

# Report on Internet Gaming and Sports Betting

Prepared for: The Mississippi Legislature, House Gaming Committee

Prepared by: State Taskforce on Internet Gaming and Sports Betting

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## Taskforce Organization and Charge

The State Taskforce on Internet Gaming and Sports Betting was formed in March 2014, at the request of the Honorable Richard Bennett, Chairman of the House Gaming Committee. Due to the many complex issues surrounding Internet gaming and sports betting and the implementation of Internet gaming in other states, a fact finding study on the matter for Mississippi, a state with a robust gaming industry, is timely. In addition, the topic of sports betting is becoming increasingly prevalent in discussions involving new directions for the gaming industry. The taskforce was charged with researching and studying these issues and providing a report to the Chairman of the House Gaming Committee. The taskforce work is solely informative and advisory in nature and does not make any recommendations for legislation, regulation, or implementation of Internet gaming or sports betting in the state of Mississippi.

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## Executive Summary

The Internet Gaming Task Force was created at the request of House Gaming Committee Chairman, Richard Bennett. Chairman Bennett directed the task force to gather all pertinent facts as they relate to Internet Gaming. Sports betting was later added to the charge of the task force. The task force brought together individuals with expertise in technology, research, responsible gaming, gaming law and taxation. The group explored the issues and made contact with the three states that have implemented some form of Internet gaming.

The task force considered four areas associated with the topics of Internet gaming and sports betting: 1) revenue and financial considerations, 2) legal issues, 3) technology considerations, and 4) responsible gaming. Revenue and financial considerations concerning internet gaming resulted in the task force gathering available information on revenue reported by the three states conducting Internet gaming. The task force found that the actual revenue numbers did not approach the originally projected numbers and it may take several years for the original projections to be achieved.

Under Mississippi law, Internet or online gaming is prohibited by the express language of Miss. Code Ann. §75-76-33(3)(b). Sports betting is also prohibited under the Mississippi criminal code, Miss. Code Ann. §97-33-1, as part of the general prohibition against wagering on the outcome of an event. Sports betting does not currently fall within any of the exceptions created by the legislature. *See* Miss. Code. Ann. § 97-33-1(a)-(d). It is also illegal under Mississippi common law. The steps that would be necessary to legalize Internet gaming in Mississippi would involve amending the Mississippi Gaming Control Act, including, but not limited to Miss. Code Ann. §75-76-33(3)(b). The steps to legalize sports betting are not fully known as of yet. Based on the 3rd Circuit's ruling in *Nat'l Collegiate Athletic Ass'n v. Governor of New Jersey*, 730 F.3d 208 (3d Cir. 2013), the State of New Jersey recently enacted legislation that "removes the prohibition" of sports betting at casinos and race tracks. The State of

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New Jersey believes this position is consistent with the 3<sup>rd</sup> Circuit's court ruling and is now poised to begin accepting sports betting at the state's operating casinos and racetracks.

Advances in technology continue to improve the Internet gaming experience while also giving a player the ability to play an online game from nearly any location on any computing device. Along with these benefits, come many technical challenges with the implementation of Internet gaming. In addition to the challenges of adhering to regulations, concerns around a player's privacy and security continue to be a priority in today's environment. Technological challenges with the implementation of Internet gaming include: age verification, geolocation and geofencing, data security and privacy, personalization and data mining and account funding.

Responsible gaming protocols and results in Mississippi appear to be robust and successful comparatively. When considering Internet gaming and sports betting, the state is encouraged by national organizations and responsible gaming leaders to consider expansion of responsible gaming protocols to include more treatment and more accessibility to treatment for individuals needing those services.

The following report is a culmination of the efforts of members of the task force and represents the facts as found following research and discussion with other states. The Task Force hopes that the report is valuable and informative to the Mississippi State Legislature as the Body undertakes discussion on the topics of Internet gaming and sports betting.

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## Introduction

Mississippi legalized casino gaming in 1990 and the first casinos opened their doors in 1992<sup>1</sup>. Since that time, tax revenue from the casinos has contributed \$4.6 billion in gaming tax revenues in addition to other tax revenue, employee wages and benefits, and philanthropic contributions to the community<sup>2</sup>. This industry's success to date is in spite of natural disasters and other negative impacts to the industry such as the national recession of 2008. Currently, Mississippi is home to 28 state regulated gaming properties and the state is still considered a good gaming market.

As robust as Mississippi's gaming is, gaming competition is growing nationally as more and more states legalize gaming and globally both from property-based gaming and Internet gaming. Recently (2014), Mississippi has experienced the site closure of major gaming properties and new gaming development has slowed. In order to remain competitive in the gaming servicescape, Mississippi leaders must be continually informed of gaming industry trends so the best decisions for Mississippi are made. Thus, the creation of an Internet Gaming and Sports Betting Task Force to study trends in these areas is timely and relevant.

For the purpose of this report, online gaming is defined as: playing a game of chance on an electronic device that is connected remotely to a gaming system via a digital communication network. All events concerning player management, financial transactions and game management happen online without any physical interaction between the player and the operator. This report is designed according to the four areas which the task force chose to categorize its work: 1) revenue and financial considerations, 2) legal issues, 3) technology considerations and 4) responsible gaming. The terms Igaming, Internet gaming and online gaming are used synonymously in the report. It is the hope of the Task Force that the report begins to answer the questions that might arise regarding Internet gaming and sports betting. The report is intended to be viewed only as a fact-finding report and not to be a report that makes recommendations for or against Internet gaming or sports betting.

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## Internet Gaming Overview

The first recorded online casino to accept a wager was based in Antigua and the wager occurred in January of 1996<sup>3</sup>. Internationally, David Stewart of Ropes & Gray, LLP, reports that approximately 85 nations now have legalized Internet gaming and that in 2010, it was an approximately \$30B industry with less than 15% of that revenue coming from the U.S.<sup>4</sup> Generally, Stewart finds that countries legalize Internet gaming in an attempt to capture jobs and public revenues that it generates and attempt to regulate it closely in order to control any social risks.<sup>4</sup> While the size of the entities vary and the level of regulation varies, it does appear that internationally, licensing is always required and that in the more developed countries where Internet gaming is legal, regulation is strong.

Legal Internet gaming has been limited in the United States with only three states currently having some form of Internet gaming, Nevada, Delaware and New Jersey. The activities in all three states have only begun to develop since early in 2013, thus providing limited data for analysis of the economic impact, either positive or negative.

## Sports Betting Overview

Outside of the United States, sports betting is active and legal around the world. William Hill, the leading sports betting company in the world founded in 1934, reports operations in the United Kingdom, Gibraltar, Italy, Spain, Israel, Philippines, Bulgaria and the United States<sup>5</sup>. In the United States, sports betting is legal in Nevada and in a limited capacity in Delaware. Of relevance when exploring sports betting, is the potential profile of an individual engaging in sports betting. Information on such a profile is limited, however, based on the popularity of fantasy sports it might be assumed that the profile of the individual engaged in sports betting would be similar. According to



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the Fantasy Sports Trade Association, in 2013 there were over 33.5 million people playing fantasy sports in the US with the following demographics<sup>6</sup>.

80% male

89.8% Caucasian

51.5% Not Married

Average Age 34

College Degree or More 78.1%

Years in Fantasy Sports 9.51

Hours Consuming Sports per week 17.89

Hours Consuming Fantasy per week 8.67

Favorite Fantasy Sport: Football (69.4%)

Pay League Fee 46.9%

### Internet Gaming Revenue and Financial Considerations

The Center for Gaming Research at the University of Nevada issues a monthly statewide and national data report for online gaming<sup>7</sup>. The June 2014 report indicates the five months, January 2014 until May 2014, national total revenues to be \$57.8M and offers the following footnotes to the data<sup>7</sup>.

- Nevada allows only betting on poker.
- Delaware allows betting on table games, video lottery and poker.
- New Jersey allows casino games and poker.
- New Jersey dominates the market with about 90% of total U.S. Internet gaming revenue.
- The U.S. online gaming market is about \$12M per month.

It has been reported that the revenue numbers in Delaware have been less than anticipated which has been attributed to the size of the state.<sup>8</sup> New Jersey is perhaps the most studied of the states in terms of revenues and projections and it appears that original estimates are not being met. The state of New Jersey estimated five year revenue of \$1.2B<sup>9</sup>. Morgan Stanley estimated \$203M

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annually for the state and the Innovation Group estimated between \$100-150M annually.<sup>9,10</sup> With a reported revenue for five months in 2014 of approximately \$43M, it does appear that the more conservative estimates are on target.

### **Sports Betting Revenue and Financial Considerations**

William Hill, Race and Sports Book Company, in a recent presentation referenced the National Gambling Impact Study Commission Report of 1999 in estimating that the U.S. sports betting market could be over \$380 billion and at that time less than 1% of U.S. sports bets were placed legally.<sup>5</sup> With the rather convoluted legal landscape surrounding the issue and the limited number of states participating in sports betting (Nevada and Delaware), research projecting potential revenues is limited.

Delaware, in 2009, passed legislation that would have made Delaware the second state to have “legalized, regulated and taxed sports betting on any professional and amateur American sporting event.”<sup>11</sup> The activity was expected to generate between \$22.5 and \$30.6 million for the Delaware general fund from a sports betting tax, higher food and beverage sales and increased betting at legalized gaming establishments in Delaware.<sup>11</sup> The courts disallowed this single-game bet method, but continued to allow a long standing practice of multiple bet wagers on NFL games.<sup>11</sup> Since that time, Delaware has allowed sports betting via the Delaware State Lottery and on the property at three casinos to start, with expansion to 70 properties in 2013.<sup>5</sup> Sports betting has gained in the amount of sports betting revenue wagered in each of the five years, 2009-2013, from \$10.8M to \$31.5M.<sup>5</sup> The amount of that wagered revenue retained by the state is not readily available within the references reviewed.

In Nevada, it has been reported that Americans legally wager \$2.5 billion a year in licensed Nevada sports books.<sup>11</sup> That figure was a 2009 figure according to a presentation by William Hill and

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that number has grown to \$3.6 billion in 2013.<sup>5</sup> As reported by William Hill, quoting numbers from the Nevada Gaming Control Board, football represents the majority of this activity at 45%.<sup>5</sup>

### Internet Gaming Legal Issues

In 1961, the United States Congress enacted the Wire Act as a part of series of anti-racketeering laws. The Wire Act compliments other federal bookmaking statutes, such as the Travel Act (interstate travel in aid of racketeering enterprises, including gambling), the Interstate Transportation of Wagering Paraphernalia Act, and the Illegal Gambling Business Act (requires a predicate state law violation). The Wire Act was intended to assist the states, territories and possessions of the United States, as well as the District of Columbia, in enforcing their respective laws on gambling and bookmaking and to suppress organized gambling activities.<sup>12,13</sup>

Subsection (a) of the Wire Act is a criminal provision that provides:

Whoever being engaged in the business of betting or wagering knowingly 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, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both<sup>14</sup>.

Historically, the U.S. Department of Justice interpreted this language to mean that a “transmission in interstate or foreign commerce of bets or wagers” involving “any sporting event or contest” and any “transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers” would be deemed a violation of the Act and, thus, illegal anywhere in the United States. Under this broad interpretation, Internet gaming was considered

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illegal throughout the United States because in order to game or place a wager or bet via the Internet the “transmission of wire communication” would be necessary.

On December 23, 2011, the U.S. Department of Justice, in a *Memorandum Opinion* by Deputy Attorney General Virginia Seitz, responded to inquiries from New York and Illinois as to the legality of the sale of lottery tickets over the Internet. In its opinion, the Justice Department made known it was changing its interpretation of the Wire Act. Specifically, the Justice Department changed its interpretation of 18 U.S.C. § 1084(a) to provide that the long standing broad interpretation was not correct, and the Act would now be read more narrowly to prohibit any “transmission of a wire communication” for any “interstate wagers on sporting events or contests.” Therefore, wagers that are ***intrastate*** and ***that do not involve wagers on sporting events or contests*** fall outside of the scope of the Wire Act.<sup>15</sup>

Following the DOJ memorandum opinion, the rush by certain states to pass legislation authorizing Internet gaming was fueled by the American Gaming Association’s report that global online gambling revenue in 2010 was nearly \$30 billion, with roughly \$4 billion originating in the U.S.<sup>4</sup> On April 30, 2013, Nevada’s first online gaming operator took the first online wager through the website UltimatePoker.com, a subsidiary of Stations Casinos.<sup>4</sup> In the absence of federal legislation legalizing interstate Internet gaming, states acted independently to legalize intrastate Internet gaming. As noted previously, today, in North America, Internet gaming is legal in Nevada, New Jersey and Delaware as well as in the territory of the U.S. Virgin Islands.

One additional notable federal act in addition to the Wire Act is the Unlawful Internet Gambling Enforcement Act of 2006 (“UIGEA”). UIGEA did not make online gambling illegal. Rather, UIGEA attempted to stop the money supply to online gambling businesses by criminalizing the

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process through which credit cards are used to fund online gambling accounts.<sup>16</sup> This has caused reluctance on the part of credit card processing companies and many do not authorize credit card transactions to fund online gambling accounts. Consequently, there is an element of inconvenience associated with online gambling that was not anticipated by those estimating revenues.

Current Mississippi law on the matter is found in the Mississippi Gaming Control Act, specifically, §75–76–33(3) (b) of the Gaming Control Act, which provide as follows:

(3) Notwithstanding any other provision of law, each licensee shall be required to comply with the following regulations:

(b) No wager may be placed by, or on behalf of, any individual or entity or group, ***not present*** on a licensed vessel or cruise vessel<sup>17</sup>.

The plain language of Miss. Code Ann. § 75–76–33(3)(b) reveals that Internet or online gaming is currently illegal in Mississippi as Internet gaming would typically take place with the patron ***not present*** on the licensed vessel or cruise vessel. Therefore, any authorization of Internet gaming in Mississippi will require amendment of this section of the Gaming Control Act as well as other pertinent provisions of the Act.

### Sports Betting Legal Issues

Nevada alone began permitting widespread betting on sporting events in 1949 and just three other states—Delaware, Oregon, and Montana—have on occasion permitted limited types of lotteries tied to the outcome of sporting events, but never single-game betting. Sports wagering in all forms, particularly state-licensed wagering, is and has been illegal elsewhere.<sup>18</sup> The United States Congress took up and eventually enacted Professional and Amateur Sports Protection Act of 1992 (PASPA), in response to increased efforts by states to begin licensing the practice.<sup>19</sup> From this background, the

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federal legal issues associated with sports betting can be best analyzed and understood by evaluating the recent actions taken by the State of New Jersey to legalize sports betting and the litigation that followed. Reviewing the decisions of the federal district court in New Jersey as well as the United States Court of Appeals for the 3<sup>rd</sup> Circuit will provide the reader with the scenario, reasoning and rulings on this issue.<sup>20, 21</sup>

To summarize, in January 2012, New Jersey Governor Chris Christie signed legislation allowing sports betting in New Jersey after it was approved by a voter referendum held in November 2011. The New Jersey law would have permitted any of the state's casinos and racetracks to offer gambling on professional and college sports, but prohibited them from accepting bets on college events played in New Jersey, or out-of-state games involving New Jersey college teams. The New Jersey Division of Gaming Enforcement subsequently issued regulations for sports betting. Soon thereafter, citing PASPA, the National Collegiate Athletic Association (NCAA), the National Basketball Association (NBA), the National Football League (NFL), the National Hockey League (NHL), and Major League Baseball (MLB) (collectively the "Leagues") filed a federal lawsuit against New Jersey to enjoin sports betting law.<sup>20,21</sup>

In February 2013, United States District Court ruled in favor of the Leagues, and enjoined New Jersey from issuing sports betting licenses. The court ruled that under the Commerce Clause of the United States Constitution, the regulation of gambling and prohibiting states from authorizing sports betting is within Congress's power. In September 2013, a three-judge panel from the 3<sup>rd</sup> Circuit Court of Appeals voted 2-1 to uphold the district court's decision. The State of New Jersey appealed the case to the United States Supreme Court, but in June 2014, the court denied the State's petition to hear the case. Therefore, the 3<sup>rd</sup> Circuit's ruling stood.

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While the 3rd Circuit's analysis is that PASPA preempts state law, the court was careful to ensure its interpretation of PASPA did not cross the line of commandeering which would render PASPA unconstitutional. A portion of its clarification of the scope of its opinion is as follows:

PASPA does not say to states you may only license sports gambling if you conscript your officials into policing federal regulations or otherwise impose any condition that the states carry out an affirmative act or implement a federal scheme before they may regulate or issue a license. It simply bars certain acts under any and all circumstances. ***Thus, under PASPA, on the one hand, a state may repeal its sports wagering ban, a move that will result in the expenditure of no resources or effort by any official. On the other hand, a state may choose to keep a complete ban on sports gambling, but it is left up to each state to decide how much of a law enforcement priority it wants to make of sports gambling, or what the exact contours of the prohibition will be.***

Since this ruling, the State of New Jersey has taken a closer look at the ruling and has determined that action to remove its prohibitions on sports betting at its casinos and racetracks is permissible. In recent months, the State of New Jersey has passed legislation removing the prohibitions, it has enacted regulations, and the State's Attorney General has issued a directive to state law enforcement to take no action against individuals or companies engaged in sports betting if it takes place at a casino or race track. The state appears poised to begin accepting wagers on sports betting. At the time of this report, it is unknown if further legal action by the Leagues will follow.

Similar to New Jersey, Mississippi law prohibits wagering on the outcome of an event with certain exceptions. *See* Miss. Code. Ann. § 97-33-1 (a)-(d).<sup>22</sup> Notably, Miss. Code. Ann. § 97-33-1 is part of the Mississippi criminal code. In it, essentially, all forms of wagering or betting on the outcome of an event are deemed illegal in Mississippi, except as otherwise provided for in exceptions specified in subsections (a) – (d). Those subsections are quoted below, and the reader will note there is no exception to permit sports betting. The current exceptions read as follows:

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(a) On a cruise vessel as defined in Section 27-109-1 whenever such vessel is in the waters within the State of Mississippi, which lie adjacent to the State of Mississippi of the three (3) most southern counties in the State of Mississippi, including the Mississippi Sound, St. Louis Bay, Biloxi Bay and Pascagoula Bay, and in which the registered voters of the county in which the port is located have not voted to prohibit such betting, gaming or wagering on cruise vessels as provided in Section 19-3-79;

(b) In a structure located, in whole or in part, on shore in any of the three (3) most southern counties in the State of Mississippi in which the registered voters of the county have voted to allow such betting, gaming or wagering on cruise vessels as provided in Section 19-3-79, if:

(i) The structure is owned, leased or controlled by a person possessing a gaming license, as defined in Section 75-76-5, to conduct legal gaming on a cruise vessel under paragraph (a) of this section;

(ii) The part of the structure in which licensed gaming activities are conducted is located entirely in an area which is located no more than eight hundred (800) feet from the mean high-water line (as defined in Section 29-15-1) of the waters within the State of Mississippi, which lie adjacent to the State of Mississippi south of the three (3) most southern counties in the State of Mississippi, including the Mississippi Sound, St. Louis Bay, Biloxi Bay and Pascagoula Bay, or, with regard to Harrison County only, no farther north than the southern boundary of the right-of-way for U.S. Highway 90, whichever is greater; and

(iii) In the case of a structure that is located in whole or part on shore, the part of the structure in which licensed gaming activities are conducted shall lie adjacent to state waters south of the three (3) most southern counties in the State of Mississippi, including the Mississippi Sound, St. Louis Bay, Biloxi Bay and Pascagoula Bay. When the site upon which the structure is located consists of a parcel of real property, easements and rights-of-way for public streets and highways shall not be construed to interrupt the contiguous nature of the parcel, nor shall the footage contained within the



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easements and rights-of-way be counted in the calculation of the distances specified in subparagraph (ii);

(c) On a vessel as defined in Section 27-109-1 whenever such vessel is on the Mississippi River or navigable waters within any county bordering on the Mississippi River, and in which the registered voters of the county in which the port is located have not voted to prohibit such betting, gaming or wagering on vessels as provided in Section 19-3-79; or

(d) That is legal under the laws of the State of Mississippi.

In light of subsection (d), we must look to the Mississippi Gaming Control Act, § 75-76-55 (1991), to see if it provides for sports betting. It confirms those activities deemed illegal in connection with wagering, as follows:

(1) It is unlawful for any person, either as owner, lessee, or employee, whether for hire or not, either solely or in conjunction with others, without having first procured and thereafter maintaining in effect a state gaming license:

(a) To deal, operate, carry on, conduct, maintain or expose for play in the State of Mississippi any gambling game, including without limitation any gaming device, slot machine, race book, or *sports pool*,

(b) To provide or maintain any information service the primary purpose of which is to aid the placing or making of wagers on events of any kind; or

(c) To receive, directly or indirectly, any compensation or reward or any percentage or share of the money or property played, for keeping, running or carrying on any gambling game, including without limitation any slot machine, gaming device, race book or *sports pool*.

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(2) It is unlawful for any person knowingly to permit any gambling game, including without limitation any slot machine, gaming device, race book or **sports pool** to be conducted, operated, dealt or carried on in any house or building or other premises owned by him, in whole or in part, by a person who is not licensed pursuant to this chapter or by his employee.

While it would appear **sports pool** is addressed by the Mississippi Gaming Control Act, notably the Gaming Control Act expressly excludes “athletic events” from the definition of “**sports pool**.” Since sports betting does not fall within any of the four exceptions found under Section 97-33-1, et seq., sports betting remains illegal under Mississippi’s general prohibition against all forms of wagering or betting on the outcome of any event.<sup>22</sup> Even if the term “athletic event” was not excluded from the definition of the term “**sports pool**” found in the Gaming Control Act such activities would be considered illegal under Mississippi common law.

In the case of *Mississippi Gaming Comm’n v. Imperial Palace of Mississippi (IPM), Inc.*, 751 So. 2d 1025 (Miss. 1999), relying on Miss. Code Ann. § 75-76-89(2), the Imperial Palace casino (IPM) sought permission from the Executive Director of the Commission to operate a race book on its licensed premises in Biloxi, Mississippi. The basis for this request was found in Section 75-76-89(2) of the Gaming Control Act, which provides that “[a] person who has been issued a gaming license may establish **a sports pool or race book** on the premises of the establishment at which he conducts a gaming operation **only after obtaining permission from the executive director**.” In spite of the clear language found in this section of the Act that would appear to give the executive director discretion to permit a sports pool or race book, the Executive Director denied IPM’s request based on Miss. Code Ann. § 75-76-33(3)(a), which the court found to be in conflict with Miss. Code Ann. § 75-76-89(2), . The Mississippi Supreme Court upheld the Executive Director’s position and essentially ruled that operators in Mississippi cannot operate a race book or sports pool under the terms of the Mississippi Gaming Control Act as it is written.

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In summary, under Mississippi law, Internet or online gaming is currently prohibited by the express language of Miss. Code Ann. §75-76-33(3)(b). Sports betting is prohibited under state common law and under the Mississippi criminal code, Miss. Code Ann. §97-33-1, et seq. as part of the general prohibition against wagering on the outcome of an event as sports betting does not currently fall within any of the exceptions created by the legislature<sup>22</sup>. See Miss. Code. Ann. § 97-33-1(a)-(d).

The steps to legalize Internet Gaming involve amending the Mississippi Gaming Control Act, including, but not limited to Miss. Code Ann. §75-76-33(3)(b).

The steps to legalize Sports Betting are not known as of yet. Based on the 3rd Circuit's ruling in *Nat'l Collegiate Athletic Ass'n v. Governor of New Jersey*, 730 F.3d 208 (3d Cir. 2013) and the State of New Jersey's actions to date, it appears Mississippi may be able to simply "remove the prohibition" of sports betting at its casinos. In September 2014, Governor Christie filed a motion with the district court seeking a clarification of the lower court's ruling enjoining the enforcement of New Jersey's Sports Wagering Law. Since then, the governor has withdrawn the motion and the State of New Jersey has moved forward with passing legislation that removes the prohibition of sports betting at its casinos and race tracks. At the time of writing this report, it remains to be seen if Governor Christie and the State of New Jersey will receive any further legal challenges from the Leagues. If successful, then it appears Mississippi (and other states) may be able to fall in line and take similar action. It would seem prudent to take a wait and see approach at this point. The following are links to motion and proposed order. Although the motion has been withdrawn, it may be of interest to the reader to review the legal arguments of the state.

The Governor's Motion for Clarification

([http://www.state.nj.us/governor/news/news/552014/pdf/20140908a\\_motion.pdf](http://www.state.nj.us/governor/news/news/552014/pdf/20140908a_motion.pdf))

The Proposed Order

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([http://www.nj.gov/governor/news/news/552014/pdf/20140908a\\_order.pdf](http://www.nj.gov/governor/news/news/552014/pdf/20140908a_order.pdf))

## Technical Considerations

There are many forms of online gaming. The earliest type of online gaming allowed a player using a home computer connected to the Internet to play an online game that is managed by a server located far away from the player. With the widespread adoption of mobile devices and prevalence of Internet connectivity, a player now has the ability to play an online game from nearly any location.

According to the Gaming Standards Association (GSA) report, there is no single technical standard for online gaming; jurisdictions each set their own specific restrictions<sup>23</sup>. Some jurisdictions' restrictions are more detailed than others, and some employ more controls. There are several existing technical challenges facing the implementation of online gaming, ranging from technical standards to financial management. The following seven topics represent the major technical challenges for consideration in the implementation of Internet gaming.

1. Technical Standards – The land-based gaming industry has developed numerous standard protocols, such as GDS, G2S and S2S. In contrast, the online gaming industry has yet to establish similar standards. Operators today experience frustration due to the lack of compatibility between systems. This frustration has created an entirely new industry which develops translators between systems. This, however, is not a permanent solution. The modules being created only partially solve the problem. Every online gaming platform and remote gaming system has its own communication API's. The current situation is also causing major problems with manufacturers. Because of the speed of the market, manufacturers cannot upgrade their systems in a timely manner because each new feature causes some kind of incompatibility with other systems. This in turn requires the translators

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needing an upgrade. The end result is that every system release becomes a major release which requires full testing and recertification.<sup>23</sup>

2. Technological Advances – Advancements in technology occur frequently and at a rapid pace. The technological infrastructure of online gaming must be able to adapt to these constantly changing technologies. It does not matter whether the gamer is sitting behind a desktop, using a smartphone on the bus or sitting at the airport with a tablet, the rules for the online gaming offering remain the same. In her article “Mobile Gaming: Regulatory and Compliance Challenges,” published in the Remote Gaming Update 2014, Olga Finkel states that certain concerns and limitations must be considered when looking at mobile devices and mobile technologies. A mobile-friendly online gaming system must recognize and be sensitive to technological challenges and limitations of the mobile delivery channel, while ensuring, at the same time, that player protection and general regulatory oversight are not compromised. Player mobility and the need for immediacy are issues faced by mobile gaming operators. According to Finkel, there is a fine line between handling these issues in a compliant manner and maintaining an attractive user experience. She also contends that remote gaming regulations must evolve to handle the issues that will arise in order for mobile gaming to flourish and reach its full potential in a compliant manner.<sup>24</sup>

3. Age Verification - One of the most fundamental cornerstones of the gambling industry is that underage play must be prohibited and all available means should be used to ensure that this principle is complied with. For remote gaming this boils down to adequate identity verification, which is a critical process not only for filtering out minors, but also for carrying out operators' compulsory general 'Know Your Customer' ('KYC') procedures. Finkel recognizes that identity verification and filtering of minors for online gaming activity on mobile devices are, in some respects, more technically challenging, as well as more time consuming for the player, especially when it comes to collecting

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data by way of lengthy forms, statements and other copies of documents. Because of this, regulations must remain technologically neutral, says Finkel. Mobile KYC services are beginning to take advantage of device cameras and geolocation. New advancements in smartphone technology, such as fingerprint scanners, will increase the level of identity verification, potentially making mobile gaming more secure than other forms of gaming.<sup>24</sup>

4. Geolocation and Geofencing – There are new regulations being implemented in other jurisdictions which provide for legal mobile gaming in predefined geographical boundaries which can be checked by geofencing technology. The drawback in geofencing technology can be inaccurate, particularly in highly urbanized areas. This limitation makes legislation that relies on precise geofencing requirements extremely difficult to implement and enforce. Land-based casinos in Nevada which implemented a mobile gaming service with similar restrictions have realized a less than 0.01% increase in tax revenue, meaning the U.S. approach is still untested in comparison to European-style regulations.<sup>24</sup>

5. Data Security and Privacy – Geolocation and geofencing bring along other concerns as well, warns Finkel. When dealing with these technologies, player privacy becomes a major issue. Because geolocation and geofencing use GPS data, the player's physical location and movements could potentially be shared across devices. The mobile device industry has spent considerable time and resources on making sure their products have a high level of security, and while any device can be hacked, the risk to the operator remains low.<sup>24</sup>

6. Personalization and Real-time Data Mining – Personalization is highly important when discussing online gaming on mobile devices, where display space available to the player is limited. Commercially, operators use personalization to create an interface that adapts to the user and minimizes complaints.

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Real-time data mining can be used to detect abnormal usage patterns as well as other potential problems. Both personalization and real-time data mining have useful applications for commercial and regulatory advantage. However, according to Finkel, there are limitations to these tools when looking at a mobile device setting. For example, it may be difficult for mobile operators to have compliant, commercially and technically sensitive opt-in checkboxes in the user interface. Finkel states that due to the important regulatory advantage of personalization and data-mining methods in mobile gaming, gaming regulations should allow operators to use more user-friendly means of collecting opt-ins and opt-outs from mobile devices.<sup>24</sup>

7. Account Funding – Payment processing is a major hurdle states must overcome when thinking about pursuing online gaming. Visa and MasterCard have stated they will process payments in states where online gaming is legal, while many other companies have said they will not authorize the transactions out of fear of an unlawful payment being processed. MasterCard has a high rate of approval, according to Joe Pappano, senior vice president and managing director of payment processor Vantiv Gaming Solutions, because they grouped online gaming transactions under a code with horse racing and other low-risk, legal forms of gambling. Vantiv is taking MasterCard's model and lobbying other companies to change the way they code online gaming transactions as well. There are alternatives to using a credit card, but these alternatives are viewed as a temporary fix, not a long-term solution. New Jersey enacted a law earlier this year making online gaming legal, but many banks have not become accustomed to processing the transactions. The American Banking Association said banks have been under federal scrutiny for so long that the move was to block all online gaming transactions, even in states where online gaming is legal. "The challenge is everyone's excited for Internet gambling, but they want instant gratification, and it just isn't there yet," Pappano said.<sup>25</sup>

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## Responsible Gaming

The National Center for Responsible Gaming, in a white paper, states that recently published studies offer a mixed picture of the health risks of online gambling<sup>26</sup>. The authors, Reilly and Smith, deem the work being done by Harvard Medical School professor, Dr. Howard J. Shaffer, as “pioneering”. In that work, the researchers have studied online gambling utilizing access to the transactions of 40,000 online gamblers via a partnership with one of the largest online gambling companies in the world. The findings of Dr. Shaffer and colleagues on this topic indicate that the overwhelming majority of players wager “moderately” when compared to the overall patterns of betting behavior for all subscribers<sup>26</sup>. Reilly and Smith state that:

“Approximately 5 percent of the online gamblers studied appeared to engage in excessive betting behavior patterns in terms of time and money spent. Their overall findings contradict the speculation that online gambling is a public health hazard because of Internet gambling’s easier access and structural characteristics (e.g., speed of play) compared with traditional forms of gaming. Instead, the portrait of Internet gambling emerging from this research appears to be consistent with worldwide prevalence rates of gambling disorders, which range between 1 and 2 percent.”

Additional studies and information on the subject can be found that support the above findings and also that give a sense of who is engaging in online gaming and sports betting online. Studies have demonstrated that Internet gamblers are younger, more educated and use the Internet more regularly for non-gaming purposes than land based casino patrons<sup>27</sup>. The same study indicated that racing and sports betting were the most commonly reported online gambling activities<sup>27</sup>. This same work corroborates the Harvard studies work on the idea that speculation that most online gamblers exhibit excessive gambling behavior is not warranted and that most Internet gaming is “moderate”<sup>27</sup>. Even with these results, the Harvard study cautions that, “for the small percentage of individuals who are very involved in Internet gambling there might still be cause for concern.



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Adaptation to online gambling was not uniformly apparent, particularly for live action betting. The authors recommend maintaining a focus on the impact of such games in future research.”<sup>26</sup>. Further still, there have been reported anecdotal situations wherein individuals do develop severe addictions to Internet gaming<sup>28</sup>.

Perhaps it is the cause for concern noted above that has led states with legalized gaming to enact responsible gaming statutes. Of the three states with legalized Internet gaming, Delaware, New Jersey and Nevada, only New Jersey and Nevada had statutes addressing responsible gaming and funding responsible gaming programs<sup>29</sup>. Of these, only Nevada mentioned sports betting in the responsible gaming statute language<sup>29</sup>. Mississippi does have responsible gaming regulations, the manifestation of which is the Mississippi Gaming Commission Self-Exclusion Program.

Self-Exclusion is a process that allows a person to request to be banned from all Mississippi licensed casino’s, and to be prohibited from collecting any winnings, recovering any losses or accepting complimentary gifts or services or any other thing of value from any Mississippi licensed casino. The Commission maintains the official self-exclusion list and notifies each casino of any addition to or deletion from the list by electronic mail. The Commission keeps track of self-exclusion agreements and provides casinos with a list of people who signed the agreement. Each casino maintains its own copy of the self-exclusion list and establishes procedures to ensure that its copy of the self-exclusion list is updated and that all appropriate employees and agents of the casino are notified of any addition to or deletion from the list. When an individual signs up for self-exclusion, he/she is offered information on gambling addiction. The information includes the contact information for problem gambling treatment providers, Gamblers Anonymous and GAM-ANON schedules and self-help tools to help the individual on his/her road to recovery. There are

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approximately 1,600 people on the list currently in Mississippi, ranging in age from 21 to 88 years of age, and of whom 40% have chosen the lifetime ban as opposed to an allowed five year ban<sup>30</sup>.

Additionally, in Mississippi, the Mississippi Council for Problem and Compulsive Gambling opened its offices in February 1996 to provide basic knowledge and increase awareness among casino employees about problem and compulsive gambling. The training includes facts about compulsive gamblers, profile of a compulsive gambler, signs of compulsive gambling in the workplace, types of gamblers and treatment options. The Mississippi Council operates a help line for problem and compulsive gamblers, which has received 115,498 calls and helped 15,360 gamblers, their families and friends since its inception. Eighty-one percent of callers are seeking help for themselves. The majority (65%) of the individuals experiencing problems with gambling fall between the ages of 26-64<sup>31</sup>.

Even with successful responsible gaming organizations, protocols and results in Mississippi, Keith S. Whyte, Executive Director of the National Council on Problem Gambling, offers the following insight with regard to responsible gaming:

*“Frankly, I think the biggest challenge for Mississippi is that the PG services seem to be so limited. Our responsible gaming model is predicated on an active public health system that includes treatment on demand. I would be extremely hesitant to expand Internet gambling in an area where it doesn’t seem like treatment is available or easily accessible.”*

*“I think the safeguards in terms of verifying age and identity, preventing underage access & enforcing self-exclusion seem very robust in the three jurisdictions with casino-style Internet gambling but I remain concerned these states are not doing enough to provide responsible gaming tools for players or in making sure that treatment resources are available to help those who develop or exacerbate severe gambling addictions online. I encourage every jurisdiction that legalizes and regulates*

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*Internet gambling to adopt our Internet Responsible Gambling Standards, which are based on best practices from regulators around the world.”*

## Conclusion

In conclusion, the Internet Gaming Taskforce has researched the topic of Internet gaming and sports betting and the facts are submitted in the above report. To date, it appears that the actual revenue generated is far behind the revenue projected by the introduction of Internet gaming. In addition, it would seem the most likely way for Internet gaming to be productive is for states to form compacts with each other, in order to make the payoffs attractive. There are technology issues that Mississippi would have that other less rural states may not encounter, while not preventing Internet gaming from occurring, it may be more frustrating for the patron trying to logon and determining if they are located in the state or outside of the state. As for sports betting, it is still uncertain as to whether a state can overcome the federal ban.

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