

# US STATE REGULATION THE NEXT IN LINE

Which will be the next states to follow the path of iGaming regulation? **Rachel Hirsch**, Attorney at Ifrah PLLC, investigates.

A few years ago, the possibility of state-sponsored iGaming legislation was a long shot. Online poker players had suffered a major setback when, in April 2011, the US government shut down the country's biggest and most reputable poker websites.

What a difference a few years can make. 2013 was undoubtedly a watershed year for online gaming in the United States. Federal legislation took a back seat to individual states' interests, and three leaders emerged – Delaware, Nevada, and New Jersey. Now, proponents of intra-state iGaming legislation are looking to other states to follow the path paved by these pioneers. Many now expect that last year's legislation will inspire a domino effect among other states to take the future of iGaming in the US into their own hands. So who will be next?

## Early momentum

Although Delaware, Nevada, and New Jersey approved very different versions of iGaming legislation, collectively, they created the momentum for other states to pass iGaming measures of their own. Other states looking to follow in their footsteps will likely be influenced by the successes experienced by these pioneer states. At the end of last year, revenue generated by Nevada's intra-state online poker sites was underwhelming. On a good day, it was projected that there were maybe 250 to 300 people playing on

the sites, which included players who had bought into different games on multiple tables. According to reports, the number of players on Nevada sites – WSOP.com and UltimatePoker.com – constituted 1/1,000th of the player volume that Internet poker experienced at the height of the market pre-April 2011. Although Ultimate Poker was running slightly ahead of WSOP in terms of sheer number of players, both platforms have been described as immature compared to the pre-Black Friday sites.

By comparison, early traffic numbers at the end of last year from New Jersey's online poker rooms demonstrated the possibility for increased growth down the road. After only a few weeks of play, and despite significant issues with geolocation, there were 100,000 accounts registered in New Jersey. Reaching 100,000 accounts in such a short span of time is something that few expected, especially given that New Jersey did not undertake public advertising pre-launch. As this article goes to print, there are approximately 200,000 new accounts in New Jersey. The state's figures are a promising sign for other states looking to pass their own iGaming measures.

New Jersey's launch in late November 2013, while an early success for the state, overshadowed its sister state Delaware's launch of its iGaming industry only a few weeks earlier.

Yet, Delaware's biggest contribution to the industry will extend beyond its borders, as it plays the role of creating inter-state online gaming markets. Delaware's initiative on this front is likely to inspire some of the other sparsely-populated states that they can still make money through online gaming.

## The domino effect

Buoyed by the momentum created by the pioneer states, other states in the union are seriously considering passing iGaming initiatives of their own. According to a *Gambling Compliance* survey, in 2013, ten states considered bills to legalize or expand Internet gambling, with 2014 shaping up to be just as busy. Looking forward, the states most likely to gain traction in passing iGaming initiatives include California, Pennsylvania, and New York as the top contenders, and states such as Illinois, Mississippi, and Colorado the runners-up.

## The contenders

### California

California is making strides toward passing intra-state iGaming legislation. With the fifth largest economy in the world, California would have a major impact on iGaming if it were to approve it. California legislators have been exploring iGaming legislation for a while now. Last year, California introduced new iGaming initiatives, including most recently Senator Lou Correa's stalled SB 678 "Authorization and Regulation of Internet Poker and Consumer Protection Act of 2013,"

which would legalize online poker, but not other games. Other legislation introduced has included Senator Roderick Wright's SB 51 "Internet Gambling Consumer Protection and Public-Private Partnership Act of 2013," and "The Internet Poker Consumer Protection Act of 2013," which was sponsored by eight of California's tribes. Previous legislation stalled mainly due to Tribes failing to see eye-to-eye on issues, which is not surprising given that there are almost 100 card rooms and 68 tribal casinos in California.

January 2014, however, ushered in a new California gambling bill, which was approved by the State Senate. The new bill, SB 601, introduced by Senator Leland Yee (D-San Francisco), could raise taxes and review regulatory procedures on the state's ever-expanding gaming industry. A gaming policy advisory committee, comprised of both industry executives and members of the public, will scrutinize the bill, with the goal of determining whether the existing regulatory structures that are in place are facilitating California's economic growth within the state. The committee will additionally review the impact of the state's numerous card clubs on both state and local tax flows. In introducing this measure, Senator Yee said he is exploring the possibility that more non-Indian gaming outfits could help boost California's economy. The bill, however, faces fierce opposition from the California Coalition Against Gambling Expansion (CCAGE), which declared that

the new bill was nothing more than a gateway for loosening regulatory procedures for operators.

Lack of cohesion among tribal gaming interests could also serve as an impediment to gaming expansion in California. Recently, there has been some indication that there is a willingness by the native North American tribes to work together on regulation. Thus far, however, there seems to be one interest all the tribes agree upon – not entering into inter-state compacts. In other words, the tribes plan to keep the state's massive player pool and revenue to themselves – a major blow to players in the rest of the United States. Despite these factors, California is primed for iGaming, and legislative movement is expected to happen either this year or the next.

#### Pennsylvania

Having adopted the "wait-and-see" approach, Pennsylvania waited until after the launch of online gambling in New Jersey to announce renewed interest in passing an iGaming measure of its own. In late 2013, a Pennsylvania Senate committee passed a resolution that would task the legislature with studying whether or not the state should legalize online gambling. The main motivation for Pennsylvania to pass legislation appears to be revenue. New revenues from online gambling would help the state continue to fund key measures, such as public education and universities. In addition, increased competition from New

York and New Jersey means that growth in Pennsylvania's gambling market appears to be stagnating.

The state currently does not have any estimates on potential additional revenues resulting from iGaming. Before that could be accomplished, the state would need to consider a tax rate, license fees, and regulatory structure. In April 2013, State Representative Tina M Davis introduced House Bill 1235, which would allow Pennsylvania to offer online poker and other casino games within the state's borders. The bill imposed a steep fee and tax for those who wanted to offer online gaming in Pennsylvania. Originally, Davis proposed a \$16.7 million licensing fee, which was reduced to \$5 million. Under the bill, licensees could also expect to be taxed at 28 percent of their daily Internet gaming gross revenue. Although the bill originally appeared to gain some traction, it eventually stalled, putting a damper on hopes of iGaming in Pennsylvania.

Although legislators in the state had mixed reactions to the new iGaming study, they are at least willing to consider the issue, despite the failure of the previous iGaming bill. However, one potential impediment to online gaming in Pennsylvania is the presence of the Sands Bethlehem casino, owned and operated by Las Vegas Sands. Their chairman, Sheldon Adelson, one of the nation's wealthiest men, is a leading opponent of online gambling in the casino industry. Adelson is hoping to put his

tremendous clout and fortune behind efforts to stop the proliferation of online gambling. With a strong presence in Pennsylvania, Adelson could turn the state into a major battleground in the fight to legalize iGaming.

#### New York

Last November, New York State voters authorized a total of seven new casinos in the state. The expansion measure was followed by a New York Senate budget proposal marshalled by the state's Senate Majority Coalition, which included language calling for the introduction of state-authorized online poker in New York. The 2013-2014 budget proposal, co-signed by New York Senate leaders Jeff Klein and Dean Skelos, provided: "The Senate supports authorizing and regulating Internet gaming for games of skill, including poker, to reflect recent changes in the classification of these games." According to a news report, the proposal relied on the *DiCristina* ruling, which determined that poker is considered a "game of skill" and not a legally prohibited "game of chance." The budget proposal also relied, in part, on a 2011 Department of Justice opinion stating that the Federal Wire Act of 1961 applies only to sportsbetting.

iGaming in New York, however, is not without its opponents. The state Conservative Party has called on legislators to block any push to legalize Internet gambling in New York. Conservatives in the state view Internet gambling as a threat to established gambling sites that have rigorous licensing and

regulations established by the state designed to prevent money laundering and underage gambling. They also question whether the job growth promoted by iGaming proponents will ever materialize. However, as New York's neighboring state of New Jersey continues to build on the early success of its iGaming launch, New York is likely to consider passing an initiative of its own, and even perhaps opening its doors to cross-border agreements.

#### Runners-up

Other states considering iGaming legislation include Illinois, Mississippi, Hawaii, Iowa, Colorado, and Massachusetts. Earlier this year, a Mississippi online gaming bill failed to gain enough traction to emerge out of the Mississippi House Gaming Committee.

Illinois has experienced problems of its own with its gambling expansion efforts, but there, the weather is to blame. A special meeting scheduled by State Representative Robert Rita to discuss expansion efforts in February 2014 was cancelled at the last minute due to extreme weather conditions. Although a new date for the meeting has not yet been scheduled, Illinois is likely going to continue its efforts to explore gaming expansion in the state.

In Hawaii, the problems are not weather-related, but rather result from the fact that Hawaii is one of only two states in the country that does not have any legalized form of gambling. That does not mean that a bill cannot pass, but any lawmakers drafting one will face a number of challenges.

For now, Iowa, Colorado, and Massachusetts are still considering their options. Iowa released a study that found that legalizing online poker might net it \$3 million to \$13 million a year, far less than private companies had estimated. Massachusetts also seems to be conflicted when it comes to online gaming, although it is a positive sign that the relatively new Massachusetts Gaming Commission has made arrangements to host a panel to discuss online gaming in the Commonwealth.

The path to regulation for these states may be bumpy, but they share one commonality with the pioneer states that will help drive them toward success – the desire for economic growth within their borders. That desire, coupled with the early momentum created by Nevada, New Jersey, and Delaware, will equate to continued forward movement in the effort to legalize and regulate online gaming.

Rachel Hirsch is an attorney at the Washington, DC-based law firm of Irwin PLLC. Ms. Hirsch focuses her practice on iGaming and Internet Advertising and Marketing. Her clients have included PokerStars, Full Tilt Poker, and Microgaming. Ms. Hirsch graduated with honors from the University of Maryland School of Law and practiced at Venable prior to joining Irwin Law. Blog: [www.irwinlaw.com/attorney/rachel-hirsch/](http://www.irwinlaw.com/attorney/rachel-hirsch/) Email: [rhirsch@irwinlaw.com](mailto:rhirsch@irwinlaw.com)

