

# INTER-STATE DEAL MAKING

## NEVADA AND NEW JERSEY LOOK TO COMPACT

Once considered rivals in the race to become the first state in the nation to legalize iGaming within their borders, Nevada and New Jersey now appear poised to broker a deal that would allow the two states to look beyond their own borders for player liquidity, writes **Rachel Hirsch**, attorney at the Washington, DC-based law firm, Ifrah PLLC.

**Although Nevada is** now the only state to offer regulated real money online poker sites under a private sector model, its population is too small to provide a sufficient player base to ensure long-term profitability. With a projected go-live date of November 26, 2013, New Jersey may hold the key to market dominance for both states.

### Market competitors

Industry experts long maintained that an online gambling compact between Nevada and New Jersey was unlikely. The two largest gambling hubs in the nation have always competed to be the premiere locale for the gambling elite. This summer, however, Jim Murren, CEO of MGM Resorts International, said he sees the chances of Nevada and New Jersey coming together on the issue of online gambling within the next year as “likely.”

Nevada and New Jersey have not always been in-sync on the issue. In 2011, Nevada became the first state to legalize intra-state online poker following a private sector model. With competition looming from the East, in February, Nevada lawmakers fast-tracked a

new iGaming bill into law, which authorizes the state to enter into inter-state compacts. On April 30, 2013, Ultimate Poker made history by becoming the first company to offer online poker in a regulated market in the US. In September, Caesars Interactive launched its World Series of Poker website in Nevada.

Although Nevada was the first state to legalize private sector iGaming within its borders, New Jersey was very close behind. A week after Nevada passed its online poker bill, New Jersey passed its own iGaming legislation. Unlike in Nevada, however, New Jersey’s iGaming law is not limited to poker. New Jersey casinos or their partners would be allowed to offer the same games that are currently offered on Atlantic City casino gaming floors.

### Key differences

While opening the door to inter-state compacts, Nevada’s iGaming law also closes off, for at least five years, opportunities to enter the market for any online company that has offered online gambling to Americans

since the 2006 passage of the Unlawful Internet Gambling Enforcement Act (UIGEA). New Jersey’s iGaming law contains no such restrictions. In fact, New Jersey’s law is very inclusive, not only allowing for reciprocal agreements with other states that have legalized online gaming, but also potentially allowing players physically located within its borders to play against international players. This broadens the playing field to reciprocal agreements with any international jurisdiction that permits online gaming, so long as those agreements are not inconsistent with federal law.

Differences in license requirements are what raise the most questions regarding how inter-state compacts might run. For example, will the compact be limited to online poker, following Nevada’s regulatory scheme, or will players in Nevada be able to play casino games offered by New Jersey providers? Other questions concern whether Nevada’s “bad actor” clause will prevent some New Jersey operators, who offered online gambling in the US post-UIGEA, from offering play to Nevada residents. Consumer protection will also become a cause for concern. How will the states safeguard minors and those exhibiting addictive behavior from abuses outside of their borders? How will they combat credit card fraud and identity theft?

### Long-term profitability

Nevada is too small to provide a sufficient player base to run a profitable online poker game. Only time will tell if Ultimate Poker and WSOP.com can generate enough players within Nevada's borders for the state to be successful on its own. The size of Nevada's online gaming market is still unknown, as the Gaming Control Board will not break out monthly revenues from Internet poker into its own category until at least three websites are active. Currently, revenues from online gaming are co-mingled with revenues from live poker games.

Yet, with a population of approximately 2.8 million, compared to New Jersey's (approximate) 8.8 million, it is highly probable that Nevada will struggle to maintain a purely intra-state iGaming model. Profitability is directly tied to the size of the player pool. Nevada's transient market of tourists may generate revenue for its land-based casinos, but New Jersey's more stable residential population will attract more players to the online table. Its proximity to two major cities, New York and Philadelphia, with a combined population of approximately ten million, also plays in New Jersey's favor. Like Nevada, New Jersey only requires that all players be physically located within the state; they do not need to be actual residents of the state to play online.

So, Nevada needs New Jersey, and when New Jersey launches online gaming in November, the opposite may also prove to be true. Both states seem open to the possibility of an inter-state compact. The Nevada Gaming Control Board told Reuters that research into how such a deal would work is "nearing completion." Nevada Assemblyman, William Horne, who led the way for Nevada's online poker law in 2011, expressed that "there's a desire in both jurisdictions to get something done." In a recent interview, New Jersey State Senator, Ray Lesniak, stated that combining the two markets "would be a good idea" that could allow both states to "dominate the entire market."

### Future possibilities

The possibility of an inter-state compact does not end with Nevada and New Jersey. According to MGM CEO, Jim Murren, at least 40 states are considering online gambling measures as revenue enhancers. Well-populated states such as Illinois, New York, and California have seriously considered regulating online gaming within their borders. A compact between Nevada and New Jersey could encourage states like California, with the fifth largest economy in the world, to pass its own iGaming measures. This would ensure market dominance, but would not necessarily require California to

pass iGaming legislation. Such a result can be achieved simply by California's governor acting through executive authority. Of course, California may choose to offer online poker under an intra-state model. However, a compact between the two casino capitals in the nation, and the increased player liquidity and revenue for both states that will result, may be enticing enough for California to forgo a solely intra-state model.

For now, short of a uniform online poker solution at the federal level, inter-state compacts may be the only way to make iGaming viable for both the states and the market participants. As federal legislation continues to stall, the environment is ripe for Nevada and New Jersey to make a deal to assert market dominance. But until then, it will continue to be each state for itself.



**Rachel Hirsch** is an attorney at the Washington, DC-based law firm of Ifrah PLLC. Ms Hirsch focuses her practice on complex litigation and transactions, with a particular emphasis on iGaming and Internet marketing and advertising. Her clients have included PokerStars, Full Tilt Poker, and Microgaming. Ms Hirsch graduated with honors from the University of Maryland School of Law and practiced at Venable LLP prior to joining Ifrah Law. Email: [rhirsch@ifrahlaw.com](mailto:rhirsch@ifrahlaw.com).