

Statement of Tom Malkasian
Vice Chairman of the Board, Commerce Casino
On HR 2267, the Internet Gambling Regulation, Consumer Protection, and
Enforcement Act

Good afternoon Chairman Frank, Ranking Member Bachus, and Members of the Financial Services Committee. It is a pleasure to be here today to offer testimony on HR 2267, the Internet Gambling Regulation, Consumer Protection, and Enforcement Act

My name is Tom Malkasian, and I am an owner, board member and director of strategic planning of the Commerce Casino, located in Los Angeles County, California. Prior to my current position with Commerce Casino, I spent over 27 years in the banking industry, managing multi-billion dollar commercial real estate, lending portfolios for Money Center, International and major regional banks in Los Angeles and Orange Counties.

The Commerce Casino is the world's largest poker casino, with 243 licensed gaming tables and over 2,600 employees. Together with our fellow Los Angeles area poker clubs, we represent the largest concentration of licensed "brick and mortar" poker casinos in the world. Collectively, we employ over 10,000 individuals, residing throughout Los Angeles and Orange Counties. We provide thousands of good-paying jobs for our employees, many of who, reside in economically distressed and minority communities that have been hard hit by the recession.

Commerce Casino is a member of a coalition of California poker clubs and sovereign Indian nations that supports legalization of Internet gaming. With a solid business plan and regulatory oversight, we believe limited forms of online gaming can provide safe play for patrons and tax revenues to the jurisdictions in which they operate.

Chairman Frank, I applaud your initiative in seeking to address the issue of legalizing and regulating Internet gaming. Therefore, it is with regret that I must testify in strong opposition to H.R. 2267 as currently written, and urge Members of the Committee to vote against it barring numerous and significant changes to address what we view as the many weaknesses currently in the legislation.

Throughout my many years in banking and casino management, I have been a "numbers guy". I have learned that no matter how good the numbers sound when something is being promoted, if the details don't support the numbers, the plan won't work.

My first criticism addresses the proposed bill's highly touted projected revenues that are not supported by the language in the bill.

HR 2267 proponents have frequently boasted that legalizing Internet gaming will generate \$42 billion in new federal revenues. As evidence, they cite the Congressional Joint Committee on Taxation study that looked at four different revenue scenarios. Three of these scenarios forecast revenues in the range of \$10-14 billion over ten years, while the fourth estimate was \$42 billion over ten years.

The problem with these estimates is that they are all built on false assumptions and conflicting representations.

First, even the lowest revenue estimate assumes that all Internet gaming facilities licensed under the bill would be required to be located in the United States. That requirement does not exist in HR 2267.

Second, the highest revenue scenario, \$42 billion in revenue, is also based on the assumption all facilities must locate in the US. Additionally it assumes that no state or tribe would be permitted to opt-out of the federal Internet gaming system proposed in HR 2267. In effect, to raise \$42 billion in new revenue, Congress would require an unprecedented federal takeover of an entire sector of the gaming industry. A move that would violate state, federal and tribal gaming laws and the right of states and tribes to decide what is best for themselves.

Third, supporters of HR 2267 are straddling two conflicting claims. On the one hand, they assure members of Congress who do not want Internet gaming in their states, that the bill will allow them to 'opt-out'. On the other, they say legalization will generate \$42 billion in new federal tax revenue. According to the Joint Tax Committee's own report, these two stances are absolutely incompatible.

You can either have a state opt-out provision, or you can have \$42 billion in new federal revenue, but you cannot have both. Let me say that again, because it bears repeating. You can have a state opt-out provision, or you can have \$42 billion in new federal revenue. But you cannot have both. To get the \$42 billion, you must take away the right of each and every state and every one of 564 Indian tribes to opt-out of Internet gaming.

Anyone telling Members otherwise is disingenuous at best, and deliberately dishonest at worst.

And there are major flaws to the state opt-out provisions. HR 2267 allows a state or tribe to opt-out of the federal system within 90 days of enactment, at the direction of the governor or tribal chair.

Given the complex balance of gaming in most states, including commercial and tribal casinos, racetracks, and lotteries, this is too little time to weigh the consequences of participation. It is too much power for one individual making decisions behind closed doors.

A much better alternative would be to amend HR 2267 to require a state or tribe to affirmatively opt-in to the federal system by a vote of the legislature or tribal council, and signed into law by the governor or tribal chair. This would allow much-needed time for analysis and public debate over a state or tribe's participation in Internet gaming.

Let me turn now to the significant lack of regulatory oversight. The word 'regulation' appears in the title of HR 2267. But real and meaningful gaming regulation, as currently practiced by many states and Indian tribes, is in short supply in the current version of the bill.

Any meaningful regulation of gaming facilities must begin with the principle that all facilities must be open to gaming regulators for compliance inspections 24 hours a day, 7 days a week, and 365 days a year. Astonishingly, HR 2267 does not even require Internet gaming facilities to be located in the United States, where regulators would have constant access to operations.

Most current Internet gaming facilities operate from overseas tax havens, beyond the reach of U.S. regulators and law enforcement. HR 2267 should be changed to require all facilities and personnel licensed under the act to be physically located in the US. Such a requirement would also have the added benefit of creating jobs in the United States, rather than outsourcing yet another American industry to low-wage, no-rules locations overseas.

Another regulatory flaw is the deviation from well-established state standards in the licensing of employees. Every employee of the Commerce Casino, no matter their position, must undergo a background check, be licensed, and receive training in stopping problem and underage gaming. All vendors providing services on our casino property must undergo similar license requirements. Under HR 2267, only five employees of an Internet gaming operation must be licensed, and no vendors are required to be licensed at all, leaving a huge loophole where an operation could be penetrated by cheats and criminals.

The proposed legislation lacks of any kind of mandate for testing and certification of the hardware and software used to conduct Internet gaming. Internet gaming will require the highest standards attainable in order to successfully protect players, stop cheating and money laundering, and prevent underage and problem gambling.

Chairman Frank, I urge you in the strongest possible terms to incorporate these needed regulatory changes in the language of the bill. These issues are far too important to leave to the rulemaking process at the Department of Treasury, which has no experience whatsoever in gaming regulation.

I fear that, if not addressed in the legislation, these issues will fail to be addressed by inexperienced Treasury officials who have never engaged in any kind of gaming oversight.

HR 2267, as written, also fails many fundamental tests of fairness by favoring overseas Internet gaming operators over law-abiding, tax-paying domestic gaming interests.

For years, overseas sites beyond the reach of US law enforcement have offered Internet gaming to American customers in violation of US laws. In doing so, they have built brand name recognition and a strong customer base at the expense of American casinos and Indian tribes, who would have been shut down had they engaged in the same activities. Therefore, overseas sites that have been breaking the law would start off with a tremendously inequitable competitive advantage over law-abiding American casinos and Indian tribes.

Unfortunately, HR 2267 does not address this unfair situation because it allows illegal foreign sites to be licensed despite their past actions, when in fact they should be deemed ineligible to ever be licensed.

If the Congress were ever to decide to legalize marijuana, certainly no one would suggest that the first federal permits to sell it should go to the Tijuana drug cartel since they have the most money and experience in marketing and distributing the product. Yet illegal foreign gaming interests are suggesting just that for Internet gaming, lobbying hard in DC to ensure that HR 2267 is not modified to exclude them based on their past misdeeds.

Let's face it. Overseas Internet gaming operators are currently spending millions on lobbying front groups, such as the Safe and Secure Internet Gaming Initiative, hoping to leave as many regulatory loopholes unplugged as possible.

The issues of unfairness in HR 2267 do not end here. Our friends and competitors in the tribal gaming community are treated particularly unfairly in this bill. Tribes in California have the exclusive right to offer slot machines and other Class III games. We respect and support their tribal-state gaming compacts and the Class III gaming exclusivity they fought long and hard for.

In return for this exclusive right, California tribes pay the state several hundred million dollars each year in revenue sharing.

HR 2267 would violate California tribes' exclusive right to operate these Class III games by allowing foreign and other competitors to offer games only tribes are entitled to. Saddled with the loss of their exclusivity and operating under unfair tax standards, the tribes would be attempting to compete with foreign entities armed with the unmerited advantages of lax regulation and no tax obligations. We stand with the California tribes in opposing this violation of their rights and sovereignty.

Revenue provisions in HR 2976, the companion bill to HR 2267, further compound unfairness in the legislation. Tribal nations offering Internet gaming would be subject to a direct federal tax. This is a violation of tribal sovereignty, and sets a terrible precedent that may lead to expanded federal taxation of other tribal gaming activities.

Additionally, by setting the rate of state taxation on Internet gaming at 6% of account deposits, most commercial and tribal gaming operations will be undermined and placed at a significant tax disadvantage compared to Internet gaming.

For example, Pennsylvania casinos pay 55%, Indian casinos 46%, and Illinois riverboats 40% of their gaming revenue to states. This disadvantage creates incentives to close physical facilities in most states, lay off workers, and set up Internet-only operations in overseas tax havens.

The competitive disadvantage is equally bad for Indian tribes, who pay revenue shares of up to 25% in many states for the exclusive right to offer certain games.

In summary, we believe the Frank and McDermott bills:

- are based on false revenue assumptions;
- enshrine arbitrary and unfair tax inequities into law;
- violate federal and state tribal gaming law;
- endanger the flow of commercial and tribal gaming revenue to local, state and federal governments;
- and brazenly rewards illegal foreign operators by locking in unprecedented market advantages that can undermine and destabilize the land-based American gaming industry. A law-abiding, strongly-regulated industry that federal and state governments rely upon for the jobs and revenue they provide.

Mr. Chairman, this concludes my remarks on HR 2267. I appreciate the opportunity to testify today, and would be happy to take any questions from you or Members of the Committee.

*For further information,
contact Tom Brierton at 202-680-2857 or Waltona Manion at 818-785-5525.*