



# New Jersey: taking the lead in offering internet gaming to the world

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**MEDIA reports on New Jersey's recently passed i-gaming law have focused on the availability of i-gaming to New Jersey's 8.8 million residents, but those reports miss a little-known feature of the law that may be enormously lucrative for casinos and i-gaming providers.**

In addition to permitting New Jersey residents to play online against each other, the law also authorises the Division of Gaming Enforcement to permit residents of foreign countries in which gaming is permitted to access to i-gaming hosted in New Jersey.

## Recent developments in New Jersey legislation

On February 26, 2013, Governor Christie signed into law an amendment to New Jersey's Casino Control Act of 1977 that provides a framework for online gaming in New Jersey. The new law (available online at [http://www.njleg.state.nj.us/2012/Bills/AL13/27\\_.pdf](http://www.njleg.state.nj.us/2012/Bills/AL13/27_.pdf)) permits licensed Atlantic City casinos to offer internet gaming within the territorial bounds of the state of New Jersey.

Under the new law, a casino may offer i-gaming independently or team with a licensed "internet gaming affiliate" that operates the internet gaming system. In either instance, the licensing process to establish i-gaming is extensive. While the application process for a company that merely seeks to license its software to a casino is not substantial, an affiliate operator must proceed through a full casino licensing application and investigation process – an exhaustive, lengthy and expensive proposition that only established i-gaming operators are likely to undertake.

In addition to obtaining a casino licence, a gaming operator - whether the casino or an internet gaming affiliate - must apply for and receive an internet gaming permit from the New Jersey Division of Gaming Enforcement (DGE). DGE has not yet issued the regulations and technical requirements for receiving such a permit but it is expected to announce proposed regulations in the next few months. The regulations will likely specify technical requirements regarding age verification, location, anti-tampering precautions and security. The DGE will also determine by regulation a list of games "suitable for use for wagering though the

internet," but DGE's list will likely include a full range of casino games.

## Looking beyond New Jersey for player liquidity

New Jersey's population of 8.8 million alone provides a substantial new market for i-gaming, but the New Jersey statute contemplates expanding online gaming well beyond the state's own residents. Section 29 of the law provides that:

*Notwithstanding any other provision of [this Act], wagers may be accepted thereunder from persons who are not physically present in this State if the Division of Gaming Enforcement in the Department of Law and Public Safety determines that such wagering is not inconsistent with federal law or the law of the jurisdiction, including any foreign nation, in which any such person is located, or such wagering is conducted pursuant to a reciprocal agreement to which this State is a party that is not inconsistent with federal law.*

The New Jersey law thus leaves the decision regarding whether online gaming can be opened to residents of foreign countries to the discretion of NJ's Division of Gaming Enforcement, subject to two restrictions.

The first – that the law of the foreign nation in which the putative player lives must permit gaming – is easily satisfied by many countries in Europe and elsewhere in the world. The second – that New Jersey and that nation must enter into a reciprocal agreement "that is not inconsistent with [US] federal law" raises some questions but should ultimately be no obstacle to expanding New Jersey-hosted i-gaming to residents of other nations.



### The absence of impediments under US federal law

While there are a number of US federal statutes that appear to block access to internet gaming, those laws should not prevent New Jersey from allowing players from other countries to play on New Jersey-hosted i-gaming websites under appropriate reciprocal agreements.

The Federal Wire Act of 1961 was once perceived as a substantial obstacle to interstate or international transmission of money related to online wagering. Recent pronouncements by the US Department of Justice make clear that this is no longer the case. In December 2011, the DOJ reversed its long-held position that the Wire Act prohibited all forms of internet gaming, including poker, and declared that the Wire Act applies only to sports betting. This legal opinion made clear that the transmission of money across state or national boundaries that would be necessary to offer i-gaming outside of New Jersey will not violate that federal statute.

There are several other US federal statutes that have been the mainstays of federal law enforcement efforts against internet gaming in the United States, but none of these statutes are likely to pose an impediment to New Jersey's offering of i-gaming to foreign players. The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA) prohibits "knowingly accepting payments in connection with the participation of another person in a bet or wager that involves the use of the internet and that is unlawful under any federal or state law."

The Illegal Gambling Business Act (IGBA) similarly provides that "[n]o person engaged in the business of betting or wagering may knowingly accept" any money transfers in

any way from a person participating in unlawful internet gambling. These statutes were essential elements in the criminal prosecutions and civil forfeiture proceedings that the US DOJ used to halt the offering of online poker in the United States in 2011. And the Travel Act forbids the use of US mail, or interstate or foreign travel, for the purpose of engaging in certain specified criminal acts, such as online gambling.

*"None of these laws itself defines what betting, wagering or internet gambling is prohibited"*

But these statutes all share one unusual feature: None of these laws itself defines what betting, wagering or internet gambling is prohibited. Rather, in most instances, these statutes rely in that respect on the prohibitions contained in state laws, and specifically exclude circumstances in which gaming is permitted by the law of the locations in which the bets are made and received. Where, as here, a state has determined to permit internet wagering, the acceptance of payments relating to that activity does not violate UIGEA, IGBA or the Travel Act. Thus, these federal laws pose no obstacle to participation in regulated New Jersey-hosted i-gaming by players outside of the United States.

### A new paradigm for legality of US i-gaming

The provisions in the New Jersey statute that permit the DGE to enter into reciprocal agreements with foreign nations have the potential to expand dramatically the market

for i-gaming hosted in New Jersey. On the one hand, such arrangements are a safety net to ensure that, even if there are not enough players online at one time in New Jersey, there will be sufficient players overall to ensure a successful and enjoyable gaming experience for New Jersey residents. The success of the New Jersey model may lead other states to make similar arrangements to permit i-gaming to their residents.

Moreover – and perhaps more significantly – the New Jersey statute and the possibilities it offers may signal a fundamental shift in the way the legality of online gaming is addressed in the United States. While in the past the focus of law enforcement and gaming companies has been on federal statutes (and the prospect for more favorable federal legislation), the states now have the opportunity to seize this issue and make it one that is determined by state legislatures. To steal a phrase from another locus of casino gaming, what happens in New Jersey may not stay in New Jersey.

The task for New Jersey regulators is to act swiftly to put in place appropriate regulations that will permit the expansion of New Jersey-hosted i-gaming to foreign residents while maintaining proper oversight of participants in these businesses. The success of i-gaming in New Jersey will bring significant economic benefits to that state and will clear the way for other states to follow suit.

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