

THE PATH AHEAD IN 2015-16

While no US states passed enabling legislation for traditional forms of iGaming last year, the proposed bills may have laid the groundwork for a more streamlined path to successful votes in 2015-16, write **Sarah Koch** and **Jeff Iffrah** of Iffrah Law.

iGaming legislation in US states has experienced a promising shift as more bills are proposed on a wider range of gaming experiences. While bills for “traditional” online casino games and poker continue to progress - but not pass - there has been a simultaneous push in states to explicitly declare real-money fantasy sports as a legal game of skill. While some stakeholders have been frustrated by the “all talk, no action” nature of many of the gaming bills, there is hope that the proposed legislation has established a solid foundation which legislators may build on in the coming year. Here we survey proposed gaming legislation which may reshape the iGaming landscape.

Fantasy sports

It is nearly impossible to watch a TV broadcast without seeing one of the ubiquitous advertisements for daily fantasy sports (DFS) sites. While these activities are generally interpreted to be legal under most states’ laws, many states are now pushing for more specific legislation to either formally legalize or regulate the activity.

Some states, including Iowa, Louisiana, Michigan, Montana, and Washington, are considering legislation which would exempt

fantasy sports from the states’ gambling codes. DFS operators could thus offer their products in these states with the reassurance that they will not face legal challenges, and without undergoing any type of licensure process. The issue recently became especially pressing in Michigan, when the state’s Gaming Control Board issued a report stating that playing DFS for money is currently illegal under Michigan law, even though Michigan was not previously considered a high-risk state in which to operate. Earlier this year Kansas was in a similar position when the Kansas Racing and Gaming Commission declared that DFS were illegal under state law. Kansas legislators rapidly addressed that by passing a bill to legalize fantasy sports, signed into law soon thereafter.

Other states are seizing on the popularity of fantasy sports and attempting to take a cut of the profits. Texas has considered a bill in which DFS companies would be required to obtain a license from the state in order to operate within its territory, and Massachusetts introduced a bill which would authorize its lottery to conduct fantasy sports.

Still other states see an opportunity to

shore up their existing gaming infrastructure by offering fantasy sports through brick and mortar establishments. Indiana is considering a bill which would allow the state’s racinos to offer fantasy sports leagues. Legislators in Pennsylvania have introduced a bill that would allow casinos to offer on-site DFS.

However, for all of these initiatives, with the exception of Kansas, there has been very little in the way of concrete progress. Most bills did not progress far in the legislative process and face an indefinite timeframe for consideration.

Sports betting

Some states have sought to challenge existing federal sports betting restrictions by introducing legislation to legalize sports betting. The 1992 Professional and Amateur Sports Protection Act (PASPA) banned sports betting in all but four states which had already implemented some form of sports betting. Despite recent efforts, PASPA has not been repealed and remains the law of the land. Regardless, a number of states - including Minnesota, Texas, and New York - have introduced legislation to legalize sports betting. Other states - including South Carolina and Indiana - have introduced legislation which would allow casinos and/or racetracks to offer sports betting. New Jersey passed a law meant to allow sports betting at its Atlantic City casinos, but its

various iterations have been struck down by courts which have found the legislation to be in violation of PASPA. The immediate future of state sports betting legislation thus looks grim. At this juncture, it seems likely that PASPA will have to be appealed or amended by Congress in order for states to implement sports betting, and therefore little progress is expected in state sports betting legislation in the coming year.

Online poker

State legislation on online casino gaming continues to simmer but not boil. The issue continues to be a regular topic of discussion in statehouses around the country, even though no additional states have passed iGaming legislation in the past two years.

California's legislative iGaming agenda has seen the most action of all the states. In the 2015 session, there were effectively three iPoker bills on the table: AB 9, AB 167, and AB 431/SB 278. Unfortunately, given the various interests at stake in the country's most populous state, it has been difficult for the stakeholders to reach a consensus as to the terms of a successful bill. Bill AB 9 was voluntarily withdrawn over the summer due to lack of agreement, and a last-minute push to pass Bill 167 similarly failed to reach an agreement. California will now have to resume its consideration of iPoker laws during the next legislative session.

Pennsylvania has long been targeted as a natural next entrant to the iGaming arena, but so far a viable bill has yet to materialize. However, that is not for a lack of trying - in the recent legislative session, the state introduced four bills which addressed the issue of iGaming. On the house side, HB 649, HB 695, and HB 920 all sought to authorize interactive gaming in the state. The first iGaming bill to be introduced on

the Senate side was SB 900, most notable for its proposed 54% tax rate and in-person registration requirements. While the bill represents the state senate's entrance into the iGaming debate, it is expected to be some time before any of the bills gain enough support to be put to a vote.

Washington's online poker bill, HB 1114, would have represented a major change in iGaming law for the state, as it is currently the only state in the country that explicitly outlaws online poker. The bill proposed to authorize and regulate online poker in the state for card rooms and tribes but left many of the details, including tax rates, to the state's Gambling Commission. However the measure did not get adequate support in the statehouse and failed to get a hearing. The issue may be revisited next year.

Federal legislation

This year iGaming opponents introduced a bill in Congress which sought to ban internet gambling nationwide - even in states which have passed laws approving and regulating it. They did so under the pretense of amending the federal Wire Act, which the DOJ in 2011 had declared only prohibited the transmission of sports betting information. This bill, versions of which were introduced in both the House and Senate, was misleadingly titled the "Restoration of America's Wire Act" (RAWA) as if the DOJ had changed the law rather than just making a reasonable reading of the text of the statute.

Both the House and Senate bills were referred to committee but did not progress to a vote. The House subcommittee held a hearing in March 2015 in which witnesses including professors and non-profit representatives presented testimony, but no industry stakeholders or regulators from gaming states. As a result, the hearing was

replete with doomsday scenarios about the purported ills of gambling and the alleged inability of technology to verify information like age or player location during online play - facts that the regulators could have knowledgeably refuted. A few witnesses brought balance by discussing topics like states' rights, since gambling is an area traditionally left for the states to decide, and the benefit of having the safeguards of regulated iGaming rather than leaving players at the mercy of unregulated offshore sites. In the end, the bills appear to lack the momentum to pass during the current legislative session, and it is not clear that they would fare any better next year.

Looking ahead

With few exceptions, notably the passage of Kansas' fantasy sports law, iGaming proponents this year have not achieved the ultimate goal of enacting new legislation, but that is not to say their efforts have been in vain. The proposed bills have opened a dialogue for lawmakers, stakeholders, and constituents that will continue into the coming year, and may serve as groundwork to achieve a more streamlined path to successful votes in 2016.

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