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**MEMORANDUM**

**TO:** Scott Gunn  
**FROM:** Mark Hichar  
**RE:** Reid Bill – Sections Affecting State Lotteries  
**DATE:** November 15, 2012

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The table below sets forth certain provisions of the draft (and yet-to-be-introduced) “Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012” (the “Bill”), prepared by the office of Senator Harry Reid (D-NV). The Bill provisions set forth include those that would directly affect U.S. state lotteries. Others I have included because of their significance and so that you will get an accurate view of the overall Bill. In provisions of particular importance, I have underlined the most significant language. (It is not underlined in the Bill.) The third column of the table sets forth my comments, if any, on the applicable Bill provision.

As you will see, the draft Bill is consistent with the previously released summary, but contains certain provisions not mentioned in the summary, most notably a grandfather clause that would “save” (i.e., preserves the legality of) the operation of certain gambling games that were “authorized, licensed, and regulated by a State or Indian tribe on the day before the date of enactment of [the Bill].” (Bill, subsection 113(h))

Please let me know if you have any questions.

**Sense of Congress and Findings:**

Bill Section Number <sup>1</sup>	Text or Description of Bill Section (underlining added)	Comments
Findings. Section 101(a)(5)	“A number of States are considering legalizing and promoting Internet gambling to generate revenue. Absent Federal limitations and enforcement, State regulation of Internet gambling, including consumer safeguards, <u>could vary widely from State to State, and States could have difficulty enforcing Internet gambling restrictions within their borders, especially against out-of-State operators. In addition, State authorizations of Internet gambling would result in a major expansion of gambling of all types on the Internet.</u> ”	These are the arguments that Frank Fahrenkopf and the American Gaming Association (“AGA”) – as well as Caesars Entertainment – are using to explain why federal legislation regulating Internet poker is necessary.
Findings. Section 101(a)(12)	“Internet gambling, like much other Internet commerce, traverses State boundaries. Any particular transaction may cross a number of State boundaries from origin to destination, and communications between the same parties at different times may travel along markedly different routes, based on factors such as traffic, load capacity, and other technical considerations outside the control of sender and recipient. <u>For that reason, among others, the Federal courts consistently have ruled that the Internet is an instrumentality and channel of interstate commerce and, as such, is subject to Congress’s plenary authority. For these same reasons, Internet gambling by its very nature implicates Federal concerns, and is different in kind and effect from traditional gambling activity.</u> ”	The findings contain the argument of the Bill’s authors why regulation at the federal (rather than state) level is necessary. It is generally correct that federal courts have rules that the Internet is an instrumentality of interstate commerce. Accordingly, pursuant to Article I, Section 8, clause 3 of the U.S. Constitution, regulation of activity via the Internet is, indeed, within Congress’ plenary (i.e., “complete”) power.
Sense of Congress. Section 101(b)(3)	“It is the sense of Congress that . . . licensed online poker operators <u>should be limited, at least initially, to service providers that have an established track record of complying with a strict</u>	This sets up the argument why, at least initially, licenses to operate Internet poker web sites should be available only to

<sup>1</sup> The Sections of the Bill are contained in four “Titles,” as follows: Sections numbered 101 – 116 are in Title I, “Internet Gambling Prohibition and Online Poker Consumer Protection”; Sections numbered 201 – 206 are in Title II, “Enforcement under Titles 18 and 31, United States Code”; Sections 301 – 307 are in Title III, “Online Poker Revenue Provisions”; and Sections 401 – 404 are in Title IV, “Other Matters”.

	<u>regulatory environment, have an established track record of providing fair games to consumers, and have significant goodwill and assets at stake, in addition to their online poker assets, to ensure they would comply with the strict regulatory framework and that they only conduct business in those States that have elected to opt-in;</u> ”	existing, already-licensed large bricks-and-mortar casinos, tracks and slot machine manufacturers.
Sense of Congress. Section 101(b)(4)	“It is the sense of Congress that . . . Congress should ensure that <u>any intrastate lottery transactions completed through the use of the Internet are limited to sales of tickets and related activities so that they do not allow for the circumvention of Congressional limits on Internet gambling on house-banked and other casino games, without unduly limiting the power of the states to offer intrastate lottery purchases.</u> ”	This explains why – in the view of the Bill’s authors – state lottery Internet gambling transactions should be limited to selling “tangible” tickets where the games are not played (or the winners revealed) online, and in which the draws are not more frequently than once per day.

**Definitions:**

Bill Section Number	Text or Description of Bill Section (underlining added)	Comments
Definitions. Section 102(2) and Section 105(a)(1)(A)	The term “benchmark qualified body” refers to certain premier state gambling regulatory bodies, at least three of which will be appointed to issue licenses to operate online poker facilities within the first 270 days after the Bill is enacted. To be a “benchmark qualified body” a state regulatory body must have each of the following: “(i) A reputation as a regulatory and enforcement leader in the gaming industry. (ii) A strict regulatory regime. (iii) Regulatory and enforcement personnel with recognized expertise. (iv) Adequate regulatory and enforcement resources. <u>(v) Demonstrated capabilities relevant to the online poker environment.</u> ” Other state gambling regulatory bodies may seek to be qualified	This definition seeks (implicitly) to make the Nevada Gaming Control Board the primary or among the three primary licensors for operation of online poker facilities. At the current time, only the Nevada Gaming Control Board issues licenses in connection with Internet poker sites, and it thus appears to be the only state regulator with “[d]emonstrated capabilities relevant to the online poker environment.”

	to issue licenses to operate online poker facilities only one year after the first benchmark qualified body is designated.	
Definitions. Section 102(3)	<p>The term “bet or wager” is defined as follows:</p> <p>“(A) In general.—Except as provided in subparagraph (B), the term “bet or wager” has the meaning given the term in section 5362 of title 31, United States Code.</p> <p>(B) Exception.—The term “bet or wager” does not include the following:</p> <ul style="list-style-type: none"> <li>(i) A bet or wager that is permissible under the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.).</li> <li>(ii) A <u>qualifying intrastate lottery transaction.</u>”</li> </ul>	<p>The definition of “bet or wager” relies on the definition of that term in the Unlawful Internet Gambling Enforcement Act of 2006 (the “UIGEA,” codified at 51 U.S.C. §5362), but sets forth special exceptions – one for pari-mutuel bets on horse races pursuant to the Interstate Horseracing Act, and the other for “qualifying intrastate lottery transactions.” Thus, “qualifying intrastate lottery transactions” will not cause an Internet gambling facility to be a “Internet gambling facility,” since those process “bets or wagers.”</p>
Definitions. Section 102(9)	<p>The term “Internet gambling facility” is defined as follows:</p> <p>“(A) In general.—The term “Internet gambling facility” means an Internet website, or similar communications facility in which transmissions may cross State boundaries, through which a bet or wager is initiated, received, or otherwise made, whether transmitted by telephone, Internet, satellite, or other wire or wireless communication facility, service, or medium, including an online poker facility not operating under a license in good standing issued under this title.</p> <p>(B) Exclusion.—The term “Internet gambling facility” does not include the following:</p> <ul style="list-style-type: none"> <li>(i) An online poker facility that operates under a license in good standing issued under [the Bill].</li> <li>(ii) <u>A facility that facilitates qualifying intrastate lottery transactions to the degree that such facility facilitates such transactions.</u>”</li> </ul>	<p>The term “Internet gambling facility” is the defined term capturing illegal Internet gambling facilities. It excludes, however, facilities that process “qualifying intrastate lottery transactions.”</p>

Definitions. Section 102(10)	“The term ‘licensee’ means a person who operates an online poker facility under a license issued by a qualified body pursuant to [the Bill].”	
Definitions. Section 102(13)	“The term ‘online poker facility’ means an Internet website, or similar communications facility in which transmissions may cross State boundaries, through which a bet or wager only with respect to a game, hand, tournament, or other contest of poker is initiated, received, or otherwise made, whether transmitted by telephone, Internet, satellite, or other wire or wireless communication facility, service, or medium.	
Definitions. Section 102(17) and Section 105(a)(1)(A)	The term “qualified body” refers to (i) the Office of Online Poker Oversight (“OOPO,” to be created within the Department of Commerce within 180 days after enactment of the Bill), (ii) the “benchmark qualified bodies” and (iii) any other state regulatory bodies gambling regulatory bodies that will be appointed to issue licenses to operate online poker facilities. However, <u>until one year after the first benchmark qualified body is designated</u> , no applications to be a qualified body will be accepted (other than applications to be a benchmark qualified body).	By restricting the qualification of regulators other than benchmark qualified bodies until more than a year after the Bill is enacted, the Bill further ensures that the Nevada Gaming Control Board (and presumably two other state regulatory agencies) will be the primary licensors of online poker facility operators. By the time other regulators are qualified to issue licenses, the benchmark qualified bodies most likely will already be accepted as the market leaders and the “go-to” regulators for licensing.
Definitions. Section 102(20)	“The term ‘qualifying intrastate lottery transaction’ means the purchase of a chance or opportunity to win a lottery or other prize— (A) which opportunity to win is <u>predominantly subject to chance</u> ; (B) which winning is determined <u>not more frequently than daily</u> ; (C) which is authorized by a State or Indian tribe wholly within its borders; (D) with respect to which <u>the Internet is solely the medium for</u>	This definition is fundamental to how the Bill would affect state lotteries. Essentially, it sets forth the only Internet lottery transactions that would be permitted, other than those that would be “grandfathered in” via the grandfather clause set forth in subsection 113(h), discussed below.

	<p><u>purchase but is not the medium in which the drawing or the playing of the game or contest is conducted;</u>  <u>(E) which requires the delivery (electronically or non-electronically) of a tangible ticket or card for purposes of redemption of any prize; and</u>  <u>(F) which is not an online lottery game that is intended to mimic or does substantially mimic a gaming device, slot machine, poker, or any other casino game.”</u></p>	
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**Prohibition on Operation of Internet Gambling Facilities**

Bill Section Number	Text or Description of Bill Section (underlining added)	Comments
Prohibition on Operation of Internet Gambling Facilities. Section 103	<p>“(a) Prohibition.—  (1) In general.—It shall be unlawful for a person to operate an Internet gambling facility.  (2) Exception.—Paragraph (1) shall not apply to the operation of an Internet gambling facility by a person located outside the United States in which bets or wagers are initiated, received, or otherwise made solely by individuals located outside the United States.</p> <p>(b) Criminal Penalties.—Any person who violates this section shall be fined under title 18, United States Code, imprisoned for not more than 10 years, or both.”</p>	<p>This provision makes it a criminal offense to operate an “Internet gambling facility.” See the definition of “Internet gambling facility” discussed above.</p>

**The Licensing Program for Online Poker**

Bill Section Number	Text or Description of Bill Section (underlining added)	Comments
Authority to Operate Online Poker Facility Under Valid	<p>“Notwithstanding any other provision of law and subject to the provisions of [the Bill], a licensee may accept a bet or wager with respect to online poker from an individual located in the</p>	<p>Licensees may accept bets and wagers with respect to online poker from individuals located in the United States – provided the</p>

License. Sec. 106(b)(2)(A)	United States and may offer related services so long as the license of the licensee issued under this title remains in good standing.”	state or tribe in which they are located has “opted-in” to the federal scheme.
Standards for license Issuance; Suitability and Disqualification Standards. Sec. 106(d)(1)(A)	“No applicant shall be eligible to obtain a license under this title unless a qualified body, with whom the applicant has filed an application for a license, has determined, upon completion of a background check and investigation, that the applicant, any person considered to be in control of the applicant, all significant vendors of the applicant, and any other person determined by the qualified body as having significant influence on the applicant are suitable for licensing.”	To obtain a license, an applicant, any person considered to be in control of the applicant, and the applicant’s vendors and significant associates, must be found suitable for licensing.
Standards for license Issuance; Suitability and Disqualification Standards. Sec. 106(d)(3)	An applicant will not be deemed suitable if it, among other things: - (D) “is delinquent in the payment of any applicable tax, unless such payment has been extended or is the subject of a pending judicial or administrative dispute;” - (F) “knowingly accepts or knowingly has accepted bets or wagers on sporting events from persons located in the United States in violation of a provision of Federal or State law;” - “(G) has affiliated with any person that knowingly accepts or knowingly has accepted bets or wagers on sporting events from persons located in the United States in violation of a provision of Federal or State law;”	If an applicant accepted bets on sporting events from persons located in the U.S. in violation of federal or state law (among other disqualifying acts), the applicant cannot be licensed.
Limitation on Licensing of Covered Persons. Sec. 114(g)(2), Sec. 114(c) and Sec. 114(e)(1)	No “covered person” may be considered suitable for licensing under the Bill before the fifth (5 <sup>th</sup> ) anniversary of the Bill’s enactment. “Covered person” means, generally, (i) <u>any person that accepted bets or wagers from persons located in the U.S. after December 31, 2006 and knew that such bets or wagers involved persons in the U.S.</u> ; or (ii) was a significant vendor to a person described in (i), except for vendors solely of advertising services. However, the five-year limitation may be waived if the covered person (and assets to be used) did not violate Federal or state law in connection with the operations that made available	Internet gambling operators that accepted bets or wagers from persons in the U.S. after December 31, 2006, and knew that such bets or wagers involved persons in the U.S., and any significant vendor (other than vendors of advertising), cannot be licensed until after the fifth (5 <sup>th</sup> ) anniversary of the Bill, absent a waiver. Such a waiver is available only if such transactions did not violate federal or state

	bets or wagers to persons located in the U.S. after December 31, 2006.	law (which is unlikely).
Limitation on Eligible Licensees. Sec. 106(f)(2)	<p>Licenses may only be issued to:</p> <p>“(A) An applicant who</p> <p>(i) is, or owns or controls, a company that operates a casino gaming facility, a qualified race track, or a qualified card room; and</p> <p>(ii) has owned or controlled such facility, race track, or card room (or the company that operates such facility, race track, or card room) throughout the 180-day period ending on the date of the enactment of [the Bill].</p> <p>(B) An applicant who is owned or controlled by a person who</p> <p>(i) is or who owns or controls a company that operates a casino gaming facility, a qualified race track, or a qualified card room; and</p> <p>(ii) has owned or controlled such facility, race track, or card room (or the company that operates such facility, race track, or card room) throughout the 180-day period ending on the date of the enactment of this Act.</p> <p>(C) An applicant who, throughout the 180-day period ending on the date of the enactment of this Act, under a license issued by a State or Indian tribe, manufactured and supplied gaming devices to casino gaming facilities with not fewer than 500 slot machines.</p> <p>(D) Such other applicants as the Secretary [of Commerce] determines appropriate under paragraph (3).”</p> <p>Paragraph (3) provides that, two years after the date the first license is issued – i.e., two years after the date that is 450 days after enactment of the Bill – the Secretary may authorize the issuance of licenses to applicants not meeting the requirements set forth in (A), (B) or (C), above, if the Secretary determines, after a notice and comment period, that such authorization will</p>	State lotteries that do not operate large casinos or race tracks (as well as small privately-owned casinos and race tracks) will not be eligible to be licensed to operate online poker facilities until, at the earliest, 1180 days (approximately 3¼ years) after enactment of the Bill.



	not increase the risk, among other things, (i) of underage play, (ii) of play by persons in prohibited locations, (iii) that not all taxes will be collected, (iv) that there will be inadequate safeguards against financial crimes and, (v) of compulsive play.	
Term, Renewal, and Transfer of License. Sec. 106(j)	Licenses shall be issued for 5-year terms, subject to renewal.	
List of Licensed Online Poker Facilities. Sec. 106(n)	“The Secretary [of Commerce] shall establish and maintain a list of all online poker facilities licensed under this section. The Secretary shall update such list regularly and make such list publicly available on an Internet website.”	

**Effective Date of First License and Start-Up:**

Bill Section Number	Text or Description of Bill Section (underlining added)	Comments
Sec. 114(a)	<p><u>Effective Date of First Licenses and Start-Up.</u></p> <p>(1) In general.—Each qualified body – i.e., licensing regulatory body – shall issue multiple licenses before the “date of first issuance” – i.e., <u>450 days after the date of enactment of the Bill</u> – “in order to ensure a robust and competitive market for consumers and to prevent the first licensees from gaining an unfair competitive advantage.”</p> <p>“(2) Effective date of initial licenses.—No license issued under [the Bill] shall authorize a licensee to accept a bet or wager under [the Bill] before the date of first issuance . . .”</p> <p>“(3) Date of first issuance.—The date of first issuance specified in this subsection is the date that is 450 days after the date of the enactment of [the Bill].”</p>	No license can authorize the acceptance of bets or wagers until the “date of first issuance” – i.e., 450 days after the date of enactment of the Bill. Note however, applications will be accepted and licenses will be issued before that date.

**The Opt-in Election:**

Bill Section Number	Text or Description of Bill Section (underlining added)	Comments
Prohibition on Use of Licenses in Certain States and Indian Lands. Sec. 108(a)	“Online poker provided by online poker facilities licensed under this title shall be lawful in the United States only with respect to the acceptance of bets or wagers from individuals located in States and Indian lands that have opted-in.”	
State Participation. Sec. 108(b)	<p>“(1) Opt-in election. A State shall be <u>considered to have opted-in</u> under this section if</p> <p>(A) a majority of a quorum of each chamber of the legislature of the State has approved a bill, resolution, or similar measure that expresses that bets or wagers authorized under this title <u>should not be prohibited in such State</u>; and</p> <p>(B) such bill, resolution, or similar measure is the most recent bill, resolution, or similar measure approved by a majority of a quorum of each chamber of the legislature of the State that expresses whether bets or wagers authorized under this title should be prohibited in such State.”</p> <p>“(2) Opt-out election. A State shall be <u>considered not to have opted-in</u> under this section if</p> <p>(A) a majority of a quorum of each chamber of the legislature of the State has approved a bill, resolution, or similar measure that expresses that bets or wagers authorized under this title <u>should be prohibited in such State</u>; and</p> <p>(B) such bill, resolution, or similar measure is the most recent bill, resolution, or similar measure approved by a majority of a quorum of each chamber of the legislature of the State that expresses whether bets or wagers authorized under this title should be prohibited in such State.”</p>	<p>The result when a State takes no action is not clear. However, given that such a State would not be considered to have opted-in, licensed online poker facilities operators could not take bets or wagers from individuals located in such a State.</p> <p>Note, however, that whether or not a State or tribe opts-in, it is still subject to the prohibitions described in the Bill (and in this memorandum) with respect to Internet gambling other than Internet poker with online poker facility operators licensed pursuant to the Bill. Opting-in under the Bill merely allows licensed online poker facility operators to accept bets and wagers from persons located within that State or the applicable tribal lands, and entitles that State or tribe to a share of the online poker activity fee (discussed below).</p>

<p>Indian Lands Located in States that have Opted-Out. Sec. 108(c)(4)</p>	<p>The process by which Indian Tribes opt-in is similar to that applicable to States. However, “[i]f the lands of an Indian tribe <u>are located in a State that is considered not to have opted-in under this section, the Indian tribe shall also be considered not to have opted-in . . .</u>”.</p>	<p>This clause is the source of considerable resistance to the Bill by Indian Tribes. It would make a Tribe’s ability to “opt-in” subject to the State in which the Tribe’s lands are located not affirmatively acting to “opt-out.”</p> <p>Note, however, that it appears that if a State does nothing, then a Tribe with lands located in the State could “opt-in,” because the State would not be considered to have “opted-out.” (It would not have opted-in, but it would not have affirmatively opted-out, either.)</p>
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**Intrastate Internet Gambling Prohibited Unless Expressly Authorized by the Bill:**

Bill Section Number	Text or Description of Bill Section (underlining added)	Comments
<p>Prohibition on Unlicensed Remote Bets and Wagers. Sec. 108(d)</p>	<p>“(1) In general.—Except as expressly authorized in [the Bill], no State or Indian tribe may authorize or operate a facility that offers remote bets or wagers, <u>even if such bets or wagers involve participants wholly within the boundaries of such State or the Indian lands of such Indian tribe, if such facility utilizes the services of any party located outside such State or Indian lands in connection with its operation or involves a financial institution in the receipt or transmission of deposits or withdrawals.</u></p> <p>(2) Limitation.—The prohibition set out in paragraph (1) shall not apply to any bet or wager authorized pursuant to a State or tribal law enacted before <u>May 1, 2012</u>, or authorized by a license issued pursuant to this title.”</p> <p>For purposes of the above, “remote bets or wagers” means bets or wagers</p> <p>(i) that are transmitted and received entirely within the boundaries of a single State or of the Indian lands of a single Indian tribe, using a communications facility <u>in which transmissions and all intermediate routing of electronic data occur wholly within the boundaries of such State or the Indian lands of such Indian tribe</u>; and</p> <p>(ii) with respect to which the participants are not located on the premises of the same casino gambling facility.</p>	<p>Clause (1) of subsection 108(d) would essentially make illegal the offering of any “bets or wagers” (again, which term excludes “qualifying intrastate lottery transactions” and bets permitted by the Interstate Horseracing Act), even if the relevant electronic transmissions never cross the boundaries of the relevant state (or tribal lands), if offering such bets or wagers involves a financial institution or any out-of-state (or tribal land) service; <u>provided however</u>, that such restriction would not apply to bets or wagers authorized pursuant to a State or tribal law enacted before May 1, 2012. (Also not subject to clause (1) – because expressly authorized under the Bill – would be bets or wagers with an online poker facility operating pursuant to a license issued by a qualified body pursuant to the terms and conditions of the Bill.) Accordingly, by way of example only (and before consideration of the broader “grandfather” clause in subsection 113(h), discussed below), the above subsection 108(d) would prohibit the Internet gambling authorized by the Delaware law passed in June, 2012, except to the extent falling within the definition of “qualifying intrastate lottery transactions,” even if the communications</p>

		<p>related to such gambling occurred entirely within the state.</p> <p>Note, however, that even if the Delaware expanded gaming law had been passed before May 1, 2012, the Internet gambling authorized by that law (other than “qualifying intrastate lottery transactions”) would be prohibited by the Bill. This is because the limitation set forth in subsection (2) of subsection 108(d) only makes the prohibition in clause (1) inapplicable. It does not make inapplicable other prohibitions set forth in the Bill, in particular the prohibitions that would be contained in the Wire Act, as amended by the Bill.</p> <p>As discussed below, however, the broader, “grandfather” clause contained in subsection 113(h) does not suffer from this limitation.</p>
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**Preemption of State and Tribal Laws:**

Bill Section Number	Text or Description of Bill Section (underlining added)	Comments
Preemption of State and Tribal Laws. Sec. 113(b)(1)	“Except as otherwise expressly provided in [the Bill], the provisions of this title shall supersede any provisions of the law of any State or Indian tribe expressly relating to the permitting, prohibiting, licensing, or regulating of Internet gambling facilities or online poker facilities and the law of any State or Indian tribe expressly relating to the authorization, prohibiting,	Except as otherwise provided, the Bill takes precedence over the laws of any State or Indian Tribe relating to gambling.

	licensing, expansion, or regulation of gambling, except to the extent such State or tribal laws are not inconsistent with this title.”	
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**Amendments to the UIGEA:**

Bill Section Number	Text or Description of Bill Section (underlining added)	Comments
UIGEA Sec.5368 Inapplicability to Certain Wagers. Sec. 113(d)	<p>Those parts of the UIGEA restricting acceptance of bets or wagers made by individuals located in the United States or requiring the blocking or other prevention of restricted transactions would not apply to</p> <ul style="list-style-type: none"> <li>- the placing, transmitting, or receiving of interstate off-track wagers, as such term is defined in section 3 of the Interstate Horseracing Act of 1978 (15 U.S.C. 3002), that are permissible under such Act (15 U.S.C. 3001 et seq.); and</li> <li>- any bet or wager <ul style="list-style-type: none"> <li>(A) occurring pursuant to a license issued under the Bill;</li> <li>(B) that is permissible under the Interstate Horseracing Act; or</li> <li>“(C) <u>[that] is the purchase of a chance or opportunity to win a lottery or other prize</u> <ul style="list-style-type: none"> <li><u>(i) which opportunity to win is predominantly subject to chance;</u></li> <li><u>(ii) which winning is determined not more frequently than daily;</u></li> <li><u>(iii) which is authorized by a State or Indian tribe wholly within its borders;</u></li> <li><u>(iv) with respect to which the Internet is solely the medium for purchase but is not the medium in which the drawing or the playing of the game or contest is conducted;</u></li> <li><u>(v) which requires the delivery (electronically or non-</u></li> </ul> </li> </ul> </li> </ul>	<p>This clause excepts from the UIGEA provisions that prohibit acceptance (and require blocking) of most bets and wagers made by persons in the United States, those bets or wagers (i) occurring pursuant to a license issued under the Bill, (ii) permitted under the Interstate Horseracing Act and, in general, (iii) in the nature of “qualifying intrastate lottery transactions.” (“Qualifying intrastate lottery transactions” would be “bets or wagers” under the UIGEA, but not under the Bill. They would be “carved out” of the UIGEA prohibitions by the UIGEA amendment contained in subsection 113(d) of the Bill.)</p>

	<p><u>electronically) of a tangible ticket or card for purposes of redemption of any prize; and</u></p> <p><u>(vi) which is not an online lottery game that is intended to mimic or does substantially mimic a gaming device, slot machine, poker, or any other casino game.”</u></p>	
<p>Further Amendments to the UIGEA. Sec. 203</p>	<p>The Bill would add to the list of items that the UIGEA excepts from the term “unlawful Internet gambling” the following:</p> <p>“(C) Qualifying intrastate lottery transactions.—The term ‘unlawful Internet gambling’ does not include the purchase of a chance or opportunity to win a lottery or other prize that satisfies all of the conditions and limitations set out in section 102(3)(B)(ii) of the Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012.”</p> <p>[Note: Section 102(3)(B)(ii) merely states: “A qualifying intrastate lottery transaction.” Presumably this clause is intended to mean a lottery transaction that meets the definition of “qualifying intrastate lottery transaction” in the Bill.]</p> <p>“(D) Licensed online poker facilities.—The term ‘unlawful Internet gambling’ does not include an activity carried out by an online poker facility, as such term is defined in section 102 of the Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012, operated by a person under a license provided under title I of that Act, in accordance with the provisions of that title I.”</p>	
<p>Further Amendments to the UIGEA. Sec. 203</p>	<p>The Bill would delete the UIGEA’s “intermediate routing” exception that the UIGEA had created in regard to intrastate transactions. That section that would be deleted provided:</p> <p>“(E) Intermediate routing.--The intermediate routing of electronic data shall not determine the location or locations in</p>	<p>This is a significant change. It means that – as the DoJ argued consistently prior to the issuance of its December 23, 2011 opinion – a transmission of a transaction or communication via the Internet will be considered “interstate” even if it begins</p>

	which a bet or wager is initiated, received, or otherwise made.”	and ends in the same state.
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**Amendments to the Wire Act:**

Bill Section Number	Text or Description of Bill Section (underlining added)	Comments
Wire Act Amendments. Sec. 113(f)	<p>The Bill would amend the Wire Act.</p> <p><u>Generally:</u></p> <p>As amended, the Wire Act would provide that, except as otherwise provided in that law, it would be unlawful for a person that is engaged in a gambling business to knowingly use a communication facility (defined so as to include mobile communication facilities and intermediate facilities and service) for the transmission in interstate or foreign commerce, of</p> <p>(1) bets or wagers (defined as in the Bill);  (2) information assisting in the placing of bets or wagers; or  (3) a communication, which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers.</p> <p>The Bill would amend the Wire Act to explicitly cover Internet communications. The Wire Act would be amended to provide:</p> <p>“Except as otherwise provided in this section, the transmission of bets or wagers, information assisting in the placing of bets or wagers, or a communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers shall be considered a transmission in interstate or foreign commerce</p>	<p>As amended, the Wire Act restrictions would not be qualified by “sporting events.” Thus, it would apply to ALL bets or wagers, and related assisting information, except as set forth below in the table under “Exceptions.”</p> <p>Note that the Wire Act, as amended, would be extremely broad. Because of the broad definitions of the “Internet” and what is considered an “interstate” transmission, the Wire Act, as amended, would cover all traditional online lottery ticket purchases (i.e., made via a retailer terminal), information assisting such purchases, and information entitling the recipient to receive money or credit as a result of such purchases; <u>provided however</u>, that it would except from its prohibitions (in addition to “qualifying intrastate lottery transactions”) interstate transmissions of “information relating to a State-specific lottery” if such transmissions were between a state where such lottery is permitted and an out-of-state data center. Accordingly, not excepted (and thus still prohibited) would</p>



	<p>subject to this section if such transmission involved the use, in some part, of the Internet.”</p> <p>“Internet” would be defined in the amended Wire Act as: “the international computer network of interoperable packet switched data networks.”</p> <p><u>Exceptions:</u></p> <p>The Wire Act would expressly not prohibit:</p> <ul style="list-style-type: none"> <li>(i) the transmission of information assisting in the placing of bets or wagers for use in news reporting if such transmission does not solicit or provide information for the purpose of facilitating or enabling the placing or receipt of bets or wagers;</li> <li>(ii) <u>the interstate transmission of information relating to a State-specific lottery between a State or foreign country where such betting or wagering is permitted under Federal, State, tribal, or local law and an out-of-State data center for the purposes of assisting in the operation of such State-specific lottery;</u></li> <li>(iii) a qualifying intrastate lottery transaction (as defined in section 102 of the Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012);</li> <li>(iv) any activity that is permissible under the Interstate Horseracing Act; or</li> <li>(v) any activity that is permissible under the Bill.</li> </ul> <p><u>HOWEVER, paragraph (1)(A)(iii) would not include any online lottery game that is intended to mimic or does substantially mimic a gaming device, slot machine, poker, or any other casino</u></p>	<p>be the transmission of “bets or wagers” in connection with games with draws more frequent than once a day (among various other games) unless between a state and an out-of-state data center. Thus, transmissions of bets or wagers in connection with such games to an <u>in-state data center</u> would be prohibited, because they would be considered “interstate” (since they would use, in part, the “Internet,” as defined in the amended Wire Act). In addition, even the exception allowing communications to an out-of-state data center would be inapplicable to bets or wagers relating to such games if the communications were routed through other states, because the amended Wire Act would contain no language directing that the intermediate routing of the communication is to be ignored.</p> <p>Although the amended Wire Act would be made much less onerous by reason of the grandfather clause in subsection 113(h), discussed below, it nevertheless would significantly restrict state lotteries. By way of example only, after enactment of the Bill, states wishing to conduct new lottery games (or <u>any</u> lottery games, if the state currently has no state lottery) that required a change in state law or which were of a type not permitted in that state on the date the Bill was enacted, would be</p>
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	<p><u>game.”</u></p> <p>See also the critical grandfather clause in Sec. 113(h) of the Bill, discussed immediately below.</p> <p><u>Seizure of Funds:</u></p> <p>The Wire Act would be amended so as to permit the U.S. to seize funds in an account maintained at an insured depository institution that is a financial transaction provider if such funds:</p> <ul style="list-style-type: none"> <li>(i) are owned or controlled by a gambling business; and</li> <li>(ii) constitute the proceeds of, were derived from, or facilitated, a violation of the Wire Act.</li> </ul>	<p>limited to games that were “qualifying intrastate lottery transactions.” Thus, for example, after enactment of the Bill, states could not implement twice-daily draw games, or 5-minute keno, if such new games required a change in state law for implementation or were of a type not permitted on the date the Bill was enacted. (See the discussion of subsection 113(h) below.)</p>
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**Grandfather Clause Preserving Lawful Internet Gambling Existing as of the Date of Enactment of the Bill:**

Bill Section Number	Text or Description of Bill Section (underlining added)	Comments
<p>Preservation of Existing Lawful Gambling. Sec. 113(h)</p>	<p><u>Grandfather Clause.</u></p> <p>(1) The Bill, the UIGEA and the Wire Act, “and any other provision of Federal law that establishes criminal penalties for any activity involved in placing, receiving, or otherwise transmitting a bet or wager, information assisting in the placing of bets or wagers, or a communication which entitles the recipient to receive money or credit as a result of bets or wagers, <u>shall not apply to the offering of a bet or wager or gambling game authorized, licensed, and regulated by a State or Indian tribe on the day before the date of enactment of this Act and otherwise lawful activities in support of the offering of that bet or wager or gambling game.</u></p> <p>(2) Applicability.—Paragraph (1) [i.e., the Grandfather Clause]</p>	<p>Subsection 113(h) of the Bill “saves” – i.e., makes lawful – all lottery transactions “authorized, licensed and regulated by a State . . . on the day before the date of enactment of [the Bill].” Thus, it would permit the conduct by a state of all lottery games currently being conducted by the state (and the conduct of lottery games not yet being conducted if such games were “authorized, licensed and regulated” by the state). However, if any individual state wished to conduct a game that did not qualify as a “qualifying intrastate lottery transaction” – either because it had draws more frequently than daily or otherwise –</p>

	<p>shall not apply to—</p> <p>(A) any expansion of or other change to any such bet or wager or gambling game that otherwise would violate any applicable provision of Federal law <u>if a change in State or tribal law is necessary in order to permit such expansion or change;</u></p> <p>(B) the offering of a bet or wager or gambling game of the same type and character in a State or Indian tribe in which that bet or wager or gambling game is not permitted on the date of enactment of this Act; and</p> <p>(C) <u>qualifying intrastate lottery transactions.</u></p>	<p>and that game (i) was one of a type not permitted on the date the Bill was enacted or (ii) required a change in that state’s law in order to implement, then the game could not be implemented, even if the game was “authorized, licensed and regulated” by the state.</p>
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**Exclusion Relating to Betting Between Participants Located on Premises of the Same Casino:**

Bill Section Number	Text or Description of Bill Section (underlining added)	Comments
<p>Systems Used in Support of Lawful Gambling. Sec. 113(g)</p>	<p>The Bill, the UIGEA and the Wire Act, “and any other provision of Federal law that establishes criminal penalties for any activity involved in placing, receiving, or otherwise transmitting a bet or wager, information assisting in the placing of bets or wagers, or a communication which entitles the recipient to receive money or credit as a result of bets or wagers, <u>shall not apply to gaming devices, information, or communications, to the extent used to support bets or wagers offered by a casino gaming facility that</u></p> <p>(A) occur between participants who are located on the premises of the same casino gaming facility; and</p> <p>(B) are lawful in the State or on the Indian lands in or on which the casino gaming facility is located.”</p>	<p>This exception permits video lottery gaming, slot machine gaming and mobile gaming between participants located on the premises of the same casino gaming facility. Note that it does not permit such mobile gaming on race tracks – in my view a glaring omission. While “gaming device” is defined so as to exclude “machines that process bets or wagers for pari-mutuel betting pools,” it does not operate so as to make lawful mobile bets on horse races placed via wireless mobile devices by participants located at a race track.</p>

**Seizure of Bettor Funds Permitted:**

Bill Section Number	Text or Description of Bill Section (underlining added)	Comments
Bettor Forfeiture. Sec. 204	<p>The Bill would amend 18 U.S.C. 981 to make clear that funds involved in a transaction, or attempted transaction, in violation of the Bill would be subject to seizure by the U.S. government.</p> <p>Specifically, it would make the following property subject to such seizure:</p> <p>“Any property, real or personal, involved in a transaction or attempted transaction in violation of section 103 of the Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012, or any property traceable to such property.”.</p>	<p>This clause permits the United States to seize funds owned by bettors if they were involved in a transaction in violation of the Bill. For the first time, player gambling funds would be subject to seizure. Usually, such seizure of funds requires that the owner of the funds have committed a criminal act.</p> <p>Although this clause is consistent with the summary of the Bill, some media outlets have reported that this seizure provision was omitted from the Bill. Assuming I have the most recent version of the Bill (which I understand I do), such media reports are incorrect.</p>

**Online Poker Activity Fee:**

Bill Section Number	Text or Description of Bill Section (underlining added)	Comments
Imposition of Online Poker Activity Fee. Sec. 302(a)	<p>A new section 4491 is added to the Internal Revenue Code of 1986, as follows:</p> <p>“SEC. 4491. IMPOSITION OF ONLINE POKER ACTIVITY FEE.</p> <p>“(a) Imposition of Online Poker Activity Fee.—Each person who is a licensee shall be required to pay not later than 15 days after the end of each calendar month an online poker activity fee equal</p>	<p>This Section of the Bill sets forth the “Poker Activity Fee” to be paid by online poker facility licensees. The “Poker Activity Fee” is sixteen percent (16%) of the licensee’s “online poker receipts,” as defined in the Section.</p>

	<p>to <u>16 percent</u> of a licensee’s online poker receipts for that calendar month.</p> <p>“(b) Online Poker Receipts.—</p> <p>“(1) In general.—The term ‘online poker receipts’ with respect to any calendar month means the amounts received by a licensee which are attributable to any commission fee, tournament fee (reduced by the amount of any tournament prizes paid by the licensee), or other fee or charge required or received from customers during such month which are directly connected to online poker.</p> <p>“(2) Exclusions.—Revenues derived from the sale or provision of goods or services that are ancillary and not integral to the game, tournament, or contest of online poker, and amounts with respect to which a bonus or promotional credit was issued by or on behalf of the licensee to a customer, shall not be taken into account in determining online poker receipts.</p>	
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**Online Poker Activity Fee Trust Fund:**

Bill Section Number	Text or Description of Bill Section (underlining added)	Comments
<p>Online Poker Activity Fee Trust Fund. Sec. 302(c)</p>	<p>Subchapter A of chapter 98 of the Internal Revenue Code of 1986 would be amended by adding at the end the following new section:</p> <p>“SEC. 9512. ONLINE POKER ACTIVITY FEE TRUST FUND.</p> <p>“(a) Creation of Trust Fund.—There is established in the Treasury of the United States a trust fund to be known as the ‘<u>Online Poker Activity Fee Trust Fund</u>’ (hereafter in this section</p>	<p>The portion of the Trust Fund allocated to states and Indian tribes – i.e., approximately 14% of licensees’ online poker receipts – would be allocated as follows: 70% would be allocated based on the location of the players from whom the operators’ online poker receipts were generated; and <u>the remaining 30% would be paid to the state or tribe in which the</u></p>

	<p>referred to as the ‘Trust Fund’), consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section and section 9602(b).</p> <p>“(b) Transfers to Fund.—There are hereby appropriated to the Trust Fund amounts equivalent to the amount of the fees received in the Treasury with respect to each calendar month under section 4491.</p> <p>“(c) Expenditures From Fund.—</p> <p>“(1) State and indian tribal government fees.—</p> <p>    “(A) In general.—On a monthly basis, the Secretary shall pay to States and Indian tribal governments <u>the State and tribal share of the Trust Fund</u> with respect to each licensee, to be allocated as follows:</p> <p>        “(i) <u>70 percent of such share</u> to be allocated among such States and Indian tribal governments, with each such government receiving an amount which bears the same ratio to the total amount so allocated as—</p> <p>            “(I) the amount of all fees paid under section 4491 by all licensees for such month which are attributable to <u>customers located within the jurisdiction</u> of such government, bears to</p> <p>            “(II) the amount of all online poker receipts received by all licensees for such month.</p> <p>        “(ii) Except as provided in subparagraph (D), <u>30 percent</u> to be allocated among such States and Indian tribal governments, with each such government receiving an amount which bears the same ratio to the total amount so allocated as—</p> <p>            “(I) the amount of all fees paid under section 4491 for such month by all licensees licensed by a <u>qualified body located within the jurisdiction</u> of such</p>	<p><u>operators’ licensing bodies were located.</u> Thus, if an operator received its license from the Nevada Gaming Control Board, that 30% portion would be paid to Nevada – and the state in which the operator was located would receive less than 10% of the operator’s online poker receipts (i.e., 14% x 70% = 9.8%).</p>
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	<p>government, bears to</p> <p>“(II) the amount of all online poker receipts received by all licensees for such month.</p> <p>“(B) <u>State and tribal share.</u>—Except as provided in subparagraph (D), for purposes of this section and with respect to a calendar month, the State and tribal share of the Trust Fund with respect to a licensee is <u>14 percent</u> of such licensee’s online poker receipts which are taken into account for purposes of the fee under section 4491 for such month.</p> <p>“(C) <u>State and Indian tribal government jurisdiction.</u>—For purposes of subparagraph (A)(i), online poker receipts of a customer located within the jurisdiction of an Indian tribal government shall be attributed to such Indian tribal government and not to the State or States in which such Indian tribal government is located. For purposes of subparagraph (A)(ii), a qualified body located within the jurisdiction of an Indian tribal government shall be considered to be located solely within the jurisdiction of such Indian tribal government and not within the jurisdiction of any State.</p> <p>“(D) <u>Federal qualified body.</u>—In the case of a licensee licensed by a qualified body which is a Federal agency (or any component thereof, including the Office of Online Poker Oversight), the amount of the State and tribal share of the Trust Fund which, if such qualified body were not a Federal agency (or component thereof) and were located within the jurisdiction of a State or Indian tribal government, would be allocated under subparagraph (A)(ii) to such State or Indian tribal government—</p> <p>“(i) shall be subtracted from the State and tribal share of the Trust Fund with respect to such licensee, and</p> <p>“(ii) shall be added to the Federal share of the Trust Fund with respect to such licensee, and shall be available for expenditure as provided in paragraphs (2), (3), and (4).</p>	
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**Effort to Preclude any Future Expansion of Internet Gambling:**

Bill Section Number	Text or Description of Bill Section (underlining added)	Comments
<p>Limitation on Expansion to Games other than Poker. Sec. 401</p>	<p>“(b) In General.—<u>It shall not be in order</u> in the Senate or the House of Representatives to consider any bill, resolution, amendment, or conference report that licenses, regulates, or otherwise permits the operation of an Internet gambling facility or that licenses, regulates, or otherwise permits any form of Internet gambling other than poker.”</p> <p>“(c) Limitation on Changes to This Section.—<u>It shall not be in order</u> in the Senate or the House of Representatives to consider any bill, resolution, amendment, or conference report that would repeal or otherwise amend this section.”</p> <p>“(d) Waiver.—A provision of this section may be waived or suspended <u>in the Senate only by the affirmative vote of three-fifths of the Members</u>, duly chosen and sworn.</p> <p>“(e) Appeals.—<u>An affirmative vote of three-fifths of the Members of the Senate</u>, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under this section.”</p>	<p>The Section attempts to make it difficult to consider amendments to the Bill. Once the Bill is enacted, consideration in the Senate or House of Representatives of any such amendments, or bills that would permit the operation of Internet gambling other than poker, would be out of order. Similarly, it would be out of order to consider any legislative action that would repeal or otherwise amend this Section.</p> <p>A three-fifths majority vote in the affirmative would be required for the Senate (i) to waive or suspend any provision of this Section, (ii) to sustain an appeal of a ruling of the Chair on a point of order raised under this Section.</p>



**Resolution of WTO Dispute:**

Bill Section Number	Text or Description of Bill Section (underlining added)	Comments
Resolution of International Dispute over Internet Gambling. Sec.403	The Bill would call for the United States Trade Representative, within 180 days of enactment of the bill, to conclude the process of withdrawing the commitment of the United States with respect to remote or Internet gambling under the General Agreement on Trade in Services.	This Section calls for a resolution of the dispute that has been ongoing for several years and in which the World Trade Organization's ("WTO") relevant dispute resolution bodies ruled against the U.S. (and in favor of Antigua and Barbuda) obligating the U.S. to open its market to certain Internet gaming from foreign operators. The U.S. has refused to comply with such decisions and instead has elected to withdraw, in relevant part, from the trade agreement.

[END]