

Response by the Campaign for Fairer Gambling to the National Council of Legislators from Gaming States “Statement of Policy” on an Internet Gaming Act

Los Angeles, December 2024

Summary

The National Council of Legislators from Gaming States (NCLGS) has proposed an Internet Gaming Act to serve as “model legislation establishing legislative and regulatory standards for implementing internet gaming at the state level.” This Act is intended to extend regulation and oversight over all aspects of internet gaming operations, based on 12 main principles.

While the Campaign for Fairer Gambling (CFG) welcomes any intervention that puts forward the case for stronger regulatory oversight, we are not fully convinced by the rationale of 3 of the 12 principles. These principles are:

***A:** That it is in the state’s interest that the implementation of iGaming be accomplished in a manner that compliments, and does not adversely impact upon, licensed casino facilities in that state.*

***G:** That operators are committed to providing the highest standards of customer care and promoting responsible gaming practices, and that iGaming legislation should establish requirements in the public interest as part of obtaining and maintaining a license.*

***H:** That a tax rate for internet gaming is established which maximizes revenue and allows for competition with other jurisdictions without creating a barrier of entry for future market participation. A rate of between 15% and 25% is proposed.*

CFG argues that there are fundamental flaws in the argument for each of these 3 principles.

First, on **Principle A**, the impact on other established gaming facilities should not be the only consideration when considering the implementation and licensing of iGaming in a state. All other economic activity and socioeconomic consequences in a state should be considered, including the fiscal cost of gambling-related displacement and harm, in order to establish a full picture of what such implementation would actually mean.

Second, on **Principle G**, there is no evidence that “responsible gaming” as currently practiced provides the highest standards of customer care, let alone acts in the public interest. Without reform of the sector, it is undesirable for current responsible gaming practices to be seen as a reason for the obtaining and maintaining of licenses.

Third, on **Principle H**, there is no evidence that higher tax rates applied to a sector impede competition. On the contrary, the proposed 15% to 25% would be a rate which is significantly lower than that already applied in some states, meaning that there is scope for an increase on that proposed rate without undue concern about the impact on competition.

Principle A

State legislators should seek to minimize any adverse impacts from the implementation of iGaming, not just the adverse impacts on other gambling facilities.

The expansion of internet gambling results in the expansion of overall gambling consumption, the expansion of intensive consumption and, therefore, the expansion of gambling harms.

Consequences of this include:

- An increase in the socio-economic costs of relevant services such as health and justice
- The detrimental use of savings and credit to fund intensive consumption
- The transfer of disposable income spends from alternative trades and sectors in the local community

- A restriction in total economic activity due to lower employee numbers, shorter supply chains and reduced economic interactions compared to alternative spend
- A reduction in taxation revenue from spend in alternative trade and sectors

Principle G

There is no evidence that the highest standards of customer care are being delivered through the current responsible gambling model.

To the best of our knowledge, there is no evidence that any state legislature or regulatory authority is contemplating any of the following measures:

- Multi-operator standards of intervention protocols and / or triggering levels
- Investigation of the degree to which harmful intensive consumption is a consequence of marketing and promotion
- Constraint of general marketing through use of affiliates, celebrities, influencers, pundits, tipsters, memes and AI
- Constraint of targeted individual marketing through use of personal data

The lack of strict licensing suitability standards has placed the potential efficacy of any improvement in the responsible gambling model in jeopardy.

Licensees have a fiduciary duty of maximizing revenues which is in polar contradiction to the theory of minimizing harm. The unbalanced tension in this relationship will limit the generational sustainability of the sector. Similarly, it is clear that the commercial activities of the sector, if left unchanged in its practices, run counter to the public interest.

Principle H

Unlike land-based gambling, which requires personal attendance at premises, internet gambling is not generally in competition with adjacent states.

Technological growth is already a primary feature of internet gambling that will not be impacted by the level of tax rate.

Only those with adequate resources of capital, personnel and probity should be able to enter the market. There should be appropriate barriers that are not related to the level of tax rate.

The level of tax rate must be sufficient to compensate for all the downsides of social, economic and fiscal detriments, in order for the state to break level prior to the dedication of allocations. It is inconceivable that the proposed upper bound of 25% achieves more than a break-level floor.

The recommended range is a strong indicator that the NCLGS policy is more aligned with the commercial interests of the operators than with maximizing the fiscal benefit. If fiscal maximization was the goal, then the recommended range would be a doubling of the current minimum to create a range of between 30% and 50% – rates which are already applied in some regulated iGaming markets.

Other Principles

Other principles laid out by NCLGS in this proposed Act also have notable omissions.

First, the Act does not address directly the number of licensees or the competition in online gaming and with online sports betting.

Casino game content is very similar from one operator to another and there is virtually no price differentiation, unlike sports content. While granting a monopoly to one provider is not best policy, it remains doubtful if there is any benefit to allowing more than a small handful of online gaming licenses in a state.

A low number of licensees should result in lower overall marketing expenditure, making legal online gaming more acceptable to the public, a lower incidence of harm generated through marketing, and should enhance the viability of a higher rate of tax. The words of **Principle B**,

which propose that “the state’s objective is to attain public confidence while shrinking illegal gaming activities and increasing new revenue to the state”, should pay heed to this fact.

The legalization of online sports betting has created a variety of issues that will not apply to online gaming. The alleged anti-competitive practices in breach of federal law by the Sports Betting Alliance duopoly of Draft Kings and Fan Duel is indicative of the weakness of state regulation. Licensees that do not fear license revocation are granted a license to act with impunity.

Second, online sports betting and online gaming can be operated under different licenses and with different accounts involving no direct cross-sell under one operator. Similarly, the danger of data abuse in cross-marketing would be eliminated by not allowing an operator to hold both an online sports betting license and an online gaming license.

The market entrants from DFS and overseas have backgrounds of disruption rather than compliance. For states that have legal land-based gambling with a history of compliance, applications could be restricted to those operators.

Principle B of the Act states that “it is in the public interest that the implementation and administration of iGaming be strictly regulated.” But strict regulation should be synonymous with strict suitability and licensing standards. Many of the entities that have entered the legal internet gambling space have dubious backgrounds related to non-white-market activity. This is despite the fact that **Principle C** of the Act states that the objectives of the proposed Gaming Regulatory Authority are to ensure “that the management and operation of internet gaming is carried out by persons who are suitable for participation in the gaming industry, and remains free from criminal influence or exploitation”.

CFG

In Great Britain, the gambling sector, their trade bodies and persons acting in financial accord with the sector have been critical of CFG and its associates. The founder and funder of CFG, Derek Webb, was falsely accused of acting in financial self-interest and the interest of casinos

when campaigning against gaming machines in betting shops. Campaigners have been falsely described as “anti-gambling prohibitionists”.

The UK trade association, the Betting and Gaming Council, has lobbied using out-of-date prevalence survey data which identifies a “problem” gambling rate of under 1% and ignores the official recent Gambling Commission approved Gambling Survey for Great Britain which identifies a rate in excess of 2%.

It would be a dereliction of legislative duty to accept at face value all representations by the sector, and those in financial alignment with it.

Derek Webb has personal knowledge of the complacency of US state licensing. He is aware that state regulators did not investigate licensee civil illegality in respect of key matters pertaining to the regulation of the sector.

First, he prevailed as a plaintiff against an attempted monopolist in the proprietary casino table game market, with some proofs to a clear and convincing standard, that the defendant had engaged in sham litigation using fraudulently obtained patents, in breach of federal anti-trust law.

Second, he acted as a funder for a successful plaintiff against an actual monopolist in the casino shuffling machine market with similar proofs of sham, fraud and breach.

It would be legislative complacency to expect that the current regulatory authority model would deliver the theoretical benefits of legalization that legislators aspire to deliver.

CFG does not oppose legal, demand driven land-based and internet gambling, with adequate rates of taxation, with adequate content controls, with adequate funding for, and provision of, harm amelioration, and with adequate regulatory oversight.