



New House Bill May Open Door to Legal Online Poker

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The momentum toward federal legalization of online poker took a significant step forward on Friday, June 24, when Rep. Joe Barton (R-Tex.) held a press conference to discuss the details of his legalization bill. The “Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2011” would both legalize online poker and create a new federal agency to oversee its administration.

Rep. Barton said at the conference, “This bill is about having the personal freedom to play a skill-based game you enjoy without fear of breaking the law.”

It is notable that Rep. Barton referred to poker as a game of skill rather than chance. This question has arisen in prosecutions of online poker operators, who contend that their game is not a gambling game but a test of skill. If the bill passes, it would probably give a major boost to these defenses.

In the past, the support for legalizing online poker has come from Democrats, but Rep. Barton, a conservative Republican, acknowledged being influenced by his constituents who want online poker to be legalized. “Clearly, Americans want to gamble on the Internet, and policymakers need to provide both the freedom to do so and ensure appropriate consumer protections are in place,” he said at the press conference.

Rep. Barton also contends that the bill would create thousands of jobs and substantial tax revenue for the federal and state governments.

The challenge for Rep. Barton now is generating the bipartisan support needed to get the bill passed. The bill has eleven co-sponsors, including seven Democrats. Even though Congress is in general gridlock because of significant partisan differences on most issues, the existence of some bipartisan support for this bill could increase the chances of advancing the legislation in this session.

The bill would create an interstate licensing program for Internet poker sites but would give each state the option of not participating in the program. It would establish a new Federal “Office of Internet Poker Oversight” in the Commerce Department that would qualify state agencies to issue licenses to poker sites. The sites would have to obtain a license issued by a qualified state agency and could not knowingly accept wagers by a person who resides in a state that chooses not to allow bets.

The bill would not allow existing Internet poker sites to obtain licenses. It only allows qualified state agencies to issue operating licenses to a company or individual that operates a casino or a qualified racetrack, owns it 10 days before the enactment of the bill, and has owned it for the past five years. The bill further requires all remote gaming equipment associated with the license to be located in the United States.



The bill would allow for the expansion of licenses to other online sites after a two-year period if it is believed that the issuance of licenses to those other than previous holders would not significantly increase the risks that the sites would be used by underage persons or those residing in jurisdictions where wagering is not allowed, and if it could be assured that the games are fair, taxes are paid, and the site is not being used to launder money.

This clause would allow for currently existing poker sites to eventually apply for a license — but not to obtain one at the outset. Additionally, the poker sites that can obtain a license at the outset would have been in the market developing a consumer base for two years, putting the sites considering entering the market two years later at an enormous competitive disadvantage. Thus, companies with existing licenses would certainly oppose this regime.

However, the text of the bill does suggest that a possible loophole may exist for current online poker sites, such as Full Tilt Poker, to partner with companies that have existing gambling licenses before the passage of the bill in order to apply for a license.

Rep. Barton's bill would limit liability under the existing Unlawful Internet Gambling Enforcement Act to those that operate online gambling sites that include games other than poker, or that operate without a license. The bill would eliminate liability for a financial transaction provider that engages in any payment processing unless the provider has actual knowledge that the financial activity or transaction was conducted in violation of the law.

If a company's license is revoked, the law would require that all funds be returned to players within 30 days. The bill contains a provision that would prevent license holders from accepting payment via credit card. This provision is intended to prevent abusive gamblers from racking up credit card debt. The bill also provides that a person who believes he or she is vulnerable to developing a gambling addiction or piling up too much debt can be placed on a list that would require the license holder to limit his or her involvement in the game.

The introduction of this bill is a huge step forward in the legislative battle to legalize online poker. It remains to be seen if it will be able to make it through Congress, but Rep. Barton believes that this bill will generate bipartisan support that has previously been lacking on Capitol Hill for online poker legislation. The bill will likely undergo changes as it weaves through the legislative process, and we will continue to monitor and report on any developments.

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