

IPOKER BACK IN PLAY IN NY BUT FEDERAL OUTLOOK UNCLEAR

In February, NY Senator John Bonacic reintroduced the online poker bill that sailed through Senate last year, and Assembly sponsor J. Gary Pretlow appears to have banished his prior concerns over the regulator's ability to effectively monitor and keep the games fair. **Rachel Hirsch** of Ibrah Law looks at the bill's main provisions and assesses its chances of passage amid an uncertain political climate for igaming at federal level.

In a positive step for online poker players, the New York Senate Gaming Committee voted unanimously in February to pass an online poker bill that would legalize internet poker in the Empire State. Passing the Committee by an 11-0 vote, State Senator John Bonacic's legislation is now poised to move to the Finance Committee for a vote. This is not the first time that Bonacic has tried to pass an online poker bill in the state. Last year, his online poker legislation made it all the way through the Senate, but it was never taken up by New York Assembly lawmakers. Bonacic, however, feels more confident about his bill's prospects this year, now that the state is not as focused on fantasy sports. If passed, New York would be the fourth state to pass online gaming legislation within its borders. With the uncertainty of what a Trump administration will mean for the future of online gaming in the US, it seems this state-by-state patchwork of online gaming legislation is the best hope for continued advancement of US online gambling.

Previous efforts to legalize online poker in NY

Last year, the Senate easily passed online poker bill S5302—also introduced by Bonacic—by a 53-5 margin. The bill then

passed the Finance Committee by a 20-8 vote. But there was not much to report from either the Senate hearing, which lasted less than one minute, or from the Finance Committee vote, with no debate and only brief comments offered. Despite sailing through the Senate, the bill was never considered by the Assembly. At the time, it appeared that the Assembly's inaction was due to not having the necessary votes to pass the bill. But there were competing factors

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in play that shifted the focus from online poker—specifically, the legal action taken by Attorney General Eric Schneiderman against daily fantasy sports (DFS). In 2016, the legislature simply did not have the time to consider a DFS bill and then move on to online poker, although some believed that the two issues could be handled together and online poker could piggyback off of DFS's progress through the legislature. The legislature did pass legislation dealing with DFS at the 11th hour, which was eventually signed into law, but that signaled the end of

the New York legislative session for 2016 and the end for Bonacic's online poker bill.

Bonacic's renewed effort to pass legislation

This year marked a renewed opportunity for online poker in New York. In January, Bonacic reintroduced legislation that would formally authorize and regulate online poker in the state. His latest measure, S3898, is virtually identical to the aforementioned S5302, which failed to generate any movement in the Assembly last year. Like its predecessor, S3898 identifies poker as a game of skill. According to the New York State Senate website, the purpose of the bill is simple: “To authorize the New York Gaming Commission to license certain entities to

offer for play to the public certain variants of internet poker which require a significant degree of skill, specifically ‘Omaha Hold'em’ and ‘Texas Hold'em’ Although the website's “purpose” statement only mentions two kinds of online poker games, the bill would authorize most forms of poker. However, the bill only authorizes a maximum of 11 licensed operators, which must pay a licensing fee of \$10 million each to receive a license that is good for 10 years. When the bill is signed into law, there will be a 180-day grace period before licenses can be issued and games can

start, likely in an attempt to ensure that the state is properly prepared.

Importantly, like its neighboring state of New Jersey, New York would be permitted under Bonacic's bill to enter into interstate gaming compacts so that player pools can be combined. Player liquidity has always been key to the success of online poker. For both online operators and players, expanded player pools under interstate gaming agreements will result in a more consumer-friendly experience, increased participation, bigger payouts and increased profits. Nevada and Delaware have an agreement to share player pools, having fewer than an estimated three to four million residents between them. New York on the other hand, has nearly 20 million residents, plus the endless stream of visitors for work and tourism each day. An interstate compact with New York would vastly improve Nevada and Delaware's otherwise lackluster online poker industries. New Jersey, however, would be the most likely compact partner, not only because of its close proximity to New York, but also because of the extensive regulatory experience it brings to the relationship. With a population of approximately 8.8 million people, New Jersey presents an opportunity for New York to expand its player base and, in turn, increase player activity to its online poker sites. And the 15 percent tax on gross gaming revenue proposed in Bonacic's bill will ensure that the increased player activity results in increased revenue for the state.

Bonacic's confidence this year in his legislation is buoyed by new support in the Assembly, where Bonacic's S5302 bill petered out last year. This February, New York Assemblyman J. Gary Pretlow introduced A5250, a carbon copy of Bonacic's S3893 bill introduced in January. With the same legislation in both chambers of New York's legislature, regulated online poker in New

York has never stood a better chance. Last year, however, Pretlow harbored his own misgivings that online poker was not a game of skill because a player could not change the size of the bet during play. He was also concerned that online poker sites could not prevent players from colluding and cheating. After a visit with the New Jersey Division of Gaming Enforcement, it appears that Pretlow is no longer concerned over the state's capability to monitor online poker games, and that he no longer questions the skill aspect of online poker.

Continued uncertainty as to the federal regulatory landscape

New York's online poker legislation comes at a time when a number of other states—most notably Pennsylvania and Massachusetts—are also reviving their efforts to regulate intrastate online gambling. Pennsylvania, a border state to New York, was expected to have licensed online poker sites up and running in 2016, but the bill never made it past the state Senate for a vote. The new year, however, brings renewed optimism for Pennsylvania.

This patchwork of state-by-state legislation will continue in the absence of a federal scheme to regulate online gaming. At this point, it is still unclear what impact, if any, a Trump presidency will have on the gambling industry. In the past, President Trump has expressed support for online gambling in general, but, if his presidential campaign is any indication, what he has said in the past may have little to no bearing on what he believes now. Certainly, there is reason to be optimistic about online poker under President Trump. His past casino interests, including his 2011 partnership with hedge fund manager Marc Lasry to set up an online gambling company, signal good news for the advancement of online gaming under

President Trump. Further, President Trump's fervent stance against pay-to-play politics, of which the Restoration of America's Wire Act (RAWA) bill is a classic example, also favors a pro-online gambling stance under a Trump administration. But the company President Trump keeps may indicate otherwise. If a Trump administration ever legalizes US online poker or gambling, it will have to do so over the objections of Sheldon Adelson, a donor to the Trump campaign and the person who bankrolled efforts to stop online gambling at the federal level. The Trump administration will also have to contend with the anti-gambling stance of the religious right and his own Vice President Mike Pence.

For now, it is unclear how a Trump presidency will impact online gambling, if at all. Right now, online gambling does not appear to be a priority for the administration, which means that the US is left with the status quo—legalized online gambling on a state-by-state basis. While online gambling bills have lacked momentum in the last couple of years, New York's online gambling legislation is certainly a move in the right direction. It will now be up to Pretlow to help push legislation to the finish line in the Assembly if the state has any chance of going online this year.



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