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DRAFT POLICY FRAMEWORK FOR THE REGULATION OF INTERNET GAMING

To be considered by the NCLGS State-Federal Relations Committee on June 6, 2014.

Sponsored for discussion by Rep. Jim Waldman (FL)

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

NCLGS believes an effective regulatory and licensing system for states wishing to participate in online gaming should increase public trust and confidence in legalized gaming, 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 online gaming 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 gaming and those who do not
- facilitate cooperation and information exchange among state policymakers and gaming regulators
- support uniformity in Internet gaming legislation while protecting states' rights to regulate gaming within their respective states
- establish minimum "benchmark" requirements for states that wish to adopt Internet gaming
- support the establishment of strong consumer protection and responsible gaming standards
- research differing proposals and views regarding taxation and revenue sharing for interstate online gaming
- explore differing views on appropriate regulatory models and structures for Internet gaming

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 gaming legislation within their respective states, as well as, multi-jurisdictional Internet gaming 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 online banking, in order to minimize the risk of theft of monies or personal information.

1.2. **Fair and appropriate dispute resolution mechanisms.** Legislation should require that licensees develop dispute resolution mechanisms for any problems associated with player accounts that are fair and reasonable.

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.

1.4 **Notice to players of operator policies.** Internet gaming websites should be required to clearly and conspicuously notify player of their policies regarding software aids, dispute resolution, payment processing, 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.

2. PROBLEM GAMBLING PROTECTIONS

2.1 **Nation Council of Problem Gambling (NCPG) Internet Responsible Gaming Standards.** In January 2014 NCLGS passed a resolution supporting the NCPG standards as best practices for responsible Internet gaming. 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 gaming measures.** States may wish to consider policies that obligate licensees to adopt appropriate pro-active measures to detect potential problem gambling behaviors.

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 gaming 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 gaming, the character, honesty, criminal history, associations with criminals, financial resources, 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 gaming or the security of games and gaming platforms, such as utility companies or telecommunications providers, 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 gaming. 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 blocking of illegal websites. 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 block, restrict, or otherwise penalize illegal websites. Multi-jurisdictional agreements should provide for the co-management of enforcement efforts between member jurisdictions, while allowing each jurisdiction to retain authority over gamblers within their borders.

6. PAYMENT PROCESSING

6.1 Use of credit, debit or prepaid cards to fund gaming accounts. As a matter of policy, legislation may seek to limit the use of credit cards, or access to credit for online 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 or that withdrawals can only be made to the same source as the original deposit.

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 gaming 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 gaming. Legislation should provide general policy guidance to the regulator and only provide specific instructions on policy areas of particular importance.

8.2 Legislative review. State lawmakers may wish to include one or more of the following to assist with legislative oversight and ensure that administrative rulemaking produces sound regulation, (1) a reasonable sunset provision for any Internet gaming law, (2) regulatory data gathering and research requirements, and/or (3) a requirement for periodic review of all Internet gaming 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 gaming 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 gaming 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.

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

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

10. GAME CHOICE AND LEGALITY

10.1 Types of Internet gaming permitted. Each state is unique with varying priorities concerning gaming 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 gaming 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 gaming within their own jurisdictional borders.

10.3 Sports wagering prohibitions. Unless and until there is a change in federal law via the congressional legislative process or court action, sports wagering cannot be included in any Internet gaming legislation.²

10.4 Internet gaming and federal Indian law. The legalization of Internet gaming 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.³

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 February 2014 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
- Dover Downs
- Gaming Laboratories International
- GTECH Corporation
- MasterCard Worldwide
- National Council on Problem Gambling
- National Indian Gaming Association
- Netsweeper, Inc.
- North American Association of State & Provincial Lotteries
- Brad J. Polizzano, Esq.
- Larry Runkle
- Martin Shapiro
- Marco Valerio
- Wali Wruble

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² See, The Wire Act, 18 U.S.C. § 1084; The Professional and Amateur Sports Protection Act, 28 U.S.C. § 3701.

³ 25 U.S.C. § 2701 et seq.