



# The Florida Senate

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Committee on Regulated Industries

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## REVIEW OF INTERNET POKER

### Statement of the Issue

The purpose of this issue brief is to provide an overview of the relevant state, federal, and international laws that pertain to Internet poker. It also explores proposed legislation at the state and federal level.

Internet poker is a game of poker played over the Internet or online instead of at a traditional casino or pari-mutuel facility. In 2009, proposed federal legislation sought to legalize Internet poker. In addition, multiple states, including Florida, proposed legislation to legalize intrastate poker. During the 2010 Regular Session, Representative Joseph Abruzzo (D-85) introduced HB 1441 to authorize intrastate Internet poker, regulate the operation of the games, and tax the operators. The bill died in the House Insurance, Business, & Financial Affairs Policy Committee. Senator Dennis L. Jones (R-13) introduced SB 1582 that provided legislative intent to revise the laws relating to poker. That bill was never heard and died in the Senate Committee on Regulated Industries.

Congress enacted the Unlawful Internet Gambling Enforcement Act (UIGEA) in 2006. The act amends the federal criminal code to prohibit persons engaged in the business of betting or wagering from knowingly accepting proceeds of financial transactions in connection with unlawful Internet gambling.

### Discussion

#### Florida Laws

Gambling is generally prohibited in Florida. Section 849.08, F.S., provides that any person who plays or engages in any game of “cards, keno, roulette, faro or other game of chance, at any place, by any device whatever, for money or other thing of value, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.”<sup>1</sup> Section 849.01, F.S., provides that it is a felony of the third degree for a person to maintain a gambling location for the purpose of gaming or gambling.<sup>2</sup>

Poker is “a card game, the most popular of a class of games called vying games, in which players with fully or partially concealed cards make wagers into a central pot, after which the pot is awarded to the remaining player or players with the best combination of cards.”<sup>3</sup> There are many variants of the game, but the most commonly played games are five-card stud, seven-card stud, and Texas hold ‘em.<sup>4</sup>

Poker is authorized to be played in Florida as a penny-ante game under s. 849.085, F.S., or in a cardroom located at a licensed pari-mutuel facility as provided in s. 849.086, F.S.

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<sup>1</sup> As provided in ss. 775.082 and 775.083, F.S., respectively, a second degree misdemeanor carries a term of imprisonment not to exceed 60 days and a fine not to exceed \$500.

<sup>2</sup> As provided in ss. 775.082 and 775.083, F.S., a third degree felony carries a term of imprisonment not to exceed 5 years and a fine not to exceed \$5,000.

<sup>3</sup> See the definition of poker at wordIQ.com (available at <http://www.wordiq.com/definition/Poker>, last visited, September 21, 2010).

<sup>4</sup> *Id.*

A “penny-ante game” is a game or series of games of “poker, pinochle, bridge, rummy, canasta, hearts, dominoes, or mah-jongg in which the winnings of any player in a single round, hand, or game do not exceed \$10 in value.”<sup>5</sup> It must be played in a dwelling, no admission or fee may be charged, no player may be solicited by advertising, a person must be at least 18 years old to play, and any debt incurred is unenforceable.<sup>6</sup>

A “dwelling” is defined as a residential premise that is owned or rented by a participant in the game. It includes “the common elements or common areas of a condominium, cooperative, residential subdivision, or mobile home park of which a participant in a penny-ante game is a unit owner, or the facilities of an organization which is tax-exempt under s. 501(c)(7) of the Internal Revenue Code.”<sup>7</sup> It also includes a college dormitory or common recreational area of the college dormitory, and a community center owned by a municipality or county.

Poker may also be played in a cardroom.<sup>8</sup> A cardroom is a facility where authorized games are played for money or anything of value and the public is invited to participate in the games and is charged a fee by the facility operator.<sup>9</sup> The operator must be a pari-mutuel permitholder which holds a valid permit and license under ch. 550, F.S., and holds a valid cardroom license issued by the Division of Pari-mutuel Wagering (division) within the Department of Business and Professional Regulation (department).<sup>10</sup>

An authorized game for a cardroom is poker or dominoes played in a nonbanking manner.<sup>11</sup> A banking game is a game in which the house is a participant.<sup>12</sup> Banked card games are illegal in Florida.<sup>13</sup> The cardrooms can be open a total of 18 hours per day on Monday through Friday and 24 hours on Saturday, Sunday, and holidays.<sup>14</sup> The cardroom operator may limit the amount wagered in any game or series of games. Otherwise, there is no other betting limitations.<sup>15</sup>

Poker conducted in a non-banking manner is considered a Class II game<sup>16</sup> under the Indian Gaming Regulatory Act, 25 U.S.C. s. 2701, et seq.<sup>17</sup> An Indian Tribe may conduct poker on Indian Land if the card games are explicitly authorized by the law of the state where the Tribe is located. The card games must be conducted in compliance with any state laws or rules regarding hours of operations and wagers or pot sizes.<sup>18</sup> In addition to the poker games authorized under ch. 849, F.S., the tribal-state compact, ratified by the Florida Legislature in the 2010 Regular Session,<sup>19</sup> allows the Seminole Tribe of Florida to conduct Class III banked card games<sup>20</sup> at all of their gaming facilities except the Seminole Indian Casinos at Brighton and Big Cypress.<sup>21</sup>

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<sup>5</sup> Section 849.085(2)(a), F.S.

<sup>6</sup> Section 849.085(3), F.S.

<sup>7</sup> Section 849.085(2)(b), F.S.

<sup>8</sup> Section 849.086((3), F.S.

<sup>9</sup> Section 849.086(2)(c), F.S.

<sup>10</sup> Section 849.086(2)(f), F.S. Twenty-three pari-mutuel facilities have licensed cardrooms.

<sup>11</sup> Section 849.086(2)(a), F.S.

<sup>12</sup> Section 849.086(2)(b), F.S. The “house” is defined as a cardroom operator and all employees of the cardroom operator under s. 849.086(2)(j), F.S.

<sup>13</sup> *Florida House of Representatives v. Crist*, 999 So.2d 601 (Fla. 2008). Examples of banked card games are blackjack, baccarat, and chemin de fer.

<sup>14</sup> Section 849.086(7)(b), F.S.

<sup>15</sup> Section 849.086(8)(b), F.S. Prior to the effective date of ch. 2009-170, L.O.F., the maximum bet could not exceed \$5 and no more than three rounds of betting. A cardroom operator could conduct games of Texas hold ‘em without a betting limit if the player’s buy-in was no more than \$100. That amendment was effective on July 1, 2010. See s. 5, ch. 2010-29, L.O.F.

<sup>16</sup> Class II games include bingo (including electronic, computer, or other technologic aids used in connection with the games) and non-banked card games. See 25 U.S.C. s. 2703(7)(A).

<sup>17</sup> The Indian Gaming Regulatory Act is the framework for the operation of gaming by Indian tribes. See 25 U.S.C. s. 2702.

<sup>18</sup> 25 U.S.C. s. 2703(7)(A)(ii).

<sup>19</sup> See s. 1, ch. 2010-29, L.O.F.

<sup>20</sup> Class II gaming does not include banked card games or electronic or electromechanical facsimiles of any game of chance or slot machines of any kind. See 25 U.S.C. s. 2703(7)(B). Class III gaming is gaming that is not Class II. See 25 U.S.C. s. 2703(8).

<sup>21</sup> *Gaming Compact between the Seminole Tribe of Florida and the State of Florida*, part II.F.2., approved by the U.S.

Department of the Interior effective July 6, 2010, 75 Fed. Reg. 38833. The authorized facilities include the Seminole Casinos at Coconut Creek, Hollywood, and Immokalee, and the Seminole Hard Rock Hotel and Casinos at Hollywood and Tampa.

## Unlawful Internet Gambling Enforcement Act of 2006

The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA) was signed into law by President George W. Bush on October 13, 2006.<sup>22</sup> The Unlawful Internet Gambling Enforcement Act does not make Internet gambling illegal. Instead the act targets financial institutions in an attempt to prevent the flow of money from an individual to an Internet gaming company because most owners and operators of such sites are located overseas, outside of the jurisdiction of the United States.

The act finds that “[n]ew mechanisms for enforcing gambling laws on the Internet are necessary because traditional law enforcement mechanisms are often inadequate for enforcing gambling.” It declares that nothing in the act may be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States.

The act does not prohibit intrastate Internet gambling as long as the bet or wager is initiated or received within the state. According to the Poker Voters of America, this provision would allow Internet poker sites in Florida as long as the servers are located within the state.<sup>23</sup>

### ***Definitions in the Act***

The act defines “financial transaction provider” as “a creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local payment network utilized to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or a participant in such network.”<sup>24</sup>

The act states that a “restricted transaction” is “any transaction or transmittal involving any credit, funds, instruments, or proceeds” that are described in §5363 of the act,<sup>25</sup> where the recipient is not permitted to accept the transaction under the language of §5363.<sup>26</sup>

“Unlawful Internet gambling” means placing, receiving, or transmitting a bet or a wager, via the Internet, where any Federal, state, or tribal law makes such an action unlawful.<sup>27</sup> Unlawful Internet gambling does not include a bet or a wager initiated and received within a single state (intrastate transactions), if such a transaction is authorized by state law and that law requires age and location verification as well security that ensures the age and location requirements are met.<sup>28</sup>

An intra-tribal transaction is a transaction that is made and received on the tribal land of a single Tribe or from the land of one tribe to another, if the transaction is allowed under the Indian Gaming Regulatory Act.<sup>29</sup> The transaction must comply with applicable tribal ordinance as well as any tribal-state gaming compact agreement.<sup>30</sup> Finally, intra-tribal transactions must also utilize the same kinds of regulations to verify age and location as the states are required to have in order to be compliant with the act.<sup>31</sup>

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<sup>22</sup> The provisions of UIGEA were adopted in Conference Committee as an amendment to H.R. 4954 by Representative Daniel E. Lungren (CA-3), “The SAFE Ports Act of 2006.”

<sup>23</sup> Presentation by Melanie Brenner, Executive Director of Poker Voters of America before the Florida Senate Committee on Regulated Industries, February 16, 2010 (presentation on file with the committee).

<sup>24</sup> 31 U.S.C. s. 5362(4).

<sup>25</sup> Section 5363 provides the prohibition on acceptance of any financial instrument for unlawful Internet gaming.

<sup>26</sup> 31 U.S.C. s. 5362(7).

<sup>27</sup> 31 U.S.C. s. 5362(10)(A).

<sup>28</sup> 31 U.S.C. s. 5362(10)(B)

<sup>29</sup> 31 U.S.C. s. 5362(10)(C)(i)(I-II). See 25 U.S.C. s. 2701 et seq.

<sup>30</sup> 31 U.S.C. s. 5362(10)(C)(ii).

<sup>31</sup> 31 U.S.C. s. 5362(10)(C)(iii).

### ***Regulations and Remedies under the Act***

The act provides that within 270 days of the enactment of the bill, the Secretary of the Treasury and Board of Governors of the Federal Reserve System in consultation with the Attorney General, are to prescribe regulations requiring financial institutions to block those restricted transactions.<sup>32</sup>

The act also provides civil remedies for violations. The section grants original and exclusive jurisdiction to the United States District Courts.<sup>33</sup> It provides that the United States Attorney General or an individual state's Attorney General (or other appropriate state official) may bring an action to restrain or prevent a restricted transaction and the court may issue a temporary restraining order, a preliminary injunction, or an injunction against any person in order to restrain a restricted transaction.<sup>34</sup> It is in the court's discretion to impose a permanent injunction, preventing the person from "placing, receiving, or otherwise making bets or wagers or sending, receiving, or inviting information assisting the placing of bets or wagers."<sup>35</sup> Any enforcement authorities specified in an applicable Tribal-State Compact are given enforcement authority of the provision according to the provisions of the Compact with respect to Indian lands.<sup>36</sup> The act specifically states that nothing within the act is to be "construed as altering, superseding, or otherwise affecting the application of the Indian Gaming Regulatory Act."<sup>37</sup>

The relief is limited to removing access to or blocking access to websites or hyperlinks to websites that are in violation of the act. The relief cannot impose an obligation on an interactive computer service to monitor for violations, it will only apply to the specified interactive computer service, and must specifically identify the location of the website or hyperlink that is to be removed or disabled.<sup>38</sup> An interactive computer service that is not in violation of this section will not be held liable under 18 U.S.C. s. 1084(d), unless the service manages, operates, owns, or is owned by a company that operates a site where such wagering or betting takes place.<sup>39</sup> Section 5366 provides that any person guilty of violating s. 5363<sup>40</sup> can be fined, imprisoned for not more than five years, or both.<sup>41</sup>

Finally, the act provides that any interactive computer service, financial transaction provider, or telecommunications service provider may be liable if there is actual knowledge and control of bets or wagers on an Internet website.<sup>42</sup>

### ***Status of UIGEA rules by Federal Reserve and US Treasury***

In October of 2007 the Department of the Treasury and the Board of Governors, in consultation with the Attorney General published the proposed rule in the Federal Register and asked for public comment on the proposed rule. After considering all of the comments, the final rule was to be effective December 2009 and was published in the Federal Register in November of 2008. Implementation was delayed however, and the full rule was not effective until June 2010.

### ***Relevant Case Law on UIGEA***

There has been one major legal challenge to UIGEA in Federal Court. In *Interactive Media Entertainment and Gaming Ass'n Inc. v. Attorney General of the United States*,<sup>43</sup> the plaintiff, Interactive Media, challenged UIGEA on the basis that the law was void for vagueness "because the phrase 'unlawful internet gambling' lacks an 'ascertainable and workable definition.'"<sup>44</sup> The court ruled that the act is not vague, and provides the average person with "adequate

<sup>32</sup> 31 U.S.C. s. 5364.

<sup>33</sup> 31 U.S.C. s. 5365(a).

<sup>34</sup> 31 U.S.C. s. 5365(b)(1).

<sup>35</sup> 31 U.S.C. s. 5366(b).

<sup>36</sup> 31 U.S.C. s. 5365(b)(3)(A).

<sup>37</sup> 31 U.S.C. s. 5365(b) (3)(B).

<sup>38</sup> 31 U.S.C. s. 5365(c)(1).

<sup>39</sup> 31 U.S.C. s. 5365(c)(2).

<sup>40</sup> See n. 25 *supra*.

<sup>41</sup> 31 U.S.C. s. 5366(a).

<sup>42</sup> 31 U.S.C. s. 5367.

<sup>43</sup> 580 F.3d 113 (3<sup>rd</sup> Cir. 2009).

<sup>44</sup> *Id.*

notice” of what is prohibited.<sup>45</sup> The court also stated that “a statute is not unconstitutionally vague merely because it incorporates other provisions by reference; a reasonable person of ordinary intelligence would consult the incorporated provisions.”<sup>46</sup> The plaintiff also challenged UIGEA on a theory that UIGEA violates the right of an individual to engage in gambling or gambling activities in the privacy of their own home.<sup>47</sup> The court, however, did not agree that gambling within an individual’s home is a right to privacy issue. It stated that “[g]ambling, even in the home, simply does not involve any individual interests of the same constitutional magnitude [as previous right to privacy cases have involved].”<sup>48</sup>

### **World Trade Organization Dispute**

The General Agreement on Trade in Services (GATS), a treaty which the United States is a party to and is enforceable by the World Trade Organization (WTO),<sup>49</sup> includes an agreement for “entertainment services.” In 2004, Antigua challenged three of the United States’ gambling laws before the WTO.<sup>50</sup> The challenged laws included the Wire Act of 1961, the Travel Act of 1961, and the Illegal Gambling Business Act of 1970.<sup>51</sup> In 2005, the WTO held that the gambling industry must comply with WTO agreements and that any attempt to block this compliance by the United States is a violation of the nation’s obligations under GATS.<sup>52</sup> The decision by the WTO provided the United States with a timeline to amend its laws to its obligations under the WTO. In April of 2006, that timeline ended without the United States addressing the WTO’s decision.<sup>53</sup> As a result of this decision, the view of the WTO is that any regulation having an effect on gambling be viewed with scrutiny. The General Agreement on Trade in Services allows for limited regulation based on issues of public morality but the WTO views themselves as the arbiters of what regulation serves that purpose and is justified. The WTO maintains that regulation of Internet gaming would be inconsistent with the previous authorization of interstate horseracing,<sup>54</sup> which relies on the Internet to work. The decision ordered the United States to repeal its Internet gambling restrictions or repeal the Interstate Horseracing Act.

### **Other Federal Statutory Provisions that may affect Internet Poker and Gaming**

Although UIGEA directly addresses Internet gaming, it is not the only federal statute which may impact Internet gambling. In fact, one of the leading experts on gambling law, I. Nelson Rose, compiled a list of other Federal Statutes that have an impact on Internet Gambling.<sup>55</sup>

One of the most frequently cited statutes that may affect Internet gaming is the Interstate Wire Act of 1961.<sup>56</sup> The act provides:

Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which

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<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> The World Trade Organization is located in Geneva, Switzerland. It states that it is the only global international organization dealing with the rules of trade between nations. The organization is based upon the WTO agreements, negotiated and signed by the bulk of the world’s trading nations and ratified in their parliaments. The organization was established on January 1, 1995 by the Uruguay Round of negotiations. As of July 23, 2008, it had 153 members. (available at [http://www.wto.org/english/thewto\\_e/whatis\\_e/whatis\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm), last visited August 27, 2010).

<sup>50</sup> Public Citizen, *Case Summary: WTO Internet Gambling Case*, March 2007, (available at <http://www.citizen.org/documents/Gamblingsummary2007.pdf>, last visited August 27, 2010).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> <sup>55</sup> See Interstate Horseracing Act of 1978, 15 U.S.C. s. 3001, et seq.

<sup>55</sup> I. Nelson Rose, *The Law of Internet Gambling Outline*, Gambling and the Law, June 15, 1999, (available at [www.Gamblingandthelaw.com](http://www.Gamblingandthelaw.com), last visited September 13, 2010).

<sup>56</sup> 18 U.S.C. s. 1084.

entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.<sup>57</sup>

The statute prohibits the use of the Internet for ‘bets or wagers on any sporting event or contest,’ but the question remains as to whether the coverage of the Wire Act extends beyond the sporting event to other applications of Internet gambling.<sup>58</sup> There is further debate as to whether the Wire Act applies to the Internet at all, since it was not contemplated at the time of the act’s passage. “Despite the divergent views . . . the official position as expressed by the Justice Department [during the Clinton Administration] and several state attorneys general is to treat the Wire Act as applying broadly and covering all forms of Internet gaming.”<sup>59</sup>

Other federal laws that may impact Internet gaming are: the Travel Act of 1961 which was part of a wide scale operation by the Department of Justice to combat organized crime in the early sixties;<sup>60</sup> the Racketeer Influenced and Corrupt Organizations Act of 1970, which was also directed toward the elimination of organized crime and can be construed to have an effect on Internet gambling; as well as the Amateur and Professional Sports Protection Act of 1992.<sup>61</sup> In addition, the conspiracy statute can also apply to Internet gambling.<sup>62</sup>

Professor Rose also indicates that the Money Laundering Control Act of 1986<sup>63</sup> may also apply to Internet gambling,<sup>64</sup> which applies to the laundering of monetary instruments and monetary transactions “involving property that is derived from some form of unlawful activity.”<sup>65</sup>

The Transportation of Gambling Devices Act of 1951, more commonly known as the Johnson Act,<sup>66</sup> prohibits the shipment of gambling devices to locations where the activities conducted with the device are illegal.<sup>67</sup> A shipment of software or hardware for Internet gaming, may be considered a crime if it is shipped to a locale where such gaming is outlawed by state or federal law.<sup>68</sup> The Interstate Transportation of Wagering Paraphernalia Act<sup>69</sup> also prohibits the shipment of gambling devices and the sending of software or hardware across state lines to areas where Internet gambling is not legal.<sup>70</sup>

Finally, the Illegal Gambling Business Act<sup>71</sup> which was passed in 1970 as an effort by Congress to stop large-scale illegal gambling operations within the country,<sup>72</sup> as part of the Organized Crime Control Act.<sup>73</sup> The RICO act was also part of that enactment and it complements the Illegal Gambling Business Act by imposing both civil and criminal penalties.<sup>74</sup>

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<sup>57</sup> 18 U.S.C. s. 1084(a).

<sup>58</sup> Jeffery Rodefer, *Internet Gambling in Nevada: Overview of Federal Law Affecting Assembly Bill 466*, 6 Gaming L.R. 393 (July 6, 2004).

<sup>59</sup> *Id.* (quoting: Adrian Goss, *Jay Cohen’s Brave New World: The Liability of Offshore Operators of Licensed Internet Casinos for Breach of United States Anti-Gambling Laws* , 7 Rich. J.L. & Tech. 32 (Spring 2001)).

<sup>60</sup> *Id.*

<sup>61</sup> 28 U.S.C. ss. 3701-3704.

<sup>62</sup> *Supra* at n.55.

<sup>63</sup> 18 U.S.C. s. 1956

<sup>64</sup> *Supra* at n.55.

<sup>65</sup> 18 U.S.C. s. 1956(a)(1). See also, Jeffery Rodefer, *Internet Gambling in Nevada: Overview of Federal Law Affecting Assembly Bill 466*, 6 Gaming L.R. 393 (July 6, 2004).

<sup>66</sup> 15 U.S.C. §§ 1171-1178.

<sup>67</sup> *Supra* at n. 58.

<sup>68</sup> *Id.*

<sup>69</sup> 18 U.S.C. s. 1953.

<sup>70</sup> *Supra* at n. 58.

<sup>71</sup> 18 U.S.C. s. 1955.

<sup>72</sup> *Supra* at n. 58.

<sup>73</sup> *Id.*

<sup>74</sup> *Supra* at n. 58.

## International Internet Gambling Laws

The regulation of internet gaming varies internationally. Some countries actively participate in the Internet gaming by running online gaming websites, others license and regulate the activities, while some affirmatively ban the practice. The following jurisdictions license Internet gaming: Alderney, Antigua, Antilles, Austria, Barbuda, Belize, Costa Rica Curacau, Dominica, Gibraltar, Isle of Man, Italy, Kahnawake, Malta, Netherlands, Panama, St Kitts and Nevis, Sweden, United Kingdom, and Vanuatu.<sup>75</sup>

On September 8, 2010, The European Court of Justice (ECJ) issued an opinion upholding the right of European Union (EU) member states to regulate, at its discretion, games of chance. This includes granting monopolies to companies, but the regulation must be tailored to fit public policy objectives or to protect their citizens.<sup>76</sup> Consequently, this ruling may result in varied gambling laws within the EU and member states may not honor licenses granted by other member states Internet gaming laws.<sup>77</sup> However, the EU maintains the authority to oversee the regulations and ensure the regulations are proportionate to the public policy concerns.<sup>78</sup>

Until recently, Internet gambling laws in Europe have operated in “legal limbo” with governments not sanctioning such practices but also unable to tax and regulate them.<sup>79</sup> Most European nations that allowed Internet gambling did so through the use of government owned sites, however, recently nations, such as France and Italy, have begun regulating other sites, permitting them to compete against the government monopolies.<sup>80</sup> For example, the Italian government has begun granting licenses to certain gambling businesses and imposing regulation on those businesses.<sup>81</sup> Countries like Belgium and the United Kingdom also provide for the licensing of business to conduct Internet gaming.

Regarding whether the Internet gaming business must be located in the country, some countries, such as the United Kingdom, permit business outside the country to offer Internet gaming provided they are licensed by the country.<sup>82</sup> Italy has issued permits for companies to open internet gambling sites in Italy.<sup>83</sup> These included both foreign and domestic companies but the companies and players must be located in Italy.<sup>84</sup> France amended its national laws to allow for regulation and taxation of foreign-based Internet casinos and sports book websites.<sup>85</sup>

Outside of the European Union, the legal status of Internet gaming also differs widely. In South Africa, a court decision on August 20, 2010, provided that it was illegal to gamble online within the country.<sup>86</sup> However, the Court’s ruling also indicated that the government may be considering the legalization of online gambling by stating that, if a company violates this ruling, they will not be eligible for a license when and if South Africa begins accepting applications for such licenses.<sup>87</sup>

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<sup>75</sup> See Viaden Media, an online casino software company at [http://www.viaden.com/products/gambling\\_license.html#](http://www.viaden.com/products/gambling_license.html#), (last visited September 27, 2010).

<sup>76</sup> Erik Vollebregt, *EU Court of Justice rules that national gambling monopolies must be regulated in a consistent and systematic manner and that sanctions cannot discriminate between local and international providers*, Interactive Gaming Council, September 8, 2010, (available at <http://www.igcouncil.org/>, last visited September 16, 2010).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> Eric Pfanner, *Two Online Gambling Operators in Europe to Merge*, N.Y. TIMES, July 29, 2010, (available at <http://www.nytimes.com/2010/07/30/technology/30bwin.html>, last visited September 30, 2010).

<sup>80</sup> *Id.*

<sup>81</sup> *Online Gambling Regulation in Italy*, Viaden Media, (available at: [http://www.viaden.com/products/italy\\_license.html](http://www.viaden.com/products/italy_license.html) (Last visited September 21, 2010)).

<sup>82</sup> United Kingdom Gambling Commission, *Gambling Sectors*, (available from <http://www.gamblingcommission.gov.uk> , last visited September 16, 2010) .

<sup>83</sup> *Online Gambling in Italy*, (available at <http://gamingzion.com/italy/>, last visited September 30, 2010).

<sup>84</sup> Interview with Poker Voters of America, September 30, 2010.

<sup>85</sup> *Online Gambling in France*, (available at <http://gamingzion.com/france/>, last visited September 30, 2010).

<sup>86</sup> Karabo Keepile, *Online Gambling Banned in South Africa*, Mail & Guardian Online, August 25, 2010 (available at: <http://www.mg.co.za/article/2010-08-25-online-gambling-banned-in-south-africa>, last visited September 17, 2010).

<sup>87</sup> *Id.*

Internet gambling is illegal in China. The Chinese Government has increased their enforcement of the online gambling laws since January 2010, arrested over 7,360 people, and frozen around one billion yuan or \$148 million.<sup>88</sup> Internet gambling is also illegal in Japan.<sup>89</sup>

Regarding the effect of legalized Internet gaming, critics of Australia's regulation of Internet gambling through its Interactive Gambling Act of 2001 (IGA) have noted importance of enforcement. The legislation's critics maintained that the prohibition did not reach its desired goal because, instead of preventing the use of Internet gambling, it has forced citizens playing such games to use offshore sites because there was no real enforcement mechanism put in place by the act.<sup>90</sup> For example, the critics have argued that the act is unenforceable internationally and is being ignored by operators outside of Australia.<sup>91</sup>

## **Legislative Proposals to Legalize Internet Poker**

### ***Proposed Florida Legislation***

Representative Joseph Abruzzo (D-85) introduced HB 1441 during the 2010 Regular Legislative Session. The bill was referred to the Committees on Business, & Financial Affairs Policy, Government Operations Appropriations, and the General Government Policy Council. The bill was on the Business & Financial Affairs Policy Committee agenda for March 25, 2010, but was not heard.

The bill created the "Internet Poker Consumer Protection and Revenue Generation Act of 2010." It provided that the Legislature has exclusive authority over intrastate Internet poker. The bill authorized playing and wagering on non-banked,<sup>92</sup> intrastate games of poker. It provided that the state would contract with an Internet poker hub operator to operate the state's poker network. Licensed cardroom operators would maintain websites as portals into the state's poker network. It also provided restrictions on players, for example, the players must be at least 21 years of age.

The Division of Pari-mutuel Wagering would be authorized to administer the act and regulate the operation of intrastate Internet poker. This authority would include rulemaking, investigatory and disciplinary authority over the hub operator and cardroom affiliates. The division shall choose an Internet poker hub operator through a competitive procurement process. The bill also provided criteria for the hub operator and the contract terms.

The department estimated net revenues of \$5,037,685 for the first year, \$22,325,999 for the second year, and \$36,653,465 for the third year. In addition there would be a transfer to General Revenue from the Pari-mutuel Trust Fund of \$5,802,229 over the three year period.

Poker Voters of America commissioned H2 Gaming Capital to prepare an analysis of the impact of HB 1441. The report indicated that the state has the potential to be the fourth largest intrastate market in the United States. Currently, 900,000 Floridians are registered to play poker online. 300,000 Floridians are playing in the state for money today. The revenue estimates for a regulated intrastate market, as proposed in HB 1441, indicate that Florida's Internet gaming market would be worth \$226 million in 2010, increasing to \$744 in 2014. Ten percent would be payable to the state by the hub operator as an annual tax.

### ***Proposed Federal Legislation***

Representative Barney Frank introduced H.R. 2267 in the 111<sup>th</sup> Congress.<sup>93</sup> If enacted the bill would amend

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<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> Liz Tay, *Analysis: Net Gambling Next on ISP Filter Hitlist?*, ItNews for Australian Business, September 3, 2010, (available at: <http://www.itnews.com.au/News/230947,analysis-net-gambling-next-on-isp-filter-hitlist.aspx/1>, last visited September 20, 2010).

<sup>91</sup> *Id.*

<sup>92</sup> Non-banked games are those in which the 'House' is not a player – the players play against each other, with the House facilitating.

<sup>93</sup> H.R. 4976, Internet Gambling Regulation and Tax Enforcement Act of 2010 by Rep. Jim McDermott (WA-7) has not been heard by committee.

UIGEA.<sup>94</sup> The bill was referred to the House Committee on Financial Services and the Committees on Energy and Commerce, and the Judiciary.<sup>95</sup> The bill, as amended, passed the House Committee on Financial Services 41-22 on July 29, 2010.<sup>96</sup> The legislation provides administrative and licensing requirements to regulate Internet gambling.<sup>97</sup> The bill prohibits the operation of an Internet gambling company within the borders of the United States without the proper license. It prohibits the acceptance of bets or wagers made by persons within the borders of the United States without a license.<sup>98</sup> The legislation also requires companies applying for a license to provide consumer protections, combat fraudulent activities, and help prevent compulsive Internet gambling.<sup>99</sup> The bill also protects financial service providers from liability for the actions of a licensed Internet gambling operation.<sup>100</sup> Finally, the bill allows individual states and tribal authorities to opt out of the licensing procedure in their jurisdictions, allowing them to prohibit Internet gambling or set up their own scheme of regulation.<sup>101</sup>

The House Committee on Financial Services on July 29, 2010, ordered the Congressional Budget Office (CBO) to prepare a report for H.R. 2267. The CBO's report states "that enacting H.R. 2267 would increase revenues by \$971 million and direct spending by \$688 million from 2011-2020."<sup>102</sup>

The future of H.R. 2267 is uncertain. Representative Frank says that it is unlikely the bill will be introduced on the floor before the midterm elections, and that it may not be taken up during the lame-duck session following the elections.<sup>103</sup> A bill just dealing with Internet poker, S. 1597 by Senator Robert Menendez (NJ) has not had a hearing in the Senate.<sup>104</sup> Supporters of the legislation are lobbying for a bill, at least dealing with Internet poker, to be passed during the "Lame Duck" session after the November 2, 2010 elections.<sup>105</sup>

### ***Proposed California Legislation***

The state legislature of California took up the issue of Internet Gambling during the 2010 legislative session. State Senator Roderick Wright, the chair of the Senate Committee on Governmental Organization, authored the Senate Bill 1485.<sup>106</sup> The bill has been named the "California Online Poker Law Enforcement Compliance and Consumer Protection Act."<sup>107</sup>

According to the California Senate Bill Analysis the proposed bill "is intended to extend consumer protections to

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<sup>94</sup> Congressional Budget Office Report, H.R. 2267, INTERNET GAMBLING REGULATION, CONSUMER PROTECTION, AND ENFORCEMENT ACT, September 22, 2010, (available at: <http://www.govtrack.us/congress/billreport.xpd?bill=h111-2267&type=cbo>).

<sup>95</sup> The reference to the Committees on Energy and Commerce, and the Judiciary were for a period to be determined by the Speaker. See note 96, infra.

<sup>96</sup> The Library of Congress, *Bill Summary and Status, 111<sup>th</sup> Congress (2009-2010)*, (available at: <http://thomas.loc.gov/cgi-bin/bdquery/D?d111:86::temp/~bdNhCi:@@@L&summ2=m&>, last visited: September 28, 2010).

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> Congressional Budget Office Report, H.R. 2267, INTERNET GAMBLING REGULATION, CONSUMER PROTECTION, AND ENFORCEMENT ACT, September 22, 2010, (available at: <http://www.govtrack.us/congress/billreport.xpd?bill=h111-2267&type=cbo>) (Last visited on : 9/28/2010).

<sup>103</sup> Kevin Bogardus, *House Finance Chairman Not Optimistic About Online Gambling Bill Moving*, THE HILL, September 20, 2010, (available at: <http://thehill.com/homenews/house/119879-frank-not-optimistic-about-online-gambling-bill-moving>).

<sup>104</sup> The Library of Congress, *Bill Summary and Status, 111<sup>th</sup> Congress (2009-2010)*, (available at <http://thomas.loc.gov/cgi-bin/bdquery/D?d111:1::temp/~bdAbjx:@@@X/home/LegislativeData.php>) (last visited September 30, 2010).

<sup>105</sup> Interview with Poker Players Alliance, September 30, 2010.

<sup>106</sup> Stephen Carter, *California Introduces Long-Awaited Internet Poker Bill*, E-Gaming Review, May 30, 2010, (available at: <http://www.egrmagazine.com/news/569002/california-introduces-long-awaited-internet-poker-bill.thtml>, last visited September 22,2010).

<sup>107</sup> Martin Harris, *California Online Poker Bill's Details Spur Discussion*, Poker News, April 25, 2010, (available at: <http://www.pokernews.com/news/2009/04/california-online-poker-bills-details-spur-discussion-6469.htm>, last visited September 22,).

Californians who play online poker, ensure that the revenues from Internet gaming are realized in California, and to protect the public interest by ensuring that all aspects of Internet gaming are regulated and controlled by the state (Department of Justice).<sup>108</sup> The bill authorizes the California Department of Justice to enter into a 20 year contract with firms to operate up to three Internet gaming hubs. It requires the players to be 21 years of age, they must register with the department, and be located in California. All facilities and bank accounts must also be located in California.

The bill provides requirements for the hub operators, including factors for evaluating the applicants and provides that the California Gaming Control Commission and the department determine the operators' suitability according to the provisions of the act. The hub operators must pay a tax of at least 10 percent of the gross revenue of the operation. An economic study supplied by Senator Wright to the staff of the Senate Committee on Government Organization estimated that the bill could generate \$2.4 and \$6.1 billion from 2012 to 2020.<sup>109</sup> The report noted that “[a] key unknown in the estimate is the extent to which revenues currently flowing offshore to illegal sites will be captured by the legal California hubs.”<sup>110</sup>

The future of the proposed legislation is also uncertain. A scheduled hearing on the bill was postponed upon request of the author and the California Legislature has adjourned for this session.

### ***Proposed New Jersey Legislation***

A bill was introduced in the New Jersey State Senate to authorize the eleven major casinos in New Jersey to establish intrastate Internet gambling websites.<sup>111</sup> New Jersey lawmakers see this proposed legislation as a way to re-direct players already involved in illegal Internet gambling to government regulated sites that would ensure consumer protections as well as create new government revenues through taxation.<sup>112</sup>

The bill provides a 20 percent tax on the gross revenues produced by Internet gambling.<sup>113</sup> The bill grants the New Jersey Casino Control Commission the authority to oversee the permitting process and to determine the qualifications of the applicants.<sup>114</sup> Computer servers that host the gambling website must reside within the boundaries of Atlantic City, and the players may be located anywhere within the state of New Jersey.<sup>115</sup> A casino with a valid license will be allowed to apply for a permit to conduct Internet gambling, and if granted, the permit is valid for one year.<sup>116</sup> Any company applying for a permit must provide the commission with a list of procedures put in place by the company for accounting and administrative controls.<sup>117</sup> The bill was referred to the Senate State Government, Wagering, Tourism & Historic Preservation Committee which reported the bill favorably with amendments on June 3, 2010. The bill was then referred to the Senate Budget and Appropriations Committee which has taken no action on the bill. A companion bill, A2570 by Assemblyman John Burzichelli (Deputy Speaker), was introduced in the New Jersey Assembly, referred to the Assembly State Government Committee and has not been heard.<sup>118</sup>

<sup>108</sup> California Senate Bill 1485, *Bill Analysis*, June 22, 2010, (available at: [http://info.sen.ca.gov/pub/09-10/bill/sen/sb\\_1451-1500/sb\\_1485\\_cfa\\_20100628\\_173132\\_sen\\_comm.html](http://info.sen.ca.gov/pub/09-10/bill/sen/sb_1451-1500/sb_1485_cfa_20100628_173132_sen_comm.html), last visited September 23, 2010).

<sup>109</sup> The bill analysis cited a June 2010 report by LECG, Inc. (authored by Jose Alberro, Ph.D. and Ronald H. Schmidt, Ph.D.) and titled, “A Multi-Hub Model for Legalized Internet Poker in California: Fiscal and Economic Implications.”

<sup>110</sup> *Id.*

<sup>111</sup> Associated Press, *Some N.J. Lawmakers Betting on the Internet for New Casino Game Revenue*, NEW JERSEY ONLINE, June 3, 2010, (available at: [http://www.nj.com/business/index.ssf/2010/06/some\\_nj\\_lawmakers\\_betting\\_on\\_t.html](http://www.nj.com/business/index.ssf/2010/06/some_nj_lawmakers_betting_on_t.html), last visited September 27, 2010).

<sup>112</sup> Associated Press, *Some N.J. Lawmakers Betting on the Internet for New Casino Game Revenue*, NEW JERSEY ONLINE, June 3, 2010, (available at: [http://www.nj.com/business/index.ssf/2010/06/some\\_nj\\_lawmakers\\_betting\\_on\\_t.html](http://www.nj.com/business/index.ssf/2010/06/some_nj_lawmakers_betting_on_t.html), last visited September 27, 2010).

<sup>113</sup> 2010 New Jersey Senate Bill 490, (available at: [http://www.njleg.state.nj.us/2010/Bills/S0500/490\\_R1.PDF](http://www.njleg.state.nj.us/2010/Bills/S0500/490_R1.PDF), last visited September 27, 2010).

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> New Jersey Legislature Bill Information, (available at <http://www.njleg.state.nj.us/bills/BillView.asp>, last visited September 30, 2010). A1331 by Assemblyman Vincent Prieto has not been heard by its committee of reference, the Assembly

## Impact of Legalizing Internet poker on the Seminole Indian Gaming Compact

The legalization of Internet Poker in Florida may affect the state's compact with the Tribe. The Tribe would not be required to make the Minimum Guaranteed Payments<sup>119</sup> if the state affirmatively allows Internet or online gaming and the Tribe's net win for all of its gaming facilities combined drops more than 5 percent below its Net Win for the previous 12 months.<sup>120</sup> However, the Tribe would still be required to make payments based on the Percentage Revenue Share Amount,<sup>121</sup> which is a graduated scale that ranges from 12 percent of Net Win up to \$2 billion and 25 percent of Net Win greater than \$4.5 billion.<sup>122</sup>

The Minimum Guaranteed Payments would be reinstated for any subsequent Revenue Sharing Cycle if the Net Win rises above the amount of the 5 percent reduction. There would be no reduction if the decline in the Net Win were due to an Act of God, war, terrorism, fire, flood, or accidents that damage the Tribe's facilities. There would also not be a reduction if the Tribe offered Internet or online gaming as authorized by law.<sup>123</sup>

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Regulatory Oversight and Gaming Committee. S 316 was introduced by Senator Richard Codey which makes Internet betting illegal also has not had a hearing from its committee of reference.

<sup>119</sup> The payments are \$150 million for the first two years of the compact, \$233 million for the next two years, and \$234 million for the last year for a total of \$1 billion.

<sup>120</sup> *Gaming Compact Between the Seminole Tribe of Florida and the State of Florida*, Part XI.B.3., approved by the U.S. Department of the Interior effective July 6, 2010, 75 Fed. Reg. 38833.

<sup>121</sup> *Id.*

<sup>122</sup> See Part XI.B.1.(b) of the compact for the complete percentage payment schedule.

<sup>123</sup> *Supra* at n. 120.