

Date of Hearing: April 27, 2016

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

AB 2863 (Gray) – As Amended April 20, 2016

**SUBJECT:** Gambling: Internet poker

**SUMMARY:** This bill, which would be known as the Internet Poker Consumer Protection Act of 2016 (Act), would establish a framework to authorize intrastate Internet poker in California, as specified. Specifically, **this bill:**

- 1) Establishes the Internet Poker Consumer Protection Act of 2016, which would establish a framework to authorize intrastate Internet poker, as specified.
- 2) Provides “Eligible entity” would include both of the following: (i) A card room that operates, as defined, whose owner or owners have been authorized, subject to oversight by, and in good standing with, the applicable state regulatory authorities. (ii) A federally recognized California Indian tribe that operates a gaming facility pursuant to a facility license issued in accordance with a tribal gaming ordinance approved by the Chair of the National Indian Gaming Commission and that is eligible to conduct real-money poker at that facility.
- 3) Provides an entity, as defined above shall have operated its land-based gaming facility for at least five years immediately preceding its application to secure a license to operate an Internet poker Web site pursuant to this Act, and shall be in good standing during that time period with the applicable federal, state, and tribal regulatory authorities.
- 4) Provides that a person who is 21 years of age or older and located within California is hereby permitted to participate as a registered player in an authorized Internet poker game provided by a licensed operator on an authorized poker Web site. The bill does not authorize any game offered in Nevada or New Jersey other than poker.
- 5) Provides that within 270 days after the effective date of the Act, the California Gambling Control Commission (CGCC), and any other state agency with a duty pursuant to this Act, shall, in consultation with the California Department of Justice (DOJ or department) and tribes, adopt regulations pursuant to the Administrative Procedure Act, as defined, to implement this bill, and to facilitate the operation of authorized poker Web sites and expedite the state’s receipt of revenues, as defined.
- 6) Authorized Internet poker games may be offered only by entities licensed pursuant to this Act. An eligible entity seeking to offer authorized Internet poker games shall apply to the department for a determination of suitability. If the department determines the applicant is suitable to receive a license, the applicant shall then apply to the commission for an operator license. The applicant shall pay an application-processing fee sufficient to cover the reasonable costs associated with the determination of suitability and the issuance of the license.
- 7) States employees of the licensed operator shall undergo a suitability review and obtain work permits, as specified. Owners, officers, and directors of licensed operators shall also undergo a suitability review and obtain employee work permits, as defined. CGCC may refuse to issue a

license to an applicant, or suspend or revoke a license of a licensed operator that fails to comply with this requirement.

8) Provides an applicant for an operator license pursuant to this bill that is a tribe shall include with its license application a limited waiver of the applicant's sovereign immunity. This limited waiver shall apply exclusively to the state, and no other party, solely for the limited purpose of enforcing this chapter and any regulations adopted pursuant to this chapter, and with regard to any claim, sanction, or penalty arising therefrom against the licensed operator by the state, and for no other purpose.

9) Provides that an operator license denoting full licensure shall be issued for a term of seven years. Each initial operator license issued pursuant to this section shall take effect on the same date. A licensee's employees in direct contact with registered players shall be physically present in the state. All primary servers, facilities, bank accounts, and accounting records of the licensee related to authorize Internet poker shall be located in the state, except as defined.

10) Provides in addition to any other confidentiality protections afforded to license applicants, the state and its agencies shall treat the proprietary information of a license applicant as confidential to protect the license applicant and to protect the security of any prospective authorized poker Web site. The Act does not prohibit the exchange of confidential information among state agencies considering a license application.

11) States an entity seeking to act as a service provider shall apply to the department for a determination of suitability. If DOJ determines the applicant is suitable to receive a license, the applicant shall then apply to CGCC for a service provider license, and obtain a service provider license, before providing goods or services to a licensed operator in connection with the operation of an authorized poker Web site. DOJ shall review the suitability of an applicant for a service provider license. The applicant for a service provider license shall pay an application-processing fee sufficient to cover the reasonable costs associated with the determination of suitability and the issuance of the license. DOJ may establish a process to conduct a preliminary determination of suitability based on a partial investigation. A partial investigation is intended to screen out applicants that do not meet the suitability requirements, as defined.

12) States a full investigation shall include a review and evaluation of the service provider's qualifications and experience to provide the services anticipated, which shall include the required submission of a report prepared on each service provider by an outside firm contracted and supervised by the department, in a format developed by the department, and at the service provider's expense. The report shall include information necessary for DOJ to make a determination of suitability, as specified in regulations adopted pursuant to this Act, consisting of, but not limited to, personal history, prior activities and associations, credit history, civil litigation, past and present financial affairs and standing, and business activities, including whether the applicant or an affiliate of the applicant has a financial interest in any business or organization that is or was engaged in any form of gaming or transactions related to gaming prohibited by the law of the federal or state jurisdiction in which those activities took place. DOJ may specify additional requirements regarding the contents of the report and other information or documentation required to be submitted.

13) Provides DOJ shall issue a finding that a license applicant is suitable to obtain a license only if, based on all of the information and documents submitted, the department is satisfied that each of the persons subject to a determination of suitability pursuant to this article is both of the

following: (1) A person of good character, honesty, and integrity, or, if an entity, in good standing in its jurisdiction of organization and in all other jurisdictions in which it is qualified, or should be qualified, to do business. (2) A person whose prior activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the public interest of the state, or to the effective regulation and control of authorized Internet poker games, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of authorized Internet poker games or in the carrying on of the business and financial arrangements incidental thereto.

14) States DOJ shall issue a finding that a license applicant is not suitable to obtain a license if it finds that a person subject to a determination of suitability pursuant to this article is described by any of the following: (1) The person failed to clearly establish eligibility and qualifications in accordance with this Act. (2) The person failed to timely provide information, documentation, and assurances required by this Act or requested by the department, or, with respect to a licensed applicant, failed to reveal any fact material to qualification, or supplied information that is untrue or misleading as to a material fact pertaining to the suitability criteria. (3) The person has been convicted of a felony, including a conviction by a federal court or a court in another state or foreign jurisdiction for a crime that would constitute a felony if committed in California, except that a conviction of a felony involving the hunting or fishing rights of a tribal member while on his or her reservation shall not be included among the class of disqualifying felonies. (4) The person has been convicted of a misdemeanor in a jurisdiction involving dishonesty or moral turpitude within the 10-year period immediately preceding the submission of the application, unless the applicant has been granted relief, as defined. (5) The person has associated with criminal profiteering activity or organized crime, as defined in the Penal Code. (6) The person has contemptuously defied a legislative investigative body, or other official investigative body of a state or of the United States or a foreign jurisdiction, when that body is engaged in the investigation of crimes relating to poker, official corruption related to poker activities, or criminal profiteering activity or organized crime, as defined in Section 186.2 of the Penal Code. (7) The person is less than 21 years of age. (8) *The person has been convicted in a court of competent jurisdiction of a felony consisting of either having accepted a bet over the Internet in violation of United States or California law, or having aided or abetted that unlawful activity.*

15) *Provides this Act shall not become operative until criteria are established by statute to address involvement in Internet betting prior to the state's authorization of Internet poker pursuant to this bill.*

16) Provides does not restrict the authority of a tribe that is a licensed operator or that owns a tribal enterprise that is a licensed operator to conduct suitability reviews of its service providers, as defined.

17) Provides a licensed operator shall ensure that registered players are eligible to play authorized Internet poker games and implement appropriate data security standards to prevent access by a person whose age and location have not been verified, as specified. A registered player shall be physically located within the State of California at the time of gambling. Provides DOJ may assess a civil penalty against a person who violates this provision, whether a licensed operator, owner, service provider, or player, as specified.

18) Provides a licensed operator shall register players and establish registered player accounts prior to play. A registered player account may be established in person, or by United States mail,

telephone, or by any electronic means. To register and establish a registered player account to play poker with real money, a person shall provide all of the following registration information: (1) First name and surname; (2) Principal residence address; (3) Telephone number; (4) Social security number; (5) Identification or certification to prove that person is at least 21 years of age; (6) Valid email address; and (7) A registered player shall not establish more than one account on the same authorized poker Web site.

19) Provides all personally identifiable information about registered players shall be shared with state agencies, including, but not limited to, DOJ, CGCC, the Franchise Tax Board, and the Department of Child Support Services as necessary to assist them in fulfilling their obligations, as specified.

20) States a licensed operator shall protect the privacy of registered players and their personally identifiable information, as specified. A licensed operator shall comply with all applicable state and federal privacy and data protection laws. A licensed operator shall destroy personally identifiable information if both of the following apply: (1) The information is no longer reasonably necessary for the purpose for which it was collected. (2) There are no pending requests or orders for access to the information, as specified.

21) Provides a licensed operator shall establish a book of accounts and regularly audit all of its financial records and reports, as specified. Provides a licensed operator shall make all financial records established and maintained, as defined, including, but not limited to, all books, records, documents, financial information, and financial reports, available on an electronic basis, as required by CGCC, DOJ, or other state agencies, as specified.

22) States a licensed operator shall: (a) Implement technical systems that materially aid the CGCC in the protection of registered players. (b) Ensure that all transactions involving registered players' funds are recoverable by the system in the event of a failure or malfunction. (c) Document and implement preventive and detective controls addressing money laundering and fraud risks.

23) States a licensed operator may charge registered players to play in authorized Internet poker games, as defined.

24) Provides in support of the application for a license pursuant to this Act, prior to offering games or accepting bets on its authorized poker Web site, the licensed operator shall remit to the Treasurer a one-time license deposit in the amount of \_\_\_\_ dollars (\$\_\_\_\_), to be deposited into the General Fund, as defined, and credited against charges imposed on the licensed operator's gross gaming revenues.

25) Provides in consideration of the substantial value of each license, a licensed operator shall remit to the Treasurer on a quarterly basis for deposit in the General Fund, an amount equal to \_\_\_\_ percent of its gross gaming revenues. Gross gaming revenue is defined as "*the total amount of moneys paid by players to the operator to participate in authorized games before deducting the cost of operating those activities except for fees to marketing affiliates and payment processing fees.*"

26) States each licensed operator shall pay a regulatory fee, to be deposited in the Internet Poker Fund, in an amount to be determined by the CGCC, for the reasonable costs of license oversight, consumer protection, state regulation, problem gambling programs, and other purposes related to this chapter, determined on a pro rata basis depending on the number of licensed operators in the state.

27) Requires the first \$60,000,000 collected each fiscal year pursuant to the license deposit and from the tax on iPoker operations to be deposited into the California Horse Racing Internet Poker Account, which would be established in the General Fund. The bill would continuously appropriate the funds as follows:

(a) One and three-twentieths percent to the defined contribution retirement plan for California-licensed jockeys, as established in current law.

(b) One and three-twentieths percent to provide health and welfare benefits for California-licensed jockeys, former California-licensed jockeys, and their dependents, as defined.

(c) Two and three-tenths percent to supplement the pension plan for pari-mutuel employees administered on behalf of the labor organization that has historically represented the employees who accept or process any form of wagering at the horse racing meetings and for other entities licensed to conduct wagering on horse races in California. Moneys distributed pursuant to this provision shall supplement, and not supplant, moneys distributed to that fund pursuant to this chapter or any other law.

(d) Ninety-five and four-tenths percent to racing associations or fairs as commissions, to horsemen participating in the racing meeting in the form of purses, and as incentive awards, in the same relative proportion as they were generated or earned at each racing association or fair on races conducted or imported by that racing association or fair during the prior calendar year, as specified.

(e) Five percent to the State Treasury to the credit of the Fair and Exposition Fund, to benefit state designated fairs, as defined.

28) States each licensed operator shall pay a regulatory fee, to be deposited in the Internet Poker Fund, in an amount to be determined by CGCC, for the reasonable costs of license oversight, consumer protection, state regulation, problem gambling programs, and other purposes as determined on a pro rata basis depending on the number of licensed operators in the state.

29) Provides the licensed operator shall facilitate the collection of personal income taxes from registered players by the Franchise Tax Board and shall be responsible for providing current and accurate documentation on a timely basis to all state agencies, as provided.

30) States a licensee shall act expeditiously to cure any violation of this chapter, or any regulation adopted pursuant to this bill, in the offer or administration of authorized Internet poker games that interferes with its obligations to the state or registered players under this Act.

31) Provides DOJ shall protect the rights and assets of registered players on an authorized poker Web site if the licensed operator's license pursuant to this ACT is revoked or the licensed operator becomes bankrupt.

32) Provides all facilities, software, including downloadable programs, and any other property, both tangible and intangible, used by the licensed operator in offering authorized Internet poker games for play on an authorized poker Web site shall be the property of the licensed operator or its licensed service providers, and shall be subject to the review of the department and the approval of the CGCC.

33) Provides the department or CGCC may contract with other public or private entities, including, but not limited to, state, tribal, and international regulatory agencies, for the provision of services related to a responsibility imposed on the department or CGCC by this Act, as defined.

34) Provides a licensed operator shall use its best efforts to protect registered players. Subject to the approval of DOJ, and consistent with uniform standards established by the department by regulation, each licensed operator shall establish administrative procedures to resolve registered player complaints, as specified.

35) Provides the Treasurer shall transfer all amounts received, as specified, to the Controller for deposit in the Internet Poker Fund, which is created in the State Treasury, to be administered by DOJ. All moneys in the fund are continuously appropriated to the department and CGCC, without regard to fiscal years, in the amounts necessary for the department and the CGCC to perform their duties under the Act.

36) Establishes the Unlawful Gambling Enforcement Fund within the General Fund for purposes of ensuring adequate resources for law enforcement charged with enforcing the prohibitions and protections of the provisions, as described above. Authorizes the Attorney General, and other public prosecutors, as specified, to bring a civil action to recover a civil penalty in an unspecified amount against a person who engages in those prohibited activities described above, or other specified unlawful gambling activities in connection with the use of an Internet access device. Provides for an unspecified percentage of revenues from civil penalties collected to be deposited into the fund and used for law enforcement activities pursuant to these provisions, upon appropriation by the Legislature.

37) Provides that any violation of the Internet Poker Consumer Protection Act of 2016 is punishable as a felony

38) Requires the CGCC, in consultation with the department, the Treasurer, and the Franchise Tax Board, to issue a report to the Legislature describing the state's efforts to meet the policy goals articulated in this bill within one year of the operative date of this bill and, annually, thereafter.

39) Requires the Bureau of State Audits, at least 4 years after the issue date of any license by the state, but no later than 5 years after that date, to issue a report to the Legislature detailing the implementation of this bill, as specified.

40) Provides the Act shall remain in effect until January 1, 2024.

#### **EXISTING LAW:**

1) In 2000, Californians approved Proposition 1A which amended Article IV, Section 19 of the State Constitution to allow slot machines, lottery games, and banking and percentage card games

on Indian tribal lands if: (1) the Governor and an Indian tribe reach agreement on a compact; (2) the Legislature approves the compact; and (3) the federal government approves the compact. Proposition 1A was a follow-up to a court's determination that a 1998 statutory initiative authorizing tribal casinos (Proposition 5) was unconstitutional. The State of California has signed and ratified Tribal-State Gaming Compacts with 72 Tribes and there are Secretarial Procedures in effect with one Tribe. There are currently 60 casinos operated by 58 Tribes.

2) Existing federal law, the Federal Indian Gaming Regulatory Act (IGRA) of 1988, established the jurisdictional framework that presently governs Indian gaming. Under IGRA, before a tribe may lawfully conduct class III gaming (games commonly played at casinos, such as slot machines and black jack), the following conditions must be met: (1) The particular form of class III gaming must be permitted in the state; (2) The tribe and the state must have negotiated a compact that has been approved by the Secretary of the Interior; and (3) The tribe must have adopted a tribal gaming ordinance that has been approved by the chairman of the National Indian Gaming Commission.

3) States the Legislature has no power to authorize, and shall prohibit, casino games of the type currently operating in Nevada and New Jersey.

4) In 1984, California voters passed Proposition 37, an exception to the State Constitution prohibition against lotteries. Proposition 37 included the California Lottery Act and created the California State Lottery.

5) In 1933, California voters passed Proposition 5, an exception to the State Constitution, legalizing pari-mutuel wagering on horse racing. Regulation of horse racing is the responsibility of the California Horse Racing Board, which was established by the Legislature in 1933.

6) Provides an exception to the California Constitution to allow the Legislature to authorize cities and counties to provide for charitable bingo games. (Cal. Const. art. IV, §§ 19(b), 19(c).)

7) The Gambling Control Act of 1997 established the CGCC to regulate legal gaming in California and the Bureau of Gambling Control within the Department of Justice (DOJ) to investigate and enforce controlled gambling activities in California. It prohibits gambling in a city or county that does not have an ordinance governing certain aspects of the operation of gambling establishments, including the "hours of operation" of gambling establishments. The Act granted the CGCC licensing jurisdiction over the operation of card clubs and of all persons having an interest in the ownership or operation of card clubs.

8) Provides that, until January 1, 2020, if a local jurisdiction had not authorized legal gaming within its boundaries prior to January 1, 1996, then it is prohibited from authorizing legal gaming. Furthermore, until January 1, 2020, the California Gambling Commission is prohibited from issuing a gambling license for a gambling establishment that was not licensed to operate on December 31, 1999, unless an application to operate that establishment was on file with the division prior to September 1, 2000.

9) Provides "Gambling operation" means exposing for play one or more controlled games that are dealt, operated, carried on, conducted, or maintained for commercial gain.

10) Provides that a "banking game" or "banked game" does not include a controlled game if the published rules of the game feature a player-dealer position and provides that this position must

be continuously and systematically rotated amongst each of the participants during the play of the game.

11) Authorizes and defines "Advance Deposit Wagering" as a form of pari-mutuel horse wagering in which a person "establishes an account with a board-approved betting system or wagering hub where the account owner provides 'wagering instructions' authorizing the entity holding the account to place wagers on the owner's behalf via the phone or Internet.

12) Existing federal law, the Unlawful Internet Gaming Enforcement Act of 2006 (UIGEA), prevents U.S. financial institutions from processing payments to online gambling businesses. The UIGEA does exempt three categories of transactions: intra-tribal, intrastate, and interstate horse racing. The UIGEA defines intrastate transactions are bets or wagers that are made exclusively within a single state, whose state laws or regulations contain certain safeguards regarding such transactions, expressly authorize the bet or wager and the method by which the bet or wager is made, and do not violate any provisions of applicable federal gaming statutes.

**FISCAL EFFECT:** Unknown

**COMMENTS:**

Purpose of the bill: For over a century, gambling in California was confined to horse racing tracks and card rooms. Then, the California Lottery was authorized in 1984 and, through a series of federal court cases, changes in federal law, and Proposition 5 and 1A—casino gambling on Native American tribal lands emerged in the last decade of the 20th century. Now it appears that the Internet poker might be the next phase of gambling expansion in California.

The author states, in addition, to countless meetings held among the various stakeholders and interested parties, both supporting and opposing the concept of Internet poker, the Legislature has held numerous informational hearings and taken hours of testimony over the past 8+ years on the issues and challenges surrounding the authorization of intrastate Internet poker in California. On June 24, 2015, the Assembly Governmental Organization Committee held a lengthy informational hearing titled "The Legality of Internet Poker – How Prepared Is California to Regulate It." These hearings have helped to identify problems and solutions that have narrowed the differences among various stakeholders.

The author emphasizes that although various stakeholders and interested parties have different views relating to the legalization of iPoker in California, those entities have worked together in good faith toward the development of a regulatory framework. AB 2863 is the product of hours of meetings and negotiations with all interested stakeholders.

It has been reported that well over a million Californians are playing Internet poker on Web sites run by offshore companies that are not regulated or licensed by any U.S. government entity - these poker players are at the mercy of unscrupulous operators who may cheat them out of their money with absolutely no recourse. As a result, Californians who play poker on these websites have no way of protecting sensitive personal information when they use their credit card or provide other financial information to such a site. In addition, hundreds of millions of dollars are leaving the California economy, money (and tax revenues) that could stay in the state if intrastate iPoker was legalized in California.



AB 2863 contains numerous consumer protections to Californians who play online poker, ensure that the revenues from online poker are realized in California, and protect the public interest by ensuring that the various aspects of online poker are sanctioned and regulated by the state. This bill will create a new and innovative industry in California that will provide economic inducements to California's economy, including job creation. This bill includes strict standards to ensure that the online poker games are fair, played by persons of legal age who are located in California, and using advanced technologies to identify and restrict access by minors.

The author states that this bill includes a strong regulatory framework that protects Californians and cracks down on illegal online gaming, replacing it with safeguards against compulsive gambling, money laundering, fraud, and identity theft. In addition, the bill contains detailed criteria in the areas of licensing, enforcement, and regulatory oversight.

The author states, the bill addresses one of the major roadblocks that has prevented movement of a iPoker proposal over the years pertaining to California's horse racing industry being an eligible entity for licensure. AB 2863 creates the California Horse Racing Internet Poker Account, which would require the first \$60 million collected annually from license fees and taxes on gross gaming revenues be deposited into the fund. The continuously appropriate fund would be distributed as follows: 1) a contribution retirement and welfare plan for California-licensed jockeys, past and present, as well as their dependents; 2) to supplement the pension plan for pari-mutuel employees administered on behalf of the labor organization that has historically represented the employees; 3) to racing associations or fairs as commissions and to horsemen purses; 4) breeder incentive awards; and 5) California's network of fairs. The subsidy is intended to resolve one of the main points of contention amongst the state's diverse gambling interests. Over the years, many tribal gaming interests have stated they that would not support an iPoker proposal where horse racing is an eligible entity for licensure. Specific tribes have stated that only they and card-clubs have the right to offer live poker in the state, and if horse racing were allowed to participate, it would violate this exclusive right. The author states that a subsidy in lieu of a license will allow this long-storied agribusiness to continue to operate and thrive in California while not being financial impacted by the further expansion of iGaming in California.

The author believes this bill will create well-regulated iPoker framework in California that will be used as a national model for creating jobs and revenue for the state while providing a safe, regulated, and responsible entertainment option for its residents.

General Background: Some gaming experts say that legal gambling over the Internet is not just inevitable but mainstream and readily available to anyone desiring to partake in this activity. Recent reports state that Americans spent approximately \$2.6 billion gambling online in 2012, despite it being illegal. Americans generate nearly 10 percent of the current \$33 billion worldwide online gambling market. Most of that money went to illegal offshore gambling websites, meaning the websites are operated in other countries where online gambling is regulated or regulation is non-existent. These gaming sites are out of the reach of U.S. courts and regulators, exposing online players to significant risks without effective legal recourse.

Experts state that by 2020 the online gaming market is expected to witness substantial growth. This may be attributed to increasing number of users taking up online gaming as an entertainment tool. Furthermore, increasing consumer awareness towards interactive entertainment systems is also expected to drive the online gaming market demand. Availability of high speed internet connectivity, efficient hardware compatibility, sophisticated gaming

techniques and increased consumer disposable income are some of the key factors driving the online gaming market.

Many gaming experts believe that legalizing intrastate Internet gaming could have a significant positive impact on state revenues by redirecting gaming revenues into a domestic, legal operation that otherwise currently go abroad. However, others have stated this is not easy because it would take time to establish operations, approve contracts, games, hubs, and convince existing players to redirect their gambling to legal, domestic sites.

The global legal framework for Internet gambling is a complicated mix of laws and regulations. In the United States, both federal and state statutes apply. Gambling is generally regulated at the state level, with federal law supporting state laws and regulations to ensure that interstate and foreign commerce do not circumvent them.

In October 2006, the United States Congress passed the Unlawful Internet Gambling Enforcement Act (UIGEA), 31 U.S.C. 5361 et seq., which generally prohibits the use of banking instruments, including credit cards, checks, and fund transfers, for interstate Internet gambling, essentially prohibiting online gambling by United States citizens, but which includes exceptions that permit individual states to create a regulatory framework to enable intrastate Internet gambling, provided that the bets or wagers are made exclusively within a single state under specified circumstances.

On April 15, 2011, three online poker companies (PokerStars, Full Tilt Poker, Absolute Poker/UltimateBet) were indicted for violating U.S. laws that prohibit the acceptance of any financial instrument in connection with unlawful Internet gambling. The companies argued that poker is a game of skill rather than a game of chance, and therefore, online poker is not unlawful Internet gambling. The indictments, quickly dubbed “Black Friday” by the poker community, came as a shock to a large number of Americans — estimated between 1.3 million and 15 million — who were playing poker online for real money.

On July 31, 2012, the U.S. Attorney’s Office announced that the United States had entered into settlement agreements with PokerStars and Full Tilt Poker. U.S. District Judge Leonard B. Sand approved the \$731 million settlement. Under the terms of the settlement with Full Tilt Poker, the company agreed to forfeit virtually all of its assets to the U.S. to fully resolve the charges in the complaint. Under the terms of the settlement with PokerStars, the company agreed to forfeit \$547 million to the U.S. and to reimburse the approximately \$184 million owed by Full Tilt to foreign players in order to fully resolve the allegations in the complaint. The settlement further provided that PokerStars would acquire the forfeited Full Tilt assets from the government. The settlements with regard to Full Tilt Poker and PokerStars, and a proposed settlement with Absolute Poker, *“did not constitute admissions of any wrongdoing, culpability, liability, or guilt by any parties.”*

On July 14, 2011, Senate Minority Whip Jon Kyl (R-Ariz.) and Senate Majority Leader Harry Reid (D-Nev.) sent a letter to U.S. Attorney General Eric Holder asking the U.S. Department of Justice to clarify its position regarding enforcement of online gambling laws.

On December 23, 2011, the Office of Legal Counsel of the DOJ issued a Memorandum Opinion, as an attachment letter to Senator Harry Reid’s July 2011 request. The opinion letter rejected DOJ’s long-held interpretation of the Wire Act, by concluding that the Act prohibits only sports

betting. Until then, DOJ had consistently declared that the Act barred both "casino games and sports betting." DOJ noted that there appeared to be a conflict between the Act and UIGEA. DOJ stated that the "unlawful Internet gaming" of the UIGEA does not include intra-state transactions that, among other things, are routed across state lines. DOJ's new policy did not constitute federal regulation of Internet gambling, but removed obstacles, which prevented state governments from enacting legislation, rules and regulations to regulate intrastate iGaming and issue licenses to Internet gambling operators and their technology providers.

In summary, federal law prohibits online gambling by U.S. citizens but includes specific provisions that allow individual states to offer intrastate Internet gaming, provided that state laws permitting and regulating that activity could impose reasonable protections against participation by underage persons or by persons located outside the boundaries of the states. So far, only three U.S. states allow licensed online casinos and poker sites. These states are Nevada, Delaware, and New Jersey. In all three states, a significant portion of the established gaming interests in the states bought into the idea that online gambling could help – not harm – their business models.

California's Involvement in iGaming Legislation: As stated above, under the terms of UIGEA, states may authorize intrastate Internet poker. California, however, currently has no such law. As such, it is legal to play poker in Native American tribal casinos and state-approved card clubs inside California, but not legal to play online poker on a site that allows players from California, other states, and other countries to wager against each other. The effect of the federal law prohibiting interstate internet gambling and California's lack of a law authorizing intrastate internet gambling has been to channel players in California to offshore sites.

Internet gambling has been a topic of consideration in California for some time. With a population of nearly 38 million, California has the potential to be a lucrative Internet gambling market should the state choose to regulate Internet gambling, beyond pari-mutuel wagering on horseracing, in the future.

From 2008-2014, eleven legislative proposals have been introduced in California in an attempt to change the nature of Internet gambling. Each bill was referred to the respective Governmental Organization Committee in each house but no testimony or vote was ever taken on the issue.

In 2015, four bills (AB 431-Gray, AB 9-Gatto, AB 167- Jones-Sawyer, and SB 278-Hall) were introduced relating to the authorization of iPoker in California. Three of the bills (AB 9, AB 167, and SB 278) were never heard in the respective Governmental Organization Committee. AB 167 (Jones-Sawyer) would have permitted all card clubs, tribes, and racetracks to offer online poker in California. AB 9 (Gatto) did not permit licensing of racetracks and included a bad actor clause (would preclude operators that took bets in the U.S. after the passage of UIGEA in 2006). AB 431 (Gray) declared the intent of the Legislature to authorize iPoker in California and adopt a legal and regulatory framework. The bill was the first iPoker proposal to ever be heard and pass a legislative committee (Assembly G.O. and Appropriations) but was held on the Assembly Inactive File for further discussion. *A summary of the various iPoker legislative proposals can be found on page 17.*

Proponents state that providing a legal mechanism for iPoker offers an alternative to illegal gambling now being played on the Internet. Californians can be protected from unscrupulous gambling enterprises by licensing and regulating iPoker. Proponents further state, the eventual

authorization of iPoker, will not only allow California to protect its consumers but also help law enforcement agencies work with the industry in preventing underage gambling, identity theft and other related fraud activity.

Proponents state that an iPoker framework in California would not only generate much needed revenue to the state but would spur a new industry in California that will provide economic inducements to California's economy, including jobs. In addition, under a state system, the state would retain tax revenues in contrast to a federal system where revenues would be divided between the state and federal government.

Opponents claim that legal Internet gambling represents the “Mother of All Expansions,” turning every home computer, school laptop, I-phone, I-pad and most cell phones into a gambling device, and every home, dorm-room, apartment and Wi-Fi business into a casino. Concerns center on whether widespread availability of legal and attractive iGaming system would become problematic with specific subgroups in the population, such as young adults. Opponents have raised concerns that the fast speed of online games and addictive nature of play can contribute to high player losses and gambling addictions.

California's horse racing industry is the only legal industry in this state with experience in the realm of offering wagering over the Internet. Advance Deposit Wagering (ADW) as authorized by AB 471 (Hertzberg), Chapter 198, Statutes of 2001 is a system whereby a person establishes an account, or multiple accounts at a CHRB-approved “betting system” or a board-approved “multi-jurisdictional wagering hub.” When a person calls to place a wager from his or her account, the California law provides that they are actually providing “wagering instructions,” rather than actually making the wager themselves. In 2014, the total amount wagered by patrons through California's licensed ADW providers was more than \$600 million.

On-line Poker Revenue Projections for California: Most gaming experts agree that the market for regulated online poker in California will be the largest in the United States. The state would benefit financially in three main ways: taxes paid on operator revenues and profits, income taxes from player winnings, and taxes paid by suppliers and employees of gaming sites. The largest revenue source would be from site operators who would pay fees based on Gross Gaming Revenues (GGR). GGR consists of total wagers made by customers less the winnings paid back to its customers, and a tax rate is applied on the base.

A forecast by Morgan Stanley stated that given California's population of 38 million people (vs. NJ's 8 million), “we expect the market to reach \$1.1B by 2017.” Morgan Stanley estimates that the online poker market in California will be approximately \$435 million in Year 1, growing to \$1.1 billion by Year 3.

A study published by Academicon and PokerScout in December 2013 stated, if California were to legalize and regulate online poker, the market could generate revenue between \$217 million and \$263 million in its first year of operation and up to \$384 million in year ten.

A 2011 study by former California Finance Director Timothy Gage stated that online poker could generate as much as \$1.4 billion in revenue over the first decade if a bill was passed. This income would come from direct and indirect taxes tied to the wagering activity. The study further stated that up to 1,300 new jobs could possibly be created – led by jobs in marketing services, high tech jobs like programmers, and gaming providers.

California's population is larger than every country in Europe but eight and is viewed by many as possessing the needed online poker liquidity to maintain the player base that is crucial to ensure that such a system is successful from a monetary standpoint.

States that have legalized Internet Gaming: Nevada allows interactive wagering on poker and sports; Delaware allows betting on table games, video lottery, and poker; and New Jersey permits casino games and poker. Currently, New Jersey dominates the market, with about 90 percent of total U.S. online gaming revenue. Poker represents about one-third of total online gaming market in those three states.

Nevada: An Internet gaming bill, AB 466, was enacted in June 2001. It authorized certain commercial casinos to offer so-called "interactive gaming." Interactive gaming, currently limited to intrastate Internet poker, went live in April 2013 pursuant to final regulations that were promulgated in December 2011. Nevada prohibits Internet gambling businesses that knowingly and intentionally took or facilitated unregulated U.S. bets after December 31, 2006, from obtaining interactive gaming licensure for five years, after the enactment of AB 466. Nevada has two web poker operators—a World Series of Poker (WSOP)-branded online poker site and an online site from South Point Casino (Real Gaming). Nevada's gross revenue from gaming is generally subject to a 6.75 percent tax.

At the end of 2014, an online poker site from Station Casinos (Ultimate Gaming) stopped offering iPoker due to lackluster revenue. The Nevada Gaming Control Board (NGCB) also stopped releasing revenue figures, as the state requires at least three operational sites before such data is released. In 2015, Nevada and Delaware entered into an interstate poker player sharing agreement, and following an initial boost to iPoker revenues, the revenue numbers returned to pre-compact levels.

New Jersey: An Internet gaming bill, A2578, was enacted in February 2013. It authorized commercial casinos to offer iGaming in the state of New Jersey. Internet gaming, currently limited to intrastate Internet poker, table games and slots, went live in November 2013 pursuant to final regulations that were promulgated in September 2013. New Jersey requires its online gambling licensees to collaborate with a brick-and-mortar casino partner. Six commercial casinos are currently operating Internet gambling websites. Furthermore, each casino has multiple online gaming websites operating under their license. The Division of Gaming Enforcement (DGE) determines license suitability of a participant. The state does not have specific language in its Internet gaming statute or regulations that expressly addresses so-called "bad actors." New Jersey taxes online gambling revenue at a rate of 15% of gross gaming revenue.

In 2015, according to the DGE, the online revenue came to \$148.8 million, 21% higher than 2014's total. Total online casino revenue in 2015 was \$125 million, up one-third from 2014, while poker revenue fell 18% to \$23.8 million. The state's annual tax from online gambling was \$18.4 million. Overall, online gambling has risen in popularity since New Jersey introduced regulation in 2013, and currently it accounts for approximately 8% of the Garden State's overall gambling market.

In December 2013, the DGE suspended their review of a license application by the former owners of PokerStars, citing legal concerns about management's outstanding issues with the DOJ. In 2014, Pokerstars, also the owner of Full Tilt, sold their gambling business to Amaya Gaming Group for \$4.9 billion. In addition, specific executives stepped down as part of the sale to Amaya. After a lengthy investigation, in September 2015, Amaya received its approval (Transactional Waiver Order) to operate PokerStars and Full Tilt in the state. PokerStars began accepting wagers on March 2016. On April 1, 2016, Amaya's online gaming license was renewed (Transactional Waiver Order) by the DGE for another six months. PokerStars NJ operates in conjunction with its partner, Resorts Casino Hotel in Atlantic City, and offers both poker and casino games online at PokerStarsNJ.com to players who are physically located in the state.

In 2016, the Pala Band of Mission Indians, a California tribe partnered with the Borgata Hotel Casino & Spa to supply the casino with its online gaming platform and to provide both online poker and casino games to residents of the state. The tribe was licensed by the DGR in 2014.

Delaware: An Internet gaming bill, HB 333, was enacted in 2012. It authorized games, such as slots, roulette, poker and blackjack, which are to be played on each Delaware casino's websites (horse racetracks with casinos) and controlled centrally by the Delaware State Lottery.

A single provider powers the state's online casino and poker offerings (888 and Scientific Games). Total online gaming revenue (all games) for 2015 was \$1.8 million, 14% lower than the \$2.1 million collected in 2014. Poker accounted for approximately \$500,000 of that total revenue figure. When poker first became legalized online in 2013, monthly revenues routinely were between \$50,000 and \$100,000. The market topped out in December 2013, as poker rake and fees reached \$106,922. Since June 2014, those amounts have not reached the \$50,000 threshold. The state's revenue sharing arrangement with the three casinos authorized to offer online gambling allows it to keep the first \$3.75 million of online revenue, meaning the casinos did not share in any of the revenue. The state has experienced low registration rates and the wagering games are not available on devices such as tablets and smart phones.

States that ban iGaming: Eight states have enacted laws expressly prohibiting iGaming. Illinois, Indiana, Louisiana, Montana, Nevada, Oregon, South Dakota, and Washington prohibit Internet Gambling. Additionally, Washington law provides that a person that transmits or receives gambling information by the Internet is guilty of a felony.

2015 Legislative Action by States: In 2015, seven states considered but did not enact legislation that would authorize Internet gambling or amend existing Internet gambling statutes. Some states, including California and New York, considered legislation that would authorize Internet poker, only, while others, including Pennsylvania, considered bills that would authorize some combination of Internet poker, table games and slot games. The states were as follows: California, Delaware, Illinois, Massachusetts, New Jersey, New York, Pennsylvania.

In Pennsylvania, HB 649 (Representative Payne) would legalize and regulate online gaming with licenses going to the state's existing land-based casinos. The tax rate the state will impose on online gambling operators remains unresolved at this point, with the House calling for a 16 percent tax on gross gaming revenue, while the Senate's bill version would impose a

54 percent tax on GGR. The bill does not contain so-called “bad actor” language. HB649 is pending on the House floor. It should be noted that California, New York and Pennsylvania, account for roughly 22 percent of the U.S. population.

In May 2015, New York State Senator John Bonacic introduced S5302B that would license online poker in the state. Online poker companies would be required to partner with an existing racino or commercial casino. The bill contains a tax rate of 15 percent on online poker operators, who would also have to pay \$10 million for a 10-year license. Up to 10 licenses could be awarded. The bill does not contain so-called “bad actor” language. The 2016 Legislature adjourns on June 16.

In March 2015, Morgan Stanley revised its forecast for the nationwide online betting market at \$2.7 billion by 2020, down from the \$5 billion it predicted in late September 2014. The firm cited several reasons for the reevaluation, from payment processing and geolocation problems, to a lack of effective marketing and the continued strength of the offshore market. The firm forecasts the 2017 online market will be \$410 million, down from an initial estimate of \$1.3 billion. It predicts 15 states will legalize online gambling by 2020, with legalization in larger states prompting smaller ones to follow suit.

What about Federal Legislation to Regulate iGaming? On the federal level, proposals have been introduced to establish a federal regulatory system for Internet gaming. Congressional representative Barney Frank (2010), Senator Harry Reid (2012), Congressman Peter King (2013), and Congressman Joe Barton (2011 & 2013) introduced bills which would have instituted federal regulation of a legalized system of Internet gaming. However, all of the bills stalled in their respective house of origin. It has been stated that Federal regulation would provide a single, comprehensive mechanism for consistent licensing, operation and enforcement of U.S. Internet gambling laws.

2015 Federal Action - The Restoration of America’s Wire Act: In 2015, Representative Jason Chaffetz (R-UT) and Senator Lindsey Graham (R-SC) respectively introduced the Restoration of America’s Wire Act (RAWA) bill in the House and Senate for the second consecutive year. RAWA would amend provisions of the federal criminal code, commonly known as the Federal Wire Act of 1961, to provide that the prohibition against transmission of wagering information shall apply to any bet or wager, or information assisting in the placing of any bet or wager (thus making such prohibition applicable to all types of gambling activities, including Internet gambling. Two Congressional hearings were held on the contents of RAWA but no further action was taken.

In Support: San Manuel Band of Mission Indians, Morongo Band of Mission Indians, Commerce Casino, Bicycle Casino, Hawaiian Gardens Casino, and Amaya Inc./PokerStars writes, "this bill will protect consumers, create jobs, and strengthen our state’s economy by authorizing and regulating intrastate, Internet Poker in California. Authorizing online poker will be good for millions of consumers and poker players who will benefit from a safe, regulated, commercial gaming environment where they are protected and assured that the games are fair and honest. AB 2863 will establish a vibrant, competitive marketplace, provide superior consumer protections, require strict oversight and regulation of licensees and service providers, and ensure that the state receives a reasonable return. We also appreciate the author's inclusive, transparent approach for getting all parties to dialogue. We are confident the few remaining

issues can be resolved and an agreement can be reached to finalize AB 2863 as it moves through the legislative process. Every year that California fails to act not only puts consumers at risk while playing online games from unregulated offshore localities that provide few protections, but our state also loses out on collecting hundreds of millions of dollars that can be used for essential programs like public schools, public safety, healthcare and social services."

The Service Employees International Union (SEIU) writes, "SEIU represents over 700,000 workers statewide, including pari-mutuel clerks at California's Thoroughbred Racing facilities. We have been a part of the discussions regarding Internet Poker legislation and look forward to passing legislation this year that will bring additional revenue and jobs to our state. We would also like to make a few comments on the direction and intent of the bill. First, the \$60 million payment in AB 2863 for the horse racing industry is a much-needed boost to the industry. We hope to work with you as the bill moves forward to ensure that the industry and its workers benefit from this revenue source."

The Thoroughbred Owners of California, Del Mar Thoroughbred Club, California Thoroughbred Breeders Association, The Jockeys Guild, California Authority of Racing Fairs, California Teamsters Public Affairs Council, California Thoroughbred Trainers, Los Alamitos Racing Association, SEIU California writes, on behalf of the California horse racing and breeding industries, writes in support of AB 2863. "More specifically, we write on behalf of the racetracks, fairs, jockeys, pari-mutuel clerks and thousands of California horse owners and trainers who have invested hundreds of millions of dollars into our state's economy to support the \$2.5 billion horse agribusiness. The Thoroughbred industry in California employs more than 50,000 people. Racing, breeding and training occurs in 28 counties within in California and attracts fans, breeders and owners from around the world. In 2001, the California Legislature granted exclusive authority to the horse racing industry to offer wagering on the Internet via advanced deposit wagering or ADW. This power was authorized following the passage of Tribal Gaming under Proposition 1A, which directly resulted in a 40% decline in racing industry revenues. Over the past 15 years, California Horseracing has completely restructured its business model to embrace the new ADW technologies and online wagering exclusivity afforded us by the Legislature. This year we project over \$600 million in ADW wagering or more than 40% percent of total pari-mutuel wagering in the State. The ADW wagering has helped partially offset the tremendous disadvantage that the California industry currently faces as the only major racing state in which horse racing does not participate in any form of alternate gaming revenues (i.e., sharing in percentage of slot machines, casino games or having the right to offer such games as is the case in other major racing states like New York, Florida, and Maryland). For comparison, in 2014 the horse racing industry in New York received over \$238 million from state casino interests to support the racing agribusiness in that state. This financial imbalance with other racing states continues to threaten the viability of horse racing in California, tens of thousands of jobs and billions of dollars in agricultural investment. With our industry's increasing reliance on Internet wagering and the lack of other gaming revenue support, we are obligated to take a hard look at any new form of online gambling in California." To protect against any misunderstandings or false precedents that could impact such other legislation, we would ask for clarifying language in AB 2863 to the effect that: *The Chapter authorizes Internet poker only and nothing in this chapter shall preclude a horseracing association from participating in future Internet gambling activities that do not include Internet poker.*



The Pokers Players Alliance writes, California has a long tradition with the game of poker and card rooms. This bill charts the course towards responsible regulation of iPoker and puts California at the leading edge of this burgeoning industry. AB 2863 will corral the current unregulated marketplace and turn it into a system that is safe for consumers and accountable to regulators. This bill mandates technologies to protect consumers from fraud, eliminates underage access and mitigates compulsive gambling behaviors. These regulatory safeguards are not theoretical. They are reality. Today three states – Nevada, Delaware and New Jersey – have authorized and are regulating Internet poker. In these states, the regulated operators are accountable to the players, regulators, and law enforcement and they are continually reviewed to ensure they are meeting, and exceeding, the prescribed technical safeguards.

In Opposition: The Coalition to Stop Internet Gambling (CSIG) writes in opposition, “CSIG is opposed to this legislation because if approved it would hurt California families and the California economy.” Internet Poker is an assault on California’s children and families. Legalization of Internet Poker will place a casino in every person’s living room, mobile device, or tablet—24 hours per day, 7 days per week and represent the largest gambling expansion in California’s history. Internet Poker is riddled with false promises that stifle economic development. California should not be led down this path by offshore gaming operators with questionable legal histories whose only intention will be to drive our state’s consumers away from California facilities and into their servers and databases. Legalized Internet gaming has been a fiscal loser for the states who have legalized it and the financial promises made by proponents never been met. The risks far outweigh the rewards. There is no compelling policy reason to approve Internet Poker, the public is demonstrably opposed, and it puts kids at risk and provides safe harbor for illicit money laundering.”

Related legislation: AB 1437 (Gray) of the 2015/2016 Session. Would enact the Internet Fantasy Sports Games Consumer Protection Act, which would require a person or entity to apply for, and receive, a license from the DOJ prior to offering an Internet fantasy sports game for play in California. (Pending in Senate Rules Committee)

Prior legislation: AB 431 (Gray) of 2015. Would declare the intent of the Legislature to authorize Internet poker in California and adopt a legal and regulatory framework that complies with federal law. The bill declares the framework shall include strict standards to ensure the fairness and integrity of the games, appropriate consumer protections, fair revenue for the state, safeguards against underage play, and mechanisms to address negative impacts of Internet poker gambling. (Held on the Assembly Floor)

AB 9 (Gatto) of 2015. This bill, which would be known as the Internet Poker Consumer Protection Act of 2015, would have established a framework to authorize intrastate Internet poker, as specified. The bill did not permit licensing of horse racing entities and excluded any company that accepted bets after December 31, 2006 in the U.S. without proper licensing, as specified. (Never Heard in Assembly G.O. Committee)

AB 167 (Jones-Sawyer) of 2015. This bill, which would be known as the Internet Poker Consumer Protection Act of 2015, would have permitted card clubs, tribes, and racetracks to offer intrastate online poker in California, as specified. (Never Heard in Assembly G.O. Committee)

SB 278 (Hall) of 2015. Would have authorized the operation of an Internet poker web site within the borders of the state. The bill required CGCC, in consultation with DOJ, to promulgate regulations for intrastate Internet poker. The regulations would include, but not be limited to, a licensing process for an individual or entity to become an operator of an Internet poker Web site and rules for the operation of an Internet poker Web site. (Never Heard in Senate G.O. Committee)

AB 2291 (Jones-Sawyer) of 2013/2014 Session. Would have authorized intrastate Internet poker, as specified. (Never heard in Committee on Assembly G.O.)

SB 1366 (Correa) of 2013/2014 Session. Would have authorized intrastate Internet poker, as specified. The bill would authorize eligible entities to apply for a license to operate an intrastate Internet poker Web site offering the play of authorized games to players within California, as specified. (Never heard in Committee on Senate G.O.)

SB 51 (Wright) of 2013/2014 Session. Would have authorized intrastate Internet gambling, as specified. Would have authorized eligible entities to apply to CGCC for a 10-year license to operate an intrastate Internet gambling Web site offering the play of authorized gambling games to registered players within California. (Never heard in Committee on Senate G.O.)

SB 678 (Correa) of 2013/2014 Session. Would have authorized intrastate Internet poker, as specified. The bill would have authorize eligible entities to apply for a license to operate an intrastate Internet poker Web site offering the play of authorized games to players within California, as specified. (Never heard in Committee on Senate G.O.)

SB 1463 (Wright) of 2011-12 Session. Would have enacted the "Internet Gambling Consumer Protection and Public-Private Partnership Act of 2012" for the stated purpose of authorizing, intrastate Internet gambling. (Never heard in Committee on Senate G.O.)

SB 40 (Correa) of 2011-12 Session. Would have authorized intrastate Internet poker, as specified. The bill required the CGCC to adopt emergency regulations, in consultation with the department, providing for the issuance of licenses to operate intrastate Internet poker Web sites.

SB 45 (Wright) of 2011-12 Session. Would have established a framework to authorize intrastate Internet gambling, as specified. The bill would have required the Bureau to issue a request for proposals to enter into contracts with up to 3 hub operators, as defined, to provide lawful Internet gambling games to registered players in California for a period of 20 years, as specified. (Never heard in Committee on Senate G.O.)

SB 1485 (Wright) of 2009-10 Session. Would have enacted the "Internet Gambling Consumer Protection and Public-Private Partnership Act of 2010" for the stated purpose of authorizing, intrastate Internet gambling. (Never heard in Committee on Senate G.O.)

AB 2026 (Levine) of 2007-08 Session. Would have authorized the intrastate play of various Internet poker games to be offered by licensed gambling establishments registered with CGCC. (Never heard in Committee on Senate G.O.)

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Bicycle Casino  
California Authority of Racing Fairs  
California Teamsters Public Affairs Council  
California Thoroughbred Breeders Association  
California Thoroughbred Trainers  
Commerce Casino  
Del Mar Thoroughbred Club  
Hawaiian Gardens Casino  
Jockeys Guild  
Lake Elsinore Casino  
Los Alamitos Racing Association  
Morongo Band of Mission Indians  
Napa Valley Casino  
Pala Band of Mission Indians  
Poker Players Alliance  
Amaya Inc./PokerStars  
Rincon Band of Luiseño Indians  
San Manuel Band of Mission Indians  
SEIU California  
Stones Gambling Hall  
Thoroughbred Owners of California  
United Auburn Indian Community

**Opposition**

Coalition to Stop Internet Gambling

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