

Louisiana has had a long and colorful history of gambling—both legal and illegal. In 1823 New Orleans had six casinos licensed by the Louisiana legislature.[1] During this time New Orleans actually had a street named Craps (now Burgundy Street) in honor of the ubiquitous dice game imported by the French settlers.[2] By 1835, the licensing of casinos was repealed by the Legislature, but many casinos continued to flourish illegally.[3] Illegal casinos and card games which once thrived in New Orleans, its surrounding Parishes and on Mississippi riverboats now find a legal home in downtown New Orleans and on many of the State's major waterways.

Following the Civil War, Louisiana hosted one of the largest, and for about 15 years, the only legal lottery in the United States.[4] Opposed on moral grounds and teeming with corruption, the Louisiana State Lottery Company (a private corporation licensed by the state) was effectively doomed by 1892.[5] Almost 100 years later, the Louisiana lottery was back and continues today as a profitable government run lottery that is used to fund, in part, public education in Louisiana.

Fueled by U.S. citizens who love to gamble and the lack of clear and enforceable federal regulations, offshore operators made billions from online casinos from 1995 to 2006. Louisiana was one of a few states to specifically prohibit online gambling during these boom years, yet the prohibition had little practice effect until federal legislation in 2006 made it illegal for credit card companies to accept payments relating to illegal online gambling.[6] Will online gambling in Louisiana follow a path similar to the lottery and land casinos from prohibition back towards legalization? The state's gambling history combined with current trends indicates the odds are in favor of the eventual legalization of online casinos.

## Current Laws Governing Online Gambling

### The Wire Act

While the 1961 Interstate Wire Act, 18 U.S.C. § 1084 (the "Wire Act") was in effect during the internet casino boom years, questions over its applicability and difficulties in enforcement made it a weak weapon to counter the online gambling surge backed by huge customer demand. The Wire Act provides, in pertinent part:

(a) 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.

Proponents of a broad interpretation of the Wire Act have concluded that this is a general prohibition against any type of gambling via telephone or online. While courts have not had difficulty interpreting the Wire Act to include bets via computer, the Fifth Circuit has concluded that the Wire Act was not intended to prevent all online gambling.[7]

### Louisiana Gambling by Computer Prohibition

In response to the booming offshore based online casinos and the lack of effective federal regulation, Louisiana specifically enacted legislation that prohibits online gambling. La. Rev. Stat. § 14:90.3 (1997).[8] A few other states have followed with similar legislation.[9] Effective August 15, 1997, "gambling by computer" was made a criminal offense. This statute not only goes after the online casino operator and its employees, but also includes the casino website and software designers, developers, and those who enable and maintain the computer network that allows the games to be played.[10]

In enacting this law, the legislature cited its interest in protecting its citizens and children from the harm of online gambling as well as assisting citizens who suffer from compulsive or problem gambling behavior.[11]

In September of 2006, Peter Dicks, the chairman of Sportingbet PLC (an online sports book trading on the London Stock Exchange) was arrested at Kennedy airport in New York based on a Louisiana state police warrant for gambling by computer.[12] New York Governor George Pataki declined to extradite Mr. Dicks to Louisiana as his office questioned their legal authority to do so in light of the fact that Mr. Dicks was not in Louisiana at the time the alleged offense occurred.

More recently, a Bossier City man was sentenced on July 31, 2013 to three years of probation and ordered to pay a \$50,000 fine for acting as a local administrator for an internet sports gambling website based in Costa Rica.[13] Interestingly, the charges were brought by a federal prosecutor under the Wire Act, rather than by state authorities under Louisiana's more specific "gambling by computer" laws.

### Horseracing Exemption

The interest of the Louisiana legislature in protecting its citizens from online gambling was apparently not enough to overcome the well-entrenched freedom of Louisiana citizens to bet on horse races. Louisiana citizens continue to gamble on horse races via the internet with the blessing of the federal government and Louisiana's "account wagering" law, La. R.S. 4:149.5. In December of 2000 Congress amended the Interstate Horseracing Act, 15 U.S.C. §3001-7 to allow states to decide whether their residents can make bets on horse races by phone and computer. Louisiana's "account wagering" law allows gamblers to deposit money with an authorized licensee and then use the account balance to make wagers on horse races via telephone or computer. See La. R.S. 4:149.5 (A-C). The inconsistency between the stated legislative intent in the "gambling by computer" legislation and the horseracing exemption is justified through the legal fiction that the bets are actually made at the racing facilities within the state.[14]

### The DOJ Memorandum

The turning point for the push by states to legalize and implement online gambling was a DOJ memorandum released on December 23, 2011.[15] The memo concluded that the Wire Act, 18 USC § 1084, is limited only to sports betting.

The DOJ memorandum was also quickly applauded by the American Gaming Association and the Poker Player's Alliance who while initially lobbying for federal legislation,

have shifted their focus to state legislation. The DOJ memorandum has been viewed as the official position of the Obama Administration on online gambling and has served as a springboard for some states to legalize online gambling.

## State Authorized Online Gambling: The Early Adopters

### Delaware

Delaware was the first state to offer full online gambling, including slots, roulette, blackjack and poker. Delaware went live on November 8th of 2013, but has struggled to attract a large number of online players.[16] The first interstate pact was recently signed between Delaware and Nevada and is expected to become effective this summer.

### Nevada

The state of Nevada has already approved online gambling legislation and several companies are currently operating legal online poker for residents of Nevada. However, other forms of online gambling have not yet been approved.

### New Jersey

In February of 2013, Governor Chris Christie of New Jersey signed a bill to allow online table games and slot play to players within state borders. Online gambling went live in New Jersey on November 26, 2013. While 51,000 accounts were set up within the first week, problems with geo-location of players, player verification and refusal by credit card issuers to process transactions hampered the initial roll out.[17] Even as of May 2014, less than half of online gambling credit card transactions in New Jersey are approved. Despite the technical problems and the fact that initial online gambling revenue numbers are far below projections, California, Pennsylvania, Washington, New York and Illinois are also exploring online gambling legislation.

## Betting on the Come: Louisiana

Louisiana State Representative Mike Huval (Republican-Breaux Bridge) filed a resolution that was adopted by the House on May 29, 2013 resolving that a committee be formed to study the feasibility and practicality of authorizing internet gambling in Louisiana.[18] On January 21, 2014 a meeting of the House Committee on Administration of Criminal Justice and the Senate Committee on Judiciary B met at the State Capitol to discuss the feasibility and practicality of authorizing internet gaming in Louisiana. The Committee heard a pitch from the Senior Vice President of Caesars, David Satz, and Marco Ceccarelli, Head of Technology for Caesar's Interactive. After giving a brief history of online gaming, Mr. Satz and Mr. Ceccarelli discussed how online gaming is currently being implemented in New Jersey and discussed the methods by which Caesars verified age, identity and the physical location of the persons attempting to gamble online. The legislators seemed generally receptive to online gambling, but Mr. Satz did face some questions from skeptical legislators concerned about a potential increase in gambling addiction as well as hacking and security issues. The bill's sponsor, Representative Huval, took the position that online gambling is already present, will certainly grow, and that Louisiana might as well regulate it so as to protect Louisiana citizens from unscrupulous operators and get the tax revenue from the citizens who are going to gamble anyway.

Louisiana Gaming Control Board Chairman, Ronnie Jones, when asked about the prospects for a bill seeking to legalize internet gambling, told the Times-Picayune, "I suspect the bill will likely be introduced, but I can't confirm." [19] When questioned for this article, Representative Huval said, "I'm not planning on bringing such a bill in 2014, but I can't say I'll never bring [such] a bill." However, with a considerable casino presence already in the state, a lottery and a populace that loves to gamble, online gambling seems a natural extension.

Such legislation, however, will not likely come without a fight from those who think online gambling will lead to increased gambling addiction and even from brick and mortar casinos who fear the competition.[20] Governor Bobby Jindal has already pledged to prevent any legislation aimed at legalizing online gambling in Louisiana.[21]

## Conclusion

A new Governor in 2015, the fear of losing tax revenue to illegal online gambling, and the lure of adding jobs to the state's economy, may be the right combination to kick start Louisiana's online gambling industry in 2015. Until then, we expect Caesar's (who owns one of the state's largest casinos and the World Series of Poker brand), and other private casino operators to quietly move behind the scenes to establish the political backing to open up Louisiana to this final gambling frontier.

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[1] John Chase: Frenchmen, Desire, Good Children, Chapter 7 (1960).

[2] Id.

[3] Abbye Gorin and Wilbur Meneray, The Rivergate, Appendix 3

[4] John Kendall: History of New Orleans, Chapter 31 (1922).

[5] Id.

[6] The Unlawful Internet Gambling Act, 31 USC §§ 5361-5367 (2006).

[7] See In Re Mastercard International, Inc., 313 F.3d 257 (5th Cir. 2002).

[8] B. Gambling by computer is the intentional conducting, or directly assisting in the conducting as a business of any game, contest, lottery, or contrivance whereby a person risks the loss of anything of value in order to realize a profit when accessing the Internet, World Wide Web, or any part thereof by way of any computer, computer system, computer network, computer software, or any server.

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D. Whoever commits the crime of gambling by computer shall be fined not more than five hundred dollars, or imprisoned for not more than six months, or both.

E. Whoever designs, develops, manages, supervises, maintains, provides, or produces any computer services, computer system, computer network, computer software, or any server providing a Home Page, Web Site, or any other product accessing the Internet, World Wide Web, or any part thereof offering to any client for the primary purpose of the conducting as a business of any game, contest, lottery, or contrivance whereby a person risks the loss of anything of value in order to realize a profit shall be fined not more than twenty thousand dollars, or imprisoned with or without hard labor, for not more than five years, or both.

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G. The conducting or assisting in the conducting of pari-mutuel wagering at licensed racing facilities under the provisions of Chapter 4 of Title 4 of the Louisiana Revised Statutes of 1950, shall not be considered gambling by computer for the purposes of this Section so long as the wagering is done on the premises of the licensed establishment.

12 See, e.g., S.D. Codified Laws § 22-25A-7 (2002); 720 Ill. Comp. Stat § 5/28-1 (1999); Wash. Rev. Code § 9.46.240 (2006); Utah Code §§ 76-10-1102(4)-(5).

[10] La. Rev. Stat § 14:90.3(E).

[11] See La. R.S. 14:90.3(A).

[12] Matt Richtel and Thomas Crampton, Arrest of Second Major Online Gambling Figure is a First of State Officials, New York Times, September 8, 2006.

[13] Bossier City Man Sentenced for Running an Internet Gambling Operation, Targeted News Service, July 3, 2013.

[14] See I. Nelson Rose and Rebecca Bolin, Game on for Internet Gambling with Federal-Approval, States Line Up to Place Their Bets, Connecticut Law Review, December 2012, p. 665-666 (hereinafter "Game On") and La. R.S. 4:149.5(E).

[15] U.S. Dep't of Justice, O.L.C. <http://www.justice.gov/olc/2011/state-lotteries-opinion.pdf>

[16] Global Gaming Business Magazine, Online Gaming In Delaware Off To A Slow Start, Vol. 13, No. 3, March 2014.

[17] Global Gaming Business Magazine, New Jersey Sees 50,000 Sign Up For Online Gambling, Vol. 13, No. 1, January 2014.

[18] See [www.legis.la.gov/legis/billinfo.aspx?i=221960](http://www.legis.la.gov/legis/billinfo.aspx?i=221960) and Maria Clark, States Race to Trump Federal Online Gambling, New Orleans Citybusiness, June 12, 2013.

[19] Renita Young, State Legislature Eyeing Internet Gaming in Upcoming Session, Times-Picayune, through NOLA.com, January 22, 2014.

[20] Sheldon Adelson, the CEO of Las Vegas Sands, has opposed online gambling on both grounds. He has garnered the support of numerous Republican politicians (no doubt aided by generous campaign contributions), and is seeking a comprehensive federal legislation barring online gambling. However, it seems unlikely that such legislation would pass at this time.

[21] Governor Bobby Jindal, Internet Gambling a Bad Bet for American Middle Class, Greater Baton Rouge Business Report, February 14, 2014