

# One Governor, two vetoes: New Jersey's i-gaming bills

The potential of the latest online gaming bill that has landed on the desk of the New Jersey Governor Chris Christie, is viewed by some commentators as huge. The successful passing of this bill would not only open up online gambling in the state, but also possibly influence the chances of future i-gaming bills in other US states. Sarah Coffey, an Associate at Ifrah Law, explains what this latest bill entails, analyses Governor Christie's decision and looks at what this means for gaming in New Jersey.

On 7 February 2013, New Jersey Governor Chris Christie conditionally vetoed an internet gambling law that easily passed the New Jersey Assembly and Senate late last year. This came nearly two years after he unconditionally vetoed a similar internet gaming bill in March 2011. Although similar in nomenclature, these actions could not be more different. In fact, the recent 'conditional' veto paves the way for internet gaming in the state.

In 2011, Governor Christie vetoed bill S-490 because he believed it was inconsistent with his goal of revitalising Atlantic City's casinos. He was concerned that the proposed law would allow establishments outside Atlantic City to offer online gaming in violation of the New Jersey law that limits casino gaming to Atlantic City. He also opposed the use of internet gaming tax revenue for horseracing subsidies. Finally, he objected to the fact that the bill deemed all wagers placed over the internet as being placed in Atlantic City, regardless of where the player is physically located, stating that the proposition was a 'legal fiction' that contradicted the clear language of the state Constitution limiting gaming to Atlantic City. He concluded that such a significant change in state law required a referendum of the voters.

The legislature responded by developing a new bill that removed the horseracing earmark and prohibited commercial i-gaming establishments outside Atlantic City. The new i-gaming bill, A2578, was approved by the New Jersey Assembly and Senate and sent to the governor for approval on 20 December 2012.

Even with those changes in place, however, it was not clear whether Governor Christie would ultimately support the legislation

during the 45-day review period in which he could sign or veto it. The new bill did not address all of the concerns that the governor voiced in his 2011 veto. A2578 still contained the 'legal fiction' that internet wagers placed anywhere in the state would be deemed to take place in Atlantic City, where the gaming servers will be located. Like the last bill, A2578 is an act of the legislature rather than a voter referendum. Finally, the governor was still concerned about the potential competitive harm that internet gaming could cause to Atlantic City. In a 22 January 2013 'Ask the Governor' radio show, Governor Christie suggested that web gaming could 'drive traffic away from Atlantic City' by allowing people to gamble from their homes. As the 45-day review period wore on, speculation increased that he might veto the bill again.

On 7 February, the last day of the review period, Governor Christie announced his conditional veto. Despite the use of the word 'veto,' this action could instead be described as conditional approval pending the legislature's acceptance of proposed changes from the governor. Far from striking down the i-gaming law, Governor Christie's conditional veto statement announced that 'now is the time for our State to move forward, again leading the way for the nation, by becoming one of the first states to permit internet gaming.'

Governor Christie's proposed changes to the bill are relatively minor. Among other changes, he increased the licensing fee, increased the tax rate from 10% to 15% and added a sunset clause that mandates that the law will expire in 10 years if not renewed by an act of legislature. His conditional veto voiced no reservations about the legal fiction of where bets are

placed, nor did it contain any mention of a voter referendum. Presumably the sunset clause was intended to give him some cover if ever pressed on the issue of why he approved an i-gaming law without a voter referendum.

The heart of the bill remains largely unchanged after the conditional veto. The law would permit licensed Atlantic City casinos to offer internet gaming within the territorial bounds of the state of New Jersey. A casino may offer i-gaming independently or team with a licensed 'internet gaming affiliate' that operates the internet gaming system. An affiliate operator must proceed through the full casino licensing application and investigation process - an exhaustive, lengthy, and expensive proposition that only established i-gaming operators are likely to undertake. A less intensive application process is available to companies who merely seek to license their gaming software to a casino rather than operate the platform on behalf of the casino. These software providers may apply for a Casino Service Industry Enterprise license - a somewhat shorter application with an application fee of only \$5,000.

In addition to obtaining a casino licence, a gaming operator - whether the casino or an internet gaming affiliate - must apply for and receive an internet gaming permit from the New Jersey Division of Gaming Enforcement (DGE). The regulations and technical requirements for receiving such a permit have not yet been determined. The law leaves regulation of this matter to the DGE, which is expected to announce proposed regulations in the next few months. The regulations will specify technical requirements regarding age verification, location, anti-tampering precautions, and

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security. The DGE will also determine by regulation a list of games 'suitable for use for wagering though the internet,' but it is expected that a full range of casino games will be approved.

Given the relatively insignificant nature of the governor's changes, it is not surprising that it quickly proceeded to approval by the legislature. The Division of Gaming Enforcement will take a number of months to formulate specific i-gaming regulations and standards, and to consider public comment before giving final approval. With the regulations in place, licensees and licence applicants will submit their software and i-gaming platforms to be tested, and it is possible that could go live in the fall of 2013.

Governor Christie's about-face on the issue of internet gaming since 2011 is likely a response to a number of external factors, including the US Department of Justice's September 2011 legal opinion letter reversing the federal government's long-held stance that federal law prohibits most forms of internet gambling. Additional factors may include the introduction by other states - chiefly Nevada, Atlantic City's major gaming competitor - of internet gaming laws. Finally, Governor Christie may now appreciate the importance of becoming a first entrant into this emerging market, so that it will already be an established presence in i-gaming when other states later approve it, making New Jersey a *de facto* hub for interstate gaming compacts similar to that of multistate lotteries.

Governor Christie's conditional veto was ultimately a seal of approval on the future of gaming. He recognised - as did the legislators which gave the bill bipartisan support - that allowing Atlantic City casinos to expand

their reach to an online market would not weaken the land-based industry, but rather strengthen it by introducing a new audience to its products. Web-based gaming will tie in with land-based incentives such as tournament entries and hotel vouchers to bring new audiences to the casinos and the surrounding establishments. With increased competition in the gaming market, New Jersey is gaining an important edge by recognising the future of this profitable and popular industry.

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