some form of express Internet gaming prohibition: Illinois, Indiana, Louisiana, Montana, Nevada, New Jersey, Oregon,

#### States with Internet Gaming Prohibitions

| St. | Statute      | Summary   |
|-----|--------------|---|
| IL  | 720 ILCS 5   | Knowingly establishes, maintains, or operates an Internet site that permits a person to play game of chance or skill for money or other thing of value by means of the Internet shall be guilty of a class C felony |
| IN  | IC 35-45—5   | An operator who knowingly or intentionally uses the Internet to engage in unlawful gambling commits a Class D felony.   |
| LA  | 14 LRS 90.3  | Whoever commits the crime of gambling by computer be fined no more than \$20,000, or imprisoned with or without hard labor, for not more than five years, or both.  |
| MT  | 23-5-112     | “Illegal gambling enterprise” means a gambling enterprise that violates or is not specifically authorized by a statute or a rule of the department. The term includes: internet gambling.                           |
| NJ  | Art4 Sec7    | State Constitution states: “no gambling of any kind shall be authorized by the Legislature unless”...[specifically] authorized by the votes (internet gaming not authorized).                                       |
| OR  | 167.109 ORS  | No person engaged in an Internet gambling business may not knowingly accept a financial instrument or transfer from another person for unlawful gambling. (Violation: Class C felony)                               |
| SD  | 22-25A       | Internet betting by person engaged in gambling business prohibited. Establishment of internet gambling business prohibited.   |
| WA  | RCW 9.46.240 | Changed the penalty for Internet gambling from a gross misdemeanor to a class C felony. (2006)  |
| WI  | Ch. 945.03   | Whoever is intentionally engaged in commercial gambling is guilty of a Class I felony...  |

#### Other States and Internet Gaming

In 2001, Nevada became the first state to pass legislation that would have permitted non-restricted gaming licensees, physically present in the state, to obtain a license to provide online gaming for Nevada citizens.<sup>13</sup> However, no casino was granted a license since the bill required the Nevada Gaming Commission (NGC) to determine the if the license

South Dakota, Washington, and Wisconsin. (See Table above)

In 2009, the Minnesota Department of Public Safety began requiring internet service providers to block state residents' access to gambling websites.<sup>17</sup>

## Federal Landscape

The U.S. Justice Department has long maintained that Internet gambling is illegal. The focus of federal enforcement has been on the owners of the virtual casinos and off-track betting parlors, leaving many on-line gamblers with the impression that what they are doing is legal, or at least acceptable. Proponents have asserted that online gaming was operating in a “grey area” within the law - that changed in mid-2010.

In June 2010, the Unlawful Internet Gambling Enforcement Act (UIGEA) was enacted. The Act, originally passed in 2006, requires financial institutions to block transactions to and from online gambling sites. This includes credit card, check, and electronic fund transfers.<sup>18</sup> In late November 2009, Rep. Barney Frank and several other lawmakers were successful in their attempt to delay the rules for the UIGEA by six months.<sup>19</sup>

Proposed legislation has already been introduced to overturn the internet gaming ban imposed by UIGEA, including language previously offered by Rep. Frank in both 2007 and 2009. Among them are:

- HR 2267 Rep. Frank (D-MA) – the Internet Gambling Regulation, Consumer Protection, and Enforcement Act would establish federal oversight of online gambling firms in exchange for five-year licenses and would include protections aimed at weeding out underage players, compulsive gamblers and criminal activity. Online sports betting would remain illegal.
- HR 2268 Rep. McDermott (D-WA) introduced a companion to HR 2267 that would levy a 2 percent tax on gambling deposits, which supporters say could bring in \$42 billion in tax revenue over 10 years. Similar Senate legislation would legalize betting on online poker and other “games of skill.”
- S 3018 Sen. Wyden (D-OR) and Sen. Gregg (R-NH) the Bipartisan Tax Fairness and Simplification Act, includes language legalizing and regulating internet gambling in the United States. (S 3018 also proposes abolishing the Alternative Minimum Tax and cutting the number of individual tax brackets from six to three.)

Testimony offered on these bills in May 2010, made the following assertions: a) Virtually the entire law enforcement community opposes legislation to legalize Internet gambling, and b) 45 Attorneys General sent a letter specifically opposing Representative Frank’s legislation. In May 2010, U.S. Attorney General Eric Holder stated clearly US Department of Justice’s opposition to legalizing Internet gambling.<sup>20</sup>

## Conclusion

The current federal proposals to overturn existing law, have met with a great deal of opposition, from rank and file law enforcement to most state attorneys general, and from states rights proponents to the US Attorney General. Given this level of opposition it seems unlikely that the combination of HR 2267 and HR 2268 will survive in their current form – ensuring that the existing federal prohibition against Internet gaming will continue.

With California facing historic budget deficits, the temptation to expand gambling is great. However, it should be noted that there are numerous obstacles to ensuring that all online gaming revenue would be received by the state, that residents would not continue to use the plethora of existing out-of-state gaming sites, and that the regulatory costs would not exceed revenues.

The closest relatives to the paradigm considered for the legalization and taxation of online gaming, are the Lottery and Tribal Gaming. It should be noted that over the last decade, state projected revenues from the Lottery and Tribal Gaming compacts routinely have come in well below anticipated levels.

Given the regulatory hurdles, marketplace pressures, and ineffectual revenue estimates – the legalization and taxation of online gaming should not be viewed as a panacea for the state’s budget woes.

1. I. NELSON ROSE & MARTIN D. OWENS, INTERNET GAMING LAW 80-85 (2005). Example: French and German national lotteries are available online to the respective nationals. Lichtenstein allows worldwide play of its national lottery. The US Virgin Islands adopted a regulatory framework like Australia and requires computer operating and control systems to protect security, audit

trails and keeps records of wagers. U.S.V.I. Internet Gaming and Gambling Regulations §§605-1.3, 605-1.4, 605-1.3 (2002).

2. Federal Bureau of Investigation: Online Gambling page. Located: <http://www.fbi.gov/page2/june07/gambling060607.htm>, accessed: July 13, 2010.
3. ROSE AND OWENS, *supra* note 2, at 2-3.
4. The Wire Act, 18 U.S.C. § 1084 (2006).
5. ROSE AND OWENS, *supra* note 2, at 100-101.
6. S.D. CODIFIED LAWS § 22-25A-7 (2002); 720 ILL. COMP. STAT § 5/28-1 (1999); LA. REV. STAT. § 14:90.3 (1997).
7. WASH. REV. CODE § 9.46.240 (2006).
8. David Braun, Don't Bet on Internet Gambling, Nov. 24, 1997, available at <http://www.techweb.com:3030/wire/news/1997/11/1124gambling1.htm>.
9. Scott M. Montpas, Gambling On-Line: For A Hundred Dollars, I Bet You Government Regulation Will Not Stop the Newest Form of Gambling, 22 U. DAYTON L. REV. 163, 172 (1996).
10. Beth Berselli, Gamblers Play the Odds Online: Despite Calls to Outlaw It, Internet Gambling Takes Off, WASH. POST, Aug. 19, 1997, at A1.
11. News Release: "Brown Shuts Down Illegal Gaming Operations in San Diego and Stockton", June 26, 2009, located: [ag.ca.gov](http://ag.ca.gov), accessed July 12, 2010.
12. [http://www.lao.ca.gov/handouts/state\\_admin/2010/Online\\_Poker\\_02\\_09\\_10.pdf](http://www.lao.ca.gov/handouts/state_admin/2010/Online_Poker_02_09_10.pdf)
13. Joel R. Reidenberg, Technology and Internet Jurisdiction, 153 U. PA. L. REV. 1951 (2005). See also John M. Norwood, Gaming Law and Technology: Gambling in the Twenty-First Century: Judicial Resolution of Current Issues, 74 MISS. L.J. 779, 788 (2005) (Discussing jurisdiction and conflicts of law); Shekel Masoud, The Offshore Quandary: The Impact of Domestic Regulation on Licensed Offshore Gambling Companies, 25 WHITTIER L. REV. 989, 1004-08 (2004).
14. Act of June 14, 2001 (Assembly Bill 466), ch. 593, §2, 2001 Nev. Stat. 3075.
15. Shorey, *supra* note 35, at 244-5.
16. Ibid.
17. Ibid.
18. Unlawful Internet Gambling Enforcement Act Implemented Tuesday, CasinoGamblingWeb.com, posted: May 30, 2010.
19. Gambling Developments in the States, 2009. National Conference of State Legislatures. Accessed: July 12, 2010.
20. Hearing Testimony on Internet Gambling, House Committee on Ways and Means, May 19, 2010.
21. Pete Harrison, Britain to Regulate Online Gaming, Opposes US Ban, REUTERS. Oct. 31, 2006, available at <http://www.reuters.com/article/internetNews/idUSL3127481420061031> (last accessed May 5, 2007).

If you have any questions, regarding this document contact Peter Renevitz at [peter@pradvocacy.com](mailto:peter@pradvocacy.com).