



# THE REID ONLINE POKER BILL OF 2012 – REPORTS OF ITS DEATH MAY BE EXAGGERATED

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On December 14, 2012, Senator Harry Reid (D-NV) conceded that the “Internet Gambling Prohibition, Poker Consumer Prohibition, and Strengthening UIGEA Act of 2012” (the “Reid Bill” or the “Bill”) was dead for 2012. The Bill, which Senator Reid had drafted in collaboration with Senator Jon Kyl (R-AZ), had never been formally introduced, but in September, 2012 it was leaked, and Senator Reid and his Nevada colleague, Senator Dean Heller (R-NV), were pushing to have the bill passed before a new Congress would be sworn in at the start of the new year. Senator Reid had run out of time and not found appropriate “must pass” legislation to which the Bill could be attached. (As was widely reported, it was never Senator Reid’s intention to push the Bill as a stand-alone piece of legislation. Rather, he intended to attach it to some other “must pass” bill.<sup>1</sup>) States and state lotteries breathed a sigh of relief, because, although the Bill would have allowed poker to be conducted online by licensed operators, it would have limited such licenses to large land-based casinos, race tracks and card rooms, and large providers of slot machines. Most state lotteries would not have been eligible for licensing for at least the first two years. Worse, the Bill would have ended state efforts to implement online gaming, even on an intrastate basis, unless the wagering:

(1) was authorized under the Interstate Horseracing Act (the “IHA”);<sup>2</sup>

(2) was “authorized, licensed and regulated” prior to the Bill’s enactment; or

(3) consisted of “Qualifying Intrastate Lottery Transactions,” defined under the Bill to include only those wagering games in which (a) winning is determined no more frequently than daily, (b) game play does not actually occur and winning is not determined on the Internet, and (c) a tangible ticket is printed in order to claim a prize.

Announcing that he would no longer push the Bill in 2012, Senator Reid stated: “As much as I would prefer a different outcome, the reality is that we have simply run out of time in the legislative calendar to pass an internet poker bill.”<sup>3</sup> Reid added that he was “disappointed, but Senator Heller and I remain committed to this issue and it will be a priority for us in the new Congress.”<sup>4</sup> Thus, although the Bill is dead for the moment, it or a substantially similar bill is likely to appear again within the next two years.

The defeat of the Reid Bill in 2012 was due in large part to the efforts of states and state lotteries. Over the past two years, letters opposing federal regulation of online gaming were written by the Governors of Idaho, Maryland, New Hampshire and Utah, and by the National Governors Association. Even stronger letters in opposition to federal regulation were penned by the Chief Executive Officers of the lotteries in Iowa and Kentucky and by the North American Association of State & Provincial Lotteries (“NASPL”). Finally, in December, 2012, during the “lame duck” period of the last Congressional Session, representatives of state lotteries and of NASPL descended upon Washington D.C. to personally and directly give voice to state opposition to federal regulation of online gaming. The effect of these efforts is perhaps best reflected in the statement of David Krone, Senator Reid’s Chief of Staff, who said:

*“I do think there’s a lot of people that didn’t grasp fully at the*

1) See, for example, “Reid Sounds Pessimistic Note on Poker Bill,” by Steve Tetreault, Las Vegas Review Journal, December 11, 2012; and “Senators Push for Bill to Advance Online Poker,” by Alexandra Berzon, Wall Street Journal, December 5, 2012. 2) 15 U.S.C. 3001, et seq. 3) “Finger-Pointing Turns to Gaming Industry as Hopes Dim for Online Poker Bill,” by Karoun Demirjian, Las Vegas Sun, December 14, 2012. 4) Id. 5) “Internet Poker Bill Effort Dead, Reid Says,” by Steve Tetreault and Howard Stutz, Las Vegas Review Journal, December 14, 2012, quoting David Krone, Chief of Staff to Senator Harry Reid. 6) “Federal Online Gambling Legislation Needed Now More Than Ever,” by Frank J. Fahrenkopf, Jr., American Gaming Association, February 1, 2012, at <http://www.americangaming.org/newsroom/op-eds/federal-online-gambling-legislation-needed-now-more-than-ever> (last accessed January 7, 2013). 7) See “The Department of Justice’s Reinterpretation of the Wire Act Does Not Create an Urgent Need for Federal Legislation Governing Internet Gambling,” by Mark Hichar, Public Gaming Research International Magazine, August 2012.

time the urgency of getting this [the Reid Bill] done sooner rather than later ... They were never fully prepared for the state lotteries and the states and the tribes that were going to come up and take this on.”<sup>5</sup>

However, if this victory is to remain permanent, states will need to implement intrastate online gaming systems and show that they can be well-regulated on a state-by-state basis, avoiding the consequences predicted by those arguing that regulation of online gaming would only be effective if done under a federal scheme. For example, the American Gaming Association argued that federal regulation of online gaming was necessary to “keep minors from gaming online, prevent fraud and money laundering, address problem gambling and ensure players aren’t being cheated.”<sup>6</sup> While such arguments were rebutted by many, including last year in this magazine,<sup>7</sup> states must now demonstrate that state-regulated online gaming can provide assurance that the games are fair (i.e., that the stated odds prevail and player-cheating and collusion are prevented) and honest (operator cheating and collusion are prevented), that underage and out-of-state persons are blocked from playing, and that problem gambling is adequately addressed. Unless states move forward in this regard, and do so quickly, it is likely that momentum again will build for federal legislation that could regulate online gaming so as to make the Internet – as would have the Reid Bill – of only marginal utility to states and state lotteries.

Some states are already moving forward. The Illinois Lottery has been selling online tickets to certain of its lottery games since March, 2012. Similarly, the Georgia Lottery began selling certain of its games online in November, 2012 and plans to expand its online offerings in 2013. In Minnesota, lawmakers approved pull-tab gaming via mobile devices (e.g., iPads), and such online gaming has

been in operation since September, 2012. Delaware passed a law in June, 2012 that will allow the lottery to conduct online lotteries and casino games. Online games are expected to be operational there starting in July, 2013. In addition, the New Jersey legislature passed a bill on December 20, 2012 that would allow Atlantic City casinos to offer casino games online to persons located within that state. As of this writing, the bill is awaiting action by New Jersey Governor Chris Christie. Finally, other states and state lotteries either have legislation pending that would authorize online gaming or are studying the issue. These states include California, Maryland and Massachusetts. This is in addition to the state lotteries that sell lottery ticket subscriptions online – i.e., the lotteries of Minnesota, New Hampshire, New York, North Dakota and Virginia.

States implementing online gaming also should consider entering into interstate compacts with each other, not only to expand the player base (increasing liquidity, in games such as poker, and to increase jackpots in other games), but also to establish uniform standards relative to, among other things, licensing, geo-location, age control, detection of fraud and dishonest play, and addressing problem gaming. Uniform standards in these areas would increase efficiency and ensure that games in each participating state were run at the same high standard and were equally protective of players.

In sum, the time is now for States to act. Had the Reid Bill become law, it would have significantly weakened long standing precedent allowing states to decide for themselves what types of gambling could be offered within their borders. If states intending to regulate online gaming do not take it upon themselves to do so quickly, they may again be faced with the possibility of losing that right. ♦

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