



THE COMMITTEE ON ENERGY AND COMMERCE

INTERNAL MEMORANDUM

December 6, 2013

To: Members of the Subcommittee on Commerce, Manufacturing, and Trade

From: Majority Committee Staff

Re: Hearing on “The State of Online Gaming”

I. Summary

On Tuesday, December 10, 2013, the Subcommittee on Commerce, Manufacturing, and Trade will hold a hearing entitled “The State of Online Gaming” at 12:30 p.m. in 2123 Rayburn House Office Building. Witnesses are by invitation only.

The purpose of this hearing is to examine the status of Internet gaming in the United States. The Committee will also review H.R. 2666, the “Internet Poker Freedom Act of 2013.”

II. Witnesses

John Pappas, Executive Director, Poker Players Alliance

Andrew Abboud, Vice President of Government Relations and Community Development, Las Vegas Sands Corporation

Geoff Freeman, President and Chief Executive Officer, American Gaming Association

Les Bernal, National Director, Stop Predatory Gambling

Kurt Eggert, Professor of Law, Dale E. Fowler School of Law, Chapman University

Rachel Volberg, Ph.D., Associate Professor, School of Public Health and Health Sciences, University of Massachusetts Amherst

III. Background

Legal gaming in the United States is a multi-billion dollar industry. According to the American Gaming Association survey, commercial casino operators reported revenue of \$37.3 billion in 2012. Similarly, the National Indian Gaming Commission reported the Indian gaming industry generated \$27.9 billion of revenue in 2012.

Gaming policy and regulation generally is handled by the States, though the Federal government has been involved in shaping the boundaries. With the exception of Hawaii and

Utah, all States have legalized some form of gaming (*e.g.*, state lotteries, Bingo, Keno, card games, slot machines, casinos).

Forms of legal gaming authorized by the States are: charitable gaming; lotteries; pari-mutuel gaming; Native American gaming; and commercial casino gaming. The total number of States which have authorized each of the various types of legal gaming are:

- A. Charitable gaming – 48 States
- B. Lotteries – 43 States and the District of Columbia
- C. Pari-mutuel gaming – 40 States
- D. Commercial casinos
 - a. Stand-alone properties – 15 States (9 of these also permit Indian casinos)
 - b. Racetrack casinos – 13 States
 - c. Indian casinos – 29 States
- E. Online gaming – 3 States

Legal Status of Online Gaming

The legal status of online gaming is more complicated. In 1961, Congress passed the Interstate Wire Act,¹ which prohibits the use of wire communications for the interstate facilitation or transfer of wagers. For nearly fifty years, this law was interpreted as making illegal most forms of gambling on the internet (recent developments are discussed below).

In 1988, Congress passed the Indian Gaming Regulatory Act to address the jurisdiction and authority of Native American tribes to establish gaming on their lands. The Act also established the National Indian Gaming Commission (NIGC) and its enumerated powers.

Unlawful Internet Gambling Enforcement Act (UIGEA)

In 2006, to combat the proliferation of unlawful Internet gaming and consistent with the recommendations of the National Gambling Commission's 1999 report, Congress adopted the Unlawful Internet Gambling Enforcement Act (UIGEA).² The UIGEA prohibited gambling-related businesses from accepting payments in the form of checks, credit card payments, or electronic funds transfers (EFTs) for gambling transactions that are otherwise illegal under Federal law. This strengthened the prevailing Wire Act prohibitions, although some off-shore internet gaming sites continued to attract U.S. residents.

2011 Interpretation of the Wire Act

¹ P.L. 87-216.

² Title VIII of P. L.109-347, the SAFE Port Act.

In December, 2011, the Justice Department's (DoJ) Office of Legal Counsel made public an opinion reinterpreting the scope of the Wire Act in response to inquiries from Illinois and New York. The States sought DoJ's opinion on their respective proposals to use the Internet and out-of-State transaction processors to sell lottery tickets. DoJ concluded that "interstate transmissions of wire communications that do not relate to a 'sporting event or contest,' fall outside the reach of the Wire Act."³ This conclusion took many observers by surprise because the DoJ had interpreted the Wire Act much more broadly for almost half a century. The new opinion essentially eliminated most Federal restrictions on online gaming (except for wagering on sports). It also effectively narrowed the applicability of UIGEA, whose scope was determined in large part by the Wire Act.

State Developments in Online Gaming

Although most States have taken no action regarding online gaming, several States have moved to outlaw or to sanction intrastate online gaming. Seven States have enacted express prohibitions on internet gambling (Illinois, Indiana, Washington, Louisiana, Oregon, Montana, and South Dakota).

Other States have interpreted the Federal laws as permitting intrastate online gaming and have begun the process of authorizing different forms of remote gaming. Nevada already has provided for remote intrastate sports wagering through mobile phone devices (Blackberry-enabled) in Nevada. State officials do not consider this type of gambling to be online gaming because it is viewed as another means of phone wagering, which is already legal in Nevada.

The District of Columbia enacted the D.C. Lottery Modernization Act of 2010 to provide the D.C. lottery a framework to offer internet poker, bingo, and casino games to its residents. However, implementing regulations are still under development.

Five States permit advance purchase subscription sales for their lotteries (New York, Virginia, Minnesota, North Dakota, and New Hampshire), and Illinois passed a law that allows a pilot program to sell lottery tickets through the internet, though the program has not yet begun. Legislation also has been introduced in other States to facilitate online gaming, including two bills in California, though no action has been taken on either bill.

The most significant development is that Nevada, Delaware, and New Jersey have enacted laws expressly authorizing online gaming for people physically present within their respective borders. The Nevada State legislature passed a law in June 2011 legalizing "interactive gaming." Although "interactive gaming" is defined broadly, Nevada's gaming commission issued the first draft regulations in August 2011, which only permit online poker and prohibit businesses from accepting payments for any other type of wager. Subsequently,

³ Memorandum Opinion For the Assistant Attorney General, Criminal Division, Whether Proposals by Illinois and New York to Use the Internet and Out-of-State Transaction Processors to Sell Lottery Tickets to In-State Adults Violate the Wire Act, September 2011 U.S. Department of Justice, September, 2011, available at <http://www.justice.gov/olc/2011/state-lotteries-opinion.pdf>.

Delaware authorized online poker, as well as slots and table games. Most recently, New Jersey enacted a law in February 2012 authorizing multiple forms of Internet gaming, and licensees commenced operations in November 2013.

IV. H.R. 2666, the Internet Poker Freedom Act of 2013

On July 11, 2013, Congressman Barton introduced H.R. 2666, the “Internet Poker Freedom Act of 2013,” a bill to establish a program for licensing Internet poker nationwide. H.R. 2666 would create a system for regulation of online poker, and allows States and tribal authorities to decide whether individuals within their jurisdiction can participate or not. H.R. 2666 would not affect other types of internet gaming.

Summary of H.R. 2666

Title I prohibits unlicensed Internet poker and provides protections for players and other consumers.

- **Creates an interstate licensing regime for Internet poker.**
 - Designates the Department of Commerce (DOC) as the Federal oversight authority for approving Qualified Regulatory Authorities (QRA). Internet poker facilities are prohibited unless licensed by a QRA. The Department of Commerce or the National Indian Gaming Commission would issue regulations governing State and tribal qualified regulatory authorities to issue licenses for U.S. companies or Federally recognized Indian tribes to accept Internet poker bets.
 - For the first two years of the program, only current holders of State- or tribal-issued gaming licenses who have substantial land-based gaming operations could be primary licensees. In effect, only race tracks, card rooms, and casinos would be eligible for licenses in the first two years of the program. Others, such as foreign companies, non-gaming companies, and small gaming operators, could be significant vendors to licensees, but could not be primary licensees for the first three years. Enforcement is conducted by the QRA that issued the license or the Secretary with penalties including license revocation.
- **Allows states and tribes to choose whether or not to participate.**
 - States and Federally-recognized Indian tribes that do not want licensees to accept bets from individuals located within their borders may “opt out” of the Federal program. Thereafter, licensees would be prohibited from accepting bets from those States or tribes. However, if a State opts out and a tribe does not, the sovereignty of the tribe is preserved so that licensees may accept bets played from their tribal territory.
- **Creates consumer protections.**

- **No underage gambling.** Requires licensees to demonstrate that their facility maintains appropriate safeguards and mechanisms to ensure all players are at least 21 years of age.
- **Limitation of funding wagers.** Prohibits licensees from accepting deposits via credit card, thus prohibiting players from playing on borrowed money.
- **Protection for those suffering from gambler addiction.** Requires qualified bodies to develop a Gambling Addiction, Responsible Gaming, and Self-Exclusion program. Qualified bodies must require licensees to provide information to players about responsible gaming; to allow players to set individualized deposit or loss limits and to block self-excluded persons. Commerce would create and maintain a list of self-excluded persons -- individuals who realize they have gambling problems and who wish to be prevented from playing poker online -- whom licensees would be required to block.
- **Collect past-due child support.** Allows any State court or agency responsible for enforcing child support to place parents who become delinquent in child support payments on the list of excluded persons.

➤ **Additional provisions.**

- Clarifies that licensees are not authorized under the legislation to accept Internet bets on sporting events or games other than poker. Does not allow “poker parlors” where a large number of terminals are grouped together.
- Makes it a crime to cheat at Internet poker or to create or distribute cheating devices (bots).
- Clarifies that existing games of skill that are not illegal under Federal or State law are not prohibited by this Act.
- Personal computers are exempt from being considered a gambling device.

Title II amends UIGEA to provide procedures and processes pertaining to unlicensed Internet gambling enterprises. Additionally, Title II clarifies that the definition of “unlawful internet gaming” does not include the activities of an Internet poker facility as defined in H.R. 2666.

V. Issues for Discussion

- Is Federal legislation necessary to address the developing patchwork of State regulations?
- How effective is enforcement of remote gaming in jurisdictions that have legalized it? How are States preparing to deal with the issue?

- What consumer protections exist for online gaming?
- How should the differences between various forms of online gaming – *e.g.*, poker vs. table games – affect how they are regulated?

Please contact Brian McCullough, Gib Mullan, or Shannon Weinberg at (202) 225-2927 with any questions.