

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1441

Internet Poker

SPONSOR(S): Abruzzo

TIED BILLS:

IDEN./SIM. BILLS:

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee		Marra	Cooper
2)	Government Operations Appropriations Committee			
3)	General Government Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The first Internet gambling site began in 1995. Today there are more than 600 Internet poker rooms. Two of the top three sites experiencing the most web traffic accept bets from U.S. residents.

It is estimated that U.S. residents wagered \$5.9 billion in 2008 on international gaming websites, which brought in \$21.0 billion from players worldwide. Because players may create multiple accounts and play on multiple websites, the number of Floridians playing Internet poker is difficult to ascertain. However, estimates indicate a significant number of Floridians play Internet poker.

In Florida, poker is currently authorized in 23 licensed cardrooms at pari-mutuel facilities throughout the state. The Division of Pari-mutuel Wagering within the Department of Business and Professional Regulation provides regulatory oversight.

The bill would authorize intrastate, nonbanked Internet poker. Under the bill, the state will contract with an Internet poker hub operator to operate the state's poker network. Cardroom affiliates, defined as licensed cardroom operators, will maintain websites as portals into the state's poker network.

The bill provides licensure and regulatory schemes, provides requirements for players and games, and provides protections for compulsive and underage gaming.

The DBPR reports it will require 4 FTEs and will incur significant expenditures in implementing the bill. However, these expenditures are offset by the collection of new licensure fees and poker taxes, resulting in a net revenue gain of \$5 million in the first fiscal year, and \$22 million to \$36 million in subsequent years.

The bill provides an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Overview of Internet Poker

The first Internet gambling site began in 1995.¹ Today there are more than 600 Internet poker rooms.² Two of the top three sites experiencing the most web traffic accept bets from U.S. residents.³

Many poker sites advertise in the United States, referring would-be customers to a .net web address offering free poker play. Players at the .net site are given the opportunity connect to the .com web address, where they can make wagers.⁴

It is estimated that U.S. residents wagered \$5.9 billion in 2008 on international gaming websites, which brought in \$21.0 billion from players worldwide.⁵

Because players may create multiple accounts and play on multiple websites, the number of Floridians playing online poker is difficult to ascertain, but Poker Voters of America estimates nearly 900,000 Floridians play, 300,000 of whom regularly play for money.⁶

Federal Regulation

Congress has met with two main obstacles in attempting to enforce online gaming prohibitions: the fact that most Internet gaming websites are operated overseas and the question whether the Wire Act can be used against any form of gambling other than sports betting.⁷

¹ Ryan D. Hammer, Does Internet Gambling Strengthen the U.S. Economy? Don't Bet on It. 54 Fed. Communications L. Journal 103, 106 (2001).

² See list at <http://www.pokerscout.com/PokerSites.aspx>.

³ See traffic report at <http://www.pokerscout.com>.

⁴ Compare <http://www.pokerstars.net> and <http://www.pokerstars.com>.

⁵ American Gaming Association, Internet Gaming Fact Sheet, available at http://www.americangaming.org/Industry/factsheets/issues_detail.cfv?id=17 (citing H2 Gambling Capital).

⁶ These numbers indicate the number of registrations originating in Florida. Because players are known to register multiple accounts on multiple sites, the actual number of Floridian players is likely less.

⁷ Charles Doyle, Congressional Research Service, *Internet Gambling: Two Approaches in the 109th Congress*, Oct. 2, 2006.

Wire Act⁸

The Wire 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 ... shall be fined under this title or imprisoned not more than two years, or both.

Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of ... wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal.

The Wire Act has been used to prosecute online sports betting,⁹ but has had conflicting results when used in relation to other forms of gaming.¹⁰ In the early 2000s, the U.S. Department of Justice relied on the Wire Act, which it interpreted as forbidding Internet gambling generally, to dissuade states from regulating Internet gambling.¹¹

*Unlawful Internet Gaming Enforcement Act (UIGEA)*¹²

Congress enacted the UIGEA in 2006 to prohibit Internet gambling operators from knowingly accepting money related to any online gambling that violates State or Federal Law.¹³ The Act does not itself outlaw any gambling activity, but rather incorporates other Federal or State law related to gambling.¹⁴

The UIGEA also directed the Department of Treasury and Federal Reserve Board to issue regulations obliging financial institutions to block payments for unlawful Internet gambling.¹⁵ The final version of these regulations went into effect January 2009, but companies have until June 2010 to comply.¹⁶

The act specifically excludes *intrastate* gaming from the definition of 'unlawful Internet gambling':¹⁷

- (B) Intrastate transactions.--The term "unlawful Internet gambling" does not include placing, receiving, or otherwise transmitting a bet or wager where--
- (i) the bet or wager is initiated and received or otherwise made exclusively within a single State;
 - (ii) the bet or wager and the method by which the bet or wager is initiated and received or otherwise made is expressly authorized by and placed in accordance with the laws of such State, and the State law or regulations include--
 - (I) age and location verification requirements reasonably designed to block access to minors and persons located out of such State; and

⁸ 18 U.S.C. 1084.

⁹ *United States v. Cohen*, 260 F.3d 68 (2d Cir. 2001).

¹⁰ Compare *United States v. Smith*, 390 F.2d 420 (4th Cir. 1968)(Conviction for a 'numbers racket'), and *In re Mastercard International*, 313 F.3d 257, 262-63 (5th Cir. 2002)(Court rejected argument that credit card companies aided and abetted a violation of Wire Act by honoring credit card charges because the charges did not involve sports betting.).

¹¹ See Letter from Michael Chertoff, Asst. Attorney General, to Nevada Gaming Control Board, (Aug. 23, 2002)(citing ss. 1084, 1952 and 1955 of Title 18, U.S.C.), *available on file with author*; and Constitutional Discussion of Preemption, *infra* at p. 9.

¹² 31 U.S.C. s. 5361-5367.

¹³ 31 U.S.C. s. 5363.

¹⁴ *Interactive Media Entertainment and Gaming Ass'n v. Attorney General of U.S.*, 580 F.3d 113, 116 (3d Cir. (N.J.) 2009), *dicta*. See also 31 U.S.C.A. § 5362 ("The term 'unlawful Internet gambling' means to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet *where such bet or wager is unlawful under any applicable Federal or State law* in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made.") *emphasis added*.

¹⁵ 31 U.S.C. s. 5364.

¹⁶ 12 C.F.R. pt. 233 and 31 C.F.R. pt. 132.

¹⁷ 31 U.S.C. s. 5362(10)(B)

- (II) appropriate data security standards to prevent unauthorized access by any person whose age and current location has not been verified in accordance with such State's law or regulations; and
- (iii) the bet or wager does not violate any provision of--
 - (I) the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.);
 - (II) chapter 178 of title 28 (commonly known as the "Professional and Amateur Sports Protection Act");
 - (III) the Gambling Devices Transportation Act (15 U.S.C. 1171 et seq.); or
 - (IV) the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

However, some have argued that, because gambling information transmitted over the Internet likely crosses state lines, it is not possible to conduct Internet poker exclusively within a state.¹⁸ Although, the U.S. Department of Justice has not issued an opinion on the matter, it previously held the view that the Wire Act prohibited Internet gaming.¹⁹

The regulations require that financial institutions and other payment processors conduct "due diligence" when creating a new relationship with a commercial customer. The due diligence obligation is automatically met if the Internet gambling operator is a part of state government, has a state or tribal license, or has a reasoned legal opinion²⁰ that it is not involved in restricted transactions.²¹

In 2007, the World Trade Organization held that the UIGEA is illegal, because it effectively prohibited the offshore supply of Internet gambling services from foreign countries, in violation of U.S. agreements under the General Agreement on Trade in Services.²² The WTO ordered the United States to bring its laws into compliance²³ and, after it failed to do so, authorized Antigua, the complaining country, to retaliate by unilaterally disregarding \$17 million worth of U.S. intellectual property rights annually.

Poker in Florida

Poker is currently played in 23 licensed cardrooms at pari-mutuel facilities throughout the state.²⁴ The Division of Pari-mutuel Wagering (Division) within the Department of Business and Professional Regulation (DBPR) provides regulatory oversight.

To obtain a cardroom license, an applicant must:

- Conduct a minimum number of live performances,
- Show that the governing body of the applicable locality has approved cardrooms,
- Pay an annual fee of \$1,000 per table,
- Provide a \$50,000 surety bond to the state,
- Submit internal control procedures for Division approval.

Additionally, penny ante poker games, defined as those in which the winnings of any player in a single round, hand, or game do not exceed \$10 in value, are legal.²⁵

¹⁸ Office of Program Policy Analysis & Government Accountability, *The Legislature Could Consider Several Options to Protect Consumers from Unregulated Internet Poker Report*, Report 09-39 6 (Nov. 2009).

¹⁹ See Constitutional Discussion of Preemption, *infra* at p. 9.

²⁰ "Reasoned legal opinion" is defined as "a written expression of professional judgment by a State-licensed attorney that addresses the facts of a particular client's business and the legality of the client's provision of its services to relevant customers in the relevant jurisdictions under applicable federal and State law, and, in the case of intratribal transactions, applicable tribal ordinances, tribal resolutions, and Tribal-State compacts. A written legal opinion will not be considered "reasoned" if it does nothing more than recite the facts and express a conclusion." 12 C.F.R. s. 233.2.

²¹ 12 C.F.R. s. 233.6(b).

²² Warren Giles, *U.S. Ban on Web Gambling Rejected*, The Washington Post (Mar. 31 2007), available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/03/30/AR2007033002161.html>.

²³ Award of the Arbitrator, United State - Measures Affecting the Cross Border Supplies of Gambling and Betting Services, WT/DS285/13 (Aug. 19, 2005).

²⁴ Section 849.086, F.S.

²⁵ Section 849.085, F.S.

Sunrise Act

According to s. 11.62, F.S., the "Sunrise Act," it is the intent of the Legislature that:

- No profession or occupation is subject to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage and that the police power of the state be exercised only to the extent necessary for that purpose; and
- No profession or occupation is regulated by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation or adversely affects the availability of the professional or occupational services to the public.

In determining whether to regulate a profession or occupation, s.11.62, F.S., requires the Legislature to consider the following:

- I. Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- II. Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;
- III. Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;
- IV. Whether the public is or can be effectively protected by other means; and
- V. Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

Proposed Changes

The bill creates the Internet Poker Consumer Protection and Revenue Generation Act of 2010.

The bill provides legislative intent to create a framework for state regulation of intrastate internet poker to:

- Ensure intrastate poker is conducted in compliance with the UIGEA;
- Provide a new source of revenue;
- Create a contractual relationship with an Internet poker hub operator to ensure play is confined to Florida players;
- Provide for competitive process for choosing such an operator;
- Provide for licensed cardroom operators to offer intranet poker;
- Ensure that the state may collect applicable taxes and fees;
- Protect registered poker players' privacy and prevent fraud;
- Ensure unlimited access by regulators;
- Require hub operators provide accessible customer service; and
- Require poker web site to contain information regarding help for problem gambling.

The bill provides definitions applicable to the act.

The bill provides that the Legislature has exclusive authority over intrastate Internet poker. This effectively preempts any attempts by local governments to regulate the game.

Games

The bill authorizes the playing of and wagering on non-banked,²⁶ intrastate games of poker. The hub operator is authorized to charge players a per-hand charge, consisting of a set fee or percentage of the pot, and tournament fees, which may not be based on the amount won by players.

The website must display for each authorized game:

- The name of the game;
- Any restrictions on play;
- The rules of the game;
- All instructions on how to play;
- The unit and total bets permitted;
- The registered player's current account balance, which shall be updated in real time; and
- Any other information necessary for fair play.

The hub operator must submit game proposals to the Division, which include a description of the game and betting rules, a legal opinion explaining compliance with Florida law, and technical software documentation. If the Division does not object within 30 days, the game is authorized.

Operation

The state will contract with an Internet poker hub operator to operate the state's poker network. Cardroom affiliates, defined as licensed cardroom operators, will maintain websites as portals into the state's poker network.

The hub operator must minimize fraud or cheating through collusion. This requirement does not create a private cause of action for players.

Players

Players must be 21 years or older and be physically present in the state when playing. Division employees and occupational licensees, and those living in their households, may not play on the hub.

Players must register and establish player accounts with the hub operator. A player may only have one account. Registration requires the following information, which will be protected from public access:

- First and last name,
- Principal residence address,
- Telephone number,
- Social security number,
- Legal identification or certification to prove the person is 21 years old.
- Valid email address, and
- Source of funds to be used to establish the account once registration is complete.

A player's account may be revoked for:

- Providing false registration information,
- Failing to update registration information,
- Violating terms of use agreement,
- Prior registration, or
- Participating in illegal activity on the poker hub.

Oversight

The Division is authorized to administer the act and regulate the operation of intrastate Internet poker. This authority includes rulemaking, investigatory and disciplinary authority over the hub operator and cardroom affiliates.

²⁶ Non-banked games are those in which the 'House' is not a player – the players play against each other, with the House facilitating.

The Division shall choose an Internet poker hub operator through a competitive procurement process. Such an operator must show it meets the following qualifications:

- Be incorporated in the state;
- Be legally, technically and financially qualified to provide the services;
- Be experienced and qualified to receive a license;
- Be licensed to operate gaming or lottery activities in one or more regulated jurisdictions in the United States;
- Have existing and established experience with Internet gaming; and
- Be licensed to conduct Internet gaming in one or more regulated jurisdictions outside the United States, where such activity is legal.
- Also, its executives and employees must meet the act's occupational licensure requirements.

The applicant must also describe how it will perform as a hub operator and must provide:

- Documentation relating to the applicant, its direct and indirect owners;
- Documentation relating to all proposed subcontractors;
- Descriptions of the methods the applicant will use to implement the act's requirements;
- Descriptions of the games and services proposed;
- Descriptions of the methods the applicant will use to ensure age requirements and facilitate player protections and resolve player disputes; and
- \$25,000 initial filing fee to cover Division's investigation. The Division is authorized to adopt procedures to refund unused portions of this fee.

The bill provides that the hub operator will be subject to contract terms and the following:

- If the act is amended, the hub operator may declare the contract null and void within 60 days; otherwise it is bound to the amendment;
- If performance of the contract becomes commercially infeasible due to some event, including changes in federal law, the hub operator may abandon the contract with 30-days notice to the Division;
- Contractual disputes are to be resolved by either an administrative law judge or circuit court.

The bill provides for the licensure of intrastate Internet poker hub operators and cardroom affiliates, as outlined in the chart below.

	Hub Operator	Cardroom Affiliate
Requirements	Be incorporated in the state	Hold a cardroom license under s. 849.086, F.S.
<i>Changes in Ownership</i>	<ul style="list-style-type: none"> – Submit changes in ownership or interest of 5% or more to the Division for approval prior to the change. – Submit changes in ownership or interest of less than 5% to the Division within 20 days of the change. 	
Fees	Deposited into the Pari-mutuel Wagering Trust Fund to fund Division oversight and regulation	
<i>Initial</i>	\$500,000 application fee	\$1,000
<i>Surety Bond</i>	\$500,000 annually	
<i>License Renewal</i>	10% monthly gross receipts of previous fiscal year	\$1,000
<i>Tax</i>	20% monthly gross receipts from intrastate poker	
<i>Other</i>	Failure to pay taxes is subject to fine up to \$10,000 per day.	4% monthly gross receipts from intrastate poker must be used to supplement pari-mutuel purses and prizes.
Discipline		
<i>Revoke, Suspend</i>	Willful violation of act or division rules	
<i>Administrative Fine</i>	Up to \$100,000 per offense for willful violation of act or division rules as alternative to license revocation or suspension.	

The bill also provides that the Division will issue occupational licenses for businesses associated with and employees of hub operators and cardroom affiliates. Occupational licensees must be 21 years old. The division is given rulemaking authority to implement the provisions and collect initial and renewal licensure fees, which may not exceed \$50 for an employee or \$1,000 for a business.

Occupational license applicants must submit fingerprints for a background investigation. The bill provides grounds for denial, revocation or suspension of an occupational license, including

- Licensure refusal or disciplinary action by any other governmental entity governing gaming;
- Violation of Florida's gaming laws;
- Felony conviction involving arson, trafficking controlled substances, racketeering or a crime involving a lack of good moral character;
- Convicted of a misdemeanor or felony involving gambling or bookmaking; and
- Accumulation of unpaid obligations, defaults or dishonored checks.
- The Division may also take disciplinary action against a licensee who provides false information under oath regarding an application or Division investigation.

The Division may impose a civil fine up to \$10,000 for each violation of the act or Division rules.

The hub operator must keep records and make reports accessible to the Division.

The bill prohibits Division employees from having certain business or financial relationships with licensees.

Problem Gaming

The hub operator must exclude anyone who has submitted an Internet Poker Self-Exclusion Form, which must be provided online. The hub operator cannot be held liable if a self-excluded player gains access and plays. The website must prominently display a link to a responsible gaming organization website.

The hub operator must give players the ability to:

- Set a per-day limit on deposits,
- Set a limit on the amount that can be wagered within a specified time,
- Set a limit on the losses that may occur within a specified time,
- Set a limit on the amount of time that can be played after logging onto the hub, and
- Prevent the hub from allowing the player to play for a definite or indefinite period of time.

The hub operator must also display the following during game play:

- How long the player has been playing,
- The player's wins and losses since last logging on,
- Give an option to end the session or return to the game, and
- Require the player to confirm that they have read the message.

The bill provides an effective date of July 1, 2010.

B. SECTION DIRECTORY:

Section 1 titles the act the "Internet Poker Consumer Protection and Revenue Generation Act of 2010."

Section 2 creates s. 849.087, F.S., allows intrastate Internet poker, provided by cardroom operators through a state Internet poker network operated by Internet poker hub operators.

Section 3 provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Department of Business and Professional Regulation expects the following revenue:

	FY 2010-11	FY 2011-12	FY 2012-13
Hub Operator	500,000	2,695,385	10,931,282
Cardroom Affiliate	23,000	23,000	23,000
Business Licenses	35,000	35,000	35,000
Occupational Licenses	10,000	10,000	10,000
Investigation Fee	25,000	-	-
Taxes	5,390,769	21,862,564	29,200,000
Total	5,983,769	24,625,949	40,199,282

2. Expenditures:

The Department of Business and Professional Regulation expects the following expenditures from the Pari-mutuel Wagering Trust Fund:

	FY 2010-11	FY 2011-12	FY 2012-13
Recurring			
4 FTEs ²⁷	224,246	224,246	224,246
Expenses	26,032	26,032	26,032
Contracted Services ²⁸	75,000	75,000	75,000
Transfer to DMS (HR)	1,596	1,596	1,596
Operation of Motor Vehicles	3,000	3,000	3,000
<i>Recurring Subtotal</i>	<i>329,874</i>	<i>329,874</i>	<i>329,874</i>
Non-Recurring			
Expense	15,508	-	-
Operating Capital Outlay	4,000	-	-
Acquisition of Motor Vehicles	18,000	-	-
Contracted Services (CMS) ²⁹	100,000	-	-
Service Charge to GR (8% revenue)	478,702	1,970,076	3,215,943
<i>Non-Recurring Subtotal</i>	<i>616,210</i>	<i>1,970,076</i>	<i>3,215,943</i>
Net Revenue Over Expenditures	5,037,685	22,325,999	36,653,465

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

²⁷ The four requested FTEs would include a Financial Examiner Analyst II, Tax Auditor IV, Operations Review Specialist and Investigation Specialist.

²⁸ Expert consultation as to technical aspects of intrastate Internet poker system.

²⁹ Modification of Central Monitoring System to accommodate Internet poker reports.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Currently, the operation of Internet poker is illegal in Florida. By authorizing and regulating the game, businesses will be able to take part in the enterprise legally.

D. FISCAL COMMENTS:

The DBPR reports it will require 4 FTEs and will incur significant expenditures in implementing the bill. However, these expenditures are offset by the collection of new licensure fees and poker taxes, resulting in a net revenue gain of \$5 million in the first fiscal year, and \$22 million to \$36 million in subsequent years.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Delegation

The Department of Business and Professional Regulation reports:

While the bill provides for fairly extensive filing for an application or response to an RFP to provide Internet poker hub services, it does not provide clear criteria for the division to use in making an award determination. Leaving these criteria for the division to determine through rulemaking might constitute an unconstitutional delegation of legislative authority in violation of the non-delegation doctrine of Art. II, s. 3, of the Florida Constitution.

Federal Preemption

If federal law is found to prohibit intrastate Internet poker, the act would be preempted to the extent it conflicts with the federal law.

The Supremacy Clause of the U.S. Constitution applies when state law is inconsistent with federal law. State law directly conflicting with federal law is invalid.³⁰ State laws not in direct conflict may also be invalidated if a court finds Congress intended to occupy the entire field regulated, even if the state law seems to reinforce or compliment the federal law.³¹ Courts will determine whether the scheme of federal regulation is comprehensive.³²

The UIGEA does not regulate any gambling activity, but incorporates other Federal or State law related to gambling:

The term 'unlawful Internet gambling' means to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet *where such bet or wager is unlawful under any applicable Federal or State law* in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made.³³

³⁰ See *Perez v. Campbell*, 402 U.S. 637 (1971); *McCulloch v. Maryland*, 17 U.S. 316 (1819).

³¹ *Campbell v. Hussey*, 368 U.S. 297 (1961).

³² *Pennsylvania v. Nelson*, 350 U.S. 497 (1956).

³³ *Interactive Media Entertainment and Gaming Ass'n v. Attorney General of U.S.*, 580 F.3d 113, 116 (3d Cir. (N.J.) 2009), *dicta*. See also 31 U.S.C.A. § 5362, *emphasis added*.

The Wire Act prohibits “knowingly [using] a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers.”³⁴ It also exempts wagers on a contest from a State where such betting is legal into a State in which such betting is legal.³⁵

The Wire Act has been used to prosecute online sports betting,³⁶ but has had conflicting results when used in relation to other forms of gaming.³⁷ While the UIGEA excludes intrastate gaming, some argue that, because gambling information transmitted over the Internet likely crosses state lines, it is not possible to conduct Internet poker exclusively within a state.³⁸

Before the UIGEA’s enactment, state efforts, including that of Nevada and North Dakota, to regulate Internet gaming met with resistance from the U.S. Department of Justice.³⁹ The Department advised that federal law prohibited gambling over the Internet, citing the Wire Act, the Travel Act, and the Illegal Gambling Business Act.⁴⁰

Thus, whether the state may regulate intrastate Internet poker will rely on whether the Wire Act is interpreted to prohibit intrastate Internet gaming, and whether intrastate Internet gaming is factually possible.

B. RULE-MAKING AUTHORITY:

The Division is given rulemaking authority to implement the act and regulate the operation of intrastate Internet poker.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Business and Professional Regulation reports the following concerns:

While the bill provides for fairly extensive filing for an application or response to an RFP to provide Internet poker hub services, it does not specify whether or not only one hub license/contract is to be awarded, nor does it provide clear criteria for the division to use in making an award determination. This lack of clarity could result in litigation in the form of rule challenges or bid protests. Further, there is the possibility of litigation by anti-gambling groups.

The statute would only allow for suspension or revocation of an Internet poker hub license or a cardroom affiliate license if the division could show that the violation is ‘willful,’ which would be particularly difficult to establish due to the nature of Internet activities and the only evidence would be provided by monitoring and reports of Internet activity.

Line 504 of the bill allows for contract termination for ‘some other event’ without providing details as to the nature of the said qualifying event. This could allow the hub operator to terminate the contract for virtually any reason.⁴¹

³⁴ 18 U.S.C. 1084.

³⁵ *Id.*

³⁶ *United States v. Cohen*, 260 F.3d 68 (2d Cir. 2001).

³⁷ *Compare United States v. Smith*, 390 F.2d 420 (4th Cir. 1968)(Conviction for a ‘numbers racket’), and *In re Mastercard International*, 313 F.3d 257, 262-63 (5th Cir. 2002)(Court rejected argument that credit card companies aided and abetted a violation of Wire Act by honoring credit card charges because the charges did not involve sports betting.).

³⁸ Office of Program Policy Analysis & Government Accountability, *The Legislature Could Consider Several Options to Protect Consumers from Unregulated Internet Poker Report*, Report 09-39 6 (Nov. 2009).

³⁹ Letter from Michael Chertoff, Asst. Attorney General, to Nevada Gaming Control Board, (Aug. 23, 2002)(citing ss. 1084, 1952 and 1955 of Title 18, U.S.C.), *available on file with author*.

⁴⁰ *Id.*

⁴¹ Under the bill, ‘some other event’ would be limited to an event causing ‘commercial infeasibility.’

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES