

## Betting on i-Gaming could have big returns

By Harsh P. Parikh and Heidi McNeil Staudenmaier

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Earlier this year, on the last day for bills to be introduced, Senate President pro tempore Darrell Steinberg and Sen. Rod Wright introduced what they hoped to be a \$200 million cash cow for California's struggling treasury: legalization of online gambling. The sponsors of the new Senate bill seek to capitalize on the lucrative online gambling market, with estimates that more than two million Californians already wager as much as \$13 billion a year on off-shore online poker sites.

California Senate Bill 1463 would create a framework for intrastate online gambling, with poker as the only game allowed for the first two years. Under S.B. 1463, "eligible entities" can apply for a 10-year license to operate an intrastate Internet gambling web site.

The bill would allow three types of "eligible entities" to obtain a license to operate an intrastate internet gambling website: (1) current owners of a state gambling license who have held it in good standing with the California Gambling Control Commission for the last three years; (2) Indian tribes; and (3) racing associations and advance deposit wagering sites in good standing for the last three years with the California Horse Racing Board.

There is no limit on the number of online gaming operators that may obtain license. The biggest obstacle for any potential Internet website, however, would be the initial nonrefundable fee of \$30 million. Even though the \$30 million fee would be credited against the licensee's monthly 10 percent tax on its gross revenues, the exorbitant fee will force most "eligible entities" to form coalitions and partnerships with investors. Those who are

not eligible to obtain a license, such as out-of-state corporations or ineligible entities, may join any eligible licensees as investors, subcontractors and online gaming platform providers. The California Department of Justice would investigate all such persons. The agency will conduct examinations to determine suitability and require any applicant to pay a refundable \$1 million to \$5 million investigation cost.

California's latest attempt at regulating Internet-based gaming comes on the heels of last year's failed bills, S.B. 40 and S.B. 45. S.B. 40 sought to legalize only online poker, while S.B. 45 sought to legalize all forms of online gaming. Although S.B. 40 went through several rounds of readings and amendments, neither bills from the 2011-2012 session came before the floor of the Senate. The question is whether S.B. 1463 will meet the same fate.

There is some reason for optimism that this bill may succeed, where others failed. For one, S.B. 1463 does not face the federal obstacle that its predecessors faced: last year, it was unclear whether federal law preempted any state laws relating to Internet-based gaming. Then, in December, the federal government gave intrastate legalization of online gaming a symbolic green light, as the U.S. Department of Justice reversed its long-held position regarding the Wire Act of 1962. In a new opinion, the Executive Branch concluded that the Wire Act only applies to sport-related gambling activities in interstate and foreign commerce.

Many experts believe that the DOJ's new legal opinion of the Wire Act essentially gives states the go-ahead to do what they want with Internet

gaming. Since January, bills that might legalize online gaming have been proposed in almost a dozen states, including Iowa, New Jersey, Mississippi, Hawaii, Missouri and the District of Columbia. In fact, in December, Nevada became the first state to begin enacting regulations directed at interactive gaming, and the Nevada Gaming Control Board is currently accepting applications to operate online intrastate gaming websites.

As states move forward with their own piece-meal regulations and legalizations of online gaming, the U.S. Congress may take action. Currently, the House of Representatives has introduced two bills – H.R. 1174 and H.R. 2267. In the Senate, majority leader Harry Reid recently indicated another bill is also in the works in the other chamber. California's S.B. 1463 would allow California to opt-in to any federal gaming regime, if approved by a majority of the state's legislature.

Yet, despite the national momentum towards web-based gaming, the new California bill faces some of the same issues as its predecessors — friction within the stakeholders. Some are concerned that the licensing procedures may open floodgates for large Las Vegas casinos to operate in California, while

others are concerned that the bill irrationally limits website licenses to a selected few. Interest groups are taking conflicting positions: brick-and-mortar casinos worry whether they will lose traditional players and seek to limit online gaming to only poker, while the California Tribal Business Alliance openly declared that almost all of the state's Indian Tribes opposed S.B. 1463 because of its broad waiver of sovereign immunity.

Online gaming is a nascent but potentially booming industry. California's lawmakers have rightfully identified it as a source of revenue. Even if S.B. 1463 eventually fails to become law, the question is not if, but rather, *when* online gaming will be legalized.



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