

STATE OF THE UNION

2013 has already been a year of significant change for the online gaming industry in the US, with Delaware concluding its RFP process, Nevada adding inter-state legislation to bolster its pending online poker industry and New Jersey finally coming to the table with its own legalised intra-state online gaming regulations. Rachel Hirsch, an associate at Washington DC-based law firm, Ifrah PLLC, takes a look at the changing iGaming landscape in the US and how events in Nevada and New Jersey could affect activity in other states.

If the first half of this year is any indication, 2013 is poised to be a watershed year for iGaming in the United States. With states like Nevada and New Jersey leading the charge, there has been a flurry of activity to introduce and pass iGaming legislation within individual states, with the expectation that cross-border play will soon follow. While some legislative measures have failed before even making it out of the gate, there is considerable justification for continued optimism for iGaming legislation, especially in the more populous states.

The leader board

Although, for some time last year, New Jersey appeared to be on the verge of becoming the first state in the union to legalise and regulate online gaming, it actually turned out to be the third. New Jersey lost this honour to Nevada and Delaware. All three states, however, approved very different versions of iGaming legislation, with New Jersey offering a broader range of iGaming opportunities with the most appeal to foreign operators.

Delaware

Unlike Nevada and New Jersey, Delaware offers a public-based model for its iGaming legislation. The law authorises the state lottery and the three racetrack casinos it regulates to offer full-scale Internet gambling, including web table games that include online poker, video lottery games,

and traditional lottery games to be offered online. The law also allows the state to explore compacts with other states to share player pools, which is important to Delaware given its small population.

Six months after passing its iGaming legislation, Delaware issued a request for proposals for the implementation of an Internet gaming system and associated services. Released on behalf of the Delaware State Lottery, the request invites interested parties to submit bids for the provision as a primary vendor of a back-end technology platform alongside operations manager services. To be considered for these positions, the request states that potential vendors must have been in business with at least one private or government client for a minimum of one year and must have operated real money games in regulated European or North American markets.

Primary vendor applicants are required to have been operating in a regulated market for two years, as well as having offered at least 30 games or game variants for at least one year.

On May 3, the Delaware State Lottery announced that it had selected Scientific Games, teamed with 888 Holdings and Williams Interactive LLC, as the primary vendor to operate iGaming in the state. The Delaware State Lottery hopes to begin offering iGaming no later than September 30, 2013.

Nevada

Following the private-sector model, Nevada was the first state to legalise intra-state online poker, providing a potential platform for foreign operators to forge partnerships with existing land-based casinos in the state. Although the legislation passed in 2011, online poker in Nevada only went live on May 1, 2013, with the launch of Ultimate Poker.

Not to be outdone by its competition in the east, Nevada lawmakers fast-tracked a new iGaming bill this year that would authorise Nevada to enter into inter-state gaming compacts. In February of this year, the Nevada Assembly Judiciary Committee unanimously voted to amend and pass Assembly Bill 114, which would allow Nevada to enter into partnerships with other states that legalise iGaming in order to share player pools. The bill was approved by both houses of the legislature in rapid succession, and Governor Brian Sandoval signed the bill as soon as it hit his desk. Under the new law, licensing fees have now been set at \$500,000, with a renewal fee of \$250,000. The law, however, also contains a clause that would prevent any online company that has offered online gambling to Americans since the 2006 passage of the Unlawful Internet Gambling Enforcement Act (UIGEA) from entering the market for at least five years. This means that those companies shut down by the US government during the Black Friday seizures cannot earn a seat at Nevada's table, at least initially.

New Jersey

Although Nevada may have foreclosed opportunities to some of the giants in the industry, New Jersey has not. A week after Nevada passed its online gambling bill,

New Jersey followed suit. Both houses of the state legislature had previously passed the iGaming bill, by large margins. Governor Chris Christie gave the online gambling bill a conditional veto in February, sending it back to the legislature and requesting minor changes. Lawmakers agreed to his conditions on February 26, passing the bill through the General Assembly with a vote of 68-5-1 and through the State Senate with a margin of 35-1. Governor Christie signed the bill into law that afternoon.

The changes requested by the Governor included an enhanced level of funding for compulsive gambling treatment programmes, a requirement that state employees and legislators disclose any representation past or present of entities seeking Internet gaming licences, and an extension of a prohibition on any casino-related employment for state employees and legislators to include companies involved in Internet gaming. Under the law, casinos or their affiliates would be allowed to offer the same games that are currently offered on Atlantic City casino gaming floors. All players must be physically located in New Jersey, but do not need to be residents of the state. The law also offers the possibility of generating much larger player pools for games through inter-state gaming compacts with states that have legalised online gaming within their borders, as long as this is consistent with federal law. On May 17, the New Jersey Division of Gaming Enforcement (“DGE”) released a draft of the proposed regulations for iGaming in the state. The public comment period on the regulations will end on August 2 and final adoption of the regulations will occur after a full review. The DGE will then announce a date when casinos will be permitted to accept online wagers at least 45 days in advance of the start date. There is not yet a definitive start date for iGaming in New Jersey, but it is quite possible that it could happen this year.

The runners-up

The news of Nevada and New Jersey passing online gambling legislation caused a surge of activity in other states.

Pennsylvania

Pennsylvania recently introduced a bill that would legalise online poker, having overtaken New Jersey as the second most lucrative gambling market in the country. With a population of 12.7 million people, Pennsylvania would have the largest intra-state player pool to work with between Nevada, New Jersey, and Delaware. Yet, operators may have to pay a steep price to take advantage of Pennsylvania’s player pool, with licence application fees expected to be in the millions.

Illinois

As in Pennsylvania, total revenue generated by new gaming measures, including online gaming, would be a welcome addition to the state budget in Illinois. For the third time in as many years, an Illinois senate committee approved an expansion of casino gaming in the state, but this time including online gaming and poker.

With a population of 13 million, Illinois has a larger player pool than the three other states that have legalised online gambling – New Jersey, Nevada, and Delaware – combined. The legislation, like that in implemented in Nevada, includes a “bad actor” provision, restricting the issuing of an iGaming licence to any operator and vendor that has “been convicted of accepting” wagers in violation of US law. The legislation also contemplates only intra-state iGaming play, even though Illinois would be an attractive partner for inter-state compacts.

With previous gambling measures failing in the state, the path towards legalized iGaming in Illinois will likely be a difficult one.

New York

Hoping to follow in the footsteps of its neighbouring states, New York recently passed a non-binding version of a budget bill that included a statement in support of the regulation of online poker. The proposed regulation reflects the recent court ruling from US District Judge Jack Weinstein that determined that poker is “not predominantly a game of chance”. The development of online poker regulations, along with the remainder of the budget bill, is expected to be finalised this spring. In the meantime, the state is working on the authorisation of new bricks-and-mortar casinos and an online lottery system.

California

With the fifth largest economy in the world, California would have a major impact on iGaming if it were to approve it. The state legislature recently introduced a proposal to regulate online poker on an intra-state basis. The bill will allow the California Gambling Control Commission to establish a framework for online poker websites, which has the potential to generate billions of dollars. Although similar bills have failed to pass because of concerns from lawmakers and Native American tribes, there is still hope that this measure may succeed.

And the rest

As the iGaming leaders begin to generate tax revenues and job opportunities within their borders, other states will be motivated to do the same. Buoyed by the success of the leader board, in a year’s time, the landscape for US iGaming will be very different than it is today.

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