

A BILL

111th Congress
2nd Session

To amend title 15 and title 31, United States Code, to provide for the amendment of the Unlawful Internet Gambling Enforcement Act to improve enforcement, to strengthen the prohibition of unlawful Internet gaming, to provide for licensing of Internet poker with consumer protections and strong regulatory oversight, to enforce the tax code, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title- This Act may be cited as the “Prohibition of Internet Gaming, Internet Poker Regulation and UIGEA Enforcement Act”.

(b) Table of Contents- The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PROHIBITION OF INTERNET GAMBLING AND INTERNET POKER REGULATION ACT

Sec. 101. Findings.

Sec. 102. Licensing requirement for operation of Internet poker facilities.

Sec. 103. Annual report.

Sec. 104. Orderly transition.

Sec. 105. Effective date.

TITLE II- STRENGTHENING UIGEA ACT

Sec. 201. Financial transaction providers.

Sec. 202. List of Unlicensed Internet gaming enterprises.

Sec. 203. Regulations.

Sec. 204. Conforming amendments.

Sec. 205. Effective date.

TITLE III--INTERNET POKER REVENUE PROVISIONS

Sec. 301. Amendment of 1986 code.

Sec. 302. Tax on Internet poker; licensee information reporting.

Sec. 303. Withholding from certain Internet poker winnings.

Sec. 304. Withholding of tax on nonresident aliens.

Sec. 305. Provisions for State and tribal tax.

Sec. 306. Foreign licensees subject to U.S. federal income tax.

Sec. 307. No excise tax on Internet poker wagering.

TITLE IV--STUDY AND PREVENTION OF PROBLEM AND PATHOLOGICAL GAMBLING

Sec. 401. State and tribal support for public awareness, research and treatment programs for problem and pathological gambling.

TITLE V—RESOLUTION OF INTERNATIONAL DISPUTES

Sec. 501. Resolution of international dispute over Internet gaming.

TITLE VI—SEVERABILITY

Sec. 601. Severability.

TITLE I—PROHIBITION OF INTERNET GAMING AND INTERNET POKER REGULATION ACT

SEC. 101. FINDINGS.

Congress makes the following findings:

(1) Since the development of the Internet, online sites offering Internet gaming and similar games have raised numerous policy, consumer protection, and enforcement concerns for the federal and State governments as millions of United States persons have chosen to play online on sites offered by operators located in many different countries, often with no credible licensing or regulatory protections.

(2) The Unlawful Internet Gambling Enforcement Act, passed in 2006, was intended to aid enforcement efforts against unlawful Internet operators and to limit unlawful Internet gaming involving U.S. persons; however, since enactment, unlawful Internet gaming has continued to flourish, as the act has proven unable to stop operators offering sports wagering and other forms of gaming.

(3) Longstanding federal policy against interstate gaming on professional, scholastic, or amateur sporting events as embodied in the Professional and Amateur Sports Protection Act (28 U.S.C. § 3701 *et seq.*), and all criminal laws prohibiting such gaming, are crucial to ensuring the integrity of athletic competition and should remain in full force and effect. Moreover, games of chance have traditionally been subject to various forms of federal and State control and prohibition, and those policy decisions should be respected and enforced, except as altered in this Act.

(4) Additional tools to assist law enforcement in the prevention of unlawful Internet gaming activities are needed. Maintenance of a list of unlawful Internet gaming enterprises and the owners, operators and key personnel of such enterprises (as well as entities and related personnel found unsuitable) will aid those law enforcement efforts.

(5) Poker enjoys a long tradition in the United States. Poker is part of the cultural and recreational fabric of the United States and has been since the founding days of the

United States. United States poker aficionados have included presidents, judges, and statesmen throughout the history of the United States. Unlike with many other games, in the long run the outcome of poker is influenced by the skill of the participants. Poker does contain elements of chance, and for that reason nearly all courts and states have considered poker to be a game of chance for purposes of their gaming laws. Nonetheless, over any substantial interval, a player's ultimate success is also influenced by that player's relative level of skill.

(6) Moreover, unlike "house-banked" games, bets and wagers in poker are made between the participants.

(7) Currently, no law permits the offering of poker online; however, at least 15 states permit licensed commercial gaming or, at a minimum, poker, including California, Colorado, Delaware, Florida, Iowa, Kansas, Michigan, Mississippi, Missouri, Nevada, New Jersey, New Mexico, Ohio, Pennsylvania, and West Virginia.

(8) The hosting by Internet operators of poker games and tournaments should be controlled by a strict licensing and regulatory framework--

- (A) to prevent underage wagering and otherwise to protect vulnerable individuals;
- (B) to ensure the games are fair and are conducted honestly;
- (C) to address the concerns of law enforcement; and
- (D) to enforce limitations on the activity established by the States and Indian tribes.

(9) An effective licensing system would ensure that licenses are issued only to Internet operators who--

- (A) meet strict criteria to protect consumers;
- (B) are in good financial and legal standing;
- (C) are of good character, honesty, and integrity;
- (D) utilize appropriate technology to prevent those under 21 years of age from participating;
- (E) adopt and implement systems to protect compulsive players;
- (F) have in place risk-based methods--
 - (i) to identify and combat money laundering and fraud; and
 - (ii) to protect the privacy and security of customers;
- (G) adopt strict internal controls which are subject to audit; and
- (H) adopt and implement systems to collect and remit taxes due.

(10) Because there is no federal gaming regulatory structure in the United States, creating a new federal Internet poker market poses complex regulatory and enforcement challenges for regulators. Therefore a new market should be regulated by entities that have an established track record of providing a well regulated gaming market to American consumers.

(11) Because there is no federal gaming regulatory structure in the United States, creating a new federal Internet poker market poses complex challenges to ensure protection of

U.S. consumers. Therefore a new market should be limited, at least initially, to service providers that have an established track record of complying with a strict 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 Internet poker assets, to ensure they will comply strictly with the new regulatory regime.

(12) The Internet, by its nature, traverses state bounds. Any particular transaction may cross a number of state boundaries from origin to destination, and two 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 parameters outside the control of sender and recipient. 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.

(13) Effective regulation requires application of the regulatory provisions prescribed in this Act to all persons seeking a license to operate an Internet poker facility, with each State and Indian tribe retaining the ability to prohibit operators of Internet poker facilities from accepting bets or wagers from persons located within their jurisdictions by providing notice of such determination as prescribed hereunder.

(14) Licensing and regulating Internet poker facilities will provide additional tax revenues for the United States and for States in which customers and operators are located and will reduce tax avoidance.

(15) The United States never intended to include Internet gaming of any kind within the scope of its commitments under the General Agreement for Trade in Services, and therefore, no World Trade Organization Member had any competitive expectation of access to the United States Internet gaming market. Despite these obvious facts, the Dispute Settlement Panels and the Appellate Body of the World Trade Organization have determined that such commitments were made in a proceeding brought by the Government of Antigua and Barbuda, WT/DS285.

(16) As a result of the erroneous conclusion of the World Trade Organization, the United States has indicated its intention to withdraw that commitment and has initiated the appropriate process to that end. The United States should conclude this matter in an orderly and expeditious fashion that respects World Trade Organization rules and the federal and State prerogative to restrict and control wagering on sporting events and games of chance.

(17) Different forms of gaming do not constitute “like services” under the General Agreement for Trade in Services because they raise different regulatory and policy concerns, require differing measures to protect consumers and to ensure fairness, entail different roles for operators and players, require differing infrastructure and support, are perceived differently by consumers and markets, and are grounded in differing cultural and historical contexts.

SEC. 102. LICENSING REQUIREMENT FOR OPERATION OF INTERNET POKER FACILITIES.

(a) IN GENERAL- Title 15, United States Code, is amended by adding at the end the following new chapter:

CHAPTER 108 – PROHIBITION OF INTERNET GAMBLING AND INTERNET LICENSING REGULATION

Sec. 8201. Definitions

In this chapter:

- (1) APPLICANT- The term ‘applicant’ means any person who has applied for a license pursuant to this chapter.

- (2) BET OR WAGER- The term ‘bet or wager’ has the same definition as that term is used in 31 U.S.C. section 5362(1), except that it does not include –
 - (a) a bet or wager that is permissible under the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 *et seq.*);
 - (b) a bet or wager that is an intratribal transaction described in 31 U.S.C. section 5362(10)(C); or
 - (c) a bet or wager that is a chance or opportunity to win a lottery or other game authorized by a State or tribe, that is an intrastate transaction described in 31 U.S.C. section 5362(10)(B).

- (3) POKER- The term ‘poker’ means any of several card games in which success over the long run is influenced by the skill of the player and--
 - (A) that are commonly referred to as ‘poker’;
 - (B) that are played by 2 or more people who bet or wager against each other on cards dealt to them out of a common deck of cards --
 - (i) including games using community cards that any player may use to make his or her hand; and
 - (ii) including games using electronic devices that simulate a deck of cards;
 - (C) in which players compete against each other and not against the person operating the game;
 - (D) in which bets or wagers of one player are often designed to affect the decision of another player in the game; and
 - (E) in which the person operating the game may assess a commission fee or any other type of fee.

The term ‘poker’ includes poker tournaments in which players pay a fee to play against each other including tournaments where the licensee guarantees a minimum tournament pot.

- (4) INTERNET- The term ‘Internet’ has the same meaning given the term in section 5362 of title 31, United States Code.

(5) INTERNET POKER- The term ‘Internet poker’ means a poker game, hand, tournament, or other contest of poker offered through the use of an Internet poker facility.

(6) INTERNET GAMING FACILITY- The term ‘Internet gaming facility’ means an Internet site, or similar communications facility in which transmissions may cross State boundaries, through which a bet or wager, as defined in this Act, is initiated, received, or otherwise made, whether transmitted by telephone, Internet, satellite, or other wire or wireless communication facility, service, or medium.

(7) INTERNET POKER FACILITY – The term ‘Internet poker facility’ means a type of Internet gaming facility that provides bets or wagers only with respect to a game, hand, tournament, or other contest of poker.

(8) OPERATE AN INTERNET POKER FACILITY- The term ‘operate an Internet poker facility’ means to conduct, direct, manage, own, supervise, or control an Internet poker facility.

(9) LICENSEE- The term ‘licensee’ means a person who operates an Internet poker facility under a license issued by a Qualified Body pursuant to this chapter.

(10) SIGNIFICANT VENDOR- The term ‘significant vendor’ means an individual or entity that, with respect to a licensee or applicant under this chapter –

(A) knowingly manages, administers, or controls bets or wagers that are initiated, received, or otherwise made within the United States;

(B) knowingly manages, administers, or controls the games with which such bets or wagers are associated;

(C) develops, maintains, operates, the software, other system programs or hardware on which the games or the bets or wagers are managed, administered or controlled;

(D) provides the trademarks, trade names, service marks, or similar intellectual property under which the licensee identifies its Internet Poker Facility to its customers in the United States;

(E) provides any products, services, or assets and is paid a percentage of gaming revenue by the licensee in order to do so; or

(F) with respect to an applicant, proposes to provide any of the the activities, services or items identified in subparagraphs (A)-(E).

(11) SECRETARY- The term ‘Secretary’ means the Secretary of Commerce.

(12) INDIAN LANDS AND INDIAN TRIBE- The terms ‘Indian lands’ and ‘Indian tribe’ have the meaning given such terms in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703).

(13) STATE- The term ‘State’ means any State of the United States, the District of Columbia, or any commonwealth, territory, or other possession of the United States.

(14) QUALIFIED BODY- The term ‘Qualified Body’ means a State or tribal regulatory body that has been qualified by the Secretary as provided in subsection (c) of section 8202 (including entities qualified as a matter of law under subsection (c)(1)).

(15) REMOTE GAMING EQUIPMENT- The term ‘remote gaming equipment’ means electronic or other equipment principally used by or on behalf of an operator of an Internet Poker Facility, including by any significant vendor to such operator, to-

(A) register a person’s participating in Internet poker and to store information relating thereto;

(B) present to persons who are participating or who may participate in Internet poker the game that is to be played;

(C) determine all or part of, or the effect of, a result relevant to a game, hand, tournament, or other contest of Internet poker and to store information relating thereto;

(D) accept payment in respect of Internet poker from the player; or

(E) authorize payment of any winnings in respect of Internet poker.

The term shall not include equipment used for business continuity, back-up, excess capacity or other secondary use. It also shall not include a computer which is used by a person to participate in Internet poker unless the computer is provided by or on behalf of the person who is conducting or providing the facilities for the game, nor shall it include equipment operated in the ordinary course of providing banking, telecommunications and payment processing services or such other ancillary services as may be prescribed.

(16) SPORTING EVENT- The term ‘sporting event’ means any athletic competition, whether professional, scholastic, or amateur, or any performance of any athlete or athletes in such competitions, except that such term does not include any activity described in section 3704(a)(4) of title 28, United States Code.

(17) CASINO GAMING- The term ‘casino gaming’ means the full range of casino gaming activity licensed by state or tribal regulatory bodies that would be qualified as Class III gaming under section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703), if that Act were applicable to the gaming, but not including bingo as defined in that Act or State or tribal lotteries.

(18) CASINO GAMING FACILITIES -- The term ‘casino gaming facility’ means a facility that provides casino gaming on a riverboat, at a race track or in another facility that hosts 500 or more gaming devices in one physical location pursuant to a duly authorized license issued by a state or Tribal gaming regulatory authority.

(19) GAMING DEVICE – The term ‘gaming device’ means any computer-based gambling machine, including slot machines and video lottery terminals, but not including machines that process bets or wagers for parimutuel betting pools, which has been approved by a State or Tribal gaming regulatory authority.

(20) QUALIFIED RACE TRACK – The term ‘qualified race track’ means a race track that has at least 500 gaming devices or offers bets or wagers under the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 *et seq.*).

(21) QUALIFYING INTRA-STATE LOTTERY BET OR WAGER – A ‘qualifying intra-state lottery bet or wager’ means a bet or wager that is –
(a) the purchase of a chance or opportunity to win a lottery or other prize (which opportunity to win is predominantly subject to chance) the outcome of which is not determined or made known to the person who placed the bet or wager near in time to the placing of the bet or wager; and
(b) is an intra-state transaction as defined in 31 U.S.C. 5362(10)(B), as clarified by 31 U.S.C. 5362(10)(E).

(22) Total U.S. Casino Gaming Revenue – The term “total U.S. casino gaming revenue” means the summation of total U.S. commercial casino gaming revenue (as calculated by summing the amounts reported by state gaming control authorities) and total Indian Tribal Gaming revenue (as reported by the National Indian Gaming Commission).

Sec. 8202. Establishment and administration of licensing program

(a) COMMERCE RESPONSIBILITIES AND POWERS-

(1) The Secretary shall have responsibility and authority for the following activities:

(A) Establishing an Office of Internet Poker Oversight (OIPO) with sufficient resources to exercise the functions set out in this chapter, to be led by a person with demonstrated experience and expertise in regulating gaming activities.

(i) The Secretary may delegate any authority under this chapter to OIPO.

(ii) Consistent with the requirements of subsection 8202(2)(c)(3), OIPO may serve as a Qualified Body to issue licenses to and regulate the provision of Internet poker services by Indian tribes.

(iii) OIPO may issue such regulations and take such other actions as necessary to carry out its responsibilities under this subsection.

(B) Reviewing and qualifying regulatory bodies pursuant to subsection (c) of this section.

(C) Exercising oversight over regulatory bodies pursuant to subsection (c) of this section to ensure that they comply with the requirements of this chapter and carry out their regulatory and enforcement functions with adequate diligence;

(D) Investigating and taking any appropriate remedial action with respect to any Qualified Body that appears, based upon the Secretary’s own inquiry or credible information provided by other Qualified Bodies, applicants, licensees, or law enforcement officials to be deficient or

substantially less rigorous than other Qualified Bodies in the discharge of its responsibilities under this chapter.

(E) Issuing regulations establishing minimum standards that must be met by Qualified Bodies, including regulations relating to-

- (i) size and qualification of staff;
- (ii) the Qualified Body's independence from entities that provide Internet Poker Facilities or significant vendors to such entities;
- (iii) the Qualified Body's enforcement authority under applicable Federal, State, or tribal law and regulation;
- (iv) the Qualified Body's authority and capacity to conduct suitability reviews and experience in conducting such reviews; and
- (v) the Qualified Body's ability to conduct independent testing of remote gaming equipment.

(F) Issuing regulations establishing rules and procedures for dealing with sums placed in escrow under subsections 8202(c)(4)(D)(i) and 8202(l)(5), and section 104(b)(3) of this Act.

(G) Issuing such other regulations the Secretary deems necessary to administer and enforce the requirements of this chapter.

(H) Employing enforcement agents with sufficient training and experience to administer the requirements of this chapter and the regulations prescribed under this subchapter.

(I) Enforcing the requirements of this chapter through all appropriate means provided under this chapter and other provisions of law.

(2) (A) Notwithstanding any certification of suitability made by or license granted by a Qualified Body, the Secretary retains the authority to suspend or to revoke a certificate of suitability or a license if the Secretary has reason to believe that a person does not meet the suitability requirements established under this section or, as applicable, any other requirement of a licensee. The Secretary may not overturn a decision by a Qualified Body to deny or to terminate a license or to deny to grant a certificate of suitability or to revoke a certificate of suitability.

(B) If a Qualified Body –

- (i) denies a license;
- (ii) terminates a license;
- (iii) denies a certificate of suitability; or
- (iv) revokes a certificate of suitability

to a person, and within 12 months of such denial, another Qualified Body grants such person a license or certificate of suitability, the Secretary shall review the license or certificate of suitability, as applicable, and within 3 months from the date such review began, determine whether to act under subsection (A).

(3) The Secretary has the authority to issue a summons with respect to an applicant or licensee necessary to carry out the purposes of this Act.

- (4) The Secretary may invoke the aid of any court of the United States to compel compliance with the summons within the jurisdiction of which—
- (A) the investigation which gave rise to the summons or the examination is being or has been carried on;
 - (B) the person summoned is an inhabitant; or
 - (C) the person summoned carries on business or may be found.
- (5) The court may issue an order requiring the person summoned to appear before the Secretary --
- (A) to produce books, papers, records, and other data;
 - (B) to give testimony as may be necessary to explain how such material was compiled and maintained;
 - (C) to allow the Secretary to examine the business of a licensee; and
 - (D) to pay the costs of the proceeding.
- Any failure to obey the order of the court may be punished by the court as a contempt thereof. All process in any case under this subsection may be served in any judicial district in which such person may be found.
- (6) CONSULTATION WITH INDIAN TRIBES – In implementing this chapter, the Secretary shall conduct meaningful consultation with Indian tribes regarding all aspects of this subchapter which affect Indian tribes, both as potential Qualified Bodies and as potential licensees.

(b) INTERNET POKER FACILITY LICENSING PROGRAM-

(1) LICENSE REQUIRED-

- (A) It shall be unlawful for a person to operate an Internet gaming facility in interstate or foreign commerce in which bets or wagers are knowingly initiated, received, or otherwise made by persons located in the United States without a license in good standing issued to such person by a Qualified Body pursuant to this chapter. A licensee need obtain a license from only one Qualified Body.
- (B) Any person who violates this section shall be fined under Title 18, imprisoned for not more than two years, or both.

(2) LIMITATION TO INTERNET POKER- With respect to Internet gaming facilities, Qualified Bodies shall be limited to issuing licenses to provide Internet poker facilities, as defined in section 8201. Nothing in this section is meant to limit the ability of Qualified Bodies to issue licenses for other forms of gaming consistent with applicable State or Tribal law and not inconsistent with federal law.

- (A) Determination of whether the game provided satisfies the definition of poker in section 8201 is made in the first instance by the Qualified Body that issued a license to the licensee.
- (B) Other licensees or Qualified Bodies may challenge a game provided by a licensee with the Secretary on the grounds that it does not satisfy the definition of poker in section 8201. The Secretary must make a determination within 30 days of such challenge.

(C) A licensee may continue to offer a game that has been challenged under subparagraph (B) until the Secretary makes a determination under that subparagraph.

(3) APPEAL- Within 30 days of a decision by the Secretary under subsection (2)(B), licensees and Qualified Bodies may appeal the Secretary's decision pursuant to subsection (2) to the United States District Court for the District of Columbia. Such court shall set aside the Secretary's decision if it determines that the decision was-

- (A) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;
- (B) not made consistent with required procedures; or
- (C) unsupported by substantial evidence.

(4) PENALTIES- The Secretary shall have authority to impose penalties on licensees that offer games determined not to be poker as defined in section 8201, if the Secretary finds those licensees to have acted in reckless disregard of the definition. Determination by a Qualified Body that a game meets the definition of poker, as defined in section 8201, shall have no bearing on the determination of recklessness. A licensee may appeal any penalties imposed under this paragraph to United States District Court for the District of Columbia. Such court shall set aside the penalty if it determines that it was-

- (A) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;
- (B) not made consistent with required procedures; or
- (C) unsupported by substantial evidence.

(5) AUTHORITY UNDER VALID LICENSE- Notwithstanding any other provision of law and subject to the provisions of this chapter, a licensee may accept a bet or wager with respect to Internet poker from an individual located in the United States, subject to the limitations set forth in this subchapter, and may offer related services so long as its license remains in good standing.

(6) LIMITATION TO UNITED STATES. Licensees may not accept bets or wagers from persons located outside of the United States and may offer play only in games and tournaments involving exclusively persons located in the United States. Nothing in this subsection shall prevent a licensee or its affiliates from operating an Internet gaming facility separate from the entity licensed under this chapter that accepts bets or wagers from persons located outside of the United States, so long as there is no commingling of players with the Internet gaming facility licensed under this chapter.

(A) AUTHORITY TO REMOVE LIMITATION. On or after three years after the date that licenses first issue specified in subsection 104(a) of this Act, the Secretary may authorize licensees to accept bets or wagers with respect to Internet poker from an individual located in one or more jurisdictions outside of the United States, if the Secretary makes the following findings –

- (i) acceptance of such bets or wagers would not violate the law in the jurisdiction of the individual placing such bets or wagers at the time such bets or wagers are placed;

(ii) acceptance of such bets or wagers would not significantly increase the risk that the requirements of subsection 8202(i)(1)-(10) will be satisfied.

(B) If the Secretary acts under this subsection, the Secretary shall provide a report to Congress setting forth his or her findings.

(7) INTERSTATE OFF-TRACK WAGERS- Notwithstanding any other provision of this chapter, a person may accept interstate off-track wagers (as defined by section 3 of the Interstate Horseracing Act of 1978 (15 U.S.C. 3002)), whether by telephone, Internet, satellite, or other wire or wireless communication facility, service, or medium without need for a license issued pursuant to this chapter.

(c) QUALIFYING STATE AND TRIBAL REGULATORY BODIES -

(1) AUTOMATIC DESIGNATION DUE TO EXTENSIVE EXPERIENCE AND PROVEN TRACK RECORD OF PROTECTING LARGE PORTION OF GAMING PUBLIC - As of the date of enactment of this Act, any State agency or tribal regulatory body that meets the conditions specified below shall be designated, as a matter of law, a Qualified Body with authority to review applications, to issue licenses, and to engage in all other regulatory and enforcement functions given to Qualified Bodies that are set out in this chapter if –

A. such agency or regulatory body currently regulates casino gaming and has so regulated casino gaming for at least the 5 years preceding date of enactment;

B. such agency or regulatory body has regulated casino gaming facilities involving gross gaming revenue of at least 5% of total U.S. casino gaming revenue for at least 3 out of the 5 years preceding date of enactment;

C. the members of such agency or regulatory body are not selected or controlled, directly or indirectly, by an entity that has any ownership interest in a facility that engages in casino gaming or that is an applicant, licensee or significant vendor under this Act; except that non-controlling investments held by a State, tribal, or local government pension, retirement, annuity, or endowment fund shall not be considered ownership interests for purposes of this subparagraph;

D. the State agency or tribal regulatory body is located in a State or on Indian lands that is opted in under section 8204; and

E. the State agency or tribal regulatory body provides written notice to the Secretary of its intention to act as a Qualified Body.

The designation as a Qualified Body shall be effective as of the date a State agency or tribal regulatory body that meets the requirements of this subsection provides the notice specified in subparagraph (v).

(2) APPLICATION FOR DETERMINATION-

A. After the Secretary has issued final regulations under this chapter, any State agency or tribal regulatory body not qualified under subsection (1) that regulates casino gaming may-

- (i) request the Secretary to designate it as a Qualified Body; and
- (ii) provide the Secretary with such documentation as the Secretary determines necessary for the Secretary to determine whether such State or tribal regulatory body is qualified to review applications, to issue licenses, and to engage in all other regulatory and enforcement functions given to Qualified Bodies that are set out in this chapter.

(B) Not later than 90 days after receiving a request from a State agency or a tribal regulatory body under (A), the Secretary shall designate the State or tribal regulatory body a Qualified Body, and so notify the entity, only if

- (i) the Secretary determines that the laws and regulations providing authority to the entity and the enforcement resources of the entity are sufficient to ensure the entity has the authority, capacity, and resources necessary to review applications, issue licenses, and engage effectively in all other regulatory and enforcement functions given to Qualified Bodies in this chapter; and
- (ii) the Secretary determines that the applicable State or tribal laws, regulations and standards to implement the requirements set out in subsections 8202(f) and (h) and in section 8203 are substantially equivalent to those used by State agencies or tribal regulatory bodies designated as Qualified Bodies pursuant to subsection (c)(1).

(C) In making its determination, the Secretary shall consider-

- (i) whether the regulatory body employs sufficient number of enforcement agents with experience in gaming regulatory enforcement areas to discharge its intended functions and has the sophistication and resources necessary to evaluate issues unique to the online environment;
- (ii) how long the regulatory body has effectively regulated other forms of gaming and whether it has a history of demonstrated regulatory enforcement and oversight commensurate with the responsibilities imposed under this chapter;
- (iii) the regulatory body's experience in working with federal authorities, including the Financial Crimes Enforcement Network;
- (iv) whether the regulatory body or any other agent or instrumentality of the State or Indian tribe owns or has any ownership interest, directly or indirectly, in a licensee, applicant, significant vendor, or potential applicant or significant vendor and, if so, what procedures and organizational or other structures have been erected between the regulatory body and those other agents or instrumentalities to prevent impairment and the appearance of

impairment to the integrity of the regulatory functions; except that non-controlling investments held by a State, tribal, or local government pension, retirement, annuity, or endowment fund shall not be considered ownership interests for purposes of this subparagraph; and

(v) other factors the Secretary has specified by regulation or deems relevant to the ability of the State or tribal regulatory body to serve as an effective Qualified Body.

(D) MINIMUM REQUIREMENTS OF QUALIFIED BODIES UNDER STATE OR TRIBAL LAW. At a minimum, applicable State or tribal law must provide Qualified Bodies with the authority to --

(i) investigate the suitability of each applicant to ensure compliance with this chapter and regulations prescribed under this chapter;

(ii) require licensees to maintain appropriate procedures to ensure compliance with this chapter and regulations prescribed under this chapter;

(iii) examine any licensee and any books, papers, records, or other data of licensees relevant to any recordkeeping or reporting requirements imposed by the Qualified Body under this chapter;

(iv) summon a licensee or an applicant for a license, an officer or employee of a licensee or any such applicant (including a former officer or employee), or any person having possession, custody, or care of the reports and records required by the Qualified Body under this chapter, to appear before the Qualified Body at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to any investigation in connection with the enforcement of this chapter or any application for a license under this chapter;

(v) enforce or direct enforcement of a summons in State or tribal court;

(vi) investigate any violation of this chapter, any regulation under this chapter, and any other violation of applicable state or tribal law relating to the operation of an Internet poker facility;

(vii) conduct continuing reviews of applicants and licensees and the operation of Internet poker facilities by licensees by use of technological means, on-site observation of facilities, including servers, or other reasonable means to assure compliance with this chapter and any regulations under this chapter; and

(viii) impose civil penalties for violations of this chapter and any regulation prescribed or order issued thereunder, including State or tribal law described under this subsection.

(3) OIPO shall act as a Qualified Body to review license applications of, issue licenses to, and regulate the provision of Internet poker services under this Act by applicants or licensees that are federally-recognized Indian tribes that apply to

OIPO. Nothing in this subsection shall require federally-recognized Indian tribes to seek a license from OIPO.

(a) OIPO shall obtain sufficient staff, resources, and expertise to carry out its functions as a Qualified Body under this subsection.

(b) Regulations issued under this subsection to implement the requirements of subsections 8202(f) and 8202(i) and section 8203 must be substantially equivalent to those adopted by State agencies or tribal regulatory bodies deemed to be Qualified Bodies pursuant to subsection 8202(c)(1).

(4) **NONQUALIFYING STATE AND TRIBAL REGULATORY AUTHORITIES DUE TO LIMITED EXPERIENCE OR CONFLICTS-** The Secretary may not approve an application from a State agency or tribal regulatory body if any of the following is applicable to such entity --

(A) the State agency or tribal regulatory body has not regulated casino gaming facilities involving at least 0.5% of total U.S. casino gaming revenue for at least 3 out of the 5 years preceding date of enactment;

(B) the State agency or tribal regulatory body is located in a State or Indian lands that is not opted in under section 8204; or

(C) the members of such agency or regulatory body are selected or controlled, directly or indirectly, by an entity that has any ownership interest in a facility that is an applicant, licensee or significant vendor under this Act; except that non-controlling investments held by a State, tribal, or local government pension, retirement, annuity, or endowment fund shall not be considered ownership interests for purposes of this subparagraph.

(5) **WITHDRAWAL OF QUALIFICATION-**

(A) **WITH RESPECT TO AUTOMATICALLY QUALIFIED BODIES.**

If the Secretary determines, after issuing final regulations, that a Qualified Body under section 8202(c)(1) would not satisfy the requirements necessary to be designated as a Qualified Body if the entity were to apply to be a Qualified Body under (c)(2), the Secretary may notify the Qualified Body that the Secretary intends to withdraw the qualification, and provide written notice to the Qualified Body of the steps it must take to satisfy the requirements to maintain its designation as a Qualified Body. One year from the date of such written notice, the Secretary may withdraw the designation as a Qualified Body under section 8202(c)(1) if the Qualified Body has not taken the steps directed by the Secretary.

(B) **WITH RESPECT TO ALL QUALIFIED BODIES.** One year after issuing final regulations under this chapter, the Secretary may withdraw, with 60 days notice, the designation as a Qualified Body under (c)(1), (c)(2), or (c)(3) if the Secretary determines that the Qualified Body is not in compliance with the requirements of the Act or regulations issued thereunder. The Secretary may provide the Qualified Body an opportunity to come into compliance not exceeding 6 months. A Qualified Body provided notice under this subparagraph may not issue new licenses until

the Secretary has determined that the Qualified Body has come into compliance.

(C) A Qualified Body that is a State agency or tribal regulatory body has the right to appeal to the United States District Court for the District of Columbia any withdrawal under subsection (A) or (B) made by the Secretary. The court shall review the withdrawal for an abuse of discretion.

(D) In the event that a Qualified Body's status as a Qualified Body body is withdrawn-

(i) licensees licensed under the Qualified Body whose qualification has been withdrawn must either -

(a) (1) cease offering, accepting, and providing services with respect to bets or wagers from persons located in the United States; and

(2) (A) return all customer deposits within 30 days of the qualification withdrawal, or
(B) place those sums return of which to U.S. customers is not feasible due to change in customer address, bank details, or similar difficulty, in escrow in an account with a financial institution in the United States for safekeeping and orderly disposition by the Secretary; or

(b) apply for a new license from a different Qualified Body within 30 days of the qualification withdrawal.

(ii) If the licensee seeks a new license under subsection (D)(i)(b), the licensee may continue to operate until final action is taken on the license application by the Qualified Body.

(a) Until final action is taken on the license application, the Secretary shall have enforcement and regulatory authority over such licensees.

(b) The Secretary may delegate the enforcement and regulatory authority over such licensees under subparagraph (a) to a Qualified Body.

(d) RELIANCE ON STATE AND TRIBAL REGULATORY BODIES -

(1) ACTIONS BY QUALIFIED BODIES- During the period that any entity is a Qualified Body under paragraph (c)(1), (c)(2), or (c)(3), the entity --

(A) May accept and review any application for a license under this chapter, to the extent consistent with the requirements of this Act;

(B) May assess on each applicant a user fee for conducting such review in an amount the Qualified Body determines to be necessary to meet its expenses in the conduct of such review;

(C) May undertake reviews of any individual or entity necessary to make suitability determinations under this chapter;

(D) May issue licenses under this chapter;

- (E) May engage in any other regulatory or enforcement function with respect to applications to that entity and licenses issued by that entity necessary to carry out the purposes of this chapter; and
- (E) Shall report all applicants for licensure and the dispositions of their applications to the Secretary promptly upon disposition of each application or in such intervals as the Secretary may prescribe. Such report shall include such information or documentation as the Secretary may request.

(e) APPLICATION FOR LICENSE-

(1) APPLICATION-

(A) IN GENERAL -- A person seeking a license to operate an Internet poker facility in interstate commerce shall submit to one or more Qualified Bodies, an application therefor in such form and in such manner as the applicable Qualified Body considers appropriate.

(B) CERTAIN APPLICANTS – An applicant that –

- (i) (aa) at any time prior to applying for a license under this Act, was a person that owned, in whole or in significant part, an Internet gaming facility or an entity that operated an Internet gaming facility, which accepted bets or wagers from persons located in the United States, and
- (bb) acted with knowledge of the fact that such bets or wagers involved persons located in the United States;
- (ii) was a significant vendor with respect to the bets or wagers from persons located in the United States for a person identified in subparagraph (i), and acted with knowledge of the fact that such bets or wagers involved persons located in the United States;
- (iv) is a person that purchased or acquired, in whole or in significant part, a person identified in subparagraph (i) or (ii), or the assets, in whole or in part, of such person; or
- (v) will use as a significant vendor a person identified in subparagraphs (i) through (iii)

must apply for a license only with a Qualified Body that is deemed a Qualified Body under 8202(c)(1). For purposes of this subparagraph, “in significant part” is defined as an owning five percent or more of a person, or owning any interest that provided control over a person.

(2) ELEMENTS- Each application submitted under paragraph (1) shall include such information as the applicable Qualified Body considers appropriate, including at a minimum the following:

- (A) Complete financial information about the applicant.
- (B) Documentation showing the organization of the applicant and all related businesses and affiliates.
- (C) The criminal and financial history of--
 - (i) the applicant;

- (ii) each of the senior executives and directors of the applicant;
- (iii) any other person who is in control of the applicant; and
- (iv) any other person for which this information is requested by the Qualified Body.

(D) Other information necessary for the suitability analysis under subsection (f).

(E) Disclosure of all other applications for licenses previously or simultaneously submitted to other Qualified Bodies and whether those applications are pending, were granted or denied.

(F) A detailed description of the applicant's plan for complying with all applicable requirements and regulations under this chapter, with particular emphasis on the applicant's ability to satisfy the requirements of subsection (i).

(G) A certification by the applicant that the applicant agrees to be subject to jurisdiction in United States federal courts and in courts of the Qualified Body to which the applicant has applied and to all applicable United States laws relating to the operation of an Internet poker facility and associated activities.

(f) STANDARDS FOR LICENSE ISSUANCE; SUITABILITY QUALIFICATIONS AND DISQUALIFICATION STANDARDS-

(1) SUITABILITY FOR LICENSING-

(A) IN GENERAL- An application to receive a license constitutes a request for a determination of the applicant's general character, integrity, and ability to participate or engage in, or be associated with Internet poker, as appropriate. No person shall be eligible to obtain a license unless the Qualified Body with which it has filed an application has determined, upon completion of a background check and investigation, that the applicant, any person deemed to be in control of the applicant, and all significant vendors of the applicant are suitable for licensing.

(B) ASSOCIATES OF APPLICANTS-

(i) IN GENERAL- If an entity that must undergo a suitability analysis under (A) is a corporation, partnership, or other business entity, a background check and investigation shall occur with respect to the president or other chief executive of the corporation, partnership, or other business entity and other partners or senior executives and directors or shareholders of the corporation, partnership, or entity, as determined appropriate by the Qualified Body.

(ii) MINIMUM DETERMINATION- In carrying out clause (i), the Qualified Body shall, at a minimum, carry out a background check and investigation of the 5 individuals receiving the most compensation (whether in the form of salary, bonus, or otherwise) from the entity, any person or entity that controls the entity, and

any other individuals or entities as determined appropriate by the Qualified Body.

(2) SUITABILITY STANDARDS- For purposes of this chapter, an applicant and any other person or entity that is required to be determined to be suitable for licensing in connection with such application, as applicable, is suitable for licensing if the person demonstrates to the Qualified Body by clear and convincing evidence that the person --

(A) is a person of good character, honesty, and integrity;

(B) is a person whose prior activities, criminal record, if any, reputation, habits, and associations do not--

(i) pose a threat to the public interest or to the effective regulation and control of Internet poker facilities; or

(ii) create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of Internet poker facilities or the carrying on of the business and financial arrangements incidental there to such facilities;

(C) is capable of and likely to conduct the activities for which the applicant is licensed in accordance with the provisions of this chapter and any regulations prescribed under this chapter;

(D) has or guarantees acquisition of adequate business competence and experience in the operation of Internet poker or Internet gaming facilities; and

(E) has or will obtain sufficient financing for the nature of the proposed operation and from a suitable source.

The investigation and analysis of suitability for significant vendors and other entities required to be determined suitable shall be the same as the investigation and analysis of suitability for license applicants.

(3) UNSUITABLE -

(A) An applicant or any other person may not be determined to be suitable within the meaning of this chapter if the applicant or such person--

(i) has failed to provide information and documentation material to a determination of suitability for licensing under paragraphs (1) and (2);

(ii) has supplied information which is untrue or misleading as to a material fact pertaining to any such determination;

(iii) has been convicted of an offense punishable by imprisonment of more than 1 year;

(iv) is delinquent in the payment of any applicable federal or State tax, tax penalty, addition to tax, or interest owed to a jurisdiction in which the applicant or other person operates or does business, unless such payment has been extended or is the subject of a pending judicial or administrative dispute;

(v) has not agreed in writing to submit to personal jurisdiction in the United States for purposes of any matter arising from the operation of an Internet poker facility or associated activities; or

(vi) is determined not to be suitable for any other reason by the Qualified Body.

(4) ONGOING REQUIREMENT- A licensee, a significant vendor and any other person or entity that is required to be determined to be suitable for licensing in connection with such license, shall meet the standards necessary to be suitable for licensing throughout the term of the license.

(5) CERTIFICATE FOR SIGNIFICANT VENDORS – With respect to significant vendors, a determination of suitability by a Qualified Body shall be made through a “certificate of suitability,” which may be issued to a significant vendor that has been determined to be suitable as part of any licensing review process. A significant vendor must obtain a certificate of suitability from the Qualified Body. The Qualified Body shall withdraw the certificate if at any time the significant vendor no longer meets the standards necessary for a determination of suitability. A Qualified Body may rely upon such certificate to establish that the significant vendor is suitable as part of other license applications. A Qualified Body may, but need not, accept a suitability certificate provided by another Qualified Body.

(6) NOTICE OF CERTAIN SERVICE PROVIDERS- A licensee shall notify promptly the Qualified Body that issued its license of all persons that are not significant vendors but that-

(A) direct, provide or solicit customers to or for the licensee’s Internet poker facility, or materially assist in any of these tasks, in return for a commission or other fee;

(B) hold themselves out to the public as offering bets or wagers on licensee’s behalf;

(C) offer an Internet poker facility under their own names or brands but using and relying on licensee’s Internet poker facility;

(D) license trademarks, trade names, service marks or other similar intellectual property to the licensee;

(E) own a substantial interest in or control persons within the scope of subparagraphs (A) through (D).

(7) The Qualified Body, at its sole discretion and on a case-by-case basis, may require that a person meet suitability requirements for a licensee to conduct business with such person if the person is –

(A) within the scope of subparagraph (6);

(B) or is any other person that provides services to an applicant or licensee, if the Qualified Body determines that with respect to the services offered to the applicant or licensee, there is a substantial risk of circumvention of the suitability requirements applicable to significant vendors.

A Qualified Body may require such information from an applicant, licensee, significant vendor or entity identified in this subparagraph as it deems necessary to implement this provision.

(8) ENFORCEMENT ACTIONS-

(A) DETERMINATION OF UNSUITABILITY FOR CONTINUED

LICENSURE- If the Secretary or the Qualified Body that issued a license

finds that a licensee, or any other person or entity that is required to be determined to be suitable in connection with such licensee, fails to meet the suitability requirements in this subparagraph at any time during the tenure of the license, the Secretary or the Qualified Body may take action the Secretary or Qualified Body considers necessary to protect the public interest, including suspending or terminating the license.

(B) IMPOSITION OF CONDITIONS INCLUDING REMOVAL OF

PARTIES- Notwithstanding a determination under subparagraph (A), the Secretary or Qualified Body may allow a licensee to continue engaging in licensed activities by imposing conditions on the licensee under penalty of revocation or suspension of a license, including--

(i) the identification of any person determined to be unsuitable for licensing; and

(ii) the establishment of appropriate safeguards to ensure such person is excluded from any management or involvement in operation of the licensed activities.

(9) ADMINISTRATIVE PROVISIONS.

(A) BACKGROUND CHECK AND INVESTIGATION- Each Qualified Body shall establish standards and procedures for conducting background checks and investigations for purposes of this subsection.

(1) **PRIVILEGE --** Any written or oral statement made in the course of an official proceeding of the Secretary, or a Qualified Body, by any member thereof or any witness testifying under oath which is relevant to the purpose of the proceeding is absolutely privileged and shall not give rise to liability for defamation or relief in any civil action.

(2) **ADDITIONAL PRIVILEGE –** Notwithstanding section 552 of title 5, United States Code, or any other federal, State or tribal law to the contrary, any communication or document of an applicant or licensee, or affiliate thereof, which is made or transmitted to the Secretary or the Qualified Body or any of their agents or employees, except information that is already public, shall be absolutely privileged and shall not be disclosed by the Secretary or the Qualified Body without the prior written consent of the applicant or licensee (as applicable), or pursuant to a lawful court order, grand jury subpoena or similar procedure after timely notice of the proceedings have been given to the applicant or licensee (as applicable). Any privilege recognized under applicable federal, State or tribal law, including but not limited to attorney-client, physician-patient and accountant-client privileges, shall not be waived or lost because a document or communication otherwise protected by the privilege is disclosed to the Secretary or the Qualified Body.

(B) CONFIDENTIALITY – Any communication or document, except information that is already public,

- (i) required by the Secretary or Qualified Body to be disclosed by the applicant or licensee, including but not limited to applications, financial or earnings information and criminal records, whether of the applicant or licensee or of any affiliate, employee, officer, director or significant vendor thereof, or of any other third party; or
- (ii) prepared or obtained by an agent or employee of the Secretary or Qualified Body that contains information within the scope of subparagraph (i)

shall be treated as confidential and may not be disclosed, in whole or part, by the Secretary or the Qualified Body without a lawful court order or as otherwise expressly required by law.

(10) LOCATION OF REMOTE GAMING EQUIPMENT- In order to ensure the integrity of the regulatory system, a licensee is required to maintain its remote gaming equipment within the territory of the United States throughout the term of its license. A Qualified Body may require applicants that seek review by such Qualified Body to locate that equipment within the territory of the State or Indian tribe, provided that any such requirement is applied to all such applicants.

(g) ASSESSMENTS FOR ADMINISTRATIVE EXPENSES-

(1) USER FEES-

(A) IN GENERAL- The cost of administering this chapter with respect to each applicant and licensee, including the cost of any review or examination of a licensee to ensure compliance with the terms of the license and this chapter, shall be assessed by the Qualified Body against the applicant or licensee by written notice in an amount that the Qualified Body determines is necessary to meet the Qualified Body's expenses in carrying out such administration, review, or examination. Expenses that are attributable to review or examination of a particular applicant or licensee shall be assessed against that applicant or licensee. Expenses for general administration shall be assessed against all licensees equally.

(B) DISPOSITION- Amounts assessed by the Qualified Body as user fees under subparagraph (A) shall-

- (i) be available to the Qualified Body to cover expenses incurred by the Qualified Body in carrying out this chapter; and
- (ii) not be construed to be Government funds or appropriated monies, or subject to apportionment for the purposes of chapter 15 or any other authority.

(C) USER FEES SET BY SECRETARY- The Secretary may set user fees to be paid by applicants and licensees only in an amount the Secretary determines necessary to meet the Secretary's cost of administering this chapter. Qualified Bodies shall collect such user fees from applicants and licensees and turn them over promptly to the Secretary.

(D) COLLECTION-

- (i) REFERRAL- If any licensee fails to pay user fees under this paragraph after the assessment has become final, the Qualified Body may recover the amount assessed by action in a court of the

Qualified Body or the appropriate United States district court, along with any costs of collection and attorney fees.

(ii) ASSESSMENT REVIEWABLE- In any civil action under clause (i), a court may review the validity and adjust the amount of the user fees.

(2) DIRECT AND EXCLUSIVE OBLIGATION OF LICENSEE- The user fees shall be the direct and exclusive obligation of the licensee and may not be deducted from amounts available as deposits to any person placing a bet.

(h) APPROVAL OF LICENSE – A Qualified Body may grant licenses to provide Internet poker services under this chapter if the applicant meets the criteria established by the Qualified Body under this chapter.

(1) CONSUMER PROTECTION – To protect consumers from unqualified licensees during the development of the market and regulatory structure, for two years from the date of first license issuance specified in subsection 104(a) of this Act, Qualified Bodies may issue licenses only to –

(A) an applicant who owns or controls a company that has operated a casino gaming facility or a qualified race track for at least five years prior to the date of enactment of this Act;

(B) an applicant who is owned or controlled by a person who owns or controls a company that has operated a casino gaming facility or a qualified race track for at least five years prior to the date of enactment of this Act; or

(C) an applicant that, for at least five years prior to the date of enactment of this Act, has manufactured and supplied slot machines to casino gaming facilities.

After the date identified in the preceding sentence, Qualified Bodies may issue licenses to other applicants if the Secretary has made a finding under subparagraph (2).

(2) EXPANSION OF LICENSEES ONLY IF NO RISK TO PUBLIC – After two years from the date of first license issuance specified in subsection 104(a), the Secretary may issue regulations expanding the range of licensees beyond those listed in paragraph (1) if the Secretary makes a determination, after a full notice and comment process, that such an expansion will not significantly increase the risk that the requirements of subparagraph (i)(1)-(10) will not be satisfied by licensees.

(i) SAFEGUARDS REQUIRED OF LICENSEE- No Qualified Body shall issue a license under this section until it has issued regulations in furtherance of the requirements of paragraphs (1)-(10) of this subsection and of section 8203 and shall issue licenses only to those applicants that have implemented and that maintain mechanisms to comply with those regulations:

(1) PROHIBITION OF UNDERAGE GAMING- Appropriate safeguards to ensure, to a reasonable degree of certainty, that the individual placing a bet or wager is not less than 21 years of age.

(2) PROHIBITED LOCATIONS- Appropriate safeguards to ensure, to a reasonable degree of certainty, that the individual placing a bet or wager is physically located in a jurisdiction that has not prohibited such bets or wagers pursuant to section 8204 at the time the bet or wager is placed.

(3) MANDATORY COLLECTION OR REPORTING OF CUSTOMER TAXES- Appropriate mechanisms to ensure, to a reasonable degree of certainty, that all taxes relating to Internet poker from persons engaged in bets or wagers relating to such games are collected or reported, as required by law, at the time of any payment of proceeds of such bets or wagers.

(4) COLLECTION OR REPORTING OF TAXES OF LICENSEE- Appropriate mechanisms to ensure that all taxes relating to the operation of an Internet poker facility from any licensee are collected and disbursed as required by law and that adequate records to enable later audit or verification are maintained.

(5) SAFEGUARDS AGAINST FINANCIAL CRIME- Appropriate safeguards to prevent, to a reasonable degree of certainty, fraud, money laundering, and terrorist financing.

(6) SAFEGUARDS AGAINST COMPULSIVE PLAY- Appropriate safeguards to ensure, to a reasonable degree of certainty, compliance with the requirements of section 8203.

(7) PRIVACY SAFEGUARDS- Appropriate safeguards to protect, to a reasonable degree of certainty, the privacy and online security of any person engaged in bets or wagers on the licensee's Internet poker facility.

(8) PAYMENT OF ASSESSMENTS- Appropriate mechanisms to ensure that any user fee under subsection (g) is paid to the Qualified Body.

(9) PREVENTION OF CHEATING- Appropriate safeguards to ensure, to a reasonable degree of certainty, that the Internet poker games are fair and honest, and to prevent, to a reasonable degree of certainty, cheating, including collusion, and use of cheating devices, including use of "bots."

(10) OTHER REQUIREMENTS- Such other requirements as the Qualified Body or Secretary may establish by regulation under this chapter.

(j) LICENSE IS A PRIVILEGE NOT A RIGHT. A decision by a Qualified Body not to grant a person a license or certificate of suitability, or to terminate a license, or revoke a certificate of suitability, is not reviewable under federal law or the law of any jurisdiction other than the jurisdiction of the Qualified Body. The State or tribal law of the jurisdiction of the Qualified Body may, but need not, provide an opportunity to appeal.

(k) TERM, RENEWAL AND TRANSFER OF LICENSE-

(1) TERM- Any license issued under this section shall be issued for a 5-year term beginning on the date of issuance.

(2) RENEWAL- Licenses may be renewed in accordance with requirements prescribed by the applicable Qualified Body under this chapter.

(3) TRANSFER- Any transfer of a license or change of control of a licensee shall require prior approval of the applicable Qualified Body.

(l) DISCIPLINARY ACTION-

(1) IN GENERAL- Any licensee may be subject to disciplinary action, including but not limited to suspension or revocation of its license, by the Qualified Body that issued the license or the Secretary if the licensee fails to comply with any provision of this chapter. Only the Secretary or the Qualified Body which granted the license may initiate disciplinary action. Nothing in this paragraph shall limit a regulatory body that has authority over a licensee or an affiliated entity independent from this chapter from taking action under the law of that regulatory body.

(2) DISCIPLINARY PROCEDURES – A Qualified Body shall commence disciplinary action against a licensee under this section upon service of a formal written complaint upon the licensee, with a copy forwarded to the Secretary, that sets forth the grounds for the disciplinary action and the proposed penalty that is being sought, which may include any or all of the imposition of a fine as provided pursuant to Section (n)(1) of this chapter or limitation, condition, suspension or revocation of the license. The disciplinary process shall proceed according to the law and regulation of the jurisdiction of the Qualified Body.

(3) FINAL ACTION- Any disciplinary action shall be treated as a final action.

(A) ACTION BY QUALIFIED BODIES. A licensee aggrieved by disciplinary action by a Qualified Body may file an appeal only in the jurisdiction where the Qualified Body taking such action is located, only to the extent permitted by the law of such jurisdiction.

(B) ACTION BY SECRETARY. A licensee aggrieved by disciplinary action by the Secretary or OIPO may file an appeal in the United States District Court for the District of Columbia. Such court shall set aside the action if it determines that the action was-

(i) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(ii) not made consistent with required procedures; or

(iii) unsupported by substantial evidence.

(4) PENDING APPEAL- During the period in which a suspension or revocation of an existing license is being challenged through a pending judicial proceeding, the licensee may continue to offer bets and wagers in full compliance with the terms of its existing license and any other conditions the Qualified Body that issued the license or Secretary reasonably may deem required to protect the public interest.

(5) RETURN OF CUSTOMER FUNDS- If a licensee's license is revoked and no appeal pursuant to subparagraph (3) is pending, the licensee must return all customer funds in an orderly manner within 30 days of the revocation of the license or place in escrow those sums return of which to U.S. customers is not feasible due to change in customer address, bank details, or similar difficulty, in an account with a financial institution in the United States for safekeeping and orderly disposition by the Secretary.

(m) ADMINISTRATIVE PROVISIONS-

(1) REGULATION UNDER STATE LAW- Unless otherwise specifically provided in this Act, actions taken by a Qualified Body may be challenged by

applicants and licensees only as permitted under the law of the State or tribe in which the Qualified Body is located.

(2) ADMINISTRATIVE ASPECTS OF SUMMONS-

(A) PRODUCTION AT DESIGNATED SITE- A summons issued by the Secretary pursuant to this subsection may require that books, papers, records, or other data stored or maintained at any place be produced--

- (i) at any business location of a licensee or applicant for a license;
- (ii) if the licensee or applicant has been deemed suitable by or is seeking a determination of suitability from a Qualified Body, at any designated location in that State or tribal land of the Qualified Body or at any designated location in the District of Columbia.

(B) NO LIABILITY FOR EXPENSES- The Secretary shall not be liable for any expense incurred in connection with the production of books, papers, records, or other data under this subsection.

(C) SERVICE OF SUMMONS- Service of a summons issued under this subsection may be by registered mail or in such other manner calculated to give actual notice as determined by the Secretary.

(3) CONTUMACY OR REFUSAL- In case of contumacy by a person issued a summons under this subsection or a refusal by such person to obey such summons or to allow the Secretary to conduct an examination, the Secretary may bring an action to enforce the summons in federal court.

(n) CIVIL MONEY PENALTIES-

(1) IN GENERAL-

(A) IN GENERAL, QUALIFIED BODIES- A Qualified Body may assess upon any licensee or other person subject to the requirements of this chapter for any violation of this chapter or any regulation prescribed or order issued under this chapter, a civil penalty as provided by applicable State or tribal law. Such law shall provide authority to impose penalties at least up to the greater of--

- (i) the amount involved in the violation, if any; or
- (ii) \$100,000 for an individual and \$500,000 for a corporation.

(B) IN GENERAL, THE SECRETARY – The Secretary may assess upon any licensee or other person subject to the requirements of this chapter for any violation of this chapter or any regulation prescribed or order issued under this chapter, a civil penalty of up to, but not more than the greater of--

- (i) the amount involved in the violation, if any; or
- (ii) \$100,000 for an individual and \$500,000 for a corporation.

(C) NOT CUMULATIVE- The penalties authorized under subparagraphs (1)(A) and (1)(B) shall not be cumulative. Only one such penalty may be assessed per violation.

(D) FAILURE TO OBTAIN A LICENSE. Notwithstanding any other provision of law, the Secretary may assess upon an entity that is required to obtain a license under this chapter, but fails to obtain a license under this chapter, a civil penalty of up to the greater of –

- (i) the amount of bets or wagers taken by the entity from players in the United States during the period that a license was needed but not held by the entity, or
- (ii) \$1 million per day that the entity accepts bets or wagers from players in the United States during the period that a license was needed but not held by the entity.

Nothing in this provision shall affect the authority of the Department of Justice to prosecute the crimes created under this Act.

(2)ASSESSMENT-

(A) ENFORCEMENT BY QUALIFIED BODIES- Qualified Bodies shall enforce this Act under State or tribal law, and penalties shall be determined, reviewable, collectable, and disposed of as provided under applicable State or tribal law. When acting as a Qualified Body, penalties by OIPO shall be reviewable, collectable, and disposed of to the same extent such a penalty would be reviewed, collected, and disposed of by the Secretary under this Act.

(B) ENFORCEMENT BY THE SECRETARY-

(i) Any penalty imposed under paragraph (1)(B) may be assessed and collected by the Secretary by written notice.

(ii) If, with respect to any assessment under paragraph (1)(B), a hearing is not requested pursuant to subparagraph (v) within the period of time allowed under such subparagraph, the assessment shall constitute a final agency order.

(iii) The Secretary may compromise, modify, or remit any penalty which the Secretary may assess or has already assessed under paragraph (1).

(iv) In determining the amount of any penalty imposed under paragraph (1), the Secretary shall take into account the appropriateness of the penalty with respect to--

- (a) the size of the financial resources and the good faith of the person against whom the penalty is assessed;
- (b) the gravity of the violation;
- (c) the history of previous violations; and
- (d) such other matters as justice may require.

(v) The person against whom any penalty is assessed under paragraph (1) shall be afforded an agency hearing if such person submits a request for such hearing not later than 20 days after the issuance of the notice of assessment.

(vi) COLLECTION-

(a) If any person fails to pay an assessment after any penalty assessed under this paragraph has become final, the Secretary shall recover the amount assessed by action in the appropriate United States district court.

(b) In any civil action under clause (a), the validity and appropriateness of the penalty shall be subject to review for abuse of agency discretion.

(vii) All penalties collected under authority of paragraph (1)(B) shall be deposited into the Treasury.

(3) **CONDITION FOR LICENSURE-** Payment by a licensee of any civil penalty assessed under this subsection that has become final shall be a requirement for the retention of its license.

(o) **TREATMENT OF RECORDS-** In light of business competition, confidentiality and privacy concerns, the Secretary and Qualified Bodies shall protect from disclosure information collected in the course of regulating licensees to the full extent permitted by sections 552 and 552a of title 5 and analogous applicable State or tribal law.

Sec. 8203. Compulsive Gaming, Responsible Gaming, and Self-Exclusion Program Requirements

(a) **REGULATIONS REQUIRED-** Each Qualified Body shall prescribe regulations for the development of a Compulsive Gaming, Responsible Gaming, and Self-Exclusion Program that each licensee of that Qualified Body shall implement as a condition of licensure. Such regulations shall provide for the establishment of a program to alert the public to the existence, consequences, and availability of the self-exclusion list described in subsection (c).

(b) **MINIMUM REQUIREMENTS-** At a minimum, each Qualified Body shall require-

- (1) that licensees provide informational materials about responsible gaming, including information about the self-exclusion list described in subsection (c) and how a player may request placement on the list, each time a player signs in to make a bet or wager, which materials may be provided via a hyperlink or comparable mechanism;
- (2) that licensees provide informational materials about responsible gaming to any player that requests such materials;
- (3) that licensees make continuously available individualized responsible gaming options that any customer may choose, including allowing customers to self-limit their access to the issuance of credit, check cashing, or direct mail marketing by the licensee, in each case as and to the extent that the Qualified Body may deem appropriate; and
- (4) that licensees ensure that persons on the list of self-excluded persons established pursuant to subsection (c) are prevented from initiating any bets or wagers within the scope of this chapter.

(c) **LIST OF PERSONS SELF-EXCLUDED-**

(1) **ESTABLISHMENT-**

(A) **IN GENERAL-** Each Qualified Body shall establish and maintain a list of persons self-excluded from playing Internet poker.

(B) SINGLE LIST- Each list shall be provided by the Qualified Body weekly to the Secretary who shall maintain one consolidated version made available to all Qualified Bodies and licensees.

(C) PLACEMENT REQUEST- Any person may request placement on the list of self-excluded persons by--

- (i) acknowledging in a manner to be established by each Qualified Body with respect to its licensees that the person wishes to be denied gaming privileges within the scope of this chapter; and
- (ii) agreeing that, during any period of voluntary exclusion, the person may not collect any winnings or recover any losses resulting from any gaming activity at any licensee sites.

(D) CHILD SUPPORT DELINQUENTS – When it is made known to the Secretary by a Federal or State court or a competent State agency involved with the administration or enforcement of a court-ordered child support payment that a particular individual is delinquent with respect to court-ordered child support payments, the Secretary shall include that individual on the list established under this subsection. Individuals placed on the list pursuant to this paragraph shall be removed from such list if the court or agency that made such individual’s delinquency known to the Secretary notifies the Secretary that such individual is no longer delinquent.

(2) AUTHORITY TO ISSUE REGULATIONS- The Secretary may provide by regulation the criteria and procedures for Qualified Bodies to establish and maintain lists of persons self-excluded from all gaming activities at all licensee sites and procedures for placements on, and removals from, the list of self-excluded persons, but the absence of such regulations shall not absolve the Qualified Bodies of their obligations under this paragraph nor delay implementation of the other provisions of this chapter.

(3) LIMITATION ON LIABILITY-

(A) IN GENERAL- The United States, the Secretary, a Qualified Body, the State or Indian tribe in which that Qualified Body is located, an enforcement agent, or any employee or agent thereof, shall not be liable to any self-excluded person or to any other party in any judicial or administrative proceeding for any harm, monetary or otherwise, which may arise as a result of--

- (i) any failure to withhold gaming privileges from, or to restore gaming privileges to, a self-excluded person;
- (ii) otherwise permitting a self-excluded person to engage in gaming activity while on the list of self-excluded persons; or
- (iii) disclosure of information about individuals placed on the list of self-excluded persons.

(B) LICENSEES- Any licensee under this Act, or any employee or agent thereof, shall not be liable to any self-excluded person or to any other party in any judicial or administrative proceeding for any harm, monetary or otherwise, which may arise as a result of--

- (i) any failure to withhold gaming privileges from, or to restore gaming privileges to, a self-excluded person;

- (ii) otherwise permitting a self-excluded person to engage in gaming activity while on the list of self-excluded persons; or
- (iii) disclosure of information about individuals placed on the list of self-excluded persons;

unless that harm is the result of knowing and willful behavior on the part of the licensee or any employee or agent thereof.

(C) RULE OF CONSTRUCTION- No provision of subparagraph (A) or (B) shall be construed as preventing the Secretary or a Qualified Body from assessing any regulatory sanction against a licensee for failing to comply with the provisions of this subsection.

(4) DISCLOSURE PROVISIONS-

(A) IN GENERAL- Notwithstanding any other provision of federal or State law, the list of self-excluded persons shall not be open to public inspection.

(B) AFFILIATE DISCLOSURE- If necessary to effectuate the self-exclusion purposes of this subsection, any licensee may disclose the identities of persons on the self-excluded list to any significant vendor, service provider or affiliated company to the extent that such party maintains such information under confidentiality provisions comparable to those in this subsection.

(d) GAMING BY PROHIBITED PERSONS-

(1) PROHIBITION ON BENEFITTING FROM PROHIBITED GAMING ACTIVITY- A person who is prohibited from gaming with a licensee by law, or by order of the Secretary, a Qualified Body, or any court of competent jurisdiction, including any person on the self-exclusion list in accordance with subsection (c), shall not collect, in any manner or proceeding, any winnings or recover any losses arising as a result of any prohibited gaming activity.

(2) FORFEITURE- In addition to any other penalty provided by law, any money or thing of value that has been obtained by, or is owed to, any prohibited person by a licensee as a result of bets or wagers made by a prohibited person after the applicable prohibition has become effective shall be subject to forfeiture by order of the Secretary or a Qualified Body, following notice to the prohibited person and opportunity to be heard.

(3) DEPOSIT OF FORFEITED FUNDS- Any funds forfeited pursuant to this subsection shall be deposited into the Treasury, or, in the case of a forfeiture to a Qualified Body, as provided by the applicable State or tribal law.

(e) ADMINISTRATIVE PROVISIONS

(1) RULE OF CONSTRUCTION- No provision of this section shall be construed as creating a legal duty in the Secretary, a Qualified Body, a licensee, or any employee or agent thereof to identify or to exclude compulsive players not on the list of self-excluded persons.

(2) NO CAUSE OF ACTION - The Secretary, a Qualified Body, a licensee, and any employee or agent thereof, shall not be liable to any person in any proceeding for losses or other damages of any kind arising out of that person's gaming

activities based on a claim that the person was a compulsive, problem, or pathological player.

Sec. 8204. Prohibition on use of licenses in certain States and Indian lands

(a) IN GENERAL- Internet poker provided by Internet poker facilities licensed under this Act shall be lawful throughout the United States, except in States, Indian lands, and territories that have not opted in or have opted out, as the case may be, under this section.

(b) STATE NOTICE AND PARTICIPATION EXERCISE-

(1) IN GENERAL- No licensee may accept a bet or wager, under a license issued pursuant to this chapter, initiated by a person who is known by the licensee to be located at the time of such bet or wager in any State which prohibits such bets or wagers under this paragraph, until such time as notice of any repeal of such prohibition becomes effective under paragraph (2).

(A) STATES THAT DO NOT PERMIT COMMERCIAL POKER MAY OPT IN- Any State not identified in Section 101(7) of this Act shall be deemed to prohibit the bets and wagers authorized under this chapter, unless the Governor of such State provides written notice to the Secretary no later than December 31, 2011, that such bets or wagers should not be prohibited.

(B) STATES THAT PERMIT COMMERCIAL POKER MAY OPT OUT- Any State identified in Section 101(7) of this Act shall be deemed to permit the bets and wagers authorized under this chapter, unless the Governor of such State provides written notice to the Secretary no later than December 31, 2011, that such bets or wagers should be prohibited.

(2) CHANGES TO STATE ELECTION- At any time after the prescribed period in paragraph (1) has expired, a State may elect to permit or to prohibit bets and wagers authorized under this chapter through written notice by the Governor to the Secretary. Any such notice shall apply, for purposes of this chapter beginning --- the later of:

(A) 60 days after the date the notice is provided; or

(B) if the effective date specified in the notice is more than 60 days after the notice is provided, then the effective date specified in the notice.

(3) COORDINATION BETWEEN STATE AND TRIBAL POSITIONS- Any State prohibition under paragraphs (1) or (2) of bets and wagers authorized under this chapter shall not apply to the acceptance by a licensee of bets or wagers from persons located within the tribal lands of an Indian tribe that--

(A) itself elects or is deemed to participate pursuant to subsection (b) of this section; or

(B) would be entitled pursuant to other applicable law to permit such bets or wagers to be initiated and received within its territory without use of the Internet.

(4) EXISTING STATE LAW- No provision of State law enacted prior to the date of enactment of this chapter shall be construed to satisfy the notice procedure set

out in paragraph (1) of this subsection or to require a State to provide notice pursuant to this subsection.

(c) INDIAN TRIBE NOTICE AND PARTICIPATION EXERCISE-

(1) IN GENERAL- No licensee may knowingly accept a bet or wager, under a license issued pursuant to this chapter, initiated by a person who is located in the tribal lands of any Indian tribe which prohibits such bets or wagers under this paragraph, until such time as notice of any repeal of such prohibition becomes effective under paragraph (2).

(A) LIST OF INDIAN TRIBES THAT PERMIT TRIBALLY CONDUCTED OR PERMITTED POKER- Not later than 90 days after enactment of this Act, the Secretary shall obtain from the National Indian Gaming Commission and shall publish a list of all Indian tribes that permit licensed poker.

(B) INDIAN TRIBES THAT DO NOT PERMIT POKER- Any Indian tribe not identified on the list published pursuant to subparagraph (A) shall be deemed to prohibit the bets and wagers authorized under this chapter, unless the principal chief or other chief executive officer or designated authority of such Indian tribe provides written notice to the Secretary no later than December 31, 2011, that such bets or wagers should not be prohibited.

(C) INDIAN TRIBES THAT PERMIT LICENSED POKER- Any Indian tribe identified as permitting licensed poker in the list specified in subsection (A) shall be deemed to permit the bets and wagers authorized under this chapter, unless the principal chief or other chief executive officer or designated authority of such Indian tribe provides written notice to the Secretary no later than December 31, 2011, that such bets or wagers should be prohibited.

(2) CHANGES TO INDIAN TRIBE ELECTION- At any time after the prescribed period in subparagraphs (1)(B) and (C) has expired, an Indian tribe may elect to permit or to prohibit bets and wagers authorized under this chapter through written notice by the principal chief or other chief executive officer or designated authority of such Indian tribe to the Secretary. Any such notice shall apply, for purposes of this chapter, beginning the later of--

(A) 60 days after the date the the notice is provided; or

(B) if the effective date specified in the notice is more than 60 days after the notice is provided, then the effective date specified in the notice.

(3) EXISTING TRIBAL LAW- No provision of tribal law enacted prior to the date of enactment of this chapter shall be construed to satisfy the notice procedure set out in paragraph (1) of this subsection or to require an Indian tribe to provide notice pursuant to this subsection.

(d) INTRASTATE REMOTE POKER- If a State or Indian tribe allows intra-State or Intra-tribal Internet poker, or closed-loop remote poker within State or tribal lands, respectively, any opt-out under subsection (b) or (c) shall have no effect. Nothing in this subsection shall be used to suggest an inference as to the legality or illegality under federal law of State or tribal laws purporting to make such intra-State gaming legal.

(e) NOTIFICATION AND ENFORCEMENT OF STATE AND INDIAN TRIBE PROHIBITIONS-

(1) IN GENERAL- The Secretary shall notify Qualified Bodies, all licensees, and applicants of all States and Indian tribes that are deemed to prohibit the bets and wagers authorized under this chapter, promptly upon receipt of notice pursuant to subsections (b) or (c), as the case may be, and in no event later than 30 days before the effective date of such notice.

(2) COMPLIANCE- The Qualified Bodies shall take effective measures to ensure that any licensee under this chapter, as a condition of the license, complies with any prohibition imposed pursuant to subsections (b) or (c), as the case may be.

(3) VIOLATIONS- It shall be a violation of this chapter for any licensee knowingly to accept a bet or wager initiated or otherwise made by a person located at the time of such bet or wager within any State or in the tribal lands of any Indian tribe which has been deemed to prohibit such bets or wagers pursuant to subsection (b) or (c), as the case may be.

(4) STATE ATTORNEY GENERAL ENFORCEMENT- In any case in which the attorney general or other chief law enforcement officer of a State or any State or local law enforcement agency, authorized by the attorney general or other chief law enforcement officer of the State or by State statute to prosecute violations of consumer protection law, has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by a violation by a licensee pursuant to paragraph (2), the State, or the State or local law enforcement agency, may bring a civil action on behalf of the residents of that State or jurisdiction in a district court of the United States located therein--

(A) to enjoin that practice; or

(B) to enforce compliance with this section.

(5) INDIAN TRIBE ENFORCEMENT- In any case in which chief law enforcement officer of an Indian tribe or tribal law enforcement agency, authorized by the chief law enforcement officer of the Indian tribe or by tribal law to prosecute violations of consumer protection law, has reason to believe that an interest of the residents of the Indian lands within the tribe's jurisdiction has been or is threatened or adversely affected by a violation by a licensee pursuant to paragraph (2), the Indian tribe, or the tribal law enforcement agency, may bring a civil action on behalf of the residents of those Indian lands in a district court of the United States most proximate to those Indian lands --

(A) to enjoin that practice; or

(B) otherwise to enforce compliance with this section.

(6) IMPACT OF PARTICIPATION – Any person who participates in a bet or wager authorized under this chapter shall be responsible for all obligations incurred in connection with such bet or wager and may not avoid such obligation on any basis other than a violation of this chapter or of any regulations promulgated hereunder, except that a violation of subsection (e) shall not be a basis for avoiding the obligation.

(f) NO IMPACT ON INDIAN GAMING REGULATORY ACT-

(1) NO IMPACT. Subject to section 8202(b) of this chapter, no provision of this chapter or decision or action taken by an Indian tribe or State pursuant thereto shall have any effect on non-Internet gaming activities within the scope of section 2710 of title 25 of the United States Code or any successor provisions or on any Tribal-State compacts or authorities pursuant thereto.

(2) TRIBAL STATUS OR CATEGORY NOT AFFECTED – Tribal operation of Internet poker facilities under this chapter shall not impact an Indian tribe’s status or category or class under the Indian Gaming Regulatory Act (IGRA), section 2710 of title 25 of the U.S. Code, and an Indian tribe’s status, category or class under IGRA shall not impact its status or ability to offer bets or wagers pursuant to this chapter.

(3) NEW NEGOTIATIONS NOT REQUIRED –

(A) The fact that an Indian tribe is operating under a license issued pursuant to this chapter or that a tribal regulatory body is acting as a Qualified Body pursuant to this chapter shall not require an Indian tribe to negotiate a new agreement, limitation or other provision of tribal-State compact, agreement or other understanding with respect to gaming or revenue-sharing, with regard to any bet or wager occurring pursuant to a license issued under this chapter.

(B) The fact that a State has opted in or failed to opt out, as the case may be, under section 8204 or that a State regulatory body is acting as a Qualified Body pursuant to this chapter shall not require the State to negotiate a new agreement, limitation or other provision of tribal-State compact, agreement or other understanding with respect to gaming or revenue-sharing, with regard to any bet or wager occurring pursuant to a license issued under this chapter.

Sec. 8205. Prohibition on bets or wagers on games of chance and sporting events

(a) IN GENERAL- No provision of this chapter shall be construed to authorize any licensee to accept a bet or wager on ---

- (1) any game that is not Internet poker; or
- (2) any sporting event in violation of any State or federal law.

(b) CONSTRUCTION- Nothing in this chapter shall be construed to repeal or to amend any provision of State or federal law prohibiting, restricting, or otherwise addressing bets or wagers on sporting events, including provisions of State or federal law that permit participation in any fantasy or simulation sports games.

Sec. 8206. Safe harbor

It shall be an affirmative defense to any prosecution or enforcement action under any provision of federal, State, or tribal law that the activity forming the basis of such prosecution or enforcement action is authorized under and has been carried out lawfully in accordance with and under the terms of--

- (1) this chapter; or

(2) the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.).

Sec. 8207. Relation to subchapter IV of title 31

- (a) Subchapter IV of title 31 shall not apply to any bet or wager--
- (1) occurring pursuant to a license issued under this chapter, subject to section 8205; or
 - (2) that is permissible under the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.).

Sec. 8208. Cheating and other fraud

(a) CHEATING DEVICES PROHIBITED-

1. No person initiating, receiving, or otherwise making a bet or wager with a licensee, or sending, receiving, or inviting information assisting with a bet or wager with a licensee shall knowingly use, possess, or assist another in the use of, an electronic, electrical, or mechanical device or software or other program or tool which is designed, constructed, or programmed specifically for use in obtaining an advantage in any game authorized under this chapter, where such advantage is prohibited or otherwise violates the rules of play established by the licensee.
2. It shall not be a violation of this subsection for a licensee, its agents, a Qualified Body, or its agent to use or possess a device described in the preceding sentence if –
 - A. such use or possession is solely for purposes of testing an Internet Poker Facility;
 - B. such device is not used in live play involving actual bets or wagers; and
 - C. such device is registered with the Secretary and the Qualified Body that issued the applicable license. Notwithstanding any other provision of law, registrations under this section need not be made available to the public.

(b) ADDITIONAL OFFENSE-

- A. No person initiating, receiving, or otherwise making a bet or wager with a licensee, or sending, receiving, or inviting information assisting with a bet or wager with a licensee, shall knowingly use, possess, or assist another in the use of any cheating device with intent to cheat or defraud any licensee or other persons placing bets or wagers with such licensee. A software program that makes bets or wagers according to an algorithm shall constitute a type of cheating device under this subsection.
- B. It shall not be a violation of this subsection for a licensee, its agents, a Qualified Body, or its agent to use or possess a device described in the preceding sentence if –
 - A. such use or possession is solely for purposes of testing an Internet Poker Facility;
 - B. such device is not used in live play involving actual bets or wagers; and

C. such device is registered with the Secretary and the Qualified Body that issued the applicable license. Notwithstanding any other provision of law, registrations under this section need not be made available to the public.

(c) PERMANENT INJUNCTION- Upon conviction of a person for violation of this section, the court may enter a permanent injunction enjoining such person from initiating, receiving, or otherwise making bets or wagers or sending, receiving, or inviting information assisting in the placing of bets or wagers.

(d) CRIMINAL PENALTY- Whoever violates subsection (a) or (b) shall be fined under title 18 or imprisoned for not more than 2 years, or both.

Sec. 8209. Inapplicability of Certain Provisions to Interstate Off-Track Wagers

(a) INTERSTATE OFF-TRACK WAGERS- The provisions of this chapter and of the Unlawful Internet Gambling Enforcement Act restricting acceptance of bets or wagers made by individuals located in the United States or requiring the blocking or other prevention of restricted transactions shall not apply with respect to the acceptance of interstate off-track wagers (as such term is defined by section 3 of the Interstate Horseracing Act of 1978, as amended (15 U.S.C. 3002)), whether such off-track wager is made by telephone, Internet, satellite, or other wire or wireless communication facility, service or medium.

Sec. 8210. Construction and relation to Other law

(a) NO IMPACT ON EXISTING LAWFUL GAMES-

(1) IN GENERAL- If bets or wagers on certain games of skill are not regarded as gambling under an applicable provision of State, tribal, or federal law in effect as of the date of enactment of this chapter-

(A) nothing in this chapter shall be construed to require licensing under this chapter with respect to such games; and

(B) fees paid to participate in such games shall not be regarded as bets or wagers for purposes of this chapter.

(2) RELIANCE- Nothing in this chapter may be relied on as support for the legality or permissibility of games described in paragraph (1) without compliance with the licensing and other requirements of this chapter.

(b) PUBLIC GAMING FACILITIES PROHIBITED-

(1) IN GENERAL- Nothing in this chapter shall be construed to authorize or otherwise to permit the operation of places of public accommodation, clubs (including clubs or associations limited to dues-paying members or similar restricted groups), and similar establishments that permit access to Internet gaming facilities.

(2) ASSUMED PUBLIC GAMING FACILITIES- Any place of public accommodation, club, or similar establishment in which large numbers of computer terminals or similar

access devices are made available that are used principally for the purpose of accessing Internet gaming facilities as defined in this Act shall be considered a place of public accommodation, club, or similar establishment within the scope of subparagraph (1).

(3) The operation of a place of public accommodation that meets the criteria of subparagraph (2) is prohibited.

(4) RELATION TO STATE, LOCAL AND TRIBAL LAW- Except as set forth in subparagraph (3), places of public accommodation, clubs, or similar establishments described in this subsection shall be subject to all otherwise applicable State, tribal, and local police, criminal, zoning and other regulatory powers, which are not intended to be limited in any way by this chapter.

(c) PREEMPTION OF STATE AND TRIBAL LAWS-

(1) Except as otherwise expressly provided in this Act, the provisions of this chapter shall supersede any and all State and tribal laws insofar as they may now or hereafter purport to permit, prohibit, license or regulate Internet gaming facilities, including Internet poker facilities, except to the extent such State or tribal laws are consistent with this chapter.

(2) No provision of this chapter shall have any effect on the rights, privileges or obligations of State or tribal lotteries as may be provided under other applicable State, tribal or federal law.

(d) RELATION TO SECTION 1171 OF TITLE 15 – Equipment used by a licensee or significant vendor in the furtherance of licensed activities pursuant to this chapter (but not to the extent it is used for other purposes) shall not be considered a gambling device within the meaning of section 1171 of title 15, United States Code.

(e) SCOPE OF SO-CALLED 'WIRE ACT'.

Section 1084 of title 18, United States Code, is amended by adding at the end the following new subsection:

'(f) Clarification of Scope- This section, subchapter IV of chapter 53 of title 31, United States Code (enacted into law by the Unlawful Internet Gambling Enforcement Act of 2006), 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 shall not apply to any bet or wager that is permissible under the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.), is permissible under the Prohibition of Internet Gaming, Internet Poker Regulation, and UIGEA Enforcement Act (15 U.S.C. 8200 et seq.), or is a Qualifying Intra-State Lottery Bet or Wager as defined in 15 U.S.C. 8201(21)'.

Sec. 8211. Regulations

(a) LICENSING OF INTERNET POKER FACILITIES- Not later than 180 days after the date of enactment of this Act, the Secretary shall--

(1) prescribe regulations that it deems necessary and where expressly authorized to carry out chapter 108 of title 15, United States Code, as added by section 102(a) of this Act; and

(2) publish such regulations in final form in the Federal Register

The failure of the Secretary to comply with this provision shall not affect the authority of a Qualified Body to consider applications, issue licenses, and otherwise take actions authorized to Qualified Bodies under this chapter.

(b) CLERICAL AMENDMENT- The table of sections for chapter 108 of title 15, United States Code, is amended by adding at the end the following:

CHAPTER 108--REGULATION OF INTERNET POKER FACILITIES

8201. Definitions.

8202. Establishment and administration of licensing program.

8203. Compulsive Gaming, Responsible Gaming, and Self-Exclusion Program Requirements.

8204. Prohibitions on use of licenses in States and Indian lands.

8205. Prohibition on bets or wagers on games of chance and sporting events.

8206. Safe harbor.

8207. Relation to section 1084 of title 18 and subchapter IV of title 31.

8208. Cheating and other fraud.

8209. Inapplicability of Certain Provisions to Interstate Off-Track Wagers.

8210. Construction and relation to State law.

8211. Regulations.

SEC. 103. ANNUAL REPORT.

(a) IN GENERAL- Not later than 1 year after the date prescribed in Section 104(a) of this Act and annually thereafter, the Secretary shall submit to Congress a report on the licensing and regulation of Internet poker facilities (as such term is defined in section 8201 of title 15, United States Code, as added by section 102(a)).

(b) ELEMENTS- Each report submitted under subsection (a) shall include the following:

(1) A description of all notices received by the Secretary under subsections (b)

and (c) of section 8204 of title 15, United States Code, as added by section 102(a).

(2) The amount of assessments collected under section 8202(g) of title 15, United States Code, as added by section 102, and, in cooperation with the Secretary of Treasury, an estimate of the amount of income tax revenue that is attributable to the operation of Internet poker facilities (as such term is defined in section 8201 of such title, as so added) during the period covered by the report.

(3) A list of the Qualified Bodies, the number of licensees reviewed by the Qualified Bodies, and the outcomes of such reviews.

(4) A description of the efforts the Secretary has undertaken to ensure that Qualified Bodies are properly issuing licenses and regulating licensees.

(5) Any other information the Secretary determines may be useful to Congress.

SEC. 104. ORDERLY TRANSITION

(a) DATE OF FIRST ISSUANCE- No Qualified Body may issue a license under this Act prior to the date that is fifteen months after the date of enactment of this Act. Qualified Bodies shall, to the extent possible while meeting all requirements and standards in this Act, issue multiple licenses on the date of first issuance 15 months after enactment in order to ensure a robust and competitive market for consumers and to prevent the first licensees from gaining an unfair competitive advantage.

(b) ORDERLY CESSATION OF UNLICENSED ACTIVITY AND SAFEKEEPING OF CUSTOMER FUNDS.

(1) This section applies to any person that –

(A) (i) at any time prior to the date of enactment of this Act, was a person that owned, in whole or in significant part, directly or indirectly, an Internet gaming facility or an entity that operated an Internet gaming facility, which accepted bets or wagers from persons located in the United States, and

(ii) acted with knowledge of the fact that such bets or wagers involved persons located in the United States;

(B) was a significant vendor with respect to the bets or wagers from persons located in the United States for a person identified in subparagraph (A), and acted with knowledge of the fact that such bets or wagers involved persons located in the United States; or

(C) is a person that purchased or acquired, in whole or in significant part, a person identified in subparagraph (A) or (B), or the assets, tangible or intangible, in whole or in part, of such person.

(2) A person identified in subparagraph (1) must, to the extent applicable to such person -

- A. except as noted in subparagraphs (B) and (C), cease offering, accepting and providing services with respect to bets or wagers from persons located in the United States immediately upon enactment of this Act;
- B. within 30 days of enactment of this Act, return all outstanding sums to customers located in the United States; and
- C. place those sums whose return to U.S. customers is not feasible due to change in customer address, bank details or similar difficulty, in escrow with a financial institution in the United States for safekeeping and orderly disposition as the Secretary may direct.

The requirements of this subparagraph apply to any person identified in subparagraph (1) regardless of whether such person applies for a license or seeks a suitability certificate with respect to an application for a license under this Act.

(c) Any person identified in subparagraph (b)(1) shall not be eligible for a license or a certificate of suitability under this Chapter until the date that is [xx] years after the first license issues under this Act, and a license or certificate of suitability may not be issued

to such person on or after that date if such person did not comply with subsection (b)(2), to the extent applicable to such person.

(d) **APPLICABILITY.** An applicant for a license under this Act and an entity that must obtain a certificate of suitability under this Act must certify that it has not acquired and will not use any assets, tangible or intangible, from an entity that has violated subsection (b)(2).

(e) **NO EFFECT ON EXISTING LAW.** Nothing in this section shall be deemed to repeal, to amend, or to affect the interpretation of any State or federal statute prohibiting, restricting or otherwise addressing bets or wagers or prohibiting fraud or other criminal activity that was in effect prior to the enactment of this Act.

(f) **CRIME TO WITHHOLD FUNDS.** It shall be an offense punishable by imprisonment for not more than 2 years and a fine not to exceed 3 times the amount of the funds subject to subsection (b) for a person to fail to comply with that subsection.

SEC. 105. EFFECTIVE DATE.

Chapter 108 of title 15, United States Code shall take effect immediately upon enactment.

TITLE II- STRENGTHENING UIGEA ACT

SEC. 201. FINANCIAL TRANSACTION PROVIDERS

(a) In General- Chapter 53 of title 31, United States Code, is amended by adding at the end the following new subchapter:

SUBCHAPTER V – UIGEA ENFORCEMENT

Sec. 5381. Financial transaction providers

(a) **IN GENERAL-** No financial transaction provider shall be held liable for engaging in financial activities or transactions, including payments processing activities, in connection with any bets or wagers permitted by this Act or the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.) unless such financial transaction provider has knowledge or reason to know that the specific financial activities or transactions are conducted in violation of this Act, the Interstate Horseracing Act, or other applicable provision of federal or State law.

(b) **DEFINITIONS-** In this section:

(1) **FINANCIAL TRANSACTION PROVIDER-** The term ‘financial transaction provider’ means a creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local payment network utilized to effect a credit transaction, electronic fund transfer, stored

value product transaction, or money transmitting service, or a participant in such network, or other participant in a payment system.

(2) OTHER TERMS-

(A) CREDIT, CREDITOR, CREDIT CARD, AND CARD ISSUER- The terms ‘credit’, ‘creditor’, ‘credit card’, and ‘card issuer’ have the meanings given the terms in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

(B) ELECTRONIC FUND TRANSFER- The term ‘electronic fund transfer’--

(i) has the meaning given the term in section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693a), except that the term includes transfers that would otherwise be excluded under section 903(6)(E) of such Act; and

(ii) includes any fund transfer covered by Article 4A of the Uniform Commercial Code, as in effect in any State.

(C) FINANCIAL INSTITUTION- The term ‘financial institution’ has the meaning given the term in section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693a), except that such term does not include a casino, sports book, or other business at or through which bets or wagers may be placed or received.

(D) INSURED DEPOSITORY INSTITUTION- The term ‘insured depository institution’--

(i) has the meaning given the term in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)); and

(ii) includes an insured credit union (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752)).

(E) MONEY TRANSMITTING BUSINESS AND MONEY TRANSMITTING SERVICE- The terms ‘money transmitting business’ and ‘money transmitting service’ have the meanings given the terms in section 5330(d) (determined without regard to any regulations prescribed by the Secretary under such section).

(b) CLERICAL AMENDMENT- The table of sections for chapter 53 of title 31, United States Code, is amended by adding at the end the following:

SUBCHAPTER V—STRENGTHENING UIGEA ACT

5381. Internet poker financial transaction providers.

SEC. 202. LIST OF UNLICENSED INTERNET GAMBLING ENTERPRISES.

(a) IN GENERAL- Subchapter IV of chapter 53 of title 31, United States Code, is amended by adding at the end the following:

Sec. 5368. Unlicensed Internet Gaming Enterprises

(a) DEFINITIONS- In this section:

(1) UNLICENSED INTERNET GAMING ENTERPRISE- The term ‘unlicensed Internet gaming enterprise’ means any person who on or after enactment of this section --

(A) violates a provision of section 5363;

(B) knowingly receives or transmits funds intended primarily for a person described in subparagraph (A); or

(C) knowingly assists in the conduct of a person described in subparagraph (A) or (B).

(2) DIRECTOR- The term ‘Director’ means the Director of the Financial Crimes Enforcement Network appointed under section 310(b).

(b) LIST OF UNLICENSED INTERNET GAMING ENTERPRISES-

(1) IN GENERAL- Not later than 120 days after the date of the enactment of this section, the Director shall submit to the Secretary of the Treasury a list of unlicensed Internet gaming enterprises and shall regularly update such list in accordance with the procedures described in paragraph (3). Such list shall include the following information for each such unlicensed Internet gaming enterprise:

(A) All known Internet website addresses of the enterprise;

(B) The names of anyone that conducts, finances, manages, supervises, directs, or owns all or part of the enterprise, as such terms are used in section 1955 of title 18, United States Code; and

(C) To the extent known, information identifying the financial agents and account numbers of the enterprise and the persons listed under subparagraph (B).

(2) DISTRIBUTION OF LIST BY TREASURY- The Secretary of the Treasury shall make available--

(A) a copy of the information provided under subparagraphs (A) and (B) of paragraph (1) on the Internet website of the Department of the Treasury;

(B) to all persons who are required to comply with the regulations prescribed under the authority provided in section 5364 a copy of all the information provided under paragraph (1) in an electronic format compatible with the Specially Designated Nationals list maintained by the Office of Foreign Assets Control; and

(C) any information required under this paragraph not later than 10 days after receiving any new or updated list from the Director.

(3) PROCEDURES- The procedures described in this paragraph are the following:

(A) INVESTIGATION- The Director shall investigate entities that appear to be unlawful Internet gaming enterprises. An initial investigation shall be completed before the end of the 60-day period beginning on the date of enactment of this section. After the initial investigation, the Director shall

regularly investigate entities that appear to be unlicensed Internet gaming enterprises. If the Director discovers evidence sufficient to prove a prima facie case that any person is an unlicensed Internet gaming enterprise, the Director shall provide the notice required under subparagraph (C).

(B) REQUESTS- Any federal, State, tribal, or local law enforcement official, any affected sports organization, any person directly harmed by unlicensed Internet gaming, any financial transaction provider, and any interactive computer service (as such terms are defined in section 5362) shall have the right, but not the obligation, to make a written request to the Director for the addition of any person to the list of unlicensed Internet gaming enterprises. If the Director determines that the evidence submitted is sufficient to prove a prima facie case that such person is an unlicensed Internet gaming enterprise, the Director shall provide the notice required under subparagraph (C) to each person identified as an alleged unlicensed Internet gaming enterprise. The Director also shall provide written notice of its decision under this subparagraph, including a decision not to add a person to the list required under paragraph (1), to the requesting party no later than 30 days after the request is received.

(C) NOTICE- Not fewer than 30 days before adding an unlicensed Internet gaming enterprise, or an owner or operator thereof, to the list required under paragraph (1), the Director shall provide written notice to such enterprise, owner, or operator. Any enterprise, owner, or operator receiving such notice may contest the Director's determination by written appeal to the Director not more than 30 days after receiving notice.

(D) OPPORTUNITY FOR HEARING- If a person properly submits a written appeal under subparagraph (C), the Director shall not include such person in the list required under paragraph (1) unless and until the Director provides such person with an opportunity for a hearing not more than 30 days after receiving written notice of appeal. Not more than 10 days after an opportunity for hearing is afforded, whether or not the person requesting the hearing appears at such hearing, the Director shall proceed to add such person to the list of unlicensed Internet gaming enterprises unless the Director determines, based on a preponderance of the evidence, that such person is not an unlicensed Internet gaming enterprise.

(E) INJUNCTIVE RELIEF- Any person that the Director determines shall be included in the list required under paragraph (1) after such person appears at a hearing described in subparagraph (D) and any person included in such list who did not receive the notice required under subparagraph (C), may petition for injunctive relief in the United States District Court for the District of Columbia, which shall have exclusive jurisdiction to hear challenges pursuant to this section. The petitioner shall have the burden of establishing by a preponderance of the evidence that such person is not an unlawful Internet gaming enterprise. Only persons designated by the Director for inclusion on the list of unlicensed Internet gaming enterprises, and other owners or operators of an enterprise to be so listed, shall have standing to contest the Director's determination. The

court may enjoin the Director and the Secretary of the Treasury not to add or remove the petitioner from the list of unlicensed Internet gaming enterprises, and no other judicial recourse shall be permitted.

(c) EFFECT OF LIST- A financial transaction provider shall be deemed to have actual knowledge that a person is an unlicensed Internet gaming enterprise to the extent that such person is identified on the list available to the public, or on a non-public list made available to such financial transaction provider, by the Secretary of the Treasury as described in subsection (b)(2), provided that the list shall not be deemed to be the sole potential source of actual knowledge.

(d) CLERICAL AMENDMENT- The table of sections at the beginning of such chapter 53 of title 31, United States Code, is amended by inserting after the item relating to section 5367 the following:

5368. List of unlicensed Internet gaming enterprises.

SEC. 203. REGULATIONS.

(a) REGULATIONS- Not later than 180 days after the date of the enactment of this Act, the Secretary of Treasury shall--

(1) in consultation with the Attorney General, prescribe regulations to carry out subchapter IV and subchapter V of chapter 53 of title 31, United States Code, as added by section 201(a) and 202(a) and publish such regulations in final form in the federal register; and

(2) prescribe regulations, if necessary, to ensure compliance with the Bank Secrecy Act, as amended, by licensees, as defined by 15 U.S.C. section 8201(8), as added by this Act, significant vendors to such licensees, and financial service providers to such licensees.

(b) EXCLUSION OF BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM FROM REQUIREMENT TO PRESCRIBE REGULATIONS CONCERNING PREVENTION OF RESTRICTED TRANSACTIONS- Subsection (a) of section 5364 of title 31, United States Code, is amended by striking ‘Before the end of the 270-day period beginning on the date of the enactment of this subchapter, the Secretary and the Board of Governors of the Federal Reserve System, in consultation with the Attorney General, shall prescribe regulations (which the Secretary and the Board jointly determine to be appropriate)’ and inserting ‘The Secretary shall prescribe regulations’.

(c) TEMPORARY SUSPENSION OF CERTAIN REGULATIONS-

(1) IN GENERAL- Subject to paragraph (2), during the period beginning on the date of the enactment of this Act and ending on the date set forth in subsection (d), part 233 of title 12, Code of Federal Regulations, and part 132 of title 31, Code of Federal Regulations, shall have no force or effect to the extent that those regulations require or impose any obligation that is inconsistent with the provisions of chapter 108 of title 15, United States Code, as set forth in this Act.

(2) PREVIOUS VIOLATION- Paragraph (1) shall not apply with respect to any violation of a regulation described in such paragraph that occurred before the date of the enactment of this Act.

(d) REVISION OF REGULATIONS- Not later than 180 days after enactment of this Act, the Secretary of the Treasury shall revise part 233 of title 12, Code of Federal Regulations, and part 132 of title 31, Code of Federal Regulations to conform to chapter 108 of title 15, United States Code, as set forth in this Act.

(e) ANNUAL REPORT—Not later than 1 year after the date on which the Secretary prescribes regulations under this section, and annually thereafter, the Secretary shall submit to Congress a report regarding the list required by 5368(b)(1) of title 31, as added by this Act, including its size, the number of persons and websites added and removed, number and description of challenges to inclusion on the list, and resolution of those challenges.

SEC. 204. CONFORMING AMENDMENTS.

(a) DUTIES AND POWERS OF THE DIRECTOR OF THE FINANCIAL CRIMES ENFORCEMENT NETWORK- Section 310(b)(2) of title 31, United States Code, is amended--

- (1) by redesignating subparagraphs (I) and (J) as subparagraphs (J) and (K), respectively; and
- (2) by inserting after subparagraph (H) the following:
 - (i) Administer the requirements of subchapter V of chapter 53.

(b) EXCLUSION OF LICENSED INTERNET POKER FACILITY OPERATIONS FROM DEFINITION OF UNLAWFUL INTERNET GAMBLING ENTERPRISE - Section 5362(10) of such title is amended--

- (1) in subparagraph (D), by striking clause (iii);
- (2) by redesignating subparagraph (E) as subparagraph (F); and
- (3) by inserting after subparagraph (D) the following:
 - (E) LICENSED INTERNET POKER FACILITIES- The term ‘unlicensed Internet gaming’ shall not include an activity carried out by an Internet poker facility (as such term is defined in section 8201 of title 15) operated by a person under a license provided under chapter 108 of title 15, United States Code, in accordance with the provisions of such chapter.

SEC. 205. EFFECTIVE DATE.

Subchapter IV and subchapter V of chapter 53 of title 31, United States Code shall take effect immediately upon enactment.

TITLE III--INTERNET POKER REVENUE PROVISIONS

SEC. 301. AMENDMENT OF 1986 CODE.

(a) AMENDMENT OF 1986 CODE- Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 302. TAX ON INTERNET POKER; LICENSEE INFORMATION REPORTING.

(a) IN GENERAL- Chapter 36 is amended by adding at the end the following new subchapter:

Subchapter E--Internet Poker

SEC. 4491. IMPOSITION OF INTERNET POKER LICENSE FEE.

(a) IMPOSITION OF INTERNET POKER LICENSE 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 Internet poker license fee equal to [20] percent of a licensee's Internet poker deposit receipts for that calendar month.

(b) ALLOCATION OF FEE-

(1) **FEDERAL INTERNET POKER LICENSE FEE-** The federal Internet poker license fee is a fee equal to [6] percent of a licensee's Internet poker deposit receipts for a calendar month.

(2) STATE OR INDIAN TRIBAL GOVERNMENT INTERNET POKER LICENSE FEE-

(A) Except as provided in subparagraph (B), the State or Indian tribe Internet poker license fee is a fee equal to [14] percent of a licensee's Internet poker deposit receipts for a calendar month, which is allocated as follows:

(i) one half of the State or Indian tribe Internet poker license fee is allocated to each State or Indian tribe on a proportionate basis, determined by the locations of the customers to whom the Internet poker deposit receipts for that month are attributable; and

(ii) one half of the State or Indian tribe Internet poker license fee is allocated to the State or Indian tribe of the Qualified Body (within the meaning of section 8201 of title 15, United States Code) from which the licensee has obtained its license.

(B) The State or Indian tribe Internet poker license fee shall be reduced to the extent such fee would be allocated under subparagraph (A) to a State or Indian tribe that has elected to be excluded from the receipt of funds distributed from the Internet Poker License Fee Trust Fund, in accordance with section 9511(c)(3) and the regulations thereunder, and the allocation of such fee shall be adjusted accordingly.

(3) **INTERNET POKER DEPOSIT RECEIPTS-** The term ‘Internet poker deposit receipts’ means the aggregate, during the relevant period, of the rake, tournament fees and all other fees or charges required or received from customers directly as a result of Internet poker, from deposits into any account maintained by the licensee or on behalf of the licensee.

(4) **LIMITATION TO IMPOSITION OF ONE STATE OR INDIAN TRIBAL INTERNET POKER LICENSE FEE FOR ANY TRANSACTION-** For purposes of the proration described in paragraph (2)(A)(i), Internet poker deposit receipts of a customer located within the jurisdiction of an Indian tribe shall be attributed to that Indian tribe and not to the State or States in which the Indian tribe is located. In the case of a fee under paragraph (2)(A)(ii) imposed because a licensee is licensed by a Qualified Body of an Indian tribe, that fee shall be allocated solely to the Indian tribe and not to the State in which the Indian tribe is located.

(c) **UNAUTHORIZED GAMING-** Each person who is not a licensee and who operates an Internet poker facility for which a license is required under section 8202 of title 15, United States Code, except as provided in section 104, shall be required to pay not later than the end of each calendar month a fee equal to the amount of the Internet poker license fee that would be applicable to such person for such month if such person were a licensee, determined by substituting ‘50 percent’ for ‘[20] percent’ in subsection (a). Nothing in this section shall be construed to limit the criminal or civil liability under any other provision of law of a person that has operated or operates an Internet poker facility without a license issued pursuant to section 8202 of title 15, United States Code.

(d) **DEFINITIONS AND SPECIAL RULES-** For purposes of this subchapter--

(1) **IN GENERAL-** The terms ‘licensee’, ‘bet or wager’, ‘poker’, ‘Internet poker’, and ‘Internet poker facility’ have the meaning given such terms by section 8201 of title 15, United States Code.

(2) **DEPOSITS-**

(A) Except as stated in subsection (C), funds received from a customer by an operator of an Internet poker facility and made available in any form, including through the extension of credit or through third-party intermediaries, for the purpose of placing a bet or wager, and funds paid to reimburse an operator of an Internet poker facility for value previously

advanced to the customer for such purpose, shall be regarded as deposits in calculating Internet poker deposit receipts.

(B) Deposits made by or on behalf of a licensee of Internet poker winnings shall not be regarded as deposits in calculating Internet poker deposit receipts.

(C) Deposits that reflect promotional credits, incentives or bonuses provided by or on behalf of the licensee, and, except as stated in subsection (B), returns of funds by or on behalf of a licensee to the account of a customer, shall not be treated as deposits for purposes of calculating Internet poker deposit receipts.

(3) **CUSTOMER FRAUD**-Losses due to customer fraud or delinquency, once deemed unrecoverable, may be subtracted from the total amount of Internet poker deposit receipts for that period. In the event amounts deemed to be losses are later recovered, they must be added to the total amount of Internet poker deposit receipts for the period in which they are recovered.

(4) **EXCLUSIONS**- Fees or charges required or received from customers directly as a result of Internet poker, for the purpose of calculating Internet poker deposit receipts, shall not include revenues derived from the sale or provision of goods or services that are ancillary and not integral to the game, tournament or contest of Internet poker.

(e) **PERSONS LIABLE**-

(1) **IN GENERAL**- Each licensee or other person who operates an Internet poker facility for which a license is required under section 8202 of title 15, United States Code, shall be liable for and shall pay the applicable fees under this section with respect to all Internet poker deposit receipts.

(2) **JOINT AND SEVERAL LIABILITY FOR UNAUTHORIZED GAMING**- In the case of any deposit with respect to which a fee is imposed under subsection (c), the person described in paragraph (1) of such subsection and any significant vendor to such person shall be jointly and severally liable for the fee under such subsection with respect to such deposit.

(f) **ADMINISTRATIVE PROVISIONS**- Except to the extent the Secretary shall by regulations prescribe, the administrative provisions of this title applicable to the excise taxes imposed by chapter 35 shall apply to the fees imposed by this section.

SEC. 4492. RECORD KEEPING REQUIREMENTS.

(a) IN GENERAL- Each licensee who is liable for the fees imposed by this subchapter shall keep a daily record showing all deposits and withdrawals to which this subchapter applies, in addition to all other records required pursuant to section 6001(a).

(b) RECORDS WITH RESPECT TO INTERNET POKER LICENSE FEE- Each licensee to which subsection (a) applies shall keep a record, using methods determined to be satisfactory by the Qualified Body, within the meaning of section 8201 of title 15, United States Code, responsible for oversight of that licensee, of the location of each person making a deposit or withdrawal to which this subchapter applies, for purposes of determining the Internet poker license fee applicable to such deposit or withdrawal for purposes of section 9511.

(c) INFORMATION RETURNS- Subpart B of part III of subchapter A of chapter 61 is amended by adding at the end the following new section:

SEC. 6050X. RETURNS RELATING TO INTERNET POKER.

(a) REQUIREMENT- Every person described in section 4491(e)(1) with respect to any month during a taxable year shall furnish, at such time and in such manner as the Secretary shall by regulations prescribe, the information described in subsection (b), and such person shall maintain (in the location and manner and to the extent prescribed in such regulations) such records as may be appropriate with respect to such information.

(b) REQUIRED INFORMATION- For purposes of subsection (a), the information described in this subsection is--

- (1) the name, address, and TIN of the person described in subsection (a);
- (2) the name, address, and TIN of each person placing a bet or wager on Internet poker (within the meaning of section 4491) with the person described in subsection (a) during the calendar year;
- (3) the gross winnings, gross wagers, and gross losses for the calendar year of each person placing a bet or wager as described in paragraph (2);
- (4) the net Internet poker winnings for each such person for the calendar year;
- (5) the amount of tax withheld, if any, with respect to each such person by the person described in subsection (a) for the calendar year;
- (6) the balance of any account maintained for each person placing a bet or wager as described in paragraph (2) by the person described in subsection (a), at the beginning and the end of the calendar year; and
- (7) the amounts of all deposits and withdrawals from each such account during such calendar year.

(c) STATEMENT TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED- Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing--

- (1) the name, address, and phone number of the information contact of the person required to make such return; and

(2) the information required to be shown on such return with respect to each person whose name is required to be set forth in such return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

(d) NET INTERNET POKER WINNINGS- The term ‘net Internet poker winnings’ means gross winnings from bets or wagers with an Internet poker facility (within the meaning of section 4491) for which a license is required under section 8202 of title 15, United States Code, reduced (but not below zero) by the amounts bet or wagered.

(e) INTERNET POKER LICENSE FEE TRUST FUND- Subchapter A of chapter 98 is amended by adding at the end the following new section:

SEC. 9511. INTERNET POKER LICENSE FEE TRUST FUND.

(a) CREATION OF TRUST FUND- There is established in the Treasury of the United States a trust fund to be known as the ‘Internet Poker License Fee Trust Fund’ (hereafter in this section 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).

(b) TRANSFERS TO FUND- There are hereby appropriated to the Trust Fund amounts equivalent to the fees received in the Treasury with respect to each calendar month under section 4491 by reason of subsection (a)(2) thereof.

(c) EXPENDITURES FROM FUND-

(1) IN GENERAL- The Secretary shall pay to each qualified State and each qualified Indian tribal government, out of the amounts in the Trust Fund, an amount equal to the monthly pro rata poker license fee amount.

(2) MONTHLY PRO RATA POKER LICENSE FEE AMOUNT- For purposes of this section, with respect to a qualified State and a qualified Indian tribal government for any calendar month, the monthly pro rata poker license fee amount is the amount of the fees described in subsection (b) received with respect to such calendar month that are attributable to deposits made by persons located within the jurisdiction of such State or tribal government (determined by the Secretary on the basis of records kept under section 4492(b)).

(3) QUALIFIED STATE; QUALIFIED INDIAN TRIBAL GOVERNMENT-

(A) IN GENERAL- For purposes of this section, the terms ‘qualified State’ and ‘qualified Indian tribal government’ mean a State or an Indian tribal government, respectively, that has not elected (by notice provided by the Governor, principal chief, or other chief executive officer or designated authority and in such form and manner as the Secretary may prescribe) to be excluded from the receipt of funds under this section.

(B) STATE ELECTION NOT TO AFFECT TRIBAL ELECTION- An election by a State under subparagraph (A) to be excluded from the receipt

of funds under this section shall not constitute an election to be so excluded on behalf of any Indian tribe located within or partially within the geographic boundaries of such State.

(C) APPLICABILITY OF ELECTION- An election made under subparagraph (A) shall be effective--

(i) upon receipt by the Secretary, if such election is received within 90 days of the date of enactment of chapter 108 of title 15, United States Code; and

(ii) in any other case, on the first January 1 that occurs at least 60 days after the later of--

(I) the receipt of such election by the Secretary; or

(II) the effective date specified in such election.

(D) REVOCATION OF ELECTION

(i) A State or Indian tribal government may revoke its election under paragraph (A) through a duly enacted law or a legally binding decision of the tribal decision-making body, as the case may be, and with notice of revocation provided to the Secretary by the Governor, principal chief, or other chief executive officer or designated authority in such form and manner as the Secretary may prescribe.

(ii) Such revocation shall be effective on the first January 1 that occurs at least 60 days after the later of—

(I) the receipt of such revocation by the Secretary; or

(II) the effective date specified in such revocation.

(E) STATE- For purposes of this section, the term ‘State’ means any State of the United States, the District of Columbia, or any commonwealth, territory or other possession of the United States.

(F) INDIAN TRIBAL GOVERNMENT- For purposes of this section, the term ‘Indian tribal government’ means the government of an Indian tribe (within the meaning of section 4 of the Indian Gaming Regulatory Act).

(4) TIME OF PAYMENTS- The payment made under this subsection with respect to any calendar month shall be made not later than the 11th day of the succeeding calendar month.

(5) NATIVE AMERICAN PROGRAM. The Secretary shall transfer \$5,000,000 per year out of the federal share of the Trust Fund (only to the extent the funds are available) to the Administration for Native Americans in the Department of Health and Human Services to be used for purposes consistent with the Native American Programs Act of 1974 (42 U.S.C. 2991 et seq.).

(6) SUPPORT OF RESPONSIBLE GAMING RESEARCH. The Secretary shall transfer \$2,500,000 per year out of the federal share of the Trust Fund (only to the extent the funds are available after compliance with subsection (5)) to the National Center for Responsible Gaming in each of the five years following enactment of this provision, for the purpose of conducting research on problem and pathological gambling. After the first five years after enactment, the Secretary shall transfer \$5,000,000 per year out of the federal share of the Trust Fund (only to the extent the funds are available after compliance with subsection (5)) to the

National Institutes of Health to fund research on problem and pathological gambling.

(d) CLERICAL AMENDMENTS-

(1) The table of subchapters for chapter 36 is amended by adding at the end the following item:

SUBCHAPTER E. INTERNET POKER.

(2) The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6050W the following new item:

SEC. 6050X RETURNS RELATING TO INTERNET POKER.

(3) The table of sections for subchapter A of chapter 98 of such Code is amended by adding at the end the following new item:

SEC. 9511 INTERNET POKER LICENSE FEE TRUST FUND

(e) EFFECTIVE DATE- The amendments made by this section shall apply to deposits made after the date of the enactment of this Act.

SEC. 303. WITHHOLDING FROM CERTAIN INTERNET POKER WINNINGS.

(a) NET INTERNET POKER WINNINGS- Paragraph (3) of section 3406(b) is amended--

(1) by striking ‘or’ at the end of subparagraph (E);

(2) by striking the period at the end of subparagraph (F) and inserting ‘, or’; and

(3) by adding at the end the following new subparagraph:

(G) section 6050X(b)(4) (relating to net Internet poker winnings).

(b) EFFECTIVE DATE- The amendments made by this section shall apply to amounts paid after the date of the enactment of this Act.

SEC. 304. WITHHOLDING OF TAX ON NONRESIDENT ALIENS.

(a) TAX ON NONRESIDENT ALIEN INDIVIDUALS- Paragraph (1) of section 871(a) is amended--

(1) by striking ‘and’ at the end of subparagraph (C);

(2) by inserting ‘and’ at the end of subparagraph (D); and

(3) by inserting after subparagraph (D) the following new subparagraph--

(E) the net Internet poker winnings (as defined in section 6050X(d)), determined at the time monies are withdrawn from a person who operates an Internet poker facility for which a license is required under section 8202(b) of title 15, United States Code.

(b) EXEMPTION FOR CERTAIN POKER WINNINGS- The first sentence of section 871(j) is amended by inserting ‘, or to net Internet poker winnings (as defined in section 6050X(d))’ before the period.

(c) WITHHOLDING OF TAX ON NONRESIDENT ALIEN INDIVIDUALS- The first sentence of subsection (b) of section 1441 is amended by inserting ‘amounts described in section 871(a)(1)(E),’ after ‘gains subject to tax under section 871(a)(1)(D),’.

(d) SOURCE OF INTERNET POKER WINNINGS- Subsection (a) of section 861 is amended by adding at the end the following new paragraph:

(9) INTERNET POKER WINNINGS- Net Internet poker winnings (as defined in section 6050X(d)).

(e) EFFECTIVE DATE- The amendments made by this section shall apply to payments made after the date of the enactment of this Act.

SEC. 305. PROVISIONS FOR STATE AND TRIBAL TAX.

(a) EXEMPTION FROM TAX ON INTERNET POKER- A State or political subdivision thereof, and an Indian tribe or political subdivision thereof, shall impose no tax on--

- (1) deposits or bets or wagers placed with a licensee that is subject to the fees under section 4491 of the Internal Revenue Code of 1986; or
- (2) income or revenue of a licensee relating to such deposits or bets or wagers, unless such licensee maintains a permanent physical presence in such State or within the area of the jurisdiction of such Indian tribe.

(b) DEFINITIONS- For purposes of this section--

- (1) IN GENERAL- The terms ‘deposit’, ‘bet or wager’, and ‘licensee’ have the same meaning as when used in section 4491 of the Internal Revenue Code of 1986. The terms ‘State’ and ‘Indian tribal government’ have the same meaning as when used in section 9511 of such Code. The term ‘Internet Poker License Fee Trust Fund’ means the Trust Fund established by section 9511(a) of such Code.
- (2) TAX- The term ‘tax’ includes any tax, charge, or fee levied by a taxing jurisdiction, whether such tax, charge, or fee is imposed on a licensee or on a customer of a licensee, and without regard to the terminology used to describe such tax, charge, or fee.

(3) PERMANENT PHYSICAL PRESENCE-

(A) IN GENERAL- The term ‘permanent physical presence’ means a substantial and continuous physical presence for the majority of the applicable taxable year. Such determination shall be made solely by reference to the assets of a licensee and the activities conducted by its employees.

(B) PRESENCE IN INDIAN TRIBE NOT TO AFFECT STATE PRESENCE- If a licensee has permanent physical presence within the area of jurisdiction of an Indian tribal government for purposes of this section, such presence shall not be deemed to constitute permanent physical presence in any State in which such area of jurisdiction is located or partially located.

(d) EFFECTIVE DATE- This section shall apply to taxes on deposits and bets or wagers after the date of the enactment of this Act.

SEC. 306. FOREIGN LICENSEES SUBJECT TO U.S. FEDERAL INCOME TAX.

(a) NONRESIDENT ALIEN INDIVIDUALS.--Section 872 is amended by inserting after subsection (b) the following new subsection:

(c) INCOME EARNED BY NONRESIDENT ALIEN INDIVIDUALS OPERATING INTERNET POKER FACILITIES.

(1) TREATMENT AS UNITED STATES TRADE OR BUSINESS. For purposes of this title, a nonresident alien individual who is a licensee or operates an Internet poker facility for which a license is required under chapter 108 of title 15, United States Code, at any time during a taxable year shall be deemed to be engaged in the conduct of a trade or business within the United States during the taxable year.

(2) TREATMENT OF GROSS INCOME AS EFFECTIVELY CONNECTED INCOME. For purposes of this title, all gross income related to domestic wagers that are placed over the Internet shall be deemed to be effectively connected with the licensee's trade or business within the United States.

(3) TREATMENT OF GROSS INCOME AS ATTRIBUTABLE TO PERMANENT ESTABLISHMENT. For purposes of any applicable United States income tax treaty, a nonresident alien individual who is a licensee or operates an Internet poker facility for which a license is required under chapter 108 of title 15, United States Code, at any time during a taxable year shall be deemed to have a permanent establishment located in the United States, and all gross income arising from domestic wagers that are placed over the Internet shall be treated as attributable to the permanent establishment of such nonresident alien individual.

(4) DEFINITIONS.

(A) WAGER. The term 'wager' has the meaning given in section 8201 of title 15, United States Code.

(B) DOMESTIC WAGER. The term 'domestic wager' means a wager placed by a person located in the United States.

(C) INTERNET. The term 'Internet' has the meaning given in section 5362(5) of title 31, United States Code.

(b) FOREIGN CORPORATIONS. Section 882 is amended by—

(1) redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(2) by inserting after subsection (d) the following:

(e) INCOME EARNED BY FOREIGN CORPORATIONS OPERATING INTERNET POKER FACILITIES.

(1) TREATMENT AS UNITED STATES TRADE OR BUSINESS. For purposes of this title, a foreign corporation that is a licensee or operates an Internet poker facility for which a license is required under chapter 108 of title 15, United States Code, at any time during a taxable year shall be deemed to be engaged in the conduct of a trade or business within the United States during the taxable year.

(2) TREATMENT OF GROSS INCOME AS EFFECTIVELY CONNECTED INCOME. For purposes of this title, all gross income related to domestic wagers that are placed over the Internet shall be deemed to be effectively connected with the licensee's trade or business within the United States.

(3) TREATMENT OF GROSS INCOME AS ATTRIBUTABLE TO PERMANENT ESTABLISHMENT. For purposes of any applicable United States income tax treaty, a foreign corporation that is a licensee or operates an Internet poker facility for which a license is required under chapter 108 of title 15, United States Code, at any time during a taxable year shall be deemed to have a permanent establishment located in the United States, and all gross income arising from domestic wagers that are placed over the Internet shall be treated as attributable to the permanent establishment of such foreign corporation.

(4) DEFINITIONS.

“(A) WAGER. The term ‘wager’ has the meaning given in section 8201 of title 15, United States Code.

“(B) DOMESTIC WAGER. The term ‘domestic wager’ means a wager placed by a person located in the United States.

“(C) INTERNET. The term ‘Internet’ has the meaning given in section 5362(5) of title 31, United States Code.

(c) EFFECTIVE DATE.--The amendment made by this section shall apply to payments made after the date of the enactment of this Act.

SEC. 307. NO EXCISE TAX ON INTERNET POKER WAGERING.

(a) Definition of ‘wager’.—Paragraph (1) of section 4421 is amended

by inserting after subparagraph (C) the following flush text:

“For purposes of this chapter, the term ‘wager’ does not include any bet or wager within the meaning of section 8201 of title 15, United States Code, that is placed over the Internet.”

(b) Definition of ‘Internet’.—Section 4421 is amended by inserting after paragraph (2) the following new paragraph:

“(3) Internet. The term ‘Internet’ has the meaning given in section 5362(5) of title 31, United States Code.”

(c) Effective Date.—The amendments made by this section shall apply to wagers made after the date of enactment of this Act.

TITLE IV--STUDY AND PREVENTION OF PROBLEM AND PATHOLOGICAL GAMBLING

SEC. 401. STATE AND TRIBAL SUPPORT FOR PUBLIC AWARENESS, RESEARCH AND TREATMENT PROGRAMS FOR PROBLEM AND PATHOLOGICAL GAMBLING.

Those States and Indian tribes receiving payments from the Internet Poker License Fee Trust Fund shall determine appropriate amounts from those payments, but not less than 0.5% of proceeds from the Internet Poker License Fee Trust Fund, to apply to the following purposes:

- (a) Public awareness – to increase knowledge and improve awareness with respect to problem and pathological and underage gambling, including supporting and augmenting existing programs;
- (b) Research – to support peer-reviewed scientific and medical research into the causes and treatment of problem and pathological gambling, including supporting and augmenting existing programs; and
- (c) Treatment – to provide treatment services with respect to problem and pathological and underage gambling, including supporting and augmenting existing programs.

Title V- RESOLUTION OF INTERNATIONAL DISPUTES

SEC. 501. RESOLUTION OF INTERNATIONAL DISPUTE OVER INTERNET GAMING

(a) NEGOTIATION OF WITHDRAWAL- The United States Trade Representative is directed to conclude the process of withdrawal of the United States commitment under the General Agreement for Trade in Services with respect to remote or Internet gaming not later than 180 days after enactment of this Act.

(b) **ARBITRATION OF WITHDRAWAL**- Should the United States Trade Representative prove unable to effect withdrawal of the United States commitment under the General Agreement for Trade in Services with respect to remote or Internet gaming by the deadline specified in subsection (a), the United States shall take all available steps to complete the binding arbitration to conclude such withdrawal.

Title VI—Severability

SEC. 601. SEVERABILITY

If any provision of this Act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the remainder of the Act shall remain in effect and will continue to apply to other persons and circumstances.