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ALL IN: NEW JERSEY BETS ON ONLINE GAMBLING

By: Matt Stankiewicz

I. Introduction

Hurting for new streams of revenue to aid the state and rejuvenate a struggling Atlantic City, New Jersey is on the cusp of legalizing online gambling within the boundaries of the State. This intrastate gambling network would do well to aid the state in its goals. This paper will address those goals, discuss the law and its basic framework, and explain how it came to be. Finally, the paper will discuss the positives and negatives of such legislation and explain how, ultimately, the bill will do far more good than harm. Online gambling will be a boon for the state.

Section II of this paper will lay out the basic framework of the bill. It will pull directly from the draft and briefly discuss the impact of the language. Section III will delve into the world of online gambling, beginning at its very roots in 1998. The section will explore its history up until the present time. Section IV evaluates the United State's (US) federal attempts to restrict online gambling. This section notes the preeminent legislation and notes how the country has wielded those weapons. Section V will discuss the intrastate gambling movement. This section will note Nevada's soon-to-be operational poker room, and will further explore the nuances of New Jersey's proposed legislation. Section VI will offer an in-depth discussion of the many positives and negatives to having an intrastate gambling network within the borders of the State. And, finally, Section VII will conclude the paper and will take a stand as to whether the legislation is ultimately worthwhile for the State.

II. New Jersey's Bill A2578

New Jersey's Bill A2578 will authorize “[i]nternet gaming at Atlantic City casinos under certain circumstances” while also “amending and supplementing the 'Casino Control Act.’”¹ The bill contains broad language as to what constitutes an “authorized gambling game.”²

Poker, roulette, baccarat, blackjack, craps, big six wheel, slot machines, minibaccarat, red dog, pai gow, and sic bow; any variations or composites of such games, provided that such variations or composites, and any above listed game or variation or composite of such game to be offered through Internet gaming, are found by the division suitable for use after an appropriate test or experimental period under such terms and conditions as the division may deem appropriate; and any other game which is determined by the division to be compatible with the public interest and to be suitable for casino use after such appropriate test or experimental period as the division may deem appropriate. “Authorized game” or “authorized gambling game” includes gaming tournaments in which players compete against one another in one or more of the games authorized herein or by the division or in approved variations or composites thereof if the tournaments are authorized by the division.³

The bill specifies a number of staple games that one would find on a typical casino floor. Further, the bill contains broad, open-ended language allowing for “any other game . . . compatible with the public interest.”⁴ For all intents and purposes, the bill will authorize nearly every game available in a brick-and-mortar casino to be made available on its online counterpart.

The bill also imposes a number of restrictions on the gaming. The first set of restrictions are territorial:

All equipment used by a licensee to conduct Internet gaming, including but not limited to computers, servers, monitoring rooms, and hubs, shall be located, with the prior approval of the division, in a restricted area on the premises of the casino hotel within the territorial limits of Atlantic

1 A2578, 215th Leg., (NJ 2012).

2 *Id.*

3 *Id.*

4 *Id.*

City, New Jersey.⁵

Next, the bill sets up a number of safety measures to ensure that all the machines work properly.

First, “[n]o computer or other gaming equipment shall be used to conduct Internet gaming unless it has been specifically tested by the division.”⁶ Further, [n]o software . . . shall be used to conduct Internet gaming unless it is able to verify that a player . . . is physically present in this State.”⁷ Finally, in order to operate a virtual casino, one must have a license purchased from the State's gambling committee.⁸

New Jersey is not taking any chances with the safety and public confidence of its games.

III. The World of Online Gambling

A. The Roots of Online Poker

The initial question that must be answered is: why now? Online poker, the cash cow of the online gambling world, is nothing new. The first real-money gambling site opened on January 1, 1998 when Randy Blumer launched PlanetPoker.com.⁹ Other major sites began to sprout over the next few years; Paradise Poker opened the following year in 1999 and quickly became the top site, UltimateBet opened in 2000, PokerStars opened in October 2001, and Party Poker opened towards the end of 2001.¹⁰ Party Poker helped revolutionize the online realm when it became the first domain to introduce

5 *Id.*

6 *Id.*

7 *Id.*

8 *Id.*

9 *Randy Blumer and the Birth of Online Poker*, BLUFF MAGAZINE, Nov. 2011 available at <http://www.bluff.com/magazine/randy-blumer-and-the-birth-of-online-poker-1161/>.

10 *Online Poker Timeline*, available at <http://visual.ly/timeline-online-poker> (last visited Dec. 1, 2012).

online tournament play.¹¹ These sites began to experience drastic growth in 2001 when the World Poker Tour (WPT) was formed and began advertising online poker to the masses.¹²

B. The Poker Boom

Following this, the poker rooms seemingly peaked in the mid-2000's. Between 2003 and 2006, the sport experienced its most dramatic growth period ever.¹³ Popularity skyrocketed in 2003 when poker began being aired on mainstream television.¹⁴ The first televised event occurred when the Travel Channel hosted a WPT event.¹⁵ It wasn't long until it became the highest rated show in the channel's history.¹⁶ Shortly after, World Series of Poker (WSOP) events began airing on ESPN.¹⁷ The broadcasts eventually expanded and became more and more frequent over the next few years, with other channels creating their own editions such as Celebrity Poker, Late Night Poker, Poker SuperStars Tournament, and Heads-Up Challenge.¹⁸ Novice and casual players could easily follow the action with the addition of broadcast enhancements such as pocket-cams to show the cards each player held, graphics displaying the odds each player had of winning the hand, and commentary explaining the reasoning behind many of the moves.¹⁹ Thus, poker went from a niche market to permeating into the mainstream.

In 2003, something remarkable happened to ignite the flames of hope in the hearts of every casual player around the country. That year, the WSOP Main Event – the largest poker event in the

11 *Id.*

12 *Id.*

13 Nate Silver, *After 'Black Friday,' American Poker Faces Cloudy Future*, NEW YORK TIMES, Apr. 20, 2011.

14 *Online Poker Industry – A Brief History*, available at <http://online-poker.flopturnriver.com/> (last visited Nov. 29, 2012).

15 *Id.*

16 *Id.*

17 Martin Harris, *Before the Boom: Re-Watching the 2002 WSOP*, POKER LISTINGS, June 5, 2012 available at <http://www.pokerlistings.com/before-the-boom-re-watching-the-2002-wsop-47759>.

18 *See* Online Poker Industry *supra* note 14.

19 *Id.*

world, essentially the Super Bowl of poker – was won by Chris Moneymaker, a 27-year-old accountant.²⁰ Moneymaker was the consummate everyman, with average looks and above average weight.²¹ Moneymaker qualified for his seat, which is normally paid for with a \$10,000 buy-in, by winning an \$89 satellite tournament in an online poker room sponsored by PokerStars.²² By winning the main event, Moneymaker earned a prize of \$2,500,000 and forever engrained himself into poker lore.²³

There were 839 entrants at that event, a 200 player increase from the year prior.²⁴ Soon after Moneymaker's historic win, a surge of players took to the Internet to try and earn their own seat at the table. The following year, the field increased by 1700 to a total of 2576 participants, greater than a 200% increase.²⁵ That 2004 tournament was won by patent attorney Greg Raymer, another online qualifier who, again, was a proverbial everyman.²⁶ Raymer earned his seat in a \$160 satellite tournament hosted by PokerStars.²⁷ With his win, Raymer took home a then record grand prize of \$5,000,000.²⁸ The Main Event continued to grow, and by 2006, the number of players ballooned to 8773, nearly a 1300% increase as compared to the modest number of competitors in 2002.²⁹

During this time, the online poker rooms were fighting vigorously for market share of an exploding market. This is evident in the rapidly changing market shares of the major online poker companies.³⁰ Further, it wasn't uncommon for domains to offer signup bonuses upwards of \$50 when

20 See Silver *supra* note 13.

21 *Id.*

22 Team PokerStars: Chris Moneymaker, *available at* <http://www.pokerstars.com/team-pokerstars/chris-moneymaker/> (last visited Nov. 25, 2012).

23 *Id.*

24 See Online Poker Industry *supra* note 14.

25 *Id.*

26 *Id.*

27 Greg Raymer Bio, *available at* <http://www.cardplayer.com/poker-players/4018-greg-raymer/bio> (last visited Nov. 29, 2012).

28 See Online Poker Industry *supra* note 14.

29 *Id.*

30 Eric Smith, *Poker Market Share History*, Aug. 10, 2012 *available at* <http://www.pokerhistory.eu/poker-statistics/poker-market-share-history>.

the majority of the tournaments ran at a few dollars each.³¹ The fact of the matter is, they were raking in more than enough money to cover those marketing expenses; in 2005, online poker in the United States was a \$2 billion a year industry.³² Annual global revenues from the nearly 1,800 virtual casinos at the time measured at \$15 billion.³³ Unfortunately for these online companies, it all came crashing down near the end of 2006.

III. Federal Legislation

A. The Unlawful Internet Gambling Enforcement Act and “Black Friday”

On October 13, 2006, President George W. Bush signed the Unlawful Internet Gambling Enforcement Act (UIGEA) into law.³⁴ The law was a culmination of a number of failed attempts to curb online gambling within the country; all of these prior iterations failed for various reasons.³⁵ The UIGEA bill was supported by recommendations made by the National Gambling Impact Study Commission (NGISC).³⁶ The committee recommended that the “President and Congress direct the [Department of Justice] to develop enforcement strategies that include, but are not limited to, Internet service providers, credit card providers, money transfer agencies, makers of wireless communications systems, and others who intentionally or unintentionally facilitate Internet gambling transactions.”³⁷

31 *Id.*

32 *Id.*

33 Kraig P. Grahmann, *Betting on Prohibition: The Federal Government's Approach to Internet Gambling*, 7 Nw. J. Tech. & Intell. Prop. 161 (2009).

34 *Id.*

35 *Id.* (The Internet Gambling Act of 1998, the Internet Gambling Act of 1999, and the Internet Gambling Enforcement Act were all attempts at restricting online gambling. All three generally sought to amend the Wire Act in order to strengthen its impact on all types of gambling across the Internet.)

36 Bunnam Srephichet, *Pirates of the Caribbean: Offshore Internet Gambling Sites Cursed by the Unlawful Internet Gambling Enforcement Act*, 30 Hastings Comm. & Ent L.J. 139, 144 (2007) (The NGISC conducted a “comprehensive legal and factual study of the social and economic implications of gambling in the United States.”)

37 National Gambling Impact Study Commission, Final Report, 5-12 (1999), *available at*

That Friday the 13th proved unlucky for online gamblers around the country. In a day the gambling industry has since dubbed “Black Friday,” online gambling in America effectively shut down.³⁸ The bill itself is regulatory in nature, rather than some blanket prohibition that attacks the act directly.³⁹ The UIGEA never explicitly forbids online gambling; rather, it just further aids existing law in accomplishing that task.⁴⁰ In strengthening existing law, the bill attacked the ingress of money – the transmission of funds.⁴¹ The bill precludes financial institutions from processing transactions for purposes of unlawful Internet gambling.⁴² This includes all financial instruments and payment systems, such as credit cards, bank accounts, and PayPal accounts.⁴³ The bill's definition of “payment systems” was intentionally written to be interpreted broadly in order to proactively fight creativity from potential infringers.⁴⁴ Further, the bill ended with a circumvention prohibition, in which it extended liability towards any “financial transaction provider, or any interactive computer service or telecommunication service” if they partake in aiding a virtual casino.⁴⁵

The penalties are steep. First, the DoJ can issue a wide range of fines.⁴⁶ These fines can stack up quickly, as they are generally issued on a per-offense basis.⁴⁷ Additionally, the DoJ has the authority to prescribe a jail term of up to five years.⁴⁸ On top of this, the DoJ can issue a permanent injunction against a site and its operators, effectively preventing them from ever entering the market again, even should online gambling become legal.⁴⁹ The bill also offers some civil remedies available against the

<http://govinfo.library.unt.edu/ngisc/reports/fullrpt.html>.

38 See Srephichet, *supra* note 36 at 145.

39 *Id* at 144.

40 31 U.S.C.A. § 5362 (West).

41 See Grahmann, *supra* note 33.

42 *Id*.

43 *Id*.

44 *Id*.

45 31 U.S.C.A. § 5367 (West).

46 31 U.S.C.A. § 5366 (West).

47 *Id*.

48 *Id*.

49 *Id*.

virtual casino operators.⁵⁰ The bill led most of the online poker rooms to completely pull out of the lucrative American market.

The bill tip-toed carefully throughout the online gambling world. The bill was very specific in only attacking virtual casinos and their ilk.⁵¹ Other forms of gambling were left alone. For example, fantasy sports games were excluded from the definition of “bet or wager,” under most circumstances.⁵² Further, the UIGEA made sure to note that the restrictions contained within the bill had no effect on horseracing.⁵³ Next, an interesting – and potentially devastating – loophole in the bill is that within the definition of “bet or wager” the bill uses the definition of “a game subject to chance” when referring to casino games.⁵⁴

This language was seen as the crack in the armor of the bill. Opponents attempted to use this language to suggest that it does not apply to online poker.⁵⁵ They argued that success in poker is heavily based on by skill, rather than chance.⁵⁶ A handful of online poker domains refused to comply with the strictures of the UIGEA based on this reasoning.⁵⁷ Meanwhile, there is now some legal backing to this assertion. In *United States v. Dicristina*, when evaluating whether poker fell under the ambit of the Illegal Gambling Business Act (IGBA) – which outlaws running a business overseeing games predominated by chance – the court held that poker is predominated by skill, as opposed to chance.⁵⁸ The court weighed expert testimony in reaching this conclusion.⁵⁹ The court noted that:

50 31 U.S.C.A. § 5365 (West).

51 *See* Grahmann, *supra* note 33.

52 *Id.*

53 *Id.*

54 31 U.S.C.A. § 5362 (West).

55 *See* Grahmann *supra* note 33; Nathan Vardi, *U.S. Government Moves to Shut Down World's Biggest Online Poker Companies*, FORBES, Apr. 15, 2011 available at <http://www.forbes.com/sites/nathanvardi/2011/04/15/founders-of-worlds-biggest-online-poker-companies-indicted/> (Steve Wynn, one of the nation's most prominent casino owners, when discussing the 2011 indictment of PokerStars, noted that “several states have ruled and courts have agreed that poker is a game of skill, it's not gambling. PokerStars rests their argument on that.”).

56 *Id.*

57 *Id.*

58 *United States v. Dicristina*, 11-CR-414, 2012 WL 3573895 (E.D.N.Y. Aug. 21, 2012).

59 *Id.*

Skillful players are more successful than less skilled players with every possible starting hand. Skillful players earn more profit than less skilled players with every possible winning hand type. Finally, skillful players reliably outperform less skillful players after a sufficiently long contest.⁶⁰

The court also noted that the “majority of poker hands end when one player induces his opponent to fold.”⁶¹ Therefore, since “the cards are never revealed or compared, the player's decisions alone determine the outcome.”⁶² Therefore, the court distinguished poker from the “other games, such as sports betting (bookmaking), enumerated in the IGBA.”⁶³ These same “other games” are listed in the UIGEA.⁶⁴

These arguments ultimately failed, and those online poker rooms that made these assertions were still forced to shut down. The primary distinguishing factor is that the IGBA requires that chance *predominate* the activity.⁶⁵ Meanwhile, the UIGEA merely requires that the game be “*subject to chance*.”⁶⁶ The court in *Dicristina* maintained that chance still plays an integral part in poker, despite the game being dominated by skill.⁶⁷ Therefore, there can be no doubt that poker is, even if only to a minor degree, “subject to chance.”

Upon its passing, the bill received its fair share of criticism. First, the bill was stealthily attached to the otherwise innocuous and unrelated Security and Accountability For Every (SAFE) Port Act.⁶⁸ Some Congressmen claim that they were not allowed to see the final version of this bill, and did not know that they were approving this addition.⁶⁹ Based on this potential impropriety, Massachusetts Congressman Barney Frank has attempted to lead a charge to get the bill overturned, even going as far

60 *Id.*

61 *Id.*

62 *Id.*

63 *Id.*

64 31 U.S.C.A. § 5362 (West).

65 *United States v. Dicristina*, 11-CR-414, 2012 WL 3573895 (E.D.N.Y. Aug. 21, 2012).

66 31 U.S.C.A. § 5362 (West) (emphasis added).

67 *United States v. Dicristina*, 11-CR-414, 2012 WL 3573895 (E.D.N.Y. Aug. 21, 2012).

68 Michael D. Schmitt, *Prohibition Reincarnated? The Uncertain Future of Online Gambling Following the Unlawful Internet Gambling Enforcement Act of 2006*, 17 S. Cal. Interdisc. L.J. 381 (2008).

69 *Id.*

as calling it “the stupidest bill ever passed.”⁷⁰ Further, the bill has come under fire from the World Trade Organization (WTO).⁷¹ The crux of the criticism is that the bill – along with prior acts – fails to treat foreign goods and services in the same manner as their domestic counterparts.⁷² In a David-versus-Goliath fight, the tiny countries of Antigua and Barbuda (known to be the home countries for various virtual casinos) filed complaints to the WTO back in 2003 with regards to the treatment of online gambling, and the UIGEA only compounded those complaints.⁷³ In 2004, the WTO ruled against the US and found that they were restricting offshore companies from accepting bets while allowing domestic companies to accept them.⁷⁴ The US then went on to exhaust all of its allotted appeals, and in March 2007 – after the passage of the UIGEA – the WTO upheld its ruling.⁷⁵ The White House has since settled the matter with the countries by making concessions in other areas of trade, though they have refused to disclose what those concessions were and are currently the subject of a Freedom of Information Act lawsuit.⁷⁶

B. The “Black Friday” Indictments

Not all of the poker sites decided to pull the plug upon passage of the UIGEA. A number of sites rolled the dice and decided to continue operating.⁷⁷ This obviously did not go unnoticed by the Department of Justice (DoJ) and it wasn't long before they got involved. The straggler sites PokerStars.com, FullTiltPoker.com, AbsolutePoker, UltimateBet, and PartyPoker.com were all indicted

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* at 400.

⁷³ *Id.*

⁷⁴ Gary Rivlin, *Place Your Bet*, NEW YORK TIMES, Aug. 23, 2007, at C1.

⁷⁵ See Schmitt, *supra* note 68.

⁷⁶ See Grahmann, *supra* note 33.

⁷⁷ *Id.*

in New York District Court for a number of crimes.⁷⁸ The primary charges those poker sites faced were those of fraud and money laundering.⁷⁹ The fraud charges stem from the UIGEA which, as previously discussed, “prohibits gambling businesses from 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.”⁸⁰ Essentially, the poker sites could not accept account deposits to be used for gambling purposes.

To get around the strictures of the UIGEA, the poker companies were misrepresenting the nature of the payments.⁸¹ Websites such as www.petfoodstore.biz, www.bedding-superstore.tv, www.oneshopcenter.com, and www.mygolflocation.com were all run by poker companies in order to move money around and circumvent the UIGEA regulations.⁸² Millions of dollars flowed through these sites as poker companies processed player deposits as “purchases” of items such as golf balls, jewelery, bedding, and pet food.⁸³ By setting up these false business fronts, the poker sites were able to defraud the credit card companies that were preventing their clients from using credit cards to deposit money into the gambling sites.⁸⁴ One executive even developed a system utilizing pre-paid debit cards and phone cards that could be loaded with funds from credit cards without having to use a blocked gambling transmission code.⁸⁵

Further, PokerStars even went as far as to bribe two banks in order to have help in processing

78 Press Release, U.S. Department of Justice, *Manhattan U.S. Attorney Charges Principals of Three Largest Internet Poker Companies With Bank Fraud, Illegal Gambling Offenses and Laundering Billions in Illegal Gambling Proceeds* (Apr. 15, 2011) at <http://www.justice.gov/usao/nys/pressreleases/April11/scheinbergetalindictmentpr.pdf>. (hereinafter DoJ Press Release).

79 *Id.*

80 31 U.S.C.A. § 5362 (West).

81 See DoJ Press Release, *supra* note 78 at 2.

82 David O. Stewart, *Online Gambling Five Years After UIGEA*, American Gaming Association (May 2011) available at http://www.americangaming.org/files/aga/uploads/docs/final_online_gambling_white_paper_5-18-11.pdf.

83 See Vardi, *supra* note 55.

84 See DoJ Press Release, *supra* note 78 at 3.

85 See Vardi, *supra* note 55.

the illicit transactions for them.⁸⁶ In return for processing those payments, the owners of PokerStars invested \$10 million into the bank, giving the owners a 30% stake in the company.⁸⁷ The Vice Chairman of the Board, and part-owner of the bank, requested and was paid a flat \$20,000 fee as a “bonus” for his assistance.⁸⁸ Additionally, the banks were allowed to charge above-market fees on each transaction.⁸⁹

With regards to the money laundering charges, the companies essentially functioned as a massive Ponzi scheme.⁹⁰ When money was deposited, the players' accounts reflected the additional funds, however they were not necessarily backed by physical funds in the company's coffers.⁹¹ Rather, the executives would pocket hundreds of millions of dollars and use the money to fund lavish lifestyles.⁹² There was never enough liquid cash in any company in order to pay out to all of the players should they all happen to withdraw at once; only a wholesale liquidation of the company would be able to accomplish that.⁹³

PokerStars has since reached a settlement with the DoJ.⁹⁴ The settlement is massive, reaching a total of \$731 million with a number of additional stipulations.⁹⁵ First, PokerStars will subsume all of the aforementioned sites named in the indictment, which includes taking on the remaining debt.⁹⁶ Next, the majority of the settlement money – about \$547 million of it – will then go towards a relief fund.⁹⁷ Players had accounts with these sites had their money frozen while the legal system took its

86 See DoJ Press Release, *supra* note 78 at 3.

87 *Id.*

88 *Id.*

89 *Id.*

90 2 poker sites agree to forfeit \$731 million after prosecutors allege 'global Ponzi scheme,' NBC NEWS, Aug. 1, 2012 available at http://www.msnbc.msn.com/id/48433962/ns/us_news-crime_and_courts/t/poker-sites-agree-forfeit-million-after-prosecutors-allege-global-ponzi-scheme/#.UM5A3bZH2L0.

91 *Id.*

92 *Id.*

93 *Id.*

94 *Id.*

95 *Id.*

96 *Id.*

97 *Id.*

course, and will now have recourse to claim the money that is rightfully owed to them. As a final piece, the DoJ will forego any permanent injunctions, thus allowing PokerStars to reenter the market if and when online poker becomes legal.⁹⁸

Interestingly enough, the UIGEA leaves open that very promise. The bill leaves open the potential for intrastate Internet gambling.⁹⁹ The language of the bill notes two exceptions where the UIGEA would not apply. First, if “the bet or wager is initiated and received or otherwise made exclusively within a single state.”¹⁰⁰ Second, if “the bet or wager and the method by which [it] is initiated” complies with “the laws of such State, and the state law or regulation include” appropriate “age and location verification requirements” and “appropriate data security standards.”¹⁰¹ Therefore, under the right circumstances, online gambling can be legalized at the state level. While the UIGEA has ruined the businesses of offshore sites within the US, it does not stand as an impediment to New Jersey's proposed legislation.

C. The Wire Act of 1961 and the Department of Justice's Change of Heart

One interesting omission from the “Black Friday” indictments was any claims under the Wire Act of 1961.¹⁰² A looming obstacle standing in the way of New Jersey's legislation was a law that was enacted before the Internet was even envisioned. The Wire Act of 1961, originally written to apply to rotary telephones and telegraphs, made most gambling operations impossible.¹⁰³ The text of the act reads:

Whoever being engaged in the business of betting or wagering knowingly

98 *Id.*

99 *See* Grahmann *supra* note 33.

100 31 U.S.C.A. § 5362 (West).

101 *Id.*

102 *See* DoJ Press Release, *supra* note 78.

103 18 U.S.C.A. § 1081 (West).

uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.”¹⁰⁴

This piece of legislation has since evolved alongside technology to now encompass the Internet.

Essentially, any type of wired communication device could not be used for most gambling purposes, regardless of whether that underlying gambling activity was legal.¹⁰⁵

The DoJ has long relied on the Wire Act to support its stance that all online gambling, especially poker, is illegal.¹⁰⁶ As recently as 2008, the DoJ prosecuted virtual casinos under this stature. That year, PartyGaming's co-founder, Anurag Dikshit, plead guilty in a federal court for violating the Wire Act.¹⁰⁷ Based upon this plea, Dikshit was forced to disgorge nearly \$300 million in profits to the DoJ.¹⁰⁸ This type of enforcement had “the perverse effect of pushing the market into the hands of online gambling operators that are generally less regulated and less trustworthy.”¹⁰⁹ Additionally, this stance has affected a whole slew of only gambling activities that should otherwise be legal, such as state lotteries.¹¹⁰

Yet, in 2011, at the request of a pair of states, the Department of Justice (DoJ) reevaluated their stance on the Wire Act and offered clarity to the situation.¹¹¹ In early 2011, Illinois and New York petitioned the DoJ to reconsider how the Wire Act applies.¹¹² Both states wanted to offer lottery tickets

104 *Id.*

105 18 U.S.C.A. § 1084 (West).

106 Nathan Vardi, *Department of Justice Flip-Flops on Internet Gambling*, FORBES, Dec. 23, 2011 available at <http://www.forbes.com/sites/nathanvardi/2011/12/23/departments-of-justice-flip-flops-on-internet-gambling/>.

107 *Id.*

108 *Id.*

109 *See* Stewart, *supra* note 82.

110 *Id.*

111 Memorandum Opinion For the Assistant Attorney General, Criminal Division, *Whether Proposals by Illinois and New York to Use the Internet and Out-Of-State Transaction Processors to Sell Lottery Tickets to In-State Adults Violate the Wire Act* (Sep. 20, 2011) available at www.justice.gov/olc/2011/state-lotteries-opinion.pdf (hereinafter DoJ Opinion).

112 *Id.*

for sale over the Internet, and ambiguity surrounded the Wire Act as courts have offered conflicting interpretations.¹¹³ These planned lotteries were characterized as intrastate.¹¹⁴ New York acknowledged that the virtual tickets would be “electronically delivered over the Internet to computers or mobile phones located inside the State of New York.”¹¹⁵ Meanwhile, Illinois stated that its lottery program would restrict sales with geolocation technology to “transactions initiated and received or otherwise made exclusively within the State of Illinois.”¹¹⁶ Regardless, both states also acknowledged that information packets would cross state lines in order to process the lottery requests.¹¹⁷ New York specified that the lottery's data centers were located in New York and Texas and that the network routing centers were centralized in Maryland and Nevada.¹¹⁸ Illinois admitted, without specifying, that “packets of data may intermediately be routed across state lines over the Internet.”¹¹⁹

Despite the fact that the underlying lottery was indeed legal, the states were worried that they would be prevented from selling tickets over the Internet based upon these issues.¹²⁰ The DoJ noted that they had a right to worry, as the department's previous holdings were consistent with the states' concerns.¹²¹ However, this reading creates a tension with the UIGEA.¹²² The UIGEA appears to permit information to cross state lines so long as it begins and ends within the same state.¹²³ The

113 See generally *In re Mastercard International, Inc.*, 313 F.3d. 257, 262-63 (5th Cir. 2002) (Wire Act “requires that the object of the gambling be a sporting event or contest.”); *United States v. Lombardo*, 639 F. Supp 2d 1271, 12818-82 (D. Utah 2007) (rejecting *In re Mastercard*); *United States v. Kaplan*, No. 4:06CR337CEJ(MLM) at 7 (E.D. Mo., May 7, 2007) (also rejecting *In re Mastercard*) (Ultimately, the Wire Act was ambiguous as to what gambling acts were restricted).

114 See DoJ Opinion, *supra* note 78.

115 *Id.*

116 *Id.*

117 *Id.*

118 *Id.*

119 *Id.*

120 *Id.*

121 *Id.* at 2. (Noting that “[t]he Department has uniformly taken the position that the Wire Act is not limited to sports wagering and can be applied to other forms of interstate gambling. . . . The Division also explains that ‘the Department has consistently argued under the Wire Act that, even if the wire communication originates and terminates in the same state, the law's interstate commerce requirement is nevertheless satisfied if the wire crossed state lines at any point in the process.’”)

122 *Id.*

123 *Id.*

UIGEA's definition of “unlawful Internet gambling’ does not include bets ‘initiated and received or otherwise made exclusively within a single State.’”¹²⁴

After analyzing the statute, the DoJ determined that Wire Act “prohibits *only* the transmission of communications related to bets or wagers on *sporting events or contests*.”¹²⁵ The issue, with regards to the interpretation of the Wire Act, was “whether the term ‘on any sporting event or contest’ modifies each instance of ‘bets or wagers’ in subsection 1084(a) or only the instance it directly follows.”¹²⁶ By analyzing the legislative history, the DoJ discovered that “Congress’s overriding goal in the Act was to stop the use of wire communications for *sports gambling in particular*.”¹²⁷ Throughout the history, Congress often remarked as to how sports books and off-track betting parlors relied heavily on the expeditious transmission of betting information in order to function properly.¹²⁸

Supplementing this finding, on the same day the Wire Act was enacted, Congress also “passed another statute in which it expressly addressed types of gambling other than sports gambling, including gambling known as the ‘numbers racket.’”¹²⁹ In this piece of legislation, Congress “expressly distinguished” between lottery games and sports “bookmaking.”¹³⁰ The decision to expressly enumerate these “lottery games” in one statute, and not the other, supports the inference that the Wire Act was not meant to apply to anything but sporting events.¹³¹ In sum, the DoJ concluded that the Wire Act applied solely to gambling on sporting events and contests, and not to the proposed lotteries of the States.¹³² The remaining gambling legislation, such as the UIGEA, all require an underlying violation

124 *Id.* at 3 *citing* 31 U.S.C.A. § 5362(10)(B).

125 *Id.* (emphasis added).

126 *Id.* at 5.

127 *Id.* at 8 (emphasis added).

128 *Id.* at 9 *citing* H.R. Rep. No. 87-967 at 2; 107 Cong. Rec. 13,901 (1961).

129 *Id.* at 10-11.

130 *Id.* at 11.

131 *Id.*

132 *Id.* at 12-13.

of federal or state law.¹³³ Therefore, New Jersey's legislation has no federal barriers in its path.

IV. The Intrastate Movement

A. South Point Interactive

Jumping on this change of heart by the DoJ, the state of Nevada appears set to have the first legalized online poker room up and running in early 2013, if not sooner.¹³⁴ In August, the five-member Nevada Gaming Control Board (NGCB) unanimously recommended that South Point Poker, L.L.C. (South Point) be licensed to operate intrastate online poker rooms.¹³⁵ Later that same month, the Nevada Gaming Commission (NGC) made the move official when it accepted the NGCB's recommendation and granted South Point, along with a few others, the requisite license.¹³⁶ South Point already has a free-to-play software client running that offers free tournaments to users.¹³⁷ These tournaments offer real cash and prizes to the winners.¹³⁸ They are using this knowledge in developing their new, pay-to-play software client.¹³⁹ This was a key reason in the NGC's decision to grant a license to South Point.¹⁴⁰

133 Joe Cahill, *Rolling the Dice: States Double Down in bid to Lure Online Gamblers*, THE NATIONAL PULSE, Aug. 1, 2012 available at

http://www.abajournal.com/magazine/article/rolling_the_dice_states_double_down_in_bid_to_lure_online_gamblers/.

134 Dan Katz, *South Point Intrastate Online Poker Room Delayed*, POKERNEWSDAILY, Oct. 16, 2012 available at <http://www.pokernewsdaily.com/south-point-intrastate-online-poker-room-delayed-22689/>.

135 Dan Katz, *South Point Becomes First Licensed Intrastate Online Poker Room in U.S.*, POKERNEWSDAILY, Aug. 27, 2012 available at <http://www.pokernewsdaily.com/south-point-becomes-first-licensed-intrastate-online-poker-room-in-u-s-22409/>.

136 *Id.* (Additionally, Monarch Interactive received a license from the NGC as well. They will be developing their software with a third party, so they are behind the curve, thus South Point is the headliner. Global Cash Access, Inc. was also licensed to act as an online payment provider. Global Cash will partner with South Point as their official payment processor.).

137 *Id.*

138 *Id.*

139 *Id.*

140 *Id.*

South Point will have some unique pressure on its shoulders when it launches.¹⁴¹ Their online client will be a case-study for the rest of the country and could have a major impact on whether other jurisdictions follow suit. South Point is taking the necessary technical precautions in order to make sure their launch goes as smoothly as possible.¹⁴² South Point CEO, Michael Gaughan, has noted that the venture into the free-to-play world of online poker was not as successful as he had hoped, and pinpointed a number of areas that could be improved upon.¹⁴³ One of the major items was that the software was complicated and hard to download.¹⁴⁴ This process will be streamlined for the new client, especially since the company is expecting a large influx of players.¹⁴⁵

Additionally, the company will be heavily scrutinized by the local gaming regulatory agencies as well as under the microscope from other jurisdictions.¹⁴⁶ The crux of the license is that the poker rooms are restricted to intrastate players.¹⁴⁷ Therefore, players attempting to access the site from outside the borders of Nevada must be recognized and denied access.¹⁴⁸ Further, the software will require safeguards to ensure that users are at least 21 years of age before participating.¹⁴⁹ South Point's COO Lawrence Vaughan noted that the biggest concern of everyone involved is “keeping those who are underage and/or outside of Nevada's borders off the site.”¹⁵⁰ Moreover, the site will maintain safeguards to prevent cheating and money laundering.¹⁵¹ Additionally, the site will have controls accessible to the player in order to help problem gamblers, such as restricting the amount able to be

141 Chris Sieroty, *Real-cash online poker OK'd*, LAS VEGAS REVIEW-JOURNAL, Aug. 23, 2012 available at <http://www.lvrj.com/business/nevada-gaming-commission-approves-south-point-s-poker-website-167228085.html>.

142 See Katz *supra* note 134.

143 *Id.*

144 *Id.*

145 See Sieroty *supra* note 141.

146 See Katz *supra* note 134.

147 Howard Stutz, *South Point could be testing online poker by October*, LAS VEGAS REVIEW-JOURNAL, Aug. 8, 2012 available at <http://www.lvrj.com/business/south-point-gets-gaming-board-s-recommendation-for-online-poker-in-nevada-165445676.html>.

148 *Id.*

149 *Id.*

150 See Katz *supra* note 135.

151 See Stutz *supra* note 147.

deposited.¹⁵² South Point has not shared the nuances of the technology in its interviews, however they have noted that the technology has a patent pending.¹⁵³

Anticipating the heavy pressure, South Point has been working to ensure that there will be no problems upon release.¹⁵⁴ When the license was granted, the original plan was to have the rooms online by October.¹⁵⁵ However, the release has been delayed as South Point pushes its software client through several rounds of rigorous independent testing.¹⁵⁶ Vaughan has stated that the client would have launched by now but for the waves of testing.¹⁵⁷ Vaughan is happy with the progress of the tests, as they are poking and prodding from every angle in order to be as thorough as possible.¹⁵⁸ South Point wants to make sure the State Gaming Control Board is satisfied with the technology and wants to avoid being an embarrassment for the entire state of Nevada.¹⁵⁹ With the testing wrapping up soon, the South Point poker rooms should be online very early in 2013, if not sooner.¹⁶⁰

B. The State of Bill A2578

1. Current Status

While hoping to be the first intrastate poker room, Bill A2578 has stalled a number of times. The bill is the center of much debate, but proponents truly expect it to reach the finish line.¹⁶¹ The bill

152 *Id.*

153 *Id.*

154 *See Katz supra* note 134.

155 *Id.*

156 *Id.*

157 *Id.*

158 *Id.*

159 *Id.*

160 *Id.*

161 Matthew Kredell, *Lesniak Expects New Jersey's Internet Poker Bill to Reach Finish Line*, POKERNEWS, Aug. 13, 2012 available at <http://www.pokernews.com/news/2012/04/lesniak-new-jerseys-internet-poker-bill-finish-line-12447.htm>.

has already passed through the Senate's State Government, Wagering, Tourism & Historic Preservation Committee and was unanimously passed by the Assembly Budget and Appropriation Committee.¹⁶² The bill is currently having its nuances tweaked and massaged as it inches closer to a vote within the legislature.¹⁶³ So while proponents of the bill had hoped to have it passed by now, there is still plenty of optimism on its future.¹⁶⁴ This current version is the second iteration of the bill as the first was vetoed by Governor Chris Christie when it crossed his desk.¹⁶⁵

2. Strong Opposition

The Governor had a number of reasons for his actions, and all were ancillary to the actual heart of the bill. First, Christie had some major political moves looming on the not too distant horizon. For one, he was widely considered, at the time, to be a potential option to run with Mitt Romney as Vice President during the 2012 election.¹⁶⁶ A stand on such a controversial matter could have been far too damning on the national stage of a presidential election, especially with it being one of the most recent items of legislation on Christie's resume.¹⁶⁷ Further, many consider Christie to be a future presidential candidate for the Republican party, and that may ultimately lead him to veto future iterations, for similar reasons.¹⁶⁸ Only time will tell on that front.

Second, and arguably more importantly, Christie wanted to see more safeguards for Atlantic

162 Dan Katz, *New Jersey Internet Gambling Bill Passes Through Senate Committee*, POKERNEWSDAILY, Apr. 4, 2012 available at <http://www.pokernewsdaily.com/south-point-becomes-first-licensed-intrastate-online-poker-room-in-u-s-22409/>; Travis Fedschun, *Internet gaming bill sponsored by Hoboken assemblyman advanced to panel*, THE JERSEY JOURNAL, JUNE 19, 2012 available at http://www.nj.com/hobokennow/index.ssf/2012/06/internet_gaming_bill_sponsored.html.

163 *Id.*

164 *Id.*

165 *Id.*

166 Earl Burton, *New Jersey Internet Poker Legislation In Limbo*, POKERNEWSDAILY, May 10, 2012 available at <http://www.pokernewsdaily.com/new-jersey-internet-poker-legislation-in-limbo-21712/>.

167 *Id.*

168 *Id.* (Besides the potential Vice Presidential nomination, Christie had a chance of being placed in a Romney Cabinet position.).

City.¹⁶⁹ Christie recognizes the importance of the tourism sector of the area and wants to see it aided, not destroyed.¹⁷⁰ An open online gambling bill could seal the demise of the town if gambling rooms were not restricted from opening up around the state.¹⁷¹ For example, Christie was concerned that bars and restaurants would open up “online gambling rooms,” where computers or touch-screens would allow patrons to sit and partake in casino gambling.¹⁷² If that were to happen, what reason would a person have to go to a brick-and-mortar casino, if bars and taverns offered these online rooms? The convenience of these establishments would only serve further dilute the crowds that travel down to Atlantic City. While the town would ultimately benefit from the revenue, the lack of patrons could easily render the brick-and-mortar casinos unsustainable and seal the end of the town.

Third, the bill has its outside opposers, and some of them are mighty. New Jersey just recently legalized sports betting and is set to issue its first licenses for this endeavor in early 2013.¹⁷³ The major professional sports leagues, especially the juggernaut that is the National Football League (NFL), as well as the National Collegiate Athletic Association (NCAA), are already looking at legal options to fight this bill.¹⁷⁴ This process becomes even more pressing for them if the betting moves online. Remember, the broad language of the online gambling bill would essentially legalize all games available in the brick-and-mortar counterparts, which would likely be interpreted to include sports betting.¹⁷⁵ Therefore, the state would have to anticipate a swift legal challenge from these leagues.

169 See Katz *supra* note 162.

170 *Id.*

171 *Id.*

172 *Id.*

173 Dan Wetzel, *New Jersey's plan to legalize sports betting incurs laughable response from NCAA*, YAHOO!SPORTS, OCT. 16, 2012 available at <http://sports.yahoo.com/news/nfl—new-jersey-s-plan-to-legalize-sports-betting-ncaa-pulls-events.html>.

174 Steve Politi, *Legalized sports betting makes sense and the NCAA's decision to deny New Jersey the East Regional doesn't change that*, NEWARK STAR LEDGER, NOV. 12, 2012 available at http://www.nj.com/college-basketball/index.ssf/2012/11/legalized_sports_betting_makes_sense_and_the_ncaas_decision_to_deny_new_jersey_the_east_regional_doe.html.

175 A2578, 215th Leg., (NJ 2012).

Again, despite these obstacles, the bill's proponents are confident it will pass.¹⁷⁶

V. Is it Worth the Gamble?

A. Addiction

Is this legislation worth the potential headache? Online gambling in New Jersey comes with both negatives and positives. The adversaries to the bill cite a number of reasons why online gambling should not be allowed in the state. The first and foremost reason revolves around a problem that is just inherent to gambling in general: addiction. Gambling addiction is a constant problem in the US, with 0.6% of the population defined as pathological gamblers, and another 2.3% defined as problem gamblers.¹⁷⁷ Further, problem gambling leads to other problems. The National Council on Problem Gambling issued a report detailing studies that found almost one in five pathological gamblers attempts suicide.¹⁷⁸

These addiction problems could potentially increase in the online world of gambling once inconvenient burdens such as traveling, showering, and wearing pants are removed from the equation. There is already a disconnect to losing money when one is betting with multi-colored casino chips rather than real currency. That disconnect will only grow when all physical identity of the money is removed, and large bets can be made with a simple click of the mouse. On some sites, “calls” can be automated by simply checking a box. Therefore, the human element can be removed and placing chips into the prize pool – with real money on the line – can be automated.

¹⁷⁶ See Kredell, *supra* note 161.

¹⁷⁷ *Casino Expansion and Its Impact on Pathological and Problem Gambling Prevalence Rates*, American Gaming Association, available at <http://www.americangaming.org/industry-resources/research/fact-sheets/history-problem-gambling-prevalence-rates> (last visited Dec. 14, 2012).

¹⁷⁸ *Problem and Pathological Gambling in America: The National Picture*, National Council on Problem Gambling, Jan. 1997, available at govinfo.library.unt.edu/ngisc/reports/4.pdf at 14-15.

This is, no doubt, a legitimate concern. However, this concern is, as previously stated, inherent to gambling in general and not unique to the online domain. Interestingly enough, one major British study concluded that there was no increase in the rate of pathological gambling between 1999 and 2007, despite the fact that online gambling became increasingly prevalent during that period.¹⁷⁹ The results were mirrored by a similar study conducted on Swedish gamblers.¹⁸⁰

Additionally, online gambling can offer a number of preventative measures that brick-and-mortar casinos cannot.¹⁸¹ This is due to the fact that as the player send his data to the casino's processing server, this information can easily be read, recorded, and monitored.¹⁸² All manners of activity can be monitored, from betting, to account deposits, to time spent online.¹⁸³ Constant monitoring of this activity can help to spot troubled gamblers. The first line of defense in a brick-and-mortar casino, the card dealer, has little control, for if they refuse a player, he or she can simply move to a different table with a fresh face dealing them cards. Other than the dealer, the monitoring is often accomplished based on security cameras. With the thousands of people that flow through the casino floor on any given day, the responsibility of spotting an addict is nigh impossible for the security team monitoring the cameras. Additionally, these staffers are generally more concerned with spotting other, more pressing, forms of trouble. In many respects, online gambling has some advantages.

Once a troubled player is recognized, a casino has many options. First, they could display warning signs letting a player know that they have been playing for too long or that they have been making too many deposits.¹⁸⁴ Second, they could send notices for gambling addiction hotlines and recommend the player call one.¹⁸⁵ Third, the casino can simply restrict a player from gambling for a

179 See Stewart, *supra* note 82 at 16.

180 *Id.*

181 *Id.*

182 *Id.*

183 *Id.*

184 *Id.*

185 *Id.*

certain time period based on the severity of his actions.¹⁸⁶ Finally, the site can simply allow the customer to establish the limits for their own actions.¹⁸⁷ These personal controls often have “cool-down” periods, where a user cannot change them for a certain time period – often seven days – in order to further restrict impulse betting.¹⁸⁸ Requiring these measures on all virtual casinos would do well to alleviate the concerns.

B. Technological Concerns

Further, many are concerned with the technological security of the sites. Age and location verification services are of the utmost importance. There is nothing that would destroy this bill faster than if minors were allowed easy access to the online casinos. This is not a new problem, however. As previously noted, the South Point poker rooms in Nevada have targeted this problem, and have patents pending on new technology to prevent these problems from arising. Additionally, the Oregon Racing Commission has strict procedures to ensure customer identification when betting on horse races.¹⁸⁹ To facilitate the enforcement of their regulations, the Commission has left their standards of player open-ended.¹⁹⁰ The commission requires that users establish that they “are of 'good repute and moral character.”¹⁹¹ From that, the Commission demands that a “customer provide his name, address, telephone and credit card information or bank account data.”¹⁹² As another example, the British Columbia Lottery Corporation can request that a customer fax certain identity-verifying documents or

186 *Id.*

187 *Id.*

188 *Id.*

189 *See Stewart, supra* note 82 at 11.

190 *Id.*

191 *Id.*

192 *Id.*

that they speak with a live customer representative before placing any bets.¹⁹³ While this concern is of the highest importance, there are numerous ways to ensure that it is properly handled.

With regards to location verification, a number of technological advances are already employed. Identification checks can utilize geolocation technology that pinpoints the IP address of the computer accessing the server.¹⁹⁴ These addresses can then be compared on existing IP databases in order to determine the location of the computer. While there are ways to spoof or mask an IP address, there are screening systems that can easily identify when these methods are being employed.¹⁹⁵ The easy way to prevent these methods from gaming the system is to identify them and then restrict a consumer from accessing the server as long as the methods are in effect.

Finally, having the poker rooms centralized in Atlantic City and overseen by the state government would allow for much stronger safeguards to prevent some of the problems inherent in the offshore sites. As seen in the cases of PokerStars and FullTilt, the ethical culture at the top of the organization can leave much to be desired.¹⁹⁶ Further, the laws of the country give players trouble when they seek to cash out.¹⁹⁷ The UIGEA stands as a glaring monolith overlooking the transactions between player and domain. At any moment, the site could cut ties with American players, have their assets frozen, or otherwise be unable to fulfill its obligations to its customers.

C. Cheating

Unfortunately, cheating is rampant on these offshore sites. “Ghosting,” seat-selling, and multi-

193 *Id.*

194 *Id.* at 14.

195 *Id.* at 15.

196 *See* Stewart, *supra* note 82 at 3.

197 *See supra* Section III.

accounting are rampant.¹⁹⁸ “Ghosting” is a term used when a player is essentially being coached while playing.¹⁹⁹ At live tournaments, it is expressly forbidden to receive any help from an outside source.²⁰⁰ However, this is much more difficult to police when players are playing within the privacy of their own homes.²⁰¹ Having a professional player (or group of such players) watching over your shoulder, offering advice, is never out of the question.

Next, seat-selling happens in the realm of online tournaments.²⁰² When an amateur player exceeds expectations and makes it to the later tables of a multi-table tournament, they now have a very interesting dilemma. On one hand, they can continue to push forward to the unlikely chance they can finish in one of the top spots to claim a major prize. On the other, they can take a guaranteed pay day and sell their log-in information to a professional player who is looking to jump back in. The professional merely logs in with the user's account information and sits down in the middle of an ongoing tournament.²⁰³ That player can forgo the early grind of the tournament and come in with a fresh mind. This situation was not anticipated by a number of sites, and thus, was not even covered in the terms of service agreements.²⁰⁴

Finally, multi-accounting is also a major issue.²⁰⁵ There are a number of ways to accomplish this. One, a single player creates a number of accounts and enters them all in a tournament or sits them at a cash game table.²⁰⁶ Here, the player controls more than one hand in the game; by seeing the additional cards, the player has a better understanding of the underlying odds of the hand. Further, he can choose to only play the best hand out of his accounts. Alternatively, he can have his “dummy”

198 Aaron Angerman, *Is there integrity in online poker?*, POKER PAGES, available at <http://www.pokerpages.com/articles/archives/angerman03.htm>.

199 *Id.*

200 *Id.*

201 *Id.*

202 *Id.*

203 *Id.*

204 *Id.*

205 See Angerman, *supra* note 198.

206 *Id.*

accounts purposely lose to his main one, thus feeding chips to the main account to give it an advantage over the other players.²⁰⁷ And two, a player could enlist a number of his friends to enter a tournament or sit at a cash game table with him.²⁰⁸ Here, the players work in cahoots with each other to eliminate all the other players from the game first. Once those players are out, they can then either cash out together or finish out the tournament and split the prize amongst each other. Many times, these players can be playing in the same room with each other while on laptops. In England, the first high profile account of multi-accounting occurred when a well-known professional player eventually won a tournament despite not playing under his iconic moniker.²⁰⁹ Later, it was discovered that he his primary account was eliminated early on, though he was also playing on at least one other account, which he won the entire tournament with.²¹⁰ He was subsequently permanently banned from the site, but the damage had been done.²¹¹

Sometimes its not even the players that are cheating. To this end, not even the off-shore sites themselves can be trusted, nevermind the players. UltimateBet, one of the preeminent virtual casinos in the early 2000s, was busted for undermining its own procedures and regulations.²¹² The casino actually allowed some insiders connected with the site to view the hole cards of others players at the table.²¹³ This gave those users an incredible advantage, as it takes the chance element almost wholly out of play.

Now while these problems may never be completely eliminated from the online gambling realm, they can be deterred dramatically when governmental penalties are threatened, such as fines, community service, or, in the most egregious cases, jail time. Further, the technological advantages of

207 *Id.*

208 *Id.*

209 *Id.*

210 *Id.* (User “JJProdigy” was famous on PartyPoker for being one of its top players. He won a \$500,000 tournament, however it was under the username “ABlackCar.”).

211 *Id.*

212 *See Stewart, supra* note 82 at 10.

213 *Id.*

hosting the games on servers can help to control multi-accounting. Virtual operators “retain a record of every hand of poker played on their systems.”²¹⁴ They can then analyze this data in various ways to identify those users that are cheating the system.²¹⁵ One regulator has even stated that “cheating at poker sticks out a mile.”²¹⁶ If two players too often play at the same table, and show winning and losing patterns that stray from the law of averages, software will be able to detect these discrepancies and report them to the server administrators.²¹⁷

D. Big Money

While the downsides of the legislation much be seriously considered, there are a number of impressive positives to enacting this legislations. First and foremost, online gambling has the potential to generate an impressive amount of revenue for all parties involved.²¹⁸ Online gambling is, in and of itself, a multi-billion dollar industry around the world, raking in \$30 billion in revenue in 2010 alone, with \$4 billion originating in the US.²¹⁹ The revenue-generating potential of online gambling in the US is immense. Caesar's Entertainment, in its most recent investor report, estimated the national online gaming market between \$6 and \$10 billion annually.²²⁰ Further, Wynn Resorts, in their own investor report, estimates that Americans currently spend \$4 billion annually on unregulated, off-shore sites.²²¹ The fact of the matter is that the market exists for online gaming and it is hungry for options. Instead of risking their money in these unregulated domains, consumers should have the option of playing in state-regulated domains.

214 *Id.* at 12.

215 *Id.*

216 *Id.*

217 *Id.*

218 *Id.*

219 Laura A. D'Angelo, *States Prepare To Bet the House on Online Gaming*, 2012-APR Bus. L. Today 1.

220 *Investor Report*, Caesar's Entertainment (Powerpoint Presentation) Oct. 2, 2012 (last visited Nov. 15, 2012).

221 *Investor Report*, Wynn Resorts (Powerpoint Presentation) Oct. 2012 (last visited Nov. 17, 2012).

One place that could use this infusion of revenue is in struggling Atlantic City. Atlantic City has seen its revenues dwindle for the last few years. In 2010, the city saw its gambling operating profits drop 23% from the following year.²²² Revenue fell by roughly 13%, despite seeing neighboring casinos in Pennsylvania rise by almost 21%.²²³ Meanwhile, the city's unemployment rate is at 12% – higher than the national average – and 24% of its housing units are empty.²²⁴ Even its poverty rate is slightly higher now when compared to when the first casinos opened in 1978.²²⁵ Hurricane Sandy did not help that matter, as it forced a number of conventions to cancel their plans, causing nearly \$31 million in anticipated spending to disappear.²²⁶

The influx of revenue that online gambling would generate would be a real boon for the area and could end up being its saving grace. The safeguards in the bill would work well to funnel money into the area. H2 Gambling, a global gaming data service based in England, estimates that Atlantic City could see \$142 million in revenue – from both rake and tournament entry fees – in the first year of implementation.²²⁷ The revenue would also benefit the entire State of New Jersey. First, the license fees will cost a flat \$200,000, with an annual renewal fee of \$100,000.²²⁸ Further, the online operators will be taxed at 10% on all gross revenues.²²⁹ Finally, tens of millions of dollars from the online gambling sector will go towards the Casino Revenue Fund which goes towards helping seniors and the

222 *A struggling city by the sea*, THE ECONOMIST, Sep. 2, 2010 available at <http://www.economist.com/node/16944002>.

223 *Id.*

224 *Id.*

225 *Id.*

226 Valarie D'Elia, *Atlantic City's casino zone struggles to win back its Sandy losses*, YOUR NEWS NOW, Nov. 3, 2012 available at <http://hudsonvalley.ynn.com/content/living/618021/travel-with-val—atlantic-city-s-casino-zone-struggles-to-win-back-its-sandy-losses/>.

227 Hoa Nguyen, *Online poker worth the gamble for New Jersey, supporters say*, PRESSOFATLANTICCITY, Sep. 3, 2012 available at http://www.pressofatlanticcity.com/news/top_three/online-poker-worth-the-gamble-for-new-jersey-supporters-say/article_54a94604-f525-11e1-af53-001a4bcf887a.html.

228 Dan Katz, *New Jersey Internet Gambling Bill Passes Through Senate Committee*, POKERNEWSDAILY, Apr. 4, 2012 available at <http://www.pokernewsdaily.com/new-jersey-internet-gambling-bill-passes-through-senate-committee-21483/>.

229 *Id.*

disabled.²³⁰

E. New Jobs

Additionally, the area would see the creation of new jobs as all the technological infrastructure must be housed and maintained on casino grounds. The creation and maintenance of the technological architecture necessary to run the games will create numerous jobs in the technological sector. Senator Lesniak, the bill's foremost proponent, suggests that "thousands" of jobs will be created in Atlantic City after this bill is passed.²³¹ These jobs will span across numerous sectors. For one, online marketing research firm Ad Age speculates that "somewhere between \$3.5 and \$5 billion could be spent by the [national] internet gaming sector over the next five years."²³² This number represents roughly 25% to 30% of the expected net revenues, something that would spur job creation in advertising agencies.²³³

VI. Conclusion

Overall, the passage of New Jersey's Bill A2578 would be a great boon for the State of New Jersey. First, the city of Atlantic City would be rejuvenated with the addition of new jobs and revenue. Already struggling, the impact of Hurricane Sandy has left the town in poor shape, and a new, high-impact stream of revenue would go to great lengths to pull the town back to its feet. Further, the taxable revenue and job creation would help a state in desperate need of both. While there are some obvious drawbacks to the legislation, they are greatly outweighed by the positives, and more

230 *Id.*

231 *Id.*

232 Earl Burton, *Ad Age Reports on Potential For Online Advertising Windfall*, POKERNEWS DAILY, Nov. 2, 2012, available at <http://www.pokernewsdaily.com/ad-age-reports-on-potential-for-online-gaming-advertising-windfall-22776/>.

233 *Id.*

importantly, are easily controlled through the various safeguards within the language of the bill. By laying all its chips on the table, New Jersey is set to rake in a massive pay-day with the introduction of its intrastate online gambling.