



The Road to Sports Betting

by Andrew Klebanow

When the Supreme Court struck down the Professional and Amateur Sports Protection Act (PASPA) last May, casino operators across the United States were euphoric, envisioning crowds of enthusiastic bettors flocking to newly constructed sports betting lounges, holding exciting events during major games, and attracting a younger clientele to their properties. Several states moved quickly to permit sports betting in some form. While casinos in some states were able to quickly build betting counters and initiate sports betting activities, most others, particularly in Indian gaming, have come to realize that they must first navigate through a maze of obstacles before taking their first bet.

States that Currently Have Sports Betting

Sports betting is currently available in some form in eight states: Nevada, Delaware, New Jersey, Mississippi, Rhode Island, Pennsylvania, West Virginia, and New Mexico. Each of these states offers some form of sports wagering, but the products offered and where bets can be made vary by state.

Nevada offers a wide variety of betting options including placing bets at casinos, kiosks in taverns, or through a casino's mobile app. In New Jersey, customers can place a bet at a sports betting counter or kiosk in a casino, at a racetrack, online, or through a number of mobile apps. Those mobile apps or online sites could even offer a different skin/brand, but they still have to be associated with a casino or racetrack. Customers can make wagers on their mobile device, place in-game wagers and proposition bets, and top off their accounts anywhere in the state. Geofencing prevents players from placing bets outside of the state's borders. West Virginia also permits wagers to be placed at the state's three casinos along with mobile wagering.

In Rhode Island, the state lottery is the sole provider of all casino gaming, including sports betting, at the state's two casinos. Bettors in Mississippi can also place their bets at a majority of the state's casinos, although not all of the state's casinos have initiated operations. Delaware's three casinos started taking wagers in June, beating New Jersey as the first to market post PASPA. These three states do not currently offer an online/mobile betting option across the state. Mississippi allows mobile wagering, but it has to be within the walls of a brick and mortar casino.

The Commonwealth of Pennsylvania viewed sports betting as an opportunity to fill in a state budget gap, charging casino operators a \$10 million licensing fee and assessing a 36% tax

rate on sports wagering revenue. So far, seven casino operators out of twelve licensees have applied for sports wagering licenses and three were in operation as of January 1, 2019. Pennsylvania will also permit online wagering and mobile apps.

In addition, Arkansas voters legalized sports betting with a ballot initiative in the most recent November election. Washington D.C.'s City Council also approved mobile sports betting, to be conducted through the D.C. Lottery, although it has yet to be signed by the Mayor, and the U.S. Senate has a 30-day review period. D.C.'s current structure appears set up for a monopoly driven model held by Intralot, the current lottery provider.

The State of New York also passed legislation in 2013, legalizing sports betting as part of the act authorizing commercial casinos, but had to wait until the repeal of PASPA before implementing it. The state has recently said that it will craft regulations with the hope of initiating sports wagering later this year. The state's Indian casinos will also be able offer sports wagering. Connecticut is another state that authorized sports betting in July of 2017 before the Supreme Court's decision. It too must work through establishing regulations that take into account the needs of its tribal partners and any additional legislation that may be needed.

Currently, only two Indian tribes have sports books up and running. In Mississippi, the Mississippi Band of Choctaw Indians, along with a number of commercial casinos, offer sports betting. In New Mexico, only the Santa Ana Star Casino has initiated sports betting. Unlike sports betting in other states, the Santa Ana Star Casino did not wait for enabling legislation specifically authorizing sports wagering or the rescission of the state law that prohibits sports wagering. Rather, it relied on the broad language in its compact with the state that permitted the tribe to offer "any and all forms of Class III gaming." Since sports wagering is considered a form of Class III gaming, it too fell under the category of permitted games.

The Road to Sports Betting

Santa Ana Star represents a unique situation, given the broad language in its compact. For most other tribes, the road to sports betting will be a far more difficult journey. For most Indian casinos, individual states must first craft enabling legislation and rescind any previous bans. Legislatures must also decide the kinds of sports wagering that will be permitted and

the entities that would be authorized to provide these products. These may include commercial casinos, racetracks, cardrooms, the state lottery, and even online wagering platforms with no land-based outlets. It is critical that tribes and associations of tribes get a seat at the table at the outset of these discussions.

Concurrent with these discussions, it is important for tribes to understand the economics and feasibility of sports betting at their casinos, particularly if mobile betting is under consideration. How much revenue can an Indian casino hope to generate from a sports betting operation, particularly if the casino is not in a convenient location? What kinds of sports betting products will the state's lottery offer and, given each state lottery's massive channels of distribution, what share of sports betting revenue will they cannibalize? What will be the impact if neighborhood cardrooms were able to take sports wagers? Most important, will mobile wagering be permitted, and which entities will be entitled to offer that product? These must be factored into the feasibility equation in order to determine the revenue that an Indian casino or groups of Indian casinos can ultimately earn.

As legislation is shaped and the concerns of the state's Indian tribes are addressed, it is also necessary for tribes to pay attention to the promulgation of rules and regulations, for they too can put tribes at a disadvantage over other potential sports book providers. At this juncture, it is essential that tribes act as a cohesive group to protect their mutual interests.

The next issue to address is the re-opening of compact negotiations. Some states may take any opportunity of compact renegotiation as a means to increase their share of gaming revenue, particularly in those states that guarantee a wide area of market exclusivity. The re-opening of compact negotiations may also include attempts at increasing the state's share of slot and table game revenue in addition to a piece of sports betting revenue. Given the results of each tribe's economic feasibility study, it may be prudent for some tribes to forego the opportunity.

For those tribes that ultimately determine that it is in their best interest to offer sports betting and are able to secure an appropriate place in a state's sports betting initiative, each tribe must then determine the kinds of sports betting products they intend to offer. They must also determine the back-of-house systems that will manage those wagers, the tribal regulations needed to preserve the integrity of the games (both to the casino and their customers), and how they

intend to mitigate risk in what potentially can be a volatile product.

Sports betting offers Indian casinos an opportunity to expand their customer base, attract a younger audience, generate more revenue, and to create energetic environments that combine dining, sports wagering, and sports viewing. The problem is that getting to that place can be hard. For tribes in different jurisdictions, the road to sports betting requires careful navigation. Better bring a map. ♣

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