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Game On: Mid-Year Update on U.S. Gaming Industry's Expanding Regulations, Legislation, and Launches

2023 follows the trend of expansion within the U.S. gaming industry with a continued focus on sports betting, iGaming, and eSports. Several states implemented new initiatives, including releasing regulations, launching sports betting operations, considering new legislation, and shifting regulatory authority.

Below is an update on the legislation and regulatory schemes for Florida, Georgia, Kentucky, Maine, Minnesota, Missouri, Nebraska, New York, North Carolina, Oklahoma, Pennsylvania, Puerto Rico, South Carolina, Texas, and Vermont.

FLORIDA

- The ongoing litigation involving the Seminole Tribe's sports wagering operation and gaming compact with Florida remains pending in the U.S. Court of Appeals for the District of Columbia.
- Oral argument was held on December 14, 2022, after a federal district court invalidated the compact and forced the Seminoles to cease its operations. The U.S. Bureau of Indian Affairs recently reviewed proposed rules which would grant any sports betting and iGaming matters into rights for each individual tribe, and therefore, the tribes could offer such products as long as the products are included in the corresponding tribal-state compact, such as the one under litigation in Florida with the Seminoles.
- In February, Miami's Magic City Casino, formerly owned by West Flagler Associates Ltd. (a party in the Seminole litigation), was sold to the Poarch Band of Creek Indian Tribe. At dispute in the Seminole litigation is the monopoly over sports betting. However, the current gaming compact in Florida provides the Seminole Tribe with a near-monopoly on slot machine gaming in Florida for 20 years, with the exception of Broward and Miami-Dade counties, as well as exclusivity over table games in south Florida. Therefore, the Florida Gaming Control Commission ("FGCC") was able to approve the sale of Magic City Casino because of its location. The Poarch Band of Creek Indian Tribe will now be the only other casino in the state to be owned by a tribe.
- Outside the pending sports betting litigation, Florida has increasingly faced issues surrounding unregulated slot machines located in "game rooms." These game rooms are often located in strip malls and gas stations. Typically, the only advertisement is a sign that says "Arcade" found on blacked-out windows on the façade of the building. As of May 2023, Tampa Bay alone had at least 70 game rooms.

- Efforts to combat illegal gambling have proven difficult, as game-room owners typically operate for six to eight months, then move to a different location. Any police involvement is often unrelated to illegal gambling. Instead, police respond to calls about robberies, vandalism, or unruly customers.
- The FGCC regulates illegal forms of gambling and enforces the State’s criminal gambling prohibitions. The FGCC has staffed teams with the specific goal of pursuing illegal game rooms.
- The FGCC issues a cease-and-desist letter to game room owners, informing them that they could face a fine of up to \$10,000 per slot machine. Despite warning owners of significant fines, these letters have resulted in only a few game room closures.

GEORGIA

- In February 2023, Georgia introduced Senate Bill 57 and House Bill 380 to authorize online sportsbooks. Both bills failed to pass. Likewise, in March 2023, sports betting language that the Georgia Senate Economic Development and Tourism Committee introduced in House Bill 237 passed in the House but was tabled by the Senate.
- Georgia is one of the few states that does not have commercial or tribal casinos. The lack of casinos in the State has prompted Georgia to explore options for online sports betting.
- Georgia’s Constitution bars gambling, and therefore requires a ballot measure by the citizens of Georgia. However, a voter referendum now would not be heard until November 2024.

KENTUCKY

- Kentucky House Bill 551 was signed by Governor Andy Beshear on March 31, 2023, after being approved March 30 by the Senate. The Bill will authorize the Kentucky Horse Racing Commission to oversee the legalization of sports wagering. The Bill allows a total of 27 online sportsbooks in the State. Each of the nine Kentucky horse racing tracks can partner with up to three online sportsbook operators, and each track will be permitted to open an in-person sportsbook.

- Horse racing tracks will pay \$500,000 for their sportsbook licenses, while online operators will pay \$50,000. Annual renewal fees will be \$50,000 for tracks and \$10,000 for online operators. The State will tax in-person sports betting revenue at 9.75 percent and online sports betting revenue carries a tax of 14.25 percent.

- Under Kentucky law, the new law will take effect on June 28, 2023. After that, per House Bill 551, the Kentucky Horse Racing Commission shall create administrative regulations to establish a fully functioning sports wagering system within six months—meaning, the launch in Kentucky is due by December 28, 2023.

- However, Governor Beshear publicly declared that Kentucky will launch in time for the NFL season, which begins September 7, 2023. Given that the regulations and pre-launch process are likely underway, a September start is still doable and would put Kentucky in line with Maine to be the next states to officially launch.

MAINE

- Maine authorized sports betting in 2022, but it has yet to launch. It is expected that sports wagering may be operational by the start of the NFL season but that will depend on the Maine Gambling Control Unit’s review of applicants.
- A new proposal, LD 1777, would remove betting language from the existing bill, and redefine sports betting to include Internet gaming (iGaming). The proposal seeks to include language that encompasses both games of chance, for purposes of adding iGaming, and games of skill, for the existing sports betting authorization.

- The proposal would authorize the State’s tribes to conduct licensed iGaming by partnering with traditional operators. Tribes would be required to pay 10 percent of their gaming proceeds to the State under the proposal.

- As of April 2023, LD 1777 was referred to the Committee on Veterans and Legal Affairs in both the House and the Senate for further consideration.

MINNESOTA

- In May 2023, attempts to legalize sports betting in Minnesota were unsuccessful.
- House Bill 2000 aimed to grant exclusive licensing rights to tribes for both retail and mobile sports betting, receiving support from tribes and major sports teams. However, an agreement could not be reached with State horse racing tracks, resulting in their exclusion from the bill's provisions.
- Supporters of sports betting must wait until the 2024 legislative session to propose new bills.

MISSOURI

- This year's Missouri sports betting legislation appears unlikely to pass as the legislative session comes to a close, with little hope of reaching a deal before adjournment.
- Opponents of the legislation, led by Senator Denny Hoskins, refuse to advance sports betting without regulation for video lottery terminals (aka "gray games").
- As an alternative, there are discussions about pursuing a statewide voter initiative in 2024 to legalize sports betting, given the strong support from fans and citizens.

NEBRASKA

- Despite being legal since May 2021 and with regulations in place since January 2023, sports betting in Nebraska remains non-operational due to the absence of casino infrastructure.
- The lack of retail casinos in Nebraska has led to delays in implementing sports betting, leaving bettors waiting and causing the State to lose potential revenue as residents seek betting options in neighboring states with established casinos.

- As of the date of this article, no retail sports betting operations are live in Nebraska, despite one casino's plans to launch prior to Memorial Day weekend.

NEW YORK

iGaming

- After the success of online sports betting in New York, Senator Joseph P. Addabbo introduced bill S4856 at the beginning of 2023, seeking to legalize online casinos and online poker, offering hope for further expansion of the State's iGaming industry.
- Due to insufficient financial support, the bill did not pass. As a result, the State faces a delay in full legalization until 2024, potentially missing out on significant tax revenue and the opportunity to join the seven states that have already legalized online gambling.

Downstate Casinos

- The State of New York is in the process of accepting applications for three casino licenses in downstate New York.
- At least eleven proposals have been announced, with potential locations including Manhattan, Queens, the Bronx, Brooklyn, and Nassau and Westchester counties.
- The Gaming Facility Location Board has received several hundred questions during round one of the Q&A application process. Staff members are currently reviewing the questions, eliminating duplicates, and preparing proposed responses for the Board's approval and publication. Once published, interested parties will have four weeks to submit questions for round two.
- The final selection will be made by the New York State Gaming Commission after a thorough evaluation process.

NORTH CAROLINA

- Sports betting is currently legal in North Carolina, but it is restricted to in-person betting at tribal casinos within the State.

- On May 30, 2023, the North Carolina Committee on Finance passed an amended version of House Bill 347 to legalize mobile sports betting.
- On June 1, 2023, the State Senate approved the Bill and now awaits the formal approval from the House, which passed the legislation in March 2023 for the Committee. House Speaker Tim Moore expressed the expectation that the Bill will be formally approved this week and sent to Governor Roy Cooper for signature.
- The Bill includes provisions for four licenses: interactive sports wagering, sports wagering supplier, service provider, and advance deposit wagering, and allows up to 12 operators to be licensed in North Carolina.
- The date for enacting sports wagering in North Carolina will be determined by the Revenue and Lottery Commission within 12 months of the Bill's passage.
- The estimated economic impact of sports wagering legalization in the first year is \$10.1 million, increasing to \$71.1 million in the fifth year.

OKLAHOMA

- As of May 2023, sports betting in Oklahoma remains illegal after House Bill 1027, which would have allowed tribes to offer both in-person and online sports betting, passed through the House but failed to clear the Senate.

PENNSYLVANIA

- In March 2023, State Representative Ed Neilson introduced House Bill 733, which seeks to legalize eSports betting in Pennsylvania.
- This move aims to enhance an already thriving market as Pennsylvania benefits significantly from in-person and online sports betting revenue.
- Should House Bill 733 pass, Pennsylvanians will have access to online sports betting, casino games, and eSports.

- The bill is currently moving through the Pennsylvania General Assembly, but no scheduled voting meetings have been announced.

PUERTO RICO

- Puerto Rico is making strides towards introducing online sports betting, expanding its sports betting offerings beyond the existing retail sportsbooks.
- The launch of online sports betting is anticipated to occur by June 2023, further boosting sports betting revenue in Puerto Rico.
- The online sports betting market has significant potential for growth, and it is projected to become a major source of revenue for Puerto Rico, following the patterns observed in other jurisdictions where online sports betting accounts for a substantial portion of betting activity.

SOUTH CAROLINA

- Sports wagering is still prohibited in South Carolina after House Bill 3749 failed to clear the State Senate in May. The Bill would have legalized up to eight sports betting operators. Next year's pursuit could be fueled by the approval in the neighboring Carolina.

TEXAS

- The Texas legislative session concluded in May 2023, without success in legalizing sports betting in the State.
- House Bill 1942 aimed to legalize online sports betting in the State. Since gambling is prohibited under the Texas Constitution, the Bill was accompanied by House Joint Resolution 102, which sought to legalize sports betting through a constitutional amendment.
- There is significant support for sports betting legalization, including Texas professional sports teams, Jerry Jones, Mark Cuban, and former Texas Governor Rick Perry.
- Despite receiving House approval, Lieutenant Governor Dan Patrick declared the Bill dead before the Senate could vote on it, citing a lack of overwhelming GOP support.

- As the Texas Legislature convenes every two years, proponents will have to wait until 2025 for another opportunity to revisit sports betting legislation.

VERMONT

- Vermont’s legislature approved mobile sports wagering via House Bill 127. The State now awaits Governor Phil Scott’s signature. Once enacted, the Department of Liquor and Lottery (the “Lottery”) will oversee all mobile sports betting within the State, as well as fantasy sports—which was previously under the purview of the Vermont Secretary of State—and horse racing. The Lottery shall authorize a minimum of two but not more than six sportsbook operators in the State.
- The Bill authorizes the Lottery to operate sports wagering “through contracts with sports wagering operators” and prohibits all others from conducting any such wagering in the State. Thus, only chosen sports wagering operators will be able to offer sports wagering in the State.
- “Operator” means “a party who is authorized by contract or agreement with the Department to conduct a sportsbook.” “Sportsbook” means “the business of accepting sports wagers on any sports event by any system or method of wagering.” And, notably, the definition of “sports event” includes “horse racing and equestrian events.” Therefore, once the Bill goes into effect, wagering on horse racing will become expressly legal but only if done by an approved operator.
- House Bill 127 exclusively legalizes online sports betting because the State lacks the infrastructure to support retail sports betting. Operators will be required to pay a \$550,000 fee, and in addition to the license fee, the Lottery will take no more than 20 percent of the adjusted gross revenue that sportsbook operators receive in a year. Once House Bill 127 is enacted into law, Vermont will become the final New England state to legalize sports betting, and the only one to do so in an online-only format.

For additional information or assistance, contact a member of Blank Rome’s [Gaming group](#) or [Gregory A. Bailey](#), [Danielle B. Catalan](#), [Nicole Bartz Metral](#), [Dennis M.P. Ehling](#), [Stephen D. Schrier](#), or [Michael P. Trainor](#).

*The Gaming group would like to thank Summer Associate **Madison Ward** for her work on this client alert.*

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