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POLICY FRAMEWORK FOR THE REGULATION OF INTERNET GAMBLING

Adopted by the NCLGS Executive Committee on January 10, 2015.

Recognizing both the threats and opportunities posed by new technologies and Internet gambling, the National Council of Legislators from Gaming States (NCLGS) has compiled suggested policy standards for Internet gambling legislation.

NCLGS believes an effective regulatory and licensing system for states wishing to participate in Internet gambling should increase public trust and confidence in legalized gambling, inhibit wagering by underage or otherwise vulnerable individuals, ensure that any games offered through the Internet are fair and safe, contain enforceable restrictions on unlicensed Internet gambling operators, and create jobs and economic development. Specifically, the policy framework was developed to address the following key legislative priorities:

- foster effective regulation and cooperation among states
- promote strong, stable, and diverse state economies
- protect both states that wish to participate in Internet gambling and those who do not
- facilitate cooperation and information exchange among state policymakers and gambling regulators
- support uniformity in Internet gambling legislation while protecting states' rights to regulate gambling within their respective states
- establish minimum "benchmark" requirements for states that wish to adopt Internet gambling
- support the establishment of strong consumer protection and responsible gambling standards
- research differing proposals and views regarding taxation and revenue sharing for interstate Internet gambling
- explore differing views on appropriate regulatory models and structures for Internet gambling

NCLGS believes that the standards contained in the framework should serve as a guideline, but should also evolve in response to emerging state needs, trends, and advances in technology—in order to be of the greatest assistance to states. The framework will provide a model for policymakers considering enacting Internet gambling legislation within their respective states, as well as, multi-jurisdictional Internet gambling initiatives.

The following topics are addressed in the Framework:

1. player protections
2. problem gambling protections
3. taxation
4. licensing
5. enforcement
6. payment processing
7. age verification, geo-location, and player identification
8. regulatory authority
9. multi-jurisdictional agreements
10. game choice and legality

1. PLAYER PROTECTIONS

1.1 Standards for data protection. Legislation should contain requirements for high standards for data protection, similar to standards followed for Internet banking, in order to minimize the risk of theft of monies or personal information. These standards should include protections of players' personally identifiable information, financial transaction information and Internet account information.

1.2. Fair and appropriate dispute resolution mechanisms. Legislation should require that licensees develop dispute resolution mechanisms that are fair and reasonable for any problems associated with player accounts. Legislation should require regulations to include an appeals process for players with the state regulatory authority where such disputes remain unresolved or if the resolution is not satisfactory to the player. Legislation should require multi-jurisdictional agreements to afford the regulatory authority the authority to determine and enforce a final appeals process for players of their own jurisdiction.

1.3 Procedures for fair game play. Legislation should contain specific policy objectives to make sure that licensees conduct their games honestly and fairly and player collusion is prevented. Legislation should require regulatory standards to address licensing and certification of Internet gambling software, hardware and network systems for: technical standards for the shuffle and deal of the cards; detection and prevention of cheating, fraud and theft by site personnel, players or third parties; systems cryptography and security; unauthorized use of software aids by players; and player multi-accounting. Legislation should require operators to retain historical records of all gambling, account and systems history for a minimum of ten years to facilitate investigations.

1.4 Notice to players of operator policies. Internet gambling websites should be required to clearly and conspicuously notify players of their policies regarding software aids, dispute resolution, payment processing, gambling promotions, privacy protection, gambling fees, and the odds of winning, where appropriate, such as with state lotteries, and other similar issues relevant to player protection.

1.5 Reasonably tailored advertising restrictions. States may wish to consider, pursuant to the U.S. Constitution, individual state constitutions, and other state and federal laws, reasonably tailored restrictions on advertising in order to curb misleading advertisements and protect consumers.

1.6 Common regulatory, technological, and testing standards. States may wish to consider sharing common technology for eGambling games to eliminate multiple certification of the same equipment in neighboring jurisdictions with slightly different technical standards.

2. PROBLEM GAMBLING PROTECTIONS

2.1 National Council on Problem Gambling (NCPG) Internet Responsible Gaming Standards. In January 2014 NCLGS passed a resolution supporting the NCPG standards as best practices for responsible Internet gambling. The standards include, among other things, information on staff training, player assistance procedures, self-exclusion policies, advertising and promotion, free play games and site features, research, and dedicated problem gambling funding. Similar standards should be contained in any legislative proposals.

2.2 Pro-active problem gambling measures. States may wish to consider policies that obligate licensees to adopt appropriate pro-active measures to detect potential problem gambling behaviors, [including automated systems for behavior analytics](#).

2.3 Information sharing and self-exclusions lists. Currently, a number of states do not allow information on individuals who have self-excluded to be shared across state lines. Any multi-jurisdictional agreements should

consider whether to establish procedures for information sharing, with strong security protections, in order to ensure that problem gamblers are adequately protected.

3. TAXATION

3.1 Taxation rates and federal law. Tax rates should be crafted to ensure they comply with federal laws, such as the Internet Tax Freedom Act.

3.2 Taxation rates and methods. While creating uniformity of policy is an important goal, each state's gambling market, population size, and market demographics are unique and taxation rates and methods should be established based on that. For that reason there is no recommendation on a suggested tax rate or method.

4. LICENSING

4.1 Licensing standards for operators. As relevant for Internet gambling, the character, honesty, criminal history, associations with criminals, financial resources, gambling and business competency of those subject to suitability determinations should be appropriately considered in the licensing process.

4.2 Service provider licensing and general services. General services providers who do not provide services directly related to the operation of gambling or the security of games and gambling platforms should not be required to obtain a service provider license.

5. ENFORCEMENT

5.1 Anti-fraud and anti-money laundering policy. Depending on the state's existing laws, the state legislature may find it in the state's interest to pass additional laws providing new or enhanced tools for state law enforcement agencies to ensure that fraud and money laundering do not occur in connection with Internet gambling. For example, delineated rule-making authority should include "among other things" within the language.

5.2 Authority for regulators to define cheating. Depending on the state's existing laws, the state legislature may find it in the state's interest to pass additional laws to provide regulators with authority to define cheating in terms of collusion, illegal software, illegal scripts, and other issues. New or enhanced penalties may be required to properly police online cheating.

5.3 Effective detection and blocking of illegal gambling operations. Depending on the state's existing laws, the state legislature may find it in the state's interest to pass additional laws providing methods to detect, block, restrict, or otherwise penalize illegal Internet gambling operators. Multi-jurisdictional agreements should provide for the co-management of enforcement efforts between and among member jurisdictions, while allowing each jurisdiction to retain authority over gamblers within its borders.

6. PAYMENT PROCESSING

6.1 Use of credit, debit or prepaid cards to fund gambling accounts. As a matter of policy, legislation may seek to limit the use of credit cards, or access to credit for Internet wagering. Other forms of electronic payment as far as debit cards and forms of prepaid cards should be determined by the regulator, in order to respond effectively to changes in technology.

6.2 Restrictions on in-person cash deposits. As a matter of policy, legislators may wish to consider prohibiting or mandating that regulators have specific requirements regarding cash transactions, as an anti-money laundering mechanism.

6.3 Methods for withdrawal. As a matter of policy, legislation may direct regulatory bodies on broad standards for payment processing, but the specific methods of funding and removing funds from accounts should be determined by regulations. Overly prescriptive statutes may impede use of the best and most appropriate payment processing technologies.

6.4 Protection of player funds. Legislation should consider how best to protect player funds, such as requiring account segregation, trusts, or sureties; reimbursements of player funds by operators for losses due to cheating, fraud or theft; fair policies for treatment of dormant player accounts; or stipulating that withdrawals can only be made to the same source as the original deposit, while ensuring states' unclaimed property laws are followed.

7. AGE VERIFICATION, GEO-LOCATION, AND PLAYER IDENTIFICATION

7.1 Geo-location standards. Public policy must ensure that play is only accepted from jurisdictions where it is legal and regulated. Robust geo-location methods shall be required in any legislation; however, the exact methodology, specific forms, and types of such controls should be left to the regulator to define, and should not be specified in law.

7.2 Age and identity verification standards. Public policy must ensure that underage players are prevented from wagering and play is only accepted from authorized players. Robust age and identity verification methods shall be required in any legislation, however, the exact methodology, specific forms, and types of such controls should be left to the regulator to define, and should not be specified in law.

7.3 Penalties for unauthorized play. Where necessary depending on current state law, penalties for companies that knowingly or recklessly accept unauthorized play, as well as for players that knowingly and purposefully participate in unauthorized play should be proscribed by the legislation or legislation should authorize regulators to impose such penalties. Sample penalties could include fines, account closure, and confiscation of winnings.

8. REGULATORY AUTHORITY

8.1 Future technological innovations and unforeseen changes. The state body authorized by the state legislature to regulate Internet gambling should be given broad authority, so that it can adapt to technological innovations and other environmental changes while continuing to ensure the strong and sound regulation of Internet gambling. Legislation should provide general policy guidance to the regulator and only provide specific instructions on policy areas of particular importance.

8.2 Legislative review. In order to assist with legislative oversight and ensure that administrative rulemaking produces sound regulation, state lawmakers may wish to include (1) regulatory data gathering and research requirements, and/or (2) a requirement for periodic review of all Internet gambling regulation for compliance with modern technologies and other changes.

9. MULTI-JURISDICTIONAL AGREEMENTS

9.1 Congressional consent. Multi-jurisdictional agreements having certain qualities do not require congressional consent. Such Internet gambling agreements or compact should be carefully crafted as to not require congressional consent.¹

9.2 Compliance with member jurisdictions' laws. For example, the New Jersey Constitution and gambling laws require that all player wagers must be processed on servers located within Atlantic City. Therefore, absent amendment to the New Jersey Constitution, any multi-jurisdictional agreement involving New Jersey would need to provide that bets from players located in New Jersey be processed only by a server located in Atlantic City. In contrast, Delaware does not require that servers be located in-state. Each state shall determine what business practice is best for that state.

9.3 Tribal government consideration. Any multi-jurisdictional agreement should allow for participation by tribal governments, in a legally permissible manner.

9.4 Any multi-jurisdictional agreement. States entering into multi-jurisdictional agreements should consider player protections of equivalent standards in all jurisdictions and allow for cross-jurisdictional cooperation in regulatory and law enforcement investigations, enforcement of findings, and criminal prosecutions.

10. GAME CHOICE AND LEGALITY

10.1 Types of Internet gambling permitted. Each state is unique with varying priorities concerning gambling and different sensibilities of its citizenry, as such; each state should be free to decide what, if any, Internet gambling should be allowed within its borders.

10.2 Internet gambling on tribal land. In states that chose to legalize Internet wagering, and which have tribal land within their borders; Indian tribes must themselves be able to determine the legality of Internet gambling within their own jurisdictional borders.

10.3 Internet gambling and federal Indian law. The legalization of Internet gambling by any state, or group of states, shall not violate tribal government rights guaranteed through existing tribal-state compacts and through the Indian Gaming Regulatory Act.²

NCLGS is the only non-partisan organization of state lawmakers that meets on a regular basis to discuss issues in regard to gaming. NCLGS does not support or oppose gaming, but supports effective regulation and believes that decisions related to gaming should be made by the citizens of the individual states and their elected officials. More information is available at www.nclgs.org.

The following interested parties submitted written comments between December 2013 and January 2015 to assist with the development of the framework:

- American Gaming Association
- State Rep. Paul Clymer, Pennsylvania
- The Council on Compulsive Gambling of New Jersey
- Delaware Park

¹ See, *U.S. Steel v. Multi-State Tax Commission*, 434 U.S. 452 (1978).

² 25 U.S.C. § 2701 et seq.

- Dover Downs
- Kurt Freedlund, Lotto Interactive
- Gaming Laboratories International
- GTECH Corporation
- Interactive Communications International, Inc. (InComm)
- International Social Games Association (ISGA)
- MasterCard Worldwide
- National Council on Problem Gambling
- National Indian Gaming Association
- Netsweeper, Inc.
- North American Association of State & Provincial Lotteries
- Optimal Payment Services, Inc.
- Poker Innovations Ltd.
- Poker Lovers Union
- Brad J. Polizzano, Esq.
- Michael Pollock, Spectrum Gaming
- Congressman Jon Porter, Porter Gordon Silver
- Professor I. Nelson Rose, Gambling And The Law
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