

Washington lawmakers draft bill requiring loot box study

A group of lawmakers in the US state of Washington, led by Sen. Kevin Ranker, have introduced a bill - SB 6266, first read on 11 January 2018 - that would require the Washington State Gambling Commission to study and make written recommendations on best practice around regulating 'loot boxes' and similar mechanisms in video games and apps, with one concern highlighted by the Bill being whether such mechanisms are considered gambling under state law.

Loot boxes are mechanisms by which players obtain randomised virtual items for use within a game or app, for example costumes for an in-game character. Often players must spend real money to purchase loot boxes, and while the player always gets an item, that item may not be one the player desires. Many games do not list how likely a given item is to appear in a loot box, while some games have been criticised for the length of time that must be spent playing to obtain loot boxes without paying.

SB 6266 also puts forward lawmakers' concerns as to whether loot boxes and similar mechanisms should be found in games and apps and whether minors and young people should be able to access them, and also raises issues of disclosure and transparency as to the odds players have of receiving specific virtual items when they open a loot box. "There is a fair chance that the bill passes, although that may not be in the current legislative session," thinks Steven Eichorn, Associate at Ibrah Law. "The real question in Washington State will be the findings in that study and what will be the reaction of legislators to those findings. However, there are legitimate adequacy of disclosures concerns in loot boxes and it is good to see Washington legislators taking a proactive role to address them in a responsible manner by gathering the facts beforehand."

According to SB 6266, the Gambling Commission must, by 1 December 2018, report back to the appropriate committees its findings and recommendations, 'including options for the adoption and implementation of a regulatory and enforcement system, restrictions on the sale of games containing these mechanisms, and any appropriate disclosures.'

"Loot boxes should not implicate gambling concerns because, although some loot boxes in games may satisfy the gambling elements of consideration and chance, they generally lack the required third element of 'prize' because the items in loot boxes are limited to a non-monetary in-game item," believes Eichorn. "Thus, loot boxes should not be considered gambling. That being said, firms using loot boxes should be careful that their prizes are limited to in-game items under all circumstances and/or eliminate the presence of chance."

"It would be foolhardy for legislators to outright ban loot boxes because that will simply force the loot box operators to offshore jurisdictions where there is far less regulatory oversight and consumer protections," adds Eichorn.

Other US states are also looking at loot boxes and similar mechanisms, including Hawaii, where a number of bills have recently been introduced to regulate such mechanisms, including HB 2727, introduced on 24 January 2018 and aimed at establishing certain disclosure requirements for publishers of video games that contain a loot box or similar mechanism.

allows Member States to take national measures to stop such advertising without infringing the Directive." Folke Fredriksen may be referring to a statement made by the European Commission during the AVMSD Contact Committee on 9 September 2016 that the European Free Trade Association ('EFTA') countries refer to in a joint comment regarding the Commission proposal for amending the AVMSD dated 10 May 2017. In the comment, the EFTA countries wrote: "The EEA EFTA States are of the opinion that advertising and marketing for gambling services are excluded from the scope of the AVMSD. In this regard, the EEA EFTA States refer to a statement made by the European Commission during the AVMSD Contact Committee on 9 September 2016. During this meeting, the Commission presented a preliminary view that as regards gambling advertising, the AVMSD did not affect the Member States' competences. In order to ensure legal clarity on this issue, the revised directive should clarify that advertising and marketing for gambling services are explicitly excluded from scope of the AVMSD."

Speculation that changes in the Government may interfere with the process

On 14 January 2018, the liberal party Venstre entered the Norwegian Government. In an editorial published on 12 January 2018, the publication *casino.no* speculated that with Venstre in government, the monopoly situation in Norway may end, and the gaming market will instead be regulated with licences. The new Government's political platform, published on 14 January, states that the new Government will continue the current monopoly situation. However, it also states that the Government wishes to conduct a broad and external review of Norwegian gambling policy.

Time will tell if the Government ends up proposing new legislation. Until then, foreign gambling services can keep on marketing their services to the Norwegian public.