



The Legislature Could Consider Several Options to Protect Consumers from Unregulated Internet Poker

at a glance

Florida law allows poker games at licensed pari-mutuel facilities but does not address Internet poker. Federal law prohibits Internet gambling of any type; however more than 2,000 websites exist and many allow United States residents, including Floridians, to gamble online. Several factors may affect the future of Internet gambling. Pending federal legislation that seeks to license and regulate Internet gambling would reverse current U.S. law. In addition, advocates interpret a recent decision by the U.S. Court of Appeals for the 3rd Circuit to suggest that intrastate Internet gambling already may be legal.

If the Legislature wishes to provide consumer protections for Internet poker, it could consider three options: (1) maintain the status quo and monitor federal legislation that would establish a federal licensing system; (2) adopt laws that would prohibit Internet poker; or (3) adopt laws to authorize and regulate intrastate Internet poker. There are advantages and disadvantages associated with each of these options.

Scope

As directed by the Legislature, this report examines the enactment of laws to provide protections and remedies for existing and unregulated Internet poker activities. The report answers four questions.

1. How is poker regulated in Florida?
2. How is Internet poker regulated?
3. What factors may affect the future of Internet poker?
4. What options could the Legislature consider to provide consumer protections for Internet poker?

Background

Typically, gambling is regulated at the state level. Two states - Hawaii and Utah - prohibit any form of gambling, including the sale of lottery tickets. The remaining 48 states authorize various forms of gambling, including state lotteries, pari-mutuel wagering, and casino-style gambling such as card games and slot machines.

In Florida, the Department of Business and Professional Regulation regulates pari-mutuel facilities that offer wagering on horse races, dog races, jai alai, and poker. In addition, pari-mutuel facilities in Broward and Miami-Dade counties offer slot machine gaming. Cruises to Nowhere also operate out of Florida ports, and

the Miccosukee and Seminole Indian Tribes of Florida operate casinos in various locations.¹ The state does not regulate Cruises to Nowhere because they operate in international waters, while tribal casinos fall under the authority of the National Indian Gaming Commission.

At the federal level, the U.S. government relies on its Commerce Clause powers and other provisions of federal law to regulate gambling activities that cross state lines. Congress passed the Interstate Horseracing Act in 1978 to regulate interstate commerce with respect to pari-mutuel wagering on horse races. Congress found that there was a need for federal action to ensure states would cooperate in accepting interstate off-track wagering on horse races (e.g., race track patrons in one state are able to place bets on races in another state).

In 2006, the federal government took steps to prohibit Internet gambling by enacting the Unlawful Internet Gambling Enforcement Act. This action reflected concerns about the societal impact of Internet gambling.² Opponents have raised concerns that the fast speed of online games and addictive nature of play can contribute to high player losses and gambling addictions. In addition, the anonymity of players makes it more difficult to prevent underage players and those with drug and gambling addictions from participating in Internet gambling (these people can be more readily identified and prevented from play in a land-based casino).

Despite federal efforts to prohibit Internet gambling, an estimated 2,000 gambling websites exist and many allow U.S. residents, including Florida citizens, to gamble online.

¹ A Cruise to Nowhere is a passenger journey that begins and ends at the same U.S. port and does not dock at any other port. Cruises to Nowhere allow passengers to gamble once the ship reaches international waters.

² Many of the negative effects of gambling are associated with problem or pathological gamblers; the negative effects may be financial, physical, or emotional. At the extreme, addicted gamblers may suffer financial hardship from their losses including bankruptcy and unemployment and may resort to criminal activity to support the addictive behavior, commit domestic violence, or turn to substance abuse or suicide.

Questions and Answers — *How is poker regulated in Florida?*

Poker is played, legally and illegally, in Florida every day.³ Legal forms of poker include penny-ante games played by individuals in private homes and authorized games played in regulated cardrooms located in pari-mutuel facilities.⁴ Illegal poker includes Internet games and those that occur in sports bars or other venues where unlicensed operators offer poker games.

The Department of Business and Professional Regulation's Division of Pari-Mutuel Wagering regulates cardroom operations and adopts rules as necessary to carry out its responsibilities. Currently, the division oversees 26 cardrooms throughout the state; these cardrooms are located at 22 licensed pari-mutuel facilities. The division's goal is to ensure wagering integrity (public confidence in wagering activities), while safeguarding and accounting for state revenues. To fulfill this mission, the department carries out licensing, inspection, enforcement, and auditing functions.

Only pari-mutuel facilities can legally operate cardrooms. The division only issues a cardroom license to a pari-mutuel permit holder; the cardroom generally operates at that same location as the pari-mutuel facility.⁵ The annual cardroom license fee for each facility is \$1,000 for each table operated.

³ Proponents of Internet poker have raised questions about whether poker constitutes a game of chance or a game of skill. In games of chance, the outcome is determined completely by chance, such as a lottery. In games of skill, such as chess, chance plays no role in the outcome. Under Florida law, an authorized game is a game or series of games of poker or dominoes that are played in a non-banking manner making the skill or chance debate irrelevant under state law.

⁴ Florida law defines a cardroom as a facility where authorized games are played for money or anything of value and are open to the public for a fee. An authorized game is a game or series of games of poker or dominoes that are played in a nonbanking manner. Non-banking manner means the licensed pari-mutuel facility is not a participant in the game.

⁵ Section 849.086(5), *F.S.*

State law outlines the following general requirements for cardroom operations.

- No person licensed to operate a cardroom may conduct any banking game or any game not explicitly authorized.
- No person under 18 years of age may be permitted to hold a cardroom or employee license, or engage in any game conducted.
- No electronic or mechanical devices, except mechanical card shufflers, may be used to conduct any authorized game.
- No cards, game components, or game implements may be used in playing an authorized game unless such has been furnished or provided to the players by the cardroom operator.

Prior to the division issuing a cardroom license, each applicant posts a \$50,000 surety bond payable to the state.⁶ Rules also require a cardroom operator to post its cardroom license, the authorized games offered, any participation fees, wagering limits, and any other house rules regarding operations and costs.

In addition to the pari-mutuel cardroom license, the division issues business occupational licenses and cardroom employee occupational licenses. A business license applies to any cardroom management company or cardroom distributor associated with operations; the fee is \$250. The division issues a cardroom employee occupational license for a \$50 fee to any person employed or otherwise working in a cardroom.

The division can deny any application if the applicant has been found guilty or had adjudication withheld for a felony or specified misdemeanor. Food service, maintenance, and security employees with current pari-mutuel occupational licenses and background checks are not required to have a cardroom employee occupational license.

The division inspects cardrooms to ensure compliance with state law and department rules. The division can inspect or audit any cardroom during the licensee's regular business

⁶ A surety bond guarantees payment by a third party should the purchaser of the bond be unable to pay.

hours.⁷ Division staff visits cardrooms to observe and inspect facility operations using an 89-item checklist of general cardroom requirements. For example, inspectors may observe the counting of monies from the games, check to see that licenses and game information are posted, and examine gaming or surveillance equipment. Division auditors assess 98 items to ensure that facilities meet department standards. Auditors can review any records including any receipts or reports necessary to ensure proper payment of taxes to the state.

Due to statutory changes in 2007, the division adopted rules in September 2008 that require improved surveillance standards by operators, detailed inspection procedures for new or modified cardrooms, and enhanced internal control standards for cardroom operators.^{8,9} These changes occurred in conjunction with new requirements for Texas Hold-em games that also modified requirements for dealers. To ensure compliance with these new rules, the division has increased the number of annual inspections, especially those concerning surveillance equipment and procedures.

Non-compliant cardrooms are subject to administrative and criminal action. The division is authorized to suspend or revoke cardroom licenses, including pari-mutuel permits or licenses, if a licensee violates or fails to comply with any provisions of law or any adopted rules. The division may impose an administrative fine up to \$1,000 for each violation.

As of November 2009, 2 of the 22 operating cardrooms did not comply with the division's new inspection rules. Division officials reported that the noncompliant permitholders have minor violations and are working to correct these issues.¹⁰ The department imposed no

⁷ State law also authorizes any law enforcement agency to inspect cardrooms.

⁸ Chapter 2007-130, *Laws of Florida*

⁹ Internal control standards are specific to each facility and include all aspects of cardroom operations, e.g. security surveillance system monitoring, assets protection, payout methodology. The division reviews and approves each facility's internal standards to ensure compliance with statutes and agency rules.

¹⁰ These violations include failure to post minimum and maximum

administrative sanctions against cardrooms in Fiscal Years 2006-07 and 2007-08, while it closed three cases by issuing consent orders and imposing fines during Fiscal Year 2008-09.¹¹ An additional 14 administrative cases from Fiscal Year 2008-09 remain open and under legal review for possible administrative action.¹²

In addition to being subject to administrative disciplinary actions, non-compliant facilities and licensees are also subject to criminal prosecution. Any licensee or permitholder who violates any provision of s. 849.086, *Florida Statutes*, commits a first-degree misdemeanor. A licensee or permitholder who commits a second or subsequent violation of the same nature within three years of a prior violation conviction may be guilty of a third-degree felony. Furthermore, any person who operates a cardroom without a valid license commits a third-degree felony.

The division ensures that cardrooms submit required revenues to the state. Each cardroom operator pays a state tax of 10% of its monthly gross receipts and an admission tax equal to 15% of each admission charge, or 10 cents, whichever is greater.¹³ In Fiscal Year 2008-09, the division collected \$10.2 million in state taxes. The division's Fiscal Year 2009-10 appropriation includes 67 positions and \$9.2 million for oversight of pari-mutuel wagering, including regulation of cardrooms.¹⁴

To ensure that these taxes are submitted timely and accurately, the division conducts at least one audit at each cardroom annually. The division has the discretion to conduct an audit

bets, felt, or drop box problems at tables, and violations of internal control procedures.

¹¹ A consent order results from a settlement agreement in lieu of department prosecution.

¹² The increase in cases over the last two years results from statutory changes effective July 2007 to allow tournament play at cardrooms. This increased the number of tables and cardroom revenues and resulted in a corresponding increase in the division's regulatory activities.

¹³ The gross receipts are the total amount of money received by a cardroom from any person for participation in authorized games.

¹⁴ Funding for the division covers the oversight of all regulated activities, including horseracing, dog racing, and jai alai. Total division funding may not include some functions, such as complaint investigation and prosecution of discipline cases that are carried out by other department units.

at any time. Failure by a cardroom to pay taxes can result in a civil penalty of up to \$1,000 for each day the tax payment is not remitted.

How is Internet poker regulated?

Foreign governments (including tribal governments in foreign countries) take different approaches to regulating Internet poker, from legalizing it and licensing operators to prohibiting it entirely. In the United States, the Department of Justice interprets federal statutes to prohibit all forms of Internet gambling; however, the department's interpretation relies upon some federal laws that predate the Internet. Florida law does not specifically address Internet poker or other forms of online gambling.¹⁵ Several states have established laws addressing Internet gambling, with some explicitly prohibiting the activity. Conversely, at least one state has pursued legislation to establish an intrastate Internet gambling system.

Some foreign governments license and regulate Internet gambling businesses; others prohibit such activities. The United Kingdom, Gibraltar, Malta, and other jurisdictions currently license and regulate Internet gambling operations, including poker. Governments that have established regulations may include provisions requiring

- background checks prior to licensing;
- mechanisms to prevent access by underage players;
- protections for compulsive gamblers including self-exclusion;
- software testing to ensure that games are conducted fairly; and/or
- monitoring to prevent money laundering or other fraudulent practices.¹⁶

¹⁵ For purposes of this report, Internet gambling refers to poker or other casino games such as blackjack but does not include sports betting.

¹⁶ These mechanisms typically require participants to provide identifying information such as credit card and driver license numbers. However, no software exists to exclude underage individuals that might be using borrowed credit cards or identification. Some companies allow players to establish only temporary accounts with limited wagering until the player's age can be verified. Companies that have these procedures contract with third-party vendors to obtain age verification.

Regulatory agencies in these jurisdictions may also conduct compliance activities (e.g., inspections and audits) and take enforcement action to suspend or revoke the licenses of operators that fail to comply with license conditions.

In contrast, some countries have legalized Internet gambling, but provide minimal or no regulation. For example, more than 200 Internet gambling companies operate in Costa Rica. In the past, these companies were self-regulated and operated under data processing licenses without specific regulations or oversight to prevent money laundering. Costa Rica's government has announced plans to create a gaming authority and license and tax all Internet and land-based gambling entities.

Other countries explicitly prohibit Internet gambling. For example, the People's Republic of China prohibits any form of Internet gambling. In early 2009, the Chinese government convicted 20 people for Internet gambling business activities, imposing prison terms from one to six years and fines equating to hundreds of thousands of dollars. Bermuda, Greece, Portugal, Russia, and Saudi Arabia also prohibit Internet gambling.

Internet gambling is considered unlawful by the federal government. In 2006, Congress passed the Unlawful Internet Gambling Enforcement Act. The act prohibits gambling businesses from knowingly accepting payments in connection with unlawful Internet gambling, including payments made through credit cards, electronic fund transfers, and checks.¹⁷ The act requires the Federal Reserve Board and U.S. Treasury to develop rules for financial firms to establish and implement policies and procedures designed to prevent payments to unlawful Internet gambling businesses. The agencies issued a final rule to implement the act on November 12, 2008. Financial institutions

¹⁷ Unlawful Internet gambling is defined as placing, receiving, or otherwise knowingly transmitting a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable federal or state law in the state or Tribal lands in which the bet or wager is initiated, received, or otherwise made. The act does not identify which activities are legal or illegal, but rather relies on existing federal and state laws.

must comply with the new rules by December 2009 and take reasonable steps to prohibit the transfer of money for illegal Internet gambling.¹⁸

Proponents of Internet poker assert that the act may allow for Internet gambling within a state. The act's prohibition on Internet gambling excludes intrastate transactions, by which bets or wagers are placed, received, or transmitted exclusively within a state.¹⁹ Proponents interpret this provision to allow intrastate Internet gambling as long as the bet is initiated, received, and paid within the same state. However, other stakeholders believe that because gambling information transmitted over the Internet likely crosses state lines, it is not possible to conduct Internet poker exclusively within a state. The U.S. Department of Justice has not issued an opinion on the matter.

The Department of Justice also has pursued enforcement of Internet gambling based on existing federal laws that predate the Internet. The department relies on the Wire Act of 1961 that prohibits a business of betting or wagering from using a wire communication facility in interstate or foreign commerce for the transmission of bets or wagers. The Department of Justice also uses the Illegal Gambling Business Act and the Travel Act to prosecute Internet gambling businesses.²⁰ These federal laws apply to Internet gambling businesses and financial firms that process payments rather than to individual gamblers.

¹⁸ The act provides exemptions for certain restricted transaction or payment systems that the U.S. Treasury and Federal Reserve determine cannot reasonably meet the act's requirements. The final rule recognizes that card systems are designated only with merchant and transaction codes that can identify and block transactions. Other designated payment systems have the responsibility for due diligence in doing so.

¹⁹ The federal act also provides that state regulations must include age and location verification to reasonably block access to minors and persons located outside the state.

²⁰ The Illegal Gambling Business Act (18 *U.S.C.* Section 1955) prohibits five or more persons from conducting, financing, managing, supervising, directing or owning all or part of an illegal gambling business. The gambling business must violate state law. The Travel Act (18 *U.S.C.* Section 1952) imposes criminal penalties to those who use interstate or foreign commerce with the intent to distribute the proceeds of any unlawful activity, including a business enterprise involving gambling in violation of state or federal law.

In recent years, the federal government has taken various steps to deter Internet gambling including arresting company executives and seizing gambling proceeds. In March 2007, the U.S. Department of Justice arrested 11 individuals for involvement in racketeering, conspiracy, and fraud associated with Costa Rican-based Internet gambling businesses. In June 2009, federal prosecutors froze an estimated \$34 million in winnings owed to 27,000 players.

Florida law does not address Internet gambling. While Florida law does not expressly prohibit Internet gambling, a 1995 Florida Attorney General advisory opinion states that gambling on the Internet is illegal. The Attorney General developed this opinion using state law that allows for gambling only in statutorily authorized locations.²¹ In addition, the Attorney General opinion references federal Wire Act provisions that prohibit a bookmaker from transmitting betting or wagering information by wire communication to persons in Florida. According to the opinion, the Wire Act provisions, in combination with state law, prohibit an individual from placing a bet or wager by wire communication or via the Internet.

Some states explicitly prohibit Internet gambling, while others have attempted to authorize intrastate Internet gambling. At least eight states have enacted laws expressly prohibiting Internet gambling. Illinois, Indiana, Louisiana, Montana, Nevada, Oregon, South Dakota, and Washington prohibit Internet gambling businesses, and some expressly prohibit Internet wagering by individual players. For example, Washington law provides that a person that transmits or receives gambling information by the Internet is guilty of a felony. Louisiana similarly has outlawed

Internet wagering, providing that such activity is a misdemeanor.

In contrast, the Nevada Legislature passed legislation in 2001 allowing its gaming commission to adopt regulations governing the licensing and operation of Internet gaming. In 2002, the U.S. Department of Justice advised Nevada that federal law prohibits gambling over the Internet. More recently, the North Dakota Legislature considered bills in 2005 to regulate, license, and tax Internet poker. The state Senate rejected the bill after receipt of a letter from the U.S. Department of Justice indicating that federal law prohibits Internet gambling.

In recent years, gambling advocates in several other states have pursued legislation to establish intrastate Internet gambling systems. Most recently, 2008 legislation filed in California directed the state gaming commission and justice department to adopt regulations for intrastate Internet poker consistent with the federal Unlawful Internet Gambling and Enforcement Act.²² The bill was withdrawn at the request of proponents after passing the state Assembly and two Senate committees in order to have sufficient time to make needed changes.

What factors may affect the future of Internet poker?

Pending federal legislation to license and regulate Internet poker would constitute a reversal of current U.S. policy. In addition, one proposal would divide Internet gambling revenues between states and the federal government. Further, a recent court decision concerning the Unlawful Internet Gambling Enforcement Act has been interpreted by some to allow Internet gambling in the absence of additional federal legislation. As a result, Internet gambling proponents may move forward with state proposals.

²¹ The Attorney General opinion also cites s. 849.14, *Florida Statutes*: "Whoever stakes, bets or wagers any money or other thing of value upon the result of any trial or contest of skill, speed or power or endurance of human or beast, ... or whoever knowingly becomes the custodian or depository of any money or other thing of value so staked, bet, or wagered upon any such result, ... shall be guilty of a misdemeanor of the second degree punishable as provided in s. 775.082 or s. 775.083."

²² Assembly Bill 2026, California Legislature 2007-08 Regular Session.

Pending federal legislation seeks to license, regulate, and tax Internet gambling businesses. In May 2009, Representative Barney Frank introduced House Bill 2267, the Internet Gambling Regulation, Consumer Protection, and Enforcement Act. The bill establishes a federal Internet gambling licensing program, which would allow Internet gambling operators to obtain a license and accept bets or wagers from any authorized person in the United States.

Under the bill, the U.S. Treasury secretary would have regulatory and enforcement jurisdiction over the licensing program. The bill would require licensees to protect against underage gambling, compulsive gambling, money laundering, and fraud, and enforce existing state or tribal gambling prohibitions or restrictions. The Treasury secretary would be authorized to revoke a license if a licensee fails to comply with regulations or is unsuitable for licensing.

Similarly, in August 2009 Senator Robert Menendez introduced Senate Bill 1597, the Internet Poker and Game of Skill Regulation, Consumer Protection, and Enforcement Act of 2009. The bill establishes a licensing and regulatory framework similar to the Frank proposal, but is more limited in its scope. Specifically, the licensing and regulatory structure would apply only to an Internet game of skill or a game in which success is predominantly determined by the skill of players including poker, chess, bridge, mahjonn, and backgammon.²³

The Menendez bill also contains tax provisions that would require licensees to pay a federal and state (or tribal) licensing fee. Each license fee equals 5% of the licensee's monthly-deposited funds; the total fee is 10%. The license fees are to be deposited into a trust fund and a qualified state would receive payments based on play by persons located within that state. The bill

also amends the federal tax code to require withholding of taxes on net Internet winnings and those of non-resident aliens.

Both bills would establish state roles in the federal licensing program. For example, any qualified state regulatory body could request and be granted the ability to review and certify prospective applicants.²⁴ States would also be authorized to opt out of the federal licensing program and limit a licensee from knowingly accepting bets or wagers within their states. The Treasury secretary would be required to notify all licensees and applicants to take effective measures to ensure that any licensee complies with any limitation or prohibition imposed by a state.

In the past, some stakeholders raised concerns that a federal licensing program would undermine a state's power to make and enforce its own gambling laws.²⁵ State attorneys general, including Florida's, expressed concern in 2007 that the opt-out provision failed to clearly preserve the right of states to place conditions on legal types of gambling. Stakeholders also argued that proposed federal legislation would preclude states from challenging a licensing decision by the U.S. Treasury or bringing an enforcement action against operators who circumvented a state's prohibition.

A recent court decision suggests that Internet poker may be legal, but depends on existing state law. In 2007, Interactive Media Entertainment and Gaming Association, Inc., challenged the constitutionality of the Unlawful Internet Gambling Enforcement Act. Among its claims, the association contended that the law was unconstitutionally vague and violated an individual's freedom of expression and right to privacy. The U.S. District Court in New Jersey heard the case and rejected the association's claims. The association appealed the decision to

²³ The bill defines poker as any of several card games that are commonly referred to as poker; that are played by two or more people who bet or wager on cards dealt to them; in which players compete against each other and not against the person operating the game; and in which the person operating the game may assess a commission fee or any other type of fee.

²⁴ The U.S. Treasury secretary retains authority to review, withhold, or revoke any license.

²⁵ Concerns were raised about the Internet Gambling Regulation and Enforcement Act of 2007 (H.R. 2046), which provided for licensing Internet gambling facilities. The bill included an opt-out provision that allowed states to limit particular types of gambling activities.

the U.S. Court of Appeals for the 3rd Circuit. In September 2009, the appeals court affirmed the judgment of the district court and ruled in favor of the federal government.

However, Internet gambling proponents interpret the appellate court's ruling to support intrastate Internet gambling as long as the wager is legal in the state where it is placed and received. The court's ruling states that the Unlawful Internet Gambling Enforcement Act itself does not make any gambling activity illegal. Instead, whether an activity constitutes unlawful Internet gambling is dependent upon how state law where the bet is made would treat the bet. If a bet is illegal under that state's law, it constitutes unlawful Internet gambling under the act. Some Internet gambling proponents have interpreted this ruling to mean that if a bet is legal in the state where it is placed and received, then it is not unlawful Internet gambling.

What options could the Legislature consider to provide consumer protections for Internet poker?

The U.S. Department of Justice currently interprets federal law to prohibit all forms of Internet gambling. Florida law, while allowing gambling in various forms, does not expressly address Internet gambling. If the Legislature wishes to take action to provide consumer protections from existing and unregulated Internet poker activities, it could consider three options: (1) maintain the status quo and monitor federal legislation to establish a federal licensing system; (2) adopt laws that would specifically prohibit Internet poker; or (3) adopt laws to authorize and regulate Internet poker. There are advantages and disadvantages associated with each of these options (see Exhibit 1).

Option 1: Maintain the status quo and monitor the pending federal legislation establishing a licensing system for Internet gambling businesses. Under this option, Florida would not enact any legislation regarding Internet poker and would monitor potential actions by Congress and other states. This option would not require any state action, but also would not establish additional consumer protections for Florida residents who play Internet poker. Because these websites operate outside the United States, consumer protections vary widely and generally are limited to those provided by the vendors under company policies or requirements that exist as part of vendor licenses in the host country.

Our interviews with international Internet gambling vendors indicated that several companies have established policies to prevent or deter underage gambling and to assist problem gamblers. These companies also provide customer service representatives to handle consumer complaints. If the company cannot resolve the dispute, consumers may seek assistance from the country that licenses the vendor. However, it would be extremely onerous, and likely very expensive, for a consumer to access a regulatory body in another country. Additionally, some Internet gambling vendors may not offer any apparent consumer protections.

At this time, the possibility for passage of federal legislation is questionable. Many groups, including land-based casinos, social conservative groups, and professional sports leagues including the National Football League, oppose the legislation. In addition, some stakeholders believe a federal licensing system would undermine state gambling laws. However, should Congress adopt a federal licensing system, Florida could receive a share of the revenues from Florida residents who gamble on the Internet.

Option 2: Adopt laws that would prohibit Internet poker. Under this option, the Legislature would enact a law to explicitly prohibit Internet poker and provide criminal penalties for this activity. The Legislature would need to consider what specific acts would be illegal: whether laws would prohibit an individual from gambling, business entities from providing services, or money transmitters from processing gambling transactions.

A law to prohibit Internet gambling could be difficult to enforce as anyone with the appropriate equipment and Internet connections can play online poker in the privacy of his or her own home. As a result, states have focused their enforcement efforts on Internet gambling businesses. For example, the state of Washington reports that to reduce unlawful Internet gambling, the state participates in a multi-jurisdictional Internet Gambling Task Force that includes state, federal, and Canadian agencies. Since 2005, the state has taken part in 11 investigations resulting in the seizure over \$264 million in illegal funds.

A Florida law outlawing Internet poker could help limit the negative social consequences of Internet gambling. Opponents of gambling expansion argue that the prevalence of gambling addiction is three to four times higher with Internet gambling than with non-Internet gambling. In a letter to Congress regarding pending federal legislation, opponents suggest that legalizing Internet gambling represents “a highly invasive and reckless form of taxation dependent on human exploitation.”²⁶

If the Legislature were to prohibit Internet gambling, it could delegate enforcement authority to existing law enforcement entities or to the Division of Pari-Mutuel Wagering. Establishing a new regulatory framework to actively enforce Internet gambling prohibitions would require additional resources.²⁷ However,

²⁶ A letter from Focus on the Family dated June 11, 2009, to members of the U.S. Congress.

²⁷ If the Legislature prescribed criminal penalties for Internet gambling, division staff would need sworn law enforcement powers like those of Division of Alcoholic Beverages and Tobacco staff.

as an alternative, the Legislature could adopt a passive enforcement system where complaints of illegal activity, rather than active monitoring or investigation, would trigger enforcement efforts.

Option 3: Adopt laws to authorize and regulate Internet poker. Under this option, the Legislature would enact laws to authorize intrastate Internet poker. If the Legislature wishes to pursue this option it would need to take several steps. These include requesting the U.S. Department of Justice to issue an opinion regarding the legality of an intrastate system for Internet poker under the intrastate provision of the Unlawful Internet Gambling Enforcement Act. If Florida received such confirmation of legality, the Legislature could consider the additional requirements needed to regulate Internet poker, such as a licensing system, a tax structure, and additional consumer protections (see Exhibit 2).

Expanding authorized gambling in the state to include Internet gambling could generate revenue. However, at this time no objective estimates exist to assess potential state revenues. Proposals to expand authorized gambling in the state to include Internet poker would likely face opposition from groups concerned about the negative societal effects of gambling. According to stakeholders we interviewed, these groups would oppose new state legislation just as they have opposed pending federal legislation. In addition, the expansion of authorized gaming to include Internet poker could affect the state’s relationship with the Seminole Tribe of Florida, especially if a gaming compact that provides the tribe exclusivity for card games is adopted.

Agency Response

A draft of our report was submitted to the Secretary of the Department of Business and Professional Regulation for review and response; a formal response was not required, although the department provided comments informally.

Exhibit 1

The Legislature Could Consider Three Options to Protect Consumers from Unregulated Internet Poker

| Option | Advantages | Disadvantages |
|-----------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Option 1 – Maintain the status quo and monitor pending federal legislation | | |
| Maintain the status quo and monitor pending federal legislation establishing a licensing system for Internet gambling | <ul style="list-style-type: none"> ▪ If the federal government authorized a national licensing system, it could establish nationwide consumer protection standards and policies to address the problems associated with compulsive gambling. ▪ The federal government would bear the costs of licensing, and states may receive a portion of tax revenues. | <ul style="list-style-type: none"> ▪ Does not establish additional consumer protections unless and until the federal government takes action. |
| Option 2 – Adopt laws to prohibit Internet poker | | |
| Adopt laws to prohibit Internet poker | <ul style="list-style-type: none"> ▪ May reduce the number of Floridians that gamble online since they would be in violation of specific state law. ▪ Passage of such a law may raise awareness of the problems associated with Internet gaming. ▪ Increased awareness, coupled with reduced Internet gambling, could reduce the costs associated with problem gamblers in the state. | <ul style="list-style-type: none"> ▪ Could increase costs for the state if the state were to actively enforce prohibitions against Internet gambling. The state's ability to enforce Internet gambling prohibitions would face a number of challenges; e.g. limited ability to identify and take action against Internet gamblers since these activities take place in private residences or to block player access to these existing sites because of the First Amendment to the U.S. Constitution. |
| Option 3 – Adopt laws to authorize and regulate Internet poker | | |
| Adopt laws to authorize and regulate Internet poker | <ul style="list-style-type: none"> ▪ Could potentially increase state revenues, but currently there are no objective estimates of fiscal impact. ▪ Under a state system, the state would retain tax revenues in contrast to a federal system where revenues would be divided between the state and federal government. ▪ A state regulated system could provide enhanced consumer protections beyond those currently offered by foreign companies. | <ul style="list-style-type: none"> ▪ Absent a clear answer from the federal government, any proposed Internet gambling system might violate federal law. ▪ A new system would increase the state's regulatory costs to license vendors, ensure compliance with state law, and monitor possible illegal sites that might claim state approval. ▪ Could increase societal problems associated with problem gambling. ▪ An expansion of gaming to include Internet gambling could affect the state's pending Seminole compact. |

Source: OPPAGA Analysis

Exhibit 2
Several Steps Would be Necessary if the Legislature Authorized Internet Poker

| Steps | Action for the Legislature to Consider |
|-----------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Contact the U.S. Department of Justice | Request an opinion from the U.S. Department of Justice regarding the legality of Internet poker under the intrastate exception to the Unlawful Internet Gambling Enforcement Act. The Department of Justice may not respond to such a request based on proposed legislation but may instead wait to issue an opinion after legislation has been passed into law. |
| Develop Regulatory Scheme for Internet Poker | Amend state law, potentially the state’s pari-mutuel statutes, to provide for licensing and oversight of Internet poker. The Legislature would need to determine whether it would allow for a single state contract or license all vendors that meet state criteria. |
| Establish Licensing Fees Appropriate to Cover the Costs of Regulation | Provide that licensing fees for Internet poker vendors must be sufficient to cover the costs of regulation. If the state gave the Department of Business and Professional Regulation responsibility for regulating Internet poker, the division would need additional employees and rule-making authority to ensure the integrity of the games, ensure compliance with applicable state laws, and ensure consumer protection. |
| Create an Internet Poker Tax Structure | Determine the tax structure and establish a system to account for Internet poker revenues. Questions to consider include how often vendors would be required to transmit Internet poker revenues to the state and what oversight the state would need to ensure appropriate payments. The state could rely on the vendors to comply or require vendors to submit Internet gaming data for audit. |
| Ensure Consumer Protections | Ensure that licensed vendors take steps to protect player identification and credit information, prohibit under-age gambling, ensure the system prohibits play on a state licensed system by anyone not physically located in the state, and require vendors to provide assistance to problem gamblers. |
| Establish Requirements for Payment System | As of December 1, 2009, new rules from the U.S. Treasury and the Federal Reserve Board take effect that seek to restrict payment system processors (e.g. banks, credit card companies, and money transmitters) from transferring money for gambling purposes. An intrastate Internet poker system would require payment-processing systems regulated by the state so that they did not violate these provisions. |
| Define the Role of Law Enforcement | Consider and address the role of law enforcement because Internet gambling can be a potential venue for various criminal activities including cheating, theft, identity theft, and money laundering. |
| Consider the Impact on the Seminole Compact | Assess the impact on the Seminole Compact if Internet gambling were authorized in Florida. The tribe would likely seek to provide similar gaming opportunities. |

Source: OPPAGA Analysis.

The Florida Legislature

Office of Program Policy Analysis and Government Accountability

OPPAGA provides performance and accountability information about Florida government in several ways.

- Reports deliver program evaluation, policy analysis, and Sunset reviews of state programs to assist the Legislature in overseeing government operations, developing policy choices, and making Florida government better, faster, and cheaper.
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