

## **The Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012**

1. The bill undoes the impact of the recent Justice Department Office of Legal Counsel (OLC) opinion that the Wire Act only covers sports betting and it further clarifies the prohibitions on Internet gambling in the Wire Act, the Illegal Gambling Business Act, and the Unlawful Internet Gambling Enforcement Act (UIGEA). In particular, the bill updates the 1961 Wire Act and the 1970 Illegal Gambling Business Act so that they clearly apply to modern technologies and to all forms of unlicensed Internet gambling. The bill also makes those two laws consistent with a modified UIGEA that is enhanced with stronger enforcement tools (described below).
2. Under the bill, all Internet gambling, whether interstate or intrastate, would be prohibited, except off-track horse-race wagering under the Interstate Horseracing Act of 1978 and licensed poker. State and tribal lotteries could sell lottery tickets online but could not create online games that mimic a slot machine or other casino games. Offering unlicensed Internet gambling would constitute an express crime under the bill — subjecting the offender to up to 10 years' imprisonment and accompanying fines — and under the Wire Act, the Illegal Gambling Business Act, and UIGEA.
3. The overall effect of the bill is to strengthen federal prohibitions on Internet gambling by expanding those prohibitions to include the vast majority of the expansive Internet gambling that the OLC legal opinion effectively permits and wholly intrastate “closed-loop” or other remote gambling. The bill also increases the capacity of law enforcement agencies to prevent illegal gambling activity.

### **Additional Law Enforcement Tools**

4. The bill adds important tools to aid law enforcement in preventing illegal Internet gambling. Among these tools is a list of licensed online poker enterprises. Financial transactions providers may only process U.S. transactions for online poker enterprises that are on that list.
5. To deter U.S. players from patronizing illegal sites, the bill makes explicit that any property involved in or traceable to a gambling transaction in violation of the new act (including winnings) is subject to forfeiture. That same provision also clarifies existing forfeiture laws by providing that all operator proceeds from such unlawful Internet gambling activity similarly are subject to forfeiture.
6. The bill prohibits the establishment of Internet poker cafes or other locations created principally for the purpose of accessing Internet gambling, thereby ensuring that substantial gambling in public places remains confined to traditional, licensed facilities.

### **Limited Exception for Online Poker Only for Those States That Choose to Participate**

7. The bill permits online poker, but only for persons physically located in states or on tribal lands that choose to opt in to the bill's regime. The bill provides a voluntary election procedure by which states and tribes may choose to participate. A state or tribe may opt out simply by doing nothing. To opt in, a state must elect to participate by a simple majority vote of each chamber of the state's legislature. A tribe may opt in if its principal chief or other chief executive officer or designated authority provides written notice to the Secretary of the Commerce Department of this election. However, a tribe may not elect to opt in if its tribal lands are within the territory of a state that has not opted in. Offering bets or wagers to or accepting bets or wagers from persons located in any state or tribal land that does not opt in

is prohibited. Similarly, no licensee or other U.S. person may accept bets or wagers from persons located in other countries.

8. Online poker will be subject to stringent licensing requirements and to oversight by a new Office of Online Poker Oversight (OOPO), established within the Department of Commerce, that will have oversight of state and tribal regulatory bodies and may issue licenses directly to state-controlled entities or tribes that themselves want to operate online poker. (Those state or tribal entities also may seek licensure from a state or tribal regulatory body, provided that such body is not owned or controlled by the entity it regulates or any other online poker licensee.)
9. The bill's principal regulatory structure is state-focused. The bill directs the Commerce Department to designate qualified bodies, which will act, along with the OOPO, as regulators of licensed online poker operators. The qualified bodies may be state agencies or tribal regulatory bodies, must possess substantial experience in regulating land-based gaming, and must meet rigorous standards set out in the bill that are designed to ensure accurate identification of customers, age and location verification, data security, and protections against collusion, fraud and compulsive gambling. The safeguards expressly mandate the use of self-exclusion lists and of biometric and GPS or materially equivalent technologies to address gambling by minors or by persons in excluded jurisdictions as well as to ensure that online poker operators use appropriate technologies. Violations of these or other requirements entail substantial civil penalties (up to \$750,000 per violation) and loss of license.
10. The bill directs the Commerce Department to designate at least three "benchmark" qualified bodies that meet the requisite criteria to serve as initial regulators along with the OOPO. The benchmark qualified bodies designated by the Commerce Department must have reputations as regulatory and enforcement leaders in the gaming industry, must adhere to a strict regulatory regime, and must have sufficient staff, experience, and resources to regulate this new activity.
11. The bill requires strict scrutiny for suitability of operators and significant vendors (those who provide certain types of goods or services — such as software or intellectual property — to operators). For the first two years, in order to ensure a baseline level of expertise and experience, licensees must already be regulated operators (or affiliates of operators) of licensed land-based gambling facilities of a certain size and type (including commercial gaming operators, tracks and tribal operators) or manufacturers of certain types of regulated gaming devices.
12. In addition, licensing of persons (or use of their assets) that were involved in offering Internet gambling to United States residents after 2006 (following enactment of UIGEA) is prohibited for five years after enactment of the bill, subject to a rebuttable presumption that state or federal laws were violated by their post-UIGEA gambling activities in the United States. A person covered by this prohibition may seek relief from this sanction, but unless that person can establish to a court by a preponderance of the evidence that no state or federal laws were violated, the prohibition will stand. After the expiration of that five-year period, any such person can participate in licensed activities only if they pass muster under the stringent suitability review that may be conducted only by the OOPO or by a benchmark qualified body.
13. The bill prescribes time frames for issuance of the regulations necessary to implement its provisions and specifies that no licensee may begin operations until at least 15 months after the date of the bill's enactment. The bill envisions establishment of the OOPO within 6 months of enactment and the appointment of benchmark qualified bodies and issuance of regulations three months thereafter. Failure by the Commerce Department to issue regulations by that date will result in automatic adoption of the first benchmark qualified body's regulations until the Department has prescribed its own regulations.

Taken together, these time frames ensure a level playing field and prevent any one licensee from acquiring a “first mover’s advantage.”

14. The authorization for online poker is strictly limited and the bill contains a mechanism to create barriers to future expansion into other forms of Internet gambling.

### **Substantially All Revenue Is Dedicated To States**

15. The bill establishes a 16% online poker activity fee payable by licensees on a monthly basis — 14% payable to the states or tribes and 2% to the federal government with an adjustment mechanism to redirect any unused portion of the federal fee to the states or to establish additional funds — up to a maximum of 3.5% — if necessary to fund the permitted federal uses. The federal share of the online poker activity fee will be dedicated to OPO, law enforcement, Native American, and responsible gaming efforts. The activity fee is calculated as a percentage of eligible online poker receipts. The fee will be administered through a Treasury Department trust fund, with state and tribal receipts distributed to the respective states or tribes that have opted-in.
16. The state and tribal shares of the online poker activity fee will be apportioned based on two factors. 70% of the state and tribal portion of the online poker activity fee will be allocated based on the location of the customers from whom the licensee’s online poker receipts are generated. The remaining 30% will be paid to the state or tribe in which the licensee’s qualified body is located. (For licensees regulated directly by the OPO, that portion will become part of the federal share.)
17. The bill requires licensees to report and to withhold online poker winnings consistent with existing federal tax law, to ensure that players’ income attributable to poker winnings are reported and applicable taxes paid.
18. The bill also allows qualified bodies and the OPO (when acting as a qualified body) to assess user fees from applicants for licenses or significant vendor certifications in order to cover the costs of administration of the application process.

### **Lotteries**

19. The bill imposes strict limitations on online lotteries, while respecting the right of states and tribes to sell lottery tickets online and otherwise to retain regulatory authority over their lottery activities. As noted, states and tribes will only be able to sell “tangible” tickets online, in games where winners are determined not more frequently than daily. The games themselves cannot be played online and cannot mimic online games.

### **Tribes and States**

20. The bill treats Indian tribes fairly. Tribal regulatory bodies can become qualified bodies subject to the same criteria as state regulatory agencies. Like states, tribes can opt in to the bill’s regime, and tribes receive shares of the online poker activity fee on the same basis that applies to the states. Tribes with gaming facilities may participate as online poker operators subject to the suitability and other criteria identified above. However, tribes may not regulate themselves. Any tribe that serves as a qualified body may not also be an online poker operator for its own operation. A tribe that is precluded from opting in because the state in which it is located has not done so nevertheless may apply for designation as a qualified body.

21. The bill further provides that no decision or action taken by a tribe or state in connection with online poker activities or their participation in the regulation or operation of an online poker facility shall have any effect on non-Internet gaming activities under the Indian Gaming Regulatory Act or on any related tribal-state compact and shall not require a tribe or state to negotiate any new compact.
22. Existing gaming that is authorized, licensed, and regulated by states or tribes as of May 1, 2012 is preserved.

#### **WTO Issue**

23. Finally, the bill directs the United States Trade Representative to conclude the long-stalled process of withdrawal of U.S. remote gambling commitments under the General Agreement on Trade in Services (WTO) within 180 days of enactment or, if unable to meet that deadline, to initiate WTO arbitration.