

KING BILL LOOKS TO TAKE CROWN IN FEDERAL VS STATE ONLINE SUPREMACY

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As individual states are racing to adopt varying laws legalising online gambling, federal lawmakers are scrambling to catch up this summer by introducing new federal online gaming bills that address at least some of the concerns that plagued prior, unsuccessful federal legislation. Leading the charge is Representative Peter King (R-NY), whose 'King Bill' aims to "foster a level playing field" among all potential online gambling stakeholders, including casinos, Indian tribes, state lotteries and horseracing operations. Despite its good intentions, however, the King Bill may be too ambitious and too open-ended to garner the support it needs from members of Congress. Importantly, it leaves open the question of what benefit it provides to states like Nevada and New Jersey where online gaming is already regulated.

The timing of the King Bill is significant and is best explained by the bill itself, which cites the 2011 Department of Justice Wire Act opinion as having pushed states like Nevada, New Jersey, and Delaware to pass a patchwork of intra-state online gambling legislation. That DoJ opinion said that the 1961 Wire Act prohibits only sportsbetting across state lines, not other forms of gambling. Striving to establish a more uniform system of licensing and regulation at the federal level, King's bill would allow all forms of online gaming, except sportsbetting. This is a departure from previous federal online gaming legislation, such as last year's Reid-Kyl bill, which sought to regulate online poker only.

The bill would create the Office of Internet Gambling Oversight in the Department of the Treasury within 180 days of the bill becoming law. As the federal regulatory authority, this office would enforce the federal regulations and has the ability to unilaterally suspend or revoke licenses issued by a state or tribal

agency if it feels the operator does not meet its standards for suitability. Fortunately for many operators, the King Bill does not include a traditional 'bad actor' clause, but it does lock out any applicants that took illegal sports bets from US customers. Existing unlicensed sites would be given the opportunity to exit the US market in an orderly fashion. As to operators that continue to operate unlicensed under the new regime, the King Bill imposes hefty fines of up to \$1 million per day or the amount of all wagers accepted and may also include up to ten years in prison.

State officials and lotteries have traditionally resisted legislation that could hinder states' authority over gambling. The bill assumes all states (and tribunal authorities) opt-in unless stating otherwise within 120 days of the bill's passage into law. For more assertive states that elect to opt-out, the state governor or similarly positioned leader must notify the Secretary within 120 days of enactment and must include a reason for doing so, such as the state is against federal laws that expand gambling. Alternatively, a state legislature could also opt-out through a majority of both chambers if the legislature has passed or passes a bill declaring that bets authorised by the King bill "should be prohibited in such State". Regardless of its decision, a state could later change its mind with 60 days-notice.

A similar opt-out provision was included in Senate Majority Leader Harry Reid's (D-Nev) online poker bill last year, but it failed to win over state critics. Those most critical of the new proposed bill are likely to include states with existing online gaming regulation regimes, such as Nevada, New Jersey, and Delaware. Unlike under the Reid-Kyl bill, these states would be "grandfathered" in under the bill, but they do not stand to gain much as a result of its passage. Although the bill opens the door for licensees to the

possibility of accepting bets from non-US customers, states like New Jersey already had these options available to them. No federal laws now prohibit states like New Jersey, which allow shared player liquidity among states with online gaming laws, from entering into reciprocal agreements with foreign jurisdictions. The Wire Act, once thought to be the biggest obstacle to interstate or international transmission of money related to online wagering, no longer poses a threat to these types of relationships. The question remains, therefore, how states with existing online gaming laws stand to benefit from the King Bill. It would appear that these states have the most to lose, not only in relation to the obvious loss of oversight authority within their borders, but also the potential to oversee online play in cross-border relationships. And although taxes are not currently included in this bill, they are expected to be introduced by a separate measure, which would also mean a loss of potential tax revenue to states with existing online gaming laws.

The King Bill is not the first instance in which Congress has flirted with online gaming, but it may be one of the last chances the federal government has left to regulate online gambling before that power is taken completely by the states. This summer could see a relative flood of online gambling bills, including one from Representative Joe Barton (R-Texas) and renewed legislation from Senator Harry Reid, now working together with Senator Dean Heller (R-Nev). Only time will tell if the King Bill takes the crown or whether the states will continue to reign supreme.

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