

Sports Betting Across America: A 2019 Legislative Preview



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As 2019 begins, states across the country are looking at their legislative agendas. Every state's legislature will meet in 2019 and there will be several issues that will be discussed, some of which will revolve around gaming and lottery. One thing that will likely be discussed in every state is the potential for sports betting. This is an important opportunity for state lotteries to expand their portfolio of games and connect with the next generation of players.

Many states are assessing the expansion opportunities for the lottery. This may include the use of video lottery terminals, iLottery, or other forms to sell their existing products through the internet, kiosks, or other means. The potential for sports betting to enhance funding for good causes is another option that many Lottery Directors across the country are hoping their state legislators

Sports betting represents an opportunity for significant expansion of games-of-chance wagering. Perhaps as a result of Daily Fantasy Sports, sports betting is now viewed as much more of a mainstream form of gambling and is even highlighted on major sports media discussing the line or total points for a game.

The Current Market

Since the overturning of PASPA in May 2018, several other states have added sports betting as an available form of wagering. Delaware was the first to market post-PASPA, as the lottery expanded its sports betting offer to include single-game wagering. Other states have since followed including New Jersey, Mississippi, West Virginia, New Mexico, Pennsylvania, and Rhode Island. Arkansas and the District of Columbia (pending U.S. Senate approval) have legalized sports betting, but they

United States Senate has any objection to its passage. Under the measure that was passed, the D.C. Lottery would be the controlling body of sports betting in the District.

Of the states that have passed sports betting, Rhode Island and West Virginia both use their state lottery as a vehicle to offer sports betting. Rhode Island launched sports betting in November with tax rates that are more comparable with a tax rate of 51%. IGT serves as the vendor in partnership with William Hill and will receive 32% of revenue (net after taxes and winnings paid to players), leaving the casinos that offer the wagers with 17% of revenue.

West Virginia's lottery proved to be one of the models for taking a state that did not offer sports betting into allowing a robust market in partnership with the existing brick-and-mortar casino operators. In the fall of 2017, The West Virginia Lottery commissioned a study to look at the potential for sports betting throughout the state. They not only looked at the best vehicle to allow for sports betting to occur but also the revenue potential that it would generate in the state based on the population, as well as the vehicle(s) in which wagering on sports may occur. This allowed for the drafting of a proper bill that maximized the best opportunity for the state in terms of tax revenue, ability to compete with the existing black market, providing the optimal venues for wagering, and allowing for consumer protections.

Preparing for the Debate

First and foremost, education with key stakeholders must occur on how sports betting works and the necessary tools to establish a market. There will be significantly large numbers discussed about potential revenue, but largely this comes from a basic misunderstanding of the difference between handle and revenue. Handle represents the total amount of money wagered on sports betting by market patrons. While this metric is useful in understanding the projected level of market participation in sports betting, it grossly overstates the actual value of the market.

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are considering. Commercial casino and online gaming operators also recognize the economic potential of sports betting, and are lobbying state legislators to implement a license-and-regulate model that would enable them to offer sports betting.

have not begun operations. Arkansas was approved, through a ballot during the 2018 Election, a measure legalizing casino gambling. The District of Columbia's City Council has passed sports betting but is currently in the waiting period to see if the

Only a portion of handle is retained by the operators as revenue. On average, operators that offer full sports betting only hold approximately five percent of handle. Those states with lotteries running sports betting operations though have a high hold but assume less risk.

One reason there is no best “one-size-fits-all” regulatory model is that existing markets and regulatory standards vary from state to state. It will be important for legislators to think carefully about how to effectively integrate a sports betting regulatory framework into an existing games-of-chance marketplace. What works in a mature market-place like Rhode Island may not be the best for an emerging marketplace like Mississippi. Other important issues include geofencing, payment process, and data feeds, consumer protections and responsible gaming measures.

The Road Ahead

Currently, almost every state in the union has had at least one representative or entity express that they are interested in moving forward with sports betting as an additional form of wagering. The states that do not have lotteries are typically the ones that are not discussing sports betting. Most states will require some sort of legislative action, as opposed to just regulatory changes, to allow for sports betting to occur. A handful of states, like Colorado and California will likely take the issue to the people through a vote that, in most cases, will probably occur in the 2020 election.

For sports betting to occur in some states, the lottery will be the chief vehicle to launch sports betting. The Kansas Lottery is the vehicle that allows the state's four existing casino operators the ability to conduct casino gaming in the state. Numerous other states have had lottery directors' express interest in looking at a model similar to what Delaware has offered for several years in parlay betting, but they may also look at how Delaware expanded currently with single game wagering. These options play a more prominent role in those states that do not offer brick-and-mortar commercial or tribal casino operations.

With eight states having operations running, two states with legislation for full sports betting in the works, and two states grandfathered in prior to the passage of PASPA in 1992, it is likely that at least

a dozen or more states will legalize sports betting over the next legislative cycle. By 2021, there is a strong likelihood that a plurality of states will have legalized sports betting either live or in motion. Prior to launching sports betting, states must first select the best qualified operators and craft regulations for a strict regulatory environment to combat the black market that has existed for years. In order for that to occur, stakeholders must be educated on sports betting and realize how tax rates, modalities, and regulation enable a market to succeed or fail. Lottery directors across the country will want to understand sports betting and the feasibility for a dynamic market in their state if they are interested in participating in this potential expansion in wagering. ■

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For example, one could make a distinction between legal turnover based on a license in a specific country and illegal turnover without having a license in that country and license-holders could be obliged to report on that and even in a detailed manner. If operators have to systematically report on their turnover taking into account the place from which the player has played, this can be an important tool in the fight against illegal activities. The very recent ‘Stanleybet’ judgment of the EU Court of Justice of 19 December 2018 is important in this context. The Court of Justice has acknowledged that a concessionaire may lose his concession if he violates the rules for the prevention of illegal gaming, either by himself or through affiliated companies, regardless of where they are located. It is therefore important, for example, that the standards are formulated in such a way that regulators can easily determine whether the conditions for a concession or a license remain at all times respected and can exchange information among each other in a simple manner.

Should we be concerned that any kind of pan-European Regulatory Committee might disrupt the stability of the regulatory frameworks established by the individual member states? After all, who determines where to draw the line between those aspects of regulatory policy that belong to the member states

to determine and those that should be ceded to a pan-European agent like the “European Committee for Standardisation”?

Piet Van Baeveghem: CEN is not an EU regulatory body, it is the emanation of the different national standardization bodies. Standards are a very complex topic. In our case, which is a little bit weird, it is the European Commission that requested the CEN to act and to start working on a standard to the benefit of the regulators. Normally speaking, standards are either imposed by Law or are an industry led initiative. We found ourselves in none of these cases. From the beginning it has been said that the future standard that can result from this exercise is not a compulsory rule that can be imposed upon the different gambling actors. Member states are still in the driving seat regarding the shaping up of the national gambling regulatory framework. If the standardization of certain concepts and information flows can contribute to better and more efficient law enforcement, then it should certainly be avoided that this standardization would lead to a form of mutual recognition that would undermine the authority of national governments to regulate their own games of chance market. But there seem to be sufficient guarantees for maintaining those national competences.

Are there aspects of the mission of this standardisation project that you would recommend be changed or clarified to make it more effective and successful?

Piet Van Baeveghem: The whole process of defining these new standards is very complex and it will take three years before the process is completed. It is important that lotteries actively participate in the process through their national standardization bodies and make their voices heard. The private online gambling sector seems already very active to hijack this standardization process with a view to obtaining further deregulation. The lotteries must therefore be very vigilant that the standards also meet the need to effectively protect players and prevent fraud and especially to achieve more efficient law enforcement and above all to create more transparency around a sector that does not like that transparency. If these standards were also used for the taxation of illegal cash flows in those countries where revenues are realized, this could become an important game changer. ■