

GamblingCompliance

## HR 2267 – Frank Bill Amendments

A Special Report By The GamblingCompliance Research Team

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*Domestic interests – including state lotteries and Indian tribes – were strengthened by amendments added to Rep. Barney Frank's bill to regulate online gambling in the United States, which was approved by the House Financial Services committee this week.*

## Introduction

The House Financial Services Committee [voted 41-22 on Wednesday to pass a bill that would legalize and regulate Internet gambling](#) in the United States.

The decisive vote signalled a growing movement in Congress toward regulating and taxing Internet gambling as other proposals also remain pending both in the House and the Senate.

Seven of the committee's 29 Republicans voted for the bill, which was originally authored by the committee's Democratic chairman, Rep. Barney Frank of Massachusetts.

Rep. Frank's [H.R. 2267](#) would authorize the US Secretary of the Treasury to establish a system to license and regulate Internet wagering, subject to additional oversight and licensing investigations performed by recognized state gaming authorities.

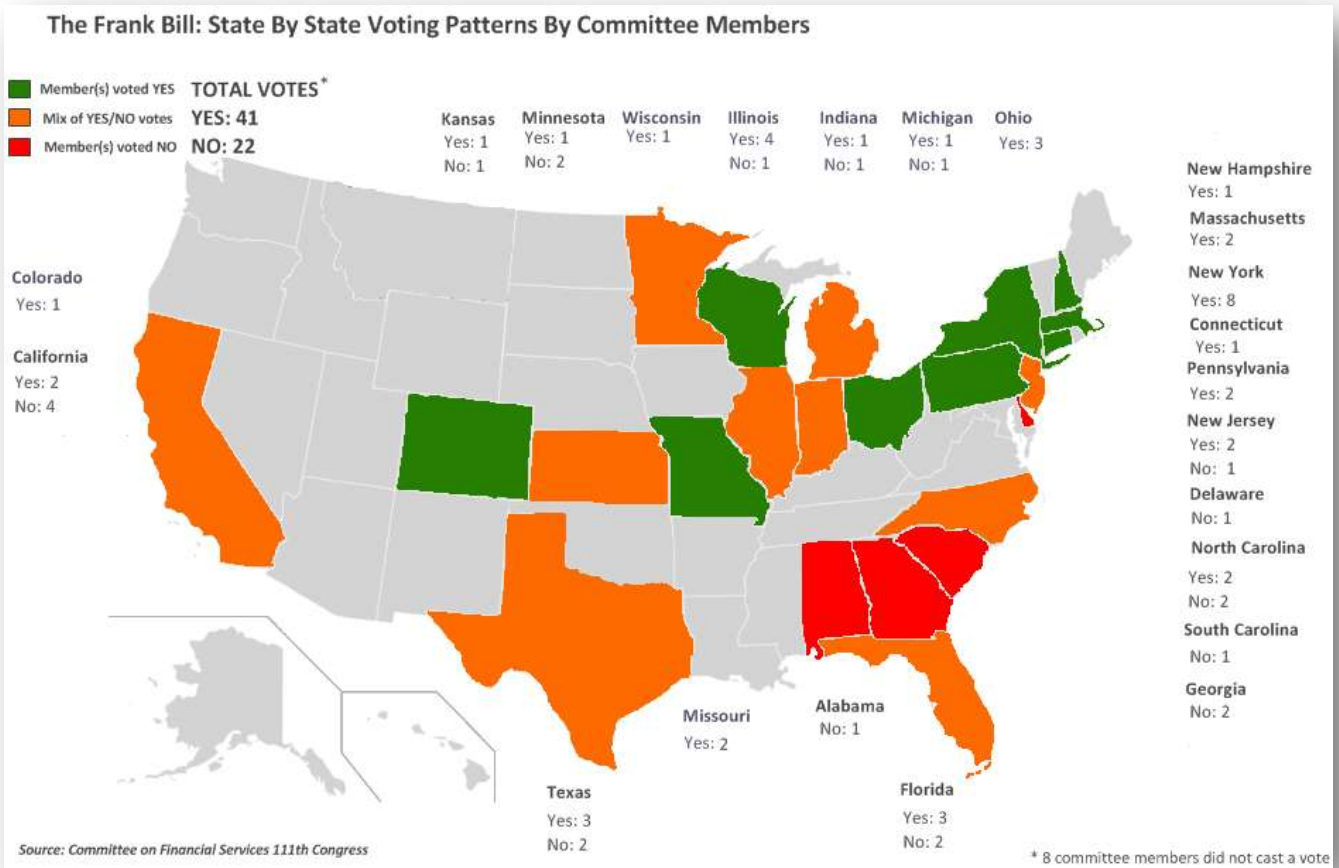
Wednesday's mark-up of Rep. Frank's H.R. 2267 saw fresh amendments attached for the bill, including several that would appear to significantly strengthen the hand of domestic interests in the event that Congress moves to approve the legislation before the turn of the end of the current session.

Among the successful amendments, which are summarised below, are proposals that would exclude from US licensing any companies that have previously violated existing state or federal gambling laws, as well as restrictions that would require applicants to have a substantial presence within the United States.

Other amendments clear the way for state lotteries to move online to offer games over the Internet within the confines of their own state borders outside of any federal approval.

State lotteries – as well as Internet horse racing operators – would also be excluded from a blanket ban on credit card payments for online gambling as proposed by committee chairman Frank himself.

The marked-up Frank bill also clarifies that nothing in the proposed legislation would require Indian gaming tribes to renegotiate existing compact agreements covering their land-based casinos.



## Sector Impacts

### Tribal Gaming

Representative Frank (D-Massachusetts) introduced [Amendment 12](#).

The amendment:

- Permits tribes to engage in Internet gaming without renegotiating their existing compact agreements or taxation arrangements with state governments covering their land-based businesses.
- Provides that, "Tribal operations of internet gambling facilities under this subchapter shall not impact an Indian tribe's status or category or class under its land-based activities."
- Requires the US Secretary of the Treasury to conduct 'meaningful consultation' with Indian tribes before any of aspects of the legislation potentially affecting tribes is enacted.

### State Lotteries

Representatives Peters (D-Michigan) and Hodes (D-New Hampshire) introduced [Amendment 14](#).

Amendment 14:

- Clarifies existing law to specify that state lotteries offering games over the Internet on an intrastate basis [would not violate the 1961 Wire Act](#).
- Makes explicit that state lotteries, as well as their 'vendors, suppliers and service providers', are not required to obtain a federal Internet gambling license in order for a lottery to move online on an intrastate basis.

It is worth noting that Michigan Rep. Peters was a former Michigan Lottery commissioner. His amendment was approved despite objections raised by union groups representing existing lottery retailers in gas stations and convenience stores.

## Payment Processing

Rep. Frank's Amendment 12 introduces a ban on the use of credit cards for the processing of regulated Internet wagers.

Exempted from the ban are entities accepting online pari-mutuel wagers placed in accordance with the Interstate Horseracing Act, as well as "any person involved in legal, land-based or state- or tribal-regulated intrastate gambling" – such as state lotteries operating inside their own borders.

## Sports Betting

Representatives King (R-New York) and Meeks (D-New York) introduced [Amendment 3](#).

The amendment states that licensees would remain prohibited from accepting "Internet bets or wagers on sporting events" with the exception of federally-sanctioned horse race bets.

The amendment tightens a looser ban on sports wagers that was included in Frank's original bill and [drew criticism from sports leagues including the NFL](#).

During the markup, Rep. Frank quipped, "I understand the NFL's horror. They are concerned that if this bill would pass without this amendment, people might actually start betting on sports."

## Off-Shore Gaming Interests

Representatives Sherman (D-CA), Bachus (R-AL) and Bachmann (R-MN) separately introduced a series of amendments which may potentially impact the ability of off-shore gaming operators to obtain US licences.

Representative Sherman (D-CA) introduced [Amendment 2](#) and [Amendment 16](#), while Representatives Bachus and Bachmann introduced [Amendment 13](#).

Representative Sherman's [Amendment 2](#) stipulates that applicants are ineligible for licensing if they fail to certify:

*"...in writing, under penalty of perjury, that the applicant or other such person, and all affiliated business entities has through its **entire history** [emphasis added]:*

*(i) Not committed an intentional felony violation of Federal or State Gambling laws; and,*

*(ii) Has used due diligence to prevent any U.S. person from placing a bet on an internet site in violation of Federal or State gambling laws."*

The amendment stipulates that "all entities under common control shall be considered affiliated business entities for the purpose of this sub-paragraph."

The amendment makes no distinction between violations of gambling laws prior to or after the passing of the Unlawful Internet Gambling Enforcement Act of 2006.

Representative Sherman's [Amendment 16](#), meanwhile, essentially states that only US-domiciled entities would be eligible to obtain licenses.

The amendment stipulates that applicants will only be suitable for licensing once they submit to the Treasury:

*"Certification that [they have] established a corporate entity, or other separate business entity in the United States, a majority of whose officers are United States persons and, if there is a board of directors, that the board is majority controlled by directors who are United States persons."*

Also, Amendment 16 grants the Treasury discretion to:

*"(C) Require licensees to maintain substantial facilities involved with the processing of bets or wagers from the United States within the United States.*

*(D) Require that the majority of all of the employees of the applicant or licensee, and of its affiliated business entities, be residents, or citizens, of the United States.*

*(E) Require licensees to maintain in the United States all facilities that are essential to the regulation of bets or wagers placed from the United States at a location that is accessible to appropriate regulatory personnel at all times."*

It should be noted the amendment states that sub-section (C) or (D) would be declared "null and void" should a World Trade Organization (WTO) arbitration panel rule that the provisions violate the trade commitments of the United States under the WTO.

Under the Bachus and Bachman [Amendment 13](#), license applicants "may not be determined to be suitable for licensing if they have on, or after the date of the Unlawful Internet Gambling Enforcement Act of 2006":

- Knowingly participated in, or should have known they were participating in, any illegal Internet gambling activity.
- Knowingly been owned, operated, managed, or employed by any person who was knowingly participating in any illegal Internet gambling activity.
- Received any assistance – financial or otherwise – from any individual who knowingly accepted bets or wagers from a person located in the United States in violation of Federal or State law.

Importantly, this prohibition would also apply to an license applicant that has "purchased", or "otherwise obtained" an entity, or "any other part of the equipment or operations of such entity" that has, "accepted a bet or wager from any individual in violation of United States law."

## State Opt-Out Periods

Representative Sherman's [Amendment 9](#) modifies the original Frank bill's requirement that states are entitled to 90 days from enactment of the legislation to determine whether they want to 'opt out' from the scope of the federal licensing regime.

Under the approved amendment, states would be entitled to "one full legislative session" to determine whether they wish to opt out. In the case of certain states, including California, this would grant an opt-out period of one year..

## Consumer Protection

Representative Campbell's (R-CA) [Amendment 8](#) lays out more stringent consumer protection requirements of licensees.

At a minimum, the amendment states that license applicants must establish a comprehensive program which:

- Verifies the identity and age of a customer, which must be made available in "real-time", through an automated process.
- Ensure that no customers under the age of 21 initiate or place wagers for "real money".
- Ensure that no customer located in a state or tribal land that "opts out" is able to place a wager.
- Provide "player-selected" responsible gaming measures, including: specific gambling losses, stake limits, loss limits, time based loss limits, deposit limits, session time limits, and time based exclusion.
- Require players to establish personal limits as a condition of play which must apply across all betting sites.

[Amendment 8](#) also calls for the Director of the Financial Crimes Enforcement Network (FINCEN) to maintain a list of "unlawful Internet gambling enterprises," beginning within 120 days of the enactment of the Frank bill, in order to prevent unregulated sites from continuing to operate in the US market.

Amendment 8 defines an 'unlawful Internet gambling enterprise' as:

Any person who, more than ten days after the date of the enactment of the legislation:

- Violates any provision of the 2006 Unlawful Internet Gambling Enforcement Act;
- Knowingly receives or transmits funds intended primarily for a person who violates the Act;
- Knowingly assists in the conduct of an unlawful Internet gambling enterprise.

The FINCEN black-list must include:

- All known Internet website addresses of the 'unlawful' enterprise.
- The names of all known owners and operators of the enterprise.
- Information identifying the financial agents and account numbers of the enterprise.

Representatives Bean (D-IL) and Kilroy (D-OH) introduced [Amendment 11](#), which requires the Secretary of the Treasury to "frequently monitor, evaluate and measure compliance effectiveness of each licensee's software, mechanisms, and other systems for preventing minors from placing bets or wagers through the Internet site of the licensee."

## Advertising Restrictions

Representative Kilroy (D-OH) introduced [Amendment 4](#), which calls for restrictions on Internet gambling advertising. Under Representative Kilroy's amendment, licensees are prohibited from engaging in 'inappropriate' advertising practices such as:

- Unsolicited e-mails targeting members of vulnerable populations.
- Targeting problem gamblers and minors.
- Internet advertising linked to search terms associated with children, problem gamblers, or other topics deemed inappropriate.

## The Road Ahead

The committee's approval of H.R. 2267, as amended, means the bill becomes eligible for a floor vote in the US House of Representatives.

However, observers note that a full House vote on such a controversial issue as Internet gambling may be unlikely to occur given the limited number of legislative days left before November's mid-term elections.

An alternative would be to have the Frank bill attached to broader, 'must-pass' legislation in a similar manner to which the Unlawful Internet Gambling Enforcement Act received congressional approval as part of the Safe Port Act in the United States Senate in October 2006.

But Rep. Frank said this week he would be [opposed to such a strategy](#).

"I would oppose that. I don't believe in that shenanigans," he said. "This is much too controversial to slip through without a vote."

An additional complication lies in the fact that H.R. 2267 does not include any revenue-raising provisions - rules allowing for the taxation of Internet wagers are instead contained in a [companion bill filed by Rep. Jim McDermott](#) (D-WA). The McDermott bill has yet to be scheduled for a vote before the House Ways and Means Committee, where it remains pending.

Nonetheless, the Frank bill's comprehensive approval in committee stage is considered by experts to be of genuine political significance, even if this specific measure is not ultimately enacted in the current congressional session which ends in December.

"This is a wonderful victory for proponents of regulation," said Joseph Kelly, professor of business law and recognized gambling expert at SUNY College, Buffalo.



## Approved Amendments Table

Amendment	Sponsor & Party Affiliation	State	Key Points of Amendments	Sectors Impacted
2	Brad Sherman (D)	California	Stipulates licensing guidelines favorable to US based operators.	Off-Shore gaming operators
3	Gregory W. Meeks (D) and Peter King (R)	New York (Meeks) New York (King)	Prohibits sports betting over the Internet.	Sports betting industry
4	Mary Jo Kilroy (D)	Ohio	Stipulates restrictive advertising measures.	Potential operators
8	John Campbell (R)	California	Consumer protection measures and licensing standards.  Essentially creates a blacklist to enforce UIGEA.	Potential Operators Off-shore gaming operators Banks
9	Brad Sherman (D)	California	Extends US states, and tribes, rights to 'opt out' from 90 days, to an entire legislative session.	US State Governments
10	Michele Bachmann (R)	Minnesota	Consumer protection.	Potential Operators
11	Melissa L. Bean (D) and Mary Jo Kilroy (D)	Illinois (Bean) Ohio (Kilroy)	Consumer protection.	Potential Operators
12	Barney Frank (D)	Massachusetts	Requires 'meaningful' tribal consultation.  Exempts transactions made in accordance with the Interstate Horseracing Act (IHRA) from credit card prohibition.	US gaming tribes Racing sector
13a	Michele Bachman	Minnesota	Consumer protection.	Potential Operators

	(R) Barney Frank <sup>i</sup> (D)	(Bachman) Massachusetts (Frank)		
13	Michele Bachmann (R)	Minnesota	Consumer protection.	Potential Operators
14	Gary Peters and Paul W. Hodes (D)	Michigan (Peters) New Hampshire (Hodes)	Exempts lotteries, and their affiliates from obtaining a federal license to offer intra-state Internet wagering.	US Lotteries and affiliated operators and vendors
15	Spencer Bachus (R) and Michele Bachmann (R)	Alabama (Bachus) Minnesota (Bachmann)	Gives the US Treasury powers to restrict licensing based on UIGEA violations.	Off-Shore gaming operators
16	Brad Sherman (D)	California	Requires potential operators to maintain significant presence in the United States.	Off-Shore gaming operators Potential Operators
17	Mary Jo Kilroy (D)	Ohio	Consumer protection.	Potential Operators

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Founded in February 2007, GamblingCompliance has very quickly established itself as the leading publisher in the global gambling industry – specialising in legal, regulatory, political and market information. Our independent and impartial analysis, delivered daily to a worldwide client base of over 800 top gaming executives and regulatory bodies via a cutting-edge technology platform, has ensured that we have become an essential information service for the industry.

We help clients and their advisors reduce exposure to regulatory and market risk by providing timely information on an advanced web-based platform, allowing clients to monitor, track and receive updates on regulation, compliance, competitors and market developments around the world.

The GamblingCompliance service gives you immediate access to in-depth country, state and provincial regulatory profiles from around the world, as well as extensive analysis across all gaming sectors. GamblingCompliance has 18 full-time staff based in Europe and the United States plus an established network of analysts and professionals representing all sectors of the industry, to ensure that our coverage is truly global. With the recent opening of our US office in Washington DC, the heart of the nation's hub for regulatory, legislative and policy developments, subscribers will receive unrivalled analysis of critical state and federal developments affecting the global gaming sector.

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