



# NEVADA: the Game Changer

The 'Silver State' introduces gaming-changing legislation with Internet poker bill.

In the United States, online poker currently falls into a legal grey area: there are no federal laws explicitly prohibiting Internet poker play, but there are not any laws that specifically legalise or regulate it either. In recent months, there has been plenty of legislative action on the state and federal level from law makers attempting to lay out, in black and white, how and if Internet poker will be played in the United States. While a federal bill and several state bills have died on the vine, it appears that it is only a matter of time before Internet poker will be made legal by one of the states active in this issue. With activity in at least four legislatures around the country, the candidate for first place changes on an almost daily basis.

Most recently, an Iowa bill seeking to legalise online gambling stalled out before it even got to the Ways and Means Committee vote before the Iowa legislature. The District of Columbia has also introduced an amendment to the DC Fiscal Year 2011 Budget Support Act that would allow the DC lottery to administer online poker by defining the DC lottery to include "both games of skill and games of chance" and allowing the games to be played over the Internet within the District. The amendment was expected to pass its first and most important hurdle before Congress on April 7, 2011, but the specific regulations under the amendment remain to be defined.

## Nevada

Now, Nevada state lawmakers are trying to take the lead on regulating Internet poker. By legalising online poker, the proposed Nevada law, Bill AB258, would create the first intrastate Internet gambling regime in the nation, and, unlike the casino-friendly federal legislation that failed last year, will allow offshore poker companies that currently service the US market to operate in the state.

Nevada, with its major casino industry, has long been a leader in gaming regulation. Last month, Bill AB258 would take that interest a step further by regulating Internet gaming in the state. The bill, however, only applies to online poker and

explicitly forbids sportsbetting, even though betting on football, basketball, and other games is legal in the state.

The preamble to the Nevada bill states that legal Internet poker could benefit Nevada's ailing economy and adds that Nevada could utilise current technology to limit the gambling sites to places where it is legal. The bill defines "Internet poker" as "any of the card games commonly referred to as poker which is played by two or more persons who wager against each other and not against the person operating or offering the game and in which success over the long-term is determined by the skill of the player." Long-time proponents of legalised online poker have similarly defined poker as a game of skill, arguing that such a definition excludes poker from the ambit of various federal laws that prohibit online gambling transactions.

The bill gives the Nevada Gaming Commission the responsibility of adopting regulations to police online poker, including age verification, geographical verification, "appropriate safeguards to encourage responsible gaming", and standards guaranteeing network security, player privacy, and the games' honesty. Further, the bill makes clear who is eligible for an online poker license. A key feature of the bill states that the Nevada Gaming Commission cannot deny licenses to online poker operators operating in the United States after the passage of the Unlawful Internet Gambling Enforcement Act in 2006, which bans financial institutions from processing online gambling transactions. The bill's text reads:

"The Commission may issue a license as an operator of Internet poker to a person or an affiliate of a person who has been licensed to operate Internet poker by a recognised body of another jurisdiction with licensing requirements that are similar to the licensing requirements of this state and who has successfully operated Internet poker pursuant to such a license for at least two years before the date on which the application for the license is submitted."

## Notable improvement

This provision is a marked departure from an online gambling bill passed by the Nevada legislature back in 2001, which confined licensees to those who owned actual casinos with non-restricted licenses. By contrast, this bill would allow non-US based companies, including the current market leaders in online poker, to operate in the state, keeping them at the top of the Nevada market. It is not surprising, therefore, that the lobbying force behind the bill is Rational Entertainment Enterprises Ltd, which does business under the name PokerStars, a popular online poker site.

For offshore poker operators, this provision of the Nevada bill is also a considerable improvement from the federal legislation proposed last year by Nevada Senator, Harry Reid. Unlike the Nevada bill, the federal legislation, which also sought to legalise online poker, was largely backed by casino interests. The legislation included language that excluded offshore operators upfront, allowing only existing casinos, horse tracks and slot-machine makers to operate online poker websites for the first two years after the bill passed.

Under the federal bill, online poker sites that currently cater to American players would need to temporarily shut down their US operations for 15 months after passage of the bill or risk not being able to ever obtain a license to operate in the United States. Many poker players were upset by this provision, viewing it as unfairly benefiting Nevada casino giants over their favoured gambling websites. The federal bill, however, died last December, leaving the door open for states like Nevada to introduce their own legislation allowing offshore companies to enter the market.

Another key aspect of the Nevada bill is that it allows Nevada companies to take bets from outside the state, provided that other jurisdictions have legalised such bets. Specifically, the bill authorises the Commission to enter into "compacts" with other jurisdictions where interactive gaming is not prohibited, thus, permitting games and poker pots

to be shared among these jurisdictions. If players are playing in other jurisdictions, Nevada will collect a 4 percent gross gaming revenue tax, on top of which the player's jurisdiction would presumably layer its own tax. Under this system, Nevada stands to gain millions in tax revenue, along with a host of new players who do not live in Nevada and would otherwise not play there in absence of the new law.

### Partnerships

The bill also opens up the possibility of partnerships between established Nevada casinos and major offshore poker operators. Leading up to the introduction of the bill was news of a partnership between Caesars Entertainment, which owns and operates the annual World Series of Poker, and 888 Holdings PLC, an Israeli company that offers online poker, sportsbetting, and casino games in Italy, France and the United Kingdom. Shortly after the introduction of the Nevada bill, the Nevada Gaming Commission approved the partnership. This announcement was followed by a similar announcement that Wynn Resorts Ltd had formed a strategic alliance with PokerStars in which the two companies would jointly service the US market via PokerStarsWynn.com when, and if, a regulatory scheme is established.

A week later, Full Tilt Poker, another leading online poker operator, announced that it had forged a partnership with Fertitta Interactive, an entity set up by Station Casino Inc, to operate in the United States if the legal climate changes. For these top online poker operators, gaining the backing of land-based casinos could ensure they are well positioned should a state or federal regulatory scheme be implemented. For the land-based casino owners, these strategic alliances would mean access to a multi-billion dollar industry that would only grow if the current legal environment changes. Note: Following indictments against PokerStars and Full Tilt these respective partnerships have been terminated.

### Terrestrial opposition

But not all land-based casino owners are in favour of the Nevada legislation. The proposed legislation has encountered vigorous opposition from existing casino owners who, despite supporting the legalisation of online poker under Senator Reid's bill, feel the Nevada legislation is too liberal when it comes to allowing foreign-based companies, like PokerStars and Full Tilt Poker, to obtain operating licenses. Even Caesars Entertainment has criticised the Nevada bill, stating that the focus of legislation should be an interstate, not intrastate, regulation and licensing regime. MGM Resorts International has also expressed its desire for licensing and regulation

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under a federal regime, rather than a state-only system. Unlike Caesars Entertainment, MGM Resorts has not entered into any deals with online poker companies, but has been approached by Internet poker companies about establishing a partnership that would utilise the MGM Resorts brand.

The Poker Players Alliance (PPA), the leading poker grassroots advocacy group with more than one million members nationwide and more than 16,000 in Nevada alone, has commended the Nevada State legislature's efforts to legalise and regulate online poker. Although it still prefers a federal bill, the PPA has stated that the new Nevada bill “is the best attempt at the state level to address the consumer concerns with intra-state regulation.”

On March 24, 2011, Nevada State Assembly Judiciary Chairman, William Horne, hosted an informational hearing on the online poker bill. Supporters of the bill noted that Nevada is a longstanding leader in the gaming industry and that it has licensing authorities in place to regulate online poker operators. Committee members were, not surprisingly, interested in the economic benefits of the bill as well as any potential harm the bill may pose to existing bricks-and-mortar casinos. The committee was also very concerned with the security of online gaming, especially with the potential for underage players obtaining access to the sites by using their parents' identification. To help counteract those concerns, the committee heard testimony from a third-party security vendor who explained the verification systems it would employ to confirm a player's age, including requiring players to use Skype to show a government-issued identification card. The vendor representative further testified that he was not aware of even one instance in which an underage application was approved under its verification system.

The Nevada Resort Association testified against the Nevada bill, explaining that the economic benefits of legalising online poker would come partially at the cost of players' visits to bricks-and-mortar casinos, with an ancillary cost to casino shows and restaurants that poker players might have otherwise visited. In addition,

the association noted that the Department of Justice has clearly stated that it views online poker as violating the federal Wire Act, which prohibits the operation of certain betting businesses in the United States. Although testifying that no online poker operator has ever been prosecuted under the Wire Act, the association maintained that the Department of Justice has not retracted its position on the illegality of online poker. The association, however, acknowledged that should online poker be legalised on the federal level, the Wire Act would no longer be a concern.

### Fate

At this point, the fate of the Nevada Internet poker bill is uncertain. The bill is certainly a game changer for offshore online poker operators who would have been temporarily excluded from the market under the previously proposed federal legislation. Yet, offshore operators are not the only ones who stand to gain from the Nevada legislation. The legislation will open up a whole new market to bricks-and-mortar casinos to offer poker play to millions of players who would not have otherwise visited the state. The benefits to the state itself are also evident, as online poker would generate millions of dollars of tax revenues for the state – something that Nevada's ailing economy could really use right now.

If the Nevada legislature does pass the Internet poker bill, it will certainly drive other states to jump on the regulation bandwagon. If it does not, another state is likely to pass similar legislation, as the legalisation of online poker appears inevitable at this point. ■

**Following events** of Friday, April 15, 2011, the strategic alignments between Wynn and PokerStars and Fertitta Enterprises (Station Casinos) and Full Tilt Poker have been terminated.

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