

SUMMARY ANALYSIS OF AMENDED BILL

Author: Wright Analyst: Diane Deatherage Bill Number: SB 51
 Related Bills: See Prior Analysis Telephone: 845-4783 Amended Date: September 12, 2013
 Attorney: Bruce Langston Sponsor: _____

SUBJECT: Internet Gambling Consumer Protection and Public-Private Partnership Act of 2013/California Gambling Control Commission in Consultation with Department of Justice, Treasurer, and FTB to Report to Legislature Annually on State's Effort to Meet Policy Goals

SUMMARY

This bill would do the following:

- Establish a licensing and regulatory framework to allow licensees located in California to offer online poker games to authorized players located within the state.
- Require the Franchise Tax Board (FTB) to create a form to allow poker gaming operators to report players' winnings electronically to the FTB, and
- Require the gaming operator to withhold state income tax from gambling winnings.

This analysis will address the bill only as it impacts the department and its programs, operations, and state income tax revenue.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The September 12, 2013, amendments added and modified provisions related to the authorization and regulation of Internet poker within the state as well as making a number of technical, nonsubstantive changes. As a result of the September 12, 2013, amendments, several technical considerations and an additional implementation consideration were identified. Additionally, the revenue estimate has been updated to reflect newly released growth and marginal tax rate data. Except for the "This Bill", "Implementation Considerations," "Technical Considerations," and the "Economic Impact" sections, the department's analysis of the bill as introduced December 19, 2012, still applies.

Board Position:
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Asst. Legislative Director	Date
Gail Hall for Jahna Carlson	1/8/14

ANALYSIS

THIS BILL

This bill would allow eligible entities that meet specific background requirements to submit an application to the California Gambling Control Commission (Commission) for a 10-year license to operate online gaming website(s) offering only the play of "poker" in the State of California. The Commission and the Department of Justice would oversee the licensees, which would be required to regulate the Internet gaming sites and withhold income tax in an amount equal to 5 percent of a registered player's tournament winnings if the amount of winnings, after deduction of the tournament charge, is in excess of \$600 and if those winnings are also at least 300 times the tournament charge. Mandatory tax withholding would be determined on a tournament-by-tournament basis. The licensee would also be required to remit the amount of money withheld from a registered player's tournament winnings to the FTB directly from the registered player's account. The funds held in a registered players account could be used to remit tax proceeds due and owing from a registered player to the FTB.

The FTB would be required to publish a form annually that would be utilized by licensees to report the winnings of its members to the state. This form would include a registered player's name, social security number, the total amount deposited into a player's gaming account during the year, the amounts of a player's total winnings and losses during the year, and the amounts withheld by the licensee during the year for purposes of federal or state income tax, and whether the registered player opened or closed his online account during the year. This form would be filed electronically by the licensee with the FTB.

The FTB would be required to submit a request for costs needed to implement this bill for the upcoming fiscal year to the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Budget, the Senate and Assembly Committees on Governmental Organization, and the Department of Finance by March 31 of the preceding fiscal year. A justification of these costs would be provided with each submission.

State agencies would have the authority to adopt rules to implement the duties that would be required under this bill. As such, the FTB may adopt rules to collect and process the taxes withheld, collected, or remitted by licensees and gamers.

This bill would create the Internet Gambling Fund. Upon initial submission, an applicant would be required to submit an application and a deposit no less than \$1,000,000, to cover the reasonably anticipated costs to complete the necessary background investigation and evaluation of the applicant's suitability. Once licensed and before collection of fees from registered players, the licensee would be required to remit a one-time license fee of \$15,000,000. In exchange for the state allowing a licensee to do business in California, the licensee would be required to transfer a minimum of 10 percent of its gross revenue to the Treasurer on a monthly basis, and the Treasurer would be required to transfer that money to the Controller to be deposited into the Internet Gambling Fund. The one-time license fee would be credited against monthly transfers based on the 10 percent of gross revenue for the first five years of operation. Upon depletion of the license fee, the licensee would be required to remit to the Treasurer the amount of the monthly fee.

The bill would define various terms including the following:

- “Commission” means the California Gambling Control Commission.
- “Gambling” means to deal, operate, carry on, conduct, maintain, or expose for play any game for money.
- “Game” means any gambling game.
- “Gross revenues” means the total amount of money paid to a licensee pursuant to activities authorized under the chapter that would be created by this bill. “Gross revenues” would not mean player wagers or deposits.
- “Licensee” means an entity licensed to offer the play of authorized games to registered players on an intrastate Internet website.
- “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.
- “Poker” means a card game that is played by two or more players who wager and compete against each other on the cards dealt to them out of a common deck of cards, not banked by either the house or by a player, in which success over time is influenced by the skill of the player, and wagers of one player are often designed to affect the decisions of another player in the game.
- “Registered player” means a player who has registered with a licensee to play authorized games.
- “Tournament” means a department-approved competition in which registered players play a series of authorized games to decide the winner.
- “Tournament winnings” means the amount of any prize awarded to a registered player in a tournament.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author’s office to resolve these and other concerns that may be identified.

This bill lacks administrative details necessary to implement the bill and determine its impacts to the department’s systems, forms, and processes. The bill is silent on the following issues:

- A funding mechanism for the FTB’s start-up and on-going costs to administer the provisions of this bill. Absence of a funding mechanism could delay implementation or require the diversion of resources from existing revenue generating workloads.
- A withholding percentage on non-tournament play.
- The dates a licensee transfers withheld amounts to the FTB.
- A definition of the phrase “tax proceeds due and owing.”
- Whether and to what extent the FTB could use a player’s personally identifiable information.
- Whether withholding penalties would be applicable.

- Whether and to what extent amounts withheld would be available to be offset against non-tax debts that the department is authorized to collect. Additionally, if the author intends that withheld amounts be available to offset child support obligations, this bill must be amended to reauthorize the department to collect on behalf of the Department of Child Support Services.

This bill would establish a withholding and reporting regime that appears to be inconsistent with current rules, practices, procedures, and penalties under the Revenue and Taxation Code (R&TC). For example, the licensee would be required to withhold of 5 percent of a registered player's winnings, whereas the existing withholding rate is generally 7 percent. Additionally, this bill lacks detail on the timing of submitting withheld amounts to the FTB. For ease of administration, the author may wish to consider amending this bill to specify that payments received by players under this act would be subject to withholding and reporting requirements under existing provisions of the R&TC and removing the withholding and reporting provisions from this bill.

This bill would require the licensee to retain for one year after they are created all books, records, documents, financial information, and financial reports, including the information used to prepare the annual form electronically submitted to the FTB. The general statute of limitations is four years from the date of filing. Destruction of documentation prior to the expiration of the statute of limitations could result in disputes among taxpayers, licensees, and the department. It is recommended that the author amend the bill to specify a retention period that is consistent with existing retention requirements for similar data.

TECHNICAL CONSIDERATIONS

On page 36, line 31, and page 45, line, 39, this bill needs to be amended where the phrase "social security number" appears, the phrase "or taxpayer identification number" should follow.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact* of SB 51 Internet Gambling Consumer Protection & Public-Private Partnership Act of 2013 As Amended September 12, 2013 For Taxable Years Beginning On or After January 1, 2014 Assumed Enactment After June 30, 2014 (\$ in Millions)		
2014-15	2015-16	2016-17
\$28	\$26	\$27

*This estimate does not include any revenue attributable to fees imposed on licensees' gross revenues.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

LEGISLATIVE STAFF CONTACT

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